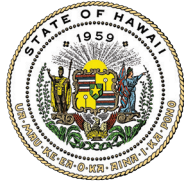

Audit of the Agribusiness Development Corporation

A Report to the Legislature
of the State of Hawai'i

Report No. 21-01
January 2021



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

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Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

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Foreword

Our audit was conducted pursuant to Act 28, Session Laws of Hawai'i 2019 (House Bill No. 1561, HD1, SD2), which mandated a performance audit of the Agribusiness Development Corporation (ADC).

We express our sincere appreciation to the corporation's staff, members of ADC's Board of Directors, members of the Board of Agriculture, and other individuals whom we contacted during the course of our audit, for their cooperation and assistance.

Leslie H. Kondo
State Auditor

Table of Contents

Introduction	1
Audit Objectives	3
Audit Scope and Methodology	3
Summary of Findings	4
Background	5
More than 25 years ago, the Agribusiness Development Corporation was created to develop an “aggressive and dynamic” agribusiness development program to fill the economic void created by the closure of sugar and pineapple plantations; the agency has done little to fill the void	9
ADC continues to misunderstand its purpose.....	10
“Considerably more limited”.....	11
ADC has yet to create a meaningful Hawai‘i agribusiness plan, which would help ensure that its work is achieving the corporation’s statutory purpose and mission.....	13
ADC does not conduct market research, a statutory requirement.....	15
ADC’s land management struggles – inconsistent, incomplete, and, in many cases, non-existent record keeping; prospective tenants occupying lands without signed written agreements; and persistent criminal activity on its properties – expose the State to unnecessary risk	17
ADC records in disarray.....	18

ADC does not keep an inventory of its land portfolio nor a complete list of its projects, which hampers its ability to effectively manage its diverse holdings 21

License terms and conditions are inconsistent with board approvals..... 23

Vacant properties home to criminal activity 23

ADC’s Board of Directors provides minimal guidance and oversight to the corporation..... 26

Board of Agriculture and ADC Board are unclear on policies behind their delegations of authority 27

Board members are doing staff-level work 29

ADC Board’s participation in land acquisitions is “more of a formality” 29

ADC Board’s lack of oversight allows the Executive Director to operate with little to no accountability 30

Board is aware that ADC is not fulfilling its statutory requirements, but it does not hold its Executive Director accountable for these shortcomings..... 32

Conclusion 33

Recommendations 35

Office of the Auditor’s Comments on the Agribusiness Development Corporation’s Response to the Audit Findings 41

Attachment 1 Response of the Agribusiness Development Corporation 46

Exhibit

Exhibit 1 The Agribusiness Development Corporation Organizational Chart..... 6



PHOTO: OFFICE OF THE AUDITOR

Practices Without a Purpose: More than 25 Years Since Its Creation, the Agribusiness Development Corporation Has Done Little to Support the Development of Diversified Agriculture and Fill the Economic Void Created by the Demise of Sugar and Pineapple

Introduction

THE HAWAI'I STATE LEGISLATURE created the Agribusiness Development Corporation (ADC or the corporation) amidst a series of sugar and pineapple plantation closures that signaled the end of an agricultural era dominated by industrial-scale dual-crop exports. Projecting that shuttered plantations would free up 75,000 acres of agricultural land and 50 million gallons of irrigation water daily over the next decade, the Legislature in 1994 established the public corporation to take the lead role in converting those assets for use in commercial diversified agricultural enterprises to fill the economic void created by the departure of the sugar and pineapple industries.

Chapter 163D, Hawai'i Revised Statutes (HRS),¹ ADC's enabling statute, envisioned the corporation developing an "aggressive and dynamic" agribusiness development program to facilitate the

More than 25 years after its creation, we found an agency that is generally unaware of its unique powers and exemptions, and has done little – if anything – toward achieving its statutory purpose.

¹ For clarity, we omit "Hawai'i Revised Statutes" in subsequent references to Chapter 163D, as well as its sections, and subsections.

“The corporation shall coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises, to carry on the marketing analysis to direct agricultural industry evolution, and to provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises.”

– Section 163D-1

agricultural industry’s evolution and provide data-driven analysis to support the development, promotion, and marketing of export crops. ADC was granted powers and exemptions unique in Hawai‘i state government that afford the corporation unrivaled flexibility to bring former plantation infrastructure back into production “in a timely manner.” Among other things, ADC is statutorily authorized to acquire, own, and sell land; lease or sell its lands to agricultural enterprises and farmers without having to go through a public auction process; invest in enterprises engaged in agricultural crop development, development of new value-added crops, and enhancement of existing agricultural commodities; issue revenue bonds to finance acquisitions; create subsidiaries; and even reorganize itself as a non-profit organization.

More than 25 years after its creation, we found an agency that is generally unaware of its unique powers and exemptions, and has done little – if anything – toward achieving its statutory purpose. From 1994 to 2012, the corporation managed two former plantation water systems on Kaua‘i and one on O‘ahu, supplying water to farmers but doing little else to develop new international, national, and local markets for Hawai‘i-grown products, to promote diversified agriculture across the state, or to develop an agriculture industry to replace the economic loss caused by the closure of the plantations.

Amendments to Chapter 163D have expanded ADC’s responsibilities. Act 234, Session Laws of Hawai‘i 2008, directed ADC to purchase 1,227 acres of former pineapple plantation lands on O‘ahu owned by the George Galbraith Estate (the Galbraith Lands). That purchase was completed in 2012. And the Legislature has since directed ADC to acquire thousands of acres of land in Central O‘ahu from Wahiawā to Waialua. Today, most of ADC’s activities center around managing its lands, much of it unused and some known to have harbored criminal activity for years. We found the corporation ill-equipped and struggling to effectively manage these lands, allowing preferred tenants to occupy its lands without approved leases or any other agreements, turning a blind eye to criminal activities on its lands, and ignoring state procurement requirements (see “Doing Business by Handshake” on page 20).

ADC’s statutory purpose has remained consistent and unchanged since the corporation was created in 1994. Yet, ADC has not taken critical steps toward achieving its overarching goals, such as preparing a Hawai‘i agribusiness plan to guide the State’s agribusiness development strategy, which is a legal requirement. In fact, ADC has no agricultural development plans for any of its projects. Those plans, which Chapter 163D also explicitly requires ADC to develop, are supposed to outline the corporation’s development and implementation of specific agricultural projects involving large tracts of former plantation lands and, among other things, include marketing information and strategies to exploit potential local, national, and international markets.

Audit Objectives

1. Describe ADC's process for acquiring former plantation lands and facilitating their transition to other agricultural uses;
2. Describe the effectiveness of ADC's land disposition and marketing strategies, including the proportion of former plantation lands in its asset portfolio that have been leased for other agricultural enterprises;
3. Describe ADC's policies and guidelines for managing its lands and evaluate its enforcement of tenants' lease terms and conditions; and
4. Make recommendations as appropriate.

Audit Scope and Methodology

We conducted this audit pursuant to Act 28, Session Laws of Hawai'i 2019 (House Bill No. 1561, HD1, SD2) (Act 28), which mandated a performance audit of ADC and a report submitted to the Legislature no later than 20 days prior to the 2021 regular session. In addition, the Legislature appropriated \$100,000 to conduct a financial audit of ADC, with which we retained the certified public accounting firm Accuity LLP (Accuity) to audit ADC's financial records for Fiscal Year 2019.

Act 28 also amended the corporation's annual reporting requirements pursuant to Section 163D-19. The amendment requires ADC to include specific information in its annual report to the Legislature, including the number of lots that are leased with protocols supporting specialty farm products; the number of vacant parcels and unoccupied parcels in the leasing process and the date the parcel was last occupied by a tenant; a description of leases approved by the corporation; and the type of farm products produced on the leased lands – all the information must be posted on its website, as well.

This is our first audit of ADC. Our audit was performed from June 2019 to March 2020 in accordance with generally accepted government auditing standards.² Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained fulfills that requirement.

² On March 5, 2020, with COVID-19 cases rising, the Governor issued the first of many emergency proclamations. With exceptions for emergency and essential personnel, state employees were directed to work remotely, limiting our ability to access information. We also re-directed our resources to contribute towards helping the State address the anticipated budget shortfall caused by the pandemic as well as reporting on the State's approach to address some of the challenges created by COVID-19.

Summary of Findings

1. More than 25 years ago, the Agribusiness Development Corporation was created to develop an “aggressive and dynamic” agribusiness development program to fill the economic void created by the closure of the sugar and pineapple plantations; the agency has done little to fill the void.
2. ADC’s land management struggles – inconsistent, incomplete, and, in many cases, non-existent record keeping; prospective tenants occupying lands without signed written agreements; and persistent criminal activity on its properties – expose the State to unnecessary risk.
3. ADC’s Board of Directors provides minimal guidance and oversight to the corporation.

ADC’s Financial Records Were Not Auditable

ADC’s inability to provide us with complete and accurate records on a timely basis greatly affected not only our audit schedule but also which aspects of agency operations we were eventually able to audit. As we discuss in this report, ADC’s recordkeeping was inconsistent, incomplete, and, in many cases, non-existent. For instance, when we requested documents essential to the day-to-day operations of a land management agency – such things as land management policies,³ land acquisition guidelines, inventories of landholdings, tenant listings, or even tenant files – we were informed that they did not exist.

ADC’s problematic recordkeeping also impacted its ability to complete its financial audit, the agency’s first. In accordance with Act 28, we contracted with Accuity, a public accounting firm, to audit ADC’s financial records, which was supposed to be completed by mid-December 2019. However, ADC has not kept financial records since its establishment and many schedules requested by the firm did not exist. As a result, Accuity suspended its work.

³ ADC provided us with a 4-page document entitled “Land Management Policies and Guidelines” that its staff did not know about before our request. That document, which was last revised in 2009, contains only general guidance, not the type of policies and procedures we would expect are reasonably necessary to direct ADC’s management of its lands. However, ADC did not update the general guidance to more specifically address the new responsibilities that were associated with being a landowner after completing its first land acquisition in 2012. In fact, the Executive Director, who describes himself as “not a details person,” readily conceded that the document “should be revisited.”

ADC did not have staff with the capability to get its financial information into an auditable condition and was required to hire another public accounting firm to prepare its financial records, many of which had to be recreated years after-the-fact. Accuity restarted its work this fall and expects to publish its report on the financial audit of ADC in January 2021, a delay of more than a year. Accuity anticipates audit findings that will include material weaknesses in the corporation's internal controls, which means material misstatements of ADC's financial condition may not be prevented, detected, or corrected by ADC in a timely manner.

Background

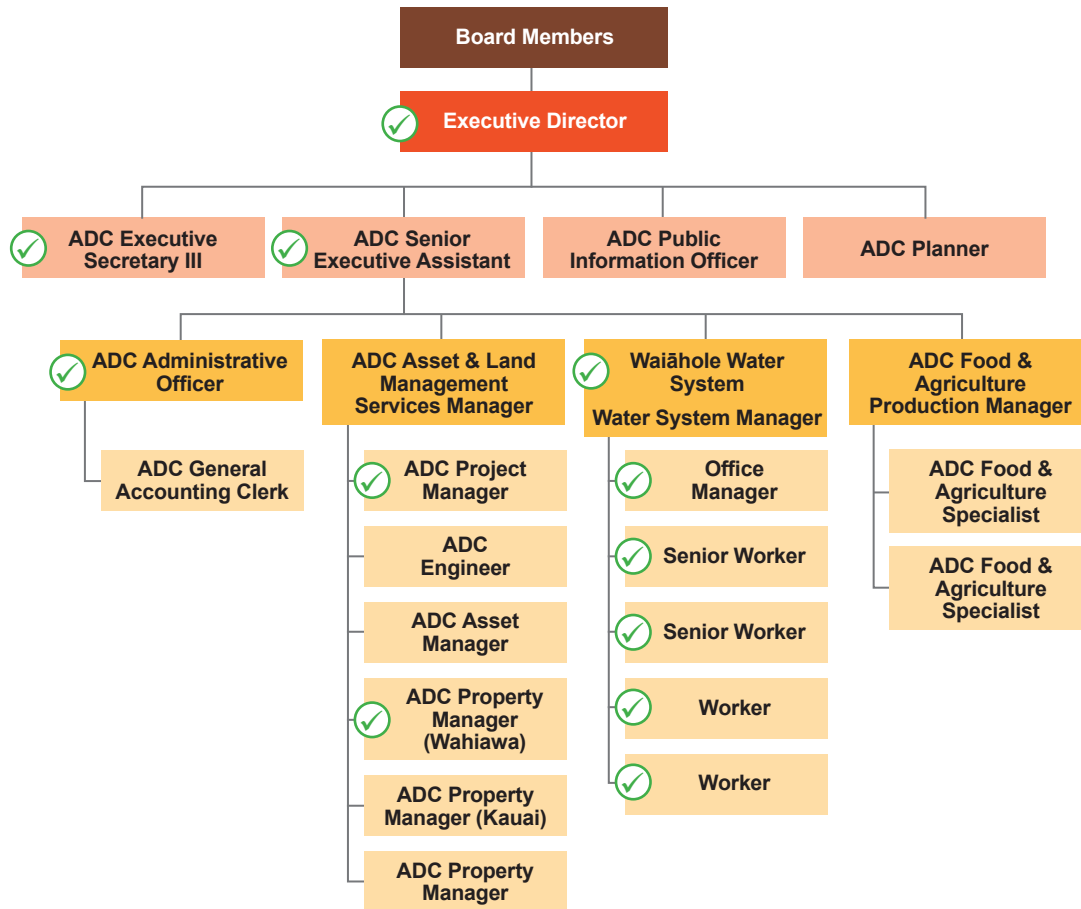
ADC's Organizational Structure

Attached to the Hawai'i Department of Agriculture for administrative purposes, ADC is headed by an 11-member Board of Directors (Board). The Chairperson of the Board of Agriculture, the Director of the Department of Business, Economic Development and Tourism, and the Chairperson of the Board of Land and Natural Resources, or their designated representatives, serve as ex-officio voting members. The other eight members are appointed by the Governor for staggered, four-year terms and selected based on their knowledge, experience, and proven expertise within the agricultural industry, agricultural economics, banking, real estate, finance, promotion, marketing, and management.

According to ADC's bylaws, the Board has established three standing committees for Administration, Technical Assistance, and Marketing/Communications. These committees are responsible for reviewing and making recommendations to the Board on matters related to personnel, finances, proposed projects, marketing-related projects, and any other matter referred by the Board Chairperson. Currently, there is no active Technical Assistance or Marketing/Communications committees according to the Board Chairperson, who expects to reactivate the Marketing/Communications Committee in the future.

The Board appoints an Executive Director to serve as ADC's chief executive officer. The Executive Director is responsible for the corporation's daily operations, including execution of the policies of the Board, the administration of the corporation's programs and projects, and supervision of the corporation's staff. The Executive Director is responsible for providing the Board with information and recommendations necessary to effect the purposes of the corporation and for proper administration of its affairs.

Exhibit 1 The Agribusiness Development Corporation Organizational Chart



✓ = Position filled

Source: Agribusiness Development Corporation

In addition to the Executive Director, at the time of our audit, ADC had 11 full-time staff. Six staff were dedicated to managing the Waiāhole Water System, while the remaining staff were responsible for all other corporation duties. From 2016 to 2018, the Legislature approved three additional positions, then added another nine positions in 2019 to be filled by 2020, including a public information officer, property manager, asset manager, and accounting clerk. The Executive Director originally requested only three new positions in 2019, believing they would be enough to carry out the work of ADC. In late 2019, ADC hired a property manager to fill one of the 12 positions; the remaining positions have not been filled.

From water system manager to land manager

In 1999, five years after it was established, ADC acquired the Waiāhole Water System, a 26-mile-long irrigation system that the O‘ahu Sugar Company had used to deliver water from Windward O‘ahu to 5,600 acres of sugar cane in Central O‘ahu. Two years later, when Kekaha Sugar Company on Kaua‘i shuttered, ADC became involved in the management of 12,500 acres of state agricultural land and related infrastructure, including the former Kekaha and Koke‘e plantation irrigation systems. After making a number of improvements and formally assuming management of the state land in 2003, ADC entered into an agreement with the Kekaha Agriculture Association, an agricultural cooperative, to operate and maintain common infrastructure. ADC also issued long-term land leases to several tenants.

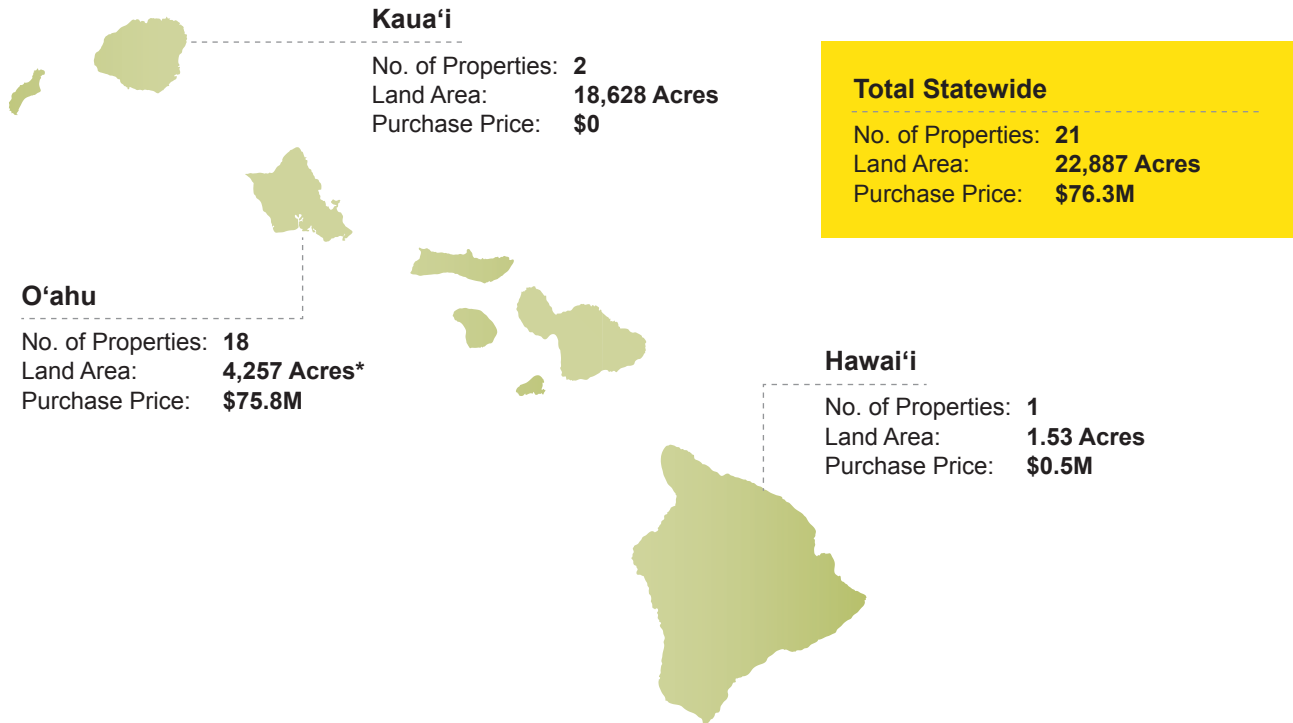
In 2012, nearly 20 years after it was created, ADC completed its first land acquisition – 1,227 acres of Galbraith Lands, stretching from Wahiawā to the boundary of Waialua. Over the next three years, the corporation purchased three properties – two in the Whitmore Village area and one in Wahiawā, a total of more than 280 acres for which it paid \$13.2 million. From 2016 to 2019, the corporation purchased another nine properties (five in 2017 alone), spending \$49.6 million for more than 2,000 acres, also in the area surrounding Whitmore Village and Wahiawā. All of these purchases were directed and funded by the Legislature.

It took ADC more than four years to sign its first license agreement for a portion of its Galbraith Lands. The corporation signed its second license agreement five months later for a parcel of about 36 acres. ADC signed up only one tenant in 2018 for a 62-acre parcel and four more tenants through December 2019 for a total of a little more than 353 acres. Overall, as of December 2019, ADC has licensed 534 of Galbraith Lands’ 1,227 acres. Eight years after acquiring the Galbraith Lands, more than half of those agricultural lands remain unlicensed.

Finding new tenants for its other former plantation lands purchased from 2013 to 2019 has been similarly difficult. Those properties collectively have a 75 percent vacancy rate, with seven of the 12 properties completely vacant. That leaves more than 1,700 acres of ADC’s Central O‘ahu land sitting idle.

The Agribusiness Development Corporation Lands

ADC's portfolio of properties includes nearly 23,000 acres of land and infrastructure. The lands around O'ahu's Waiāhole Water System and Kaua'i's Kekaha and Koke'e irrigation systems comprise the vast majority of the acreage. Except for a 1.5-acre parcel outside of Hilo on Hawai'i Island acquired in 2015, all of ADC's acquisitions since 2012 have centered around Central O'ahu, specifically Wahiawā. ADC has not acquired any property on Maui.



*ADC's land area on O'ahu includes 4,009 acres purchased by the corporation and 248 acres set aside to ADC through executive orders by the Governor.

Source: Office of the Auditor

More than 25 years ago, the Agribusiness Development Corporation was created to develop an “aggressive and dynamic” agribusiness development program to fill the economic void created by the closure of sugar and pineapple plantations; the agency has done little to fill the void

The Legislature recognized that the downsizing of sugar and pineapple production would idle “a valuable inventory of supporting infrastructure, including irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses.” Calling the closure of Hawai‘i’s sugar and pineapple plantations an “unprecedented opportunity for the conversion of agriculture into a dynamic growth industry,” the Legislature declared “[t]he challenge to government and business is to conserve and convert the arable lands and their associated production infrastructure in a timely manner into new productive uses that are based upon strategies developed from detailed marketing analysis and monitoring of local, national, and international opportunities.”

The Legislature saw a need to coordinate the transition of the former plantation lands, stating “[c]onstantly evolving economies require an aggressive and dynamic leadership for the promotion and development of agricultural enterprises,⁴ and centralized leadership to coordinate industry development, provide industry-wide services, provide marketing assistance, and facilitate investments and coventures in viable enterprises.” To provide that leadership, the Legislature created ADC, envisioning the corporation would facilitate the development of large-scale agricultural enterprises – private entities as well as ones in which ADC was involved – to export diversified agricultural products on the same scale that Hawai‘i once exported sugar and pineapple.

Instead of a catalyst to develop an “aggressive and dynamic” agribusiness program, we found an organization primarily managing 4,257 acres of land and the Waiāhole Water System on O‘ahu.⁵ After almost 30 years, we found that ADC has done little – if anything – to facilitate the development of agricultural enterprises. Moreover, we

⁴ As defined in Section 163D-2, “‘Enterprise’ means a business with its principal place of business in Hawai‘i, which is, or proposes to be, engaged in agricultural crop development, development of new value-added products, enhancement of existing agricultural commodities, and the application of existing agricultural appurtenant facilities to productive uses; provided that the majority of whatever the corporation produces shall be produced for *export*.” Emphasis added.

⁵ ADC also owns two water systems and associated lands on Kaua‘i, a total of 18,628 acres, which are operated and maintained by the Kekaha Agricultural Association, pursuant to an agreement.

found ADC has not developed an agribusiness plan – a plan required by statute – to define and establish the corporation’s goals, objectives, and priorities. We found that, notwithstanding the unique powers and exemptions conferred by the Legislature, ADC is using few of them – and none to develop agricultural enterprises to fill the economic void created by the plantation closures. Instead, we found an organization unaware of its statutory purpose, unable to locate documented policies, procedures, or controls – if they, in fact, exist – and operating with little direction from or involvement by its Board of Directors.

ADC continues to misunderstand its purpose

ADC’s purpose has remained constant through several amendments to its enabling statute. Nevertheless, ADC’s Board and administration do not seem to recognize the breadth of the corporation’s mandate. Acquiring land and other agricultural assets may be in keeping with ADC’s purpose, but acquisitions are not the sum of the corporation’s responsibilities. According to Chapter 163D, ADC is expected “to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawai‘i.” But instead of optimizing its assets to develop a diversified agriculture industry that bolsters the state economy, the corporation has been spending state funds to purchase agricultural land and associated infrastructure, maintain thousands of unoccupied acres of agricultural land, and secure vacant parcels that have harbored criminal activity.

Overall, we found that ADC has made little progress toward achieving its statutory purpose, in large part because its board members and Executive Director do not understand what that purpose is, a condition that has persisted since the corporation’s establishment. Failure to develop a thorough, documented agribusiness development strategy, which would ensure consistency through changes in board composition, has left current board members without a clear sense of the corporation’s purpose and direction. As it stands, new board members do not even receive orientation or training at the start of their terms. The Board Chairperson told us that she learned about ADC through her own research and by attending meetings.

Consequently, board members misconstrue ADC’s purpose and the corporation’s special powers to achieve it. For instance, instead of expediting the conversion of arable lands for commercial agricultural enterprises with economic value for Hawai‘i, the Board Chairperson told us ADC’s mission is to purchase agricultural lands as they become available to prevent them from being rezoned for other uses – even if there are no immediate or long-term plans for them. “We need to have those lands even if we don’t have enough farmers right now,” she explained. The Board Vice-Chairperson concurred, stating that this

practice of acquiring and holding vacant land, which he referred to as “land banking,” is the corporation’s “most important thing.” “Whether you use it now or 10 years after, ADC’s strategy is to perpetuate land in agriculture, and land bank if they cannot use the lands immediately,” he told us.

However, purchasing and holding lands with no development plans in the near or distant future is not a strategy consistent with ADC’s statutory mandate, which envisioned a corporation that would provide “aggressive and dynamic leadership” to assist agricultural enterprises in transforming the dual crop industry into other diverse agricultural enterprises. But even if ADC had the correct strategy in place, it does not have the staff to do the work of an industry leader. For example, previous to ADC, the Project Manager worked as a legislative aide at the State Capitol, and before that, as a manager at a local entertainment company. Most of his agricultural experience has occurred on the job, learning from ADC’s farmers, not the other way around.

“No one here has a deep agricultural background,” the Executive Director told us.

“Considerably more limited”

The Legislature recognized the importance of replacing the economic loss caused by the closure of the plantations and conferred broad, unique powers and exemptions on ADC – powers significantly different from those given to other state agencies – to give ADC the necessary tools and flexibility to facilitate the transformation of former plantation lands to other export crops and agricultural enterprises. As we have noted, those powers allow ADC to operate more like a business than a state agency (see “A Public Agency on Steroids” on page 12) and give the corporation the ability to, among other things, partner with private organizations, provide options to purchase its lands, directly invest in organizations that are developing new agricultural commodities for export, create subsidiaries, and even re-form itself into a non-profit organization. The Legislature also empowered ADC to assist Hawai‘i-based agricultural enterprises with marketing studies and developing marketing strategies, as well as to carry out programs designed to develop new markets for Hawai‘i agricultural crops.

In 1997, the Legislature asked the Legislative Reference Bureau (LRB) to study ADC’s operations and make recommendations to improve its effectiveness. According to the LRB report issued later that year, the Legislature was concerned about the “perceived failure of the corporation to live up to people’s expectations.” The LRB report also pointed out that, just three years after ADC’s creation, its board members “[a]re not in total agreement with one another as

“No one here has a deep agricultural background.”

– ADC Executive Director

A Public Agency on Steroids

Among ADC's unique powers are the ability to sue and be sued; to acquire, sell and exchange real property interests, infrastructure, and water facilities; and to grant options to purchase. It also has the power to form subsidiaries – with all the powers of ADC – and organize co-operatives.

ADC WAS CREATED as a “public body corporate and politic” and granted powers and exemptions unique in Hawai'i state government, resulting in what the Legislative Reference Bureau called a “public agency on steroids.” Collectively,

these powers and exemptions give the corporation the flexibility and ability to transform a declining dual-crop plantation-based agricultural industry into a diversified dynamic growth industry impacting the local, national, and international scene.

Other state entities that are public body corporate and politic organizations include

the Aloha Tower Development Corporation, which was created to redevelop Honolulu's waterfront; the Hawai'i Health Systems Corporation, which provides health care services to address the healthcare needs of Hawai'i; and the Hawai'i Technology Development Corporation, which focuses on developing the technology sector for Hawai'i. These public body corporate and politic organizations, including ADC, are conferred powers to operate more like businesses with a public purpose, and not just as agencies of the State.¹

Among ADC's unique powers are the ability to sue and be sued; to acquire, sell and exchange real property interests, infrastructure, and water facilities; and to grant options to purchase. It also has the power to form subsidiaries – with all the powers of ADC – and organize

co-operatives. ADC can issue and sell bonds for acquiring agricultural lands and for constructing, acquiring, remodeling, furnishing, and equipping any project facility.

In addition to these unique powers, ADC is exempt from public land trust regulations. This allows ADC to directly negotiate long-term leases with select agricultural enterprises and farmers, rather than conduct public auctions for property dispositions. ADC is also exempt from Public Utilities Commission regulations and civil service laws, and it may coordinate federal, state and private resources to maximize agribusiness opportunities.

However, when we asked the Board Chairperson why ADC was created as a public body corporate and not another state agency, she replied that being a corporation creates less paperwork for farmers and enables ADC's tenants “to move forward with whatever they want to grow.” When asked how this differs with how the Department of Agriculture operates with its tenant farmers, she replied that she wasn't aware of what the department does.

In addition, when we asked the Board Chairperson why the corporation had not entered into any public-private partnerships or co-ventures, she explained that ADC is short-staffed and would be able to do more if the corporation had more staff.

For his part, ADC's Executive Director believes ADC's unique powers are exaggerated, and its exemptions are burdensome: “... too many exemptions leaves a target on your back,” he said.

¹ In the case of *Maricopa County Municipal Water Conservation Dist. No. 1 v. La Prade, Atty. Gen.*, 40 P.2d 94, 45 Ariz. 61 (Ariz. 1935), the Arizona Supreme Court stated, “irrigation districts and similar public corporations, while in some senses subdivisions of the state, are in a very different class. Their function is purely business and economic, and not political and governmental... Probably the best definition we can give then is to say that they are corporations having a public purpose.”

to their understanding of the corporation’s mission” or “as to their understanding of the corporation’s objectives.” According to former ADC staff, the single, most important reason for the corporation’s lack of progress was “the lack of board consensus.”

In 2006, the Legislature asked LRB to review the corporation once again. In its second review, LRB found that the vast majority of ADC’s time, energy, and resources were being spent on managing the irrigation systems (and the adjoining farmlands). Since these functions were “considerably more limited” than what the Legislature had originally envisioned for the corporation, LRB asked the Legislature to consider refocusing the range and scope of ADC’s functions to a less expansive level, possibly to encompass just the projects and programs it was engaged in at the time. However, the Legislature neither altered its vision of ADC as an all-expansive entity to lead the State’s development of a new agricultural industry nor downsized the corporation’s expected functions. Now, over 12 years later, ADC has shifted its focus to managing lands it has acquired, much of which remain vacant, still not recognizing that its statutory purpose is to facilitate the development of a new agricultural industry.

ADC has yet to create a meaningful Hawai‘i agribusiness plan, which would help ensure that its work is achieving the corporation’s statutory purpose and mission

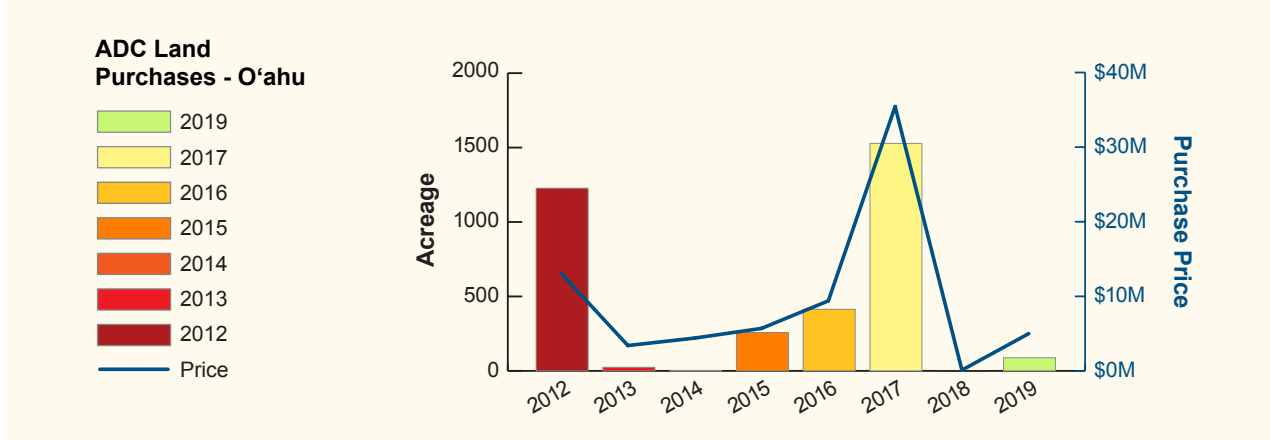
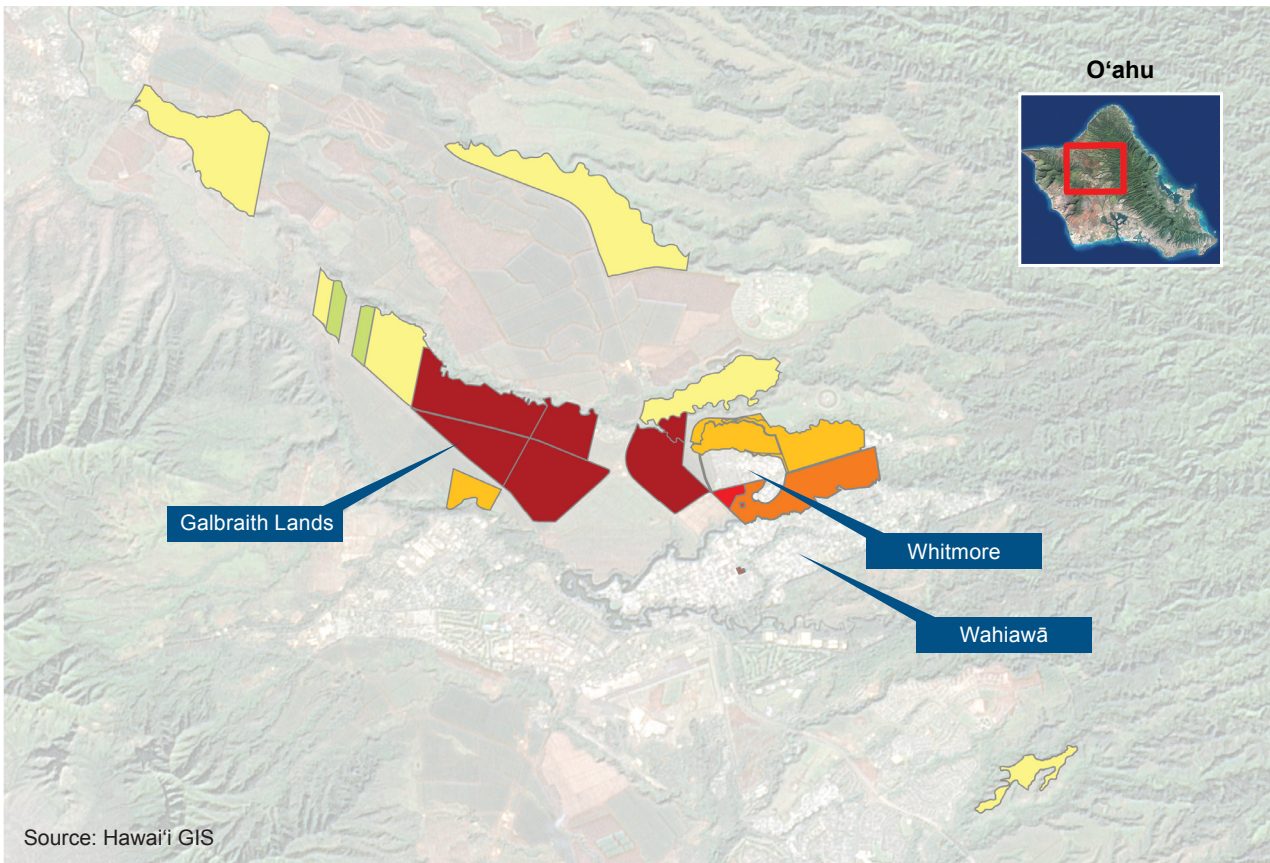
Beginning with its acquisition of the Galbraith Lands in 2012, ADC has spent more than \$76 million to purchase 3,542 acres of land statewide. With the exception of 1.5 acres outside of Hilo, all of the agency’s purchases have been properties adjoining or in close proximity to its Galbraith Lands. They have all been made without an agribusiness plan to guide the corporation’s acquisitions.

Required by statute, an agribusiness plan would establish goals, objectives, policies, and priorities for a development strategy to achieve the corporation’s statutory purpose and mission. Components of the plan, which ADC must incorporate into its annual reports to the Governor and Legislature, include inventories of land and infrastructure, analyses for increasing local production of agricultural products, marketing strategies, programs to facilitate the absorption of displaced agricultural workers, and strategies for federal and state legislative actions to promote the development of Hawai‘i agricultural industries.

Among other things, the establishment of a comprehensive plan would clarify for ADC its leadership role in the effort to revive and reimagine Hawai‘i’s agriculture industry. Instead, ADC appears to be content with being a water system manager and a landlord of a disparate and growing portfolio of former plantation lands in Wahiawā, one which

Central O’ahu: The Center of ADC’s Operations

For nearly a decade, ADC’s activities have largely centered on acquiring properties surrounding its Galbraith Lands. From 2013 to 2019, the corporation spent nearly \$63 million to acquire more than 2,300 acres of farmland in and around the Central O’ahu communities of Wahiawā and Whitmore Village. Collectively, these properties have a 75 percent vacancy rate, with seven of the 12 parcels completely vacant. That leaves more than 1,700 acres of ADC’s Central O’ahu land sitting idle.



it is struggling to manage. Its properties have been acquired through executive order by the Governor or legislative directive, lands inherited from another department or paid for with general fund moneys. Unaware or uninterested in using its other considerable powers, ADC is more of a government tool than an industry leader.

ADC does not conduct market research, a statutory requirement

According to Chapter 163D, the corporation is to “carry out marketing analysis to direct agricultural industry evolution as well as provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises.” ADC is also empowered to carry out specialized programs designed to develop new markets for Hawai‘i agricultural products.

However, in 2007, LRB found that ADC had not carried out or contracted for surveys or research for marketing agricultural products; analyzed imported agricultural products to determine whether local production could replace imports; or collected data on market demands and trends to be used to plan future harvests and production. Thirteen years later, we found that ADC still does not engage in these activities nor has it adopted a leadership role in shaping Hawai‘i’s diversified agriculture landscape.

For instance, according to the Executive Director, what crops ADC’s tenant farmers grow should be driven by the demands of the current market, not by the corporation. As far as providing farmers with information on what those products may be and where they could be sold, he said that he does not have the staff to do market studies and product analyses, which he believes is the Department of Agriculture’s responsibility anyway. He pointed out that the department has an entire staff dedicated to market research; however, he admitted that he has never tried to tap those resources.

We did not obtain information about the market research performed by the Department of Agriculture; however, we do know that ADC was to lead “an aggressive and dynamic agribusiness development program” by coordinating and administering programs to assist agricultural enterprises in transitioning the former plantation infrastructure into other agricultural uses. And, the Legislature unambiguously directed ADC “to carry on the marketing analysis to direct agricultural industry evolution.” The Legislature intended ADC – not the Department of Agriculture – to help new agricultural enterprises identify marketing strategies “to better exploit local, national, and international markets” and “to develop new markets for Hawai‘i agricultural products.” Instead, ADC takes a hands-off approach when it comes to providing

Sweet and Slow

The pineapple and sugar industries' decades-long exit from the islands and ADC's "response"



Five sugar plantations closed within three years of the ADC's establishment in 1994, including three on Hawai'i Island; however, ADC did not buy any of those Hawai'i Island agricultural lands or take any action to facilitate the conversion of those lands to grow other export crops.

● **1992**

Pineapple production ceases on Lāna'i (October).

Dole Food Co. shuts Iwilei Cannery (December).

● **1994**

Hilo Coast Processing Co. closes, which included Hilo Sugar Co., Onomea Sugar Co., Pepe'ekeo Sugar Co., Honomu Sugar Co., and Hakalau Sugar Plantation (September).

Hāmākua Sugar Co. closes, which included Laupāhoehoe Sugar Co., Kaiwīki Sugar Co., Kūkaiāu

Plantation Co., Hāmākua Mill Co., Pa'auhau Sugar Plantation Co., Honoka'a Sugar Co., and Pacific Sugar Mill Co. (October).

Act 264, Session Laws of Hawai'i, 1994, creates ADC to "facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises, to carry on the marketing analysis to direct agricultural evolution, and to provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises."

● **1995**

O'ahu Sugar Co. closes (April).

● **1996**

Ka'u Sugar Co. closes (March).
Waialua Sugar Co. closes (October).

● **1999**

Last sugar harvested by Hawaiian Commercial & Sugar Co. in Lahaina, Maui.

● **2000**

Kekaha Sugar Co. ceases operation.



● **2003**

ADC formally assumes management responsibility of the former Kekaha Sugar Co. lands with the execution of Executive Order No. 4007.

● **2008**

Del Monte Co. harvests its last pineapple crop.

● **2009**

Maui Land and Pineapple Co. closes its pineapple operations.



● **2012**

ADC makes its first land acquisition with the \$13 million purchase of 1,227 acres of former pineapple plantation lands in Wahiawā owned by the George Galbraith Estate.

● **2016**

Hawaiian Commercial & Sugar Co. closes down on Maui.

● **2017**

ADC issues its first license for its Galbraith Lands, an 83-acre un-subdivided lot for a little over \$15,000 per year.

marketing assistance to not only large-scale agricultural enterprises but to its own tenant farmers.

“Our farmers are struggling with rudimentary farming protocols like good agricultural practices and good handling practices and are nowhere near meeting the requirement of the Food Safety Modernization Act. We suspect they market their produce solely in Chinatown and at farmers’ markets,” wrote the ADC Senior Executive Assistant in a March 2020 email.

ADC’s land management struggles – inconsistent, incomplete, and, in many cases, non-existent record keeping; prospective tenants occupying lands without signed written agreements; and persistent criminal activity on its properties – expose the State to unnecessary risk

Since 2012, ADC’s activities have largely centered on acquiring properties surrounding its Galbraith Lands, in particular more than 2,300 acres of former Castle & Cooke Hawai‘i and Dole Food Company pineapple plantation land in Central O‘ahu. We found ADC’s staff struggles to manage these lands, challenged by the myriad duties required for effective land management. For instance, when we requested documents we believed would be essential to the day-to-day operations of a corporation that manages land and properties – such things as land management policies, land acquisition guidelines, inventories of land holdings, and tenant listings – we were informed that the requested materials did not exist and would need to be assembled. In addition, we found that ADC’s recordkeeping is inconsistent, incomplete, and, in many cases, non-existent. This inability to collect and maintain adequate documentation of its business transactions, coupled with the absence of widely used land management practices and tools, makes us question whether “management” is the proper term to describe ADC’s administration of its lands.

The Senior Executive Assistant admitted that ADC is not good at land management. “Development is what we do. It’s not our role to oversee the day-to-day activities of farmers,” she said, adding that ADC is considering turning over its land management duties to the Department of Agriculture; however, we note that, since 2008, ADC has had the ability to contract for lease management services “to promote fiscal accountability with regard to agricultural land lease agreements between the State and lessees.” Instead, it has retained that responsibility, which has not promoted fiscal accountability.

ADC records in disarray

According to staff, ADC does not have a centralized filing system and many documents were kept in boxes under the recently retired secretary's desk. And, while some documents were housed in filing cabinets, they were not necessarily organized by tenant or subject matter; rather, they were randomly stacked on cabinet shelves "wherever there was an empty space." According to the Senior Executive Assistant, the recent retirement of ADC's secretary has left office files in "disarray."

When we requested tenant files for 7 of ADC's 83 tenants, which we randomly selected for review, staff informed us the corporation did not maintain tenant files. The staff offered to create the requested files for us and asked what should be included in them.

As a result, obtaining documents and other information from ADC was a constant struggle throughout our audit. When we requested written policies and procedures, inventories of land holdings, tenant listings, tenant files, or project status reports, we were repeatedly informed that staff would need to pull the information together from various sources. When we requested tenant files for 7 of ADC's 83 tenants, which we randomly selected for review, staff informed us the corporation did not maintain tenant files. The staff offered to create the requested files for us and asked what should be included in them.

We provided staff with a list of items commonly used in property management that we expected ADC would maintain, such as a copy of the tenant's initial application, the corporation's ranking and selection of the tenant, board approval to issue a tenant contract, the tenant contract, determination of annual rents, insurance certificates, site inspection reports, tenant ledgers, notices of default, general correspondence, and any other significant documentation relevant to the management of the specific lease, license, or permit. The following week, ADC created the requested seven files for us. Upon subsequent review, we found that none were complete.

We then felt it necessary to review all 83 tenant files; however, the staff could only assemble the files for 71 of the remaining 76 tenants, which were haphazardly thrown together and difficult to navigate. For instance, license agreements and their exhibits were disorganized and unstapled, making it difficult to discern the order of the pages and exhibits. And it was not uncommon for the files to be missing copies of the legal document creating the lease, license, revocable permit, or right of entry reportedly issued to the tenant.

We also found significant deficiencies: 16 tenant files were missing contracts, 21 did not contain the board approvals to issue tenant contracts, and more than half of the files contained no evidence the tenant had complied with insurance requirements. In one file, the tenant's certificate of insurance had been revoked due to non-payment of the premium; however, nothing in the file indicated what – if any – action ADC took to enforce tenant compliance with the contract's

insurance requirements. Creating files after-the-fact, as we requested them, was a time-intensive and tedious exercise that offered no assurance that ADC had complete and accurate records of tenant transactions in its possession.

In addition, certain submittals to the Board requiring its action, while represented by staff as having been “approved,” did not contain any notation to reflect the action taken by the Board; some minutes, which were missing the Board Secretary’s signature, were in fact silent as to whether a vote was indeed taken and, more importantly, the Board’s action. We note that the Sunshine Law, Part I of Chapter 92, specifically, Section 92-9, requires the Board to maintain minutes of its meetings that “shall give a true reflection of the matters discussed at the meeting and the view of the participants,” including, among other things, “[t]he substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken.”

We were told that ADC does not have documented policies and procedures, generally, and none specific to the process through which matters are brought before the Board, including how Board decisions are memorialized. The Executive Director believes that documented guidance would be “good to have” but he does not want to “get stuck with something in writing.” However, as a state entity, ADC is accountable for its use of public funds, and documented procedures are necessary to ensure that work is being performed as management intended. And, in this case it would help to ensure that ADC complies with its statutory responsibility to maintain complete and accurate minutes. Moreover, the absence of documentation may affect the efficiency of corporation operations, because personnel may need information that is not available in the files. Conducting government business without adequate documentation increases the possibility that, in time, all relevant facts may be unavailable or interpretations may be distorted. It also poses a risk that information that has not been documented will be lost to the corporation when staff members leave. In addition, poor documentation could render the corporation unresponsive, unable to account for its actions, or both, and increase the risk of fraud, waste, and abuse going undetected.

Doing Business by Handshake

Since 2013, an anchor tenant has cleared land and built roads for ADC, as well as constructed its own reservoir. That work, however, was not procured in accordance with the Hawai'i Public Procurement Code. Moreover, ADC did not agree upon a fee or document, monitor and track the services, labor, and materials for the work, and it has not received an invoice yet.

IN MAY 2016, ADC led a fieldtrip on its Galbraith Lands where its first tenant, Kelena Farms, Inc. (Kelena), had harvested its inaugural watermelon crop on converted pineapple lands in Kunia. At the following month's ADC Board meeting, the "Chair stated that it is very important to have these anchor tenants that do well to show incentive for the smaller farmers."

Kelena continues to be ADC's most productive and prominent tenant. In 2019, the Department of Agriculture heralded Kelena's bumper crop of cabbage in a website post "Whitmore Project Produces Record Harvest." The Governor elaborated in his own website post, pointing out that Kelena's owner was the first "to successfully grow watermelons and bell peppers on lands that had lain fallow when Del Monte stopped pineapple production. This year Kelena produced more than a million pounds of head cabbage, which is one-and-a-half times larger than the average yield in California, according to [the Department of Agriculture]."¹ According to Kelena's owner, the farm falls under the Sugarland Growers, Inc., which includes agricultural operations on O'ahu and Moloka'i.

Kelena's harvests demonstrate the potential for farmers to run profitable diversified agricultural enterprises on the Galbraith Lands. But, it is unclear whether Kelena's commercial success has translated into revenue for ADC or the State. During our site visit on October 11, 2019, we witnessed evidence of farming activities at the Kelena site, including soil preparation, water fixtures, wooden pallet storage, and stockpiling of road material. At the time of that site visit,

Kelena did not have a license, lease, or other documented agreement to occupy the land from ADC. A license was signed roughly two weeks later *with terms retroactive to 2016*, which means Kelena's activities exposed the State to unnecessary risk and liability for three years.

ADC did not have written agreements to document the services Kelena's owner provided ADC, including building reservoirs and paving roads for other Galbraith Lands parcels, or the monetary value of those services. Kelena's owner has not submitted an invoice as of February 2020. "The agreement was loose, no cash was exchanged," we were told. These informalities are especially concerning since ADC agreed to compensate Kelena's owner for the work through rent credits. "He was helping us out," the Executive Director stated, noting ADC "got a good deal on materials alone." But the Executive Director acknowledged that ADC has not documented, monitored, or tracked the services, labor, or materials Kelena provided, opting instead to take the owner's "word" on the services provided, the costs incurred, and the material used. These services were not procured in accordance with the Hawai'i Public Procurement Code. ADC, along with certain other state agencies, lost its exemption from the Hawai'i Public Procurement Code in 2004.

The Senior Executive Assistant acknowledged it "looks bad" that ADC did not have a written agreement with Kelena's owner and had not documented, tracked, or monitored the work. She stated any future agreements with Kelena will be documented.

¹ "Growing Ag: Farming for the Future in Central O'ahu," September 12, 2019, <https://governor.hawaii.gov/featured/growing-ag-farming-for-the-future-in-central-oahu/>

ADC does not keep an inventory of its land portfolio nor a complete list of its projects, which hampers its ability to effectively manage its diverse holdings

The Executive Director could not estimate the number of “leases”⁶ issued and managed by ADC. He said that he would like an inventory of lands managed by ADC so that he would know how many leases ADC manages, the lease terms, and the lease expiration dates. He said that, currently, he becomes aware of an expired lease condition about six months or more *after the fact*.

We asked ADC for a list of the corporation’s acquisitions and dispositions of its agricultural lands, an inventory of those lands, and a list and status of its projects. Since the information is not held in a centralized location, ADC could only compile various documents that included a list of 85 “projects.” Those projects represent an eclectic collection of items, which range from large-scale land acquisitions to everyday tasks such as lawn mowing. Identified as a “project matrix,” the listing includes two columns, “Description,” which identifies the various projects, both large and small, and “Status,” which includes brief descriptions of either the project or work that is in-progress or completed; we note that several have already lapsed. With few details, the project matrix resembles a to-do list rather than a functional and useful project management tool. Nevertheless, the Executive Director considers the project matrix to be ADC’s “bible,” even though staff track the status of projects individually and ADC has no system to collect this information from various staff and update the document.

We note that, because ADC does not have an inventory of its land holdings, we were unable to assess the corporation’s overall management of the land and infrastructure it oversees. In the absence of this and other important management tools as well as written policies and procedures, we question whether “management” is the proper term to describe ADC’s administration of its lands.

⁶ For the lands it has acquired since 2012, ADC has issued only licenses, not leases. For more information on this issue see “Ownership Interest or Right to Use” on page 22.

Ownership Interest or Right to Use

By issuing licenses instead of leases, ADC restricts prospective tenants' ability to obtain financing.

CHAPTER 163D requires ADC “to provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises,” among other responsibilities. However, ADC’s practice of issuing short-term licenses rather than long-term leases may hinder its tenants’ efforts to obtain financing for their farming operations. The corporation’s preference for licenses was a factor in a 2019 lawsuit filed against ADC by one of the first applicants for a Galbraith Lands lease.

A lease is a contract in which the rights to use and occupy land are transferred by the lessor to a lessee for a specified period of time in return for a specified rent. A license is a personal, unassignable, and typically revocable privilege or permit from the licensor to a licensee to perform an activity on the land without obtaining an interest in the property. The license merely conveys the right to use the property. A lease creates an ownership interest (i.e., a leasehold interest) in the property, and for the duration of the lease term, the ownership rights in the property may be assignable to another. A license is not considered an interest in real property and the licensee’s right to use the property may not be assignable.

A lessee’s leasehold interest can serve as a valuable piece of collateral that allows a lessee to, among other things, mortgage that leasehold interest to obtain a loan or other financing. To be qualified for financing, generally, the length of the lease term must extend well-beyond the maturity date of the loan to ensure that there is enough time for the tenant to amortize the loan or for the lender to sell the ground lease in the case of a foreclosure.

Notwithstanding ADC’s ability to issue leases, the Executive Director maintains that the corporation does not do so because its properties are not subdivided. According to the Executive Director, ADC does not subdivide its properties because “it is costly” and “if you want a subdivision ... that is on your dime.” He said that, in lieu of a lease, ADC issues 35-year licenses “just because of subdivision.” ADC’s former Executive Director said he was not aware of farmers’ concerns regarding

their ability to secure loans for lands that were not subdivided, but he felt that ADC could offer long-term leases that farmers could use as collateral to borrow money to support their operations. Under the current Executive Director, at least one farming operation – ‘Ohana Best Farms (‘Ohana) – has expressed interest in a lease over a license for financing purposes (see “A Best (and Worst) Case Scenario” on page 24).

ADC included correspondence from the attorney representing ‘Ohana among the documents provided for this audit. In a 2018 letter to ADC, ‘Ohana’s attorney alleged, among other things, that ADC’s refusal to issue a lease impacts his client’s ability to obtain financing. According to the attorney, the State can apply the same contract terms and regulations to either a license or a lease without legal consequence. He contends, however, that “[f]or years, [ADC] simply interchanged the words lease and license relating to [‘Ohana] land” despite a critical difference between the two types of contracts for ADC’s tenants. He explained, “A long-term lease is the only way [‘Ohana] can attempt to secure financing for a possible well and other funds needed for [‘Ohana’s] farming operations. The ability to [obtain] monies towards developing [‘Ohana’s] agribusiness project is vital. One would think that [ADC] would be knowledgeable about the difference between a leasehold interest and a licensing agreement.”

However, the attorney’s letter to ADC alleged, “As of today, per [ADC] there will never be a lease executed by the State to farm [‘Ohana] land. How ADC can justify such a position, which severely constrains any new potential farmer from making long-term investments for capital improvements critical for new farmers to operate their farms in a productive and efficient manner [sic]. This ADC policy is contrary to State policy especially since ADC is hard [pressed] to identify what additional risk it assumes when granting a farmer a lease instead of a license. Had [ADC] steadfastly told [‘Ohana] that the State would never agree to lease any Galbraith land to [‘Ohana], [the owner] would have walked away without expending over one million dollars in time, infrastructure, and equipment.”

License terms and conditions are inconsistent with board approvals

During our review of ADC's licenses, we found contracts the Executive Director entered into with tenants for the use of ADC lands were inconsistent with what the Board had approved:

- In 2013, the Board approved a five-year right of entry and license at an annual base rent of \$200 per acre plus royalty fees. The executed contract excludes an annual base rent provision and a contract termination date.
- In 2014, the Board approved a 35-year license for a lot at an annual rent of \$100 per acre for the first three years. The executed contract is for a different lot at an annual rent of \$200 per acre.

If the ADC Board discussed and approved amendments to the two licenses cited above, records of those decisions were not included in the tenant files. Because of the poor condition of ADC's records, we could not determine if these discrepancies were the result of clerical errors or if documents accounting for the differences were misfiled or never created in the first place. Either way, we note the absence of anything resembling adequate recordkeeping.

We also found that prospective tenants are occupying and farming lands without signed written agreements, exposing the State to unnecessary risk, liability, and loss of revenue. For instance, since 2014, 'Ohana Best Farms has had access to 160 acres of state lands without a license agreement, which, among other conditions, would relieve ADC of the responsibility to secure the property and indemnify the State against claims of liability.

Vacant properties home to criminal activity

In December 2016, three months before the corporation would issue its first license, ADC launched a year-long buying spree that increased its land holdings by more than 1,500 acres. ADC's unoccupied lands included a 226-acre parcel near Whitmore Village and Poamoho that was part of the 2012 Galbraith Lands purchase. Although criminal activity was already present on the parcel when ADC acquired it, ADC did not take measures to secure the area until February 2020 – after media reports about a “massive chop shop” and a fatal shooting on the property. An individual who recovered his stolen vehicle from the area described what he saw to KHON News in December 2019: “They have tents, they have workstations, there's generators, they operate at night. It's a 24-hour run chop shop.” A month later, in January 2020, a

A Best (and Worst) Case Scenario

By allowing unauthorized use of state lands, ADC exposes the surrounding community and the State to unnecessary risk.

SINCE ITS GALBRAITH LANDS PURCHASE, ADC has been plagued by unauthorized use of its lands, from trespassing and other criminal activity on vacant lands to approved applicants deviating from Board-approved terms and conditions. A 226-acre parcel near Whitmore Village and Poamoho (Parcel 5) has been particularly troublesome. Disputes with a farming operation that has occupied a 160-acre portion of Parcel 5 since 2014 escalated to legal action against ADC in 2019. The remaining 66 acres of the parcel have long been vacant and in February 2020 ADC characterized the section as a “hotbed of criminal activity.”

Files ADC provided us included a letter to the agency from the attorney representing ‘Ohana Best Farms (‘Ohana) who said his client applied for a lease on ADC’s Galbraith Lands in September 2012, citing more than 25 years of experience, strong financial capitalization, and an extensive inventory of farm equipment. When the application reached the ADC Board two years later, ‘Ohana was approved for a 35-year license rather than the requested lease. The approved license, which had a provision to give ‘Ohana rent credits in exchange for preparing the raw land on its own, was never issued. Nevertheless, in June 2014, ‘Ohana moved forward with planning and constructing infrastructure improvements in anticipation of a license.

ADC’s Executive Director said ‘Ohana did not consult the corporation about the improvements. Yet correspondence from 2014 suggest that he was aware of ‘Ohana’s initial efforts to bring water and electricity to its property. In fact, he urged city and state agencies to facilitate the necessary approvals. “ADC has no objections to ‘Ohana Best Farms’ efforts in trying to bring water in from a closer source,” he wrote to the Department of Transportation’s Right-of-Way Branch.

But ADC’s approval of ‘Ohana’s land preparation was not unconditional, and with land license terms unresolved, the two parties disagreed on what could be done on the property. ‘Ohana requested approval for several improvements, including a 3-million gallon reservoir, a well, photovoltaic array systems, and base yard improvements. ‘Ohana

also asked that ADC issue its Board-approved license for the 160-acre site and approve a long-term commercial lease for additional lands that would allow the farming operation to construct a new product distribution and processing facility.

The Executive Director’s concerns, documented in an ADC board submittal, stated ‘Ohana had only been authorized to construct a base yard. “Specifically, the ADC has concerns that the Licensee’s proposed development on the [Galbraith Lands] goes against what the lands were intended for, which is agricultural production,” he wrote. ‘Ohana countered that those activities were noted in its soil conservation plan filed with the West O’ahu Soil and Water Conservation District in February 2014.

We note that, while the Executive Director refers to ‘Ohana as a “licensee,” ADC never issued the approved license or any other documented agreement that would have granted ‘Ohana access to the land and indemnified the State against damages, such as when ADC received a Hazardous Waste and Used Oil Complaint from the Hawai’i State Department of Health. The department had received photos showing that “several totes of used oil and other potentially unknown petroleum products were dumped/abandoned on a vacant agricultural property” owned by ADC, which could result in penalties up to \$25,000 a day for each violation. ADC informed ‘Ohana in writing that the farm was responsible for corrective action, but it is unclear how ADC could enforce that order without a signed license with ‘Ohana.

‘Ohana had concerns of its own related to criminal trespassing and theft. The farm reported a dump truck and 13 large rolls of shade cloth had been removed from its property and a trespasser had moved a backhoe to an unauthorized location on ‘Ohana’s parcel. The trespasser and his brother were “squatters,” hidden from street view by a screened gate, roadside fronting barriers, and tall grass, ‘Ohana’s attorney alleged, adding that the brothers had removed a dirt berm for covert access from the farm’s interior roads to Kamehameha Highway.

woman was fatally shot on the parcel. The recently appointed Board of Agriculture Chairperson said a state representative told her that was the third fatal shooting in the area.

On February 27, 2020, law enforcement “swept” the parcel, arresting three men and issuing nearly a dozen trespass warnings. ADC’s Project Manager told KHON News about “multiple criminal activities” on that 230-acre parcel, “anywhere from stolen vehicles and illegal dumping. This looks like a chop shop. I mean I don’t know exactly what was going on because it was too dangerous for staff to come in here alone.” In the same news report, the Project Manager said that local law enforcement would police the area around the clock and that securing the area for six months will cost \$600,000, potentially delaying irrigation and farm development projects. Despite that assertion, three days later, Honolulu police and firefighters were called to the area that had just been swept because several abandoned cars were allegedly set on fire, according to the *Honolulu Star-Advertiser*.

Criminal activity is one of the consequences of ADC’s struggle to develop and manage its land, and it highlights the corporation’s shortcomings when it comes to property management. The Executive Director, who considers ADC’s proper role to be a developer and not a landlord, would like to turn property management duties over to the Department of Agriculture. The Project Manager handles site inspections on O‘ahu, which he admits he conducts as much as he can, but probably not as much as he should. Although he takes photographs of the properties, the Project Manager has no criteria or standardized form to conduct or document site inspections.⁷

ADC’s statutory mandate includes owning, holding, improving, and rehabilitating property, granting options to purchase, and leasing, all activities requiring oversight. And, like it or not, ADC is directly responsible for the conservation as well as the conversion of arable lands to new, productive uses and, as a landlord, cannot be absentee. Yet, ADC was never intended to manage a portfolio of vacant lands; its purpose is to develop a new agricultural export industry. While the corporation has the power to acquire lands, its mandate is to get them back into production in a timely manner – either by developing the lands or by leasing or selling lands to agricultural enterprises to achieve that purpose. Those large-scale farming operations presumably would be responsible for securing the property and have insurance coverage to protect the State from liability arising on the property. But ADC has been unwilling to subdivide or enter into agreements necessary

⁷ According to the Project Manager, ADC procures the services of a former land agent on Kaua‘i to conduct site inspections for ADC’s Kaua‘i properties. These site inspection reports, prepared by the former land agent, consist of narrative descriptions and photographs of the property.

for tenant financing, making it difficult to attract large enterprises and forcing the corporation to manage vacant lands on its own, a function it is ill-equipped to perform. Management struggles, such as poor recordkeeping and recurring criminal incidents on state-owned land, belie an agency inefficiently and inadequately managing state lands and exposing the State to unnecessary risk and liability. As a land manager, ADC is not making optimal use of its valuable agricultural assets.

ADC’s Board of Directors provides minimal guidance and oversight to the corporation

ADC’s powers are vested in its 11-member Board, 8 of whom are appointed by the Governor based on their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry, agricultural economics, banking, real estate, finance, promotion, marketing, and management. According to ADC’s enabling statute, the Board exercises its authority over the corporation through the appointment of an Executive Director, who the Board holds accountable for day-to-day operations and developing and administering corporation activities, including the execution of board policies. According to best practices, this board-executive system splits corporation governance by providing the Board with policy-making and oversight roles while leaving day-to-day operations and administrative duties to the Executive Director.

We found that such a board-executive system does not exist at ADC, where “big-picture” priorities are not defined, determined, or even addressed by the Board. According to the Vice-Chairperson, the Board does not necessarily sit down and talk about long-term planning, although he thinks they should. Rather than taking an active role in charting the corporation’s direction, the Chairperson and Vice-Chairperson believe that the Board’s responsibility is to address whatever business is brought before it by the Executive Director. We note that the Executive Director must furnish the Board with information and make recommendations necessary to effect the purposes of the corporation and for the proper administration of its affairs; however, without an actively engaged Board, the issues that are addressed and how they are addressed by the Board are left to the discretion of the Executive Director. That business largely entails review, approval or disapproval of tenant licenses and revocable permits.

According to the Vice-Chairperson, the Board should not micromanage the corporation’s daily activities, therefore, ADC staff should set the corporation’s priorities; however, for larger issues, such as acquisitions, leasing, and marketing, the Board should be involved in those initiatives. “The Board is ultimately responsible for the direction of the

agency and should be approving those priorities. That is not being done currently,” he said.

Board of Agriculture and ADC Board are unclear on policies behind their delegations of authority

ADC is statutorily required to obtain Board of Agriculture (BOA) approval prior to the implementation of all agricultural projects, agricultural development plans, and project facility programs.⁸

However, we found that there is general confusion among the Executive Director and his staff, the ADC Board, and BOA of not only the nature but also the existence of this requirement. For instance, the Executive Director initially told us that BOA approval is required for all projects. He later qualified his statement, saying BOA approval is required for larger projects, but not smaller projects located within larger ones. The ADC Board Chairperson told us that she was neither aware of this requirement for BOA approval of ADC projects, plans and programs, nor any ADC policy involving the corporation’s involvement with BOA. BOA also appears to be unaware of this requirement.

As stated above, the statute is clear: ADC must obtain BOA approval for *all* agricultural projects, agricultural development plans, and project facility programs. However, the Executive Director claimed that going to BOA is a poor use of time and a duplication of effort. He says that his predecessor had an agreement with the then-BOA Chairperson on what would be taken to BOA for its approval, but he was not certain if this understanding was ever documented. The current Executive Director has not drafted policies and procedures regarding BOA approvals and told us that while he is able to, he was not sure how they would be received. He said ADC has requested BOA approval only three times.

According to the Senior Executive Assistant, BOA delegated the authority to approve ADC projects to the BOA Chairperson in February 2008 – almost 13 years ago. She told us that she was unaware of any documentation of BOA’s delegation, but subsequently discovered minutes from the February 2008 BOA meeting, which note that the basis for the delegation was that the BOA Chairperson is an ex-officio member of ADC’s Board who works closely with the ADC Executive Director. However, since 2008 the composition of BOA has changed and it is unclear whether current BOA members have delegated the authority to approve ADC projects to the BOA Chairperson. The current BOA Chairperson told us that she was aware of a delegation of authority to her

⁸ As defined in Section 163D-2, “‘Project’ means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.”

predecessor but had yet to read the document. She also indicated that, as an ex-officio member of the ADC Board, she will sometimes skip ADC Board meetings if she knows quorum will still be met, leaving ADC's Board to operate without BOA oversight. When asked for her current position on ADC's obligation to obtain BOA approval for its projects, she said that it would be premature to make decisions and instead will wait to see the outcome of this audit's findings and recommendations before reviewing the matter with legal counsel.

Whether the multiple BOA Chairpersons from 2008 to present were aware of and exercised their delegated authority to approve ADC projects, ADC did not provide us with any documentation of BOA's approval of any ADC project, including approval by the BOA Chairperson under the authority delegated by BOA. Without such documentation, we have no basis to determine whether ADC is complying with its statutory requirement that BOA approve ADC projects. While ADC Board minutes may reflect a BOA Chairperson's participation in and approval of ADC projects *as an ex-officio member of the ADC Board*, we do not believe that constitutes action on behalf of BOA. Those actions by the Chairperson are as a member of the ADC Board, not BOA.

The ADC Board has also delegated some of its responsibilities to its Executive Director. For example, while the Board approves licenses, it gives the Executive Director the power to approve rights of entry "necessary to implement ordinary operations." The Executive Director told us that rights of entry are generally issued to grant short-term access for activities such as clearing land for future tenants. However, in some instances, we found that he has used rights of entry to give farmers access to grow crops (and profit) from ADC lands. He did so without seeking board approval or collecting a fee for the privilege of using the land or securing other protections to the State that are included in the licenses issued by ADC.

The Senior Executive Assistant's understanding is that the Board delegated perfunctory approvals to the Executive Director, but "extraordinary" issues still need board approval. According to the Executive Director, determining which issues are extraordinary is a judgment call. We note that, in practice, it is his judgment and his call. By limiting itself to addressing only the issues that the Executive Director and his staff choose to bring before it, the Board is tacitly surrendering its oversight duties, allowing the Executive Director to operate with little or no accountability.

Board members are doing staff-level work

Further blurring the line between corporation governance and day-to-day operations is the fact that some board members also perform staff-level work themselves. In December 2017, in an effort to improve ADC's placement of tenant farmers, the Chairperson appointed board members to serve on the Board's Land Committee. According to the Senior Executive Assistant, the committee sets minimum qualifications for farmers to use state lands and works with the Project Manager to determine the types of tenants ADC wants for specific geographic areas. The committee also decides how a particular area of land is going to be leased or licensed. The Executive Director added that the committee reviews and visits farms to "actually see if the farmers know what they are doing." All these duties are operational in nature and should be performed by staff. As discussed earlier, the Board is responsible for establishing policies, setting strategic priorities, and providing oversight to ensure the corporation is making progress toward achieving its purpose. Instead of engaging in daily operations, the Board should carry out its own duties and hold the Executive Director accountable for staff-level activities.

ADC Board's participation in land acquisitions is "more of a formality"

According to the Executive Director, the Board rarely "chimes in" during the land acquisition process, and board approval to proceed with the purchase is "more of a formality." Our review of board meeting minutes confirmed this lack of engagement. Land acquisition requests receive little inquiry and discussion and are not subject to debate. For example, while discussing a potential acquisition during a June 2016 ADC Board meeting, a board member asked ADC staff why the property they wanted to purchase was considered desirable. It had been previously disclosed that the property had no access to water. The staff member explained that the "Legislature gave funds to purchase parcels." The explanation appears to have sufficed since there is no other mention of the issue in the minutes and the request was approved. In 2017, ADC purchased the 91-acre parcel, without water, from Castle & Cooke for \$2.3 million. According to ADC, this parcel was still vacant as of January 21, 2020.

To date, the Board has approved every land acquisition request brought before it.

According to the Chairperson, ADC's strategy and purpose is to "maintain and keep all of our State's ag lands in agriculture and get farmers on the land so it doesn't lay fallow." However, this singular and limited purpose combined with the lack of a long-range vision and

an agribusiness plan has allowed acquisitions to be driven by legislative directives and corresponding appropriations, not ADC strategy. As a result, the corporation has acquired land far faster than it can find tenants. As of January 21, 2020, almost 74 percent of ADC's O'ahu lands were vacant and its statewide vacancy rate was over 51 percent.

ADC Board's lack of oversight allows the Executive Director to operate with little to no accountability

As previously noted, ADC lacks a board-executive system, which splits corporation governance with the Board providing policy-making and oversight while leaving day-to-day operations and administrative duties to the Executive Director. Although board members we interviewed understand that it is their duty to hold the Executive Director accountable for his actions, the Board has not established any goals or performance measures for the Executive Director to fulfill. In addition, the Board does not have any reporting requirements for the Executive Director and his staff. While the Executive Director provides a status update on the corporation's various projects during board meetings, what projects and what he reports about them are at his discretion. The Executive Director has submitted just three annual reports (2012, 2018, and 2019) to the Governor and Legislature since 2012. He admitted that it is "on him" that the annual reports were not consistently prepared; however, he feels that the annual report "is a waste of time." "Who reads these reports? I would rather spend the time working on projects instead of the annual report," he said. We note that Section 163D-19, requires ADC to submit a report to the Legislature no later than 20 days prior to each legislative session.

According to ADC Board meeting minutes, the Board evaluated the Executive Director's performance in executive session in October 2017, extending his employment and possibly giving him a raise. As previously noted, the Board has not established goals or performance measures for the Executive Director to fulfill, so it is unclear what the evaluation was based on. As for his own staff, the Executive Director does not conduct performance evaluations because he says that the office is too small. Instead, his only requirement is "do what I tell you to do" and "get the job done." ADC's Project Manager confirmed that he is in charge of projects and does all the work from start to finish, from acquiring funds to construction, once the Executive Director has told him what to develop. He told us that he focuses on the priorities set by the Executive Director, following his routine and deadlines.

No One Formula?

ADC's process for acquiring land is unclear; however, what is clear is that every acquisition since 2012 has been directed by the Legislature, not the corporation's Board.

WHEN WE INQUIRED about ADC's acquisition process, staff responded that ADC does not have a documented process, but offered to write down the 10-step process that the corporation follows. Unable to assess ADC's adherence to the newly documented policies and procedures, we instead attempted to chronicle and describe them.

ADC compiled a list of priority properties for possible purchase. It was not used.

Based on our review of the 10 steps that ADC was eventually able to document, we identified four general categories: Land Selection and Secure Funding, Secure Board Approval, Due Diligence and Negotiations, and Closing. According to the Executive Director, the Legislature takes the first step in the process by appropriating funds for specific parcels ("Usually the Legislature identifies the land and then we buy.") But he added: "Sometimes Castle [& Cooke Hawai'i] and Dole want to sell land and will present a portfolio." However, in our review of the available documents, it is unclear how the land acquisition process is initiated or how the Legislature determines and assesses what properties to purchase.

In our effort to collect information on ADC's acquisition process, we found that in 2016 ADC submitted *Report to the Twenty-Eighth Legislature: Assessment of Lands Owned by Dole Food Company, Inc.* The report was the result of a legislative request to appraise and investigate the possibility of acquiring the agricultural lands owned by Dole Food Company (Dole). ADC had been instructed to establish an internal investigative team to conduct an analysis of the lands in Dole's portfolio that were suitable for long-term diversified agricultural production for the State.

ADC ranked the individual and bulk parcels according to a criteria of farmable lands,

water accessibility, and proximity to its Galbraith Lands. The properties were assigned three different designations – "Highest," "High," and "Priority," but the report did not include any information on how these designations were determined or how they would be applied to impending purchases. Although ADC's report to the Legislature generally states criteria that parcels have access to an underground well and/or irrigation system and may include agricultural improvements to be deemed high priority, it does not discuss specific criteria to differentiate between the three priority categories.

As with other aspects of its land acquisition process, ADC staff did not have any information on the priority list, the membership of the internal investigative team that compiled the list, or the criteria that it used to prioritize the properties. But what is clear is that decisionmakers did not follow the priority properties list. Since the publication of the report, ADC has purchased numerous Dole properties in Central O'ahu, spending nearly \$50 million for approximately 2,000 acres of farmland. When we compared these purchases to the 2016 report's rankings, we found that three properties had been ranked as "Highest Priority" and one was ranked a "High Priority." None of the purchases were considered a "Priority" and five did not receive any priority designation at all.

According to the Executive Director, there is no "one formula" for how ADC acquires former plantation lands; however, we found that every one of its land acquisitions since 2012 was directed by the Legislature and not the Board. While it is not unusual in state government for legislative appropriation to initiate action by the corporation, the lack of Board participation in the process is noteworthy.

Board is aware that ADC is not fulfilling its statutory requirements, but it does not hold its Executive Director accountable for these shortcomings

The Chairperson was aware that ADC has not recently submitted an annual report to the Legislature and the Governor, and she intended to speak with the Executive Director about the shortcoming. She acknowledged that it was her responsibility to enforce this statutory requirement.

In addition, as previously noted, the Executive Director has neglected to prepare an agribusiness plan, also a statutory requirement. While he told us that he was concerned that ADC was not achieving its mandate, and that an agribusiness plan would be helpful, he stated that given the choice between working on projects or sitting down and writing a plan, he chooses projects. “I have everything up here,” pointing to his head. “I don’t write anything down.” He did say that he had a couple of staff members working on a draft for his review.

The Board Chairperson explained in a subsequent interview that the Executive Director had recently submitted a draft agribusiness plan, which the Board would discuss at its next meeting. She did not fault the Executive Director or his staff for not preparing one earlier because she realizes that it is a big job, it is not a priority, and the corporation is short staffed. She said that it is “probably” the Board’s responsibility to ensure that the Executive Director prepares the plan.

When we asked the Vice-Chairperson about the Hawai‘i agribusiness plan, he told us he had been under the impression that the plan had not only been completed but had also been updated. According to the Vice-Chairperson, the Board is responsible for holding the Executive Director accountable for ADC’s compliance with statutes, but because the Board is only aware of the matters that the Executive Director or the Deputy Attorney General chooses to bring before them, the Board is not doing that job.

“A lot of times you’re not going to know unless it’s brought up to you,” he said.

Foundational documents, such as a Hawai‘i agribusiness plan and other written plans, would have included ADC’s goals and objectives and helped guide the corporation in carrying out its statutory purpose and mission. LRB pointed out in its 1997 report that the absence of the agribusiness plan hindered the Board’s ability to evaluate ADC’s efforts. The lack of documented plans – either long-term or short-term – as well as policy documents also ensured little or no project and program continuity. Had ADC begun preparing the agribusiness plan

soon after it was established in 1994, perhaps the corporation could have anticipated which plantation lands and supporting infrastructure would become available for diversified agriculture and had a strategy in place to transform the State’s agricultural industry as plantation after plantation harvested its final crop.

Regardless of how ADC’s Chairperson and Vice-Chairperson came to the belief that the Board’s primary responsibility is to address whatever business is brought before it by the Executive Director, this misunderstanding illustrates a fundamental weakness in the corporation’s governance. The Board is responsible for ADC’s performance; the Board is responsible for establishing policies and setting strategic priorities to achieve the corporation’s statutory purpose, and therefore, the failings of ADC as an agency to actively pursue a mission of conversion and dynamic growth, as well as its stewardship of land already owned, is borne by the Board, which, in our opinion, has been hampered by management.

Conclusion

ADC was created in 1994 to “facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises.” It was intended to provide the leadership and market analysis necessary for what the Legislature expected would be an agricultural evolution that would follow the demise of the Islands’ pineapple and sugar industries. The Legislature granted ADC extraordinary powers that afford the corporation unrivaled flexibility to bring former plantation infrastructure back into production “in a timely manner.” However, more than 25 years after its creation, we found a corporation that is generally unaware of its unique powers and exemptions and has done little – if anything – toward achieving its statutory purpose.

For its first two decades of existence, ADC was content with being a manager of water systems on O’ahu and Kaua‘i. Then, in 2012, ADC completed its first land acquisition – 1,227 acres of Galbraith Lands. Subsequently, it has gone on a buying spree of sorts, spending more than \$60 million for about 2,300 additional acres, nearly all of it in the areas in and around Wahiawā and Whitmore Village. According to ADC’s Board Chairperson, this pivot to becoming a major Central O’ahu landowner fulfills the corporation’s mission, which she defines as purchasing agricultural lands as they become available to prevent them from being rezoned for other uses – even if there are no immediate or long-term plans for them.

The Executive Director for his part believes that ADC's proper role is that of a developer – not a landlord – and he hopes to one day turn over the corporation's property management duties to the Department of Agriculture. However, if, as the Executive Director claims, ADC is or should solely be a developer, it is not clear exactly what ADC is currently developing. Because not only has the corporation failed to create a meaningful Hawai'i agribusiness plan for the state agriculture industry as a whole – a statutory requirement – it has no plans, either long- or short-term, for its own land acquisitions.

Today, most of ADC's activity centers around managing its lands, much of which sit unused with some parcels harboring criminal activity for years. And “managing” is a generous characterization of how ADC administers its portfolio of properties. For instance, corporation staff could not provide us with even the baseline metrics of its land holdings and its management of those resources because they do not collect, track, and document such data. The few records that staff were able to gather were in disarray – incomplete, nearly inaccessible, and not auditable. Simply put, ADC is incapable of carrying out its basic, day-to-day land management responsibilities.

For decades, the State has talked about diversifying the economy, with agriculture once again joining tourism and the military as one of Hawai'i's core industries. The COVID-19 pandemic has highlighted the necessity for a strong and diversified agriculture sector, one that could provide for much of the State's food needs while producing crops for export. Unfortunately, thanks in part to ADC's past inaction and its continued lack of direction, focus, and competence, this dream remains as elusive as it was nearly 30 years ago.

Recommendations

ADC should:

1. Update and revise its mission statement to reflect the corporation's purpose more completely as intended by the Legislature to address, among other things, facilitating the development of Hawai'i-based agricultural enterprises and strategies to promote, market, and distribute Hawai'i-grown agricultural crops and value-added products in local, national, and international markets.
2. Develop goals, objectives, policies, and priority guidelines that articulate and outline an agribusiness development strategy.
3. Develop an inventory of agricultural lands with adequate water resources that are or will become available due to the downsizing of the sugar and pineapple industries or for any other reason that can be used to meet present and future agricultural production needs.
4. Develop an inventory of agricultural infrastructure that was or will be abandoned by the sugar and pineapple industries or by any other organization involved in the production of agricultural products such as irrigation systems, drainage systems, processing facilities, and other accessory facilities.
5. Prepare an analysis of imported agricultural products and the potential for increasing local production to replace imported products in a manner that complements existing local producers and increases Hawai'i's agricultural self-sufficiency.
6. Develop financial and other programs (such as advisory, consultative, training, and educational) to promote and facilitate the development of diversified agriculture and agricultural enterprises.
7. Develop feasible strategies for the promotion, marketing, and distribution of Hawai'i agricultural crops and value-added products in local, national, and international markets.
8. Develop strategies to ensure the provision of adequate air and surface transportation services and associated facilities to support the agricultural industry in meeting local, national, and international market needs.

9. Develop proposals to improve data collection and the timely presentation of information on market demands and trends that can be used to plan future harvests and production.
10. Develop strategies for federal and state legislative actions that will promote the development and enhancement of Hawai'i's agricultural industries.
11. Prepare, and revise as required, the Hawai'i Agribusiness Plan.
12. Prepare short- and long-range strategic plans to facilitate development of Hawai'i-based agricultural enterprises to grow and export agricultural crops and value-added products.
13. For each project, prepare or coordinate the preparation of business and agricultural development plans, as required by Section 163D-7, HRS.
14. Evaluate retaining consultants and other outside technical assistance to develop a current Hawai'i Agribusiness Plan, short- and long-term strategic plans, business and agricultural development plans, and other tasks necessary to carry out the purposes of Chapter 163D, HRS.
15. Obtain and document approval by the Board of Agriculture for agricultural projects, agricultural development plans, and project facility programs, before implementation, as required by Section 163D-8.5, HRS.
16. Obtain from the Board of Agriculture its policies and procedures for approval of ADC's projects under Section 163D-8.5, HRS, including any delegations of authority.
17. Twenty days before each legislative session, submit a report of the corporation's plans and activities to the Legislature and Governor, as required by Section 163D-19, HRS.
18. Develop written policies and procedures relating but not limited to:
 - a. ADC Board oversight. The policies and procedures should address, among other things, the matters or types of matters that must be presented to the Board for information, consideration, and/or action; criteria establishing the actions which the Executive Director may authorize without the Board's approval, including powers delegated by the Board to the Executive

Director, if any, as well as the process to periodically review the delegated authority; and the recordation of actions taken by the Board, which may include, among other things, confirmation of the Board's approvals, approvals with amendments, rejections, and/or deferrals;

- b. Land and other ADC-owned property disposition application processes. The policies and procedures should address, among other things, the internal processes for evaluating applications for use of ADC-owned property (license, permit, right of entry, etc.), including criteria upon which applications are evaluated; and checklists to document completion of each step of the process, receipt of required information, and timely communication with the applicant.
 - c. Property management. The policies and procedures should address, among other things, the process to confirm the receipt of all required documentation and other information, such as certificates or other evidence of compliance with federal and state requirements, performance bonds or other security, certificates or other evidence of insurance; for inspection of ADC properties, including the information or types of information that should be documented and the frequency of inspections; for enforcement of license/permit/right-of-entry terms and conditions, including, issuance of notices of default; to evaluate the need for and type of security measures for a specific parcel; and to document completion of required processes or activities.
 - d. File and document management. The policies and procedures should address, among other things, the types of documents retained by ADC and organization of those documents; staff responsibility for performing each file and document management task; document retention; and reporting of any release of personal information.
19. Create an electronic database that includes, among other things, an inventory of the corporation's lands, improvements, and other assets. The database should include all information reasonably necessary to manage those assets, such as the material terms of licenses, permits, rights of entry, and other agreements to use or occupy ADC assets; and should allow ADC to generate reports necessary for management of its

assets, such as current tenant lists, vacancy rates, rent rolls, rent reopening dates, and license, permit, or right of entry termination dates.

20. Create a filing system (or electronic document management system) that maintains documents in an organized manner and allows for the efficient retrieval of documents and/or files.
21. Evaluate the retention of a private property management company to manage some or all of ADC's properties.
22. Promulgate administrative rules to address, among other things, the application process for the use of ADC lands and other assets, including ADC's process for evaluating applications; ADC's administration and enforcement of the terms and conditions of licenses, permits, rights of entry, and other conveyance instruments, including those relating to inspections, notices of default, termination, eviction, and appeal rights; criteria and other procedures to create subsidiaries; criteria and other procedures to coventure, i.e., to invest in qualified securities of an agricultural enterprise, and to make direct investment in an agricultural enterprise; criteria and other procedures to apply and qualify for allowances and grants; criteria and other procedures to exercise ADC's right of withdrawal from licenses, permits, and rights of entry; and criteria and other procedures to apply and qualify for rent credits.
23. Evaluate the need to procure insurance against loss in connection with ADC-owned properties.
24. Obtain an opinion from the State Procurement Office as to whether the corporation's practice of offering negotiated rent credits to tenants and prospective tenants in exchange for services in common areas, unoccupied properties, or properties occupied by other tenants, such as road and reservoir construction, and/or materials is permitted under the Hawai'i Procurement Code.
25. Attend training on the Hawai'i Procurement Code, Chapter 103D, HRS.
26. Fill vacant staff positions with qualified persons in a timely manner.
27. Develop and document annual performance goals and measures for each staff.

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28. Evaluate each staff's performance annually and document that evaluation.

The recommendations below are addressed to the Board of Directors, specifically, and relate to issues that are the exclusive responsibility of the Board of Directors. The recommendations addressed to ADC, above, are also directed to the Board of Directors, as the head of the corporation, and should be addressed by the Board of Directors in conjunction with the ADC staff. Actions to implement the recommendations should be approved by the Board of Directors, as needed, to provide the appropriate oversight and direction of the corporation. We will request documentation of that approval by the Board of Directors as part of our "active" review of ADC's implementation of the audit recommendations.

We will ask ADC to provide us with the status of its implementation of the audit recommendations as part of our annual Status of Implementation of Audit Recommendations report that compiles all the recommendations from audits issued during the past five years. Two or three years from today, we will conduct a more rigorous review of ADC's implementation of the recommendations, which we refer to as an "active" review, that includes interviews of select agency personnel as well as examining the relevant policies, procedures, records, and documents to assess the agency's actions to address the recommendations.

The Board of Directors should:

29. Develop and document annual goals and performance measures for the Executive Director that allow the Board to evaluate the Executive Director's work, annually, to ensure compliance by the corporation with statutory requirements and achievement of its statutory purposes, among other things.
30. Evaluate the Executive Director's performance annually based on the annual goals, performance measures, and other relevant criteria; document that evaluation.
31. Document the specific authority delegated to the Executive Director, including, but not limited to, the types of access and use of ADC property for which the Executive Director can

approve without notice to or approval by the Board; and the rent credits and other amendments to Board-approved contract terms for which the Executive Director can approve without notice to or approval by the Board.

32. Attend training on the State's open meetings law (the Sunshine Law), Part I of Chapter 92, HRS.
33. Ensure that the Board's minutes sufficiently document "[t]he substance of all matters proposed, discussed, or decided," among other things, as required by Section 92-9(a)(3), HRS.

Office of the Auditor's Comments on the Agribusiness Development Corporation's Response to the Audit Findings

WE PROVIDED A DRAFT OF THIS REPORT to the Agribusiness Development Corporation (ADC) and met via video-conference with the Executive Director and the Senior Executive Assistant to discuss our findings. The Board of Directors did not participate in the exit conference. ADC subsequently provided a written response to the draft report, which is included in its entirety as Attachment 1.

In its response, ADC does not materially dispute any of the audit findings. ADC's response does not address our assessment that the corporation has done little to facilitate the development of an agricultural industry to replace the economic void created by the closure of Hawai'i's sugar and pineapple plantations, which is, and has been from its inception, its primary statutory purpose.

Lawsuit concerns

ADC requests that the text boxes on pages 22 and 24 of the report, discussing an ongoing lawsuit with one of its tenants, 'Ohana Best Farms, be removed because, according to ADC, the information undermines its ability to defend itself. We disagree. The letter from which the reported information is from was provided by ADC, and the information we report is not privileged or otherwise confidential.

We included the information to illustrate an issue related to ADC's policy to not issue long-term leases, specifically how that decision may reduce – perhaps significantly – the number of potential agricultural enterprises and other farmers who can farm on lands owned by ADC because it may restrict their ability to obtain financing to support their farming operations. To be clear, we are not offering any opinion on the merits of 'Ohana Best Farms' claims against ADC.

It is astonishing that ADC cites “anecdotal evidence” that its Board “has approved mortgage liens as conditions of financing on other lands where the collateral to be encumbered are licenses” to, apparently, address our concern that its policy to not issue long-term leases may limit tenants' ability to obtain financing. That anecdotal evidence offers

no information about which financial institution may have offered the financing, how (or whether) the financial institution may have secured its interest, or when that may have occurred. Moreover, if the Board did approve a tenant's request to encumber its license, that request and the Board's approval should be reflected by ADC's records, for instance, in communication with the tenant and the tenant's lender as well as in the Board's minutes. It also seems very likely the lender would have required ADC to execute other formal documentation. However, we did not find information related to any approvals of mortgage liens by the Board in the documents provided by ADC in the course of the audit.

The evolution of ADC

ADC attempts to temper the audit findings by describing the corporation's "evolution," separating its history since its inception almost 30 years ago into three arbitrary "phases." The corporation claims that such a retelling of its history "will help the reader better understand what ADC's deficiencies are, and hopefully assist with the development of a cogent plan for improvement."

First, we are unclear why ADC expects readers to "assist with the development of a cogent plan for improvement." It is ADC alone that must account for its use of public resources, perform its statutory responsibilities, and develop policies and procedures to do so. And we would expect its Board of Directors, which heads the corporation, to provide the necessary leadership and direction to do so.

Second, this brief and incomplete history does not explain ADC's lack of progress towards its statutory purpose – to facilitate the development of an agricultural industry to replace the economic loss caused by the closure of the sugar and pineapple plantations. Instead, ADC's retelling reflects an organization that has yet to understand fully its primary mission and to comply with statutory requirements to begin the agricultural transformation that the Legislature envisioned almost 30 years ago. For example, as we repeatedly note in the report, ADC has disregarded its statutory mandate to prepare an agribusiness plan, which must include an inventory of agricultural lands and infrastructure that can be converted to other agricultural activities, analysis of imported agricultural products and the potential for increasing local production to replace those imported products, and feasibility studies to promote, market, and distribute Hawai'i-grown agricultural products in local, mainland, and international markets, among other things. That agribusiness plan and other statutory requirements could have – and should have – been addressed as soon as the corporation was created in 1994; in fact, ADC does not indicate when – or even if – it will begin directing resources toward fulfilling the corporation's primary purpose even in its self-described current phase of evolution.

Acquiring land without a plan

As we note in the report, Section 163D-5, HRS, requires the corporation to prepare an agribusiness plan that “shall define and establish goals, objectives, policies, and priority guidelines for its agribusiness development strategy,” which ADC acknowledges it had not done at the time of our audit. Nevertheless, ADC argues that its land acquisitions should not be criticized because “it would be cavalier to believe that a seller will wait for the development and approval of a plan before it sells its lands.”

ADC’s response is misleading and reinforces the finding that the Board of Directors is failing to adequately oversee and direct the corporation’s activities. The requirement that ADC prepare an agribusiness plan is not new; it is required by statute; it was not intended to be optional. Moreover, ADC did not make its first land acquisition until 2012, almost 20 years after it was created. Since then, it has acquired 12 more properties totaling over 2,280 acres in the Wahiawā area of O‘ahu, all of which were identified and directed by the Legislature. It is disingenuous for ADC to suggest by its response that, for the almost 30 years of its existence, it has been unable to develop “goals, objectives, policies, and priority guidelines for its agribusiness development strategy.”

It is equally disingenuous for ADC to suggest that it is the interest of private landowners wanting to sell their properties, and not the State’s interest, that is driving the acquisitions. As a publicly funded organization, ADC should have business concerns of its own and purchasing land without a clear strategy or proper vetting is neither good business nor good governing. Without an agribusiness development strategy, it is unclear how or even whether the lands ADC has acquired fit into the State’s goal of agricultural self-sufficiency and developing agricultural exports to replace sugar and pineapple. We note that, at the time of our audit, 7 of the 12 properties are vacant, leaving more than 1,700 acres of ADC’s lands sitting idle.

Criminal activities on ADC lands

In our discussion of ADC’s struggle to manage its lands, we report that the corporation’s vacant lands have harbored various criminal activities. However, in its response, ADC claims to have been “extremely successful” in addressing the illegal activities on its lands. That statement, however, is directly contradicted by what ADC staff said during the audit. The Project Manager told us, not only was he aware of illegal cockfights, prostitution, abandoned vehicles, squatters, fights, theft, and dumping of trash, but that those problems had been going on for years, some even before ADC acquired the property in 2012. Later, he told KHON News that there were “multiple criminal

activities” on one of ADC’s properties, stating “I don’t know exactly what was going on because it was too dangerous for staff to come in here alone.” The corporation did not take measures to secure the area until February 2020, after multiple media reports about a “massive chop shop” and a murder on vacant ADC property. In February 2020, ADC requested approval of an emergency procurement for security guard services, stating as justification for its request that the areas that will be patrolled “have historically been used as access points by trespassers and criminals.” The State Procurement Office’s website indicates that, in March 2020, ADC awarded a contract in an amount of \$462,210 to provide 24/7 emergency security services at 5 of its properties, including “the Galbraith Reservoir Construction Site” to guard “the job site, heavy equipment, and supplies.” This contract will end on February 6, 2021.

We disagree with ADC’s assessment that it has been extremely successful in securing its properties.

The Board’s proper role

Our report points out that new board members begin their terms without orientation or training to familiarize them with ADC’s purpose and mission, as well as their role in achieving it. While it may be appropriate for board members to “constantly provide insight and guidance to ADC staff” as ADC claims, boards typically provide such guidance by setting policy and providing direction and oversight, not by performing the work themselves. ADC’s assertion that “truly dedicated board members can and do participate in the activities and business of the corporate entity” goes against the best practices described in this report. Simply put, day-to-day operations and administrative duties should fall to the Executive Director; the Board’s role is to provide governance and hold its executive accountable for fulfilling his responsibilities. We recognize that ADC is short-staffed, but the solution is to fill the positions created by the Legislature, not involve board members in daily activities.

We also question ADC’s insistence that the Board of Agriculture’s delegation to its Chairperson to approve ADC projects continues to be appropriate and valid. Most significantly, the current ADC Chairperson was unaware of the requirement that ADC obtain Board of Agriculture approval of its projects, which strongly suggests she was equally unaware of the Board of Agriculture’s delegation. Moreover, the Board of Agriculture approved that delegation in February 2008, almost 13 years ago. Since that time, there have been many new members appointed to the Board of Agriculture as well as many different chairpersons. We question whether the current Board of Agriculture members agree with the delegation or are even aware that they have delegated certain of their statutory responsibilities to the Chairperson.

In fact, as we report, the current Chairperson expressed uncertainty about her authority to approve ADC projects on behalf of the Board of Agriculture and said that she is waiting to read the audit findings and recommendations before deciding her position on the delegated authority. We emphasize the statutory requirement to obtain Board of Agriculture approval of “[a]ll agricultural projects, agricultural development plans, and project facility programs” and strongly suggest that the approval be clear, not based on a delegation that the current members of the Board of Agriculture have not approved and about which they may not be even aware.¹

Similarly, we do not understand ADC’s disagreement with our concern that, even assuming the Chairperson is empowered to approve ADC projects on behalf of the Board of Agriculture, there is no documentation or other evidence of that approval. ADC insists that the Chairperson’s approval *as a member of the ADC Board* is somehow sufficient and satisfies the statutory requirement. We disagree. Any action in that capacity clearly is not on behalf of and as the Chairperson of the Board of Agriculture, and the minutes of the ADC Board meetings do not reflect actions of the Board of Agriculture. Similarly, we suspect there is no documentation of the Chairperson’s approvals of ADC projects in the Board of Agriculture’s records.

Board members agree in part and disagree in part with the findings

In the first paragraph of the response, ADC states that the corporation, “*along with our board members,*” agree in part and disagree in part with the report’s findings. We note that, at the beginning of the audit, we had offered to meet with the Board for an entrance conference to, among other things, explain the purpose of the audit, the process, and our expectations. However, the Board declined our offer. We provided the draft audit report to the board members at the same time it was provided to the Executive Director. While we received communication from one member, we were not informed that the Board was interested in participating in the exit conference or to otherwise discuss the audit. We would welcome the opportunity to discuss the audit findings with the Board and will make ourselves available if the Board is interested in doing so.

¹ It is misleading for ADC to cite the Legislative Reference Bureau’s 2007 report as support for its practice of construing action by the Board of Agriculture Chairperson as an ADC board member to be approved by the Board of Agriculture. While the Legislative Reference Bureau may have found that the Board of Agriculture’s approval was “a redundant time-consuming process,” the Legislature did not remove or otherwise amend the requirement. Under Section 163D-8.5, HRS, ADC is statutorily required to obtain Board of Agriculture approval prior to the implementation of all projects which has not changed since the corporation was created in 1994. Moreover, the Legislative Reference Bureau made many, more significant findings, such as ADC not fulfilling its intended purpose, that ADC has not apparently followed.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
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January 7, 2021

Leslie H. Kondo
State Auditor
State of Hawaii
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mr. Kondo:

Re: Audit of the Agribusiness Development Corporation
Act 28 (SLH 2019)

Thank you for the draft of the Audit of the Agribusiness Development Corporation ("ADC"). We, along with our board members, have read the draft audit report ("report") and agree in part and disagree in part with the findings presented. We offer our comments below.

Inclusion of a party litigant's comments in a public audit is not appropriate. ADC requests that the discussion of the ongoing lawsuit be removed from this report. Report at pages 21 and 23. While the "fact" that Plaintiff's attorney's writings are documented, we reiterate that the statements asserted by Plaintiff's counsel are mere allegations, and including such allegations in a public audit report while a lawsuit is pending undermines the State's ability to fairly defend itself. For instance, our legal counsel reminds us that Plaintiff's assertion that it tried to obtain financing but was denied because of the lack of a lease instrument is unsubstantiated and will be rigorously litigated in Court.

Additionally, ADC asserts that the allegations of the lawsuit as anecdotal evidence that ADC's practice impairs its tenants is not justified given the potential damage such action may cause to the State. In its own anecdotal defense, note that the ADC board has approved mortgage liens as conditions of financing on other lands where the collateral to be encumbered are licenses.

While the substance of the report is exclusively limited to ADC's deficiencies, ADC believes a performance audit should analyze the entire operation of the audited agency. The agribusiness plan ("ag plan") has been submitted to the Legislature and is attached to ADC's 2020 Annual Report. That ag plan, along with ADC's Annual Reports for FY 18, 19, and 20 contain numerous instances of ADC's efforts and successes. Among these successes are the land banking efforts, made possible by the support and funding of the Legislature and the agricultural community that submitted written and oral testimony in support of the funding, the improvements made to 100 year old irrigation systems, including the installation of Supervisory Control and Data Acquisition ("SCADA") systems to allow real-time operations and manipulation

of gates and weirs within the system, construction of water storage reservoirs of varying capacities to meet the needs of incoming farmers, soil amendment actions (which are agronomically critical when converting acidic pineapple lands to more diversified crops), and constructing internal farm roads and implementing farm practices to reduce mud and agricultural chemicals from being transported to adjacent public roadways.

ADC also has projects intended to address agricultural concerns in the future such as the ongoing project in conjunction with the City and County of Honolulu, Department of Environmental Services to use recycled water for agricultural uses, thereby forever removing wastewater from future discharges into Lake Wilson, and the construction of more water storage reservoirs and a backup well for times of drought or other emergencies. ADC continues to communicate with local farmers about the potential for a Whitmore Community Food Hub which, once operational, will provide the State with the opportunity for a whole new level of food safety, food distribution, food processing and marketing, even addressing farm worker shortages. Reviewing the plan, the annual reports, and the report together gives the reader a more accurate, realistic view of the current status of ADC.

BACKGROUND.

The report attempts to examine the efficiency of ADC's operations and management, lumping together 25 years of activities into one audit. These 25 years span five (5) gubernatorial administrations and at least three (3) different executive directors. This is a massive undertaking. Understanding the evolution of ADC will help the reader better understand what ADC's deficiencies are, and hopefully assist with the development of a cogent plan for improvement.

The report recognizes that ADC has evolved over the past 25 years from a nascent government office to its current operation. ADC's evolution can be summed up in three (3) phases. Phase I began at inception in 1994 with its acquisition of the Waiahole Water System ("WWS") and its subsequent conversion from a private operation to a governmental operation. Citing the Legislative Reference Bureau's 1997 study of ADC, the report notes that during the first three years of its existence, the single, most important reason for the corporation's lack of progress at that time was the lack of board consensus. Report at page 12. Notwithstanding any lack of consensus, ADC was able to establish an office in the Department of Agriculture's ("Department") Halawa facility and exempt government positions for its six (6) WWS business and ditch employees.

Phase II began during the early 2000's when ADC began receiving set asides of state lands through the governor's executive orders from the Department of Land and Natural Resources. The largest of these set asides were 12,000 acres in Kekaha, Kauai, and 6,000 acres in Kalepa, Kauai, all of which were formerly planted with sugar by the Kekaha Sugar Company and the Lihue Sugar Company. Prior to receiving the set asides, ADC did not establish land management processes and procedures for lease administration or income and expenses, nor did it seek or receive employee positions to manage the state lands.

Phase III, the current phase, has focused on land-banking, improving and incorporating high tech capabilities into the existing agricultural infrastructure improvements, finding the proper "fit" of agricultural tenants who can contribute to the doubling of diversified and other forms of food production, and exploring new methods of farming through cooperation with existing or potential

Leslie H. Kondo
January 7, 2021
Page 3 of 5

tenants such as climate controlled production, crop-to-crop rotation, crop-to-livestock rotation, and zero waste technologies.

Recognizing these phases and understanding ADC's activities during these phases provide a better picture of the current status of ADC, how it got here, and what it needs to do to ensure the continuation of a smoothly operating, properly funded government organization.

The report evidences a rudimentary understanding of what it takes to establish a strong commercial agricultural sector in the "real world". Where appropriate, we have attempted to provide sufficient information to help the reader put the findings, assumptions and conclusions contained in the report into proper perspective. The report also provides helpful comments on the requirements of sustainable office management, documents management, and operating procedures. We look forward to receiving the resulting recommendations therefrom.

ADC DISAGREES.

ADC takes issue with the assertion that ADC primarily managed 4,257 acres of land and WWS on Oahu, and that central Oahu is the "Center of ADC's Operations." Report at pages 7, 9 and 13. In fact, ADC actively manages the 12,000 acres in Kekaha, Kauai, and the 6,000 acres in Kalepa. The agricultural cooperative comprised of ADC Kekaha tenants in Kekaha provides a great deal of the capital for the agricultural infrastructure, such as the roads, drainage canals and ravines, irrigation systems, and electrical systems, as well as valuable expertise on potential agricultural activities and agronomically viable crops for the area. However, the day-to-day operational decisions continue to be managed by ADC.

The agricultural cooperative comprised of ADC Kalepa tenants in Kalepa are responsible for the upkeep, maintenance and security of the agricultural roads and security gate system within the 6,000 acres. This cooperative is less organized, and struggles more with its obligations. ADC assists the coop with these duties while it conducts its own day-to-day operational decisions and management activities of the 6,000 acres.

Every large landowner contends with criminal activity, especially on lands that have access to surface water and overgrowth. ADC strongly disagrees that it turned a blind eye to criminal activities. Report at page 2. With the financial support of the Legislature and the Department, and the assistance of and guidance from the Honolulu Police Department, ADC has been extremely successful at removing homeless encampments, both big and small, abandoned and stripped vehicles and "chop shops", chicken fight events, and drug-related activities. As of this writing, ADC is now in the position to address trespassing and property damage incidents as they occur. Of course, funding for more fencing and security services will continue to determine the level of success that ADC is able to achieve.

The report notes that the delegated authority from the Department Board of Agriculture ("BOA") to the Chairperson of the BOA issued almost 13 years ago and by a different membership makeup of the BOA to approve ADC project pursuant to HRS 163D-8.5, implying therefore that the delegation is suspect. Report at page 26. This point contradicts the guidance provided to ADC by the Legislative Reference Bureau's 2007 study ("LRB study"). The LRB study recommended that the Department of Agriculture and Board of Agriculture oversight should be removed from the ADC statute to minimize bureaucracy; the BOA delegated its oversight responsibility a year later in 2008. ADC and the Department heard the concerns of the LRB and

took appropriate action to address those concerns. ADC is now criticized for following that guidance.

ADC disagrees with the report's conclusion that the actions taken by the BOA chair at ADC meetings, participating in deliberations and approving ADC projects, does not constitute actions by the BOA. ADC finds no requirement that BOA approval of ADC projects be done as a separate action, or on a document separate and apart from an ADC board meeting. Indeed, the current handling of the requirements of 163D-8.5 by both the Department and ADC eliminate separate, additional requests to the BOA and serves to streamline its processes, a key component of ADC's flexibility.

ADC AGREES.

ADC agrees that as of the time of this audit, ADC had not submitted an agribusiness plan pursuant to HRS 163D-5. ADC takes issue, however, with the implication that land acquisitions without an agribusiness plan should be subject to criticism. In the world of acquisition, timing is key, both for buyers and for sellers. One of the primary purposes of Phase III is to collaborate with larger agricultural landowners. Like the State, these large land owners value food production and want to see their lands continue in agriculture rather than be subdivided and sold in small, one to five acre parcels, only to be used as a "gentlemen farm." But these landowners also have business concerns; they will not wait for the State to develop a plan for its acquisitions. If funding is available now, ADC suggests that it would be cavalier to believe that a seller will wait for the development and approval of a plan before it sells its lands.

ADC agrees that it has struggled with land management and document management, and that as its land inventory continues to expand, better management will be crucial. This should have been done at the beginning of Phase II in the early 2000's. As noted in the report, ADC has created, found the necessary office space for, and filled the position of the property manager in January, 2020. The property manager has done a superb job, learning much of the nuances of agricultural land management and visiting the ADC lands on Oahu and on Kauai through safe travels, as well as establishing procedures and databases, all of which either did not exist at the time, or needed improvement.

ADC agrees that the last performance evaluation of the executive director was conducted in 2017 but was never completed. Some of the points discussed in the report are the subject of the evaluation. As of this writing, a performance evaluation was conducted in 2020, and has been discussed by the board in executive session but continued for further action. The evaluation is scheduled to resume at the next regularly scheduled meeting of the ADC board in February, 2021. In light of potential privacy concerns, we withhold any further discussion of the ongoing personnel matter in this response.

OTHER COMMENTS.

Transitioning former pineapple and sugar lands into diversified uses is not simply a matter of digging up pineapple plants and planting lettuce in its place. Existing soil conditions, different irrigation needs, specific climate conditions and more all determine what type of crops can flourish or whether a particular crop is likely to succeed at all. ADC believes that it is better to take the time to prepare the land, develop a proper irrigation system, and select the most promising farmer than it is to simply plunk available farmers on land and stand back to see if that farmer will succeed. As noted in the report, many of the small farmers on the Galbraith

Leslie H. Kondo
January 7, 2021
Page 5 of 5

lands may never achieve the practices and scale needed to sell their produce in larger supermarkets without the assistance of agricultural experts. The University of Hawaii, Hawaii Farm Bureau, and numerous local farmers have donated countless hours and efforts to work with ADC and its small farmers, encouraging them to grow, teaching them good agricultural practices and good handling practices. Adopting these practices are costly and require time and patience.

The report notes that the BOA chair “sometimes skips” board meetings if she knows quorum will be met without her presence. ADC is proud to have historically nearly 100% attendance by its board members, a feat rarely matched by the volunteers who serve on the state’s boards and commissions. ADC stresses that the department heads who often hold ex officio positions on these boards and commissions often delegate that responsibility to others within their departments, in large part because of the stringent demands placed upon cabinet-level positions. In the case of the ADC, however, the BOA chair has always prioritized ADC meetings and is only absent when other matters require priority, and when quorum requirements will be met. She has always made her department personnel available to assist ADC with its governmental and fiscal needs and has been a stellar supporter of ADC activities.

Contrary to the comments in the report, ADC commends and appreciates its volunteer board members who, with the exception of the executive director, have far greater expertise in agricultural matters than ADC staff, and who volunteer their time and services to visit ADC lands, assess appropriate types of crops that would likely succeed in a particular area, vet land applicants who present a likelihood of success, and who constantly provide insight and guidance to ADC staff. Report at page 28. ADC suggests that regardless of whether a corporate board operates in the government or private sector, truly dedicated board members can and do participate in the activities and business of the corporate entity, and that such involvement improves productivity, dedication, and morale to the corporate structure.

CLOSING.

The LRB study recommended that the Legislature revisit whether ADC should be as expansive as it was originally established to be or whether its focus should be honed to what it was then actively involved in -- the repair and improvement of agricultural infrastructure. ADC suggests that the tension that existed in 2007 between what ADC was capable of doing, what it has accomplished, and what it has yet to do, is the same tension presented today.

We note that the report does not include the auditor’s recommendations for improvements. We look forward to seeing the recommendations and will strive to incorporate as many actions as we reasonably can to ensure that ADC continues to promote and grow agriculture for the people of Hawaii.

Sincerely,



James J. Nakatani
Executive Director

c: ADC board members