



**Minutes of the Board of Agriculture
February 28, 2023**

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on February 28, 2023, at 9:07 a.m. by Board of Agriculture Chairperson, Sharon Hurd. The meeting was conducted virtually via Zoom and in-person from Plant Quarantine Branch Conference Room located at 1849 Auiki Street, Honolulu, HI 96819.

Members Present:

- Sharon Hurd, Chairperson, Board of Agriculture
- Russell Tsuji, Board of Land and Natural Resources, Ex-Officio Member
- Dr. Ania Wieczorek, Interim Dean CTAHR, Ex Officio Member
- Mary Alice Evans, Department of Business, Economic Development and Tourism, Ex-Officio Member
- Diane Ley, Hawai'i Member
- Vincent Mina, Maui Member
- Fred Cowell, Kauai Member
- Randy Cabral, Member-at-Large
- En Young, Member-at-Large
- James Gomes, Member-at-Large

Note: Chair Hurd, Board Member Evans and Deputy Attorney General Bryan Yee were present, in-person at the conference room located in the Plant Quarantine Branch Conference Room. Board Members Tsuji, Ley, Mina, Cowell, Cabral, Young and Gomes joined virtually via zoom. Board Member Wieczorek joined virtually at 10:00 am.

Others Virtually Present:¹

- Darcy Oishi
- Wayne Takamine
- Noni Putnam
- J Ferrer# HDOA
- Jodi Yi
- AGR - Kau# Brian
- Brandi Ah Yo
- Hawaii Invasive Species Committees
- Stephanie Easley
- K. Koike
- Keith Weiser

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

1 Morris Atta
2 Michael Melzer
3 Jonathan Ho
4 Chelsea Arnott
5 nishimotosk
6 Wayne Takamine
7 Chris Kishimoto
8 Kimberly Johnson/Corteva Ag
9 Guest Guest

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12 II. APPROVAL OF MINUTES FROM 1/31/23 MEETING

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14 Motion to Approve: Gomes/Tsuji

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16 Vote: Approved; 9-0

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18 III. INTRODUCTIONS – None.

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21 IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

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23 A. AGRICULTURAL LOAN DIVISION

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25 1. Request for Approval of One (1) Emergency Loan and One (1) Operating Loan to Diamond B
26 Ranch, LLC and Brendan L. Balthazar, Co-Borrowers.

27

28 Morris Atta, Acting Agricultural Loan Administrator, presented testimony as submitted.

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30 Mr. Atta notes a correction – the interest rate 3.7% fix should be 6%. The actual calculation of the
31 annual payments would need to be adjusted accordingly and the applicant will be notified of this
32 update.

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34 Motion to Approve: Gomes/Mina

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36 Discussion:

37 Board Member Tsuji asked if the signatory is LLC and not Brendan Balthazar and is he providing a
38 personal guarantee? Mr. Atta replied that both the LLC and Brendan Balthazar are co-applicants/co-
39 borrowers. The loan officer's analysis showed that the assets that were presented as collateral is more
40 than substantial to justify approving the loan.

41

42 Board Member Gomes advised that Brendan needs to be notified about the increased interest rate
43 because he may change his mind about the loan. Chair Hurd said if the board approves the loan and
44 applicant doesn't agree with the loan, Brendan can deny it.

45

1 Mr. Wayne Takamine commented that the interest rate is 6.5%, not 6%. Mr. Atta added that the 6%
2 interest rate is for new farmers only. The 6.5% rate is for the ongoing eligible borrowers. This went into
3 effect on January 1st of this year.

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5 Board Member Mina asked if the interest rate was raised for Class D as well? Mr. Atta said no. The Class
6 D Loans are emergency loans and are set specifically for the relief efforts.

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8 Chair Hurd added that if the board chooses to approve this request for the loan, the applicant has the
9 opportunity to reject.

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11 Board Member Evans added that she wants the record to note that the board did not approve an
12 increase in the Class C direct operating loan interest rate and that the interest rate was reset on January
13 1st by either rule or policy, but not a board action.

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15 Vote: Approved; 9-0

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18 B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

- 19
20 1. Request for Approval to Withdraw TMK Parcel (1) 4-1-010:004, Koolaupoko,
21 Waimanalo, Island of Oahu, Hawaii, from Governor's Executive Order No. 4535 and Re-
22 Set Aside to the Department of Land and Natural Resources Pursuant to Act 90, SLH
23 2003, Codified as Chapter 166E, Hawaii Revised Statutes

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25 Linda Murai, Property Manager, presented testimony as submitted.

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27 Motion to Approve: Alice/Ley

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29 Discussion:

30 Board Member Evans asked if of the three necessary conditions of acceptance by the HDOA, is it only
31 number one that this lessee is not in compliant with? Ms. Murai responded that it is only one. They're in
32 violation of the county filing and permitting rule and there is a lawsuit. The lease says there shouldn't be
33 any lawsuits with any government agency. This is a DLNR lease/Act 90 lease.

34
35 Board Member Young added the goal is to get the lands in use. What is the disposition of these kinds of
36 transfers when there are compliance issues? Ms. Murai said when lawsuits are settled, the lease will be
37 considered and proposed for transfer for Act 90.

38
39 Board Member Tsuji said the tenant is compliant, but there is a pending violation and lawsuit from the
40 county. Because of these pending lawsuits, is this adequate to not accept these leases? Is the tenant
41 aware of the pending decision today at this meeting? Ms. Murai replied that because the lawsuit
42 included DLNR in their filing, HDOA felt DLNR should resolve these issues before sending the lease over
43 to HDOA. The tenant is aware of this legal action.

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45 Vote: Approved; 9-0

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2. Request for Approval To Issue Revocable Permit (RP) To Molokai Livestock Homestead Association (MLHS); TMK: (2) 5-2-001:017, Molokai Agricultural Park, Hoolehua, Island of Molokai, Hawaii

Linda Murai, Property Manager, presented testimony as submitted.

Motion to Approve: Mina/Gomes

Discussion:

Board Member Evans asked Ms. Murai to recite the correct acreage numbers as it was different on her board packet. Ms. Murai said the gross acreage is 30.715 and the net usable acreage is 3.769 acres.

Board Member Mina asked if the month-to-month is a normal operating procedure in a revocable permit? Ms. Murai replied yes, it is. The lessor or lessee may request to cancel the lease with 25-30 days prior written notice.

Board Member Gomes asked what's going to happen to the balance of the acreage? Is it all usable but only 3 acres is what they will pay for? Ms. Murai replied that the net usable area is the area that can be used for farming as determined by the appraiser. Depending on what the crop is, they can use more than the 3.76 acres. MLHS will be able to use the entire 30 acres.

Ms. Murai added that the board submittal should say the land area of gross acreage and the net usable area.

Board Member Gomes asked for the phone number of the hemp homestead.

Ms. Murai said she will get the phone number to Board Member Gomes.

Board Member Tsuji asked if the HDOA staff can add into the title the appropriate land disposition so the public can testify if they wish. Ms. Murai added that there was a public meeting for the irrigation bills and the community was able to participate at the meeting.

Board Member Ley asked if this property has irrigation available? Ms. Murai said there is one meter at one end of the property.

Board Member Ania Wieczorek joined the meeting at 10:00 am

3. Request to Approve Rental Offset, General Lease No. S-1001; Hawaii Golden Farm LLC, Lessee; TMK: (1) 8-5-034:001, Lot 1, Waianae Agricultural Park, Waianae, Island of Oahu, Hawaii

Roy Hasegawa, Property Manager, presented testimony as submitted.

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Motion to Approve: Cabral/Gomes

Discussion:

Board Member Mina asked if the 1.5% of the gross income is higher than the base rent, the lessee will need to pay the 1.5% to the state? Why do we do that in these leases?

Ms. Murai responded that if the farmer is very profitable, the state may share in their profitability after a certain threshold. In the state of Hawaii, there are only 2 lessees that have paid the additional rent.

Board Member Evans asked if the department has the authority to change this policy.

Deputy Attorney General Yee responded that he thinks it should be done by policy for all future farmers and not on an individual basis. Board Member Cabral added that it is not unusual to have a percentage of gross in private leases from the individual landowner.

Vote: Approved; 10-0 with reservations – 1 (Mina)

C. PLANT INDUSTRY DIVISION

Pesticides Branch

1. Request that the Final Order for In the Matter of Alii Pest Management and Louie Louis, Docket No. 20-PE-025, be Referred to the Attorney General for Collection.

Scott Nishimoto, Environmental Health Specialist, presented testimony as submitted.

Motion to Approve: Evans/Wieczorek

Discussion:

Board Member Gomes said that this man’s license should have been revoked for a period of time. The time that is spent for DOA and staff is worth more than \$250.00. We need to take his license away or suspend him for a long time to where he cannot operate. Mr. Nishimoto said he can bring it up to the program manager. Any kind of change or civil penalty amount will need to come from the program manager’s approval.

Board Member Cabral asked if penalties are set by law or program manager? Mr. Nishimoto replied that this is a program policy. The actual penalty amount is determined by the program manager. Maximum amount is \$1,000.00 for private applicators. Commercial applicators will be up to \$5,000.00.

Chairperson Hurd added that Greg is on vacation right now, but he has testified in support of a bill from the public that increases the fines considerably for repeat violators. There’s a bill going through the legislature that increases the maximum penalty to \$5,000.00 for repeat offenders.

Vote: Approved; 10-0 with reservations - 2 (Mina and Gomes)

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2. Request that the Final Order for In the Matter of Big Island Ag Products, LLC and Tung Huynh, Docket No. 22-PE-050, be Referred to the Attorney General for Collection.

Scott Nishimoto, Environmental Health Specialist, presented testimony as submitted.

Motion to Approve: Evans/Wieczorek

Discussion:

Board Member Mina commented that there seems to be a disregard with rules especially with restricted use pesticides. Deputy Attorney General Yee added that the notice of violation process is done by the Department of Agriculture. They do most of that work themselves and it is finalized by DOA.

Board Member Gomes asked what is the maximum he can pay? Why are there different fee amounts? Mr. Nishimoto said for private applicators, the civil penalty would be \$100. For commercial applicators, the civil penalty would be \$250.

Board Member Cabral added that the bill in legislation that increases the penalties is bill HB 692. He also added that just because they never turned in the report doesn't mean that they use RUPs.

Board Member Young commented that language access is a problem. They do carry RUPs and sell them, but we cannot catch who originally sold them. If you're not fluent in English, it's difficult to pass the RUP test. If the person is able to get a license, they know what they are doing.

Mr. Nishimoto clarified that RUP purchases are based on sales report. That is how they base the penalty amount. We are not assuming that they did not use, but only purchase of the applicator.

Board Member Mina asked if there is anything in the license about mixing cocktails and how to report those? Mr. Nishimoto responded not to his knowledge. He added that he will leave a message for Greg regarding his concerns.

Board Member Cabral said people that hold these licenses need to keep record on site and DOA can do inspections to be sure they are up to date.

Vote: Approved; 10-0 with reservations – 1 (Mina)

The Board was in recess from 10:29 a.m. – 10:37 a.m.

Plant Quarantine Branch

2. Request for: (1) Preliminary Approval of the Proposed Changes to Hawaii Administrative Rules, Chapter 4-71, to Place the Unlisted Northern Largemouth Bass, *Micropterus salmoides salmoides*, on the List of Restricted Animals (Part A) for

1 ecosystem and fishery impact research for the Wahiawa Public Fishing Area by the
2 Hawaii Department of Land and Natural Resources, Division of Aquatic Resources, and
3 (2) Authorization for the Chairperson to Schedule Public Hearings and Appoint One or
4 More Hearings Officers in Connection With the Proposed Amendments to Chapter 4-
5 71, Hawaii Administrative Rules.

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7 Jonathan Ho, Inspection and Compliance Section Chief, presented testimony as submitted.

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9 Motion to Approve: Gomes/Wieczorek

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11 Discussion:

12 Board Member Mina asked if they're already here, why would we need to bring any more in unless
13 they've been overfished and not reproducing? Mr. Ho replied that the current bass we have here is a
14 Florida strain. The Northern strain that is being proposed here does get larger. This request is for
15 Wahiawa Reservoir, not statewide distribution. Mr. Ho added that DLNR wants to do more research so
16 they can determine that it is not more detrimental. The intent is to bolster the commercial fishing
17 industry.

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19 Mr. Mina asked if there is concern of them taking over the reservoir? Mr. Ho replied that is part of the
20 process of the research.

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22 Vote: Approved; 10-0

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25 3. Request to: (1) Allow the Importation of Maize chlorotic mottle virus (MCMV), a Virus
26 on the List of Restricted Microorganisms Part A, by Permit, for Laboratory Work and
27 Shade House Inoculations by Pioneer Hi-Bred International, Inc.; and (2) Establish
28 Permit Conditions for the Importation of Maize chlorotic mottle virus (MCMV), a Virus
29 on the List of Restricted Microorganisms Part A, for Laboratory Work and Shade House
30 Inoculations by Pioneer Hi-Bred International, Inc.

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32 Wilfred Leon, Plant Quarantine Inspector, Microorganism Specialist, presented testimony as submitted.

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34 Motion to Approve: Evans/Ley

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36 Discussion:

37 Board Member Mina asked if the applicant, Kimberly Johnson, was available to testify. Ms. Johnson
38 advised that Dr. Scott Heuchelin and Dr. Mark Jung will be available for questions.

39
40 Board Member Mina asked if the research is mainly on the germplasm and what happens after the
41 research is complete? Dr. Heuchelin replied that yes, it is mainly on the germplasm. After the notes on
42 the phenotypic response are received, that material is destroyed and all the remaining inoculum are
43 destroyed as well.

44

1 Board Member Mina asked if they are doing any research on managing any rhizosphere in the
2 microflora of the soil in dealing with this virus in the leaf? Dr. Heuchelin said we do know that this virus
3 can be transmitted in the soil, although that is not the focus for this study. The concern here is about
4 selecting germplasm that is resistant to the maize chlorotic mottle virus.

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6 Vote: Approved; 10-0 with reservations – 1 (Mina)
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- 9 4. Request for: (1) Preliminary Approval of the Proposed Amendment and Compilation of
10 Hawaii Administrative Rules, Chapter 4-72, entitled “Plant and Non-Domestic Animal
11 Quarantine Plant Intrastate Rules” to among other things: Implement Plant Quarantine
12 Interim Rule 22-1, Regarding Quarantine Restrictions on the Coconut Rhinoceros Beetle
13 (CRB) and CRB host materials; Implement Fees for Inspections and the Processing and
14 Issuance of Permits; Establish Authority to Prohibit the Movement of Infested Materials
15 Within the State; Include Penalties for Non-compliance; Make Other Changes for Clarity
16 or Simplification and Other Non-substantive Changes Correcting Grammar, Punctuation,
17 or Typeface; and (2) Authorization for the Chairperson to Schedule Public Hearings and
18 Appoint One or More Hearings Officers in Connection With the Proposed Amendments
19 to Chapter 4-72, Hawaii Administrative Rules
20

21 (See attachment 1 for a summary of the specific proposed changes)
22

23 Jonathan Ho, Inspection and Compliance Section Chief, presented testimony and noted that the item 7
24 section was changed according to the testimony that was provided by the Coordinating Group on Alien
25 Pest Species (CGAPS). The rules that were provided to the board members does not reflect those
26 changes. However, the testimony that CGAPS provided to the board includes the proposed changes.
27

28 Motion to Approve: Mina/Gomes
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30 Discussion:

31 Ms. Stephanie Easley testified on behalf of the Coordinating Group of Pest Species.

32 Ms. Easley strongly supports HDOA’s proposed changes to the rules. She said her primary concern is that
33 the rules continue to move forward as the CRB interim rule will lapse on June 30th. She added that she
34 would like to be sure that is able to continue uninterrupted.
35

36 Ms. Easley asked if section 150a-53 be added as a statute implemented for proposed sections 1, 2, 3, 4,
37 5, 9, 10, 15, 22 and 23 of the new chapter 72. She also added that the changes proposed by the Plants
38 and Animal Advisory Committee is to add “insect” or “disease” before the term “pest”. This will provide
39 a regulatory basis for HDOA to prevent the intra-state movement of all insects and diseases.
40

41 Ms. Chelsea Arnott from the Department of Land and Natural Resources and Hawaii Invasive Species
42 Committee testified. She said the proposed amendments to Chapter 72 will help clarify the HDOA’s
43 authority to mitigate the spread of invasive species through the inter-island movement of agricultural
44 and non-agricultural commodities. The CRB rule will complement legislation that is currently going

1 through the state legislature to appropriate funds to the UH to conduct research and new management
2 tools to contain and better manage to stop this pest from spreading.

3
4 Mr. Ho said that permitting fees were not included in the section. He said there are no fees for permits
5 right now. He also added that there was a bill in 2010 that implemented fees for inspections. HDOA has
6 been charging people the fees, but it's not in the rules.

7
8 Board Member Young asked how should we move forward in determining adverse effects on the
9 environment and what is the vision for the board to stay ahead of the game with regards to things
10 coming in? Mr. Ho replied that being proactive as much as possible is something we need to do. The
11 rules haven't been amended but we've added things to it.

12
13 Mr. Darcy Oishi, Acting Plant Pest Control Branch Manager, added that we did not have the opportunity
14 to fully cue up the changes we'd like without jeopardizing the interim rule. We've been discussing the
15 need to modify statutorily and functionally how we define a pest within the department. After
16 completing this rule change, we will reassess these other issues that we've identified. We can create
17 criteria for how different categories of pests can be defined.

18
19 Board Member Ley asked if the current process of inspections are at the nursery sites before they load
20 or during the loading process. When do you interact? Mr. Ho replied that the fee is based upon the
21 location of the inspection. It is very load dependent. If the shipment can be expected, we'd do it on
22 premises. The public is well aware of the requirements, and we have regular shippers.

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24 Vote: Approved 10-0

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27 V. OLD BUSINESS
28 None.

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30 VI. NEW BUSINESS
31 None.

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33 The meeting was adjourned at 12:06 pm.

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35 Respectfully submitted,

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39 Marci Clingan