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5 **Minutes of the Board of Agriculture**
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7 I. CALL TO ORDER – The meeting of the Board of Agriculture was called to order on
8 November 25, 2014 at 9:00 a.m. by Board of Agriculture Chairperson Scott Enright, at
9 the Plant Quarantine Conference Room, 1849 Auiki Street, Honolulu, Hawaii 96819.

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11 **Members Present:**

12
13 Scott Enright, Chairperson, Board of Agriculture (Board)
14 Clark Hashimoto, Member-At-Large
15 Jerry Ornellas, Kauai Member
16 Michelle Galimba, Member-At-Large
17 Dr. Maria Gallo, Dean of the College of Tropical Agriculture & Human Resources
18 University of Hawaii (CTAHR-UH), Ex Officio Member
19 Lynn DeCoite, Maui Member
20 Mary Alice Evans, Deputy Director, Department of Business, Economic
21 Development and Tourism
22 Glenn Hong, Member-At-Large
23

24 **Members Absent:**

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26 William Aila, Chairperson, Board of Land and Natural Resources
27 Richard Ha, Hawaii Member
28

29 **Others Present:**

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31 Robert Ikeno, Hawaii Department of Agriculture (HDOA)/Agriculture Resource
32 Management (ARM)
33 Linda Murai, HDOA/ARM
34 Randall Chang, HDOA/ARM
35 Randy Teruya, HDOA/ARM
36 Stan Ceria, HDOA/ Agriculture Loan Division (SALD)
37 Dean Matsukawa, HDOA/SALD
38 Kevin Yokoyama, HDOA/SALD
39 Haunani Burns, Deputy Attorney General
40 Adina Cunningham, Deputy Attorney General
41 Andrew Goff, Deputy Attorney General
42 Janelle Saneishi, HDOA/Chairperson's Office
43 Ken Kakesako, HDOA/ Chairperson's Office
44 Michael Opgenorth, HDOA/Chairperson's Office
45 Christy Martin, Coordinating Group on Alien Plant Species

- 1 Thao Khamoui, United States Department of Agriculture (USDA) Rural
- 2 Development
- 3 Diane Ley, USDA Farm Service Agency (FSA)
- 4 Inga Gibson, Humane Society of the U.S. (HSUS)
- 5 Jeri Kahana, HDOA/Quality Assurance Division (QAD)
- 6 Brett Duff, Big Island Dairy
- 7 Grant Tomita, HDOA QAD
- 8 Chris Kanazawa, USDA Rural Development
- 9 Tyler Ralston, Concerned Citizen
- 10 Mark Phillipson, Syngenta
- 11 Thomas Matsuda, HDOA/ Pesticides
- 12 Cathy Goeggel, Animal Rights Hawaii
- 13 Dr. Chin Lee, PhD. University of Hawaii at Manoa
- 14 Ed Boteilho, Cloverleaf Dairy,
- 15 Landon Wong, Hawaii Public Policy Advocates
- 16 Darcy Oishi, HDOA Plant Pest Control (PPC)
- 17 Becky Azama, HDOA Plant Pest Control (PPC)
- 18 Eric Tanouye, Hawaii Floriculture Nursery Association (HFNA)
- 19 Mae Nakahata,
- 20 Peter Adler, Hawaii Agriculture Mediation Program
- 21 Nancy Jones, Hydroponics Alternatives LLC.
- 22 Zeb Jones, Hydroponics Alternatives LLC.

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24 II. COMMENTS FROM THE GENERAL PUBLIC ON AGENDA ITEMS (ORAL OR

25 WRITTEN)

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27 Chairperson Enright stated the Board will take testimony for each item as it comes up in

28 the agenda.

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30 III. INTRODUCTION AND COMMENTS

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32 Chairperson Enright stated the minutes from the October 28th Board meeting are not yet

33 available for approval from the Board.

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35 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

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37 A. AGRICULTURAL LOAN DIVISION

- 38
- 39 1. Rquest for Approval of One (1) Direct Emergency Loan to Gilbert A.
 - 40 Padamada and Vilma A. Padamada.

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42 Presentation by Kevin Yokayama of HDOA/SALD as submitted. The loan is to replace a

43 portion of the acreage (papaya) lost to Tropical Storm Iselle. Staff recommended

44 approval of the loan.

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1 Motion to accept: Galimba/ DeCoite

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3 Vote: approved: 7/0

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5 B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

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7 1. Request for Consent to Assignment of General Lease No. S-1007, Lot
8 7 for Nancy A. Jones; TMK (1) 8-5-034:007 Waianae Agricultrual Park.
9 Waianae, Island of Oahu

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11 Presentation by Randall Chang of HDOA/ARM as submitted.

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13 Motion to accept: Hashimoto/Gallo

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15 Discussion:

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17 Nancy Jones , the current lesee on lot S-1007 approached the Board and explained that
18 they had been growing miscellaneous green vegetables but the intent was always to put
19 greenhouses on that particular lot. After working with a potential investor for two years,
20 there are plans to create this quality greenhouse that can withstand hurricane force
21 winds. Ms. Jones explained that the company they are working with is experienced with
22 making strong greenhouses.

23

24 Mr. Zeb Jones, the lessee's husband, stated that their plan was to help be an example
25 for other farms. Using hydroponics, they can grow successful crops. There is potential
26 to take land that currently is primarily rocks, even lava rock, and grow raised hydroponic
27 crops.

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29 Vote: approved 7/0

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31 2. Request for Consent to Sublease Between the Hamakua Agricultural
32 Cooperative and Robert Bowman; Lot No. 18B, General Lease No. S-
33 551 TMK (3) 4-6-003:001 (por.);

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35 Randy Teruya, property manager for HDOA/ARM presented on the request for consent
36 as submitted.

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38 Board member Mary Alice Evans arrived at the meeting at 9:05 a.m.

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40 Motion to accept: Galimba/ Evans

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42 Discussion:

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44 Mr. Bowman plans to do organic vegetable farming after first restoring the soil.

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1 Board Member DeCoite mentioned the part of the request for consent that incorporates
2 livestock. She said that part of the Food Safety Modernization Act requirements is to
3 keep animals out of the area where crops are growing. Board member Decoite then
4 asked how the applicant plans to comply with food safety regulations.

5
6 Mr. Teruya responded that Board member DeCoite's statement was correct. The initial
7 use of animals in livestock is to just get the soil prepared for planting. Once planting
8 starts, animals will not be allowed to roam among the crops.

9
10 Board member DeCoite then asked if the soil pH will be measured after the soil
11 preparation is complete.

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13 Mr. Teruya confirmed that a measure of the soil pH will take place.

14
15 Vote: approved 8/0

16 17 C. QUALITY ASSURANCE DIVISION

18 19 1. Possible Discussion of Report of the Board of Agriculture's (Board) 20 Investigative Committee on Proposed Milk Rule Amendments (Report 21 Presented at 10/28/14 Board of Agriculture Meeting

22
23 Discussion began with Board member Ornellas, who served on the Board's
24 Investigative Committee on the proposed Milk Rule Amendments, and he stated his
25 conclusion is there is much that is still not known. Board member Ornellas said that,
26 although he was involved with the dairy industry as a part of his personal experience, he
27 stated it is a very complex set of things happening. Board member Ornellas referenced
28 the Chin Lee CTAHR study that studied the milk industry in Hawaii. Mr. Ornellas said
29 he was not ready to make a decision on this amendment and that more information is
30 needed before the Board can proceed. He said that the question is whether the dairy
31 farmers need the Department of Agriculture's help or not. If the producers can deal with
32 the processors/bottlers themselves without the Department of Agriculture's help, so be
33 it. On the mainland, dairies in most, if not all of the states operate under a federal
34 marketing order. Board member Ornellas stated that those issues need to be addressed
35 and he asked whether Hawaii is unique enough so the farmers will not need help from
36 the State.

37
38 Chairperson Enright requested Jeri Kahana Division Administrator for the HDOA Quality
39 Assurance Division to approach the Board to participate in the discussion.

40
41 Board member Galimba, who also served on the Board's Investigative Committee,
42 stated, that the whole point of the Milk Control Act was to construct a level payment
43 structure for all dairies. She said that it is important for the Board to look at this issue in
44 the big picture, instead of making a small change as proposed under the amendment
45 that can have a big impact and negative side effects on the milk industry.

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Board member Evans requested the Board members who served on the Investigative Committee speak to the legislative intent of the Milk Control Act that was based on conditions at the time 30 or 40 years ago and whether the Act is now outdated. She asked whether repealing the Milk Control Act would be one of the options the Board would consider introducing to the Legislature.

Board member Ornellas said that adopting this amendment would, in effect, be repealing the Milk Act, as dairies could go directly to processors to negotiate price. He added that the issue is also with quotas. Oahu has a huge pool of available quota up for grabs and the Big Island is producing all the milk. As to whether the Milk Control Act is obsolete, dairy farms require huge investments and want some form of price support. If the producers here think they can do without the Act, the Board should not stand in the way.

Chairperson Enright said it is public knowledge that Cloverleaf Dairy is up for sale and the sale may close some time during the first week of December.

Ms. Jeri Kahana said that repealing the Milk Act would not be the answer because a processor could still side with one producer over another. As for pricing, a formula is probably a more accurate measure rather than having a set price. The formula can adjust based on the cost of production and fluctuating input costs, based on the market.

Brad Duff, General Manager for Big Island Dairy on Hawaii Island said they accept all help and will take it any way they can get it. The sole purpose of this proposed amendment is to give a little extra coverage on the milk that is not covered by quota. Big Island Dairy likes what the Milk Act stands for, so it means something to Big Island Dairy that they can remain in operation. The amendment's purpose is to put in some security on their side for the excess milk produced. As to concerns about how the amendment would affect the other dairy, all share the same goal: viability, sustainability. Big Island Dairy does not want to see the Milk Act completely abolished because agriculture depends on government in terms of planning, assistance, and advice.

Board member Ornellas asked about the contract with Dean Foods. Does it address the issue of surplus milk at a certain prices? Or does it have present pricing and then beyond that production, the producer will have to negotiate a separate price?

Mr. Duff responded, that is correct, whatever we produce in surplus is up to the producer to have a separate price. The quota price follows the Milk Act, and anything above the quota will be up to the producers to figure out how to sell that surplus.

Board member Ornellas explained it is not a point of production. The real problem is that there are imports from the mainland coming in and, ironically, the milk is re-

1 pasteurized when it gets to Hawaii. However, in California, milk is not allowed to be re-
2 pasteurized.

3

4 Board member Hong requested clarification on the amendment from Ms. Kahana,
5 stating his understanding of it. The amendment has the current quota system for the
6 Hawaii Island milk shed. Any excess above the quota is only relevant to Hawaii Island.
7 There is no milk shed for the other islands

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10 Ms. Kahana said that the rule change would allow the producer to come to the Board
11 and request a waiver of the minimum price requirement and authorize the Board to
12 grant a waiver. For Kauai and Maui which do not have a Milk Shed, they would have to
13 come to the Board for a waiver. What a producer would have to do is come to the Board
14 for a waiver allowance and demonstrate that lower price will take into consideration the
15 standards for setting the minimum price that are in the statute.

16

17 Board member Galimba stated that her understanding is that processors were not
18 required to buy any milk, and that processors purchasing within the quota need to pay a
19 certain price. If the Board grants a waiver for a lower price, then there is nothing to stop
20 the processor from not buying milk from another dairy. It creates downward price
21 pressure and the Board cannot assume that the processors will not take that option of
22 buying milk at a lower price. So it leaves the dairy at the mercy of a marketplace that is
23 not very merciful. At this point, the Board should approach this issue as conditions are
24 today.

25

26 Board member Hong stated that in the marketplace, retailers can import and sell milk at
27 a lower price than what's produced here. If the milk price is not competitive, then the
28 consumer will not pay, for instance, three dollars more, for a gallon of milk. We should
29 help dairies to be competitive. Price controls that disregard competitive pricing would
30 be detrimental to the local producer's' ability to sell their product and they would end up
31 failing.

32

33 Ed Boteilho of Cloverleaf Dairy approached the Board for discussion and asked why
34 there is such a difference in price in the milk shed when it all is locally produced milk.
35 He said that this amendment provides the opportunity for one new entity to have control
36 of the marketplace by accommodating a processor at a lower price. Mr. Boteilho said
37 that changed relationship with the processor is inconsistent with the Milk Control Act.
38 He said that currently, all excess milk will be paid based on the California milk price plus
39 \$12.20 shipping. That price has increased over the years and even moved beyond
40 Hawaii's current quota price. There is a benefit to the processor when the price is lower
41 than the Hawaii quota price. With the current rules, there is a fluctuation in price and
42 the producer can make the decision whether they want to produce milk for a certain
43 buyer. Mr. Boteilho said that he liked the current formula due to the flexibility. If there is
44 excess milk produced, it will be paid at the current California price plus \$12.20. When
45 this amendment was proposed in February, the producers had to educate the Board on

1 this rule. Mr. Boteilho said the Board should be neutral, but that this amendment will
2 allow a form of manipulation by the Board. Finally, Mr. Boteilho said that he testified
3 against the decision to move this amendment forward. He said that Cloverleaf Dairy
4 was not consulted and he feels that what the Board is trying to accommodate is
5 prejudicial to Cloverleaf. Mr. Boteilho then requested the Board direct its attention to Dr.
6 Chin Lee, a researcher who is very well versed on the dairy industry.

7
8 Board member Galimba asked Dr. Chin Lee to discuss the impacts on the milk industry
9 from the proposed amendments.

10
11 Dr. Chin Lee, Department of Human Nutrition, Food, and Animal Sciences at CTAHR –
12 UH stated that he has seen the transformation of the dairy industry as he has focused
13 on the dairy industry since 1986. In 1986, the industry used to produce 96% of milk
14 consumed in the State and now, it's about 15% - 20%. This proposed amendment
15 would not provide the same even playing field that was established previously. The
16 processor today is not necessarily a producer, so the rule's language as it stands, is in
17 conflict with itself. He said that there are ways in which we can accommodate a new
18 dairy and look forward that are more equitable than the proposed amendment. The
19 wording in the amendment makes a bad situation worse. All over the State, we see milk
20 as an important product and how it is a major part of food diet.

21
22 Board member Evans said that what Dr. Lee is proposing is unclear and asked Dr. Lee
23 whether he was proposing a change to the wording of the amendment or proposing not
24 adopting it.

25
26 Dr. Lee responded that, in August, the Board received the Department staff's comments
27 on his testimony that it won't move beyond what is proposed in the amendment. Dr.
28 Lee said his testimony's proposal was to look at the greater subject of milk control to
29 investigate what is best for the industry. As the proposed rule amendment stands it
30 conflicts in many ways because it does not address Cloverleaf Dairy's and Big Island
31 Dairy's needs. The processor and distributor now no longer own a farm but solely focus
32 on their specific positions in the supply chain. Other options should be considered. He
33 also said that he understood that staff had rejected his proposed wording change
34 regarding producer-distributor.

35
36 Board member DeCoite asked Dr. Lee what he thinks is the foremost solution to adjust
37 the rule to make it ideal for most parties involved.

38
39 Dr. Lee said that, in August, the staff presented that it is possible to develop a quota for
40 surplus milk. Quota is provided so the State can assure provides a minimum supply is
41 there to meet the State needs. He said that he would like to see a way that surplus milk
42 can come into the Oahu market and have a milk shed equally open to any dairy, an
43 opportunity for all producers. There needs to be an agreement to purchase and the
44 ability to produce it. When a dairy no longer has that, the quota goes back to the State.
45 It is a State duty to provide the opportunity for those to produce milk.

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2 Mr. Boteilho said that one of the things that needs to be considered is that the current
3 pricing system is based on the farmers providing their information to the State and the
4 State going through a cost of production study to justify at least a 10% price increase.
5 The last price increase was over six years ago. With this new amendment proposal, it
6 is possible to see that a dairy's production volume gives them an advantage to sell their
7 milk for less and be in control of the market, which would leave Cloverleaf out. He
8 stated that this was not what he wants to see. He asked who benefits by giving the
9 processor this price break and whether the lower price would be passed on to the
10 consumer.

11

12 Mr. Grant Tomita, HDOA QAD Milk Control Program Specialist stated that the formula
13 on Oahu took on the California price many years ago. Milk prices paid to producers by
14 the processors in the Honolulu milk shed is based on a formula. The formula is \$12.20
15 plus the Northern California price of milk for a given month. The current rule states that
16 this price cannot go below \$27.50 or exceed \$31.50. The Northern California milk
17 prices fluctuates from month to month. Giving the processor a "break" in price,
18 translates to a reduced price paid to producers. This is not a benefit for the producer.
19 This may be a benefit for consumers. If the processor is paying less for the milk they
20 buy from producers, it stands to reason that the processor may pass this benefit to the
21 consumer. HDOA does not control the retail price of milk.

22

23 Chairperson Enright said he wanted to address a statement earlier made by Ed Boteilho
24 that seemed to refer to something nefarious happening with the way this proposal came
25 to this Chairperson and this staff. The State of Hawaii has two dairies. Island Dairy,
26 which was almost bankrupt when it was purchased by Big Island Dairy so that they
27 could come in. The Department listens to everybody, so Big Island Dairy came in and
28 spoke to us about their situation. The Department changes its rules to try and stay
29 current, and it happens often. It is exactly what the Department is supposed to be doing.
30 Before, when staff started on this proposal, they spent the time with Ed Boteilho of
31 Cloverleaf Dairy to discuss their ideas. The Chairperson said that Mr. Boteilho's
32 statements today made it seem that this was not the case. That is how it transpired and
33 this Board is doing exactly what it is supposed to be doing. These milk rules were put in
34 place forty (40) years ago when the industry was totally different and the marketplace
35 was different. There were not big box stores that were bringing in large containers of
36 product. The situation from many years ago has radically changed. The Board was
37 looking to amend these rules and make changes to the Milk Control Act.

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39 Mr. Boteilho responded that during the visit that occurred in 2013, the deal was already
40 done.

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42 Chairperson Enright stated that was correct.

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44 Mr. Boteilho stated he was never informed about that or a part of it. It was a done deal,
45 and that is what the Chairperson is trying to correct.

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Chairperson Enright responded that the Department was not part of the negotiations between Big Island Dairy and their distributor. Big Island Dairy let the Department know what they were doing. At that point, there were many dairies. Now, the industry is not very vibrant. The Department and the Board will continue to work on these rules. If somebody comes in willing to make a major investment in the dairy industry that we have not seen before, we will work with them to see if we can accommodate them because the State needs investment in the industry, but at the same time, still try to take care of existing producers.

Mr. Boteilho stated that there is an existing price formula, and that he feels this amendment is an attempt to control the whole industry. If he is pushed out of business, Meadow Gold will be in control with Big Island Dairy. In his 50 years of experience, there used to be a request for milk shed producers to get together.

Chairperson Enright stated that he does not envision Big Island Dairy trying to put anyone out of business.

Board member Gallo asked what the repercussions are if the amendment was not passed today, whether the industry will be in imminent danger and whether the dairies will not be able to function properly. She asked whether there are opportunities to examine options as the Board goes forward.

Big Island Dairy's Mr. Duff stated that they do not know and the producers do not know how that will develop. There could be a situation where mainland price drops very low and Meadow Gold will decide that they want to purchase cheaper milk from the mainland and tell Hawaii producers to sell their milk elsewhere. Less local milk would be produced. Something is obviously wrong and there either needs to be change or follow the same path as everyone else. Big Island Dairy has a completely different set up, following a model developed at their mainland dairies that have been very successful.

Board member Hong asked if the Big Island Dairy is selling at the formula's prices.

Ms. Kahana stated that Big Island Dairy is not following a formula. It is considered excess milk. The Honolulu milk shed price has a ceiling and a floor but because California price is currently higher, Meadow Gold is offering a higher excess milk price to Hawaii's milk producers.

Board member Hong stated that, at the end of the day, there is no guarantee that the price itself will be paid by the processor. It seems that there still is some milk controls over what happens in the industry. The Department does not want any producers to not continue to have market for their product. In the long term, the delivered price will be what local producers will be competing with. The bottom line is that all local dairies must compete with mainland milk prices.

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Mr. Boteilho stated that the formula in place now does address it and Hawaii dairy producers have lived with it for so long.

Board member Hong replied that a majority of producers have gone out of business.

Dr. Lee stated that the reasons for the industry decline have to do partially with the consent agreement with the Environmental Protection Agency (EPA) in the mid-2000s. A majority of the dairies used to be on Oahu, with four on Hawaii Island. Some dairies couldn't afford to address the EPA requirements. USDA and EPA put in protocols in regard to waste management and this negatively affected the dairies in Waianae due to their small acreage. There were many attempts to occupy former sugar lands, but long term leases were not easy to obtain. It is not feasible for leases with around five year terms to be potential sites for infrastructure development to develop dairies. The demise of the dairy industry is tied to the difficulty in getting long-term land leases, which dairies needed to get financing. Huge capital investment is needed. Most dairies in the State closed around 2000.

Board member Ornellas thanked Dr. Lee for his presentation, and stated that he met with Dr. Lee and it was an enlightening meeting in which he respects Dr. Lee's point of view. Mr. Ornellas stated that it sounds like the general consensus is that the Milk Act should not be repealed.

Mr. Boteilho stated that in 1996, the report showed that on Oahu, many of the dairies were having a great percentage of their locally produced milk going into class 2 products at a very low price because the processors were bringing in mainland milk. This occurred only on Oahu and negatively affected those producers. When there was that much allowed for class 2 products, it basically nullified the Oahu local fresh milk industry. For those on Hawaii Island, there was no class 2, so they were safe. Cloverleaf, being a solely dairy operation, has benefitted, as their land has been designated as agriculture land for "dairy use only".

Board member Ornellas stated they need to defer to the farmers to protect those interests. If they cannot speak freely, this conversation can go on for a very long time. He asked whether it was possible to reach a solution.

Board member Evans asked whether there had been significant testimony at the public hearing.

Mr. Grant Tomita stated that the only changes requested were the ones brought up by Dr. Lee.

Board member Evans stated there is no time frame for acting on this amendment, as this issue has been deferred for several meetings. She asked that the Investigative Committee look into whether there is enough information to move forward.

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Board member Ornellas stated that the Investigative Committee no longer exists after the conclusion of their report at the last meeting. It is a complex issue, the Committee did meet with numerous stakeholders and at length. There are many conflicting issues. But he thinks they are close to a solution.

Board member Clark Hashimoto asked why there was no written report from the Investigative Committee.

Board member Galimba said there is not a written report because the subject is very complex and technical. The Investigative Committee members looked at extensive information on the subject, but they are not experts and would not want to be inaccurate. An oral report was more appropriate and the hope was to have more time to discuss it.

Board Member DeCoite stated the approving or not approving is on the table and the Board's discussion today has brought a lot of comments to the table. She said that she thinks the Board should make a decision.

Chairperson Enright said that amendment approval is the next agenda item.

Mr. Boteilho stated that his question is what is the benefit is of the price reduction. It is unbelievable that someone came into the industry, had everything established, and had a price reduction.

Mr. Duff of Big Island Dairy said the easy answer is that they are producing as much milk as they can to help the State's sustainability goal. In order to do that, they need to secure the price on it.

Ms. Kahana asked Mr. Duff if they are getting a price reduction due to the current pricing.

Mr. Duff responded that with the current pricing, no.

Board member DeCoite stated that they are looking at selling the dairy farm, and asked if that was correct.

Mr. Duff responded that is not the case.

Chairperson Enright clarified that Dean Foods took over Meadow Gold. For those who remember Lani Moo and the Healthy Baby Contest as a fixture in our State, that entity no longer exists. It is now Dean Foods out of Dallas, Texas. Dean Foods is losing market share and needs to compete with companies that are bringing in containerized milk, especially the big box stores. Dean Foods said that if they will buy this excess locally produced milk, they need it at a certain price in order for them to be competitive.

1 This is the marketplace today. We are watching them to see if they will start making
2 movements to turn and start bringing in containerized milk from the mainland to try and
3 maintain their market share. When Dean Foods came in to see him they said they were
4 going to do it. That is the context of the situation.

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6 Mr. Boteilho asked if the market is reflective of the price difference of local milk and if
7 local milk is the driving force for the marketplace.

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9 Chairperson Enright said there is no current premium for locally produced milk at this
10 time. He said that it is his expectation that as the State grows the dairy industry, there
11 will be a shift of balance to the producer if the dairy industry is able to produce more
12 milk. Right now, we are at a severe disadvantage because we do not produce enough.
13 What Big Island Dairy and Ulupono are trying to do is accomplish that. When we see
14 that shift, we can get that premium for locally produced milk. Chairperson Enright
15 agreed there should be a premium for local milk.

16
17 Ed Boteilho asked whether pricing mainland milk equivalent to locally produced milk
18 doesn't amount to a price fixing situation, given that local dairies benefit the State.

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20 Chairperson Enright stated that he does not see it as such, no.

21
22 Board member Ornellas said that, regardless of the outcome of the vote during the
23 meeting, he hoped that Jeri Kahana and Grant Tomita continue looking for solutions to
24 best mitigate this issue.

25
26 Chairperson Enright called for a recess at 10:29 am.

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28 Chairperson Enright called the meeting back to order at approximately 10:38 am.

- 29
30 2. Approval of Proposed Amendments to Section 4-60-9, Hawaii
31 Administrative Rules, entitled Minimum Prices in the Honolulu Milk
32 Shed and Section 4-60-10 entitled Minimum Prices in the Hawaii Milk
33 Shed. Allows milk producers to petition the Board of Agriculture for a
34 waiver to the minimum milk prices paid by distributors to producers.
35
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37 Ms. Jeri Kahana presented the request and apologized that the proposed rule
38 amendment was not included in the Board members' meeting packets. This is the
39 request for approval that was delayed from the Board's August meeting when the Board
40 established the Investigative Committee. Ms. Kahana read aloud the entire text of the
41 proposed amendment to Section 4-60-9, Hawaii Administrative Rules (HAR) regarding
42 minimum prices in Honolulu Milk Shed, in its entirety. She said that, in essence the
43 dairy producer would have to come before the Board and request approval for the
44 waiver of the minimum price.
45

1 Board member Hong asked why the amendment is proposed to both section 4-60-10 for
2 Hawaii milk shed and section 4-60-9 for the Honolulu Milk Shed.

3
4 Ms. Kahana responded that because the amendment it will be done for one milk shed, it
5 will need to be done for both, in case Oahu gets a producer, even though there is not
6 one yet.

7
8 Board member Hong said the Hawaii milk shed has the quota fully subscribed, and
9 Oahu has none.

10
11 Ms. Kahana said the Department obtained and holds the quota for the Honolulu Milk
12 Shed.

13
14 Board member Hong asked if would make any sense that the amendment would be
15 applied to the Honolulu Milk Shed only.

16
17 Chairperson Enright then called for a five minute recess so he could consult with legal
18 counsel.

19
20 Chairperson Enright called the meeting back to order at 10:46 a.m. Copies of the
21 proposed rule amendment were distributed to the Board members and made available
22 to the public. He asked Ms. Kahana to finish her presentation.

23
24 Ms. Kahana said there had been no change to the proposed rule amendments since the
25 public hearing and that Dr. Chinn Lee's proposed changes were not accepted. The
26 request to the Board was to amend both rule sections. What Board member Hong had
27 suggested is acceptable based on what they have heard so far. That would maintain
28 the Hawaii Milk Shed price at the current minimum price and the Honolulu Milk Shed
29 price can be under this waiver. The Department would have to allocate a quota based
30 on that. The producer would still have to come to the Board for approval, and the Board
31 could approve or deny the waiver.

32
33 Motion to Approve: Gallo

34
35 Board member Evans asked that, even though a motion has been made, if it is timely to
36 discuss the possibility to amend the request to limit the Board's actions to Section 4-60-
37 9 relating to the Honolulu Milk Shed.

38
39 Chairperson Enright said the Board may certainly participate in such discussion.

40
41 Second to the motion/ Hong

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43 Board member Ornellas noted the second part of the paragraph that refers to the
44 minimum price and asked, when taking section 157-32 , HRS, into consideration, would
45 that set a minimum?

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Ms. Kahana said that it would set a minimum price but as long as they follow the steps within the statute. She read aloud the text language of section 157-32 regarding the standards for setting minimum prices for milk, as follows: As a guide to determine the minimum prices of milk to be paid into producer and producer-distributors, the board shall take into consideration the following items: Based on the operations of a reasonably efficient producer: the price to producers necessary to ensure the production of an adequate supply of wholesome milk for the market; the price necessary to return to the producer, the producers cost of production, plus a fair return on the producers invested capital, the producer's family labor, and their producer's management skills; the cost incurred in obtaining feeding, managing and obtaining dairy animals at optimum production capacity; the prevailing wages and perquisites of employees; and the ordinary fixed charges and operating expenses incident to the ownership, operation and management of the dairy. In establishing minimum prices for milk under this chapter, the board shall further consider the effect on the consumer.

Ms. Kahana said that there is a minimum price established at this time, but if the producer comes in for a waiver, the minimum would be based on what the Board determines. The rules are specific and prices are based on a cost of production study.

Board member Evans said it appears the Board may approve the proposed amendment to rule section 4-60-9 regarding the Honolulu Milk Shed to help producers sell into the Honolulu Milk Shed and there would be market competition, subject to all those standards. This is certainly not a fair market but it is a step in that direction. There are two dairies on Hawaii Island that would want to keep the quota and keep the cost structure in Hawaii County. Board member Evans then offered to move to amend the proposed amendment to rule section 4-60-9, but not move on amending rule section 4-60-10 at this time.

Ms. Kahana said they cannot predict the effect on Big Island Dairy. What is being proposed in this motion is contrary to what the Big Island Dairy had discussed with their processor in their agreement.

Deputy Attorney General Haunani Burns asked Ms. Kahana what the effect would be of taking action on one of the rule sections and not the other and what would be the impact.

Jeri Kahana said that there would not be any real impact that she can see. They can accept the proposed change to what was originally brought to the Board and move on rule section 4-60-9 but not amend rule section 4-60-10. In Honolulu Milk Shed there are no producers and no quota. The producers could come in for Board approval of a waiver.

Board member Evans restated the changed motion is to amend rule section 4-60-9, but defer on approval of amending section 4-60-10.

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Motion: Evans/ Hong

Vote: approved, 8/0

Chairperson Enright called for a five minute recess at 11:00 a.m.

Chairperson Enright brought the meeting back to order at 11:05 a.m. and asked for any further discussion on the amendments.

There was no further discussion on the amendments.

VI. NEW BUSINESS

1. Presentation on State of Hawaii/ US Department of Agriculture Partnership Regarding Programs that Support Agriculture in the State and Transition Plan Beyond 2014

Presentation by Ken Kakesako, Deputy to the Chairperson of HDOA. He stated that logistically, there is a call twice a month to do updates on where the industry stands and how to move the projects forward with as much support as possible. The first handout presented to the Board is a letter from U.S. Department of Agriculture (USDA) Secretary Tom Vilsack to the previous Hawaii governor, Neil Abercrombie, to bring notice to the federal/state partnerships to bring the State forward. The second handout is a list of Initial "Shovel Ready" MOU Projects to point to initiatives to move the State's agriculture forward. Finally, the third handout is a Quarterly Progress Report developed by the USDA Hawaii Food and Agriculture Council and State of Hawaii Initiative

Diane Ley, Director of the USDA Farm Service Agency (FSA), said the USDA is comprised of 18 agencies that address a wide range of programs to serve rural and urban areas. The FSA mission is broad and widespread and the organization convenes on the national and local level to communicate on projects. The reason for this proposal is to help move forward on projects as a partnership. All the entities need to apply for their programs but allow groups to come together and create awareness. The FSA has been working closely with HDOA and USDA to bring awareness to federal programs in the State. The change in administration does not diminish the need for this work in rural areas, and if we can report to the Secretary of Agriculture that there will be opportunities moving forward, it will please him as well.

Chris Kanazawa, State Director for USDA Rural Development, said that he will be leading the collaborating group next year. To restate what Diane Ley is saying, we are all limited in resources, so leveraging through partnerships really is now becoming essential. The partnership with HDOA makes a lot of sense. From the USDA standpoint, one of the priorities the Secretary of Agriculture has is supporting regional

1 food systems. Rural development is different from other organizations at USDA and
2 even though there is much agriculture support, it provides a broad venue to address
3 other projects.

4
5 Chairperson Enright stated that the HDOA will never have enough money to do the
6 projects that need to be done. This is the genesis of increasing this partnership and this
7 is expected will continue.

8
9 Mr. Kakesako said that even though there is a planned administration change, the
10 partnership with USDA will continue. The request of the group at this point is to ask a
11 member of the Board to volunteer and sit in on those meetings.

12
13 Chairperson Enright said he will discuss with the Board someone who may be able to fit
14 that position. The HDOA does its best when it is in partnership with all groups.

15
16 Board member Evans stated she was delighted, as four of the projects are also in
17 assistance of Department of Business, Economic Development and Tourism (DBEDT)
18 initiatives.

19
20 Board member DeCoite stated that the partnership is great, particularly in Molokai
21 where it has brought agriculture to the forefront. She mentioned the Waimea project on
22 the Big Island is also a great example of this partnership.

23
24 Board member Galimba congratulated the Chairperson and the Department of
25 Agriculture staff on the creation of such a strong synergy between the State of Hawaii
26 and our federal partners.

- 27
28 2. Presentation on the Department of Agriculture's Proposed Legislation
29 for the 2015 Legislative Session, on Subjects including but not Limited
30 to Invasive Species and Pests, Loans Regarding Federal Food Safety
31 Standards Compliance, Exempting Locally Produced Commodities
32 from the Procurement Code, importation of Animals, and increasing
33 the Barrel Tax Allocation (Food Self- Sufficiency).

34
35
36 Ken Kakesako Deputy Director of HDOA presented the list of eleven potential legislative
37 bills that are subject to change. These bills would need to be approved as
38 administration bills by the incoming Governor.

- 39
40 1. Invasive species. Provides authority to and designate quarantine areas, create
41 compliance agreements, and further regulate the movement of infested materials
42 in a way that does not adversely affect businesses in infested areas.
43 2. Biosecurity Loan Program. As the Food Safety Modernization Act takes effect,
44 the hope is to increase infrastructure in order to help farmers comply with new
45 regulations.

- 1 3. Exemption locally produced commodities from the Procurement Code. The
2 purpose is to make it easier to integrate local produce into state facilities.
- 3 4. Importation of performance animals. More of a housekeeping measure, instead
4 of anything substantial. If there are no rules for importing an animal that
5 someone wants to bring in to the State, rules will have to be adopted before the
6 animal can be imported.
- 7 5. Increased allocation of HDOA portion of barrel tax funds. Right now, 60 cents of
8 the \$1.05 tax on imported barrels of oil is going toward general funds.
- 9 6. Public Lands as Important Agriculture Lands (IAL). We are mandated to put our
10 lands in the Departments agricultural park lands and non-agricultural park lands
11 into IAL. One concern is that this will open up lands to uses beyond agriculture
12 production. The HDOA wants to make sure that if the lands are designated IAL,
13 that the use does not move beyond active agriculture use.
- 14 7. Allow Agribusiness Development Corporation to issue grants to farmers.
- 15 8. Farm to School Program. To create a program within the Department of
16 Agriculture and employ a position within this program. The intent is that
17 Department of Education and UH CTAHR would participate moving forward.
- 18 9. Biosecurity Program to move the program under a department function away
19 from a strictly Plant Quarantine Branch function. Many of the issues within the
20 scope of biosecurity reach across numerous branches within the Department.
- 21 10. Hunting on agricultural lands. Requiring hunters have consent from landowners
22 to hunt on private lands.
- 23 11. Hawaii Right to Farm Act to protect rights for farmers following federal and state
24 agriculture regulations.

25
26 Board member Evans stated her appreciation to increase the allocation of the barrel tax.
27 In addition, she stated there is particular promise for public lands as "Important
28 Agriculture Lands." IAL is an important tool, but is less useful when considering the
29 restrictions on land use.

30
31 Board member Decoite stated her support for the idea of this biosecurity loan program.
32 A lot of farmers are faced with improvements to their facilities. Also, regarding the
33 trespassing and hunting on agricultural lands, on Molokai there is trophy hunting
34 allowed, there is fence cutting and other incidents that cause issues for private land
35 owners.

36
37 Board member Hong asked in regard to the ADC bill, if it is just grants and not loans?

38
39 Mr. Kakesako confirmed it would be only for grants. There would be no appropriation
40 request, but from ADC special funds.

41
42 Board member Mary Alice Evans stated that the ability to get ADC grants will allow
43 farmers to invest in their infrastructure.

44

1 Board member Hong asked, in reference to the trespass bill, where this law is meant to
2 affect.

3

4 Mr. Kakesako stated it is focused on private agricultural lands.

5

6 Chairperson Enright stated the Department would hire an investigator through the
7 Attorney General's office that will enforce the law. It is a huge problem and it is a
8 request by agricultural producers throughout the State to address agriculture theft and
9 trespassing.

10

11 Board member Hashimoto stated support for the idea of the Farm to School Program.
12 Over the last few years, there has been significant movement on this issue.

13

14 Chairperson Enright called for public testimony in reference to the legislative package.

15

16 Inga Gibson of the Humane Society of the US (HSUS) requested the Board continue to
17 look into permitting for the import of entertainment animals. While the Humane Society
18 looks forward to working with the Department of Agriculture on housekeeping
19 measures, the Humane Society would also ask that the Department is supportive of
20 their initiatives. She said this it is the Board's responsibility to consider their request and
21 she referenced the over 375 testimonies in support of the HSUS petition to restrict
22 performing animals that was heard at the previous month's Board meeting.

23

24 Tyler Olston testified to request to move dangerous and wild animals to the Prohibited
25 List without delay. His testimony was provided to the Board and he presented this
26 testimony as submitted.

27

28 Cathy Goeggel of Animal Rights Hawaii testified to urge the Board to take care of the
29 issue of performing animals and not allow it to carry over into the Legislature. At the
30 last hearing, someone spoke about keeping things local. If this is allowed to go to the
31 Legislature, lobbyists from all over the U.S. will testify on this issue. There is an
32 opportunity to make this a local decision now.

33

34 Christy Martin of CGAPS, the last member of the public to testify on this issue, asked
35 the Board that if animals are not specifically listed, they are prohibited. When we
36 continue to import animals to this place, the possibility of disease comes with them.
37 Another concern is for staff purposes in that it takes a lot of time for people to go
38 through the permit process.

39

40 Chairperson Enright announced the need to go into executive session to consult with
41 legal counsel as to the Board's authority and potential litigation risks.

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43 Motion: Evans/DeCoite

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45 At 11:47 a.m. the Board moved into Executive Session.

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Board of Agriculture meeting reconvened after Executive Session at 12:39 p.m.

3. Presentation by Peter Adler on the Process for the Department of Agriculture- County of Kauai Joint Fact Finding Mission Project Regarding Possible Impacts Associated to Pesticide use and Production of General

Chairperson Enright introduced the next presenter, Peter Adler, who was recently tasked to conduct a project initiated by the Office of the Chair and the County of Kauai to conduct a Joint Fact Finding Mission.

Peter Adler, PhD presented to the Board his plan to perform the fact finding study. Joint fact finding is a focused, analytical process to bring the best evidence-based information and make a conclusion to the best extent possible. The team will be developing a summary of current and historical pesticide use. In addition, the team will also present a recommendation on future studies and what should be monitored moving forward. The group itself may also choose to make additional recommendations relating to pesticides and genetically modified organisms (GMOs).

Peter Adler, PhD will be leading the group. Also in his team is Keith Matson, a land use planner who will be doing the plan in draft. Bruce Anderson, the former Department of Health director, will be looking at health issues. Tina Sublant, a former student at the University of Hawaii, will be looking at some of the environmental contamination cases where it can be found.

Mr. Adler stated the team will also be assembling a working group from the community that has credibility that will deliberate the findings to see if we can come to some good conclusion. It will not be outside experts, but local experts that will be around nine (9) people from Kauai that have varied backgrounds in agriculture, environmental health, epidemiology, toxicology, and land use. The anticipation is to begin in January 2015 and may take one year. The team is hopeful that this will set a model in place to discuss issues such as these that are high profile.

Board member Gallo requested an explanation of the overall goal.

Mr. Adler responded that the group will review and interpret available studies and documentation on these issues. He anticipates that if need is indicated, they may make specific recommendations for a long term study of exposure and study of health harms. That study would have to be handed off to perhaps the National Institutes for Health or the Centers for Disease Control but the information will be collated in one place to make a determination. It is hard to say, being that this project is somewhat open ended, but there is a "port in the storm" that even though GMO and pesticides is being debated politically and legally, that there is an avenue for finding factual information.

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Board member Hashimoto stated that Mr. Adler is talking about pesticides and is not speaking to GMO.

Mr. Adler responded that the focus will be pesticides and GMO. However issues such as genetic drift and labeling will not be investigated. Of course, one of the issues is this debate seems to get conflated with many issues meshed together, so the intent is to confront these issues one by one.

Chairperson Enright mentioned that due to the nature of Kauai Bill 2491 focusing on pesticides, this study is more geared toward addressing those concerns. The hope is that this concept moves forward around the State and each study is geared toward each particular situation.

Board member Ornellas asked who will be choosing the Kauai group.

Mr. Adler responded that this will fall ultimately on himself, but others on his advisory staff will help with the selection.

Board member Galimba asked about the ultimate destination of this project. How will the findings be published?

Mr. Adler said a detailed report will be provided. Other projects using this method of joint fact finding has been used before. For example, in the geothermal debate that recently took place on Hawaii Island. He attested to his faith in this process and confidence it is a good method to move forward on the issue.

Call for Adjournment

Motion: Decoite/ Evans

Vote: Approved 8/0

VII. ADJOURNMENT OF REGULAR MEETING

Meeting adjourned at 12:45 pm

Respectfully submitted,



Michael L. Opgenorth
Board Secretary