



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of  
**THEODORE E. LIU**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON**  
**WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**  
Wednesday, December 17, 2008  
5:00 p.m.  
University of Hawaii at Hilo, Room UCB-127 (Ho'oulu Terrace)  
in consideration of  
**INFORMATIONAL BRIEFING AND PUBLIC HEARING ON POSSIBLE**  
**AMENDMENTS TO HRS § 171-95**

Chair Hee, Vice Chair Tokuda, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on the proposed amendment to HRS § 171-95 which would amend current law and reverse the Board of Land and Natural Resources' (BLNR) ability to lease state lands through direct negotiations with renewable energy producers. The proposed amendment will also require renewable energy producers to meet four (4) or more additional criteria before entering into what is proposed to be an auction. The criteria are: 1. Posting a performance bond to cover the renewable energy project; 2. A project timeline; 3. Evidence of financial ability to complete the project; 4. Other requirements deemed appropriate by the BLNR to ensure on time completion. Furthermore the bill requires the BLNR to conduct no less than two (2) public hearings in the county where the renewable energy project is located, provided that the notice of the hearing is published according to HRS §1-28.5.

We understand the concern of the Committee with public notice and input into the process of leading land to renewable energy producers. We believe, however, the proposed legislation goes beyond dealing with this concern and may have unintended adverse consequences to the state's energy policy and to the state's consumers.

We are very concerned with the requirement that the BLNR must auction off state lands to renewable energy producers. An auction will force the lease or other disposition of state land to the highest bidder, which in effect will drive up the cost of the land. To recover these costs, the renewable energy producer must pass this cost on to the energy purchasers, the Hawaii consumers. Hawaii consumers, especially on the Neighbor Islands, already pay the highest electricity and energy costs in the nation. The State's policy to encourage development of renewable energy is aimed at lowering energy costs to the consumers, in addition to achieving energy security.

Furthermore, the uncertainty of a public auction could jeopardize a renewable energy project that has benefits to the state and to the community. When the Senate passed Act 102, a member of the Senate commented:

“In recent years, DLNR has received requests to lease public land for wind farms and other renewable energy projects. Their inability to secure a land lease during a project development process has been cited by renewable energy producers as an impediment to development, and in some cases, developers have proceeded through the relatively lengthy and costly development process, only to be outbid for the land leases. This bill will remove the uncertainty for renewable developers, thereby encouraging the development of renewable energy projects and reducing the State's dependence on fossil fuels.”

Therefore, to help control renewable energy costs and to provide some predictability to renewable energy developers, DBEDT recommends against the public auction requirement and retaining the BLNR's ability to continue direct negotiations with renewable energy producers.

We are also concerned about the additional requirements this Committee seeks to impose on the leasing process. The likely effect of a performance bond will be, again, to increase the costs for renewable energy producers. A requirement to post a performance bond prior to knowing whether a lease will in fact be executed, will act as a deterrent to project developers and prevent the increase of renewable energy in Hawaii. Evidence of financial ability to complete the project is also, in our view, an onerous requirement as without a lease, the developer will not be able to secure financing. Leasing state land is a step in securing funding to develop a renewable energy project. To require renewable energy producers have all of their funding up

front before securing a lease creates an unnecessary burden and will also act as a deterrent to renewable energy development.

We understand this Committee's concern over renewable energy projects that are not adequately funded or planned locking up valuable state lands. We suggest that the BLNR, as part of its direct negotiation process, set specific and clear milestones for the project development as part of the lease. If these milestones are not met, then the lease is terminated and the land is returned to the BLNR's inventory.

We defer to the BLNR the requirement of holding two (2) additional public hearings in the county where the project is located prior to leasing the public land. We note that the permitting and development of renewable energy project in Hawaii is a long and involved process, which requires several public hearings and opportunities for public comment. For instance, because the project will use state lands leased under HRS § 171-95, this will trigger the Environmental Assessment (EA) process governed by HRS § 343-5. The EA process is lengthy and requires public comment. Furthermore, several state and county permits, including the Special Management Area (SMA) and Conservation District Use Permit (CDUP), already require a public hearing. To add two (2) additional hearings to the development process could unduly burden renewable energy developers and will inhibit the development of renewable energy in Hawaii.

In closing, the legislative and executive leadership of Hawaii have for 30 years recognized that Hawaii needs to break its over-dependence on foreign oil. At over 90% dependent on fossil fuel for its energy, Hawaii is the State most vulnerable to disruptions and to high energy costs. Only recently, however, has there been the political will to take specific and concrete steps toward this long-held objective – one that will reap many benefits for our citizens. As this is a new path toward energy security and self-sufficiency for our citizens, we all recognize that adjustments from lessons learned will need to be made while on this path. This informational hearing itself is an example of the self-correcting process already in place. We respectfully suggest that the provisions of the proposed legislation go beyond the Committee's sought-after correction.

Thank you for the opportunity to offer these comments.

LINDA LINGLE  
Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS  
Wednesday, December 17, 2008  
5:00 P.M.

Chairperson Hee and Members of the Committee:

Thank you for the opportunity to offer comments on the renewable energy producer provisions of section 171-95, Hawaii Revised Statutes (HRS), and the subsequent action taken by the Board of Land and Natural Resources (BLNR) at their meeting of November 14, 2008 on the proposed issuance of a direct lease to SunFuels Hawaii LLC.

We are all aware of the economic pressures that agricultural businesses are enduring with high energy and fertilizer costs, drought, and encroaching development. Agriculture is in a very precarious state and any disruption that causes uncertainty and risk increases the possibility of farmers and ranchers abandoning agriculture. The state cannot afford to lose any more food producers as it struggles to increase food self-sufficiency in the event of future disruption of supply.

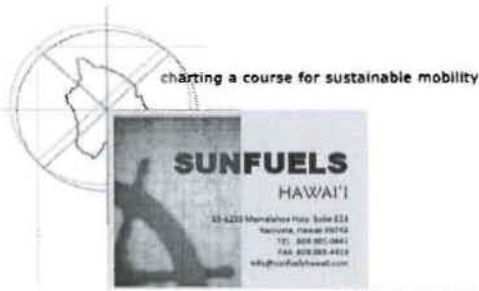
HDOA also recognizes the importance of the State's goal to reduce dependence on imported fuels for energy and that Hawaii grown energy feedstock production can create opportunities for local agriculture. We believe that thoughtful planning and good communication is needed to make the most productive and efficient use of the State's lands for food and energy and to avoid unnecessary conflict.

Our concern is that as demonstrated in the November 14, 2008 BLNR meeting, Chapter 171-95, HRS, has the potential to create discord, fear, and anger if care is not taken to include all affected parties in the direct lease process, particularly if the lands being sought for direct lease are currently encumbered. We commend the BLNR for acknowledging these unintended consequences by imposing additional conditions on SunFuels in addition to those previously required. These additional conditions, whether statutorily required, adopted as rules, or as policy, would do much to alleviate future concerns about direct leases.

After the November 14<sup>th</sup> meeting, HDOA met with several of the affected leaseholders. They expressed the desire and intent to remain on their leases and continue ranching or farming. HDOA's position is that unless current farmer/rancher lessees are not fulfilling the terms of their lease, they should not be displaced unwillingly from their leases.

The Hawaii Department of Agriculture (HDOA) and the Department of Land and Natural Resources (DLNR) have been working together during the past five years to transfer parcels of agriculture-zoned public lands to the HDOA non-agriculture park lands program as required by Chapter 166E, HRS. Both departments recognize the benefit to the state of having agricultural lands under the management of the HDOA. HDOA is hopeful that lands transferred through Chapter 166E, as well as the recently enacted Act 233, SLH 2008, which provides for public lands to be identified as Important Agricultural Lands and transferred to HDOA, will include currently encumbered pasture lands in order to support food self-sufficiency as well as vacant pasture lands that will be considered for lease to livestock as well as bio-fuel producers.

We would also like to reiterate HDOA's previously expressed willingness to assist the BLNR, SunFuels Hawaii LLC, and the ranchers and farmers who may be affected, by facilitating needed conversations or in any other way.



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December 17, 2008

**Testimony of SunFuels Hawai'i LLC**

State Senate, Hawai'i State Legislature  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Senator Clayton Hee, Chair  
University of Hawai'i at Hilo  
200 West Kawili Street, Room UCB-127  
Hilo, Hawai'i 96720

Dear Senator Hee and Committee Members,

Thank you for inviting public comment and discussion on the future of renewable energy initiatives, our island cattle industry, and policies affecting lessees of state lands.

SunFuels Hawai'i is a new company now pursuing the development of a biomass-to-liquid (BtL) plant to produce a clean, high performance synthetic diesel fuel called SunDiesel® on the Big Island. Our company was formed by Michael Saalfeld, a full-time Hawaii resident and majority owner of Choren Industries GmbH, headquartered in Freiberg, Germany. Choren and its minority shareholders — Royal Dutch Shell and automakers Volkswagen and Daimler — have partnered to produce SunDiesel® for the diesel market in Europe and North America.

We believe that island-made SunDiesel® can fill an important, strategic niche in Hawai'i's emerging renewable energy portfolio while reducing our overall carbon footprint. Diesel is a workhorse fuel needed by people in agriculture, heavy equipment operators, the public safety sector, and public and private transportation. Clean diesel is essential for Hawai'i's energy future.

The production of SunDiesel® requires secure, long-term supply of biomass feedstock for conversion to a liquid fuel. The establishment and operation of a scalable BtL refinery is, at a minimum, a 50+-year enterprise requiring capital investment of hundreds of millions of dollars.

In addition to SunFuels Hawai'i, other companies presently are pursuing the development of a biomass-to-energy plant to supply 20-30MW of renewable power to our island utility, HELCO. Another company seeks to operate a veneer mill in Hamakua. Other smaller sawmills also operate in Hamakua and Hilo. We appreciate the initiative of all these companies variously to supply reliable baseload power to our electrical grid or develop a forest products industry. Moreover, we understand that the broader development of commercial rotational forestry in support of these enterprises represents significant, transformational change for our community and island economy.

For these reasons, we submitted a letter to the Board of Land and Natural Resources on October 8, 2008 requesting deferral on action to grant state leases. We stated: "In the present circumstance, we believe

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Senate Committee on Water, Land, Agriculture and Hawaiian Affairs

Page 2

that state decisions about large tracts of land leased to renewable energy producers should fully consider all interested parties, technologies and sectors of our economy.” We proposed a “collaborative dialogue.” We encouraged “discussions with DLNR, the Land Board, other private companies, and the public to flesh out the array of energy initiatives under consideration and the best way to accommodate our most promising ventures.”

We remain convinced that a thoughtful dialogue will aid policymaking surrounding biofuel crops and the assignment of state lands. During the past year, we looked at private and public lands of interest on the Big Island and met with staff from DLNR and DBEDT to explore possibilities for forestry. We also submitted input regarding the state Bioenergy Master Plan. In October, when it became clear that the Land Board would issue recommendations regarding the lease of state lands, we were advised by DLNR and DBEDT staff to promptly identify lands of interest to us. Moreover, in a letter dated October 24, 2008 DBEDT staff invoked HRS 171-95 as the basis to determine whether our “project should be allowed to enter into direct negotiations with BLNR for State land ...” That process, in retrospect, was too hurried and arbitrary. It failed to bring current state lessees into the discussion. We therefore deeply regret that the process leading up to the November 14, 2008 Land Board meeting created alarm in our island’s dairy and ranching community.

It is not our intent to abrogate leases in place whatsoever, or to do any harm to dairy and cattle operations. Contrary to some newspaper headlines, we have no intent to lease 37,000 acres of state land. Our forestry objectives require approximately 10,000 acres of state lands to be successful. Accordingly, we wish to meet with current lessees to explore what is mutually agreeable with respect to woodlots and cooperative silvopasture – i.e., mixed tree farming and grazing lands. We strongly believe there are opportunities for synergy and profitable win/win outcomes for forestry and grazing on the Big Island.

The BLNR decision of November 14, 2008 provides for “potential agreements, culminating in secure agreements with the State’s tenants for the use of all or portions of the demised lands whether by early termination of the leases or revocable permits, assignments or subleasing if allowable...” We believe this language poses a threat (or certainly the appearance of one) to current lessees. We think such language and terms should be revisited to allow negotiations with state lessees to proceed without any prospect of loss of leased lands.

Toward that end, we are committed to work with our legislators, state officials, landowners and lessees of state lands to achieve mutually beneficial outcomes. For the sake of our ranching community and for Hawai’i’s energy future, it’s important that we get this right.

Thank you for the opportunity to share our perspective on these matters.

Sincerely,

John Ray, General Manager  
SunFuels Hawai’i LLC

JR/rf

## Island Resources Ltd.

"Resource management with imagination"

Water Land Energy

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To: Senate Committee on Water, Land ,Agriculture and Hawaiian Affairs

From Stephen P Bowles

Subject : Testimony for the Senate hearing oof 12/17/08 on Biofuels in Hilo

Dear Chairman Hee and Committee members,

My name is Stephen Bowles and I reside in Kamuela. Thank you for this opportunity to submit written testimony as I will be on Oahu at the time of the hearing .

I am in favor of the Sunfuels Hawaii, LL C proposal to integrate their forest proposal with those leases of the cattle ranchers of Hamakua and elsewhere. Sunfuels Hawaii offers an exciting and visionary alternative to imported fuels through integration of tree culture with leasehold ranchers.

Once Sunfuels Hawaii has an opportunity to properly present their proposal, it will be possible to see how it can strengthen the economic future for ranchers. The other tree option does little for the promotion of agricultural food sustainability nor does the production of more energy help the consumer today or in the near future. Value added wood products can and should be part of the forestry efforts

I encourage you to consider the vision of Sunfuels Hawaii for the production of synthetic diesel, a necessary commodity on the island of Hawaii in particular. Every farmer, rancher, bus rider, and earthmover needs diesel. It is essential to our economic future.

This is a once in a lifetime opportunity to do it right.

Mahalo, Stephen P. Bowles



TESTIMONY OF:

NORMAN MEDEIROS AND FAMILY  
ALFRED NOBRIGA (ALFRED NOBRIGA ENTERPRISES)  
ERNEST, MARIAN AND STEVEN DEULUZ (DELUZ RANCH)  
WAYNE BOTEILHO AND FAMILY (BOTEILHO HAWAII ENT. AND CLOVERLEAF DAIRY)  
KERRY SCHUMAN (S.C. RANCH)  
JASON AND JERI MONIZ (K.K. RANCH)  
BAHMAN SADEGHI (ISLAND DAIRY)

BEFORE THE SENATE COMMITTEE ON  
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
DECEMBER 17, 2008

SENATE BILL NO.  
RELATING TO RENEWABLE ENERGY PRODUCER PROVISIONS OF HRS SECTION  
171-95

Chairperson Hee and Members of the Committee:

Thank you for the opportunity to testify on the draft Senate Bill which proposes amendments to HRS 171-95. We support in principle the proposed amendments to HRS 171-95, particularly HRS 171-95 (d) which provides language to disallow the termination of existing State leases in compliance with lease terms in favor of awarding direct leases for renewable energy proposals. However as a result of some of our past experiences where we were subjected to economically damaging actions by State lessors, particularly the BLNR, we offer the following for your consideration. Please consider providing language in this bill or others that:

1. Also prevents the withdrawal of or placement of easements on significant portions of leases for this or other purposes.
2. Prevents the placement of new conditions on leases, ROEs or permits that have negative economic impact to the lessee or permittee.
3. Provides a clear directive to DLNR to transfer agricultural lands, including these pastoral leases, ROEs and permits that have ongoing agricultural enterprises, prioritizing those in food production, to HDOA within the next three years.

Justifications:

1. Several of these livestock operations have already been subjected to significant economic damage having lost significant portions of their leases due to actions by the BLNR or DHHL. Boteilho Hawaii Enterprises, S.C. Ranch and K.K Ranch had up to 33% of their leases removed with no compensation for the loss to their business or improvements, when large portions of their leases were removed to meet mitigation measures required to complete the realignment of the Saddle

Road. Because 150 acres of the lands being impacted by the realignment was designated critical habitat for the Palila bird, government biologist deemed it necessary that 10,000 acres of mitigation land and 15 million dollars were needed to win their approval to allow the realignment through the critical habitat. The Military leased from the State the property with the 150 acres of critical habitat and had only 4000 acres of suitable mitigation lands to offer. To come up with the balance of the mitigation land DLNR placed an easement disallowing grazing on 6000 acres of four ranch leases in order for the project to proceed. After years of meetings and attempts by the lessees and several supportive members of the legislature to make changes to HRS 171 to provide some economic relief to the lessees the only viable solution for the lessees was/is to take on additional debt and make further improvements to their leases and there by qualifying for a provision in HRS 171-36 to extend these leases up to a total of 55 years for the purpose of securing a mortgage. As absurd as it sounds to take on additional debt after suffering significant economic damage at the hands of a BLNR taking, extending the lease and restructuring debt has been the only viable means to recover. In this case the BLNR did not terminate the lease, or even withdraw a portion of the lease as provided for in the lease agreement, but instead placed an easement preventing the lessee from grazing the lands removed for mitigation purposes, therefore we request the additional language proposed in item one (1) above be considered in your bill.

2. The language in item two (2) is proposed to prevent a taking by placing conditions on a lessee, a right of entry or permit that places economic hardship on an existing operation causing them to fail or give up. Mr. DeLuz and his family faced such actions at PuuWaaWaa where they were required to reduce the size of their operation by 50% and follow grazing regimes geared more to fire control and habitat preservation then their production thereby increasing their cost of production on the remaining herd and making their continued operation at PuuWaaWaa unfeasible. Allowing for changes in the lease or permit condition to occur after the operation is in place under agreed upon lease or permit conditions is an effective but certainly unethical means of bringing an entity to its demise.
3. We believe the transfer of State lands currently in agricultural production from DLNR to HDOA is in the best interest of securing the sustainability of the State's agriculture industries and providing for some degree of food production security. Hawaii needs to gain or regain in the case of beef, dairy and other livestock production some degree of self sufficiency. The Department of Agriculture has a mandate and mission in line with this and we trust HDOA will work towards making decisions on the use of State lands in agriculture production that will successfully sustain livestock production and other agriculture in the State.

The livestock operations on these lessees are a significant part of beef cattle and dairy production in the State. They represent approximately 10% of the beef cattle produced on the island of Hawaii. The island of Hawaii produces 76% of

the States beef cattle. The only two remaining dairies in the State are on the island of Hawaii and both are also potentially affected lessees.

Several of us have experienced first hand the actions taken by the BLNR that have had severe negative impact to our livestock operations by decisions that pay little attention to agriculture and food production. For these reasons we ask that you take a serious look at the Act 90, SLH 2003 and its current status of execution and provide the resources and directives to secure agriculture, particularly food production, by requiring these transfers, including these pastoral leases, be expedited.

We are a group of family farmers and ranchers that despite having what we consider unfair and economically damaging actions taken upon us continue to persist. I expect you understand that farmers and ranchers have become a very rare resource in Hawaii and this nation as a whole. Other rare resources are protected. We are not asking for special protection, but at least to be treated fairly and ask that you seriously consider providing all bona fide food producers with economic incentives to remain sustainable like the incentives that have been provided in the IAL legislation, like the support and promotions continuously bestowed upon the tourism industry in this State, given to boost the high tech industry and now the renewable energy industries.

We certainly don't rule out participation in win-win enterprises including renewable energy production, but not at the demise of our businesses, families and at forsaking a goal of food production security for this State. Chairman Hee we know you understand and have yourself had to "cowboy up". In our business we understand that term all too well, and please don't take this the wrong way, but sometimes when the bull is in your back, even the toughest cowboy needs some help to get on his feet to ride again another day. The bulls in our back again and we need some help here.

Thank you.

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**CLAUDIA WOODWARD-RICE**

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December 15, 2008

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE,  
AND HAWAIIAN AFFAIRS  
Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice Chair

**Hearing: Wednesday, December 17, 2008**  
University of Hawai'i at Hilo  
200 W. Kāwili Street, Room UCB-127 (Ho'oulu Terrace)  
Hilo, Hawai'i 96720

Sergeant-At-Arms fax: 1-800-586-6659

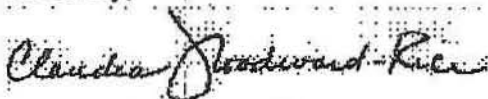
Dear Chairman Hee and Committee members:

Currently section 171-95, HRS allows the DLNR to issue leases to renewable energy producers without public auction. This is questionable public policy. Provisions need to be included to encourage best practices and lower end-user (consumer) costs. Hawaii energy costs are several times higher than the national average, and a heavy burden on its people.

It is also desirable to allow other alternative energy entities to participate in the process prior to selection; to provide better public notification of pending applications and maximize public input; and to hold the decision-making meetings on the island where the project is proposed to occur.

Open, efficient and effective government is crucial to our survival during the tough economic times ahead.

Sincerely,



Claudia Woodward-Rice

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**From:** Dianne Pencille Evans [DI@DMESYS.COM]  
**Sent:** Tuesday, December 16, 2008 12:44 PM  
**To:** WTLTestimony  
**Subject:** Big Island Hamakua Coast

As a **business and property owner** living in Paauhau Village, I wish to go on record as being Strongly Opposed to any type of Biomass Energy Plant at this time.

We were not aware of any use of trees for fuel until last week although we understand from Hamakua Biomass that this idea has been in the works since May of 2007! Most of our friends and neighbors are out of work. We are concerned about the fact that we are living in the middle of the Pacific Ocean and are completely reliant on imported food and products. We would like to see available surrounding lands be used for the production of food.

I understand that the Eucalyptus trees that are planted above and surrounding the residential areas of the Hamakua Coast are privately owned and were originally planted as a Monocrop. These trees are quick growing and have a short life span. They should be harvested in the near future. The Hamakua Biomass Co tells us that there is enough mass to last 10 years. For the balance of the project (30 additional years) they plan on moving on to "other state lands".

I have many questions and concerns that need to be addressed concerning air & noise pollution, traffic, run off and erosion concerns, cost of electricity - present and future, aesthetic issues, etc.

My husband and I have lived on the island for almost three years. We are grateful every day that we chose to live on the Hamakua Coast - in a rural area - where the air is clean. We own two houses on the Big Island. One is a rental (Waikoloa Village). Our tenant is moving out at the end of the month because there is no work for him on the island. Our interest only loan on our rental is \$2200, we pay insurance, homeowner association fees as well as **Property Taxes on both homes**. We also pay a hefty mortgage on our residence. We are totally up-side-down in our debt to value ratio due to the present economy in both properties. We own a business that is not dependent upon the Hawaii Economy so we are able to pay our bills. Although, like many others, we are hanging on by our fingernails. We have a stake in the future of the island.

As far as energy is concerned, I believe we need to explore options using the natural resources that are available to us - wind, solar, ocean, geothermal. A brand new plant that burns anything in order to produce electricity in 2008 is not an option.

Dianne Pencille Evans  
44-704 Ho'ouii Street  
Honokaa, HI 96727  
808) 775-9512

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**From:** Bob Numbers [bnumbers@hawaii.rr.com]  
**Sent:** Tuesday, December 16, 2008 1:40 PM  
**To:** WTLTestimony  
**Cc:** Pete Hoffman; K. Greenwell, Councilman; Dominic Yagong; Cheryl Takabayashi; Dayday Hopkins; Diane Ley; Guy Enriques; Maria Tome; Mike Robinson  
**Subject:** Testimony in Favor of Amendments to Section 171-95, HRS

## **Hawaii BioCrude, Inc**

P.O. Box 26  
Papa'aloa, Hawaii 96780-0026  
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[bnumbers@hawaii.rr.com](mailto:bnumbers@hawaii.rr.com)

16 December 2008

**To:** Senate Committee on Water, Land, Agriculture and Hawaiian Affairs

**Attention;** Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice Chair

**Subject:** Testimony in Favor of Amendments to Section 171-95, HRS

**Reference:** Informational Briefing and Public Hearing  
5:00 PM, Wednesday, December 17, 2008  
At University of Hawaii at Hilo

Dear Chair and Vice Chair persons and Committee Members:

I thank you for the opportunity to provide this letter of testimony in favor of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs taking action during the referenced informational briefing on 17 December 2008 on proposed amendments to the renewable energy producer provisions of section 171-95, Hawaii Revised Statutes,.

It is generally understood that those proposed amendments to section 171-95 would allow alternative energy entities to participate in the long term state land lease bid process prior to selection, to provide better public notification of pending applications, and to hold the decision-making meetings on the islands where the projects are proposed to occur.

Allowing alternative energy provider entities, such as Hawaii BioCrude, to participate in the land lease bid process prior to selection will enable them to go forward with business plans in a competitive fashion that will benefit the state, counties and communities in many positive ways. It will assure best use of the lands and funds for the state, provide much needed jobs, enhance redevelopment of the rural communities in which the entities' projects are located, increase tax income for the county and state, help reduce Hawaii's dependence on imported fossil fuels and contribute to reducing global warming.

I thank you for your and the committee's consideration in this section 171-95 HRS amendment matter and look forward to its approval.

In the meantime, please do not hesitate to contact me if you have any questions, comments or suggestions regarding my position about amending section 171-95 HRS.

Sincerely,

Bob Numbers  
VP, Business Development

Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice-Chair  
Committee on Water, Land, Agriculture, and Hawaiian Affairs

Hu Honua Bioenergy, LLC

Wednesday, December 17, 2008

Re: Section 171-95, Hawaii Revised Statutes

Chairperson Hee, Vice Chairperson Tokuda and members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs:

My name is Tim Lasocki, Executive Vice President of Hu Honua Bioenergy, LLC. Thank you for the opportunity to offer testimony on the renewable energy producer provisions of section 171-95 of the Hawaii Revised Statutes and on recent events that will affect all who are engaged in agriculture, ranching and renewable energy and fuel. I would also like to thank the committee for coming to the Island of Hawaii where the people most affected by the outcome of this hearing reside.

Hu Honua Bioenergy, LLC ("Hu Honua") is a renewable energy producer committed to production of "green" energy from renewable resources produced in Hawaii. Hu Honua has made a considerable investment to acquire an existing commercial electrical power generation facility at Pepeekeo, Hawaii. The facility was formerly operated as a biomass fueled power plant using sugarcane bagasse from the sugar mill and then later by C. Brewer as a coal fueled power facility. Hu Honua is presently refurbishing equipment and expects the biomass facility to be operational by the fourth quarter of 2010. Hu Honua has eschewed the use of coal as a feedstock, in favor of returning the plant to operation as a biomass fueled facility.

In order to secure biomass that is renewable, Hu Honua is in the process of developing a sustainable biomass farming plan with the University of Hawaii and HARC and is pursuing land leases for the cultivation of appropriate biomass crops as feedstock for the generation of electrical power. Throughout this process of identifying suitable land for a sustainable biomass crop, we have been careful to formulate a viable farming plan prior to approaching the State for long-term land leases. Hu Honua held its sustainable biomass farming conference in Hilo at the end of October 2008 and is completing the final plan now with assistance from the academic and commercial farming community.

We were surprised to recently find that tens of thousands of acres of State land suitable for a biomass crop on the Island of Hawaii is being leased to two entities, without there having been a public process to identify other bioenergy companies that may be interested in pursuing that land.

Subsequently, we informed the BLNR Chair of our interest in pursuing State lands on the Island of Hawaii and are prepared to engage in negotiations for long-term land leases. Having said this, Hu Honua will in no case participate in any process that would include the arbitrary removal of current State land lease holders. In fact, if there had been a process that included each applicant providing a detailed sustainable cultivation plan to the State prior to the final disposition of the land, Hu Honua would have been able to discuss its intention to grow a biomass crop that includes a byproduct successfully used around the world as a feed for cattle. It has been our goal to work with ranchers, dairies and farmers to find solutions that are a win for all concerned.



In conclusion, Hu Honua supports the committee's efforts to amend the current law to create a level playing field for all bioenergy companies while preserving ultimately the idea of direct lease needed to expedite the process for time-sensitive projects. We believe that this can be achieved by forgoing the current "first come, first served" approach in favor of a vetting process that includes public notice and the evaluation of each potential applicant's financial, technical and logistical capabilities and the projects overall chance for success. Weighed along with this should be the company's plan to work synergistically with existing farming, ranching dairy and other agriculture endeavors with respect to land and water use. As we look at this process we understand that State land is to be used for the benefit of all of the people of Hawaii and ultimately it is their interest that must be served. While we strongly believe that the promotion of home grown, renewable fuel and electrical power is in the best interest of the people of Hawaii, a process that eliminates competition will not ensure that Hawaii's land resources are being utilized to the highest and best benefit for all concerned.

Thank you again for the opportunity to testify.

Sincerely,

Tim Lasocki

Executive Vice President

Hu Honua Bioenergy, LLC

ELECTRONIC MAIL

[WTLTestimony@capitol.hawaii.gov](mailto:WTLTestimony@capitol.hawaii.gov)

To: Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Informational Briefing and Public Hearing  
Date: Wednesday, December 17, 2008  
Time: 5:00 p.m. – 7:00 p.m.  
Place: University of Hawai'i at Hilo  
Room UCB-127 (Ho'oulu Terrace)

**RE: TESTIMONY OF GEORGE YOKOYAMA, INFORMATIONAL BRIEFING  
AND PUBLIC HEARING ON RENEWABLE ENERGY PRODUCER  
PROVISIONS SECTION 171-95, HRS**

Honorable Chairman and Members of the Committee:

I testify in making an appeal for fairness and transparency, and allowing opportunities for all entities to compete for lease of public land, as well as, for public involvement in the determination of public land lease.

I strongly believe, the questionable conduct of BLNR in approving in principle, the issuance of direct leases, without public input, to two private entities makes mockery of the democratic process that is, the BLNR convening a meeting in November 2008, away from the Big Island, in Honolulu, without the presence of Big Island Board Members, without community input, and without providing opportunities for others to compete.

Honorable Chairman and Members of the Committee, I respectfully request your thoughtful consideration in amending the laws to ensure fairness to all interested entities for public land leases and for the maximum feasible participation of the public for determination of public land leases.

Thank you for the opportunity to testify.

Respectfully,

*George Yokoyama*

George Yokoyama

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**From:** Tim Mann [kaimana@hawaiiantel.net]  
**Sent:** Tuesday, December 16, 2008 3:16 PM  
**To:** WTLTestimony  
**Subject:** Testimony from Hamakua North Hilo Ag Coop

Aloha Friends

Aloha Friends

I am giving this testimony both as a private citizen and as the President of the Board of the Hamakua North Hilo Agricultural Co-op, a group with 104 active land leases to farmers, and approximately 284 additional adult (voting age) members.

It is our position that, before any State land in the Hamakua District is leased or sold to business ventures of whatever nature, it should first be determined whether or not it is viable agricultural land.

If it is useful for agriculture, it should be determined what the appropriate agricultural uses for the land are, with input from Hamakua area farmers, ranchers, Hawaiian cultural practitioners, planning groups, and private citizens. Then the land should be put out for bid in appropriately sized parcels that would allow even small producers to bid on the leases.

This way, DLNR and BLNR do not run the risk of getting tied down by one-sided lease agreements that favor big business instead of offering opportunities for agricultural producers in the community to get established or expand.

The Hamakua North Hilo Agricultural Coop opposes the current proposal(s) to lease land to Sun Fuels and/or Hamakua Biomass because there has been no opportunity for public input to the BLNR on the Big Island, and precious little information distributed to the public about these proposed operations. What we support is intelligent community planning that includes primary consideration of the input from major segments of the community and gives secondary consideration to the needs of the large outside businesses that are proposing these developments.

We feel that no decisions on this matter should be made until the community has a CDP in place that has identified the community's concerns and opinions on development issues. The community is not in a hurry to have an unknown business take up residence here; we would like to deal with this as part of a long-range planning process for our community, not as a last-minute bid to get enough public support so the deal doesn't fold. Please feel free to call if you have any questions, Tim Mann

Aloha from

Susanne Friend and Tim Mann  
Friendly Aquaponics, Inc  
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Honokaa, Hawaii 96727

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## TESTIMONY OF MITCHELL EVANS

Gentlemen:

We live on a remote island in the middle of the largest ocean in the known universe. There is a limited amount of land available to us. We are dependant on fossil fuels to meet our most basic needs.

Because we live on such an island we have a set of laws that regulate how we can utilize available lands, how we consider proposed new uses for the land, who shall make such approved use of these lands as we look to meet the needs of the people living on our islands. These laws are intended to balance the rights of the owner of the lands with the larger needs of the community for sustenance, meaningful work and recreation.

There are times when these very laws can become an impediment to the values they are intended to protect. There are those who are skilled at manipulating these always imperfect vehicles to obtain advantage for themselves or their group. Thus it has always been. Thus it can no longer be. We are running out of time, options, resources and capacities. Today we *must* choose wisely or we will not be able to choose again.

Our primary need on this island is FOOD. Our secondary need is SHELTER. According to HELCO we have adequate electrical power until 2021. New technologies are coming on line and we can expect new and more productive technologies to come on line in the coming years. This is the direction our society demanded in the recent election, in which our newly elected President is leading us and in which our scientists, universities and institutions are marching as we speak. Shall we commit ourselves to an inefficient and destructive energy plan at such a time?

I stand here today to state the obvious: that committing limited Hawaiian lands to an outmoded and regressive technology is stepping backwards blindfolded. Growing tress for fuel will constrain the land, degrade the breadbasket of Hawaii and seriously impede the growth of sustainable agriculture in Hamakua on which our citizens depend.

Ladies and gentlemen of the board, please think this through. Don't be led down the path of limited thinking, belief in scarcity and fear of tomorrow. Tomorrow belongs to those who protect our resources today.



## HAWAII FOREST INDUSTRY ASSOCIATION

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December 15, 2008

### TESTIMONY ON THE RENEWABLE ENERGY PRODUCER PROVISIONS OF SECTION 171-95, HAWAII REVISED STATUTES (HRS)

Dear Senator Clayton Hee, Chair and Senator Jill N. Tokuda, Vice Chair, Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

HFIA supports the use of wood biomass as fuel and recognizes forestry's ability to contribute to energy production via biomass/biofuels. We support a fully integrated and diverse industry of which bio-energy/fuels are a part, however we would like to see value-added products such as veneer and other wood products included.

It is clear that we have become overly dependent on petroleum as a source of energy, and biomass is a clean, safe, source of dependable and sustainable energy. Biomass, together with solar, wind, geothermal and other emerging technologies will enable Hawai'i to find its way to an energy-secure, environmentally sound, future.

We are concerned, however, with the idea of granting long term licenses to large blocks of land for a single dedicated use on a no-bid basis. By their nature no-bid contracts constrict the market and should only be used when only one qualified entity is available to use the land resource for the purposes intended by our government leadership. If there is sufficient interest among qualified entities to compete for a State resource, the State has much to gain by fostering a transparent competition. We believe that competition for public land licenses/leases is most beneficial.

No-bid contracts are politically perilous and being locked into a single pre-ordained use is economically fragile. We believe there is a way to meet the legislature's laudable intent while avoiding the political quicksand of no-bid contracts. It will also be possible to improve revenue to the State, and set the stage for a significant new class of family wage jobs.

In commercial forestry operations worldwide, trees are used to produce a wide range of products. The higher value products come from the lower portion of the tree where the trunk is large and has fewer limbs. Such products include lumber for construction or cabinetry and veneer for fine furniture, plywood and engineered beams. Manufacturing these products requires many highly skilled, well paid employees. The majority of these jobs are in rural areas--where they are most needed. This industry also creates opportunities for additional secondary employment as lumber and veneer are manufactured into finished products. The creation of higher values also leads to better long turn economic stability, as well as better return of revenue to the land owner.

Tree tops, rough and irregular pieces, trimmings and breaks are used to make by-products such as wood chips for pulp and biomass for fuel. As in any industrial process, the by-products are sold at low prices. Whether the primary manufacturer is a lumber or a veneer operation, about half of the total

wood volume utilized typically becomes finished product, with the remainder being used as biomass fuel or pulp wood chips.

Over the course of decades, the DLNR has wisely planted the seeds for the creation of a forest products industry in Hawai'i through its extensive planting and experimentation with various commercial tree species. The DLNR has also commissioned several high level forestry feasibility studies. One recurring theme of those studies has been the need for a diversified, integrated industry, not one producing a single commodity or product.

In the past, the DLNR has offered land licenses on a "Request for Proposal" basis. This has allowed the Board to weigh the various values that the land can produce including revenue, environment, job creation and now, as a source of renewable energy. We do not believe it is in the interest of the State to replace this well regarded process with one which grants a license to the first applicant in line. "First In line" is an acceptable method for deciding who gets tickets to a rock concert, but not for such serious matters as the State's long term energy future and economic stability.

As always, the issue with commercial development in Hawai'i is one of scale. The project must be large enough to be internationally competitive, yet small enough to fit Hawai'i. While HFIA strongly supports the development of biomass energy in Hawai'i, we request that DLNR utilize its land resource in a balanced way, which continues to facilitate the development of the now emerging forest products industry with the need for new energy sources.

HFIA urges the Board of Land and Natural Resources to:

- 1) Make additional land available for commercial forestry, including biomass production, on an open bid basis rather than a closed no-bid process.
- 2) Require that by-products from wood grown on new State land licenses be first offered to those creating energy or fuel in Hawai'i, if such a market exists.
- 3) Make several smaller land license offerings (approximately 10,000 acres), rather than a large "winner takes all" offering. This provides a greater number of potential bidders.
- 4) Include protection for the State in the form of deposits, bonds or guarantees to prevent unqualified buyers from securing licenses which they are not financially capable of purchasing.

Sincerely,



Heather Gallo, Executive Director  
Hawai'i Forest Industry Association

# LIFE OF THE LAND

*Ua Mau Ke Ea o Ka 'Aina i Ka Pono*

*The Life of the Land is Perpetuated in Righteousness*

**76 North King Street, #203, Honolulu, Hawai'i 96817**

**(808) 533-3454 \* [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)**

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December 17, 2008

Committee: Water, Land, Agriculture, and Hawaiian Affairs

Chair: Senator Clayton Hee

Vice Chair: Senator Jill N. Tokuda

Date: Wednesday, December 17, 2008

Time: 5:00 p.m. – 7:00 p.m.

Place: University of Hawai'i at Hilo

200 W. Kāwili Street

Hilo, Hawai'i 96720

Room UCB-127 (Ho'oulu Terrace)

re: Informational Briefing and Public Hearing

**Act 102, SLH 2002 as codified as HRS §171-95**

Invited to participate in the hearing: DLNR, DBEBT, Sunfuels Hawai'i, LLC  
Hāmākua Biomass Energy, LLC, The Hāmākua community, Lessees affected  
Hawai'i Forest Industry Association, Hu Honua Bioenergy

Aloha Chair Hee, Vice Chair Tokuda, and Members of the Committee

In recent months, the Board of Land and Natural Resources (BLNR) heard proposals and counter-proposals for 10,000s acres of state land by Sunfuels Hawai'i; Hāmākua Biomass Energy; and Hu Honua Bioenergy<sup>1</sup>. Apparently Applicants approached various large land owners who were reluctant to commit large tracts of land to bioenergy crops. So various Applicants proposed to the BLNR that the BLNR lease lands to them that are already leased to other leases. The proposal consists of numerous smaller parcels of conservation and non-conservation land that BLNR is currently leasing to other agricultural entities. According to the various Applicants, they had not contacted these lessees about using the land. According to various Applicants and to the BLNR Chair, these lessees were not informed of the relevant BLNR hearings. According to one BLNR Board member, a lease in principle was required to force existing lessees to the table to seriously

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<sup>1</sup> The BLNR held hearings on three bioenergy proposals: (1) Approval, in Principle, of the Issuance of Direct Leases to Hamakua Biomass Energy, LLC (Agenda Item D3, On October 10, 2008); (2) Approval in Principle of the Issuance of a Direct Lease to Sunfuels Hawaii LLC for Commercial Forestry Purposes (Agenda Item D5, November 14, 2008) (3) Resubmittal - Approval in Principle of the Issuance of a Direct Lease to Hamakua Biomass Energy, LLC, for a Commercial Biomass Energy Generation Facility and Hamakua Biomass Holdings, LLC, for Commercial Forestry Purposes (Agenda Item D6, November 14, 2008). In addition, Hu Honua testified at one of the hearings.



renegotiate the terms of their leases, that is, to share their leased land with bioenergy companies. Pressure, intimidation, and coercion before talking to them. How rude.

We testified in writing and in person before the BLNR on these agenda items:

(1) Meetings MUST be scheduled on the relevant island. We reminded the Board that there was precedence for a second Board meeting: when Kaheawa Wind Farm was proposed for the hills above Ma`aleaa, Maui, the original Board meeting was held on O`ahu, but seeing no opposition, the Board decided to hold a second hearing on Maui.

(2) The current lessees MUST be notified of the hearing

(3) The State EIS law MANDATES environmental review at the earliest reasonable time. The DLNR Staff statement re environmental reviews was less than credible. It jumped from the Department of Agriculture's kuleana over agricultural land ("allowable use within the agricultural district") to DLNR's Division of Land Management ("Exemption Class No. 1") as if the subject matter was consistent. The next sentence in the DLNR's Division of Land Management's Exemption Class No. 1 was omitted "The exempt items below are not applicable in lands classified Conservation." Apparently this sentence slipped past the DLNR staff. Nor apparently were DLNR staff aware that exemptions did not apply when the cumulative impacts were significant.

We were appalled to learn that the BLNR was going to ram these proposals through, in direct violation of numerous state laws.

We notified the BLNR that we would file a Request for a Contested Case Proceeding at the relevant time.

We look forward to Legislative proposals to reign in a state agency with little regard for state law.

Mahalo,

Henry Curtis  
Executive Director

Appendix

**CHAPTER 171  
PUBLIC LAND, MANAGEMENT AND DISPOSITION OF**

**HRS §171-95 Disposition to governments, governmental agencies, public utilities, and renewable energy producers.** (a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

(2) Lease to the governments, agencies, public utilities, and renewable energy producers public lands ... [on] terms and conditions as the board may determine;

**CHAPTER 91  
ADMINISTRATIVE PROCEDURE**

**HRS §91-9.5 Notification of hearing; service.** (a) Unless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

**CHAPTER 92  
PUBLIC AGENCY MEETINGS AND RECORDS**

**§92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy -the discussions, deliberations, decisions, and action of governmental agencies -shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

**§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.

**CHAPTER 343  
ENVIRONMENTAL IMPACT STATEMENTS**

**§343-5 Applicability and requirements.** (a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands ...