Minutes of the Board of Agriculture

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on September 25, 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
- Fred Cowell, Kauai Member
- Vincent Mina, Maui Member
- Diane Ley, Hawaii Member
- Joe Tanaka, Member-At-Large
- 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
- Suzanne Case, Chairperson, Board of Land and Natural Resources
- Glenn Hong, Member-At-Large

Others Present:
- Jonathan Ho, HDOA/Plant Quarantine Branch (PQB)
- Michael Iosua, Imanaka Asato
- Morris Atta, HDOA/Agricultural Resource Management Division (ARM)
- Joyce Wong, HDOA/ARM
- Linda Murai, HDOA/ARM
- Roy Hasegawa, HDOA/ARM
- Tyler Ralston, Private Citizen
- Weston Yap, HDOA
- Charles Hunter, Private Citizen
- John McHugh, HDOA/Pesticides Branch (PEST)
- Victoria Matsumura, HDOA/PEST
- Scott Nishimoto, HDOA/PEST
- Yong Pak, HDOA/Agricultural Loan Division (AGL)
- Gareth Mendonsa, HDOA/AGL
- Stephanie Kendrick, Hawaiian Humane Society
- Cathy Goegel, Animal Rights Hawaii
- Delanie Prescott-Tate, Attorney General's Office
- Haunani Burns, Attorney General's Office
- Valerie Kato, Attorney General's Office
- Jennifer Waihee-Polk, Attorney General's Office
II. APPROVAL OF MINUTES FROM 7/24/18 MEETING

Item deferred until next meeting.

III. INTRODUCTIONS

IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL LOAN DIVISION

1. Request for Approval of One (1) Emergency Loan to Jose A. Ramelb.
Gareth Mendonsa, HDOA/AGL, presented testimony as submitted. Staff recommends approval.

Motion to accept: Hong/Comerford.

Board member Case asked about the overall harm from the eruption and the individual grower’s economic setback. Mr. Mendonsa said the individual growers will carry additional debt, but that they are still determined to make it.

Board member Hong asked if there is a mechanism for DOA to look at terms of interest and mitigate the issue of payments to stretch out payments while recovering. Mr. Mendonsa said they have measures to help these growers. There are forbearance agreements to defer payments until farm conditions improve. This includes lower payments.

Board member Comerford asked about the proposed new safer spot. Mr. Mendonsa said the eruption covered 2,000 acres in lower Puna. Keaau is in a different lava zone and that’s where he intends to plant. Board member Cabral mentioned that the trade winds in the area help.

Board member Tanaka asked if the new location was in the lava flow. Mr. Mendonsa said it was outside the flow. It is in the area called the “ag lots” in Keaau. It is impossible to predict where the next flow will go or move. There is some historical data on lava flows, however it is still impossible in general to predict the lava flow. This location is much further away than Ophekau.

Board member Mina said that FSA is only giving loans to farmers in zone 3 and asked if that is correct. Mr. Mendonsa said he is unsure, but there are private lenders that will not lend to zone 1 and 2.

Vote: Approved, 10-0.

2. Request for Approval of One (1) Direct Farm Ownership Loan to William P. Brosnahan III and HKC LLC, Co-Borrowers.

Gareth Mendonsa, HDOA/AGL, presented testimony as submitted. Staff recommends approval.

Motion to accept: Ley/Evans.

Board member Evans asked if this 4% rate is determined due to a particular loan program, as the previous loan was for 3%. Mr. Mendonsa said that it is due to the emergency loan program, providing a lower interest rate to address emergency need.
Board member Cabral asked why the labor cost was low and if it does not include his time in the cost. Mr. Mendonsa said yes.

Board member Mina said that he appreciates the planting of Durian.

Vote: Approved, 10-0.

3. Request that One (1) Loan to MV Farms, Inc. be Referred to the Attorney General for Disposition and/or Collection.

Yong Pak, HDOA/AGL, presented testimony as submitted. Staff recommends approval.

Motion to accept: Cabral/Tanaka.

Board member Cabral asked if this is the normal procedure and what the procedure is. Mr. Pak said there is no particular process per se. Chairperson Enright said that DOA finds a way to keep the farmers farming. This was sent to Ag Mediation and it came to terms. That then fell through. At this point as it has been going on for extended periods of time, the request is coming to the Board.

Board member Cowell asked if it is still in operation. Mr. Pak said yes. Chairperson Enright said there are no cows and they buy the milk from Meadow Gold.

Board member Mina made a comment that it is sad to see this happen and would like to know if there is anything we can do to help her with operating her business. There is expertise out there, but not sure where we can come in. Chairperson Enright said they are not producing milk.

Vote: Approved, 10-0.

B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION


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

Motion to accept: Hong/Comerford.

Board member Hong asked whether the current loan was up to date. Ms. Murai said yes. Michael Domeier, owner, came forward.
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Board member Hong asked if he would be able to move the operation to Molokai and still brand under same label. Mr. Domeier said they would get the honey and ship to the Big Island.

Board member Mina asked what type of honey would be produced. Mr. Domeier said it is Klaue. They also make Table Honey and it is sold. They will start extracting honey with use of satellite imagery. Molokai is a great place for honey. There is only a handful of honey makers on the island.

Board member Tanaka asked if it is packed when being shipped and why not keep it on Molokai. Mr. Domeier said the equipment price is high. They will hire in Molokai.

Board member Hong asked about ancillary business-like queen bee cultivation. Mr. Domeier said he would like to do that and that is a possibility. The reason for Molokai is not only the potential on the island, but also the lack of Varroa Mite.

Chairperson Enright thanked him for his interest. He asked about bee operations on small portion of acreage and what will the rest of the property be used for. Mr. Domeier said it was for an operation base, equipment and potential infrastructure. There may be potential use for other farmers in the area. Chairperson Enright said that beekeepers are vocal, and their concern is the importation of Varroa Mite as equipment moves. Mr. Domeier says he is very aware of the issue. Equipment will only go one way. Brand new equipment will go to Molokai. Chairperson Enright said that he would like to put some conditions on this lease, based on PQ inspectors going to make sure varroa mite will not move.

Board member Mina appreciate the expertise of Mr. Domeier. Mr. Domeier said that they have reached out to community and other operations and mentioned that they would train others if needed. The worry of the market on Molokai is not needed as this will be on the Big Island.

Board member Tanaka asked if Mr. Peabody is still raising honey. Mr. Domeier said that there are a few older beekeepers still around in the area.

Vote: Approved, 10-0.

2. Request for Approval to Award Waianae Agricultural Park Lands Leases to Various Awardees and Back-Up Positions; TMK: 1st/ 8-5-034:002, 013, 016 And 017; Waianae Agricultural Park, Waianae, Island of Oahu, Hawaii

Chairperson Enright deferred this item.

3. Request for Consent to Assignment of General Lease No. S-6007; Olivios A. Arios, Lessee/Assignor, Chai Yoshimura, Assignee; TMK: 1st Div/5-6-006:035, Lot 07, Kahuku Agricultural Park, Koolauloa, Kahuku, Island of
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Oahu, Hawaii

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

Motion to accept: Evans/Tanaka.

Vote: Approved, 10-0.

4. Request for Approval of Extension of Lease Term and Transfer of Member Interest, General Lease No. S-3003, Kona Producers Cooperative, Lessee; TMK: 3rd Div/7-9-016: 018, And 019, Lot Nos. 018 And 019, Honalo, North Kona, Island of Hawaii

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

Motion to accept: Mina/Tanaka.

Board member Evans asked if the Board usually approves change of members with the lessee. Ms. Wong said they must go through the process as if they were new members with the Department. Board member Evans asked if the lease rent is a personal obligation of each member. Ms. Wong said it is with the organization.

Dana Shapiro, Kona Producers Cooperative (KPC), came forward. She mentioned the history of the Honalo Marshalling yard and how the Coop had almost dissolved. This may have forced tenants to be evicted. They were forced to consider their options. The existing board members were pleasantly surprised to see interest. She said that they worked closely to join the board and others resigned. They were then looking to convert KPC to a non-profit. They have been working to clean up the organization, and the Marshalling yard is being utilized as an ag hub. They are working with small farmers in the region and processing for Hawaii’s public schools. Chairperson Enright said that this is one of those facilities that DOA has that doesn't really fit into our programs. It was underutilized but then the Ulu Coop came in. The old group was going out and a new one was coming in. It is not standard but is on the submittal.

Board member Ley asked how many members are in KPC. Ms. Shapiro said there is only 3, as the board has been the only members historically. The model needs to change.

Board member Mina said that the Ulu Co-op is under the KPC. Ms. Shapiro said that they are within the umbrella. Board member Mina thanked her for her work.

Board member Ley confirmed that the users include the Ulu Co-op, Hamakua Macadamia Nut Company, and the Kona Farm Bureau. Board member Ley asked about the avocado industry as a pilot project. Ms. Shapiro said that they have partnered
with a Washington company and are using a separate facility. Board member Ley asked about any plans for additional acreage. Ms. Shapiro said that they have planted 7 ulu trees and working with NRCS for agroforestry demonstration. There is a large concrete parking lot potentially for Voyaging Foods, flower production. There may be commercial solar drying in the area. They are exploring their options at the moment. Board member Ley asked if the lease reopening is in November. Ms. Wong said it would be appraised in November.

Morris Atta, HDOA/ARM, in response to Board member Evans' previous comments, said that leases with transfer of control require Board approval. This request isn't necessarily a transfer of ownership shares, however, out of caution, coming before the board with this request was the appropriate way to move forward.

Vote: Approved, 10-0.

5. Request for Consent to Assignment of General Lease No. S-4627, JKB & MLB Corp., Assignor; Scott Saffen, Assignee; TMK: 3rd Div/1-5-116:024, Lot No. 24, Pahoa Agricultural Park, Phase II, Keonepoku Iki, Puna, Island of Hawaii

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

Motion to accept: Evans/Tanaka.

Board member Mina asked what else the assignee will plant. Ms. Wong said he plants papaya and cacao. Board member Mina asked about the use of the Kukui nuts. Ms. Wong said they are good for ailments and that he would be doing value added products.

Vote: Approved, 10-0.

Chairperson Enright called a 5 minutes recess at 10:00 AM.

Chairperson Enright called the meeting back to order at 10:05 AM.

6. Request for Consent to Assignment of General Lease No. S-3114, David Pellani, Assignor; Michael Shinsky, Assignee; TMK: 3rd Div-4-4-011:033, Lot No. 33, Ka'apahu Homesteads, Hamakua, Island of Hawaii

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

Motion to accept: Evans/Cabral.
Board member Evans asked if there are homestead lots on the ag park and if the assignee could build a home. Ms. Wong said that any of this would have to come before the Board.

Chairperson Enright said that Mike lost his home in Puna and asked if he was aware that DOA does not allow residences on Hamakua land. Ms. Wong said he is aware of it.

Chairperson Enright said it is a discussion that we will have at DOA and ADC to discuss residences on ag lots. Board member Evans asked if a policy change is needed or if it is a rule change for DOA ag parks and non-ag parks. Chairperson Enright said historically DOA and ADC do not look at residency favorably due to lack of farming over the course of time. There needs to be consideration moving forward with new generation to accommodate them. It's a discussion that we need to have but current policy is not to allow it on those lots.

Board member Mina said that he appreciates that move to discuss that. He suggested a bridge in the dilemma would be a land trust to help mitigate the issue.

Vote: Approved, 10-0.


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

Motion to accept: Ley/Evans.

Morris Atta, HDOA/ARM, came forward. Chairperson Enright confirmed the lease transfer with Mr. Atta.

Vote: Approved, 10-0.


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

Motion to accept: Cabral/Comerford.

Sean Aguilar, AGEE, Inc., came forward.
Board member Ley asked about outstanding issues. Sean Aguilar said that he has a
plan to clean up the area. There is a plan to fix the fences. The feedlot was built for
8,000 head, but that is not currently the use. They will utilize the land better. Board
member Ley asked if they will use whole acreage. Mr. Aguilar said they will make
bigger paddocks and use the whole land.

Board member Comerford asked how long do animals reside on the feedlot? Mr.
Aguilar said that it is about 30-45 days. Board member Comerford asked if they are not
meeting that capacity. Mr. Aguilar said they are not. Board member Comerford asked
about the feedlot’s plan with waste. Mr. Aguilar said it goes into ponds.

Chairperson Enright said that small ranchers often aggregate at Mr. Aguilar’s facility to
be shipped. Mr. Aguilar said there is a need and a market for it.

Board member Mina asked about the genetics. Mr. Aguilar said that the genetics used
are comparable to other states.

Chairperson Enright said that staff would move forward but would have conditions to
move forward on the feedlot plan. He asked if they have settled the question of roping
events. Mr. Attia said yes.

Vote: approved, 10-0.

9. Request for Consent to Assignment of General Lease No. S-3119; Glenn
Joseph Robert Griffin and Kelly Lei Griffin, Lessee/Assignor, To Michael
Patrick Fairall, Assignee; Lot No. 10, TMK: 1st Div/4-1-010:041;
Koolaupoko, Waimanalo, Island of Oahu, Hawaii

Chairperson Enright deferred this measure.

C. PLANT INDUSTRY DIVISION

1. Request for: (1) Approval of additional partial amendments to
Chapter 4-66, Hawai’i Administrative Rules that received board
approval on February 27, 2018 in order to comply with the
passage of Act 045, signed into law June 13, 2018; and (2)
Appoint John McHugh, PhD. as the Hearings Officer in
Connection with the Proposed Amendments to Chapter 4-66,
Hawai’i Administrative Rules.

(See Attached Amendments)

John McHugh, HDOA/PEST, and Victoria Matsumura, HDOA/PEST, presented
testimony as submitted. Staff recommends approval.
Motion to accept: Comerford/Hong.

Board member Hong made a clarification with some of the wording.

Board member Ley made a clarification under 4-66-62 item D and asked if this was for
departmental use. Mr. McHugh said yes. Board member Ley asked if they could add in
“departmental use” into this section. The language was confirmed with the Deputy
Attorney General. Board member Cabral said that it is listed as departmental use and
that he wants to make sure farmers are protected.

Board member Comerford said that UH may have greenhouses within 100 feet of a
school and asked if they can use RUP’s. Mr. McHugh said that would be their
understanding.

Board member Ley asked if the onus is on the schools to inform the DOA and asked
how farmers are supposed to understand that. Chairperson Enright said that the onus
is on the Department. There will be a lot of legwork on this and identifying the schools
will be difficult.

Board member Cabral asked how DOA will come up with the list and if the farmer will
see if that is close to their property. He asked if something is not on the list, are they
liable. Victoria Matsumura, HDOA/PEST, said the certified applicator will be liable.

Board member Cabral asked how the farmer will know and will DOA be liable for the list.
He asked about the possibility of an unregistered school. Mr. McHugh said that if they
are unregistered it will be a problem. Ms. Matsumura said that the advisory committee
asked for a provision that school locations be based on readily identified public records.
The list is not considered fully official as there are other public documents that identify
schools. Board member Cabral said he is trying to minimize liability for the farmer,
whether they know or don’t know based on a list. Chairperson Enright said it was a
work in progress. Mr. McHugh said that they will work with farmers, but there is always
a chance that someone is off the grid. It will be a challenge. Chairperson Enright said
that if they are not registered with the State, then that may not affect them. Deputy
Attorney General Bryan Yee said that there is a definition in statute. If there are
problems with the Statute, rules can’t fix the problem.

Board member Hong left.

Board member Ley said that the Legislature has put forward resources to help with this.
Bryan Yee mentioned the definition of schools in statute. They are taking it straight
from the statute. Board member Ley asked if they could require that the school come
forward to identify themselves. Mr. Yee said that they couldn’t do that. Ms. Prescott-
Tate said that the bottom line is that it would be the restricted use applicator who would
be liable per the statute. Board member Cabral said that this is not the intent of the law
for the farmer to go knock on the door. Board member Ley asked if a farmer can call
HDOA to check their farm. Mr. McHugh said that there is a lot of work needed to move this forward. He stated that the structural use of RUPs is exempted from this section of the law, however there are other issues outside of agriculture such as utility pole treatment.

Board member Ley asked if the law is going into effect January 1, 2019. Mr. McHugh said yes. Intention is to have this wrapped up by end of year.

Board member Mina asked if farmers are required to notify of mixes. Ms. Matsumura said no. Board member Mina asked what it would take to require what’s being put into the tank. Mr. McHugh said he wasn’t sure of what it would take. Board member Mina commented about the mixes of chemicals and their effects. Mr. McHugh said it will apply to the most serious requirements.

Board member Cabral asked about Chlorpyrifos and the permitting process. Ms. Matsumura said that the permit process is being drafted with an expiration of 6 months to 1 year. It is still being drafted and should be done by the end of the year.

Motion to approve as amended

Vote: Approved, 9-0 (Board member Hong not present).

Chairperson Enright called for a recess at 11:00 AM.

Meeting resumed at 11:05 AM.

V. OLD BUSINESS

1. Re-submission of Request for Adoption of Proposed Amendments to Chapter 4-71, Hawaii Administrative Rules, Entitled “Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal Import Rules”, to Ban Import of Dangerous, Wild Non-Domestic Animals for Performance or Exhibition in Circuses or Carnivals.

(See Attached Summary of Proposed Amendments and Where They May Be Viewed.)

(Reference: 9/26/2017 Board of Agriculture Meeting. No Board action was taken on these specific proposed amendments, for lack of a majority vote.)

Jonathan Ho, HDOA/PQB, presented testimony as submitted. Staff recommends approval.

Motion to accept: Comerford/Case.
Chairperson Enright opened testimony to the public.

Jessica Wooley, HSUS, presented testimony in support of the request.

John Field, CFO of Punahou School, presented testimony in support of EK Fernandez. They have been a valued partner for the school. They are an important partner for the community.

Stephanie Kendrick, Hawaiian Humane Society, presented testimony in support. She said that the issue is about mainland companies with animal welfare issues and not about local business.

Lolita Takeda, private citizen, Kapolei high parent board, presented testimony in opposition. EK Fernandez carnival has been in Kapolei for five years and is a benefit to the community.

Larry Lee, Bulldog Concessions, presented testimony in opposition.

Charlita Mahoe, Mahoe’s Hawaiian Delights, Inc., presented testimony in opposition.

Lori Miano, Hawaii Speed and Quickness, presented testimony in opposition. She stated that EK Fernandez provides a service to the Hawaii Kai community.

David Tautofi, Kaimuki resident, presented testimony in opposition. There is a benefit to the Kaimuki community and the children.

Charles Hunter, EK Fernandez, in opposition. Animal welfare is not the question here, the rules state it is about health and safety. EK is targeted. Special laws should not apply to one person/entity while giving special privileges to others.

Cathy Goegell, Animal Rights Hawaii, presented testimony in support. She stated it was not an issue about EK Fernandez, but about public health and safety.

Jackie Jaques, private citizen, presented testimony in opposition. EK has done nothing wrong and they are a quality company.

Victoria Anderson, private citizen, presented testimony in support. Animal welfare is an issue in transport.

Donna Smith, EK Fernandez, presented testimony in opposition. There is not one reason to ban wild animal acts in Hawaii. Hawaii is known to have the most stringent importation standards in the industry. USDA enforces animal welfare act. There is a lot of licensing and safety protocols that must be met to import exotic animals.
Tyler Ralston, private citizen, presented testimony in support. The risk is extremely high when bringing in these animals.

Scott Fernandez, EK Fernandez, presented testimony in opposition. If this about safety, then look at the record. USDA handles all animal welfare issues. The reason for success is because of safety. This is a solution looking for a problem.

Paul Tibbs, private citizen, presented testimony in support. He said that exploiting animals in captivity is wrong.

Board member Tanaka questioned HSUS about previous legislation to address this issue. Ms. Wooley, HSUS, said that many have attempted to address this issue before at the Legislature. Board member Tanaka questioned whether DOA is the appropriate government entity to move on this issue. He believes it’s best served at the Legislature and not at the Board.

Board member Comerford says he is discouraged about this being about one business. The reason for this is public safety, public health, and animal welfare. The data says there is no public safety issue, public health is hard to find significant issue – hard to find diseases, and so it come to animal welfare and what we want to be as a society. He stated that he doesn’t like this being about one business and that it should be in context outside of that. Board member Comerford says that the rule change is only partial in addressing this.

Board member Cabral said there is risk in everything we do. People are more of a risk than bringing in wild animals. He mentioned that he grew up with the circus and does not see the harm if it is regulated.

Board member Mina asked Scott Fernandez to come forward. He mentioned that he found a way to weather the hit of regulation. He mentioned the possibility of an outside concept for creative solutions such as virtual reality and asked if there was a creative solution that could exist. Mr. Fernandez said that this was about the Show itself. His job is to bring things in that entertain people. The animal acts have become educational. Animals are becoming extinct around the world and the only place to see these animals will be at zoos. Board member Mina said he would like to encourage new solutions as the tide is moving away from wild animals. Mr. Fernandez said that most local people are benefitting from this. The Legislature should take this up, not this Board. Board member Mina said we are all in business to make money and asked about the questions in the 10,000-person petition. Donna Smith, EK Fernandez, said this was about allowing acts to continue and people signed the petition in support of the animals.

Board member Case stated that she voted for this before and would vote for it again. There are a lot of opportunities for entertainment in Hawaii and it is changing over time.
With no other testimony, Chairperson Enright called for a voice vote on the item.

Vote: Approved, 6-3 (Yes – Diane Ley, Suzanne Case, Mary Alice Evans (WR), Scott Enright, Vincent Mina, and Nicholas Comerford; No – Joe Tanaka, Fred Cowell, and Randy Cabral; Glenn Hong not present).

2. Updates on Statewide Disaster Relief Efforts.

Phylis Shimabukuro-Geiser, presented an update on the emergency efforts on the fires on Maui and Hurricane Lane. The Chairperson met with constituents in Lahaina to discuss possibilities of support. The Shipman request with the Army National Guard did not move forward.

VI. ADJOURNMENT OF REGULAR MEETING

Motion to adjourn meeting: Comerford/Tanaka.

Vote: Approved, 9-0.

Meeting adjourned at 12:18 PM.

Respectfully submitted,

[Signature]

Micah Munekata
Board Secretary