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Minutes of the Board of Agriculture

CALL TO ORDER - The meeting of the Board of Agriculture was called to order on June 30, 2020 at 9:01 a.m. by Board of Agriculture Chairperson, Phyllis Shimabukuro-Geiser. The meeting was conducted virtually via Zoom due to the current risk of exposure to COVID-19.

Members Virtually Present:

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture

Suzanne Case, Chairperson, Board of Land and Natural Resources, Ex Officio Member

Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human Resources University of Hawaii, Ex Officio Member

Vincent Mina, Maui Member

Diane Ley, Hawaii Member Fred Cowell, Kauai Member

Glenn Hong, Member-At-Large

Joe Tanaka, Member-At-Large

Mary Alice Evans, Ex Officio Member (viewed the meeting but was unable to participate and vote: she signed out of the virtual meeting at 10:30 a.m.)

Others Virtually Present:1

Brian Kau, HDOA/ARMD

Roy Hasegawa, HDOA/ ARMD

Linda Murai, HDOA/ARMD

Joyce Wong, HDOA/ARMD

Brandi Ah Yo, HDOA/ARMD

Kirk Saiki, HDOA/ARMD

Kevin Hoffman, HDOA/PI

Dean Matsukawa, HDOA/ALD

Christine Asing, HDOA/ALD Jillian Scheibe, HDOA/ALD

Janelle Saneishi, HDOA/CHR

Morris Atta, HDOA/CHR

Earl Yamamoto, HDOA/CHR

Bryan Yee, Attorney General's Office

Kevin Hoffman, HDOA/PI

Wil Leon-Guerrero, HDOA/PQB

Jonathan Ho, HDOA/PQB

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

1		Keith Otsuka, HDOA/PQB	
2		Leo Obaldo, HDOA/QAD	
3		Cornel Kea, Dutch-Hawaiian Dairy Farms, LLC	
4		Kees Kea, Dutch-Hawaiian Dairy Farms, LLC	
5		Ed Boteilho	
6 7		Derek Kurisu, KTA Stores Cathy Goeggel, Animal Rights Hawaii	
8		Gary Genske, CPA	
9		Scott E. Enright	
10		Dr. Vivek Nerukar, UH/JABSOM	
11		Saguna Verma, UH/JABSOM	
12		Axel Lehrer, UH/JABSOM	
13		Alanna	
14		Hurbert Olipares, UH	
15		Wei-Kung Wang, JABSOM/UH	
16		Brent Fujimoto	
17		Daniel Strange	
18		Darlene Ferreira	
19		Daryl Huff	
20		Etnakano	
21		G. Inouye	
22		HNN	
23		Josh Gottlieb	
24		Lauren Ching	
25		Owner	
26		etnakano	
27		Pakeli Kafusi	
28		Paul Talbett	
29		Richard Yanagihara	
30		Sasha Zanga Schutte	
31 32		Zanga Schutte	
33	II.	APPROVAL OF MINUTES FROM 4/14/20 MEETING	
34	11.		
35	Motio	n on 4/14/20 Minutes: Mina/Comerford	
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37	Vote:	Approved, 7-0	
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39	111.	INTRODUCTIONS	
40		AND	
41	IV.	COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION	
42	and and tostimony was accented		
43	On Ju	On June 23, 2020, staff presented each agenda item and oral testimony was accepted.	

For the meeting held on June 30, 2020, Chair restated the requests, accepted additional testimony, and the Board members discussed and voted on the items.

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A. AGRICULTURAL LOAN DIVISION

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1. Request for Approval of One (1) Emergency Loan to LBD Coffee, LLC and Leslie Drent, co-borrowers.

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Public testimony: None

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Motion to approve: Comerford/Ley

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Discussion: None

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Vote: Approved, 7-0

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2. Request for Approval of One (1) Emergency Loan to Heavenly Hawaiian, Ltd., & The Other Farm, Ltd., co-borrowers.

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Board Member Tanaka joined via Zoom at 9:15 a.m.

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Public Testimony:

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Supplemental written testimony received from applicant, Mr. David Bateman.

Board Member Hong was in support but noted that the cash flow summary had holes and should have been more closely reviewed and followed-up on by staff. Board member Comerford asked the process for evaluating the economic situation of a loan. Ms. Scheibe noted that the accounting changed for the farms and numbers should be more congruent going forward. Mr. Matsukawa clarified further.

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Vote: Approved, 8-0

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3. Request for Approval of One (1) Emergency Loan to ZBAR Ranch, LLC and Barney James Schutte, co-borrowers.

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Public testimony:

39 40 Ms. Cathy Goeggel, President of Animal Rights Hawaii, opposed the loan stating that it is not a good investment, not good for the land and not good for the taxpayer

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Motion to approve: Ley/Tanaka

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Board member Mina asked Ms. Goeggel what she meant by not good for the land. Ms. Goeggel answered that raising animals does not sequester enough carbon as forest land and it would be better if the land was left fallow or in forest rather than cattle. Board member Case

stated that while she appreciated the comment, the issue is an agricultural loan and the issue does not apply.

Board member Ley questioned the lien on the horse herd and value. Mr. Matsukawa explained that Exhibit A is a depreciated value and the security is valued at market value.

Vote: Approved, 8-0

4. Request for Approval of One (1) Direct Farm Ownership/Improvement Loan and One (1) Direct Operating Loan to Dutch-Hawaiian Dairy Farms, LLC

Public Testimony:

Mr. Derek Kurisu, Executive Vice President, KTA Stores, testified that he is a strong
advocate and supporter of Agriculture for over 40 years. He stated that he has known
Kees Kea for over 20 years and if he purchases the dairy, KTA will purchase all of the
milk to keep the dairy and milk industry alive. He continued that he is in full support and
would like to help Meadow Gold and Mr. Boteilho.

Chair announced that items A4 and B1 are related and would be voted on together.

B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

 Request for Consent to Assignment of General Lease No. S-6024, Boteilho Hawaii Enterprises, Inc., Lessee/Assignor; to Dutch-Hawaiian Dairy Farms, LLC, Assignee, TMK: 3rd Div/5-5-003:004, 005 and 006; 3rd Div/5-5-005:001; 3rd Div/5-5-006:002, 003, 004 and 015, Opihipau-Hukiaa, Kokoiki, North Kohala, Island of Hawaii, Hawaii

Public testimony:

- Ms. Cathy Goeggel, President, Animal Rights Hawaii, strongly opposed both the loan and the lease transfer.
- Mr. Kees Kea, Owner of Mauna Kea Moo and Dutch-Hawaiian Dairy Farm testified that he is aware of the negative impact of Big Island Dairy. His dairy is a natural, organic family farm. He added that their goal is to also make cheese and yogurt.
- Mr. Joshua Gottlieb, Chairman and CEO of Hawaii Agriculture, Energy and Earth Products, LLC submitted written testimony and addressed the Board. He requested that the Board defer actions and review his claim that his company had an existing agreement to purchase Cloverleaf Dairy.
- Mr. Gary Genske stated that Mr. Boteilho's dairy has been legally operating for decades and that the Keas will acquire the assets and manage the business going forward. He added that the Kea family will be present to operate the farm and watch day to day activities.

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46 47 Mr. Paul Tallet testified that he worked closely with Mr. Cornel Kea and recommended him as a hardworking businessperson.

Board member Case stated that she would like to understand the contractual dispute in executive session. Chair asked if there were any other questions relating to the legal matter to be discussed.

Motion to enter executive session to discuss legal matter: Case/Mina

The Board entered executive session at 9:59 a.m.

The Board meeting resumed and then recessed at 10:33 a.m.

The meeting reconvened at 10:37 a.m. with 8 board members present.

Public testimony continued:

Vote: Approved, 8-0

- Mr. Ed Boteilho of Cloverleaf Dairy testified that he has been in business for over 57 years and his desire is to see the dairy continue. He explained that his contract with Mr. Gottlieb to transfer the DLNR lease was conditioned on a signing bonus of \$100,000. He was paid \$50,000 up front. He stated that the timelines are moot, all extensions have passed, and he has been trying to repay the money, but Mr. Gottlieb has not been cooperative. He continued that he believes that Mr. Kea and his family along with his workers can be successful.
- Mr. Alan M. Okamoto, Mr. Boteilho's attorney testified that he was called by Mr. Kea and informed that Mr. Gottlieb claimed that he had a right to purchase the dairy. He provided history by explaining that Mr. Gottlieb was notified that there was a possible contamination and an environmental study was done in 2019. With the passage of time, the value of the dairy decreased, and the offer was made to reduce the price if Mr. Gottlieb wished to proceed. If not, they would return the money. They received no response. Mr. Boteilho is still prepared to return the money, but he needs the proceeds from the sale to Mr. Kea to do so. There is one creditor that is ready to file a judgment which will close the dairy. If the Board approves, the creditor will hold off filing the judgment.

Motion to approve: Hong/Comerford

Board member Case questioned whether Mr. Gottlieb had been in contact with the Department within the 2 years. Mr. Matsukawa replied in the negative. Ms. Murai also replied in the negative but indicated that there was contact from the Okamoto law firm. Board member Case stated that because there is movement forward on the current application and no movement from the previous application, she would support the current application based on the testimony heard.

Board member Mina questioned the legal ramifications if approved. Board member Cowell noted the time sensitiveness regarding the creditors if action was delayed.

Chair asked Mr. Okamoto if a delay would be detrimental. Mr. Okamoto explained that the closing date had already been extended two times. If a decision was not made, Mr. Boteilho would be out of business in one week.

Board member Hong stated that consent to transfer is not a requirement to transfer. He said that the KTA commitment is important and he would like to move forward in the best interest of the dairy and the community. Board member Comerford also supported and added that the money owed to Mr. Gottlieb is already in escrow.

Board member Mina addressed Ms. Goeggel's concern and was in support of the farm.

Motion was amended: Motion to approve loan and consent to assignment of lease: Hong/Comerford

Vote: Approved 7-1 (Cowell disapproved)

 Request for Approval for the Transfer of Public Lands at Kula on the Island of Maui from the Department of Land and Natural Resources to the Department of Agriculture Pursuant to Act 90, SLH 2003, Codified as Chapter 166E, Hawaii Revised Statutes

Public testimony: None

Motion to approve: Mina/Tanaka

Board member Mina asked about the management of the pastures and if there was water available. Chair replied that they are all vacant. Ms. Murai answered that some parcels bring in water and some do have water, but it is not known if there are existing meters.

Vote: Approved, 8-0

2. Request for Acceptance of Annual Lease Rents as Determined by Independent Appraisal for Rent Reopenings and New Leases for TMK: (1) 4-1-009:269; (1) 4-1-027:004; (1) 8-5-034:001; (1) 8-5-034:003; (1) 8-5-034:004; (1) 8-5-034:006; (1) 8-5-034:008; (1) 8-5-034:010; (1) 8-5-034:011; (1) 8-5-034:012; (1) 8-5-034:015; (3) 1-2-006:019; (3) 2-1-016:001; (3) 2-4-049:011; (3) 5-8-002:002; (3) 5-9-001:004, (3) 5-9-003:002 & 004, (3) 5-9-004:001 & 008; (3) 1-5-116:001; (3) 1-5-116:003; (3) 1-5-116:007; (3) 1-5-116:011; (3) 1-5-116:012; (3) 1-5-116:013; (3) 1-5-116:015; (3) 1-5-116:017; (3) 1-5-116:018; (3) 1-5-116:020; (3) 1-5-116:034; (3) 1-5-116:062; (4) 1-9-002:001; (4) 1-9-002:013; (4) 1-9-002:019; (4) 1-9-002:020; (4) 4-1-001:012; (4) 4-1-009:005 & 006; (4) 4-4-002:031

Public testimony: none

Motion to approve: Ley/Cowell

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Board member Ley suggested that it would be helpful if the percentage of increase was understood. She voiced her concern that Pahoa Ag Park has 11 vacant parcels and if efforts were being made to fill the lots. Chair asked if there were active inquiries. Ms. Wong replied that there are inquiries and the division can move forward to fill the vacancies now that appraisals are done.

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Vote: Approved, 8-0

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4. Request for Consent to Assignment of General Lease No. S-4925; Lounareth Soulatha, Lessee/Assignor; to Mahiku Farm LLC, Assignee; TMK: 1st Div/4-1-035:004, Lot 4, Waimanalo Agricultural Park, Koolaupoko, Waimanalo, Island of Oahu, Hawaii

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Public testimony: none

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Motion to approve: Tanaka/Cowell

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Vote: Approved, 8-0

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5. Request for Consent to Assignment of General Lease No. S-9014, Thomas Decourcy, Lessee/Assignor, to Thomas Decourcy and Bradley Tsugio Sakamoto, Assignee; TMK: 2nd Div/5-2-001:022, Lot No. 13, Molokai Agricultural Park, Hoolehua-Apana, Island of Molokai, County of Maui, Hawaii

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Public testimony: none

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Motion to approve: Mina/Tanaka

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Vote: Approved, 8-0

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36 37 6. Request for Approval of Extension of Lease Term, General Lease No. S-5480, TMK: (4) 4-4-002:031; Lelan C. Nishek and Barbara M. Nishek, Lessee; Kapaa Homesteads, 2nd Series, Oolohena Kawaihau, Island of Kauai, Hawaii

Public testimony: None

Motion to approve: Cowell/Tanaka

Vote: Approved: 8-0

7. Request for Approval to Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and Stanley Cypriano, Sublessee; General Lease No. S-5551, TMK: (3) 4-6-003:01,02,20(por), Lot Nos. 3,5,9,10,20,21,22,23, and General Lease No. S-5554, TMK: (3) 4-6-001:007,008,018(por), Lot No. 002, Honokaia Makai Tract, and Lauka-Kulihai, Hamakua, Island of Hawaii

Public testimony: None

Motion to approve: Ley/Comerford

Vote: Approved, 8-0

8. Request for Approval to Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and Robert M. Bowman, Sublessee; General Lease No. S-5551, TMK: (3) 4-6-003:001, 002, 020(por), Lot No. 18B, Honokaia Makai Tract, Hamakua, Island of Hawaii

Public testimony: None

Motion to Approve: Ley/Cowell

Vote: Approved, 8-0

9. Request for Consent to Assignment of General Lease No. S-4790, Soriano Farm, Inc., Lessee/Assignor, to Lester Gebin, Assignee, TMK: 3rd Div/8-8-004:010, Lot 10, Papa Homesteads, Papa 1st, South Kona, Island of Hawaii

Public testimony: None

Motion to approve: Ley/Tanaka

Vote: Approved, 8-0

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> 10. Request for Consent to Assignment of General Lease No. S-4822, Ted Scott Phillips, Lessee/Assignor, to Susan Christine Philips, Assignee, TMK: 3rd Div/1-5-116:059, Lot 32 Pahoa Agricultural Park, Phase II, Keonepoko Iki, Puna, Island of Hawaii

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Public Testimony: None

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Motion to Approve: Tanaka/Mina

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Vote: Approved, 8-0

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11. Request for Consent to Assignment of General Lease No. S-4855, Mountain Shore Farm LLC, Lessee/Assignor, to Zachariah Weimer, Assignee, TMK: 3rd Div/7-3-049:030, Lot 34, Keahole Agricultural Park, Kalaoa, North Kona, Island of Hawaii

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Public Testimony: None

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Motion to Approve: Ley/Cowell

Vote: Approved, 8-0

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12. Request for Consent to Assignment of General Lease Nos. S-7000, S-7014, S-7015 and S-7016; Hawaii Beef Producers, LLC, Lessee/Assignor, to Hawaii Beef Lease, LLC, Assignee; TMK: 3rd Div/4-3-005:002; 3rd Div/4-3-005-002-5002; 3rd Div/4-3-005-002-5003 and 3rd Div/4-3-005-002-5004, Hamakua Agricultural Park, Pohakuhaku and Kemau 1st, Hamakua District, Island of Hawaii, Hawaii

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Public Testimony: None

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Motion to Approve: Ley/Mina

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Vote: Approved, 8-0

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13. Certification of Acreage Assessments for The Honokaa-Paauilo, Kahuku, Molokai, Waimanalo, and Waimea Irrigation Systems, 2021 Fiscal Year

Public testimony: None

Motion to approve: Mina/Cowell

Board Member Ley stated that the Co-op is paying assessments on vacant parcels and asked if there would be flexibility if they were trying to fill the parcels. Mr. Kau replied in the negative because the master lease is to the co-op and they need to find subtenants. He added that they are searching for tenants, but it is difficult as successors have moved to larger parcels or taken other vacant lands that are available. Board member Mina asked whether they have been networking through farm organizations. Mr. Kau was not aware but will pass on information to them.

Vote: Approved, 8-0

C. PLANT INDUSTRY DIVISION

Plant Quarantine Branch

- 1. Request to: (1) Allow the Importation of the Coronaviruses: Alphacoronavirus Strains NL63 and 229E, and Non-Select Agent Betacoronavirus Strains OC43 and HKU1, Viruses on the List of Restricted Microorganisms (Part A), for Laboratory Research by the University of Hawaii, by Emergency Permit;
 - (2) Establish Permit Conditions for Importation of the Coronaviruses: Alphacoronavirus Strains NL63 and 229E, and Non-Select Agent Betacoronavirus Strains OC43 and HKU1, Viruses on the List of Restricted Microorganisms (Part A) for Laboratory Research by the University of Hawaii;
 - (3) Allow the Importation of the Coronaviruses: SARS-CoV-2 Betacoronavirus Isolates USA-WA1/2020, Germany/BavPat1/2020, and USA CA3/2020, Viruses on the List of Restricted Microorganisms (Part A), for Laboratory Research by the University of Hawaii, by Emergency Permit; and
 - (4) Establish Permit Conditions for Importation of the Coronaviruses: SARS-CoV-2 Betacoronavirus Isolates USA-WA1/2020, Germany/BavPat1/2020, and USA CA3/2020, Viruses on the List of Restricted Microorganisms (Part A) for Laboratory Research by the University of Hawaii.

Public Testimony:

Dr. Vivek N. Nerukar provided an update that on June 23, 2020, inspectors from the Department of Agriculture determined the biocontainment facility safe and fully functional. He also said that Tropical Medicine faculty have submitted \$5 million in grants which will be 1 2 3

lost if the importation is not approved. Mr. Leon-Guerrero confirmed inspection of the lab and noted that there were no major deficiencies in BSL3 and ABSL3.

Testimony in support of importation of SARS-CoV-2:

· Lauren Ching, Graduate Student, UH

- Brent Fujimoto, post-doctoral researcher, provided written and oral testimony in support of the importation of SARS CoV2.
- Daniel Strange, Graduate Student, Ph.D. Candidate, JABSOM
- Richard Yanagihara, Professor of Pediatrics
- Dr. Pakieli Kaufusi, Biologist, Assistant Professor, Tropical Medicine, UH
 - Rosanna Alegado submitted written testimony
 - Dr. Elliot Parks, President and CEO of Hawaii Biotech submitted written testimony

Chair summarized the 4 parts of the request.

Motion to Accept Recommendation: Mina/Cowell

Board Member Case wanted to understand the recommendation to disapprove items 3 and 4. Mr. Leon-Guerrero explained that Items 1 and 2 are lesser strains of coronavirus and Items 3 and 4 are to bring in the COVID virus.

Chair questions why items 1 and 2 are okay but not 3 and 4. Mr. Leon-Guerrero explained that the request was sent to the subcommittee and two experts, one current DOH employee and one former DOH employee recommended approval of only the lessor strains.

Board member Comerford asked for an explanation of why experts do not want to have the CoV-2 virus that is here now and killing people. Board member Case asked when the review was conducted. Mr. Leon-Guerrero stated that the permit was done this month. The emergency procedure allowed the experts' recommendation to go to the board and did not require review by the Plant and Animal Advisory Committee.

Mr. Jonathan Ho noted that there was concern about the permit conditions and the possibility that SARS CoV-2 would be deemed a Select Agent in the future. If deemed a Select Agent, UH would not be authorized to do select agent work. Board member Comerford added that a lab at a certain level would be needed to work on a select agent and did not agree with the arguments. Mr. Ho noted and stated that regardless of the recommendation, the Board can issue the permit.

Board member Comerford asked if the board can vote for recommendations separately. Mr. Leon-Guerrero answered in the affirmative.

Motion was amended to approve Items 1, 2, 3, and 4: Mina/Comerford

Board member Hong asked to hear the JABSOM rebuttal for items 3 and 4. Dr. Yanagihara confirmed that CoV-2 was already in the islands. The request is to import reference strains of the virus that is already here.

Dr. Nerukar added that they are working with the West Nile Virus, which is not occurring in Hawaii. COVID-19 is already in the islands and will be worked on in an equally safe environment and in a facility that is already approved. He stated that there is no one else in Hawaii doing the research because there are no other BSL3 research facilities. Chair questioned what would happen if isolates become select agents. Dr. Nerukar replied that if authorized by the CDC as a select agent, the virus would be destroyed. Mr. Leon-Guerrero stated that permit condition #10 includes that if deemed a select agent, the permit would be cancelled, and the virus would be destroyed.

Board member Mina asked Dr. Nerukar to explain select agent. Dr. Nerukar replied that the federal government determines a select agent by 1) the mortality rate. SARS CoV-1 is a select agent. 2) effect on biodefense. The federal government restricts certain types of viruses to certain facilities so that they can be monitored. He also added that there are no animal experiments planned. Their focus would be on pathogenesis and vaccines.

Axel Lehrer, Assistant Professor, Tropical Medicine, UH stated that dissenting reviewers while opposed to the importation, raised questions as to why the local strain could not be used. He said that reference strains are needed to compare results to results of literature.

Vote: Approved 8-0 (Tanaka w/reservations)

V. OLD BUSINESS

VI.

None

NEW BUSINESS

None

VII. ADJOURNMENT OF REGULAR MEETING

Meeting adjourned at 12:40 p.m.

Respectfully submitted,

Jan Ferrer

Board Secretary