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October 31, 2019

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Aloha Dr. Anderson and Mr. Madsen,

Hu Honua Bioenergy ("HHB") filed an application with the Hawai`i Department of Health ("HDOH") Clean Air Branch ("CAB") for a modification to its Covered Source Permit ("CSP").

Life of the Land's Position

HDOH should reject the HHB application as inadequate.

Life of the Land asks that that HDOH hold a public hearing in Hilo on the HHB application pursuant to Hawai`i Administrative Rules ("HAR") § 11-60.1-205.

Life of the Land asks that the HDOH hold a contested case proceeding pursuant to HAR §11-60.1-100(e) and/or §11-60.1-206(c).

Life of the Land asks that HDOH require an Environmental Impact Statement pursuant to Hawai`i Revised Statutes (“HRS”) Chapter 343. The HHB incinerator requires wood in the form of trees. HHB has stated that it signed confidential leases for trees but has been unwilling to identify their location, address, or TMK, or to say whether the trees are in the Shoreline Management Area, on conservation-zoned land, or on state or county land. Until the lands are publicly identified, the rebuttable presumption must be that HHB has a reason for non-disclosure. The trees are required to make HHB work, they can't be segmented from the project.

Life of the Land believes that the following two sections of HAR, which appear to be unique to HDOH, violate our constitutional rights to a clean and healthful environment. HAR §11-60.1-100 (g) “any covered source permit that has been issued shall not be invalidated by a petition for a contested case hearing”; HAR §11-60.1-206 (e) “any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing.” A permit should only be valid after it has been approved and the appeal process has been exhausted.

Discovering after-the-fact that a permit should not have been issued is unacceptable. That goes double for global lifeform destroying projects such as HHB.

### The Hawai`i Department of Health

The HDOH CAB docket record includes that Application for Significant Modification No. 0724-03, Amendment of CSP No. 0724-01-C,<sup>1</sup> the Draft Permit,<sup>2</sup> and the Request for public comments on draft air permit regulating the emissions of air pollutants (“Request”).<sup>3</sup>

“The permit amendment incorporates a facility-wide greenhouse gas (GHG) emissions cap in accordance with HAR, Chapter 11-60.1, Subchapter 11, to limit GHG emissions from affected facilities. Affected facilities are permitted covered sources with potential carbon dioxide equivalent (CO<sub>2</sub>e) emissions (biogenic plus non-biogenic) equal to or greater than 100,000 tons per year. **However, the biogenic carbon dioxide emissions are excluded in determining compliance with the CO<sub>2</sub>e emissions cap.**” (emphasis added)

The Request stated, “All comments on the draft permit and any request for a public hearing must be in writing, addressed to the Clean Air Branch at the above address on Oahu and must be postmarked or received by November 26, 2019 [] Any person may request a public hearing by submitting written request that explains the party’s interest and the reasons why a hearing is warranted. The DOH may hold a public hearing if a hearing would aid in DOH’s decision. If a public hearing is warranted, a public notice for the hearing will be published at least thirty (30) days in advance of the hearing.”

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<sup>1</sup> [https://health.hawaii.gov/cab/files/2019/10/0724-01-C.review.draft\\_dh\\_.pdf](https://health.hawaii.gov/cab/files/2019/10/0724-01-C.review.draft_dh_.pdf)

<sup>2</sup> [https://health.hawaii.gov/cab/files/2019/10/0724-01-C.permit.draft\\_dh\\_.pdf](https://health.hawaii.gov/cab/files/2019/10/0724-01-C.permit.draft_dh_.pdf)

<sup>3</sup> <https://health.hawaii.gov/cab/files/2019/10/19-CA-PA-17.pdf>

The general powers and duties of the Hawai`i Department of Health is defined by HRS §321-1(a): “The department of health shall have general charge, oversight, and care of the health and lives of the people of the State, and shall pursue as a goal, the achievement of health equity. The department shall consider social determinants of health in the assessment of state needs for health.” This provision covers all health issues, not selective health issues.

The Hawai`i Legislature mandated that “the director shall prevent, control, and abate air pollution and the emission of air pollutants in the State.” (HRS § 342B-3). Furthermore, the legislature charged the director of the department of health to enact rules “[e]stablishing greenhouse gas emission limits applicable to sources or categories of sources, to be achieved by January 1, 2020, and establishing emission reduction measures to achieve the maximum practically and technically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit.” (HRS § 342B-72(a)(1)).

### Life of the Land`s Interest

Life of the Land is Hawai`i`s own energy, environmental and community action group advocating for the people and `aina; we are a non-profit public-interest group that will reach the half-century age mark in February 2020. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

We have worked on energy and water issues throughout our history, climate change policies since 1999, and opposed the Hu Honua proposal since it first popped up in 2008.

We have a direct interest in this case.

We intervened in the Public Utilities Commission (“PUC”) review of the Hawaii Electric Light (“HELCO”) – Hu Honua BioEnergy (“HHB”) Power Purchase Agreement (“PPA”) in 2012. After the deal fell apart, HELCO filed a Revised and Amended PPA in 2017. The PUC re-opened the proceeding with an order designating Life of the Land as a participant.

After the PUC approved the revised contract, Life of the Land appealed the approval to the Hawai`i Supreme Court.

In May 2019 the Hawai`i Supreme Court upheld our appeal asserting that Life of the Land`s constitutional right to a clean and healthful environment had been denied and remanded the case back to the PUC. The PUC re-opened the proceeding and required a greenhouse gas lifecycle analysis from the applicants (HELCO and HHB). HELCO and HHB filed separate analyses.<sup>4</sup>

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<sup>4</sup> GHG Emissions Impact Analysis for the Hu Honua Bioenergy Project (October 2019). Hu Honua Bioenergy, LLC Pepeekeo, Hawai`i  
<https://dms.puc.hawaii.gov/dms/DocumentViewer?pid=A1001001A19J22A83952B00001>

Hu Honua Doublespeak: “Although the intensity of the Hu Honua plant itself (1.95 short tons CO<sub>2-e</sub>/MWh) has been estimated to be relatively greater than the average intensity of a HELCO fossil fuel-fired plant (0.91 short tons CO<sub>2-e</sub>/MWh), the intensity figures requested do not adequately reflect the biogenic nature of emissions from the project.” (Hu Honua GHG Analysis, p. 4)

Climate change will have detrimental effects on every aspect of Hawai`i’s social, cultural, and economic sectors, including lifestyles, agriculture, recreation, fishing, forestry, and tourism. Climate change induced impacts included wildfires, rain bombs, hurricanes, flooding, and sea level rise that will increase in severity and cost to mitigate .

Life of the Land is a member of Hawaiian Electric Companies Resilience Working Group which is working on developing disaster scenarios and mitigation strategies. Life of the Land attends meetings of the State and City Climate Commissions. This activism complements rather than replaces our work to stop the HHB incinerator project. We need to plant trees not chop them down.

It is beyond dispute that greenhouse gases are extremely harmful to all planetary lifeforms.

To avoid double counting, the **Intergovernmental Panel on Climate Change** (“IPCC”) determined in 2006 that biogenic emissions would be counted in the **Agriculture, Forestry and Other Land Use** (“AFOLU”) sector rather than the energy sector.

To repeat, biogenic emissions are not ignored by removing their consideration from the energy sector.

The Hawai`i Department of Health has the kuleana and the responsibility to deal with all emissions that are harmful to human health regardless of what accounting system is used to record the emissions. Agricultural emissions are part of their kuleana.

It is beyond ironic that Camilo Mora, an associate professor of geography at the University of Hawaii, Mānoa, proposes planting trees to avert climate change, while Hu Honua proposes clearcutting Big Island forests to generate electricity.

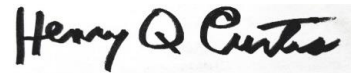
Hu Honua`i Greenhouse Gas Analysis asserted that it will use 400,000 gallons of diesel to get the plant operational, and then use more than 400,000 gallons of diesel each year chopping down, transporting, and pelletizing trees, and by an international definition adopted in the last millenium with any analysis, the destructive process is termed “carbon neutral.”

Hu Honua proposes using existing trees for the first seven years, and only thereafter, using Hu Honua plantings to produce electricity.

The Hawai`i Supreme Court stated that the precautionary principle must be used to protect Hawai`i’s fresh water supply. Climate change is and will increasingly devastate fresh water supplies.

Given the mandatory duties identified in HRS §§ 342B-3 and 342B-72(a)(1), the obligations imposed by the public trust doctrine, and the legislature's clearly expressed intent, it would be arbitrary and capricious for the health department to hide behind false assertions of carbon neutrality and fail to address all emissions associated with the project including AFOLU impacts.

Mahalo

A handwritten signature in black ink that reads "Henry Q Curtis". The signature is written in a cursive, slightly slanted style.

Henry Q Curtis  
Vice President for Consumer Issues and Executive Director  
Life of the Land