

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

Meeting of the Board of Directors

Held via Teleconference

May 18, 2022
9:00 a.m.

Pursuant to Public Act 220, SLH 2021, 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.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than 72 hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to hdoa.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street Rm 205, Honolulu HI 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two (2) minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://zoom.us/j/94974946877>

Telephone: (669) 900-6833, Web ID: 949 7494 6877

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For both ICT, phone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID which is also listed at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your phone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Department of Agriculture
Hale Waiolama Board Room
1428 South King Street
Honolulu, Hawaii 96814-2512

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty (30) minutes to restore connectivity with all board members and the public in-person access noted above. In the event that audio connectivity is re-established within 30 minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within 30 minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://hdoa.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will also be posted on the website no less than twenty-four (24) hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. None

D. New Business

1. Presentation by University of Hawaii Community Design Center Regarding the Whitmore Food Hub.
2. Request for Approval to Issue a Request for Proposals to Construct and Operate a High Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu
3. Request for Approval to Renew Revocable Permit No. S-6814 Issued to Ronald P. Weidenbach dba Hawaii Fish Company for 18 Acres, More or Less, in Kaena, Waialua, Oahu, Tax Map Key (1) 6-9-001:003, :033 (por)
4. Request for Approval to Renew Revocable Permit No. RP17-01 Issued to Andros Engineering Corporation for 132.25 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
5. Request for Approval to Renew Revocable Permit No. RP20-02 Issued to Kelena Farms Inc. for 345.38 Acres in Waialua, Oahu, Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-001:046
6. Request for Approval to Renew Revocable Permit No. RP20-01 Issued to Ho Farms LLC for 57.296 Acres at Galbraith, Oahu, Tax Map Key (1) 7-1-012:001 (por)
7. Request for Approval to Renew Revocable Permit No. RP-W257-21-02 Issued to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,392.7 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
8. Request for Authorization to Seek an Opinion from the Department of the Attorney General Concerning Legal Issues Pertaining to Kekaha Agriculture Association's IAL Petition

E. Old Business

1. None

F. Executive Director's Update

G. Adjourn

The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS."

If you require special assistance or auxiliary aids or services to participate in the public hearing process, please contact staff at (808) 586-0186 at least three (3) business days prior to the meeting so arrangements can be made.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW ON OUR WEBSITE ON AND AFTER THURSDAY, MAY 12, 2022.

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and, the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited, by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Delanie Prescott-Tate, Acting Non-Discrimination Coordinator
Agribusiness Development Corporation
425 Queen Street
Honolulu, HI 96813
(808) 586-1180
hdoa.adc.titlevi@hawaii.gov

If you believe that you have been discriminated against with respect to an Agribusiness Development Corporation program or activity, you may contact the Acting Non-Discrimination Coordinator identified above.

To request language or accessibility for Agribusiness Development Corporation programs or public meetings, please contact the office, at (808) 586-0186 or email: hdoa.adc@hawaii.gov. Please allow sufficient time for the Agribusiness Development Corporation to meet accommodation requests.

To request language interpretation for this document, please contact: LEP Coordinator located at 1428 South King Street, Honolulu, HI 96813 (Phone: 808-973-9469 Email: hdoa.hr@hawaii.gov). Individuals may request oral interpretation services in order to request a written translation of this document.

Non-Discrimination Statement
Agribusiness Development Corporation Board Agendas

If you require special assistance or auxiliary aids or services to participate in the public hearing process please contact staff at (808) 286-0186 at least three (3) business days prior to, the meeting so arrangements can be made.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC 's OFFICE, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII, ON AND AFTER MAY 12, 2022.

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and, the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited, by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Hawai'i Department of Agriculture
1428 S. King Street, Honolulu, HI 96814,
(808) 973-9560
hdoa.titlevi@hawaii.gov

If you believe that you have been discriminated against with respect to an Agribusiness Development Corporation program or activity, you may contact the HDOA Non-Discrimination Coordinator identified above.

To request translation, interpretation, modifications, accommodations, or other auxiliary aids or services, contact the HDOA, at (808) 286-0186 or email: hdoa.adc@hawaii.gov. Please allow sufficient time for the Agribusiness Development Corporation and HDOA to meet accommodation requests.

Non-Discrimination Statement
Agribusiness Development Corporation Board Agendas

Inā makemake 'oe i ke kōkua kūikawā a i kekahi lawelawe keu paha e komo piha ai i ka hō'ike mana'o no ka lehulehu, e ho'ohui me nā limahana ma (808) 286-0186 he 'ekolu (3) lā hana ma mua ma ka li'ili'i loa, i hiki ke ho'omākaukau 'ia ia mau lawelawe kōkua 'ana.

MANA'O: E HIKI ANA KE NĀNĀ 'IA KA MA'I'O O KĒIA PAPA KUMUMANA'O MA KŌ KA PO'O ADC KE'ENA, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII, I KA LĀ NŌ A MA HOPE AKU MAY 12, 2022.

'A'ole nō ho'okae ka 'Oihana Mahi 'Ai o ka Moku'āina o Hawai'i i kō ke kanaka lāhui, 'ili, keka, 'āina, kūlana makahiki, kīnānā a mea 'oko'a a'e i ka'a ma lalo o nā kānāwai pekelala a moku'āina, ma ka ho'okele 'ana i kona mau papahana, pāhana, a 'a'ole ho'i ho'omaka'u, 'imi mākaia, a 'āke'ake'a ka 'Oihana Mahi 'Ai i kekahi kanaka a hui paha ma muli o kō lākou pono, hihia 'ana i kekahi mau hana ho'opale 'ia a i 'ole kū'ē kekahi mau hana ho'okapu 'ia ma lalo o nā Mahele 5 a me ka 7 o ka 40 Papa Kānāwai Pekelala (C.F.R.).

Inā he mau nīnau kāu no kēia ho'olaha, a i 'ole no kekahi o kō ka 'Oihana Mahi 'Ai mau polokalamu, kulekele, a ka'ina hana i pili i ka ho'okae, e ho'ohui 'oe me:

Hawai'i Department of Agriculture
1428 S. King Street, Honolulu, HI 96814,
(808) 973-9560
hdoa.tittlevi@hawaii.gov

Inā he mana'o no kou ho'okae 'ia i loko kekahi pō'aiapili no kekahi pāhana a hanana o ka 'Oihana Mahi 'Ai, e ho'ohui nō 'oe me [ka Ho'olauka'i Hihia Ho'okae] i 'ōlelo 'ia i luna a'e nei.

No ke noi 'ana i kōkua māhele a unuhi 'ōlelo, a me nā lawelawe a kōkua keu o kēlā 'ano kēia 'ano, e kelepona aku i ke ke'ena o ka Luna Ho'okele ma (808) 286-0186 a i 'ole e leka uila aku iā hdoa.adc@hawaii.gov. E 'ae mai i wā e ho'olako aku ai ka HDOA i ia mau lawelawe 'ana.

Non-Discrimination Statement
Agribusiness Development Corporation Board Agendas

Nu masapulmo ti espesial a tulong wenno makatulong a tulong wenno serbisio tapno makapaset iti proseso ti publiko a panagdengngeg maidawat a kontakem ti empleado iti (808) 286-0186 iti saan a nababbaba ngem tallo (3) nga aldaw nga adda serrek sakbay ti pannakiuman tapno maaramid dagiti panagiurnos.

LAGLAGIPEN: DAGITI MATERIALES PARA ITI DAYTOY A PANGGEP KET SIDADAAN PARA ITI PANNAKATINGITING ITI OPISINA TI MANGIDADAULO ITI ADC, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII, BAYAT KEN KALPASANNA MAY 12, 2022.

Ti Departamento ti Agrikultura ti Hawai'i ket saan a mangidumduma maibasar iti puli, kolor, seks, nasion a nagtaudan, edad, wenno disabilidad, wenno aniaman a dadduma a klase a protektado iti masakupan ti maipakat a linteg ti pederal wenno estado, iti panangimaton kadagiti programa, wenno aktibidadna, ken, ti Departamento ti Agrikultura ket saan a mamutbuteng wenno bumales maibusor iti siasinoman nga individual wenno grupo gapu ta inusarda dagiti karbenganda a makipaset kadagiti tignay a maprotektaran, wenno sinumra ti aramid a maiparit, babaen ti 40 C.F.R. Paset 5 ken 7, wenno para iti panggep a panangsinga kadagita a karbengan.

Nu addaanka iti aniaman a saludsod maipapan iti daytoy nga abiso wenno aniaman a programa, pagalagadan, wenno wagas ti saan a panangidumduma ti Departamento, mabalinmo a kontakem ti:

Hawai'i Department of Agriculture
1428 S. King Street, Honolulu, HI 96814,
(808) 973-9560
hdoa.titlevi@hawaii.gov

Nu patiem a naidumdumaka mainaig iti programa wenno aktibidad ti Departamento ti Agrikultura, mabalinmo a kontakem ti [Tagakoordina iti Saan a Panangidumduma] a nadakamat iti ngato.

Tapno agkiddaw iti panagipatarus, interpretasion, modipikasion, akomodasion, wenno dadduma pay a pangtulong a tulong wenno serbisio, kontakem ti Opisina ti Mangidadaulo iti (808) 286-0186 wenno ag-email iti: hdoa.adc@hawaii.gov. Maidawat a palubusam ti umdas a tiempo para iti HDOA tapno matun-oyna dagiti kiddaw nga akomodasion.

Non-Discrimination Statement
Agribusiness Development Corporation Board Agendas

ຖ້າຫາກທ່ານຕ້ອງການຄວາມຊ່ວຍເຫຼືອພິເສດ ຫຼື ເຄື່ອງມືຊ່ວຍເຫຼືອ ຫຼື ການບໍລິການເສີມ ເພື່ອເຂົ້າຮ່ວມໃນຂະບວນການໄຕ່ສວນພິຈາລະນາ ລຸນາຕິດຕໍ່ພະນັກງານທີ່ (808) 286-0186 ຢ່າງໜ້ອຍສາມ (3) ວັນລັດຖະການກ່ອນ, ການປະຊຸມສາມາດຈັດການໄດ້.

ໝາຍເຫດ: ອຸປະກອນ ສໍາລັບວາລະນີ້ຈະມີໃຫ້ໃຊ້ ສໍາລັບການກວດສອບຄືນໃນຫ້ອງການຂອງປະທານ, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII ແລະ ຫຼັງຈາກນັ້ນ MAY 12, 2022.

ພະແນກກະສິກໍາຂອງລັດຮາວາຍບໍ່ເລືອກຈໍາແນກບົນພື້ນຖານດ້ານເຊື້ອຊາດ, ສີເຜິ້ວ, ເພດ, ຊາດກໍາເນີດ, ອາຍຸ ຫຼື ຄວາມພິການ ຫຼື ກຸ່ມຄົນອື່ນໆ ທີ່ຖືກປົກປ້ອງພາຍໃຕ້ກົດໝາຍລັດຖະບານ ຫຼື ລັດທີ່ກ່ຽວຂ້ອງ, ໃນການບໍລິຫານໂຄງການ ຫຼື ກິດຈະກຳຕ່າງໆ ແລະ, ພະແນກກະສິກໍາບໍ່ໄດ້ຂີ້ມຊຸ່ ຫຼື ຕອບໂຕ້ຕໍ່ບຸກຄົນ ຫຼື ກຸ່ມຄົນໃດໜຶ່ງ ເພາະວ່າພວກເຂົາໄດ້ໃຊ້ສິດທິຂອງເຂົາເຈົ້າໃນການມີສ່ວນຮ່ວມໃນການກະທຳທີ່ໄດ້ຮັບການຄຸ້ມຄອງ ຫຼື ຄັດຄ້ານການກະທຳທີ່ຖືກຫ້າມ, ໂດຍ 40 CFR ພາກ 5 ແລະ 7 ຫຼື ເພື່ອຈຸດປະສົງໃນການແຊກແຊງສິດທິດັ່ງກ່າວ.

ຖ້າຫາກທ່ານມີຄໍາຖາມໃດໆກ່ຽວກັບແຈ້ງການສະບັບນີ້ ຫຼື ໂຄງການ, ນະໂຍບາຍ ຫຼື ຂັ້ນຕອນທີ່ບໍ່ມີການຈໍາແນກຂອງພະແນກ, ທ່ານສາມາດຕິດຕໍ່ຫາ:

Hawai'i Department of Agriculture
1428 S. King Street, Honolulu, HI 96814,
(808) 973-9560
hdoa.titlevi@hawaii.gov

ຖ້າທ່ານເຊື່ອວ່າທ່ານໄດ້ຖືກຈໍາແນກກ່ຽວກັບໂຄງການ ຫຼື ກິດຈະກຳຂອງກະຊວງກະສິກໍາ, ທ່ານສາມາດຕິດຕໍ່ຫາ [ຜູ້ປະສານງານການບໍ່ຈໍາແນກ] ທີ່ລະບຸຢູ່ຂ້າງເທິງ.

ເພື່ອຂໍການແປພາສາ, ການຕີຄວາມໝາຍ, ການດັດແປງ, ທີ່ພັກ ຫຼື ການຊ່ວຍເຫຼືອ ຫຼື ການບໍລິການເສີມອື່ນໆ, ກະລຸນາຕິດຕໍ່ຫ້ອງການຂອງປະທານ ທີ່ (808) 286-0186 ຫຼື ສົ່ງອີເມວຫາ: hdoa.adc@hawaii.gov. ກະລຸນາອະນຸຍາດໃຫ້ມີເວລາພຽງພໍ ສໍາລັບ HDOA ເພື່ອຕອບສະ ໜອງຄໍາຮ້ອງຂໍທີ່ພັກ.

Non-Discrimination Statement
Agribusiness Development Corporation Board Agendas

如果您需要特殊幫助或輔助設施或服務來參與公共聽證會過程，請至少在會議召開前三(3)個工作日致電(808) 286-0186 聯絡工作人員，以便做出安排。

備註：本議程的材料將在會議前後可在BOA主席辦公室查閱，地址為
ADC, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII。MAY 12, 2022.

Hawai'i農業部在其管理的計劃或活動中，不會基於種族、膚色、性別、國籍、年齡或殘障，或任何其他受適用聯邦或州法律保護的類別而進行歧視行為，並且農業部不因任何個人或團體依據40 C.F.R.第5部份和第7部份行使其權利進行受保護活動或反對禁止的行為，或以干擾其權利為目的而恐嚇或報復他們。

如果您對本通告或本部門的任何無歧視計劃、政策或程序有任何疑問，您可以聯絡：

Hawai'i Department of Agriculture
1428 S. King Street, Honolulu, HI 96814,
(808) 973-9560
hdoa.titlevi@hawaii.gov

如果您認為您在參與農業部計劃或活動中受到歧視，請聯絡上述確定的
[無歧視協調員]。

如需翻譯、口譯、修改、住宿或其他輔助設施與服務，請聯絡主席辦公室，致電(808) 286-0186 或發送電子郵件至
hdoa.adc@hawaii.gov。請允許HDOA足夠的時間來滿足住宿要求。

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-2

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Approval to Issue a Request for Proposal to Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu

Applicant: N/A

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: Island of Oahu

Tax Map Key: N/A

Land Status: N/A

Trust Land Status: N/A

Character of Use: Processing Facility

Contract Term: TBD

BACKGROUND:

The State of Hawaii Agribusiness Development Corporation (ADC) seeks to solicit proposals to construct, operate and maintain a high-pressure processing (HPP) machine and agricultural facilities situated within the Whitmore Food Hub in Wahiawa, Oahu.

This request seeks to bring High Pressure Processing (HPP) technology to Hawaii for use by farmers and other food producers. Local farmers and food producers face challenges of: 1) delivery and shipping logistics, and 2) the limited shelf-life of Hawaii-made value-added food products. Addressing this challenge will immensely increase the economic development opportunities for Hawaii's agricultural and "value-added" industries.

HPP is a non-thermal technology that pasteurizes and preserves food, thereby extending the shelf-life of food products from several weeks up to months, without compromising overall food quality. It enables farmers and value-added processors to scale distribution and exports with non-thermal technology to preserve and pasteurize food products without compromising overall food quality and food safety. HPP machines

can process a wide variety of foods, including fruits, vegetables, meats and seafoods. It can deliver ready-to-eat meals, ready-to-cook meats, juices, soups, sauces, dips, and dairy-based products.

It is a proven, growing technology used extensively on the mainland, but so far, not available locally. High start-up costs make it difficult for the private sector to take on this investment.

Accordingly, the State is creating a “food hub”, that establishes HPP center at its core, with supportive facilities including cold storage and distribution capabilities. It will be located in Central Oahu within the Whitmore Food Hub (Tax Map Key numbers. (1) 7-1-002:009 and (1) 7-1-002:004. At full build out, The Food Hub will also include offices, additional warehousing, and workforce housing.

ADC is awarding up to Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, delivery, and installation of said machine(s), as well as hiring technical expertise, staff training, and project support. The funding was provided by the State of Hawaii Department of Business, Economic Development, and Tourism to progress the state’s agricultural post-production capacity to support local demand and scalability of value-added exports.

ADC will own the machine(s); however, it will be purchased, installed, and maintained by the selected Offeror. The selected Offeror will be responsible for providing materials and labor for operating and maintaining the HPP machine(s), as well as the food processing hub complex. It will establish user fees, as approved by ADC. The selected Offeror will also be responsible for obtaining all required land use entitlements, government approvals, and permits, and operating the HPP machine on behalf of the State for a minimum of seven years. In consideration of the Offeror’s services and the Offeror’s proposed rent schedule, the ADC will provide the selected Offeror with funding for the HPP machine and a ground lease for up to 553,778 square feet (12.3 acres) within the Whitmore Food Hub.

The ADC’s evaluation committee, comprised of at least three (3) qualified state employees, will evaluate the proposals and select the Offeror whose proposal best meets ADC’s objectives and the RFP selection criteria.

REQUEST:

Pursuant to Chapter 163D-4(8), authorize the Executive Director to issue a Request for Proposal (see “Exhibit A”) to purchase and operate a high-pressure processing machine and develop and manage a food processing facility in Wahiawa, Oahu.

RECOMMENDATION:

Based upon the above, the recommendation is to approve the request to issue a Request for Proposal to construct and operate a HPP machine and agricultural facilities and authorize the Executive Director to negotiate and enter into a public private partnership subject to the following conditions:

- 1) ADC will provide up to \$5.5 million to acquire at least one, possibly two HPP machine, and installation of said equipment, as well as project support;
- 2) The term of the Contract shall be for a minimum 7 years, with the option to extend;
- 3) ADC shall own the equipment throughout its usable life and the Offeror shall be responsible for operating and maintaining the HPP machine and facility for a minimum of 7 years;
- 4) ADC shall receive, at minimum, a fee equivalent to 1% of any gross sales over the first \$1 million of gross sales generated by the HPP machine operations; and
- 5) In consideration of the Offerors services, the ADC will provide the Offeror a lease for up to 553,778 square feet (12.3 acres) within the Whitmore Food Hub for the development of agricultural facilities.

Respectfully submitted,

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

May 18, 2022

Subject: Request for Approval to Renew Revocable Permit No. S-6814
Issued to Ronald P. Weidenbach dba Hawaii Fish Company for 18
Acres, More or Less, in Kaena, Waialua, Oahu, Tax Map Key (1) 6-
9-001:003, :033

Permittee: Ronald P. Weidenbach dba Hawaii Fish Company

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 18 acres, more or less

Field No(s).: Undesignated

Tax Map Key: (1) 6-9-001:003; :033

Land Status: Set aside by the Governor's Executive Order No. 4474 to the
Agribusiness Development Corporation for Agricultural Purposes

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes ____ No X

Character of Use: Aquaculture

Land Doc. Type: Revocable Permit

Term: Month-to-month (renews annually)

Rental Rate: \$100 per month per year
Annual Rent: \$1,200

BACKGROUND:

On August 27, 2014, the Board of Directors of the Agribusiness Development Corporation ("ADC") voted to approve the acceptance of 147 acres, more or less, (the "Property") (see "Exhibit A") which include the above-referenced TMKs, among others, near Mokuleia from the Department of Land and Natural Resources ("DLNR"). The land was transferred to the ADC via Governor's Executive Order No. 4474 dated November 24, 2014 ("EO 4474").

Included in the transfer was one tenant, Ronald P. Weidenbach dba Hawaii Fish Company ("Permittee"), under DLNR Revocable Permit No. S-6814 (see "Exhibit B") (the "Permit") for 18 acres, more or less, for purposes of general aquaculture (the "Premises"). Included in the 18 acres was a 7-acre pond. In May 2015, Permittee submitted a proposal to ADC for a long-term license for the 18 acres as well as an additional 77 acres, totaling 95 acres to develop an integrated aqua-farm. Instead of a license, at their meeting on May 27, 2015, the ADC Board approved the issuance of a Revocable Permit to Permittee for the 18 acres, including the 7-acre pond, pending negotiations of the terms of an eventual license. Unfortunately, ADC and Permittee were unable to agree to license terms. ADC maintained an interest the makai lands, as well as a portion of the pond to promote other aquacultural interests; Permittee maintained their request for exclusive use of all usable lands and the pond to establish their aqua-farm. Subsequent negotiations were intractable and unproductive. In fact, Permittee has even refused to sign the ADC Revocable Permit and has been operating on holdover status under the Permit.

At their meeting on April 28, 2021, the Board of the Agribusiness Development Corporation ("ADC") voted to approve the withdrawal of EO 4474 and re-set aside the property to the Hawaii Department of Agriculture ("HDOA") who has expressed interest in managing the Property, along with DLNR's Division of Forestry and Wildlife for a Game Management Area. At their meeting on April 22, 2022, the DLNR board approved the withdrawal of EO 4474 and the re-set aside of the Property to the HDOA. Until the Governor's office withdraws EO 4474, the Property and the Permittee remain under the control and management of ADC.

LAND REQUEST:

To approve the annual renewal of the Permit for one year, or until EO 4474 is withdrawn and re-set aside to the HDOA, whichever may be sooner.

WATER NEEDS AND SOURCE OF WATER:

The Premises include a 7-acre pond which the Permittee utilizes for fish stock production. Additional water is provided by an 8" well located on-site.

OPERATIONAL PLAN:

Permittee conducts aquaculture operations on-site for sale to local markets.

CONSERVATION PLAN:

There is no conservation plan on file.

DISCUSSION:

The subject property has been approved to be re-set aside from ADC to HDOA as approved by DLNR. Until such time as the Governor issues an executive order

formalizing the transfer, the property and tenant remain under the management and control of ADC.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the land request noted above, subject to the following conditions:

1. The renewal term shall commence on June 1, 2022 and shall expire on May 31, 2023 or at such time as EO 4474 shall be withdrawn and the Property re-set aside to the HDOA, whichever shall sooner occur; and
2. All other terms and conditions of the Permit shall remain unchanged.

Respectfully Submitted,

James J. Nakatani
Executive Director

EXHIBIT A

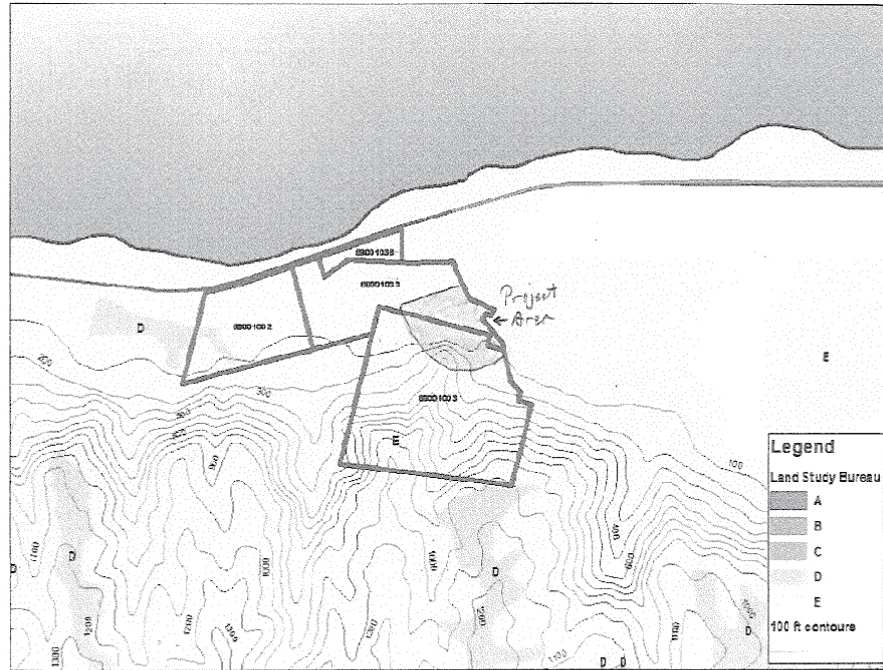


Figure 4.

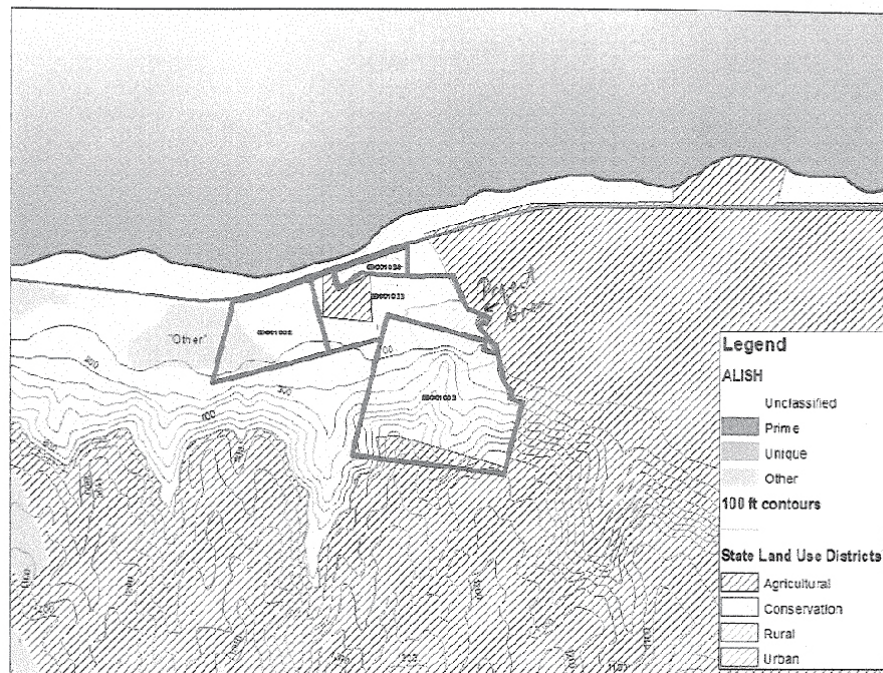


Figure 5.

Request for Approval to Renew Revocable Permit No. S-6814 Issued to Ronald P. Weidenbach
dba Hawaii Fish Company for 18 Acres, More or Less, in Kaena, Waialua, Oahu, Tax Map Key (1)
6-9-001:003, :033
May 18, 2022
Page 5 of 5

EXHIBIT B

Revocable Permit No. S-6814

[see following pages]

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT

REVOCABLE PERMIT NO. S-6814

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 1st day of June, 1992,
RONALD P. WEIDENBACH dba HAWAII FISH COMPANY
hereafter called the "PERMITTEE", whose business and mailing
address is 68-059 B Waialua Beach Road, Waialua, Hawaii 96791.

is permitted to enter and occupy, on a month-to-month basis
only, that certain parcel of Government land (and any
improvements located thereupon) situate at Kaena, Waialua,
Oahu, TMK: 6-9-01:3 and 33

as indicated on the map attached hereto, if any, and made a
part hereof, containing an approximate area of 18 acres
which parcel is hereinafter referred to as the
"Premises".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following
specified purposes only:

Aquaculture Purposes

2. Pay, at the Office of the Department of Land and
Natural Resources, Honolulu, Oahu, or at the Office
of its Land Agent on the Island where the Premises
are located, the sum of ONE HUNDRED AND 00/100 DOLLARS
(\$100.00) being rental due and payable on the first
day of each and every month commencing June 1, 1992.

The interest rate on any and all unpaid or delinquent
rentals shall be at one per cent (1%) per month plus
a service charge of FIFTY AND NO/100 DOLLARS (\$50.00)
per month for each month of delinquency.

3. Upon execution of this Permit, deposit with the Board
of Land and Natural Resources, hereinafter called the
"Board", the sum of \$ 200.00
as security for the faithful performance of all of

these terms and conditions. The whole or portion of the deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.

4. At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) days notice, in writing, before vacating the Premises.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover lessee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules, and regulations of the federal, state, municipal, or county governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.

11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises use due care for public safety and agrees to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.

B. Additional Conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to the revocation; provided, however, that in the event payment of rental is delinquent for period of ten (10) days or

more, this Permit may be revoked upon written notice to the Permittee at lease five (5) business days prior to the revocation.

2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State liquidated damages at the daily rate of \$ 20.00 for each day, or portion thereof, the Permittee remains on the Premises over the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within thirty (30) days, after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

8. It is understood that the Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
9. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.
10. The term of this month-to-month permit beyond one year from date of issuance, is subject to the prior approval of the Board.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, or a physical handicap.
12. Any and all disputes and/or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. _____

Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

DATED: JUL -1 1992, 19 .

STATE OF HAWAII

By John P. Keppeler
Chairperson and Member
Board of Land and
Natural Resources

Approved by the Board
at its meeting held on
May 22, 1992.
Item F-1-d

PERMITTEE

RONALD P. WEIDENBACH dba
HAWAII FISH COMPANY

By: Ronald P. Weidenbach
Its:

And By: _____
Its:

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 26th day of June, 1992,
before me personally appeared RONALD P. WEIDENBACH, dba HAWAII FISH
COMPANY, to me known to
be the person(s) described in and who executed the foregoing
instrument and acknowledged to me that he executed the same
as his free act and deed.

Jean Fujiwara
Notary Public, State of Hawaii

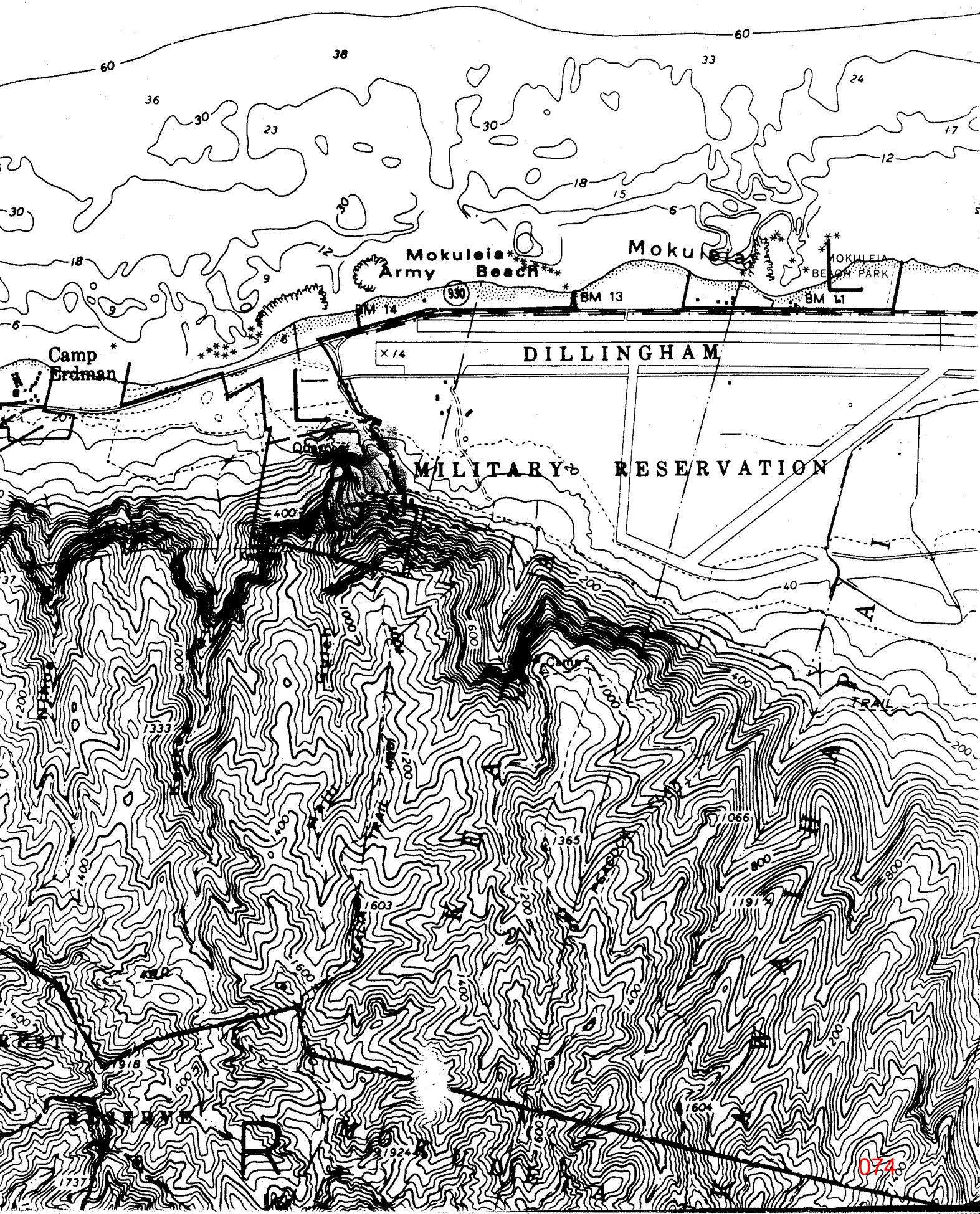
My commission expires: 2/4/95

STATE OF HAWAII)
COUNTY OF) SS.

On this _____ day of _____, 19____, before
me appeared _____ and
_____, to me personally
known, who, being by me duly sworn, did say that they are the
_____ and _____,
respectively of _____,
a Hawaii corporation, and that the seal affixed to the
foregoing instrument is the corporate seal of said corporation
and that said instrument was signed and sealed in behalf of
said corporation by authority of its Board of Directors, and
the said _____ and _____
acknowledged said instrument to be the free act and deed of
said corporation.

Notary Public, State of Hawaii

My commission expires: _____



ADDENDUM

ADDITIONAL TERMS AND CONDITIONS UNDER WHICH THIS PERMIT IS GRANTED ARE AS FOLLOWS:

1. The property is available on a month-to-month basis only, without further commitment.
2. The applicant accepts the property in its "as is" condition.
3. The applicant shall secure all necessary permits from County, State and Federal agencies.
4. The applicant shall provide the Chairperson with a Development Plan for approval, prior to any construction occurring on the property.
5. Add "Farm operation office/caretakers building and hatchery office/caretakers building.
6. Add the conditions under CDUA #OA-9/6/91-2504 approved by the Board on January 24, 1992 under agenda Item H-2.



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Approval to Renew Revocable Permit No. RP17-01
Issued to Andros Engineering Corporation for 132.25 Square Feet,
More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-
002:004 (por)

Permittee: Andros Engineering Corporation

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 132.25 square feet, more or less

Bldg No(s).: Bldg E

Tax Map Key: (1) 7-1-002:004

Land Status: Acquired in fee by the Agribusiness Development Corporation in
2015.

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes ____ No X

Character of Use: Commercial/Agricultural Recycling

Land Doc. Type: Revocable Permit

Term: Month-to-month (renews annually)

Rental Rate: \$79.35 per month per year
Annual Rent: \$952.20

BACKGROUND:

Andros Engineering Corporation ("AEC") has been renting office space located in Building E ("Exhibit A") in Whitmore since 2017. AEC is a world supplier of specialized agricultural equipment that deal in irrigation, research and development, and biotech contract services (recycling). AEC also occupies a covered parking and storage shed in Whitmore, identified as Building F.

The Permittee has been a good tenant with timely and complete rent payments.

LAND REQUEST:

To approve the annual renewal of the Permit (see "Exhibit B") for the period of July 1, 2022 – June 30, 2023.

WATER NEEDS AND SOURCE OF WATER:

For the purposes of the Permittee's use, there are no water needs. However, the premises do have access to bathroom facilities which is connected to BWS water and sewer.

OPERATIONAL PLAN:

The premises provide administrative space for Permittee's operation within ADC's Whitmore food hub master-planned area.

CONSERVATION PLAN:

For the purposes of Permittee's use, a conservation plan is not required.

DISCUSSION:

The premises are located within ADC's Whitmore food hub master-planned area. As such, a short-term revocable permit is appropriate for this disposition.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the land request noted above, subject to the following conditions:

1. All current terms and conditions of the Permit shall remain unchanged.

Respectfully Submitted,

James J. Nakatani
Executive Director

Request for Approval to Renew Revocable Permit No. RP17-01 Issued to Andros Engineering Corporation for 132.25 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
May 18, 2022
Page 3 of 4

EXHIBIT A

Map

[see following page]

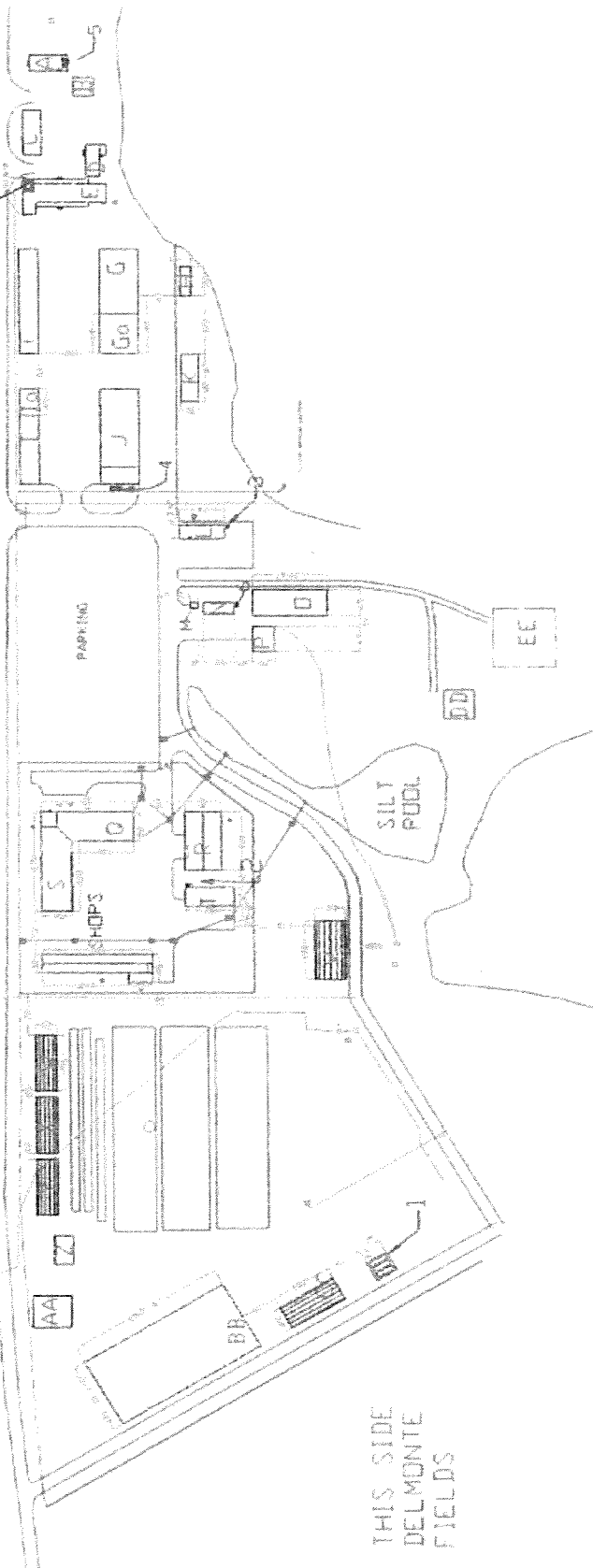
EXHIBIT A

TMK:7-1-02-04 (por)
Building E (por)
132.25 Sq ft

WHITMORE AVENUE

WHITMORE AVENUE

WATER PIPE TO PINEAPPLE PLANT



WHITMORE AVENUE
DRAIN

TANK LEGEND
1. 3 TELLER TANKS
2. 300 GPM DIESEL (STEAM WASHER)
3. 200 GPM PROPANE
4. 3600 GPM WASTE OIL
5. 100 GPM PROPANE
6. 300 GPM PROPANE

LEGEND
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Dole		WHITMORE AVENUE	
Dole Fresh Fruit Company		Dole Fresh Fruit Company	
Wahiawa, Hawaii		Wahiawa, Hawaii	
DATE: 1/1/11		DATE: 1/1/11	
BY: [Signature]		BY: [Signature]	

Request for Approval to Renew Revocable Permit No. RP17-01 Issued to Andros Engineering Corporation for 132.25 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
May 18, 2022
Page 4 of 4

EXHIBIT B

Revocable Permit No. RP17-01

[see following pages]

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

REVOCABLE PERMIT NO. RP17-01

Effective the 1st day of July, 2017, Andros Engineering Corporation, a California Corporation, whose mailing address is P.O. Box 856, Santa Margarita, California 93453 hereinafter called the "PERMITTEE", is permitted to enter and occupy, on a month-to-month basis, a portion of Building E with the address of 1116 Whitmore Avenue, Wahiawa, Hawaii 96786 located on that certain parcel of State land situated at Whitmore, District of Wahiawa, Oahu, TMK: (1) 7-1-02-04 (por), as shown on the attached Exhibit A, containing an approximate area of 132.25 square feet which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The PERMITTEE shall:

1. Occupy and use the premises, AS IS WHERE IS, for the following specified purposes only:
Office Space

2. Pay, to the Agribusiness Development Corporation, whose mailing address is 235 S. Beretania St., Room 205, Honolulu, Hawaii 96813, hereinafter called ("ADC"), the sum of \$79.35 being rental due and payable of the first day of each and every month commencing on the effective date.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/DOLLARS (\$50.00) per month for each month of delinquency.

3. Upon execution of this Permit, deposit with ADC the sum of \$79.35 as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PERMITTEE upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed.

4. At the PERMITTEE's own cost and expense, keep insured all buildings and improvements erected on the demised

premises in the joint names of the State of Hawaii and the PERMITTEE against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof. In the event of a loss, damage, or destruction of those improvements, ADC shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage or destruction of the improvements and the balance of those proceeds, if any, shall be delivered to the PERMITTEE.

5. Give ADC twenty-five (25) day notice, in writing, before vacating the property.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the premises from the date of this Permit. In addition, a PERMITTEE, not a holdover lessee or licensee, who has occupied the premises for a continued period of one year or more, shall pay the real property tax assessed against the premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules, and regulations of the federal, state, municipal, or county governments affecting the premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the premises.
9. Obtain the prior written consent of ADC before making any improvements.
10. Keep the premises and improvements in a safe, clean, sanitary, and orderly condition.
11. Pay, when due, all payments for sewer, electricity, and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the premises.
13. PERMITTEE shall agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, employees, and agents from and against any claim or demand for loss,

liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the premises, resulting from any act or omission of the PERMITTEE, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon caused by the PERMITTEE, or growing out of or caused by any failure on the part of PERMITTEE to maintain the premises in a safe condition, or by any act or omission of PERMITTEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by PERMITTEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments.

14. PERMITTEE shall maintain during the entire period of this Permit a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of PERMITTEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

PERMITTEE, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Permit, whichever is sooner, shall furnish ADC with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Permit, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by PERMITTEE or by ADC at its option, shall be issued to PERMITTEE and ADC at least thirty (30) days before cancelation. The policy shall include ADC as an additional insured as its interests appear under this Permit.

B. Additional Conditions:

1. ADC may revoke this Permit for any reason whatsoever, upon written notice to the PERMITTEE at least thirty (30) days prior to the revocation; provided, however, that in the event that payment is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the PERMITTEE at least five (5) business days prior to the revocation.
2. If the PERMITTEE does not vacate the premises upon the revocation of the Permit by ADC, the PERMITTEE shall pay to the State of Hawaii liquidated damages at the daily rate of (\$20.00) for each day, or portion thereof, the PERMITTEE remains on the premises over the date of revocation. The payment is in addition to any other rights or remedies ADC may be entitled to pursue, such as breach of contract, or for illegal occupancy, including the right to evict the PERMITTEE without court action, and the cost thereof to be paid by the PERMITTEE.
3. If the PERMITTEE fails to vacate the premises upon the revocation of the Permit, ADC, its agents and/or representatives may enter upon the premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the premises, and the PERMITTEE agrees to pay for all costs and expenses of removal and disposition.
4. ADC may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
5. Any improvements, including but not limited to equipment, buildings and fences, erected or moved onto the premises by the PERMITTEE shall remain the property of the PERMITTEE and the PERMITTEE shall have the right, prior to the termination of this Permit, or within an additional period ADC in its discretion may allow, to remove the improvements from the premises; provided, however, that in the event the PERMITTEE fails to remove the improvements forty-five (45) days, after written notice to remove has been sent, ADC may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the PERMITTEE.

6. ADC reserves the right for itself, its agents, and/or representatives, to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the PERMITTEE has inspected the premises and knows the conditions thereof and fully assumes all risk incident to its use.
9. The acceptance of rent by ADC shall not be deemed a waiver of any breach by the PERMITTEE of any term, covenant, restriction, or condition of this Permit, or of ADC's right to declare and enforce a forfeiture for any breach; and the failure of ADC to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by ADC.
10. The term of this month-to-month permit beyond one (1) year from date of issuance, is subject to the prior approval of the ADC Board of Directors.
11. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or Human Immunodeficiency Virus (HIV) status.
12. Any and all disputes and/or questions arising under this permit shall be referred to the ADC Executive Director and his determination of the disputes or questions shall be final and binding on the parties.
13. PERMITTEE shall maintain for the duration of this Permit insurance against claims for injuries to persons or damages to Premises, which may arise from or in connection with the performance of the work by the PERMITTEE, their agents, representatives, employees or contractors.

PERMITTEE shall ensure that any and all of its agents, representatives, employees or contractors carry and maintain at their sole cost and expense the following insurance policies and coverage below:

a. Comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability in form and substance reasonably satisfactory to ADC, with an insurer licensed to do business in the State of Hawaii reasonably satisfactory to ADC, which shall be no less than:

Bodily Injury and Property Damage Liability \$500,000 each occurrence/ \$1,000,000 aggregate.

If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.

b. Comprehensive automobile liability insurance covering all owned, hired, or non-owned vehicles, including the loading and unloading thereof on the property.

c. Workers' compensation insurance affording statutory limits, and employees' liability coverage with limits no less than \$500,000 covering all persons admitted to the Property under the terms of this Permit.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

ADC:

STATE OF HAWAII

AGRIBUSINESS DEVELOPMENT
CORPORATION

By


James J. Nakatani

Its Executive Director

Date: August 29, 2017

APPROVED AS TO FORM:

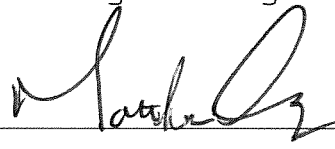

Andrew D. Goff

Deputy Attorney General

PERMITTEE:

Andros Engineering Corporation

By



MATTHEW ANDROS

(print name)

Its PRESIDENT

Date: 8/15/2017

APPROVED AS TO FORM:

Attorney for Permittee

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Luis Obispo)

On this 16th day of August, 2017, before me personally appeared Matthew Andros, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Dana M. Roden
Print
Name: Dana M. Roden
Notary Public, State of Hawaii California
My commission expires: Feb 23, 2020

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

CA Drivers License

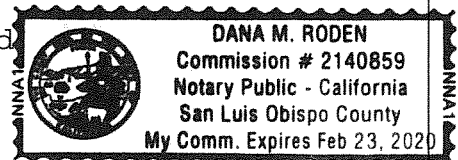
Document Date: 15th day of July 2017

No. of Pages: 9

Jurisdiction (in which notarial act is
performed): California

Dana M. Roden Aug 16, 2017
Signature of Notary Date of
Notarization and

Certification
Statement

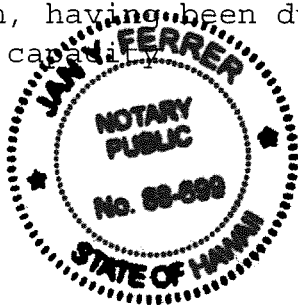


Dana M. Roden
Printed Name of Notary

(Notary Stamp or
Seal)

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 29th day of August, 2017, before me personally appeared JAMES J. NAKATANI, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Print

Jan Y. Ferrer

Name:

Notary Public, State of Hawaii

My commission expires: 11/29/20

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

State of Hawaii Agribusiness Development

Corporation Revocable Permit No. RP17-01

Document Date: July 1, 2017

No. of Pages: 9

Jurisdiction (in which notarial act is
performed): 1st

AUG 29 2017

Signature of
Notary

Date of
Notarization and
Certification
Statement

Jan Y. Ferrer

Printed Name of Notary

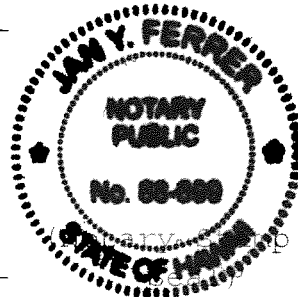
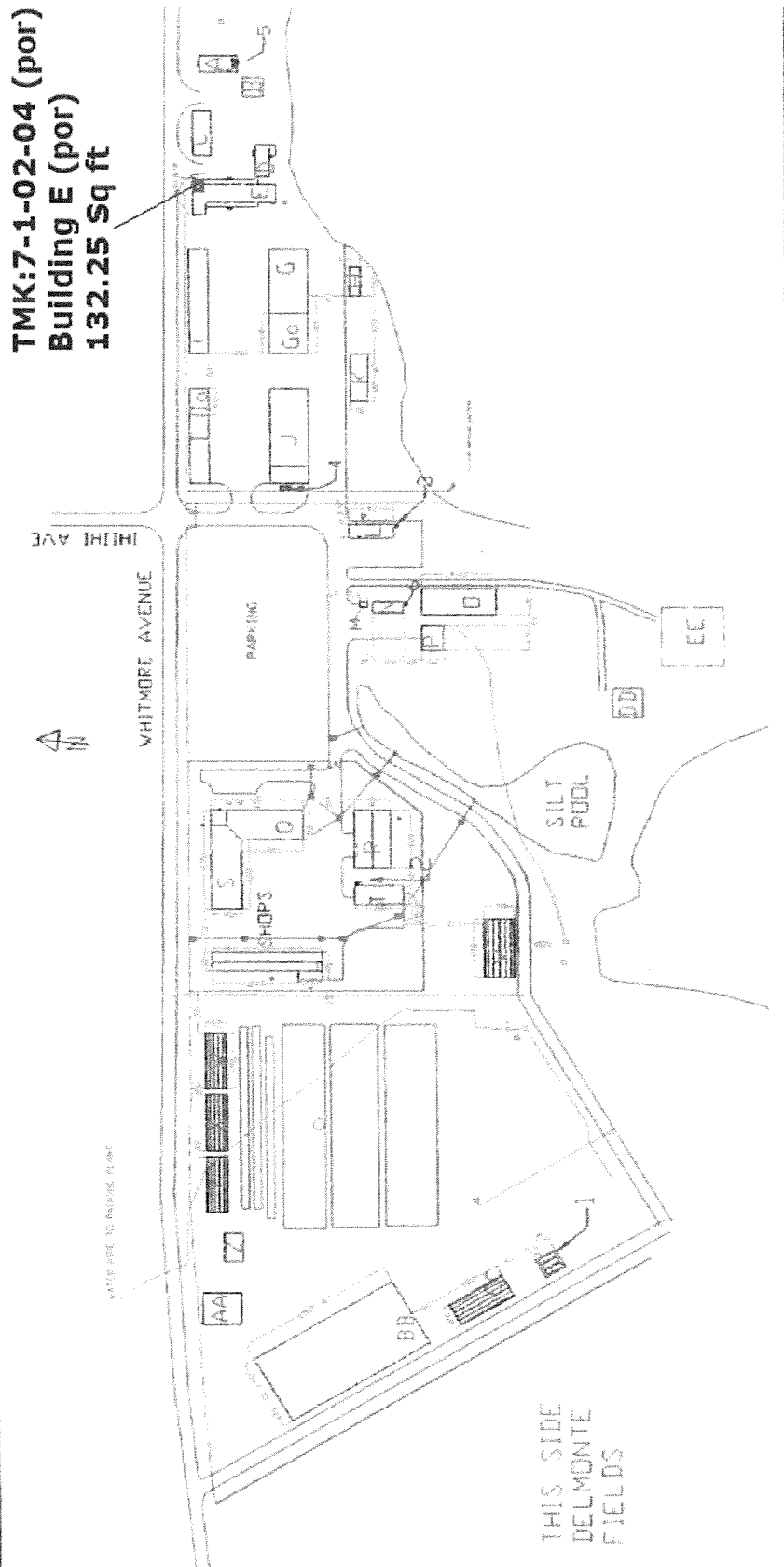


EXHIBIT A

TMK: 7-1-02-04 (por)
Building E (por)
132.25 Sq ft



Dole		WHITMORE AR
Dole Fresh Fruit Con		
Wahiawa, Hawai		
DATE	BY	REVISION
10/1/00	WHITDA	1

HYDRANT
DRAIN

TANK LEGEND	
1	3 TELLER TANKS
2	300 gal DIESEL (STEAM WASHER)
3	200 gal PROPANE
4	3600 gal WASTE OIL
5	100 gal PROPANE
6	300 gal PROPANE

LEGEND	
1	SHOP
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100	WASHER



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Approval to Renew Revocable Permit No. RP20-02
Issued to Kelena Farms Inc. for 345.38 Acres in Waialua, Oahu,
Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-001:046

Permittee: Kelena Farms Inc.

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 345.38 acres

Field No(s).: Undesignated

Tax Map Key: (1) 6-5-002:011, :006, :008, (1) 6-5-001:046

Land Status: Acquired in fee by the Agribusiness Development Corporation in
2017 – 2019.

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes ____ No X

Character of Use: Agricultural

Land Doc. Type: Permit

Term: Month-to-month (renews annually)

Rental Rate: \$100 per acre per year
Annual Rent: \$34,538

BACKGROUND:

Since 2012, the Agribusiness Development Corporation (“ADC”) has acquired over 3,000 acres in Central Oahu as part of its land acquisition campaign to preserve agricultural land and expand its land inventory, so it can provide long-term agreements to farmers. Some of the land ADC acquired were encumbered and actively farmed at the time of the purchase, including the subject tenant. Subsequent to the purchase of the

property, ADC issued Revocable Permit No. RP20-02 to Kelena Farms Inc. ("Permittee" or "Kelena Farms") (see "Exhibit B") for 345.38 acres of the subject property (see "Exhibit A") (the "Premises") pending the purchase of certain well easements from Dole Food Company, at which time a long-term license will be issued.

Kelena Farms is a Hawaii corporation and one of the largest producers of fresh fruits and vegetables and has been farming on five contiguous parcels, which include the subject properties, since 2008. They are excellent operators and currently sell produce to large retailers and local distributors.

LAND REQUEST:

To approve the annual renewal of the Permit for the period of July 1, 2022 – June 30, 2023.

WATER NEEDS AND SOURCE OF WATER:

The Premises are currently irrigated via water delivered from Dole Well #25 located over a mile away on Dole property. The well, among others, are currently under active procurement by ADC from Dole Food Company. The Premises include a reservoir and irrigation distribution furnished installed by the Permittee (no state funds used).

OPERATIONAL PLAN:

The Permittee grows fruits and vegetables that include, but are not limited to, cabbage, bell pepper, and watermelon

CONSERVATION PLAN:

The terms of the Permit require that a conservation plan be developed. While a plan has not yet been developed, Permittee does farm with windbreaks and soil erosion mitigation techniques in place. Permittee has assured staff that a conservation plan will be developed forthwith.

DISCUSSION:

Conservation planning notwithstanding, Permittee has been an excellent steward of the Premises and has improved the property at his own expense through the installation of reservoirs and irrigation distribution lines which enhance the use and value of the subject property.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the land request noted above, subject to the following conditions:

1. All current terms and conditions of the Permit shall remain unchanged.

Request for Approval to Renew Revocable Permit No. RP20-02 Issued to Kelena Farms Inc. for
345.38 Acres, More or Less, in Waialua, Oahu, Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-
001:046

May 18, 2020

Page 3 of 5

Respectfully Submitted,

James J. Nakatani
Executive Director

Request for Approval to Renew Revocable Permit No. RP20-02 Issued to Kelena Farms Inc. for
345.38 Acres, More or Less, in Waialua, Oahu, Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-
001:046
May 18, 2020
Page 4 of 5

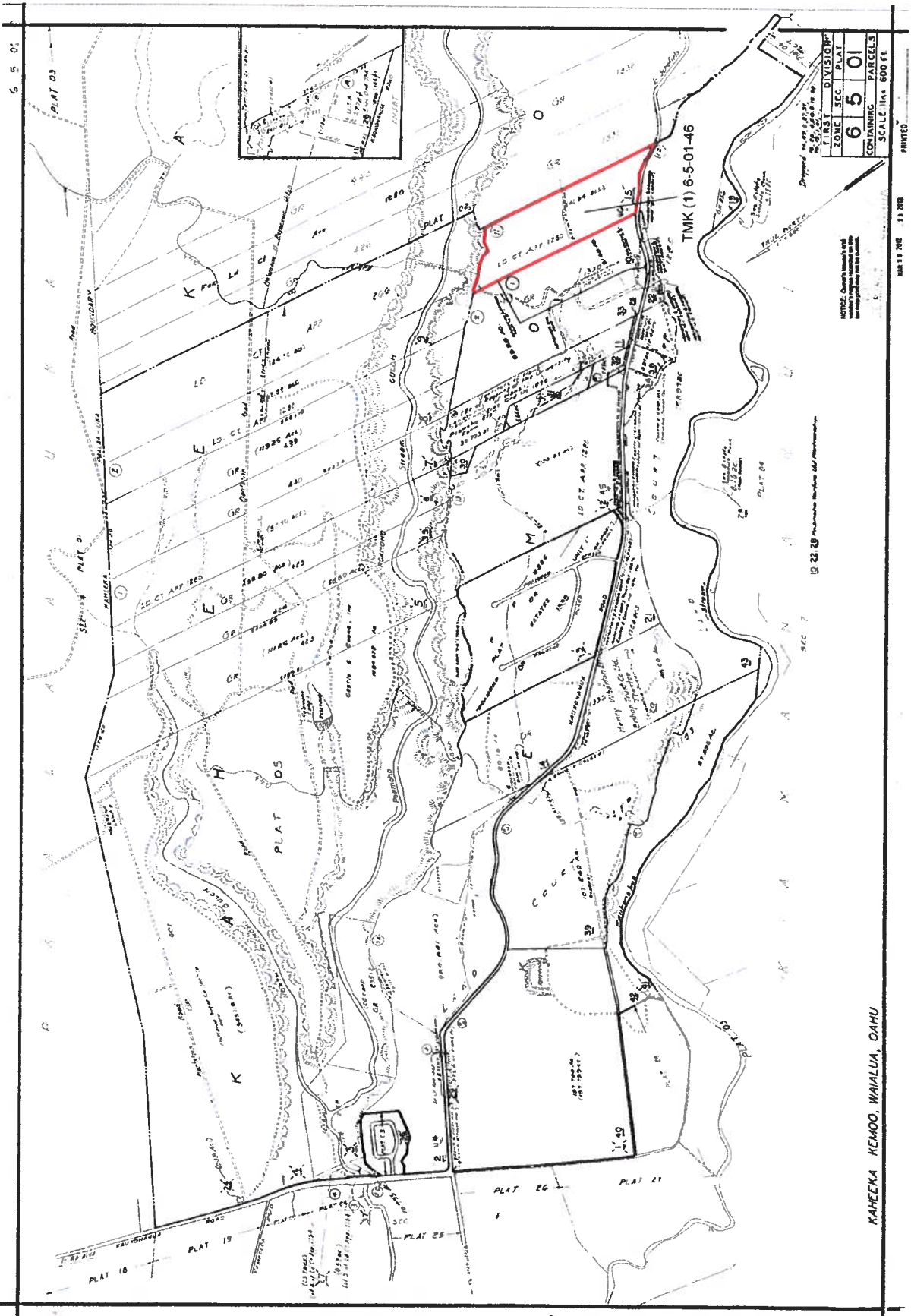
EXHIBIT A

Maps

[see following pages]



EXHIBIT "A-1"



FIRST	DIVISION
6	5
ZONE	SEC.
6	5
PLAT	PARCELS
01	01
SCALE: 1 in. = 100 ft.	

NOTE: Owner's name and address are shown on the map. The map is not a legal document.

KAMEEKA KEMOO, WAIALUA, OAHU

Request for Approval to Renew Revocable Permit No. RP20-02 Issued to Kelena Farms Inc. for
345.38 Acres, More or Less, in Waialua, Oahu, Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-
001:046
May 18, 2020
Page 5 of 5

EXHIBIT B

Revocable Permit No. RP20-02

[see following pages]

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

REVOCABLE PERMIT NO. RP20-02

Effective and issued this ^{1st}~~22nd~~ day of ^{July}~~June~~, 2020, Kelena Farms Inc., a Hawaii corporation hereinafter called the "PERMITTEE", whose mailing address is P.O. Box 27, Kunia, HI 96759 is permitted to enter and occupy, on a month-to-month basis only, that certain parcels of State land situate at Waialua, Oahu, TMKs: (1)6-5-02-11; (1) 6-5-02-06; (1) 6-5-02-08; and (1) 6-5-01-46 as shown on attached Exhibit A & A-1, containing an approximate area of 345.38 acres which area is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The PERMITTEE shall:

1. Occupy and use the premises for the following specified purposes only:
Agricultural
2. Pay, to the Agribusiness Development Corporation, whose mailing address is 235 S. Beretania St., Room 205, Honolulu, Hawaii 96813, hereinafter called ("ADC"), the sum of \$100.00 per acre per year or \$2,878.16 per month being rental due and payable of the first day of each and every month commencing on the effective date.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/DOLLARS (\$50.00) per month for each month of delinquency.

3. Upon execution of this Permit, deposit with ADC the sum of \$2,878.16 as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PERMITTEE upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed.
4. At the PERMITTEE's own cost and expense, keep insured all buildings and improvements erected on the demised premises in the joint names of the State of Hawaii and

the PERMITTEE against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof. In the event of a loss, damage, or destruction of those improvements, ADC shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage or destruction of the improvements and the balance of those proceeds, if any, shall be delivered to the PERMITTEE.

5. Give ADC twenty-five (25) day notice, in writing, before vacating the property.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the premises from the date of this Permit. In addition, a PERMITTEE, not a holdover lessee or licensee, who has occupied the premises for a continued period of one year or more, shall pay the real property tax assessed against the premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinance, rules, and regulations of the federal, state, municipal, or county governments affecting the premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the premises.
9. Obtain the prior written consent of ADC before making any major improvements.
10. Keep the premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit, or suffer, and waste, strip, spoil, nuisance or unlawful, improper or offensive use of the premises.
13. PERMITTEE shall agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees,

including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the premises, resulting from any act or omission of the PERMITTEE, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon caused by the PERMITTEE, or growing out of or caused by any failure on the part of PERMITTEE to maintain the premises in a safe condition, or by any act or omission of PERMITTEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by PERMITTEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments.

14. PERMITTEE shall maintain during the entire period of this Permit a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of PERMITTEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

PERMITTEE, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Permit, whichever is sooner, shall furnish ADC with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Permit, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by PERMITTEE or by ADC at its option, shall be issued to PERMITTEE and ADC at least thirty (30) days before cancelation. The policy shall include ADC as an additional insured as its interests appear under this Permit.

B. Additional Conditions:

1. ADC may revoke this Permit for any reason whatsoever, upon written notice to the PERMITTEE at least thirty (30) days prior to the revocation; provided, however, that in the event that payment is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the PERMITTEE at least five (5) business days prior to the revocation.
2. If the PERMITTEE does not vacate the premises upon the revocation of the Permit by ADC, the PERMITTEE shall pay to the State of Hawaii liquidated damages at the daily rate of (\$20.00) for each day, or portion thereof, the PERMITTEE remains on the premises over the date of revocation. The payment is in addition to any other rights or remedies ADC may be entitled to pursue breach of contract, or for illegal occupancy, including the right evict the PERMITTEE without court action, and the cost thereof to be paid by the PERMITTEE.
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4. ADC may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
5. Any improvements, including but not limited to equipment, buildings and fences, erected or moved on to the premises by the PERMITTEE shall remain the property of the PERMITTEE and the PERMITTEE shall have the right, prior to the termination of this Permit, or within an additional period ADC in its discretion may allow, to remove the improvements from the premises; provided, however, that in the event the PERMITTEE fails to remove the improvements forty-five (45) days, after written notice to remove has been sent, ADC may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the PERMITTEE.

6. ADC reserves the right for itself, its agents, and/or representatives, to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the PERMITTEE has inspected the premises and knows the conditions thereof and fully assumes all risk incident to its use.
9. The acceptance of rent by ADC shall not be deemed a waiver of any breach by the PERMITTEE of any term, covenant, restriction, or condition of this Permit, or of ADC's right to declare and enforce a forfeiture for any breach; and the failure of ADC to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by ADC.
10. The term of this month-to-month permit beyond one (1) year from date of issuance, is subject to the prior approval of the ADC Board of Directors.
11. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, or physical handicap.
12. Any and all disputes and/or questions arising under this permit shall be referred to the ADC Executive Director and his determination of the disputes or questions shall be final and binding on the parties.
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maintain at their sole cost and expense the following insurance policies and coverage below:

a. Comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability in form and substance reasonably satisfactory to ADC, with an insurer licensed to do business in the State of Hawaii reasonably satisfactory to ADC, which shall be no less than:

Bodily Injury and Property Damage Liability \$500,000 each occurrence/ \$1,000,000 aggregate.

If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.

b. Comprehensive automobile liability insurance covering all owned, hired, or non-owned vehicles, including the loading and unloading thereof on the property.

c. Workers' compensation insurance affording statutory limits, and employees' liability coverage with limits no less than \$500,000 covering all persons admitted to the Property under the terms of this Permit.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

ADC:


STATE OF HAWAII

AGRIBUSINESS DEVELOPMENT
CORPORATION

By 
James J. Nakatani
Its Executive Director

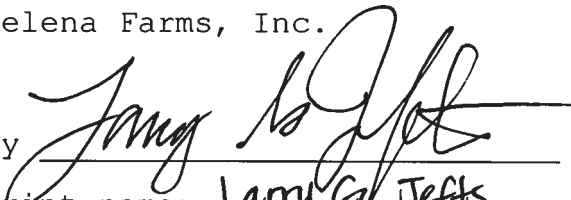
Date: JUL 01 2020

APPROVED AS TO FORM:


Deputy Attorney General

PERMITTEE:

Kelena Farms, Inc.

By 
Print name: Larry G. Jeffs

Its President

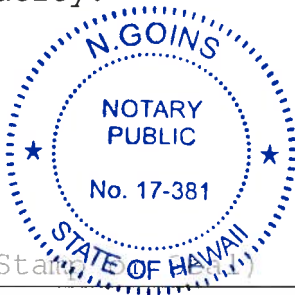
Date: 06/22/2020

APPROVED AS TO FORM:

Attorney for Permittee

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 22nd day of June, 2020, before me personally appeared Larry G. Jeffs, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Spring
Print Name: N. Goins
Notary Public, State of Hawaii
My commission expires: 10/08/2021

(Notary Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

State of Hawaii Agribusiness Development
Corporation Renewal Permit NO. RP20-02

Document Date: 06/22/2020

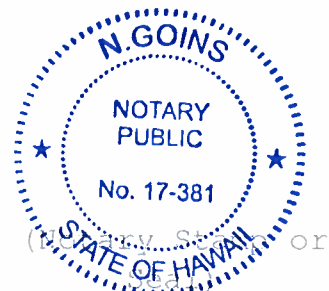
No. of Pages: 09 pages

Jurisdiction (in which notarial act is
performed): First

Spring
Signature of
Notary

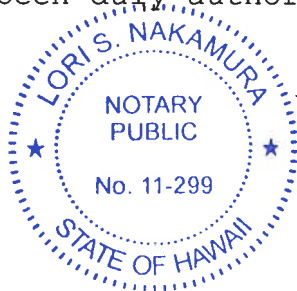
06/22/2020
Date of
Notarization and
Certification
Statement

N. Goins
Printed Name of Notary



STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 1st day of July, 2020, before me personally appeared James J. Nakatani, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Lori S. Nakamura

Print

Name: Lori S. Nakamura

Notary Public, State of Hawaii

My commission expires: Oct. 16, 2023

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Revocable Permit No. RP20-02

Agribusiness Development Corporation & Kelena Farms Inc.

Document Date: July 1, 2020

No. of Pages: 11 (9 + 2 Exhibits)

Jurisdiction (in which notarial act is
performed): First Circuit

Lori S. Nakamura

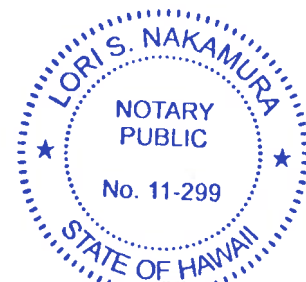
7/01/2020

Signature of
Notary

Date of
Notarization and
Certification
Statement

Lori S. Nakamura

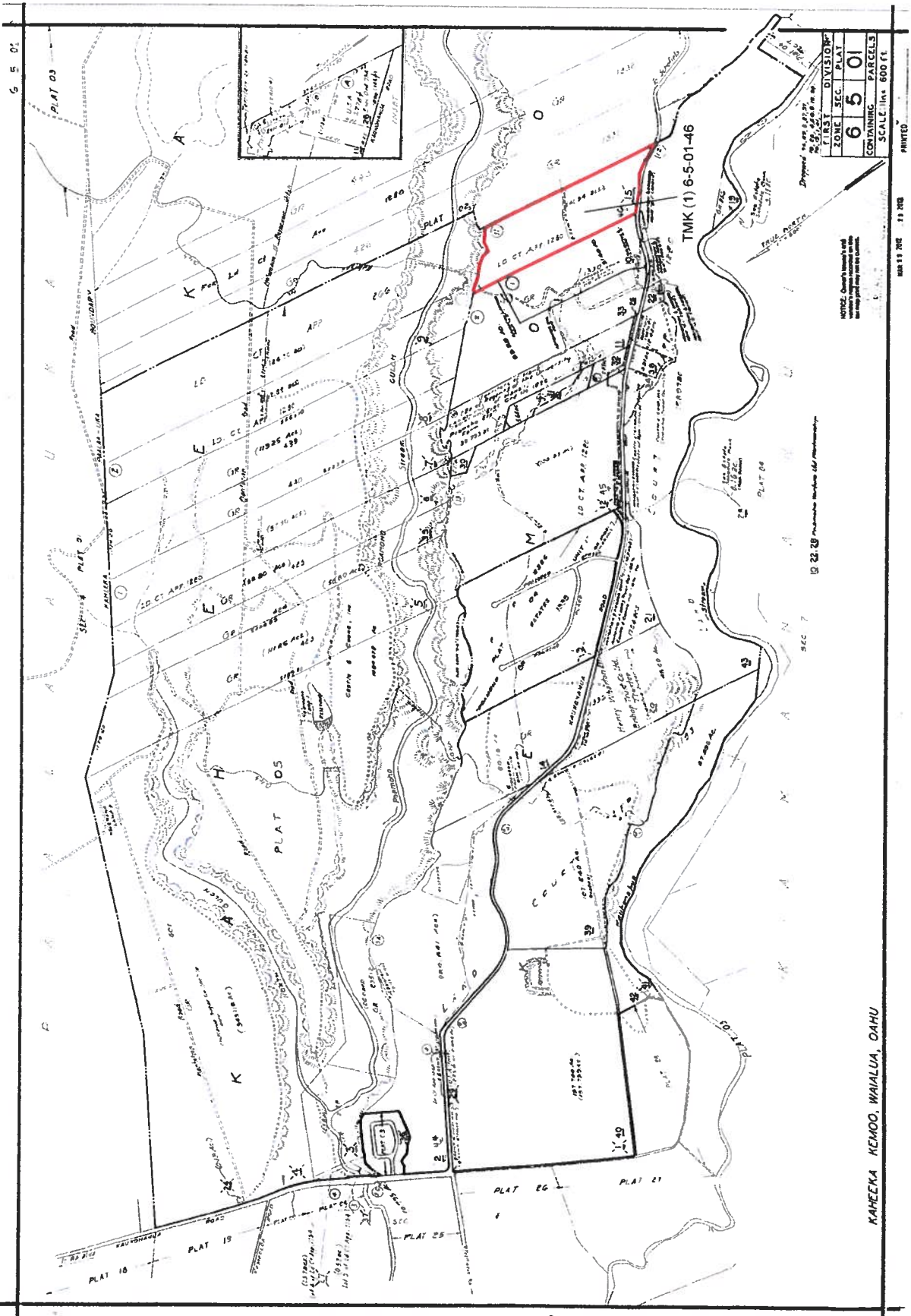
Printed Name of Notary



(Notary Stamp or
Seal)



EXHIBIT "A-1"



KAMEEKA KEMOO, WAIALUA, OAHU

Nakamoto, Ken T

From: The Farms <thefarms@aloha.net>
Sent: Friday, July 17, 2020 11:34 AM
To: Nakamoto, Ken T
Subject: [EXTERNAL] Kelena Farms Inc.

I approve the the change date to July 1, 2020 for Revocable Permit No. 20-02 for Kelena Farms Inc.

Larry Jeffs



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Approval to Renew Revocable Permit No. RP20-01
Issued to Ho Farms LLC for 57.296 Acres at Galbraith, Oahu, Tax
Map Key (1) 7-1-012:001 (por)

Permittee: Ho Farms LLC

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 57.269 acres

Field No(s).: Lot 12

Tax Map Key: (1) 7-1-012:001

Land Status: Acquired in fee by the Agribusiness Development Corporation in
2012.

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes ____ No X

Character of Use: Agricultural

Land Doc. Type: Permit

Term: Month-to-month (renews annually)

Rental Rate: \$100 per acre per year
Annual Rent: \$5,778.30

BACKGROUND:

The Galbraith Agricultural Lands ("GAL") small farmer area is comprised of twelve contiguous lots ranging in size from six to eighty acres. The subject area is identified as Lot 12 and is 57.296 acres (the "Premises"). The Premises are held under Revocable Permit No. RP20-02 ("Permit") which was issued to Ho Farms LLC ("Permittee") on July 1, 2020.

Currently, Permittee also farms on 62.025 acres of Lot 11, immediately adjacent to the Premises. Permittee grows tomato, cucumber, eggplant, papaya, and an assortment of other fruits and vegetables.

LAND REQUEST:

To approve the annual renewal of the Permit for the period of July 1, 2022 – June 30, 2023.

WATER NEEDS AND SOURCE OF WATER:

The Premises are currently irrigated via water delivered from Bott Well.

OPERATIONAL PLAN:

The Permittee grows fruits and vegetables that include, but are not limited to, tomato, cucumber, eggplant, and papaya.

CONSERVATION PLAN:

Permittee has updated their existing conservation plan to include the lands under the Permit.

DISCUSSION:

Permittee has been an excellent steward of the Premises and has improved the property at their own expense through the installation of a shade house use and value of the subject property. Permittee is also in discussions with Hawaiian Electric Company to bring power onto the property which ADC will also use to convert Bott Well to electric power.

The subject Premises are currently held under a revocable permit as they are intended for partial development under ADC's Wahiawa Recycled Water Irrigation Project.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the land request noted above, subject to the following conditions:

1. All current terms and conditions of the Permit shall remain unchanged.

Respectfully Submitted,

James J. Nakatani
Executive Director

Request for Approval to Renew Revocable Permit No. RP20-01 Issued to Ho Farms LLC for 57.296 Acres at Galbraith, Oahu, Tax Map Key (1) 7-1-012:001 (por)
May 18, 2020
Page 3 of 4

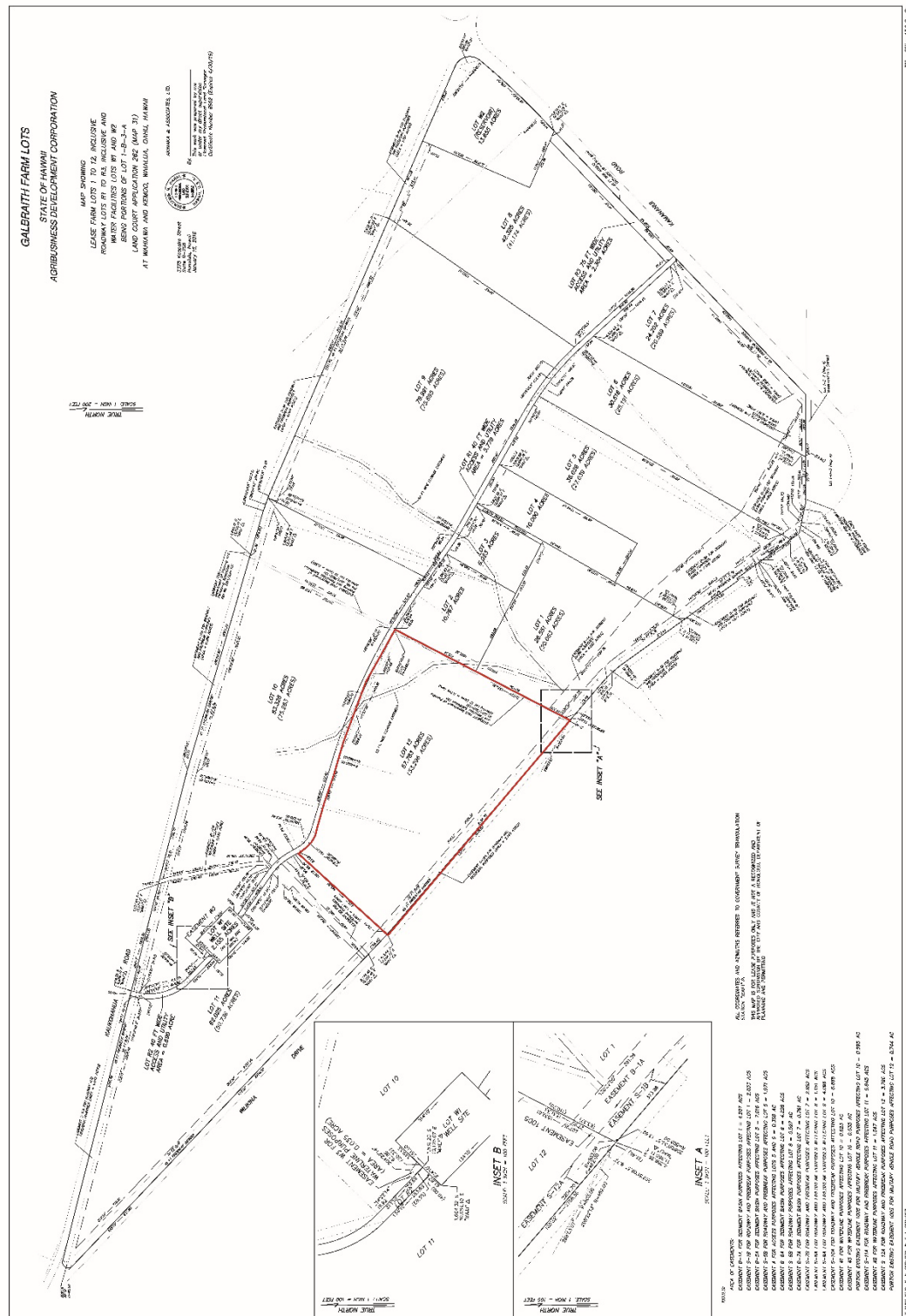
EXHIBIT A

EXHIBIT B

Revocable Permit No. RP20-01

[see following pages]

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

REVOCABLE PERMIT NO. RP20-01

Effective and issued this ^{1st}~~17th~~ day of ~~June~~^{July}, 2020, Ho Farms LLC, a Hawaii domestic limited liability company hereinafter called the "PERMITTEE", whose mailing address is P.O. Box 569, Kahuku, HI 96731 is permitted to enter and occupy, on a month-to-month basis only, that certain parcel of State land identified as Lot 12 situate at the Galbraith Agricultural lands, Waialua, Oahu, TMK: (1)6-5-02-25(por) as shown on attached Exhibit A, containing an approximate area of 57.783 gross acres (53.296 usable acres) which area is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The PERMITTEE shall:

1. Occupy and use the premises for the following specified purposes only:
Agricultural
2. Pay, to the Agribusiness Development Corporation, whose mailing address is 235 S. Beretania St., Room 205, Honolulu, Hawaii 96813, hereinafter called ("ADC"), the sum of \$100.00 per usable acre per year or \$444.13 per month being rental due and payable of the first day of each and every month commencing on the effective date.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/DOLLARS (\$50.00) per month for each month of delinquency.

3. Upon execution of this Permit, deposit with ADC the sum of \$444.13 as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PERMITTEE upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed.
4. At the PERMITTEE's own cost and expense, keep insured all buildings and improvements erected on the demised premises in the joint names of the State of Hawaii and

the PERMITTEE against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof. In the event of a loss, damage, or destruction of those improvements, ADC shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage or destruction of the improvements and the balance of those proceeds, if any, shall be delivered to the PERMITTEE.

5. Give ADC twenty-five (25) day notice, in writing, before vacating the property.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the premises from the date of this Permit. In addition, a PERMITTEE, not a holdover lessee or licensee, who has occupied the premises for a continued period of one year or more, shall pay the real property tax assessed against the premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinance, rules, and regulations of the federal, state, municipal, or county governments affecting the premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the premises.
9. Obtain the prior written consent of ADC before making any major improvements.
10. Keep the premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit, or suffer, and waste, strip, spoil, nuisance or unlawful, improper or offensive use of the premises.
13. PERMITTEE shall agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees,

including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the premises, resulting from any act or omission of the PERMITTEE, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon caused by the PERMITTEE, or growing out of or caused by any failure on the part of PERMITTEE to maintain the premises in a safe condition, or by any act or omission of PERMITTEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by PERMITTEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments.

14. PERMITTEE shall maintain during the entire period of this Permit a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of PERMITTEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

PERMITTEE, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Permit, whichever is sooner, shall furnish ADC with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Permit, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by PERMITTEE or by ADC at its option, shall be issued to PERMITTEE and ADC at least thirty (30) days before cancelation. The policy shall include ADC as an additional insured as its interests appear under this Permit.

B. Additional Conditions:

1. ADC may revoke this Permit for any reason whatsoever, upon written notice to the PERMITTEE at least thirty (30) days prior to the revocation; provided, however, that in the event that payment is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the PERMITTEE at least five (5) business days prior to the revocation.
2. If the PERMITTEE does not vacate the premises upon the revocation of the Permit by ADC, the PERMITTEE shall pay to the State of Hawaii liquidated damages at the daily rate of (\$20.00) for each day, or portion thereof, the PERMITTEE remains on the premises over the date of revocation. The payment is in addition to any other rights or remedies ADC may be entitled to pursue breach of contract, or for illegal occupancy, including the right evict the PERMITTEE without court action, and the cost thereof to be paid by the PERMITTEE.
3. If the PERMITTEE fails to vacate the premises upon the revocation of the Permit, ADC, its agents and/or representatives may enter upon the premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the premises, and the PERMITTEE agrees to pay for all cost and expenses of removal and disposition.
4. ADC may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
5. Any improvements, including but not limited to equipment, buildings and fences, erected or moved on to the premises by the PERMITTEE shall remain the property of the PERMITTEE and the PERMITTEE shall have the right, prior to the termination of this Permit, or within an additional period ADC in its discretion may allow, to remove the improvements from the premises; provided, however, that in the event the PERMITTEE fails to remove the improvements forty-five (45) days, after written notice to remove has been sent, ADC may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the PERMITTEE.

6. ADC reserves the right for itself, its agents, and/or representatives, to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the PERMITTEE has inspected the premises and knows the conditions thereof and fully assumes all risk incident to its use.
9. The acceptance of rent by ADC shall not be deemed a waiver of any breach by the PERMITTEE of any term, covenant, restriction, or condition of this Permit, or of ADC's right to declare and enforce a forfeiture for any breach; and the failure of ADC to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by ADC.
10. The term of this month-to-month permit beyond one (1) year from date of issuance, is subject to the prior approval of the ADC Board of Directors.
11. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, or physical handicap.
12. Any and all disputes and/or questions arising under this permit shall be referred to the ADC Executive Director and his determination of the disputes or questions shall be final and binding on the parties.
13. PERMITTEE shall maintain for the duration of this Permit insurance against claims for injuries to persons or damages to Premises, which may arise from or in connection with the performance of the work by the PERMITTEE, their agents, representatives, employees or contractors.

PERMITTEE shall ensure that any and all of its agents, representatives, employees or contractors carry and

maintain at their sole cost and expense the following insurance policies and coverage below:

a. Comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability in form and substance reasonably satisfactory to ADC, with an insurer licensed to do business in the State of Hawaii reasonably satisfactory to ADC, which shall be no less than:

Bodily Injury and Property Damage Liability \$500,000 each occurrence/ \$1,000,000 aggregate.

If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.

b. Comprehensive automobile liability insurance covering all owned, hired, or non-owned vehicles, including the loading and unloading thereof on the property.

c. Workers' compensation insurance affording statutory limits, and employees' liability coverage with limits no less than \$500,000 covering all persons admitted to the Property under the terms of this Permit.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

ADC:

STATE OF HAWAII

AGRIBUSINESS DEVELOPMENT
CORPORATION

By



James J. Nakatani
Its Executive Director

Date:

JUL 01 2020

APPROVED AS TO FORM:



Deputy Attorney General

PERMITTEE:

Ho Farms LLC

By



Print name: Wei' Chong Ho

Its Production

Date:

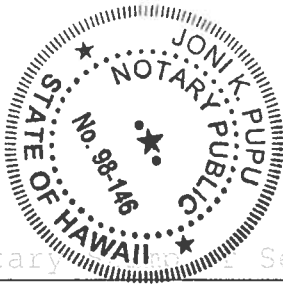
6-17-20

APPROVED AS TO FORM:

Attorney for Permittee

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 17th day of June, 2020, before me personally appeared Wei Chong Ho, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Notary Seal)

Joni K. Pupu

Print

Name:

Joni K. Pupu

Notary Public, State of Hawaii

My commission expires:

April 07, 2022

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Revocable Permit

Document Date: 06-17-2020

No. of Pages: 10

Jurisdiction (in which notarial act is
performed):

Joni K. Pupu
Signature of
Notary

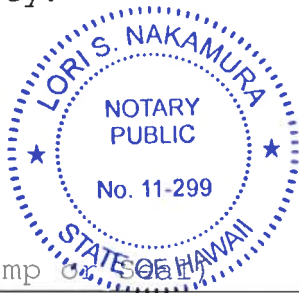
06-17-2020
Date of
Notarization and
Certification
Statement

Joni K. Pupu
Printed Name of Notary



STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 1st day of July, 2020, before me personally appeared James J. Nakatani, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Lori S. Nakamura

Print

Name: Lori S. Nakamura

Notary Public, State of Hawaii

My commission expires: Oct. 16, 2023

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Revocable Permit No. RP20-01

Agribusiness Development Corporation & Ho Farms LLC

Document Date: July 1, 2020

No. of Pages: 10 (9 + 1 Exhibit)

Jurisdiction (in which notarial act is
performed): First Circuit

Lori S. Nakamura

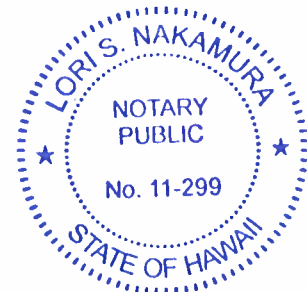
7/01/2020

Signature of
Notary

Date of
Notarization and
Certification
Statement

Lori S. Nakamura

Printed Name of Notary



(Notary Stamp or
Seal)

MAP SHOWING
LEASE FARM LOTS 1 TO 12, INCLUSIVE
ROADWAY LOTS R1 TO R3, INCLUSIVE AND
WATER FACILITIES LOTS W1 AND W2
BEING PORTIONS OF LOT 1-B-3-A
LAND COURT APPLICATION 262 (MAP J1)
AT WAHAWA AND KEMOO, WAIALUA, OAHU, HI.

1375 Kingship Street
Suite #-208
Honolulu, Hawaii
January 13, 2016

SCALE: 1000' = 1" (VERTICAL)
1" = 100' (HORIZONTAL)

BOTT WELL PUMP
35-1155 KAUKONAHUA RD.

PERMIT AREA

EXHIBIT "A"

ALL COORDINATES AND ADJUSTS REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "MAY" A

STUDY

AREA OF CASUALTY

CASUALTY 8-14 FOR MOUNTAIN BALM PARADES AFFECTING LOT 10 = 4.269 AC

CASUALTY 5-18 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 11 = 2.833 AC

CASUALTY 5-19 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 10 = 1.988 AC

CASUALTY 5-20 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 10 = 1.017 AC

CASUALTY 4-16 FOR ACCESS PARADES AFFECTING LOT 8 = 0.208 AC

CASUALTY 8-14 FOR MOUNTAIN BALM PARADES AFFECTING LOT 8 = 4.608 AC

CASUALTY 5-18 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 8 = 1.887 AC

CASUALTY 5-19 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 7 = 2.833 AC

CASUALTY 5-20 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 8 = 1.514 AC

CASUALTY 5-14 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 8 = 4.086 AC

CASUALTY 5-15 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 8 = 4.608 AC

CASUALTY 5-16 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 10 = 0.833 AC

CASUALTY 5-17 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 10 = 0.833 AC

CASUALTY 5-18 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 10 = 0.833 AC

CASUALTY 5-19 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 11 = 1.514 AC

CASUALTY 5-20 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 11 = 2.833 AC

CASUALTY 5-14 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-15 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-16 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-17 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-18 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-19 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

CASUALTY 5-20 FOR MOUNTAIN AND PRELUDE PARADES AFFECTING LOT 12 = 0.833 AC

[illegible]

123

Nakamoto, Ken T

From: Shin Houy Ho <shin@hofarms.com>
Sent: Monday, July 6, 2020 3:07 PM
To: Nakamoto, Ken T
Subject: [EXTERNAL] Re: Revocable Permit No. 20-01

Received, thank you.

On Mon, Jul 6, 2020 at 1:41 PM Nakamoto, Ken T <Ken.T.Nakamoto@hawaii.gov> wrote:

Hi Shin,

Thank you for returning RP No. 20-01. The document has been fully executed, but the effective date is incorrect. The document cannot be effective before it is fully executed by both parties. Accordingly, we are changing the effective date to July 1, 2020. Please acknowledge that you received this email and approve the correction. Should you have any questions, please give me a call.

Mahalo,

Ken Nakamoto

(808)586-0087



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Approval to Renew Revocable Permit No. RP-W257-21-02 Issued to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,392.7 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)

Permittee: The Davey Tree Expert Company
Davey Tree Surgery Company

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 21,392.7 square feet, more or less

Bldg No(s): Bldg E (por), Bldg J (por), Bldg I, and undesignated open space for parking

Tax Map Key: (1) 7-1-002:004

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2015.

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No ☒ **X**

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ____ No ☒ **X**

Character of Use: Commercial/Landscaping

Land Doc. Type: Revocable Permit

Term: Month-to-month (renews annually)

Rental Rate: Office: \$0.60 per sq ft per month
Storage/Parking \$0.10 per sq ft per month
Annual Rent: \$2,305.80

BACKGROUND:

ADC and the Davey Tree Expert Company ("Davey Tree Expert") executed Revocable Permit No. RP16-01 on March 1, 2016 for 224 sq. ft. of office space, 5,000 sq ft of covered storage space, and 10,000 sq. ft. of open parking area. Davey Tree Expert had been

gradually expanding their operations and the expansion resulted in a certain amount of encroachment upon the premises of adjacent tenants.

At the meeting in September 20, 2020, the Board approved Davey Tree Expert's request to include 5,460 sq. ft. of Building J (por) for the purpose of equipment storage.

At the meeting on June 23, 2021, the Board approved a request to issue a new Revocable Permit No. RP-W257-21-02 ("Permit") (see "Exhibit B") issued to both The Dave Tree Expert Company and Davey Tree Surgery Company (collectively the "Davey Tree Companies") and include additional office space (the "Premises") (see "Exhibit A").

LAND REQUEST:

To approve the annual renewal of the Permit for the period of July 29, 2022 – July 28, 2023.

WATER NEEDS AND SOURCE OF WATER:

For the purposes of the Permittee's use, there are no water needs. However, the Premises do have access to bathroom facilities which is connected to BWS water and sewer.

OPERATIONAL PLAN:

The Premises provide administrative, covered storage, and parking space for Permittee's operation within ADC's Whitmore food hub master-planned area.

CONSERVATION PLAN:

For the purposes of Permittee's use, a conservation plan is not required.

DISCUSSION:

The premises are located within ADC's Whitmore food hub master-planned area. As such, a short-term revocable permit is appropriate for the use.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the land request noted above, subject to the following conditions:

1. All current terms and conditions of the Permit shall remain unchanged.

Respectfully Submitted,

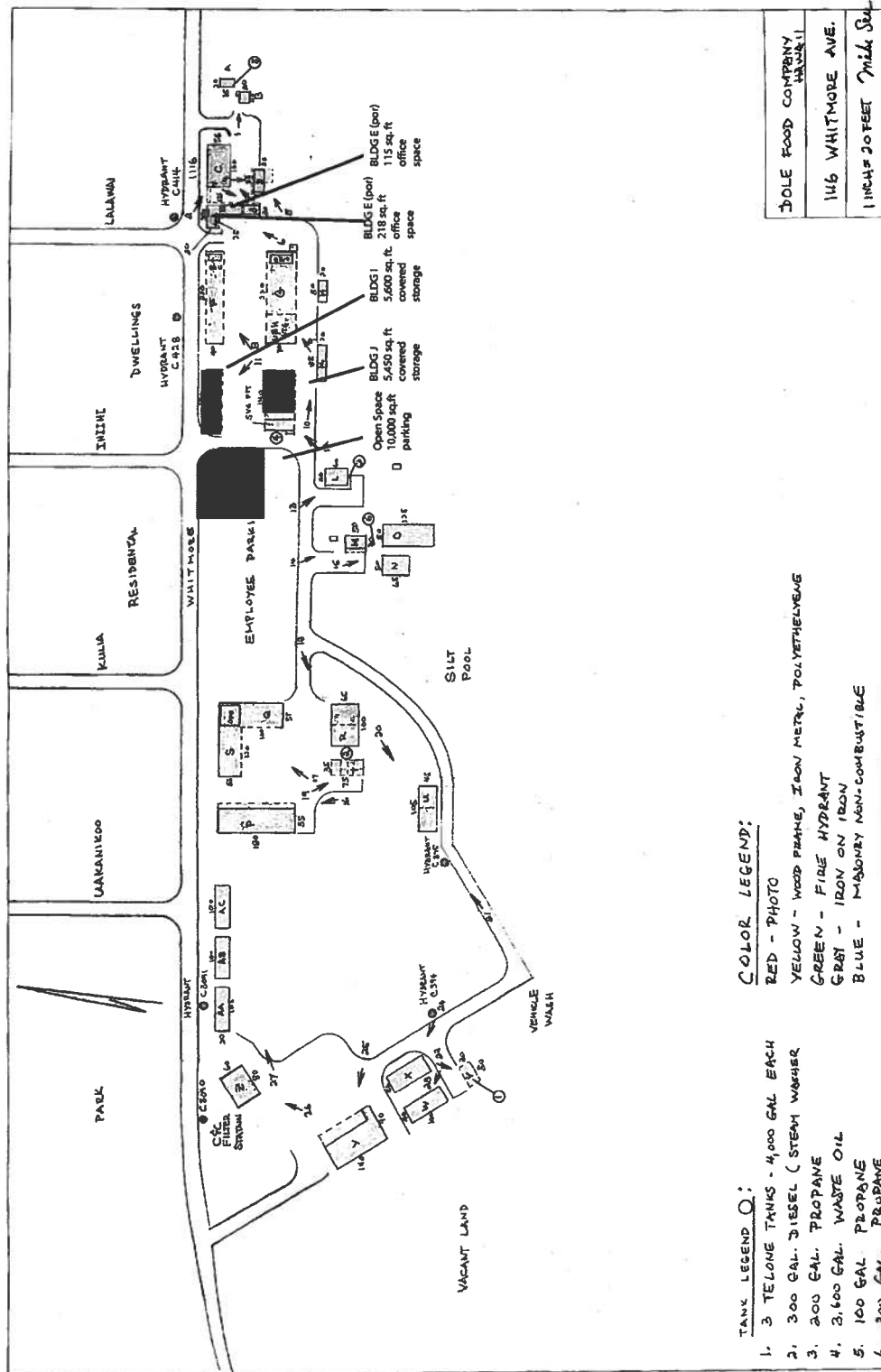
James J. Nakatani
Executive Director

Request for Approval to Renew Revocable Permit No. RP-W257-21-02 Issued to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,392.7 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
May 18, 2022
Page 3 of 4

EXHIBIT A

Map

[see following page]



Request for Approval to Renew Revocable Permit No. RP-W257-21-02 Issued to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,392.7 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)
May 18, 2022
Page 4 of 4

EXHIBIT B

Revocable Permit No. RP-W257-21-02

[see following pages]

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

REVOCABLE PERMIT NO. RP-W257-21-02

Effective the 29th day of July, 20 21, The Davey Tree Expert Company, an Ohio corporation whose mailing address is 1500 North Mantua St., Kent, Ohio 44240, and Davey Tree Surgery Company, a Delaware corporation whose mailing address is 1500 North Mantua St., Kent, Ohio 44240, hereinafter collectively called the "PERMITTEE", is permitted to enter and occupy, on a month-to-month basis, the parking area, which contains approximately 10,000 square feet of unimproved land for parking purposes located on that certain parcel of State land situate at Whitmore, District of Wahiawa, Oahu, TMK: (1) 7-1-02-09 (por); and 5,600 square feet of Building I; 5,460 square feet of Building J (por) for storage purposes; 333 square feet of Building E (por) for office space with the address of 1126 Whitmore Avenue, Wahiawa, Hawaii 96786 located on that certain parcel of State land situate at Whitmore, District of Wahiawa, Oahu, TMK: (1) 7-1-02-04 (por), as shown on the attached Exhibit A, containing an approximate area of 21,392.7 square feet, which parcels are hereinafter referred to collectively as the "Premises."

THIS REVOCABLE PERMIT ("Permit") IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The PERMITTEE shall:

1. Occupy and use the Premises, AS IS and WHERE IS, for the following specified purposes only:
Parking, Storage, and Office
2. Pay to the Agribusiness Development Corporation, whose mailing address is 235 S. Beretania St., Room 205, Honolulu, Hawaii 96813, hereinafter called ("ADC"), the sum of \$2,305.62 being rental due and payable on the first day of each and every month commencing on the effective date.

Space	Area	Rate	Total
Parking	10,000 sq ft	\$0.10	\$1,000.00
Bldg I	5,600 sq ft	\$0.10	\$560.00
Bldg J (por)	5,460 sq ft	\$0.10	\$546.00
Office A	218 sq ft	\$0.60	\$130.80
Office B	115 sq ft	\$0.60	\$69.00
Total	21,393 sq ft		\$2,305.80

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/DOLLARS (\$50.00) per month for each month of delinquency.

3. Pay to the ADC, within 30 days of the date of execution of this Permit, the sum of \$671.4 as security (the difference between \$2,305.80 (the new security deposit assessment for the expanded premises) and \$1,634.40 (prior security deposit assessment for the original premises)). The amount of \$2,305.80 will be security for the faithful performance of the terms and conditions herein. It will be returned to PERMITTEE upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed.
4. At the PERMITTEE's own cost and expense, keep insured all buildings and improvements erected on the premises in the joint names of the State of Hawaii and the PERMITTEE. At minimum, coverage must protect against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof. In the event of a loss, damage, or destruction of those improvements, ADC shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage or destruction of the improvements and the balance of those proceeds, if any, shall be delivered to the PERMITTEE.
5. Give ADC twenty-five (25) days notice, in writing, before vacating the property.
6. If a holdover permittee, pay all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a PERMITTEE, if not a holdover permittee, who has occupied the Premises for a continued period of one year or more, shall pay the real property tax assessed against the Premises after the first year of the Permit.
7. Observe and comply with all laws, ordinances, rules, and regulations of the federal, state, municipal, or county governments affecting the Premises or any improvements, including but not limited to, all applicable federal, state, and county environmental impact regulations,

including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation.

8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of ADC before making any improvements.
10. Keep the Premises and improvements in a safe, clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other utilities, and including charges for the collection of garbage that may be levied.
12. Not make, permit, or suffer, any waste, nor strip, nor spoil, any nuisance or unlawful, improper or offensive use of the Premises.
13. Agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, employees, Board members, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the Premises, resulting from any act or omission of the PERMITTEE, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon caused by the PERMITTEE, or growing out of or caused by any failure on the part of PERMITTEE to maintain the Premises in a safe condition, or by any act or omission of PERMITTEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by PERMITTEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments.

The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Permit.

In case the ADC shall, without any fault on its part, be made a party to any litigation commenced by or against

PERMITTEE in connection with this Permit, the PERMITTEE shall pay all costs and expenses incurred by or imposed on the ADC, including attorneys' fees.

14. PERMITTEE shall maintain during the entire period of this Permit a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of PERMITTEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

PERMITTEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this Permit, whichever is sooner, shall furnish ADC with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Permit, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by PERMITTEE or by ADC at its option, shall be issued to PERMITTEE and ADC at least thirty (30) days before cancelation. The policy shall include ADC as an additional insured as its interests appear under this Permit.

15. PERMITTEE shall be responsible for any environmental issue occurring on the Premises during the entire time it occupies the Premises.

(a) PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by federal, state, and local law. PERMITTEE shall not allow the storage or use of such materials in any manner not sanctioned by such federal, state, and local law. ADC may, upon reasonable request and for reasonable cause, require testing of the Premises to

ascertain whether or not there has been any release of hazardous materials by PERMITTEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by PERMITTEE, PERMITTEE shall, in addition to PERMITTEE's other obligations hereunder, be responsible for the cost of such testing.

PERMITTEE shall execute affidavits, representations, and the like from time to time at ADC's request concerning PERMITTEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE. If PERMITTEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject ADC, PERMITTEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, PERMITTEE shall immediately advise ADC thereof in writing and provide to ADC such detailed reports thereof as may be reasonably requested by ADC. ADC shall have the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) PERMITTEE shall be responsible for and shall indemnify, defend, and hold harmless ADC and its officers, employees, agents, successors, Board members, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this Permit and caused by PERMITTEE, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any repair, clean-up, or detoxification of the Premises required by hazardous materials laws and of the preparation and implementation of any related closure, remedial, or other required plans; (3) the costs of ADC's investigation and handling of any hazardous materials

claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of ADC's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by ADC in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the revocation or earlier termination of this Permit.

B. Additional Conditions:

1. ADC may revoke this Permit for any reason whatsoever, upon written notice to the PERMITTEE at least thirty (30) days prior to the revocation; provided, however, that in the event that payment is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the PERMITTEE. Said notice must be at least five (5) business days prior to the revocation date.
2. If the PERMITTEE does not vacate the premises upon the revocation of the Permit by ADC, the PERMITTEE shall pay to the State of Hawaii liquidated damages at the daily rate of (\$20.00) for each day, or portion thereof, the PERMITTEE remains on the premises over the date of revocation. The payment is in addition to any other rights or remedies ADC may be entitled to pursue, such as breach of contract, or for illegal occupancy, including the right to evict the PERMITTEE without court action, and the costs and attorneys' fees thereof to be paid by the PERMITTEE. The provisions of this paragraph shall survive the revocation or earlier termination of this Permit.
3. If the PERMITTEE fails to vacate the premises upon the revocation of the Permit, then the ADC, its agents and/or representatives may enter upon the Premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the PERMITTEE agrees to pay for all costs and expenses of removal and disposition. The provisions of this paragraph shall survive the revocation or earlier termination of this Permit.

4. Upon termination or revocation of the Permit, PERMITTEE shall surrender the Premises in substantially the condition as of the date hereof, ordinary wear and tear excepted. If the PERMITTEE fails to surrender the Premises in such condition, ADC shall have the option to correct any issues and charge the PERMITTEE for any costs, including reasonable damages for any delay caused. The provisions of this paragraph shall survive the revocation or earlier termination of this Permit.
5. Any improvements, including but not limited to equipment, buildings and fences, erected or moved on to the Premises by the PERMITTEE shall remain the property of the PERMITTEE and the PERMITTEE shall have the right, prior to the termination of this Permit, or within an additional period ADC in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the PERMITTEE fails to remove the improvements forty-five (45) days after written notice to remove has been sent, then ADC may elect to retain the improvements or may remove the same and charge the cost of removal, storage, or disposal, if any, to the PERMITTEE.
6. ADC may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
7. ADC reserves the right for itself, its agents, and/or representatives, to enter or cross any portion of the Premises with prior notice to PERMITTEE. Notice is not required in the case of an emergency.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. It is understood that the PERMITTEE has inspected the Premises and knows the conditions thereof and fully assumes all risk incident to its use.
10. The acceptance of rent by the ADC shall not be deemed a waiver of any breach by the PERMITTEE of any term, covenant, restriction, or condition of this Permit, or of ADC's right to declare and enforce a forfeiture for any breach; and the failure of ADC to insist upon strict performance of any term, covenant, or condition, or to

exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by the ADC.

11. The failure of the ADC to insist upon the strict compliance with any term, provision, or condition of this Permit shall not constitute or be deemed to constitute a waiver or relinquishment of the ADC's right to enforce the same in accordance with this Permit.
12. The term of this month-to-month permit beyond one (1) year from date of issuance, is subject to the prior approval of the ADC Board of Directors.
13. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law.
14. Any and all disputes and/or questions arising under this permit shall be referred to the ADC Executive Director and his determination of the disputes or questions shall be final and binding on the parties.
15. ADC shall not be responsible for theft or damage to PERMITTEE's property, including but not limited to any vehicles or property stored on the Premises.
16. PERMITTEE shall maintain for the duration of this Permit, insurance against claims for injuries to persons or damages to Premises, which may arise from or in connection with PERMITTEE or their agent, representative, employee, or contractor's use or occupancy of the Premises.

PERMITTEE shall ensure that any and all of its agents, representatives, employees or contractors carry and maintain at their sole cost and expense the following insurance policies and coverage below:

a. Comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability in form and substance reasonably satisfactory to ADC, with an insurer licensed

to do business in the State of Hawaii reasonably satisfactory to ADC, which shall be no less than:

Bodily Injury and Property Damage Liability \$500,000 each occurrence/ \$1,000,000 aggregate.

If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.

b. Comprehensive automobile liability insurance covering all owned, hired, or non-owned vehicles, including the loading and unloading thereof on the Premises.

c. Workers' compensation insurance affording statutory limits, and employees' liability coverage with limits no less than \$500,000 covering all persons admitted to the Premises under the terms of this Permit.

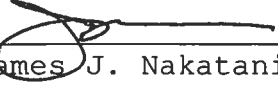
17. RP257-21-01 is terminated upon the effective date of this Permit.

[The remainder of this page is left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

ADC:

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT
CORPORATION

By: 

James J. Nakatani

Its: Executive Director

Date: JUL 29 2021

PERMITTEES:

THE DAVEY TREE EXPERT COMPANY

By: 

(print name)

Its: 

Date: 7/27/2021

DAVEY TREE SURGERY COMPANY

By: 

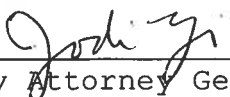
Christopher S. Bast

(print name)

Its: VP + Treasurer

Date: 7/27/2021

APPROVED AS TO FORM:


Deputy Attorney General

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 29th day of July, 2021, before me personally appeared **JAMES J. NAKATANI**, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Notary Stamp or Seal)

Jan Y. Ferrer
Print Name: **Jan Y. Ferrer**
Notary Public, State of Hawaii
My commission expires: 11/29/2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Revocable Permit No. RP-W257-21-02

Document Date:

7/29/21

No. of Pages:

14

Jurisdiction (in which notarial act is performed):

1st circuit

Signature of Notary

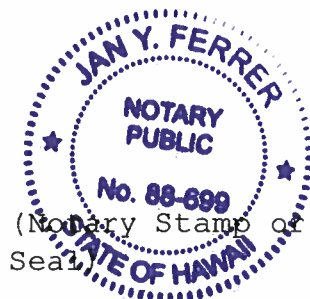
Jan Y. Ferrer

Date of
Notarization and
Certification
Statement

7/29/2021

Jan Y. Ferrer

Printed Name of Notary



(Notary Stamp or Seal)

STATE OF OHIO)
) ss.
COUNTY OF Portage)

On this 27 day of July, 2021, before me personally appeared Dan A. Joy, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Michael F. Brately
Notary Public, State of Ohio
My Commission Expires
April 19, 2024

Michael F. Brately
Print
Name: Michael F. Brately
Notary Public, State of Ohio
My commission expires: April 19, 2024

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Revocable Permit No. RP-W257-21-02

Document Date:

No. of Pages:

14

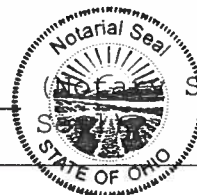
Jurisdiction (in which notarial act is
performed):

Kent, Ohio

Michael F. Brately
Signature of Notary

7/27/21
Date of
Notarization and
Certification
Statement

Michael F. Brately
Printed Name of Notary



Michael F. Brately
Notary Public, State of Ohio
My Commission Expires
April 19, 2024

STATE OF OHIO)
) ss.
COUNTY OF Portage)

On this 27 day of July, 2021, before me personally appeared Christopher J. Bast, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Michael F. Brately
Notary Public, State of Ohio
My Commission Expires
April 19, 2024

(Notary Stamp or Seal)

Michael F. Brately

Print

Name: Michael F. Brately

Notary Public, State of Ohio

My commission expires: April 19, 2024

NOTARY CERTIFICATION STATEMENT

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Jurisdiction (in which notarial act is
performed): Kent, Ohio

Michael F. Brately

Signature of Notary

7/27/21

Date of

Notarization and
Certification
Statement

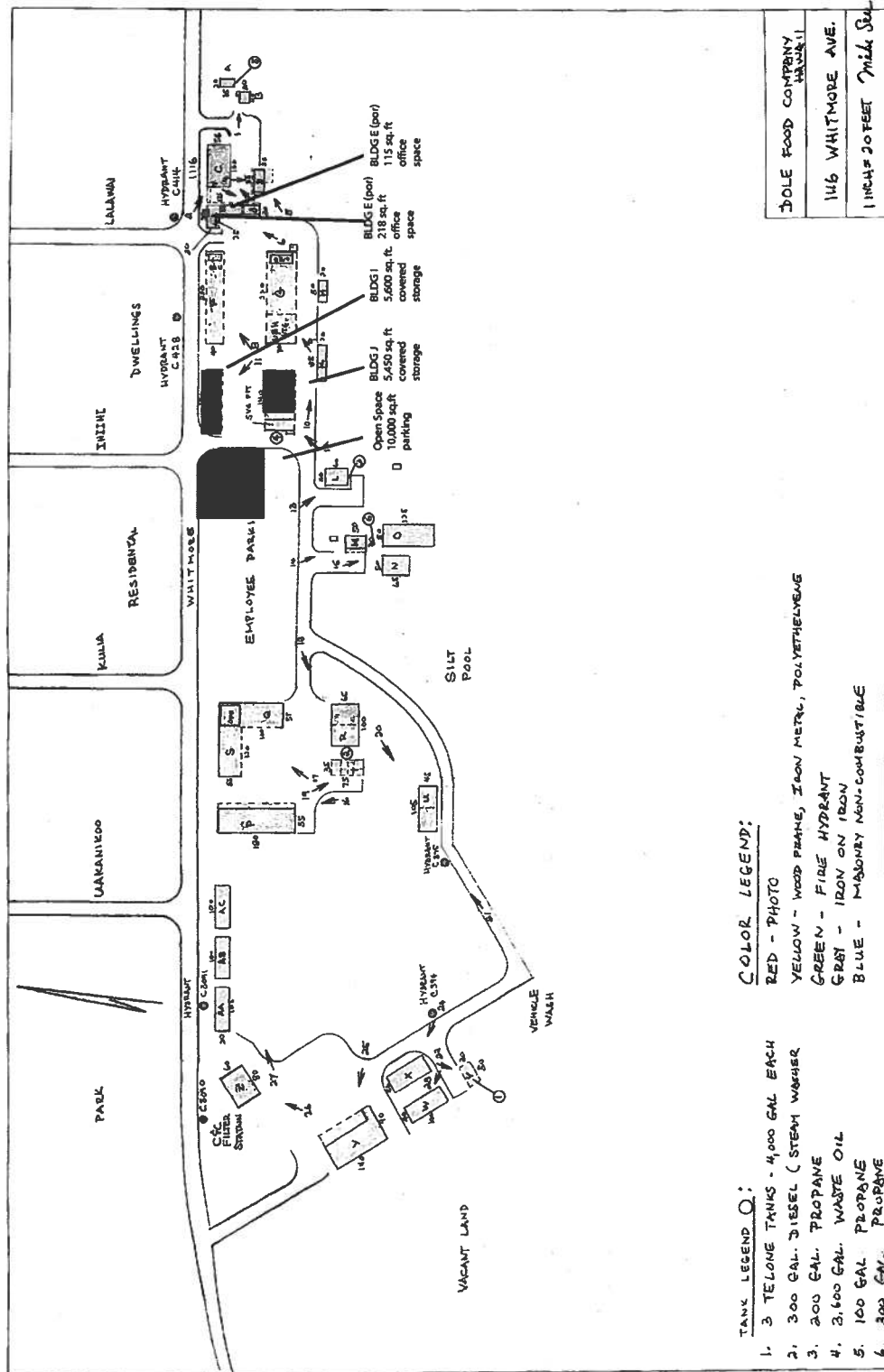
Michael F. Brately

Printed Name of Notary



Michael F. Brately
Notary Public, State of Ohio
My Commission Expires
April 19, 2024

EXHIBIT A





STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

May 18, 2022

Subject: Request for Authorization to Seek an Opinion from the Department of the Attorney General Concerning Legal Issues Pertaining to Kekaha Agriculture Association's Important Agricultural Lands (IAL) Petition

Applicant: Kekaha Agriculture Association (KAA)

Authority: Section 163D-4(a)(18), Hawaii Revised Statutes (HRS)

Location: Kekaha, Island of Kauai, Hawaii

Land Area: Portions of the Mānā plain lands, approximately 12,123 acres

Tax Map Key: (4) 1-2-002-001

Land Status: Set aside by the Governor's Executive Order No. 4007 to the Agribusiness Development Corporation (ADC) for Agricultural and Related Purposes

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes X No ____

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes X No ____

Character of Use: Agricultural

Land Doc. Type: N/A

Term: N/A

Rental Rate: N/A

BACKGROUND:

On December 2, 2021, KAA filed a Petition for Declaratory Order to Designate Important Agricultural Lands (Petition) with the Land Use Commission (LUC). This Petition was assigned Docket No. DR 21-76. Through the Petition, KAA sought to have 12,123 acres of land at Kekaha, Kauai declared as important agricultural lands. The 12,123 acres of

land were set aside for agricultural and related purposes to be under the control and management of ADC.

On March 16, 2022, the ADC Board reauthorized KAA to pursue a declaratory order to designate ADC's Kekaha lands as IAL in accordance with HRS section 205-45. The ADC Board further provided consent, on behalf of the State of Hawaii as the fee simple landowner authorized by Executive Order No. 4007 and HRS section 171-2(11), for purposes of approving and supporting KAA's Petition. Finally, the ADC Board authorized ADC staff to assist and cooperate with KAA as necessary to secure the designation of the Mānā plain lands as important agricultural land. A hearing on KAA's Petition under Docket No. DR 21-76 was scheduled December 23, 2021, and thereafter rescheduled for further hearing on May 11, 2022.

On April 27, 2022, KAA filed a Motion to Amend Petition for Declaratory Order to Designate Important Agricultural Lands with the LUC. The purpose of the amendment was to reduce the amount of acreage from 12,123 acres to 11,863 acres.

On May 4, 2022, the Board of Land and Natural Resources (BLNR) filed a Memorandum Regarding KAA's Petition for Declaratory Order to Designate Important Agricultural Lands (Memorandum) with the LUC. See attached Exhibit A. The Memorandum opposed the Petition.

On May 5, 2022, ADC responded to the BLNR Memorandum. See attached Exhibit B. ADC questioned the contents of the Memorandum and noted that the late filing of the Memorandum did not provide sufficient time to thoughtfully respond to the issues raised.

On May 6, 2022, KAA advised the LUC that KAA intended to orally withdraw the Petition at the May 11, 2022 hearing as permitted by HAR section 15-15-70.

On May 11, 2022, at the LUC hearing, KAA orally moved to withdraw the Petition. The oral motion to withdraw was granted.

REQUEST:

The BLNR Memorandum raised several issues in its memorandum:

- 1) ADC does not meet the definition of "landowner" and therefore was not authorized to give KAA permission to seek IAL designation through HRS section 205-45;
- 2) ADC did not properly consult with BLNR before approving KAA's Petition;
- 3) Reclassifying lands to IAL at the request of KAA violates BLNR's public trust obligations; and
- 4) KAA does not meet the definition of "farmer".

See attached Exhibit 1

DISCUSSION:

HRS section 28-3, provides that the “attorney general shall, when requested, give opinions upon questions of law submitted by the governor, the legislature, or its members, or the head of any department.” KAA has asked ADC to approach its department head for purposes of submitting a request to the Attorney General for an opinion on the questions of law raised by BLNR through its Memorandum.

RECOMMENDATION:

Accordingly, it is recommended that the ADC Board authorize ADC Staff to submit a formal request that the head of the Hawaii Department of Agriculture (prior to July 1, 2022) or the head of the Hawaii Department of Business, Economic Development, and Tourism (beginning July 1, 2022 and after), as the department to which ADC is administratively attached, asking the Attorney General for an opinion upon the following questions of law:

- (1) In regard to a petition for important agricultural land designation pursuant to HRS section 205-45, for purposes of meeting the definition of “Landowner” as set forth in section 15-15-03, Hawaii Administrative Rules (HAR), as necessary to demonstrate authorization of the applicable landowner in compliance with HAR section 15-15-121, must the landowner authorization be made by ADC pursuant to Executive Order No. 4007 and HRS section 171-2(11), which removes lands set aside to ADC by executive order from the definition of “public lands”; or DLNR based upon its reversionary interest, should some subsequent act cause the lands to regain the status of “public lands”, which would return management, administration, and control of the public lands to DLNR pursuant to HRS section 171-3;
- (2) In regard to a petition for important agricultural land designation pursuant to HRS section 205-45, should the petitioner be ADC, or KAA, or both, where the petition for declaratory order to designate the lands as important agricultural lands may be filed by a farmer or a landowner;
- (3) In regard to a petition for important agricultural land designation pursuant to HRS section 205-45, does an agricultural cooperative composed of farmers, organized under HRS section 421, meet the term “farmer” for purposes of filing a petition for declaratory order to designate the lands as important agricultural lands; and
- (4) Should a petition to seek important agricultural lands designation for lands set aside to ADC pursuant to HRS section 171-2(11) be brought under HRS section 205-44.5 or HRS section 205-45?

Respectfully Submitted,

James J. Nakatani
Executive Director

EXHIBIT A

“State of Hawai‘i Through Its Board of Land and Natural Resources’ Memorandum Regarding
Kekaha Agriculture Association’s Petition to Declaratory Order to Designate Important
Agricultural Lands”

[see following pages 1-10]

HOLLY T. SHIKADA 4017
Attorney General of Hawai'i

COLIN J. LAU 6058
Deputy Attorney General
Kekuanao'a Building, Room 300
465 South King Street
Honolulu, Hawai'i 96813
Telephone: (808) 587-2991
Fax: (808) 587-2999
Email: colin.j.lau@hawaii.gov



Attorneys for BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of the Petition of

KEKAHA AGRICULTURE
ASSOCIATION, a Hawaii
agricultural cooperative,

For Declaratory Order to Designate
Important Agricultural Lands for
approximately 12,123 acres at
Kekaha, Kauai; TMK 4-1-2-002:001
Por.

DOCKET NO. DR 21-76

STATE OF HAWAI'I through its
BOARD OF LAND AND NATURAL
RESOURCES' MEMORANDUM
REGARDING KEKAHA
AGRICULTURE ASSOCIATION'S
PETITION FOR DECLARATORY
ORDER TO DESIGNATE IMPORTANT
AGRICULTURAL LANDS

CERTIFICATE OF SERVICE

STATE OF HAWAI'I THROUGH ITS BOARD OF LAND AND NATURAL RESOURCES'
MEMORANDUM REGARDING KEKAHA AGRICULTURE ASSOCIATION'S PETITION
FOR DECLARATORY ORDER
TO DESIGNATE IMPORTANT AGRICULTURAL LANDS

THE STATE OF HAWAI'I through its BOARD OF LAND AND NATURAL
RESOURCES ("BLNR"), respectfully submits its memorandum regarding KEKAHA
AGRICULTURE ASSOCIATION ("Petitioner" or "KAA")'s Petition for Declaratory
Order to Designate Important Agricultural Lands ("Petition").¹ Primarily on the basis of

¹ Since the December 2, 2021 Petition, KAA moved to amend said Petition on April 27, 2022.

lack of input of the BLNR in the current proposed designation involving a significant amount of public lands, the BLNR **OPPOSES** the Petition for the policy reasons stated below.

I. FACTUAL BACKGROUND

Without any notice by Petitioner KAA to the BLNR, or approval sought from the BLNR, the Land Use Commission (LUC)'s online pending docket for declaratory orders showed a Petition of Kekaha Agriculture Association for Declaratory Order to Designate Approximately 12,123 Acres at Kekaha, Kaua'i; TMK 4-1-2-002:001 Por. IAL. Petitioner seeks a declaratory order, citing Hawaii Revised Statutes (HRS) sections 205-44 and -45 and Hawaii Administrative Rules (HAR) sections 15-15-98, -99, -120, and -121 as authority to designate approximately 95% of the "Kekaha Ag Land" (i.e., the subject property) as Important Agricultural Lands (IAL).

Petitioner 'manages and operates agricultural infrastructure (e.g., irrigation water, drainage, roadways, and electric power systems) on land on Kaua'i referred to as the "Kekaha Ag Lands"' pursuant to a memorandum of agreement with the Agribusiness Development Corporation (ADC). The agreement is set to expire in the year 2028. Petition, p. 2, ¶ 3. The Petitioner states that the "State of Hawai'i owns the Kekaha Ag Lands." *Id.*

Executive Order No. 4007 (E.O. 4007) set aside a portion of TMK no. (4) 1-2-002:001 to the Agribusiness Development Corporation "for agricultural and related purposes" on September 16, 2003. The set aside was for "a gross area of 12,860.642 acres and a net area² of 12,592.133 acres" as compared with the entire parcel size of 12,996.7660

² E.O. 4007 excluded 268.509 acres, such as Kaumualii Highway (80.225 ac), Kokee Road (25.30 ac), Polihale Road (19.38 ac), Waimea Canyon Drive (30 ac.), among others. BLNR believes these excluded roads, wells, storage areas, etc. to be either under its own control, other political subdivisions, or private individuals.

acres as indicated by the County of Kaua'i Real Property Assessment Office website for the TMK parcel. The county website indicates the State of Hawai'i as the fee owner, but erroneously includes ADC.

Instead, the BLNR, on behalf of the State of Hawai'i, is the fee owner to the approximately 12,123 acres Petitioner originally sought to designate as IAL.³ The BLNR is the head of the Department of Land and Natural Resources (DLNR), which manages and administers the public lands of the State. HRS sec. 26-15.

Despite Petitioner's acknowledgment that the State of Hawaii owns the subject property, the BLNR was not consulted nor served by Petitioner any notification of petition for its intent to designate the approximately 12,123 acres of state land as IAL. Petitioner's records show a prior attempt to designate Kekaha Ag Lands as IAL in 2018, followed by this current Petition. Nor has BLNR been informed by the ADC regarding this Petition or any modification.⁴ BLNR has neither been asked to agree to, nor concurred with, Petitioner's designation.

In addition to being the fee owner, the BLNR owns and manages properties adjacent/abutting the subject property. The State of Hawai'i (through the BLNR) is the fee simple landowner to a number of adjoining properties, many of which are zoned conservation. Moving from the mauka eastern edge of the subject property then proceeding northerly in a

³ Petitioner's April 27, 2022 motion to amend its petition reduces the acreage for designation as IAL to 11,863 acres.

⁴ In ADC's January 31, 2018 ADC Board meeting minutes, ADC states it "approached DLNR by way of letter dated January 22, 2018 about "the subject of fee simple ownership of lands set aside to ADC by executive order". "DLNR had not responded to ADC's letter by the January 31, 2018 ADC Board meeting." KAA Brief in Response to Commission's Feb. 2 Letter, Exhibit B (ADC Board Packet), p. 3 of 9. ADC allegedly asked DLNR for assistance in designating ADC lands through KAA's petition. Lack of a response was apparently interpreted by ADC as approval by the BLNR and that ADC is the fee simple owner.

clockwise direction around the perimeter of the proposed designated property, the State owns the following properties:

TMK no. (4) 1-2-002:027 Agricultural lot (48.777 ac)
TMK no. (4) 1-2-002:029 Por Hawaiian Home Land of Waimea (25.686 ac)
TMK no. (4) 1-2-001:006 Puu Ka Pele Forest Reserve (4,898.988 ac)
TMK no. (4) 1-2-001:001 Beach Reserve (431.0 ac)
TMK no. (4) 1-2-002:024 Portion of Bonham Air Base/Polihale State Park (132.48 ac)
TMK no. (4) 1-2-002:025 Former Mana Airport (69.562 ac)
TMK no. (4) 1-2-002:009 Dump (35.67 ac)
TMK no. (4) 1-2-002:036 State of Hawaii Leased Land (66.788 ac)
TMK no. (4) 1-2-002:040 Kaumualii Hwy (132.58 ac)
TMK no. (4) 1-2-002:032 Kuhio Hwy (28.63 ac)
TMK no. (4) 1-2-002:007 Kaumualii Hwy (16.40 ac)
TMK no. (4) 1-2-006:018 State of Hawaii Waimea Heights House Lots (57.6930 ac)
TMK no. (4) 1-2-011:016 Off Waimea Canyon Dr. (5.01 ac)
TMK no. (4) 1-5-001:002 State Agricultural lot (3,867.6210 ac)
TMK no. (4) 1-2-001:003 Puu Ka Pele (527.422 ac)

Adjoining lands to the subject property are over 10,244 acres in area according to TMK information on the Kaua'i County Real Property website showing the "State of Hawaii" as fee owner.

As far as can be determined, this is the first instance of state public lands being proposed by a person or entity other than the DLNR or Department of Agriculture.⁵

II. POLICY CONSIDERATIONS AGAINST DESIGNATION BY DECLARATORY ORDER IN DR 21-76

There are at least three procedures for designation of state public lands in LUC statutes and rules: by boundary amendment in HRS section 205-4, by collaboration of the Department of Agriculture and DLNR in HRS section 205-44.5, and by petition by a farmer or landowner for

⁵ Petitioner states,

KAA understands that its Petition is the first, or among the first, to seek to designate land that is not privately owned, but is owned by the state, and to be brought not by a private landowner but by farmers who farm the land and whose agricultural operations will directly benefit from the support afforded by IAL designation.

KAA's Brief in Response to Commission's letter dated February 2, 2022, dated March 30, 2022 ("KAA's response to LUC"), *see* p. 3, ¶ 1.

declaratory order in HRS section 205-45. Of the three, the latter appears to be less rigorous to ascertaining the rights and position of any landowner if the petition is made by a “farmer”.

A. The BLNR through DLNR exercises fee simple ownership on behalf of the State.

Petitioner erroneously refers in its Petition to the ADC as the fee owner giving authorization in its petition.⁶ When public lands are set aside by executive order under HRS section 171-11, the State of Hawai‘i continues to own all the property, and has the reversionary management interest. Under Executive Order (E.O.) 4007, the ADC was given management authority for TMK no. (4) 1-2-002:001. E.O. 4007 mandates that public lands be set aside for the following public purposes:

For agriculture and related purposes, to be under the *control* and *management* of the Agribusiness Development Corporation...Subject, however, to the condition that upon cancellation of this executive order or in the event that non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the Agribusiness Development Corporation shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii. (Emphasis added).

As stated, E.O. 4007 did not and does not transfer an absolute fee simple ownership⁷ of the subject property to the Agribusiness Development Corporation (“ADC”); but merely transfers *control* and *management* of the subject property.⁸ Although the ADC may issue a

⁶ Petition, p. 5, ¶ 1; KAA’s response to LUC

⁷ “With fee simple ownership the grantee or successful claimant became entitled to all the incidents and privileges which attach to that status by operation of the common law or Hawaiian custom and usage.” *State by Kobayashi v. Zimring*, 58 Haw. 106, 139, 566 P.2d 725, 744 (1977) Black’s Law Dictionary defines “fee simple” as the “term applying to total ownership of land and all of the buildings on it.”

⁸ If the State intended to transfer fee simple ownership and the department, agency, or political subdivision possessed powers conferred by the Legislature which allowed it to own land, then a warranty deed or even a quitclaim could suffice; or the Legislature could create an exception to the definition of “public land” in HRS sec. 171-2 to remove the land from chapter 171 controls. This is not the case here.

land disposition such as a lease, easement, license, revocable permit, etc., unless the disposition is for less than 14 days, an agency given managerial jurisdiction such as the ADC is still required under section 171-11 to seek the BLNR's prior approval before such a land disposition may be made, ensuring that the disposition is be consistent with the public purpose that the lands were set aside under the executive order.

Under HRS section 171-11, if set aside lands are either not used or required for the described public use in the E.O., the BLNR has the prerogative to make any further land disposition less than the fee interest for purposes that are either consistent or inconsistent with those in the E.O. Land set aside may also be cancelled or withdrawn, the latter of which previously occurred for E.O. 4007 on September 17, 2010, under E.O. 4330, as signed by then-Governor Linda Lingle, and subject to disapproval of the Legislature by two-thirds vote.⁹

B. DR 21-76 sets a precedent for designation of public lands without BLNR input

Without having been given an opportunity to discuss the merits or pitfalls of Petitioner's petition, the BLNR is concerned with this treatment of public lands going forward. As public lands under the BLNR's jurisdiction have not yet been designated as IAL, we are particularly concerned of the implications of designation by this process. A precedent may be set which includes confusing and seemingly contradictory treatment in procedures and notice requirements.

Lands owned by the State of Hawai'i are being declared IAL without any consultation, evaluation, or input by the BLNR as to other attributes of the public lands – including the presence of historic or prehistoric remains, historical properties, sites of cultural significance; geological features, rare, endangered,

⁹ On Sept. 8, 2006, BLNR approved the withdrawal of 19,500 square feet.

threatened, or indigenous species; introduced species which impact any natural resource; access for traditional and customary practices, hunting, fishing, water, the statewide trail system, endangered species, or any reserved interest in the property, such as minerals and metallic mines, or native rights. The proposal does not address or appear to be required to specifically address, the effects of designation on the State's adjoining properties and easements.

C. Designation under DR 21-76 has unintended consequences to public lands without BLNR input

If designated as IAL, Part III of HRS chapter 205 allows a number of incentives to follow, including tax credits, farm dwellings and employee housing, processing facilities. *See* HRS sections 205-45.5, -46, -46.5. Housing and dwellings are examples of structures not usually allowed by the BLNR, as being inconsistent with the public purpose of a set aside under an E.O., or most public land dispositions under HRS chapter 171.

BLNR's representation of the State is under the Constitution and through statute, includes public trust duties and responsibilities to public lands and associated natural resources. None of these responsibilities should be supplanted by the private interests of KAA, nor can the DLNR's agency expertise or representation be substituted by other state or county agencies. The further transfer of management upon designation could cause a conflict between agencies if their constitutional and statutory mandates are taken into account.

In contrast, reclassification of the lands to IAL without BLNR approval materially impacts BLNR's authority under HRS section 171-11, as the authority to manage,

administer, and exercise control over public lands designated IAL is transferred to the Department of Agriculture. HRS section 171-3. This differs from any cancellation or withdrawal of lands from a section 171-11 set aside, which would enable the State through the BLNR to set aside the lands to another state or county agency, or allow any other disposition.

D. Qualifications of Petitioner KAA under HRS section 205-45

As an agricultural cooperative managing agricultural infrastructure, KAA is not a farmer, although it may be composed of farmers. Petition, p. 2, ¶¶ 2, 3.

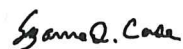
KAA is also not a landowner, and as stated above, operates under a managerial agreement with ADC rather than hold a traditional property interest in land. As far as we are aware, KAA has not disclosed this agreement with ADC by which it exercises its management of Kekaha Ag Lands. The agreement will lapse in about six years.

Given the extensive amount of state lands proposed for designation by Petitioner, which qualifications under HRS section 205-45 appear marginal, we believe that under the circumstances, denial of the Petition or Amended Petition (if amendment is granted) at this juncture is warranted.

III. CONCLUSION

Based on the above, respectfully, it is the testimony of the BLNR that the appropriate outcome is for the Land Use Commission to deny this Petition, or Petition as amended.

DATED: Honolulu, Hawai'i, May 3, 2022



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of the Petition of

KEKAHA AGRICULTURE
ASSOCIATION, a Hawaii agricultural
cooperative,

For Declaratory Order to Designate
Important Agricultural Lands for
approximately 12,123 acres at Kekaha,
Kauai; TMK 4-1-2-002:001 Por.

DOCKET NO. DR 21-76

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was
duly served upon the following parties, via U.S. Mail, postage prepaid, as set forth below:

STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
Attn.: Earl Yamamoto
1428 South King Street
Honolulu, HI 96814

STATE OF HAWAI'I
OFFICE OF PLANNING AND SUSTAINABLE
DEVELOPMENT
Attention: Mary Alice Evans
P.O. Box 2359
Honolulu, HI 96804-2359

ALISON KATO, ESQ.
Deputy Attorney General
Office of the Attorney General
State of Hawai'i
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KAUAI COUNTY PLANNING DEPARTMENT
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Līhu‘e, HI 96766
Attention: Ka‘aina S. Hull

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DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO
Fort Street Tower, Suite 1500
Topa Financial Center
745 Fort Street
Honolulu, HI 96813

DATED: Honolulu, Hawai‘i, May 3, 2022



COLIN J. LAU
Deputy Attorney General
Attorney for Board of Land and Natural Resources

EXHIBIT B

ADC Response to "State of Hawai'i Through Its Board of Land and Natural Resources'
Memorandum Regarding Kekaha Agriculture Association's Petition to Declaratory Order to
Designate Important Agricultural Lands"

[see following pages 1-2]

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

May 5, 2022

SENT VIA EMAIL: dbedt.luc.web@hawaii.gov

Mr. Daniel E. Orodener, Executive Director
and Members of the State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Re: Petition by Kekaha Agriculture Association for Declaratory Order to Designate
Important Agricultural Lands for Approximately 12, 123 acres at Kekaha, Kauai under
Docket No. DR 21-76

Dear Executive Director Orodener and Members of the Land Use Commission:

The above referenced Petition is presently scheduled for a continued hearing on May 11, 2022, having previously been heard on December 23, 2021. The Agribusiness Development Corporation (ADC) was extremely disheartened to receive a copy of the Board of Land and Natural Resources' Memorandum Regarding Kekaha Agriculture Association's (KAA) Petition for Declaratory Order to Designate Important Agricultural Lands (BLNR Memorandum), which was filed with the Land Use Commission on May 4, 2022. The BLNR Memorandum raises significant issues. However, some of these issues are factually inaccurate. The late filing of the memorandum, a mere five business days before the scheduled hearing, does not allow sufficient time to prepare a thoughtful response that would aid the Commission in its decision making.

At this point in time, suffice it to say that the Chairperson of the Board of Land and Natural Resources (BLNR), or a designated representative, serves as an ex-officio, voting member of the ADC Board. See section 163D-3(b), Hawaii Revised Statutes (HRS). The representative of the BLNR that sits on the ADC Board has been aware of KAA's pursuit of Important Agricultural Land designation since January 2018. See HDOA/ADC website available at www.hdoa.hawaii.gov/adc/meetings for ADC Board meeting agendas, meeting attendance, and minutes.

ADC would like to further clarify that the Hawaii Legislature did create an exception that allows "lands that are set aside by the governor to the agribusiness development corporation, lands leased to the agribusiness development corporation by any department or agency of the State, or lands to which the agribusiness development corporation in its corporate capacity holds title" to be excluded from the definition of "public lands." See section 171-2(11), HRS.

Mr. Daniel E. Orodenker
and Members of the State of Hawai'i Land Use Commission
May 5, 2022
Page 2 of 2

ADC would like to take this opportunity to thank the Commission for their time and efforts in bringing the State's goal of increased local agricultural production and food security to fruition. Should you have any questions please do not hesitate to contact me at james.nakatani@hawaii.gov.

Sincerely,



James J. Nakatani
Executive Director

c: KAA
ADC board members



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

Executive Director's Update

May 18, 2022

2022 Legislative Session

The adjournment sine die for the 2022 Legislative Session was on May 5, 2022. The ADC tracked the following bills as it made its way through the legislative process:

- SB 2480 – Relating to the Wahiawa Irrigation System

This measure authorizes the issuance of bonds to the Department of Land and Natural Resources, Hawaii Department of Agriculture, and ADC to purchase the Wahiwa Irrigation System, which includes Lake Wilson. This measure failed to make it out of conference, but funding was appropriated to the various departments to address this critical issue.

- SB2473 – Relating to Economic Development

This measure transfers the ADC from the Hawaii Department of Agriculture to the Department of Business, Economic Development, and Tourism. The bill also amends the focus, scope, and management of the ADC. This measure passed out of conferencing and passed both the House and Senate Chambers and is effective July 1, 2022.

The ADC received the following appropriations from the Legislature for Capital Improvement Projects:

1. Agricultural Infrastructure Improvements, Oahu - \$4,000,000

Plans, design, construction, and equipment for agricultural infrastructure improvements, which includes improvements for the 3 deep wells.

2. Kekaka Ditch Irrigation System Modification, Kauai - \$3,500,000

Plans, design, construction, and equipment for modification to the Kekaha ditch irrigation system, which includes modifications to the stream diversions pursuant to settlement agreement with Earth Justice.

3. Waiahole Water System Improvements, Kunia, Oahu - \$5,000,000

Plans, design, construction, and equipment for improvements to the Waiahole Water System and appurtenant works, which includes a back-up well and enclosing problematic and hazardous sections of the open ditch system.

4. Wahiawa Reclaimed Water Irrigation System, Oahu - \$1,620,000

Design for a new wastewater reclaimed water irrigation system at the Wahiawa Wastewater Treatment Plant. Additional design funding needed to construct the system in phases.

The ADC also received funding for 2 full-time positions, 1 accountant, and 1 asset manager.

REPI/Encroachment Partnering – Whitmore Annex Update

UNCLASSIFIED / FOUO



Encroachment Partnering
JBPHH Wahiawa Annex Buffer
Military Influence Area (MIA) Parcels – Prioritized Map

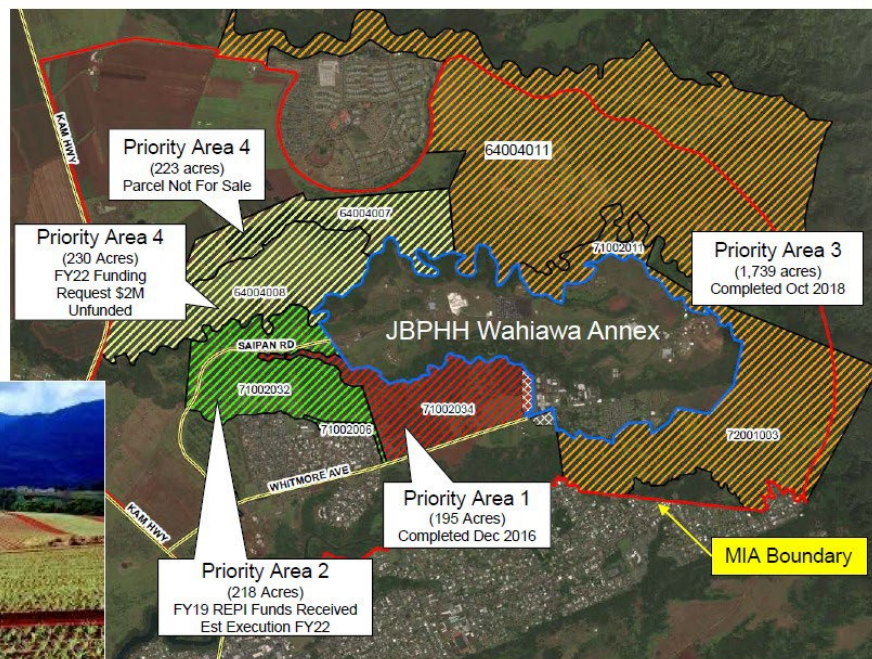


Mission: Communications

- Established 1940/41
- 700 acres
- Surrounded by former pineapple fields, gulches, forested areas

Encroachment Concerns:

- Maintain security buffer
- Antenna line of sight obstructions
- Incompatible land uses
- Foreign investment/National security threats



The ADC is awaiting the establishment of a sub-account for funds received from the sale of a restrictive use easement to the U.S. Navy. The funds received will be used for improvements in and around the Whitmore community. The ADC is continuing its discussions with the U.S. Navy to sell restrictive use easements (RUE) on ADC lands surrounding the Joint Base Pearl Harbor Hickam (JBPHH) Wahiawa Annex. The Navy has an interest in preventing interference with the transmission of communications, preserve the agricultural use of the land, and prevent other uses that would be incompatible with the military mission and operations and has the capability and funding to pay the fair market value of an RUE, up to 50% of the full value of the underlying fee simple interest.

In 2016, the ADC acquired 195 acres in Whitmore (Priority Area 1) from the Trust For Public Lands (TPL). TPL first purchased the 195 acres and simultaneously placed an RUE on the property and transferred the encumbered property to ADC at half the value of the fee, saving the State \$1.8 million.