



Minutes of the Board of Agriculture  
July 25, 2023

CALL TO ORDER –

The meeting of the Board of Agriculture was called to order on July 25, 2023, at 9:04 am by Board of Agriculture Board Member Mary Alice Evans. The meeting was conducted virtually via Zoom and in-person from:

*State of Hawaii, Department of Agriculture  
Plant Quarantine Branch  
1849 Auiki Street*

Members Present In-Person:

Mary Alice Evans, Ex-Officio Member

Members Virtually Present: Roll call/alone

Russell Tsuji, Board of Land and Natural Resources, Ex Officio Member

Diane Ley, Hawaii Member

Vincent Mina, Maui Member

Fred Cowell, Kauai Member

En Young, Member-at-Large

James Gomes, Member-at-Large

Excused:

Sharon Hurd, Chairperson, Board of Agriculture

Randy Cabral, Member-at-Large

Board Member Tsuji logged in at 9:05 AM.

Deputy Attorney General Present In-Person: DAG Bryan Yee

Others Present In-Person:

Carol Okada, HDOA/Deputy

Janelle Saneishi, HDOA/Chair

Jonathon Ho, HDOA/PI

Linda Murai, HDOA/ARMD

Marci Clingan, HDOA/Chair

Roy Hasegawa, HDOA/ARMD

Stephen Dalton HDOA/IT

Jodi Yi, DAG

Joe Ryan, Individual

Keith Otsuka, HDOA/QAD

Kelly Tomioka, Sunny Side Up

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2 Others Virtually Present:<sup>1</sup>  
3 Delanie Prescott-Tate, DAG  
4 Jan Ferrer, HDOA/Chair  
5 Janet  
6 Kelcie Nagata, DAG  
7 KoikeK  
8 Leo Obaldo, HDOA/QAD  
9 Lori Buchanan  
10 Mason Morizumi  
11 Shelby Ching  
12 Stephanie Easley  
13 Yamamotoej, HDOA/Chair  
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15 I. Election of Temporary Chairperson of the Board of Agriculture for its Meeting on  
16 July 25, 2023.  
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18 Board Member Evans advised that Chair Hurd has asked Board Member Evans to convene the  
19 meeting and entertain a motion to elect a Chair pro tem to serve at this meeting only.  
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21 Motion for Board Member Evans to Serve as Chair pro tem for this meeting– Mina/Gomes  
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23 Vote – Approved; unanimously  
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27 II. APPROVAL OF MINUTES FROM 6/27/23 MEETING  
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29 Board Member Tsuji said that he would like to amend the first paragraph on page 5. He said he  
30 wanted to clarify that DLNR transferred 20,000 acres to DOA and an additional 20,000 acres to  
31 ADC. He also wanted to add “*There are other lands for ag operations. Campbell lands are  
32 industrial lands to support the slaughterhouse and water needs and are not for general  
33 agricultural purposes. Those lands had a reservation for renewable energy projects.*”  
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35 Motion to Accept Minutes as Amended: Gomes/Tsuji  
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37 Vote: Approved; unanimously  
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40 III. INTRODUCTIONS  
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<sup>1</sup> The identification of the public members is based on their sign-in name but are not verified.

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IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request for Conversion of General Lease No. S-3753; SGVG Corp., Lessee; TMK: (1) 4-1-010:031, lot 2, Waimanalo Agricultural Subdivision, Koolaupoko, Waimanalo, Island of Oahu, Hawaii

Linda Murai, Property Manager, presented testimony as submitted.

Motion to Approve: Gomes/Tsuji

Vote: Approved; unanimously

2. Request to Terminate General Lease No. S-1004, Bernardino Cagauan, Jr., Lessee; Issue Cancellation Document, and Disposition of Lot; TMK: (1) 8-5-034:004, Waianae Agricultural Park, Lot 4, Waianae, Island of Oahu, Hawaii

Roy Hasegawa, Property Manager, presented testimony as submitted.

Motion to Approve: Mina/Gomes

Discussion:

Board Member Gomes asked what the amount of the default was and how long it has been. Mr. Hasegawa said the lease is current and nondevelopment notices have been issued since July 2022. Mr. Hasegawa also mentioned that there was a brushfire in 2018 and time was given, but it never panned out.

Board Member Mina asked if this property has water. Mr. Hasegawa said yes, it has county water, and the meter line is 2 inches. Board Member Mina asked if he lost his soursap trees in the fire. Mr. Hasegawa said yes, some had fruit. Mr. Hasegawa added that during the application process, business plans are submitted. This applicant's business plan was primarily submitted for soursap.

Vote: Approved; unanimously

B. PLANT INDUSTRY DIVISION

Plant Quarantine Branch

1. Subject: (1) Request for Review of the Petition from Tiffany Leilani Nerveza-Clark to Initiate Administrative Rule Making and Rule Amendment to Chapter 4-71, Hawaii Administrative Rules (HAR), to Change the List Placement of the hybrid Savannah cat, crosses of the Serval, *Felis (Leptailurus) serval* with the domestic cat, *Felis catus*, From the List of Prohibited Animals to enable individual possession.

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Chair Evans advised that this Item C will be deferred to the next meeting.

Discussion:

Lori Buchanan, community advocate from Molokai. She said she is in strong opposition to the request. She wants to ask the applicant to withdraw their request. There will be dire consequences if any of the placements that are made to restrain such prohibited animals go awry. She added we are being overrun by the Molokai Axis Deer along with the Black Buck which was also brought in by permit.

Chair Evans said that the board will take the agenda out of order and discuss the item under Old Business first before continuing down the agenda to letter C. For clarity, the minutes will be reported in the same order as the agenda.

### C. QUALITY ASSURANCE DIVISION

1. Request (1) to Consult with the Board’s Attorney Regarding a Petition for Declaratory Ruling Regarding Hawaii Revised Statutes Sections 147-75, et. seq. (Grades and Standards, Part V, Chicken Eggs, notice of grade and size) and Related Administrative Rules (“Petition”); and (2) for Delegation of Authority to the Chairperson to Respond to the Petition. Note: In Executive Session pursuant to HRS section 92-5 (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

Chair Evans presented request as submitted.

Discussion:

Joseph Ryan, Attorney to Kelly Tomioka, said the staff submittal is missing the suggested recommendation on what the board’s action should be. He added that he wishes the board would declare under the authority granted to the board by HRS 147-74 and pursuant to HRS 147-75, the sale of eggs of a person’s own production which are sold from the place of production by contract formed over the internet are not subject to enforcement by the department for alleged violation of HRS 147-76 or 77 or regulation by the administrative rules 4-46.

Motion to enter executive Session: Ley/Gomes

Vote: Approved; unanimously

Board began Executive Session at 9:42 AM

Board ended the Executive Session at 10:25 AM

The Board went into recess at 10:25 AM

1 The Board reconvened the meeting at 10:36 AM

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3 AG Yee stated that at the board's discretion, they may make a motion to decline to respond to  
4 the declaratory petition because the matter is currently in litigation and the dispute does not  
5 appear to be based primarily upon the Hawaii Department of Agriculture's rules or statutes. Any  
6 party may raise this issue again after the litigation is completed.

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8 Motion to approve AG Yee's statement: Gomes/Wieczorek

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10 Discussion:

11 Joseph Ryan, Attorney to Kelly Tomioka commented that the underlying litigation does not  
12 involve the State of Hawaii or City and County of Hawaii. It involves the Right to Farm Act. A  
13 farming operation is defined in the statute as a commercial agricultural pursuit and therein lies  
14 the problem. The people that are suing allege that Ms. Tomioka does not grade her eggs as  
15 required and is selling to a consumer illegally and therefore she is not commercial. Mr. Ryan  
16 added that a producer is identified and defined in 147-1 which applies to nuts, fruits and  
17 vegetables. In 147-71, the chicken egg statutes, the producer is not defined. Because of this  
18 conflict, statutes and rules that apply only to retailers are being applied to producers of chicken  
19 eggs. He said he hopes that the board will vote against the motion and state that a producer of  
20 eggs is not a retailer of eggs. 147-75 does not require a producer to label, size, or grade her  
21 eggs and therefore does not have to comply with 147-76 or 77 related to advertising.

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23 Board Member Mina asked Ms. Tomioka if she has any relationship with her neighbor and that it  
24 seems like that would mitigate a lot of the issue. Ms. Tomioka replied that she is about  
25 community and not about being right. She added that she has rehomed all but a couple of her  
26 roosters and have done several different attempts to alleviate the nuisance that her neighbors  
27 claim. She also added that she has worked out solutions and the last thing she wants to do is go  
28 to court.

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30 Vote: Approved-6; Nay-1 (Evans)

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33 V. OLD BUSINESS

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35 1. Update on Raising Pigs or Chickens on Agricultural Leased Lands.

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37 Linda Murai, Property Manager, gave the update on raising pigs or chickens on agricultural  
38 leased lands. Ms. Murai said the following restrictions and considerations are applicable only  
39 to DOA lands and land leases and permits but not necessarily to fee simple and any lands that  
40 the Department of Agriculture manages. Ms. Murai stated there is high demand for department  
41 of agricultural lands due to reasonable rents offered by the state. Nearly 100% of our ag lands  
42 are encumbered by long term leases pursuant to Chapter 166 E Hawaii Revised Statute, the  
43 department has been working with DLNR to transfer additional agricultural lands for leased  
44 qualified farmers and particularly to local small farmers to DOA. The definition in our rules and  
45 statutes of "agricultural activities" means the care and production of livestock, livestock  
46 products, poultry or poultry products, or apiary, horticulture or floricultural products, or the  
47 planting, cultivating, and harvesting of crops or trees. Currently, the department does not have

1 leases for poultry or hog production. The prohibition of poultry and swine is the language that's  
2 used in our leases and is not a law, rather it's based on policy and language in our lease  
3 agreements. It stems from previous concerns regarding noise and odor being a nuisance to the  
4 surrounding residential areas, as well as the potential increased risk of disease transmission.  
5 The character of uses in department leases are historically established agricultural practices  
6 such as diversified agriculture which is a production of food products, aquaculture, nursery and  
7 pasture. These uses balance support for the agricultural industry with known community  
8 concerns.

9 The department has received calls from the public regarding odors and noise coming from  
10 chicken and hog operations. The public assumes the department has the authority to act on  
11 complaints regarding chickens and hog operations because these operations are considered  
12 agricultural. The following are some considerations for allowing poultry on state lease lands.  
13 First would be the land location which would need to be remote relative to residential areas.  
14 Second would need to be engagement with neighborhood boards and other community groups  
15 for approval of poultry or hog operation. The Department of Health's Clean Water Branch  
16 follows the code of federal regulations for animal feeding operations. They concentrate on  
17 feeding operations that discharge waste into state waters. When the Department of Health  
18 receives a complaint from agricultural farm pollution into state waters, they send officers to  
19 investigate pollution complaints. These types of operations should be located away from  
20 streams, drainage ways and aquifers. The Department of Health's Clean Water Branch is a  
21 reactive branch, and they react to complaints. Department of Health's Waste Management  
22 Division will review waste management plans for animal feeding operations via NRCS. The  
23 animal feeding operations would need to have an approval process prior to the construction  
24 and operation of a facility. The department recognizes the need for sustainable agriculture  
25 which includes poultry and hogs. Consideration for the possibility of the production of chicken  
26 and hog cultivation on state leased properties would be on a case-by-case basis. New  
27 techniques for raising these animals could minimize the impacts to the immediate surrounding  
28 community and may be considered with input from local neighborhood boards and/or  
29 community groups. Location is a factor, meaning that the land is located in a remote area away  
30 from residential communities and water sources. If appropriate lands for these uses were  
31 identified by the department, a public notice to lease the land would be issued and would state  
32 in the public notice the inclusion of these specific uses for these poultry and/or hogs. The DOA  
33 hopes to have constructive communications and conversations on how to balance these types  
34 of operations with farmers, agricultural experts, and communities that will be impacted directly.

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36 Discussion:

37 Board Member Wieczorek asked if the department will evaluate the land and then make the  
38 public notice and people will apply or will people apply first and then the department will look  
39 for suitable land. Ms. Murai said that the first is correct.

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41 Board Member Young said he does not want to allow people to put in the applications for hog  
42 or chicken farmers and we end up dealing with these issues after. He added that we don't want  
43 these issues to come back and haunt us. Smells and noises are what farming is.

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45 Board Member Mina added that animal production has gotten a bad name. He suggested to  
46 add in an educational process with the people that were applying. There are new processes

1 and techniques and if the DOA can take a posture of education in the front end, concerns can  
2 be addressed.

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4 Board Member Wieczorek said she agrees that providing the education is a great idea.

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7 VI. NEW BUSINESS

8 None.

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10 Motion to adjourn: Gomes/Cowell

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12 The meeting was adjourned at 10:50 AM

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14 Respectfully submitted,

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18 Marci Clingan