

A2

**AGRICULTURAL
LOANS:**

None

**LOAN REQUEST
& PURPOSE:**

<u>Amount</u>	<u>Class C</u>
\$500,000	Direct Aquaculture Corporation

This loan request will allow the applicant to complete building the processing center, finish the greenhouses, and tank spaces, drill a well, move the tilapia stock & remaining materials, and includes funds for working capital.

Project Breakdown:

\$256,500	Processing Center & Greenhouses
\$ 90,000	Well
<u>\$153,500</u>	Working Capital & Direct Start-up
\$500,000	

TERMS:

Class C- Direct Aquaculture Corporation Loan

Amount:	\$500,000
Term:	Twenty (20) Years
Interest rate:	5% per annum, fixed.
Repayment:	Monthly principal and interest payments of \$3,300 until maturity.

SECURITY:

The Class C will be secured as follows:

1) Second position accommodation mortgage on 6.5-acre fee simple parcel property identified by Tax Map Key (TMK) (3) 5-5-007-023 owned by the Revocable Trust of Margaret Kije Hazelwood. The county tax assessed total market value is \$964,800. The property has been excavated and terraced to level out sites on the otherwise 0-12% slope of compacted Kohala silty clay. There are four 30 x 100 feet green houses, seven 4,000-gallon enclosed water tanks, five 30,000-gallon (fish) tanks, and the framing for the processing center on site. There is further plumbing put in throughout the acreage for additional processing space,

framing for another greenhouse, and plumbing to each terrace for greenhouses as part of the next phase of development. There is also the framing for four more 30,000-gallon tanks. While the property runs off grid pulling water from neighboring wells, it also has access to county water. The first position is held by American AgCredit for \$94,000 for a line of credit.

Shown below is the Loan-to-value Ratio:

$$\begin{array}{l} \text{Loan to} \\ \text{Value Ratio} \end{array} \quad \frac{\$500,000 \text{ (Prop. Loan)} + 94,000 \text{ (Am. AgCredit)}}{\$964,800 \text{ (Assessed Market Value)}} = 61.57\%$$

The county tax assessed total market value is \$964,800 and meets statute requirements of 85%. Due to an abundance of equity in real estate, the value of the chattel was not included in the loan to value ratio.

2) A junior financing statement and security agreement for working capital on all crops, accounts, inventory, equipment, tools, and aquaculture supplies. First position is held by FSA.

GUARANTORS:

Robert Endreson & The Revocable Trust Agreement of Margaret Kije Hazelwood, July 27, 2021.

**FINANCIAL
CONDITION:**

SEE EXHIBIT A (CONFIDENTIAL)

**REPAYMENT
ABILITY:**

SEE EXHIBIT A (CONFIDENTIAL)

INSURANCE:

Hazard Insurance with Department of Agriculture and Biosecurity named as mortgagee.

A3

**BACKGROUND/
MANAGEMENT
ABILITY:**

The Kohala Mountain Fish Company LLC (KMFC) was started in 2016 as a project of the Kohala Institute (KI) where it was spearheaded operationally by Robert Endreson. Robert previously worked as a commercial fisherman and helped design the tilapia operations elsewhere before being hired by KI. In 2022 the operation was transferred to Robert Endreson fully. KMFC now is owned and managed by his son Mathew Endreson as President, and Margaret Hazelwood as secretary. KMFC includes Marley Endreson and Kaycen Endreson as non-managing members. Robert recently stepped back from the role of secretary but remains a consultant for the facilities.

The operation was moved to Ms. Hazelwood's land from the Kohala Institute in July of 2023. She and her late husband owned the land for more than twenty years having created an orchard on the sugarcane land. They farmed fruit such as citrus, avocado, and mangos, before leasing the land to KMFC. Ms. Hazelwood has further assisted in the aquaculture project lending in the lands development.

Matthew Endreson has been working on the new site since 2023 managing the build-out and maintaining the operation. He previously worked as the processing manager at KI. He and his father improved on the original business plan, creating a more efficient, less time-intensive production model. KMFC will be growing the tilapia to 1.25 pounds as opposed to 3 pounds to be sold as fillets. Robert will continue to mentor Matthew and consult for KMFC bringing his years of experience and knowledge.

The business has the fish inventory and equipment to generate profits within 4 months of completing construction and within the first year of production realizing profits. KMFC will use rotation to maximize their systems efficiency both for the growing space for fish using their hatchery and grow tanks and the lettuce production. This strategy also stabilizes supply for their markets.

There are two parts to this project. Phase 1 is completion of construction, permitting, moving fully onto the new site, and the start of lettuce production. Phase 2 will start

generating fish sales and add the production of lettuce from three more greenhouses.

SUMMARY:

There has been considerable time and monetary investment to get it to this point in its build. The aquaculture project is in the last phases of completion and remains in a pre-revenue state. KMFC has all the necessary aquaponic supplies, processing equipment, and fish stocks on hand to generate income once construction is completed on the processing center. The Endresons and Ms. Hazelwood remain committed and brings years of dedication, knowledge, and experience.

The benefit to the state is the increasing diversification of protein resources available and further development of the aquaculture industry. It will capitalize on an opportunity to use the equipment available for local food security. The project has the support of other community members, as well as being well connected with the aquaculture industry.

TURNDOWNS:

Bank Five Nine, McKinley Alaska Growth Capital, and Hawaii National Bank have declined credit due to insufficient collateral, lack of revenue, and insufficient credit file.

AS

AG

RECOMMENDATIONS: Staff recommend approval based on management experience, projected timeline, cashflow projections, and strength of collateral.

Loan is conditional on contracted monthly bookkeeping and accounting service to facilitate third party financial record keeping. Disbursements will be based on agreed upon projection and building timeline.

Date

Recommended by:

10/16/25


Jillian C. Scheibe
Agricultural Loan Officer V

Date

Reviewed and concurred by:

OCT 16 2025


Richard A. Nichols
Agricultural Loan Administrator

Date

Approved for submission:

10/16/2025


Sharon Hurd
Chairperson, Board of Agriculture and Biosecurity

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

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: REQUEST FOR APPROVAL FOR THE TRANSFER OF PUBLIC LANDS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND BIOSECURITY, PURSUANT TO ACT 90, SLH 2003, CODIFIED AS CHAPTER 166E, HAWAII REVISED STATUTES; TMK NOS.: (3) 4-1-004:033 AND (3) 4-2-007:002, ISLAND OF HAWAI'I

Authority: Section 166E-3, Hawaii Revised Statutes ("HRS")

BACKGROUND:

Act 90, Sessions Laws of Hawaii ("SLH") 2003, established the Non-Agricultural Park Lands Program within the Hawai'i Department of Agriculture, now known as the Department of Agriculture and Biosecurity ("DAB"), and was codified as Chapter 166E, HRS. Under this program, the Legislature found that certain public lands classified for agricultural use by the Department of Land and Natural Resources ("DLNR") should be transferred to the DAB for purposes and in a manner consistent with Article XI, Section 10, of the Hawai'i State Constitution.

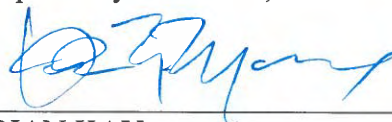
The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the DLNR for agricultural purposes by allowing these lands to be transferred to the DAB for leasing and management.

In accordance with provisions of Act 90, SLH 2003, the Board of Agriculture, now known as the Board of Agriculture and Biosecurity (Board must mutually approve of the selected encumbrances for transfer. Staff verified compliance of one (1) encumbrance for approval by Board as listed in the attached Exhibit A.

RECOMMENDATION:

Staff reviewed the list of proposed encumbrances and performed its due diligence and recommends that the Board approve the transfer of the one (1) encumbrance as listed above.

Respectfully submitted,


for BRIAN KAU
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachments - Exhibit "A"

APPROVED FOR SUBMISSION:


SHARON HURD
Chairperson, Board of Agriculture and Biosecurity

EXHIBIT "A"

Doc. No.	Lessee	Tax Map Key (TMK)	Character of Use	Leased Area (Acreage)
S-6054	Mauna Kea Moo, LLC	(3) 4-1-004:033 & (3) 4-2-007:002	Dairy	1404.25 (Approx. Gross Area) 1395.37 (Approx. Net Area)

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

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: REQUEST FOR APPROVAL TO: (1) CANCEL GENERAL LEASE S-4805; WADE M. OKAMOTO, LESSEE; (2) ISSUE THE CANCELLATION DOCUMENT; AND (3) DISPOSE OF THE PARCEL TO THE PUBLIC BY NEGOTIATION; TMK: 3rd DIV/1-5-116:041, LOT 14, PĀHOA AGRICULTURAL PARK, PHASE II, KEONEPOKO IKI, PUNA , ISLAND OF HAWAI'I, HAWAI'I

Authority: Section 166-6, Hawaii Revised Statutes ("HRS"), and Section 4-153-3, 13, 19 and 34 Hawaii Administrative Rules ("HAR")

Lessee: Wade M. Okamoto

Land Area: 5.002 acres

Tax Map Key: 3rdDiv/1-5-116:041 (Exhibit "A")

Lease Term: 55-years, May 1, 1982, through April 30, 2037

Land Status: Encumbered by Governor's Executive Order No. 3380, dated February 26, 1988, to the Department of Agriculture, now known as the Department of Agriculture and Biosecurity, for Agricultural Park Purposes

Annual Base Rent: \$830.00 per year

Character of Use: Diversified Agriculture

BACKGROUND:

In 1983, General Lease S-4805 was awarded by the Board of Land and Natural Resources to Wade M. Okamoto. The subject property was transferred to the Department of Agriculture, now known as the Department of Agriculture and Biosecurity, by Governor's Executive Order No. 3380, dated February 26, 1988.

The lessee developed the subject property with the cultivation of anthuriums, orchids and green foliage.

Mr. Okamoto fell ill several years ago and passed away in 2022. Since falling ill, the agricultural activity on the property continuously decreased and the lessee fell behind on annual lease rents, and real property taxes. Numerous Certified Mail letters were mailed to the lessee in attempts to cure the cited defaults and bring the property back into compliance with the terms of the lease. In addition, staff had several conversations with the lessee's family members regarding the defaults and provided available options for assigning the lease. Unfortunately, all efforts to cure the said defaults have been exhausted and all attempts to assign the lease were unsuccessful.

To date, no one has come forward as being authorized by the appropriate courts as a personal representative for Mr. Okamoto's estate to legally act on his behalf. After reviewing the Hawai'i State Judiciary website, no probate matters were opened. As of this date there is no farming activity occurring on the leased premises. There are also unpaid, delinquent real estate property taxes, and a past due annual lease balance in the amount of \$4,399.67.

In accordance with section 4-153-33 (a)(5), HAR, in the event of the absence or cessation of any devise, bequest, or intestate succession, the leasehold interest and all improvements thereon shall be surrendered to the Board, free and clear of any claims or encumbrances.

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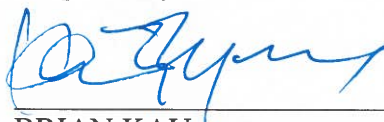
RECOMMENDATION:

Staff recommends that the Board of Agriculture and Biosecurity:

1. Approve the cancellation of General Lease S-4805 pursuant to section 4-153-34, HAR, and terminate all right, title, and interest granted to the Lessee therein effective as of the date of approval of this submittal;
2. Authorize issuance of lease cancellation documents to be executed by the Chairperson and recorded at the Bureau of Conveyances;
3. Authorize staff to prepare TMK: (3) 1-5-116:041 for disposition to the public by negotiation, pursuant to Sections 4-153-3, 13, and 19, HAR; and
4. Approve the request to refer General Lease S-4805 as delinquent accounts to the Office of the Attorney General for review and disposition in accordance with Section 40-82, HRS.

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

Respectfully submitted,


for BRIAN KAU
Administrator and Chief Engineer,
Agricultural Resource Management Division

Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:


SHARON HURD
Chairperson, Board of Agriculture

**GENERAL LEASE S-4805
 PHOTOS**



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

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: REQUEST TO APPROVE RENTAL OFFSET, GENERAL LEASE NO. S-4754A; FU YE SUN, LESSEE; TMK: (3) 2-2-056:033, PANA'EWA AGRICULTURAL PARK, ISLAND OF HAWAI'I, HAWAI'I

Authority: Section 166-9, Hawaii Revised Statutes ("HRS"), and Section 4-153-24 (2), Hawaii Administrative Rules ("HAR")

Lessee: Fu Ye Sun

Land Area: 10.170 gross acres

Tax Map Key: (3) 2-2-056:033 (see Exhibit "A")

Lease Term: 35 years, January 1, 2024, through December 31, 2058

Land Status: Encumbered by Governor's Executive Order No. 3378, dated February 26, 1988, to the Department of Agriculture, now known as the Department of Agriculture and Biosecurity, for Agricultural Park Purposes

Annual Base Rental: \$8,510.00 per year, until rental reopening on January 1, 2039

Character of Use: Diversified Agriculture

BACKGROUND:

General Lease S-4754A was awarded to Fu Ye Sun effective January 1, 2024. The lessee submitted expense receipts for equipment and services rendered for the clearing of the subject parcel in preparation for the planting of his crops, longan and lychee.

The Lessee is requesting a rental offset of up to two years of the annual lease rents of \$17,020.00. Total expenses for the land clearing were \$44,500.00, exceeding the allowable offset. Pursuant to 4-153-24 (2), HAR, and General Lease S-4754A, the Board of Agriculture and Biosecurity may permit the Lessee to offset the cost of land clearance and improvements against not more than two (2) years of base annual rental.

RECOMMENDATIONS:

That the Board of Agriculture and Biosecurity approve the Lessee's request for a rental offset of up to two years of base annual lease rent in accordance with the terms and conditions of General Lease No. S-4754A and Section 4-153-24 (2), HAR, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



BRIAN KAU
Administrator and Chief Engineer
Agricultural Resource Management Division

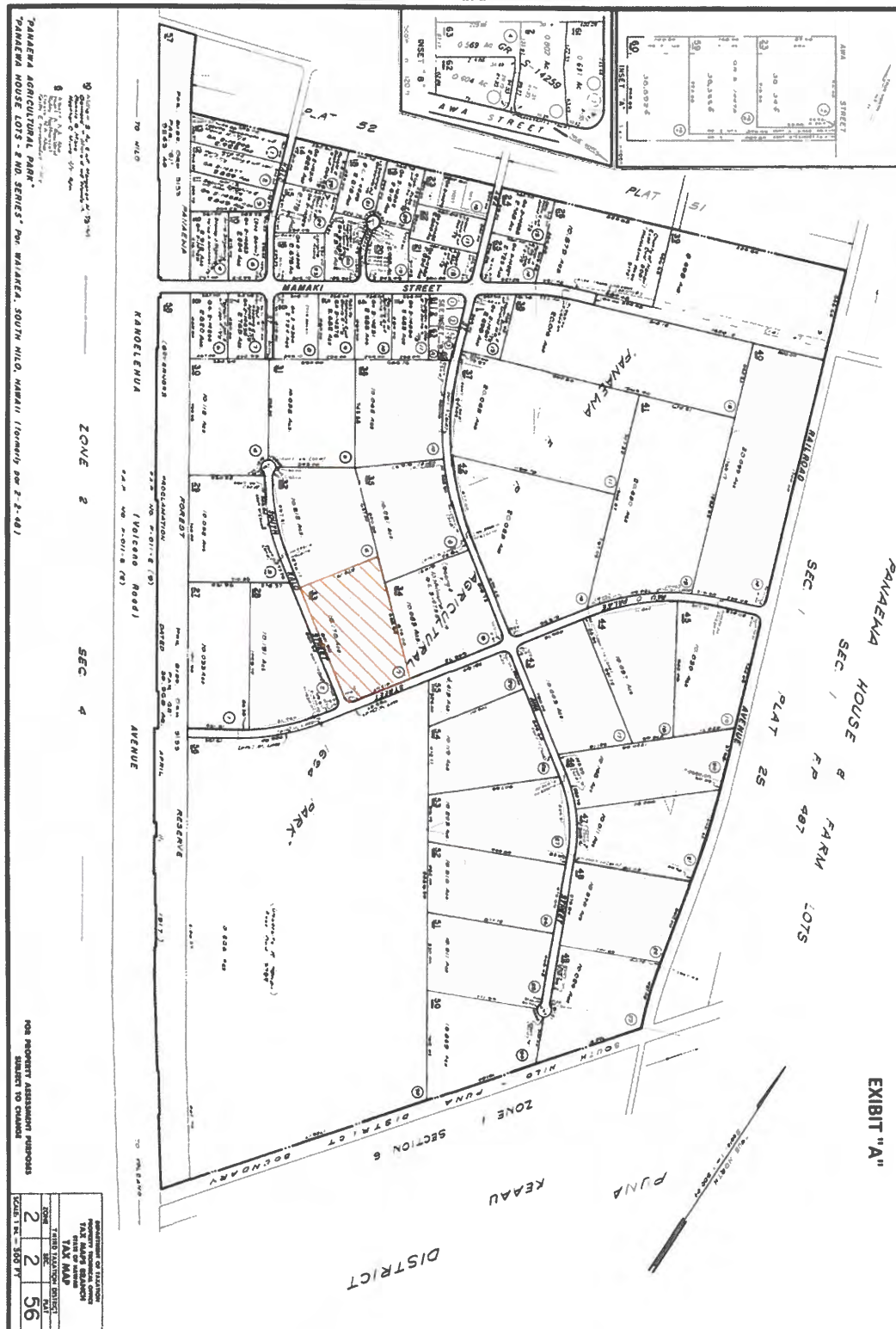
Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson
Board of Agriculture and Biosecurity

EXHIBIT A



PHOTOS OF GENERAL LEASE S-4754A

BEFORE IMPROVEMENTS



AFTER IMPROVEMENTS



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

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: REQUEST FOR:

(1) APPROVAL FOR DEPARTMENT OF LAND AND NATURAL RESOURCES / EURUS ENERGY AMERICA LLC TO SUBDIVIDE TMK: (1) 9-1-031:001, INCLUDING GENERAL LEASE S-3138, HAWAII LAND & LIVESTOCK, LLC, LESSEE, INTO TWO PARCELS CONSISTING OF 9.385 AND 100.721 ACRES;

(2) APPROVAL OF MODIFICATION OF GENERAL LEASE S-3138; HAWAII LAND & LIVESTOCK, LLC, LESSEE, CONTINGENT UPON SUBDIVISION OF TMK: (1) 9-1-031:001, REFLECTING: A REDUCTION IN AREA FROM 110.106 TO 9.385 ACRES; A REDUCTION IN RENT FROM \$18,300.00 PER YEAR TO \$1,600.00 PER YEAR; AND THE CORRECTION OF THE LEASE EXPIRATION DATE FROM DECEMBER 31, 2055 TO DECEMBER 31, 2054;

(3) DELEGATION TO THE CHAIRPERSON TO NEGOTIATE AND EXECUTE LEASE MODIFICATION DOCUMENTS TO BE RECORDED AT THE BUREAU OF CONVEYANCES CONTINGENT UPON COMPLETION OF ALL THE ABOVE; AND

(4) CONCURRENCE WITH PARTIAL WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER 4584 (DATED MAY 15, 2019) OF APPROXIMATELY 100.721 ACRES, MORE OR LESS, FOR REVERSION TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES CONTINGENT UPON COMPLETION OF (i) THE SUBDIVISION OF TMK: (1) 9-1-031:001, AND (ii) THE MODIFICATION OF GENERAL LEASE S-3138; HAWAII LAND & LIVESTOCK, LLC, LESSEE, HONO'ULI'ULI, 'EWA, O'AHU, HAWAI'I

- Authority: Section 166E-3, Hawaii Revised Statutes (“HRS”), and Sections 4-158-2(a)(13) and 4-158-2(c)(5), Hawaii Administrative Rules (“HAR”)
- Lessee: Hawaii Land & Livestock, LLC
- Land Area: 110.106 acres
- Tax Map Key: (1) 9-1-031:001
(see Exhibit “A”)
- Land Status: Encumbered by Governor’s Executive Order No. 4584 to the Department of Agriculture for agricultural purposes on May 15, 2019.
- Lease Term: 35 years, January 1, 2020 – December 31, 2055 [sic – should be December 31, 2054]
- Current Rent: \$18,300.00 per year
- Additional Rent: 1.5% of the gross proceeds, which includes revenues from consignment sales and subletting.
- Permitted Use: Solely for diversified agriculture including animal feedlot purposes for finishing prior to slaughter of livestock.

BACKGROUND:

Pursuant to Section 171-11, HRS, as amended, Executive Order No. 4584 (“EO4585”), dated May 15, 2019, set aside 110.106 acres for agricultural purposes, and established a non-agricultural park parcel currently under the control and management of the Department of Agriculture and Biosecurity (“DAB”), Agricultural Resource Management Division (“ARMD”). EO4585 reserved to the Board of Land and Natural Resources (“BLNR”) the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with DAB’s use of the land.

The Board of Agriculture and Biosecurity (“Board”) awarded General Lease No. S-3138 to HAWAII LAND & LIVESTOCK, LLC, (“HL&L”) for a term of THIRTY-FIVE (35) years commencing on January 1, 2020, with the permitted use of diversified agriculture including animal feedlot purposes for finishing prior to slaughter of livestock. The lease set the expiration date as December 31, 2055, but that is in error as a 35-year term actually expires on December 31, 2054. Staff is including a recommendation below that the erroneous expiration date be corrected by an amendment of the lease.

In August 2020, ARMD became aware that a trucking company called AMERICAN HAULING, INC. ("American Hauling") was using a portion of the leased premises to stage trucks, trailers and other equipment. HL&L commenced efforts to relocate American Hauling first amicably and ultimately by legal eviction proceedings. This resulted in a long-standing non-compliance issue under General Lease No. S-3138 that was finally resolved when American Hauling secured a lease with the Department of Hawaiian Home Lands and vacated the property as of June 30, 2025. HL&L then dismissed its case against American Hauling.

At its meeting of June 24, 2025, under agenda Item IV.A.2, the Board approved the deregistration from Land Court of the subject parcel as well as two abutting parcels under the management control of DAB. At its meeting of June 26, 2025, the Agribusiness Development Corporation approved the deregistration of one other parcel that appears on the same Transfer Certificate of Title as the DAB-managed parcels. The Department of the Attorney General is working with the Bureau of Conveyances to complete the deregistration.

At its meeting of August 26, 2025, under agenda Item IV.B.1, the Board consented to the addition and withdrawal of officers of HL&L, which resulted in Jeff Rivera replacing Robert Farias as a member/owner of HL&L.

DAB and the Department of Land and Natural Resources ("DLNR") have come to an agreement to remove a portion of the area set aside under EO4584 for the potential future development of a solar-to-hydrogen plant on a portion of a property. Once the deregistration process is complete, the following must still occur to return a portion of the land to DLNR for its renewable energy project:

- 1) The parcel must be subdivided to facilitate the prospective use of approximately 100.721 acres as a solar-to-hydrogen facility under DLNR.
- 2) The lease that DAB currently has with HL&L will be amended to reduce the area of the leased premises to 9.385 acres, reduce the annual rent payable under the lease from \$18,300.00 to \$1,600.00 until the first rental reopening under the lease scheduled for January 1, 2030, and correct the lease expiration date to December 31, 2054.
- 3) The 100.721-acre portion will be withdrawn from EO4584 to DAB, resulting in the withdrawn acreage reverting to DLNR management.

Staff understands that HL&L is willing to reduce its acreage to approximately 9.385 acres of the total 110.106 acres of the feedlot parcel. One of the reasons for this is the smaller parcel will still have an ample supply of water available for slaughterhouse operations. DAB originally requested the transfer of the 110.106-acre parcel from DLNR in 2016 because the slaughterhouse needed the 800-gallon-per-acre water allocation for the parcel provided for under a 1997 Declaration of Covenants Regarding Water Consumption and Development, James Campbell Industrial Park ("Declaration"). The Declaration was put in place at a time when an agricultural water supply system served the industrial park and Campbell Estate required irrigation water for its remaining agricultural operations in the area.

With the phasing out of agriculture in the vicinity of the industrial park and the development of an improved Board of Water Supply delivery system, the water restrictions under the Declaration were no longer required. As a result, Campbell Estate's successor-in-interest released and terminated the Declaration earlier this year.

Staff further understands that HL&L and EURUS ENERGY AMERICA LLC ("EURUS"), who is the project proponent for the proposed solar-to-hydrogen facility, have agreed on the location of the 9.385 acres on the feedlot parcel to remain with HL&L. The agreed location ensures that EURUS's renewable energy project will not interfere with HL&L's operations and vice versa.

Once the Board approves the foregoing, then DLNR, with EURUS, will move toward subdivision of the property. After the subdivision, DLNR intends to request BLNR to approve a partial withdrawal of acreage from EO4584 that originally set aside the lands to DAB. The withdrawal will only cover the 100.721 acres, and the remaining 9.385 acres under EO4584 will stay with DAB.

RECOMMENDATION:

That the Board of Agriculture and Biosecurity:

1. Approve DLNR's / EURUS's request to subdivide TMK: (1) 9-1-031:001 including General Lease No. S-3138 into two parcels consisting of 9.385 and 100.721 acres;
2. Approve the modification of General Lease No. S-3138, Hawaii Land & Livestock, LLC, Lessee, contingent upon completion of the subdivision of TMK: (1) 9-1-031:001, to reflect a reduction in area from 110.106 to 9.385 acres, a reduction of the annual rent payable under the lease from \$18,300.00 to \$1,600.00 until the first rental reopening under the lease scheduled for January 1, 2030, and correction of the lease expiration date to December 31, 2054;
3. Delegate to the Chairperson the authority to negotiate and execute the lease modification documents to be recorded at the Bureau of Conveyances, contingent upon completion of all the above; and
4. Concur with the partial withdrawal of approximately 100.721 acres, more or less, from Governor's Executive Order No. 4584 (dated May 15, 2019) for reversion to DLNR contingent upon the completion of (i) the subdivision of TMK: (1) 9-1-031:001; and (ii) the modification to General Lease S-3138.

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

Board of Agriculture and Biosecurity

October 28, 2025

Page 5

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian Kau", is written over a horizontal line.

BRIAN KAU

Administrator and Chief Engineer

Agricultural Resource Management Division

Attachment – Exhibit “A”

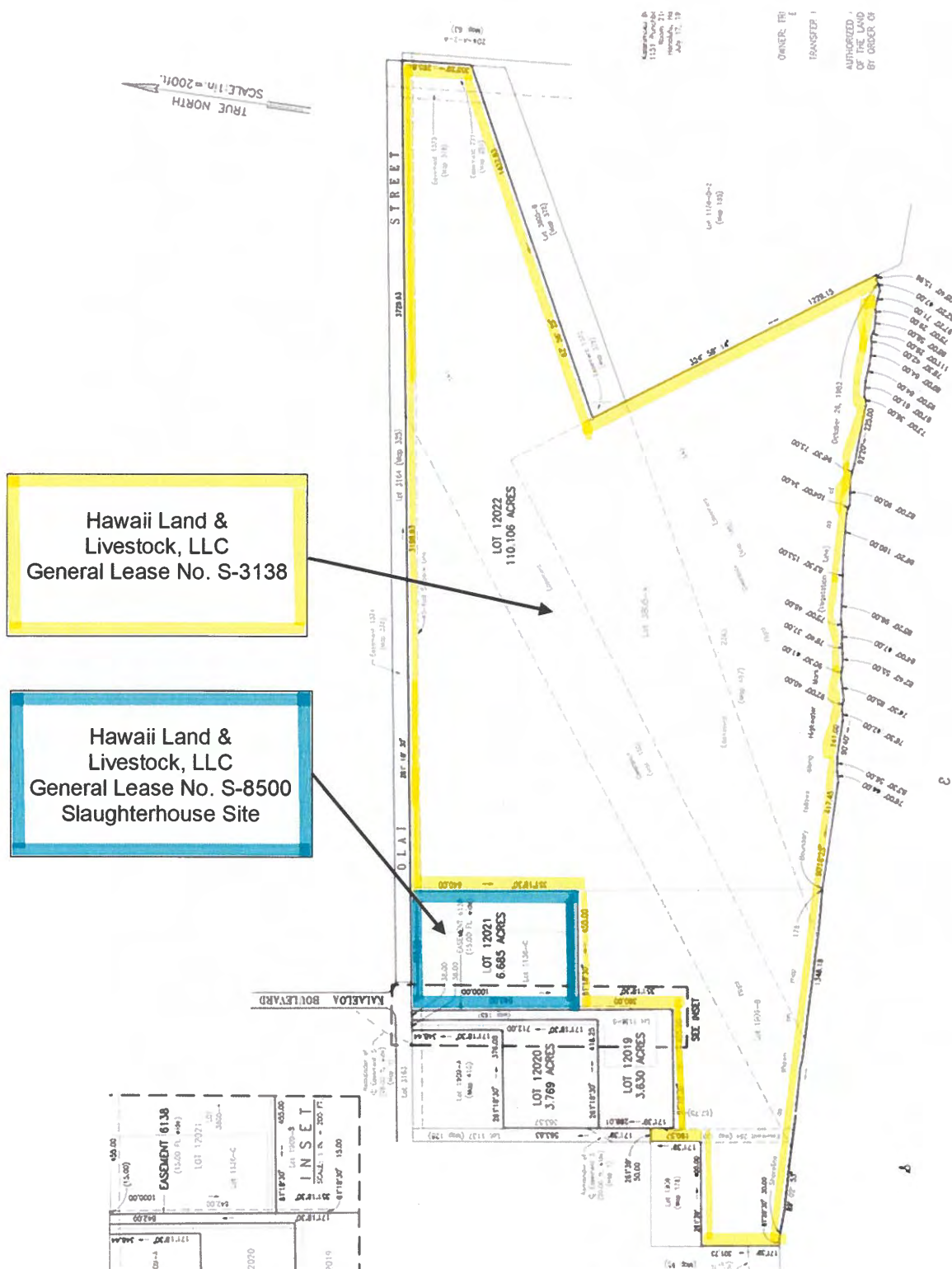
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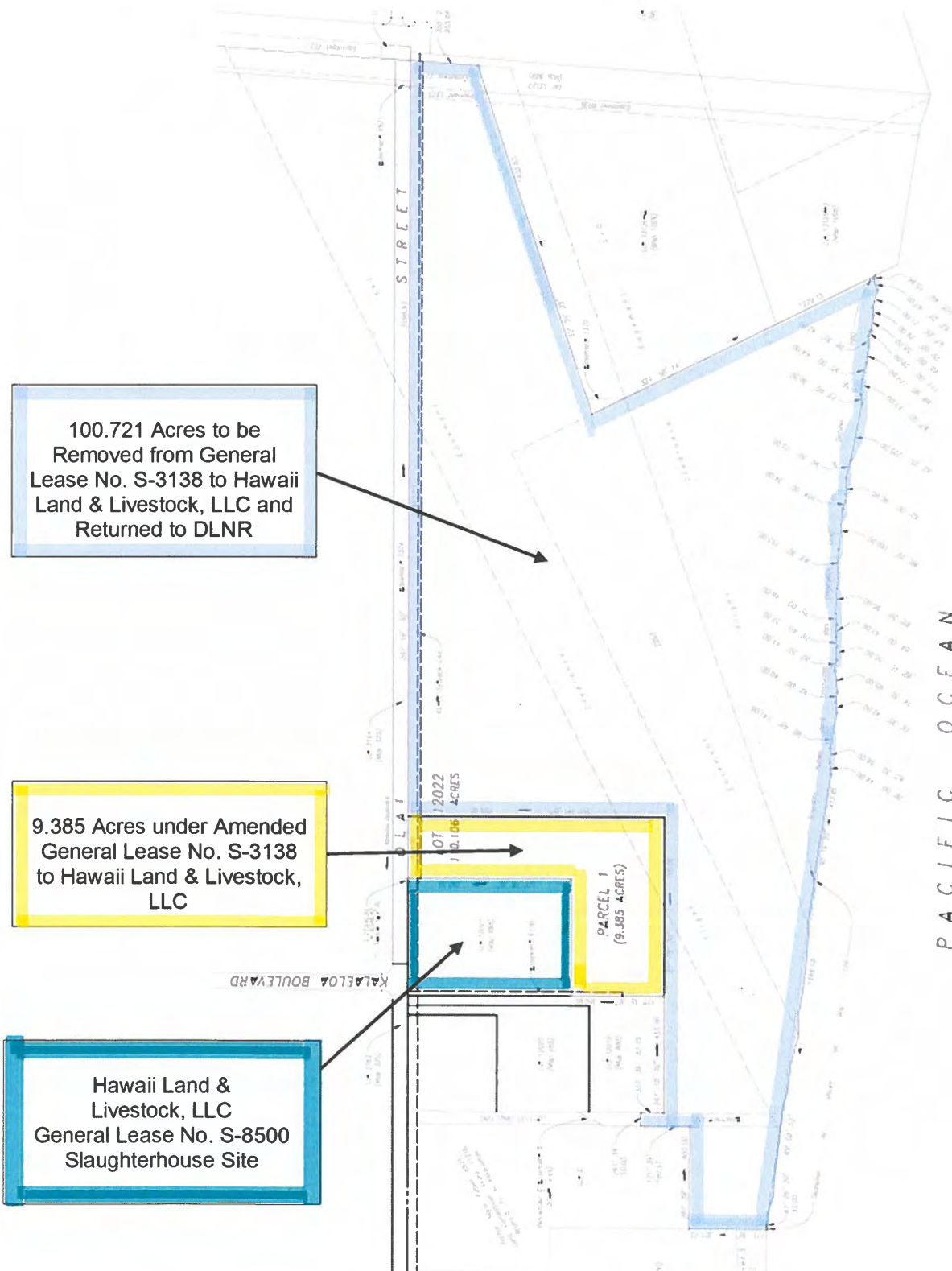
A handwritten signature in blue ink, appearing to read "Sharon Hurd", is written over a horizontal line.

SHARON HURD

Chairperson, Board of Agriculture and Biosecurity

EXHIBIT "A"





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

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: REQUEST FOR: (1) SUBMISSION OF HEARING OFFICER'S REPORT AND RECOMMENDATION ON CHAPTER 4-159, HAR; (2) REQUEST FOR ACCEPTANCE OF MINUTES OF PUBLIC HEARING; (3) REQUEST FOR ADOPTION OF PROPOSED RULE, CHAPTER 4-159 "AGRICULTURAL ENTERPRISE PROGRAM RULES, CHAPTER 4-159, HAR.

I. **Background**

The Hawai'i Department of Agriculture and Biosecurity (DAB) Agricultural Resource Management Division is proposing to establish Chapter 4-159, Hawaii Administrative Rules ("HAR"), Agricultural Enterprise Program Rules.

DAB 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 Program within the Hawai'i Department of Agriculture and Biosecurity. This newly created program allows tenants to operate broader activities related to and supportive of agriculture, while under the management and control of DAB.

Under the Agricultural Parks program and Non-Agricultural Parks program, the production of crops and organisms on DAB 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. Establishing the Agricultural Enterprise 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.

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

Additionally, there is no indication that customary and traditional Native Hawaiian rights on lands that may be reclassified as Agricultural Enterprise lands under DAB's control and jurisdiction will be impacted. Therefore, DAB does not believe any customary and traditional Native Hawaiian rights will be impacted by the enactment of these rules.

The Small Business Regulatory Review Board (SBRRB), which provides advisory comments to the Governor on administrative rules that affect small businesses met on October 16, 2025, and recommended the proposed adoption of Chapter 4-159, HAR, Agricultural Enterprise Program Rules.

II. Notice of Public Hearings

The Board of Agriculture and Biosecurity gave preliminary approval to the assignment of a hearings officer and to proceed to public notice on May 27, 2025. Following the Governor's preliminary approval to proceed to public hearing on the adoption of Chapter 4-159, Agricultural Enterprise Program Rules, a public notice was published on June 27, 2025, in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News for statewide circulation. The public notice was also posted on the Department's website.

The Notice of Public Hearing stated that the Department of Agriculture and Biosecurity would accept written testimony on the adoption of Chapter 4-159 until August 6, 2025. The public hearing was held on July 30, 2025, at 1849 Auiki Street, from 1 pm to 3 pm.

III. Hearing Results and Summary of Testimonies

During the public commenting period, there were no oral or written testimonies provided.

IV. Hearing Officer's Recommendation and Comments

Pursuant to section 4-1-28, Hawaii Administrative Rules (HAR), I am filing the Hearing Officer's Report on the above-referenced adoption of Chapter 4-159, HAR, Agricultural Enterprise Program Rules. The Public Hearing Officer recommended adoption of the proposed Chapter 4-159, HAR, entitled "Agricultural Enterprise Program Rules", as presented at the public hearing.

V. Staff Recommendation

That the Board of Agriculture and Biosecurity (1) accepts the official hearing officer's report, (2) accepts the minutes of the public hearing for the Agricultural Enterprise Program Rules, and (3) adopts the proposed rule, Chapter 4-159 "Agricultural Enterprise Program Rules", Chapter 4-159, HAR.

Respectfully submitted,



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

Attachment – Exhibit “A” Hearing Officer’s Report
Exhibit “B” Public Hearing minutes
Exhibit “C” Agricultural Enterprise Program Rules

APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture and Biosecurity

EXHIBIT "A"

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



State of Hawai'i
DEPARTMENT OF AGRICULTURE & BIOSECURITY
KA 'OIHANA MAHI'AI A KIA'I MEAOLA
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone (808) 973-9800 FAX (808) 973-9813

SHARON HURD
Chairperson
Board of Agriculture & Biosecurity

DEAN M. MATSUKAWA
Deputy to the Chairperson

August 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

**HEARINGS OFFICER'S REPORT ON PROPOSED ADOPTION OF CHAPTER 4-159,
(HAR), ENTITLED AGRICULTURAL ENTERPRISE PROGRAM RULES, REQUEST
FOR ACCEPTANCE OF MINUTES OF PUBLIC HEARING**

I. Notice of Public Hearing

Pursuant to section 4-1-28, Hawaii Administrative Rules (HAR), I am filing the Hearing Officer's report on the above-mentioned proposed adoption of Chapter 4-159, HAR that will allow the Department of Agriculture and Biosecurity (DAB) lessees to operate broader activities related to and supportive of agriculture, while under the management and control of DAB. The Board of Agriculture and Biosecurity (BAB) gave preliminary approval to these proposed amendments on May 27, 2025. Following the Governor's preliminary approval to proceed to public hearing on the adoption of this new rule, a Notice a Public Hearing was published on June 24, 2025 in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and the Garden Island for statewide circulation to City and County of Honolulu, County of Kauai, County of Hawai'i, and County of Maui. Informal notice of public hearing was posted on the Department's website.

The Notice of Public Hearing stated that DAB would accept written testimony on the proposed adoption of the new rule until August 6, 2025, at 1428 S. King Street, Honolulu, Hawaii, 96814, by fax to (808) 973-9467, or by email to hdoa.armd@hawaii.gov.

The public hearing was held on July 30, 2025, from 1:00 pm to 3:00 pm at 1849 Auiki Street, Honolulu, Hawaii 96819. Interested members of the public also had the opportunity to join and comment via telephone or zoom on July 30, 2025, from 1:00 pm to 3:00 pm.

II. Hearing Results and Summary of Testimonies

Testimony relevant to the adoption of Chapter 4-159 is summarized below:



A. ORAL TESTIMONY

Five (5) members of the Department of Agriculture and Biosecurity (DAB) were physically present at the hearing. Five (5) members of the DAB were online via zoom. One (1) member of the public was online and One (1) government representative from Senator Richards office was online. There was no testimony provided during the public hearing.

B. WRITTEN TESTIMONY

In total, there were two (2) email inquiries about the public hearing date and location, but no comments were provided.

III. Analysis and Response to Public Testimony and Comments

Changes made to the proposed rules were not substantive and consisted of:

1. Immaterial alterations to the rules included alignment, spacing, spelling, and subject verb agreement.
2. Clarification and consistency of the department and program name throughout the document

IV. Hearing Officer's Recommendation

As the appointed Public Hearing Officer, I recommend adoption of the proposed rules, Chapter 4-159, HAR, entitled "Agricultural Enterprise Program Rules" as presented at the public hearings.



Kori Koike, Planner
Agricultural Resource Management Division

EXHIBIT "B"

JOSH GREEN, M.D.
Governor

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July 30, 2025

Minutes for the Public Hearing of the
PROPOSED ADOPTION TO TITLE 4, SUBTITLE 8, CHAPTER 159, HAWAII
ADMINISTRATIVE RULES, ENTITLED "AGRICULTURAL ENTERPRISES LAND
PROGRAM RULES."

PRESENT

Kori Koike, Public Hearing Officer & Planner, Infrastructure Branch, Agricultural Resource Management Division ("ARMD"), State of Hawai'i Department of Agriculture and Biosecurity ("HDAB")

Lindsey Ancog, Office Assistant, Land Branch, ARMD, HDAB

Jason Azus-Richardson, IT Specialist, HDAB

Sharon Hurd, Chairperson, Board of Agriculture and Biosecurity

Kevin Moore, Agricultural Land Program Manager, Land Branch, ARMD, HDAB

Others Virtually Present¹

Brandi Ah Yo, Property Manager, Land Branch, ARMD, HDAB

Beryl Manliguis, Property Manager, Land Branch, ARMD, HDAB

Ruth R.

Gabe Nagtalon, Account Clerk, ARMD, HDAB

Diandra Goodwin-Leung, Engineer, ARMD, HDAB

Reggie Garcia, Hawaiian Affairs Committee Clerk, Office of Senator "Tim" Richards

I. CALL TO ORDER

The public hearing was called to order at 1:01pm on Wednesday, July 30, 2025, by Kori Koike in the Plant Quarantine Branch Conference Room located at 1849 Auiki Street, Honolulu, Hawai'i 96819 and simultaneously online via Zoom Meeting.

II. INTRODUCTION

Kori Koike introduced herself and stated that the purpose of the public hearing is to receive testimony on the proposed adoption of Hawaii Administrative Rules, Title 4, Subtitle 8, Chapter 159 - "4-159 Agricultural Enterprises Land Program Rules," to,

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

Minutes for the Public Hearing
July 30, 2025

among other things, allow HDAB lessees to operate broader activities related to and supportive of agriculture while under the management and control of HDAB. The notice for the public hearing and the adoption of the Agricultural Enterprises Land Program Rules was published in the *Honolulu Star Advertiser*, *Hawaii Tribune-Herald*, *West Hawaii Today*, *The Maui News*, and *The Garden Island Newspaper* on June 24, 2025. The public will be allowed to provide oral testimony here today until 3pm. Written testimony can be submitted until Wednesday, August 6, 2025.

Kori Koike read the notice of the public hearing out loud and stated that copies of the public hearing notice are available for review, along with copies of the proposed rules in Ramseyer format, in-person by appointment and online via the HDAB website.

Kori Koike instructed the public on how to provide testimony via Zoom and over-the-phone and stated that each testifier will be limited to two minutes of testimony. Oral testimony can be provided in-person until 3pm and written testimony can be submitted until Wednesday, August 6, 2025.

III. PUBLIC TESTIMONY

None

IV. ADJOURNMENT OF MEETING

The public hearing was adjourned at 3:00pm on Wednesday, July 30, 2025.

EXHIBIT "C"

CHAPTER 4-159 - ADOPTION OF NEW CHAPTER
Standard Format
(9/15/2025)

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Adoption of Chapter 4-159
Hawaii Administrative Rules

August 29, 2025

SUMMARY

Chapter 4-159, Hawaii Administrative Rules, entitled
"Agricultural Enterprise Program Rules", is adopted.

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Adoption of Chapter 4-159
Hawaii Administrative Rules

August 29, 2025

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

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 159

AGRICULTURAL ENTERPRISE 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 and biosecurity, 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 ranches.

"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 and biosecurity 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 and biosecurity.

"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 and biosecurity.

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

"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 and biosecurity 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 percent 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) Have 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) Are 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) Have 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) Possess a general excise tax license from the state tax department and has filed tax returns on it;
- (3) Have maintained a viable agricultural enterprise operation;
- (4) Have 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) Possess an agricultural enterprise business financial plan, farm business financial plan or conservation plan; or
- (6) If applicable, are 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) Reassess the agricultural enterprise lands program and define new directions and priorities for the program;
- (2) Identify and analyze potential agricultural enterprise lands required to support the development of agricultural industries in the State; and
- (3) 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 11-200.1 (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 and biosecurity, 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

- SUBCHAPTER 4

- (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 non-contributory land areas, for those lots for which the specified use is for crops to be grown "in the soil or ground".
- (3) 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 shall 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 an 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 held 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
- (4) 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 AND BIOSECURITY

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
and Biosecurity

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 and Biosecurity
Plant Industry Division
Plant Quarantine Branch
Honolulu, Hawai'i

October 28, 2025

Board of Agriculture and Biosecurity
Honolulu, Hawai'i

Subject: Proposed Requirements and Procedures for the Submission of
"Biosecurity and Pest Management Plans" pursuant to Act 236, Session Laws of
Hawai'i (SLH) 2025, Relating to Biosecurity.

I. **Introduction and Background**

During the 2025 Legislative session, the legislature passed extensive changes affecting the then Department of Agriculture, pursuant to Act 236, SLH 2025, which among other things: renamed the Department of Agriculture to the Department of Agriculture and Biosecurity, renamed the Board of Agriculture as the Board of Agriculture and Biosecurity, created a Deputy Chairperson for Biosecurity, and made numerous changes to Hawaii Revised Statutes (HRS) Chapter 150A, including adding a new section, HRS section 150A-G, regarding Biosecurity and Pest Management Plans.

This new section enables "any person, including any unit of state or local government" to submit to the Board of Agriculture and Biosecurity (Board) a proposed biosecurity or pest management plan (Plan), provided the Plan includes the information listed below:

1. The name of the person or organization submitting the Plan;
2. The organism proposed to be classified as a pest; provided that a Plan may encompass a category of organisms proposed to be classified as pests;
3. A description of the organism's adverse effects;
4. A description of the region of the Plan or whether the Plan will be implemented statewide;
5. The reason for the Plan;
6. Objectives of the Plan;
7. The principal measures to achieve the objectives and alternative measures, if any;
8. An allocation of the costs, if applicable;
9. Proposed funding; and
10. Other information as required by the Department of Agriculture and Biosecurity (DAB).

After receipt of a Plan, the new section requires the Board to review the Plan and take into consideration the following information:

1. Whether the implementation of the Plan is likely to eradicate or effectively manage the organism proposed to be declared a pest;
2. Whether the Plan is inconsistent with any federal or state requirement, activity, or policy;
3. Any harmful effects of denying the Plan;
4. Whether the benefits of the Plan would outweigh the costs; and
5. Other considerations established by DAB.

The statute also:

1. Requires the Board to approve, deny, or modify Plans at a public hearing;
2. Allows DAB to negotiate with the person who submitted the Plan, or any other person, before taking action;
3. Requires the Board to publish each Plan it approves and each Plan it approves with modifications;
4. Enables DAB to enter into contracts to implement approved Plans; and
5. Allows resubmission of a previously disapproved Plan if the Chairperson determines the revised Plan is significantly different from the previously disapproved request.

The Plant Quarantine Branch (PQB) will be preparing, for the Board's approval, administrative rules implementing the procedure for HRS section 150A-G that will include: 1) Requirements for Plan submission (including additional information required by DAB) and the Plan review process and consideration requirements (including additional considerations established by DAB) prior to review by the Board; and 2) additional submission and consideration requirements for Plans proposing management of organism(s) not currently designated by DAB as pests.

II. Submission Requirements and Review Process

PQB believes that the requirements for submission are broad and require the Board to review a Plan and make a determination to approve, deny or approve with modifications, at a public hearing. HRS section 150A-G allows DAB to negotiate with the submitter (or any other person) before the Board takes action at a public hearing, to establish information required to be included in submitted Plans, and to establish other considerations for the Board when reviewing a Plan.

In order to implement HRS section 150A-G, the Board would need to adopt administrative rules.¹ The administrative rules would set forth any additional information

¹ Administrative rules would be required to implement HRS section 150A-G and clarify PQB's role in the process.

needed in submitted Plans and would allow PQB to work with submitters to correct Plans missing key information or vital details prior to Board consideration (rather than presenting insufficient Plans straight to the Board). This would avoid wasting limited PQB staff resources to analyze, present, and discuss issues of Plans that the Board would likely not approve.

HRS section 150A-G does not provide any clear steps for DAB to work with the submitter before the Board reviews and considers a Plan, PQB believes that, rather than creating new steps, the administrative rules would be easiest to understand and most efficient if they were similar to the parameters and procedures the PQB currently has for permit requests for non-domestic animal or microorganism importation (including, but not limited to, sections 4-71-3 and 4-71-4, Hawaii Administrative Rules). Such parameters and procedures would, among other things, authorize the PQB to work with applicants to provide the necessary information for consideration prior to the review of and decision on the Plan by the Board and would include review of the Plan (and recommendation) by the Advisory Committee on Plants and Animals.

III. Issues relating to Proposed Pests

Besides the need for more detailed information, PQB is concerned that HRS section 150A-G appears to contemplate some Plans managing organism(s) not currently recognized by DAB to be a pest or biosecurity risk under HRS chapter 150A.

PQB intends to include in the draft administrative rules certain requirements that specifically apply to Plans for organisms not recognized by DAB as pests or biosecurity risks under HRS chapter 150A, including, but not limited to, (1) additional information required for submitted Plans; and (2) additional consideration requirements for the Board's review of the Plans.

IV. Recommendation

PQB will be preparing administrative rules for implementation of HRS section 150A-G for the Board's approval and for eventual adoption under HRS section 91-3. The rules will (1) have parameters and procedures similar to those the PQB currently has for permit requests for non-domestic animal or microorganism importation; and (2) require additional submittal information and provide additional consideration requirements for Plans that apply to organisms not currently recognized by DAB as pests or biosecurity risks.

Pursuant to HRS section 91-1, "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda. (Emphasis added.)

Among other things, the proposed administrative rules will ensure that all Plans submitted to the Board can be vetted by PQB prior to Board review and approval.

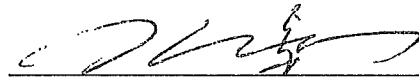
If the Board disagrees with the current plans for the administrative rules or wishes to include any additional provisions in the rules, we request that the Board take action to guide PQB with its preferences.

Respectfully Submitted,



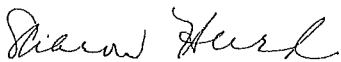
Jonathan Ho
Manager, Plant Quarantine Branch

Concurred:



Richard Kim, Ph.D.
Administrator, Plant Industry Division

APPROVED FOR SUBMISSION:



Sharon Hurd
Chairperson, Board of Agriculture and Biosecurity