

LIFE OF THE LAND

Ua Mau Ke Ea o Ka `Aina i Ka `Ike
The Life of the Land is Perpetuated in Righteousness
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August 24, 2007

Ted Liu, Director
Hawai`i Department of Business, Economic Development, and Tourism
No. 1 Capitol District Building
250 S. Hotel Street, 5th Floor
Honolulu, HI 96813

re: Update on August 10, 2007 letter re BlueEarth Environmental Impact Statement

Aloha Director Liu,

HB1294 SD1 CD1 (Act 55, 2004) established that that under HRS §343-5(a)(9)(D) an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required for an oil refinery.

The provision was adopted in committee on April 3, 2003. Fifty-four weeks later, on April 19, 2004, the bill passed final reading in both houses without any opposition: 42-0 (House) 24-0 (Senate).

During the final days of the Legislative session, on May 5, 2004, the Governor signed the bill into law.

"The environmental group Life of the Land says an EIS is required by a 2004 state law, and on Monday state Sen. J. Kalani English, who wrote the amendment, said that's correct."
(Maui News, August 21, 2007)

There has been some confusion about whether the Final EIS for the Waena Power Generating Facility covers the proposed BlueEarth bio-refinery.

The existing Final EIS (1997) occurred before the Land Use Commission, while the subsequent rezoning (2000) occurred at the county level.

The Final EIS explicitly stated the exact components of four 58-MW generators. The Final EIS could not have anticipated that Maui County would require alternative energy at the site. The Final EIS explicitly analyzed non-fossil fuel alternatives and dismissed them. It explicitly rejected ethanol and did not discuss biodiesel. ¹

Three years later, alternative energy was raised: "J. Kalani English, the Council's Land Use Committee chairman, said the zoning bill took the middle path by allowing the utility to use only 32.5 of its 65.7 acres of the Waena land for oil-fired energy. The remaining acreage has been designated for alternative energy use." ²

On August, the Hawaii Supreme Court ruled unanimously in the Superferry case that "The Hawai'i Department's determination that improvements to the Kahului Harbor, on the Island of Maui, are exempt from the requirements of Hawai'i Revised Statutes (HRS) chapter 343 (Supp. 2004) was erroneous as a matter of law" ³

DBEDT is required under the law to certify whether HECO's Palm Oil Policy is sustainable, as defined partially by law. DBEDT might choose to evaluate whether HECO's Palm Oil Policy is sustainable without first determining what the environmental impacts are.

It would be simpler if DBEDT required an EIS and then used that information to determine whether HECO's policy meets the law.

Henry Curtis
Executive Director

¹ Final EIS for Maui-Waena Power Generating Station:

<http://oeqc.doh.hawaii.gov/default.aspx?RootFolder=%2fShared%20Documents%2fFINAL%20EIS%2fMAUI%2f1997&View=%7bF4E3E6A9%2d2607%2d49FC%2dB7A5%2d2928B79F10B4%7d>

² Maui Electric gets zoning approval for Waena plant. Honolulu Star-Bulletin, July 8, 2000, <http://starbulletin.com/2000/07/08/news/story9.html>

³ HSC, Number 27407, August 23, 2007