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THE SENATE  
HOUSE OF REPRESENTATIVES  
THE THIRTY-FIRST LEGISLATURE  
INTERIM of 2021

MINUTES  
for the  
ACT 90 WORKING GROUP  
LESSEE AND PUBLIC TESTIMONY: Monday, August 23, 2021 (1:00 p.m.)  
Via Videoconference

**CALL TO ORDER:** The meeting was called to order on Monday, August 23, 2021 at 1:00 p.m. by Act 90 Working Group Co-Chair Representative David A. Tarnas. The meeting was conducted virtually via Zoom due to the current health risk of exposure to COVID-19.

**VIRTUALLY PRESENT:**

Act 90 Working Group Members:

House Committee on Water and Land:

Representative David A. Tarnas, District 7, Co-Chair  
Representative Patrick Pihana Branco, District 50, Vice Chair

Senate Committee on Water and Land:

Senator Lorraine R. Inouye, District 4, Co-Chair  
Senator Gilbert S.C. Keith-Agaran, District 5, Vice Chair

Department of Agriculture:

Morris Atta, Deputy to the Chairperson  
Linda Murai, Agriculture Resource Management Division



Department of Land and Natural Resources:

Suzanne Case, Chairperson  
Robert Masuda, First Deputy Director  
Russell Tsuji, Land Division Administrator  
Kevin Moore, Land Division Assistant Administrator  
Ian Hirokawa, Land Division Special Projects Coordinator  
Gordon Heit, Land Division Hawaii Island District Land Agent  
David Smith, Forestry and Wildlife Division Administrator  
Steven Bergfeld, Forestry and Wildlife Division Hawaii Branch Manager  
Jay Hakayama, Forestry and Wildlife Division, Forester  
Ian Ko

**OTHERS VIRTUALLY PRESENT:** (As acknowledged by Chair Tarnas)

Robin, House of Representatives staff  
Technical staff

**BACKGROUND:**

This working group is set up by Act 139, House Bill 469 to ascertain the process and status of the transfer of non-agricultural park lands from the Department of Land and Natural Resources (DLNR) to the Department of Agriculture (DOA) pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90) and Chapter 166E.

The second task of the working group is to determine the challenges and potential remedies necessary to facilitate the process of fulfilling the purposes of Act 90.

The Working Group seeks to get a better understanding of DLNR's land management of agriculture lands and how it is characterized in terms of food production, ecosystems services, reforestation, habitat conservation, cultural use, public access, recreational use, and other considerations.

The purpose of today's hearing meeting is to hear testimony from lessees and others in the industry regarding their experiences as lease holders with the Department of Land and Natural Resources. The usual guidelines are as follows: each testifier to keep their testimonies to about three minutes and there will be lots of opportunities for questions and conversations after that, keep yourself muted and your video off while waiting to testify and when you're pau testifying, please do the same.

Co-chairs Tarnas and Inouye welcome everyone and introduced Vice Chairs Keith-Agaran and Branco from the Legislature. DLNR Chair Case introduced her team and DOA Deputy Atta introduced his team member.

The next meeting will be held September 9, 2021 to discuss the challenges and potential remedies.

## **TESTIMONY**

Co-Chair Tarnas introduced the testifiers as follows:

1. **Hawaii Farm Bureau (HFB) - Brian Miyamoto, Executive Director**, See full written testimony - Attachment #1.  
*Summary: HFB believes DOA is the correct agency to manage ag leases. An additional point not in our written testimony follows: While we understand that DLNR wants to keep the lands for the potential use for habitat reforestation and other purposes, our ranchers are currently actively producing agriculture on these lands. Transferring the ag land leases to DOA will help DLNR in their mission to focus more on efforts to restore lands already in conservation and while ranchers and farmers restore the land on which they are producing agriculture. We believe DOA is the correct and appropriate agency to manage these land leases.*
2. **Hawaii Cattlemen's Council, Inc. – Nicole Galase, Managing Director**, See full written testimony - Attachment # 2.  
*Summary: Thank you for creating this working group and the opportunity to testify. There are ranchers not available to testify today and understandably they may be concerned about retribution for speaking out, and the Hawaii Cattlemen's Council is here to testify on their behalf and the industry to advocate for support of leases being transferred to the Hawaii Department of Agriculture. ....our stance is in support of transferring agricultural lands from DLNR to HDOA....We appreciate that DLNR acknowledged their....shortfalls in their ability to manage agricultural leases properly, but disagree that the solution is to amend rules to give them the same abilities as HDOA. ...transferring the lease to HDOA....will assure that agricultural production will be prioritized. ....benefits of supporting agriculture, not just for food production, but for land stewardship....we can avoid unnecessary reforestation which is costly and could reduce agricultural lands....ranchers should be supported as agricultural entities, with their conservation efforts recognized.*
3. **Alan Gottlieb – Ponoholo Ranch (Hawaii Island)**, See full written testimony -- Attachment #3.  
*Summary: We have worked for many years to get our leases transferred to DOA under Act 90, 2003, for the reasons the legislature passed Act 90: to allow farmers and ranchers to work with a State department which specializes in Agriculture, and which had favorable terms to promote agriculture and sustainability in the State....In 2020 Ponoholo's two long term leases and one Revocable Permit (RP) were transferred to HDOA and we were able to negotiate extensions for the long-term leases....HDOA issued a long-term lease for the DLNR RP that we held for over 40 years. We were finally able to make investments on that parcel...With better lease terms and management by HDOA, which prioritizes agriculture, ranchers will be better equipped to continue these eco-system services which benefits everyone in Hawaii. Ponoholo Ranch has always been an active cooperator with the Natural Resource Conservation Service, Watershed Partnerships and we are active steward of those watersheds...These practices continue on our leases under HDOA. There*

*is no loss for the community if ranchers succeed. Ranchers do every day what the State does not have the manpower or budget to do!*

4. **Jason Moniz – KK Ranch (Hawaii Island)**, See written testimony - Attachment #4  
Summary: *I'm testifying on behalf of myself and my wife, Jeri Moniz, and KK Ranch, Inc. We support the Act 90 transfer of leases to DOA. We personally advocated for and supported Act 90 back in the early 2000's due to our experiences as DLNR lessees with the withdrawal of 2100 acres of our lease... to mitigate the realignment of the former Saddle road... That taking occurred without fair compensation and nearly bankrupted us... DLNR's priorities are not aligned to support agricultural entities and DLNR has fought most amendments to their regulations to provide for fair compensation for withdrawals from pastoral leases....Hawaii's Beef Industry works continuously to expand local marketing and it's insulting to hear criticism that Hawaii beef cattle producers are not contributing to the effort to make Hawaii sustainable in food production. As a test, the Moniz's have been actively conferring with DLNR to see if a workable agreement can be reached in a timely manner to remain under the management of DLNR.*
  
5. **Brendan Balthazar – Diamond B Ranch (Maui) – Oral testimony only.** See Attachment #5 for full oral testimony.  
Summary: *I started Diamond B Ranch in 1968. Acquired DLNR lease in Kaupo over 20 years ago. I put in \$300,000 worth of wells, pipelines, fences, which I was done paying back 2 years ago. About 15 years ago I acquired another property under DLNR and spent about \$400k improvements....A study from CTAHR says the pasture sequestered as much carbon and as efficiently as forest, especially with minimized disturbance. The state wants to increase food production and that can't happen when productive farm and ranch lands are taken away from those who really care for the land and ranches.....Forestry does a very poor job of maintaining the forest...Most of it is invasive trees, fire weed, etc. I was told by the Forestry Division here that they do not have the resources to take care of the forest area here, they don't have the money or the manpower, yet they want to take more land for forestry. Kind of like filling your plate with food after you're done eating and you're full; so let's go get some more to waste.  
For my land (in Kula), I am proposing the that top section of my property which is more conducive to planting ohia trees, sandalwood trees and koa trees, the top area which they refer to as the Alpine area which would be about 2000 acres, I have no problem compromising and having them take that. I developed the lower portion, again, taking water tanks up there and doing a lot of improvements so that the cattle can move up there in the summer months to graze.  
I have also done a lot with the Kaupo lease. It's a very dry area, but I was already told that when the lease expires it would not be renewed and the land would go over to Forestry. Ranchers are grass farmers. We raise grass and the animals harvest it for us. We take care of the land like it's our own. It's our livelihood and our passion. Any land that goes to DOA is still owned by the state. It will be kept as open land by the ranchers. It can go to different uses in the future, but once it's with DLNR Forestry it will become full of trees and invasive plants and it will be hard and costly to reclaim that open space.... I urge all of you to not take more food producing land*

*and put it full of trees. The DOA really understands ag..... ....When leases expire you have to bid against those who have not spent one cent on the property. You have to bid against them to get your land back and actually you are paying for the improvements you put on the property. Article 11 of the state constitution says the state shall conserve and protect agricultural lands, promote diversified agriculture and increase agricultural self-sufficiency and assume availability of agriculturally suitable lands. I really appreciate the committee and Lorraine for having the decency to reply whenever I send something. To Patrick and the rest of you, hopefully, you can see the light through the forest.*

6. **Lani Petrie, Kapapala Ranch (Hawaii Island)** – Bill and Lanie Petrie, operators of Kapapala Ranch, See written testimony - Attachment #6.

*Summary: Act 90 is not a bill about transferring lands, it's a bill about implementing sound resource management.... We believe that there will be lease reform through Act 90 and the transfer of leases to the Department of Agriculture. Its rules support and maintain the value of leases upon expiration through term extensions and conversions to new leases, which is why we invested in capital improvement projects such as completing a seven-mile overhaul of boundary fence with the Kapapala Forest Reserve, installing improvements for storage of nearly 10 million gallons of water and two reliable water resources that deliver water through 110 miles of functioning pipeline. The Ranch's water system has been used twice for fighting wildfires in the adjacent Forest Reserve and National Park. The public has a right to access public areas which is why we have accepted the responsibility for maintaining the public's access to the Forest Reserves. Kapapala Ranch provides daily access to public areas by fielding over 300 calls per month and providing 600 plus registered users with personal ID numbers. ....We have always been advocates for responsible resource management as evidenced by our collaboration efforts with DOFAW.*

7. **Peter D. Simmons, Kamehameha Schools, Asset Manager (Retired)** – Oral testimony only, See Attachment #7 for full oral testimony.

*Summary: Thank you very much for allowing me to speak and I must say I've been amazed and riveted by the testimony we've heard so far. DLNR's DOFAW's well written Forest Action Plan...My reaction was mixed between true admiration that it was so well written by such knowledgeable people and that they had such depth with such a wide range of issues facing our forests and natural resources. But I was really saddened because once again I had to read how horribly underfunded DOFAW, in particular, is....We have two-thirds of endangered birds in the United States and it would take \$83 million per year to secure our native birds – about half of DOFAW's budget. There is insufficiency of funding for State parks. Commercial forestry has been neglected and is underfunded and undermanaged.....and yet we want to give DLNR more responsibility and they want to take more responsibility at the same time. DOFAW has really good people who are dedicated. However, this is just misguided trying to take on too much and not do enough with what they are already responsible for .....assets should be managed by people who know what to do on the land, and as has already been testified to, these are the ranchers and people that work with the ranchers that know the lands that have been managing the*

*lands .....we need to find ways to make them (ranchers) more profitable so they can do more of what their really good at, taking care of the land... find incentives for our lessees to do some of the conservation stewardship ..... I had the great privilege to work with Kamehameha Schools and I only had one department to manage, ranches in conservation assets.....how to find incentives for our lessees....and writeup a lease that's agreed to and give the terms necessary to make it successful. That would be huge...it should go into the Department of Agriculture ..... I'm delighted that the Legislature is taking it seriously. ...Most of us know that DOFAW has been forced to not manage large areas of our lands. Their lands are overrun with weeds. It's too expensive.... Put it in the hands of people who know the lands and can manage them best and incentivize them to be successful. If we decide to make a difference, a difference can be made.*

Co-Chair Tarnas called others who signed up to testify – None present

Others submitting written testimony only – See Attachments 8 - 14:

8. **Warren K. Watanabe, Executive Director, Maui County Farm Bureau (MCFB),** See written testimony - Attachment #8.  
*Summary: On behalf of farm and ranch families and organizations on Maui strongly supports farm and ranch lessees on state lands. MCFB is especially concerned about long established ranches on state lands that are not planned for transfer to HDOA and are put at risk due to loss of leases.....MCFB finds it ironic that our rancher's viability is put at risk during these times of major concern about increasing Hawaii's level of food self-sufficiency....Pastures taken out of production will probably not be replaced. Major investments will be lost and families thrown into chaos....*
9. **Kendall Matsuyoshi, Local Food Coalition,** See written testimony - Attachment #9.  
*Summary: Supports Act 90 and original version of HB 469 that established a deadline to transfer these lands. Farmers and ranchers need long-term leases in order to reasonably invest in infrastructure improvements on the lease lands....success of ranchers and farmers is a key component in the State's goal to double local food production.*
10. **Micah Munekata, Director of Government Affairs, Ulupono Initiative,** See written testimony - Attachment #10.  
*Summary: Ulupono Initiative supports the local livestock industry...With the DOA's affordable, long-term structure in place, local ranchers will be able to make the necessary investments...improving economic viability and increasing local food production for the state...While we support DLNR's mission...Ulupono believes that all active agricultural pasture leases should be transferred to the DOA as per the intent of Act 90, SLH 2003.*

11. **Jacob D. Tavares, Manager, Livestock Business Operations, Parker Ranch, Inc. (Hawaii Island)**, See written testimony - Attachment #11.

Summary: *Parker Ranch, Inc. continues to support the intentions of Act 90...Hawaii's legislature recognized the need to ensure that agricultural producers had access to leases that would allow them to more securely operate, steward and invest in the land...We appreciate and will continue to support DLNR's mission...The Department of Agriculture's mission focuses on and understands the necessities of agricultural producers and agricultural land stewards.*

12. **Stephen DeLuz, Puu Waa Waa Cattle Company, LLC (Hawaii Island)**, See written testimony - Attachment #12.

Summary: *I am for transferring agricultural land from DLNR to the Hawaii Department of Agriculture. Back in 2005 DLNR took back prime grazing land...we were leasing. We had to sell nearly 75% of our 1500 head of breeding stock with a loss of over \$350,000 annually in revenue...As a rancher, we continue to be good stewards of the land...Working with NRCS...putting in nearly \$400,000 worth of improvements over the past 3 years. We supply the local markets with grass fed beef, which contributes to the sustainability of our island.*

13. **Jodie DeLuz, Rancher**, See written testimony - Attachment #13.

Summary: *I am a 3<sup>rd</sup> generation rancher in Hawaii. Our lives are dedicated to these ranches. They are the livelihood of our families. These lands need to be kept in agriculture. There is no one that would care for these lands better than a rancher. ...Most of the livestock is sent away because the state does not have enough resources to slaughter the large quantity of livestock to provide the state with local beef..To finish cattle for slaughter ranchers need more lands with grass to finish these cattle locally...I hope the decision to transfer these lands to DOA is made...we could continue to pass down through the generations, this important way of life...*

14. **Maui Cattlemen's Association, William Jacintho, President**, See written testimony – Attachment #14.

Summary: *..our stance is in support of transferring agricultural lands from DLNR to HDOA...transferring the leases to HDOA is necessary as it will assure the leaseholder that agricultural production will be prioritized...Economic sustainability allows the ranchers to implement the conservation practices that are necessary to steward the lands and resources well..*

Co-Chair Tarnas called for any other testifiers – None

### **WORKING GROUP QUESTIONS**

Co-Chair Inouye question to **Brendan Balthazar, Diamond B Ranch (Maui)**

1. Requested clarification regarding the land that DLNR/DOFAW wants for forestry use.  
Answer: DOFAW wants the land under his current lease transferred to DOFAW. Mr. Balthazar was saddened to learn of this as he had already gotten water up to about the 7500 foot level and cattle can graze up there. Further up in the "Alpine" area, as

DLNR calls it, up to the Haleakala National Park, he has no problem with DOFAW taking that land area of 1900 to 2000 acres which is almost two-thirds of the entire premises.

2. What was the reaction from the local DLNR staff about Mr. Balthazar's offer for DOFAW taking that portion of the land?

Answer: It's too late. It's already going to be forestry and we are going to plant trees starting up there all the way down to the road. Why not start in the Alpine area where those trees are conducive to the environment up high? I was told it's much easier to plant trees in the pasture where we can walk, than trying to plant trees up there in the bushes. So that's the reason you want to take the pasture. I'm saying, compromise and put the portion that is already in cattle and productive land and put it under the Department of Ag. The top portion of about 1900 acres can go to Forestry.

3. What is the area wanted by DOFAW?

Answer: 100% of the land in the Kula area. I was asked by Forestry to leave the water tanks. I have spent more money than what I can make on the land and trying to keep invasive species out. Why give DOFAW more land to mismanage when they are understaffed and underfunded. The adjacent Kula property is thick with Waddle trees and other invasive species. Let us (the ranchers) manage the lands.

**Co-Chair Inouye question to Peter Simmons, Kamehameha Schools, Asset Manager (Retired)**

Co-Chair Inouye is concerned about wildfires in her area - Kapapala Ranch, Ponoholo and other ranches had to fight wildfires in their areas. Kapapala worked 24/7 against the wildfires until they were contained, whereas State Parks personnel left after their 8-hour shifts ended. Where do we stand with forestry and wildfire management?

Answer: How did Kamehameha Schools handle their forestry lands. Planning is a major part of planning for forestry and commercial conservation lands. State owned lands with short term leases become more rundown because lessees/permittees do not want to invest in improvements, etc. It's very expensive to turn around lands that have been overgrown with invasive trees and plants. When Kamehameha bought the old sugar mill out of bankruptcy, they put about two-thirds it in ranching

**Co-Chair Inouye request to Morris Atta, Deputy, DOA** – From the list of TMK's managed by DOA provided to Sen. Inouye manages, identify those leased lands that are in cattle grazing.

**Rep. Branco question to Lani Petrie, Kapapala Ranch, Hawaii Island:**

Please share with the committee the situation and stresses of being on revocable permits that you had mentioned in your testimony.

Answer: Looking at RP's there is the risk. DLNR holds all the cards. They could put up the lands for public auction. Yes, it's very unnerving. We try hard to provide hunting access and be good neighbors. We are teetering on anyone getting ticked off

and losing the permit. These RP's were had for 17 years and it's a risk. When Mom and Dad took over the property it was in a rundown condition. It's no way to incentivize people to do better.

The human asset is overlooked with ranchers. We're pretty easy to find; we're always working; we're always determined and pushing forward to making things better. I think I'm going sideways from your question. There is a very valuable human resource in the ranching community. Thank you.

**Co-Chair Inouye: Request to Chairperson Case, DLNR** – please provide a list of land DLNR took back and transferred to Forestry within the past 20 years, and what is the condition of those lands that were transferred to Forestry today.

**Co-Chair Tarnas: Question to Jason Moniz:** What would be your desired outcome of negotiating a new lease with DLNR if your lease were to stay with DLNR?

Answer: Basically what I said in the testimony, economically we would like to stay at net zero. In some of our early discussions with Bob, there are some areas where we are not grazing now that they might consider grazing. We have areas that we are grazing now that Jeri and I have looked at for years and have thought that we should try to get trees that have died out there regrown. And those that are hanging on we will try to get those protected. We don't have the dollars to do that and so we are hoping that DLNR has some kind of program like we do with USDA Natural Resource Conservation Service where we have cost share agreements and they work out well. Hundreds of thousands of dollars have been put into improvements on the lease and so if DLNR has something similar we would like to look at it and work on it. Basically, the biggest threat is to see that the pastoral leases are totally taken out of pastoral use like what Brandon is facing on Maui.

**Co-Chair Tarnas comment:** It would be useful for the working group to understand the process you're going through and the current negotiations. If it is a useful model then we can understand it better and understand the dynamics better. I appreciate you sharing with us what you can. I understand you're still in discussions and nothing finalized yet.

**Co-Chair Tarnas:** Turning back to other working group members. Thank you to our testifiers. They have been very kind and patient with us to give testimony once again after many sessions in a row and you've come back again and I really appreciate it Lani, for spending your couple of hours with us. Thank you to Alan, Nicole and Brian, Jason, Brendan and Peter for testifying. Are there any last questions or comments from members of the working group before we wrap up today's informational meeting. I don't see anyone with a hand up. Chair Inouye do you want to have any final statement before we wrap up?

**Co-Chair Inouye:** I just want to thank everyone who participated in providing the testimonies and this is good discussions and I'm sure there would have been more from those who sent testimonies but didn't speak. Our hearings are continual so we'll work hard on it.

**Co-Chair Tarnas:** For our next steps. Next meeting will be September 9 at 10am via zoom and it will be public meeting and will give opportunity for public testimony at that time. I'd like

to request that all the working groups members compile your suggestions send it to co-chair and me about the list of potential remedies that we've heard from our lessees and our own research so that we can discuss this at our next meeting. The third meeting will consists of basically a discussion of working group members, what are the advantages and disadvantages of different remedies that we might offer. What can be changed to addressed some of the concerns. It will be an open discussion of working group members at the next meeting. Next public hearing meeting is September 9, 2020 at 10:00 am.

**Co-Chair Inouye's requests that Deputy Atta and Chair Case provide the information at the next meeting on September 9, 2021.**

### **Comments from the Working Group**

**Deputy Atta:** Thank you to the committee and testifier for providing the information that we received today. It's helpful to enhance our discussions to move this issue along, and we really appreciate the opportunity to work with the working group and DLNR as well as the community to come up with something that's viable.

**Chair Case:** Really appreciate it; good discussion; good information and important for working this through. Thank you.

**Co-Chair Inouye:** We thank you both too. This is an issue and if it wasn't for the industry we wouldn't be talking about it. This issue is 30 years old, and I guess we all know that I was the introducer. Let's see what we can do with what's before us. We appreciate both DLNR and DOA.

### **ANNOUNCEMENT OF NEXT MEETING**

The next meeting will be held September 9, 2021 at 10:00 am to discuss the challenges and potential remedies.

### **ADJOURNMENT**

**Co-Chair Tarnas** adjourned the Working Group meeting at approximately 2:25 pm and thanked all for participating.