May 20, 2021

Land Use Commission
235 South Beretania Street, Suite 406
Honolulu, Hawai‘i 96813

Re: IAL Designation:
41-1010 Waikupanana Street
Waimanalo
TMK:4-1-10:72

Dear Members of the Land Use Commission,

My family and I strongly object to the City and County of Honolulu designating our property Important Agriculture Land in violation of our rights to due process. There was absolutely no notice regarding this designation from the City much less input from us. The City has failed to follow Hawai‘i Revised Statues Sections 205-44,205-47, 205-48 and 205-49. Our land is not even an acre and we are not commercial farmers.

We fully agree with Commission members Nancy Cabral, Dan Giovanni, Chairman Jonathan Likeke Scheuer and Dawn N.S. Chang regarding the defective methodology of land selection and notifications to landwoners. This process is tantamount to “taking/eminent domain” without due process and is not Pono.

Mahalo Nui Loa,

Sheryl Turbeville

Yamamoto Caliboso
A LIMITED LIABILITY LAW COMPANY

May 20, 2021

VIA ELECTRONIC MAIL: dbedt.luc.web@hawaii.gov

State of Hawaii
Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Re: Conformance of C&C of Honolulu Important Agricultural Lands Recommendation to Applicable Statutory and Procedural Requirements

Chair Scheuer and Members of the Commission,

My name is Jodi Shin Yamamoto, and my firm represents Kahuku Wind Power, LLC ("Kahuku Wind"). Kahuku Wind operates a 30-megawatt renewable energy wind project in Kahuku, Oahu, Hawaii ("Project"), which is located on lands proposed to be designated as Important Agricultural Lands ("IAL") by the City and County of Honolulu ("County").[1] Kahuku Wind's renewable energy wind project was constructed in 2011 and has been providing Oahu with clean, renewable energy for the past ten years. The Project can generate enough energy to power 7,700 homes and prevent 39,000 metric tons of carbon dioxide emissions annually,[2] and it contributes critically towards the State's mandate of achieving a 100% Renewable Portfolio Standard ("RPS") and carbon neutrality by 2045. See HRS §§ 225P-5 and 269-92. Hawaiian Electric Company, Inc. noted in its current Power Supply Improvement Plan that the RPS mandate will likely not be met only through solar, and that additional renewable resources including onshore wind will be necessary.

We submit these written comments for the Commission's consideration and believe the Commission should reject the County's recommendation ("Recommendation")[3] for its proposed designation of IAL because the County has failed to satisfy the procedural steps required by law. Kahuku Wind has serious concerns that:

> (1) The County's process in developing its Recommendation was seriously flawed and did not comply with the law because the County failed to properly notify and meaningfully consult with landowners, including those upon whose lands renewable energy projects are or may be sited;

[1] The Project is located on two parcels of land, TMK 5-6-005:007 ("Parcel 007") and TMK 5-6-5:014 ("Parcel 014") (collectively, "Project Site"). Kahuku Wind is the owner of Parcel 007 and it or an affiliated entity has owned the land since 2007. Kahuku Wind is the registered owner of the property and has timely paid its real estate property taxes. Kahuku Wind is a sublessee of Parcel 014 and has leased this parcel since 2009. Both parcels are included in the County's Recommendation as warranting IAL designation.
[2] See "Hawaii Renewable Energy Projects" at www.energy.ehawaii.gov (last accessed 5/20/21).
[3] See https://luc.hawaii.gov/wp-content/uploads/2021/04/DR-CC-HNL-IAL-003.pdf (last accessed 5/20/21).

(2) The County's public participation process was perfunctory and fundamentally flawed;

(3) The IAL designation improperly impacts landowners' due process rights; and

(4) The County failed to properly consider all the standards and criteria, as required by the Legislature, in developing its Recommendation.

A. Notice and Consultation with Landowners.

In adopting Hawaii Revised Statutes ("HRS") Chapter 205, Part III (Important Agricultural Lands), the State Legislature mandated that the counties develop their IAL recommendation after a robust public consultation process, which, unfortunately, did not occur here. Specifically, HRS § 205-47 sets out a step-by-step process the counties must follow in developing their recommendations. HRS § 205-47(b) states:

> (b) Each county **shall** develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture--Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(Emphasis added). Critically, the Legislature required that the counties develop their maps "in consultation and cooperation with landowners." Id. In formulating its final Recommendation, the County is required to report on, *inter alia*, the "manner in which the important agricultural lands mapping relates to, supports, and is consistent with the… (5) Representations or position statements of the owners whose lands are subject to the potential designation." HRS § 205-47(d).

At the Commission's April 28-29, 2021 meeting ("April Meeting"), the County's complete failure to follow this first and foundational requirement of consultation and cooperation with landowners in developing its Recommendation was clear. To satisfy this requirement, the County stated that it sent two "notices" through regular mail to registered landowners of affected properties on December 29, 2016 ("2016 Letter")[4] and November 8, 2017 ("2017 Letter").[5] See Recommendation at 9. Both the 2016 and 2017 Letters were identical form letters that do not appear to have individually identified the affected landowners or provided notice or other information to the individual landowners regarding the specific property proposed to be designated as IAL. Neither letter provided

[4] See https://luc.hawaii.gov/wp-content/uploads/2021/04/Landowner-Notice-and-Map-of-Proposed-IAL-12-16.pdf (last accessed 5/20/21).
[5] See https://luc.hawaii.gov/wp-content/uploads/2021/04/Final-Landowner-Incl-Notice-2.pdf (last accessed 5/20/21).

any explanation or justification regarding why the landowners' unspecified property was included in the IAL Recommendation. The letters could have been easily mistaken as junk mail. There is also a discrepancy between the number of notices sent by the County and the notices sent by the Commission. The County's Recommendation states that notices were sent to approximately 1,800 landowners. See Recommendation at 9. The Commission sent notices for its April Meeting to approximately 2,388 TMKs. The discrepancy may be caused by single landowners owning multiple parcels, but the record is unclear, and apparently the County failed to keep track of the mailing of the 2016 Letter, which compounds the confusion.

Kahuku Wind has reviewed its records and is not able to locate any notice from the County regarding its proposed IAL designation for the Project Site. The Commission's notice, dated April 12, 2021, was the first notice received by Kahuku Wind that its Project Site would be recommended by the County to receive an IAL designation.

The 2016 Letter informs the landowner regarding the proposed designation as IAL of his or her property, invites the landowner to two public meetings "to learn more about the Draft IAL Maps and the IAL process," and solicits comments to be sent to the County's consultant. The 2016 Letter provides no notice or other information to the individual landowner regarding the specific property that is proposed to be included in the IAL designation or the justification for his or her specific property to be included in the Recommendation. The landowner had no meaningful way to address the County's inclusion of his or her property as IAL as there was no indication as to why the property was included. Further, the 2016 Letter does not even suggest the possibility that the landowner could object or advocate for exclusion from the IAL designation.

The 2017 Letter similarly informs the landowner that his or her property is included in the Recommendation and invites the landowner to one public meeting "to view the final Draft IAL Map and the IAL process." This notice does not solicit comments or input but is a final notice telling the landowner that his or her land is being designated as IAL. A copy of the postcard in the record, sent to landowners who did present objections to their land's proposed IAL designation, failed to respond to the landowner's specific concerns or objections and contained no further indication regarding how a landowner could provide meaningful input on the proposed IAL designation.[6] The process followed by the County made it impossible for the County to comply with HRS § 205-47(d) that requires the County to report to the Commission on the "[r]epresentations or position statements of the owners whose lands are subject to the potential designation" because the County never solicited representations or position statements from landowners.

At its April Meeting, the Commission also emphasized that over three years and six months have passed since the County apparently last notified landowners that their

[6] See https://luc.hawaii.gov/wp-content/uploads/2021/04/2018-04-04-Postcard-Reply.pdf (last accessed 5/20/21).

properties could be designated as IAL. Since that time, the County has provided no notice or opportunity to comment to individuals who acquired their properties after the November Letter and several years have passed for those who did receive notice but likely thought the process was stalled or abandoned given the passage of time.

On these bases alone, the Commission should reject the County's Recommendation and instruct the County to develop an inclusive process for meaningful landowner engagement and cooperation that is required by law.

B. Public Participation and the Technical Advisory Committee.

In addition to individual landowner consultation and cooperation, the law also requires the County to solicit additional public engagement. HRS § 205-47(c) provides that each County's planning department

> shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(Emphasis added).

It appears the County held a total of three public meetings in 2017 for the public to consider the draft IAL maps prepared by the County. Three public meetings are completely deficient where the County's Recommendation directly impacts at least 1,800 individual landowners and approximately 2,388 TMKs.

Per HRS § 205-47(c), the County established a Technical Advisory Committee ("TAC") in the initial stage of planning, which surprisingly included only one landowner and apparently only met six times in 2013. See Recommendation at 5. Despite the importance of the 100% RPS mandate to both the State and the County, the County failed to include any landowners with lands being utilized or considered for renewable energy projects. Renewable energy projects are primarily sited on agricultural land due to the land attributes required for successful renewable energy projects, which are often able to operate in conjunction with secondary agricultural activities. The legislature has mandated that the State must achieve a 100% renewable portfolio standard by 2045. See HRS § 269-92(a). As explained in more detail below, the IAL designation would likely negatively impact the ability of current and future renewable energy projects to obtain permits from the County and other state approvals. Access to suitable land that can host renewable energy projects (e.g., taking accessibility, topographical characteristics,

proximity to transmission lines with available capacity, land availability, conformance with state and county land regulations, avoidance of sensitive environmental, cultural and historic resources, and community acceptance into consideration) is already a significant obstacle to successful development of renewable energy projects. The County's proposed designation of IAL would potentially take a significant portion of the land available to host renewable energy projects and impose additional restrictions upon the land for uses that are not primarily agricultural in nature. See HRS § 205-43.

This issue is more critical now than ever given that the AES Coal Plant must currently cease operations in 2022, which the State's Public Utilities Commission has indicated will leave Oahu's electricity grid unstable, could potentially lead to blackouts, and significantly increase energy prices for customers.[7] The State should not be working at cross purposes. Hawaii consumers already have the highest energy bills in the nation, which particularly impact farmers given the significant energy required by farmers to plant, harvest, and process agricultural products. Intensifying the burdens and obstacles that are imposed on renewable energy projects will only drive energy prices even higher. As discussed at the Commission's April Meeting, the County made no effort to engage local neighborhood associations or any other civic organization. Including only one landowner in the TAC and excluding all other interests, including renewable energy interests, is simply insufficient.

Finally, the processes followed by the County and other state agencies have further confused this process. Pursuant to HRS § 205-48(a), the Commission shall receive the County recommendations and maps and, pursuant to HRS § 205-48(b), the department of agriculture ("DOA") and the office of planning ("OP") must "review the county report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission." State agency review must be based on an evaluation of the degree that:

> (1) County recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
>
> (2) County has met the minimum standards and criteria for the identification and mapping process in sections 205-44 and 205-47.

HRS § 205-48(c).

OP and the DOA submitted their comments and recommendations on February 10, 2021. OP states it reviewed the County's "transmittal to our office regarding Important Agricultural Lands (IAL) on Oahu, Resolution 18-233 CD1, FD1 dated September 22,

[7] See Pacific Business News, State, HECO scrambling to ready for shutdown of AES coal plant in 2022 https://www.bizjournals.com/pacific/news/2021/03/23/aes-coal-plant-scramble.html (last accessed 5/20/21).

2020 ("Resolution")."[8] It's unclear from the record whether the Resolution dated September 22, 2020 and any attachments thereto comprised the County report upon which OP and DOA were required to comment within forty-five days. This Resolution consists only of the City Council's Resolution accepting the maps and TMKs proposed to be designated as IAL.[9] It appears DOA reviewed the same transmittal and provided comments thereon as well.[10] It is unclear whether OP and DOA fulfilled their duty, required by statute, to review the County's "report and recommendations" to ensure they complied with the objectives and policies for IAL and the minimum standards and criteria for identification and mapping prior to the County's filing of its Recommendation on April 21, 2021.

II. THE COUNTY'S INCLUSION OF A LANDOWNER'S PROPERTY WITHIN THE RECOMMENDATION WITHOUT NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD VIOLATES THE LANDOWNER'S DUE PROCESS RIGHTS.

Kahuku Wind disagrees with the County's position asserted at the April Meeting that due process issues are not implicated by the County's proposed IAL designation. Kahuku Wind and each landowner subject to the IAL designation has a property interest in the underlying zoning of their property that cannot be changed without the protections of procedural due process, which require reasonable notice and a meaningful opportunity to be heard.

The current zoning status of a landowner's property is a property interest that would be indisputably impacted by the County's IAL designation. The Hawaii Supreme Court has recently explained that

> "[c]onstitutional due process protections mandate a hearing whenever the claimant seeks to protect a 'property interest,' in other words, a benefit to which the claimant is legitimately entitled." Pele Def. Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 68, 881 P.2d 1210, 1214 (1994). We apply a two-step analysis to claims of a due process right to a hearing: "(1) is the particular interest which claimant seeks to protect by a hearing 'property' within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is 'property,' what specific procedures are required to protect it." Sandy Beach Def. Fund v. City Council of Honolulu, 70 Haw. 361, 376, 773 P.2d 250, 260 (1989) (citing Aguiar v. Haw. Hous. Auth., 55 Haw. 478, 495, 522 P.2d 1255, 1266

[8] See OP's Submittal at https://luc.hawaii.gov/wp-content/uploads/2021/02/Citys-IAL-Recommendations-to-LUC-OP-comments-Signed.pdf (last accessed 5/20/21).
[9] See Resolution at https://luc.hawaii.gov/wp-content/uploads/2021/02/RES18-233-CD1-FD1.pdf (last accessed 5/20/21).
[10] See DOA Submittal at https://luc.hawaii.gov/wp-content/uploads/2021/04/DOA-Comments-on-City-IAL-petition-to-LUC-2021.pdf (last accessed 5/20/21).

(1974)).

In re Application of Maui Elec. Co., Ltd., 141 Haw. 249, 260, 408 P.3d 1, 12 (2017). The claimed property interest need not be tangible; rather, a protected property interest exists in a benefit to which a party has a "legitimate claim of entitlement." Id. (citation omitted).

> The legitimate claims of entitlement that constitute property interests are not created by the due process clause itself. Instead, "they are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law-rules or understanding that secure certain benefits and that support claims of entitlement to those benefits."

Id. (quoting In re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications, 128 Haw. 228, 241, 287 P.3d 129, 142 (2012)). Landowners have a due process property interest in the zoning classification of their property. See e.g., DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC, 134 Haw. 187, 218, 339 P.3d 685, 716 (2014) (analyzing whether landowners procedural due process rights were violated where the Commission reverted property to former land use classification).

Finally, once a property interest is found to exist, "[t]he basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." Sandy Beach Def. Fund v. City Council of City & Cnty. of Honolulu, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (citation omitted).

The County maintains that the IAL designation does not implicate due process because the designation does not impact current permissible uses on the designated properties. The County also maintained this position in an FAQ released in September of 2018. In response to the question, "How am I affected if the City is recommending all of my land for IAL?", the County's response was:

> The City has completed its recommendations for lands proposed for IAL designation. No decisions on IAL are made until action is taken by the State LUC. Until action is taken, there is no effect on ownership and development rights. Land that is ultimately designated as IAL by the LUC does not preclude the landowner from using his or her land for purposes allowed or permitted under current LUC rules and regulations and the City's zoning requirements.[11]

We disagree. As an example, this is inconsistent with the County's own admission at the April Meeting that the IAL designation does change the rules for IAL regarding farm dwellings and employee housing. See HRS § 205-45.5 and Land Use Ordinance ("LUO")

[11] See Frequently Asked Questions, Oahu Important Agricultural Lands Mapping Project (September 2018) at https://luc.hawaii.gov/wp-content/uploads/2021/05/CC-HNL-IAL-FAQs.pdf (last accessed 5/20/21) (emphasis added).

§§ 21-5.250 (Farm dwellings); 21-10.1 (Definitions). The LUO currently defines a "[f]arm dwelling" as "a dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling." LUO § 21-10.1. In the AG-1 district, one farm dwelling is permitted for each five acres of lot area and must be contained within an area not to exceed 5,000 square feet of the lot. LUO § 21-5.250. The IAL restrictions require that the farm dwellings "shall be used exclusively by farmers and their immediate family members who actively and currently farm on important agricultural land upon which the dwelling is situated" and the dwelling cannot exceed five percent (5%) of the total IAL land controlled by the farmer. See HRS § 205-45.5(1), (3). Further, the designation of property as IAL also imposes additional burdens and required expense on the landowner with respect to any reclassification or rezoning of IAL pursuant to HRS § 205-50 and requires any such request to meet specific standards and criteria applicable specifically to IAL. See HRS § 205-50. The County's position that the rights of landowners are not negatively impacted by the IAL designation is unsupportable.

Further, the IAL designation will have an impact on the rights of the landowner regarding current and future uses of his or her property. The IAL designation was specially created by the legislature to both restrict and provide incentives for IAL because the Legislature decided "[t]here is a compelling state interest in conserving the State's agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use…." HRS § 205-41. The Legislature adopted specific policy directives that the County must implement to achieve these legislative purposes. For example, HRS § 205-43 requires that "[s]tate and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands" and must be consistent and implement a number of policies, including *inter alia*,

> (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
>
> (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
>
> (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;

An IAL designation once imposed will make affected properties subject to future land use regulations adopted by the County to implement the Legislature's policy directives for IALs, including those listed above. Further, it is also uncertain how the IAL designation will affect the County's decision-making for permits on IAL. These uncertain impacts specifically impact Kahuku Wind and other similarly positioned renewable energy projects - both current projects and future projects. The confusion is only compounded by the significant delay between the Legislature's creation of the IAL system in 2005 and

the County's Recommendation being considered now by the Commission over fifteen years later. Renewable energy projects like Kahuku Wind are often sited on agricultural lands and, where possible, engage agricultural activity to occur in parallel with the primary use of the property for the generation of renewable energy. After 2005, the Legislature amended Chapter 205 to permit the siting of certain renewable energy projects on agricultural land which supports the State's RPS and carbon neutrality goals. For example, HRS § 205-4.5(a) was amended in 2007 to allow biofuel production on Agricultural land.[12] The statute was again amended in 2011 to permit solar energy facilities on certain classes of Agricultural land and in 2012 to permit geothermal resources exploration.[13] Hydroelectric facilities became permissible uses after the statute's amendment in 2015.[14] Renewable energy developers have developed and continue to develop renewable energy projects on Agricultural land as permitted by current land use law.

For an existing renewable energy project like the Kahuku Wind Project, being sited on IAL that is subject to the directives and policies of HRS § 205-43, including the directive that the County should "[d]irect nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses," is dangerous at best. A policy that "discourages … the conversion of these [important agricultural] lands to nonagricultural uses" is detrimental to new renewable projects and the State's 100% RPS and carbon neutrality mandates.

The County's position that due process is not implicated because the County has not yet adopted rules to which IAL will be subject avoids the important fact that the IAL designation was designed by the Legislature to create a category of agricultural lands in the state subject to special protections and regulations that are not currently imposed on normal agricultural lands. This position is also fundamentally misleading as it avoids mentioning the significant likelihood of the future adoption of rules and regulations by the County to comply with the Legislature's directives in HRS § 205-43. Kahuku Wind submits that landowners' due process rights are affected by the County's Recommendation. The failure of the County to take reasonable steps to notify landowners and to provide them a meaningful opportunity to be heard before their property is included in the County's Recommendation violates the landowners' right to due process. See Sandy Beach Def. Fund, 70 Haw. at 378, 773 P.2d at 261.

III. THE COUNTY'S FAILURE TO CONSIDER ALL OF THE STANDARDS AND CRITERIA IDENTIFIED BY THE LEGISLATURE TO IDENTIFY IAL DID NOT COMPLY WITH THE LAW.

Finally, the County's process by which it selected proposed IAL failed to comply

[12] See 2007 Hawaii Laws Act 159 (S.B. 1943).
[13] See 2011 Hawaii Laws Act 217 (S.B. 631); 2012 Hawaii Laws Act 97 (S.B. 3003).
[14] See 2015 Hawaii Laws Act 228 (H.B. 1273).

with the law. The IAL designation was designed to identify lands that:

> (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
>
> (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or
>
> (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

HRS § 205-42(a). HRS § 205-44 governs the standards and criteria that the County was required to utilize in developing its Recommendation. HRS § 205-44(a) provides that "[t]he standards and criteria in this section shall be used to identify important agricultural lands" and "shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43." The standards and criteria identified by the Legislature, all of which must be considered, include:

> (1) Land currently used for agricultural production;
>
> (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
>
> (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
>
> (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
>
> (5) Land with sufficient quantities of water to support viable agricultural production;
>
> (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
>
> (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
>
> (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

HRS § 205-44(c). In developing its Recommendation, the law instructs the County that it "shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part…." HRS § 205-

47(a).

In developing its Recommendation, the County failed to consider each of these eight criteria[15] and did not even attempt to weigh the standards and criteria to determine whether the properties proposed to be designated as IAL merited such a designation. Rather, the County cut corners and identified and considered only three "priority" criteria, and then proceeded to determine that the existence of only one "priority" criteria was required to merit the IAL. See Recommendation at 15. The County compounded its error by failing to engage with individual landowners who have actual knowledge regarding their lands and their characteristics. The County's apparent explanation for this approach to require only one priority criteria to merit an IAL designation at the April Meeting was that the County wanted to be over-inclusive in its Recommendation for the benefit of landowners. This justification fails to take into account the current and future burdens placed on landowners of IAL described above in Section II and the significant expense, time, and uncertainty involved regarding the process to de-designate IAL under HRS § 205-50.

By failing to follow the process established by the Legislature to identify potential IAL, which requires the weighing of all eight of the standards and criteria in HRS § 205-44(c), the County ignored its legislative mandate under HRS § 205-47 and left these important determinations to the Commission. Kahuku Wind respectfully submits that the Commission should send this matter back to the County for processing in compliance with applicable law.

Thank you for the opportunity to provide these comments.

Very truly yours,

Jodi S. Yamamoto
for
YAMAMOTO CALIBOSO
A Limited Liability Law Company

cc: Chief Clerk Riley Hakoda – via email (riley.k.hakoda@hawaii.gov)

[15] Perplexingly, a ninth criteria was added by the Count for "Government programs to protect AG lands in perpetuity that are recorded" that was not a criteria identified by the Legislature. See Appendix G at 2. It is unclear why the County believes it had the authority to add this criteria. Regardless, the issue appears to be moot because the County failed to consider any of the non-priority criteria and conducted no weighing of the criteria as required by HRS § 205-44(a).