LINDA LINGLE





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KEN C. KAWAHARA DEPUTY DIRECTOR - WATER

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STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCE

> POST OFFICE BOX 621 HONOLULU, HAWAII 96809

TESTIMONY OF THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES

ON

Renewable Energy Producer Provisions of Section 171-95, HRS, Originally Enacted as Act 102, Session Laws of Hawaii 2002, and the Subsequent Action Taken by the Board of Land and Natural Resources at Their Meeting Held on Friday, November 14, 2008.

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

December 17, 2008

The Department of Land and Natural Resources ("DLNR") offers comments regarding the actions of the Board of Land and Natural Resources' ("BLNR") taken on November 14, 2008 and on the proposed amendments to HRS § 171-95. that would amend current law and reverse the BLNR's ability to lease state lands through direct negotiations with renewable energy producers.

The proposed amendment will (1) require all leases to renewable energy producers to be issued by public auction only; (2) require renewable energy producers to (a) post a performance bond, (b) submit a project timeline, (c) provide evidence of financial ability to complete the project, and (d) meet other requirements deemed appropriate by the DLNR to ensure on time completion; (3) prohibit the termination of an existing lease in good standing; and (3) require the

BLNR to conduct no less than two public hearings in the county where the renewable energy project is located.

The Department appreciates the concerns of the Committee with public notice and community input into the process for issuing leases for State lands. We believe, however, that the process followed under the existing law is working and will greatly facilitate the state in achieving its goal of 30% of our energy needs being met by renewable energy resources by the year 2030. The Board of Land and Natural Resources acted prudently in this matter, ensuring broad consultation with relevant state agencies, industry organizations and has actively sought public participation by requiring the proponents of the subject renewable energy projects, as a prerequisite to any approval, to meet and discuss their respective proposals with the affected community. We are providing the following chronology of the Department and Board of Land and Natural Resources actions and decisions describing the thoughtful manner in which the Board implemented the legislative policy relating to renewable energy.

1. Initial Approach by Hamakua Biomass Energy LLC

In June 2008, Hamakua Biomass Energy LLC ("HBE") approached the Department regarding the possibility of leasing state lands for the purpose of operating a commercial biomass energy conversion plant to generate electrical energy and for growing and harvesting eucalyptus trees as feedstock for the plant. The DLNR facilitated a meeting on July 30, 2008 between its staffs, HBE, and invited the Department of Business, Economic Development and Tourisms' ("DBEDT") Renewable Energy Coordinator to consider HBE's request. HBE stated that it had recently acquired a lease with Kamehameha Schools Bishop Estate ("KSBE") for approximately 10,000 acres of trees and was in need of an additional 10,500 acres to secure financing and a power purchase agreement with HELCO. HBE was directed to identify the State lands in which

they were interested and they subsequently provided the department with an initial list of approximately 18,000 acres of lands with the understanding that they were attempting to identify only vacant and unencumbered (unleased) lands).

HBE's list appeared to include forest reserve lands. Accordingly the department included the Division of Forestry and Wildlife ("DOFAW") in the consultation. After further discussion, HBE requested a formal recognition of the State's intent to continue to work with HBE to identify land that may be suitable for HBE to lease for growing a renewable energy crop, which would enable HBE to continue progress towards securing a power purchase agreement with HELCO.

The process within the department is to bring policy decisions regarding leases to the Board of Land and Natural Resources for decision making. Accordingly, DLNR staff prepared a submittal for the October 10, 2008 BLNR meeting recommending the BLNR agree IN PRINCIPLE ONLY to consider the issuance of leases to HBE of 63.67 acres for a biomass energy conversion plant and up to 10,500 acres of state land for growing a renewable energy crop.

An "agreement in principal only to consider issuing a lease" is not a lease. It is simply a method by which the department expresses the intent to negotiate a possible lease with a party. This is an important point to understand, as department staff was merely recommending to the Board that they should open direct negotiations with HBE.

2. SunFuels Notification to the Department of Competing Interest in Land

In early October 2008, upon being informed of the pending Board action regarding HBE, SunFuels Hawaii LLC ("SunFuels") formally requested the DLNR that it consider the possibility of leasing state lands for the purpose of growing and harvesting eucalyptus trees as feedstock for

a biomass to liquid plant to produce diesel biofuel for the Island of Hawaii. SunFuels stated that it was seeking state land to supplement private lands that it had secured commitments for feedstock for its operations. SunFuels had tentatively identified a site for the biomass to liquid plant on private lands in Waimea.

Upon receipt of notification by SunFuels, DLNR/BLNR Chairperson, Laura Thielen, requested assistance from DBEDT Director specifically because she recognized that the department would not have information regarding other potential renewable energy companies that may have competing interests in the same lands. The DBEDT Director agreed to provide their renewable energy division staff technical assistance to identify existing or upcoming parties interested in land leases for renewable energy crops or facilities, and to identify specific benchmarks to ensure such companies progressed expeditiously to production of renewable energy in the event any leases of state land were issued.

Accordingly, at the October 10, 2008 Board meeting, the BLNR approved only the agreement in principal to lease 63.67 acres for a biomass energy conversion plant and deferred any action on the request to lease up to 10,500 acres of state land for growing a renewable energy crop, directing departmental staff to work with DBEDT and return with a proposal which addressed the concerns raised by the Board.

3. BLNR Action on November 14, 2008 Relating to HBE and SunFuels

a. HBE Request

On November 14 the BLNR first reviewed the request by HBE for an agreement in principal to lease up to 10,500 acres of vacant, unencumbered land. Testimony was received from several parties active in the timber industry and the Division of Forestry and Wildlife

relating to concerns about the affect on Natural Area Reserve System and the use of high value hardwood for renewable energy.

In response to the testimony, the BLNR voted to move forward with the negotiations with HBE subject to the following conditions:

- Land Division and DOFAW would work with HBE to identify specific vacant lands that would be suitable for growing the renewable energy crop in order to protect the NARS and timber industry resources;
- (2) The Timber Association would be included in the negotiations;
- (3) DBEDT staff would provide the department with specific benchmarks HBE must meet in developing their renewable energy production as lease terms to assure the land is promptly utilized for this policy purpose;
- (4) HBE to conduct informational public meetings in the Hamakua District to ensure that the area residents and other interested parties would have an opportunity to comment on the proposal;
- (5) Any relevant Chapter 343 requirements would be met by HBE; and
- (6) After these negotiations were completed, staff was directed to bring any proposal for a lease back to the Land Board, with prior notice to all affected parties, for decision making at a public meeting.

The Board was requested to hold any decision making meeting on the affected island, and the Board indicated that it was willing to do so for these matters.

b. SunFuels

In mid-October 2008 SunFuels provided the department with an initial list of approximately 37,263 acres of possible state lands that included a significant amount of lands encumbered by existing tenants of the State, as well as 3,830 acres previously requested by HBE. On October 24, 2008, DLNR and DBEDT met with SunFuels and specifically directed SunFuels to meet and discuss its project with all affected lessees and the community and was informed that no lease would be issued to them unless and until all concerns of the affected lessees and the community were resolved. Due to the agricultural nature of the pasture leases involved, SunFuels was also directed to consult with the Department of Agriculture. This was the process followed by a renewable energy producer seeking state land on Kauai, which resulted in a mixed-use between existing ranch tenants and the renewable energy producer after in-depth negotiations.

Based on this information, DLNR staff prepared a submittal that the BLNR for the November 14, 2008 meeting for the Board to determine whether to, IN PRINCIPLE ONLY, to consider the issuance of leases of state lands for growing eucalyptus trees as feedstock for renewable resource transportation fuels. The intent of the department was to recommend opening multi-party negotiations similar to the ones which had reached a successful conclusion on Kauai.

The day prior to the Board meeting, department staff discovered that SunFuels had not consulted with the affected tenants on the list of lands provided by SunFuels. Staff began the November 14 meeting with an apology to the affected landowners, and the department has stated that in the future our staff will make direct contact with lessees prior to placing any item on a Board agenda.

The Board received testimony from the Department of Agriculture, Farm Bureau, Cattleman's Association and some affected lessees who had concerns regarding opening negotiations for land currently under lease. The Board held a lengthy discussion with the testifiers prior to deliberating.

In deliberations, the Board noted that the state policy of achieving 30% of energy needs from renewable resources was going to require our state to increase the efficient use of state lands. Time and again the Board referred to the Kauai negotiations where existing rancher tenants agreed to dedicate lands to share with a renewable energy producer in exchange for the producer building infrastructure improvements to make the remaining ranch lands more productive. The producer is currently providing renewable energy to supplement KIUC's energy portfolio. The Board chose to support the agreement to move forward in principal in order to open negotiations to determine if there was a possibility of adopting a mixed use pattern in Hamakua which would support both ranching and renewable energy.

The Board voted to support the negotiations subject to the following conditions:

- Land Division would work with SunFuels and the affected tenants to determine if mixed use operations were a possibility;
- (2) The lease would only be for up to 10,000 acres maximum, with SunFuels being directed to identify the minimum number of acres needed and the schedule of land needed under it's business plan;
- (3) The agricultural industry would be included in the negotiations (Agricultural Development Corporation had assisted in Kauai and DOA indicated they were willing to assist as well);
- (4) DBEDT staff would provide the department with specific benchmarks SunFuels must meet in developing their renewable energy production as lease terms to assure the land is promptly utilized for this policy purpose;

(5) SunFuels to conduct informational public meetings in the Hamakua District to ensure that the area residents and other interested parties would have an opportunity to comment on the proposal;

(6) Any relevant Chapter 343 requirements would be met; and

(7) After these negotiations were completed, staff was directed to bring any proposal for a lease back to the Land Board, with prior notice to all affected parties, for decision making at a public meeting.

4. Conclusion

Under the above actions, a lease cannot be issued without a separate and subsequent BLNR approval authorizing such action at an open public meeting. The BLNR was not and is not bound by the actions taken on November 14, 2008 to issue any lease whatsoever if in its discretion, it believes that the applicants have not addressed all of the pertinent concerns of the State, existing lessees and permittees, and any other interested parties, to its complete satisfaction.

Additionally, as a part of the above actions, the BLNR requested DBEDT to assist the DLNR by providing recommendations regarding the viability of renewable energy applicants and developing specific benchmarks and timetables for moving a renewable energy project forward or risk losing the lease.

The BLNR also encouraged HBE and SunFuels to consider State lands in areas other than Hamakua and to open discussions with private landowners of large tracts of land as an alternative strategy for their respective projects.

Accordingly, the department believes the process supports increasing both our food and fuel agricultural industry and does not warrant any dramatic changes in statute.

Hawaii Cattlemen's Council 64-957 Mamalahoa Highway Ste. 2 Kamuela, HI 96743 Ph. 808-885-5599 Fax 808-887-1607 hicattlemens@hawaii.rr.com



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,

Aloha and mahalo for providing an opportunity for the public to participate in discussions regarding policies affecting lessees of state lands, our cattle industry, and the future of renewable energy in Hawaii.

The Hawaii Cattlemen's Council, Inc. (HCC) is the statewide umbrella beef production organization comprised of the five county level Cattlemen's Associations. Our 120+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. HCC is also unified with the National Cattlemen's Beef Association (NCBA).

The vision of the Hawaii Cattlemen's Council is to have an industry which provides an attractive, productive and well managed landscape across our state which maintains current grazing capacities and which nurtures our resources while perpetuating our quality of life and culture.

Under optimum conditions, Hawaii's cattle producers are unable to return sufficient income to the land to successfully compete with higher value uses. Hawaii's cattle industry is threatened by the loss of sufficient carrying capacity to support the critical mass necessary to sustain the infrastructure, services and markets upon which the industry is vitally dependent.

The strategic goal of HCC is to create the compelling case which causes each of three stakeholder groups (Producers, Landowners, and the Community/Public) to recognize the critical need to work together to provide sufficient incentives to the owners of grazing lands and open space to cause them to continue to maintain the same for the mutual long-term success and well-being of all stakeholders. The following are a few facts that help to make this case:

- Ranchers are good land stewards. Our State's natural resources (land and water) and ecosystems must be enhanced with proper management and financial resources. These practices are consistent with prudent ranch management.
- Critical mass is a critical issue. Hawaii's cattle industry needs a core of producers to survive to preserve the necessary critical mass that benefits all producers and keeps the operation of the industry's infrastructure (transportation, packing houses, market opportunities, etc) viable.
- **Good grazing land is increasingly scarce.** While over 1 million acres of the State's 4.2 million total acres are in some sort of "grazing" use according to Real Property tax records, being able to secure reasonable quality pasture on reasonable terms and tenure is increasingly difficult;
- Grazing land provides a high level of ecosystem service values. The public tends to take for granted all the value which Hawaii's open space represents, much of which is in pasture use. This includes its value for aesthetics and scenic vistas, water catchment and infiltration, carbon sequestration, oxygen production, habitat enhancement and preservation, fire suppression and fuel load management, soil conservation, preservation of cultural values, potential for additional access and recreational opportunities, etc.

The Hawaii Cattlemen's Council is committed to better educating the public about the total contribution of our industry to the broader community in terms of the value the economic impact of a healthy cattle industry and the value of the ecosystem services attributable to land under the stewardship of ranchers. HCC is also committed to work to preserve public grazing lands with a "no net loss of State grazing land" policy by restricting the leasing of public lands which have historically been used for grazing leases to only qualified ranchers and on lease terms appropriate to encourage responsible pasture use and management.

Our organization realizes the importance of developing renewable energy resources and applauds the efforts of those who are working towards this end. We welcome the dialogue among parties with interests in Hawaii's public lands and appreciate the opportunity to provide the perspective of Hawaii's cattle industry.

Respectfully,

H.M. Richards, III Vice President Hawaii Cattlemen's Council Christopher S. English President Hawaii Cattlemen's Association Michael Crosson P O Box 12 Honokaa, HI 96727 December 17, 2008

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

Subject: Testimony on the renewable energy produce provisions of section 171-95, HRS, and the subsequent action taken by the Board of Land and Natural Resources at their meeting on November 14, 2008.

Dear Committee Members,

I support amending section 171-95, HRS, to provide better public notification of pending applications, and to hold the decision-making meeting on the island where the project is proposed to occur.

I believe the board erred when it approved the leases in principle without due consideration from other agencies and community members. At the Oct 10 DLNR Board meeting, HBE requested to lease 10,500 acres of state lands. They submitted a list of 23,379 acres of state lands in the area from which the 10,500 acres would be chosen. DOFAW staff said 18,385 acres were forest reserve composed of largely native forest and deemed them inappropriate. Another 2,500 acres should be removed from the list because they are already leased to cattle operations. 209 acres are composed of steep rugged gulches like Kalopa gulch, which seem unsuitable for biomass production. If these gulch parcels are leased, somehow planted with eucalyptus, and a large storm happens, there would be potential for significant damage to bridges and roadways. From the original list of 23,000 plus acres, there appear to be less than 2,000 acres suitable for biomass agreed to the staff's recommendation that staff help identify the remaining acreage needed. How DLNR staff will determine the additional acreage remains unclear. What, if any, involvement the community will have in this process also remains uncertain.

I am dismayed by the recent actions of the DLNR. Although almost no warning was given to the communities and citizens up to this point, there was a considerable amount of feedback that warranted at least a delay of the approval in principle. The applicant's requests raise a number of concerns with regard to community livelihood and safety, as well as a disregard for native forest lands. The vision of eucalyptus trees extending from near sea level all the way to the Mauna Kea Forest Reserve at 8,000 feet is sobering. I am concerned that the staff and board did not fully consider all of the implications before approving in principle the leasing of these lands to HBE. In order to see the affect from all angles, all stakeholders, including members of the Hamakua community, must be involved in the process.

I am encouraged by the quick action of this committee and thank you for your efforts to remedy the situation.

Sincerely, Withel Crossing

Scott Enright P.O. Box 42 O'okala, HI 96774 enright.scott@gmail.com 808-854-1200

LATE TESTIMON

December 17, 2008

Chairperson Clayton Hee and Committee Members Senate Committee on Water, Land, Agriculture and Hawaiian Affairs

Re: Hawai'i Revised Statutes section 171-95 (as amended in Act 102, Session Laws of Hawai'i 2002) regarding an expedited process for alternative energy development and the subsequent action taken by the Board of Land and Natural Resources at their meeting held on Friday, November 14, 2008 in Honolulu.

Dear Chairman Hee and Committee Members,

The purpose of this testimony is to recommend that the Hawai'i Revised Statutes section 171-95 (as amended in Act 102, Session Laws of Hawai'i 2002) be amended to allow other alternative energy entities to participate in a process prior to selection, to provide better public notification of pending applications, and to hold the decision-making meeting on the island where the project is proposed to occur. Further, I respectfully ask this Committee to amend the statute, directing the Board of Land and Natural Resources to produce a comprehensive agriculture and alternative energy management plan and land map utilizing recommendations from the Department of Agriculture, and Department of Forestry and Wildlife in conjunction with the Department of Business, Economic Development and Tourism.

I'd like call attention to the lack of any comprehensive plan or strategy on the part of the Board of Land and Natural Resources in the issuance of direct leases of State lands on the Hamakua coast of Hawai'i. Recent economic events and the trends produced in the forest products, energy and agriculture sectors dictate that the Board move in a cautious and informed manner in awarding decades-long leases of valuable public land resources.

A number of alternative energy entities have recently attempted to secure long-term leases on extensive tracts of State land on the Hamakua coast. The large scale monoculture plantings proposed by these entities provide a very low monetary return to the State for what are valuable land resources. The leases proposed by these concerns do not help secure a diversified agricultural economy for either Hamakua or the State. Neither do they promote the Board's stated agenda of developing a value-added forest products industry. Further, lease agreements made by the Board for extensive tracts of land to one or two energy entities fail to take into consideration future food security issues, which should be a high priority interest of the State.

While this testimony recognizes the State's interest in promoting the leasing of its land holdings as a way to create new jobs and industry, the public interest must be served at all times. The

December 10, 2008

WILalso/ E TESTIMONY

RE: Direct Lease of Hamakua Lands to; Sunfuels Hawaii LLC /Biomass Energy Hawaii LLC

Aloha Chairperson Laura Theilen,

It is quite upsetting to learn that a piece of legislation deemed good for the future of Hawaii can be so devastating to the People of Hawaii, namely to the residents along the Hilo/Hamakua Coast. This (little known) piece of legislation gives the BLNR rights to negotiate with anyone wanting State lands for use for bio-fuel, including lands already in use for other purposes, can be in effect sold off to the highest bidder. If bidding were a part of this equation this situation would at least have had some process in which to be dealt with.

The newspaper may be where DLNR/BLNR can post all of their notices to the public however the time given to respond to issues at DLNR/BLNR meetings is **way too short** notice. On these meeting's agendas are issues where time sensitivity is more a way to railroad items through without public input than have the issues heard. Only those who have the means to jump on a plane short notice-take time off from their life and come to you in person-to speak on their behalf get heard. Since there are less and less of those in the regular working class and in the present economy that can do this, the situation usually goes just the way the State wants it to, with more people who never heard it was even an issue in the first place.

I am very concerned that lands could be snatched up by anyone, under any guise, without proper procedure, public hearing, proper timely notification, bidding etc... Any piece of land including lands already in use for other purposes, are in jeopardy. I was speaking specifically about a small forty acre piece of land in Ookala that is currently cared for under a MOA with DLNR/BLNR until 2030 for use as a community demonstration forest. But that has since been removed from Sunfuels tmk list as inappropriate. This whole process by which they have been allowed to move around is inappropriate. The aggravation created by these allowances has been beyond measure.

I have personally worked too hard on this small piece of property to lose it or even have the threat to lose it. There is too much to do in day to take time out to have to fight for something when it should be yours by the process provided by law. The process by which I had to obtain this piece has been usurped. I know lease holders like myself and other community members feel that loop holes were created to benefit a few and give the majority of State lands almost illegally to one concern. Whatever happened to preserving our rural lifestyle and supporting the working person, such as the farmers and ranchers trying to put food on theirs and everyone else's tables.

Our area was hard hit when the plantations closed; the Laupahoehoe Train Museum picked up this parcel as a demonstration forest and place for the community to build its pride, just as the farmers have done and ranchers have done holding the lands in trusted to them. A diversified group using our lands by the processes established long ago. A process to give everyone equal chance. I propose that if any endeavor was to affect an area than that area should be where the meetings are held. Not in a board room in Honolulu, if it means saving all the Island of Hawaii issues till the meeting comes to the island than do so, if it means making special meetings than do so, we pay your way either way. Notification should have been given when the loophole was created to all leaseholders in writing well in advance one week in an article in the newspaper is not enough.

I regret that I cannot be here to be at this meeting as I would like to say this and hear in person what will be done to reverse this error and what kind of apology will be made to those of us who feel the State just pulled a fast one over on.

It is with heartfelt concern that I request that you reconsider any decision to give these lands away to any taker for any reason without proper time for community input and consideration. OUR STATE lands, including TMK 3-9-01:13 and 18, commonly referred to as the Ookala Community Forest would not like to be lost by the community.

Sincerely,

Lisa Barton

BIG ISLAND FARM BUREAU



P.O. Box 1630 Kamuela, HI. 96743

Phone: 800-Fax: 808-885-5582 E-mail: bifb@hawaiiantel.net

Re: ACT 102 & HRS Section 171-95 Hearing Date: December 17, 2008 at 5:00PM

Senator Clayton Hee: Committee on Water, Land, Agriculture and Hawaiian Affairs

Chair Hee & Members of the Committee,

My name is Lorie Farrell; I am the Executive Director of the Big Island Farm Bureau. I am here this evening on behalf of Dean Okimoto, President of the Hawaii Farm Bureau Federation. Senator Hee, Members of the Committee; he wanted me to convey his apology and regret's being unable to attend the hearing this evening on this important very important issue.

The Hawaii Farm Bureau Federation is the largest general agriculture organization in the State of Hawaii with over 1600 members Statewide and 650 on the Island of Hawaii

The Hawaii Farm Bureau Federation will not trade food production for fuel production, nor will we support the erosion of our livestock industry. The Biofuel movement in this State needs to address how they are doing business; they are going about this in the wrong manner, we respectfully urge you to engage the concerned parties & stakeholders before not after; this is only good business. The agricultural producers in this particular situation should have been engaged prior to it becoming public.

We keep hearing about sustainability but what does that mean? Is it a buzz word the State uses or do you actually want it? If your answer is yes; then why is the State taking away our only affordable source for agriculturally productive land?

Do you want livestock producers on this Island? Every producer you take out erodes the sustainability of this industry. They are in a precarious position as is; are you willing to help push them over the edge. Each time an action such as this occurs you are jeopardizing the entire livestock industry on this Island.

We are willing to work with you on amending Act 102 & HRS 171-95 and pledge our support. Please support our agricultural producers with actions that ensure the sustainability of future generations.

Respectfully, Lorie Farrell Lorie Farrell, Executive Director **Big Island Farm Bureau**