

STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAI'I

May 27, 2025

Board of Agriculture
Honolulu, Hawai'i

Subject: REQUEST FOR: (1) PRELIMINARY APPROVAL OF THE PROPOSED COMPILATION OF HAWAII ADMINISTRATIVE RULES, CHAPTER 4-159, ENTITLED "AGRICULTURAL ENTERPRISE LANDS PROGRAM RULES;" AND (2) AUTHORIZATION FOR THE CHAIRPERSON TO SCHEDULE PUBLIC HEARINGS AND APPOINT ONE OR MORE HEARING OFFICERS IN CONNECTION WITH THE PROPOSED AGRICULTURAL ENTERPRISE LANDS RULES, CHAPTER 4-159, HAWAII ADMINISTRATIVE RULES ("HAR").

I. **Background**

The Hawai'i Department of Agricultural (HDOA) Agricultural Resource Management Division is proposing to establish Chapter 4-159, Hawaii Administrative Rules ("HAR"), Agricultural Enterprises Lands Program Rules.

HDOA works to create and maximize opportunities for exporting; and facilitates growth of existing and new agricultural commodities and value-added products. Act 221, Session Laws 2022, established the Agricultural Enterprise Lands program within the Hawai'i Department of Agriculture. This newly created program allows tenants to operate broader activities related to and supportive of agriculture, while under the management and control of HDOA.

Under the Agricultural Parks program and Non-Agricultural Parks program, the production of crops and organisms on HDOA leased lands are expressly promoted and allowed. However, it is silent regarding the allowance of ancillary and other activities that are supportive of and important to economic viability and success of agriculture. An agricultural enterprise is defined as any business, company, or economic activity with direct and demonstrated ties and relations to any definition of "agricultural or aquacultural" activities..., either for profit or not for profit, and may include but not be limited to agricultural education centers, food hubs, farmers markets, and feed mills. Establishing the Agricultural Enterprise Lands program with the presented administrative rules will clarify other related roles that support agriculture and provide our lessees opportunities to grow and expand their business models.

II. **Summary**

The creation and management of this program codifies into rules that ancillary and other related activities that support agriculture are encouraged and allowable by HDOA. The Agricultural Enterprise Lands Program allows HDOA greater flexibility in using HDOA lands for all purposes that promote agricultural diversification, production, and self-sufficiency by supporting all facets of the business of agriculture.

III. **Recommendation**

That the Board of Agriculture (1) preliminarily approve of the proposed compilation of Chapter 4-159, HAR, entitled "Agricultural Enterprise Lands Program" and (2) authorize the Chairperson to schedule public hearings and appoint one or more hearings officers in connection with the proposed rules, Chapter 4-159, HAR, "Agricultural Enterprise Lands Program".

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

Attachment "A"

DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-159 Hawaii Administrative Rules

February 11, 2025

1. Chapter 4-159, Hawaii Administrative Rules,
entitled "Agricultural Enterprises Lands Program
Rules", is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 159

AGRICULTURAL ENTERPRISES LANDS PROGRAM RULES

Subchapter 1 General Provisions

- \$4-159-1 Definitions
- \$4-159-2 Powers and general duties
- \$4-159-3 Fees and charges
- \$4-159-4 Penalties
- \$4-159-5 Covenants against discrimination
- \$4-159-6 Irrigation projects
- \$4-159-7 Prohibitions

Subchapter 2 Transfer of Agricultural Enterprise Lands

- \$4-159-8 Conversion of qualified and encumbered
lands

- \$4-159-9 Extension of encumbered agricultural enterprise lands
- \$4-159-10 Term, rent, and condition of extension
- \$4-159-11 Eligibility for extension
- \$4-159-12 Extension restrictions

Subchapter 3 Policy, Planning, and Development

- \$4-159-13 Planning
- \$4-159-14 Development
- \$4-159-15 Development by joint ventures
- \$4-159-16 Planning; joint ventures
- \$4-159-17 Terms of joint venture

Subchapter 4 Disposition of Agricultural Enterprise Lands

- \$4-159-18 Lease provisions, generally
- \$4-159-19 Lease restrictions, generally
- \$4-159-20 Additional terms and conditions
- \$4-159-21 Appraisals and setting of lease rents
- \$4-159-22 Negotiation
- \$4-159-23 Drawing of lot
- \$4-159-24 Public auction
- \$4-159-25 Conduct of drawing
- \$4-159-26 Disposition of abandoned or seized property
- \$4-159-27 Application requirements
- \$4-159-28 Preference right
- \$4-159-29 Notices
- \$4-159-30 Ineligible applicants
- \$4-159-31 Expired leases; holdover

Subchapter 5 Management of Agricultural Enterprise Lands

- \$4-159-32 Consent to mortgage
- \$4-159-33 Notice of breach or default
- \$4-159-34 Rights of holder of security interest
- \$4-159-35 Re-purchase right, first offer to board; limitation on re-purchase price
- \$4-159-36 Condemnation of leases

4-159-1

§4-159-37 Taxes

§4-159-38 Lease forfeiture

Subchapter 6 Other Provisions

§4-159-39 Severability

SUBCHAPTER 1

GENERAL PROVISIONS

§4-159-1 Definitions. As used in this chapter:

"Abandoned property" means any and all property, unless the context clearly indicates otherwise, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that have been left unattended on land owned or controlled by the State without authority for a continuous period of more than twenty-four hours.

"Administrator" means the head of the division of agricultural resource management, department of agriculture, or any officer or employee to whom authority has been duly designated.

"Agricultural activities" includes the care and production of livestock, livestock products, poultry, and poultry products; the care and production of apiary, horticultural, and floricultural products; the planting, cultivating, harvesting of crops or trees; aquaculture; and any other activity that is directly associated with agriculture; and has the same meaning as defined in section 141D-2, HRS.

"Agricultural commodity" means any agricultural product, including but not limited to, horticultural (including floriculture), nuts, coffee, whether cherry (berry), parchment, or green beans, fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice, whether produced in the State or imported, products, livestock and livestock products, bees and honey, poultry and poultry products, egg and egg products, timber and Christmas trees, fish and fish products either in their natural state or as processed by the producer thereof or by a processor, as defined in this section.

"Agricultural enterprise" means any business, company, or economic activity with direct and demonstrated ties and relations to any definition of "agricultural or aquacultural" activities defined in this section, either for profit or not for profit, and

may include but not be limited to agricultural education centers, food hubs, farmers markets, and feed mills. All agricultural enterprises must be approved by the administrator.

"Agricultural enterprise lands" means agricultural lands that are not designated as agricultural parks or non-agricultural park lands pursuant to chapter 166 or 166E.

"Agricultural processing" means the processing of agricultural produce or products, including dairying, grown, raised, or produced in Hawaii.

"Agriculture or agricultural" means the planting, cultivating, harvesting, and processing of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, or forestry purposes, including aquatic life farmed or ranched.

"Animal unit" means one mature cow or horse; two yearling steers or heifers; five mature sheep; twelve weaned lambs; or two colts.

"Applicant" means any person or entity, which acts to acquire or obtain a lease or any interest therein, including a sublease, or an interest in an association or a partnership which either holds the lease or owns the stock in a corporation which holds the lease.

"Aquacultural activities" means the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that such farm or ranch is on or directly adjacent to land.

"Board" means the board of agriculture or its designated representative.

"Bona fide operator" means a person who:

- (1) Was an operator of an established agricultural enterprise or similar for at least two years; or
- (2) Has at least four years' experience as a part-time operator of an established agricultural enterprise or similar enterprise and who, in the administrator's judgment, is likely to successfully operate the enterprise by reason of ability, experience, and training as a vocational

trainee.

"Carrying capacity" means the maximum number of animal units that an area is able to support over a period of years without injury to the soil, forage resources, tree growth, watershed, or unwarranted interference with other services of the land.

"Chairperson" means the chairperson of the board of agriculture.

"Commercial exporter" means any person who is engaged in the business of exporting fresh or processed agricultural commodities to points outside the State.

"Commercial importer" means any person who is engaged in the business of importing fresh or processed agricultural products from points outside of the State.

"Consumer" means any person or firm purchasing agricultural commodities for human consumption or animal consumption.

"Conversion" means the extinguishing of an existing encumbrance and the issuance of a new long-term lease to the existing lessee.

"Corporate successor" means a solely-owned corporation which, through assignment of lease, succeeds the interest of a lessee and who shall own all of the stock issued by, and be the principal officer of, the corporation.

"Department" means the department of agriculture.

"Division" means the agricultural resource management division of the department of agriculture.

"Encumbrance" means any instrument issued including but, not limited to, a lease, permit, license, easement, grant, contract, or authorization to occupy and use agricultural enterprise lands under the terms and conditions of this chapter.

"Established date of operation" means the date on which the original agricultural enterprise operation first commenced operation. If the physical facilities of the enterprise operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original

operation, provided that this does not violate existing state law or county ordinances.

"Farm" means the parcel, area or building where the "farming operation" occurs. "Farm" also means "ranch" and "farmer" also means "rancher".

"Farm dwelling" means a single- or multiple-family dwelling or employee dwelling used in connection with agricultural or aquacultural activities.

"Farming operation" means:

- (1) A commercial agricultural, aquacultural facility, or agricultural enterprise or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, ranching, poultry and poultry products, and apiary, horticultural, or floricultural products;
- (2) The planting, cultivating, and harvesting and processing of crops;
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;
- (4) Marketed produce at roadside stands or farm markets;
- (5) Noises, odors, dust, and fumes emanating from a commercial agricultural, aquacultural facility, or agricultural enterprise or pursuit;
- (6) Operation of machinery and irrigation pumps;
- (7) Ground and aerial seeding and spraying;
- (8) Application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor; or
- (9) A "farming operation" that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other agricultural enterprise use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the

requirements of this definition.

"Holder of record having a security interest" means a person who is the owner or possessor of a security interest in any land covered in section 4-159-32 and who has filed a copy of the interest with the department and the bureau of conveyances of the State.

"Institutional lender" means a federal, state, or private lending institution, licensed to do business in the State, that makes loans to qualified applicants on the basis of a lease awarded for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Land" includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided.

"Land agent" means the land agent of the public lands of the district where the land is situated, and is interchangeable with "property manager".

"Land license" means a privilege granted to enter land for a certain special purpose such as the removal of timber, soil, sand, gravel, stone, hapuu, and plants. "Land license" does not include ground or surface water rights, or removal of minerals.

"Land patent" means a government grant of real estate in fee simple.

"Lease" means the right to possess and use land for a term of years.

"Lessee" means a lessee under a lease issued by or transferred to the department or any tenant, licensee, grantee, permittee, assignee, or other person authorized to conduct an agricultural enterprise by the board or department.

"Non-conforming use" means a use formerly permitted but presently incompatible with the permitted land use in a zoning district.

"Offgrade" is a descriptive term applicable to agricultural commodities which have a market value, and designates a quality lower than the lowest applicable grade in Hawaii, or other states in the

United States for each agricultural commodity.

"Partner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for agricultural or aquacultural uses and has the financial ability satisfactory to the board to develop and subdivide land and enter a joint venture as provided in this section.

"Processed" means canned, preserved, frozen, pickled, dried, or otherwise prepared with or without any ingredients added thereto.

"Processor" means any person engaged within this State in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural commodity for the purposes of marketing such product.

"Produce dealer" means any person other than a producer who is engaged in the selling, marketing, or distributing of any agricultural commodity or in the business of soliciting.

"Producer" means any person, or any cooperative association of such persons, engaged within this State in the growing or producing for market of any agricultural commodity.

"Product" means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, distributor, or handler.

"Public lands" means all lands which have been given the status of public lands under chapter 171, HRS, and excluded by section 171-2, HRS; including all of the transferred lands collectively and individually under chapter 141D, HRS, and to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167, HRS.

"Public purpose" as used in this chapter, unless the context clearly indicates otherwise, includes but

shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial parks.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

"Seized property" or "property seized" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that has been seized by the State as the result of an unauthorized use of or encroachment on land owned or controlled by the State.

"State" means the State of Hawaii.

"Unencumbered public lands" means any lands defined as public lands by section 171-2, HRS, and which have not been:

- (1) Set aside for any purpose, by statute, executive order, or other means to a governmental agency; or
- (2) Encumbered by lease, license, permit, easement, or other document issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous nonforest reserve, wildlife, or park areas. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §2)

§4-159-2 Powers and general duties. (a) In addition to the powers and function granted to the board under chapter 26, HRS, the board shall have the power to:

- (1) Prescribe forms of instruments and documents;
- (2) Establish restrictions, requirements, or

conditions, not inconsistent with those prescribed in chapter 141D, HRS, and this chapter, relating to the use of particular land being disposed of, the terms of lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;

- (3) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural enterprise use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural enterprise use;
- (4) Delegate to the chairperson or employees of the department, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (5) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving an agricultural purpose;
- (6) Appoint hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (7) Approve of plans to develop public lands;
- (8) Award and cancel leases, issue revocable permits, easements, and rights of entry covering lands for use consistent with its purposes;
- (9) Approve the transfer, assignment, or sublease of a lease or any interest therein, including the transfer of stock of a corporation including a limited liability corporation holding the lease, or the interest in an

association or partnership including a limited partnership holding the lease. To the extent the board reserves such a right in the lease, upon the transfer, assignment, or sublease of a lease or any interest therein, the board may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands;

- (10) Waive rental payments due to natural catastrophes and other external factors beyond the lessee's control and determine the period for the waiver;
- (11) Establish lease rentals as provided in section 4-159-21;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands; and
- (13) Do any and all things necessary to carry out its purposes and exercise the powers granted in chapter 141D, HRS, and this chapter.
 - (b) Except as provided by law, the board through the chairperson shall:
 - (1) Enter into joint venture agreements or development contracts for development and infrastructure improvements of agricultural enterprise lands; or contract for subdivision, and installation of infrastructure improvement as provided for in this chapter;
 - (2) Prevent illegal activities on, unlawful occupation of, or trespassing on public lands;
 - (3) Cause all trespassers and persons unlawfully occupying public lands, and their effects, and all animals trespassing on the lands to be removed therefrom and to impound the seized effects and animals according to law;
 - (4) Enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, default, forfeiture, or escheat; and
 - (5) Recover money due the State for damage done to

any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property or asset.

- (c) The administrator shall have the power to:
 - (1) Fine any person causing an encroachment upon public land as allowed by law and the person shall be liable for administrative costs incurred by the department and for payment of damages;
 - (2) Approve other lands for development pursuant to section 141D-10, HRS, and sections 4-159-14 and 15 and lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 141D-4, HRS;
 - (3) Accept and process applications for leases;
 - (4) Disapprove lease applications when the prospective applicant is unable to meet the requirements of the program or the criteria for the particular disposition;
 - (5) Recommend for board action the disposition of lands to qualified applicants;
 - (6) Collect rents, assessments, and other fees and charges;
 - (7) Recommend for board action cancellation of leases where due notice of breach or default has been provided;
 - (8) Issue non-renewable dispositions granting easements, permits, and rights of entry for a period not in excess for fourteen days for use consistent with the purposes of this chapter;
 - (9) Recommend for board action lease rentals as provided in section 4-159-21;
 - (10) Set, charge, and collect interest and a service charge on delinquent payments due on leases, permits, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
 - (11) Set, charge, and collect additional rentals

for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (10);

- (12) Maintain an accurate inventory of transferred lands;
- (13) Enforce contracts respecting leases, licenses, permits, or other disposition of public lands;
- (14) Conduct all public auctions and drawings pertaining to the disposition of public lands and other property authorized by the board;
- (15) Keep a record of all official transactions, relating to public lands within the chairperson's jurisdiction and such record shall be a public record;
- (16) Establish, operate, maintain, and improve public lands infrastructure;
- (17) Establish additional criteria for the selection of applicants not inconsistent with those prescribed in this chapter, relating to the intended use of particular land being disposed of, the financial feasibility of lot development, or the terms of the disposition, the criteria to be included in the public notice of disposition; and
- (18) Establish conditions of award which shall be met to the satisfaction of the administrator prior to document execution, the conditions to be included in the public notice of disposition. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §3)

§4-159-3 Fees and charges. Fees for the processing of lease or permit documents and records shall be charged as follows:

- (1) Lease, permit, assignment of lease, sublease, consent to mortgage, collateral agreement, and all other documents:
\$30/document
- (2) Copy of document: \$0.75/page

The cost of appraisals, surveys, public notices, lease closing and other services relating to lot disposition, reopening, or assignment which are incurred by the department shall be charged to the lessee upon completion of the relevant lease or permit transaction and any other fees or charges incurred by the department. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §4,8 and 11)

§4-159-4 Penalties. (a) The chairperson may set, charge, and collect administrative fines and costs, as allowed by law, or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of chapter 141D, HRS, or any rule adopted pursuant to chapter 141D, HRS.

(b) Any criminal action against a person for any violation of chapter 141D, HRS, shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of chapter 141D, HRS, or any rule adopted pursuant to chapter 141D, HRS, shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.

(c) A violation of any provision in this chapter shall be cause for the board to cancel the lease and take possession of the land, or take other action as the board, in its sole discretion, deems appropriate; provided that the board shall provide notice to the lessee of the violation in accordance with rules

adopted pursuant to section 141D-7, HRS. [Eff
] (Auth: SLH 2022, HRS §141D-7,
§7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-5 Covenants against discrimination. The board shall provide in every patent, deed, lease, agreement, license, or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or a physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex, or a physical handicap. As used in this section, "physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH, HRS §141D-7[+], §8)

§4-159-6 Irrigation projects. In any encumbrance or similar agreement, a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 4-159-33. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9; HRS §171-25)

§4-159-7 Prohibitions. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits is prohibited with the following exceptions:

- (1) The taking of such materials, not in excess of one gallon per person per day for

- reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public areas and adjacent public lands or construction or maintenance of state approved reservoirs, harbors, launching ramps, or drainage channels with a permit authorized under chapter 183C, HRS;
 - (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5, HRS; provided that the materials removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
 - (4) The cleaning of areas for state or county maintenance purposes including the purposes under section 46-12, HRS; provided that the materials removed shall be placed on adjacent areas unless such placement would result in significant turbidity. [Eff
] (Auth: SLH 2022, HRS
\$141D-7, §7; 171-58.5) (Imp: SLH 2022, HRS
\$141D-7, §8; HRS \$171-58.5)

SUBCHAPTER 2

TRANSFER OF AGRICULTURAL ENTERPRISE LANDS

§4-159-8 Conversion of qualified and encumbered lands. (a) The board may offer to convert existing encumbrances on transferred lands into new long-term leases. These leases include those persons who:

- (1) Hold a revocable permit for agricultural purposes;
- (2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or
- (3) Is determined by the department to have a

beneficial impact on agriculture. In addition, a "bona fide operator" must be named and included in all applications. The "bona fide operator" or qualified representative must be at the enterprise during operational hours.

Prior to the board making an offer to convert an existing encumbrance to a long-term lease, the board shall determine that it is in the public interest to assist those holding encumbrances, who presently operate or operated a viable agricultural enterprise. Further, by allowing conversion of existing encumbrances into new long-term leases, the State would realize greater returns and reduce disruptions to current ongoing farming operations. The lessee may request conversion of the lease if the remaining term is less than ten years, but more than five years.

For land with encumbrances, conversion shall be limited to those lands:

- (1) Not needed by any state or county agencies for any other public purpose; and
- (2) Zoned, classified, or leased for agricultural activity or agricultural enterprise operation.

(b) The board may negotiate and enter into a new lease of no less than fifteen years and not more than sixty-five years. In issuing the new leases the department shall:

- (1) Require appraisal of the parcel in accordance with section 4-159-21;
- (2) Impose other lease terms, provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interests;
- (3) Recover from the new lessees the costs of subdividing the parcel as may be required;
- (4) Require the payment of annual lease rent by appraisal and a premium computed at twenty-five per cent of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years. For example, if land

is occupied for ten years, the twenty-five per cent premium shall be paid for seven years, the maximum term; and

- (5) The department may negotiate the conversion into the new lease without regard to section 4-159-30. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §5)

§4-159-9 Extension of encumbered agricultural enterprise lands. This section shall apply to those existing encumbrances that meet the following:

- (1) The tenant must hold a current lease or permit for use of lands transferred to the department;
- (2) The holder of an encumbrance shall be satisfactorily performing in full compliance with the terms and conditions of the existing lease, permit, or license;
- (3) The holder of an encumbrance shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county;
- (4) The holder of an encumbrance's agricultural activity, farming operation, or agricultural enterprise operation shall be fully and economically viable as specified in section 4-159-11; and
- (5) The holder, if an agricultural cooperative organized under chapter 421, HRS, or other agricultural associations or partnerships must name a "bona fide" operator. This operator or qualified representative must be at the enterprise during operational hours.

Upon request, the administrator shall evaluate the existing encumbrance to determine whether the enterprise operation and the holder of the encumbrance meets the qualification and eligibility requirements as outlined in section 4-159-11. The department on a case-by-case basis may recommend to the board the option to renegotiate or amend for extension each

existing encumbrance. The board may review the recommendation and shall approve a course of action. The encumbrances deemed not qualified shall continue unabated until the encumbrance termination date expires. [Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-10 Term, rent, and condition of extension.

(a) Terms of extension shall not be for a longer term period than sixty-five years, that includes the aggregate of the existing term period with the extension term period cumulatively summed.

(b) All extensions shall require the determination of the base rent and additional rents. The rental value of the existing lease shall be based on the appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator. Should the lessee disagree with the rental value, the lessee may invoke provisions of section 4-159-21. In no case shall the base annual rent of the existing encumbrance be reduced from its current rate.

(c) Conditions of the lease extension shall remain the same or not less restrictive than those conditions specified in sections 141-159-11 and 12. The board may impose certain lease requirements or condition the extension provisions to make whole any holders of security interest in order that any outstanding loan status shall not be jeopardized or foreclosed upon as a result of the extension.

(d) An extension may be granted to extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic

life of the improvements as determined by the administrator or an independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises are developed and utilized according to a plan of utilization and development approved by the department;
- (2) The lessee is otherwise in compliance with lease terms;
- (3) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
- (4) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (5) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled;
- (6) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands;
- (7) The board may increase the rent and adjust the rental period; and
- (8) Additional restrictions, terms, and conditions to insure and promote the purposes of the demised lands, to the extent the board has reserved this right in the lease. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-11 Eligibility for extension. (a) The existing agricultural activity, farming operation, or agricultural enterprise operation shall meet at least three of the following criteria to qualify for extensions under this section:

- (1) Conforms with provisions of the Hawaii State Plan or the State Functional Plan for

- Agriculture;
- (2) Protects and conserves suitable agricultural lands within the land district;
 - (3) Promotes diversified agriculture industry and development of new crops;
 - (4) Increases the State's self-sufficiency of agricultural commodities and products;
 - (5) Produces an agricultural commodity that contributes to reducing imported produce;
 - (6) Ensures the continued availability of suitable agricultural lands in the land district; or
 - (7) Conforms with any other agricultural uses that the board may deem worthwhile for the preservation of the diversified agricultural industry for the land district.

Upon request, the administrator shall evaluate each encumbrance and determine whether or not a recommendation to the board for permission to negotiate a lease extension is justified.

(b) Eligibility requirements. Holders of existing encumbrances shall meet at least four of the following requirements:

- (1) Has filed a general excise tax (state) G-49 form for the past seven years either with the state tax department or the Internal Revenue Service showing farming revenues;
- (2) Possesses a general excise tax license from the state tax department and has filed tax returns on it;
- (3) Has maintained a viable agricultural enterprise operation;
- (4) Has not filed for bankruptcy during the term of the existing lease or not in default of more than six months rent or cited to be in violation of any lease terms, conditions, or covenants;
- (5) Possesses an agricultural enterprise business financial plan, farm business financial plan or conservation plan; or
- (6) If applicable, is an approved co-operator with the state soil and water conservation

district program under chapter 180, HRS. The administrator shall request each lessee or permittee to file an affidavit showing that existing holders of encumbrance meet the above criteria or submit proof, whichever is acceptable. Any willful violation of this requirement shall be cause for the cancellation of the existing encumbrance and forfeiture of the land to the department without due course. [Eff] (Auth: SLH 2022, Act[7] 221, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-12 Extension restrictions. The board may impose the following restrictions on any lease extensions:

- (1) No aggregate term period shall be less than fifteen years nor exceed sixty-five years;
- (2) The purpose of the extension shall be for a specific agricultural enterprise operation and may include waste or unusable lands for preservation of the surrounding environment and continuity of farming operations; and
- (3) The lease shall not be in violation of existing lease terms or conditions or be in arrears of rents due at the date of extension. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

SUBCHAPTER 3

POLICY, PLANNING, AND DEVELOPMENT

§4-159-13 Planning. (a) The division from time to time shall:

- (1) Formulate and implement general plans, including but not limited to functional plans for agriculture;
- (2) Reassess the agricultural enterprise lands program and define new directions and

priorities for the program;

- (3) Identify and analyze potential agricultural enterprise lands required to support the development of agricultural industries in the State; and
- (4) Select and recommend suitable sites for future agricultural enterprise lands projects to meet the needs of agricultural commodity industries.

(b) The department, or its lessees subject to the department's approval, may plan, design, and develop, and manage agricultural enterprise lands and agricultural enterprise on:

- (1) Public lands set aside by executive order pursuant to section 171-11 for use as agricultural enterprise lands and agricultural enterprise;
- (2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section 141D-10, HRS; and
- (3) Lands acquired by the department.

(c) Prior to the development of an agricultural enterprise lands project, and subject to section 141D-10, HRS, the administrator shall prepare or cause to be prepared plans and specifications as a package for board action, including but not limited to:

- (1) Site selection analysis, including preliminary site inspection and boundary mapping, sufficient to establish the suitability of the land for its intended uses;
- (2) Development plan and preliminary engineering report, including alternative land use plans and infrastructure requirements, configurations, and costs required to service the project area, and schedule of governmental permits and approvals required to implement the project;
- (3) Feasibility analysis, including

identification of potential markets, costs

- and economic returns, and recommended lot sizes;
- (4) Environmental impact statement prepared in accordance with chapter 11-200 (department of health);
 - (5) Land use district boundary amendment and county plan and zoning amendments as required for the project;
 - (6) Survey and cadastral work, including topographic and feature map, profile, and cross section survey, preliminary and final subdivision map, parcel descriptions, and installation of property pins for individual lots;
 - (7) Design of project improvements (such as roads and irrigation facilities), including construction drawings and specifications, cost estimates, soils and drainage reports, quantity takeoffs, approval signatures from permitting agencies, and arrangements for utilities installations; and
 - (8) Consultation and advice during construction phase, including resolution of problems due to unforeseen conditions, approval of substitutions by the contractor, and as-built drawings. [Eff]
(Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

§4-159-14 Development. The division shall cause agricultural enterprise lands infrastructure improvements approved by the board to be established, improved, operated, and maintained. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

§4-159-15 Development by joint ventures. Any agricultural enterprise lands developed by the department in partnership with a federal agency, county, or a private party shall be subject to a

partnership agreement approved by the board of agriculture, which agreement shall provide, at a minimum:

- (1) A determination by the board that it is in the public interest to enter into the partnership agreement;
- (2) Long-term assurance that the land will be utilized for agricultural enterprise purposes;
- (3) Board approval of the agricultural enterprise lands development plans and specifications;
- (4) Selection and management of lessees in a manner approved by the board; and
- (5) Conditions to ensure a public benefit from any state funds expended for the project.
[Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

§4-159-16 Planning; joint ventures. (a) Prior to entering into a partnership agreement, 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 or uses to which the lands shall be put;
 - (D) The estimated period of time to construct and complete the development;
 - (E) Minimum requirements for on-site and off-site improvement, if any; and
 - (F) Such other terms and conditions as shall be deemed necessary by the board;
- (2) Set the minimum or upset rental and additional rental, if any, on the basis of an appraisal report prepared by an appraiser for the board, determining the rental value of the lands for the use or uses for which

they are to be developed using generally accepted appraisal methods; the appraised value may be adjusted as provided in section 4-159-21;

- (3) Give notice of the proposed partnership agreement by publication at least once in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by the department, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by interested persons;
- (4) Require each interested person to include a financial statement, and performance and experience records in agricultural or related development; provided that the board may also, in its discretion, require the interested person to submit answers, under oath, to questions contained in a questionnaire prepared by the department;
- (5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as possible including but not limited to the following: the interested person's proposal as to how and when the person intends to develop the land in partnership with the

board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person's costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;

- (6) Establish reasonable criteria for the selection of a private party or parties as a partner; and
- (7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board's determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board then may enter into a partnership agreement with that person; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that met the criteria, select the person who submitted the best proposal. The board then may

negotiate the details of the partnership agreement; provided that the terms of the agreement shall not be less than those proposed by the partner in the application. [Eff] (Auth: HRS §141-1; SLH 2022, HRS §141D-7) (Imp: SLH 2022, HRS §141D-7, §9)

§4-159-17 Terms of joint venture. Any partnership agreement for a joint venture shall be approved by the board and shall be in conformity with section 4-159-15. The terms of a partnership agreement for joint venture shall include the following, wherever appropriate:

- (1) The development and subdivision shall comply with appropriate state and county zoning and subdivision requirements; provided that, pursuant to section 141D-10, HRS, the development and subdivision may be exempt from the requirements;
- (2) The partners shall file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the partnership agreement;
- (3) The dates on which the partners must submit to the board for approval the preliminary plans and final plans and specifications for the total development. No construction shall commence until the board has approved the final plans and specifications, provided that with board approval, construction on an incremental basis may be permitted;
- (4) The date of completion of the total development, including the date of completion of any permitted incremental development;
- (5) The minimum requirements for off-site and onsite improvements that the partner must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and

establish the minimum requirements for offsite and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development;

- (6) A partnership agreement may provide that the board shall issue a lease to the nominees of the partner, including the partner, pursuant to the terms previously negotiated and agreed upon between the partner and the board, including lease rent to the lessee and method of recoupment of expenses by the partner;
- (7) In the event of a lease, the partner may be permitted, after the partner has completed construction of any required offsite improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any offsite improvement has been completed to an assignee or sublessee who shall assume the obligations of the partner relative to the parcel being assigned or subleased, including the construction of any onsite improvement. The board may permit a partner to share in the lease rent for a fixed period in order to recover costs and profit;
- (8) The board may include in any partnership agreement or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in this chapter; and
- (9) Other terms and conditions set by the board.
[Eff _____] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §9)

SUBCHAPTER 4

DISPOSITION OF AGRICULTURAL ENTERPRISE LANDS

§4-159-18 Lease provisions, generally. Every lease issued by the board shall contain:

- (1) The specific use or uses to which the land is to be employed, provided that the use or uses shall be for agricultural enterprise operations or activities only;
- (2) The improvements required, provided that a minimum reasonable time shall be allowed for the completion of the improvements, and provided further that the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental. This provision shall not apply to lease conversions as defined in section 4-159-8;
- (3) Restrictions against alienation as set forth in section 4-159-5;
- (4) The rent as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas; reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches; and prevention of nuisance and waste;
- (6) A "bona fide operator" must be named and included in all applications. The "bona fide operator" or qualified representative must be at the enterprise during operational hours; and
- (7) Such other terms and conditions as the board deems necessary to preserve and protect agricultural enterprise lands and to effectuate the purposes of the state constitution and chapter 141D, HRS.

[Eff] (Auth: SLH 2022,

HRS §141D-7, §7) (Imp: SLH 2022, HRS
§141D-7, §8)

§4-159-19 Lease restrictions, generally. Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) No lease shall be for a term of less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or to any person who, during the five years preceding the date of disposition, has had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof;
- (3) No lease shall be transferred, assigned, or subleased without the prior written approval of that board; any transferee, assignee, or sublessee of an agricultural enterprise land lease shall first qualify as an applicant under this chapter. No lease or any interest therein, including corporate stock or interest in a partnership or association, shall be transferred or assigned without the consent of the board, except by devise, bequest, or intestate succession.
- (4) With the approval of the board, and subject to the provisions of section 4-159-35, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:
 - (A) The lessee becomes mentally or physically disabled;
 - (B) Extreme economic hardship is demonstrated to the satisfaction of the

- board; or
- (C) The assignment is to the corporate successor of the lessee;
- (5) Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-159-21;
- (6) The lessee shall not sublet the whole or any part of the demised premises without the approval of the board; provided that:
- (A) Prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee;
- (B) In the case where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid by the sublessee shall be included as part of the lessee's gross receipts; and
- (C) The board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that

the rent may not be revised downward;
and

- (7) The lease shall be for a specific use or uses, and shall not include wastelands unless it is impractical to provide otherwise. [Eff
] (Auth: SLH 2022, HRS
\$141D-7, §7) (Imp: SLH 2022, HRS \$141D-7,
§8)

§4-159-20 Additional terms and conditions. (a)

The lessee, shall promptly provide all information and documents requested by the administrator and in accordance with the plan of development and utilization provided for in subsection (d), shall provide data and documents to show profit, viability, and fiduciary responsibility, including but not limited to tax forms, cashflow statement, and financial statements.

(b) The lessee shall furnish the department, prior to the issuance of the executed lease, the following:

- (1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the administrator and approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and
- (2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with lease terms and the lessee's lot is substantially developed according to plans approved by the department; provided

further that the department may reinstate the waived bond at any time during the term of the lease.

(c) The board, at its discretion, may permit a dwelling or dwellings on a leased lot if the need is clearly demonstrated. The dwelling or dwellings shall be used in connection with the agricultural enterprise activities on the lot and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the board may require, including, but not limited to, adjustment of the base rental to reflect residential use.

(d) The lessee shall utilize the land only for the purposes specified in the lease, in accordance with a plan of development and utilization which shall be submitted for the administrator's approval prior to the issuance of the lease. The lessee shall not modify or deviate from the plan without the approval of the department and any unapproved modification or deviation from the plan may be cause for the termination of the lease.

(e) All construction on the leased lot shall be in accordance with plans approved by the administrator and shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules, including but not limited to laws regarding environmental quality control.

(f) When a notice of lease disposition covers more than one lot or parcel, each lessee shall bear a pro rata share of the cost of the services referenced in subsection (b) and the pro rata share shall be determined by the administrator.

(g) The administrator or the administrator's authorized representative has the right to inspect, at reasonable hours and without notice, the leased property and the improvements, crops, livestock, equipment, chattels, books, and records of the lessee in connection with the administration of the lease.

[Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-21 Appraisals and setting of lease rents.

(a) Public auction. The appraisal of lands for the determination of the upset lease rental at public auction may be made by an employee of the department qualified to appraise lands, or by one but not more than three disinterested appraisers contracted by the administrator; provided that the upset lease rental shall be determined by disinterested appraisal when prudent management so dictates. Except as otherwise provided in this subchapter, no such lands shall be leased for a sum less than the rental value fixed by appraisal; provided that for any lease at public auction, the board may establish the upset lease rental at less than the appraisal value set by an employee of the department and the land may be leased at that price. The department shall be reimbursed by the lessee for the cost of any appraisal made by a disinterested appraiser or appraisers contracted for by the department.

(b) Drawing or negotiation. The base rental and additional rental lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal, and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) Reopening. In the case of reopenings of the rental for a lease, the base rental and additional rental for any ensuing period shall be the rental value at the time of reopening determined in conformance with the uniform standards of professional appraisal practice as adopted by national professional appraisal organizations. At least six months prior to the time of reopening, the rental value of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the administrator, and the lessee shall be promptly notified of the determination; provided that should the lessee disagree with the appraised rental, the lessee may

appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the appraised rental shall be determined by arbitration as provided in chapter 658A, HRS. In that case the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

(d) Assignment of lease. In the event of an assignment of lease, the base rental and additional rental for any ensuing period may be redetermined by the board pursuant to appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator; provided that the base rental and additional rental shall be the rental value at the time of assignment determined by generally accepted appraisal methods. The cost of redetermining the base rental and additional rental shall be borne by the lessee.

(e) When more than one appraiser is appointed, each shall prepare and submit an independent appraisal. All appraisal reports shall be available for review by the public.

(f) All appraisals are required to be performed by using the Uniform Standards of Professional Appraisal Practices.

(g) Notwithstanding anything to the contrary contained in this chapter, the administrator may recommend to the board for approval an adjustment of an appraised value. The administrator may recommend using any of the following adjustments:

- (1) An adjustment of the fee simple value determined through appraisal as necessary to maintain equitable fee simple values between, among, or throughout the department's land lease system for lands having the same designated use and which are put out to lease within twelve months of each other;
- (2) An adjustment of the rental value determined through appraisal by factoring in a lot's

unproductive acreage, e.g., drainageways, restricted easements, common usage, mixed use, and uncontributory land areas, for those lots for which the specified use is for crops to be grown "in the soil or ground".

An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:

- (A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the value of the leasehold since commencement of the lease;
- (B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time.

[Eff] (Auth: SLH 2022,
HRS §141D-7, §7) (Imp: SLH 2022, HRS
§141D-7, §8)

§4-159-22 Negotiation. (a) A lease of agricultural enterprise lands may be disposed of through negotiation with any person who:

- (1) Holds a revocable permit for agricultural purposes;
- (2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or
- (3) Is determined by the department to have a beneficial impact on agriculture, per 141D HRS.

(b) After a determination is made to negotiate the disposition of a lease, the administrator shall:

- (1) Give notice to eligible applicants in writing pursuant to section 141D-11, HRS, of the department's intention to lease agricultural enterprise lands through negotiation, setting forth the terms,

conditions, and restrictions.

- (2) Interested eligible applicants shall apply for a lease by submitting a written application within thirty days from the date of receipt of the notification; provided that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease.
- (3) Determine the applicants who meet the criteria for selection set by sections 4-159-8 or 4-159-18, as applicable, and the department and notify all applicants of the administrator's determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.

(c) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in subsection (b) (2), dispose of the lease by negotiation.

(d) If two or more applicants meet the criteria for the selection of the lessee, the department shall select the lessee who submits the highest offer contained in a sealed bid deposited with the administrator.

(e) Disposition of agricultural enterprise lands set aside for common use or for the processing of agricultural products may be negotiated without regard to the limitations set forth in this section and section 4-159-29; provided that the disposition encourages competition within the agricultural processing industry and shall not exceed a maximum

term of sixty-five year.

(f) The lease shall be issued when conditions of the award of lease are fulfilled.

(g) Notwithstanding the provisions of this section and section 4-159-29, the board may renegotiate leases as provided in section 4-159-2.

(h) Upon negotiating and executing a lease pursuant to this section, the board shall:

- (1) require the appraisal of the parcel using the Uniform Standards of Professional Appraisal Practice to determine the rental amount, including percentage of rent;
- (2) Require a payment of a premium, computed as twenty-five per cent of the annual lease rent; provided that the premium to be added to the annual lease rent for each year of the lease shall be equal to the number of years the lessee has occupied the land; provided that the premium period shall not exceed seven years; and
- (3) recover from the lessee the costs of expenditures required by the department to convert the parcel into a leasehold. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §11)

§4-159-23 Drawing of lot. When the board determines that agricultural enterprise lands are to be leased by drawing, the administrator shall give public notice inviting applications for the drawing as provided in section 4-159-29, with such details concerning the drawing as it deems necessary and desirable. Applications to participate in the drawing shall be filed with the department within two weeks after the last publication date of the notice. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. The date of the drawing shall be published as set forth in section

4-159-29. All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-24 Public auction. (a) Disposition of agricultural enterprise lands may be made at public auction after public notice as provided in section 4-159-29. All public auctions shall be held at the department or at any other convenient place in the district in which the land is located, and shall be conducted by the administrator or by an authorized employee of the division under the direction of the administrator, who shall perform this service without extra compensation.

(b) To be eligible to bid in an auction for a agricultural enterprise lands lease, a bidder shall qualify as a bona fide operator as defined in this chapter. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-25 Conduct of drawing. (a) Qualified applicants shall be present in person or shall be represented by an agent with appropriate credentials authorizing representation. Applicants who are not present or arrive late at the drawing shall be disqualified.

(b) All qualified applicants shall be placed in the following groups:

- (1) Group I, all persons given preference pursuant to section 4-159-28; or
- (2) Group II, applicant with "bona fide operator" as defined in this chapter.
- (c) The department may determine the order of lot selection as follows:
 - (1) Within Group I, by prioritizing in any sequence the different preference categories

identified in section 4-159-28.

- (2) Within the Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for agricultural enterprise land lots.

(d) After all lots have been selected, five additional names each may be drawn as alternates from Group I and Group II remaining applicants. In the event awards are canceled for failure to satisfy conditions of award or other reason, the lots made available shall be offered for award to the alternates, first from Group I and then from Group II in the order in which their names were drawn. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-26 Disposition of abandoned or seized property. The department may sell, donate, or otherwise dispose of property abandoned or seized on public land upon compliance with the requirements of section 171-31.5, HRS. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-27 Application requirements. (a) An applicant shall identify at least one "bona fide operator" pursuant to section 4-159-1 and meet such other qualifications as the board may prescribe pursuant to section 4-159-2.

(b) All applicants. In addition to satisfying the requirements of subsection (a), all applicants shall demonstrate the ability to perform the lease terms and shall provide the following information, at a minimum, to the administrator:

- (1) A resume of the "bona fide" operator, including experience identified by month and year;
- (2) A business plan and financial plan;
- (3) A preliminary plan of utilization and development of the land;
- (4) Certificate of good standing from the Hawaii

- department of commerce and consumer affairs;
- (5) An affidavit that the applicant is not delinquent in any obligation to the State or any of its political subdivisions; and that the applicant has not had a sale, lease, license, permit or easement covering public land canceled for failure to satisfy any terms or conditions thereof;
 - (6) A financial statement, in the format outlined in the application instructions, including a balance sheet current within six months; and
 - (7) Copies of state income tax returns for the last five years.
- (c) Additionally, applicants which are partnerships, including limited partnerships, corporations, including limited liability corporations, associations, trusts, or agricultural cooperatives shall provide the following information:
- (1) In the case of a corporation, a copy of articles of incorporation reflecting date of filing, purpose of the corporation, and disclosure of all directors and officers; and
 - (2) Name and experience of "bona-fide operator."
- (d) Hawaii Business Registration. All applicants shall be a registered business with the Hawaii department of commerce and consumer affairs. The registered business and Certificate of good standing shall be maintained throughout the lease.
- (e) Whenever the board establishes additional criteria for the selection of lessees, pursuant to section 4-159-2(a)(2), in support of qualification, each applicant shall provide documentation to the satisfaction of the administrator. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-28 Preference right. (a) Any person otherwise qualified to take a lot shall have preference in any disposition by drawing of lots if

the person has been displaced by reason of any natural disaster as defined in this chapter.

After the above preference, any person who is a citizen of the United States and who is otherwise qualified shall be given preference over non-citizens.

(b) Proof of preference status. Any applicant claiming preference status shall furnish proof of veteran status, as called for in the instructions to applicants and which shall be submitted together with the application. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-29 Notices. (a) Any disposition of public lands shall require public notices as prescribed in the following paragraphs. In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner, or on the department's website.

(b) Each notice of proposed lease disposition shall contain the following information:

- (1) General information regarding all the parcels or lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualification of applicants, procedure for filing application, conditions of award, if any and time and place at which more detailed information regarding the lease disposition may be obtained;
- (2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset rental, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and
- (3) The lessee's responsibility for applicable

lease disposition costs pursuant to section 4-159-3.

(c) Auctions. Public notice of any proposed disposition by auction shall be given at least once in the land district where the land being disposed of is located. Notice of the auction shall contain in addition to information in subsection (a) the following:

- (1) General description of the land, including the address and tax map key;
- (2) Specific use for which the disposition is intended;
- (3) Minimum upset price or rental; and
- (4) The maps showing the metes and bounds description and the classification of the land shall be kept in the division or its land agent in the land district in which the land is situated, and shall be available for inspection at normal business hours.

(d) Drawings. Whenever a disposition by drawing by lots is proposed, notice inviting applications to participate in the drawing shall be given at least once in the land district where the land being disposed of is located. The notice shall contain, in addition to information in subsection (a):

- (1) The qualifications required;
- (2) A general location and tax map key;
- (3) The specific use for which the disposition is intended;
- (4) Base rental to be charged, and basis for additional rent, if any; and
- (5) The date by which all applications shall be filed, which date shall be not less than fourteen days after the last publication date.

Within not more than one hundred twenty days after the closing date for applications, the administrator shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing. The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing,

shall be mailed to each applicant, whether or not the applicant in fact qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award of leases shall be announced at the next regularly scheduled meeting of the board and the lease issued when conditions of the award are fulfilled.

(e) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once in the land district where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general the terms and conditions that will be negotiable and those terms which shall be predetermined and the last date on which application will be received by the department which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested person. If more than one applicant qualifies then the administrator shall review and may recommend to the board for approval to negotiate the best terms. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-30 Ineligible applicants. (a) No person shall be eligible to lease public lands who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.

(b) No person shall be eligible to lease public land who is in arrears in the payment of taxes or other obligations to the State or any of its counties.

(c) No person shall be eligible to become an applicant who is not of legal age. [Eff] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-31 Expired leases; holdover. Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term "cycle" as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

Upon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the department may issue a temporary permit to the lessee, subject to section 4-159-2 and the rent and such other terms and conditions as the board may prescribe. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8) SUBCHAPTER 5

MANAGEMENT OF AGRICULTURAL ENTERPRISE LANDS

§4-159-32 Consent to mortgage. (a) Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board, consent of the board is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, provided the

purchaser shall be qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

(b) Notwithstanding any provision in this chapter to the contrary, in leases or sales for agricultural residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the federal agencies specified in subsection (a) or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the United States Department of Agriculture. [Eff

] (Auth: SLH 2022, HRS §141D-7, §7
(Imp: SLH 2022, HRS §141D-7, §13)

§4-159-33 Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the administrator shall deliver a written

notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent issued under this chapter, the written notice shall include a demand to pay the rent within sixty days after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided or within such additional period as the board may allow for good cause, the board subject to section 4-159-34, may exercise such rights as it may have at law or as set forth in the lease or encumbrance. [Eff
] (Auth: SLH 2022, HRS §141D-7,
§7) (Imp: SLH 2022, HRS §141D-7, §13)

§4-159-34 Rights of holder of security interest.

(a) Whenever any notice of breach or default is given to any party under section 4-159-33 or under the terms of any lease, license, agreement, or other instrument issued or to be issued under this chapter, a copy of the notice shall be delivered by the department to all holders of record of any security interest in the land or interest covered by the lease, license, agreement, or other instrument whose security interest has been recorded with the department. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all the terms, covenants, restrictions, or conditions of any lease, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 4-159-33 or within such additional

period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may:

- (1) Pay to the holder from any moneys at its disposal, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or
 - (2) If the property cannot be reasonably reassigned without loss to the department then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispense of the affected land to a qualified and responsible applicant free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still resolve the violation created by the breach or default involved.
- (b) The proceeds of any disposition under subsection (a)(2) shall be applied: first, to

reimburse the department for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the department in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the department upon disposition which exceeds the fair market lease value of the land as previously determined by the department's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date of a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(c) Prior board action shall be required when an institutional lender acquires the lessee's interest through a judicial or nonjudicial foreclosure sale, by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a judicial or nonjudicial foreclosure sale. The institutional lender shall convey to the board a copy of the sale or assignment as recorded in the bureau of conveyances.

(d) Notwithstanding any other provision of this chapter, for any lease that is subject to a security interest held by an institutional lender who has given to the board a copy of the encumbrance as recorded in the bureau of conveyances:

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a

term equal to the term of the lease remaining immediately before the cancellation termination, or rejection, with all terms and conditions being the same as in the canceled, terminated or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection; provided that a lease that is rejected or deemed rejected under bankruptcy law shall be deemed canceled and terminated for all purposes under state law;

- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of paragraph 141D-13(b)(1), HRS acquisition of the lessee's interest pursuant to a judicial or nonjudicial foreclosure sale, or an assignment in lieu of foreclosure:
 - (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest; provided that the institutional lender shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
 - (B) Sections 141D-8(b)(1) and (2), HRS, shall not apply to the lease or the demised land during the time the institutional lender has hold the lease; provided that:
 - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
 - (ii) The new lease issued to the

institutional lender shall terminate one hundred twenty days from the effective date of issuance, at which time the institutional lender shall either sell or assign the lease and sections 141D-8(b)(1) and (2), HRS, shall apply to the new lease.

- (3) If there is a delinquent loan balance secured by a security interest:
 - (A) The lease shall not be canceled or terminated, except for cancellation by reason of default of the lessee;
 - (B) No increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, shall be imposed or become payable;
 - (C) No lands shall be withdrawn from the lease, except either by eminent domain proceedings beyond the control of the board or with prior written consent of the institutional lender, which shall not be unreasonably withheld, and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender have been paid in full.

(d) Ownership of both the lease and the security interest by an institutional lender shall not affect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the lease and security interest with the consent of the board.

(e) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease

mortgageable or more acceptable for mortgageability by an institutional lender.

(f) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

- (1) The purchase, assignment, or transfer shall conform with subsection 141D-13(b)(4), HRS; and
- (2) The purchase, assignments, of transfer of the rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers shall not be precluded from acquiring the institutional lender's security interest but shall not have exercisable rights as successor in interest to the original institutional lender. [Eff

] (Auth: SLH 2022, HRS §141D-7, §13) (Imp: SLH 2022, HRS §141D-7, §13)

§4-159-35 Re-purchase right, first offer to board; limitation on re-purchase price. (a) A lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the board, as follows:

- (1) The board may have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this subsection, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises. If

the board does not exercise its option, the provisions of section 4-159-19(4) shall apply;

- (2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value;
- (3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the administrator; provided that should the lessee disagree with the values, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department;
- (4) The board may re-purchase the lease and improvements with funds from the special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the board; and
- (5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the board at the time of the re-purchase.

(b) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-159-34. [Eff]

(Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-36 Condemnation of leases. The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, county, or any other governmental agency, the lease rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority:

- (1) The value of growing crops, if any, which the lessee is not permitted to harvest; and
- (2) The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided that the lessee may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee.

The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lease and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within such reasonable period allowed by the department. [Eff] (Auth: SLH 2022, HRS §141D-7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-37 Taxes. Any provision to the contrary notwithstanding, leases and licenses issued by the board and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee, or the permittee and the lessee's, licensee's, or permittee's successor in interest.

Upon notice from the appropriate tax agency, the administrator shall notify the lessee, licensee, or permittee and each holder of record having a security interest as provided in section 4-159-34 of any default in the payment of the taxes and upon failure to remedy the default within sixty days after receipt of notice of default, the board may cancel and terminate the lease, license, or permit without prejudice to any other remedies the department may have against the lessee, licensee, or permittee. [Eff
] (Auth: SLH 2022, HRS §141D-7, §7) (Imp: SLH 2022, HRS §141D-7, §8)

§4-159-38 Lease forfeiture. (a) Upon the violation of any condition or term of any lease to be observed or performed by the lessee, the board shall, after the notice of default as provided in section 4-159-33, and subject to the rights of each holder of record having a security interest as provided in section 4-159-34, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.

(b) The board shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was

demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal the lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops. [Eff _____] (Auth: SLH 2022, HRS \$141D-7, §7) (Imp: SLH 2022, HRS \$141D-7, §8)

SUBCHAPTER 6

OTHER PROVISIONS

§4-159-39 Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety." [Eff _____] (Auth: SLH 2022, HRS \$141D-7, §7) (Imp: HRS \$91-2)

DEPARTMENT OF AGRICULTURE

Chapter 4-159, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following public hearings held on _____

_____, after public notices were given
in the _____ on
_____.

The adoption of chapter _____ shall take
effect ten days after filing with the Office of the
Lieutenant Governor.

Sharon Hurd
Chairperson
Board of Agriculture

APPROVED

Josh Green M.D.
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAI'I

May 27, 2025

Board of Agriculture
Honolulu, Hawai'i

Subject: REQUEST FOR APPROVAL TO INCREASE BASE
WATER TOLL DELIVERY CHARGE BY NO MORE THAN
TWO CENTS PER THOUSAND GALLONS TO ALL
SYSTEM IRRIGATION USERS UNDER THE HAWAI'I
DEPARTMENT OF AGRICULTURE IRRIGATION
SYSTEMS.

I. Background

Chapter 4-157-21 of the Hawaii Administrative Rules ("HAR") allows the Board of Agriculture ("BOA") to establish irrigation system rates and charges. The last time irrigation system rates and charges were established by the BOA was during the fiscal year period of 2006 to 2011, when water delivery toll charges were increased from \$0.32/1,000 gallons to \$0.50/1,000 gallons. Chapter 4-157-21 states that "effective July 1, 2011, the board may adjust base water toll changes by no more than two cents per thousand gallons of irrigation water delivered once each fiscal year."

Chapter 167-22, Hawaii Revised Statutes ("HRS") requires the Hawai'i Department of Agriculture ("HDOA") to establish an irrigation system revolving fund. The irrigation system revolving fund is used to operate and maintain the irrigation systems. The irrigation system revolving fund should be self-sufficient and is supported by revenue from water delivery fees, acreage assessments, and legislative appropriations. Currently, the irrigation program is not self-sufficient. It is subsidized by the general fund and maintains its balance by deferring necessary purchases. This fund, which carries a portion of the irrigation program labor costs, allows the HDOA to keep the irrigation system rates and charges low but does not fulfill the requirements of 167-22, HRS.

A Water Rate Study was completed by the HDOA in 2019. The Water Rate Study examined the current revenues and expenditures to determine a water delivery rate that would allow the irrigation program to be self-sufficient. The Water Rate Study evaluated four scenarios which were presented to the BOA in 2019. The BOA approved the request to move forward with the public hearing process and selected the scenario that increased the water delivery rate to \$1.11/1,000 gallons. The necessary amendments were made to the rule, and a public hearing was held on August 22, 2023, but no further action was taken.


Board of Agriculture
May 27, 2025
Page 2

During this legislative session, personnel costs were moved from the irrigation fund to the general fund for the upcoming fiscal year. By moving personnel costs to the general fund, HDOA is able to further postpone the \$1.11 water delivery increase, but may need to move forward with the water delivery rate increase of \$1.11/1,000 gallons for the next fiscal year if the personnel costs do not remain in the general fund. Nevertheless, the water delivery rate should be increased by two cents as allowed by HAR § 4-157-21. This increase in the delivery rate will be a step forward in keeping the fund self-sufficient.

II. **Recommendation**

That the Board approve an increase of water delivery rate charges for all users effective July 1, 2025 from \$0.50/1,000 gallons to \$0.52/1,000 gallons.

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

Attachment "A"

DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-157 Hawaii Administrative Rules

September 27, 2005

SUMMARY

Chapter 4-157, Hawaii Administrative Rules, entitled "Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems", is adopted.

BBH

2705

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 157

RULES GOVERNING IRRIGATION WATER SERVICE TO
CONSUMERS OF HAWAII STATE DEPARTMENT OF AGRICULTURE
IRRIGATION SYSTEMS

- \$4-157-1 General
- \$4-157-2 Definitions
- \$4-157-3 General conditions
- \$4-157-4 Conservation measures and interruption of water supply
- \$4-157-5 Elevation agreement, pressure condition
- \$4-157-6 Application for water service and service connections
- \$4-157-7 New service connections
- \$4-157-8 Meter reading and rendering of bill
- \$4-157-9 Payment of bills
- \$4-157-10 Non-registering meters
- \$4-157-11 Meter tests and adjustment of bills for inaccuracy of measurement
- \$4-157-12 Discontinuance of service
- \$4-157-13 Restoration of water service
- \$4-157-14 Department's equipment on consumer's premises
- \$4-157-15 Damage and accessibility to department's property
- \$4-157-16 Ingress to and egress from consumer's premises
- \$4-157-17 Responsibility for water receiving equipment
- \$4-157-18 Unauthorized drawing of water
- \$4-157-19 Cross-connections
- \$4-157-20 Resale of water
- \$4-157-21 Rate, fee, and charge schedule

- §4-157-22 Honokaa-Paauiilo Irrigation System water
user advisory board
§4-157-23 Severability
§4-157-24 Interim rules for temporary irrigation
systems and districts

Historical Note: Chapter 4-157 is based substantially
upon Chapters 4-150, 4-151, and 4-152 [Eff 12/4/89; am
7/6 MAR 17 2006]; Chapter 4-155 [Eff 5/15/00;
R MAR 17 2006]; and Chapter 4-156 [Eff 4/24/00; R
MAR 17 2006].

§4-157-1 General. (a) These rules establish the
practices governing the provision of irrigation water
for all department of agriculture irrigation systems
and define the obligations of the board to consumers
and of the consumers to the board.

(b) It is the policy of the board to render
adequate and satisfactory service to all consumers and
to encourage courtesy to the public by all its
employees. The board desires to cooperate with
consumers to eliminate water waste and to minimize
charges to the consumer.

(c) Prospective consumers are advised to obtain
information from the department on the availability of
water, pressure conditions, and other pertinent data.
[Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS
§167-5)

§4-157-2 Definitions. As used in this chapter
unless otherwise provided:

"Acreage assessment" means any levy imposed
pursuant to this chapter on the agricultural land and
pastureland within an irrigation project and any amount
charged by the State for the purpose of acquiring,
establishing, or maintaining irrigation facilities for
an irrigation project.

"Actual need" means the volume of irrigation water
consumed by an irrigation customer. The volume of
irrigation water shall be actual use as determined by

monthly meter readings or as otherwise provided in these rules.

"Administrator-chief engineer" means the person holding the office of administrator and chief engineer of the division of agricultural resource management of the department acting directly or through authorized assistants including the irrigation district manager.

"Board" means the board of agriculture of the State of Hawaii, which is the governing body of the department of agriculture.

"Consumer" means the person, firm, corporation, partnership, association, or any public or private organization, whether owner, tenant, or lessee, whose name appears on the records of the department as responsible and liable for receiving irrigation water service from the board.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection to the consumer's service areas.

"Cost of service connection" means the sum of the cost of the service connection materials, labor, transportation, equipment, and road repair, if any, and other incidental charges necessary for the complete installation of a service connection.

"Department" means the department of agriculture.

"Irrigation system" or "system" means the intakes, ditches, flumes, weirs, siphons, reservoirs, tunnels, pipelines, valves, pumps, and controls, and other elements comprising an irrigation system operated by the board to serve the lands within an irrigation district as defined by the board.

"Irrigation district manager" means the person holding the office of irrigation district manager for a particular irrigation system of the department acting directly or through authorized assistants.

"Livestock" means any animal which is pastured within the boundaries of the project and uses the system. Not all irrigation systems have pastureland and livestock that are recognized by the department. Therefore, any references to livestock, pastureland, pasturing, pastoral, herds, livestock watering, and livestock drinking water are only applicable and valid

for irrigation systems with pastureland and livestock that are officially recognized within these rules.

"Main" or "main pipe" means the supply or distribution pipe to which service connections are made.

"Measuring device" means a weir, meter, or other suitable means for measuring the amount of water received by the consumer from the irrigation system.

"Pastureland" means agricultural land within an irrigation system that is used for grazing livestock. Only areas identified in section 4-157-3(i) are eligible for pastureland designations.

"Project", "district", "irrigation district", or "irrigation project" means the area, contiguous or noncontiguous, established under chapter 167, Hawaii Revised Statutes, to be served by a unique and specific department of agriculture irrigation system.

"Service connection" means the tap, pipe, fittings, and valves from the mains to and including the meter.

"State" means the State of Hawaii.

"Temporary irrigation system or district" means any irrigation system that is in the process of being constructed by the department.

"Water charges" means the sum of the water tolls and acreage assessments which may include credits as may be applicable.

"Water tolls" means all of the charges established by the board for irrigation water and livestock drinking water supplied by it to consumers.

"Weir" means any device which allows the measurement of a quantity of irrigation water being delivered. [Eff MAR 17 2006] (Auth: HRS §167-5)
(Imp: HRS §§167-2, 167-5)

§4-157-3 General conditions. (a) Upon proper application, a prospective consumer whose premises are within the service limits established by the board for a specific irrigation system and whose premises are adjacent to the distribution main, where pressure conditions permit, may obtain irrigation water service; provided that there is a sufficient water supply developed to take on new or additional service without

detriment to those already served, and the consumer agrees to abide by these rules.

(b) The water supplied by all irrigation systems is intended to be used only for agricultural and aquaculture activities, as defined in section 166-2, Hawaii Revised Statutes, and may include livestock watering and pastoral irrigation. Consumers may not use water for any other purpose except with the express written consent of the board. The board makes no guarantee, warranty, or representation, expressed or implied, as to the quality, quantity, flow rate, condition, or fitness of the water supplied for any use or purpose.

(c) When an extension of the main is necessary or where large quantities of water are required or a substantial investment is necessary to provide service, the consumer shall be informed by the department as to the conditions and charges to be made for that particular area and situation in question before water service may be approved. Before water service commences, the consumer and the board shall execute an agreement, which will include the specific conditions and charges to be made for that particular area. The board shall have the right to refuse service to a consumer if an agreement cannot be executed.

(d) All water supplied by the department will be measured by means of suitable meters or other means as may be applicable at the discretion of the irrigation district manager. The water tolls shall be in accordance with the rates established by the board. The department through the administrator-chief engineer shall determine the location and size of all meters and service connections to the irrigation system. All service connections shall become the property of the department for operation and maintenance after installation and new connections or disconnections may be made thereto by the department at any time.

(e) Where applicable, the total cultivatable and pastoral area of the consumer shall be levied an acreage assessment in addition to the water delivery charge. The department shall determine the area of each consumer's land subject to this assessment. The unit of area measured shall be the acre and fractional

acres shall be considered to be a full acre. Once an area is levied the acreage assessment, it may not thereafter be withdrawn from this assessment; provided, however, that should the consumer lose the right to cultivate a portion of the consumer's acreage, except by default for nonpayment of water bills, said acreage may be withdrawn from the acreage assessment, with the consent of the board.

(f) To assure the maximum and most efficient use of system water available, no one who owns or occupies less than two acres of agricultural land within the project suitable for irrigation or livestock pasturing or watering will be permitted to become a consumer.

(g) To assure that the irrigation system meets its financial obligations, there shall be levied a minimum acreage assessment equivalent to two acres for those potential consumers who are land occupiers within the boundaries of the irrigation district but do not apply for water service connection.

(h) For the following irrigation systems, no service connection shall be allowed directly from the transmission pipeline prior to the system's reservoir, except upon specific written approval by the board: Waimanalo, Kahuku Agricultural Park, Molokai, Waimea, and Honokaa-Paauiilo. Future irrigation systems that have been recognized and established by the board shall be governed under this provision unless specifically exempted by the board.

(i) Pastureland designations may only occur in the Honokaa-Paauiilo irrigation system or where otherwise approved by the board. Following approval by the board, pastureland designations for specific consumers must be approved by the administrator-chief engineer. Only consumers with designated and approved pastureland will be responsible for pastureland acreage assessments, fees, and adherence to pastureland rule provisions.

(j) These rules shall apply to all irrigation systems and districts that are officially recognized and established by the board, including Honokaa-Paauiilo, Kahuku Agricultural Park, Molokai, Waimanalo, and Waimea. [Eff MAR 17 2006] (Auth: HRS §167-5)
(Imp: HRS §§167-5, 167-6, 167-19)

S4-157-4 Conservation measures and interruption of water supply. (a) The department shall exercise reasonable diligence and care to deliver an adequate supply of water to the consumer and to avoid shortage or interruptions in water service, whenever possible, but shall not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

(b) Whenever, in the administrator-chief engineer's opinion, special conservation measures are deemed necessary to forestall a water shortage and a consequent emergency, the administrator-chief engineer may restrict or ration the use of water by any reasonable method of control. Livestock watering customers shall install an automatic water flow control device to prevent waste or continued overflow from livestock drinking troughs. Each device shall be approved by the irrigation district manager prior to installation and shall be tested periodically to determine its functionality.

(c) To ensure that a continuous water supply is available to livestock, the department may require those consumers with a large herd (more than fifty animals) of animals to install an adequate means of storage for water or reservoir on their property.

(d) The department reserves the right at any and all times to shut off water from the mains with reasonable notice for the purpose of making repairs, extensions, alterations, or for other reasons. Consumers who require a continuous supply of water shall provide, at their own cost, emergency water storage and any check valves or other devices necessary for the protection of equipment or fixtures against failure of the pressure or supply of water in the department's main. Repairs or improvements shall be carried out as rapidly as practicable and at the time or times as will cause the least inconvenience to consumers.

(e) The department will deliver water to the land of each consumer at the ground elevation and at the outlet site as the department may establish upon each consumer's land convenient with the operation of the

department's irrigation system, and it shall be the responsibility of each consumer to provide for the distribution of the water upon the consumer's land by the consumer's own method.

(f) During seasonal drought periods, a shortage of irrigation water within an irrigation system may occur. During these periods, the department shall continue to supply irrigation and livestock drinking water as available. However, the department shall use its best judgment in allocating the available agricultural water in a manner that it deems fair and equitable.

(g) The department reserves the right in times of declared emergency to allow the use of irrigation water for emergency purposes. Charges for the water used shall be established by the board based on the nature of the emergency and attendant circumstances.

(h) The department reserves the right to allocate water use in the following order of priority as it may deem necessary to:

- (1) Preserve crops and harvests on agricultural and aquacultural lands;
- (2) Preserve animal life; and
- (3) Irrigate pasture.

(i) During periods of low rainfall or drought, the department shall develop notices and criteria on the manner in which water will be delivered, restricted, and allocated for the duration of the emergency. Violations of the restrictions or allocations may result in the discontinuance of service, additional water toll surcharges, or the removal of the water connection.

(j) Upon declaration of emergency conditions and implementation of mandatory conservation measures (i.e., ten per cent, twenty per cent, or thirty per cent cutbacks), consumers exceeding the level of mandatory cutback shall be assessed a surcharge as follows:

- (1) Mandatory ten per cent conservation - consumers shall be assessed a surcharge of ten cents per thousand gallons of water consumed in excess of ninety per cent of their average use as calculated by the administrator-chief engineer;

- (2) Mandatory twenty per cent conservation - consumers shall be assessed a surcharge of twenty cents per thousand gallons of water consumed in excess of eighty per cent of their average use as calculated by the administrator-chief engineer; and
- (3) Mandatory thirty per cent conservation - consumers shall be assessed a surcharge of thirty cents per thousand gallons of water consumed in excess of seventy per cent of their average use as calculated by the administrator-chief engineer.

(k) Notwithstanding any provision herein to the contrary, subsection (j) shall not apply to the users of the Molokai Irrigation System who are also lessees of the department of Hawaiian home lands (homesteaders), provided that an actual need is shown and the homesteader's aggregate irrigation water consumption remains at or below two-thirds of the water developed in the first phase of the construction of the Molokai Irrigation System, based on the most current monthly three year average of non-drought years. Should the homesteader's use exceed the homesteader's two-thirds preference, the homesteader shall be subject to the terms and conditions contained in subsection (j). The homesteader shall be subject to subsection (j) until the homesteader's usage falls to a two-thirds to one-third ratio or less, based on the most current monthly three year average of non-drought years, or until the conservation notice for the Molokai Irrigation System is canceled, whichever first occurs. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

§4-157-5 Elevation agreement, pressure condition.

(a) The department shall make every effort to maintain pressure but shall not be responsible for maintaining pressure in its water main.

(b) Where property is situated at an elevation higher than the irrigation system, the consumer, in consideration of a connection with the department's system, shall agree to accept water service as the

department is able to render it from the department's existing facilities and to install, if necessary, and maintain at the consumer's own expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water. When required, the consumer shall install protective devices between the consumer's supply line and the service connection. The consumer shall execute a written release to the department for all claims on account of any inadequacy of the department's system or inadequacy of the water supply to the consumer.

(c) When the pressure from the department's supply is higher than that for which the irrigation equipment or other facilities are designed, the consumer shall protect the consumer's equipment and other facilities by installing and maintaining pressure reducing and relief valves at the consumer's expense. The department shall not be liable for damage due to pressure conditions caused by or arising from the failure or defective condition of the pressure regulators and relief valves or for damage that may occur through their installation, maintenance, or use. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

§4-157-6 Application for water service and service connections. (a) Each prospective consumer shall be required to sign the standard application form for the water service desired. A nonrefundable filing fee shall be required with each water service application. This application fee shall be in accordance with the amount established by the board. By signing the application form, the consumer assumes responsibility for the payment of future water charges at each designated location and to abide by these rules before water is turned on for any use whatsoever. The consumer signing the application form shall be held liable for the payment of all water charges at the designated location. The lessee or owner of the land shall also be liable for the water charges in the event that the consumer fails to pay.

(b) Water charges shall begin when the water service is established and shall continue until due

notification from the consumer or until discontinued by the administrator-chief engineer for failure of the consumer to comply with these rules. It is the responsibility of the landowner to notify the irrigation district manager when there is a change in the occupant of the parcel; otherwise, the property owner will incur additional charges.

(c) When an application for water service is made by a consumer who was responsible for and failed to pay all water bills previously rendered, regardless of location or time incurred, the department may refuse to furnish water service until the outstanding bills are paid.

(d) A prospective consumer taking possession of property and using water without applying to the department for water service to the property shall be held liable for the water charges from the date of the last recorded meter reading as well as a new application fee. If proper application for water service is made and if accumulated bills for water service are not paid upon presentation, the water service shall be subject to discontinuance without further notice.

(e) Consumers are required to notify the irrigation district manager at least forty-eight hours in advance of the time they would like water delivery to begin. The department does not guarantee the start date or time, nor amount of irrigation water delivered but the department will operate in a manner consistent with its responsibilities set forth in these rules. Consumers may be required to receive water on a defined delivery schedule established by the administrator-chief engineer. [Eff MAR 17 2006] (Auth: HRS S167-5) (Imp: HRS S167-5, 167-6, 167-19)

S4-157-7 New service connections. (a) The application for a new service connection is subject to approval by the department. After approval, the connection shall be installed by the department or its designee at the expense of the applicant and thereafter shall become the property of the department and maintained by the department at the department's

expense. There shall be one meter for each service connection unless the department, because of operating necessity, installs two or more meters in parallel. After installation, the department will seal all meters and no seal shall be altered or broken except by one of the department's authorized employees. Meters whose seals have been altered or broken shall be replaced at the expense of the consumer.

(b) A standard deposit for installing a service connection shall be required of the applicant before the connection is installed. The standard deposit shall be in accordance with the rates established by the board as shown in the table entitled "Schedule of Rates, Fees, and Charges for Irrigation Water Delivery Services at All DOA Irrigation Systems", dated September 27, 2005, attached as Exhibit "A" at the end of this chapter and made a part of this chapter. If the actual cost of the connection is in excess of the standard deposit, the applicant shall pay for the difference. Arrangement to make payments in monthly or pre-arranged installments shall be at the discretion of the administrator-chief engineer. If the actual cost is less than the standard deposit, the applicant shall be refunded the difference.

(c) The consumer shall install and connect, at the consumer's own expense, the necessary supply pipe to the shut-off valve or outlet installed by the department. The consumer's supply pipe shall at all times remain the sole property of the consumer who shall be responsible for its maintenance and repair. If the consumer's supply pipe exists before the service connection is installed, the department may complete the connection to the consumer's supply pipe, provided it is requested by the consumer prior to installation.

(d) Only employees and designees of the department shall be allowed to connect or disconnect the service connection to or from the department's ditch or main.

(e) Employees and designees of the department are strictly forbidden to demand or accept personal compensation for services rendered.

(f) No service connection or water main shall be installed by the department on any private land until the department is given proper easements for the main

or service connection and vehicular access is available.

(g) All meters or suitable water flow measuring devices shall be installed within the public right-of-way or easements, preferably on the boundary line most nearly perpendicular to the main, unless the department, because of operating necessity, provides otherwise. The valve, which is installed before the meter, is only for the use of employees and designees of the department.

(h) When the proper size of the service connection for any consumer has been determined and the installation has been made, the department has fulfilled its obligations for providing the size of the service connection and the location thereof. If thereafter the consumer desires a change in the size of the service connection or a change in the location, the consumer shall bear all costs of the change.

(i) All work and materials involved with the change in location or elevation of any part of the existing irrigation system made necessary by the new service connection shall be at the expense of the applicant or consumer.

(j) The department shall determine the location and size of all meters and service connections for the consumer's system. [Eff MAR 17 2006] (Auth: HRS \$167-5) (Imp: HRS §§167-5, 167-6, 167-19)

S4-157-8 Meter reading and rendering of bill. (a) Meters or water flow measuring instruments are read and bills are rendered monthly. Special readings will be made when necessary for closing of accounts or when otherwise required. Consumers using the system to water animals or herds of livestock shall be billed in the same manner and at the same rate as agricultural and aquacultural consumers. Irrigation water delivered by ditches to the consumer shall be measured at weirs at the point or points of delivery to the consumer's land. The agents or employees of the board shall take readings from the weirs at least once during the period of delivery of the irrigation water and the readings taken shall be used by the board to determine the amount of irrigation water delivered. If the board

does not deliver the amount of irrigation water requested by the consumer, its agent or employee shall notify the consumer at that time of the amount of water delivered. All protests by the consumer shall be made within seven days of the date of delivery. If no protest is made by the consumer within that period, the amount of irrigation water determined by the board to have been delivered, from its readings pursuant to this section, shall be deemed conclusive.

(b) Closing bills for periods shorter than the standard billing cycle will ordinarily be determined by the amount of water actually used as indicated by the meter reading, plus the acreage assessment for the full billing cycle:

(c) For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately and the readings thereof shall not be combined.

(d) All notices and bills for water charges shall be mailed by the department to the consumer at the address of the consumer stated in the consumer's application until the department is notified in writing by the consumer of a new address. It shall be the responsibility of the consumer to report a change of address or ownership to the department; if the consumer fails to report a change in address or ownership, the consumer shall continue to be liable for all charges and interest that accrue on the account. [Eff

MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

§4-157-9 Payment of bills. (a) All bills shall be due and payable when the department deposits the bill in the United States mail, or upon presentation to the consumer, whichever is earlier. Payment shall be made at the office of the irrigation district manager or at the department's option, to duly authorized collectors of the department. If any bill is not paid within thirty days after the department presents the bill directly to the consumer or deposits it in the United States mail for delivery, the water service shall be subject to discontinuance without further notice.

(b) There shall be a service charge for payments made by checks which have been dishonored by the bank for any reason. The service charge shall be as provided in section 40-35.5, Hawaii Revised Statutes, and shall be added to the charges set in section 167-6, Hawaii Revised Statutes.

(c) An interest charge shall be assessed on delinquent balances of more than sixty days and the interest rate shall be consistent with chapter 167, Hawaii Revised Statutes. [Eff MAR 17 2006] (Auth: HRS §§167-5, 167-6, 167-11) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

S4-157-10 Non-registering meters. If a meter fails to register due to any cause except the non-use of water, an average bill may be rendered. This average bill shall be subject to equitable adjustment, taking into account all factors before, during, and after the period of the bill. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

S4-157-11 Meter tests and adjustment of bills for inaccuracy of measurement. (a) All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving the consumer's premises may request a test of the meter. The requesting consumer will be notified as to the time of the test and may witness the test. There will be a charge for meter tests to defray the cost.

(b) If, as a result of the test, the meter is found to register more than two per cent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption for a period not to exceed six months, unless it can be proved that the error was due to some cause for which a specific date can be determined, and the cost of the test. Any overcharge shall be computed back to, but not beyond, the determined date. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

§4-157-12 Discontinuance of service. (a) Water service may be refused or discontinued by the department for the following reasons:

- (1) If the bill has not been paid within thirty days after the mailing or presentation thereof to the consumer. However, acreage assessments shall continue in spite of the discontinuance of service;
- (2) If the consumer fails to comply with any of these rules, and noncompliance is not corrected within five days after the department so notifies the consumer;
- (3) Without notice by the department, to protect the department against fraud, abuse, or unauthorized use of water;
- (4) Where negligent or wasteful use of water exists on any premises, if the conditions are not corrected within five days after the department gives the consumer written notice of the department's intent to refuse or discontinue service; or
- (5) Where the demands of the consumer will result in inadequate service to others.

(b) A consumer about to vacate any premises supplied with water by the department shall give prior written notice of the consumer's intention to vacate, specifying the date service is desired to be discontinued. In the event of failure to give such written notice, the consumer shall be held responsible for all water service furnished to the premises until the department has received the notice of discontinuance. A consumer may not vacate only a portion of the consumer's assessed acreage.

(c) The department may remove a meter for non-use if there are no water toll charges for a period of one year after the meter is installed. A consumer whose meter is removed for non-use forfeits all previous fees, and reapplication shall be treated as a new service connection with applicable costs. Acreage assessments will continue to accrue.

(d) Any consumer who sells, assigns, conveys, or subleases the lot being served with irrigation water

shall notify the department in writing indicating the name and address or other means of contact for the new consumer together with the notice of discontinuance as provided in subsection (b). [Eff MAR 17 2006]
(Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

S4-157-13 Restoration of water service. If water service is turned off because of failure to pay a bill or violation of any of these rules or for other reasons, all outstanding accounts against the consumer shall be paid or satisfactorily secured before water service shall be restored. [Eff MAR 17 2006]
(Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

S4-157-14 Department's equipment on consumer's premises. All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or other purpose, shall continue to be the property of the department and may be repaired, replaced, or removed by the department at any time without the consent of the consumer. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the meters and other equipment. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

S4-157-15 Damage and accessibility to department's property. (a) Any damage to water mains, service connections, valves, standpipes, or other property of the department shall be paid for by the person or organization responsible for the damage.
(b) The consumer shall be liable for any damage to a meter or other equipment or property of the department caused by the consumer or the consumer's tenants, agents, employees, contractors, licensees, or permittees, and the department shall be promptly reimbursed by the consumer for all damages upon demand. In the event settlement for the damage is not promptly

made, the department reserves the right to discontinue water service to the premises.

(c) No obstructions shall be placed upon or around any water meter, valve, or standpipe rendering it inaccessible. If an obstruction is placed so as to interfere with the department's meter, the obstruction may be removed by the department without notification to the consumer. Any costs associated with the removal of the obstruction will be billed to the consumer. The department may confiscate the obstruction and may dispose of it without resource to the consumer.

(d) No animals, livestock, or fowl shall be tethered or tied to any pipe, flume, structure, valve, standpipe, meter, or hydrant of the irrigation system, or be permitted to graze or to wander under any structure, or be put or permitted to go into, over, or upon any ditch, ditch bank, flume, reservoir, tunnel, or other element of the irrigation system. The department may confiscate any animal in violation of this subsection and may dispose of the animal without recourse to the owner.

(e) No grass, bushes, trees, or other windbreak or planting shall be grown or be permitted to grow upon the banks of any ditch or so close thereto as to hang into or over any ditch, reservoir, flume, tunnel, standpipe, valve, meter, or hydrant, or other element of the irrigation system, or to inhibit the free passage of water therein. No dirt, trash, cuttings, rubbish, weed, manure, or drainage water from stables, pens, and pastures, or debris of any nature shall be thrown, dumped, or put into or upon, any ditch, ditch bank, flume, reservoir, tunnel, or other element of the irrigation system. The department may remove or correct such obstructions or violations and bill the consumer for the cost of remediation. [Eff

MAR 17 2008] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

§4-157-16 Ingress to and egress from consumer's premises. Any officer, employee, or designee of the department shall have the right of ingress to and egress from the consumer's premises at all reasonable

hours for any purpose reasonably connected with the furnishing of water or other service to the premises, and the exercise of any and all rights secured to the department by law, including these rules. In case any officer, employee, or designee is refused admittance to the premises or after being admitted is hindered or prevented from making the inspection, the department may cause the water to be turned off from the premises after giving twenty-four hours' notice to the owner or occupant of the premises of the department's intention to do so. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

§4-157-17 Responsibility for water receiving equipment. (a) The consumer shall, at the consumer's own risk and expense, furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying, and utilizing water and the board shall not be responsible for any loss or damage caused by the improper installation of the equipment or the negligence, want of proper care, or wrongful act of the consumer, or of any of the consumer's tenants, agents, employees, contractors, licensees, or permittees in installing, maintaining, using, operating, or interfering with any equipment.

(b) The department shall not be responsible for damage to property and losses caused by irrigation equipment, spigots, faucets, valves, and other equipment that may be opened when water is turned on at the meter, either when turned on originally or where turned on after a temporary shutdown.

(c) All of the consumers' valves shall be slow-closing to prevent water hammer. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

§4-157-18 Unauthorized drawing of water. (a) No person or entity shall be permitted to draw water from any part of the system without the written consent of the administrator-chief engineer. No approval shall be granted in cases where, in the opinion of the administrator-chief engineer, the drawing of water may

adversely affect the water service extended by the department to other consumers.

(b) Approvals given by the department under this section are subject to revocation upon thirty days' notice. [Eff. ~~MAR 17 2006~~] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-19)

§4-157-19 Cross-connections. (a) No cross-connections shall be made without the written consent of the department.

(b) The department requires the installation of a mechanical or any other methods or devices on the consumer's side of the meter to prevent backflow on all new services at the sole cost and expense of the consumer.

(c) Whenever the consumer maintains a separate pressure system or separate storage facility, or in any way increases the pressure of the water within the premises above the pressure furnished by the department, or has the equipment, devices, or arrangement of piping, storage, or industrial methods or processes that might, under certain circumstances, raise the pressure of the water within the premises above the pressure of the water in the mains of the department, a backflow prevention device shall be specified and approved by the administrator-chief engineer for installation at the sole cost and expense of the consumer.

(d) As a protection to the consumer's water system, a suitable pressure relief valve shall be installed and maintained at the consumer's expense when backflow devices are installed on the consumer's side of the meter.

(e) Any device installed for the prevention of backflow as may be required under these rules shall, unless the department approves otherwise in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible, and with adequate working room for inspections, testing, and repairing.

(f) All backflow prevention devices, whether mechanical or not, shall be tested and inspected internally not less than once annually. Repairs, replacement of parts, or any other maintenance, shall be made whenever necessary at the expense of the consumer. The annual test and inspection shall be the responsibility of the consumer and shall be made in accordance with methods recommended by the manufacturers and approved by the department. Records of tests and inspections shall be made on forms prescribed by and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in the department making the tests, repairing and replacing any equipment, and charging the cost to the consumer.

(g) Upon request by the department, the consumer shall present an affidavit either certifying to the fact that there are no connections or installations of the type prohibited under this rule on the premises or describing in detail all nonconforming connections or installations.

(h) The several conditions relative to the installation and maintenance of connections referred to in this section shall be subject to change to meet changing requirements of the state and county laws, ordinances, and rules.

(i) Failure on the part of the consumer to comply with the department's requirements relative to cross-connection and backflow protection shall be sufficient reason for discontinuing water service until such time that the department's requirements have been met. [Eff
MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS
§§167-5, 167-6, 167-19)

S4-157-20 Resale of water. Unless specifically agreed upon by the board, the consumer shall not resell any water received from the board. [Eff
MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS
§§167-5, 167-6, 167-19)

§4-157-21 Rate, fee, and charge schedule. The irrigation system rates and charges established by the board are as follows:

- (1) Water tolls, fees, and charges are set at the following rates:
 - (A) Effective October 1, 2005, the irrigation system rates, fees, and charges established by the board shall be as provided in the table entitled "Schedule of Rates, Fees, and Charges for Irrigation Water Delivery Services at All DOA Irrigation Systems", dated September 27, 2005, attached as Exhibit "A" at the end of this chapter and made a part of this chapter. These rates shall apply to all irrigation and livestock drinking water. Effective July 1, 2011, the board may adjust base water toll charges by no more than two cents per thousand gallons of irrigation water delivered once each fiscal year; and
 - (B) (The board may temporarily waive the collection of water tolls or acreage assessments, or both, and may provide credits if the board finds that total irrigation system revenue is sufficient to meet the expenditures necessary to administer the program for the current fiscal year. In the event that a grant is received to offset a system or group water rates, the minimum charge per thousand gallons shall be no less than 25 cents. The board may adjust this minimum charge once each fiscal year. Any excess shall be applied to the subsequent year or until the original grant is exhausted.
- (2) Any irrigation system that, as a whole, uses more than eight hundred fifty million gallons of irrigation water per fiscal year shall be eligible for a volume usage discount that will lower the system's water rate by 5 cents per thousand gallons of irrigation water for

- the following fiscal year. Eligibility for this discount will be based on the previous year's usage;
- (3) A surcharge for system pumping shall be imposed for individual irrigation systems that require the use of pumps for more than four cumulative months out of the fiscal year. The surcharge will be 5 cents per thousand gallons of irrigation water and will be imposed for the following, complete, fiscal year. Eligibility for this surcharge will be based on the previous year's usage;
 - (4) Acreage assessments are set for irrigation use pursuant to section 167-19, Hawaii Revised Statutes;
 - (5) Acreage assessments cover a portion of the cost of maintaining irrigation system infrastructure;
 - (6) From time to time, it may be necessary to stop the flow of irrigation water to conduct proper maintenance and repair on a particular irrigation system. In support of these efforts, the billing and payment of acreage assessments are mandatory even though irrigation water is not being provided. Acreage assessments may be waived by the board for specific time periods due to natural catastrophes and other external factors beyond the department's control that result in the temporary loss of irrigation water availability; and
 - (7) The fee for new service connections shall be charged at cost. [Eff MAR 17 2006]
(Auth: HRS §§167-5, 167-6, 167-11) (Imp: HRS §§167-5, 167-6, 167-11, 167-19)

S4-157-22 Honokaa-Paauilo Irrigation System water user advisory board. (a) The board may allow the formation of a voluntary advisory board ("advisory board") of water users and community-based organizations in accordance with the federal assisted watershed project for the Honokaa-Paauilo Irrigation

System only. This advisory board shall include the following:

- (1) A farmer water user;
- (2) A rancher water user;
- (3) A designee of the Hamakua/North Hilo Agricultural Cooperative;
- (4) A designee of the Hamakua Farm Bureau;
- (5) A designee of the Hamakua Soil and Water Conservation District;
- (6) A representative from Waipio Valley; and
- (7) Any others who may from time to time be designated by this advisory board to be added.

The advisory board shall be voluntary and shall be appointed by the board of agriculture for four-year terms. The members shall serve with no compensation and shall for administrative purposes be placed within the department.

(b) The purpose of the advisory board is to act as a liaison between the users and the irrigation system as a condition of the federal watershed project which includes the irrigation system. In addition to any other duties as may be required by the federal watershed project, the advisory board's duties and responsibilities may include the following:

- (1) Comment on operational matters concerning the irrigation system;
- (2) Provide support for improvements to the irrigation system's facilities;
- (3) Act as a liaison between the water users and the community; and
- (4) Assist the department in community hearings, meetings, legislative hearings, and informational public meetings.

(c) The advisory board shall elect a chairperson from among its members, whose duty is to conduct the meeting; and shall establish bylaws, which will govern its organization. The advisory board shall meet with the department at least twice a year for the purposes of long-range planning for the irrigation system's improvements. [Eff MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §167-5)

§4-157-23 Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and shall not invalidate this chapter in its entirety. [Eff
MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §167-5)

§4-157-24 Interim rules for temporary irrigation systems and districts. (a) Boundaries for a temporary irrigation district to be served by new infrastructure shall be defined and set by the administrator-chief engineer. These boundaries will change as necessary, until the temporary irrigation system has been completed and the irrigation district is approved and accepted by the board, at which time the boundaries shall become permanent.

(b) Acreage assessments shall not be assessed for consumers in an irrigation district being administered under the interim rules.

(c) Water tolls shall be assessed a surcharge of 6 cents per thousand gallons of irrigation water in irrigation systems being administered under the interim rules over the rates established in the table entitled "Schedule of Rates, Fees, and Charges for Irrigation Water Delivery Services at All DOA Irrigation Systems", dated September 27, 2005, attached as Exhibit "A" at the end of this chapter.

(d) All conditions in this chapter shall apply to a temporary irrigation district. In addition, interim rules shall apply to temporary irrigation districts as defined in this chapter. Where there is a conflict of rules, the interim rules shall supersede this chapter.

(e) Interim rules shall be in effect until the board officially establishes the irrigation district by specifically including it in this chapter. [Eff

MAR 17 2006] (Auth: HRS §167-5) (Imp: HRS §§167-5, 167-6, 167-11, 167-15, 167-16, 167-17, 167-19)

September 27, 2005

SCHEDULE OF RATES, FEES, AND CHARGES
FOR IRRIGATION WATER DELIVERY SERVICES
AT ALL DOA IRRIGATION SYSTEMS

<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
----------------	----------------	----------------	----------------	----------------	----------------

<u>WATER TOLL CHARGES (CENTS PER 1,000 GALLONS)</u>					
---	--	--	--	--	--

36	40	42.5	45	47.5	50
----	----	------	----	------	----

<u>WATER SERVICE AND SERVICE CONNECTION APPLICATION FEE</u>					
---	--	--	--	--	--

\$55	\$55	\$60	\$60	\$60	\$65
------	------	------	------	------	------

<u>DISHONORED CHECK SERVICE CHARGE PLUS INTEREST</u>					
--	--	--	--	--	--

As provided in section 40-35.5, Hawaii Revised Statutes.

<u>STANDARD DEPOSIT FOR A NEW SERVICE CONNECTION</u>					
--	--	--	--	--	--

\$1,000					
---------	--	--	--	--	--

<u>METER/SERVICE CONNECTION CHARGES</u>					
---	--	--	--	--	--

At Cost					
---------	--	--	--	--	--

<u>COPYING FEES FOR DOCUMENTS OR DRAWINGS REQUESTED FROM THE DEPARTMENT</u>					
---	--	--	--	--	--

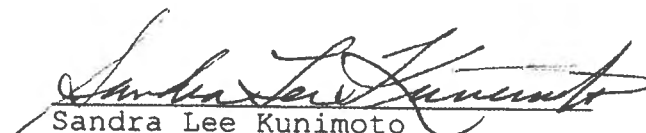
50 cents per page for pages up to 11" x 17".
All other sizes shall be charged at cost.

B-91


DEPARTMENT OF AGRICULTURE

Chapter 4-157, Hawaii Administrative Rules, on the Summary Page dated September 27, 2005, was adopted on September 27, 2005, following public hearings held on September 7 and 8, 2005, after public notice was given in the **Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island** on August 3, 2005.

The adoption of chapter 4-157 shall take effect ten days after filing with the Office of the Lieutenant Governor.

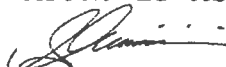

Sandra Lee Kunimoto
Chairperson
Board of Agriculture

APPROVED:


Linda Lingle
Governor
State of Hawaii

Dated: 3/6/06

APPROVED AS TO FORM:


Deputy Attorney General

Filed

LIEUTENANT GOVERNOR'S
OFFICE

06 MAR -7 09:47

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

May 27, 2025

Board of Agriculture
Honolulu, Hawaii

Subject: CERTIFICATION OF ACREAGE ASSESSMENTS FOR
THE HONOKAA-PAAUILO, KAHUKU, MOLOKAI,
WAIMANALO, AND WAIMEA IRRIGATION SYSTEMS,
2026 FISCAL YEAR

BACKGROUND:

Section 167-19(a), Hawaii Revised Statutes, states, "The board shall determine and certify on or before June 30 of each year the amount of acreage assessments necessary in that fiscal year for the acquisition, construction, operation, and maintenance of irrigation facilities for each project, and the acreage of agricultural and pastureland of each land occupier within the project." For the 2026 fiscal year, the Agricultural Resource Management Division has determined that acreage assessments for the following irrigation systems are:

Irrigation System	Acreage Assessment
Honokaa-Paauilo	\$99,103.00
Kahuku	\$31,910.00
Molokai	\$99,103.00
Waimanalo	\$99,103.00
Waimea	\$99,103.00

The acreage of agricultural and livestock lands of each land occupier within the Irrigation Systems are as follows:

Irrigation System	Agricultural Acreage	Livestock Acreage	Land Occupier Exhibit
Honokaa-Paauilo	726	6,582	A
Kahuku	168	None	B
Molokai	3,413	None	C
Waimanalo	978	None	D
Waimea	702	None	E

Board of Agriculture
May 27, 2025
Page 2

RECOMMENDATION:

1. That the Board determine and certify that the amount of acreage assessments necessary for annual maintenance of the listed five (5) irrigation systems for fiscal year 2026 are as listed.
2. That the Board determine and certify that the acreage of agricultural and livestock lands of each land occupier within the listed irrigation system is as set forth in attachments A through E.
3. That the Board determine and certify that agricultural lands shall bear 100% of the annual acreage assessments, for the Kahuku, Molokai, Waimanalo, and Waimea Irrigation Systems; and
4. That the Board determine and certify that agricultural and pastoral lands shall bear 70% and 30%, respectively, of the annual acreage assessments for the Honokaa-Paauilo Irrigation System.

Respectfully submitted,



BRIAN KAU, P.E.
Administrator
Agricultural Resource Management Division

Attachments

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Exhibit A – Honoka‘a-Pa‘auilo, Acreage by Account FY2026

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
6801	7	6876	5	6991	4	69830	8
6803	10	6880	3	6993	6	6821	14
6804	7	6892	5	6995	6	6818	9
6810	2	6894	12	6996	2	6819	9
6812	2	6897	10	6997	5	6909	9
6813	5	6901	5	6998	14	68091	5
6822	11	6904	4	6999	5	68381	6
6823	20	6905	14	68011	13	68461	12
6824	5	6907	9	68060	13	68981	6
6830	14	6908	5	68250	3	7000	15
6832	6	6910	6	68260	4	7001	141
6833	5	6911	22	68341	5	7002	625
6835	3	6914	39	68402	6	7005	60
6837	4	6916	2	68430	4	7006	21
6841	3	6917	5	68600	5	7007	4
6845	7	6919	8	68680	4	7008	8
6851	5	6920	5	68690	5	7009	10
6853	5	6921	17	68790	3	7010	192
6855	5	6935	1	68910	15	7011	9
6857	5	6940	4	68930	16	7012	3
6859	5	6953	11	68990	3	7013	34
6861	2	6954	13	69311	3	7016	57
6862	4	6955	16	69331	10	7017	27
6863	5	6956	8	69341	5	7018	260
6864	5	6960	12	69360	4	7020	163
6865	5	6962	21	69371	7	7036	677
6867	5	6967	8	69380	2	7037	125
6868	3	6969	7	69410	2	7038	3
6870	5	6970	4	69581	11	7040	3
6871	4	6972	3	69640	13	7042	311
6873	5	6975	12	69650	8	7043	351
6874	5	6987	2	69661	10	7044	32
6875	5	6990	5	69760	10	7045	716

B-95

Board of Agriculture
May 27, 2025
Page 4

Exhibit A – Honoka‘a-Pa‘auilo, Acreage by Account FY2026, continued

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
7047	682	7054	142	7061	1	7077	26
7048	47	7055	140	7062	2	7078	22
7049	32	7056	4	7063	446	7080	100
7050	13	7057	6	7064	17	Total	7308
7051	2	7058	594	7066	163		
7052	4	7059	15	7069	68		
7053	10	7060	29	7073	100		

Exhibit B – Kahuku, Acreage by Account FY2026

ACCT	ACRES
3501	15
3502	7
3503	7
3504	11
3505	4
3506	4
3507	9
3508	7
3509	9
3510	4
3511	4
3512	4
3513	6
3514	5
3515	2
3516	6
3517	8
3518	7
3519	8
3520	9
3521	6
3522	8
3523	8
3524	10
Total	168

Exhibit C – Moloka‘i, Acreage by Account FY2026

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
5000	3	5036	2	5074	2	5112	2
5001	3	5038	10	5075	3	5113	6
5002	9	5039	2	5076	2	5115	5
5003	5	5040	5	5077	2	5117	25
5004	4	5041	15	5078	2	5118	2
5005	2	5043	3	5079	2	5119	2
5006	110	5044	30	5080	2	5120	2
5007	92	5045	11	5081	3	5121	2
5010	4	5047	2	5082	2	5122	6
5011	2	5048	3	5083	30	5124	21
5012	35	5049	95	5084	2	5126	2
5013	3	5050	46	5085	2	5127	2
5014	2	5051	30	5086	5	5128	30
5015	2	5052	2	5087	8	5129	2
5016	2	5053	2	5088	2	5130	2
5017	2	5055	3	5089	2	5131	150
5018	2	5056	2	5090	5	5132	2
5020	2	5057	23	5091	2	5133	3
5021	2	5058	2	5092	2	5134	2
5022	5	5059	29	5093	2	5135	2
5023	2	5060	39	5094	2	5138	3
5024	26	5061	30	5095	2	5139	2
5025	2	5062	30	5096	2	5140	2
5026	2	5063	2	5097	2	5141	12
5027	2	5064	5	5100	2	5142	2
5028	3	5065	2	5101	2	5143	2
5029	2	5066	3	5103	2	5148	16
5030	2	5067	2	5105	19	5150	2
5031	2	5068	3	5107	2	5151	3
5032	4	5069	22	5108	20	5152	25
5033	2	5070	26	5109	2	5153	30
5034	2	5072	3	5110	2	5155	2
5035	7	5073	2	5111	2	5156	2

Exhibit C – Moloka‘i, Acreage by Account FY2026, continued

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
5157	2	5192	314	5222	35	5256	2
5159	2	5193	2	5223	98	5257	2
5161	5	5194	2	5225	2	5258	2
5162	2	5195	2	5226	25	5259	2
5163	2	5196	2	5227	3	5260	2
5164	4	5197	2	5228	2	5261	2
5165	28	5198	3	5229	2	5262	2
5166	3	5199	2	5230	2	5267	2
5167	2	5200	2	5231	2	5271	2
5168	2	5201	2	5232	2	5272	2
5169	35	5202	2	5233	2	5273	20
5170	10	5203	377	5234	2	5274	5
5171	31	5204	2	5235	2	5276	5
5172	3	5205	2	5236	2	5280	5
5174	45	5206	2	5239	2	5281	322
5175	2	5207	2	5240	2	5282	27
5177	3	5208	2	5241	2	5283	16
5178	148	5209	2	5242	2	5284	9
5179	2	5210	2	5243	2	5285	25
5180	4	5211	25	5244	2	5286	5
5181	5	5212	2	5246	2	5288	16
5182	2	5213	2	5247	2	50990	25
5183	3	5214	2	5248	2	51360	2
5184	2	5215	2	5249	2	51770	2
5185	2	5216	2	5250	2	52240	30
5186	8	5217	2	5251	2	Total	3413
5187	7	5218	2	5252	2		
5188	30	5219	2	5253	12		
5189	50	5220	2	5254	2		
5190	90	5221	2	5255	2		

Exhibit D – Waimānalo, Acreage by Account FY2026

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
2000	10	2046	7	2090	8	2129	10
2001	3	2047	5	2091	9	2131	8
2003	8	2048	3	2092	9	2132	6
2004	9	2049	10	2093	5	2133	2
2005	3	2050	9	2094	2	2134	2
2006	11	2053	6	2095	4	2137	3
2007	9	2054	9	2096	3	2138	2
2008	6	2055	4	2097	5	2143	3
2010	9	2057	3	2098	10	2144	4
2012	2	2058	6	2102	5	2147	0
2015	9	2060	5	2104	2	2148	0
2016	6	2061	2	2105	4	2149	0
2018	9	2062	2	2106	8	2150	0
2021	8	2064	9	2107	128	2157	8
2022	10	2065	5	2109	5	2158	8
2023	6	2068	9	2110	9	2159	2
2024	2	2069	2	2111	5	2160	2
2026	11	2070	4	2112	48	2161	2
2028	3	2072	2	2115	10	2162	2
2029	4	2073	3	2116	5	2163	3
2030	9	2074	8	2117	8	2164	5
2033	6	2075	9	2119	3	2165	3
2034	10	2076	6	2120	11	2167	2
2036	10	2079	9	2121	12	2170	0
2037	9	2081	5	2122	7	2171	0
2039	2	2082	14	2123	11	2172	2
2040	10	2083	4	2124	11	2173	3
2041	11	2084	4	2125	11	2180	9
2042	7	2085	11	2126	10	2182	8
2043	10	2088	6	2127	11	2183	9
2044	2	2089	7	2128	9	2184	4

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
2186	6	2192	3	2200	10	2207	2
2187	2	2193	2	2201	2	2208	3
2188	3	2196	2	2203	2	Total	978
2189	7	2198	2	2204	3		
2190	10	2199	2	2205	5		

Exhibit E – Waimea, Acreage by Account FY2026

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
1000	2	1034	9	1079	10	1115	5
1002	11	1035	3	1080	2	1116	2
1003	4	1036	2	1082	4	1117	4
1004	2	1037	12	1083	6	1118	5
1005	17	1040	6	1084	0	1119	5
1006	0	1041	12	1085	2	1120	2
1007	10	1042	4	1086	2	1121	4
1008	10	1043	6	1087	4	1122	2
1009	10	1050	5	1088	2	1124	6
1011	21	1052	2	1089	5	1126	5
1012	8	1053	3	1090	2	1127	2
1013	10	1056	4	1092	2	1128	5
1014	23	1057	2	1093	3	1129	10
1015	11	1058	2	1094	2	1130	6
1016	9	1059	2	1095	2	1131	6
1017	9	1060	2	1096	2	1132	6
1018	19	1061	2	1097	2	1133	6
1019	9	1062	3	1098	2	1134	2
1020	10	1064	2	1099	2	1135	2
1021	2	1066	3	1100	2	1136	5
1022	2	1068	2	1101	2	1137	5
1023	7	1069	2	1102	2	1138	5
1024	3	1070	2	1104	2	1139	2
1026	10	1071	2	1105	2	1140	2
1027	5	1072	7	1106	2	1141	5
1028	9	1073	2	1107	2	1142	6
1029	2	1074	4	1108	2	1143	6
1030	9	1075	2	1111	2	1144	2
1031	11	1076	4	1112	2	1145	5
1032	10	1077	3	1113	2	1146	2
1033	9	1078	2	1114	2	1150	3

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
1151	2	1157	3	1162	5	10470	6
1153	21	1158	5	1163	5	10490	5
1154	2	1159	5	1166	4	Total	702
1155	4	1160	2	10250	7		
1156	5	1161	9	10460	7		