Department of Agriculture
STATE OF HAWAII

DRAFT
Unapproved

Minutes of the Board of Agriculture
September 22, 2020

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on September 22, 2020 at 9:08 a.m. by Board of Agriculture Chairperson, Phyllis Shimabukuro-Geiser. The meeting was conducted virtually via Zoom due to the current risk of exposure to COVID-19.

Members Virtually Present:

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture
Suzanne Case, Chairperson, Board of Land and Natural Resources, Ex Officio Member
Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human Resources University of Hawaii, Ex Officio Member
Mary Alice Evans, Ex Officio Member
Vincent Mina, Maui Member
Diane Ley, Hawaii Member
Fred Cowell, Kauai Member
Randy Cabral, Member-at-Large
Joe Tanaka, Member-at-Large
En Young, Member-at-Large

Others Virtually Present:[1]

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Adrian Kamali'i
Aja Eyre
Andrew Goff, Attorney General's Office
Becky Azama, HDOA/Pesticides
Bob King
Brandi Ah Yo, HDOA/ARMD
Bryan Yee, Attorney General's Office
David Saito
Doug Fine
Elisabeth Bluml
Gail Byrne Baber
Galaxy Note 9
James Toma, Department of Health
Janet
JF Greimann
Jonathan Ho, HDOA/Plant Quarantine
Joyce Wong, HDOA/ARMD

[1] The identification of the public members is based on their sign-in name, but are not verified.

Jutta Mueller
Keith Zelinski
Leo Obaldo, HDOA/QAD
Leslie
Linda Murai, HDOA/ARMD
Lois Tambalo
Martin Canning
Michael Iosua
Michael Tivana
Morris Atta, HDOA/CHR
Peter Fay
Ray Maki
Raymond McGorry
Kyle Yamashita
Roy Hasegawa, HDOA/ARMD
Sean Lester
Shelley Choy, HDOA/QAD
Steve Shropshire
Tai Cheng

II. CALL TO ORDER

II. APPROVAL OF MINUTES FROM 8/12/20 MEETING

Motion to approve 8/12/20 minutes: Mina/Cowell

Vote: Approved, 9-0; (Abstained: Case)

III. INTRODUCTIONS

None

IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request to Approve Rental Offset, General Lease Nos. S-1002, S-1013, S-1016, S-1017; Hawaii Golden Farm, LLC, Lessee; TMK: 1st Div/8-5-034:002, 013, 016, and 017, Lots 2, 13, 16 and 17, Waianae Agricultural Park, Waianae, Island of Oahu, Hawaii

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

Motion to Approve: Evans/Tanaka

Board Member Cabral questioned how often a lessee could request a rent deferral. Board Member Ley asked the definition of "offset". Mr. Hasegawa explained that rent deferrals are

only for new leases; after one year, the lessee could submit receipts for cleaning and land preparation and request an "offset". The offset is a waiver of lease rent for two years.

Board Member Tanaka asked if there were any past exemptions authorized. Mr. Hasegawa confirmed that there was an exemption in 2019 or early 2019 for a lessee in Waimanalo.

Vote: Approved, 10-0

2. Request for Approval for Farm Dwelling; General Lease No. S-3132; Joshua Stamm, Lessee; Lot 14, TMK: 1st Div/4-1-010:046, Koolaupoko, Waimanalo, Island of Oahu, Hawaii

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

Motion to Approve: Evans/Ley

Board Member Evans asked if there was a previous farm dwelling on the site. Mr. Hasegawa replied that there was a greenhouse but no dwelling. Board Member Mina asked what would happen to the dwelling at the end of the lease. Ms. Murai replied that since it is considered a fixture, it would return to the State. She also confirmed that the Lessee would be responsible to the County as far as the sewer hookup, etc.

Vote: Approved,10-0

3. Request for Consent to Assignment of General Lease No. S-3114, Michael Shinsky (Deceased), Lessee/Assignor; Julia Shumann-Shinsky, Assignee; TMK: 3rd Div/4-4-011:033, Lot No. 33, Ka'apahu Homesteads, Hamakua, Island of Hawaii

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

Motion to Approve: Mina/Ley

Board Member Mina expressed condolences to the Shinsky family and wished Julia Shumann-Shinsky the best.

Board Member Young referred to "New Business, Item #2" and commented that the request had a clear line of succession and should be taken up as departmental housekeeping.

Vote: Approved, 10-0

4. Request for Approval to Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and Whitney Velez, Sublessee; General Lease No. S-5549,

TMK: 3rd Div/ 4-4-001:001 (Por), Lot No. 02, Kaunamano, Hamakua, Island of Hawaii

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

Motion to Approve: Tanaka/Ley

Vote: Approved, 10-0

5. Request for Approval to Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and Agee, Inc., Sublessee; General Lease Nos. S-7009, TMK: 3rd Div/4-3-005:014 (Por), Lot No. 16, General Lease No. S-7010, TMK: 3rd Div/4-3-005:017 (Por), Lot Nos. 06, 07, 09, General Lease No. S-7012, TMK: 3rd Div/4-3-005:019 (Por), Lot No. 08, General Lease No. S-7013, TMK: 3rd Div/4-3-005:020 (Por), Lot No. 2A, Hamakua Pohakuhaku and Kemau 1st, Hamakua, Island of Hawaii

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

Motion to Approve: Cabral/Cowell

Chair questioned if the sublessee had maintained the property in a satisfactory manner. Ms. Wong answered that Agee, Inc. had already cleared and prepared property for cattle movement, everything was in order and the agreement with State had been fulfilled. Board Member Ley asked Ms. Wong to elaborate on the agreement with the department and questioned whether it was a separate action. Ms. Wong said that there had been a question about Agee, Inc. staying on the property, but all matters were cleared with the former Chair.

Board Member Ley questioned whether there was a policy between the Coop and DOA which limits one sublessee to subleasing up to 50% of the Coop's lands and if there were opportunities for other producers to sublease within the Coop's leased lands? Ms. Murai said that there was no policy written or unwritten for Hamakua Ag Park. Chair questioned whether there was anything for all subletting of Ag Parks. Ms. Murai replied in the negative.

Board Member Young asked if there was any testing done for pesticides and insecticides and if any disclosures were required as former sugar lands are now being used for cattle. Ms. Murai was not sure but would follow-up. Chair requested that the Division include how long the land had remained fallow.

Board Member Ley asked if the response could be a summary report at a future meeting so that all board members could be better informed. DAG Yee replied that a report from the division at a future meeting is fine if further discussion is required. If communication is by email, the response should be sent "To Board Member Young" with a "bc" to all of the other board members. He explained that if "reply all" was used, using "bc" would avoid inadvertent communication between board members, which could be a sunshine law problem.

Vote: Approved, 10-0

6. Request for Consent to Assignment of General Lease No. S-4636; Ronald T. Okazaki (Deceased) Lessee/Assignor to Green Point Nurseries, Inc., Assignee; Lot No. 8, TMK: 3rd Div/2-4-049:022, Waiakea, South Hilo, Island of Hawaii

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

Motion to Approve: Ley/Tanaka

Vote: Approved, 10-0

7. Request for Approval to participate in The United States Department of Agriculture, Conservation Reserve Program; General Lease No. S-5655; Ponoholo Ranch, Limited, Lessee; TMK: 3rd Div/5-9-002:006; Makiloa, North Kohala, Island of Hawaii, Hawaii.

Brandi Ah Yo, HDOA/ARMD, presented testimony as submitted. Staff recommends approval.

Motion to Approve: Cabral/Ley

Public Testimony: None

Board Member Mina asked if the operation was mob grazing animals. Ms. Ah Yo replied that she would check and get back to him.

Vote: Approved, 10-0

8. Request for Approval for Installation of a Prefabricated Warehouse; General Lease No. S-3766; Contemporary Landscaping LLC, Lessee; Lot 10, TMK: 1st Div/4-1-027:019, Koolaupoko, Waimanalo, Island of Oahu, Hawaii

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

Motion to Approve: Evans/Tanaka

Board Member Mina asked if the lessee could take the warehouse with them at the end of the lease. Ms. Murai answered yes, with the consent of the lessor.

Vote: Approved, 10-0

B. QUALITY ASSURANCE DIVISION

1. Request for Approval of Proposed Chapter 4-161, Hawaii Administrative Rules, entitled "Hemp Production Interim Rules." The proposed new chapter 4-161 includes: §4-161-A Definitions; §4-161-B Transportation (requirements for the transportation of hemp); §4-161-C Nuisance (hemp growing area restrictions; compliance with nuisance, environmental, and land use regulations); §4-161-D Inspection; and §4-161-E Violations/Penalties.*

Chair explained that following the motion to approve/disapprove, all public testimony would be heard. The Board would then go into Executive Session to get clarity on the interim rules. Following the Executive Session, discussion, questions and decision making would follow.

Shelley Choy, HDOA/QAD, presented testimony as submitted. Staff recommends approval.

Motion to Approve: Evans/Tanaka

Public Testimony:

Chair stated that the Board received 35 written testimonies.

Micahel Iosua, Attorney representing South Maui Gardens, submitted verbal and written testimony in support of the interim rules.

Peter Fay, representing Omaopio-Piliwale Ohana, urged disapproval of the interim rules until nuisance rules are incorporated to address the noise, smell, vibrations and light destroying the neighborhood.

Sean Lester, field technician working with Dr. Leventhal, international expert on sound and acoustics, testified that he took field readings for the Dr. and the Ohana. The readings were up to 72 db in the field which was 25 db over international standards. He added residents are subjected to unacceptable level of low frequency noise from fans which would not be tolerated in other countries. He suggested that the grower would need to replace fans. The homes are shaking but there is no ability for grower to work with Ohana. He asked the Board to require 45 and 50 db at the boundary of the property

Raymond McGorry, license holder, founder Solvate Services, opposed Section 4-161-4 fees for inspections and Section 4-161-2 regarding transportation.

Doug Fine testified that he cultivated hemp in Hawaii and on the mainland and felt that the direction of hemp is to become a major staple crop; fewer restrictions are better in the long term.

Ray Maki, President of the Hawaii Hemp Farmers Association testified that the organization was concerned that the $50/hour inspection fee for discretionary requests would be a financial burden to the farmer. The have complaints about the buffer distances and felt that it was an unstudied, late addition to the bill that could articulate financial damage to compliant growers. He summarized that agricultural nuisance is a well-established area of lawful oversight at the

county and state levels and questioned the capacity of DOA to investigate and mediate the complaint and how the fines would be applied through the department.

Gail Byrne Baber testified that her husband has been farming for 40+ years and was issued one of the first hemp permits. She voiced objection to the buffers and nuisance sections of the interim rules--one neighbor situation has resulted in micromanaging and overregulating the industry. She stated OSHA and the County already have penalties in place and would like to see a pathway forward for mitigation.

Michael Tivana, Island Hemp on Big Island, testified against Section 4-161-4, fees for inspection. He said he has orders to fill but it is not clear who would do the approval. He recommended striking inspection fees.

Martin Canning of Hawaiian Hempire Farms on the Big Island supported the department's position but opposed inspection fees in the violation/penalties section. He stated that testing is already required under USDA and under pilot program and they already pay for inspections. He voiced concern about potential oversight problems when individuals without experience in the hemp industry conduct inspections and would like the penalties removed or altered.

Jennifer Greimann, Mauna Lua farms LLC, Hawaii, testified that farming is expensive; she explored programs through FSA/USDA but found it difficult to understand and qualify. She stated that community dialogue was needed and that USDA and DOA should become part of team to help the farmer become successful.

Elisabeth Bluml is a neighbor of hemp farm, South Maui Gardens. She testified and that due to 24-hour noise and excessive smell, she is losing her voice, is on medication, and is very concerned about her 12-year old daughter having problems. She is pro-CBD but would like rules and regulations for the industry to succeed without burdening the neighbors.

Keith Zelinski, Solvate Services testified that additional fines, law enforcement, and buffers, make it difficult/impossible to be a successful farmer.

James Toma of the Department of Health's Noise Section testified that noise rules are in place based on zoning of property. For agriculture, it is 70 db, 24/hours/day; for residential, it is 55 db during day and 45 db at night.

Aja Eyre, a Maui resident, testified that the Department of Health's noise statutes have not been amended since 1996 and the Legislature should look at amending the statutes to consider mixed zoning as antiquated laws are being used to address modern problems.

Motion to go into Executive Session to consult with Attorney: Mina/Comerford

Vote: Approved, 10-0
The Meeting was paused to enter Executive Session at 10:45 a.m.
The Meeting reconvened at 11:36 a.m. Discussion followed:

Board Member Evans directed a question to Mr. Toma as to whether the Department of Health had received complaints regarding a Hemp farm on Maui. Being that Mr. Toma was no longer in attendance, Ms. Choy answered that a complaint was filed but not investigated due to COVID.

Board Member Mina asked Ms. Baber about USDA rules and fees. Ms. Baber replied that there are none required by USDA. The only requirement was an email and letter from DOA. She requested that the DOA not regulate ahead of the USDA. She added that she would like to delete the fees as the USDA does not authorize fees and HB1819 does not authorize fees.

Board Member Tanaka asked Mr. Iosua why fans were needed on the farm. Mr. Iosua answered that he did not know. He also added that they did an audio inspection and the sound tests read 44-45 db levels and South Maui Gardens was willing to do mitigating efforts within reason. Board Member Cabral said that fans are needed to keep the air circulating to prevent mold and mildew. He did not know why they were using large fans as smaller fans are quieter and the norm on mainland operations. Mr. Iosua acknowledged that he would speak to Scooter Wallace regarding the size of the fan. Board Member Young explained that the fans pictured looked like exhaust fans to control humidity and heat which is the reason they need to be running during the day. He added that smaller fans would change the electrical load as more motors would be running and that greenhouse engineers would normally try to use the least number of fans for flow rates.

Board Member Comerford asked if the Board could receive the new information or inspection reports that were referred to by Mike Iosua and Sean Lester in a readable form. Board member Case clarified that they should submit the information as written testimony.

Board Member Ley stated that the new USDA rules for issuing licenses take effect on 10/30/20 but do not address transportation and nuisance. Ms. Choy stated that the USDA gives the license to grow the hemp and nuisance and transportation is a state function. Board Member Ley asked if there was a regulatory process for vibration and odor and if there were any other jurisdictions throughout the United States that address the effects of Cannabis growing. Ms. Choy answered that the DOH would handle vibrations and maybe the EPA would handle the chemical/odor. Ms. Choy was not sure about other jurisdictions which have addressed the effects. Board Member Ley asked for more research into the effects.

Board Member Ley asked if the interim rules, would allow DOA to inspect, issue a notice of violation, or assess fines. As an example, if there were noise problems would the DOA be able to enforce DOH statutes? DAG Yee clarified the question: Would DOA be able to issue a violation if violation of DOH regulations are found? Ms. Choy replied, yes and added that DOH has experts to measure nuisances. DOA does not have the training or expertise to take measurements. Chair asked Ms. Choy to confirm that odor comes under vector control.

Board Member Young asked if other departments would be called to help fill in the blanks if the rules were approved. Ms. Choy answered if the rules were approved, it would mean that the Board believed that the rules adequately addressed the issues.

Board Member Ley asked if the inspection rate of $50/hour + mileage is typical of the fees charged for other inspections. Chair stated and Ms. Choy confirmed that it is the rate currently charged by the Plant Quarantine Branch.

Board Member Ley asked if there were trained inspectors on each island and if travel was required, would there be an additional fee? Ms. Choy answered that there was no specialized training required and current staff could conduct the inspections to check if rules and statutes were being followed. She was not sure about the availability of personnel on each island. Board Member Mina asked why fees were being added when the legislature did not require fees. Ms. Choy answered that USDA does not require fees to have a license to grow but the department is required to monitor tasks outside of growing and the tasks need to be done with current personnel.

Board Member Mina stated that because one farm does not have a good relationship with the community, the farmers and the community will suffer. He reiterated that the regulations for sound have not been reviewed for many years. Chair referred to Aja Eyre's testimony regarding noise issues. Ms. Choy explained that Mr. Toma of the Department of Health, said existing regulations are set by the DOH statutes, Title 11, Chapter 46 but the issues of low frequency and constant noise is a new science that has not been vetted and is a matter that should be dealt with legislatively.

Board Member Evans asked why the DOA requires reporting of transportation as it appears that a USDA license imposes transportation restrictions. She questioned whether it was a concern that the plant could be confused with the THC variant and why law enforcement was included in enforcement if it is not a controlled substance? Ms. Choy replied that the USDA does not have specific transportation requirements, but it is required by Act 014 so the department needs to address it via the rules. She agreed that hemp does look visually the same as marijuana therefore the transport of hemp needs to be monitored because a crossover cannot be determined unless there is testing and is the reason law enforcement should be able to participate.

Board Member Cowell questioned whether penalties in section 5 are only related to what is stated in the rules and if there is a DOH noise complaint, would DOA be authorized to collect the fine? The fees will fall on the farmer but an environment where the farmer can prosper should be created.

Board Member Case made a statement and DAG Yee confirmed that this is a new industry, interim rules are required and would be eventually followed by full rules.

Board Member Case commented that there is one nuisance situation that is unresolved. All farmers new to hemp will have a buffer requirement that existing farms do not. To be fair, she suggested checking with DOH to find out the distance that the new growers would match the decibel requirements of the existing growers. If the growers can resolve the situation, it may not be necessary to address the issue in the final rules. If it is not resolved, then something can be added to help the situation. She stated that this is agricultural land that we don't want turned into residential neighborhoods. The problem grower should be motivated to resolve the situation, otherwise, it can be addressed in the final rules.

Board Member Tanaka asked DAG Yee if the USDA issues the license, the state could take it away. Mr. Yee explained that the USDA issues a license for growing and the state does not take a license to grow. The rules provide a license to transport. Board Member Tanaka asked if amending rules is an act of taking. DAG Yee said that regulatory structure is necessary for public health and safety did not agree that it was an act of taking. Board Member Tanaka stated if the rules are passed, the residents would not be satisfied. He asked if Chair could request that the grower negotiate with the residents

Chair addressed Mr. Iosua to ask South Maui Gardens to try and resolve the issue. Mr. Iosua acknowledged that they would like to work with the community and have taken sound mitigation efforts and again referred to the inspection report.

Board member Comerford said that there is a need to realize that the 500-foot buffer is arbitrary and has nothing to do with the noise values and there was a lot of information presented on health issues around noise. He recommended that the Board accept the interim recommendations now but include that DOH and DOA staff come up with reasonable noise, smell and light recommendations based on best science possible to protect people living in the area.

The original motion was amended by Board Member Evans.
Amended motion: To accept the interim rules as stated and ask DOA staff to develop rules relating to noise, smell, and lights by January 31, 2021 and work with other department agencies to make rules based on the best science available.

Motion to approve amended motion: Evans/Tanaka

Board Member Mina voiced displeasure about Mr. Iosua's response to the Chair's request.

Vote: Approved, 10-0 (w/reservations: Mina and Cabral)

Board Member Cabral asked that staff also look at concerns raised by farmers regarding fees for inspection and other concerns on added costs of operation.

V. OLD BUSINESS
None

VI. NEW BUSINESS
1. Discussion and possible decision-making on the Coffee Berry Borer situation on Kaua`i and Lana`i.

Board Member Cowell reported that the Coffee Berry Borer (CBB) was detected on Kauai three weeks ago by a non-commercial farmer. The insect was reported to the Kauai Invasive Species Council, DOA, and CTAHR who assessed the reported sites and other sites. Within a few weeks, CBB was also detected on Lanai. He voiced concern over the speed of the response

and spoke of the need for coffee growers to adapt what others who have been in their situation have done as the invasive species has changed the way that they do business.

Chair said that the department was the 3rd agency to be contacted and acknowledged that the department needs to inform the public how to report more quickly.

Ms. Becky Azama, Manager of the Plant Pest Control Branch said that they have been working on a written response; having a branch well-informed on how to react in different scenarios is important. She said that one of the factors involved is that staff is not always able to access a site to survey or monitor right away.

Mr. Jonathan Ho, Acting Plant Quarantine Manager said that the relationship between DOA and CTAHR is not as cohesive as in the past due to personnel changes. He is part of the Early Detection Rapid Response Working Group and they recognize that reestablishing communication is important. He continued, when the interim rules for CBB were made, they recognized that uninfected islands could be affected in transit. He added that quarantine is not perfect but there is also a need to determine how to deal with the situation regulatorily.

Board Member Cowell said that he would like to meet with the teams that responded, as a citizen, to discuss the response and determine what worked and what didn't work as a lesson on how to deal with future incidents.

Dr. Kevin Hoffman, HDOA/PI reviewed the response timeline. HDOA received the sample on September 3rd and CBB was positively identified on September 4th. Staff responded that day to the collection site and informed Kauai Coffee. He reported that there are only 2 staff on Kauai and over 2 weeks, they teamed with CTAHR and Kauai Invasive Species Committee to survey the residential area around the find. In addition, Mr. Cowell's staff also surveyed their coffee. They acted quickly but unfortunately CBB was already in several locations and would be difficult to eradicate. He agreed with Mr. Ho regarding evaluating interisland restrictions and extended appreciation to Kauai Coffee and Mr. Cowell for their assistance during the initial response.

Board Member Young stated that there is community concern over the fragility of the environment on Lanai and a voluntary quarantine of agricultural supplies is in effect. He expressed concern that there is an inability to track what brought is in on household goods and asked if the department could disseminate traps or something that the farmers could use to collect samples to assist the department.

Board Member Case commented that vectors are in green coffee beans and materials that have carried the beans like burlap bags that are reused. She said to take a careful look at restrictions that need to be upgraded to prevent further distribution.

Mr. Ho reviewed procedures for shipping.

Public comment: None

2. Announcement without discussion of upcoming agenda items (e.g., delegation of authority to the Chairperson).

Chair announced that the delegation of authority from the Board to the Chair to act on certain items, such as fencing on leased property, would be placed on next meeting's agenda. Based on the administrative rule of various programs, the submission would note what the Chair is delegated to do and the Board's authority on policy.

Public comment: None

VII. ADJOURNEMENT OF MEETING

The meeting was adjourned at 12:51 p.m.

Respectfully submitted,

Jan Ferrer
Board Secretary