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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 April 23,
8 2019 at 9:06 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 Randy Cabral, Member-At-Large
17 Mary Alice-Evans, Designated Representative of Director of Department of Business,
18 Economic Development & Tourism (DBEDT), Ex Officio Member
19 Suzanne Case, Chairperson, Department of Land and Natural Resources (DLNR), Ex
20 Officio Member
21 Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human
22 Resources (CTAHR-UH), Ex Officio Member
23

24 **Others Present:**

25 Irene Sprecher, Hawaii Department of Land and Natural Resources (DLNR)
26 Leo Obaldo, Hawaii Department of Agriculture (HDOA)/Plant Quarantine Branch (PQB)
27 Liz Xu, HDOA/Aquaculture & Livestock Services
28 Thee See, Alii Agricultural Farm
29 Justin Goggins, DLNR, Division of Aquatic Resources (DAR)
30 Morris Atta, HDOA/Agricultural Resource Management Division (ARM)
31 Russel Tsuji, DLNR, Land Division
32 Todd Low, Agribusiness Development Corporation
33 John Oliva, Kohala Mountain Fish Company
34 Barry Cheung, DLNR, Land Division
35 Victoria Matsumura, HDOA/Pesticides Branch
36 Jennifer Waihee-Polk, Attorney General's Office
37 Greg Takeshima, HDOA/Pesticides Branch
38 Scott Nishimoto, HDOA/PQB
39 John McHugh, HDOA/Pesticides Branch
40 Janet Ashman, Hawaii Farm Bureau Federation
41 Glenn Muranaka, HDOA/Chairperson's Office
42 Bobby Farias, Kunoa Cattle Company
43 Kevin Hoffman, HDOA/Plant Industry
44 Techi Lancaster, HDOA/PQB
45 David Lingenfelter, HDOA/PQB
46 Trenton Yasui, HDOA/PQB
47 Fred Mencher, Hawaii Aquaculture and Aquaponics Association
48 Don Heacock, Kauai Organic Agroecosystems
49 Renee Pinel, Western Plant Health Association

1 Andre Seale, University of Hawaii
2 Bryan Yee, Attorney General's Office
3 Linda Rosehill, Rosehill and Associates
4 Brian Nielson, DLNR/DAR
5 Delanie Prescott-Tate, Attorney General's Office
6 Donovan Cabebe, Pesticide Action Network, North America
7 Kealii Lopez, Western Plant Health Association
8 Jonathan Ho, HDOA/PQB
9 Christopher Kishimoto, HDOA/PQB
10 Isaac Maeda, HDOA/Animal Industry Division
11 David Penn, Penn Law Center
12 Autumn Ness, Hawaii Center for Food Safety
13 Jeri Kahana, HDOA/Quality Assurance Division

14
15 II. APPROVAL OF MINUTES FROM 2/26/19 MEETING:

16 Motion to Approve: Tanaka/Evans.

17
18 Board Member Hong mentions a typo on page 12 line 32 of the draft board meeting minutes
19 from the 2/26/19 meeting. He notes that the vote should be "6/2" instead of "6/0".

20
21 Chairperson Shimabukuro-Geiser makes a motion to approve with Board Member Hong's
22 corrections.

23
24
25 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

26
27 III. INTRODUCTIONS

28
29 There were no introductions.

30
31 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

32
33 A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

- 34
35 1. Request for Consent to Waive Performance Bond Requirement for
36 General Lease No. S-5811; Lessee: Andy Trang; (3) 3-1-004:002,
37 Lot No. 02, Kamaee-Wailua, North Hilo, Island of Hawaii

38
39 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff
40 recommends approval.

41
42 Motion to Approve: Evans/Tanaka.

43
44 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

- 45
46 2. Request for Approval for Issuance of Right-of-Entry to Christina McArthur, Jeffrey
47 McMoyler, Heather Pelletier, and their authorized representatives for ingress and
48 egress over and through TMK: (3)4-9-011:002, Ili of Kaohia, Waipio Valley,
49 Hamakua, Island of Hawaii, encumbered by Revocable Permit No. S-7839.

1 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff
2 recommends approval. Mr. Atta said this request requires the express consent of the
3 permittees. Unless the permittees agree, we are interfering with their right to quiet enjoyment of
4 their permit.

5
6 Motion to Approve: Ley/Tanaka.

7
8 Board Member Tanaka asks if one year is enough to settle the issue.

9
10 Mr. Atta said that this has been an ongoing issue for years. He heard that Bishop Museum has
11 been holding community meetings and is considering re-opening prior access called the "middle
12 road" that crosses the stream, but does not have more information of the status on that potential
13 option.

14
15 Board Member Comerford asks whether the permittees are getting compensation for the
16 agreement, as they are losing some of the use of their land.

17
18 Mr. Atta said that the permittees were allowing this for years, but recently the permittees got
19 upset that an embankment that was being used was becoming eroded and brought the concern
20 up to ARM. ARM tried to act as a mediator and asked the permittees what it would take for
21 them to allow the ongoing use. The permittees reasoned that if people are going to use the
22 path, they should maintain the path, and the maintenance shouldn't cost the permittees any
23 money. Those were the terms in a nutshell, and ARM was willing to work with the permittees
24 and the community to provide a temporary solution.

25
26 Board Member Comerford asks whether there is a legal mechanism to ensure that the users of
27 the path follow through with the maintenance.

28
29 Mr. Atta said the users of the path have agreed to maintain any wear and tear of the path and to
30 hold a standard million-dollar liability insurance policy. There is no particular enforcement
31 mechanism to require the users to maintain the path. There is a "tenuous" peace amongst the
32 residents.

33
34 Chairperson Shimabukuro-Geiser notes that under item d, it allows the Chairperson to continue
35 the right of entry for an additional year.

36
37 Mr. Atta said "yes."

38
39 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

- 40
41 3. Amend Prior Board Approval Dated October 23, 2018 Awarding Waianae
42 Agricultural Park Leases to Various Awardees and
43 Back-Up Positions; TMK (1) 8-5-034:002, 013, 016 and 017; Waianae
44 Agricultural Park, Waianae, Island of Oahu, Hawaii

45
46 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff
47 recommends approval.

48

1 Mr. Atta said that in the prior Board meeting held October 23, 2018, ARM's board submittal
2 ended up being approved for 35 years, but the public notice was for 45 years. ARM would like
3 to correct the award from 35 to 45 years.

4
5 Chairperson Shimabukuro-Geiser asks if there is a motion to amend the lease term from 35 to
6 45 years.

7
8 Motion to Approve: Evans/Comerford.

9
10 Vote: Approved, 8/0. Board Member Mina and Cowell absent.

11
12 Chairperson Shimabukuro-Geiser asks if there is a motion to approve the request for approval
13 to award the Waianae Agricultural Park leases to the awardee and back-up positions.

14
15 Motion to Approve: Tanaka/Comerford.

16
17 Board Member Cabral asks whether these leases are for 45 years.

18
19 Mr. Atta said "yes."

20
21 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

- 22
23 4. Request for Consent to Assignment of General Lease No. S-5501; Doris E. Naki,
24 Successor Trustee, Assignor, to Doris E. Naki and Naki Farms LLC, Assignee;
25 TMK: (1) 4-1-010:029, Lot 29; Waimanalo Farm Lots, Koolaupoko, Waimanalo,
26 Island of Oahu, Hawaii

27
28 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff
29 recommends approval.

30
31 Motion to Approve: Cabral/Evans.

32
33 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

- 34
35 5. Request for Approval to Accept the Set Aside and Issuance of Immediate
36 Management Right-Of-Entry for Lot No. 12022; TMK: (1) 9-1-031:001; Honouliuli,
37 Ewa, Island of Oahu, Hawaii

38
39 Presentation by Morris Atta, Agricultural Lands Branch Manager, ARM, as submitted. Staff
40 recommends approval.

41
42 Motion to Approve: Evans/Cabral.

43
44 Board Member Evans asks that if DLNR wishes to exercise their right for PV uses, would that
45 be a separate parcel, or would DLNR be potentially putting PV over the feedlot.

46
47 Mr. Atta said that it is his understanding that DLNR is reserving the air development rights in
48 conjunction with the existing feedlot, but there are no current plans to develop/exercise that right
49 at this time. DLNR is just reserving the rights.

50

1 Board Member Case said that this parcel was under contract for development for renewable
2 energy for 110 acres and asks how much acres the feedlot will take.

3
4 Mr. Atta said that he is not sure of the specific acreage request, but he thinks the lessee is
5 looking to use a significant portion of the parcel.

6
7 Board Member Case said it is her understanding that the language for the set-aside is general
8 and not exclusive to only air rights over the feedlot, but any PV system built cannot
9 unreasonably interfere with the use of the land by the DOA. Board Member Case said that she
10 also believes that the DOA and their tenants can install PV/renewable energy systems, if the
11 power generated is used for agricultural operations on the land.

12
13 Mr. Russel Tsuji, Land Division Administrator, DLNR, testified in support of this agenda item.
14 Mr. Tsuji said that this parcel was originally designated to DLNR as one of the few industrial
15 lands within its portfolio, and DLNR was initially hoping they could lease this parcel to a PV
16 developer to generate revenue. All money generated would go into DLNR's special funds, and
17 some of these special funds would be transferred to other programs within DLNR that are
18 underfunded. Ultimately, however, the PV developer could not secure a power purchase
19 agreement with HECO. Meanwhile, the Chairperson of the DOA had been inquiring for several
20 years about a possible transfer for this parcel. The DOA has other lands abutting this parcel
21 that we have given to the DOA, and after this transfer we would not have any lands within the
22 Campbell Industrial Park. We had asked that the DOA be responsible for managing the 110
23 acres including areas down to the shoreline. The shoreline areas do not pose any special land
24 management issues. Just typical issues such as occasional trespassers and squatters.

25
26 Board Member Ley said that the DOA does not usually manage submerged lands, and it was
27 her understanding that submerged lands uniformly fall under DLNR's jurisdiction. What would
28 happen, for example, if a boat washed ashore.

29
30 Mr. Tsuji said that mauka to the shoreline would generally not be considered "submerged
31 lands". As far as he knows, there has only been typical land management issues for this parcel.

32
33 Board Member Hong said his understanding is that there are two reasons why this 110-acre
34 transfer is being requested. First, for the reestablishment of the feedlot to support the adjacent
35 slaughter house; and two, to provide necessary water allocation for the slaughterhouse. Board
36 Member Hong asks why the slaughterhouse can't just get a larger water meter permit.

37
38 Mr. Atta said that the water allocation is in part based on the size of the parcel and what has
39 been allocated for a specific use. His understanding is that the slaughter house parcel does not
40 have a sufficient water allocation to meet safety/health standards, and the slaughterhouse is
41 currently operating on borrowed water.

42
43 Bobby Farias, Co-founder of Kunoa Cattle, approaches the Board.

44
45 Chairperson Shimabukuro-Geiser asks Mr. Farias to describe the ranch's current operations
46 and water needs.

47
48 Mr. Farias said the water allocations are appropriated by land size. The current slaughterhouse
49 was built for a higher water allocation than what we currently have. If we run the
50 slaughterhouse to capacity, our water needs would exceed our allocation.

1
2 Board Member Hong asks whether Kunoa Cattle has attempted to get an exemption for the
3 allocation calculation.

4
5 Mr. Farias said he doesn't think they would need additional water outside of the allocation from
6 the two parcels. Cattle operations in the State do not have the capability to de-stock their barns
7 when the weather is bad. To keep the numbers going, ranchers need to be protected from dry
8 spells. An expandable footprint is necessary for the growing protein demand and production
9 within the State.

10
11 Board Member Case asks what the cattle eat when being stored. She wants to understand the
12 operation as much as possible in case DLNR decides to exercise their PV rights. She does not
13 want to interfere with the cattle operation.

14
15 Mr. Farias said the cattle are grass fed. We purchase bales of grass from a local operation in
16 Kauai and ship the bales. The idea is to thin out the trees to maintain a pastoral setting, and if
17 we need additional feed it would be forage feed and not grain. We are looking to implement
18 practices such as being carbon neutral/positive, and PV is a component to that objective. We
19 are considering PV panels 6-7 feet above ground, which would not inhibit our operation.

20
21 Board Member Hong asks whether the PV panels would inhibit the grass underneath.

22
23 Mr. Farias said it is possible to stagger the panels in a grid formation to allow sunlight.

24
25 Board Member Case says she thinks the best way to go about PV on this property is to do a co-
26 development: a portion of the energy generated would go to the cattle operations, and the
27 leftover would go to DLNR to sell.

28
29 Vote: Approved, 8/0. Board Members Mina and Cowell absent.

30
31 Chairperson Shimabukuro-Geiser calls the next agenda item out of order. The Board will hear
32 the Plant Quarantine Branch's agenda items first.

33
34 Chairperson Shimabukuro-Geiser calls a recess at 9:51 a.m.

35
36 Chairperson Shimabukuro-Geiser calls the meeting back to order at 10:00 a.m.

37
38 B. PLANT INDUSTRY DIVISION

39
40 Plant Quarantine Branch
41 Invertebrate and Aquatic Biota:

- 42
43 2. Request to: (1) Allow the Importation of Nile Tilapia, *Oreochromis niloticus*, a
44 Fish on the List of Restricted Animals (Part B), by Permit, for Aquaculture
45 Production, by Kohala Mountain Fish Company, LLC; and (2) Establish Permit
46 Conditions for the Importation of Nile Tilapia, *Oreochromis niloticus*, a Fish on
47 the List of Restricted Animals (Part B), by Permit, for Aquaculture Production,
48 by Kohala Mountain Fish Company, LLC.
49

1 Techie Lancaster, Acting Invertebrate & Aquatic Biota Specialist, PQB, presents as submitted.
2 Staff recommends approval.

3
4 Motion to Approve: Comerford/Evans.

5
6 Board Member Case said that pages 2 through 20 of the submittal for this agenda item appear
7 to have been taken directly from Kohala Mountain's application, and these pages include the
8 assessment of invasiveness for Nile Tilapia. Board Member Case asks whether this is correct,
9 and if the DOA also independently assesses invasiveness.

10
11 Ms. Lancaster said "yes". The DOA does not directly asses invasiveness. The DOA, however,
12 assesses the risk of the proposed facility.

13
14 Board Member Case asked what the advisory committee discussed/concluded for this review.

15
16 Mr. Jonathan Ho, Branch Manager, PQB, said that regarding the committees, this request went
17 before them twice. At the first meeting, the issue of invasiveness was brought up, and the
18 committee deferred the request. After the first deferral it came back to the committee for the
19 second time, and the issue of invasiveness was brought up again. One of the big issues
20 discussed was the potential for transfer because the applicant does discuss a co-op. In regard
21 to risk, while the DOA does not have a formal risk assessment process, risk is addressed when
22 we make mitigation requirements on the applicant. The DOA places restrictions or conditions to
23 prevent the specimen from getting out of the facility.

24
25 Board Member Case said that according to the application submitted by the applicant, they want
26 to sell live fish to other operators, and asks how the DOA would address additional operations
27 potentially receiving Nile Tilapia from the applicant.

28
29 Mr. Ho said that the DOA regulates importation and transportation. Should additional
30 operations want to receive live fish, they would need to apply to get certified and their facility
31 would need a site inspection. The Board, however, does have the ability to further restrict such
32 transfers if it wants to, including requiring Board approval for each additional facility.

33
34 Chairperson Shimabukuro-Geiser calls up members of the public to testify.

35
36 Justin Goggins, Invasive Species Biologist, Division of Aquatic Resources (DAR), says that
37 DAR is opposed to this measure. Nile Tilapia grows fast and is adaptable to various
38 environments. DAR conducted a thorough risk assessment for this species using 3 different risk
39 assessment tools: (1) the Hawaii Marine Invasiveness Species Risk Assessment; (2) Fish
40 Scoring Kit; and (3), the Canadian Marine Invasiveness Screening Tool. 2 of the 3 tools
41 categorized Nile Tilapia as high risk, with the remaining tool listing Nile Tilapia as a moderate
42 risk. Notably, the Hawaii Marine Invasiveness Species Risk Assessment tool listed Nile Tilapia
43 as a "Tier 1" high risk and did not recommend live importation or trade of this species within the
44 State. Allowing importation of this species will be counterproductive in reaching the State's
45 biosecurity goals. DAR/DLNR has opposed this species for importation as far back as 1995,
46 and our testimony/position regarding importation has been consistent for the past 20 years. If
47 this species is allowed to enter the State, it will eventually enter into our waterways and
48 eradication will become almost impossible. There are very few management tools to control
49 invasive fish without killing native species within the same habitat. DAR recommends that the

1 Board not approve this agenda item. If the Board approves this agenda item, DAR
2 recommends that no live transfer/sale of this fish be allowed.

3
4 Board Member Hong says that there is an assertion that through DNA testing, *niloticus* may
5 already be established in the wild in a hybrid setting. There is also an assertion that *niloticus* is
6 not as aggressive as an already established variant of tilapia called “black chin”, and that the
7 black chin tilapia is more widespread than *niloticus* could ever be.

8
9 Mr. Goggins said he has not done a deep review into the literature for other species of tilapia.
10 His assessment of black chin is that we can't necessarily assume that just because there is
11 another species that is more aggressive or widespread, it is OK to introduce lesser aggressive
12 species that are still invasive. We don't need to add the potential invasive risks of a new
13 species, and there are too many uncertainties of what *niloticus*' impact could be on the
14 environment. If *niloticus* were to escape into the wild, it could hybridize with another tilapia
15 species to produce a faster, more salt tolerant species. This, however, is all speculation and the
16 risk of uncertainty is too great.

17
18 Board Member Hong asks whether *niloticus* exists anywhere in the wild as a hybrid today.

19
20 Mr. Goggins said he is not certain.

21
22 Board Member Comerford asked if Mr. Goggins could explain in more detail the risk tool that
23 listed *niloticus* as “moderate risk”. Board Member Comerford also asked if Mr. Goggins could
24 comment on the fact sheet the DOA submitted with this agenda item.

25
26 Mr. Goggins said the one tool that did not identify *niloticus* as high risk, rated *niloticus* as
27 “moderate to high risk” which is still not a good rating. Mr. Goggins said that he is not sure who
28 initially allowed tilapia into the state in the 1980s. Regardless, our science has been updated
29 since the 1980s and just because tilapia was allowed for importation back then, it shouldn't
30 necessarily mean it is OK to allow additional tilapia variants for importation today. While he has
31 heard of Nile tilapia being established in some streams, he does not believe that Nile tilapia is
32 established everywhere in the State.

33
34 Brian Neilson, Division Administrator, DAR, comes up before the Board to testify. Mr. Neilson
35 says that he supports Mr. Goggins' testimony. He has only heard of one stream where Nile
36 tilapia may be established, but it is certainly not prevalent throughout the State.

37
38 Board Member Comerford asks whether it is true that Nile tilapia would eventually escape into
39 the wild, if the applicant is granted a permit to import.

40
41 Mr. Neilson said that there has definitely been a lot of past examples of this happening.
42 Preventing invasive species from entering the State has proven to be the best way to manage
43 invasive species.

44
45 Board Member Evans asks whether there are any tilapia species currently commercially farmed
46 in the State.

47
48 Ms. Lancaster said Mozambique tilapia is commercially farmed.
49

1 Board Member Hong said that he is uncertain with some of what he has read and what he is
2 hearing today. Board Member Hong said he would agree that *niloticus* would be invasive in an
3 environment without other types of tilapia. However, if you already have tilapia in the
4 environment, it is not clear what type of additional impact another species of tilapia would have
5 to the environment if it were potentially introduced. He would like to see a study done on
6 current intrusion of tilapia within the State, and the potential impact *niloticus* would have if
7 introduced in environments that have existing tilapia populations.

8
9 Board Member Tanaka asks if tilapia can survive in both salt water and freshwater.

10
11 Mr. Nielson said black chin tilapia has a high salt tolerance, but Nile tilapia has a very low salt
12 tolerance.

13
14 Board Member Comerford asks if this measure is not approved, would this species still be
15 allowed in the State for research purposes.

16
17 Ms. Lancaster said that the University of Hawaii has been allowed to bring this species in for
18 research.

19
20 Mr. Ho said that when the original importation was done by Board action, there were no
21 administrative rules at the time. When administrative rules regarding importation came out in
22 the 90s, this species was put on the Restricted A List, which allows importation only for research
23 purposes.

24
25 Mr. Leonard Obaldo, Aquaculture & Livestock Support Services, comes up before the Board to
26 testify. Mr. Obaldo said that the fact sheet we provided to the Board today from this agenda
27 item has been taken from testimony/research that has been compiled since 2014.

28
29 Board Member Case asks what Mr. Obaldo's definition of "sustainable" is.

30
31 Mr. Obaldo says that he believes "sustainable" has several elements including environmental,
32 social, and economic. If farmers can import Nile tilapia, it would help their farms be more
33 financially sustainable. However, the farmers would also need to be responsible for the
34 environment. Mr. Obaldo says that modern aquaculture facilities have much higher standards
35 of safety/safeguards.

36
37 Board Member Case asks if the scientists cited in the fact sheet all work to support tilapia
38 aquaculture.

39
40 Mr. Obaldo says that Dr. Gordon Grau, a retired UH Director, has done a lot of work on tilapia.
41 Mr. Grau gave us guidance on invasiveness of tilapia in Hawaii, and has determined that Nile
42 tilapia was amongst the least invasive tilapia species in Hawaii.

43
44 Board Member Cabral asked how many aquaculture operations in the State currently grow
45 tilapia.

46
47 Mr. Obaldo said around 3-5 large operations, Kohala Mountain being the biggest producer of
48 around 2.5 million pounds annually. There are also a bunch of smaller operations.

49

1 Board Member Cabral said that while the Applicant appears to have a pretty secure site, he
2 wonders whether the smaller aquaculture operations are also up to date in biosecurity
3 measures.

4
5 Mr. Obaldo said any other aquaculture operation wishing to import Nile tilapia would have to go
6 through the same process as Kohala Mountain to comply with the higher biosecurity
7 requirements to bring in new imported species.

8
9 Board Member Cabral said that from a market point of view, it seems that the businesses that
10 would be able to bring in Nile tilapia would have a market advantage. The smaller aquaculture
11 operations may go out of business if they can't comply with the stricter biosecurity requirements
12 to import Nile tilapia.

13
14 Mr. Obaldo says he wouldn't say that the smaller operations would go out of business, as many
15 of the smaller operations are often in niche markets. The bigger operations would benefit from
16 Nile tilapia because they would have the capabilities to mass process tilapia.

17
18 Board Member Cabral asks how much frozen tilapia is imported into the State.

19
20 Mr. Obaldo said that 400 metric tons was imported into the State in 2013, and that number is
21 probably similar today.

22
23 Todd Low, Branch Manager, Aquaculture & Livestock Support Services, comes up before the
24 Board to testify. Mr. Low said he agrees that in general, the first person bringing in a new
25 genetic usually has the advantage. But in this case, because the biosecurity requirements for
26 Nile tilapia are high, the idea is to not necessarily benefit certain operations, but to encourage
27 the aquaculture industry to become a more modern industry and be able to compete with
28 importations. With Nile tilapia, local aquaculture operations can reach the food
29 service/institution markets. While the DOA is tasked with biosecurity, it is also responsible for
30 doubling local food production.

31
32 Board Member Ley asked whether there is work being done in developing genetics on
33 established tilapia species.

34
35 Mr. Low said that globally, *niloticus* is the "workhorse" of the tilapia industry. If these new
36 genetics are not brought in, you cannot "jury-rig" existing genetics. The aquaculture industry will
37 not go away, but in order for the industry to access the food service and state institution markets
38 we need to have better genetics.

39
40 Mr. Fred Mencher, Hawaii Aquaculture and Aquaponics Association, testifies in support of this
41 agenda item. Mr. Mencher said that Nile tilapia is an important fish for the aquaculture industry.
42 Nile tilapia is fast growing, has a favorable body for fillets, and is also more efficient in feed
43 requirements. Mr. Mencher said that Nile tilapia was basically approved around a year ago
44 when it was finally transferred from the Restricted A List to the Restricted B List, and the
45 discussion for this agenda item should be focused on whether this particular applicant is able to
46 comply with the biosecurity rules to import Nile tilapia.

47
48 Board Member Cabral asked what the potential market would be in the State, if tilapia was
49 available to be fully cultivated here.

50

1 Mr. Mencher said he is not sure about the potential institutional market. Mr. Mencher said that
2 he works for a tilapia farm and they sell whole fish. If aquaculture operations can raise tilapia
3 faster and more efficiently, the industry can certainly sell more. There is more demand than the
4 industry can currently supply.

5
6 Board Member Tanaka asks what the demand is for locally grown tilapia in the State.

7
8 Mr. Mencher said the demand seems to be pretty strong, but he is not sure what the total
9 market demand is in the State. His farm is selling everything it can grow. Through marketing,
10 we were able to improve demand. A lot of the high-end restaurants serve tilapia now. For
11 example, Alan Wong has been asking for years for increased production and supply.

12
13 Board Member Tanaka asked whether his farm could oversupply tilapia.

14
15 Mr. Mencher said not his farm. A farm like Kohala Mountain is much larger than ours, but they
16 also seem to be directed at different markets such as the fillet market and export market.

17
18 Mr. Andre Seale, Hawaii Institute of Marine Biology, comes up before the Board to testify. Mr.
19 Seale said he has some research experience with tilapia, in particular with nile tilapia's
20 adaptability in different environments. Mr. Seale said he was studying mozambique tilapia and
21 nile tilapia in adaptability with salinity and environmental pollution. One study they conducted
22 last year was to place tilapia into brackish water with salinity of 20 parts per thousand (2/3ds the
23 amount of salt in seawater) and measure the tilapia's salt plasma concentration. The study
24 found that the nile tilapia was unable to regulate its salt plasma concentration and was
25 effectively dead after 24 hours in the brackish water environment.

26
27 Board Member Evans asked whether the nile tilapia's inability to adapt to brackish water affects
28 its invasiveness, as fishponds within the State are usually brackish.

29
30 Mr. Seale said it is an environmental limitation. If you look at any environment within the State
31 that has a higher salinity concentration than fresh water, it would be a potential environmental
32 barrier for nile tilapia. While he does not have any data on salt concentrations of fishponds
33 within the State, based on observational data, the only tilapia he has seen in fishponds were
34 black chin.

35
36 Board Member Comerford asks Mr. Seale if he is in favor of this agenda item being passed by
37 the Board.

38
39 Mr. Seale said "yes."

40
41 Board Member Hong asked whether there are any studies that looks at the competitiveness of
42 nile tilapia when they are placed in the same environment of other tilapia variants such as the
43 black chin.

44
45 Mr. Seale said that he has not been a part of any studies that made such a comparison, but he
46 knows of a study done in Africa where there was a dam that was primarily populated by nile
47 tilapia. When black chin tilapia was introduced into the dam, the nile tilapia population was
48 dramatically reduced to a small portion of the dam.

49

1 Board Member Case asked whether Nile tilapia could survive in fresh water fishponds, or
2 sections of fishponds that are freshwater, such as the area right next to a stream mouth.

3
4 Mr. Seale said “yes,” Nile tilapia would be able to survive in freshwater fishponds. However, in
5 competition with other tilapia species, the Nile tilapia seems to be dominated by other tilapia
6 species such as the black chin.

7
8 Board Member Hong asks whether Nile tilapia can survive in constantly moving water.

9
10 Mr. Seale said that he does not know of a particular study that compares tilapia survivability
11 between moving and still bodies of water, but from his observations, tilapia prefer secluded
12 bodies of water.

13
14 Board Member Evans asks what is Nile tilapia’s temperature tolerance.

15
16 Mr. Seale said that Nile tilapia’s temperature tolerance spans between 10-15 degrees, the lower
17 limit being around 22-26 degrees Celsius and the upper limit being around 32-33 degrees
18 Celsius.

19
20 Board Member Evans asked whether Hawaii is on the outer limits of Nile tilapia’s temperature
21 range.

22
23 Mr. Seale said “no”, Hawaii’s waters are in range of the Nile tilapia’s temperature tolerance.

24
25 Mr. Don Heacock, comes up before the Board to testify. Mr. Heacock said he has been a
26 professional fisheries biologist for 45 years, and one of the things that has not been discussed
27 today is that the Mozambique tilapia can’t filter feed phytoplankton, but Nile tilapia can. Nile
28 tilapia can live in a very eutrophic environment such as a reservoir with animal manure. Mr.
29 Heacock said he imported *Oreochromis aureus* almost 20 years ago as a way to integrate
30 aquaculture into his taro fields, as *Oreochromis aureus* is tolerant to cold. Additionally, Nile
31 tilapia cannot breed in salt water, and as far as tilapia variants, the black chin variant is far worst
32 on the native environment. The worst freshwater invasive species that we have within the State
33 is small mouth bass, which the State introduced back in 1956. Mr. Heacock would like to see a
34 discussion about eradication of more invasive species such as the small mouth bass.

35
36 Mr. Heacock said that when he was granted his permit to import *Oreochromis aureus*, one of the
37 conditions for importation was a restriction of live transport/sale, which meant he could only sell
38 whole fish on ice or fillets. His imported fish has never escaped his facility in over 20 years.
39 Regarding wastewater concerns, an integrated system where fish wastewater is going into a
40 crop field is an excellent solution. Fish waste can be a problem, but not if it is integrated with
41 crops such as taro.

42
43 Mr. John Oliva, General Manager, Kohala Mountain Fish Company (KMFC), comes up before
44 the Board to testify. Mr. Oliva said that the main purpose from wanting to switch from growing
45 Mozambique to Nile tilapia is economics. KMFC recently finished construction on its new fish
46 processing plant, and the plant is currently able to obtain around 30% yield from Mozambique
47 tilapia. If KMFC switched to Nile tilapia, it would increase yield to 38-40%. That percent
48 increase alone would be a significant amount of additional revenue generated. KMFC employs
49 around 20 people, and it plans to hire 20 more to run the plant. Mr. Oliva said his background is
50 primarily in fisheries management, and invasiveness is something he takes very seriously.

1 Economically, KMFC is incentivized to prevent escapes. Mr. Oliva said that KMFC currently
2 produces around 2 million pounds of fish annually. In 2020 it will be 4 million, and in 2022 we
3 estimate 6 million. The maximum plant operation is theoretically around 54 million pounds/year,
4 and we are looking at ways to fill up the plant capacity such as a co-op setting with other
5 facilities.

6
7 Board Member Evans asked how KMFC's economic model will be affected, if the Board were to
8 add conditions articulated by Mr. Heacock that KMFC could only sell dead/frozen Nile tilapia.

9
10 Mr. Oliva said they could still make it work, but the processing plant wouldn't be able to be run
11 continuously, which is not an ideal situation.

12
13 Board Member Ley asked Mr. Ho how KMFC's potential co-op idea would work. Does the
14 restrictions under this permit account for the movement of live transfer/sale of Nile tilapia? And
15 would the co-op members each have to apply for a full permit and receive the same type of
16 restrictions?

17
18 Mr. Ho said that if you look at the proposed permit conditions, the first condition does allow for
19 sale/transfer of live fish for aquaculture production; however, specific conditions for transfer
20 have not been created yet. The rules allow for administrative issuance of Nile tilapia importation
21 for subsequent applicants who plan to use the Nile tilapia in the same way as KMFC. The Board
22 may choose to require every subsequent applicant for Nile tilapia to still need to obtain Board
23 approval. But under the existing rules/language before the Board today, should KMFC get its
24 importation permit for Nile tilapia, every subsequent permit for Nile tilapia will be reviewed/issued
25 administratively without Board approval.

26
27 Board Member Case said that in order to maintain good Board oversight we should amend the
28 current permit language to regulate transfer of live Nile tilapia.

29
30 Mr. Ho said that the Board can change the permit condition to require subsequent Nile tilapia
31 permit applications to be "approved by the Board of agriculture". Then the Board would have to
32 approve each applicant.

33
34 Board Member Hong makes a motion to amend the permit conditions to place restrictions
35 against live transfer or sale of Nile tilapia, and to require Board approval for subsequent
36 applicants for Nile tilapia importation permits. Board Member Hong says that he voted against
37 the transfer of Nile tilapia from the List of Restricted Animals Part A to Part B, and after having
38 heard the discussions today, he thinks there needs to be more research done.

39
40 Mr. Ho said the motion would then be to amend the proposed condition 1 to prohibit live sales or
41 transfer of Nile tilapia, except as approved by the Board. Mr. Ho recommended that the Board
42 could probably direct the Plant Quarantine Branch to require all subsequent applications of Nile
43 tilapia obtain Board Approval, rather than putting this requirement in the permit conditions.

44
45 Deputy Attorney General Yee said that for clarity, this motion would be to allow the importation
46 of Nile tilapia and to establish importation requirements as submitted, with the following
47 amendments: (1) to prohibit the sale or transfer of live Nile tilapia without Board approval; and
48 (2), to require future applications for Nile tilapia importation to obtain Board approval.

49

1 Chairperson Shimabukuro-Geiser asks if there is a motion to approve this agenda item with the
2 following amendments proposed by Deputy Attorney General Yee.

3
4 Motion for Approval: Hong/Case.

5
6 Deputy Attorney General Waihee-Polk, who is assigned to the Plant Quarantine Branch, said
7 she is OK with the amendments.

8
9 Board Member Case said that she is voting against this motion, as she feels strongly that
10 “sustainable” has to include environmental sustainability. Two of the three risk assessment
11 studies show a high risk of invasiveness for Nile tilapia. Board Member Case said that she has
12 a lot of experience with fish species escaping and destroying natural habitats, and this is a
13 situation that DAR has had very long-term repeated concerns with, and we need to honor that.

14
15 Board Member Evans said that she is voting to approve this motion because she believes that
16 the future of food production is in part with aquaculture. Approval of this motion is important for
17 the State goal of doubling local food production, and is an important step in moving towards
18 food sustainability.

19
20 Vote: Approved 6/2. Board Members Case and Tanaka against. Board Members Mina and
21 Cowell absent.

22
23 Chairperson Shimabukuro-Geiser calls recess at 11:40 a.m.

24
25 Board Member Case leaves at 11:45 a.m.

26
27 Chairperson Shimabukuro-Geiser calls the meeting back into session at 11:57 a.m.

- 28
29 3. Request to: (1) Allow the Importation of Grass Carp, *Ctenopharyngodon idella*,
30 a Fish on the List of Restricted Animals (Part B), by Permit, for Aquaculture
31 Production, by Alii Agriculture Farms LLC; and (2) Update Permit Conditions
32 for the Importation of Grass Carp, *Ctenopharyngodon idella*, a Fish on the List
33 of Restricted Animals (Part B), by Permit, for Aquaculture Production, by Alii
34 Agriculture Farms LLC.

35
36 Techie Lancaster, Acting Invertebrate & Aquatic Biota Specialist, PQB, presents as submitted.
37 Staff recommends approval.

38
39 Motion to Approve: Evans/Comerford.

40
41 Board Member Cabral said that the committee report talks about two prior violations from the
42 Applicant and asks what has been done to assure the Applicant will not violate a condition
43 again.

44
45 Mr. See Ba Thee, Alii Agricultural Farms LLC, comes up before the Board to testify. Mr. Thee
46 said that the prior violations were not done on purpose, as he did not read the restrictions given
47 to him. Mr. Thee said that in the future he will follow all instructions given to him by the DOA.

48
49 Board Member Cabral says that he wants to make sure there are safeguards in place to prevent
50 another violation from happening.

1
2 Mr. Ho said the past violations were unintentional. The DOA does have the ability to inspect
3 facilities. Part of the permit conditions require permittees to have an inventory of the fish, and
4 the DOA will be able to audit the Applicant periodically to make sure he is in compliance.

5
6 Chairperson Shimabukuro-Geiser said the Mr. Thee needs to make sure that he understands
7 the conditions of approval for the importation permit.

8
9 Board Member Evans asked whether there are other existing permits for importing grass carp.
10 She knows DLNR imported grass carp in the past to keep some of its reservoirs and ditches
11 clean. Board Member Evans also asked how the survivability of this species is within the State,
12 and what the difference is between triploid and halfploid variants of this carp.

13
14 Mr. Ho said “yes”, there are some older existing permits for grass carp, most of them on golf
15 courses. Survivability is “OK”, but the State’s climate is not favorable for reproduction of the
16 species. By adding an extra chromosome, triploid grass carp cannot breed. However, because
17 the State’s environmental conditions prevent grass carp from breeding, we are not
18 recommending triploid carp be a condition for importation.

19
20 Board Member Hong asks what environmental conditions in the State prevent grass carp from
21 breeding.

22
23 Mr. Ho said grass carp need deep, clean rivers to breed. Reservoirs do not mimic these
24 conditions.

25
26 Board Member Hong asks why we would then want triploid versus non-triploid variants, and
27 asks whether there was a concern by the advisory committee that triploid was not a specific
28 requirement.

29
30 Mr. Ho said the triploid option was just another potential layer of protection, but because of the
31 State’s unfavored environment for breeding, it was not a recommended requirement. But this is
32 still an option that the Board can consider making a requirement. There was no concern by the
33 advisory committee that this was not a recommended requirement.

34
35 Vote: Approved, 7/0. Board Members Mina, Cowell, and Case absent.

36
37 Land Vertebrate:

- 38 4. Request for: Approval of the Board of Agriculture’s Proposed Order Amending
39 Chapter 4-71, Hawaii Administrative Rules (HAR), “Non-Domestic Animal
40 Import Rules,” to Transfer the Water Buffalo, *Bubalus bubalis*, From the List of
41 Restricted Animals (Part A), to the List of Restricted Animals (Part B).

42 **(See Attachment)**

43
44 Jonathan Ho, Acting Branch Manager, PQB, presents as submitted. Staff recommends
45 approval.

46
47 Motion to Approve: Tanaka/Hong.

48
49 David Penn, Penn Law Center, approaches the Board to testify. Mr. Penn said he has been
50 working in natural resources and agricultural matters since 1981. Mr. Penn submits written

1 testimony for the Board to review. Mr. Penn urges the Board to initiate on its own, rulemaking
2 procedures as necessary to place *Bubalus bubalis* on the domestic list under Animal Industry
3 (AI)'s jurisdiction, and to expediate this process so that public hearings can be done by July 31,
4 2019. *Bubalus bubalis* should not be treated any differently than cattle.

5
6 Board Member Evans asks Mr. Ho if what Mr. Penn is asking would be contrary to the staff
7 recommendations.

8
9 Mr. Ho said that should we be directed by the Board today, PQB would go through the review
10 process to make the proposed changes to 4-71, Hawaii Administrative Rules (HAR) to remove
11 *Bubalus bubalis* from the Restricted Animal List and make it clear that *Bubalus bubalis* should
12 be on the Domestic Animal List under AI's jurisdiction. At the same time AI would need to
13 amend their rules to include *Bubalus bubalis* on the Domestic Animal List and create
14 administrative rules to regulate that animal. Mr. Ho said that he wasn't sure how long all of the
15 rulemaking would take, but thinks that three months is ambitious.

16
17 Board Member Comerford asks whether the purpose for the request today to take *Bubalus*
18 *bubalis* from the Restricted Animal List A to List B, is to let Mr. Heacock import these animals
19 into the State in a timely fashion, and the next potential step is to move *Bubalus bubalis* to the
20 Domestic Animal List.

21
22 Mr. Ho said "yes."

23
24 Mr. Penn said that it would be good if both steps could be done in tandem to each other.

25
26 Board Member Evans asked whether the permit fee to import *Bubalus bubalis* would be
27 automatically waived if the Board now starts the process to take *Bubalus bubalis* out of the
28 Restricted Animal List and onto the Domestic Animal List. Board Member Evans asks if the
29 applicant already paid the permit fee.

30
31 Mr. Ho said the applicant had already paid the permit fee. Mr. Ho said that if *Bubalus bubalis*
32 was on the Domestic Animal List, the applicant would not have to apply for an importation
33 permit, and therefore would not have to pay the permit fee.

34
35 Vote: Approved, 7/0. Board Members Mina, Cowell, and Case absent.

- 36
37 5. Request to: If the Board of Agriculture Orders the Transfer of the Water Buffalo,
38 *Bubalus bubalis*, From the List of Restricted Animals (Part A), to the List of
39 Restricted Animals (Part B), and Subject to the Order First Taking Effect: (1)
40 Allow the Importation of Water Buffalo, *Bubalus bubalis*, an Animal on the List
41 of Restricted Animals (Part B), by Permit, for Commercial Production, by Kauai
42 Organic AgroecoSystems; and (2) Establish Permit Conditions for the
43 Importation of Water Buffalo, *Bubalus bubalis*, an Animal on the List of
44 Restricted Animals (Part B), by Permit, for Commercial Production, by Kauai
45 Organic AgroecoSystems.

46
47 Jonathan Ho, Acting Branch Manager, PQB, presents as submitted. Staff recommends
48 approval.

49
50 Motion to Approve: Hong/Cabral.

1
2 Mr. Penn comes up before the Board to testify. Mr. Penn said that his client requests the Board
3 use its discretion to waive the \$2,500 permit fee. It is his understanding that paying the permit
4 fee was an “all fault” reality necessary to keep things moving. In the written testimony provided,
5 he has listed some points that indicates why it would be appropriate to waive the fee or provide
6 his client with a \$2,500 credit for future costs associated with importing *Bubalus bubalis*.

7
8 Deputy Attorney General Yee asked Mr. Penn whether he is aware of any rule or statutory
9 provision that would give the Board the discretion to waive the fee.

10
11 Mr. Penn said he is not aware of any specific rule, but he knows that the Board of Land and
12 Natural Resources has waived fees before.

13
14 Mr. Don Heacock comes before the Board to testify. Mr. Heacock said he would like to clarify a
15 couple of points listed in the submittal: Page 19, regarding Mr. Fern Duval’s comments on
16 water buffalo potentially going feral. If you read that paper, the author misuses the terms “wild”,
17 “domestic”, and “feral”. “Wild” means never domesticated. Also, on page 19, regarding the
18 recommendation to verify that imported *Bubalus bubalis* are licensed from the USDA, there is
19 no licensing requirement for domestic water buffalo.

20
21 Deputy Attorney General Yee asked Mr. Heacock if there are any specific wordings within the
22 final permit conditions that he has comments on.

23
24 Mr. Heacock said “yes”:

- 25
- 26 • Page 26, item 8.a, regarding the World Organization for Animal Health. AI has already
27 recommended which diseases must be tested for cattle, and this list should apply for
28 *Bubalus bubalis*. Water buffalo doesn’t need to be screened for any additional diseases.
29 Mr. Heacock said he is OK with including leptospirosis vaccines, and recommends that
30 this section be amended to follow what is included for subtitle 5 under AI’s list for cattle.
31 Regarding quarantine procedures for *Bubalus bubalis*, Mr. Heacock said that this
32 condition states that the domestic water buffalo shall be quarantined no less than 30
33 days in a PQB approved facility that prevents direct/indirect exposure to organisms that
34 may carry dieses. Mr. Heacock said that this requirement is physically impossible, as
35 rats/pigs carry leptospirosis, and he is unable to quarantine the water buffalo from them.
36 He will, however, prevent the water buffalo from interacting with any cattle. Mr. Heacock
37 recommends amending this requirement to only be quarantined from cattle.
 - 38
 - 39 • Page 26, item 8b, regarding buffalo that are not certified “free of diseases” by OIE, Mr.
40 Heacock said that the Board should only be concerned about diseases listed by AI’s
41 section 5 on cattle, and condition 8b is unnecessary.
 - 42
 - 43 • Page 26, item 8c regarding the requirement that the cattle being purchased from the
44 mainland must be monitored and on health surveillance for a period of six months prior
45 to shipment, Mr. Heacock believes that Mr. Shane Morgan’s letter should meet this
46 criteria/condition and therefore this condition is not necessary.
 - 47
 - 48 • Page 28, regarding approved fencing, Mr. Heacock said that electric fencing is extremely
49 useful. There is only one kind of electric fencing, and that is pain based. Mr. Heacock

1 said that to comply with the current fencing conditions would cost him around \$20,000.
2 He has an existing paddock around 3.5 acres that has electric fencing comprised of 2
3 electrified strands. Mr. Heacock requests the fencing condition be changed to allow
4 other types of fencing, if approved by PQB.
5

- 6 • Page 29, item 15. Mr. Heacock said this requirement should be omitted, as there aren't
7 any other agencies.
8
- 9 • Page 30, item 22 regarding permit conditions are subject to amendments based on
10 scientifically validated risks. Mr. Heacock said that *Bubalus bubalis* does not have any
11 risks. Mr. Heacock said he went out of his way to purchase stock from a closed herd in
12 Arkansas that doesn't have any diseases. Mr. Heacock requests that this condition be
13 omitted.
14

15 Mr. Ho said a lot of these conditions before the Board today are designed to be "future-proof"
16 and are not specific to the particular Applicant's permit. While some of the conditions may not
17 be pertinent at this time, should issues arise in the future, the appropriate conditions will already
18 be in place. In regard to fencing, item 10a allows PQB to approve different types of fencing
19 material.
20

21 Deputy Attorney General Yee asks Mr. Ho if he has seen the Applicant's proposed electric
22 fencing, and whether he plans to approve the fencing.
23

24 Mr. Ho said "yes" to both questions.
25

26 Deputy Attorney General Yee said that if the proposed fence is less than 5 1/2 feet, the Board
27 should amend the condition to allow the possibility of shorter fences. Deputy Attorney General
28 Yee recommends amending Condition 10 to read that fences: "Should be a minimum of 5 1/2
29 feet in height, unless otherwise approved by PQB."
30

31 Mr. Ho said that item 15 is standard language in all permit conditions. Item 22 is a future proof
32 condition. Should there be some disease in the future affecting cattle and water buffalo, this
33 condition would be important to have in place.
34

35 Chairperson Shimabukuro-Geiser asked whether Dr. Maeda was on the subcommittee and if he
36 reviewed this permit application.
37

38 Mr. Ho said "yes" to both questions.
39

40 Chairperson Shimabukuro-Geiser asks whether the Board needs to determine whether it has
41 the discretion to potentially waive the permit fee paid by the Applicant.
42

43 Deputy Attorney General Yee says it is the Board's choice to discuss this issue either in open
44 session or executive session.
45

46 Chairperson Shimabukuro-Geiser asks the Board whether any of the members are interested in
47 entering executive session. Hearing no interest, Chairperson Shimabukuro-Geiser directs the
48 discussion to be in open session.
49

1 Deputy Attorney General Yee says his view is that rules have the force of effect of law, and you
2 need to have something within the rules that would give the Board the power to waive the fee.
3 Deputy Attorney General Yee said he saw nothing in the rules that specifically allow waivers of
4 fees. Given that fact, he believes there is no basis that the Board can waive the fee.

5
6 Mr. Penn asks whether there are any rules prohibiting the Board from waiving fees, and if not,
7 could it be interpreted that the Board may waive fees.

8
9 Deputy Attorney General Yee said that in open session, all he is willing to say is his conclusion.

10
11 Board Member Cabral said that the Applicant paid the fee and already agreed to it. It was his
12 choice to pay the fee to be able to import *Bubalus bubalis* now, instead of waiting for the rule
13 change to place it in the Domestic Animal List.

14
15 Board Member Evans makes a motion to amend Board Member Hong's prior Motion of
16 Approval for this agenda item with a proposed amendment to: change the permit fencing
17 requirements to no less than 5 ½ feet in height, unless otherwise approved by PQB.

18
19 Board Member Hong seconds.

20
21 Vote: Approved, 7/0. Board Members Mina, Cowell, and Case absent.

22
23 Pesticides Branch

- 24
25 1. Request for: (1) Acceptance of Hearing Officer's Revised
26 Recommendations following Public Hearings held on November 1,
27 2018, November 2, 2018, November 5, 2018, November 7, 2018,
28 and November 8, 2018 on the Proposed Amendments to Chapter
29 4-66, *Hawai'i Administrative Rules*, entitled "Pesticides" and
30 comments received at the December 4, 2018 Board Meeting; and
31 (2) to Schedule a Date for Announcement of the Board's Decision
32 on Adoption of the Proposed Amendments to Chapter 4-66,
33 *Hawai'i Administrative Rules*, (this matter was continued at the
34 December 4, 2018 Board Meeting for further discussion at the
35 February 2019 Board Meeting, where the matter was further
36 deferred to the next Board Meeting). Proposed revisions to 4-66-62
37 and 4-66-64.2, *Hawai'i Administrative Rules*, were attached to the
38 February 2019 submittal. The submittal can also be
39 found at <http://hdoa.hawaii.gov/meetings-reports/proposedar/>
40 **(See Attachment)**

41
42 Presentation by John McHugh, Pesticides Branch Manager, and Victoria Matsumura, Pest Case
43 Developer, PI, as submitted. Staff recommends approval.

44
45 Chairperson Shimabukuro-Geiser asks the Board if there is a motion to accept this agenda item.

46
47 Motion to Approve: Evans/Comerford.
48

1 Board Member Cabral asks for clarification: by accepting this motion, can the Board potentially
2 make revisions during the next Board meeting when it makes a vote to adopt the proposed
3 amendments to Chapter 4-66, Hawaii Administrative Rules (HAR)?
4

5 Deputy Attorney General Yee says he believes the process moving forward is unique to the
6 Department's Pesticides Branch. In this particular case, the Board must: (1) accept the hearing
7 officer's recommendations; (2) schedule a date for decision making to adopt the proposed
8 amendments; and (3), during decision making, accept, deny, or defer the motion to adopt the
9 proposed amendments. Deputy Attorney General Yee says that given the history of this matter,
10 he recommends that the Board today: (1) accept the hearing officer's recommendations; (2) if
11 necessary, instruct the DOA to make additional changes to the proposed rules; and (3),
12 schedule a date for decision making for the proposed rules. Acceptance of the hearing officer's
13 recommendations does not imply Board agreement to the current proposed rules. The Board
14 would still have an opportunity during the decision-making meeting to make additional
15 amendments.
16

17 Board Member Cabral asks whether it will be a simple majority for voting to approve or
18 disapprove.
19

20 Deputy Attorney General Yee says "yes," the Board needs at least 6 votes to approve or
21 disapprove anything. If you have 5 or less votes either way, nothing can pass or fail.
22

23 Chairperson Shimabukuro-Geiser calls up members from the public to testify.
24

25 Ms. Renee Pinel, representing Western Plant Health Association (WPHA), testifies on this
26 agenda item. Ms. Pinel says that WPHA is a trade association that represents the interests of
27 fertilizer and crop protection manufacturers, biotechnology providers, distributors and
28 agricultural retailers in California, Arizona and Hawaii. WPHA supports the Hawaii Farm
29 Bureau's testimony for this agenda item. WPHA is concerned that reporting requirements under
30 the proposed rules go beyond what was mandated in Act 45. WPHA believes that the
31 legislature, in passing Act 45, carefully considered what should be required for reporting, and
32 that additional reporting requirements beyond Act 45 hurt small farmers.
33

34 Ms. Janet Ashman, representing the Hawaii Farm Bureau Federation (HFBF), testifies on this
35 agenda item as submitted. HFBF is in strong support that the proposed rules be accepted by
36 the Board; however, HFBF has one outstanding issue. In passing Act 45, the legislature made
37 it clear in the conference committee reports that they want two separate items: (1) information
38 coming from RUP users; and (2), a summary by county from the DOA. Also, this particular
39 issue and "quick fix" has nothing to do with protecting human, animal, or environmental health.
40 This issue is only about information being provided to the public.
41

42 Ms. Ashman says that this particular rule update has been going on for many years, and at this
43 point, the changes should almost be housekeeping to align the proposed rules with Act 45. In
44 every Board meeting and Pesticide Advisory Committee meeting, members have already
45 expressed that they want the proposed rules to match up with Act 45, and the Pesticide Branch
46 has always agreed. But then when everyone reviews the proposed rules, it is not the same as
47 Act 45. Ms. Ashman also notes that the "Comprehensive Report" provided by the Pesticides
48 Branch contains errors/omissions. For example, section "i" has been completely deleted. Ms.
49 Ashman says that she wants to testify more, but her eyes are fogged over and can't read any
50 more. Ms. Ashman continues, stating that farmers she has talked with would prefer to only

1 have one set of records, and would only like to report what is required in Act 45. It is a false
2 assumption that farmers would prefer to turn in “everything” they have to the DOA and let the
3 DOA pick and choose what it needs.

4
5 Board Member Evans asks Ms. Ashman whether the “public reports” she is referring to in her
6 testimony is in Committee Report 154-18 (Twenty-Ninth Hawaii State Legislature (2018)), page
7 3, item 4: “requiring the DOA to produce summaries for public disclosure of pesticide use by
8 county.”

9
10 Ms. Ashman says this is what is missing from the current proposed rule: the county summaries
11 by the DOA. Ms. Ashman thinks that it would be negligent for the proposed rules to not include
12 what was indicated in Act 45.

13
14 Ms. Autumn Ness, Co-Director for Hawaii Center for Food Safety, said that the argument that
15 additional reporting requirements will impact small farmers is incorrect when you look at the
16 data. Ms. Ness said that she was at the Legislature for years trying to determine a line on what
17 is reasonable reporting. She filed a UIPA request and analyzed over 9,000 lines of RUP data,
18 and found that unequivocally, small farmers do not use RUPs. 99% of RUP uses are from .5%
19 of farms in Hawaii. Act 45 wants the Department to collate the data and put it into a summary,
20 but this data is already available online. What we need is to figure out how to provide data that
21 can show potential exposure to chronic, or low level, persistent exposure over long periods of
22 time. A summary of one pesticide use per island/year will achieve this. She is hoping to “open
23 up” the books for independent researchers to access the records. If the data is locked behind
24 the DOA under CBI, Act 45 is useless.

25
26 Board Member Comerford says that Act 45 specifically states that a summary is to be reported
27 by county. Getting individual data is another issue outside of Act 45 and would be a freedom of
28 information act issue.

29
30 Ms. Ness said that the only reason why she got up today to testify was because the two
31 previous testifiers were industry representatives, and she felt obligated to re-iterate her position
32 in support of the members she represents.

33
34 Board Member Comerford said that a summary by county is what Act 45 requires. One point of
35 view is that people want farmers to provide food, but it’s hard for farmers to provide food for
36 themselves if there are too many regulations. In this case, it is clear what Act 45 requires: there
37 is a specific data set that RUP users must submit to the DOA, and the DOA must then submit a
38 summary by county of RUP uses. To go beyond this reporting is a freedom of information act
39 issue.

40
41 Board Member Hong asks Ms. Ashman how many of the 8,000 farmers use RUPs.

42
43 Ms. Ashman says that is an irrelevant question because even if there is a very small percentage
44 of farms that use RUPs, you cannot know when there may be a pest crisis in the future that
45 would require immediate use of RUPs. Farms not able to be licensed or comply with RUP rules
46 would be at a disadvantage.

47
48 Board Member Hong again asks Ms. Ashman how many of the 8,000 farmers use RUPs.
49

1 Ms. Ashman says she is not sure, but knows that the most successful farms use RUPs.
2 Farmers who can control pests effectively are usually the most successful, and those farms are
3 the ones who are growing 99% of produce on the islands. Ms. Ashman says there are probably
4 thousands of farms that are between 1.2 to 5 acres that may not be using RUPs.
5

6 Board Member Hong said that the reason why he asked how many farms are using RUPs is
7 because he was under the impression that an issue surrounding the proposed rules is that RUP
8 reporting burdens small farmers. If small farmers are not using RUPs, this issue is moot.
9

10 Ms. Ness said that approximately 50 farms use RUPs.

11
12 Chairperson Shimabukuro-Geiser said that 50 is not in-line with the DOA's internal records.
13 The DOA's internal number for small farmers was double what was used in previous testimony.
14

15 Ms. Ness said that 99% of RUPs were used by .5% of farms. Ms. Ness said that when they
16 were trying to count farms as "users" of RUPS, they decided to use a threshold, and only
17 counted farms that used over 25 gallons or pounds of RUPs/year. The number of farms using
18 over 25 gallons/pounds was 50, and we took this number to the Legislature, but the Legislature
19 determined to require all users of RUPs to report, regardless of amount used. Some farmers
20 buy .5 pounds of RUPs for the whole year.
21

22 Chairperson Shimabukuro-Geiser asks Ms. Ness what her definition of a small farmer is.
23

24 Ms. Ness said that she doesn't have a metric, and from a legal standpoint, we can spend a lot of
25 time on the definition of a "small farmer". However, when looking at the top 20 RUP users, they
26 are all large well-known farms. The data does not suggest that small farmers will be affected
27 significantly.
28

29 Board Member Cabral said that we are dealing with Act 45, and we should stick to Act 45
30 issues.
31

32 Board Member Hong said he would like DOA staff to come up and respond to the issues
33 presented by the public testifiers.
34

35 Chairperson Shimabukuro-Geiser calls a recess at 1:46 p.m.
36

37 Chairperson Shimabukuro-Geiser calls the meeting back to order at 1:55 p.m.
38

39 Board Member Evans said that she wants to ask some questions about the chart (Exhibit "O")
40 from the Comprehensive Report submitted for this agenda item. The chart contains two similar
41 columns, "Required to be submitted under Act 45", and "Records needed by HDOA to comply
42 with Act 45".
43

44 Deputy Attorney General Waihee-Polk said that Act 45 requires in part for the DOA to provide a
45 summary, by county, for public disclosure. Part of the summary shall include the amount of
46 area in the county in which the RUP was applied. However, the user reporting requirements in
47 the Act did not contain amount of area of RUP application as part of the required information.
48 Therefore, in the proposed rules, the Department added the requirement that users also report
49 amount of area of each application.
50

1 Board Member Evans asked whether the other items in the summary records to be submitted in
2 the first column, "Required to be maintained by RUP applicators" that weren't checked under
3 either of the other two columns, are additional pieces of information that the DOA is
4 recommending RUP applicators maintain.

5
6 Deputy Attorney General Waihee-Polk said the first column is recommendations from the
7 Pesticide Branch that would allow the DOA to effectively regulate RUP use. Deputy Attorney
8 General Waihee-Polk said that she understands that the Board may decide to change the
9 record keeping requirements in light of the concerns brought about by public testimony. The
10 main thing the Pesticide Branch wants is the information required to be submitted under Act 45,
11 as well as the total area covered in order for the Department to comply with the Act.

12
13 Board Member Evans said she would like to ask about the additional items being requested by
14 the Department to be submitted by RUP users that are outside of Act 45.

15
16 Ms. Matsumura said that the additional items not required in Act 45, but that we require for
17 record keeping are: "Type of formulation", "total area covered", and "target pest". However,
18 these three pieces of information are all available from the pesticide label.

19
20 Board Member Ley said that she thinks that Act 45 was clear and made clear by the conference
21 committee report and was really specific on what was intended for Departmental use. The
22 intent was to have unhindered governmental access to address health incidents and concerns.
23 It is also very clear that Act 45 references public information, and that information be
24 summarized by county. Board Member Ley said she does not understand why that requirement
25 was taken out.

26
27 Deputy Attorney General Waihee-Polk said that between the December 2018 Board meeting
28 and the February 2019 Board meeting, subsection "i" was removed. It looks like there may
29 have been concerns by the Board with subsection "i", but that might have been a
30 miscommunication. However, the Pesticides Branch has no problem re-including subsection "i."

31
32 Board Member Ley said that the other concern she has is the "prescribed form" under section 4-
33 66-62(d), HAR.

34
35 Ms. Matsumura said that the "Forms prescribed by the head" section was included to help
36 compile the summary report.

37
38 Board Member Ley said she does not want the Head to have the authority to go beyond the
39 intent of the law. Intent is different between individuals, and the Legislature tried really hard to
40 strike a balance between those who want reporting and to not over burden farmers with
41 regulation.

42
43 Board Member Comerford asked if the Pesticides Branch is collecting and summarizing all
44 pesticide information, including non-RUP pesticides.

45
46 Ms. Matsumura said "no," just RUPs.

47
48 Board Member Comerford asked whether non-RUP pesticide information is being stored by
49 individual users.

- 1 Ms. Matsumura said that users of non-RUP pesticides are only required to keep information if
2 the farm falls under the “worker protection standard”.
3
- 4 Chairperson Shimabukuro-Geiser asks if Act 45 requires the Department to post the county
5 summaries on its Department website.
6
- 7 Ms. Matsumura said that the Act requires production of the summary, but does not specifically
8 say that the Department must publish it on its website.
9
- 10 Chairperson Shimabukuro-Geiser asks whether posting the summary to the Department’s
11 website would be consistent with the Act.
12
- 13 Board Member Comerford believes it is just a mechanism to publish the report.
14
- 15 Board Member Cabral asks whether the Board will be directing the Pesticides Branch to comply
16 with Act 45.
17
- 18 Deputy Attorney General Yee said that it is his understanding that the Board will instruct the
19 Pesticides Branch to change specific things in the proposed rules, and not necessarily instruct
20 the Branch to go back and look over the rules entirely. A general review of the proposed rules
21 was supposed to have taken place by the Pesticides Branch in preparation for this meeting.
22 The next step would be to direct staff for specific changes for reporting requirements, and the
23 re-insertion of subsection “i”. In regard to Board Member Ley’s concern about the “forms
24 prescribed by the head”, he does not believe this provision authorizes the head to change the
25 substantive requirements of the law.
26
- 27 Chairperson Shimabukuro-Geiser asks if she has a motion to accept the hearing officer’s
28 revised recommendations.
29
- 30 Vote: Approved 6/0, Cabral recused. Board Members Mina, Cowell, and Case absent.
31
- 32 Chairperson Shimabukuro-Geiser then asks the Board to vote on scheduling a date
33 Announcement of the Board’s Decision on Adoption of the Proposed Amendments to Chapter 4-
34 66, HAR, for the next regular Board meeting.
35
- 36 Board Member Evans asks the Chairperson to clarify the motion.
37
- 38 Deputy Attorney General Yee said that for clarity, this motion will be to announce that at the
39 next regularly scheduled Board meeting, this Board intends to adopt the final rules, with the
40 understanding that the Board may consider changes to the proposed rules, and the re-inclusion
41 of subsection “i.”
42
- 43 Board Member Ley asks whether the Board would have the option to defer this agenda item
44 during the next hearing.
45
- 46 Deputy Attorney General Yee says “yes.”
47
- 48 Motion to Approve: Comerford/Ley.
49
- 50 Vote: Approved 6/0, Cabral recused. Board Members Mina, Cowell, and Case absent.

1
2 Board Member Cabral requests that the next Board meeting discuss Act 90 transfers to the
3 DOA and agricultural theft on the Big Island.

4
5 V. OLD BUSINESS

6
7 None


8
9 VI. NEW BUSINESS

10
11 None

12
13 VII. ADJOURNMENT OF REGULAR MEETING

14
15 Meeting adjourned at 2:30 p.m.

16
17
18 Respectfully submitted,

19
20 
21
22 Noa K. Ching
23 Board Secretary

24
25
26
27