

## MACZAC Hotspots 2/8/2018

### East Hawaii - Bob

#### Dairy Manure Problem

This could be a Hot-Spot issue for East Hawaii. Although we have a “marine” oriented focus, this issue about hormones/pharmaceuticals in our streams is starting to be an issue in East Hawaii. The Hawaii County Community Development Plan focused this area for agricultural development. I expect more of these types of industries may start appearing here. The threat would not be only public health but for our group, the feminization effect on native fishes, for streams, estuaries and nearshore marine.

### East Hawaii – Phil

#### Pepeekeo Bioenergy Plant Must Submit EA/EIS – See attached article

The Bay Front Hwy that borders Hilo Bay is another low spot that gets closed when there is high tides and high surf.

### West Hawaii – Phil

Commercial Aquarium Fishing Permits Stopped Pending Environmental Review – See attached article

### Maui - Jim

#### Ka'anapali Beach Commercial Operations

There is a hot spot at Ka'anapali which is spreading to all the beaches on Maui. It has to do with commercial operations on Ka'anapali Beach which was Maui's first destination resort. (Maybe the first in the State?) It has to do with the right of hotels to put out Cabanas and Umbrellas for guests, Surf Schools, the 15 Commercial Ocean Activities Permits that are Permitted to embark and disembark at Kaanapali Beach, Public parking, Beach Access, etc. There have been several lawsuits filed since the Unberger Fish Collection Decision by the Supreme Court this past fall.



## **WARNING**

**For your safety, please familiarize yourself with the swim zones marked on this placard. This beach allows for commercial boating activity in the marked zones. For your safety please do not swim in those zones. Stay within the designated swim areas marked by the white buoys**

Oahu – Kimbal

North shore & Waikiki Beach/Seawall/walk erosion, Ala Wai Canal, north shore roads

Oahu – Phil

Kamehameha Hwy on the Northshore is highly vulnerable to SLR. The Ewa Beach area due to the low elevation. Areas susceptible to king tides, such as the lower Mapunapuna area.

Those areas that have brown water advisories on a regular basis – one example is the Waianae area.

Statewide – Rich

My hotspot would be the State's water quality and what I'm seeing as an abundance of chlorophyll "a" off of Kihei but no way to quantify except the papers published on the subject.



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# Appellate court sends Hu Honua back to planning commission

By JOHN BURNETT Hawaii Tribune-Herald | Wednesday, January 24, 2018, 12:05 a.m.

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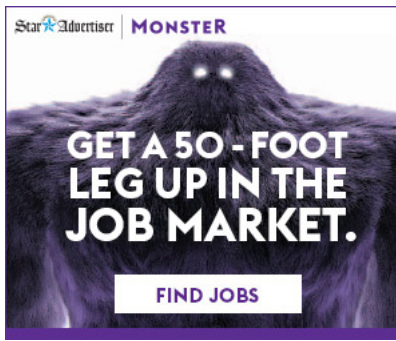
Construction on Hu Honua Bioenergy plant is shown in this August 2017 file photo. (HOLLYN JOHNSON/Hawaii Tribune-Herald)



Construction on Hu Honua Bioenergy plant is shown

HILO — A state court has ordered Hawaii County’s Windward Planning Commission to address public shoreline impacts with regard to repairing or replacing a damaged outfall for cooling water and storm water from the Hu Honua Bioenergy power plant under construction in Pepekeo.

A three-judge panel of the Intermediate Court of Appeals opined that Hilo Circuit Judge Greg Nakamura ruled in error that the public trust doctrine — a section of the state constitution that mandates management of public resources for conservation and self-sufficiency — didn’t apply to Hu Honua’s request for a special management area permit.



The commission in 2011 granted Hu Honua's permit without requiring an environmental impact statement or environmental assessment of the project.

Nakamura's 2014 ruling came in a civil lawsuit against the commission and Hu Honua by The Hilo Project LLC. Other plaintiffs include Robert and Patricia Ferazzi, Susan Munro and Kerry Glass, Marcus G. Spallek and Elaine Munro, Bridget Rapoza and Raquel Dow.

The plaintiffs appealed Nakamura's ruling. The appellate court opinion remands the case to the Windward Planning Commission for reconsideration.

"I would expect that the Planning Commission will perform its duty," attorney Steve Strauss, who represents the appellants, said Monday. "... The outfall is an (environmental impact statement) trigger."

During a contested case hearing on Hu Honua's permit request, engineer Dennis Poma, a land use and permitting consultant for Hu Honua, testified that when Hu Honua submitted its SMA application, it didn't plan on any construction on the shoreline. Officials for the wood-burning power plant project, which is still under construction, requested and received a waiver of environmental review of shoreline impacts.

According to the opinion, Poma testified that Hu Honua was looking at different alternatives to repair the outfall, and also was considering not using the outfall at all. Poma testimony was noncommittal as to whether there would be construction on the shoreline, according to the decision and Hu Honua was still evaluating the situation.

"Despite the status of the outfall, Poma testified that he still believed there would be no impact to the shoreline," the opinion stated.

According to the opinion, since Hu Honua didn't specify what would be done in regard to the outfall, it "did not make an affirmative showing that any work done will not conflict with the principles and purposes of the public trust doctrine."

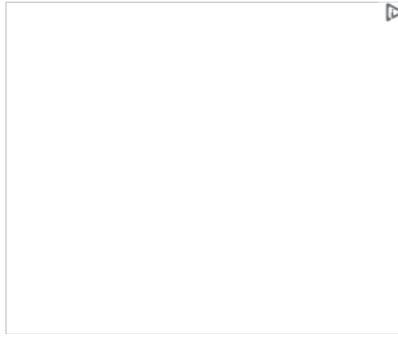
"Therefore ... the Planning Commission granted the amended (special management area) permit in violation of constitutional provisions," the opinion stated.

The outfall is also a prominent subject in a lawsuit filed in November 2017 by Hilo bed-and-breakfast owner Claudia Rohr against the Windward Planning Commission and the county's Planning Department.

In her suit, Rohr alleges the project's primary discharge structure for industrial storm water into the ocean is "in a current condition of disrepair ... does not fulfill its intended purpose of settling out sediment from storm water, and obviously needs alternations, repairs" and the location of the structure "is entirely in the shoreline area," which necessitates an EIS or EA under the Hawaii Environmental Policy Act.

Informed of the appellate court's decision, Rohr noted she's been "trying since 2010" to convince the commission and the Planning Department that an environmental review is necessary and required under law.

"That one point will help everybody try to understand the substantial changes to (Hu Honua's) project," Rohr said, referring to the proposed increase in power output by the plant from 21.5 to 30 megawatts. "It will require that either the Planning Commission or the Planning Department require Hu Honua to submit an EA or EIS and disclose the impacts to the environment to the community. That's the whole point of this."



Harold Robinson, president of Island BioEnergy, Hu Honua's parent company, didn't return a phone call seeking comment.


Email John Burnett at [jburnett@hawaiitribune-herald.com](mailto:jburnett@hawaiitribune-herald.com).


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EDITORIAL | ISLAND VOICES

# Dairy must solve manure problem

By Sophia Cabral-Maikui, Genard Frazier and Charlene Nishida

Posted January 03, 2018

January 3, 2018

*Updated January 3, 2018 12:05am*

A recent front-page article describing Big Island Dairy's new milk bottling plant ignores the other major product that the dairy won't be putting in new labeled containers: its cow poop ("Big Island Dairy to process its own milk, bypassing Meadow Gold," Star-Advertiser, Dec. 4, 2017). With more than 1,400 mature milking cows, and more than 1,000 other calves and heifers, Big Island Dairy generates over 200,000 pounds (100 tons) of manure per day.

That's a lot of manure to deal with, and unfortunately, the dairy doesn't handle it well. It stores manure in two large earthen pits — only one of them has a synthetic liner to reduce infiltration. It spreads the manure on its fields during windy and rainy days, of which there are many with well over 100 inches of rain per year, when there's a high risk that the waste will drift or run off the property.

And, even when the dairy gets the timing right, if the manure is not applied to the crops in just the right amount, the excess runs off into the gulches and seeps toward our underground water supply. Contrary to the image painted by its website, most of its cows spend the bulk of their time confined in feeding stalls, not out grazing on the "lush hillsides of the Hamakua coast."

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This style of confinement further concentrates a lot of animal waste into a very small area. Simply put, the dairy is generating more manure than it can handle — there are just too many cows on too few acres on a steep hillside.

The community of Ookala is unfairly bearing the brunt of Big Island Dairy's mismanaged manure. The three main gulches impacted by the dairy that flow through our community frequently appear brown and frothy, like a raging river of chocolate milk. You wouldn't want to drink it, though: It often reeks of manure and water quality tests have shown high levels of fecal bacteria. Our gulches — places kids like to play — have been fouled by manure runoff and are no longer enjoyable or safe. On at least two occasions, heavy rains have carried manure-laden water directly into people's homes.

We tried raising these concerns to various government officials, and our concerns fell on deaf ears. In 2014, based on a complaint from our community, the Hawaii Department of Health confirmed animal waste from the dairy had contaminated local streams, but took no action.

In a December 2016 inspection report, the Department of Health noted a potential for pollutant discharges from the dairy's lagoon systems and its compost operation, but still took no action. We finally took matters into our own hands and initiated a Clean Water Act citizen lawsuit earlier this year.

In bringing our Clean Water Act suit, we — and our co-plaintiff, Center for Food Safety — want Big Island Dairy to change its practices and stop polluting. Why is the dairy allowed to reap profits using taxpayer-funded low-interest subsidies while it dumps manure onto the people of Ookala and into our ocean?

If Big Island Dairy really wants to "do it right," we hope the Whitesides, the family that owns the dairy on land leased from the state, will show as much commitment to cleaning up its manure problem as it has to generating profits from its brand.

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**Sophia Cabral-Maikui, Genard Frazier and Charlene Nishida submitted this on behalf of the board of directors of Kupale Ookala.**

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# Ag chief backs away from funding offer

By [TOM CALLIS Hawaii Tribune-Herald](#) | Thursday, January 25, 2018, 12:05 am

Hawaii Department of Agriculture's director is no longer offering to help pay for expanding environmental quality tests near a dairy farm accused of polluting gulches in Ookala.

Scott Enright told residents at a public meeting last March that he would use his contingency funds to support follow-up inspections or additional soil and water tests following complaints.

He's since backed away from much of that offer, citing the lawsuit filed by a group of residents that accuses Big Island Dairy of violating the federal Clean Water Act. Enright said he's still willing to support oversight efforts done by the state Department of Health, though a spokeswoman said that department is not planning any more water quality tests at this time.

Enright said that decision was based on advice from state attorneys and that he thinks those tests, which would have included monitoring of marine waters for pollution, will be done as part of the lawsuit anyway. The department leases state land to the dairy.

"It's gotten complicated with the legal action, is the short of it," he told the Tribune-Herald earlier this month.

Charlene Nishida, an Ookala resident and board member of Kupale Ooakla, which filed the lawsuit, didn't buy that argument and said Enright was breaking his promise to the community.



“We’re incredibly disappointed in Scott Enright and his lack of fulfilling any of the promises he made in person and shook hands on at that meeting,” she said.

The 2,500-acre dairy is located mauka of the village on steep terrain. The lawsuit alleges wastewater is oversprayed on the fields, causing runoff into nearby gulches and stream beds, including one that goes through town.

Following complaints, DOH fined the dairy \$25,000 in May for unlawful discharge of wastewater. Residents involved in the lawsuit say the problem goes beyond that one incident.

DOH confirmed earlier discharges in 2014 but took no action.

Despite the fine, Enright said DOH has not found the dairy to “be a bad actor” because it didn’t find additional discharges during a follow-up inspection.

“I’d make the contention they are good farmers,” he said. “They do need to work on the odor issue.”

Nishida said she found that “completely perplexing because the state has said that they have polluted.”

She said the lawsuit was filed last year because the group doesn’t think the state is doing enough oversight and that the problems haven’t been addressed.

“(The state) is going full speed ahead with large agricultural business that it’s not monitoring in a way that’s providing balance between the production of agriculture activities and the well-being of the community,” Nishida said. “This situation really shines a flashlight on the problem and how extensive the problem is.”

Since the lawsuit, the dairy stopped growing corn on the property and planted grass to reduce erosion and runoff. Corn is grown elsewhere on the Hamakua Coast as cattle feed for the dairy.

Wastewater is sprayed over the fields as a fertilizer, a common practice for dairies.

Meanwhile, DOH says the dairy has installed a new wastewater treatment plant for its milking and bottling facility, and is awaiting final inspection.

The plant is designed to handle a flow of 10,000 gallons a day, said Janice Okubo, DOH spokeswoman, in an email.

She said waste will enter an “equalization basin” and be treated with a dissolved air flotation unit followed by a biological secondary treatment.

Okubo said the department’s clean water branch will conduct periodic unannounced inspections as part of its “ongoing enforcement oversight.”

“At this time, there are no plans for more water quality tests,” she added. “The streams that run through the dairy are non-perennial and seem to only flow during heavy storms.”

A phone number for the dairy’s general manager was no longer in service Wednesday.

Email Tom Callis at [tcallis@hawaiitribune-herald.com](mailto:tcallis@hawaiitribune-herald.com).



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## West Hawaii fishing permits stopped pending environmental review

Friday, January 5, 2018, 10:05 a.m.

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The Department of Land and Natural Resources announced today in a press release that after applying a Hawaii Supreme Court ruling from last year to an existing DLNR rule, no aquatic life may be taken for commercial aquarium purposes off West Hawaii until an environmental review is completed.

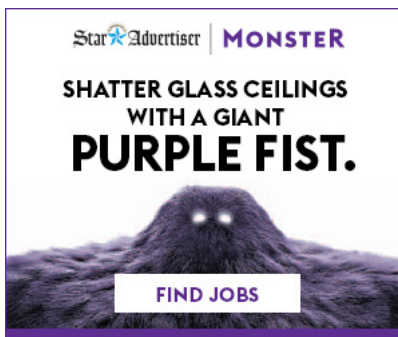
The court ruled on Sept. 6, 2017, that an environmental review must first occur before permits can be used to catch aquatic life for the commercial aquarium trade.

Following that ruling, State Circuit Court Judge Jeffrey P. Crabtree terminated and canceled all fine mesh net permits. DLNR rules state that a Hawaii State Aquarium Permit is also required to take any aquatic life from waters off of West Hawaii for commercial aquarium purposes.

“Although the state permit referenced in the rules is not defined, the intent of the Supreme Court decision is clear,” said Bruce Anderson, Administrator of the DLNR Division of Aquatic Resources. “As a result of these court decisions it is clear that fine mesh nets cannot be used anywhere in Hawaii in the commercial aquarium trade until the environmental review process has been

completed. Given the intent of the court ruling, any taking of aquarium fish or other animals for the commercial pet trade in West Hawaii is prohibited until the environmental review has been completed," said Anderson.

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