

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 September 26, 2017 at 9:00 a.m. by Board of Agriculture Chairperson Scott Enright, at 9 the Plant Quarantine Conference Room, 1849 Auiki Street, Honolulu, Hawaii 96819. 10 11 Members Present: 12 Scott Enright, Chairperson, Board of Agriculture 13 Suzanne Case, Chairperson, Board of Land and Natural Resources 14 Randy Cabral, Member-At-Large 15 Jerry Ornellas, Kauai Member 16 Glenn Hong, Member-At-Large 17 Vincent Mina, Maui Member 18 Michelle Galimba, Member-At-Large 19 Richard Ha, Hawaii Member 20 Mary Alice Evans, Deputy, Department of Business Economic Development, Ex 21 Officio Member 22 23 Members Absent: 24 Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human 25 Resources University of Hawaii, Ex Officio Member 26 27 Others Present: 28 Jung Hoi, Private Citizen 29 Tyler Ralston, Private Citizen 30 Chris Kishimoto, HDOA/Plant Quarantine Branch (PQB) 31 Stephen Gelber, Sunrise Capital/Clay Chapman 32 Kai Fox, Kualoa Ranch Hawaii 33 David Morgan, Kualoa Ranch Hawaii 34 Natalie Cash, Olomana Gardens 35 Glenn Martinez, Olomana Gardens 36 Michael Iosua, Imanaha Asato 37 Jim Sweeney, Sunrise Capital Ron Weidenbach, Hawaii Aquaculture and Aquaponic Association 38 39 Liz Xu, HDOA/Animal Industry (AI) 40 Keevin Minami, HDOA/PQB 41 Ginny Tiu, Private Citizen Stephanie Kendrick, Hawaiian Humane Society 42 43 Andre Seale, University of Hawaii 44 Thomas Iwai Jr., Island Aquaculture and Aquaponics 45 Lance Sakaino, HDOA/PQB

1		Todd Low, HDOA/AI	
2		Romy Aguinaldo, Romy's Kahuku Prawns	
3		Inga Gibson, West Hawaii Humane Society	
4		Matt Jisa, Private Citizen	
5		Brian Kau, HDOA/Agricultural Resource Division (ARM) Administrator	
6		Randy Teruya, HDOA/ARM	
7		Roy Hasegawa, HDOA/ARM	
8		Fred Mencher, Hawaii Farm Bureau	
9		Nick Pecoraro, Private Citizen	
10		Eric Vanderwerf, Pacific Rim Conservation	
11		Keith Dane, Humane Society of the United States	
12		Jacki Inaws, Private Citizen	
13		Fred Lau, Mari's Gardens	
14		Brian Neilson, DLNR/Division of Aquatic Resources (DAR)	
15		Linda Gusman, Romy's Kahuku Prawns	
16		Wil Leon Guerrero, HDOA/PQB	
17		Cathy Goegell, Animal Rights Hawaii	
18		Laura Russell, Private Citizen	
19		Leo Obaldo, HDOA/PQB	
20		Chad Nishikuni, Mari's Gardens	
21		Janelle Saneishi, HDOA/Chair's office (CHR)	
22		Micah Munekata, HDOA/CHR	
23		Bryan Yee, Attorney General's Office (AG)	
24		Jennifer Waihee-Polk, AG	
25		Haunani Burns, AG	
26		Jonathan Ho, HDOA/PQB	
27		Kehau Watson, Honua Consulting	
28		Linda Santos, Honolulu Zoo	
29		Laura Debnar, Honolulu Zoo	
30		Susan Miller, UH Manoa - Aquaponics Maui	
31		Brendon Lau, Mari's Gardens	
32		John McHugh, HDOA/Plant Industry Administrator	
33		Donna Smith, E.K. Fernandez Shows	
34		Scott Fernandez, E.K. Fernandez Shows	
35		Natalie Parra, Keiko Conservation	
36		Trenton Yasui, HDOA/PQB	
37		Phillip Waller, Private Citizen	
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39	II.	APPROVAL OF MINUTES FROM 6/20/17 MEETING	
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41	Chairperson Enright requested a motion to approve the August 22, 2017 meeting		
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43	Matic	n for approval: Galimba/Ha	
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1 Vote: Approved, 8/0 (Hong not present for vote).

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III. COMMENTS FROM THE GENERAL PUBLIC ON AGENDA ITEMS (ORAL OR WRITTEN)

Chairperson Enright said that the Board will be taking public comments on agenda items as they come up during the meeting.

IV. INTRODUCTIONS

V. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

 Request for Approval of Transfer of Stock of Sunrise Capital, Inc.; General Lease Nos. S-5367, TMK: 4th Div/1-2-002:022, S-8001, TMK: 4th Div/1-2-016:1,6,7,9,10,11,14,15,16,18 & 19, S-8002, TMK: 4th Div/1-2-016:002, S-8005, TMK: 4th Div/1-2-016:005, S-8008, TMK: 4th Div/1-2-016:013, S-8012, TMK: 4th Div/1-2-016:012, S-8013, TMK: 4th Div/1-2-016:013, S-8017, TMK: 4th Div/1-2-016:017, and S-8020; TMK: 4TH Div/1-2-002:004; Kekaha, Waimea, Island of Kauai.

Presentation by Randy Teruya, HDOA/ARM, as submitted. Staff recommends approval.

Motion to accept: Evans/Galimba.

Board member Mina asked for clarification whether the request is for genetic engineering.

James Sweeney, President of Sunrise Capital, said that it is all selective breeding. He said that this project is with multiple family lines that are distinct. He said that they select the best of the best in the breeding process.

Board member Ha asked how Mr. Sweeney got into the field. Mr. Sweeney said that he studied at the Fujinaga Institute in Japan, came back to Hawaii, and started the first marine shrimp operation in Kahuku in 1979. He later worked with the Oceanic Institute where he was able to experiment and research new systems. He later got into breeding towards the end of his career in Kauai.

Vote: Approved, 8/0 (Hong not present for vote).

 Request for Authorization to Acquire Kealahou Lateral Waterline Easements for the Upcountry Maui Watershed Project; TMK: 2nd div/2-2-

Presentation by Roy Hasegawa, HDOA/ARM, as submitted. Staff recommends approval.

010:032, 2-2-018:008, 013 & 035, and 2-3-012:066; Kula, Makawao,

Motion to accept: Mina/Galimba.

Island of Maui.

Board member Case recused herself from vote due to conflict.

Board member Galimba asked for clarification on the request. She said that the request looks like the water line runs along the road. She asked about the percent interest. Mr. Hasegawa said that the road is owned by property owners each with a stake in the easements in the request. Board member Galimba clarified the location of the water line in the maps provided.

 Board member Mina clarified how rejection letters were received and asked how eminent domain played into this decision. Bryan Yee, AG, said eminent domain is a court proceeding. This motion allows HDOA to go to court to acquire the easements in return for fair market value. It authorizes HDOA to initiate the court proceedings. Board member Mina said that Haleakala has rich soils and hopes this goes through.

Board member Ornellas asked what the width of the easement was. Randy Teruya, HDOA/ARM said its about 20 feet,10 feet on each side.

Vote: Approved, 7/0 (Case recused, Hong not present for vote).

 Resubmittal Request For Consent To: (1) Assignment Of General Lease Nos. S-3128, TMK: 4th Div/4-4-004:005, S-5583, TMK: 4th Div/4-3-004:001, 014 & 017, S-5659, TMK: 4th Div/4-1-002:012 & 018 And S-5660, TMK: 4th Div/4-4-004:004 & 051; William J. Sanchez, Sr., Assignor, To William J. Sanchez, Trustee, Assignee; And (2) Extension Of General Lease No. S-5659; TMK: 4th Div/4-1-002:012 & 018; Kawaihau (Puna), Island of Kauai, Hawaii.

Presentation by Roy Hasegawa, HDOA/ARM, as submitted. Staff recommends approval.

Motion to accept: Ha/Ornellas.

 Board member Galimba said that last time this was before the Board. we ended with a question. Bryan Yee, AG, said once assignment is approved, claims under contract can be made against the trust, not against the original assignor. If you would want that, you would need to impose an additional guarantee as a condition of the assignment. The

only caveat is that you should apply a uniform policy moving forward. Some assignments probably wouldn't require the guarantee, going from one legitimate business to another. On the other hand, if it is assigned to a revocable trust that has no other assets, other than contract, then it may make more sense. Under what circumstances you would want a guarantee is something the HDOA or Board may work on.

Board member Case said that revocable living trusts is a structure for state planning. It doesn't change underlying responsibility for the trustee which is the same person and it may not need to add additional requirement.

Board member Evans asked if the trust document names a successor trustee and if that trustee would have the same debt and lease obligations. Jennifer Waihee-Polk, AG, said that it is subject to the terms of the lease. You would still need to comply to take over the lease. It could be clarified more strongly in the consent if desired.

 Board member Case said that if the gentleman passes, it would transfer and asked whether a consent requirement would come into play from the Board. Ms. Waihee-Polk said that it does require the Board's consent as certain requirements are needed. Mr. Teruya said that two people in the trust would qualify under existing rules. Board member Case asked if you would need to do a second consent. Mr. Teruya said normally it would not as HAR and HRS approves revocable trusts to LLC and so forth. Mr. Teruya said that the main representatives of the trust take over if the person dies and they would administer the trust. Board member Case asked if there is a mechanism for Board should the trustee take over. Mr. Teruya said that it was not necessary because they have been qualified.

Board member Cabral said that the transfer would require Board approval. Mr. Teruya said upon the passing of the initial trustee, the representative of the revocable trust takes over administration of the trust. If the trust desire is to transfer the lease to someone else, then we would have to come back to the Board for approval. Mr. Yee said that upon the passage of existing lessee that this, through will, would go to the beneficiaries. When it moves from trust to beneficiary, the trust is dissolved and goes to individuals who succeed under the will. Mr. Teruya said that under program rules even a beneficiary which may be a child or relative they would have to qualify.

Board member Ornellas said that because it is a revocable trust, those trustees can be changed at any time. He can change those trustees. Board member Case also said that if he dies 10 years from now, are they still eligible.

Vote: Approved, 9/0.

B. Plant Industry Division

Land Vertebrates

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1. Request to Amend Permit Conditions for Importation of Black-footed Albatross, (Diomedea nigripes), a Bird on the List of Restricted Animals (Part B), to Expand the Import Purpose from Exhibition at James Campbell National Wildlife Refuge at Kahuku, Oahu to Include Research and Liberation.

Presentation by Keevin Minami, HDOA/PQB, as submitted. Staff recommends approval.

Motion to accept: Mina/Galimba.

Board member Mina was impressed by how folks are getting these chicks started. Mr. Minami said it was the applicant.

Vote: Approved, 9-0.

Chairperson Enright called a recess at 9:43 AM.

Chairperson Enright called the meeting back to order at 9:55 AM.

Plant Quarantine Branch

2. (1) Request for Extension of Time for Submission of Hearing Officer's Report and Recommendation on Proposed Amendments to Chapter 4-71, Hawaii Administrative Rules (HAR), Entitled "Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal Import Rules", Including Amendment Banning Import of Dangerous, Wild Non-Domestic Animals for Performance or Exhibition in Circuses or Carnivals; (2) Submission of Hearing Officer's Report and Recommendation on Proposed Amendments to Chapter 4-71, HAR; (3) Request for Acceptance of Minutes of Public Hearings; (4) Request for Adoption of Proposed Amendments to Chapter 4-71, HAR. (See Attached Summary of Proposed Amendments and Where They May Be Viewed.)

Presentation by John McHugh, HDOA/Plant Industry Administrator, and Jonathan Ho, HDOA/PQB, as submitted. Staff recommends approval.

Motion to accept: Galimba/Evans.

Chairperson opened the meeting to public testimony for the dangerous, wild animals section.

Matt Jisa, Private Citizen, presented testimony as submitted in support of the ban.

- I Inga Gibson, West Hawaii Humane Society, presented testimony in support of the ban.

Scott Fernandez, EK Fernandez Shows, presented testimony in opposition to the ban.

Glenn Martinez, farm owner, presented testimony in opposition to the ban.

Phillip Waller, Private Citizen, presented testimony in support of ban.

Keith Dane, Hawaii Policy Advisor with HSUS, presented testimony in support of the ban.

Stephanie Kendrick, Hawaiian Human Society, presented testimony in support of the ban.

Cathy Goeggel, Animal Rights Hawaii, presented testimony in support of the ban.

Ginny Tiu, Private Citizen, presented testimony in support of the ban.

Tyler Ralston, Private Citizen, presented testimony in support of the ban.

Chairperson Enright called a recess at 10:50 AM.

Chairperson called the meeting back to order at 10:55 AM.

Chairperson opened the floor to any further testimony.

Donna Smith, E.K. Fernandez shows, presented testimony in opposition to the ban.

Natalie Cash, Olomana Gardens, presented testimony in opposition to the ban.

Natalie Parra, Keiko Conservation, presented testimony in support of the ban.

Trisha Kehau-Watson, Honua Consulting, presented testimony in opposition of the ban.

Chairperson opened testimony on the Nile Tilapia.

Andre Seale, University of Hawaii, presented testimony in support.

Fred Lau, Mari's Gardens, presented testimony in support.

Ron Weidenbach, Hawaii Aquaculture and Aquaponic Association, presented testimony in support.

Romy Aguinaldo, Romy's Kahuku Prawns, presented testimony in support.

 Fred Mencher, Hawaii Farm Bureau, presented testimony in support.

Brian Neilson, DAR, presented testimony in opposition.

Thomas Iwai Jr., Island Aquaculture and Aquaponics, presented testimony in support.

David Morgan, Kualoa Ranch, presented testimony in support.

Glenn Martinez, Olomana Gardens, presented testimony in support.

Chairperson Enright opened the floor to public testimony on Crickets.

No testimony was offered.

Chairperson Enright called a recess at 11:40 AM.

Chairperson Enright called the meeting back to order at 11:48 AM.

Jonathan Ho went over the motions before the Board on this submittal.

1. Jonathan Ho said that the first motion is to approve the extension of time of hearing officer's report.

Motion to accept: Galimba/Ha.

Board member Evans asked if the extension for late filing means that the hearing officer's report is not officially before the Board. Mr. Ho said that it is. Board member Evans said the extension is a waiver. Mr. Ho said yes.

Board member Case clarified the motions.

Vote: Approved, 9-0.

2. Jonathan Ho said that the second motion is the submission of the hearing officer's report.

Motion to accept: Evans/Galimba.

Vote: Approved, 9-0.

3. Jonathan Ho said that the third motion is the acceptance of minutes of public hearing.

Motion to Accept: Evans/Galimba.

1 Vote: Approved, 9-0.

4. Jonathan Ho said that the fourth motion is to accept the request of adoption of proposed amendments to 4-71 HAR.

Motion to Accept: Galimba/Evans.

Board member Case made a motion to take up the dangerous wild animals and the Nile Tilapia as separate votes.

Bryan Yee, AG, clarified that the motion is for a friendly amendment to accept the amendments except for the amendments for the Nile Tilapia.

Motion to accept friendly amendment: Mina/Galimba.

9-0, approved.

The floor was opened to discussion on everything except Nile Tilapia.

Board member Hong said that he will recuse himself from vote.

Board member Ornellas worked with the E.K. Fernandez Shows for Kauai Fair and questioned whether a conflict exists. Bryan Yee, AG, said there is no personal advantage to him and it is up to him to make that call.

Board member Mina called E.K. Fernandez forward to speak on the welfare issue. He said that there was testimony on how animals are stressed when coming to the State. He asked how E.K. Fernandez treats their animals. Scott Fernandez, E.K. Fernandez Shows, said that the USDA sets out rules on how animals travel. The USDA has statutory authority. He said that you must be licensed by the USDA. Every year you have to apply for this and it has never been a big issue. He said that the incident with Tyke was not with E.K. Fernandez. Donna Smith, EK Fernandez, talked about the animal care. Mr. Fernandez stated how there are stringent requirements to transport animals. Board member Mina asked if there are interstate shipments issues. Mr. Fernandez said that eventually there will be as certain counties start to ban this. He said that this is a small group trying to change people's lives.

Board member Case asked if E.K. Fernandez contracts with people to bring in their animals. Mr. Fernandez said that they do. Board member Case asked whether they come in by air or ship. Ms. Smith said they come in through USDA approved trailers that are put on a Matson ship. Some animals come in by air. They are put in a trailer that houses them. Mr. Fernandez said that they come from different spots around the US. From the port, the animals come straight to Aloha Stadium. Board member Case asked what animals they have. Mr. Fernandez said that they have lions, tigers, horses, chimps, and other animals. Board member Case asked if some of them are do acts.

Mr. Fernandez said that they have animals that are doing more educational shows. Board member Case asked how long they are in the State. Ms. Smith said that the Fair usually runs around five weekends. Board member Case asked where they live during that time. Ms. Smith said that the animals live in the trailers at night and are in arena at Aloha Stadium. Board member Mina said that this is tough to vote on a level playing field for the issue at hand.

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Board member Cabral asked if the rule change is because of safety and animal welfare. Mr. Ho said it is only for public safety as welfare issues lie with USDA APHIS. He said that you must have a valid animal welfare license and the license is given prior to importation as part of the permitting process. Board member Cabral asked about the process to get a license. Mr. Ho said he is unsure. Board member Cabral mentioned concern with safety for movie incidents.

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Board member Case said that the Board regulates the safety issue and that is why it's before this Board. She said that the testimony in support of the rule change is that animals in captivity that travel sometimes are significantly stressed and can escape and thus it then becomes a public safety issue.

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Board member Galimba said that she will be voting for this measure but that it is nothing against the EK Fernandez Shows. She said the stress that these animals are under make them a higher risk for public safety.

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Chairperson opened the floor to any public testimony on Crickets or any of the housekeeping measures of the motion at hand.

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No testimony was offered

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Vote: Not Approved, 5-1 (Hong, Ornellas, and Mina recused, Cabral voted no)

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Chairperson Enright opened the floor to discussion on Nile Tilapia.

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Board member Evans said that she is in favor of the motion to move the listing as she supports the aquaculture industry and DBEDT supports that industry as well.

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Board member Case called Brian Neilson, DLNR/DAR forward. She asked if this fish only stays in fresh water. Mr. Neilson said they are salinity intolerant in literature. The juvenile Nile Tilapia could result in tolerance later. In near shore reefs, this may not happen, but in estuaries there could be an issue. Board member Case asked if they are herbivores. Mr. Neilson said they can shift to a variety of herbivorous or omnivour diets. Board member Case said that the threat is to fresh water species. Estuaries could be affected by juvenile tolerance. No formal risk assessment has been done on this yet. She said that we can still see the impacts otherwise. She said that some scientists say

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they are not invasive, but some studies say they are. Mr. Neilson said that there are

traces of Nile Tilapia through hybrids and not pure breeds.

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Board member Ha said there are a lot of escapes as per testimony. He asked if they have become hybridized and it is not an issue as a result. Mr. Neilson said the Nile Tilapia was intentionally introduced. They were for weed control in ditches. They have been hybridized since the 1970's. Board member Ha asked what the difference is between the risk now and before. Mr. Neilson says the risk of fast growing traits getting re-established into eco-systems and those traits being passed on to another tilapia that are here.

Board member Galimba how long will the risk assessment take. Mr. Neilson said that it could be put together in a month or two.

Board member Mina said if that's the case then can we do the risk assessment and come back. Chairperson said that this is an option.

Board member Hong said the Nile Tilapia does not survive in fresh water estuaries. If they get washed out they would have trouble surviving. He asked if hybrids are tolerant to salt. Mr. Neilson said he isn't sure but studies say that probability is low.

Board member Mina clarified the motion at hand.

 Chairperson Enright called Andre Seale, Professor from UH, forward. Mr. Seale said Nile Tilapia is not tolerant to salt water. Various species can be limited by salinity. Of the seven species already established in Hawaii, Nile Tilapia has the lowest tolerance. Studies they have done indicate that Nile Tilapia will not survive 20 parts per thousand in sea water. The Nile Tilapia do not inhabit fast moving waters and fresh water ponds. This tilapia is relatively harmless in comparison to other species.

Board member Mina said brackish water for salinity of water is 34%. Mr. Searle said it is between 34 and 35 parts per thousand. They would die in 24 hours after 20 parts per thousand. Mr. Seale said that salt concentration was equal to that in the environment. This means they are failing to compensate the salt concentration. Other species of tilapia can.

Board member Case asked background of Mr. Seale. He said he is a professor at the College of Human Nutrition and Animal Science at CTAHR. His focus of research is on os-regulation and growth. Tilapia is a source for this research. Board member Case asked if he had been in touch with DLNR DAR. Mr. Seale said no.

 Board member Hong asked if Mr. Seale has studied the projection of hybridization between Nile Tilapia and other species in our estuaries. Also does the fast-growing genetics of the Nile transfer to the other tilapia. Mr. Seale said he has not studied it directly. Literature says that domesticated species would be reared to conform best not traits to a controlled environment which are not the same traits present in the environment marked by heavy competition and a site for survival. There are some in

Hawaii. Any traits that are selected for further domestication in captivity are different from the wild.

Board member Mina asked what would be considered invasive would it be all waterways, whether fast running or estuaries. Mr. Seale said that invasive species can displace other species in the environment. The fact that Nile Tilapia are in the environment doesn't make them invasive and studies show that they are harmless.

Board member Case said that this is something that a risk assessment is meant to evaluate in depth.

Board member Cabral asked why was a risk assessment not done. Chairperson Enright said that one has not been done. He said if the Board moves this forward, before they get a permit, we could ask for a risk assessment then. It is whether to include this as a species for aquaculture. Board member Case said you want the assessment first before the overarching decision rather than a case by case issue.

Bryan Yee, AG, said that Board needs a motion to accept the recommendation with respect to Nile Tilapia

Motion to accept: Cabral/Ornellas

Board member Case said this is exactly what risk assessments are for. To bring in a fish before we understand it may be troublesome to the eco-system and economy. Board member Case said that she opposes this and would like to take a careful approach.

Board member Galimba said that she takes Board member Case's concerns seriously. She said that she is wondering if risk assessments can be done in a month or two. Chairperson Enright said it would depend on protocols on the risk assessment. HDOA is doing biosecurity work on species being brought in. He said that someone bringing in these species would need to show that to the Board.

Vote: Approved, 7-2 (Case and Hong voted no).

Chairperson Enright called a recess at 12:40 PM.

Chairperson called the meeting back to order at 12:43 PM.

Chairperson asked if the Board would revisit the proposed Crickets and housekeeping measures as a separate issue and vote on that.

Motion to approve the recommended rule change with respect to Crickets and housekeeping measures: Ornellas/Galimba.

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1 2 3	Vote: 9-0, Approved.			
3 4 5	VI.	OLD BUSINESS		
6 7		None.		
8 9	VII.	NEW BUSINESS		
10 11		None.		
12 13	VIII.	ADJOURNMENT OF REGULAR MEETING		
14 15	Motio	n to adjourn meeting: Hong/Evans.		
16 17	Vote: 9-0, Approved.			
18 19	Meeting adjourned at 12:45 PM.			
20	Respectfully submitted,			
21 22 23	WAS			
24		Micah Munekata		
25	Board	l Secretary		