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4  
5 **Minutes of the Board of Agriculture**  
6

7 CALL TO ORDER – The meeting of the Board of Agriculture was called to order on February  
8 26, 2019 at 9:05 a.m. by Acting Chairperson Phyllis Shimabukuro-Geiser, at the Department of  
9 Agriculture Plant Quarantine Conference Room, 1849 Auiki Street, Honolulu, HI 96819.

10  
11 **Members Present:**

12 Phyllis Shimabukuro-Geiser, Acting Chairperson, Board of Agriculture  
13 Diane Ley, Hawaii Member  
14 Glenn Hong, Member-At-Large  
15 Joe Tanaka, Member-At-Large  
16 Vincent Mina, Maui Member  
17 Fred Cowell, Kauai Member  
18 Randy Cabral, Member-At-Large  
19 Mary Alice-Evans, Designated Representative of Director of Department of Business,  
20 Economic Development & Tourism (DBEDT), Ex Officio Member  
21 Suzanne Case, Chairperson, Department of Land and Natural Resources (DLNR), Ex  
22 Officio Member  
23 Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human  
24 Resources (CTAHR-UH), Ex Officio Member  
25

26 **Others Present:**

27 Leo Obaldo, HDOA/Plant Quarantine Branch (PQB)  
28 Liz Xu, HDOA/Aquaculture & Livestock Services  
29 Lance Saikano, HDOA/PQB  
30 Scott Nishimoto, HDOA/PQB  
31 John McHugh, HDOA/Pesticides Branch  
32 Victoria Matsumura, HDOA/Pesticides Branch  
33 Morris Atta, HDOA/Agricultural Resource Management Division (ARM)  
34 Jennifer Waihee-Polk, Attorney General's Office  
35 Bryan Yee, Attorney General's Office  
36 Techi Lancaster, HDOA/PQB  
37 Yong Pak, HDOA/ Agricultural Loan Division (AGL)  
38 Kevin Yokohama, HDOA/AGL  
39 Kevin Hoffman, HDOA/Plant Industry  
40 Ambyr Mokiao-Lee, CTAHR-UH  
41 Christy Martin, Coordinating Group on Alien Pest Species (CGAPS)  
42 Chelsea Arnott, CGAPS  
43 Christopher Kishimoto, HDOA/PQB  
44 Cathy Goeggel, Animal Right's Hawaii  
45 Kealii Lopez, Western Plant Health Association (WPHA)  
46 Josh Atwood, DLNR  
47 Rachel Neville, Oahu Invasive Species Committee (OISC)  
48 Emma Anders, Hawaii Conservation Alliance Foundation  
49 Don Heacock, Kauai Organic Agroecosystems

1 Autumn Ness, Hawaii Center for Food Safety  
2 Sumiko Yamada, HDOA/PQ  
3 Jim Thain, HDOA/PQ  
4 Becky Azama, HDOA/Plant Pest Control Branch  
5 Emmanuel Zibakalam, Hawaii Green Living Association  
6

7 II. APPROVAL OF MINUTES FROM December 4, 2018 MEETING:  
8

9 Chairperson Shimabukuro-Geiser defers Board Approval of minutes from the December 4, 2018  
10 meeting.  
11

12 III. INTRODUCTIONS  
13

14 Chairperson Shimabukuro-Geiser introduces herself as the recently appointed Board of  
15 Agriculture Chairperson.  
16

17 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION  
18

19 A. AGRICULTURAL LOAN DIVISION  
20

21 1. Request for Approval of One (1) Direct Operating Loan to ‘Ano’Ano Farms,  
22 LLC and Max C.K. Bowman, co-borrowers.  
23

24 Presentation by Kevin Yokohama, Business Loan Officer, ALD, as submitted. Staff  
25 recommends approval.  
26

27 Motion to Accept: Evans/Hong.  
28

29 Board Member Comerford asks what the rent is for the new acres being sought by the applicant.  
30

31 Mr. Yokohama said that he cannot comment on specific details due to confidentiality rules, but  
32 the budget submitted contains everything, including the existing acreage being leased.  
33

34 Board Member Cabral asked whether the original acreage is still in production.  
35

36 Mr. Yokohama said “no.”  
37

38 Board Member Cabral then asked when the ulu farm is supposed to come into production.  
39

40 Mr. Yokohama said a couple more years.  
41

42 Board Member Cabral said he was surprised in the write-up that the applicant was no longer  
43 planning on drawing from the Ulupono loan for the ulu farm until production comes into place  
44 and wonders how the farmer will pay for expenses to run the farm in the meantime.  
45

46 Mr. Yokohama said he believes Mr. Bowman paid most of the upfront costs, such as buying and  
47 planting the ulu trees. He believes maintenance costs between planting and harvesting are  
48 minimal, and that Mr. Bowman will tap into the loan as needed when harvesting.  
49

1 Board Member Cabral asked why Mr. Bowman only plans to purchase one extra tractor for the  
2 additional acquisition of 27 acres, when Mr. Bowman has 11 tractors for his existing acreage.

3  
4 Mr. Yokohama responded, stating that Mr. Bowman can move tractors between areas.

5  
6 Board Member Hong asked whether the original loan's interest will be deferred for the next 6  
7 months, and if ALD will then re-amortize the loan.

8  
9 Mr. Yokohama said "yes."

10  
11 Vote: Approved, 10/0.

- 12  
13 2. Request that One (1) Loan to Clara Confectioners, LLC and Clara J. Char,  
14 co-borrowers, be referred to the Attorney General's Office for Disposition  
15 and/or Collection

16  
17 Presentation by Young Pak, Business Loan Officer, ALD, as submitted. Staff recommends  
18 approval.

19  
20 Motion to Accept: Comerford/Hong.

21  
22 Vote: Approved, 10-0.

23  
24 B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

- 25  
26 1. Request for Approval to Add and Withdraw Directors for Hawaiian Sunshine  
27 Nursery, Inc.; General Lease No. S-3121, Tax Map Key (TMK): 1st Div/4-1-  
28 024:062 & 063, Lot No. 31, Koolaupoko, Waimanalo, Island of Oahu; and  
29 General Lease No. S-4773, TMK: 3rd Div/2-2-056:052, Lot No. 26, Panaewa  
30 Agricultural Park, Waiakea, South Hilo, Island of Hawaii.

31  
32 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff  
33 recommends approval.

34  
35 Motion to Approve: Ley/Cabral.

36  
37 Board Member Mina asked whether it would be appropriate to ask the ages of the new  
38 directors.

39  
40 Deputy Attorney General Bryan Yee said he would prefer if the board members vote before  
41 hearing the answer.

42  
43 Mr. Atta said that he is filling in for an ARM staff member who couldn't make it to this meeting,  
44 and he does not know the ages of the new directors.

45  
46 Vote: Approved, 10-0.

- 47  
48 2. Request for Approval of Use of Temporary Public Access Road Over Leased  
49 Property; General Lease No. S-4932, Koba's Nursery Inc., Lessee; TMK: 1st  
50 Div/4-1-035:011, Lot 11, Koolaupoko, Waimanalo, Island of Oahu, Hawaii.

1  
2 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff  
3 recommends approval.  
4

5 Mr. Atta stated that the lessee, Koba's Nursery, Inc., has been notified of the situation and  
6 consents to the proposed temporary use of the road. No permanent solution has been finalized  
7 yet, this request is a temporary solution.  
8

9 Motion to Approve: Mina/Comerford.

10  
11 Board Member Mina asked what type of material the proposed temporary public access road is  
12 made from.  
13

14 Mr. Atta said that it was a dirt road susceptible to flooding, but the City and County of Honolulu  
15 (C&CH) made temporary improvements to the road. Mr. Atta said that once there is a long-term  
16 solution in place, he believes that it will probably result in a county-standard road. Right now,  
17 however, the C&C has made temporary improvements such as placing gravel on the road.  
18

19 Board Member Comerford asked if Koba's Nursery, Inc., has given their consent to use the road  
20 in writing.  
21

22 Mr. Atta said not yet. ARM is working on preparing a full record, including obtaining  
23 documentation of notifying the Board that the lessee had consented, and that everyone is  
24 actively involved in discussions. At a minimum ARM wanted to start off by reporting to the  
25 Board that there is an agreement.  
26

27 Board Member Cowell asked whether the damaged road will no longer be used, and how much  
28 of the lessee's current property is affected by these proposed changes.  
29

30 Mr. Atta said that the future use of the damaged road has also been part of the discussion, but  
31 nothing is finalized yet. Mr. Atta said that the proposed changes would affect possibly 5-10% of  
32 the lot, and these changes would be contained near the border of the lot and should not  
33 significantly affect the useable area of the lot.  
34

35 Vote: Approved, 10-0.  
36

37 C. PLANT INDUSTRY DIVISION

38  
39 Pesticides Branch

- 40  
41 1. Request that the Consent Agreement for In the Matter of CHUAN PRODUCE,  
42 INC. and JING CHUAN YAO, Docket No. 17-PE-025, be Referred to the  
43 Attorney General for Collection.  
44

45 Presentation by Victoria Matsumura and Scott Nishimoto, Pest Case Developers, PI, as  
46 submitted. Mr. Nishimoto also stated that the final letter was issued February 14, 2019, which  
47 informed Mr. Yao that the original penalty of \$3,000 would be reinstated and that the matter  
48 would be in the process of referral to the Attorney General's Office for collection. On February  
49 16, 2019, this letter was served to Mr. Yao.  
50

1 Staff recommends approval.

2  
3 Motion to Approve: Cabral/Mina.

4  
5 Board Member Cabral asked whether the violations have been corrected, and why staff still  
6 chose to pursue the reduced violation fee of \$1,500 in the December 11, 2018 demand letter.

7  
8 Ms. Matsumura said that to her knowledge, the violations have not yet been corrected. DOA  
9 sent education staff to Mr. Yao's establishment to make sure that his workers were sufficiently  
10 trained. At the time the consent agreement was signed, he was not verbally instructed of the  
11 clause that if he did not comply, he would have to pay the original amount. We gave him the  
12 benefit of the doubt that he did not remember.

13  
14 Board Member Evans asked if Mr. Yao spoke English.

15  
16 Ms. Matsumura said that Mr. Yao has limited English abilities; however, during the consent  
17 hearing and the inspection process, Mr. Yao had translators.

18  
19 Mr. Nishimoto said that the translator also signed the consent agreement.

20  
21 Vote: Approved, 10-0.

- 22  
23 2. Request for: (1) Acceptance of Hearing Officer's Revised Recommendations  
24 following Public Hearings held on November 1, 2018, November 2, 2018,  
25 November 5, 2018, November 7, 2018, and November 8, 2018 on the  
26 Proposed Amendments to Chapter 4-66, Hawai'i Administrative Rules,  
27 entitled "Pesticides" and comments received at the December 4, 2018 Board  
28 Meeting; and (2) to Schedule a Date for Announcement of the Board's  
29 Decision on Adoption of the Proposed Amendments to Chapter 4-66, Hawai'i  
30 Administrative Rules, (this matter was continued at the December 4, 2018  
31 Board Meeting for further discussion at the February 2019 Board Meeting).  
32 Proposed revisions to 4-66-62 and 4-66-64.2, Hawai'i Administrative Rules  
33 are attached Plant Quarantine Branch Invertebrate and Aquatic Biota:  
34

35 Presentation by John McHugh, Pesticides Branch Manager, and Victoria Matsumura, Pest Case  
36 Developer, PI, as submitted. Staff recommends approval.

37  
38 Motion to Approve: Comerford/Tanaka.

39  
40 Board Member Cabral asked if he can still join in the board discussion on this agenda item,  
41 even though he cannot vote.

42  
43 Deputy Attorney General Yee said that it would be better if he abstains in the discussion, but he  
44 may testify before the Board.

45  
46 Board Member Cabral asks if the testimony for this agenda item was passed onto the other  
47 board members before this meeting.

48  
49 Mr. McHugh said that written testimony was posted on the DOA website.  
50

1 Deputy Attorney General Yee suggests that the Chairperson move onto the next agenda item,  
2 until hardcopies of written testimony for this agenda item can be provided to the board  
3 members.  
4

5 Chairperson Shimabukuro-Geiser says that the Board will go out of order and move on to the  
6 next agenda item.  
7

- 8 3. Request to: (1) Allow the Importation of Swai, *Pangasius hypophthalmus*, a  
9 Fish on the List of Conditionally Approved Animals, by Permit, for  
10 Aquaculture Production, by Kohala Mountain Fish Company, LLC.; and (2)  
11 Establish Permit Conditions for the Importation of Swai, *Pangasius*  
12 *hypophthalmus*, a Fish on the List of Conditionally Approved Animals, by  
13 Permit, for Aquaculture Production, by Kohala Mountain Fish Company, LLC.  
14

15 Techie Lancaster, Acting Invertebrate & Aquatic Biota Specialist, PQB, presents as submitted.  
16 Staff recommends approval.  
17

18 Motion to Approve: Evans/Tanaka.  
19

20 Board Member Evans asks if there is a native or existing catfish in Hawaii, and whether Swai  
21 will be a new product in Hawaii.  
22

23 Ms. Lancaster says that there are some types of catfish currently in the wild in Hawaii, but she is  
24 not aware of the range or numbers. Swai would be a new local product in Hawaii.  
25

26 Board Member Hong asks if the applicant will need to put carp hormones in the Swai  
27 broodstock, and if so, whether Swai in a reservoir with other carp may reproduce.  
28

29 Ms. Lancaster said that it might be possible; however, Hawaii's water systems are not deep  
30 enough for Swai to be able to establish a wild population.  
31

32 Board Member Ley noted that the applicant claims that its personnel are "certified" and was  
33 wondering if there is a particular certification process. Board Member Ley also asked if a permit  
34 holder is required to notify the DOA if their listed point of contact changes, and whether the DOA  
35 conducts annual reviews.  
36

37 Ms. Lancaster said that the DOA does not certify employees, but DOA staff conducts  
38 inspections. In the event of key personnel leaving a permittee's business, the permittee is  
39 required to notify the DOA. Ms. Lancaster also confirmed that the DOA conducts regular site  
40 inspections. Permits are re-issued yearly, but re-issued permits do not usually come back  
41 before the Board.  
42

43 Board Member Case said that there are other types of catfish here already in Hawaii; however,  
44 this particular type is at low risk of being invasive, because of the incompatible habitat with  
45 Hawaii's streams and rivers.  
46

47 Board Member Ley asks if the applicant is required to submit a plan for a catastrophic event.  
48

49 Ms. Lancaster said that applicants are required to turn in a biosecurity plan that would address  
50 in part a plan for catastrophic events.

1  
2 Vote: Approved, 10-0.  
3  
4

- 5 4. Request to: (1) Allow the Importation of Pacific Oyster, *Crassostrea gigas*,  
6 Kumamoto Oyster, *Crassostrea sikamea*, Eastern Oyster, *Crassostrea*  
7 *virginica*, and Manila Clam, *Tapes semidecussata*, Animals on the List of  
8 Conditionally Approved Animals, by Permit, for Aquaculture Production in a  
9 Hawaiian Fishpond, by Hui O Kuapa; (2) Establish Permit Conditions for the  
10 Importation of Pacific Oyster, *Crassostrea gigas*, Kumamoto Oyster,  
11 *Crassostrea sikamea*, Eastern Oyster, *Crassostrea virginica*, and Manila  
12 Clam, *Tapes semidecussata*, Animals on the List of Conditionally Approved  
13 Animals, by Permit, for Aquaculture Production in a Hawaiian Fishpond, by  
14 Hui O Kuapa; (3) Allow the Transfer of Pacific Oyster, *Crassostrea gigas*,  
15 Kumamoto Oyster, *Crassostrea sikamea*, Eastern Oyster, *Crassostrea*  
16 *virginica* and Manila Clam, *Tapes semidecussata*, Animals on the List of  
17 Conditionally Approved Animals, by Permit, for Aquaculture Production in a  
18 Hawaiian Fishpond, by Hui O Kuapa; and (4) Establish Permit Conditions for  
19 the Transfer of Pacific Oyster, *Crassostrea gigas*, Kumamoto Oyster,  
20 *Crassostrea sikamea*, Eastern Oyster, *Crassostrea virginica* and Manila  
21 Clam, *Tapes semidecussata*, Animals on the List of Conditionally Approved  
22 Animals, by Permit, for Aquaculture Production in a Hawaiian Fishpond, by  
23 Hui O Kuapa. Land Vertebrate:  
24

25 Techie Lancaster, Acting Invertebrate & Aquatic Biota Specialist, PQB, presents as submitted.  
26 Staff recommends approval.  
27

28 Motion to Approve: Hong/Mina.  
29

30 Chairperson Shimabukuro-Geiser calls up Joseph Farber, Hui O Kuapa Board Member.  
31

32 Board Member Case asks whether all the species for this agenda item are present in Hawaii,  
33 and if any of them are present around Molokai. Board Member Case also asks if a wild  
34 population might be able to be established if the oysters escaped.  
35

36 Ms. Lancaster said "yes," these species are currently present in Hawaii.  
37

38 Mr. Farber said that at one-point manila clams were probably around Molokai. Mr. Farber said  
39 that he has worked with UH Hilo since 2008 along with Molokai fishponds to test oyster  
40 growouts. Mr. Farber said that these oysters will most likely not be able to establish a wild  
41 population because there are a lot of predators for these species, and outside of the fishponds,  
42 there are not a lot of food available for the oysters to eat. Part of the plan will be to construct a  
43 190-gallon tank with a UV filter where the oysters will be placed for around 48 hours to purge  
44 them from any potential pathogens. They will test the oyster meats for three rounds for food  
45 safety requirements.  
46

47 Board Member Case said that she was aware of a past DLNR pilot project conducted with the  
48 Navy to see if certain types of oysters could be a potential mechanism for improving water  
49 quality, and she thought the project showed promise. Board Member Case asked if the  
50 applicant has a monitoring program to track any accidental exposure to the wild.

1  
2 Mr. Farber said “yes,” monitoring is part of their mitigation plan.  
3  
4 Board Member Case asked whether Mr. Farber considered trying to grow Native Hawaiian  
5 oysters. She said if they did that, they could grow them out in the open without any containment  
6 procedures. Board Member Case then said the likelihood of these species turning into a  
7 problem in the wild is low, and oysters contains certain benefits to aquaculture and water  
8 quality.  
9  
10 Mr. Farber said growing Native Hawaiian oysters is a future “wishlist” item. Right now, however,  
11 the pacific oyster would be the easiest to grow out and contains a decent amount of meat.  
12  
13 Board Member Mina says that he visited a facility on the west coast where farmers in Hawaii  
14 purchased crushed oyster shells as a soil amendment, and it would be good to see a local  
15 venue producing oyster shells instead of having to import them.  
16  
17 Board Member Hong said that he noticed several listed shippers, including shippers from the  
18 west coast, and asked Mr. Farber if the oysters will all come from Hilo.  
19  
20 Mr. Farber said he decided to add a lot of different shippers and oyster species, knowing that  
21 some of the shippers and species may not meet approval. Mr. Farber said that the shippers  
22 have their own strict quarantine procedures, and he believes the State is adopting some of  
23 those procedures. Initially we are only going to be receiving pacific oysters from Hilo but  
24 wanted options in the future.  
25  
26 Board Member Mina asked if they plan to incinerate the oyster shells after harvesting the meat.  
27  
28 Mr. Farber said that they plan to sell whole oysters.  
29  
30 Vote: Approved, 10-0.  
31  
32 Chairperson Shimabukuro-Geiser calls a 10-minute recess at 10:20 a.m.  
33  
34 Meeting called back to order at 10:33 a.m., Chairperson Shimabukuro-Geiser moves back to  
35 hearing Agenda Item C.2:  
36  
37 2. Request for: (1) Acceptance of Hearing Officer’s Revised Recommendations  
38 following Public Hearings held on November 1, 2018, November 2, 2018,  
39 November 5, 2018, November 7, 2018, and November 8, 2018 on the  
40 Proposed Amendments to Chapter 4-66, Hawai’i Administrative Rules,  
41 entitled “Pesticides” and comments received at the December 4, 2018 Board  
42 Meeting; and (2) to Schedule a Date for Announcement of the Board’s  
43 Decision on Adoption of the Proposed Amendments to Chapter 4-66, Hawai’i  
44 Administrative Rules, (this matter was continued at the December 4, 2018  
45 Board Meeting for further discussion at the February 2019 Board Meeting).  
46 Proposed revisions to 4-66-62 and 4-66-64.2, Hawai’i Administrative Rules  
47 are attached Plant Quarantine Branch Invertebrate and Aquatic Biota:  
48  
49 John McHugh, Pesticides Branch Manager, passes hardcopies of testimony submitted for this  
50 agenda item for the Board to review.



1  
2 Chairperson Shimabukuro-Geiser invites members of the public to come up and testify.

3  
4 Ms. Kealii Lopez, representing Western Plant Health Association, testifies as submitted.

5  
6 Ms. Autumn Ness, Co-Director of the Hawaii Center for Food Safety, testifies that she was  
7 closely involved in a number of years with this issue that eventually resulted in the passage of  
8 Act 45, Session Laws of Hawaii 2018 (Act 45). She is wondering if under the proposed rules  
9 being reviewed today, would the disclosure rules be the same as what was mandated in Act 45.  
10 Ms. Ness said that she does not believe that the users or entities required to report on restricted  
11 use pesticide (RUP) uses, should be the ones to decide what is considered “confidential  
12 business information.”

13  
14 Chairperson Shimabukuro-Geiser asks what changes to the proposed rules have been made  
15 since the December 2018 board meeting.

16  
17 Ms. Matsumura said that what we presented at the December 2018 board meeting was identical  
18 to what is being presented to the Board today, except for eliminating section “i”.

19  
20 Deputy Attorney General Yee asks if under the proposed rules, the DOA is still the entity to  
21 determine what is “confidential business information”, and whether the proposed rules attempts  
22 to change what should or should not qualify as “confidential business information.”

23  
24 Ms. Matsumura says that under the proposed rules, the DOA would still be the entity to make  
25 that determination, and that the proposed rules do not change what is considered “confidential  
26 business information.” The DOA would still have to follow the sunshine rules stated in section  
27 92F, HRS.

28  
29 Board Member Comerford asks if there are other laws outside of this Act that would influence  
30 what may be disclosed to the public.

31  
32 Ms. Matsumura says “yes.” On average the DOA has responded to around 30 Uniform  
33 Information Practices Act (UIPA) requests every six months for the past 5 years. PI has been  
34 following the rules/guidance of section 92F, HRS, on what we redact, and we verify all proposed  
35 redactions with the attorney general’s office. We have experience complying with section 92F,  
36 HRS, for a while now.

37  
38 Board Member Hong asks whether the DOA will have available staff to quickly process and  
39 determine confidential business information issues for medical and emergency events. Board  
40 Member Hong says he is not sure what confidential business issues might arise from the  
41 application of pesticides, but has no problem with the proposed rules, if there is quick access to  
42 information for medical and emergency services as needed.

43  
44 Mr. McHugh says that he meets with emergency response crews from the State on a quarterly  
45 basis, and states that communication with response crews is a high priority for PI.

46  
47 Board Member Ley asks whether the DOA would be required to disclose specific farms and Tax  
48 Map Key (TMK) numbers, if someone requests public records for a location in the State.

49

1 Ms. Matsumura says that if a requestor wanted to know what happened to “farm x”, they can  
2 submit a request to the DOA and we would provide all information under the guidelines of  
3 section 92F, HRS. Past pesticide usage and TMK numbers are not considered confidential  
4 business information and will be disclosed if requested.  
5  
6 Board Member Evans said that she has read the testimony provided for this agenda item and  
7 one of the testimonies provided claims that the proposed rules require applicators to submit  
8 information beyond what is required in Act 45. As a business advocate, she is concerned that  
9 the amount of information might present a burden on applicators and farmers. Board Member  
10 Evans asks if there is a balance between public safety and reasonable reporting requirements.  
11  
12 Ms. Matsumura says that additional information required in the proposed rules is already  
13 required to be kept by the user by other rules outside of Act 45.  
14  
15 Chairperson Shimabukuro-Geiser asks if the Board has copies of Act 45.  
16  
17 Mr. McHugh passes out copies of Act 45 to the Board.  
18  
19 Chairperson Shimabukuro-Geiser asks if Ms. Matsumura can read the reporting requirement  
20 section within Act 45.  
21  
22 Ms. Matsumura reads out section 149A-26 titled “Post-application reporting of pesticide use”  
23 from Act 45.  
24  
25 Deputy Attorney General Yee states that the proposed rules appear to require the production of  
26 all information required by Act 45, and that under the proposed rules, this information will be  
27 available to all in the form of reports. Deputy Attorney General Yee asks why the proposed  
28 rules will have information provided on a regular basis, rather than available only on request.  
29  
30 Ms. Matsumura said that under the original intent of the rules, it would be unfortunate to make  
31 two sets of reports, so we would prefer to just have them submitted. Additionally, a lot of other  
32 items required for reporting are already on the pesticide use label, and there are no privacy  
33 issues associated with those items.  
34  
35 Deputy Attorney General Yee asks the presenters whether they had an opportunity to review  
36 the testimony presented by the public today, particularly regarding the issues surrounding the  
37 reporting requirements between a “user” and an “entity”.  
38  
39 Deputy Attorney General Jennifer Waihee-Polk appears before the Board and says that in  
40 previous versions of Act 45, the bill originally limited reporting requirements to corporations or  
41 business entities. However, future drafts of the bill included “user”, with a committee report  
42 explaining that the intention for this change was to make reporting requirements to all users of  
43 pesticides, rather than only corporations or businesses. The DOA interpreted the committee  
44 report to mean the intent of the Act was to make the reporting requirements of restricted use  
45 pesticides apply to every user and not just at the entity level.  
46  
47 Board Member Comerford asks whether the Act also require RUPs to only be applied by  
48 certified applicators.  
49  
50 Deputy Attorney General Jennifer Waihee-Polk said “no”.

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Ms. Matsumura says that only certified applicators, or those under the direct supervision of a certified applicator may apply RUPs. The certified applicator must report everything that he/she did, as well as actions by anyone acting under the direction of the certified applicator.

Board Member Ley said that she doesn't want to delay this agenda item, but the Board received these packets late, and in order to adequately digest all the material, she needs more time. Her preference would be to delay board action until the Board receives a comprehensive report that clearly summarizes prior recommendations from the Board on this proposed rule change and advisory committee reports on the proposed rules. This proposed rule change is a contentious issue between members of the public and entities/users of RUPs.

Chairperson Shimabukuro-Geiser asks if there is a motion to defer this agenda item.

Motion to Defer: Ley/Mina.

Board Member Comerford says that if a delay will be approved, he would like the Board to give the DOA more specific instructions on what is needed in the comprehensive report.

Board Member Cabral said that in the past two board meetings, it was very clear to him what the Board recommendations were. Both Mr. McHugh and the Deputy Attorney General agreed with the Board's recommendations in the September 2018 meeting.

Deputy Attorney General Yee asks the Board whether it would like the comprehensive report to look at the issues relating to the deviation from Act 45 and to explain where and why there were any deviations from Act 45.

Board Member Evans said that she is satisfied today by the presenter's response why the proposed rules attempts to bundle information into one report rather than several reports.

Board Member Tanaka asks if this proposed rule change is time sensitive.

Mr. McHugh says "no", not in particular.

Ms. Matsumura says there are a couple of pesticides that will not be able to be applied unless these proposed rules move forward.

Board Member Hong asks whether if it's ultimately the licensed applicator that submits the report to the DOA, regardless of whether a farmer or a business entity is the one applying the RUP.

Ms. Matsumura says "yes".

Board Member Comerford asked whether the proposed rules are trying to be consistent with Act 45, but also trying to be consistent with other rules. While the proposed rules may not be specific to Act 45, where the language differs from Act 45, those differences are from previous proposed rule changes that the DOA was trying to pass before Act 45 became law.

Ms. Matsumura says "yes." The DOA started the process of a proposed rule change back in

1 December 2015, but when Act 45 was passed, we attempted to incorporate the mandated  
2 changes in Act 45 to our existing proposed rule changes to avoid having to do two rule changes.

3  
4 Board Member Cabral said that if you follow the language in Act 45, it doesn't change anything  
5 else besides the record keeping and reporting. It is very specific as to what was supposed to be  
6 changed.

7  
8 Ms. Matsumura said that Act 45 and the past proposed rule changes are in the same section.  
9 When Act 45 was passed, the DOA absorbed the mandated changes in Act 45 to our existing  
10 proposed rule changes.

11  
12 Board member Evans said that she has no concern with bundling proposed rule changes  
13 together to have a more efficient process.

14  
15 Chairperson Shimabukuro-Geiser said that there is a motion on the floor and counsel suggests  
16 language in the motion to defer until we get more information from staff about the deviations  
17 from Act 45.

18  
19 Chairperson Shimabukuro-Geiser asks Board Member Ley if she would like to amend her  
20 motion to include when staff needs to submit the comprehensive report to the Board for review.

21  
22 Board Member Ley says preferably three weeks from now, she would like DOA staff to submit to  
23 the board members a comprehensive report on the proposed rule changes with the following  
24 issues addressed: (1) within the proposed rule changes, explain where and why there were any  
25 deviations from Act 45; (2) what are the other reporting requirements outside of Act 45 the  
26 proposed rules refer to; (3) what did the Board discuss and recommend at the two prior Board  
27 meetings; (4) pesticide advisory meeting minutes for this proposed rule change; and (5), other  
28 documents or sources that DOA staff relied on in preparing these proposed rules.

29  
30 Motion for approval: Ley/Mina.

31  
32 Vote: Approved, 6/0. Board Members Evans and Hong against. Board Member Case abstains.  
33 Board Member Cabal recused.

34  
35 Chairperson Shimabukuro-Geiser calls a five-minute break at 11:27 a.m.

36  
37 Chairperson Shimabukuro-Geiser calls the board back into session at 11:34 a.m.

- 38  
39 3. Request for: (1) Preliminary Approval of Proposed Amendments to Chapter  
40 4-71, Hawaii Administrative Rules (HAR), "Non-Domestic Animal Import  
41 Rules," that Include Amendments Changing the List Placement of Water  
42 Buffalo, Bubalis bubalus, and (2) Authorize the Chairperson to Schedule a  
43 Public Hearing and Appoint a Hearing Officer in Connection with the  
44 Proposed Amendments to Chapter 4-71, HAR. (See Attached Summary of  
45 Proposed Amendments.)

46  
47 Chris Kishimoto, Entomologist, PQB, presents as submitted. Staff recommends approval.  
48

1 Mr. Kishimoto said that there are processing fees of \$2,500 that the applicant would have to pay  
2 and has informed the applicant.

3  
4 Chairperson Shimabukuro-Geiser asks Mr. Kishimoto to summarize the request by PQB on this  
5 agenda item.

6  
7 Mr. Kishimoto summarizes the recommendations and mentions that it is up to the Board and the  
8 applicant on which list it wants to place *Bubalis bubalus*.

9  
10 Motion for approval: Cowell/Evans.

11  
12 Board Member Case said that for disclosure purposes, the applicant before us today, Mr. Don  
13 Heacock, Kauai Organic Agroecosystems, was once an employee of DLNR.

14  
15 Chairperson Shimabukuro-Geiser calls up Mr. Heacock to the Board.

16  
17 Mr. Heacock said it is incorrect to assume that because *Bubalis bubalus* is in the same category  
18 as *Bovidae*, that they are non-domestic. *Bubalis bubalus* has been domesticated for over 5,000  
19 years. There are a 198 million buffalo around the world and are a symbol of sustainable  
20 agriculture. While there are wild buffalo and bison, there are no wild *Bubalis bubalus* – they are  
21 different species.

22  
23 Mr. Heacock said that his recommendations submitted July 10, 2018 were changed by Mr.  
24 Jonathan Ho, Manager, PQB. Mr. Ho changed a lot of my recommendations including  
25 proposed definitions of domestic water buffalo. These changes have been confusing for the  
26 Board and members of the public following this issue.

27  
28 Mr. Heacock requests that a board member move to replace this agenda item with the following:  
29 (1) direct DOA to immediately fulfill the provisions of public information and public notice  
30 requirements that will support a board order; (2), add *Bubalis bubalus* as a domestic species to  
31 the exemption list of animals appended in chapter 4-71, HAR; (3), accept his petition for rule  
32 making to amend chapter 4-71, HAR; (4), initiate rulemaking to amend chapter 4-16, HAR; and  
33 (5), combine and expedite rule making procedures as a single unified collaborative effort  
34 between PQ and AI.

35  
36 Mr. Heacock said that he does not believe a public hearing is necessary for the above requests.

37  
38 Chairperson Shimabukuro-Geiser said that she recalls that Mr. Heacock has been a proponent  
39 of this issue since May 2018, and she thinks the Board remembers and understands that.  
40 Chairperson Shimabukuro-Geiser asks if the request before the Board would be to place  
41 *Bubalis bubalus* on the “b” list.

42  
43 Mr. Kishimoto says he thinks Mr. Hancock wants to include *Bubalis bubalus* in one of the  
44 exemptions of *Bovidae*.

45  
46 Chairperson Shimabukuro-Geiser asks whether placing it in an exemption list would then place  
47 the administration in the realm of PQ or AI.  
48

1 Mr. Kishimoto says it depends in part if Mr. Heacock's request is to have *Bubalis bubalus*  
2 regulated like other domestic animals such as sheep, goats, and horses. If so, *Bubalis bubalus*  
3 would most likely be regulated by AI.  
4  
5 Chairperson Shimabukuro-Geiser asks whether we would be under AI's administrative rules, if  
6 *Bubalis bubalus* is regulated under AI.  
7  
8 Mr. Kishimoto says "yes."  
9  
10 Chairperson Shimabukuro-Geiser says if the Board by action placed *Bubalis bubalus* in PQ's  
11 exemption list "B", then AI could work with Mr. Heacock in the meantime, because *Bubalis*  
12 *bubalus* would be in the b-list and we could treat it like cattle while we go through AI's  
13 rulemaking process.  
14  
15 Board member Cabral excuses himself at 11:59 a.m.  
16  
17 Mr. Kishimoto says that there are requirements where the public would need to be notified at  
18 least a month in advance for any proposed rule changes in chapter 4-71, HAR. Mr. Kishimoto  
19 said he is not sure if you can change the definition section and thinks that *Bubalis bubalus*  
20 would also need to be inserted in the definition section.  
21  
22 Mr. Heacock said that adding an animal to the exemption list does not require a public hearing.  
23  
24 Board Member Comerford said that he agrees that *Bubalis bubalus* is a domesticated animal  
25 and is not sure why the Board has taken so long in dealing with this issue. Board Member  
26 Comerford says that if the applicant has a business plan that requires insemination and  
27 movement of animals, he suggests that the Board do what it can to expediate what needs to be  
28 done.  
29  
30 Board Member Cowell asks whether the existing agenda item, if passed as is, would help Mr.  
31 Heacock.  
32  
33 Chairperson Shimabukuro-Geiser makes a motion that the Board enter into executive session to  
34 discuss options.  
35  
36 Motion for Approval: Ley/Case.  
37  
38 Vote: Approved, 9-0. Board Member Cabral absent.  
39  
40 The Board enters into executive session at 12:07p.m.  
41  
42 Chairperson Shimabukuro-Geiser makes a motion to end the executive session.  
43  
44 Motion to Accept: Cowell/Comerford.  
45  
46 Vote: Approved, 9-0. Board Member Cabral absent.  
47  
48 Chairperson Shimabukuro-Geiser calls the Board back into session at 12:25 p.m.  
49

1 Chairperson Shimabukuro-Geiser asks if anyone else from the public would like to testify on this  
2 agenda item.

3  
4 Cathy Goeggel, representing Animal Right's Hawaii, testifies that she is opposed to allow new  
5 animals to come into the State. She noticed in the agenda item documents that several of the  
6 scientists reviewing this request recommended disapproval. Captive animals becoming  
7 destructive/feral is an all too common occurrence, and she is concerned about bringing very  
8 heavy animals into Hawaii. Additionally, if allowed to be imported, this has the potential to go  
9 beyond just one farm, as other farmers around the State may be interested in importing this  
10 animal. She suggests that an Environmental Assessment be done before voting on this agenda  
11 item, as allowing *Bubalis bubalus* here has potential environmental issues.

12  
13 Board Member Cowell withdraws his previous motion to accept the agenda item and makes a  
14 new motion to propose to put water buffalo on the restricted b-list.

15  
16 Board Member Comerford seconds.

17  
18 Board Member Case says that how we define what is domestic/feral/wild is a larger issue that  
19 the Board should explore in the future. Theoretically all domestic animals were wild and become  
20 feral if they are out in the wild.

21  
22 Vote: Approved, 9-0. Board Member Cabral absent.

23  
24 Chairperson Shimabukuro-Geiser directs staff to work on placing water buffalo on the domestic  
25 category on this list, and to work with the applicant to determine what the next steps are.

26  
27 V. OLD BUSINESS

28  
29 No old business.

30  
31 VI. NEW BUSINESS

32  
33 1. Petition to Add Chapter 4-70A Restricted Plant Rules and List to the Hawaii  
34 Administrative Rules, Non-Domestic Animal Quarantine Restricted Plant Rules.

35  
36 Board Members Comerford, Cowell, Mina, and Ley leave at 12:30 p.m.

37  
38 Chairperson Shimabukuro-Geiser asks whether the Board meeting today can continue, if the  
39 Board doesn't have quorum.

40  
41 Deputy Attorney General Yee says he believes the meeting can continue without quorum;  
42 however, no board actions may take place without quorum (5 board members currently  
43 present).

44  
45 Chairperson Shimabukuro-Geiser says that even though the Board doesn't have quorum, she  
46 would like to give the presenters for this agenda item the option to present since they have been  
47 waiting all this time.

48  
49 Chelsea Arnott, Planner, CGAPS, and Chrissy Martin, Manager, CGAPS, presents as  
50 submitted. CGAPS staff recommends approval.

1  
2 Chairperson Shimabukuro-Geiser calls up Lance Sakaino, Plant Specialist, PQB.  
3  
4 Board Member Cowell returns at 12:35 p.m., saying that his flight was delayed.  
5  
6 Mr. Sakaino relays comments made by Jonathan Ho, Manager, PQB, regarding this agenda  
7 item. Mr. Sakaino says that on its face, the petition seems to be sound; however, PQB is  
8 requesting that the Board defer this agenda item until a full review by PI and various  
9 stakeholders can be done, including reviews by PI sub-committee on plants and advisory  
10 committee on plants and animals. PQB preference would be to finalize the existing rule  
11 changes for *Myrtaceae* before moving on to any other rule changes. The *Myrtaceae* rule  
12 change is currently before the Governor to review and approve.  
13  
14 Board Member Case asks if CGAPS has a comment on the *Myrtaceae* process.  
15  
16 Ms. Martin said that CGAPS has been working with DOA since 2005 to restrict the *Myrtle* family  
17 of plants to protect native ohia species. CGAPS has also been working to try and get the  
18 proposed *Myrtaceae* rule change approved for public hearing, but she is not sure why it is still  
19 waiting for signature from the Governor. On the federal side, CGAPS is working on domestic  
20 importation rules, and this is moving parallel to the State's proposed rule changes. Ms. Martin  
21 said that this current agenda item proposes to fix an outstanding issue that has long been  
22 flagged as a gap in Hawaii's biosecurity. Currently, there is no ability to list species that have a  
23 very high probability of being invasive to Hawaii. This petition will help close the biosecurity  
24 gap.  
25  
26 Board Member Case asks, process-wise, if this petition is approved, would it then go straight to  
27 public hearing, or will it still have to go through PI's committees.  
28  
29 Mr. Sakaino says that the process would be similar to the process for the *Myrtaceae* rule  
30 change.  
31  
32 Board Member Case asks why the DOA can't also start the process on this petition concurrently  
33 with the ongoing *Myrtaceae* rule change.  
34  
35 Chairperson Shimabukuro-Geiser says that PQB has limited staff and to be more efficient, it is  
36 preferred that staff focus their efforts on one rule change before taking on another proposed rule  
37 change.  
38  
39 Board Member Evans asks whether the Board would have the ability to place noxious invasive  
40 species on this list in the future, without having to go through the whole process of amending  
41 the rules again.  
42  
43 Board Member Case says that it would be preferable to be able to place additional plants on the  
44 list without having to go through public hearings.  
45  
46 Deputy Attorney General Yee says that if there is a provision set forth in HRS that allows an  
47 exemption, it would be OK. The Board cannot create an exemption only through HAR- the  
48 exemption needs to be in HRS. The exemption in HRS also needs to specifically point to the  
49 particular section in the HAR it is exempting from the normal rule making process, and in this



1 case, he is not sure if there is an HRS exemption that points to section 4-70A, HAR, and you  
2 may need to get an HRS change to make this exemption possible.

3  
4 Motion to Approve: Case/Evans.

5  
6 Vote: Motions fails to pass, 5-1. Chairperson Shimabukuro-Geiser voting against. Comerford,  
7 Mina, Ley, and Cabral absent.

8  
9 Chairperson Shimabukuro-Geiser says that she voted against this motion because she wants a  
10 better understanding of how it will affect the ongoing *Myrtaceae* rule change. Chairperson  
11 Shimabukuro-Geiser says that it is PQB's preference to finish the *Myrtaceae* rule change, and  
12 asks whether approval of this motion would require PQB to work on this motion immediately.

13  
14 Mr. Sakaino says "no."

15  
16 Deputy Attorney General Yee says that just to be clear, this motion would be to approve the  
17 petition before us. If approved, the petition's proposed rule change would then go to the sub-  
18 committee on plants and then to the advisory committee on plants and animals, then back to the  
19 Board for approval, then up to the Governor for approval, and then to public hearing.

20  
21 Board Member Case makes a motion to approve, with the above following procedural process  
22 outlined by Deputy Attorney General Yee. Evans seconds.

23  
24 Vote: Approved: 6-0. Comerford, Mina, Ley, and Cabral absent.

25  
26 VII. ADJOURNMENT OF REGULAR MEETING

27  
28 Meeting adjourned at 12:51 p.m.

29  
30  
31  
32  
33 Respectfully submitted,

34  
35  
36  
37 Noa K. Ching  
38 Board Secretary

