Minutes of the Board of Agriculture

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on May 29, 2018 at 9:00 a.m. by Board of Agriculture Chairperson Scott Enright, at the Plant Quarantine Conference Room, 1849 Auiki Street, Honolulu, Hawaii 96819.

Members Present:
Scott Enright, Chairperson, Board of Agriculture
Randy Cabral, Member-At-Large
Jerry Ornellas, Kauai Member
Glenn Hong, Member-At-Large
Vincent Mina, Maui Member
Michelle Galimba, Member-At-Large
Diane Ley, Hawaii Member
Mary Alice Evans, Deputy, Department of Business Economic Development, Ex Officio Member
Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human Resources University of Hawaii, Ex Officio Member

Members Absent:
Suzanne Case, Chairperson, Board of Land and Natural Resources

Others Present:
Melissa Pavlicek, HPPA
Al Chee, Island Energy Services
Kathryn Stanaway, CGAPS
Linda Murai, HDOA/Agricultural Resource Management Division (ARM)
Roy Hasegawa, HDOA/ARM
Joyce Wong, HDOA/ARM
Phyllis Shimabukuro-Geiser, HDOA/Deputy to the Chairperson
Dean Matsukawa, HDOA/Agricultural Loan Division (AGL)
Glenn Okamoto, HDOA/ARM
Stephanie Kendrick, Hawaiian Humane Society
Nora Sisouphanthong, Kahuku lot 22
Julius Ludovico, Private Citizen
Randy Teruya, HDOA/ARM
Kevin Yokoyama, HDOA/AGL
Jeri Kahana, HDOA/Quality Assurance Division (QAD)
Bryan Yee, Deputy Attorney General
Morris Atta, HDOA/ARM
Jim Thain, HDOA/ Plant Quarantine Branch (PQB)
Miguel Ramirez, Private Citizen
Chris Kishimoto, HDOA/PQB
Isaac Maeda, HDOA/Animal Industry Division (AI)
Micah Munekata, HDOA/Chairperson’s Office (CHR)
Janelle Saneishi, HDOA/CHR
Jonathan Ho, HDOA/PQB
Don Heacock, KOA

II. APPROVAL OF MINUTES FROM 1/23/18 AND 2/27/18 MEETING

Chairperson Enright deferred the 2/27/18 minutes until the next meeting.

Motion to accept the 1/23/18 minutes: Galimba/Hong.

Vote: Approved, 9-0.

III. INTRODUCTIONS

Chairperson Enright introduced new Board member representing Hawaii Island, Diane Ley.

IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL LOAN DIVISION

1. Request for Approval to Activate and Set Parameters for DOA’s Emergency Loan Program to Provide Relief Due to Lava, Heavy Rains and Flooding.

Dean Matsukawa, DOA/AGL, presented testimony as submitted. Staff recommends approval.

Motion to accept: Mina/Evans.

Board member Ley asked if loans were limited to where there was a direct impact from lava emissions and ash. Mr. Matsukawa said the criteria was made as broad as possible. Relocation of farms may be an issue.

Board member Cabral asked what is the total amount of ag loan monies that are available. Mr. Matsukawa said about $2.6 million is committed of the $4.6 million AGL has, leaving about $2 million available. The HDOA is also requesting $7.5 million out of state emergency money to be put into fund. Board member Cabral said that is not a lot available seeing the initial needs expressed. Mr. Matsukawa said that the limits of the emergency loans were pushed up to help with the anticipated damage. Chairperson Enright said that the State Legislature did not give any money to the Agricultural Loan
Program this session and as a result there is not a lot in the program to help. The HDOA Deputy is working with the Ag Loan Division to put in an application to ask for $7.5 million of the $100 million set aside for Kauai. There have been no loans generated from Oahu to date as a result of the April 2018 flooding. The $7.5 million would also cover lava damage from the Big Island. The Deputy went and met with farmers on Big Island and the Chair said that he would be there this week. Chairperson Enright said that the additional emergency loan money request would be going in today as HDOA is attempting to be there for the farmers. This money will give the Ag Loan Division the ability to be creative and help. Chairperson Enright said that an example would be for Kealia Farms looking to provide a group loan for a bunch of small farmers. He also said that the Haraguchi Farm and taro farmers in Kauai may need loan support going forward. Board member Cabral asked if the Chair has heard about a potential special session at the Legislature to help Big Island farmers. Chairperson Enright said that he will check with leadership in Senate and House.

Board member Mina asked whether these funds would go toward farmers affected now or would it have to wait for the lava to stop flowing. Chairperson Enright said that most farmers are hesitant to take on more debt. The HDOA is waiving repayment until farmers are fully operational.

Board member Ornelles said that farmers appreciate the Chair and his work with Kauai farmers. The damage is in the ballpark of one million. Chairperson Enright said that it is a team effort.

Board member Hong said that there are state ag leases in the area affected and asked what actions have been taken for deferral. Chairperson Enright said that there has been no ask yet, but could be coming in soon. Morris Atta, HDOA/ARM, came forward. Chairperson Enright asked if the Department has heard from any tenants in Pahoa. Mr. Atta said that they have not yet. There are other issues, but nothing relating to crop and volcano issues. Chairperson Enright said that he will give the Board an update on where we are with Kauai.

Vote: Approved, 9-0.

2. Request for Approval of One (1) Direct Farm Ownership Loan to Robert David Butler and Lori Ann Butler.

Kevin Yokoyama, DOA/AGL, presented testimony as submitted. Staff recommends approval.

Motion to accept: Evans/Galimba.

Board member Evans asked what a satirist loan is. Mr. Yokoyama said it was a mainland lender loan.
Board member Hong asked what the loan interest was. Mr. Yokoyama said it was 3.5%.

Board member Galimba asked why there seem to be fewer loan requests lately. Mr. Matsukawa said that it was a timing issue. Over the last 6 months, loan requests have slowed, but now requests have picked up.

Vote: Approved, 9-0.

B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request for Acceptance of Annual Lease Rents as Determined by Independent Appraisal for Rent Reopenings and Lease Conversions for Various Lots Located in Waimanalo, Oahu; and Maui, Hawaii

Linda Murai, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Ornelles/Galimba.

Vote: Approved, 9-0.

2. Request for Approval to Construct a Farm Dwelling, General Lease No. S-4857; Lessee: Dean Maruyama; TMK: 3rd Div/7-3-049:006; Lot No. 06; Keahole Agricultural Park, Phase I, Kalaoa-Ooma, North Kona, Island of Hawaii

Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Evans/Ley.

Board member Evans asked if farm dwellings are allowed in Ag parks. Ms. Wong said farm dwellings are ok if they live on property or if there is a manager staying on the property. Board member Evans asked at end of 45 years, do improvements return to HDOA. Mr. Atta said that standard lease terms provide the option that you can remove improvements or can revert back.

Board member Ornelles asked if it is contingent to having utilities being available, like potable water and electricity. Mr. Atta said that in order to build whatever you are building there is an approval process through HDOA engineers. There is no specific requirement that this needs to exist prior to improvements.

Board member Evans said DOH is holding meetings on cesspool conversion and asked if a lessee would be eligible for a loan to convert the cesspool. She asked if the county
issues the permit for the farm dwelling or is it through HDOA. Mr. Atta said that they
must abide by county code when HDOA issues the permit.

Vote: Approved, 9-0.

3. Request for Approval to Sublease Between The Hamakua Agricultural
Cooperative and Richard Miller; General Lease No.
S-7011, TMK: (3) 4-3-005:018(Por), Lot W11, Pohakuhaku and Kemau 1st,
Hamakua, Island of Hawaii

Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends
approval.

Motion to accept: Evans/Galimba.

Board member Evans asked if Hamakua Ag Coop offers farm dwellings. Ms. Wong said
no.

Board Member Mina asked if this is specific to a particular ag park to have dwellings.
Ms. Wong said there is no good access into this area. Access is difficult and dependent
on emergency vehicles so no dwellings are allowed. Board member Mina asked if the
sublessee was an organic grower. Ms. Wong said no.

Vote: Approved, 9-0.

4. Request for Approval to Sublease Between The Hamakua Agricultural
Cooperative and Marcelino Tagudan; General Lease No. S-7008, TMK: 3rd
Div/4-3-005:002(Por), Lots W02, W03, W04, W06, W07; General Lease
No. S-7009, TMK: 3rd Div/4-3-005:014(Por), Lots W01, 015, 018; General
Lease No. S-7011, TMK: 3rd Div/4-3-005:018(Por), Lot W09, Hamakua
Pohakuhaku And Kemau 1st, Hamakua, Island of Hawaii

Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends
approval.

Motion to accept: Mina/Galimba.

Board member Evans said that terms are 15 years and asked if this request is made by
the LLC or the Hamakua Ag Coop. Ms. Wong said that 15 years is the remaining
number of years on the lease. Board member Evans asked if HDOA has a plan to
extend the lease with the Co-op or is that subject to a competitive procurement. Ms.
Wong said she was unable to answer. Mr. Atta said that there are current discussions
with the Hamakua Coop and DOA on how to move forward. Based on the
circumstances, HDOA would need to go through a subdivision process to directly lease
to farmers in Co-op. There are many issues that need to be resolved. The Co-op
agreed to remain intact until those issues are resolved and then the HDOA can establish a direct relationship with each farmer. It is not a finance situation to determine the term, but more an organizational question. Board member Evans asked if this affects the appraisal of the sublease. Mr. Atta said he is not aware of that. They work with the appraisal. Board member Evans asked if the Department of Planning at Hawaii County would allow a waiver of the ag zoning or would it require new zoning. Board member Ley said she believes it could be explored. Chairperson Enright said that this Co-op is unique. It was put in place by Dwight Takamine when Hamakua Sugar went out of business. This tied up state lands with a Co-op. The master leases held a lot of liabilities within them. This does not serve the Co-op well. The Co-op is asking HDOA to take them back. It could take years to move forward with the subdivision process. Farmers could then come in for a re-opening after subdivision.

Board member Ley asked if Co-op has rules on ratio or maximum acreage given to the subleased entity. Mr. Atta said that they are not aware of any rules. The nature of the Co-op allows flexibility. Chairperson Enright said that this farmer is one of the few plantation workers to work the land. Chairperson Enright asked if this farmer is up to date. Mr. Atta said yes.

Board member Mina asked about the deteriorating roads and whose responsibility it is. Chairperson Enright said that it is the Co-op and this was an issue that HDOA may help with.

Board member Galimba asked if these pieces that he is getting revert to the Co-op and then he leases them. Wong said yes.

Vote: Approved, 9-0.

5. Request for Approval for Issuance of a New Sublease Between Green Point Nurseries, Inc., Lessee/Sublessor, and Vantanage Nursery, LLC, Sublessee; General Lease No. S-4445, TMK: (3) 2-4-49:26,27,28 (Por), Lot(s) 12,13,14, Panaewa Farm Lots, Waiakea, South Hilo, Island of Hawaii

Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Ley/Galimba.

Board member Mina asked about the juxtaposition of this land to the lava. Chairperson Enright said the location is about 18 miles away from the lava flow. If trades are blowing, the vog could move toward South Point. Winds can change and bring vog to Hilo. This is far away enough that it is safe.
Board member Hong said this request is a sublease of a portion of two lots and rent is lower than the current rent. He asked how that is structured. Ms. Wong said Greenpoint Nurseries is the owner of Vantanage Nursery. The $7,402 for lots 27 and 28 are part of the $9,870. Hong asked if HDOA will receive two payments. Ms. Wong said only one. Board member Hong said it is an internal transfer of funds.

Vote: Approved, 9-0.


Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Evans/Hong.

Vote: Approved, 9-0.

7. Request for Approval of Extension of General Lease No. S-7017; AGEE, Inc., TMK: 3rd Div/4-3-005:015, Lot No. 07, Pohakuhi, and Kemau 1st District of Hamakua, Hawaii

Joyce Wong, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Cabral/Galimba.

Board member Galimba asked if staff has looked at it and how it looks. Ms. Wong said staff has looked at it. Chairperson Enright said it needs work and asked if that will be the case to maintain terms of lease. Mr. Atta said yes. In the past there were different unauthorized activities that needed to stop. Staff went to lessee and discussed the issues and the lessee assured staff that they will discontinue these activities. Mr. Atta said that they are now in compliance with land use. Chairperson Enright asked if $50,000 is enough to clean up the property. Ms. Wong said that they are using the money for the feed storage as it is collapsing. Chairperson Enright thanked staff for checking out the property and expressed his concerns with that site. He asked if there were any plans on how to accomplish the cleanup. Mr. Atta said that he mentioned the various things that need repair. He explained his immediate needs, one of which was storage area. The lessee mentioned that he had no formal plan but that he needs lease term to get financing.

Board member Evans asked if there is something different about this one as compared to the 15 year lease. Mr. Atta said that this was primarily a financing issue.
Chairperson Enright said that it was not part of the Hamakua Co-op. Ms. Wong said the lease extension was needed to get financing to move forward.

Board member Cabral asked whether confined feeding operations requirements are needed and if they comply. Chair said it is not that type of operation. Big Island meat has the slaughterhouse and the Aguilar family has the feed lot. The numbers fluctuate and are not steady. Board member Cabral said it is like open pasture. Chairperson Enright said that he is concerned with the business plan to move forward. He said that he is more than open to extend the lease, but does not see a plan to clean up the dangerous issue and a liability.

Board member Mina asked if the $50,000 is receipt generated. Ms. Wong said that they are working with a bank credit line. Board member Mina clarified that it was not generated based on receipts. Chairperson Enright explained some of the history of this lot.

Chairperson Enright deferred the item until next month’s Board meeting asking the lessee to show up with a business plan showing how the lessee will move forward with the property.

8. Request for Consent to Assignment of General Lease No. S-6022; Nora Sisouphanthong, Assignor, to Julius Ludovico, Assignee;
TMK: 1st Div/5-6-006:050; Lot 22, Kahuku Agricultural Park, Koolauloa, Kahuku, Island of Oahu, Hawaii

Roy Hasegawa, DOA/ARM, presented testimony as submitted. Staff recommends approval.

Motion to accept: Mina/Comerford.

Board member Ornelles asked about the discrepancy of rents from 1.5% to 3%. Mr. Hasegawa said the 3% is from the original lease. Mr. Atta said they defer on the valuation to the appraiser. The percentage is left to appraiser based on conditions of the particular area. HDOA staff would not get involved because this would interfere with independent appraisal. Randy Teruya, HDOA/ARM, provided background on Kahuku Ag Park. Originally the Ag park was developed by DLNR in the 90's. It was transferred to DOA in 95. There were 24 lots with 32 applicants qualified. Admin rules would have negotiated leases. In this case this was a public drawing. Based on this process, because no bidding, the initial rents were established low, but percentage was 3%. Lower rents with success of lessee, then State would share in gross rents over the first 3 to 5 years. As time goes on, times change, and rents inch upwards. It is a matter of being fair. HDOA recommended to appraiser that percentage should be lower. Kahuku is coming up for reopening soon, making percentage lower rather than a minimum rate. Board member Ornelles asked would this person be locked in. Teruya said he is locked until the reopening, there is no cap on percentage rent.
Board member Evans asked if this Ag Park allows for farm dwellings. Mr. Hasegawa said upon approval of Board.

Vote: Approved, 9-0.

Chairperson Enright took a 5 minute recess 10:10 am.

C. QUALITY ASSURANCE DIVISION

1. Request for (1) Repeal of Chapter 4-86, Hawaii Administrative Rules, entitled “Brake Fluids, Coolants, Petroleum Products, and After Market Additives,” (2) Preliminary Approval of Newly Proposed Chapter 4-186, Hawaii Administrative Rules, entitled “Petroleum Products Accounting and Inspection,” and (3) Authorization for the Chairperson to Schedule Public Hearings and to Appoint a Hearings Officer in connection with (2).

(see attached summary of proposed rule amendments)

Jeri Kahana, HDOA/QAD, presented testimony as submitted. Staff recommends approval.

Motion to accept: Galimba/Cabral.

Melissa Pavlicek, Island Energy, presented testimony as submitted in support. She stated that they have reworked the submittal to address the Board concerns mentioned in the previous meeting.

Vote: Approved, 9-0.

D. ANIMAL INDUSTRY DIVISION

Service Dogs and Exempted Guide Dogs, Designated Address, Thirty-day to Forty-day Post-arrival Requirement, Documentation of Need for a Service Dog and (2) Submission of Hearings Officer’s Summary of Public Hearings Testimony on Proposed Amendments to Chapter 4-29, and Hearings Officer’s Recommendations

(see attached summary of proposed rule amendments)

Isaac Maeda, HDOA/AI, presented testimony as submitted. Staff recommends approval.

Motion to accept: Cabral/Hong.

Board member Mina asked about a testimony that said that there is no proof of rabies being eliminated from the body within 30 days. Dr. Maeda said that statement is unclear. He said that the 30 days reference is the post FAVN testing time after the test of entry. The program is multiple components, including the microchip identification, health certificate, 2 rabies vaccinations, blood test, passing titer test and then the 30 day waiting period. After the first vaccination to final test is about 60-90 days. The chance of incubated rabies is very low after that period of time. Board member Comerford asked what does very low means. Dr. Maeda said maybe one case every 70,000 years based on risk assessment. Board member Comerford said in his experience release has been between 3 weeks and 60 days. Dr. Maeda said the time period to determine efficacy can be species specific as cats have shortened incubation periods. It is complicated to divide by certain species but is something HDOA can look at. HDOA is working to update its database system to work out efficiencies.

Board member Ley made clarifications on the submittal and asked if a mongoose carries rabies. Dr. Maeda said this is an issue in Puerto Rico and it is possible. Board member Ley asked if the law required the apartment as a reasonable accommodation or whether rules dictated this. Dr. Maeda said the apartment is not necessary under the ADA per discussions with the Attorney General’s Office. Chairperson Enright said that 89% of animals are currently released at airport and with this rule change it will increase the release rate to 95%. Animal Industry Division is slated to lose land holding in Halawa during same time. By reducing the number of animals in quarantine, this will help HDOA design AI infrastructure moving forward.

Chairperson Enright opened the floor to public testimony.

Stephanie Kendrick, Hawaiian Humane Society, presented testimony as submitted in support. She said that she would like to see HDOA make compliance with county licensing regulations a state requirement. Board member Mina asked if the microchip is differently read on the mainland. Ms. Kendrick said what changes is the person’s location and it is a matter of changing one’s address. Bryan Yee, Deputy AG, clarified
that this recommended change would be a significant change and would need to have
been done before the public hearing.

Vote: Approved, 9-0.

E. PLANT INDUSTRY DIVISION

Plant Quarantine Branch

1. Petition from Donald Heacock to the Hawaii Board of Agriculture to
   Initiate Administrative Rule Making and Rule Amendment in Order
   to Allow Import of Domestic Dairy Water Buffalo (Bubalus bubalis)
   for Agriculture.

Jonathan Ho, DOA/PQB, presented testimony as submitted. Staff recommends
disapproval.

Motion to accept: Mina/Ornelles.

Chairperson Enright called a 5 minute recess at 10:47am.

Donald Heacock, KOA, presented testimony as submitted in support.

Board member Evans asked if the request is for importing actual animals as opposed to
frozen semen, how is it determined if they are carrying a virus that could cross species
and infect local herds. Mr. Heacock said he would do quarantine the same way they
would quarantine imported cattle. He said that HDOA should create a new chapter on
water buffalo to include checks similar to cattle.

Board member Comerford said the rules conflict is that all species in this family are
restricted yet we have already imported them and they may be domestic. He asked if
Mr. Heacock has already imported them. Mr. Heacock said he moved to Kauai from
Oahu. Board member Ornellles said UH Waialua Station had a few of them up until the
60’s. Mr. Heacock said reading the rules today does not mention water buffalo, just
mentions “wild buffalo.”

Board member Galimba said she is supportive but it is somewhat complicated. She
clarified the motion. Chairperson Enright said it was a motion to hear the petition and
then vote. Chairperson Enright mentioned Animal Industry Division staff is okay with
this. Mr. Ho clarified the rules changes that would be needed. Bryan Yee, Deputy
Attorney General, said the motion was to accept the recommendation from PQB staff to
initiate rulemaking which requires consultation with the advisory committee.

Board member Mina asked Mr. Heacock if you could import it, when that would be. Mr.
Heacock said October or November of this year. Board member Mina asked how long
this would take. Mr. Ho said the request would go to the subcommittee, advisory 
committee, then come back to the Board with proposed amendments, then public 
 hearing, Small Business Review Board, then back to the Board for final approval. He 
said that this may take up to a year if everything goes well. Board member Mina 
clarified the process with Chairperson Enright.

Board member Evans asked if they can defer action on the petition while the Board 
recommends the issue go to subcommittee review. Mr. Yee said you would deny the 
request and send the issue to the subcommittee. Mr. Ho said that if a petition meets 
requirements, the Board has 30 days to respond. He clarified the amendments needed. 
Mr. Heacock said that he has been pursuing this for the last 2 years. He said this would 
be a simple change. Chairperson Enright and Mr. Yee clarified the motion and how to 
move forward.

Board member Mina asked about the compilation of the advisory committee. 
Chairperson Enright mentioned that they weigh in on numerous occasions and for 
various submittals.

Board member Hong said that this request would be permitted to move ahead with 
hearings and with the advisory committee. Mr. Yee said that the problem is once the 
issue has gone to public hearing, significant changes will not be able to be made.

Board member Galimba mentioned concern and would like to see advisory committee 
weigh in.

Board member Evans asked if genetic profiles of water buffalo are now too inbred and 
you need to bring in something new. Mr. Heacock said no.

Board member Mina commented that he supports the whole system approach to 
agriculture and he supports this.

Board member Ornelles said that this should have been resolved in 2016. The burden 
should be on HDOA and not the petitioner. He mentioned that he would like to expedite 
this as this is a domestic animal. Mr. Ho clarified the petition.

Board member Comerford said that he agrees with Board member Ornelles. He sees 
value in moving forward.

Board member Evans asked if the advisory committee has an expert with water buffalo. 
Chairperson Enright said that there is technical advice.

Board member Mina asked about the horns. Mr. Heacock said that the swamp and 
dairy have different shaped horns.
Chairperson Enright said to move this to the advisory committee to weigh in. The intent of this Board is to move this forward. Phyllis Shimabukuro-Geiser, Deputy to the Chairperson, mentioned she will support with division resources.

Chairperson Enright said that they would take a vote to deny the petition for immediate rulemaking and send the request to the advisory committee on plants and animals. Mr. Ho mentioned that the Animal Industry Division rulemaking should be done in conjunction.

Vote: Approved, 9-0.

Board member Comerford left the meeting

Board member Cabral asked how hard is the permitting process to get through. Mr. Ho said that it depends on how well the applicant answers the questions. PQB tried to hit a standard based on how questions have been raised in the past. It depends on the applicant. Generally, most applicants follow this process and it takes 2-3 months. Chairperson Enright mentioned the new staff at PQB and the development of a database to help with the permitting process.

V. OLD BUSINESS

None.

VI. NEW BUSINESS

None.

VII. ADJOURNMENT OF REGULAR MEETING

Motion to adjourn meeting: Ley/Cabral.

Vote: Approved, 8-0 (Comerford excused).

Meeting adjourned at 11:35 AM

Respectfully submitted,

Micah Munekata
Board Secretary