

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

July 25, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR CONVERSION OF GENERAL LEASE NO. S-3753; SGVG CORP., LESSEE; TMK: (1) 4-1-010:031, LOT 2, WAIMANALO AGRICULTURAL SUBDIVISION, KOOLAUPOKO, WAIMANALO, ISLAND OF OAHU, HAWAII

Authority: Section 166E-4, Hawaii Revised Statutes (HRS), and Sections 4-158-8, Hawaii Administrative Rules (HAR)

Lessee: SGVG Corp.

Land Area: 3.429 gross acres

Tax Map Key: (1) 4-1-010:031 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4257 to the Department of Agriculture (DOA) for non-agricultural park land purposes dated December 23, 2008

Lease Term: 65 years; December 2, 1963 through December 1, 2028

Annual Rental: \$4,100.00 per year

Character of Use: Diversified Agriculture

AI

REMARKS:

General Lease No. S-3753 was awarded by public auction by the Board of Land and Natural Resources to Sidney G.U. Goo on December 2, 1963. On May 9, 1980, the BLNR consented to the assignment of lease to SGVG Corp. On December 15, 1982 the BLNR extended the term of the lease to and including December 1, 2010. On December 23, 2008, Governor's Executive Order No. 4257 transferred the lease from DLNR to DOA for management purposes. In 2012, the BOA extended the term of the lease to and including December 1, 2028.

SGVG produces a variety of ornamental potted plants, inground trees and palms, ground cover, etc. They provide these products for use by the company's landscape and maintenance division's commercial projects, as well as for sale to other landscape contractors on a smaller scale. SGVG is in good standing and in compliance with the lease, and the premises is fully developed. There is one worker housing unit on the premises in good condition, however, painting and minor repair renovations are planned for the dwelling.

The Lessee has requested a conversion of said lease in accordance with Section 4-158-8, HAR, to a new lease of thirty-five (35) years for the initial term, subject to the requirements of the administrative rules which are stated, in pertinent sections as follows:

The department shall:

- Require an appraisal of the parcels in accordance with Section 4-158-21, HAR, subject to approval by the Board;
- Impose other lease terms, provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interest; and
- Require the payment of annual lease rents by appraisal and a premium computed at twenty-five percent (25%) of the annual base rents for each year of the leases equal to the number of years that lessee occupied the land, but not to exceed seven (7) years

An appraisal will be ordered pursuant to Section 4-158-21, HAR, for the purpose of determining the fair market rental for the subject parcel. The new appraised annual rental for the new lease shall be set for the first fifteen years of the term versus 1.5% of gross sales, whichever is greater. Reopenings shall be set for the 15th and 30th years of the term. The appraised annual rental will be applied to the converted lease as of the date of commencement. Additionally, in accordance with the administrative rules, the Lessee will pay a premium equal to 25% of the rental for the new lease for a period of seven (7) years from the commencement of the converted term.

Further, the Board and Lessee mutually agree to cancel the existing General Lease No. S-3753 by executing a mutual cancellation of the existing General Lease No. S-3753, subject to execution of the converted general lease documenting the effective date, so that only one lease is

in full force and effect. Since the mutual cancellation of the lease is agreed upon and executed by the parties and is not due to breach or default by Lessee, the Lessee is eligible and qualified for the new general lease, in this respect only. All other eligibility terms must be met to the satisfaction of the Board.

RECOMMENDATION:

That the Board of Agriculture:

1. Approve Lessee's request to convert General Lease No. S-3753 to a new Non-Agricultural Park Lands lease of thirty-five (35) years for the initial lease term subject to the conversion provisions of Chapter 4-158-8, HAR.
2. Approve the Mutual Cancellation of General Lease No. S-3753, subject to the execution of the effective dates of the new general lease.

All documents are subject to review and approval as to form by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachments – Exhibit "A" map
Exhibit "B" photos

APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture

Exhibit "A"

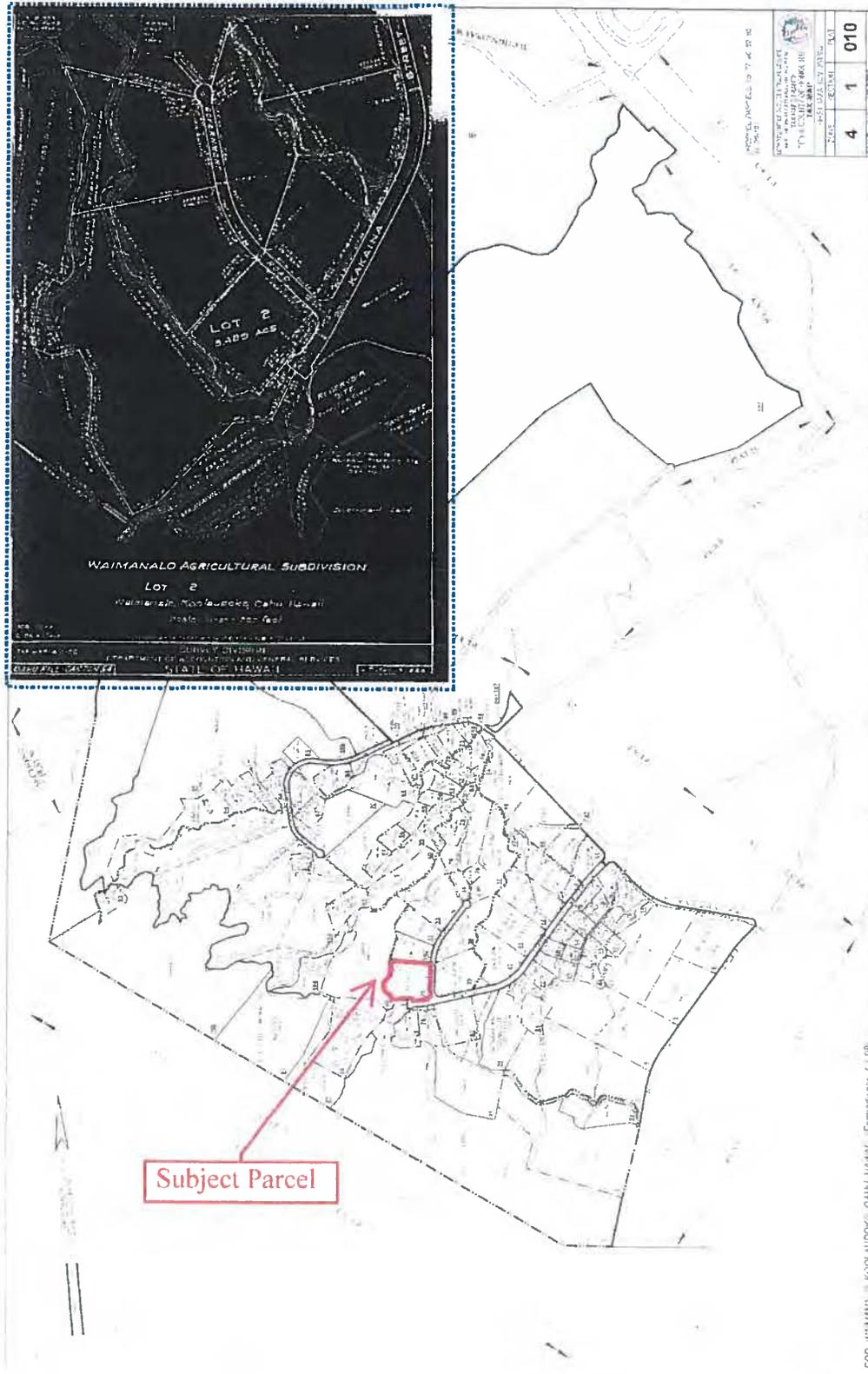


EXHIBIT B



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

July 25, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST TO TERMINATE GENERAL LEASE NO. S-1004, BERNARDINO CAGAUAN, JR., LESSEE; ISSUE CANCELLATION DOCUMENT, AND DISPOSITION OF LOT; TMK: (1) 8-5-034:004, WAIANAE AGRICULTURAL PARK, LOT 4, WAIANAE, ISLAND OF OAHU, HAWAII

Authority: Section 166-6(b) Hawaii Revised Statutes (HRS), and Sections 4-153-3(b)(3) and 34, Hawaii Administrative Rules (HAR)

Lessee: Bernardino Cagauan, Jr.

Land Area: 7.484 acres

Tax Map Key: (1) 8-5-034:004 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 3481 to the Department of Agriculture for agricultural park land purposes

Lease Term: 45 years, 4/1/1994 to 3/31/2039

Current Rent: \$2,985.00 per year until reopening on 6/1/2029

Additional Rent: 1.5 % of the gross proceeds from the sale of commodities produced on the demised premises which exceed the base rental

Permitted Use: Diversified agriculture purposes

AL

BACKGROUND:

The subject lease was awarded to Bernardino Cagauan, Jr. in 1994. The Lessee cultivated soursop trees, however brush fires and the lessee’s health condition contributed to situations prohibiting development of the property.

The Lessee currently is in default for not conducting any farming activity. Letters demanding remedy of the violation have been sent. All efforts to work with the Lessee to remedy the violation have been exhausted. The Lessee has failed to remedy the violation of the lease within the given times allowed or such additional periods allowed for good cause, to correct the violation.

RECOMMENDATION:

That the Board of Agriculture:

1. Approve the cancellation of General Lease No. S-1004 pursuant to Section 4-153-3(b)(3), HAR, and terminate all right, title, and interest granted to the Lessee therein effective as of the date of approval of this submittal;
2. Authorize issuance of a lease cancellation document to be executed by the chairperson and recorded at the Bureau of Conveyances; and
3. Authorize staff to prepare TMK: (1) 8-5-034:004 for disposition to the public, pursuant to Sections 4-153-21 and 22, HAR; and

All related documents are subject to approval as to form by the Office of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

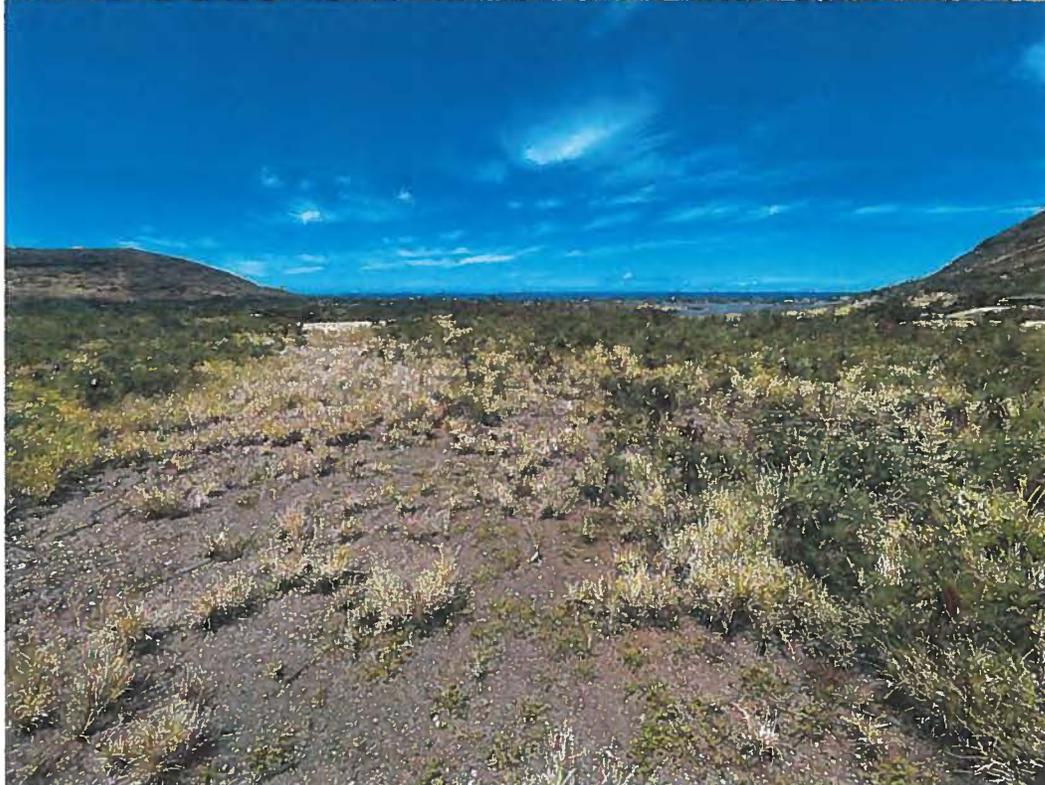
Attachment – Exhibit “A”

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Photos of Property



State of Hawaii
Department of Agriculture
Plant Industry Division
Plant Quarantine Branch
Honolulu, Hawaii

July 25, 2023

Board of Agriculture
Honolulu, Hawaii

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

I. Background:

On June 23, 2023, the Office of the Chairperson received a petition from Ms. Tiffany Nerveza-Clark requesting that the Board of Agriculture (Board) review importation of savannah cats on a "case by case" basis. The Petition is attached as Attachment A. Ms. Nerveza-Clark's petition was submitted both in Hawaiian and English. To ensure that the Board could consider the petition in its entirety, the Plant Quarantine Branch (PQB) contracted Language Services Hawaii, LLC to ensure that that both versions were interchangeable, which was confirmed.

Savannah cats are the offspring of the Serval, *Felis (Leptailurus) serval* and a domestic cat, *Felis catus*. Beyond the F1 generation (first filial generation), savannah cats are currently on the List of Prohibited Animals, as all hybrid animal crosses are prohibited. Animals on the List of Prohibited Animals are not allowed for importation into the State.

Ms. Nerveza-Clark's Petition for rule amendment is brought under the Board's Rules of Practice and Procedure, chapter 4-1, Hawaii Administrative Rules (HAR), which allows rulemaking to be initiated by petition of an interested person or agency upon Board approval. (§ 4-1-23, HAR, et seq.) Section 4-1-23(c), HAR, requires that within 30 days after filing such a petition, the Board must either deny the Petition or initiate rulemaking proceedings. Denial of a petition does not prevent the Board from acting on the petition's subject matter on the Board's own motion at a later time. (§ 4-1-24, HAR).

Board of Agriculture
July 25, 2023
Page 2

To be considered by the Board, a Petition for rule adoption or amendment under § 4-1-23(b), HAR, must contain certain substantive items, specifically: (1) a draft of the substance of the proposed rule or amendment or designation of the rule provisions to be repealed; (2) a statement of the petitioner's interest in the subject matter; and (3) a statement of the reasons in support of the proposed rule, amendment, or repeal. Ms. Nerveza-Clark's Petition appears to conform to these procedural prerequisites for Board consideration.

Should the Board ultimately act favorably on this Petition, the proposed amendments to the rules would occur after Advisory review then following Chapter 91, Hawaii Revised Statutes, rulemaking procedures, which include the public hearing process, Board adoption, and Governor's approval or; via the expedited amendment procedure through a Board Order, which involves an abbreviated process that is available in certain circumstances. Additionally, a permit that requires a rule amendment to accommodate the request requires a fee of \$2500.00 to issue.

II. Summary of Proposed Amendments to Chapter 4-71, HAR

While Ms. Nerveza-Clark's petition does not specifically define the changes that she would like to see made to Chapter 4-71, HAR, the only way to allow Savannah Cats on a "case-by-case" basis is by the following proposed changes to Chapter 4-71, HAR.

1. Section 4-71-6, List of Prohibited Animals

Amends "PHYLUM Chordata (crosses with prohibited species) - animals, hybrid; (all hybrid-crosses where one of both parents are prohibited)" to add an exception for Savannah Cats, *Felis serval* and *Felis catus* crosses.

2. Section 4-71-6.5, List of Conditionally Approved Animals

Adds "Scientific Name: *Felis serval* x *F. catus* and Common Name: Cat, Savannah".

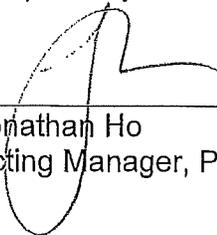
III. Staff Recommendation

The PQB recommends that the Board deny this request to initiate rulemaking as there is not enough information provided, nor was the information provided by the petitioner reviewed by the appropriate Advisory Subcommittee and Advisory Committee on Plant and Animals, prior to the Board's final decision making, as is standard procedure.

Board of Agriculture
July 25, 2023
Page 3

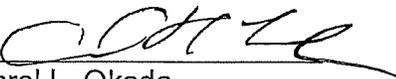
However, should the Board desire to further review this request, the Board can direct PQB staff to work with the petitioner to complete the full advisory review and the request can be brought before the Board at a later date, for a complete review and decision making.

Respectfully Submitted,



Jonathan Ho
Acting Manager, Plant Quarantine Branch

CONCURRED:



Carol L. Okada
Acting Administrator, Plant Industry Division

APPROVED FOR SUBMISSION:



Sharon Hurd
Chairperson, Board of Agriculture

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

CAROL LEI OKADA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

July 17, 2023

Ms. Tiffany L. Nerveza-Clark
3138 Waiialae Avenue
Honolulu, Hawaii 96816

Subject: Procedural Denial of Petition to the Board of Agriculture to Initiate
Administrative Rulemaking to Allow the Importation of Savannah Cats.

Dear Ms. Nerveza-Clark,

Thank you for your petition received on June 23, 2023, which appears to request the Board of Agriculture (Board) to enact a rule amendment to Chapter 4-71, Hawaii Administrative Rules (HAR), to allow the importation of Savannah cats, crosses of the Serval, *Felis (Leptailurus) serval* and a domestic cat, *Felis catus*.

Pursuant to §4-1-23(c), HAR, the Board is required to either deny a petition or initiate rulemaking proceedings within 30 days after the filing of a petition for rulemaking. Due to a scheduling conflict, the Board is unable to have a meeting within the 30-day timeframe and this letter serves as a procedural denial of your petition to satisfy the requirement above. Please note §4-1-24, HAR does not prevent the Board from acting on its own motion upon any matter disclosed in a denied petition, and the Board will be considering your petition at its next meeting, tentatively set for July 25, 2023.

Should you have questions regarding this matter, please contact Mr. Jonathan Ho, Acting Plant Quarantine Branch Manager at 808-832-0566 or jonathan.k.ho@hawaii.gov.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Hurd".

Sharon Hurd
Chairperson, Board of Agriculture



Tiffany L. Nerveza-Clark
3138 Wai'alaie Ave., Unit 109
Honolulu, Hawai'i 96816

Hawaii Department of Agriculture
Office of the Chairperson
1428 S. King Street
Honolulu, Hawai'i 96814

Helu 'ekahi:
#1:

Tiffany Leilani Nerveza-Clark
3138 Wai'alaie Ave., Unit 109
Honolulu, Hawai'i 96816

Kumu: HAR 4-1-23 Ka ho'omaka 'ana o ke ka'ina hana o nā kulekele
Re: HAR 4-1-23 Initiation of the Rulemaking Process

Helu 'ekolu: He kiko'o a i 'ole ke kumu o ka lula i mana'o 'ia a i 'ole ka ho'ololi 'ana a i 'ole kahi inoa o nā 'ōlelo o ke kōnāwai e ho'opau 'ia.

Wahi a HAR 4-71-6, 'a'ole 'ae 'ia kekahi mau holoholona ma Hawai'i nei. 'O ka'u mau pōpoki kūloko, ua hō'ole 'ia lāua ma muli o ke kulekele kahiko, mai ka lā 28 o Nowemapa, 2006. 'A'ole lāua no ka pae F1 a 'a'ole hiki ke hānau 'ia nā pēpē; he pae F5 lāua. Eia na'e, ua hō'ea nā holoholona 'ē e like me nā mo'o Anole Naika Kuba a he nui lākou i kēia manawa ma ka Mokupuni 'o O'ahu. Puni ia mo'o i nā manu a me nā huamoa o nā manu; pilikia lākou i ka 'āina. Aia nō na'e lākou ma Hawai'i nei. 'O kekahi mea hou, ua hō'ea nā hese Copper Head ma kēia mokupuni, a 'a'ole 'ae 'ia ka'u mau pōpoki kūloko. Mana'o au, hiki ia kulekele ke ho'ololi 'ia ma ke 'ano he kūlana i ke kūlana. He kanaka 'ōiwi au, no Hawai'i au; 'ōlelo au i ka 'ōlelo makuahine o kēia 'āina a 'ike nō au i ko'u kuleana i ka 'āina.

Helu 'eha: He 'ōlelo no ka makemake o ka mea ho'opi'i i ke kumuhana.

Hoihoi kēia i ia kulekele no ka mea loa'a nā holoholona kōheoheo ma ka mokupuni nei, 'a'ole na'e 'ae 'ia ka'u mau pōpoki kūloko ma muli o nā kumu lā'au a me nā manu 'ōiwi. 'Ike le'a au i ka waiwai o ia mau mea, 'oiai he Hawai'i au; he kanaka nānā pono i ke kālaimaola au;

a kāko‘o piha au i ka mālama ‘ana o ka ‘āina nei. Pūlama mau au i nā mea e ho‘opuni ana a ‘a‘o pū au i nā kānaka e pili ana i ka ‘ano nui o ka pilina o ka ‘āina me ke kanaka.

‘O ka hua‘ōlelo no ka hānai ‘ana ‘o ia ka hua‘ōlelo a ka hapa nui o ka po‘e e pili ana me ka hānai keiki akā pili pū kekahi i ka hānai ‘ana a i ‘ole ka mālama ‘ana. Hiki ke mana‘o i ka mālama. ‘O Hānai pū kekahi me nā holoholona. ‘O ka hua‘ōlelo e hānai i holoholona, ‘o ia nō ka hānai a huhu.

‘O huhu ka mana‘o. Ua kapa ‘ia ka pipi he huhu a i ‘ole he mea aloha. ‘O ka mana‘o o ka "mea mālama holoholona" ‘a‘ole ia he mana‘o i lawe ‘ia ‘o ka ‘ōlelo Hawai‘i ma ke ‘ano he kuleana ma luna o nā mea a pau e ola ana me he mea lā, e like me ke ‘ano o ka mana‘o ‘āina i ko kākou mau kūpuna. ‘O ka hānai ā huhu e like me ka hana ‘ana ma ke ‘ano he makua hānai a i ‘ole ka mālama ‘ana i kahi makua aloha ‘ia ka mea i lawe ‘ia i loko o ka ‘ōlelo Hawai‘i.

He huhu ka nui o ko kakou mau kūpuna inā he pua‘a, moa, ‘īlio, manu, a me nā pōpoki hope.

Ua kaulana ‘o Kuhina nui Ka‘ahumanu no kāna huhu he pua‘a. Ua loa‘a iā Kamehameha II a i ka V nā ‘īlio me ka Mō‘īwahine Liliuokalani. He mau pōpoki ka Mo‘i Wahine Kapi‘olani. He mau pu‘upu‘u ko ke Kamāli‘iwahine Ka‘iulani.

Nui nā ‘ohana i ka mālama ‘ana i ka huhu i nā manawa a pau, no ka mea, ua ‘ike ‘ia ka huhu i ka mālama ‘ana i ka ‘ohana a me ke a‘o ‘ana i nā ‘ōpio i ke kuleana a me ke aloha. Ua mālama ‘ia nō ho‘i ka huhu no ka mea ua ‘ōlelo ‘ia he hiki i kā lākou hana ke ‘ōlelo a‘e i nā pō‘ino kūlohelohe. Akā ho‘i, huhu ka nui o nā kupuna i ho‘omaopopo i ke ‘ano o ka huhu i hā‘awi ai i ke kāko‘o no‘ono‘o a mau nō. He kumu nui lākou, a ‘o ka‘u mau huhu he mau lālā lāua o‘u a me ka‘u ‘ohana a kāko‘o ia‘u. Me kēia palapala he leka kāko‘o e ‘ōlelo ana pehea e paepae ai ka‘u mau huhu ia‘u.

Helu ‘elima: He ‘ōlelo o nā kumu e kāko‘o ana i ke kānāwai i mana‘o ‘ia, ho‘ololi, a ho‘opau paha.

“He ali‘i ka ‘āina, he kauwā ke kanaka.” *The land is chief, man is its servant.* Ho‘omau au i kēia ‘ōlelo no‘eau a no ka‘u mau pōpoki, ‘a‘ole lāua i puka mai ka hale mai ko lāua wā pēpē.

‘O ka pololei, inā puka lāua, e pilikia ana lāua ‘oiai ‘a‘ole lāua ma‘a. Pēlā ka mana‘o a ‘a‘ole lāua e ho‘opilikia ana i nā manu ‘ōiwi me nā kumu lā‘au kekahi. Pono e na‘anā pono i nā holoholona kōheoheo i ‘ole pilikia nā kānaka ma ka mokupuni me nā manu ‘ōiwi, me nā kumu lā‘au ‘ōiwi kekahi.

Ku‘u wahi noi:

No ka‘u mau pōpoki, noho wale nō lāua ma ka hale a he mau holoholona kāko‘o hōpūpū no‘u. Ua pilipa‘a mākou ‘elua makahiki aku nei a ma muli o ko lāua ‘ano no‘u, ‘a‘ole hiki ia‘u ke ‘ai, ke hiamoe pono; ‘a‘ole hiki ia‘u ke kia ma ka hana no ka mea hopohopo nui au a no‘ono‘o pinepine au no ka pono o lāua. ‘A‘ole maika‘i ia no ko‘u ola kino. He noi ha‘aha‘a kēia e ‘ae ‘olu‘olu iā lāua i hiki nō ia‘u ke ho‘i i ko‘u iho ma‘amaui i ka‘u mau pōpoki. He ‘ōlelo ho‘ohiki ‘a‘ole lāua e puka ana i waho o ka hale a e noho wale ana nō ma ka hale no ka pono o lāua me ko Hawai‘i.

#3: A draft of the substance of the proposed rule or amendment or a designation of the provisions of the rule to be repealed.

According to HAR 4-71-6, certain breeds of animals are not allowed in Hawai‘i. My domestic Savannah cats were denied entrance into the State due to the policy dated November 28, 2006. They are spayed and are generation F5. Being so removed from generation F1, they are viewed as being domesticated by zoological professionals and do not exhibit the same traits as those of F1. The policy needs to be revisited and revised. The entire process seems inconsistent as foreign poisonous animals have found their way to this island. For example, the Cuban Knight Anole; there’s a good-sized colony of them here on O‘ahu and they have an affinity for the native birds and their eggs, making them harmful and detrimental to the ‘āina. CopperHead snakes also arrived to O‘ahu also. The cats have never exited a building, or set foot on the ground outside. Regarding a revision of the policy and viewing situations on a “case by case” basis should be considered. I am a native Hawaiian from Hawai‘i; I am fluent in the native language of Hawai‘i, and I fully understand the relevance and my responsibility to take care of the ‘āina.

#4: A statement of the petitioner's interest in the subject matter.

I am vested in the revision of this policy because the cats are my emotional support animals. They were still denied entrance because they may be detrimental to the native trees and native birds. One of the areas of study I focused on during my undergraduate was Hawaiian culture and language. I also majored in Natural Science and Biology, and I am fully aware of the importance of the native foliage and the relationships our native birds have with them. I am not only aware, but I am devoted to and perpetuate taking care of the 'āina. I teach others the importance of the relationship we have with the 'āina and how we can mālama 'āina and 'āina aloha.

The Hawaiian word for animals is 'holoholona'. The word for raise is 'hānai' which is a term most people associate with adopting a child but also refers to nourishment or provide for. It can also mean to caretake. Hānai also refers to pets. The term to raise a pet is hānai ā huhu. Huhu means to cherish. A pet was referred to as a huhu or a cherished one. The concept of being "pet owner" is not an idea conveyed in 'ōlelo Hawai'i as ownership over anything living would have seemed as alien as the concept of land ownership to our ancestors. Rather hānai ā huhu as in acting as an adopted parent or being a caretaker over a cherished one is one that is conveyed within the 'ōlelo Hawai'i.

Many of my Hawaiian ancestors had a huhu whether it was a pig, chicken, dog, bird, or cats. Kuhina nui Ka'ahumanu was famous for her pet pig. Kamehameha II to the V all had dogs along with Queen Liliuokalani. Queen Kapi'olani had cats. Princess Ka'iulani had flocks of peacocks. Many families had a tradition of keeping a huhu at all times as huhu were seen as protecting a family and teaching young ones responsibility and love. Huhu were also kept because it was said that their behavior could warn of natural disasters. *But also, many kūpuna (elders) understood how huhu provided emotional support and still do.* They are great teachers, and my huhu are part of me and my 'ohana and provide me with emotional support. Included with this document is an Emotional Support Animal Letter stating how my huhu provides support to me.

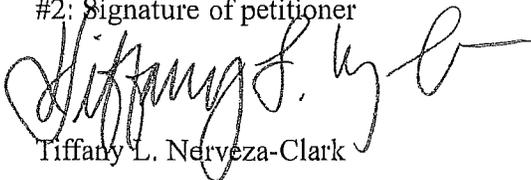
#5: A statement of the reasons in support of the proposed rule, amendment, or repeal.

“He ali‘i ka ‘āina, he kauwā ke kanaka.” *The land is chief, man is its servant.* I continue to live by this proverb and help others to understand the importance of this relationship. As for the cats, they have never stepped foot outside of a house. If they were to, they would be worse off than any other organism, as they could possibly get lost or hurt because they're not accustomed to being outside. Due to those circumstances, I assure the Board of Agriculture that the cats will remain indoors (as they are customary to) ensuring that they are not detrimental to the birds and environment. The poisonous aforementioned animals are the animals that need to be addressed. I am a responsible person that has a vested interest in the prosperity of Hawai‘i and I am not looking to be the cause of disrupting the environment.

My request:

The cats have only stayed indoors and they are my emotional support animals. We created an unbreakable bond as I was their first and only owner. Since moving here and their entrance being denied, I experienced not being able to eat, sleep, and have had a hard time focusing, increased bouts of worry, as well as the lack of motivation. This has been harmful to my health and I am humbly requesting that they be allowed to come to Hawai‘i, allowing me to return to good health. They will not exit my living quarters and they will strictly stay indoors as they have for the duration of their lives, for their well-being and the well-being of Hawai‘i. In addition, revising the policy to be flexible and assessing each situation would be worthy to consider. Should future applicants have precautions in place (e.g. organism is spayed/neutered, not allowed to exit premises, microchipped, ESA etc.) the BOA may allow previously banned organisms into Hawai‘i to responsible kanaka.

Na‘u nō me ka ha‘aha‘a,
Humbly yours,
Helu ‘elua: Pūlima a ka mea noi
#2: Signature of petitioner


Tiffany L. Nerveza-Clark

HAWAII DEPT OF AGR

2023 MAY 23 PM 4: 05

Marie Chacón, M.A., LMFT #13292169-3902

Licensed Marriage and Family Therapist

23550 Lyons Avenue, Suite #211 • Santa Clarita, CA 91321

marie.e.chacon.lmft@gmail.com • 858.356.2879 • 1.661.554.0111

Date: June 12, 2023

Expiration Date: June 12, 2024

Name: **Ms. Tiffany Nerveza-Clark**

RE: Emotional Support Animals

The individual named above (DOB: 02/07/1977) was clinically assessed by me on June 12, 2023. I am familiar with Ms. Tiffany Nerveza-Clark's history and the functional limitations imposed by her disability. Ms. Nerveza-Clark meets the requirements for an ESA under the Fair Housing Act and the Rehabilitation Act of 1973. Ms. Nerveza-Clark's disability, recognized in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) handbook, substantially limits one or more major life activities or major bodily functions.

Due to this emotional disability, this individual has certain limitations. To help alleviate these difficulties, enhance her day-to-day functionality, live independently, and fully use and enjoy the dwelling unit you own or administer, I have recommended that Ms. Nerveza-Clark maintain her emotional support animals. The said animals are two Savannah female cats named Liona and Kealoha.

Both emotional support animals offer different roles that mitigate the symptoms of two separate disabilities. Ms. Nerveza-Clark reports that the presence of Liona helps her stay calm and grounded when experiencing emotional distress. Ms. Nerveza-Clark reports that the presence of Kealoha regulates her mood and motivates her to engage in daily routines. Lastly, the company of Liona and Kealoha has improved Ms. Nerveza-Clark's overall quality of life and well-being. Upon my recommendation, please allow Ms. Nerveza-Clark to live in her dwelling with her ESAs as reasonable accommodations under the Fair Housing Act.

Please note that under guidance issued by the U.S. Department of Housing and for privacy reasons, details about the diagnosis or severity of this individual's disability and medical records may not be disclosed.

I, Marie Chacon, am not responsible for the emotional support animals' behavior. Ms. Nerveza-Clark understands she is 100% liable for her emotional support animals' behavior, health, training, cleanliness, and any damage caused by her emotional support animals. I am licensed in the state of Utah to practice therapy and recommend ESAs for treatment. For verification of licensure, please visit the Utah Division of Professional Licensing website at www.dopl.utah.gov.

Sincerely,

Marie Chacon

Marie Chacon, LMFT
Licensed Marriage and Family Therapist
License Number 13292169-3902

HAWAII DEPT OF AGR

2023 MAY 23 PM 4: 06

State of Hawaii
Department of Agriculture
Quality Assurance Division
Honolulu, Hawaii 96819

July 25, 2023

Board of Agriculture
Honolulu, Hawaii

SUBJECT: Request (1) to Consult With the Board’s Attorney Regarding a Petition for Declaratory Ruling Regarding Hawaii Revised Statutes Sections 147-75, et. al. (Grades and Standards, Part V, Chicken Eggs, Notice of grade and size) and Related Administrative Rules (“Petition”); and (2) for Delegation of Authority to the Chairperson to Respond to the Petition.

BACKGROUND:

On April 11, 2023, the Board Chairperson received a request from Joseph Ryan, Jr., Attorney At Law, LLC on behalf of Kelly Tomioka (“Petitioner”). The document was titled “Petition for Declaratory Ruling Pursuant to Hawaii Administrative Rule § 4-1-50, Concerning Hawaii Revised Statutes §§147-75, et. al. and the Sale of Chicken Shell Eggs By a Flock Owner At the Place of Production, Method of Sale of Shell Eggs, and Internet Advertising” (“Petition”). The Petition sought the issuance of a declaratory order regarding the applicability of a statutory provision from the Board. See Petition, page 1 (Attachment 1). On May 10, 2023, Petitioner submitted, via email, additional material for the Board’s consideration. See 5/10/23 Ryan submittal “Statement of Petitioner’s Counsel” (Attachment 2).

On May 2, 2023, Roy J. Bell, III sent to the Chairperson a letter with additional facts (“Bell letter”). He represents Andrea W. Bell, Morris S. “Scott” Creel, and Jeanne A. Creel, Plaintiffs in a case versus Kelly K. Tomioka, aka Kelly Kline and Takayuki Tomioka, in Civil No. 1CCV-22-0000845, First Circuit Court, State of Hawaii. See Bell letter, page 1 (Attachment 3). They “have sued the [Petitioner] for common law tort claims of nuisance arising out of what [they] allege is unreasonable, unbearable rooster and chicken noise and noxious odors. Id.

Summary of Issues: Due to the confidential nature of this request, the summary of issues will be presented by the Board’s attorney during executive session. The Board will consult with the Board’s attorney to determine an appropriate response.

Authority: Hawaii Administrative Rule (“HAR”) § 4-1-50 Petition for declaratory ruling.

Board of Agriculture
July 25, 2023
Page 2 of 2

RECOMMENDATION:

The Quality Assurance Division is respectfully requesting that the Board of Agriculture provide a decision on the following:

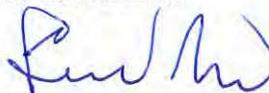
- (1) "Petition for Declaratory Ruling Regarding Hawaii Revised Statutes Sections 147-75, et. al. and Related Administrative Rules," and
- (2) "Delegation of Authority to the Chairperson to Respond to the Petition."

Respectfully submitted,



KEITH OTSUKA
Acting Manager, Commodities Branch

CONCURRED:



LEO OBALDO, PhD
Administrator, Quality Assurance Division

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Attachments

ATTACHMENT 1

Petition for Declaratory Ruling

JOSEPH RYAN, JR.,
Attorney At Law, LLLC.
41-430 Waikupanaha Street
Post Office Box 562
Waimanalo, Hawaii 96795
Phone/fax (808) 259 6870

BOARD OF AGRICULTURE
STATE OF HAWAII
1428 S. King Street
Honolulu, HI 96814-2512

March 31, 2023

Dear Chairperson and Board:

Re: PETITION FOR DECLARATORY RULING PURSUANT TO HAWAII ADMINISTRATIVE RULE § 4-1-50, CONCERNING HAWAII REVISED STATUTES §§ 147-75, ET AL AND THE SALE OF CHICKEN SHELL EGGS BY A FLOCK OWNER AT THE PLACE OF PRODUCTION, METHOD OF SALE OF SHELL EGGS, AND INTERNET ADVERTISING

Interested Person, Kelly Tomioka, by and through her attorney, Joseph N. A. Ryan, Jr., and pursuant to Hawaii Administrative Rule (HAR) §4-1-50 petitions the Board of Agriculture for issuance of a declaratory order regarding the applicability of a statutory provision as explained herein.

This petition is brought to resolve apparent conflicts between Hawaii Revised Statutes (HRS) § 147-75 and HAR § 4-46-1 through 4-46-12 (Standards For Shell Eggs), and certain public service informational handouts (attached hereto) which threaten administrative fines and jail for subjects, to wit: grading and labeling, et al, that seem statutorily exempt from regulation by the department.

(1) State clearly and concisely the controversy of (sic) uncertainty:

The Board is asked to determine if the **owner** of a small, organically fed, cage free, chicken laying hen flock is exempt by law from the requirements of labeling, sizing, grading, size, and weight when selling chicken eggs for human consumption by subscription and under a tradename.

Hawaii Revised Statutes § 147-75 (2002) "Notice of grade and size; designation of origin of imported eggs; violation" states in relevant part:

It shall be unlawful for any person to sell, or offer to sell, or expose for sale to a consumer, any eggs, **other than those of the person's own production at the place of production**, intended for human consumption, without notifying, by suitable sign or label, the person purchasing or intending to purchase the same whether the same are imported from the mainland United

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States or foreign countries or of island production, and the exact grade or quality and the size or weight of the eggs, according to the standards prescribed by the department of agriculture. . . (Emphasis added).

QUERY:

The question above concerns the words “other than those of the person’s own production at the place of production” and creates at least two major controversies or uncertainties and several lesser issues. The controversy exists because of an apparent exemption in HRS 147-75 versus the department of agriculture Quality Assurance Division, Commodities Branch published informational handouts titled “Sale of Shell Eggs at Retail” and “Selling Chicken Eggs at Retail (open) Markets in Hawaii” may be criminal violations of laws and rules and subject the violator to fine and/or jail for selling ungraded eggs without proper labeling.

1) The first major controversy exists concerning the words “other than those of the person’s own production” in HRS § 147-75 which appears as a legislated exemption for chicken eggs sold in a commercial endeavor by a backyard farmer of his or her own egg laying hens. The parameters of the exemption are not addressed by HRS Chapter 91 rulemaking and appear to conflict with Hawaii Administrative Rule (HAR) §4-46-5 (cited below) which requires all shell egg packaging be labeled with “[t]he designation of origin, grade, and size . . .” and other information. This particular controversy encompasses the lesser questions of (a) whether or not ungraded eggs can be sold by a producer for human consumption, and (b) is “candling” of eggs required if “grade” is exempted?

2) The second controversy or uncertainty concerns the words “at the place of production”. This phrase, added to HRS §147-75 in 1983 before the internet became a reliable means of communication, is not defined by Chapter 91 rulemaking and has created an ambiguity in methods of commerce and advertising, to wit:

Does the phrase “at the place of production” apply only to *ad valorem* taxation setting the value of eggs “at the place of production” to determine the wholesale tax (in Hawaii at 0.05%), before transportation or other costs are added to the products which sold through a retailer or on consignment at a Co-op or farmer’s market and is therefore inapplicable to the small farm egg “producer” who makes a direct sale to the consumer; or

Is a small chicken laying hen farming operation required to sell her eggs “at the place of production” i.e., in the seller’s own driveway; and/or

Is the small farmer described herein in compliance with “at the place of production” when selling her own product over the internet by contract, aka “subscription”, which requires (a) the buyer to buy one dozen eggs per week (b) for four weeks (c) for a price of \$x.xx dollars, and (d) have the eggs delivered to the buyers address for an additional charge? The lesser questions created by this ambiguity are: Where and when does an “internet subscription sale” occur, to wit: Does the sale occur when the buyer, over the internet, agrees to buy (“Fair Market Sale” between a willing buyer and a willing seller) or when each one-dozen eggs is delivered to the buyer during the four-week subscription contract, or does it occur on the completion of the

subscription contract or does it occur when money changes hands with (POD: Payment On Delivery) or without product delivery (pre-payment for subscription)?

(2) Cite the statutory authority involved;

As previously stated, the primary question stems from the words "other than those of the person's own production at the place of production" in HRS § 147-75.

Two other statutes are implicated:

§147-76 Advertisement of eggs and price. It shall be unlawful to advertise in newspaper or by sign, handbill, placard, or otherwise, the price at which eggs are offered for sale without plainly indicating in conjunction with price, the full and correct designation of grade, size of the eggs according to the standards in this chapter, of geographic origin of eggs, and of shell treatment if applicable. The designations shall be in a typeface or other conspicuous letters as provided in the rules of the department of agriculture.

If the small flock owner is exempt from HRS § 147-75, is the same small flock owner permitted to advertise price without label of island production, and the exact grade or quality and the size or weight of the eggs as required by HUS § 147-76?

§147-77 Signs and labels on cartons, crates, etc. The signs and labels required by section 147-75 shall likewise be affixed to the cartons, crates, and cases containing eggs required to be marked as in the section provided.

If the small flock owner is exempt from HRS § 147-75, is the same small flock owner exempt from labeling as required by HRS §147-77?

(3) Include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest

STATEMENT OF FACTS

1. [REDACTED] is an Agricultural Condominium existing on approximately eight and one-half (8.5) more or less, acres of land that is classified as AG-2. [REDACTED] consists of five (5) separate estates which "shall be occupied and used as "farm dwellings" and "farm dwelling means a dwelling located and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling. . .".

2. At all times relevant the land of the Agricultural Condominium known as [REDACTED] is and has been classified as AG-2 land. Permitted uses of land classified as AG-2 under city ordinance are:

Revised Ordinances of Honolulu Sec. 21-3.50-4 Agricultural uses and development standards. (a) Within the agricultural districts, permitted uses and structures shall be as enumerated in Table 21-3

“Livestock” means and includes all animals generally associated with farming, which are raised and kept for food and other agricultural purposes. Such animals include . . . chickens, ducks, geese and other poultry, and swine. . . . “Livestock grazing” means the raising or feeding of livestock by grazing or pasturing. . . . “Major livestock production” means and includes agricultural establishments primarily engaged in commercial livestock keeping or feeding as a principal land use that, because of operational characteristics, may generate dust, odors, pollutants or visual impacts that could adversely affect adjacent properties. These include . . . chicken, . . . and other poultry farms. . . .

3. On May 18, 2022, a City and County, Department of Planning and Permitting, Residential Code Enforcement Branch Inspector visited the Tomioka property at Tomioka’s request. Inspector Colin Ishikawa sent Petitioner an email on June 17, 2022 and confirmed her property “is in an AG-2 Agricultural District” and also determined “Chickens are permitted on [Petitioner’s] Agricultural zoned property”.
4. Kelly sells eggs, live chicks, and fertilized eggs from her flock of “organically fed” chickens. Kelly raises different varieties of chickens. Variety is part of the desirability of the saleable eggs in that they are laid by the different breeds of chickens which produce different colored eggs of colors ranging between green, white, and multiple shades of brown and some are speckled.
5. Petitioner sells her eggs by way of “subscription¹” as a retail endeavor by a sole proprietor under the brand and logo of “SUNNY SIDE UP” which requires the purchase of multiple one-dozen eggs over a four-week term with an additional charge for delivered products.
6. Petitioner keeps roosters for the purpose sustaining the flock of assorted breeds, meaning that as the laying chickens age, chicks hatched in Hawai‘i and not subject to mainland diseases, replace aged non-productive laying hens. Petitioner also endeavors to sell as non-food items (not for consumption), e.g., fertile eggs for hatching and live chicks.
7. Petitioner has a General Excise Tax license.

¹ Tomioka advertises by “word of mouth” and offers of subscription made on internet sites. The “subscription” sales method requires (a) the buyer to buy one dozen eggs per week (b) for four weeks (c) for a price of \$x.xx dollars, and (d) have the eggs delivered to the buyers address for an additional charge.

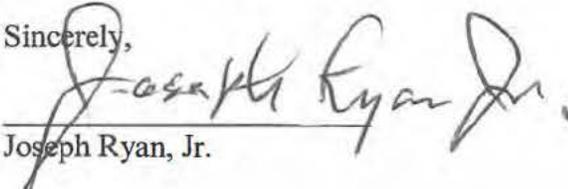
9. Petitioner employs the best agricultural and management practices for small poultry laying hen production as detailed in a letter from Dr. Kelly Dowdall-Gaberson, MS, MPH, DVM, of Aloha Affordable Veterinary Services LLC. Petitioner's agricultural and management practices include but are not limited to, application of antibiotics, cage and area cleaning, regular collection of eggs, and securing the roosters at night in a darkened area to lessen noise.
10. Petitioner's neighbors have complained that Petitioner's chickens are a noise nuisance and that Petitioner is operating an illegal business by selling ungraded eggs, off-site (not at the place of production), and by use of illegal advertising on the internet based on and supported by evidence of publications (attached hereto) disseminated and distributed by the department of agriculture and available on the internet.
11. Petitioner's interest is in continuing her sale by subscription of chicken eggs for human consumption in full conformance with the law and administrative rules of the department and protected from nuisance complaints by the Hawaii Right To Farm Act..

(4) Conform to the requirements of section 4-1-12.

This document conforms to HAR § 4-1-12.

I may be contacted for further information and will be available to testify is needed.

Sincerely,



Joseph Ryan, Jr.



Selling Chicken Eggs at Retail (open) Markets in Hawaii

The USDA does not regulate egg farms with less than 3,000 chickens. However, the Hawaii "Standards for Shell Eggs" apply to all eggs sold at retail and are enforced by the Hawaii Department of Agriculture (HDOA) Commodities Branch. Retail includes open markets (farmers markets) as well as grocery stores, restaurants, and hotels. Eggs must be Grade B or better and be properly labeled. A permit from the Hawaii Department of Health is required to sell eggs.

Here are links from the HDOA web site to get you started:

1. "Sale of Shell Eggs at Retail"

<http://hdoa.hawaii.gov/qad/files/2012/12/qad-egglabeling.pdf>

This one page flier shows the basics such as grade, labeling, and temperature requirements.

2. HAR Ch 46 "Standards for Shell Eggs"

<http://hdoa.hawaii.gov/qad/files/2012/12/AR-46.pdf>

These standards explain the differences between AA, A, and B grade eggs, describe individual egg quality standards, and list other rules.

Key points

Egg Cartons - New cartons are best. Recycled egg cartons should be clean and previous label markings must be covered or obliterated and labeled as required. Refer to "Sale of Shell Eggs at Retail".

Washing and sanitizing your eggs - Eggs sold off-farm for human consumption must be clean. Washing with potable water is required by the Hawaii Department of Health and sanitizing is highly recommended for shell eggs intended for off-farm retail sale. Use wash and sanitizing products with labels that state they are approved for use on shells eggs. Only potable water should be used when cleaning. To prevent the egg contents from contracting and pulling any microbes that may exist in the wash water through the shell and causing any internal contamination of the edible portion of the egg; eggs should be washed in water that is at least 20 degrees warmer than the warmest eggs, and the water should be at least 90 degrees. **Eggs should not be immersed or allowed to soak in water.** A continuous flow of water should be used when washing to allow water to drain away from the eggs.

Temperature requirements - Any person storing, transporting or selling shell eggs for human consumption that have been washed, shall keep such eggs at an ambient temperature of no greater than forty-five degrees Fahrenheit, except when the eggs are being candled or graded.



Department
of Agriculture
STATE OF HAWAII

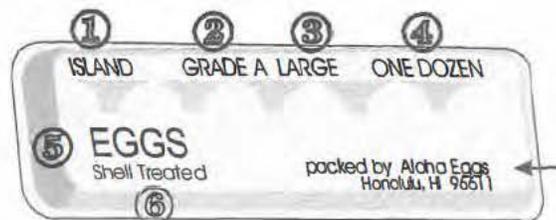
Quality Assurance Division
COMMODITIES BRANCH
1851 Aulki Street
Honolulu, HI 96819-3100

SALE OF SHELL EGGS AT RETAIL

SHELL EGGS (chicken) sold in Hawaii shall be:

- GRADE B or better (Grade AA, A, or B).
- PROPERLY LABELED (cartons or loose pack) to indicate:
 1. Origin (Island, Mainland, etc.)*
 2. Grade *
 3. Size *
 4. Quantity (Doz., 18 eggs, etc.)
 5. Commodity
 6. Shell treated if applicable.

Example:



NOTE: Advertisement with a price must also indicate the above 6 items.
Carton eggs must also indicate packer or distributor and address.

- * Type size of not less than 3/16 inch in height for container labels and not less than 1/2 inch in height for bulk signs and placards.

Additional Federal labeling requirements (Consumer packages):

1. The words "Keep Refrigerated".
2. Safe Handling Instructions "To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly" (also required on bulk sign or placard for loose pack).
3. Nutritional Statement for the appropriate size of eggs.

- **REFRIGERATED at 45° F or lower.**
- If imported (not local), each egg must be **INDIVIDUALLY MARKED** as to origin.

WARNING!

Violation of State laws and rules may subject you to an administrative penalty and/or imprisonment of up to one year (Chapter 147, part V, Hawaii Revised Statutes and Chapter 46, Title 4, Hawaii Administrative Rules). Rules are available for viewing and downloading on the Dept's website at hawaiiag.org/hdoa/adminrules.htm - scroll down to Chapter 46, Shell Eggs.

Sale of eggs below Grade B quality by other than a registered farm, grading station, or shell egg handler is in violation of federal law and may subject violator to a \$1,000 penalty and/or one year imprisonment.

For more information call:

OAHU
832-0700

HAWAII
974-6500

MAUI
873-3555

KAUAI
274-3071

ATTACHMENT 2
5/10/23 Ryan Submittal
“Statement of Petitioner’s
Counsel”

Attachment 2

STATEMENT OF PETITIONER'S COUNSEL RELATED TO THE PHRASE "AT THE PLACE OF PRODUCTION" IN HRS § 147-75 IN SUPPORT OF THE PETITION FOR DECLARATORY RULING.

Much has changed since the words "at the place of production" were added to HRS § 147-75 in 1983. The Board of Agriculture (BOA), in accord with its duty to support, enhance, and promote agriculture, should be welcoming of new farmers and encourage novice egg producers to enter the business. The BOA is within its powers to adopt or declare rules pursuant to Chapter 91 that comply with HRS-147 et seq but also account for the reality of change that the legislature did not foresee. The BOA is authorized, pursuant to HRS § 147-74, to make rules pursuant to Chapter 91 to accommodate for changing circumstances which include the following:

On March 23, 2020, Gov. David Ige issued a stay-at-home emergency order that prevented all but essential consumer activities to cease. Because of the Covid pandemic, new business opportunities were realized.

In 1983, the internet did not exist. Now, in 2023, consumers can shop from home on websites like "Amazon.com" or purchase a plate lunch or McDonald's cheese burger and fries and have their order delivered by business upstarts like "DoorDash" and "UberEats", all done on the internet. The major change in how people can conduct business requires the BOA to adopt rules that encompass the currently available legitimate methods of business.

Hawaii also adopted the Uniform Commercial Code (UCC) covering sales of goods, HRS § 490 in 2004. The UCC was meant to modernize the law regarding commercial transactions and fits well with the department's goals "to support, enhance, promote, and protect Hawaii's agriculture" without repealing any statute related to consumers or farmers, e.g. egg producers (See HRS §490:2-102).

FACTS

The legislature did not define what constitutes a "producer" in the Chicken Egg Statutes: HRS § 147-71 through -81. As a result, a person relying on the statutory definitions of HRS § 147, misinterprets and identifies all sellers of "eggs to a consumer" as a "retailer". It certainly appears that the legislature in 1931 did not intend the chicken egg statutes to regulate "producers" at all given the "other than those of the person's own production" language. 1983 Legislature acknowledged "Producers of eggs can currently sell eggs of their own production off of the farm, at open markets, swap meets, roadside or in retail stores owned by them" (See attached Act 177 of the 1983 Legislature). It is clear the original statute was not meant to regulate "producers". Even now, federal statutes exempt producers with less than 3000 laying hens from regulation.

Attachment 2

The sale of eggs is a commercial transaction and can be done by a producer of eggs with less than 3000 laying hens. The 1983 legislature did not provide a definition of “at the place of production” with the future development of the internet in mind.

The sale of eggs can be accomplished by way of a contract. A producer can make an offer from the producer’s place of production/business. A buyer can accept the offer over the internet; The producer’s entire communication of an offer to a buyer can and does occur at the seller’s place of production. Even the terms of acceptance are controlled by the producer/seller.

The actual eggs are never displayed in direct competition with a retailer which is the intent of the 1983 amendment according to the report of the Standing Committee on Agriculture recorded in the Senate Journal of 1983 identified in the attachment hereto. The eggs actually sold are never seen before delivery to the buyer and are never displayed in direct competition with eggs sold at retail.

A person can contract a subscription service consisting of multiple deliveries of eggs. A buyer can accept the offer by simply giving a delivery address and the contract is formed. .

§490:2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

A “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this chapter and as supplemented by any other applicable law” (HRS 490:1-201). The exchange of delivery for money is merely evidence of the existence of an enforceable contract.

Dated: Waimanalo, Hawaii, May 10, 2023.

Joseph N. A. Ryan, Jr.



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May 2, 2023

CERTIFICATION

This is to certify that the attached pages are true and faithful reproductions of said title(s):

Session Laws of Hawaii, Regular Session of 1983 [KFH25 A28 1983 v.1] Pages 368-370 + Title

Senate Journal, 1983 Regular Session [KFH18 S46 1983 c.1] Pages 1368-1369 + Title

House Journal, Regular Session of 1983 [KFH18 H68 1983 c.1] Pages 988-989 + Title

This is to further certify that the Supreme Court Law Library of the State of Hawai'i maintains an original edition of the above title(s) and the same has not been amended, revised, or modified.

Signature: *Marlene MA Cuenco*
Name: Marlene MA Cuenco
Title: Public Services Librarian

SESSION LAWS
OF
HAWAII
PASSED BY THE
TWELFTH STATE LEGISLATURE
VOLUME I

REGULAR SESSION
1983

Convened on Wednesday, January 19
and
Adjourned sine die on Friday, April 22

Published by Authority of the
Revisor of Statutes
Honolulu, Hawaii

A Bill for an Act Relating to Chicken Eggs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There currently exists within the statutes governing chicken eggs, areas where the enforcement of quality assurance is weak. Revision of the statutes should be made to assure that the department of agriculture can continue to assist the industry in maintaining a quality product.

Producers of eggs can currently sell eggs of their own production off of the farm, at open markets, swap meets, roadside or in retail stores owned by them, without labeling the eggs as required for other retailers of eggs. This could lead to abuse and is unfair to other retailers. Sales on the farm should continue to be exempt from labeling requirements.

The provisions for the marking of imported eggs tend to insure that imported eggs are not falsely marketed as local eggs. The current statute is, however, overly restrictive and in practice unenforceable. The current practice of shipping eggs in sealed container vans protects the integrity of the lot of imported eggs until the time of inspection. To keep abreast with current transportation and marketing practices, the specific requirements for marking imported eggs and enforcement should be contained in rules of the department of agriculture.

The current procedure for imposing fines for violating the marking requirements requires criminal action. The prosecutor's office has not been able to handle requests for assistance in prosecuting violators due to their heavy load of cases. The cumbersome criminal procedure in order to assess fines greatly reduces the effectiveness of the department of agriculture to assure compliance with the law. It is further evident that the level of criminal fines contained within the law has been in effect for many decades and needs to be revised to be consistent with the present penalties imposed for misdemeanors.

SECTION 2. Section 147-74, Hawaii Revised Statutes, is amended to read as follows:

"§147-74 **Grading standards and regulations.** Subject to chapter 91, the department of agriculture may make rules [and regulations] with respect to:

- (1) Sale and transportation for sale of eggs for human consumption;
- (2) Specific grades or standards of quality, condition and size or weight classes which shall conform when practical to those established by the United States Department of Agriculture as local conditions will permit;
- (3) Inspection and classification;
- (4) Assessment and collection of fees for requested certification as to grade, standard of quality, condition, and size or weight classes;
- (5) Labeling of containers of imported and locally produced eggs[;] and marking of individual imported eggs as to origin;
- (6) Seller's invoice for sale of eggs;
- (7) Records of imported shell eggs of foreign origin;

- (8) Methods of dete recandling or any which is discrimi requires a cost inc
- (9) Enforcement of th adopted under thi

SECTION 3. Section 1 as follows:

"§147-75 **Notice of g eggs.** It shall be unlawful for a a consumer, any eggs, other production, intended for huma label, the person purchasing or imported from the mainland U tion, and the exact grade or qu the standards prescribed by th

The word "island" sha produced in this State.

[In the case of eggs] foreign countries[, regardless imported] shall be individually twelve point type, the letters United States, or the name o country, before the eggs may l container containing the] as to dock or landing without permi processed, sold, or offered fo with a certificate [of] from th contained in the shipment in v section[;] and rules of the dep; preserved with an outer cove provided."

SECTION 4. Section as follows:

"§147-79 **Penalties.** more than [\$100 for the first o more than \$300] \$1,000 or in subsequent offenses. one ye

SECTION 5. Chapter adding two new sections to t

"§147- **Administra** after notice and hearing, fine under this part, not more th instance of violation shall cor or collect the penalty provide

H.B. NO. 210

- (8) Methods of determining egg quality, which shall not include recandling or any other method applied to eggs in interstate commerce which is discriminatory or impairs that commerce in any way or requires a cost increase of eggs in interstate commerce;
- (9) Enforcement of this part and of the rules [and regulations promulgated] adopted under this part."

SECTION 3. Section 147-75, Hawaii Revised Statutes, is amended to read as follows:

"§147-75 Notice of grade and size; designation of origin of imported eggs. It shall be unlawful for any person to sell, or offer to sell, or expose for sale to a consumer, any eggs, other than those of his own production at the place of production, intended for human consumption, without notifying, by suitable sign or label, the person purchasing or intending to purchase the same whether the same are imported from the mainland United State or foreign countries or of island production, and the exact grade or quality and the size or weight of the eggs, according to the standards prescribed by the department of agriculture.

The word "island" shall be used to designate the geographic origin of eggs produced in this State.

[In the case of eggs] Eggs imported from the mainland United States or foreign countries[, regardless of the person producing the same, each egg so imported] shall be individually marked [in clear and plain letters, of not less than twelve point type, the letters "U.S.", if the egg was produced in the mainland United States, or the name of the country, if the egg was produced in a foreign country, before the eggs may be removed from any dock or landing, and no crate or container containing the] as to origin. Imported eggs shall not be removed from any dock or landing without permission of the department of agriculture and shall not be processed, sold, or offered for sale until the consignee thereof has been furnished with a certificate [of] from the department of agriculture certifying that the eggs contained in the shipment in which the eggs arrived are marked as provided in this section[;] and rules of the department of agriculture; provided[,] that eggs which are preserved with an outer covering of ashes and salt need not be marked as herein provided."

SECTION 4. Section 147-79, Hawaii Revised Statutes, is amended to read as follows:

"§147-79 Penalties. Every person who violates this part shall be fined not more than [\$100 for the first offense; not more than \$200 for the second offense; not more than \$300] \$1,000 or imprisoned not more than [ninety days for the third and subsequent offenses.] one year, or both."

SECTION 5. Chapter 147, Part V, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§147- Administrative penalties. The department of agriculture may, after notice and hearing, fine any person who violates this part or any rule adopted under this part, not more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

§147- Remedies and penalties not exclusive. The penalties and remedies provided in this part with respect to any violation of this part shall not be deemed exclusive of each other or of other civil or criminal rights, remedies, or penalties provided or allowed by law with respect to any such violation."

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 7. This Act shall take effect upon its approval with the exception of amendments to section 147-75, Hawaii Revised Statutes, which shall take effect 180 days after approval or upon adoption of rules of the department of agriculture, whichever comes first.

(Approved June 6, 1983.)

Note

- 1. Edited pursuant to HRS §23G 16.5.

ACT 178

H.B. NO. 253

A Bill for an Act Relating To Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend section 171-60(a), Hawaii Revised Statutes, to reinstate a major part of the subsection which was inadvertently deleted by Act 199, Session Laws of Hawaii 1981. As amended, the subsection contains none of the standards and procedures which are required to be followed, thereby effectively precluding the board of land and natural resources from leasing any public land or entering into development contracts with private developers.

SECTION 2. Section 171-60, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) Leasehold projects. Notwithstanding anything in this chapter to the contrary, the board may, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving a development project, such concurrent resolution to be adopted by each house no earlier than forty-eight hours after printed copies thereof have been made available to members of that house, (1) lease public lands, including submerged lands to be reclaimed at the developer’s or developers’ expense, to a private developer or developers, or (2) enter into a development agreement with a private developer or developers, for development and subdivision of such¹ lands as a leasehold project for agricultural, industrial, single-family or multiple-family residential, commercial, business, or hotel and resort uses, as provided in this subsection.

Prior to leasing any public land to, or entering into a development contract with, a developer or developers, the board shall:

- (1) Determine:
(A) Whether the lands shall be developed by disposition or contract;
(B) The location, area, and size of the lands to be developed;

(C) The use conform zoning.
(D) The es develop
(E) Minimu any.
(F) Whether be estat
(G) Such of the boa
(2) Set the minir appraisal rep fair market v
(3) Give notice least once in circulation i circulation i second, and to submit ap the project notice shall rental of the minimum re ment, the m the construct such lands s bids will be thirty days o such notice. tion with re interested pe
Each a bid, a financ real estate d discretion. i questions co applicant's s detail as pos applicant's develop the the amount project, the amount the land, and th



JOURNAL

of the

SENATE OF THE TWELFTH LEGISLATURE

of the

STATE OF HAWAII

Regular Session of 1983

Convened Wednesday, January 19, 1983

Adjourned Wednesday, April 22, 1983

However, the enforcement of this chapter has been hampered due to several reasons: the lack of administrative penalties, the reluctance of the public prosecutor to prosecute violators, and the commission merchant surety bond requirement being set too low to offer adequate protection to claimants.

Furthermore, some persons do not even apply for a license since the department only has the power to revoke or suspend a license. Moreover, the penalty clause for late renewal of license is currently not being applied to all classes of business.

This bill amends the current statutes by granting the Department of Agriculture the power to impose fines upon retail merchants for late renewal of licenses. The current statute applies this penalty to commission merchants, dealers, brokers, and processors but not retail merchants. This bill also authorizes the department to set the amount of the surety bond required from the commission merchant and after notice and hearing, to fine any person who violates Chapter 145 or any rule adopted under that chapter, not more than \$5,000 for each separate offense.

Your Committee has amended the bill by specifying that the surety bond level for commission merchants not exceed \$10,000. The purpose of this amendment is to set a ceiling on the bond amount which can be established by the department.

Your Committee has also amended the bill to correct typographical errors and to make nonsubstantive changes for the purposes of clarity and conformance with recommended drafting style.

Your Committee on Agriculture is in accord with the intent and purpose of H.B. No. 209, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 209, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 736 Agriculture on H.B. No. 210

The purposes of this bill are to clarify the labeling requirements for eggs sold by a producer, to allow the Department of Agriculture to set specific requirements to enforce labeling of imported eggs, to allow the Department to impose administrative penalties for violations, and to raise the level of fines.

The labeling requirements for the sale of eggs by a producer are not clear. A producer of eggs is not required to label the eggs no matter where the producer sells them, while retailers who do not produce eggs must label them. This bill clarifies the labeling requirements for eggs, by requiring producers to label eggs which are for sale at places other than the place of production.

The current laws relating to the marking of imported eggs are overly restrictive and unenforceable. This bill amends Sections 147-74 and 147-75 to authorize the Department of Agriculture to set the specific requirements for marking imported eggs by rule, thereby affording the Department the flexibility to structure the requirements to ensure efficient and effective enforcement.

Currently, the penalties for violations of Chapter 147, are not more than \$100 for the first offense, not more than \$200 for the second offense and not more than \$300 or imprisonment for not more than ninety days for the third and subsequent offenses. This bill will stiffen the penalty by raising the amount of fines for all offenses to not more than \$1,000 and increasing imprisonment to not more than one year, or both. This bill also adds two new sections to Chapter 147, Part V, which allows the Department to impose and collect administrative penalties of not more than \$1,000 for each separate offense in addition to other sanctions which may be imposed.

Your Committee agrees with the Department of Agriculture that the proposed changes are necessary to improve enforceability, increase the level of compliance and to assure equity.

Your Committee has amended the bill by making technical changes which have no substantive effect.

Your Committee on Agriculture is in accord with the intent and purpose of H.B. No. 210, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 210, H.D. 1, S.D. 1, and be placed on

the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 737 Agriculture on H.B. No. 211

The purpose of this bill is to clarify that the Hawaii Revised Statutes, Section 142-12, Penalties, applies to all violations of Hawaii Revised Statutes, Chapter 142, Part I, Animal Diseases and Quarantine, where a penalty is not otherwise specified; and to increase the penalties for violation.

Presently Section 142-12 applies to all violations of Chapter 142, Part I, Animal Diseases and Quarantine. However, other sections contained in Part I also have specific penalties for violations of the respective sections, thereby causing confusion as to which penalty should control. The maximum penalties currently provided for in Section 142-12 is a \$500 fine, or 6 months imprisonment, or both.

This bill amends Section 142-12 by specifying that the section only applies to those sections of Part I, Chapter 142, Hawaii Revised Statutes, for which a penalty is not otherwise provided. The bill also amends Section 142-12 by raising the fines to \$1,000 and increasing the imprisonment term to not more than one year.

Your Committee amended the bill by making technical changes which have no substantive effect.

Your Committee on Agriculture is in accord with the intent and purpose of H.B. No. 211, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 211, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 738 Housing and Urban Development on H.B. No. 319

The purpose of this bill is to amend section 46-15.2, Hawaii Revised Statutes, by correcting a drafting error in paragraph (2)(A) and (B).

During the 1982 legislative session, H.B. No. 3178, H.D. 1, S.D. 1, was passed and subsequently signed into law by the governor as Act 284. The purpose of the law is to allow the counties to issue bonds to support mortgage loan programs. The intent was to provide for the establishment of program qualifications by the counties if general obligation bonds are issued, but to require the counties to comply with the provisions of the Hula Mae Program if the counties issue revenue bonds for their loan program.

Upon review of Act 284, it was discovered that due to a transposition of chapter numbers, the opposite was accomplished.

House Bill No. 319, H.D. 1, proposes to amend section 46-15.2 by amending paragraph (2)(A) to read "chapter 47" (which relates to general obligation bonds) rather than "chapter 49" and paragraph (2)(B) to read "chapter 49" (which relates to revenue bonds) rather than "chapter 47".

Your Committee has made minor technical amendments to the bill.

Your Committee on Housing and Urban Development is in accord with the intent and purpose of H.B. No. 319, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 319, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senators Holt and Cobb.

SCRep. 739 Housing and Urban Development on H.B. No. 814

The purpose of this bill is to amend chapter 356, Hawaii Revised Statutes, by adding a new section which will allow the Hawaii Housing Authority, with the approval of the attorney general, to delete delinquent rent accounts of tenants residing in federal public housing projects from its accounts receivable records if the accounts have been delinquent for at least ninety days.

Under section 40-82, Hawaii Revised Statutes, the Hawaii Housing Authority is

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of the

TWELFTH LEGISLATURE
STATE OF HAWAII

REGULAR SESSION OF 1983

Convened Wednesday, January 19, 1983

Adjourned Friday, April 22, 1983

House Journal, Regular Session of 1983 [KFH18 H68 1983 c.1] Pages 988-989 + Title

I certify that this is a true and authentic copy from a source deposited in the Supreme Court Law Library.

Date: 5/2/2023

Signature:

Madeline MA Cramer

Your Committee on Public Employment and Government Operations is in accord with the intent and purpose of H.B. No. 265, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 265, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee.

SCRep. 339 Public Employment and Government Operations on H.B. No. 1347

The purpose of this bill is to have the public employers and employees to pay their share of the monthly medical plan on a 50 50 basis.

According to testimony, legislation has been continuously enacted in order that payments for the medical plan be shared on a 50 50 basis. This bill would increase the employers monthly contribution for FY 1983-84 to \$3.80 for a Self Only Enrollment Medical Plan and \$11.66 for a Family Enrollment Medical Plan.

The appropriations from the general fund needed to fund this bill would be \$2,110,000 for FY 1983 84 and \$2,174,000 for FY 1984 85.

Your Committee on Public Employment and Government Operations is in accord with the intent and purpose of H.B. No. 1347 and recommends that it pass Second Reading and be referred to the Committee on Finance.

Signed by all members of the Committee.

SCRep. 340 Water, Land Use, Development and Hawaiian Affairs on H.B. No. 1208
(Majority)

The purpose of this bill is to add new sections to Chapter 46, Hawaii Revised Statutes, concerning provisions common to all counties, in order to provide a means by which an individual may be assured at a specific point in time, after he has met all existing requirements in developing a property, that his rights to develop the property in a certain manner are vested.

According to testimony, there are numerous risks in any development project which escalate with every new regulatory or administrative action in the development approval process required by the government. In the face of uncertainty and unpredictability, landowners and developers meet a stringent set of circumstances entailing considerable expenditures of time, effort, and money.

Your Committee is in agreement with the intent of the bill, but it is of the opinion that the purpose of the bill could be accomplished in a much more simple manner, by codifying the recent decision of the Hawaii State Supreme Court on the subject of vested rights in the land development business. Your Committee has therefore amended the bill by substituting for the detailed procedures in the bill a more simple statement as to what and when vested rights are attained. The sections, beginning page 3, line 8, and ending page 8, line 8, have been deleted and substituted by new ones.

Your Committee on Water, Land Use, Development and Hawaiian Affairs is in accord with the intent and purpose of H.B. No. 1208, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1208, H.D. 1, and be referred to the Committee on Finance.

Signed by all members of the Committee except Representatives Hee, Takamine and Dang.
(Representatives Kiyabu-Saballa, Nakata, Okamura and Isbell did not concur.)

SCRep. 341 Agriculture on H.B. No. 210

The purposes of this bill are:

- (1) To clarify labeling requirements for sale of eggs by a producer;
- (2) To allow the Department of Agriculture to set, by rule, the specific requirements for enforcing labeling and marking of imported eggs;

- (3) To further allow the Department to impose administrative penalties on violators; and
- (4) To raise the level of fines.

Your committee has received testimony in support of this bill from the Chairman of the Board of Agriculture.

Your Committee has amended this bill as follows:

- (1) On page 2, line 15, the word "need" should be changed to "needs". On page 4, line 23, underscore "not".
- (2) On page 5, line 3, the phrase "of agriculture" should be inserted following the word "department".

Your Committee on Agriculture is in accord with the intent and purpose of H.B. No. 210, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 210, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 342 Agriculture on H.R. No. 50

The purpose of this resolution is to encourage the Department of Land and Natural Resources to negotiate long term leases for large parcels of private land being taken out of pineapple or sugar production which can then be sub leased in smaller parcels to farmers of low and moderate income for diversified agricultural enterprises.

Your Committee finds that due to the high developmental costs of agricultural parks, an additional source of land suitable for long term agricultural use at reasonable prices is required.

Your Committee also finds that in addition to long term leases, the State could obtain additional land for diversified agriculture by either purchase or land exchange with private landowners including land taken out of pineapple and sugar production.

Your Committee has therefore amended the title of H.R. No. 50, the second "WHEREAS" paragraph, and the "BE IT RESOLVED" paragraph to reflect these findings.

Your Committee on Agriculture concurs with the intent and purpose of H.R. No. 50, as amended herein, and recommends its adoption in the form attached hereto as H.R. No. 50, H.D. 1.

Signed by all members of the Committee.

SCRep. 343 Agriculture on H.C.R. No. 23

The purpose of this concurrent resolution is to encourage the Department of Land and Natural Resources to negotiate long term leases for large parcels of private land being taken out of pineapple or sugar production which can then be sub-leased in smaller parcels to farmers of low and moderate income for diversified agricultural enterprises.

Your Committee finds that due to the high developmental costs of agricultural parks, an additional source of land suitable for long-term agricultural use at reasonable prices is required.

Your Committee also finds that in addition to long term leases, the State could obtain additional land for diversified agriculture by either purchase or land exchange with private landowners including land taken out of pineapple and sugar production.

Your Committee has therefore amended the title of H.C.R. No. 23, the second "WHEREAS" paragraph, and the "BE IT RESOLVED" paragraph to reflect these findings.

Your Committee on Agriculture concurs with the intent and purpose of H.C.R. No. 23, as amended herein, and recommends its adoption in the form attached hereto as H.C.R. No. 23, H.D. 1.

Signed by all members of the Committee.

Attachment 2

PAYMENT DUE AT PICK-UP!

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TEL: (808) 539-4964 FAX: (808) 539-4974
E-MAIL: LawLibrary@courts.hawaii.gov

REQUEST FOR HAWAII LEGISLATIVE HISTORY SERVICE

The library will assist in Hawaii legislative history research by pulling and marking acts and committee reports from *Session Laws of Hawaii (SLH)* and the *House and Senate Journals*. Payment for service must be made in-person or received via mail before requestor will be allowed access to the pulled and marked materials. Acts and committee reports can be copied and delivered, additional document delivery charges will apply.

Joseph N. A. Ryan, Jr.

Joseph Ryan Jr. AAL, LLLC

Name	Business/Firm	
P.O. Box 562 Waimanalo, Hawaii 96795		
Address		
808 259 6870	jryan808@outlook.com	May 2, 2023
Telephone	E-mail Address	Date

ACT(s) or HRS CHAPTER(s) BEING REQUESTED:

Examples: SLH 2000 Act16 or HRS 510-5 [L1945 c273, amL1949 c242, amL1984 c100]

- HRS 147-75 "Notice of grade and size . . . eggs"
-
- [My specific interest is the legislative history of the phrases (1) "other than those of the person's own production" (circa 1931) as an
- exemption to sizing and grading of eggs and (2) the phrase "at the place of production" added in Laws 1983 , ch 177, § 3
- PLEASE CERTIFY THE RESULT.

PREPAYMENT IN THE EXACT AMOUNT BY CHECK, CASHIER'S CHECK, or MONEY ORDER IS REQUIRED
MAKE CHECKS PAYABLE TO: *Supreme Court Law Library*.
PROOF OF PAYMENT ACCEPTED TO EXPEDITE SERVICE (Ask Library Staff for details)
MAIL PAYMENT TO: *Supreme Court Law Library, 417 S. King St., Rm. 119, Honolulu, HI 96813*

FEES

Regular: \$10.00 per ACT (each Act associated with a different HRS Chapter)
\$15.00 per HRS Chapter with 1-5 amendments
\$20.00 per HRS Chapter with 6-10 amendments
\$25.00 per HRS Chapter with 11-15 amendments
\$30.00 per HRS Chapter with 16+ amendments

Rush: Additional \$5.00 per ACT or HRS Chapter (same day service if request & proof of payment received by noon, HST)
(Only available for requests of ten (10) Acts and/or Amendments total.)

Act(s):	<u>1</u> @ \$10.00	\$ <u>10.00</u>	Document Delivery ↓ Certification
HRS Chapter(s) w/ 1-5 amendments:	_____ @ \$15.00	\$ _____	
HRS Chapter(s) w/ 6-10 amendments:	_____ @ \$20.00	\$ _____	
HRS Chapter(s) w/ 11-15 amendments:	_____ @ \$25.00	\$ _____	
HRS Chapter(s) w/ 16+ amendments:	_____ @ \$30.00	\$ _____	
Rush (per ACT or HRS Chapter)	<u>1</u> @ \$5.00	\$ <u>5.00</u>	11 pages 25¢ each = 2.75
TOTAL COST		\$ <u>15.00</u>	Handling = 2.00
			Certification = 5.00
			rush = 5.00
			<u>\$14.75</u>

Please COLLECT PAYMENT

\$15 + \$14.75 = \$29.75 Total Cost

ATTACHMENT 3

Bell Letter



Roy J. Bell III

Attorney at Law - A Law Corporation

May 2, 2023

HAWAII DEPT OF AGRIC
2023 MAY -5 AM 9:53

Via US Mail

State of Hawaii, Department of Agriculture
Board of Agriculture
1428 South King Street
Honolulu, HI 96814-2512

Re: Petition By Kelly Tomioka for Declaratory Ruling Pursuant to Hawaii Administrative Rule Section 4-1-50, concerning Hawaii Revised Statutes Section 147-75, et al, and the sale of chicken shell eggs by a flock owner at the place of production, method of sale of shell eggs, and internet advertising submitted March 31, 2023.

Dear Chairperson and Board:

I represent Andrea W. Bell, Morris S. "Scott" Creel, and Jeanne A. Creel, Plaintiffs', vs. Kelly K. Tomioka, aka Kelly Kline and Takayuki Tomioka, Defendants in Civil No. 1CCV-22-0000845, First Circuit Court, State of Hawaii. On behalf of my clients, we have sued the Tomioka's for common law tort claims of nuisance arising out of what we allege is unreasonable, unbearable rooster and chicken noise and noxious odors created by Defendant Tomiokas on their 9,888 sq. ft. lot at [REDACTED]

Plaintiff Andrea W. Bell, lives at [REDACTED] on a 67,000 sq. ft. property which shares a partial common boundary with the Tomiokas, and whose bedroom is approximately 50-75 feet from the Tomiokas' side and backyard where most of the hens, roosters, a goose, ducks, rabbits, and pigs are kept by the Tomiokas. Recently, the Tomiokas placed an open cage/coup in their front yard which appears to house about a dozen chickens, most of them roosters.

Plaintiffs Scott and Jeanne Creel reside at [REDACTED] on an approximately 10,000 sq. ft. lot which shares a common boundary with the Tomiokas and whose lanai, kitchen and bedroom are approximately 30 feet from the side and back yard of the Tomiokas property where they keep most of roosters, hens, a goose, ducks, rabbits, and pigs.

Attachment 3

I was provided a copy of the petition for declaratory ruling by the Tomiokas' attorney, Joseph Ryan Jr., who is defending the Tomiokas in the lawsuit my clients have filed. Mr. Ryan, on behalf of his clients, is seeking to delay the July 31, 2023 trial in our case pending the Board of Agriculture's ruling on the Tomioka petition.

We are not seeking to formally intervene in the declaratory ruling action but feel that, as interested parties, we may have information, which is pertinent to your inquiry and which, so far as we can tell, has not been provided to the Board of Agriculture.

First, Kelly Tomioka advertises her eggs for sale through social media posts and text messages. She advertises that the eggs she sells, "are delivered to your doorstep once a week." **Exhibit A.** According to her media post, she accepts cash payment only for her eggs. **Exhibit B.**

The cartons in which Kelly Tomioka sells her eggs in are custom-made egg cartons with the "Sunnyside Up Hawaii" logo stamped on the top of the carton. There is no other writing on the carton, top or bottom. **Exhibit C.**

When I took Kelly Tomioka's deposition on January 12, 2023, she testified that she did not know the difference between a Grade A egg and a Grade B egg. She does not grade her eggs. She does not candle her eggs. She uses her personal vehicle to deliver her eggs and claims that because she delivers her eggs within 36 hours after washing them, she does not need to maintain a maximum of 45° temperature. **Exhibit D.**

In our lawsuit, Defendant Kelly Tomioka claims that she is the operator of a commercial farming operation in conformity with generally accepted agricultural and management practices and is therefore entitled to the presumption of no nuisance under Hawaii Right to Farm Act, HRS Chapter 165-1 et seq. Kelly Tomioka sells her eggs to customers for their own family use or consumption and sells them off-site, i.e., not at her home. We therefore believe that, by definition, she is a "Retailer" pursuant to HRS §147-1.

In her petition, there is a representation that the Tomiokas raise their chickens, "cage-free", and that she secures the roosters at night in a darkened area to lesson noise. (**Petition at page 1 and page**

I

My clients dispute both of these factual assertions. Photographs taken by my clients demonstrate that the Tomiokas keep some of their chickens and roosters in cages open to the elements. **Exhibit E.** Furthermore, my clients have cellphone recordings taken at various times, including 4:30 am, 5:30 am, 6:30 am, and later demonstrating the lack of any effective noise

Attachment 3

abatement. These cellphone recordings are available upon request and have been provided to Mr. Ryan.

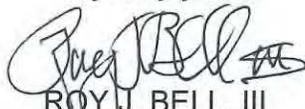
We are not now and have never asked for any enforcement action or sanctions by the Department of Agriculture or any other administrative agency and, frankly, my clients don't care if Defendants farming operation is illegal. My clients, however, believe that to operate a legitimate retail commercial farming operation selling eggs, the Tomiokas must comply with the existing statues governing such eggs sales and that since Tomiokas have not done so, they are not entitled to any protections under Hawaii's Right to Farm Act. That is a legal matter which will ultimately be decided by a judge or jury in our pending lawsuit.

We are not trying to put Defendants out of business. We want them to get rid of their roosters which are not necessary for hens to lay eggs. Since Defendants have thus far refused to do so , we are seeking damages from them for loss of my clients' rights to the quiet enjoyment of our property and for the diminution of property values.

Feel free to contact me if you need clarification of any of the issues raised by this letter or if you need other information, including Kelly Tomioka's deposition transcript from the lawsuit.

Thank you in advance.

Very truly yours,


ROY J. BELL, III
Attorney for Plaintiffs

RJB:th

Cc: Joseph Ryan, Jr., Esq. via email
Scott and Jeanne Creel
Andrea Bell

EXHIBIT A

DATE 1/12/23
TOMIOKA

nextdoor.com

Kelly Kline



Maunaloa, HI • Today • 10:30

Aloha from Sunny Side Up Farm. 🌞 🐔 🥚
I believe in compassionate farming. My chickens are free range, organically fed and raised naturally in the lush green valleys of the Windward Side, just beneath the shadow of the beautiful Olomana mountains. My hens are hand raised from chicks and given dedicated love and attention. I believe that how a chicken is raised can greatly effect the quality and taste of the eggs that they produce. Nothing quite compares to a farm fresh chicken egg. I am currently taking on new clients so please message me if you are interested. My chickens are a mix bunch ranging from Rhode Island Red, Amercauna, Easter Egger, Barred Rock, Light Brahma, Hyline, Cochin, Silky, Polish, Frizzle, and D'ucelle Mille de Fleur. My eggs come either in the larger dozen or the smaller bantam dozen. **Eggs are delivered to your doorstep once a week.** My egg yolks are a beautiful bright color golden yellow or orange because they are richly infused with Marigold petals, golden flaxseed, black oil sunflower seeds, and plenty of fresh grass and range free grazing. Nothing like the taste of farm fresh golden delicious eggs.

Send me a message for further details and look forward to serving you 🌸



EXHIBIT B

Intro

Based in Kailua, Hawaii, Sunny Side Up strives to provide beautiful eggs from organically fed free

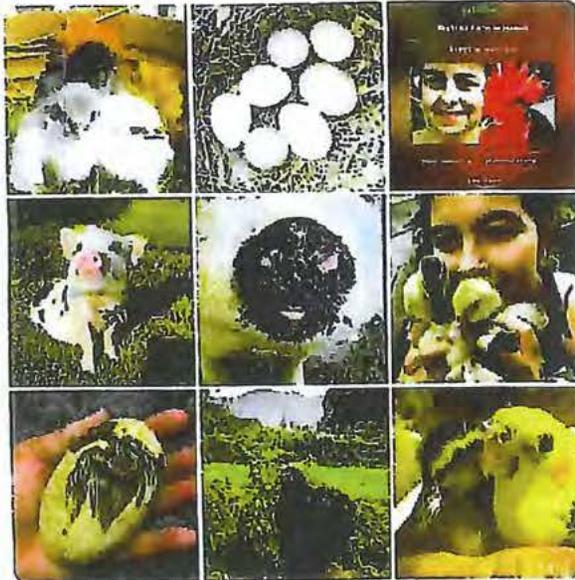
Page · Farm

Not yet rated (0 Reviews)

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Photos

See all photos



Sunny Side Up

April 23 2022

Aloha from Sunny Side Up Farms.

I believe in compassionate farming. My chickens are free range, organically fed and raised naturally in the lush green valleys of the Windward Side, just beneath the shadow of the beautiful Olomana mountains. Most of my hens are hand raised from chicks and given dedicated love and attention. I believe that how a chicken is raised can greatly effect the quality and taste of the eggs that they produce. Nothing quite compares to a farm fresh chicken egg. I am currently taking on new clients so please read below if You are interested. My chickens are a mix bunch ranging from Rhode Island Red, Amercauna, Easter Egger, Barred Rock, Light Brahma, Hyline, Cochèn, Silky Polish, Frizzle, and D'ucde Miille de Fleur. My eggs come either in the larger mix dozen or the smaller mix dozen. In the future I hope to offer all one kind for sale but for now it's a mix.. so not able to request all brown or ali blues just yet.

- 1) A mix dozen eggs med to large = \$10
(Rhode Island Red, Amercauna, Easter Egger, Barred Rock, Light Brahma, Hyline, Cochèn)
- 2) A mix dozen eggs small = \$8
(Silky, Polish, Frizzle, Bantam)
- 3) A combo of both = \$ 10

Delivery to your door is available for just \$ 5

(Kailua, Kaneohe, Waimánalo)

Other areas can be delivered for additional gas fee.

I accept cash payment only please

Currently taking on just a few clients at this time, the rest will be wait listed.

Must agree to a 4 week cycle meaning one dozen a week for 4 weeks.

Eggs are delivered once a week and delivery day will depend on "the girls" productivity

Pick ups will be coordinated with client



11
DATE 11/12/23
Tomioka
CLIENT SIGNATURE

EXHIBIT C



Attachment 3

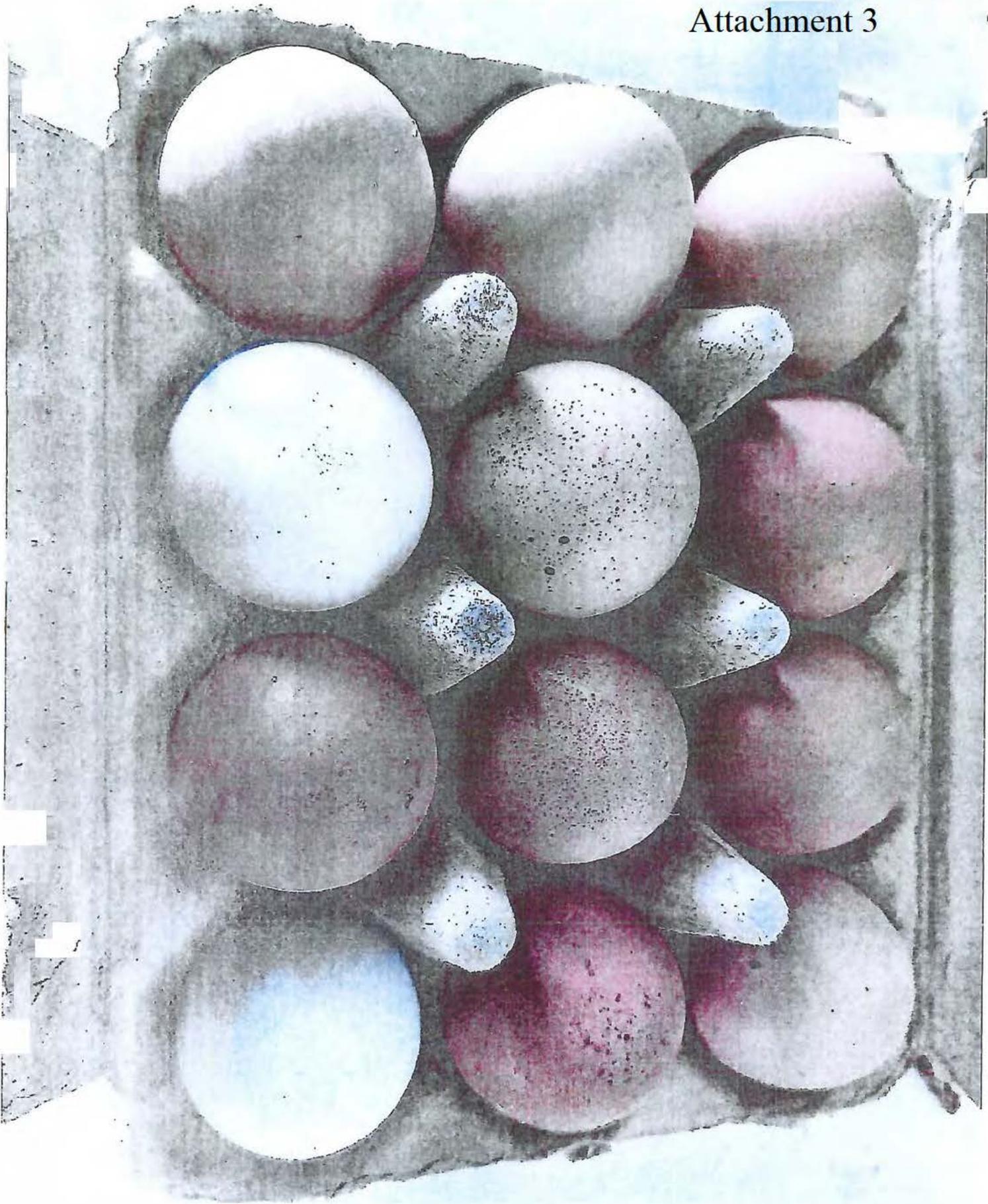


EXHIBIT D

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ANDREA W. BELL; MORRIS S. "SCOTT")	CIVIL NO. 1CCV-22-0000845
CREEL; JEANNE A. CREEL,)	
Plaintiffs,)	
)	
vs.)	DECLARATION OF KELLY K.
)	TOMIOKA, EXHIBITS "B", "C" and "E"
KELLY K. TOMIOKA, AKA KELLY)	through "L"
KLINE; TAKAYUKI TOMIOKA;)	
)	
Defendants.)	
_____)	
)	

DECLARATION OF KELLY K. TOMIOKA

I, Kelly K. Tomioka, make the following declaration on personal knowledge of the facts contained herein.

1. I am over the age of eighteen and a resident of the City and County of Honolulu, state of Hawaii and I am competent to testify in this matter.
2. I reside in [REDACTED] of an agricultural condominium located at [REDACTED] and all of the land of the condominium is classified as AG-2 by the State of Hawaii. Exhibit B hereto are true and correct pages from the Declaration of Condominium Property Regime [REDACTED] [REDACTED] which I received when I purchased the property and which, at paragraph "H", states the land was classified as "agricultural" when I purchased and the apartments are to "occupied and used as farm dwellings".
3. Before 2005, I held four different General Excise Tax licenses for "Direct Sales", meaning I sold products made by others to consumers. My last license, I had converted to the sale of live rabbits. The sales of rabbits was not a viable business and I gave up all business licenses by 2005.

Attachment 3

4. Before 2021, I had a reasonably cordial relationship with the Creels. That relationship began to turn confrontational when I asked the Creel's to control their cat who was terrorizing my chickens. Shortly after that I received a text message from Jeanne Creel complaining about my roosters. Exhibit L. Jeanne Creel wrote that even though my property was AG-2, I was required to have a 300' set back from the property line for "all farm enclosures" and "that no more than 2 chickens are allowed and 0 roosters." She threatened to call the police. I also asked Scott Creel to trim his three avocado trees that overhang my property in May of 2022. The trees drop large fruit from fifty feet or more into my yard where I keep animals. I believe the fruit sometimes weigh 2 pounds or more. Scott refused and I paid a tree trimmer cash on May 10, 2022 to trim the overhanging tree limbs. The police did come on May 15, 2022 and issued a Complaint and Summons for "Animal Nuisance" which was dismissed by the prosecutor on June 9, 2022. (1DCC-22-007813).

5. I have had chickens for ^{over 20 yrs} ~~many~~ years. Over time the chickens reproduced, and I sold baby chicks of different breeds. I also had more eggs than my family could consume. By April of 2021, I tried to sell eggs. My first online advertisement had only two inquiries and did not result in the sale of any eggs.

6. I slowly developed a client list of people who would regularly buy my chicken eggs and I came to the conclusion that selling eggs may be a viable business since my sales were regular and not occasional. I applied for an excise tax license in May of 2022. I now have ^{8 K5} ~~nine~~ regular subscribers.

7. I admit I did not know about the laws, rules and regulations related to selling eggs when I began this business. I thought I could sell eggs just like I sold live rabbits in the past.

Attachment 3

8. Because of the Creels text telling me that there was a 300” set back from my property line to legally keep chickens on my property, the first government agency I checked with was the city Department of Planning and Permitting (DPP). I asked for an inspection of my property to see if I could keep poultry. I received an e-mail from Code Enforcement Branch Inspector Colin Ishikawa, dated June 17, 2022, telling me he had inspected my property and my chickens were allowed on my AG-2 property and he found no land use or building code violations. Exhibit “E” to this declaration is a true and correct copy of the DPP response.

9. I was later informed that I needed to wash my eggs in an approved food establishment kitchen within 36 hours of production. I enrolled in and completed a mandatory four hour course in food safety applicable to food establishments, paid \$100.00 for a license (Exhibit “I”), and I now wash my chicken eggs at Kalapawai Market before delivering them to a subscriber. Because I collect, wash, and deliver my chicken eggs within 36 hours, I am not required to refrigerate my eggs at 45°.

10. I have also learned of what is called the “farmer’s market exception”. According to HRS § 147-75, I do not have to label my egg cartons with notice of the island of production or “grade or quality and the size or weight of the eggs” because I only sell my own eggs from my own property. I can sell ungraded eggs.

11. I do not candle my eggs because the USDA, Food Safety and Inspection Service published that “Hand candling—holding a shell egg directly in front of a light source—is done to spot check and determine accuracy in grading” on the website <https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/eggs/shell-eggs-farm-table#9> and since I do not have to grade my eggs, I am not required to candle.

Attachment 3

12. Exhibits “F” and “G” are true and correct images representing my eggs and the cartons they are sold in.
13. Exhibit H is a true and correct copy of my General Excise Tax License.
14. Exhibit I is a true and correct copy of my State of Hawaii Department of Health “Food Establishment Permit”.
15. Exhibit J is a true and correct copy of a letter given to me following an inspection of my farming operation by Dr. Dowdall-Garberson, a qualified veterinarian stating I follow “generally accepted agricultural and management practices” at my farm.
16. Exhibit K is a true and correct “screen grab” sent to a printer from my phone showing the actual number of photos and videos on my personal phone.
17. Exhibit L is a true and correct text message I received from Jeanne Creel on May 4, 2022.

I, Kelly K. Tomioka, do declare under
Penalty of law that the foregoing is true and correct.

Dated: Kailua, Hawaii, February 21, 2023.


Kelly K. Tomioka

EXHIBIT E

Attachment 3





Attachment 3



Attachment 3



Attachment 3

