



Minutes of the Board of Agriculture
September 28, 2021

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on September 28, 2021 at 9:05 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
Mary Alice Evans, Ex Officio Member
Diane Ley, Hawaii Member
Vincent Mina, Maui Member
Fred Cowell, Kauai Member
Randy Cabral, Member-at-Large
Joe Tanaka, Member-at-Large
En Young, Member-at-Large

Others Virtually Present:¹

18087803263
18089368378
Aldric Ulep, FIN
Ann Phet Keosavanh
Ashley Haleakala
Becky Azama, HDOA/PI
Brandi Ah Yo, HDOA/ARMD
Brian Kau, HDOA/ARMD
Calvin Wong
Carrie Mukaida
Chris Kishimoto, HDOA/PI/PQB
Daryl Huff
Delanie Prescott-Tate, AG
Donald Garwood, HDOA/ARMD
Edward Boteilho
Evan Oue
Guest
Helmuth Rogg, HDOA/PI
Jacob Tavares, Parker Ranch
Janelle Saneishi, HDOA/Chair
Jodi Yi, AG
Jonathan Ho, HDOA/PI/PQB
Joyce Wong, HDOA/ARMD

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

1 Kimberly Yoshimoto
2 Leo Obaldo, HDOA/QAD
3 Linda Murai, HDOA/ARMD
4 Linda Rosehill
5 Margaret Ahn, AG
6 Mark Fukui
7 Mark Ladao
8 Martin Nadeau
9 Michael Iosua
10 Morris Atta, HDOA/Chair
11 Nicole Galase
12 Ray
13 Richard Cohen. HDOA/QAD/MS
14 Roy Hasegawa, HDOA/ARMD
15 Scott Enright
16 Shannon Alivado
17 Susan Mulkern
18 Terri Spanogle
19 Wil Leon Guerrero, HDOA/PI/PQB
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22 II. APPROVAL OF MINUTES FROM 6/22/2021 MEETING

23

24 **Motion to Approve 6/22/2021 minutes: Ley/Mina**

25 Discussion: None

26 **Vote: Approved, 9-0 (excused-Comerford)**

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29 III. INTRODUCTIONS

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31 Dr. Helmuth Rogg, Plant Industry (PI) Administrator

32 Richard Cohen, Measurement Standards (MS) Branch Manager

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35 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

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38 A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

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- 40 1. Request for Acceptance of Annual Lease Rents as Determined by Independent
41 Appraisal for Rent Reopenings and New Leases for Various Lots Located
42 Statewide; TMK Nos.: (1) 4-1-008:071, 072 por; (1) 4-1-018:049; (1) 4-1-027:027;
43 (1) 4-1-035:001, 002, 004, 005, 006, 007, 008, 009, 011, 013, 014; (2) 2-2-
44 004:001, 002, 029, 031, 066; (2) 2-2-005:047, 053; (3) 2-2-056:027, 028, 029, 030,
45 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045; (3) 5-5-
46 003:004, 005, 006, 5-5-005:001, 5-5-006:002, 003, 004, 015; (3) 7-3-049:002, 003,
47 005, 007, 008, 009, 010, 011, 012

1 Donald Garwood, HDOA/ARMD presented testimony as submitted.
2 Staff Recommendation: Approval

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4 **Motion to Approve: Evans/Cowell**

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6 Public Testimony:

- 7 • Mark Fukui, owner of Contemporary Landscaping testified that his rent doubled. He
8 stated that the appraisal was conducted without regard for the circumstances in
9 Waimanalo and felt that sales prices were driven by non-ag use which in turn increases
10 rent. He wanted DOA to break the cycle and make ag land more affordable.
11 • Susan Mulkern, Mulkern Landscaping & Nursery said that their rent tripled. She noted
12 that it was better value than a private lease, but she was concerned for all who depend
13 on proceeds from nurseries to pay the rent. Kevin Mulkern added that labor shortages
14 and ag theft influence the ability to pay lease rents.
15 • Written testimonies in opposition were received from David Shiigi, Bromeliads HI;
16 Boteilho Hawaii Enterprises, Inc., and Raymond Tanouye.

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19 Discussion:

20 Board Member Cabral asked if there was a process for the lessee to contest the increase. Ms.
21 Linda Murai explained that if a lessee did not agree, they could appeal and get another
22 appraisal at their own expense. If the two appraisers did not agree, a third appraiser would
23 decide. She added that the process was costly for the lessee because they would be
24 responsible for the arbitration and mediation expense; in addition, there would also be a cost to
25 the State in terms of time and effort by staff.

26
27 Board Member Cabral said that a lot of farmers, especially nurseries, suffered during the
28 pandemic and he was reluctant to increase rents and asked if they could propose delaying any
29 increase. Division Administrator Brian Kau answered that it would be unprecedented and
30 suggested consulting the Attorney General's (AG) office. He noted that a delay or
31 postponement of reopenings would place the department in a difficult position as the revenue
32 pause would significantly impact the continuance of the program. Board Member Cabral
33 commented that it would not help if the farmer was not able to pay the increased rent and a
34 temporary stay would be a compromise.

35
36 Board Member Evans was concerned that the appraised fair market values for Waimanalo were
37 taking into consideration that privately-owned farm lots in ag districts are being sold for
38 residential prices. She acknowledged the revenue concerns but stated that the purpose of
39 making the parcels available for farmers is to allow them to survive situations like the pandemic
40 and be able to farm. She stated that she would be inclined to compromise or disapprove. She
41 added that she had questioned why the laws could not be amended to allow an approach other
42 than appraisals because appraisals are not reflective of agriculture.

43
44 Board Member Young agreed with Board Members Cabral and Evans. He noted that inflation is
45 crazy and to say that the housing market has no effect on ag prices is blind. He acknowledged
46 the revenue issue but felt that it was not the right time to look at increases.
47

1 Mr. Kau said that the appraisals are based on unimproved vacant land and that there was no
2 cheaper way. Alternate methods always came out higher. He acknowledged the Board
3 Members' concerns but noted that the program is special-funded and currently not subsidized.
4 He said that it was his responsibility was to ensure that the program would continue.

5
6 Board Member Case said the process seemed clearly set by statutes and rules, and if there was
7 a question, the Board should consult the Deputy AG on the Board's responsibility and their
8 ability to make changes.

9
10 Board Member Case referred to Exhibit A and there was a discussion with Ms. Murai regarding
11 the different categories. Reopenings are existing leases going through periodic review (every
12 10-15 years). Conversion is a revocable permit or a long-term lease transitioning to a new 35-
13 year lease. Ms. Murai said that the leases are brought to the board to authorize before
14 confirming the lease rent. She also explained that the fair market rent would be the new lease
15 rent. If a Percentage Rent on Gross Proceeds was included in the lease, then the lessee would
16 pay the higher of the calculated percentage rent or the annual lease rent. They would not pay
17 both.

18
19 Board Member Ley asked if the division was relying on the proposed increases at the time the
20 budget was projected. Mr. Kau answered that there was a small amount of cash reserves and
21 that they could weather a year, but they would not be able to respond to emergencies. Board
22 Member Ley asked about major expenditures, other than staffing. Per Mr. Kau, staffing was 70-
23 80% of the overall budget and the other large expense was the Special Fund Assessment which
24 is based on expenditures and revenues. Board Member Ley asked if there was an opportunity
25 for producers with financial losses to justify deferral of increases.

26
27 Chair suggested that there be a motion to go into Executive Session.

28
29 **Motion to go into Executive Session to consult with attorney on the Board's rights,**
30 **privileges, duties, and responsibilities: Case/Young**

31
32 Deputy Attorney General (DAG) Ahn stated that she was not ARMD's attorney. DAG Bryan
33 Yee, who represents ARMD, was not available. Chair asked DAG Ahn to contact DAG Jennifer
34 Waihee-Polk to join the Executive Session.

35
36 Board Member Evans commented that if reopenings were every 10 years, the appraiser
37 decided on a 10% increase in value, which is high for farming. She added that collective
38 bargaining increases for special funds have been 2.5% per year. The \$200,000 that the
39 legislature took from the special fund to transfer to the general fund was the farmers' money
40 subsidizing government. Going forward with rent reopenings and rent increases when farmers
41 are struggling to stay in business would place the needs of the general fund ahead of farmers.

42
43 **By unanimous vote, the Board went into Executive Session pursuant to section 92-5(4) to**
44 **consult the board's attorneys regarding the powers, duties, privileges, immunities, and**
45 **liabilities at 10:00 a.m.**

46
47 The meeting resumed at 10:40 a.m. Board Member Tanaka did not rejoin the meeting.

1 **The original motion was withdrawn: Evans/Cowell**

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3 Chair stated that more time was needed to get advice from DAG Bryan Yee.

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5 **New motion to defer the agenda item to the next meeting: Evans/Cowell**

6 **Vote to defer: Approved, 8-0 (excused - Comerford, Tanaka)**

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8 Board Member Case left the meeting at 10:43 a.m.

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11 **Chair announced that Item No. A-5 would be deferred to the next regular board meeting.**

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2. Request for Approval to Sublease Between the Hamakua Agricultural Cooperative and AGEЕ, Inc.; General Lease No. S-7009, TMK: 3rd Div/4-3-0005:014(por), Lot No. 17, Hamakua Pohakuhaku and Kemau 1st, Hamakua, Island of Hawaii

Joyce Wong, HDOA/ARMD presented testimony as submitted.

Staff Recommendation: Approval

Motion to Approve: Cabral/Evans

Public Testimony: None

Discussion:

Board Member Ley asked if past issues with unauthorized activities and storage of junk had been resolved. Ms. Wong replied that an inspection was done last month, and it had been cleaned up.

Vote: Approved, 7-0 (excused – Comerford, Tanaka, Case)

3. Request for Approval of Termination of General Lease No. S-4432, Floral Resources-Hawaii, Incorporated, Lessee; TMK: 3rd Div/1-5-116:019, Pahoа Agricultural Park, Lot No. 19, Keonepoko Iki, Puna, Island of Hawaii

Joyce Wong, HDOA/ARMD presented testimony as submitted.

Staff Recommendation: Approval

Motion to Approve: Ley/Cabral

Public Testimony: None

Discussion: None

Vote: Approval, 7-0 (excused – Comerford, Tanaka, Case)

- 1 4. Request Approval for Modification of General Lease No. S-5567, Lot No. 73; Scott
2 James Salfen, Lessee; TMK: 3rd Div/1-2-006:073, Kaimu, Puna, Island of Hawaii,
3 Hawaii
4

5 Brandi-Ah Yo, HDOA/ARMD presented testimony as submitted.
6 Staff Recommendation:

- 7 1. Find that the Lessee, due to the discovery of documentation regarding the existence of
8 historical features on the premises, ceased farming and development of the premises in
9 accordance with paragraph 39 of the lease. The Lessee is unable to commence farming
10 until an Archaeological Inventory Survey is performed meeting criteria under Hawaii
11 Administrative Rules (HAR) Chapter 13-276. Due to COVID, it is uncertain as to when or
12 if the State Historic Preservation Division can perform the survey.
13 2. Approve the modification of the lease term pursuant to Section 171-36(b)(2), Hawaii
14 Revised Statutes (HRS), by authorizing the early termination of General Lease No. S-
15 5567 with Scott James Salfen, as Lessee, retroactively effective as of December 8,
16 2020, as his lease rent is paid in full as of that date.
17 3. Pursuant to HAR Section 4-158-2 (a)(10), waive all outstanding lease rent delinquencies
18 including penalties and interest accrued commencing December 9, 2020 to the date of
19 this BOA meeting.
20

21 **Motion to Approve: Evans/Ley**

22 Public Testimony: None
23
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25 Discussion:

26 Board Member Cabral asked if a Conservation Plan was required for parcels leased from the
27 State and if the plan required identification of historical structures and sites. Ms. Ah Yo said a
28 Plan was required and that the lease was transferred from DLNR.
29

30 Board Member Ley asked about the planned disposition of the parcel going forward. Ms. Murai
31 answered that the parcel is no longer leasable because of the historic preservation items on the
32 land and that the parcel would be transferred back to DLNR.
33

34 Board Member Evans expressed appreciation to the lessee for protecting sites and to the
35 department for recognizing that the lessee was doing the right thing.
36

37 In response to an inquiry, Ms. Ah Yo reported that the property did not have water and it was
38 not known how many acres were in production. She also added that Mr. Salfen only recently
39 became aware of the new memo stating that there were historical remains throughout the
40 property.
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42 **Vote: Approved, 7-0 (excused – Comerford, Tanaka, Case)**
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- 1 5. ~~Request for Approval of Extension of Lease Term, General Lease Nos. S-7000, S-~~
2 ~~7014, S-7015 and S-7016; Hawaii Beef Lease, LLC, Lessee; TMK: 3rd Div/4-3-~~
3 ~~005:002; 3rd Div/4-3-005-002-5002; 3rd Div/4-3-005-002-5003 and 3rd Div/4-3-005-~~
4 ~~002-5004, Hamakua Agricultural Park, Pohakuhaku and Kemau 1st, Hamakua District,~~
5 ~~Island of Hawaii, Hawaii~~

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7 **(Deferred to the next regular Board meeting)**

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10 11:04 a.m. – 11:12 a.m. Meeting paused.

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13 **B. QUALITY ASSURANCE DIVISION**

- 14
15 1. Request for (1) Preliminary Approval of Proposed Chapter 4-161.1, Hawaii
16 Administrative Rules, entitled “Hemp Production” and (2) Authorization for the
17 Chairperson to Schedule Public Hearings and to Appoint a Hearing Officer in
18 connection with (1).

19
20 A summary of the proposed rules is as follows:

- 21
22 A. §4-161.1-1 Definitions. Establishes definitions for hemp production
23 rules.
24 B. §4-161.1-2 Transportation. This section creates procedures and
25 reporting requirements for the transportation of harvested hemp leaf and
26 floral materials, and live hemp plants (1) between licensed producers,
27 (2) between licensed producers and registered processors, or (3) for
28 exportation.
29 C. §4-161.1-3 Nuisance. Act 14 created 500 foot buffer zones around
30 certain areas and structures, but exempted pilot program licensees who
31 were licensed prior to August 27, 2020 from the buffer zone
32 requirements in the areas for which they were licensed at the time. This
33 section creates additional penalties for the violation of any nuisance,
34 environmental, or land use regulations by licensees exempt from the
35 buffer zone.
36 D. §4-161.1-4 Inspection. Authorizes inspection and sampling by the
37 Department of Agriculture and law enforcement to ensure compliance
38 with Act 14 and these rules.
39
40 E. §4-161.1-5 Violations and Penalties. This section establishes penalty
41 provisions for violations.

42
43 A copy of the proposed rules are available at <http://hdoa.hawaii.gov/meetings-reports/>.

44
45 Leo Obaldo, HDOA/QAD presented testimony as submitted.

46 Staff Recommendation: Approval

47
48 **Motion to Approve: Ley/Evans**

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1 Public Testimony:
2 Written testimony was received from South Maui Gardens (SMG). There were no oral
3 testimonies.

4
5 Discussion:
6 Chair summarized the written testimony in support of adoption of the administrative rules
7 (currently interim rules) as written. SMG voluntarily implemented mitigative measures. Board
8 Member Mina asked if the community had confirmed and was happy with the voluntary actions.
9 Chair answered that they were not contacted by anyone in the community since the interim
10 rules were adopted in January.

11
12 Board Member Evans noted that language in Nuisance subsection (b)(2) was not consistent
13 with the Rules for State Agricultural Districts. DAG Ahn will contact Board Member Evans to
14 align the draft rules with the already adopted Rules for State Agricultural Districts which limit
15 dwellings to farm dwellings or employee farm dwellings. DAG Ahn said that an amended
16 motion was necessary.

17
18 **Amended motion: To amend main motion to include a non-substantive, technical**
19 **amendment to Nuisance subsection (b)(2) to align draft rules with already approved rules**
20 **for State Agricultural Districts: Evans/Ley**

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22 **Vote: Approved, 7-0 (excused – Comerford, Tanaka, Case)**

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25 C. PLANT INDUSTRY DIVISION

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- 28 1. Request for Review of the Petition from Anatis Bioprotection Inc. to
29 Initiate Administrative Rule Making and Rule Amendment to Chapter
30 4-71A, Hawaii Administrative Rules (HAR), to Change the List Placement
31 of *Beauveria bassiana* strain ANT-03, a fungi on the List of Restricted
32 Microorganisms (Part A), to Placement on the List of Nonrestricted
33 Microorganisms to allow the importation of the Pesticide, BioCeres WP.

34 Wil Leon-Guerrero, HDOA/PI/PQB presented testimony as submitted.
35 Staff Recommendation: Plant Quarantine Branch (PQB) takes no position on the substance of
36 the proposed rule amendment to change the list placement and recommended disapproval with
37 the understanding that the Board may direct PQB to go through the full advisory review and
38 recommendation process and to act on the substance of the Petition at a later date, if the Board
39 so chooses.

40

41 **Motion to Approve: Cowell/Cabral**

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44 Public Testimony:
45 Martin Nadeau, Director of Anatis Bioprotection, Inc. testified that Bioceres WP is registered
46 with EPA in California. Project is safe, birds, terrestrial insects, aquatic insects, mammals, fish
47 and honeybees when applied according to label restrictions. The project is biologic and organic.
48 It is safe for organic growers and Organic Materials Review Institute (OMRI) certified. He also
provided information on strains available in Hawaii that the general public is able to purchase.

1 Terri Spanogle, Sr. Regulatory Specialist with SciReg testified in support of the request to
2 initiate rulemaking.

3
4 Discussion:

5 In response to questions by Board Member Mina, Dr. Nadeua confirmed that the product is non-
6 GMO and that inert ingredients to the formulation are all registered organic and OMRI-
7 approved.

8
9 Board Member Cowell said that *Beauveria bassiana* was effective against the Coffee Berry
10 Borer (CBB) and asked how it was going to be labeled and what crop it would be used for. Dr.
11 Nadeau answered it was for vegetable, potato beetles, and other crops. He acknowledged that
12 there is a potential for use in coffee.

13
14 Board Member Young asked about the Department's process and timeline for new products.
15 Mr. Jonathan Ho answered that rules require the Board to approve or disapprove the application
16 within 30-days, but it was not possible for the application to be reviewed by the advisory
17 subcommittee, the Advisory Committee on Plants & Animals (P&A) and the Board within 30
18 days. He said that the Board could take the applicant's petition and initiate rulemaking, or the
19 Board could deny the petition and direct the branch to go through the review. He noted that
20 PQB has been working with the applicant to draft the submittal for the review process and if the
21 board directs, they will work with the applicant to move it through the subcommittees and back
22 to the board in 2-3 months to initiate rulemaking for list placement.

23
24 **Amended Motion to disapprove the request for rulemaking and direct PQB to go through**
25 **the full advisory review process: Cowell/Cabral**

26
27 **Vote: Approval, 7-0 (excused – Comerford, Tanaka, Case)**

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30 V. OLD BUSINESS
31 None.

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33 VI. NEW BUSINESS
34 None.

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36 VII. ADJOURNMENT OF MEETING: Mina/Evans
37 The meeting was adjourned at 11:53 am.

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40 Respectfully submitted,

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44 Jan Ferrer
45 Board Secretary
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