

3 4 5 Minutes of the Board of Agriculture 6 7 CALL TO ORDER - The meeting of the Board of Agriculture was called to order on 8 August 26, 2014 at 9:10 a.m. by Board of Agriculture Chairperson Scott Enright, at the 9 Plant Quarantine Conference Room, 1849 Auiki Street, Honolulu, Hawaii 96819. 10 11 Members Present: 12 Scott Enright, Chairperson, Board of Agriculture 13 Glenn Hong, Member-At-Large 14 Clark Hashimoto, Member-At-Large 15 Jerry Ornellas, Kauai Member 16 Michelle Galimba, Member-At-Large 17 Dr. Maria Gallo, Dean of the College of Tropical Agriculture & Human Resources University of Hawaii (CTAHR-UH), Ex Officio Member 18 19 Mary Alice Evans, Deputy Director, Department of Business, Economic 20 Development and Tourism 21 Richard Ha. Hawaii Member 22 Lynn DeCoite, Maui Member 23 24 Members Absent: 25 William Aila, Chairperson, Board of Land and Natural Resources 26 27 Others Present: 28 Haunani Burns, Deputy Attorney General 29 Adina K. Cunningham, Deputy Attorney General Randy Teruya, Hawaii Department of Agriculture (HDOA)/Agricultural Resource 30 31 Management (ARM) 32 Ken Kakesako, HDOA/Chairperson's Office 33 Brian Kau, HDOA/ARM Edward Boteilho, Cloverleaf Dairy 34 35 Grant Tomita, HDOA/Quality Assurance Division (QAD) 36 Glenn Okamoto, HDOA/ARM 37 Kees Kea. Mauna Kea Moo LLC 38 Cornel Kea, Mauna Kea Moo LLC Jeri Kahana, HDOA/QAD 39 40 Dean Matsukawa, HDOA/SALD 41 Brad Duff, Big Island Diary 42 Randal Chang, HDOA/ARM 43 Steve Whitesides, Big Island Diary 44 Linda Murai, HDOA/ARM 45 Daryl Arai, HDOA/SALD 46 Cam Tran, KITV News

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1 Ken Nakamoto, HDOA/Agribusiness Development Corporation Rick Daysog, KGMB News 2 3 Paul Omengkar, KGMB News 4 Brigette Namata, KHON News 5 6 APPROVAL OF MINUTES FROM 6/24/14 MEETING: II. 7 8 Motion to approve: Hong/Galimba 9 10 Vote: Approved, 9/0 11 12 III. COMMENTS FROM THE GENERAL PUBLIC ON AGENDA ITEMS (ORAL OR 13 WRITTEN) 14 15 Chairperson Enright said that the Board will be taking public comments on agenda items as they come up during the meeting. No public comments submitted. 16 17 18 IV. INTRODUCTION AND COMMENTS 19 20 There were no introductions or comments. 21 22 ٧. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION 23 24 A. AGRICULTURAL LOAN DIVISION 25 26 1. Request for Approval to Activate and Set Parameters for DOA's Emergency Loan Program to Provide Relief Due to Heavy Rains, High 27 28 Winds and Flooding. 29 Presentation by Mr. Dean Matsukawa, Division Administrator, State Agricultural Loan 30 31 Division (SALD) as submitted. Mr. Matsukawa stated that as set forth in his staff report, 32 the Governor's emergency proclamation for the State due to Hurricane Iselle authorizes 33 SALD to provide emergency loans for disaster relief, particularly on the Island of 34 Hawai'i. SALD set the loan limit at \$100,000. Staff recommends approval. 35 36 Motion to approve: Ornellas/Hashimoto. 37 38 Board Member Evans asked what the current balance was for the Emergency Loan 39 Fund. 40 41 Mr. Matsukawa said there is \$1.5 million in the revolving fund available for loans. The reason SALD has set the loan limit at \$100,000 is to try and help as many people 42 43 possible. Approximately 55 individuals have expressed interest in obtaining an 44 emergency loan. The largest request SALD has received so far is 35K. He said SALD

is also working with USDA to find emergency loans for farmers.

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Vote: approved, 9/0.

## B. QUALITY ASSURANCE DIVISION

1. Request for (1) acceptance of the minutes of the public hearings, (2) adoption of amendments to Chapter 4-60, Hawaii Administrative Rules, entitled, "Minimum prices in the Honolulu milk shed," and "Minimum prices in the Hawaii milk shed." Allows milk producers to petition the Board of Agriculture for a waiver to the minimum milk prices paid by distributors to producers.

Presentation by Ms. Jeri Kahana, Division Administrator, Quality Assurance Division (QAD), and Mr. Grant Tomita, Milk Control Program Specialist, QAD. Staff recommended approval of the rules as set forth in the staff report, and discussed that the rule amendments would help make Hawaii competitive with the mainland, including California.

Motion for approval: DeCoite/Hong.

Board Member Galimba asked whether a dairy can contract with a processor under the current form of the milk rules. Specifically whether or not a dairy can contract with a processor to get their quota milk price and then negotiate a different price for milk outside of its quota. She also asked about how the amendments will affect minimum price. Ms. Galimba was concerned about small milk producers.

Ms. Kahana said "yes," under current rules, the minimum prices apply up to quota amounts. Under the proposed amendment to the rules, the minimum price will not change unless the dairy petitions the board for a waiver to the minimum price and the Board approves it. The dairy requesting this change is increasing its production volume significantly and would accept a lower price to assure that the processor will purchase the dairy's increased volume.

Board Member Ha said that this amendment will not affect the price of milk for any other dairy that does not choose to enter into a contract for less than the quota price. This amendment will help processors to buy milk from local producers in a competitive manner.

Ms. Kahana said "yes."

Board Member Ha said that local milk is fresher, and fresher milk is better. There is additional value in local milk, but currently there is no consideration for promoting that value.

Mr. Tomita said these proposed amendments do promote local milk. It makes it possible for the processor to purchase more local milk at prices competitive with the mainland.

Board Member DeCoite asked if there is a consideration to incentivize processors to buy local milk.

Mr. Tomita said that producers currently provide around 20% of the local demand for milk in the islands. The proposed amendments will help the processor stay within its economic bounds and buy more local milk competitively, but that the processor can still purchase milk from the mainland.

Board Member Hong said that the proposed amendments give the ability for the producer and processor to sell/purchase milk below the minimum price quotas. Essentially, the milk quotas become meaningless, especially if the milk quota waivers become perfunctory.

Mr. Tomita said that quotas assure a minimum price for milk. The rule amendments would allow the Board to grant or deny an applicant's request for a waiver of the quota price, and the waiver would have to come to the Board for decision.

Board Member Hong said that he was concerned that a lower minimum price would allow the processor to be more competitive and that the waiver would undermine the free market for milk sales.

Board Member Ornellas asked what percentage of milk was packaged and processed on the mainland.

Mr. Tomita said he did not know, but that the majority of imported milk is bulk pasteurized pre-shipment and processed and re-pasteurized in Hawaii, but places like Walmart and Sam's Club import packaged milk, and all organic milk is "bottled" on the mainland.

Chairperson Enright called Steve Whitesides and Brad Duff of Big Island Dairy to address the Board.

 Mr. Whitesides said the current Milk Act is basically a fixed milk price act, not a minimum price. Producers can't receive anything higher than the quota price either. The last six months their dairy would have received a higher market price. The market drives prices. He said that when they initially came to Hawaii, they thought the quota system was a good opportunity to guarantee milk sales at a fixed price. However, the fact is that the quota system doesn't have any "teeth." The processor isn't obligated to buy from any specific dairy in Hawaii. If the mainland prices are lower than the quota price, the processor may choose to purchase mainland milk, instead.

1 Mr. Whitesides said that he agrees that local milk has value over imported milk from the mainland and that "fresh milk" is better, but they're competing with the mainland.

Common buyer practice is that buyers purchase the cheapest milk. If the local dairies don't look at being competitive with the mainland, Hawaii may not have a processor in the future. He said that he needs to be able negotiate with the processor. He asked if the State could support local producers through state institutions like schools.

Mr. Duff said that he would like to address the scenario that other dairies will be forced to lower their prices. If a processor can buy cheaper milk from the mainland, they will do so. That's the free market, regardless of these amendments.

Board Member Galimba said that Mr. Whitesides mentioned that he came here under the impression that Hawaii's milk quota would give him a guaranteed price and sale. Board Member Galimba asked Mr. Whitesides whether they operate under a quota system in the mainland that guarantees a price/sale.

Mr. Whitesides said he does not know of any state or city that has a guaranteed price/sale quota for milk. Some quota systems exist but they are dynamic and market driven.

Board Member Ha asked how much of Mr. Whitesides' dairy expansion is projected to provide for the State's current milk demand, and how their expansion will affect the local economy.

Mr. Whitesides said that the expansion will provide at least 40% of the current demand for milk in Hawaii. Currently, the company milks 1000 cows. The expansion will build a western style dairy with 2000 head. Right now the company employs around 30 people, but the company does not plan to immediately hire more employees following the expansion.

Board Member Ha said he would like to see a concerted effort to hire local people.

Chairperson Enright called up Mr. Edward Boteilho of Cloverleaf Diary.

Mr. Boteilho said he is the last original natural dairy farmer in the State and that he has produced the highest quality milk on the island of Hawaii for over 50 years. Mr. Boteilho said that he appreciates Mr. Whiteside's concerns and comments on the current milk quota system, but notes that the Milk Act was initially established because the processors were being unfair to the producers. The Milk Act established quota for each farm to get their quota for a certain price. The Act protects established farms from new farms trying to come in and undercut everyone. It is not fair that one dairy is making this change without consulting him. He said he was very upset, and asked how one party could come in and get a waiver for a lower price. He said he has never had a contract with Meadow Gold in 50 years nor did other dairies, and that Meadow Gold does not make contracts. He asked that the rule amendments not be approved until the

language is cleared up, that it needs to be drafted in conformity with the current milk shed and the Milk Act.

Board Member Hong asked what percentage of milk is sold to the Hawaii milk shed.

Mr. Boteilho said 100% of his milk quota is sold on Hawaii island and that he sells and ships about 15% over quota to Honolulu.

Chairperson Enright called up Steve Whitesides and Ms. Jeri Kahana.

Board member Hong asked Mr. Whitesides if there was a way to bring milk into Honolulu and not affect the Hawaii milk shed. He asked Ms. Kahana whether there was a way to look at this amendment to protect a minimum price.

Ms. Kahana said they would have to amend the Milk Act, which would require going to the legislature for approval. She said that the dairies on Hawaii Island don't need Honolulu quotas to sell their milk here, but it currently exceeds the Class 1 price, so Meadow Gold is capping the price.

Mr. Whitesides said he understands what Mr. Boteilho is saying, but that he needs some guarantee that the processor will be there tomorrow. Walmart is bringing in jug milk. He said that is why "my amendment" to the rules needs to be passed. He wants producers to be able to come in under an alternative system.

Board Member Ornellas said that the dairy industry in Hawaii had been shrinking for a long time; however, recently it has started to expand. We are going to have a 2000 head herd soon. He asked whether the Milk Act is obsolete.

Mr. Whitesides talked about the history of the Milk Act. He said times have changed and they're attempting to grow the industry now.

Ms. Kahana said "yes" the Milk Act is obsolete. The Act was passed when Hawaii was 100% self-sufficient in milk. Now, local dairies must compete with Walmart bringing in packaged mainland milk.

Mr. Whitesides said he's competing against mainland farms with 35,000 head of cattle that can sell at lower prices. The amendment would allow him to get a waiver to contract for less than the minimum price.

Chairperson Enright said that at one time, there were 48 dairies in the State. Now, there are only two. The rule amendments are being proposed to allow growth in the milk industry so industry can raise capital and expand. It's a different landscape now and we're trying to grow the industry.

Board Member Galimba asked if there is any reason Big Island Dairy cannot get a contract now under the current rules.

Ms. Kahana said yes, they cannot negotiate a contract to sell their milk under the minimum price for their quota under current rules.

Board Member Gallo said that this amendment is just a preemptive strike. She wants to know what the plan is for the future.

Chairperson Enright said that they are waiting to see what happens in Kauai with Hawaii Dairy Farms and the long term plan is to go to the legislature to change the Milk Act.

Board Member Hong said he would love to flip the local production to 80/20%, but dairies are not going to be able to do that with the existing Milk Act. The Act doesn't fit the times and market forces will dictate the success of the dairies.

Chairperson Enright called up Kees Kea of Mauna Kea Dairy.

Mr. Kea said that he was worried that if Big Island Dairy is allowed to contract with Meadow Gold for a lower price than the minimum, that would mean that Meadow Gold wouldn't need to buy milk from Mauna Kea Dairy or Clover Leaf Dairy.

Board Member Galimba said she appreciates the work done on this amendment, but she doesn't believe that it is a balanced amendment that protects the interests of the smaller dairies. Given the history of the industry and the relationship between the processor/producers, she will vote against the proposed changes. Board Member Galimba agrees that the Milk Act is obsolete and hopes the Board will work on modernizing it.

Chairperson Enright said that there is no way to determine Meadow Gold Dairies' commitment towards the milk industry. He said that although we can craft tools to allow the industry to grow, it's not known how Meadow Gold will react to growing the industry. He said the rule change would allow entities to go forward with their development and obtain capital for expansion. Meadow Gold is not protected from Dean Foods' strategy, there is no long term commitment from Dean Foods. Factoring in protection of local industry in the rules is beyond the scope of the rules and of the Board's authority. There are not a lot of players left in the local dairy industry. However, Mr. Whitesides is making a major commitment, and we are trying to support that commitment.

Board Member DeCoite said that sometimes the best intentions isn't the right intention. At the state level we lack the power punch to set the rules that help farmers. It is a huge thing to just ignore the fact that Mr. Boteilho is the last existing original dairy.

Chairperson Enright said that agriculture needs to be competitive and the Board cannot give them protection to make them competitive. Not just competitive locally but on a national scale. The Milk Control Act is essentially subsidizing milk.

Board Member Ha said we need to think this through and work to the end. All of us want to take care of the small farmers, and he would like to have more discussion about protecting small farmers. He wants to look at getting more value for locally produced milk.

Board Member Gallo said that she doesn't feel comfortable moving forward without knowing what the Board is going to do in the future.

Board Member Ornellas said he purchased quota when he was in the dairy business. It seems ironic that when they were under producing, they had a quota system, and now that the market is reaching saturation, the quota system may go away. In a free market, however, it doesn't compel anyone to buy milk from local producers.

Board Member Hong said he thinks the Milk Act has failed in its goals. As an interim measure, he supports this proposed amendment. 20% local production is terrible, and we can do a lot better than that.

Board Member Hashimoto said he supports small farmers, and we need to grow the industry. We need to find some way to require labeling of locally produced milk.

Board Member Evans said she will support the proposed changes. Board Member Evans said she lived in Waimanalo and remembers the Foremost Dairy. She does not think we can stand still and doesn't think this Board has the tools on hand to subsidize local dairies. This amendment is a way to keep the industry from shrinking further and to try to retain the processor. Board Member Evans said that she thinks this measure is a step towards preserving the industry.

Chairperson Enright called for a recess at 10:39 a.m.

Chairperson Enright called the Board meeting back in session at 10:46 a.m.

Chairperson Enright proposed that the Board create an investigative committee with Board Members Galimba, Ha, and Ornellas as members. The investigative committee would look at the issues involved in the rule changes that staff is proposing, and also suggest where the Board and staff could act in the future in making changes to the Milk Act. The investigative committee will report to the Board at the next meeting with their findings.

Chairperson Enright proposed that this rule amendment measure be deferred until the investigative committee returns and presents their findings to the Board.

Motion to defer action on the proposed rule amendments and to approve establishment of an investigative committee, as proposed: DeCoite/Evans

Vote: approved, 9/0.

## C. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request for Consent to Waterline Easement Between the Hamakua Agricultural Cooperative and Randall T. Higa, TMK: (3) 4-3-005:013 (por.) Kaunamanu Homesteads, Hamakua, Island of Hawaii.

Presentation by Mr. Randy Teruya, Agricultural Asset Manager, Agricultural Resource Management (ARM) as submitted and presentation of his staff memo regarding an easement for the above matter. Staff recommends approval.

Motion to approve: Hashimoto/Evans

Board Member Galimba asked where the easement starts.

Mr. Teruya said the easement generally runs along the property line.

Vote: approved, 9/0

2. Report on Plans for Utilization and Development; Kapaa Poi Factory, Inc. TMK: (4) 4-4-004:043; Kapaa Homesteads, Kapaa & Waipouli, Island of Kauai

Presentation by Mr. Randy Teruya of his staff memo reporting on the lease for the above property, with no Board action recommended.

Board Member Evans asked what would happen to the 35 year lease if Kapaa Poi Factory goes out of business within 35 years.

Mr. Teruya said that if Kapaa Poi Factory elects to terminate their lease, under the proposed 35 year lease, Kapaa Poi Factory has the authority to assign the lease to a qualified lessee. The proposed lessee would need to come to the Board to get approval.

Board Member Evans asked whether the proposed lease rent is based on the public interest to assist the factory, and if a new lessee comes in, would the lease rent remain the same.

Mr. Teruya said that the Board has the authority to place restrictions on the assignment, which could include the reappraisal of the property specific to use for a new lessee.

Board Member Ornellas said that this property is being underutilized.
Mr. Teruya said that Kapaa Poi Factory worked with ARM and UH CTAHR and has improved its operation and is now buying and processing more taro.

Chairperson Enright said that in reading the report on this lease, there was no long term lease before, and he can see how Kapaa Poi Factory would be hesitant to expand their business on the property.

Board Member Ornellas said that, in this case, there was another party interested in the property, Bruce Laymon of Kauai Taro Company.

Mr. Teruya requested to consolidate items C(3) to C(9) into a single presentation because they were all the same subject matter.

Chairperson Enright said "yes."

3. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Randall Dickinson; TMK: (3) 4-3-005:010 (por.), Lot No. 11, Hamakua Agricultural Park, Hamakua, Island of Hawaii

4. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Susan Sanders; TMK: (3) 4-3-005:019 (por.), Lot No. 4, Hamakua Agricultural Park, Hamakua, Island of Hawaii

5. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Everette Souza; TMK: (3) 4-6-003:020 (por.), Lot No. 2D, Honokaia, Hamakua, Island of Hawaii

6. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Kevin Beckey; TMK: (3) 4-3-003:001 (por.), Lot No. 13 and Lot No. 14, Honokaia, Hamakua, Island of Hawaii

7. Request for Consent to Two Subleases Between the Hamakua Agricultural Cooperative and Marcelino Tagudan; TMK: (3) 4-6-003:001 (por.), Lot No. 7 and (3) 4-3-003:007 (por.) Lot No. 18, Honokaia & Paauilo, Hamakua, Island of Hawaii

8. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Michael Manor, DBA Mother Nature's Miracle; TMK: (3) 4-6-003:003 (por.), Lot No. 23, Paauilo Hamakua, Island of Hawaii

9. Request for Consent to Sublease Between the Hamakua Agricultural Cooperative and Jesus Vallente, TMK: (3) 4-6-003:007 (por.), Lot No. 9, Paauilo, Hamakua, Island of Hawaii

Presentation by Mr. Randy Teruya and Mr. Randall Chang of their staff memo regarding the above leases and sublease for the above properties. All the lessees are current farmers in production with long term leases that run until 2033. Staff recommends approval for agenda items C(3) to C(9).

Motion to approve: Ornellas/Hashimoto

Board Member Evans asked whether there are any criteria to consenting to the subleases between the Hamakua Agricultural Park.

Mr. Chang said yes, ARM reviews all sublease applications and all sublessees must be bona fide farmers and current in their payments.

Vote: approved, 9/0

10. Request for Extension of General Lease No. S-4445, Lot Nos. 12, 13, & 14, for Green Point Nursery, Inc.; TMK: (3) 2-4-049: 026, 027 & 028, Panaewa Farm Lots, 2nd Series, Waiakea, South Hilo, Island of Hawaii

Mr. Randall Chang and Mr. Randy Teruya, presented as submitted. Staff recommends approval.

Motion to approve: Ha/Hashimoto

Board Member Evans said that the Department of Land and Natural Resources established current lease rent of \$9870 per acre until 2020. Board Member Evans asked if Mr. Teruya thinks DLNR's 2009 appraisal is high or low, if there is a provision in the lease for rent forgiveness, and if this parcel suffered any damage from the hurricane.

Mr. Teruya said that in his opinion, DLNR's appraisals for the Panaewa properties are a little high. Mr. Teruya said that rents don't decrease at the end of a term, they stay the same if the appraisal value is lower or the same. Mr. Teruya said there is a provision for rent forgiveness, and ARM hasn't received a full assessment of the total hurricane damage yet.

Vote: approved, 9/0.

41 Mr. Teruya requested to consolidate items C(12) to C(14) into a single presentation.

43 Chairperson Enright said "yes."

11. Request for Conversion of General Lease Nos. S-3777, S-3778, S-