



Department
of Agriculture

STATE OF HAWAII

Minutes of the Board of Agriculture
October 27, 2020

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on October 27, 2020 at 9:12 a.m. 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
Fred Cowell, Kauai Member
Randy Cabral, Member-at-Large
Joe Tanaka, Member-at-Large

Others Virtually Present:¹

Andrew Goff, AG
Becky Azama, HDOA/PI
Brandi Ah Yo, HDOA/ARMD
Brian Kau, HDOA/ARMD
Bryan Yee, AG
Bryna Storch, Lanipo Farm
Christine Asing, HDOA/ALD
Darwin Inman
Dean Matsukawa, HDOA/ALD
Earl Yamamoto, HDOA/CHAIR
Gareth Mendonsa, HDOA/ALD
Heath Williams, HDOA/CHAIR
Isaac Maeda, HDOA/AI
Janelle Saneishi, HDOA/CHAIR
Janet
Jonathan Ho, HDOA/PI
Joyce Wong, HDOA/ARMD
Kelly Stern, Yogarden LLC
Kennie Bender, Peter De Luz Ranch, LLC
Kevin Hoffman, HDOA/PI
Leo Oblado, HDOA/QAD
Linda Murai, HDOA/ARMD

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

1 Margaret Ahn, AG
2 Roy Hasegawa, HDOA/ARMD
3 Shelley Choy, HDOA/QAD
4 Victoria Matsumura, HDOA/PI
5 Wayne Takamine, HDOA/ALD
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7 II. APPROVAL OF MINUTES FROM 9/22/20 MEETING
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9 Motion to approve 9/22/20 Minutes: Comerford/Tanaka
10

11 Vote: Approved, 8-0
12

13 III. INTRODUCTIONS
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15 None.
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17 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION
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19 A. AGRICULTURAL LOAN DIVISION
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21 *Due to technical difficulties, item #2 (loan to Tamimi) was heard before item #1 (loan to De Luz*
22 *etal.); item numbers were preserved to match agenda.*
23

24 2. Request for Approval of One (1) Emergency Loan to Zuhair Tamimi.
25

26 Wayne Takamine, HDOA/ALD, presented testimony as submitted.
27

28 Staff recommendation: Approval
29

30 Motion to Approve: Mina/Cabral
31

32 Public Testimony: None
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34 Discussion:
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36 Board Member Mina asked if a 3% loan was the best that could be done for farmers. Mr.
37 Takamine stated that Mr. Tamimi still has orders and 15% of his clients have been restored and
38 35% would be his breakeven point and is looking for different distributors. His primary clientele
39 are high end resorts, and he is hoping everything returns to normal.

40 Chair said that 3% interest rate is the best that could be done. Mr. Matsukawa stated that the
41 3% interest rate was set by statute and is the lowest rate that could be offered.

42 Board Member Mina stated that he hoped that the farmer had an alternate business plan if
43 tourism does not bounce back according to expectations. He asked Mr. Takamine how he
44 follows up and keeps in touch with borrowers.
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46 Mr. Matsukawa stated that the terms are being proposed but if the farmers have difficulty, the
47 terms can be modified.

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Vote: Approved, 8-0

Board Member Cabral asked for the available balance in the loan fund. Mr. Matsukawa answered that after current loans there would be about \$350,000 left in the fund within the budgeted ceiling.

1. Request for Approval of One (1) Emergency Loan to Peter De Luz Ranch, LLC and Peter E. De Luz, Sr., Co-Borrowers.

Gareth Mendonsa, HDOA/ALD, presented testimony as submitted.
Staff recommendation: Approval

Motion to Approve: Evans/Cabral

Public Testimony:

Kennie Bender was present and available to answer questions on behalf of her father, Peter De Luz, Sr.

Discussion:

Board Member Cabral questioned the base market value of Angus that was presented as \$2,000 - \$5,000 in the loan writeup. Mr. Mendonsa answered that it was from the internet. Ms. Bender said that they sell Angus for \$2,000 to \$2,500 as a fair bull price, and cows are lower.

Board Member Mina said he is happy that Ms. Bender was working with her Dad. Ms. Bender said it is a family business and she and her two brothers work with their Dad, who hopes to keep the business successful to pass down to his children and grandchildren.

Board Member Cabral added that he knows Peter and that he is a good rancher and runs a good operation.

Vote: Approved, 8-0

3. Request for Approval of One (1) Direct Farm Ownership Loan to Bryna Storch, Isobel Storch and Lanipo Farm LLC, Co-Borrowers.

Christine Asing, HDOA/ALD, presented testimony as submitted.
Staff recommendation: Approval

Motion to Approve: Mina/Evans

Public Testimony:

Bryna Storch was present and briefly described their farm operation.

Discussion:

1 Board Member Cowell voiced his support for the loan and added that the farm-to school as well
2 as the EBT programs are a fantastic way to serve the community. Board Member Mina said
3 that he knows Ms. Storch and that she is passionate and committed to agriculture.
4

5 Vote: Approved, 8-0
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7

- 8 4. Request for Approval of One (1) Direct New Farmer/Farm Ownership Loan to
9 Yogarden LLC, Paul D. Izak and Kelly C. Stern, Co-Borrowers.
10

11 Christine Asing, HDOA/ALD, presented testimony as submitted and corrected page 6 to state
12 that loan approval is subject to the consent to assignment of lease.

13 Staff recommendation: Approval
14

15 Motion to Approve: Mina/Evans
16

17 Public Testimony:

18 Kelly Stern was present to answer any questions.
19

20 Discussion:

21 Board Member Mina stated that Paul and Kelly are ambassadors to agriculture with music,
22 recipes and yoga. He added that they have a diverse, holistic approach to agriculture and
23 encouraged support.
24

25 Vote: Approved, 8-0
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28 B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION
29

- 30 1. Request for Consent to Assignment of General Lease No. S-3103; Gabriel Machado,
31 Jr., Trustee and Shellee H. Machado, Trustee, Lessee/Assignor, Yogarden LLC,
32 Assignee; TMK: 1st Div/4-1-010:039, Lot 8, Koolaupoko, Waimanalo, Island of Oahu,
33 State of Hawaii
34

35 Linda Murai, HDOA/ARMD, presented testimony as submitted and added that the assignment
36 includes a 3-bedroom, 1-bath dwelling with carport, processing shed, and shadehouse.

37 Staff recommendation: Approval
38

39 Motion to Approve: Mina/Cowell
40

41 Public Testimony:

42 Kelly Stern stated that with the purchase, will enable them to move forward to the next step that
43 they see for their business.
44

45 Discussion:

46 Board Member Mina applauded the efforts of young, passionate farmers. Chair questioned if
47 the fruit trees and vegetables were part of the operation and asked if they are already growing

1 or planning to grow turmeric and vanilla. Ms. Stern replied that they currently have $\frac{3}{4}$ acre of
2 turmeric producing 5,000 lbs. and are able expand the operation. She added that they have
3 vanilla in a shadehouse that is in year 3 of production and it would take 4-7 years before making
4 a profit.

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6 Vote: Approved, 8-0
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9 2. Request for Acceptance for Annual Renewal of Revocable Permits for TMK Nos.:
10 (1) 1-9-002:080; (1) 4-1-008:071 & 072; (1) 4-1-018:049; (2) 1-1-003:028; (3) 3-1-
11 004:001; (3) 4-6-002:001; (3) 4-7-004:009; (3) 4-9-011:002; (3) 5-5-007:011; (4) 1-9-
12 002:019; (4) 1-9-003:006; (4) 1-9-003:010; (4) 1-9-012:011; (4) 4-1-001:007; (4) 4-1-
13 001:012; and (4) 4-1-009:005 & 006.
14

15 Linda Murai, HDOA/ARMD, verbalized a correction that TMK number (1)1-9-002:080 should be (1)
16 9-4-002:080. Testimony was presented as submitted.

17 Staff recommendation: Approval.
18

19 Motion to Approve: Cabral/Evans
20

21 Public Testimony: None
22

23 Discussion:
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25 Board Member Case questioned the provision for public access going mauka-makai on the road
26 for RP 7775 and if it would be possible to amend the submittal to include a stipulation to the
27 extent that the road can be accessed. Ms. Murai answered that she would check and consult
28 with the Deputy Attorney General.
29

30 Chair stated that staff will work on the concern regarding the road for RP 7775.
31

32 Board Member Cabral asked why they are revocable permits (RP) and not long-term leases as
33 RP's do not work in the long run. Ms. Murai answered that they came over from DLNR as RP's
34 and not general leases and that DOA can now offer longer term leases.
35

36
37 Board Member Mina asked if the Board approved no rent increases, the permittee could still be
38 offered a long-term lease. Ms. Murai answered, yes. Chair asked if there had been any interest
39 by permittees to convert. Ms. Murai answered yes, and they are subject to appraisals being
40 completed.
41

42 Vote: Approved, 8-0
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45 The Board recessed from 10:30 a.m. – 10:35 a.m.
46
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1 V. OLD BUSINESS

2
3 1. Discussion and Decision Making on the Delegation of Authority to the
4 Chairperson.

5
6 Chair explained that since March 2019, Board Members have commented that certain requests
7 were routine housekeeping and should be delegated to Chairperson. Chair called on division
8 administrators to present and explain their lists of requests.

9
10 **Agricultural Loan Administrator**, Dean Matsukawa, explained his submission.

11
12 Board Member Evans asked questions to clarify submittal and voiced support of
13 recommendation and made the motion:

14
15 Motion to delegate the Board's vested powers and duties and functions to the Chair in
16 regard to actions in HAR 4-8-34, Default.
17 (Evans/Cowell)

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19
20 Chair voiced that she was supportive of anything that would speed up the decision-making
21 process as meetings are not always held monthly.

22
23 Public testimony: None

24
25 Vote: Approved, 8-0

26
27 Board Member Mina asked if Ag Loan's money was from the legislature or if it was COVID
28 money. Mr. Matsukawa replied that there was no COVID money in the Ag Loan fund.

29
30
31 **Agricultural Resource Management Administrator**, Brian Kau presented his division's two
32 proposals as submitted.

33
34 Board Member Evans asked if item #2 included adding fencing and non-residential storage or
35 processing structures. Mr. Kau answered, yes. Board Member Evans made the motion:

36
37 Motion to approve delegation of the two types of actions that are initiated by the division
38 and delegate the ability to approve them to the Chair of the Board of Agriculture.
39 (Evans/Cabral)

40
41
42 Discussion:

43
44 Board Member Evans stated that she believes that the Chair should have the ability to approve
45 the items listed to avoid the delay of waiting for the item to be placed on the board agenda. She
46 did not recall improvements such as a fencing ever being turned down. She was strongly in
47 favor of the opportunity to improve the business conditions for farmers.

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Board Member Cabral asked if the farmer had any recourse if their request was denied and if the farmer could go before the Board if they felt the denial was for an unjustified reason.

Mr. Kau answered that if the item went to the Board, the process would be unchanged from the current path. Chair asked, if approval authority was delegated, and the request was denied, the lessee could take their request before the Board. DAG Yee explained that the normal process would be for the request to be reviewed by staff and then recommended for approval. If staff did not approve, they would not recommend disapproval. Although it has never happened before, Board Member Cabral wanted to make sure that there was a mechanism in place for the farmer to seek remedy if they felt the denial was not justified

DAG Yee suggested that the Board could delegate the authority to approve, but not the authority to disapprove to the Chair. Board Member Evans said that her motion was specifically for approval only and silent on the Chair recommending disapproval.

Board Member Evan's motion was restated by DAG Yee.

Restate motion for ARMD Item #2: Motion to delegate to the Chair, the power to approve installation/construction of improvements planned and proposed by the lessee to be constructed on the premises are subject to chapters 4-153-32 (3) and 4-158-20 (e), HAR, provided that it should not include the power to deny the items in the ARMD submittal, which shall come before the board.
(Evans/Cabral)

Board Member Case had significant concerns on ARMD's first request. She felt that it was a basic function of the Board and a basic area where public transparency was important. She was not concerned about the transfers to family but questioned transfers to corporate successors. Board Member Case offered an amendment to Board Member Evan's motion.

Amended motion ARMD Item #1: Regarding general leases – assignments/ownership interest/stock transfers to familial related individuals, extensions and waiver of performance bonds for which approval shall be subject to lessee's compliance with provisions of the lease, Hawaii Revised Statutes and Hawaii Administrative Rules.
(Evans/Cabral)

Public Comment: None

Vote: Approved; 8-0

Animal Industry Administrator, Isaac Maeda explained that his submission was only to inform the Board what currently exists and that no new delegations were being requested.

Public Comment: None

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2 **Plant Industry Administrator**, Kevin Hoffman summarized his submission and stated that he
3 was not asking for additional authorities.

4
5 Board Member Case asked about inclusion of a plant to the noxious weed list. Ms. Becky
6 Azama, PI/PPC, answered that it must go through the rulemaking process. Board Member
7 Case commented because it involves the rulemaking process, it cannot be delegated but it
8 would be nice to delegate to staff the ability to put something in place quickly to prevent the
9 spread and to investigate how to incorporate into a new rule the ability to make future changes
10 more quickly.

11
12 Board Member Evans asked if the Chair had the ability to take emergency action without
13 amending rules if time is of the essence. Dr. Hoffman replied that the Department does not
14 have the ability, but the Governor does. He added that there is a provision where the
15 Department can broadly respond and do surveys.

16
17 Regarding quarantine, Chair asked Mr. Jonathan Ho, PI/PQ if there was a recent example of
18 how the Department could respond to a new invasive pest or disease. Mr. Ho responded that
19 Section 158-9.5, HRS gives the Department the ability to implement an interim rule not subject
20 to Chapter 91, HRS. He cited as an example, Rapid Ohia Death (ROD) where an interim rule
21 was implemented. The process still required that the rule go through the Plant and Animal
22 Advisory Board (P&A) but it took 6-7 months instead of 1 year if it went through the full
23 rulemaking process.

24
25 Board Member Cabral asked what steps the Department could take right away for the Coffee
26 Leaf Rust (CLR) on Maui. Mr. Ho said public outreach was done but as far as interisland
27 movement, the Department would draft a board submittal which would need to be reviewed by
28 the P&A before bringing it to the Board. He thought that the process could be quicker than for
29 the ROD because CLR is a preeminent pest of coffee.

30
31 Board Member Cowell emphasized that CLR is extremely significant and waiting a month or two
32 for quarantine or movement restrictions would have massive economic impact.

33
34 Chair said that the Department is not waiting for an official identification and the Plant
35 Quarantine Branch has already been notified to start preparing for the emergency rule process.

36
37 Board Member Case said that it is a challenge and an opportunity to rethink the process in this
38 challenging financial situation and 6 months for an emergency rule was not good. She gave an
39 example of the board meeting being considered as part of the public rulemaking process.

40
41 Board Member Evans stated that for CLR, based on what the division discovers, the Chair
42 should have the ability to take emergency action immediately and put it into place quickly to
43 protect other islands. She made a motion:

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45 Motion to delegate to the Chair to impose emergency quarantine to protect the islands
46 from the CLR pathogen.
47 (Evans/Cowell)

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Deputy Attorney General Yee commented that rules cannot be delegated and asked Mr. Ho what authority the Board had to impose requirements. Mr. Ho cited Section 158-9.5, HRS which restricts movements and Section 141-3c which allows the department to designate a pest for control/eradication. DAG Yee asked if he would assume that the Department could make the determination and Mr. Ho replied depends how to interpret the term "department"

Chair asked if the department could skip the P&A review and go to Chair with staff's recommendation. Mr. Ho replied in the negative, as it is a statutory requirement.

Board Member Comerford says that CLR affects the biosecurity and he would argue for the most liberal interpretation to avoid delays in taking remedial action as it would mean the possible destruction of industries. He added that the Board needs to back up actions as strongly as possible within the lines of the law.

Chair questioned if action could be done today by a motion. DAG Yee stated that the motion is delegation of action and he did not hear that the delegation was the limiting factor. He noted that other issues such as liberal interpretation of statute should be discussed in executive session.

Chair stated that she can already start emergency action for CLR. Mr. Ho stated that if the term department coincides with the Chairperson, then it is clear that the Chair can make the determination; the interim rules would need to go to P&A but after that, the Chair can make the designation and after 12 days, the interim rule would go into effect.

A motion was made to go into Executive Session to consult with lawyers to consider the rights, duties and obligations as Board Members.
(Cowell/Case)

Vote: Approved; 8-0

The meeting was paused to go into Executive Session as 12:02 p.m. and resumed at 12:23 p.m. with 8 board members present.

A Motion made by Board Member Evans was read by DAG Yee.

Motion to delegate such powers as the board may have under sections 141-3 or 150A-9.5, Hawaii Revised Statutes, to the Chair upon the determination by the chair that in her discretion, an imminent threat of a pest or pathogen with significant agricultural, economic or ecological impacts exists.
(Evans/Cowell)

Discussion:

1 Board Member Mina asked the latitude of the Department when it is necessary to enter
2 someone's property during an infestation. Mr. Ho said that Section 141-3.6, HRS allows them
3 to enter the property to control or eradicate pests. DAG Yee added that it may require a court
4 order if the property owner refuses.

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6 Vote: Approved; 8-0

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9 **Quality Assurance Division's** presentation and decision making were deferred to the next
10 board meeting.

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13 Motion to Adjourn: Comerford/Cabral

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16 Board Member Cabral asked if he could discuss placing an item on the agenda for the next
17 meeting. Board Member Mina asked about discussing old business.
18 DAG Yee said that it was possible to request to put a prior item on the agenda but there could
19 be no discussion. Chair said that the items would be placed on the next agenda.

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22 VI. NEW BUSINESS

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24 None.

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27 VII. ADJOURNMENT OF MEETING

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29 The meeting was adjourned at 12:33 p.m.

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32 Respectfully submitted,

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35
36 Jan Ferrer
37 Board Secretary

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