

PROGRESS REPORT ON
TRANSFER OF AGRICULTURAL LAND FROM
DEPARTMENT OF LAND AND NATURAL
RESOURCES
TO
DEPARTMENT OF AGRICULTURE

As mandated by Act 90, Section 1, Session Laws of Hawaii 2003

Submitted by the Department of Agriculture and the Department of Land and Natural Resources

A meeting with the Department of Land and Natural Resources (DLNR) was held on June 2, 2003 to discuss the need to develop transfer criteria for both agencies. Approval from both boards is necessary prior to any transfer. Issues identifying the criteria for transfers and rules governing the program should be kept separate. DLNR offered to seek assistance from the Office of Planning (OP) to use the Geographic Information System (GIS) to identify parcels for the "first cut". The Department of Agriculture (DOA) began the planning required to implement the new program.

On June 6, 2003, DOA developed a preliminary schedule for the implementation of S.B. No. 1034 (Act 90). Milestones will include: developing draft rules, holding public hearings, addressing concerns from interested parties, receiving governor's approval, reorganizing the division, and requesting funding for the new positions.

DOA staff met with Chairperson Sandra Lee Kunimoto on July 15, 2003 to discuss progress on the new program. Chairperson Kunimoto suggested that staff contact agricultural leaders in the community to discuss concerns and issues they may have regarding implementation of the new program. Chairperson Kunimoto identified issues regarding pasture versus forestry use that had been raised in the past. It was noted that transferred lease conditions regarding the length of a lease and monthly rental will not change at the date of transfer. The rental amount can only be adjusted according to the existing terms of the lease.

DLNR held its first internal meeting on July 16, 2003. Representatives from each of DLNR's divisions were present to discuss their individual concerns. OP agreed to provide staff to assist in this project. Act 90, SLH 2003, was explained, including the purpose of the bill ("to ensure long-term productive use of public lands for agricultural purposes"). The definition of "agricultural purposes" was also discussed. The general process for the project will occur in two phases:

- 1) Determine lands to be transferred; establish criteria (DOA/DLNR)-use of GIS to identify lands; and
- 2) Develop management guidelines (administrative rules by DOA).

The Division of Forestry and Wildlife (DOFAW) pointed out the opportunity (and need) to identify and integrate many of DLNR's natural resources issues on conservation lands that the Land Division manages with public leased, revocable permit, and unencumbered agricultural lands. This concerns more than what is on the public agricultural zoned lands, as it also includes their spatial relationship with the public conservation lands that DLNR already manages, and/or adjacent private lands managed for similar purposes.

Each division within DLNR would propose "working policy principles" that would provide a context for determining what lands are appropriate for transfer to DOA. These "working policy principles" can be viewed as "desired future conditions" that DLNR and/or DOA would envision for the combined public land base. It also provides needed direction for relevant natural resources information to be integrated into public land use policy. The "working policy principles" would need to be agreed to by DLNR and DOA as they will drive the type of analysis needed to be done by staff.

A meeting was scheduled by DOA on July 22, 2003 to meet with agricultural leaders to discuss transfer issues. Attendees included Dean Okimoto, Prasong Hsu, and Grant Hamachi.

Suggestions and questions by the guests included: property should be leased in "as is" condition; lessee should be responsible to grub and clean the lot; lands transferred need to be "clean" with respect to hazardous materials; lands need to have a title search prior to transfer; knowledge of past uses of the lands would be helpful; a minimum lot size for the transfer to ensure bona fide agricultural activity should be considered; and transfers should be limited to agricultural zoned land only.

Following the meeting, staff discussed additional transfer criteria. Criteria mentioned include: tenant must be currently in good standing; there should be no limit on type or activity of land to be transferred (however, the transfer should be done in "like" phases beginning with traditional agricultural activities); revocable permits are acceptable and may be subject to a conversion fee when placed on a long-term lease; vacant land may be considered for transfer in a later phase by region or geographical area; initial parcels should be relatively close to existing DOA activities; parcels should have required infrastructure (irrigation and roads); length of term remaining on the lease should not be a factor; and land transferred must be able to support a viable agricultural operation (location/access).

The Waimanalo Agricultural Association invited DOA to attend their August 11, 2003 community meeting. Chairperson Kunimoto and staff attended to answer any questions that the community might have. A major topic of discussion centered around the land transfer issue. Questions asked and answered included:

- * Who is being transferred first?
(undecided)
- * When will the program begin?
(anticipated implementation date is late summer '04)
- * Will the lease terms be negotiable upon transfer?
(yes, excluding lease length and rent)
- * What will happen to transferred lots not in compliance with their current leases?
(they will not be eligible for transfer until they are in compliance)
- * Will vacant land be transferred?
(yes, but not as the first phase)
- * Will there be a preference for existing tenants to re-bid their lots?
(DOA is carefully considering this issue)

DLNR held its second internal meeting on August 13, 2003. This meeting was also conducted with representatives from DLNR's divisions and OP. Each of the divisions went over its proposed working principles and conditions.

Land Division's proposed working principles focused on the retention of lands with a potential for future higher and better uses; the transfer of prime, former sugarcane lands to DOA; and consideration of irrigation systems for transfer to DOA except where there are user conflicts between agricultural and other uses. Conditions proposed were that transfers

should not result in patchwork jurisdictions and DOA should be responsible for any subdivision requirements.

DOFAW proposed several working principles in the areas of commercial forestry, public hunting, forested watershed (ensuring viable water yields by protecting watersheds), protection of native plant and animal species and native ecosystems, outdoor recreation, public access, and trails.

The Commission on Water Resource Management raised issues regarding the transfer of water rights, the agency that will be responsible for water sources and conveyance system infrastructure (e.g., wells, ditch systems, reservoirs, etc.), ensuring that the transfer of lands to DOA will not affect legally protected water rights, and the growing conflict between agricultural use and stream restoration use of former sugar cane irrigation water.

The Division of Aquatic Resources' (DAR) primary concern in the transfer of lands to DOA is stream protection. DAR would like to review the specific parcels proposed for transfer to be able to make meaningful comment.

The Historic Preservation Division's main focus is on the past uses of the lands being transferred to determine the extent to which historic or cultural sites may be present. Like DAR, they would like to review the specific parcels proposed for transfer.

OP presented the GIS maps they created. It was agreed that the maps should only show agricultural/pasture leases and permits rather than all leases and permits. OP will revise base maps and put them on their website for everyone's use.

On October 29, 2003, DOA staff submitted its intent to reorganize the Agricultural Resource Management Division to transfer two positions for the non-agricultural park program, one position from within the DOA and one position from DLNR. Funding for these positions through the general fund is being requested with the intent to fill at least one position starting mid FY05. The intent to reorganize was approved by Chairperson Kunimoto.

Note: DOA is currently reviewing possible amendments to Act 90 to clarify the intent of the program and the transfer parameters. These amendments may require legislative approval.