Minutes of the Board of Agriculture
May 9, 2022

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on May 9, 2022, at 9:12 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 recognized as virtually present and alone:
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 (joined at 9:27 am)
Mary Alice Evans, Ex-Officio Member
Diane Ley, Hawaii Member
Vincent Mina, Maui Member (joined at 9:30 am)
Fred Cowell, Kauai Member
Randy Cabral, Member-at-Large
En Young, Member-at-Large (joined at 9:27 am)
Joe Tanaka, Member-at-Large

Deputy Attorney General virtually present: Bryan Yee

Others Virtually Present:\1

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A. Tongotea
Adam Vorsino, USFWS
Becky Azama HDOA/PI
Brad White
Brandi Ah Yo, HDOA/ARMD
Brian Kau, HDOA/ARMD
Chris Kishimoto, HDOA/PI/PQB
Christy Martin, CGAPS
Cynthia King, DLNR, DOFAW HIP
Darcy Oishi
David Smith, DLNR
David Stone
Earl Campbell, USFWS
Gracelda Simmons, DOH
Hawaii Dept of Agriculture
Helmuth Rogg, HDOA/PI
Janet

\1 The identification of the public members is based on their sign-in name, but are not verified.
Jodi Yi, AG
Jonathan Ho, HDOA/PI/PQB
Joshua Fisher, USFWS
Joyce Wong, HDOA/ARMD
Kevin Mulkern
Lainie Berry
Linda Murai, HDOA/ARMD
Morris Atta, HDOA/Chair
Nigel Snoad
Noni Putnam, HDOA/PI/PQB
Public Testimony
Rob Hauff
Roy Hasegawa, HDOA/ARMD
Sara
Sara Verily
Susan Mulkern
Tevita Tongotea Sr.
Thomas Heaton
Wil Leon Guerrero, HDOA/PI/PQB

II. APPROVAL OF MINUTES FROM 3/22/22 MEETING

Motion to Approve: Cowell/Cabral

Chair commented that items on the agenda were taken out of order and that the minutes were formatted according to the agenda that was publicly noticed.

There were no public comments.

Board Member Evans noted that a correction was required on page 4, line 44 to change the Office of State Planning to the Office of Planning and Sustainable Development (OPSD).

Board Member Case did not attend the 3/22/22 meeting and therefore abstained from the vote.

Chair noted that that page 4, line 26 should be Honolulu County

Board Member Tanaka experienced video difficulties and the meeting to recessed at 9:20 am and was called back to order at 9:27 am.

Board Member Young and Board Member Comerford joined the virtual meeting at 9:27 am and confirmed that they were alone.

By roll-call vote, the minutes were approved 8-1 (Case-abstained, Mina-excused)
III. INTRODUCTIONS

IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

Board Member Mina joined the meeting at 9:30 am.

A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request for Conversion of General Lease No. S-3768; Kevin James Mulkern and Susan Shaheen Mulkern, Lessee; TMK: (1) 4-1-027:027, Lot 28, Waimanalo Farm Lots, Koolaupoko, Waimanalo, Island of Oahu, Hawaii

Linda Murai, HDOA/ARMD presented testimony as submitted.

Motion to Approve: Evans/Ley

Discussion:

Board Member Evans pointed out that the appraised value was a 300% increase over previous years. She asked for the basis of the appraisal and said that it was unlikely that it was based on crop value. Ms. Murai answered that an independent appraiser based the value on the current real estate market value, refined by the rate of return and not crop values. Board Member Evans said that the lease conversions and new lease rentals should be based on the value of crops and not real estate values, especially on Oahu.

Chair asked Ms. Murai the date of the last reopening that determined the rent. Ms. Murai said that it was 10 years ago. Chair said that the annual rents were fixed for 10 years according to the lease. Ms. Murai added that the Board approved the annual lease rent in a previous board meeting on October 26, 2021.

Board Member Case said that she did not understand the legal framework. She asked if 65 years is the maximum term for a lease, how can you roll over this existing 65-year lease into a new 35-year lease without going to auction. Ms. Murai answered that 65-year lease would be converted to a new 35-year lease and that it is allowed because it is a non-ag park lease.

There was discussion on what would be allowed under Hawaii Administrative Rules Chapter 4-158. Ms. Murai explained that there is a window where a lessee can request a conversion of the lease and along with the conversion, they must pay a premium equal to 25% of the rent for 7 years.

Board Member Case voiced concern that the lease would go over the maximum term of the lease. Ms. Murai said that there is a provision under 4-158-8 which would allow it.

Chair asked if the concern was that the person would have more than a 65-year lease. She said the Mulkerns have had the lease since 2017 and are not the original lessee that came over from the Department of Land and Natural Resources (DLNR).
Board Member Case asked if other people had a chance to bid because it's a conversion of an existing long-term lease. Ms. Murai answered that it is a brand-new lease, and it is part of the Administrative Rules.

Board Member Cabral asked the meaning of an "unrecorded extension". Ms. Murai explained that it was her understanding that because the Bureau of Conveyances is a part of the DLNR, the lease was not recorded at the Bureau of Conveyances.

Chair advised the Board that a bill passed this session would allow the Board and the Department to extend leases beyond the 65-year maximum. The Legislature's intent was to allow farming operations that have done well under the state ag land program to continue because they have a next generation that is taking over the business. She said this seemed to be in line with the board members' concerns.

Board Member Evans voiced that the result of auctioning the non-ag park farm lots could result in values that are more than the ag value of the land and could drive experienced farmers out of farming because people would bid on the residential vs. the agricultural value of the property. She said that it is an unanticipated consequence of the process and was concerned that the DOA's mission is to support farmers and agriculture and not to generate the highest rate of return.

Board Member Case asked if there was a process for people on the waiting list to review opportunities. Board Member Evans pointed out the issue of people with genuine ag uses being out-bid.

Ms. Murai explained that the Expression of Interest form could be filled out by anyone interested in leasing land. It is not an application, but they would be added to the database. Whenever there is a public notice to lease, everyone on the list would be notified and would be able to apply. Board Member Case asked about this request. Ms. Murai replied that the conversion rule is in the non-agricultural park program. Ag Park rules do not have a conversion rule and the lease would come back to the State.

Vote: By roll-call vote, the request was approved 9-1 (Case-opposed)

Kevin Mulkern, Lessee, landscape contractor, ornamental nurseryman for 40 years, said that he understood Board Member Case’s desire to put the lease out to bid and spoke about his experience bidding on an agricultural parcel in Hauula 40 years ago.

2. Request for Approval to: 1) Add and Withdraw members for KLK Farm, LLC, Lessee; and 2) Extend Term of Lease of General Lease No. S-6014; TMK: (1) 5-6-006:042; Kahuku Agricultural Park Lot 14, Koolauloa, Kahuku, Island of Oahu, Hawaii

Roy Hasegawa, HDOA/ARMD, presented testimony as submitted.

Motion to Approve: Evans/Ley
There was no public testimony or discussion by the Board.

Approved by Roll-Call Vote: 10-0

3. Request for Approval to Award Leases to Various Awardees and Back-up Positions; TMK Nos. (1) 4-1-027:023 and (1) 4-1-027:020 & 024, Island of Oahu, Hawaii

Roy Hasegawa, HDOA/ARMD, presented testimony as submitted.

Motion to Approve: Cabral/Mina

There was no public testimony or discussion by the Board.

Approved by Roll-Call Vote: 10-0

4. Request for Conversion of General Lease No. S-4364; Puna Certified Nursery Inc, Lessee; TMK: (3) 2-4-049:017, Lot 2; Panaewa Farm Lots, South Hilo, Island of Hawaii, Hawaii

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

Motion to Approve: Ley/Young

Discussion:
Board Member Case questioned the 55-year lease expiring 2027, non-ag park lands, new 30-year lease without bidding. She said that she was not trying to discourage farming but was trying to understand a consistent way to make sure that people have a way to bid.

Approved by Roll Call Vote: 9-1 (Case-opposed with respect)

5. Request for Consent to Assignment of General Lease No. S-4807; Hikari Nursery & Landscaping, Inc., Lessee/Assignor; David Stone, Assignee; TMK: (3) 1-5-116:043, Lot 16, Pahoa Agricultural Park, Puna District, Island of Hawaii, Hawaii

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

Motion to Approve: Cabral/Ley

Discussion:
Board Member Case asked if analysis was done in this situation and if DOA would get a share.
Ms. Ah Yo replied, no.
Board Member Young asked if a reopener had been done and if from the lessee’s perspective, they could select anyone. Ms. Ah Yo answered that the lessee would find someone who was interested and then would come to the department to see if they qualify. Board Member Young asked about him being from a different island with an intent to move to the Big Island. Mr. Stone answered that the property became available a few years ago and he had been communicating with the lessees regarding the lease. He said that his current residence is in Pahoa and he would sell and move to the subject property.

Approved by Roll Call Vote: 10-0

6. Request to Approve Rental Offset, General Lease No. S-4426; John F. Garcia Jr., Lessee; TMK: (3) 1-5-116:011, Lot 11, Pahoa Agricultural Park, Puna District, Island of Hawaii, Hawaii

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

Motion to Approve: Evans/Ley

Discussion:
Board Member Mina questioned the infrastructure in Pahoa Ag Park. Ms. Ah Yo answered that the water, electric, and roads are in good shape. Mr. Brian Kau, HDOA/AMRD Administrator added that ARMD managed the infrastructure and explained that the funding comes from ag park lease rentals that are deposited into a special fund. He said that the Fund was used for operations and maintenance. Otherwise, they could ask the legislature for CIP money. Board Member Ley asked what type of maintenance was done. She said that she understood that it was county water and Hawaii Electric and asked if the roads were dedicated to the County of Hawaii. Mr. Kau answered that there was no regular maintenance contract or on-call contractor for Ag Parks. He said that depending on the ag park, they would do landscaping on easement portions that they control.

Board Member Young said that he understands that offsets are reimbursements for tenant improvements. He asked if the value of the offset was included in the transfer value. Mr. Kau said that they were allowed to ask for it once.

Board Member Mina asked for the size of the waterline/meter. Mr. Kau did not have an answer as it was county water. Board Member Mina asked Mr. Kau to find out.

Approved by Roll Call Vote: 10-0

The meeting was recessed at 10:42 am and reconvened at 10:49 am.
B. PLANT INDUSTRY DIVISION

1. Request for Preliminary Review and Approval of the Request from the Hawaii Department of Land and Natural Resources and Hawaii Department of Health to add the Asian Tiger Mosquito, Aedes albopictus, Yellow Fever Mosquito, Aedes aegypti, and the Southern House Mosquito, Culex quinquefasciatus, to the List of Restricted Animals, Part A, by Board Order Pursuant to Hawaii Administrative Rules §4-71-4.2.

Dr. Helmuth Rogg, HDOA/PI Administrator presented testimony as submitted. He said he has staff, DLNR, U.S. Fish and Wildlife Service (USFW) to assist with technical questions.

Motion to Approve: Mina/Case

There was no public testimony.

Discussion:

Board Member Mina asked if the mosquitoes being brought in were genetically engineered. Dr. Rogg said that they were not. He said they were Wolbachia, a parasite which about half of all insects have naturally. The Wolbachia strain would render the male mosquitoes sterile. He said the area would be inundated with sterile males and they would pass on the Wolbachia to the females when they mate so there would be no offspring. He said that Florida uses genetically modified mosquitoes, but Hawaii would not.

Board Member Mina asked the lifespan of mosquitoes with Wolbachia bacteria. Dr. Rogg said that they live a few weeks, and their lifespan would not be altered by the treatment.

Board Member Mina asked how many would be released. Mr. Adam Vorsino from the USFW explained the overflooding ration and said to get over 90% efficacy of control, 10 sterilized males to 1 wild type female would be needed. The density of the wild type males in the area would determine the number to be released to get high efficacy.

Board Member Ley asked about EPA registration. Dr. Rogg answered that the EPA decided that the strain of Wolbachia strains of mosquitoes is a biopesticide. Once EPA gives the green light, they can go for section 18, emergency regulation, and bring in mosquitoes with the Wolbachia strain.

Board Member Young acknowledged that the work was important. He asked, in addition to allowing and encouraging efforts to occur, the department has the responsibility to stop new things from coming in and wanted to know if there was a commensurate effort for mosquitoes and other pests from household goods, fruit flies, etc. Dr. Rogg replied that the Department of Agriculture is a leader in the biosecurity program and has a statutory authority to protect Hawaii from the invasive species. He said it is a multi-organizational and multi-institutional effort to protect Hawaii from invasive species.
Board Member Case thanked Dr. Rogg and the Department for moving forward and working with the Departments of Health and Land and Natural Resources. She said that the three mosquitos are being imported but have already been here for 100 years. She added that they have naturally occurring bacteria, making the male sterile so when they are released, there will be no offspring. It is naturally occurring and that there is no GMO involved.

Board Member Mina asked if it would be one application. Dr. Rogg answered that it would be more than one application and deferred to Mr. Vorsino. Mr. Vorsino explained that it would be a multi-year effort and that they want to control, not eradicate.

Chair asked DLNR and DOH if there was an outreach effort planned to get the public to understand that we are not increasing nuisance mosquitos. She said that last session a legislator asked about community outreach and other legislators are supportive of the efforts and are doing outreach with their constituents.

Board Member Case said that there is an ongoing multi-agency collaboration--Birds Not Mosquitos (overarching group-USFW, National Parks, non-profits DLNR, DOA, DOH and others.) Environmental assessments processes are to be completed along with public scoping and public outreach. There will be films and specials because people need to understand that is naturally occurring mosquitos and Wolbachia.

Gracelda Simmons, Program Manager for the DOH Vector Control Branch said that DOH is actively seeking community input and will provide outreach as part of their environmental assessment. GMO seems to be a big a concern, and they will need to impress upon the community that it is not GMO.

Chair commented that DOA and DOH learned a lot during Dengue. DOH asked other departments to assist with public information meetings during Dengue; they went out to the rural communities that were not accessible by social media. She hoped that what was done during Dengue and Rat Lung Worm would be considered regarding the mosquito mass release.

Board Member Mina asked the cost of the release. Mr. Vorsino said the cost of the release is high but will go down as released more and product becomes more available. After phase 3, the cost will be $4.5 million per year for release on 3 islands.

Approved by Roll Call Vote: 10-0

V. OLD BUSINESS
   None.

VI. NEW BUSINESS
    None.

Chair announced that the next Board Meeting would be in June.

VII. ADJOURNMENT OF MEETING: Mina/Cowell
The meeting was adjourned at 11:17 am.

Respectfully submitted,

Jan Ferrer
Board Secretary