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LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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

ACT 90 WORKING GROUP
INFORMATIONAL BRIEFING: Thursday, September 9, 2021 (10:00 a.m.)
Via Videoconference

CALL TO ORDER: The meeting was called to order on Thursday, September 9, 2021 at 10:00 A.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 (DOA):

Morris Atta, Deputy to the Chairperson
Linda Murai, Designee for the Administrator

Department of Land and Natural Resources (DLNR):

Suzanne Case, Chairperson
Robert Masuda, First Deputy Director
Russell Tsuji, Administrator, Land Division

Kevin Moore, Assistant Administrator, Land Division
Ian Hirokawa, Special Projects Coordinator, Land Division
Gordon Heit, Hawaii Island District Land Agent, Land Division
David Smith, Administrator, Division of Forestry and Wildlife
Steven Bergfeld, Hawaii Branch Manager, Division of Forestry and Wildlife
Emma Yuen, Native Eco-System Program Manager, Division of Forestry and Wildlife

Others:

Nicole Galase, Managing Director, Hawaii Cattlemen's Council, Inc.

APPROVAL OF MINUTES FROM AUGUST 16, AND AUGUST 23, 2021 BRIEFINGS.

Chair Case requested amendments to the August 16, 2021 minutes. Co-Chair Representative Tarnas agreed to defer approval until the next meeting.

Motion to approve the August 23, 2021 minutes: Co-Chair Senator Inouye, seconded by Deputy Atta. Vote: Approved unanimously.

ANNOUCEMENTS:

Co-Chair Representative Tarnas thanked the DLNR and DOA for providing documents on the status of land transfer. The documents are now posted on the Act 90 Working Group Website and are available for the public to review.

DISCUSSION:

COMMENTS ON PUBLIC TESTIMONY:

Act 90 Working Group Co-Chair Senator Inouye deferred to DLNR and DOA to respond to the public testimony from the previous meeting. Vice Chair Senator Agaran requested more information from DLNR on the reforestation efforts and possible funding issues.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Chair Case deferred to the Division of Forestry and Wildlife (DOFAW) Administrator Smith and Ms. Yuen to respond to Vice Chair Senator Agaran, and noted DLNR also submitted documents for review to the Working Group on this subject.

Administrator Smith summarized DLNR's written testimony, in consideration of testimony submitted by Mr. Brendon Balthazar, Diamond B Ranch LLC. He clarified that ~~the lease~~ Mr. Balthazar's lease has, and was placed on sale on the open market with, a 1-year cancellation

clause. ~~It~~ That clause was set up specifically to enable sale of the property without long-term encumbrance. DLNR, and a coalition of partners, along with U.S. Forest Reserve and U.S. Fish and Wildlife Service, purchased the land for reforestation, watershed protection, and protection of endangered species habitat. This property thus has nothing to do with Act 90 discussions in terms of potential for transfer to DOA. ~~He~~ Administrator Smith also provided information and history on DOFAW's management of the Kula Forest Reserve, and added that DOFAW has the funding and resources to manage these areas.

Co-Chair Senator Inouye requested details about the appropriation that was used for the ~~purchased from the different entities~~, and clarification if it was State CIP funds.

Administrator Smith ~~gave~~ provided an estimated cost: \$4 million ~~dollars~~ Forest Sservice, \$2 million ~~dollars~~ Fish and Wildlife Sservice, \$4 million ~~dollars~~ of State CIP money, and some funding from private services for restoration and management. He will provide ~~this~~ these details to the Working Group in writing.

In response to a concern raised at the last Working Group meeting by Mr. Jason Moniz, K.K. Ranch, Inc., regarding the Daniel K. Inouye construction project, Administrator Smith noted that because the highway encroached on critical habitat lands, the department was required to designate some other lands for the Palila habitat restoration, and it was a trade--off in order for Department of Transportation to build the highway. The highway mitigation was not initiated by DLNR, and DOFAW was not prepared to manage the parcel at that time. DOFAW is still in conversations with Mr. Moniz.

Ms. Yuen gave an update on DLNR's forest restoration work completed on parcels transferred to DOFAW which included 400,000 trees planted, miles of fencing per hoofed animal removed, fire breaks, and hunting areas opened to the public. DOFAW is working to manage these areas long term through federal grants and out-of-state funding sources.

Chair Case clarified DLNR land leases and revocable permits are held by the Land Division. Some are set aside to the DOFAW from time to time as and when appropriate, to do additional management of resources and possible collaborative work with permittees.

Co-Chair Representative Tarnas brought up concerns from lessees that DLNR does not prioritize food production. Many believe DOA is better suited to manage Ag-agricultural leases because of its ability to offer more flexibility in leasing options. Co-Chair Representative Tarnas asked how DLNR manages multiple--use properties to include food production and other conservation value.

Chair Case said DLNR prioritizes food security and manages pasture grazing just as well as DOA in addition to hunting and gathering, which are also food ~~related issues~~ sources.

Ms. Yuen added that protecting watershed forests is important because they are the source of water in Hawaii, which enables agriculture.

Administrator Tsuji said agricultural and pasture leases originated ~~from in~~ DLNR for the purpose of agricultural production. Prior to Act 90, DOA only managed agricultural parks; ~~T~~ through a statutory amendment, DOA acquired additional lease options, ~~which that~~ DLNR has been seeking through legislation for years.

Co-Chair Representative Tarnas asked DOA how it has adapted its strategic plan since Act 90 and handles issues of multiple use easements.

Deputy Atta said DOA made changes to its property management and mission which now include ranching, pasture, the food production industry, and all aspects of agriculture. DOA devised two sets of administrative rules, and their divisions provide technical support in ~~concept~~ concert with CTAHR, the private agriculture sector, and USDA.

Deputy Atta said DOA acknowledges properties can have multiple uses; however, DOA believes the management should be based on the most active use occurring on the property.

In response to written testimony submitted from Ka'ala Farms, Inc., he noted DOA took issue with the characterization of its management capabilities. DOA worked collaboratively with DLNR to cancel the lease and return jurisdiction of the parcel to DLNR to preserve the cultural resources.

Chair Case said she appreciates the working relationship with DOA. However, DLNR should manage ~~multiple--~~use properties to prevent further land conversion. Many ~~multiple--~~use lands have a history of problems which result in the parcels being transferred back.

Chair Case referenced a pilot project to transfer PonoHolo Ranch lands to DOA and discovering restrictions from the Executive Order were missing in the lease terms. She ~~attributed-noted~~ her presence on the Board of Agriculture and familiarity with the issues as important factors in the ~~finding the~~ multiple-use lands' oversight and noted that DLNR review is need to monitor these types of details.

Chair Case deferred to Deputy Masuda to talk about another incident with a dairy farm and Hamakua hunters concerned about losing access on a DOA lease.

Deputy Masuda said he was contacted by the Hawaii County Council Chair ~~of Hawaii~~ to help resolve the issue with hunters and noted that while DLNR regulates hunting activities, it was a DOA lease. DLNR worked with DOA to smooth things over; however, Deputy Masuda said that if the property was managed by DLNR, the situation may not have escalated to that level of community upset.

Deputy Atta said that he is not sure that if DLNR managed the property the issue would have been resolved sooner, but agreed collaboration is key. He noted the incident also involved a criminal trespass and, property damage situation and resulted in a controlled access arrangement

which appears to be working. DOA appreciates the assistance from DLNR and ~~envisions~~ appreciates this type of working collaboration to resolve issues.

Co-Chair Senator Inouye added there could be other factors involved including the parcel being in old sugar plantation lands and ~~plantation~~-roads in limbo. Complainers may be holding the State liable when there could be County roadway issues.

Deputy Masuda related the issue of dairies and food sustainability to another DLNR project in East Hawaii to restore Meadow Gold Dairy and expand their production facility. In addition, DLNR is working on restoring a reservoir to ensure there is adequate water supplied. Deputy Masuda cited this as another example of DLNR working collaboratively on agricultural projects for the State and public's interest.

Administrator Smith said the original Act 90 legislation was pushed by the cattle industry and grazing tenants to transfer all ag leases, but noted the process has evolved to include mutual agreement. Administrator Smith noted that in issuing long--term no--bid leases to a few select individuals able to reassign with terms they can directly negotiate may be like privatizing the property. He noted the hope is to have good long-term tenants and offer greater flexibility, however if there is abuse and problems occur, the rules may need to be tightened and the public will raise questions ~~why it occurred~~.

Co-Chair Senator Inouye commented that in the original Act 90 discussion DOA said it would look at the lands before accepting the transfer. She also noted the Act 90 reports from both DLNR and DOA included parcels offered to DOA that were not approved for transfer.

Deputy Atta clarified DOA's leasing policies in response to Administrator Smith's comment that direct negotiation in leases may be similar to privatization. He noted that once ~~the~~ lands are transferred, they ~~it~~ goes through due diligence and the department has controls in place to prevent any inappropriate transfer for private gain or private use through a lease assignment. DOA has a no subletting provision, and all assignments or transfers of lease interests or ~~RPs~~ revocable permits go through the agency's vetting process and is subject to Board approval.

Deputy Masuda said he worked with Deputy Atta on Act 90 in 2005-2007 to draft a master list of ~~Ag~~ agricultural properties to be transferred from DLNR to DOA. DOA responded the department did not have the capacity to manage the properties at that time, and Deputy Masuda noted DLNR took exception to cherry picking or the selection of which properties to manage because all the problem agricultural leases would be left with DLNR.

Deputy Masuda clarified the agricultural parcels DLNR wants to protect and manage are large pastoral leases and grazing multiple--use lands which are used for ranching and adjacent to, or lands converted from, the forest reserve. Deputy Masuda said DLNR is not against ranching and wants to work with the current lessees to be able to extend their leases like as DOA does, without public auctions, with cooperative terms to protect public trust values. Deputy Masuda recognized there can be cause for distrust and cited Ponoholo Ranch's testimony about

investment losses. He noted it had nothing to do with DLNR or DOA and was a security issue involving the management authority to provide for a secure transition and more investment.

Co-Chair Representative Tarnas asked DLNR how it works with lessees to motivate investment and ensure ~~that it~~ lessees have a way to recoup investment cost~~can be recouped~~.

Deputy Masuda said DLNR supports Lani Petrie and her stewardship of the land in an ongoing partnership to allow hunting access. Deputy Masuda said if DOFAW managed the land, it could provide 8 months of grazing to Kapāpala Ranch and be a fire reduction and control mechanism which would benefit Ms. Petrie and may reduce property taxes.

Chair Case clarified her interpretation of Co-Chair Representative Tarnas' question to be how ranchers protect their ~~return on~~ investments and noted it depends on the private dollar investment made. She noted the water system reservoir construction may have included federal dollars, and estimated the lease at \$44,000 a year which is a very favorable rent that justifies some private investment in managing the ranch.

Deputy Masuda added the reservoir was supported by NRCS funding.

Co-Chair Senator Inouye said DOFAW should compensate lessees for investments they have made by lessees, and not take the pastoral activity assets ~~done for pastoral activity~~when a lease is ended early.

Administrator Smith said DOFAW has worked with ranchers and NRCS ~~for to produce~~ a grazing plan with access for game bird hunting. He notes ranchers were offered a low to almost no cost lease or permit and DLNR built all the improvements, including fencing and water units, so those ranchers were able to utilize the property without much up front investment in a mutually beneficial relationship.

Deputy Masuda added DLNR is working on a pilot project with Mr. Moniz to create oasis of forests for birds with grazing underneath to keep fire loads down and help ranchers with a lease while preserving the natural and cultural resources.

Co-Chair Senator Inouye reminded Co-Chair Representative Tarnas she has a flight to catch and to move on with the agenda.

PUBLIC TESTIMONY:

Ms. Nicole Galase, Managing Director of Hawaii Cattlemen's Council, Inc. said she did not submit written testimony but was present on Zoom to answer any questions on behalf of the ranchers.

Ms. Galase responded to Chair Case's earlier comment on Ms. Galase's statement the ~~state~~ State had two million acres of active ranching in 1937, and noted that ag land conversion back to

forest and before human contact is not feasible. Ms. Galase said it is heartening to hear DLNR is willing to work with ranchers but it should focus on restoring lands which are already in conservation and leave the 750,000 acres which are in grazing to remain in active production.

Co-Chair Representative Tarnas thanked Ms. Galase and asked whether anyone else would like to present to testimony. Ka'ala Farms, Inc. and Ke One O Kākuhihewa, Association of Hawaiian Civic Clubs submitted written testimony to the Working Group.

Mr. Jason Moniz of KK Ranch, Inc. submitted testimony noting the DLNR list of pasture acreage withdrawn from leases did not include the approximate 2,100 acres withdrawn from KK Ranch in 2010. Co-Chair Representative Tarnas asked DLNR to respond and whether the acres were not listed due to the previous discussion it was not a DLNR action.

Chair Case deferred to the Land Division for comment and clarified if it was a DOFAW withdrawal it was not an action initiated by DLNR but was mitigation required for the DOT highway.

Administrator Tsuji noted DLNR's list only included the past 20 years and for confirmation of the year indicated by Mr. Moniz. Co-Chair Representative Tarnas said the year was 2010. Chair Case said DLNR would double check on it. Administrator Tsuji said DLNR submitted multiple lists including lands set aside to DOFAW with their comments, cancelled revocable permits, and withdrawals from leases.

Deputy Masuda said the 2,100 acres was for the highway mitigation, not property part of the Act 90 review, and that is why it was not included on the DOFAW Act 90 list.

Co-Chair Representative Tarnas questioned why DLNR issues so many revocable permits rather than leases.

Chair Case said revocable permits (RPs) are more flexible in rent and can be issued for only a part of the parcel instead of doing a subdivision in a lease. She also noted DLNR still lacks DOA's ability to do direct negotiation. Conversions of RPs to a long-long-term lease must go through public auction with risk to lessees of losing the parcel.

Co-Chair Senator Inouye added that she has supported DLNR's request to give ~~them~~-DLNR the authority to do direct negotiation like DOA and asked how the revocable permit process would change if ~~it~~-that was-were approved.

Co-Chair Representative Tarnas asked DLNR to respond and clarified Co-Chair Senator Inouye's question to include the authority to do lease negotiations and extensions, and whether it would change DLNR's approach to revocable permits.

Administrator Tsuji said many RP tenants will likely request longer term disposition. He also commented on Co-Chair Representative Tarnas' previous question why DLNR issues more

revocable permits than leases and noted State lands turned over from territory days were never surveyed. Surveying the area can be a huge expense and leases are required to provide legal ~~meets-metes~~ and bounds. Revocable permits can use a TMK or map to describe the area and he noted there is a significant difference in speed and cost.

Administrator Tsuji said in response to the second question if DLNR gained the authority to do lease negotiations and extensions, there would probably be many applications but, like any other disposition, they are required to go before the Land Board for approval. DLNR should consider if additional conditions are necessary, and noted the intent is for DLNR to be equivalent to DOA and suggested reviewing DOA's process to find if it can be applicable to DLNR.

Co-Chair Senator Inouye noted DLNR manages industrial lands in addition to agricultural lands and that should be taken into consideration.

Vice Chair Representative Branco asked whether a revocable permit has a term limit and noted he is familiar with it being for 30 days. He asked whether it can be for a longer term, or if it is limited to 30 days.

Administrator Tsuji confirmed under the statute a revocable permit is for 30 days at a time but noted it can go on and be renewed annually by the Land Board. The renewal process includes staff recommendation, and if there is no immediate use for the area, good tenants can continue the RP.

Administrator Tsuji noted RP's are not financeable unlike a long-term lease where you can build some improvements. Many RP's are in conjunction with another parcel and longer-term disposition, whether privately owned, or part of another parcel they have a long-term lease on, ~~like-such as~~ Kapāpala.

Co-Chair Senator Inouye said more discussion should be continued regarding the public testimony received from the previous meeting, and that she would like to have both DOA and DLNR comment on them.

Co-Chair Representative Tarnas said Ms. Galase wanted to add a comment in response to the note submitted by Mr. Moniz that S.C. Ranch and Boteihho Ranch are on the DLNR list and both had lands taken from them for the same reason as K.K. Ranch. Co-Chair Representative Tarnas asked DLNR to review the list and clarify the situation.

Chair Case thanked the Working Group for the discussion and had no further comments.

Deputy Masuda thanked Administrator Tsuji for his explanation on revocable permits and added if DLNR had the same authority as DOA to do lease negotiation and extensions it would amortize the cost of surveys and improvements and be a big advantage to current lessees with an RP.

Chair Case added DLNR would also have more flexibility to work on the multiple-use leases with the tenant to negotiate lease terms. She noted currently this option is unavailable due to the requirement to hold a public auction, and the terms are set before bid rather than being able to negotiate cooperative arrangements for each parcel and tenant.

Deputy Masuda said long-term leases would also enable DLNR to offer better support to their lessees and help them extend their business to provide for more investments.

Co-Chair Representative Tarnas thanked DLNR and said these discussions may help to set the stage for the next legislative session when the bill comes up again, and added DLNR should reach out to the ranching community so they can understand the advantages.

Deputy Atta commented that the Act 90 transfer issue is primarily a question of who should properly manage productive agricultural assets of the State. DOA recognizes food sustainability, conservation, watershed protection, cultural preservation, and recreational resource access are all important priorities and should be an overlay to good land management of the agricultural activity, whether it is grazing, ranching, or diversified agriculture. Deputy Atta said collaboration from both departments is needed to achieve that goal.

Vice Chair Representative Branco had no other comments.

ANNOUNCEMENT OF NEXT MEETING:

Co-Chair Representative Tarnas thanked everyone present and requested more discussion at the next meeting on how to move forward next Legislative session. No immediate meeting date was scheduled.

Administrator Smith was asked for additional information on the Balthazar lease and he replied that DLNR has already submitted testimony to the Act 90 Working Group for review.

ADJOURNMENT:

The meeting was adjourned at 11:33 A.M.