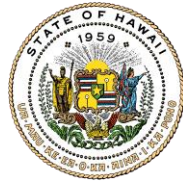


JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



State of Hawai'i
DEPARTMENT OF AGRICULTURE & BIOSECURITY
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SHARON HURD
Chairperson
Board of Agriculture & Biosecurity

DEAN M. MATSUKAWA
Deputy to the Chairperson

July 17, 2026

TO: Advisory Committee on Plants and Animals

FROM: Jonathan Ho, Manager
Plant Quarantine Branch
Hawaii Department of Agriculture and Biosecurity

SUBJECT: Request for: (1) Review of the Petition From the Lahaina Community Land Trust to Initiate Administrative Rulemaking to Implement an Interim Rule Pursuant to Hawaii Revised Statutes §150A-9.5, to Restrict the Transportation of Coconut Rhinoceros Beetle (CRB) Host Material Which Includes Potted Plants, Coconut Fruit, Decomposing Plant Material Such as Compost, Wood, Tree Chips, and Mulch, Plant Propagation Media and Other Items Comprised of Decomposing Organic Plant Material Such as Landscaping Material or Erosion Control Socks From Any Other Area in the State to the Islands of Maui and Lāna'i;

(2) A Finding that the Existing Regulations in chapter 4-72, Hawaii Administrative Rules, Related to the Transportation of CRB Host Material including, Potted Plants, Coconut Fruit, Decomposing Plant Material Such as Compost, Wood, Tree Chips, and Mulch, Plant Propagation Media and Other Items Comprised of Decomposing Organic Plant Material Such as Landscaping Material or Erosion Control Socks is Insufficient to Prevent the Spread of CRB to the Islands of Maui and Lāna'i Which Creates a Situation Dangerous to the Public Health and Safety or to the Ecological Health of Flora or Fauna Present in the State and Constitutes an Emergency Justifying an Interim Rule; and

(3) A Finding that the Adoption of an Interim Rule to Further Restrict the Transportation of CRB Host Material including Potted Plants, Coconut Fruit, Decomposing Plant Material Such as Compost, Wood, Tree Chips, and Mulch, Plant Propagation Media and Other Items Comprised of Decomposing Organic Plant Material Such as Landscaping Material or Erosion Control Socks From Any Area in the State is Required to Prevent the Spread of CRB to the Islands of Maui and Lāna'i.



I. Background:

On June 8th, the Office of the Chairperson received the Petition for Emergency and Interim Rulemaking (Petition) from the Lahaina Community Land Trust (Petitioner) requesting the Board of Agriculture and Biosecurity (Board) to simultaneously adopt an (1) interim rule pursuant to section 150A-9.5, Hawaii Revised Statutes (HRS), and (2) emergency rules pursuant to section 91-3(b), HRS, to prohibit the movement of coconut rhinoceros beetle (CRB) host material (which includes live plants of any size if there are any organic material attached to the roots; coconut fruit; untreated decomposing plant material such as compost, wood, tree chips, and untreated mulch; and plant propagation media and other items comprised of decomposing organic plant material such as landscaping material or erosion control socks) from any other area in the State to the islands of Maui and Lānaʻi. The June 8th Petition is included as APPENDIX A, and includes a proposed interim and emergency rule, located on pages 12 and 13 of the Petition.

Since its initial detection on Oʻahu in late 2013, CRB has been found on Kauaʻi, West Hawaiʻi Island, Maui, Molokaʻi, and Lānaʻi, with an ongoing eradication program occurring in West Hawaiʻi Island and rapid response efforts on Maui and Molokaʻi. Since then, multiple regulations regarding CRB have been implemented. Chapter 4-72, Hawaii Administrative Rules (HAR) regulates the movement of CRB host materials from Oʻahu to other areas in the State. Recent prohibition on the movement of CRB host materials from anywhere in the State to Molokaʻi were established through Interim Rule 25-1 and the establishment of a CRB infested area and regulation through a compliance agreement and permitting system in the Kona area of Hawaiʻi Island was established through Interim Rule 26-1.

The June 8th Petition was reviewed by the Board at its June 23, 2026, meeting under the Board's Rules of Practice and Procedure, section 4-1-23, HAR, which allows rulemaking to be initiated by petition of an interested person upon Board approval. The Petitioners submitted as testimony, revised proposed emergency and interim rule language that was in response to the PQB's analysis, which is attached as APPENDIX B. Ultimately, the Board did not approve the Petitioner's request for emergency rulemaking, but directed the Plant Quarantine Branch (PQB) to work with the Petitioners to revise their proposed interim rule, present it to the Advisory Committee on Plants and Animals (Committee) for review, and bring the Petition request back before the Board, preferably at its July meeting for final review and approval.

PQB staff met with the Petitioners on June 29, 2026, and July 7, 2026, to discuss and revise the proposed interim rule. The June discussion was based on the interim rule language from APPENDIX B, with a subsequent revision that was discussed at the July meeting, which is included as APPENDIX C for the Committee's consideration.

II. Authority

Pursuant to section 150A-9.5, HRS, the Hawaii Department of Agriculture and Biosecurity (DAB) may establish an interim rule governing the transport of flora and fauna into and within the State. Pursuant to section 150A-9.5(b), HRS, **an interim rule may be adopted if the Advisory Committee on Plants and Animals finds that the importation or movement of any flora or fauna, in the absence of effective rules, creates a situation dangerous to public health and safety or to the ecological health of flora or fauna present in the State which is so immediate in nature as to constitute an emergency.** (emphasis added).

Once adopted by DAB, any interim rule must be published within twelve days of issuance at least once in any newspaper of general circulation in the State and shall be effective for not more than one year.

III. Proposed Interim Rule

The most recent version of the interim rule (APPENDIX C) would prohibit live plants of any size if there is any organic material attached to the roots; coconut fruit; untreated decomposing plant material such as compost, wood, tree chips, and untreated mulch; and untreated plant propagation media and other items comprised of decomposing organic plant material such as landscaping material or erosion control mats/socks, or gravel free of organic/landscaping material, from any other area in the State to the islands of Maui and Lānaʻi. Movement of materials require secondary inspections on Maui or Lānaʻi. The Petition exempts fresh plant products intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices (except coconut fruit); plant products preserved from decay by treatment or intended use, such as lumber, woven hats, wooden posts, wood carvings, and firewood; seeds for planting; cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements; and rock, coral, gravel, and sand, not mixed with any organic material; potted plants transported by the Department of Land and Natural Resources (DLNR) pursuant to DAB inspection and approval; and tissue cultured or other micropropagated live plants in sterile media.

IV. Analysis

The PQB believes that many of its initial challenges/questions with language in the June 8th proposed interim rule have been addressed in the APPENDIX C version of the interim rules, however a few remain or have arisen:

- The PQB does not believe that allowing DLNR to move potted plants under section B(6) should be allowed as there are no approved treatments/mitigation

measures for potted plants. Additionally, should DLNR have a process/procedure that would prevent CRB infestation, this same procedure should be afforded to all others who are doing the same or have a similar process and/or procedure, subject to verification by PQB prior to movement.

- There are number of instances (particularly sections A(1)(C), A(1)(E), and A(3), and to a lesser extent sections A(1)(B), A(4), and A(5)) that require inspection upon arrival to Maui and Lānaʻi. As PQB does not have staff on Lānaʻi, the PQB is not sure how compliance could occur there.

ADVISORY COMMITTEE REVIEW: May we request your recommendation (finding) and comments at the next meeting of the Advisory Committee on Plants and Animals.

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Attorneys for LAHAINA COMMUNITY LAND TRUST

BEFORE THE BOARD & DEPARTMENT OF AGRICULTURE AND BIOSECURITY
 STATE OF HAWAII

In re the Petition of:	)
LAHAINA COMMUNITY LAND TRUST,	) PETITION FOR INTERIM AND
	) EMERGENCY RULEMAKING;
For adoption of interim and emergency rules to	) DECLARATION OF KAPALI KEAHI;
regulate transportation of Coconut Rhinoceros	) APPENDIX "A"
Beetle host material and potential such material to	)
Maui and Lāna'i islands.	)

PETITION FOR INTERIM AND EMERGENCY RULEMAKING

Petitioner LAHAINA COMMUNITY LAND TRUST, a Hawai'i nonprofit organization ("Community Trust" or "Petitioner"), submits this Petition for Interim and Emergency Rulemaking pursuant to Hawai'i Revised Statutes ("HRS") §§ 91-1, 91-3, 91-4, 91-6, 141-2, and 150-9.5, and Hawai'i Administrative Rules ("HAR") §§ 4-1-23 and -30. Petitioner seeks adoption and implementation of rules regulating transportation of material that may host Coconut Rhinoceros Beetle (*Oryctes rhinoceros*) ("CRB") to Maui and Lāna'i islands. Proposed rules are substantially similar to those currently in effect for the Island of Moloka'i.

I. PROPOSED INTERIM & EMERGENCY RULE

A draft of the substantive terms of the proposed interim and emergency rule is below. A fully formatted draft is attached as Appendix "A."

Rule § -A: Regulation of CRB material transport.

- (1) CRB host material and materials that may host CRB originating in the State of Hawai'i, and transported to Maui and Lāna'i islands, are regulated as follows:
 - (A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lāna'i

islands under any circumstances.

- (B) Bareroot plants may be transported to Maui and Lānaʻi islands after inspection and approval by the Department.
- (C) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel (which must be free from all organic or landscaping material) may not be transported to Maui and Lānaʻi islands, unless such material has been subjected to an treatment to kill all life stages of CRB. The treatment protocol, completion of this treatment, and storage and transportation plan must be approved in writing by CRB Response and the Department prior to transport to Maui and Lānaʻi islands.
- (D) Coconuts may not be transported to Maui and Lānaʻi islands.
- (E) Potted plants and other material described in paragraphs (A) through (D) that have not been present, staged, or stored in any other area of the State may be transported to Maui and Lānaʻi islands.

The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material or materials that may host CRB.

- (2) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (B), (C), or (E) is subject to inspection by the Department upon or after arrival on the island of Maui. Any such plant or other material found to be infested with CRB or shows signs of CRB damage shall be refused and returned, treated, or destroyed, at the discretion of the Department and at the expense of the person who initiated transport, usually the person shipping the plant or other material.
- (3) The Department may revoke or otherwise terminate their approvals if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § -B: Exclusions from regulation. This rule does not regulate the transportation of the following to Maui and Lānaʻi islands:

- (A) Plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (B) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (C) Seeds for planting,
- (D) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (E) Rock, coral, and sand, not mixed with any organic material,
- (F) Potted plants transported by the Department of Land and Natural Resources to the Maui and Lānaʻi islands pursuant to a permit issued by the Department; or,
- (G) Tissue cultured or other micropropagated live plants in sterile media.

Rule § -C: Definitions. As used in this rule:

- (1) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on Oʻahu in 2013 and managed through the University of Hawaiʻi and staffed through the Research Corporation of the University of Hawaiʻi.

- (2) “Department” refers to the Department of Agriculture and Biosecurity.
- (3) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § -D: Construction of Rule. The requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lānaʻi islands.

II. REASONS TO SUPPORT PROPOSED RULES

A. Existing regulation has not stopped CRB from spreading.

CRB feeds on important plants, including coconut trees, various palm species, hala, kalo, banana, pineapple, and sugarcane. CRB was first detected in Hawaiʻi on Oʻahu in 2013.¹ Since then, the Department and its partners have worked to prevent CRB from spreading, but these efforts have not been successful. CRB is now reported to be established on Oʻahu and is spreading to other islands.²

In an attempt to contain CRB, DAB adopted interim rules under HRS § 150A-9.5 in June 2022, October 2023, and October 2024³ to require permits for transportation of CRB host material, including palm plants in the genera *Cocos*, *Livistona*, *Phoenix*, *Pritchardia*, *Roystonea*, and *Washingtonia*; decomposing plant material, such as compost, wood or tree chips, and mulch; plant propagation media; and other items comprised of decomposing organic plant material such as landscaping material or erosion control socks from Oʻahu to other areas of the State.⁴ These interim rules expired in 2025. Currently, there is no comprehensive rule to reduce CRB on Oʻahu or Kauaʻi or to prevent CRB from spreading to other islands.

The result is CRB is continuing to spread throughout the State. In 2023, CRB was detected

¹ Dep’t of Agriculture, New Pest Advisory No. 14-1 (May 2014) dab.hawaii.gov/pi/files/2013/01/npa-CRB-5-1-14.pdf.

² Thomas Heaton, “Ravenous Beetles go Urban, Preying on Honolulu’s Iconic Coconut Palms,” *Civil Beat* (Feb. 18, 2025) www.civilbeat.org/2025/02/ravenous-beetles-go-urban-preying-on-honolulus-iconic-coconut-palms/.

³ Dep’t, Plant Quarantine Interim Rule 24-2, (Oct. 11, 2024) <https://dab.hawaii.gov/wp-content/uploads/2025/03/CRB-Interim-Rule-24-2-Signed.pdf>.

⁴ HAR §4-23.1-1; see Plant Quarantine Interim Rule 24-2 (Oct. 11, 2024) dab.hawaii.gov/wp-content/uploads/2018/05/CRB-Interim-Rule-10-11-2024.pdf.

on Hawai‘i island, Maui, and Kaua‘i. The Kaua‘i infestation spread.⁵ Initial introductions on Hawai‘i Island, at Waikōloa, and Maui, in Kīhei, were controlled and the Waikōloa and Kīhei sites have been free of CRB for years.

Beginning in March 2025, CRB was detected at multiple sites in West Hawai‘i, near the Kona International Airport and within the Keāhole Agricultural Park. These detections set off a multi-agency response that included the Department, the County of Hawai‘i, the State Department of Transportation, the Hawai‘i Invasive Species Council, CRB Response, and the Big Island Invasive Species Committee.⁶ The response included mass fumigation and removal of CRB breeding sites at the Keāhole Agricultural Park, ongoing trapping and monitoring efforts across West Hawai‘i, pesticide application to coconut trees, public outreach, and two three-month Voluntary Compliance Order for CRB Host Materials issued by the County of Hawai‘i, in coordination with the Department.

Motivated by concern about the spread of CRB on Hawai‘i island, community members petitioned for an interim rule requiring businesses transporting CRB host material to use best management practices. The Board approved this interim rule, effective on March 25, 2026.⁷

On September 23, 2025, the Board unanimously voted to adopt Moloka‘i community petitioners’ proposed interim rules governing CRB host material transport to Moloka‘i.⁸

In April 2026, three dead CRB were collected in traps on Moloka‘i and one dead CRB was collected in a trap on Maui.⁹ In June and July 2025, CRB was detected in separate shipments of potted plants transported from O‘ahu to Lāna‘i.¹⁰

⁵ Dep’t of Agriculture, “Coconut Rhinoceros Beetles Detected on Kauai” NR23-11 (June 5, 2023) <https://dab.hawaii.gov/blog/main/nr23-11crbonkauai/>.

⁶ “Discovery of coconut rhinoceros beetles in West Hawai‘i initiates multiagency response,” *Maui News* (Aug. 28, 2025) maui.now.com/2025/08/28/discovery-of-coconut-rhinoceros-beetles-in-west-hawaii-i-initiates-multiagency-response/; Dep’t of Agriculture & Biosecurity, “Multi-Agency Effort to Fumigate CRB Green Waste at Keāhole Ag Park,” <https://dab.hawaii.gov/blog/main/nr25-21keahole-fumigation/>.

⁷ Department Plant Quarantine Interim Rule 26-1 (Mar. 25, 2026) [https://records.hawaiicounty.gov/Weblink/1/edoc/154877/CRB-Interim Rule 26-1.pdf](https://records.hawaiicounty.gov/Weblink/1/edoc/154877/CRB-Interim%20Rule%2026-1.pdf).

⁸ Minutes of the Board of Agriculture, at 10 (Sep. 23, 2025) <https://dab.hawaii.gov/wp-content/uploads/2025/11/BAB-meeting-minutes-approved-9-23-25.pdf> (voting to adopt “appendix E” without staff proposed changes); see Dep’t Interim Rule 25-1, effective on September 24, 2025.

⁹ Department, “Dead CRB found near Kahului Airport,” NR26-05, (Apr. 8, 2026) <https://dab.hawaii.gov/blog/main/nr26-05-crb/>; Coconut Rhinoceros Beetle Response, “Maui and Moloka‘i Coconut Rhinoceros Beetle (CRB) Response Timeline (Apr. 30, 2026) www.crbhawaii.org/post/maui-and-moloka-i-coconut-rhinoceros-beetle-crb-response-timeline.

¹⁰ Department, “Coconut Rhinoceros Beetles Detected on Lāna‘i” (Aug. 6, 2025) <https://dab.hawaii.gov/blog/main/nr25-18-crb-lanai/>

In May 2026, two adult CRBs and one larva were found in a shipment of potted plants from O‘ahu to Lāna‘i.¹¹ Pūlama Lāna‘i, a land management company with a landscape and biosecurity program that services Lāna‘i, required additional biosecurity measures once plants are moved to Lāna‘i thus detected the CRB. Other islands do not have the authority from the Department to require similar measures.

B. Proposed rules enable Department to prevent CRB spread to Maui/ Lāna‘i islands.

Counties are preempted from banning or regulating the movement of material to prevent the introduction of a pest or invasive species.¹² That authority rests solely with this Board and Department. Therefore, the County of Maui is limited in its ability to regulate the transport, quarantine, or treatment of plants, soil, and other CRB host material to Maui and Lāna‘i islands.

Increased regulation of materials that may host CRB: Proposed rules expand the Department’s authority to regulate and inspect not only CRB host material as defined by HAR § 4-72-23(b)(1), but material that may host CRB, such as coconuts. CRB can bore into the coconut fruit, particularly in heavily infested areas.

Potted plants prohibited: The proposed rule prohibits the movement of potted plants of any size to the Maui and Lāna‘i islands from other areas of the State. At this time, there is no acceptable CRB treatment for potted plants. This leaves visual inspection at the island of export as the only prevention tool. As demonstrated by recent CRB detections, these inspections are not effective at stopping CRB from moving within the State. Visual inspections and other requirements failed to prevent CRB from becoming established on Kaua‘i, reaching and spreading on the Island of Hawai‘i, moving to the Lāna‘i in potted plants not typically considered hosts of CRB, or reaching the island of Maui, as shown by recent trap detections.

CRB can get into potted plants two different ways. First, material could be put into the pot from an already infested source, such as a pile of potting medium in a large pile on the ground. Second, an adult CRB could lay eggs in the pot. Current Department rules do not require commercial dealers to address these two pathways. Therefore, prohibiting importation of potted

¹¹ Keila Kamoku, “Invasive Coconut Rhinoceros Beetle detected in plant shipment in Lāna‘i” *KHON News* (May 12, 2026) www.khon2.com/lanai-news/invasive-crb-detected-in-lanai/.

¹² See *Atay v. Cty. of Maui*, 842 F.3d 688, 709 (9th Cir. 2016); *Syngenta Seeds, Inc. v. Cty. of Kauai*, 664 F. App’x 669, 673 (9th Cir. 2016); *Hawaii Floriculture & Nursery Ass’n v. Cty. of Hawaii*, No. CIV. 14-00267 BMK, 2014 WL 6685817, (D. Haw. Nov. 26, 2014), *aff’d sub nom. Hawai‘i Papaya Indus. Ass’n v. Cty. of Hawaii*, 666 F. App’x 631 (9th Cir. 2016).

plants onto Maui and Lānaʻi islands immediately and for at least a year is necessary, during which time treatment and best management practices should be developed for potted plants.

Treatment required for some CRB host material: Some CRB host material, such as soil, mulch, and wood chips, are already regulated would be required to be treated under the proposed rule. Treatments for these CRB host materials currently exist and are available in Hawaiʻi. Treating these materials prior to transport will significantly reduce the risk of spreading CRB to Maui and Lānaʻi islands. Gravel is often unintentionally mixed with decaying organic material such as soil. Unless gravel can be demonstrated to be free from organic material, it should be treated as a CRB host material and treated prior to transport. Exceptions to transportation prohibitions are narrower than those existing.

The Department is already familiar with pest-infestation treatment protocols implemented for non-domestic plants, animals, and micro-organisms, as are set out in existing HAR chapters 4-71A and -73. Therefore, the Department is well-situated to determine how to implement treatment protocols and to determine their successful completion. CRB Response, a publicly-funded entity, has particular expertise in CRB life cycles and therefore their approval is also required.

C. Imminent peril posed by CRB spread constitutes an emergency.

The transportation of potentially infested host material around the State threatens to exacerbate the spread of CRB on Maui and Lānaʻi islands. This constitutes a situation dangerous to the public health and safety and the ecological health of flora or fauna present in the State – and is so immediate in nature as to constitute an emergency under HRS §§ 127A-2 and 150A-9.5(b).

CRB particularly attack coconut trees (*Cocos nucifera*) and other palm species. Maui and Lānaʻi residents use coconut trees for subsistence, agriculture, traditional Hawaiian cultural practices, and landscaping. Should CRB spread, the treatment of coconut trees will significantly impact their usability, require ongoing pesticide application, imperil native and endemic palms, and potentially interfere with important traditional and cultural practices.

CRB establishment on Maui would thus impact native and endemic palm species, including the loulu palms. Resource managers have noted loulu damage and mortality in areas hard-hit by CRB across Oʻahu, Kauaʻi, and Hawaiʻi Island.¹³ Maui is home to five loulu species,

¹³ “Coconut Rhinoceros Beetle Puts Hawaiʻi’s Endemic Loulu Palms at Risk,” *Maui Now* (Feb. 27, 2026) <https://mauinow.com/2026/02/27/coconut-rhinoceros-beetle-puts-hawai%CA%BBis-endemic-loulu-palms-at-risk/>

each endangered and endemic to Maui County. The most abundant loulu, *Pritchardia arecina*, found only on the eastern slopes of Haleakalā, has a wild population of about 500 individuals. In Ukumehame Valley, the loulu *Pritchardia munroi* has just two wild individuals left. To lose loulu would mean losing a piece of Hawaii's cultural identity. Ecologically, loulu provides essential habitat for native birds and insects and aids in soil stabilization and carbon sequestration.

Preventing CRB from reaching and becoming established on Maui is an emergency situation, with CRB being established on O'ahu, widespread on Kaua'i, spreading on Hawai'i Island, and recent detections in traps and potted plants on Maui and Lāna'i islands. An interim and emergency rule is needed to prevent the spread of CRB to Maui and Lāna'i islands.

D. Coextensive Interim and Emergency rules are necessary.

Pursuant to HRS § 150A-9.5(b), the Department may adopt an interim rule:

in the event that the importation or movement of any flora or fauna, in the absence of effective rules, creates a situation dangerous to the public health and safety or to the ecological health of flora or fauna present in the State which is so immediate in nature as to constitute an emergency. No interim rule shall be adopted without such a finding by the advisory committee on plants and animals created under section 150A-10.

Id. Therefore, the Department must refer the matter to an Advisory Committee, which must then convene in order to make required findings, and the interim rule must be published within 12 days of issuance. *Id.*(c). The Advisory Committee's findings and the interim rule are both subject to the appeal by "[a]ny person." *Id.* §-9.5(d). Once adopted, "[n]o interim rule shall be effective for more than one year." HRS § 150A-9.5(c)(2).

By contrast, an emergency rule may proceed upon written findings and without notice or hearing, "if an agency finds that an imminent peril to the public health, safety, or morals, to livestock and poultry health, or to natural resources" requires the rule. HRS § 91-3(b). The emergency rule is immediately effective upon filing with the lieutenant governor. HRS § 91-4(b)(2). However, its duration is limited to 120 days. *Id.*

The Board and Department's adoption of written findings of imminent peril would support an emergency rule that would become immediately effective upon filing. That would give the Department and Advisory Committee to meet and enter their findings and issue required notice for an Interim Rule.

III. PETITIONER'S INTEREST IN CRB SPREAD TO MAUI & LĀNA'I

In 2023, Maui community members organized the Community Trust out of deep concern

for the future and stewardship of Maui's Lahaina lands after the August 2023 fires. Declaration of Kapali Keahi ("Keahi Decl.") ¶3. The Community Trust's mission is to protect and perpetuate Lahaina, by empowering the Lahaina community to live, engage, and prosper, restoring and caring for its 'āina and ea. Our goal is to help keep Lahaina families in Lahaina, protect cultural and environmental sites and explore values-based economies as Lahaina rebuilds. Keahi Decl. ¶4.

Rooted in Lahaina and dedicated to the long-term stewardship of 'āina, housing, environmental restoration, and cultural resilience, the Community Trust understands CRB as more than simply an agricultural pest. Keahi Decl. ¶5. The spread of CRB threatens the ecological, cultural, and economic foundations of our communities. Lahaina and West Maui are already confronting compounding crises: wildfire recovery, watershed degradation, loss of canopy cover, climate stress, invasive species proliferation, and the broader ecological consequences of overdevelopment and extractive land use practices. In Lahaina, where vegetation loss from wildfire has already intensified heat, dust, and erosion, the destruction of remaining tree canopy would deepen environmental instability and diminish the quality of life for residents. The introduction and spread of CRB threatens to accelerate these vulnerabilities. *Id.*

CRB infestation severely impacts coconut palms and other palm species that are culturally and economically important to the communities our Community Trust serves. Keahi Decl. ¶6. Beyond their aesthetic value, these trees provide shade, erosion control, cooling effects in urban heat conditions, habitat support, and cultural identity across Maui's coastal landscapes. *Id.*

The pathways through which CRB spreads are well documented. Beetles and larvae are commonly transported through compost, mulch, decaying organic material, nursery stock, and potted plants. Keahi Decl. ¶7. Allowing unrestricted importation of potentially contaminated materials creates unnecessary risk to Maui County at a time when prevention remains far less costly and far more effective than long-term containment. This is inseparable from the Community Trust's mission. The work of rebuilding Lahaina requires restoring healthy and resilient landscapes around homes, community spaces, cultural sites, and agricultural areas. An unchecked CRB outbreak would increase maintenance costs, weaken restoration projects, threaten urban and cultural forestry efforts, and further burden already strained local resources. It would also undermine efforts toward food security, ecological restoration, and community self-sufficiency. *Id.*

The Community Trust is concerned, based on previous instances in Hawai'i, invasive species management cannot rely solely on reactive measures after establishment. Keahi Decl. ¶8.

Once invasive species become widespread, the burden of mitigation falls disproportionately on local communities rather than on the industries and import systems that facilitated their arrival. Prevention and strict biosecurity protocols are essential. *Id.*

The Community Trust is therefore petitioning for an interim and emergency rule to more strictly regulate the transportation of CRB host materials and materials that *may* host CRB to the islands of Maui and Lānaʻi. Keahi Decl. ¶9.

IV. RELIEF REQUESTED

For the foregoing reasons, Petitioner requests the Board and/ or Department:

- (1) Convene a meeting of the Advisory Committee on Plants and Animals (“Advisory Committee”) as soon as possible to consider an Interim Rule as proposed *supra* Part I and in Appendix A to protect Maui and Lānaʻi islands from the spread of CRB;
- (2) Delegate authority to the Board chairperson to sign any Interim Rule, should the Advisory Committee determine the proposed interim rule is necessary to address an emergency situation, in order for the Interim Rule to take effect at the earliest possible date without requiring further meetings of the Board or Department;
- (3) Find, based on the above, immediate adoption of an emergency Rule is necessary because of imminent peril to the public health, safety, or morals, or to natural resources, and file the emergency rule with the lieutenant governor’s office so that the rule may immediately take effect for the maximum of 120 days to cover the period between this meeting and the promulgation of any Interim Rule (HRS §§ 91-3(b), -4(b)(2), HAR § 4-1-30); and,
- (4) Prepare internal Department management procedures to ensure the Interim and emergency rules may be implemented upon effectivity.

DATED: Makawao, Hawaiʻi

June 8, 2026

/s/ Lance D. Collins

LAW OFFICE OF LANCE D. COLLINS
LANCE D. COLLINS

DATED: Honolulu, Hawaiʻi

June 8, 2026

/s/ Bianca Isaki

LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioner
LAHAINA COMMUNITY LAND TRUST

BEFORE THE BOARD & DEPARTMENT OF AGRICULTURE AND BIOSECURITY
STATE OF HAWAII

In re the Petition of:)
LAHAINA COMMUNITY LAND TRUST) DECLARATION OF KAPALI KEAHI
)
)

DECLARATION OF KAPALI KEAHI

I, KAPALI KEAHI, declare under penalty of law the following is true and correct.

1. I am a resident of the island and County of Maui and make this declaration based upon my personal knowledge, information and belief.
2. I am a Board officer of Petitioner LAHAINA COMMUNITY LAND TRUST (“Community Trust”), a nonprofit corporation, in the above-captioned proceeding. LCLT’s address is P.O. Box 12580, Lahaina, Hawai‘i, 96761. The Community Trust’s telephone number is 808-830-5258.
3. In 2023, Maui community members, including myself, organized the Community Trust out of deep concern for the future and stewardship of Maui’s Lahaina lands after the August 2023 fires.
4. The Community Trust’s mission is to protect and perpetuate Lahaina, by empowering the Lahaina community to live, engage, and prosper, restoring and caring for its ‘āina and ea. Our goal is to help keep Lahaina families in Lahaina, protect cultural and environmental sites and explore values-based economies as Lahaina rebuilds.
5. Rooted in Lahaina and dedicated to the long-term stewardship of ‘āina, housing, environmental restoration, and cultural resilience, the Community Trust understands CRB as more than simply an agricultural pest. The spread of CRB threatens the ecological, cultural, and economic foundations of our communities. Lahaina and West Maui are already confronting compounding crises: wildfire recovery, watershed degradation, loss of canopy cover, climate stress, invasive species proliferation, and the broader ecological consequences of overdevelopment and extractive land use practices. In Lahaina, where vegetation loss from wildfire has already intensified heat, dust, and erosion, the destruction of remaining tree canopy would deepen environmental instability and diminish the quality of life for residents. The introduction and spread of CRB threatens to accelerate these vulnerabilities.
6. CRB infestation severely impacts coconut palms and other palm species that are

culturally and economically important to the communities our Community Trust serves. Beyond their aesthetic value, these trees provide shade, erosion control, cooling effects in urban heat conditions, habitat support, and cultural identity across Maui's coastal landscapes.

7. The pathways through which CRB spreads are well documented. Beetles and larvae are commonly transported through compost, mulch, decaying organic material, nursery stock, and potted plants. Allowing unrestricted importation of potentially contaminated materials creates unnecessary risk to Maui County at a time when prevention remains far less costly and far more effective than long-term containment. This is inseparable from the Community Trust's mission. The work of rebuilding Lahaina requires restoring healthy and resilient landscapes around homes, community spaces, cultural sites, and agricultural areas. An unchecked CRB outbreak would increase maintenance costs, weaken restoration projects, threaten urban and cultural forestry efforts, and further burden already strained local resources. It would also undermine efforts toward food security, ecological restoration, and community self-sufficiency.

8. The Community Trust is concerned, based on previous instances in Hawai'i, invasive species management cannot rely solely on reactive measures after establishment. Once invasive species become widespread, the burden of mitigation falls disproportionately on local communities rather than on the industries and import systems that facilitated their arrival. Prevention and strict biosecurity protocols are essential.

9. The Community Trust is therefore petitioning for an interim and emergency rule to more strictly regulate the transportation of CRB host materials and materials that *may* host CRB to the islands of Maui and Lāna'i.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Lahaina, Maui, Hawai'i June 5, 2026


KAPALI KEAHI
DECLARANT

Draft Interim & Emergency Rule

To Regulate the Transportation of CRB Host Material to Prevent the Movement of Coconut Rhinoceros Beetle, *Oryctes rhinoceros*, to Maui and Lānaʻi Islands from Other Areas of the State

Under authorization of Hawaiʻi Revised Statutes (“HRS”) §§ 91-1, 91-3, 91-4, 141-2, and 150-9.5 and Hawaiʻi Administrative Rules (“HAR”) §§ 4-1-23 and -30, the State Department of Agriculture and Biosecurity (“Department”) hereby establishes this interim and emergency rule to regulate the movement of coconut rhinoceros beetle host material to prevent the spread of coconut rhinoceros beetle, *Oryctes rhinoceros*, (“CRB”) to Maui and Lānaʻi islands, where CRB is not known to be established.

The rule is needed to prevent the spread of CRB to Maui and Lānaʻi islands from other areas of the State, which poses imminent peril to the public health and safety and natural resources of Maui and Lānaʻi islands.

Rule § ____-A: Regulation of CRB material transport.

- (4) CRB host material and materials that may host CRB originating in the State of Hawaiʻi, and transported to Maui and Lānaʻi islands, are regulated as follows:
 - (F) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lānaʻi islands under any circumstances.
 - (G) Bareroot plants may be transported to Maui and Lānaʻi islands after inspection and approval by the Department.
 - (H) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel (which must be free from all organic or landscaping material) may not be transported to Maui and Lānaʻi islands, unless such material has been subjected to an treatment to kill all life stages of CRB. The treatment protocol, completion of this treatment, and storage and transportation plan must be approved in writing by CRB Response and the Department prior to transport to Maui and Lānaʻi islands.
 - (I) Coconuts may not be transported to Maui and Lānaʻi islands.
 - (J) Potted plants and other material described in paragraphs (A) through (D) that have not been present, staged, or stored in any other area of the State may be transported to Maui and Lānaʻi islands.

The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material or materials that may host CRB.

- (5) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (B), (C), or (E) is subject to inspection by the Department upon or after arrival on the island of Maui. Any such plant or other material found to be infested with CRB or shows signs of CRB damage shall be refused and returned, treated, or destroyed, at the discretion of the Department and at the expense of the person who initiated transport,

APPENDIX "A"

usually the person shipping the plant or other material.

- (6) The Department may revoke or otherwise terminate their approvals if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § -B: Exclusions from regulation. This rule does not regulate the transportation of the following to Maui and Lānaʻi islands:

- (B) Plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (B) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (C) Seeds for planting,
- (D) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (E) Rock, coral, and sand, not mixed with any organic material,
- (F) Potted plants transported by the Department of Land and Natural Resources to the Maui and Lānaʻi islands pursuant to a permit issued by the Department; or,
- (G) Tissue cultured or other micropropagated live plants in sterile media.

Rule § -C: Definitions. As used in this rule:

- (4) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on Oʻahu in 2013 and managed through the University of Hawaiʻi and staffed through the Research Corporation of the University of Hawaiʻi.
- (5) “Department” refers to the Department of Agriculture and Biosecurity.
- (6) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § -D: Construction of Rule. The requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lānaʻi islands.

This Interim Rule is effective _____ 2026 and is valid for no longer than one year from this date.

This Emergency Rule is effective _____ 2026 and is valid for no longer than 120 days from this date.

SHARON HURD

Chairperson, Board of Agriculture and Biosecurity

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

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June 21, 2026

VIA EMAIL

Sharon Hurd, Chairperson
 Board of Agriculture & Biosecurity
 Office of the Chairperson
 1428 S. King Street
 Honolulu, Hawai'i 96814
 sharon.k.hurd@hawaii.gov
 dab.board.testimony@hawaii.gov

Re: Petitioner LAHAINA COMMUNITY LAND TRUST's proposed REVISED Interim and Emergency Rule regulating transportation of material that may host Coconut Rhinoceros Beetle (*Oryctes rhinoceros*) ("CRB") to Maui and Lāna'i islands.

Dear Chairperson Sharon Hurd and Members,

I am co-counsel for Petitioner LAHAINA COMMUNITY LAND TRUST, a Hawai'i nonprofit organization ("Community Trust" or "Petitioner"). On June 8, 2026, we submitted a Petition for Interim and Emergency Rulemaking, seeking adoption and implementation of rules regulating transportation of material that may host Coconut Rhinoceros Beetle (*Oryctes rhinoceros*) ("CRB") to Maui and Lāna'i islands ("petition").

We reviewed the Plant Quarantine Branch's ("PQB") insightful analysis and provide the following revisions to the proposed rules in advance of your June 23, 2026 meeting in order to facilitate timely approval and adoption of these rules. Additionally, we dispute certain of PQB's proposed revisions and provide our rationale herein.

I. REVISED PROPOSED INTERIM & EMERGENCY RULE

A draft of the substantive terms of the proposed interim and emergency rule is below. Fully formatted "clean" draft rules are appended to this testimony.

Rule § -A: Regulation of CRB material transport.

(1) CRB host material and materials that may host CRB originating in the State of Hawai'i, and transported to Maui and Lāna'i islands, are regulated as follows:

(A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lāna'i islands under any circumstances except as provided by this rule.

(A) Bareroot plants may be transported to Maui and Lāna'i islands after inspection and

- approval by the Department.
- (B) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel ~~(which must the shipper has not demonstrated to~~ be free from all organic or landscaping material) may not be transported to Maui and Lānaʻi islands, unless such material has been ~~treated subjected to an treatment~~ to kill all life stages of CRB. The treatment ~~must consist of~~ evidence-based treatment and post-treatment storage protocols developed or approved by accredited researchers with demonstrated experience with CRB in Hawaiʻi, or a research organization such as CRB Response, that will kill CRB present in any life stage, including eggs, and proven post treatment reinfestation. The protocol, completion of this treatment, and storage and transportation plan must be approved in writing by ~~CRB Response and~~ the Department prior to transport to Maui and Lānaʻi islands.
- (C) Coconuts may not be transported to Maui and Lānaʻi islands.
- (D) Potted plants and other material described in paragraphs (A) through (D) that have not been present, staged, or stored in any other area of the State may be transported to Maui and Lānaʻi islands.
- (2) The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material or materials that may host CRB.
- (3) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (B), (C), or (E) is subject to inspection by the Department upon or after arrival on the island of Maui. Any such plant or other material found to be infested with CRB or shows signs of CRB damage shall be refused and returned, treated, or destroyed, at the discretion of the Department and at the expense of the person who initiated transport, usually the person shipping the plant or other material.
- (4) The Department may revoke or otherwise terminate their approvals if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § -B: Exclusions from regulation. This rule does not ~~impose additional restrictions on regulate~~ the transportation of the following to Maui and Lānaʻi islands:

- (A) Plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (B) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (C) Seeds for planting,
- (D) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (E) Rock, coral, ~~gravel~~, and sand, not mixed with any organic material,
- (F) Potted plants transported by the Department of Land and Natural Resources ~~as part of the Division of Forestry and Wildlife Rare Plant Program~~ to the Maui and Lānaʻi islands ~~pursuant to a permit issued by the Department~~; or,

(G) Tissue cultured or other micropropagated live plants in sterile media.

Rule § __-C: Definitions. As used in this rule:

- (1) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on O‘ahu in 2013 and managed through the University of Hawai‘i and staffed through the Research Corporation of the University of Hawai‘i.
- (2) “Department” refers to the Department of Agriculture and Biosecurity.
- (3) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § __-D: Construction of Rule. The requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lāna‘i islands.

II. RESPONSE TO PQB ANALYSIS & RATIONALE

The following paraphrases PQB’s analytical points and responds with rationale supporting the proposed revised Interim and Emergency rules.

1. PQB: Adopt headings from the Petition, pages 1-3. Agreed.
2. PQB: Allow treated potted plants if a scientifically verified treatment is developed. Because there is no treatment, the Board, Petitioner, and the public lack information to assess whether a rule allowing treated potted plants is warranted. Adult and larval CRB have been detected in potted plants that were being moved interisland. Currently, as no effective treatment exists, the prudent approach is to prohibit potted plant transport to Maui and Lāna‘i with a narrow exception discussed *infra* Part I.6. Petitioners added the following clause in underlined red text to “Regulation of CRB material transport”:
 - (1) CRB host material and materials that may host CRB originating in the State of Hawai‘i, and transported to Maui and Lāna‘i islands, are regulated as follows:
 - (A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lāna‘i islands under any circumstances except as provided by this rule.
3. PQB: Emergency and Interim rules should be prepared in separate documents. Agreed, see the attached [Revised] Emergency Rule and [Revised] Interim Rule.
4. PQB: Remove gravel without organic material from regulation: Agreed. For clarification purposes, gravel which “the shipper has not demonstrated to be free from all organic or landscaping material” is retained as a regulated material, and gravel “not mixed with any organic material” is added to the provision governing exclusions from regulation.

Revisions utilize the Department's authority to prohibit interisland transport of gravel infested with an insect, disease, or pest under HAR § 4-72-4. Because gravel is often stored on the ground and could include organic matter, the shipper is properly burdened with demonstrating gravel is free from any organic material prior to transport.

5. PQB: CRB Response written approval for treatment/ transport unreasonable. The proposed rule is revised to focus on standards for treatment and expands the scope of peer-reviewers to provide quality control instead of CRB Response alone as follows:

The treatment must consist of evidence-based treatment and post-treatment storage protocols developed or approved by accredited researchers with demonstrated experience with CRB in Hawai'i, or a research organization such as CRB Response, that will kill CRB present in any life stage, including eggs, and proven post treatment reinfestation. The protocol, completion of this treatment, and storage and transportation plan must be approved in writing by ~~CRB Response and~~ the Department prior to transport to Maui and Lāna'i islands.

The expanded scope of expertise addresses PQB's concern about lack of authority over CRB Response and recourse for persons affected by CRB Response's involvement. Involving accredited researchers and research organizations in the development or approvals will enhance public confidence and assist the Department in executing these complex treatments and protocols.

6. PQB: Remove bareroot plants from regulation; inspection and approval requirements redundant of HAR chapter 4-72 requirements. Bareroot plants are included in proposed regulation because CRB may exist in the crowns or other parts of plants other than roots. The Department's Interim Rule 26-1, governing CRB host material transport on Hawai'i island, defines "CRB Host Material" to include bare root CRB host palms. Interim Rule 26-1(II)(2)(A). However, CRB has been detected in plants other than palm species. Therefore, requiring Department inspection and approval of bare root plants is prudent.

PQB correctly notes plant materials already require inspection and certification prior to interisland transport, with exceptions for diagnostic, testing, educational, or permitted purposes. HAR §§ 4-72-3, -4. Concerns include practices of allowing uninspected plant materials from, for example, "certified nurseries" to move without inspection. The proposed rule would require Department inspection and approval for bareroot plants in every instance without exception. To the extent the proposed rule is redundant, emphasizing inspection requirements may further dissuade interisland movement of plant materials during weekends and other periods with the PQB inspection office is closed. For these reasons, bareroot plants should remain subject to inspection and approval.

7. PQB: clarify the rule does not impose *additional* restrictions on transport. Adopted.
8. PQB: Provisions for revoking Department approvals redundant of existing practice. To the extent the Department already practices termination of their approvals where conditions have materially changed, were premised on a mistake, or previously misrepresented, the proposed rule properly provides notice to affected persons and should be retained. The proposed rule is similar to Interim Rule 26-1, which provides: "The Department may revoke or otherwise terminate a permit or compliance agreement if the person issued the permit or compliance agreement is not in material compliance with the terms and

conditions thereof.”

9. **PQB: Remove exceptions for DLNR potted plants given absence of effective treatment.** Proposed rules are revised to narrow the exception as follows: “Potted plants transported by the Department of Land and Natural Resources as part of the Division of Forestry and Wildlife Rare Plant Program to the Maui and Lāna‘i islands pursuant to a permit issued by the Department;”

The DOFAW Rare Plant Program (“RPP”) is operated under highly controlled conditions and its mission of surveying, monitoring, and especially recovery of plant species on the brink of extinction warrant this narrow exception.

RPP requires interisland transport for operations. One of RPP's primary activities is collecting seeds for nursery propagation where the plants can be grown until they are old enough to be planted back into protected areas. To do this, the RPP operates native plant conservation nurseries on Kaua‘i, O‘ahu, Moloka‘i, Maui, and Hawai‘i Island. Sometimes seeds and cuttings from native plant populations can stay on-island to be propagated at the local DOFAW nursery. More often, propagation require specialized techniques such as seed banking, micropropagation, or cryo-preservation. The only facilities in Hawai‘i with those services are at the Lyon Arboretum on O‘ahu, where plants are grown in sterile lab conditions in glass tubes or in closed incubators at the seed bank.

No risk of CRB infestation under RPP procedures. When the plants are ready to be transferred, they are first inspected by laboratory staff, then brought to the Department by DOFAW for additional inspections. The Department only authorizes “clean” plants for shipment and the plants are hand-carried or transferred off-island via air cargo.

Because all plants are grown in sterile conditions in a laboratory environment, there is zero risk of infestation by CRB or other pests. Over the last decade, RPP has never had a single plant fail inspection for inter-island transport. Most plants being sent inter-island are very small seedlings grown in 2-inch pots with sterile media in a growth chamber incubator with deionized water and synthetic fertilizer. At this stage, fragile seedlings are extremely susceptible to root damage and cannot be removed from the media. Furthermore, the 2-inch pots they are grown in at the seed bank are much too small for CRB larvae to survive.

Absence of RPP’s work may do more harm to recovery. Since the moratorium on interisland movement of plants to Moloka‘i last year, no plants have been transferred to Moloka‘i, halting all RPP recovery work there. Because recovery efforts were stopped, rare plant populations have continued to decline. Inter-island transport by the RPP is critical to the recovery of Hawai‘i’s endemic plants. This includes loulu (*Pritchardia spp.*), Hawai‘i’s only native palm, which is currently being decimated by CRB on O‘ahu and Kaua‘i. One of the main activities for combatting CRB impacts on wild populations is to plant younger palms, which are less susceptible to CRB. Preventing RPP operations Maui/ Lāna‘i for low-risk activities may prevent loulu recovery.

In sum, the risk associated with interisland transport of RPP potted plants is low and the need for their ongoing work, including Maui and Lāna‘i islands, is high. While PQB correctly points out a blanket exemption for DLNR potted plants under permit is unwarranted, the revised rule appropriately narrows the exception to RPP.

III. BOARD MAY ADOPT REVISED RULES ON JUNE 23, 2026

The Board may adopt proposed revised Interim and Emergency rule at its June 23, 2026 meeting without running afoul of Hawai'i's Sunshine Law, Hawai'i Revised Statutes ("HRS") chapter 92. The Board's agenda lists "review" of the proposed Interim and Emergency rule as an "item to be considered at the forthcoming meeting" pursuant to HRS § 92-7(a). The Office of Information Practices ("OIP") concluded "the term 'consider' must ordinarily be interpreted to include possible decision-making on the item." OIP Op. Ltr. 07-06, at 4.¹ Here, the Board's agenda noticed matters to be considered at the meeting "with enough detail to reasonably allow the public to understand the subject of the matter to be considered." *Id.* at 2.

Revisions to proposed rules fall within the matters to be considered and there is a sufficient nexus between the proposed rule and the revisions. HRS § 92-7(a). "So long as there is a sufficient nexus between what was noticed and what the discussion resulted in, there would be no violation of the Sunshine Law." OIP Op. Ltr. 02-09, at 2-3. In reviewing a claim that a state agency's proposed rules substantively changed between drafts, *Ala Moana Boat Owners v. State*, 50 Haw. 156, 434 P.2d 516 (1967) noted, "[t]o permit the original proposal to be completely ignored and adopt another proposal which was not advocated or discussed at the public hearing may destroy the statutory requirement for a public hearing." *Id.*, 50 Haw. at 160, 434 P.2d at 519. Relying on *Ala Moana, Carlsmith, Carlsmith, Wichman & Case v. CPB Properties*, 64 Haw. 584, 645 P.2d 873 (1982), held notice of proposed legislative enactments is sufficient unless the proposal is "so substantially different from the changes proposed in the notice as to amount to an entirely new proposal." *Id.*, 64 Haw. at 588, 645 P.2d at 877.

Here, proposed revisions are minimal and sufficiently overlap with the noticed proposal. Therefore, the Board may approve the revised Interim and Emergency Rule at its June 23, 2026 meeting without delay.

Very truly yours,



LAW OFFICE OF BIANCA ISAKI

cc: Lance D. Collins, Esq.
Kapali Keahi
Autumn Rae Ness
Carolyn Auwelo

¹ OIP noted in all relevant Sunshine Law provisions, "the term 'consider' only makes sense if it is construed to include all actions a board is likely to take at a meeting with respect to an agenda item." *Id.* (citing HRS §§ 92-5 (use of "consider" in list of purposes for executive meetings impliedly includes all discussion, deliberation and decision-making); -7(d) (at continued meetings, board may "consider" items, which includes all discussion, deliberation and decision-making)).

REVISED DRAFT INTERIM RULE

To Regulate the Transportation of CRB Host Material to Prevent the Movement of Coconut Rhinoceros Beetle, *Oryctes rhinoceros*, to Maui and Lānaʻi Islands from Other Areas of the State

Under authority provided by Hawaiʻi Revised Statutes (“HRS”) §§ 91-1, 91-3, 91-4, 141-2, and 150A-9.5 and Hawaiʻi Administrative Rules (“HAR”) §§ 4-1-23 and -30, the State Department of Agriculture and Biosecurity (“Department”) hereby establishes this interim rule to regulate the movement of coconut rhinoceros beetle host material to prevent the spread of coconut rhinoceros beetle, *Oryctes rhinoceros*, (“CRB”) to Maui and Lānaʻi islands, where CRB is not known to be established.

The rule is needed to prevent the spread of CRB to Maui and Lānaʻi islands from other areas of the State, which poses imminent peril to the public health and safety and natural resources of Maui and Lānaʻi islands.

Rule § -A: Regulation of CRB material transport.

- (1) CRB host material and materials that may host CRB originating in the State of Hawaiʻi, and transported to Maui and Lānaʻi islands, are regulated as follows:
 - (A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lānaʻi islands under any circumstances except as provided by this rule.
 - (B) Bareroot plants may be transported to Maui and Lānaʻi islands after inspection and approval by the Department.
 - (C) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel (which the shipper has not demonstrated to be free from all organic or landscaping material) may not be transported to Maui and Lānaʻi islands, unless such material has been treated ~~subjected to an treatment~~ to kill all life stages of CRB. The treatment must consist of evidence-based treatment and post-treatment storage protocols developed or approved by accredited researchers with demonstrated experience with CRB in Hawaiʻi, or a research organization such as CRB Response, that will kill CRB present in any life stage, including eggs, and proven post treatment reinfestation. The protocol, completion of this treatment, and storage and transportation plan must be approved in writing by the Department prior to transport to Maui and Lānaʻi islands.
 - (D) Coconuts may not be transported to Maui and Lānaʻi islands.
 - (E) Potted plants and other material described in paragraphs (A) through (D) that have not been present, staged, or stored in any other area of the State may be transported to Maui and Lānaʻi islands.
- (2) The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material or materials that may host CRB.
- (3) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (B), (C), or (E) is subject to inspection by the Department upon or after arrival on the island of Maui. Any such plant or other material found to be infested with CRB or shows signs of CRB damage shall be refused and returned, treated, or destroyed, at the discretion of the Department and at the expense of the person who initiated transport, usually the person shipping the plant or other material.

- (4) The Department may revoke or otherwise terminate their approvals if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § -B: Exclusions from regulation. This rule does not impose additional restrictions on the transportation of the following to Maui and Lānaʻi islands:

- (A) Plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (B) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (C) Seeds for planting,
- (D) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (E) Rock, coral, gravel, and sand, not mixed with any organic material,
- (F) Potted plants transported by the Department of Land and Natural Resources as part of the Division of Forestry and Wildlife Rare Plant Program to the Maui and Lānaʻi islands; or,
- (G) Tissue cultured or other micropropagated live plants in sterile media.

Rule § -C: Definitions. As used in this rule:

- (1) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on Oʻahu in 2013 and managed through the University of Hawaiʻi and staffed through the Research Corporation of the University of Hawaiʻi.
- (2) “Department” refers to the Department of Agriculture and Biosecurity.
- (3) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § -D: Construction of Rule. The requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lānaʻi islands.

This Interim Rule is effective _____ 2026 and is valid for no longer than one year from this date.

SHARON HURD

Chairperson, Department of Agriculture and Biosecurity

REVISED DRAFT EMERGENCY RULE

To Regulate the Transportation of CRB Host Material to Prevent the Movement of Coconut Rhinoceros Beetle, *Oryctes rhinoceros*, to Maui and Lānaʻi Islands from Other Areas of the State

Under authority provided by Hawaiʻi Revised Statutes (“HRS”) §§ 91-1, 91-3, 91-4, and 141-2, and Hawaiʻi Administrative Rules (“HAR”) § 4-1-23, the State Department of Agriculture and Biosecurity (“Department”) hereby establishes this emergency rule to regulate the movement of coconut rhinoceros beetle host material to prevent the spread of coconut rhinoceros beetle, *Oryctes rhinoceros*, (“CRB”) to Maui and Lānaʻi islands, where CRB is not known to be established.

The rule is needed to prevent the spread of CRB to Maui and Lānaʻi islands from other areas of the State, which poses imminent peril to the public health and safety and natural resources of Maui and Lānaʻi islands.

Rule § -A: Regulation of CRB material transport.

- (1) CRB host material and materials that may host CRB originating in the State of Hawaiʻi, and transported to Maui and Lānaʻi islands, are regulated as follows:
 - (A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lānaʻi islands under any circumstances except as provided by this rule.
 - (B) Bareroot plants may be transported to Maui and Lānaʻi islands after inspection and approval by the Department.
 - (C) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel (which the shipper has not demonstrated to be free from all organic or landscaping material) may not be transported to Maui and Lānaʻi islands, unless such material has been treated ~~subjected to an treatment~~ to kill all life stages of CRB. The treatment must consist of evidence-based treatment and post-treatment storage protocols developed or approved by accredited researchers with demonstrated experience with CRB in Hawaiʻi, or a research organization such as CRB Response, that will kill CRB present in any life stage, including eggs, and proven post treatment reinfestation. The protocol, completion of this treatment, and storage and transportation plan must be approved in writing by the Department prior to transport to Maui and Lānaʻi islands.
 - (D) Coconuts may not be transported to Maui and Lānaʻi islands.
 - (E) Potted plants and other material described in paragraphs (A) through (D) that have not been present, staged, or stored in any other area of the State may be transported to Maui and Lānaʻi islands.
- (2) The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material or materials that may host CRB.
- (3) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (B), (C), or (E) is subject to inspection by the Department upon or after arrival on the island of Maui. Any such plant or other material found to be infested with CRB or shows signs of CRB damage shall be refused and returned, treated, or destroyed, at the discretion of the Department and at the expense of the person who initiated transport, usually the person shipping the plant or other material.

- (4) The Department may revoke or otherwise terminate their approvals if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § -B: Exclusions from regulation. This rule does not impose additional restrictions on the transportation of the following to Maui and Lānaʻi islands:

- (H) Plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (I) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (J) Seeds for planting,
- (K) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (L) Rock, coral, gravel, and sand, not mixed with any organic material,
- (M) Potted plants transported by the Department of Land and Natural Resources as part of the Division of Forestry and Wildlife Rare Plant Program to the Maui and Lānaʻi islands; or,
- (N) Tissue cultured or other micropropagated live plants in sterile media.

Rule § -C: Definitions. As used in this rule:

- (4) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on Oʻahu in 2013 and managed through the University of Hawaiʻi and staffed through the Research Corporation of the University of Hawaiʻi.
- (5) “Department” refers to the Department of Agriculture and Biosecurity.
- (6) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § -D: Construction of Rule. The requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lānaʻi islands.

This Emergency Rule is effective _____ 2026 and is valid for no longer than 120 days from this date.

SHARON HURD

Chairperson, Board of Agriculture and Biosecurity

REVISED DRAFT INTERIM RULE

To Regulate the Transportation of CRB Host Material to Prevent the Movement of Coconut Rhinoceros Beetle, *Oryctes rhinoceros*, to Maui and Lānaʻi Islands from Other Areas of the State.

Under authority provided by Hawaii Revised Statutes (“HRS”) §150A-9.5 and Hawaii Administrative Rules (“HAR”) § 4-1-23, the Hawaii Department of Agriculture and Biosecurity hereby establishes this interim rule to regulate the movement of coconut rhinoceros beetle host material to prevent the spread of coconut rhinoceros beetle, *Oryctes rhinoceros*, (“CRB”) to Maui and Lānaʻi islands, where CRB is not known to be established.

This interim rule is needed to prevent the spread of CRB to Maui and Lānaʻi islands from other areas of the State, which poses imminent peril to the public health and safety and natural resources of Maui and Lānaʻi islands.

Rule § -A: Regulation of CRB material transport. This interim rule regulates the following:

- (1) CRB host material transported to Maui and Lānaʻi islands, are regulated as follows:
 - (A) Live plants of any size, if there is any organic material attached to the roots, including potted plants and sod, are prohibited from being transported to Maui and Lānaʻi islands under any circumstances except as provided by this interim rule.
 - (B) Bareroot plants may be transported to Maui and Lānaʻi islands after inspection and approval by the Department. If a bareroot plant shows signs of CRB damage, the Department shall prohibit the movement of that plant to the island of Maui or Lānaʻi. If the CRB damage is detected upon arrival on the island of Maui or Lānaʻi, the plant shipment shall be destroyed, or quarantined and returned to the island of origin.
 - (C) Decomposing plant material, including mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, soil, plant propagation media including commercially bagged plant propagation media, erosion socks, erosion mats, or gravel which the shipper has not demonstrated to be free from all organic material may not be transported to Maui and Lānaʻi islands, unless such material has been treated to kill all life stages of CRB. The treatment must consist of evidence-based treatment and post-treatment storage protocols developed or approved by accredited researchers with demonstrated experience with CRB in Hawaii, or a research organization such as CRB Response, that will kill CRB present in any life stage, including eggs, and

proven post treatment reinfestation protection. The protocol, completion of this treatment, and storage and transportation plan must be approved in writing by the Department prior to transport to Maui and Lānaʻi islands. Such material is subject to inspection on the island of origin and upon arrival on the island of Maui or Lānaʻi.

- (D) Coconut fruit may not be transported to Maui and Lānaʻi islands.
- (E) Potted plants and other material described in subparagraphs (A) through (D) that originated outside the State and that is transshipped through another area of the State in a container that is CRB resistant and that was not opened may be transported to Maui or Lānaʻi island and must be inspected upon arrival in Maui or Lānaʻi.
- (F) Potted plants that have undergone treatment to kill all life stages of CRB may be transported to the islands of Maui and Lānaʻi after inspection and approval by the Department. The treatment must consist of evidence-based treatment that will kill CRB present in any life stage, including eggs, and post-treatment storage protocols developed or approved by accredited researchers and approved by a Hawaii-based research organization such as CRB Response and made publicly available. The protocols, completion of this treatment, and storage and transportation plan must be approved in writing by the Department prior to transport to Maui and Lānaʻi islands.
- (G) Imported erosion control mats and socks that are in unopened containers or have been stored in an enclosed facility with low risk of CRB exposure may be transported to Maui and Lānaʻi after inspection to confirm no signs of CRB damage.
- (2) The above regulations supersede and control over HAR § 4-72-23(d) exceptions for the transportation of CRB host material.
- (3) Any plant or other material that may be transported to Maui and Lānaʻi islands under paragraphs (1)(B), (1)(C), (1)(E) (1)(F), or (1)(G) is subject to inspection, including inspection of documents evidencing treatment, by the Department upon arrival on the island of Maui or Lānaʻi. Any such plant or other material found to be hosting living CRB adults or larvae shall be destroyed by the Department at the expense of the owner or the owner's agent. Any such other material, other than living plants, showing signs of CRB damage but has documented evidence of treatment shall be quarantined, at the expense of the owner or owner's agent, for a period of not less than 2 weeks and subject to re-treatment after such period. If any living CRB are detected, the shipment shall be

- destroyed at the expense of the owner or the owner's agent.
- (4) Any material regulated by the interim rule may be inspected by the Department after its arrival on the island of Maui or Lānaʻi.
 - (5) The Department may revoke or otherwise terminate an approval provided under this interim rule if the Department determines treatment, storage, or transportation conditions have materially changed, were premised on a mistake, or previously misrepresented to the Department.

Rule § — -B: Exclusions from regulation. This rule does not impose additional restrictions on the transportation of the following to Maui and Lānaʻi islands:

- (1) Fresh plant products (other than coconuts) intended for consumption, such as fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (2) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (3) Seeds for planting;
- (4) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (5) Rock, coral, gravel, and sand, not mixed with any organic material;
- (6) Potted plants transported by the Department of Land and Natural Resources as part of the Division of Forestry and Wildlife Rare Plant Program to Maui and Lānaʻi islands, after inspection and approval by the Department; or
- (7) Tissue cultured or other micro-propagated live plants in sterile media.

Rule § — -C: Definitions. As used in this interim rule:

- (1) “CRB Response” refers to the publicly-funded entity established as an emergency response under the incident command system after CRB was first detected on Oʻahu in 2013 and managed through the University of Hawaii and staffed through the Research Corporation of the University of Hawaiʻi.
- (2) “Department” refers to the Department of Agriculture and Biosecurity.
- (3) “Transport” means movement of CRB host material out of a single Tax Map Key (“TMK”) parcel or portion thereof to another TMK.

Rule § — -D: Construction of Rule. Except as specifically provided, the requirements set out in this Rule are in addition to, and do not replace, any other requirements and authorities set out in statute or rule, including HAR

chapter 4-72, “Plant and Pest Host Material Intrastate Rules” and other interim rules regulating the spread of CRB. To the extent other rules conflict with this Rule, this Rule controls regulation of transportation of CRB host materials and materials that may contain CRB to Maui and Lāna‘i islands.

Rule § ____-E: The State shall not be responsible for any economic loss or damages related to any actions by the Department pursuant to this interim rule. Actions include treatment, quarantine, or destruction of any item.

This Interim Rule is effective _____ 2026 and is valid for no longer than one year from this date.

 SHARON HURD
 Chairperson, Department of Agriculture and
 Biosecurity