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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
8 June 25, 2019 at 9:30 a.m. by Board of Agriculture Chairperson Phyllis Shimabukuro-
9 Geiser, at the County of Hawaii's Aupuni Center Conference Room, 101 Pauahi Street
10 #1, Hilo, Hawaii, 96720 and interactive conference at University of Hawaii College of
11 Tropical Agriculture & Human Resources, 3050 Maile Way, 202 Gilmore Hall, Honolulu,
12 Hawaii, 96822.

13
14 **Members Present:**

15 Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture
16 Randy Cabral, Member-At-Large
17 Fred Cowell, Kauai Member
18 Glenn Hong, Member-At-Large
19 Vincent Mina, Maui Member
20 Diane Ley, Hawaii Member
21 Mary Alice Evans, Department of Business Economic Development, Ex
22 Officio Member
23 Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human
24 Resources University of Hawaii, Ex Officio Member (via interactive
25 conference)
26

27 **Members Absent:**

28 Joe Tanaka, Member-At-Large
29 Suzanne Case, Chairperson, Board of Land and Natural Resources
30

31 **Others Present:**

32 Morris Atta, HDOA/Agricultural Resource Management Division (ARM)
33 Brian Kau, HDOA/ARM
34 Linda Rosehill, Kunoa
35 Joseph Kekedi, Orchid's Paradise
36 Gordon Inouye, Puna Flower Power & Floral Resources
37 Jennifer Waihee-Polk, Attorney General's Office
38 John McHugh, HDOA/Pesticides Branch (PEST)
39 Scott Nishimoto, HDOA/PEST
40 Yong Pak, HDOA/Agricultural Loan Division (AGL)
41 Christine Asing, HDOA/AGL
42 Janet Ashman, Hawaii Farm Bureau
43 Jeri Kahana, HDOA/Quality Assurance Division
44 Shane Muramaru, Hawaii County Office of Prosecuting Attorney
45 Gordon Heit, DLNR/Land Division

1 Cathy Goegell, Animal Rights Hawaii
2 Kameron Marchose, Private Citizen
3 Micah Munekata, HDOA/Chairperson's Office
4 Bryan Yee, Attorney General's Office
5

6 II. APPROVAL OF MINUTES FROM 4/23/19 MEETING
7

8 Motion to accept: Evans/Ley.
9

10 Board member Comerford made correction to page 11, line 18, stating that this
11 individual represents CTAHR.
12

13 Chairperson Shimabukuro-Geiser made correction to page 1 stating that she was no
14 longer in the acting role during the 4/23/19 meeting. Page 15, line 6 should also read
15 as "that" and not "the."
16

17 Vote: Approved, 6-0 (Cowell, Mina not present for this vote).
18

19 III. INTRODUCTIONS
20

21 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION
22

23 A. AGRICULTURAL LOAN DIVISION
24

25 1. Request for 1-year Extension of Application Deadline for DOA's
26 Emergency Loan Program.
27

28 Yong Pak, HDOA/AGL, presented testimony as submitted. Staff recommends approval.
29

30 Motion to accept: Ley/Cabral.
31

32 Board member Evans asked if the 3% interest rate is similar to FEMA or USDA loans.
33 Mr. Pak said that they don't have that information. Board member Ley said FEMA
34 doesn't provide loans to businesses. USDA does provide loans.
35

36 Board member Ley asked that given the extent of the disaster, the lead time required
37 given the many decisions needed, and the short timeframe, is it possible for the Board
38 to take action to extend beyond a 12-month extension. Chairperson Shimabukuro-
39 Geiser said that further extension could be considered per the Ag Loan Administrator.
40 Bryan Yee, Attorney General's Office, said it would be subject to potential
41 appropriations issues.
42

43 Board member Evans made a correction to item 7 to read as "2020."
44

1 Gordon Inouye, Hawaii floral nurse association, mentioned the status of some orchid
2 growers in Keaau. And that they are in support of the extension.

3
4 Vote: Approved, 6-0.

- 5
6 2. Request that One (1) Loan to So Ono Food Products, LLC be
7 referred to the Attorney General's Office for Disposition and/or
8 Collection.

9
10 Yong Pak, HDOA/AGL, presented testimony as submitted. Staff recommends approval.

11
12 Motion to accept: Evans/Ley.

13
14 Board member Cowell and Board member Mina arrived at meeting.

15
16 Board member Cabral asked if they put collateral down when the loan was made. Mr.
17 Pak said that there was a first mortgage on the leasehold and a blanket filing on the
18 business. There was also a personal property in Texas. Board member Cabral
19 expressed concerns with this type of collateral no longer available.

20
21 Board member Hong said that original terms of the loan said that funds from business
22 could be taken out before the loan was repaid. He stated some of the history of the
23 loan. He said the first of the two loans being repaid was a good start. He asked if the
24 restriction placed on them in terms of cash and resources out of entity being placed on
25 second home. Mr. Pak said there were personal guarantees. He asked for financial
26 statements. Mr. Pak said that they had them at the time of the loan. Board member
27 Hong asked if staff made any assessments on personal assets to cover it. Mr. Pak said
28 that they have business financial statements and tax returns. Board member Hong
29 expressed concern with this loan. Mr. Pak said that this loan has had its struggles since
30 he began handling the loan itself. Board member Cabral also expressed his concerns.

31
32 Board member Evans stated that DOA is the lender of last resort and every loan made
33 is always going to have higher risk and the default rate will undoubtedly look a little
34 higher than other institutional loans. Board member Cabral said that the concern is to
35 make sure that due diligence is done.

36
37 Board member Hong said that this loan in 2014 this was viewed as a processing or
38 value-added enterprise to augment their production. The terms were problematic back
39 then. Moving forward, he would like to see significant delinquencies be brought before
40 the Board periodically.

41
42 Chairperson Shimabukuro-Geiser said that divisions can provide annual reports to the
43 Board. She said that they will make sure that the Ag Loan report can be made available
44 to the Board.

45

1 Board member Ley said that this loan was made on the premise of resources outside of
2 the State. But those resources outside the State were apparently unavailable in the
3 case of default. Whatever the case, the loan should be premised on those resources
4 for which we have the ability to reach in this State. The State's ability to securing the
5 assets is key.

6
7 Vote: Approved, 8-0.

8
9 3. Request for Approval of One (1) Direct Real Estate Loan to YK
10 CORP.

11
12 Christine Asing, HDOA/AGL, presented testimony as submitted. Staff recommends
13 approval.

14
15 Motion to accept: Evans/Hong.

16
17 Board member Mina asked if the applicant has family members to support the
18 operation. Ms. Asing said that the succession plan is to transfer it to the Texeira family,
19 long-time family friends and fellow hog farmers.

20
21 Board member Ley confirmed with staff that the merging of businesses is part of the
22 transition. Everything is going to the Texeira family.

23
24 Board member Hong said that YK showed substantial sales and expenses in 2016 and
25 asked how valid the numbers are in 2016. Ms. Asing said she does the slop operation
26 as well for sales. Board member Hong asked if these projections are used to project
27 out for Texeira's operation. Ms. Asing said it was combined with the Texeira operation.
28 She confirmed additional numbers with Board member Hong.

29
30 Board member Cabral asked about how the plan is determined. Ms. Asing said that
31 they do due diligence on site through property inspection, financials, etc. Board
32 member Cabral expressed his concerns. Ms. Asing said that we are the lender of last
33 resort and that they have looked into the challenges.

34
35 Board member Hong confirmed some of the operation numbers with staff. Chairperson
36 Shimabukuro-Geiser confirmed that the salary ranges on the principal and the hired
37 employees/family.

38
39 Cathy Goegell, Animal Rights Hawaii, presented testimony in opposition to the practice
40 of hog farming.

41
42 Board member Mina asked for follow up. Ms. Asing said there are no dogs as stated.
43 It's a slop operation and pig farm. The condition is average and any upgrades to
44 property is dependent on owning the property. Ms. Asing was unaware if the loan was
45 being used for the waste pond liner.

1
2 Board member Evans asked about the elevation of the pond on the property.
3 Chairperson Shimabukuro-Geiser said that there are more cesspools in that particular
4 area. The county has no immediate plans to put septic in that area.
5
6 Board member Ley asked if Ag Loan verifies if the operation is in compliance with all
7 federal, state, and county rules and regs. Mr. Pak said yes. The environmental aspect
8 is something that is covered when an environmental assessment is required.
9
10 Board member Mina has concern with the ecological aspect.
11
12 Board member Comerford asked about the water table depth at the site. Chairperson
13 Shimabukuro-Geiser said that Dr. Zaleski, from the University of Hawaii, would have
14 that type of information.
15
16 Bryan Yee, Attorney General's Office, offered the Board two possible options:(1) the
17 Board can defer the action and request more information; or (2) accept this request,
18 subject to the satisfaction of the Chair that the pond will meet the regulations in place.
19
20 Board member Evans said that she would like to amend the motion to approve subject
21 to the Chair being satisfied that pond is legal and meets environmental requirements.
22
23 Board member Cowell said that they also have rent of unit as part of income on site.
24 He mentioned concern with not being on a septic system. He said that this should be
25 inserted as well. Evans entertained that request into the amended motion. Cowell
26 Second.
27
28 Vote: Approved, 7-0 (Board member Ley stepped out).

29
30 **B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION**

- 31
32 1. Request for Consent to Assignment of General Lease No. S-4853,
33 Kalaoa Gardens, LLC, Assignor; Hawaii Lawn & Landscape, Inc.,
34 Assignee; TMK: 3rd Div/7-3-049:015, Lot No. 17, Ke'ahole Agricultural
35 Park, Kalaloo, North Kona, Island of Hawaii
36

37 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff recommends
38 approval.
39

40 Motion to accept: Mina/Evans.
41

42 Vote: Approved, 7-0 (Board member Ley stepped out).
43

- 44 2. Request for Consent to Assignment of General Lease No. S-4624,
45 Yoshiaki Noguchi And Marion K. Noguchi (Deceased), Assignor; to

1 Gerry R. Barao, Sr., Assignee; TMK: 3rd Div/1-5-116:021, Lot 21, Pahoia
2 Agricultural Park, Phase Ii, Keonepoku Iki, Puna, Island of Hawaii
3

4 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff recommends
5 approval.
6

7 Motion to accept: Evans/Hong.
8

9 Vote: Approved, 7-0 (Board member Ley stepped out).
10

- 11 3. Request for Approval to Sublease Between the Hamakua Agricultural
12 Cooperative, Lessee/Sublessor, and Travis Kamakawiwoole,
13 Sublessee; General Lease No. S-7013, TMK: (3) 4-3-005:020 (Por), Lot
14 No. 02, Hamakua Agricultural Park, Hamakua Pohakuhaku and Kemau
15 1st, Hamakua, Island of Hawaii
16

17 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff recommends
18 approval.
19

20 Motion to accept: Ley/Cabral.
21

22 Board member Evans asked about the surrounding lot operations. Mr. Atta said that the
23 Hamakua Ag Cooperative does a mixture of operations. He is unsure exactly on the
24 particular use; however, it is compatible with the lease.
25

26 Vote: Approved, 8-0.
27

- 28 4. Request for Approval to Negotiate A Lease for Lot No. 12022; TMK: (1)
29 9-1-031:001, for Use as a Livestock Feed Lot and for a Water Allocation
30 Requirement Purpose; Honouliuli, Ewa, Island of Oahu
31

32 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff recommends
33 approval.
34

35 Motion to accept: Cabral/Evans.
36

37 Board member Comerford asked how the feed lot would include renewable energy. Mr.
38 Atta stated the parcel has a history with DLNR for plans of renewable energy. DLNR
39 reserves the air renewable energy rights on the parcel. The current slaughterhouse
40 wants the ability to develop renewable energy to serve their operations. Board member
41 Comerford asked about the additional water for the property. Mr. Atta said that the
42 water allocation is an issue because the area limitations for the slaughterhouse is 4k a
43 day. The feedlot operation would meet those needs to run the operations more
44 smoothly. Board member Comerford asked about the current capacity of the lot and the
45 resident's time on the feed lot. Mr. Atta said he does not have the particulars. He

1 mentioned that the operators said that the cattle are subject to delivery schedule of
2 Young Brothers. The lack of holding area has led to cattle being stressed and having
3 the lot would optimize the operations.
4

5 Cathy Goegell, Animal Rights Hawaii, presented testimony in opposition.
6 Recommended an EIS.
7

8 Linda Rosehill presented testimony in strong support. Kunoa is a cattle aggregator.
9 Making sure the flow is continuous to maximize use is critical. Board member Hong
10 said that this is a holding area. He said that they wanted to grow fresh grass for forage.
11 Ms. Rosehill said that the cattle will be accommodated with shade and some other
12 necessities. They were looking at other feed sources. Mr. Atta mentioned that this site
13 is traditionally used as a feedlot. We are not changing the use of the site from its
14 historical use.
15

16 Vote: Approved, 8-0.
17

- 18 5. Request for Conversion of General Lease No. S-4011, Lessee:
19 Matsuko Matsumoto Revocable Living Trust, Lessee/Assignor, to
20 Atirom Gardens, LLC, Assignee; TMK: 1st Div/4-1-027:004,
21 Koolaupoko, Waimanalo, Island of Oahu, Hawaii
22
23

24 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff recommends
25 approval.
26

27 Motion to accept: Evans/Ley
28

29 Board member Evans asked why the extension was so short. Mr. Atta mentioned that
30 there are certain requirements for this particular lease term as a potential reason.
31

32 Vote: Approved, 8-0.
33

- 34 6. Certification of Acreage Assessments for the Honokaa-Paauilo,
35 Kahuku, Molokai, Waimanalo, and Waimea Irrigation Systems, 2020
36 Fiscal Year
37

38 Brian Kau, HDOA/ARM, presented testimony as submitted. Staff recommends
39 approval.
40

41 Motion to accept: Cabral/Hong
42

43 Evans asked for clarification on whether an acreage assessment is made to water users
44 not lessees. Mr. Kau said that the water user is charged and could be fee simple
45 owners who have access to the system. There is a per acre charge to user.

1 Board member Ley asked for clarification in relation to the agricultural co-op in
2 Hamakua. Mr. Atta said that the user is the Co-op, which involves multiple sub-users.
3 The charge is to the Co-op. Mr. Kau said that if you are a lessee of ag park lands that
4 has access to DOA water through an irrigation district, you must be a member of the
5 users. He said that it is statute. He clarified the use.

6
7 Board member Cabral asked if these systems were all run by the state. Mr. Kau said
8 yes.

9
10 Board member Ley asked about the usage of the members within the ag park. Mr. Kau
11 said that it is necessary to participate in the irrigation district. It is all laid out in the
12 lease.

13
14 Board member Cabral asked if there is a fee for the water usage as well. Mr. Kau said
15 that there are two fees, and this is what all water systems do. You have a delivery fee
16 and that is based on usage. There is a cost to provide that water to the meter to include
17 the costs of maintenance of equipment, staff, etc. In order to generate a base minimum
18 income, one fee is acreage fee and one is a delivery fee. Mr. Atta said that the ag park
19 concept is based on spreading common costs within a common area. Regardless if
20 water is turned on, you still need to maintain it.

21
22 Vote: Approved, 8-0.

23
24 7. Request Approval for Modification of General Lease Nos. S-4620, Lot No.
25 07, S-4622, Lot No. 17; and S-4623, Lot 20; Floral Resources-Hawaii, Inc.,
26 Lessee; TMK: (3) 1-5-116:007, (3) 1-5-116:017, and
27 (3) 1-5-116:020, Respectively; Keonepoku Iki Farm Lot Subdivision,
28 Pahoia Agricultural Park, Keonepoku Iki, Puna, Island of Hawaii

29 Morris Atta, HDOA/ARM, presented testimony as submitted. Staff offered three options for
30 the Board in response to the lease.

31
32 Motion to accept: Ley (made motion to approve option A)/Evans

33
34 Board member Ley asked if the termination requires lessee to clean up the area from
35 shade cloth, etc. Mr. Atta said that is up to the Board. Board member Ley said that
36 those properties may need to be cleaned up and if a subsequent lessee is given
37 consideration in terms of the lease rent. Mr. Atta said that it is normally leased "as is."
38 Board member Ley said that she sees the potential for repurposing.

39
40 Board member Hong asked if there is a recommendation on the A, B, or C
41 circumstances. Mr. Atta said that the normal process is to declare default and work on
42 the property. In this situation we are terminating the lease and we are told that current
43 lessees cannot continue to farm so the income source to resolve the situation. That's
44 why there are three options on the table. They are looking at a compassionate option to

1 waive everything. Second option is if the Board thinks the money should be repaid, the
2 option for the repayment plan is on the table. The last option was to follow the standard
3 process of default for delinquency and waive it anyway. As staff, they wanted to bring
4 this before the Board. Board member Hong asked about staff looking at financial
5 capacity currently for the lessees. Mr. Atta said that they have not done a business
6 analysis; however, there is a history of communication to attempt revival and sale of the
7 business. They have not been successful in getting someone to take it over. None of
8 this has panned out. Pahoia Ag park is unique and not for all ag. Mr. Atta said that the
9 financials are an issue.

10
11 Chairperson Shimabukuro-Geiser asked if this is a unique circumstance for the lessees.
12 Mr. Atta said this is the first time that they are bringing these options before the Board.
13 This lessee suffered significant losses.

14
15 Board member Cabral clarified that there is no insurance option.

16
17 Chairperson Shimabukuro-Geiser clarified the motion.

18
19 Vote: Approved, 7-0. (Abstain: Hong)

20
21 Chairperson Shimabukuro-Geiser called for a recess at 11:30am.

22
23 Chairperson Shimabukuro-Geiser called the meeting back to order at 11:38am.

24
25 C. PLANT INDUSTRY DIVISION

26
27 Pesticide Branch

- 28
29 1. Request for: (1) Withdrawal of request for approval of proposed partial
30 amendments to Chapter 4-66, *Hawaii Administrative Rules*, that received
31 board approval on November 24, 2015; (2) Preliminary Approval of
32 Proposed Amendments to Chapter 4-66, *Hawaii Administrative Rules*,
33 entitled "Pesticides"; (3) Authorization for the Chairperson to Schedule
34 Public Hearing(s) and Appoint a Hearing Officer in Connection with the
35 Proposed Amendments to Chapter 4-66, *Hawai'i Administrative Rules*.

36
37 John McHugh, HDOA/PEST, presented testimony as submitted. Staff recommends
38 approval.

39
40 Motion to accept: Hong/Evans

41
42 Board member Mina asked how long the process has been. Mr. McHugh said since
43 January 2015.

44

1 Board member Ley clarified that the summary section should read as legislative
2 statutes. Page 8, Section B, commercial applicators should read as "c" rather than "e."
3 Under F-1 certified restricted use pesticide applicator section, she would like to strike
4 #1, name and applicator certification number as this was not required within the law and
5 the intent is to provide a summary report. Staff clarified that the reason was for
6 identification.

7
8 Board member Evans asked if Act 45 provides a basis for redacting the name of certifier
9 and certification number. Deputy Attorney General Jennifer Waihee-Polk said that is
10 not necessarily the case. It may be challenged if requested through UIPA. The
11 information is for identification.

12
13 Board member Hong is favorable to the information presented here.

14
15 Board member Comerford agrees with the identification.

16
17 Board member Cowell asked if the definition of "user" and "entity" issue has been
18 resolved. Chairperson Shimabukuro-Geiser said the terms were interchangeable based
19 on the discussion last Board meeting.

20
21 Board member Cowell said that we agreed to the form, but the form has not been
22 specified, and asked if that is true. Mr. McHugh said the form is on the website.

23
24 Bryan Yee, Deputy Attorney General, made clarifying comments on the amendments for
25 changing the submission's language. There are 2 proposed amendments: (1) to
26 correct Section B, and (2) to remove the name of the applicator from the document.

27
28 Board member Hong made a motion to amend Section B, replacing subsection "e" to
29 read as "d"/Board member Ley seconded.

30
31 Board member Ley made a motion to modify the prior motion to also delete section F-1/
32 Board member Cowell seconded.

33
34 Janet Ashman, Hawaii Farm Bureau, testified in support of the amended motion. The
35 Legislative intent is not to disclose this information. The potential for harassment is
36 high. The legislature was trying to avoid that via language they posted in Act 45. She
37 mentioned the form should not allowed to be modified as required by the proposed rule.

38
39 Kealii Lopez, Western Plant Health Association, presented testimony in support. She
40 thanked the Board for the long and thorough review. She thanked the staff and the
41 attorneys involved.

42
43 Board member Evans asked if the name of the user or entity could be used instead of
44 the applicator name and license number. Staff clarified that a name will be needed in
45 order to identify the users.

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Chairperson asked if you could use mail or email to identify the identity of the user. Mr. McHugh said they have all the information available. Ms. Waihee-Polk clarified the reason behind using the name for identification.

Board Cowell asked if every user has a certification number. Ms. Waihee-Polk said yes. Board member Cowell asked if that could be used instead. Mr. McHugh said that could be done.

Board member Hong asked if every certified applicator has to submit a report and asked if a signature is required. Mr. McHugh said no. Board member Hong asked if there are repercussions on missing information and said that you should certify the report. He would like to see who is submitting the report.

Board member Cabral asked if a certification number could be requested by the public to match to a person or entity. Ms. Waihee-Polk said that in general the certification and name can be made public.

Board member Comerford asked about the email or envelope is a public record. Mr. Yee said that the email and envelope would be a government record.

Board member Evans asked if Act 45 takes precedence over Chapter 92F. Mr. Yee said that they would have to be read together. Exceptions to 92F need to be stated specifically. Board member Evans concluded, based on the AG explanation, that Act 45 cannot supersede Chapter 92F.

Board member Ley said that she would like to withdraw her amendment to the motion based on discussion with the Deputy Attorney Generals.

Board member Hong restated the motion to accept staff's recommendation and amend subsection "e" to read as "d."

The Board clarified the contents of the form is stated. Mr. Yee clarified the limitations as to the how the form can be developed.

Vote: Approved, 7-0. (With Reservation: Ley/Shimabukuro-Geiser, Abstain: Cabral)

V. OLD BUSINESS

None.

VI. NEW BUSINESS

1. Update on the Agricultural Theft Pilot Project, presented by Shane Muramaru, with the Hawaii County Prosecutor's Office.

1
2 Shane Muramaru, Office of the Prosecuting Attorney/County of Hawaii, and Jeri
3 Kahana, Quality Assurance Division/HDOA, presented report on the agricultural theft
4 pilot program. Mr. Muramaru explained the issues that the county is facing with
5 agricultural theft and how education to local farmers and ranchers is key to the success
6 of the program. Most of the work is interacting with the agricultural community through
7 education and outreach.

8
9 2. Status Update for Act 90, Session Laws of Hawaii 2003, Land Transfers
10 from the Department of Land and Natural Resources (DLNR) to the
11 Department of Agriculture (DOA), presented by Morris Atta, Agricultural
12 Lands Branch Manager, DOA.

13
14 Chairperson Shimabukuro-Geiser deferred this item to the following meeting.

15
16 VII. ADJOURNMENT OF REGULAR MEETING

17
18 Motion to adjourn meeting: Hong/Evans.

19
20 Vote: Approved, 8-0.

21
22 Meeting adjourned at 12:30 PM.

23
24 Respectfully submitted,

25 

26
27 Micah Munekata
28 Board Secretary