

LEGISLATIVE PRIORITIES REPORT

O'ahu County Committee of the Democratic Party of Hawai'i
November 24, 2018

- I. Weds., Oct. 10, 2018, Kahalu'u Neighborhood Board Report
- II. Thurs., Oct. 11, 2018, Ko'olauloa Neighborhood Board Report
- III. Fri., Nov. 30, 2018, 6:00-8:00, Protect Red Hill Aquifer Forum, Option 3, Double-lined stainless steel tanks as opposed to Option 1, patchwork Ernest Lau, BWS Chief Engineer, Carroll Cox, EnviroWatch
- IV. Thurs., Dec. 6, 2018, 5:00-7:00, 2nd Meeting for OCC Legislative Priorities
- V. Thurs., Dec. 6, 2016, 7:00-9:00, w/ADA, PATSY MINK'S BD, free screening of Patsy Mink Documentary "Ahead of the Majority," potluck, BYOB
- VI. Thurs. Dec. 20, 2016, Hu Honua Bioenergy Plant Forum, Henry Curtis, Life of the Land (LOL), Lance Collins, Attorney for LOL, HH proposes to release 288,920 tons of CO₂ (Carbon Dioxide), 22 tons of methane, and 11 tons of nitrous oxide annually and draw 21 million gallons of water per day from the Hakalau aquifer and then mix hazardous chemicals into the water before heating and daily disposing it via injection wells directly over the aquifer and only 100 feet from the shoreline.

KAHALU'U NEIGHBORHOOD BOARD NO. 29 WEDNESDAY, OCTOBER 10, 2018 REGULAR MEETING MINUTES

RESIDENTS/COMMUNITY CONCERNS

Windward Democratic Party Update – Melodie Aduja, Oahu County Democratic Party of Hawaii Legislative Priorities Committee Chair, reported the following:

- Hawaii 2018 General Election – The Hawaii 2018 General Election is Tuesday, November 6, 2018.
- Early Voting – Early voting for the Hawaii 2018 General Election starts on Tuesday, October 23, 2018 and ends on Saturday, November 3, 2018.
- Walk-In Voting Registration – Walk-in voting registration is available for the Hawaii 2018 General Election. Residents are required to bring proof of residency.
- Office of Hawaiian Affairs (OHA) – Aduja encouraged all voters to participate in the OHA election. Aduja reported that OHA received minimal participation during the Primary Election and Deal responded that one (1) precinct did not receive OHA ballots.
- Resolutions – The Democratic Party recently passed two (2) resolutions. The first opposes the proposed Constitutional Convention due to its associated costs and potential effects to OHA and environmental protections. The other supports the proposed constitutional amendment to surcharge investment properties valued over one (1) million dollars to support public education.

KO'OLAULOA NEIGHBORHOOD BOARD NO. 28 THURSDAY, October 11, 2018 REGULAR MEETING MINUTES

PUBLIC INPUT/COMMUNITY ANNOUNCEMENTS

- Democratic Party of Hawaii: A representative from the Democratic Party of Hawaii asked to support the Constitutional Amendment to improve the public education system. Everyone is eligible to vote for Office of Hawaiian Affairs elections. The Democratic Party of Hawaii passed a resolution to oppose the Constitutional Convention.

OC 2018-11. Urging the United States Navy to retro fit its twenty jet fuel tanks or relocate them to a location away from the aquifer

Whereas, A Navy analysis may underestimate the contamination potential of leaks from giant fuel tanks from Red Hill; and

Whereas, The Navy has 20 underground fuel storage tanks dating to World War II in Red Hill above Pearl Harbor; and

Whereas, The tanks sit on an aquifer that supplies a quarter of the water consumed in urban Honolulu; and

Whereas, More than 27,000 gallons of jet fuel leaked from one of the tanks in 2014; and

Whereas, The Navy's evaluation of the potential risks appears to be skewed toward concluding that millions of gallons of jet fuel could be released without damaging the groundwater; and

Whereas, The Navy cannot locate the leaked fuel or accurately assess the risk to our groundwater; and

Whereas, Instead, the Navy is providing models to produce its preferred outcomes; and

Whereas, The Navy and regulatory agencies are working on a 20-year-plan to reduce the risk of leaks and fuel contamination from the tanks; and

Whereas, The plan includes new tank designs and potentially storing the fuel someplace other than Red Hill; and therefore, be it

Resolved, That the O‘ahu County Democrats of the Democratic Party of Hawai‘i urge the United States Navy to install double-walled tanks at Red Hill within five years or move the tanks if the Navy is unable to retrofit the twenty tanks into double-walled tanks within the time prescribed; and be it further

Resolved, That the O‘ahu County Democrats of the Democratic Party of Hawai‘i urge the Hawai‘i State Legislature, and the U.S. Congress to mandate that the Navy retrofit the twenty Red Hill tanks to double-walled tanks within five years and or relocate the twenty tanks to a location where the risk of leakage into the aquifer and groundwater is greatly minimized; and be it

Ordered, That copies of this resolution be transmitted to the United States Navy, members of the Hawai‘i Congressional Delegation, the Governor of the State of Hawai‘i, the Lt. Governor of the State of Hawai‘i, Hawai‘i Legislators who are members of the Democratic Party; the Mayor of the City and County of Honolulu; and Members of the City Council of the County of Honolulu; and the 2018 convention resolutions committee of the Democratic Party of Hawai‘i.

HUMAN ENVIRONMENTAL IMPACTS COMMITTEE PRESENTS
Protecting Oahu's Red Hill Aquifer
Ernest Lau, BWS, and Carroll Cox, EnviroWatch
Friday, Nov. 30, 2018, 6:00-8:00 p.m., DPH HQs, 627 South St.

Ernest Y. W. Lau, P.E, Manager and Chief Engineer. On February 1, 2012, The Board of Water Supply's (BWS) board of directors appointed Ernest Y.W. Lau as the tenth manager and chief engineer of the Board of Water Supply. As manager, Lau is responsible for the overall strategic direction and management of the BWS, with a focus on furthering the department's mission to provide a safe, dependable, and affordable water supply, now and into the future.

Carroll Cox, President of EnviroWatch and Carroll Cox Show, Honolulu Star-Bulletin reports that Carroll Cox is a tireless watchdog, putting in countless hours combing through government documents, attending public meetings and following up on tips from whistleblowers to expose wrongdoing. The Carroll Cox Show airs Sunday morning, 8:05 am to 10 am, Hawaii Time, on radio station KWAH 1080 AM. Shows are archived on its website, www.carrollcox.com, along with additional pictures, documents and other information. Mr. Cox was the first to report on the Red Hill 27,000-gallon fuel leak in 2014.

In January 2014, there was a 27,000-gallon leak of jet fuel from Tank 5 at the U.S. Navy's Red Hill Bulk Fuel Storage Facility. This underground storage tank (UST) – along with 19 others like it in the Red Hill area – is able to contain up to 12.5 million gallons of fuel for the U.S. Navy. These tanks are located 100 feet above the groundwater aquifer, which the BWS uses to provide water to residents from Moanalua to Hawaii Kai.

The Red Hill Bulk Fuel Facility continuously stores 187 million gallons of fuel in 70+ year-old tanks that are located just 100 feet above a State designated drinking water aquifer. The BWS uses water from this aquifer to serve residents from Moanalua to Hawaii Kai. Navy studies show the groundwater underneath and within close proximity to the tanks is already contaminated with petroleum chemicals. These studies also document leaks dating back to 1947, continuing corrosion of the tank liners, and the risk of a large catastrophic fuel release. If such a release occurred, it could pollute the aquifer and our water supply for many years. A catastrophic fuel release could occur as the result of structural failure of the tanks caused by an earthquake. This could result in more than a million gallons of fuel released into the groundwater and potentially several million gallons to Halawa Stream and Pearl Harbor.

To protect the aquifer's long-term ability to provide safe drinking water, the BWS urges the Navy, EPA, and Hawaii DOH to:

- double line the tanks (Option 3). If not, then relocate away from the potable water aquifer;
- meet the same regulatory requirements as all other USTs; and
- clean up the fuel that is already underneath the tanks to reduce the long-term threat to other wells in the area.



O`ahu County Democrats Committee on Legislative Priorities

Subcommittee Membership Sign-up Sheet

Joint Senate and House Committees

	<u>Name</u>	<u>Email</u>	<u>Phone</u>
S/H Agriculture and Environment (AEN) (AGR)	Alan Burdick		
H Energy & Environmental Protection (EEP)	Melodie Aduja, Chair		
S/H Ocean, Marine Resources & Hawaiian Affairs	Bill South		
S/H Water & Land			
S Transportation & Energy			

H Economic Development & Business (EDB)	Robert Galliher, Chair		
H Interstate Commerce	Donald Koepler		
H Tourism	John Bicklel		
H/S Higher Education (HED) (HRE)			
S/H Education (EDU) (EDN)			

H/S Finance; Ways & Means (FIN) (WAM)	Dylan Armstrong		
S/H Consumer Protection, Commerce and Health (CPC) (CPH)	Marsha Joyner		
	Alan Burdick		
H/S Health & Human Services (HHS) (HMS)	Larry Smith, Chair		
S/H Housing (HOU) (HSG)	Becky Gardner		
	Rick Tabor		

S/H Judiciary	Bobbi Halpin		
S/H Labor & Public Employment	Gloria Borland		
H Legislative Management	Sam Puleasi		
S Public Safety, Intergovernmental and Military Affairs	Lynn Robinson-Onderko		
	Rick Tabor, Chair		
H Veterans, Military, & Intergovernmental Affairs, & Culture and the Arts	Greg Middents		
H Public Safety			

Second Meeting: Thursday, December 6, 2018, 5:00 pm to 7:00 pm, HQs (LegislativePriorities@gmail.com)

ENV:2018-08 Urging Hawai`i's officials to prioritize sustainability as a primary directive across all sectors of public policy, and to withdraw Public Utilities Commission support for Hu Honua Bioenergy, LLC.

Whereas, Sustainability is defined by the World Commission on Environment and Development to mean “development that meets the needs of the present without compromising the ability of future generations to meet their own needs;” and

Whereas, Traditional Hawaiian society was able to sustain a thriving population of an estimated one million people with advanced agriculture, aquaculture and prudent, effective management of land and natural resources; and

Whereas, Global climate chaos presents an urgent threat to the Hawaiian islands via sea level rise, ocean acidification, coral bleaching, drought, flooding, temperature changes, species extinction, infectious disease and other harmful impacts; and

Whereas, The nature of our island archipelago is one of limited resources, space and carrying capacity; and

Whereas, The platform of The Democratic Party of Hawai`i supports this definition of sustainability and its urgent priority; and

Whereas, in July 2017, the State Public Utilities Commission (PUC) contradicted the principles of this definition of sustainability when it approved Hu Honua Bioenergy, LLC, which proposes to release 288,920 tons of CO₂, as well as 22 tons of methane, and 11 tons of nitrous oxide into the air every year, even though alternative means of producing renewable energy in Hawai`i, such as solar and wind power, exist that would have negligible greenhouse emissions; and

Whereas, Hu Honua would draw 21 million gallons of water per day from the Hakalau aquifer and then mix chemicals, designated as “hazardous” by both the EPA and OSHA, into this fresh water before heating and daily disposing it via injection wells directly over the aquifer and only 100 feet from the shoreline, from which point it would ultimately percolate into coastal waters; and

Whereas, Human beings living in Hawai`i all have a moral obligation and real responsibility to act as good stewards of the land and preservers of its unique flora and fauna for the current and future generations; and

Whereas, Protection of our natural environment and natural resources benefits and sustains our economy and livelihoods, health and well-being, and enjoyment of Hawai`i's open spaces, parks and trails, coastlines, bodies of water and other natural resources; therefore be it

Resolved, That The Democratic Party of Hawai`i urges the Public Utilities Commission, all elected and appointed officials of the State of Hawai`i and its various counties to withdraw support for Hu Honua Bioenergy, and any successors, which will have irreversible and deleterious consequences for the state's coastal waters and the planet's atmosphere; and be it further

Resolved, That The Democratic Party of Hawai`i urges all elected and appointed officials of the State of Hawai`i and its various counties to work toward ensuring that all further plans for economic development, infrastructure upgrades, energy and food production, housing and all other sectors of public policy be researched, designed, executed and maintained with the core tenet of achieving sustainability as defined above as a primary goal; and be it

Ordered, That copies of this resolution be distributed to all elected and appointed officials of the State of Hawai`i and its various counties. Ordered, That copies of this resolution be distributed to all elected and appointed officials of the State of Hawai`i and its various counties.



O`ahu County Committee on Legislative Priorities

November 21, 2018

via email: cleanwaterbranch@doh.hawaii.gov

The Honorable Bruce S. Anderson, Ph.D.
Director of Health
State Department of Health
P.O. Box 3378
Honolulu, Hawai`i 96801-3378

RE: HU HONUA BIOENERGY, LLC

Dear Mr. Anderson:

In addition to the testimony of the O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawaii ("DPH"), submitted on November 14, 2018, the OCCLP submits its supplemental memorandum contained herein. OCCLP is an interested party as the outcome of the Department of Health's decision will not only affect Hawai`i island but will have statewide ramifications as statewide precedent. As such, OCCLP strongly urges that an **Environmental Impact Statement** be required prior to the issuance of any DOH Permits based on the Hawai`i State Constitution Public Trust Document and the Precautionary Principle.

Hawaii Revised Statutes Chapter 343 provides as follows:

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

...

(9) Propose any:

- (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single family dwellings or the equivalent;
- (B) Waste-to-energy facility;
- (C) Landfill;
- (D) Oil refinery; or
- (E) Power-generating facility

However, there is a loophole in the statute as §343-5 (a)(9)(E) Power-generating facility is defined under §343-2 as follows:

"Power-generating facility" means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

Since Hu Honua Power Plant relies on steam to create energy rather than fossil fuel, it is exempt from §343-5 (a)(9)(E) which requires a power plant that burns fossil fuel to complete an environmental assessment.

Rather, Hu Honua Power Plant is characterized as a "Renewable energy facility" as defined in section 201N-1 as: "Renewable energy facility includes a facility that produces or transmits biofuel."

The O`ahu County Committee on Legislative Priorities remains steadfast in strongly urging that an Environmental Assessment be conducted prior to the issuance of any DOH Permits pursuant to Article 11, Section 1 of the Hawai`i State Constitution and the Precautionary Principle to argue in favor of an Environmental Assessment.

Article 11, Section 1 of the Hawai`i State Constitution provides:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

The Hawai`i Supreme Court has declared that this section makes the Public Trust Doctrine (PTD) a fundamental element of Constitutional Law in the State of Hawai`i.

Specifically, under Article 11, Section 1, of the Hawai`i State Constitution, the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people. The Hawai`i Supreme Court has declared that this Constitutional provision created a duty for the State to protect public trust purposes. The Public Trust Doctrine, therefore, seeks to protect the following Public Trust Purposes:

1. Domestic water use of the general public, particularly drinking water,
2. The exercise of Native Hawaiian and traditional and customary rights including appurtenant rights,
3. Reservations of water for Hawaiian Home Land allotments, and
4. Maintenance of waters in their natural state. (Water Resource Protection Plan (2008), Commission on Water Resource Management)

Both the Hawai`i Supreme Court and the Commission on Water Resource Management have declared that the Public Trust Doctrine applies with equal force to groundwater as it does to surface water.

The Precautionary Principle is a duty under the Public Trust Doctrine. The PTD is a preventative doctrine, not a remedial one, as the Hawai`i Supreme Court recognized when it found that the Precautionary Principle was an inherent attribute of the PTD. In endorsing the Precautionary Principle, the Hawai`i Supreme Court rejected the requirement of scientific certainty before acting to protect Public Trust Purposes, noting that to do so will often allow for only reactive, not preventive regulation.

The Commission on Water Resource Management has espoused that "where scientific evidence is preliminary and not yet conclusive regarding the management of freshwater resources

which are part of the public trust, it is prudent to adopt ‘Precautionary Principles’ in protecting the resource.”

Although Hu Honua is not a fossil fuel burning power plant which would make §343-5(a)(9)(E) applicable, under the Hawai‘i State Constitution PTD and Precautionary Principles, the analysis should be the same, i.e., the Department of Health should make the inquiry for determining the necessity of an environmental assessment based on the language of HRS §343-5(c), whether the proposed action will “likely” have a significant effect on the environment. As defined in this section, “significant effect” includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would “likely” cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of “may” and the statutory definition of “significant effect.” Kepoo v. Kane, 106 H. 270, 103 P.3d 939 (Haw. 2005). In addition, the sufficiency of an environmental impact statement is a question of law. Price v. Obayashi Hawaii Corp., 81 H. 171, 914 P.2d 1364 (Haw. 1996).

In Kepoo v. Kane, *supra.*, at 103 P.3d 957, the Court found that the 58-megawatt power plant which burns 86,000 gallons per day and discharges 11 million gallons per day of wastewater and exceeds federal significance levels for air pollution, as set forth in the EA, may have a substantial environmental impact. . . . The plant would be a major source of air pollution, emitting hundreds of tons of pollutants. The Kepoo Court further found the withdrawal of 10.4 million gallons of groundwater and the burning of 86,000 gallons of fuel on a daily basis “involves an irrevocable commitment to loss or destruction of” natural resources. Thus, an EIS was required pursuant to HRS § 343-5 (c) and . . . of the significance criteria enumerated in HAR § 11-200-12(b).

Similarly, pursuant to the PTD and the Precautionary Principle, the inquiry should be that under §343-5(c), the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that, for an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time.

Here, Hu Honua Bioenergy, LLC, proposes to draw 21 million gallons of water per day from the Hakalau Aquifer, double the 10.4 million gallons per day found by the Kepoo Court, *supra.* It will then heat the 21 million gallons of water and combine it with over two dozen chemicals recognized by the EPA and OSHA as “HAZARDOUS CHEMICALS” and 11 million gallons of wastewater will be returned to the Hakalau Aquifer via injection wells that are 400 feet deep above the Hakalau Aquifer, 100 feet from the edge of unstable cliffs and a mere 100 feet from the shoreline. This heated contaminated water will percolate into coastal waters where endangered Hawksbill turtles and other marine life will be at-risk thus not only adversely affecting the fragile marine ecosystem but also the livelihood and subsistence of the surrounding fishing community.

As in Kepoo v. Kane, where it was determined that the withdrawal of 10.4 million gallons of groundwater and the burning of 86,000 gallons of fuel per day involves an irrevocable commitment to the loss or destruction of natural resources requiring an EIS, the Hu Honua Bioenergy Power Plant must also be required to complete an EIS under the Hawai‘i Constitution Public Trust Doctrine and Precautionary Principle, HRS § 343-5 (c) and under the significance criteria enumerated in HAR § 11-200-12(b).

II. An **air pollution control permit** from the DOH Clear Air Branch should also be required given the substantial amount of greenhouse gas emissions that Hu Honua will emit annually. The proposed amount includes 288,920 tons of CO₂, 22 tons of methane gas, and 11 tons of nitrous oxide on an annual basis. The Plant will emit three times more CO₂ than natural gas and 1.5 times more CO₂ than coal. For this reason, the renewable energy source, i.e., steam, it will not reduce the carbon footprint by avoiding fossil fuel as it still emits a substantial amount of greenhouse gas emissions thus failing in being carbon neutral.

Environmental law in the State of Hawaii includes the Constitution of the State of Hawaii, and the Hawaii Environmental Policy Act (“HEPA”).

Article XI, Section 9 of the Hawai‘i Constitution (1978) states: “Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings [...].”

The Hawaii Environmental Policy Act (“HEPA”) (Hawaii Revised Statutes **Chapter 343**), requires individuals and agencies to provide environmental assessments and/or environmental impact statements when an action may affect the environment.

In Massachusetts v. Environmental Protection Agency, **549 U.S. 497** (2007), the U.S. Supreme Court case involved twelve states and several cities of the United States brought suit against the Environmental Protection Agency (EPA) to force that federal agency to regulate carbon dioxide and other greenhouse gases (GHGs) as pollutants under the Federal Clean Air Act.

The Clean Air Act’s sweeping definition of “air pollutant” includes “*any* air pollution agent or combination of such agents, including *any* physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air” §7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word “any.” Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt “physical [and] chemical ... substance[s] which [are] emitted into ... the ambient air.” The statute is unambiguous.

An air pollution control permit from the DOH Clear Air Branch should also be required. Given the excessive amount of greenhouse gas emissions that will be emitted annually, an air pollution control permit would be a means to assure that the amount of greenhouse gas emissions is within acceptable EPA and DOH standards pursuant to the Hawai‘i Constitution, the Hawaii Environmental Policy Act, and applicable Hawai‘i statutes and Administrative Rules and relevant Hawai‘i and Federal case law.

In conclusion, the O‘ahu County Committee on Legislative Priorities urges that Hu Honua Bioenergy Plant be compelled under the Hawai‘i State Constitution Public Trust Doctrine and Precautionary Principle to complete an Environmental Impact Statement and obtain an NDPEs

Permit pursuant to the Federal Clean Water Act and an air pollution control permit pursuant to the Federal Clean Air Act.

Thank you very much for your kind consideration.

Me ka `oia`i`o,

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities