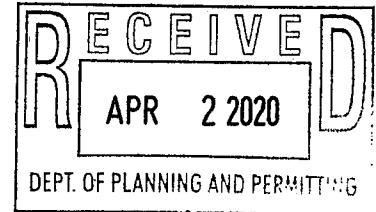


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KEEP THE NORTH SHORE COUNTRY

BEFORE THE ZONING BOARD OF APPEALS  
CITY AND COUNTY OF HONOLULU  
THE STATE OF HAWAII

In the Matter of the Petitions of ) Case No. 2019/ZBA-7 (Consolidated)  
)  
KEEP THE NORTH SHORE COUNTRY, a ) APPELLANTS' CONSOLIDATED  
nonprofit corporation, and THE KAHUKU ) MEMORANDUM IN OPPOSITION TO NA  
COMMUNITY ASSOCIATION, a nonprofit ) PUA MAKANI POWER PARTNERS, LLC  
corporation, concerning the Na Pua Makani ) AND DIRECTOR OF DEPARTMENT OF  
Wind Project - Subprojects A & B, 56-668 ) PLANNING AND PERMITTING, CITY  
Kamehameha Highway, Kahuku, O'ahu, Tax ) AND COUNTY OF HONOLULU'S  
Map Key (1) 5-6-008:006 & 5-6-006:018 ) MOTION TO DISMISS PETITION TO  
) APPEAL; DECLARATION OF GIL  
From the Actions of the Director of Planning ) RIVIERE; DECLARATION OF TĒVITA  
and Permitting, dated October 24, 2016 ) KA'ILI; EXHIBITS "01"- "10";  
(2016/CUP-49); January 20, 2017 (2016/CUP-69) ) CERTIFICATE OF SERVICE  
& 2016/W-63), & June 7, 2019 (2019/MOD-34, )  
-35 & -36) )

APPELLANTS' CONSOLIDATED MEMORANDUM IN OPPOSITION TO NA PUA  
MAKANI POWER PARTNERS, LLC AND DIRECTOR OF DEPARTMENT OF PLANNING  
AND PERMITTING, CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS  
PETITION TO APPEAL

Appellants KEEP THE NORTH SHORE COUNTRY, a nonprofit corporation, and THE  
KAHUKU COMMUNITY ASSOCIATION, a nonprofit corporation (collectively, "Appellants"),

by and through their undersigned counsel, respectfully submit this Consolidated Memorandum in Opposition to the Motions to Dismiss the Kahuku Community Association’s Application to Appeal Director’s Approvals of Conditional Use Permits, Waiver, and Modifications (NPM KCA mtn) and Keep the North Shore Country’s Petition to Appeal (NPM KNSC mtn), both filed by Intervenor NA PUA MAKANI POWER PARTNERS, LLC (NPM) and Respondent DIRECTOR OF DEPARTMENT OF PLANNING AND PERMITTING, CITY AND COUNTY OF HONOLULU (Director) (collectively, NPM) on March 27, 2020.<sup>1</sup>

## **I. INTRODUCTION**

Due process required the Director to notify Keep the North Shore Country (KNSC) and the Kahuku Community Association (KCA) of NPM’s applications for conditional use permit (CUP) minors for its subprojects A and B and for modifications to those CUP minors, as well as of the Director’s approvals of those CUP minors and modifications. Appellants submitted multiple statements expressing concern about the environmental impacts of the siting of the NPM wind turbine - Subprojects A & B, located at 56-668 Kamehameha Highway, Kahuku, O’ahu, Tax Map Key (1) 5-6-008:006 & 5-6-006:018 (project) in documents reviewed by the Director and on file in the Director’s office. The filing of the Director’s decisions that have widespread environmental impacts into the Director’s files could not constitute notice to Appellants or other interested persons. Because Appellants lacked any reasonable notice of the Director’s actions, due process

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<sup>1</sup> Pursuant to Rules of the Zoning Board of Appeals (ZBA) Rule §22-4(e), “All memoranda shall not exceed ten pages, double-spaced, excluding motions and exhibits.” Memoranda in support of NPM’s motions were 19 and 20 pages respectively. The instant memorandum consists in 18 pages and is lengthier as a consequence of being a consolidated response to both of NPM’s motions and memoranda. Appellants’ responses were consolidated for the purpose of increasing the ease of reading. Should the Board determine that this consolidated memorandum in opposition is non-compliant with ZBA Rule §22-4(e), Appellants would seek to amend this memorandum by splitting it into two separate responses to strictly comply with the rule.

requires that both KCA's and KNSC's appeal from the Director's approvals and modifications of NPM's project be sustained.

## II. ARGUMENT

### A. The Board has jurisdiction to hear Appellants' appeal.

NPM contends the Board lacks jurisdiction over Appellants' appeal because "the appeal was not filed within 30 days of the mailing or service of the director's decision." NPM KCA mtn. at 6-7/ NPM KNSC mtn. at 6-7 quoting City and County of Honolulu Land Use Ordinance (LUO) §21-1.40. NPM also relies on the Rules of Practice and Procedure of the Zoning Board of Appeals (ZBA Rules), which provides in relevant part:

§ 22-2 Mandatory appeal filing deadline. (a) A written petition appealing an action of the director must be received at the department of land utilization within 30 days of the date of mailing or personal service of the director's written decision; except that in the case of an appeal relating to the administration of the subdivision ordinance, the petition must be received within 15 days after receipt of the notice of the action.

(b) If the appeal is not timely filed, it shall be dismissed by the board upon the board's own motion or the motion of any party to the proceeding.

*Id.* quoted by NPM KCA mtn. at 7/ NPM KNSC mtn. at 7. NPM relies on the Rules of Practice and Procedure of the Department of Planning and Permitting (DPP Rules) as follows:

The director shall mail the written decision to the applicant and, upon request, shall give notice of the decision to other interested persons. The decision shall be available for review by the public at the department of planning and permitting.

DPP Rule §6-2. NPM's position is that the Director's mailing of notice to the Applicant NPM is sufficient to trigger the appeal deadlines for all persons. NPM is silent on the question of whether and how Appellants and other interested persons could have known to request notifications, save for a reference to the Director's statement that members of the public could have sought review of approvals at the Department. NPM KCA mtn. at 8/ NPM KNSC mtn. at 8.

NPM's analysis is flawed. The threshold issue is whether the Director was required to notify KNSC, and if so, whether procedures for notification were sufficient. The Director's decisions on

NPM's application for CUP minors and modifications of those permits for on Subprojects A and B were never mailed or personally served on KNSC or its president. Declaration of Gil Riviere (Riviere Decl.) ¶¶10-13. Nor does KCA have any record of mailing or personal service of these decisions. Declaration of Tēvita o Ka'ili (Ka'ili Decl.) ¶¶18-25.

As discussed *infra* Part II.B, Appellants' rights to due process demanded notice of decisions affecting their rights and interests. ZBA Rules and the Land Use Ordinance do not deprive this Board of jurisdiction over this appeal because Appellants never received notice, mailing, or personal service of the Director's decisions.

B. Appellants hold property interests entitled to constitutional due process.

1. *KCA holds property interests affected by the Director's decisions.*

KCA's property interests are at issue in the Director's decisions because the proposed wind turbine project may affect: (1) KCA's members' rights to a clean and healthy environment as defined by laws including the City's land use ordinances; (2) its mission as an environmental protection organization; and (3) the health, recreation, livelihood, and cultural and spiritual practices of KCA's members and community.

KCA was formed to develop community interests, provide a place for individual and community opinion, to find and study the needs of the community and carry out projects or activities to meet these needs, to act as the voice of the community in dealing with governmental and other outside agencies, and to develop and promote recreational programs to fulfill the needs of the community with special reference to the needs of the youth in the community. Ka'ili Decl. ¶4.

KCA's members are those who live, recreate, study, and work in Kahuku, including those who would be under the shadow of the NPM project. Ka'ili Decl. ¶5. The massive structures pose a physical threat to Petitioner's members because of their proximity to homes, schools, and

farmlands, as well as through their operation, which entails shadow flicker, stray voltage, and other phenomena that have untested impacts on human health and the environment. *Id.*

KCA's members have specific and personal recreational, aesthetic, cultural, scientific, and spiritual interests and practices that are directly and indirectly impacted by the Director's permitting of the location of the turbines. Ka'ili Decl. ¶6. KCA's members include those whose children regularly attend Kahuku Elementary and High schools, recreate in the nearby Kahuku District Park, and who would live nearby the proposed wind turbines. *Id.* ¶7.

KCA's members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project and have held their own community meetings at which concerns about the project were discussed. Ka'ili Decl. ¶8.

2. *KNSC holds property interests affected by the Director's decisions.*

KNSC's property interests are at issue in the Director's decisions because the proposed wind turbine project may affect: (1) KNSC's members' rights to a clean and healthy environment as defined by laws including the City's land use ordinances; (2) its mission as an environmental protection organization; and (3) the health, recreation, livelihood, and cultural and spiritual practices of KNSC's members.

KNSC is a grassroots, volunteer-based North Shore non-profit, formed in 2006, "to preserve, protect and enhance the heritage and rural character of the North Shore of O'ahu Hawai'i, in partnership with communities from Ka'ena Point to Kahalu'u." Riviere Decl. ¶4.

KNSC's members include those who live, recreate, study, and work in Kahuku, including those who would be under the shadow of the project. The massive structures pose a physical threat to Petitioner's members because of their proximity to homes, schools, and farmlands, as well as through their operation, which entails shadow flicker, stray voltage, and other phenomena that have untested impacts on human health and the environment. Riviere Decl. ¶5.

KNSC's members have specific and personal recreational, aesthetic, cultural, scientific, and spiritual interests, including members whose traditional and cultural, recreational, and aesthetic practices include and rely on native birds and 'ōpe'ape'a that will be adversely impacted by the installation and operation of the wind turbines proposed as part of the project. Riviere Decl. ¶6. They have interests in protecting endangered and threatened species, native species, and wildlife. KNSC's members have volunteered on wildlife conservation projects throughout the state, including Kahuku Point, Malaekahana, and James Campbell National Wildlife Refuge, near or within the area affected by the Project. *Id.* KNSC's members include those whose children regularly attend Kahuku Elementary and High schools. Riviere Decl. ¶7.

KNSC's members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project. Riviere Decl. ¶8.

3. *Appellants' constitutional rights entitle them to due process.*

Hawai'i Constitution, article XI §9 provides:

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, subject to reasonable limitations and regulation as provided by law.

Appellants hold property rights in their rights to a clean and healthy environment as defined by laws of environmental quality, including LUO §§21-2.40-1, 21-2.90 et seq., 21-5.700, and 21-4.60. The stated purpose of the City's LUO:

is to regulate land use in a manner that will encourage orderly development in accordance with adopted land use policies, including the city's general plan, and development and sustainable communities plans, and, as may be appropriate, adopted neighborhood plans, and to promote and protect the public health, safety and welfare by, more particularly:

- (1) Minimizing adverse effects resulting from the inappropriate location, use or design of sites and structures;
- (2) Conserving the city's natural, historic and scenic resources and encouraging design that enhances the physical form of the city; and
- (3) Assisting the public in identifying and understanding regulations affecting the development and use of land.

LUO §21-1.20(a). The location and siting of NPM's project impacts Appellants' members public health, safety and welfare and is thereby a law relating to environmental quality that implements Appellants' constitutional rights to a clean and healthy environment. Hawai'i Const., art. XI §9. The right to a clean and healthful environment defined by laws relating to environmental quality "is a property interest protected by due process, as it is a substantive right guaranteed by the Hawai'i Constitution." *In re Hawai'i Elec. Light Co. (HELCO)*, 145 Hawai'i 1, 16, 445 P.3d 673, 688 (2019) (emphasis in original); *citing In re Application of Maui Elec. Co. (MECO)*, 141 Hawai'i 249, 260-61, 408 P.3d 1, 12-13 (2017).

C. Appellants' are entitled to a contested case hearing on the Director's decision.

KNSC's was entitled to due process to protect its rights. The second step of the due process analysis requires determining what kind of procedures were required to protect these rights.

*HELCO*, 145 Hawai'i at 17, 445 P.3d at 689 *quoting MECO*, 141 Hawai'i at 265, 408 P.3d at 17.

When determining the procedures required to comply with constitutional due process, we consider the following three factors: "(1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail."

*HELCO*, 145 Hawai'i at 17, 445 P.3d at 689 (concluding a contested case hearing was required) *quoting Sandy Beach Def. Fund v. City Council of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).

These three factors establish that KNSC is entitled to the instant contested case proceedings before the Board.

1. *Impact to NPM's private interests are counterbalanced by those of Appellants.*

NPM alleges that sustaining Appellants' appeal would "undermine developers' ability to rely on permits issued by the City and County and would ultimately harm citizens in this state by increasing the costs and uncertainty associated with development" (NPM KNSC mtg. at 18) and

“result in a perpetual state of uncertainty regarding any permit or other approval granted by DPP.”

NPM KCA mt. at 17. The private interests NPM raises is its ability to rely on the propriety of permits issued and increased costs associated with development.

However, heightened notice requirements to ensure all interested persons receive notice (DPP Rule §6-2) would serve developers by reducing the likelihood for later community opposition to their projects, including the project at issue.<sup>2</sup>

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<sup>2</sup> The Board may take judicial notice of the significant, sustained community opposition to construction of the NPM project in Kahuku. See Nina S. Jones, Community Voice: Why you should care about wind turbines in Kahuku, *Civil Beat* (Dec. 5, 2019) available at: <https://www.civilbeat.org/2019/12/why-you-should-care-about-wind-turbines-in-kahuku/>; Robert Bryce, Opinion Contributor, Hawaii protests show why wind energy can't save us from climate change, *TheHill.com* (Dec. 3, 2019) available at: <https://thehill.com/opinion/energy-environment/469870-hawaii-protests-show-why-wind-energy-cant-save-us-from-climate>; Stopthesethings.org, Bat battle: Native Hawaiians go to war with wind industry to save threatened bat species, (Dec. 3, 2019) available at: <https://stopthesethings.com/2019/12/03/bat-battle-native-hawaiians-go-to-war-with-wind-industry-to-save-threatened-bat-species/>; Kevin Brown, Oahu residents unite to protest the construction of more towering wind turbines in Kahuku, *National Wind Watch* (Dec. 3, 2019) available at: <https://www.wind-watch.org/news/2019/12/03/oahu-residents-unite-to-protest-the-construction-of-more-towering-wind-turbines-in-kahuku/>; Andrew Gomes, Silent protest over Kahuku wind farm made to state commission, *Honolulu Star-Advertiser* (Nov. 23, 2019) available at: <https://www.staradvertiser.com/2019/11/23/hawaii-news/silent-protest-over-kahuku-wind-farm-made-to-state-commission/>; Editorial, Letters: Kahuku wind farm is too big, *Honolulu Star-Advertiser* (Nov. 21, 2019) available at: <https://www.staradvertiser.com/2019/11/21/editorial/letters/kahuku-wind-farm-is-simply-too-big-too-close/>; Rosemarie Bernardo and Mark Ladao, Delivery of Kahuku wind farm parts complete, *Honolulu Star-Advertiser* (Nov. 21, 2019) available at: <https://www.staradvertiser.com/2019/11/21/hawaii-news/delivery-of-kahuku-wind-turbine-parts-complete/>; Jessica dos Santos, Community Voice: Industrial Wind Project and Indigenous Rights, *Civil Beat* (Nov. 20, 2019) available at: <https://www.civilbeat.org/2019/11/industrial-wind-project-violates-indigenous-rights/>; Rosemarie Bernardo, Kahuku wind farm company completes transport of turbine parts ahead of schedule, *Honolulu-Star Advertiser* (Nov. 20, 2019) available at: <https://www.staradvertiser.com/2019/11/20/breaking-news/21-more-wind-farm-protesters-arrested-in-kalaeloa-and-kahuku/>; After another night of protests, number of arrests linked to wind farm opposition hit 200, *Hawai'i News Now* (Nov. 18, 2019) available at: <https://www.hawaiinewsnow.com/2019/11/18/more-arrests-made-after-another-large-crowd-wind-farm-protesters-turns-out-kalaeloa/>; Blaze Lovell, More arrests as Oahu wind farm protest enters second month, *Civil Beat* (Nov. 18, 2019) available at: <https://www.civilbeat.org/2019/11/more-arrests-as-oahu-wind-farm-protest-enters-second-month/>; Rosemarie Bernardo and Mark Ladao, Hawaii lawmaker decries 'aggressive' police tactics as 26 wind farm protestors arrested in Kalaeloa, *Honolulu Star-Advertiser* (Nov. 15, 2019) available at:



In any case, Appellants' interests in their health and clean environments, as well as spiritual and cultural practices, are considered property interests that counterbalance NPM's concern with its own private interests. Ka'ili Decl. ¶6. Hawaiian cultural practices constitute "property interests" requiring due process protections. *In re 'Iao Ground Water Mgmt. Area High-Level Source Water use Permit Applications*, 128 Hawai'i 228, 241, 287 P.3d 129, 142 (2012); see also *Mauna Kea Anaina Hou*,

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<https://www.staradvertiser.com/2019/11/15/breaking-news/26-kahuku-wind-farm-protesters-arrested-in-kalaeloa/>; Jennifer Sinco Kelleher, Associated Press, Telescope protest inspires more Native Hawaiian activism, *ABC News* (Nov. 16, 2019) (concerning Kahuku protests) available at: <https://abcnews.go.com/US/wireStory/telescope-protest-inspires-native-hawaiian-activism-67067612>; Mark Ladao, Wind farm opponents protest in Mayor Kirk Caldwell's office, *Honolulu Star-Advertiser* (Nov. 1, 2019) available at: <https://www.staradvertiser.com/2019/11/01/breaking-news/wind-farm-opponents-protest-in-mayor-kirk-caldwells-office/>; Christian Palmer, Community voice: Why the fight against Kahuku turbines matters, *Civil Beat* (Nov. 1, 2019); Christine Jedra, 'Shadow Flicker' and lost sleep: are Kahuku wind turbines too close to homes?, *Civil Beat* (Oct. 31, 2019) available at: <https://www.civilbeat.org/2019/10/shadow-flicker-and-lost-sleep-are-kahuku-wind-turbines-too-close-to-homes/>; Mark Ladao and Dan Nakaso, Kahuku wind project spurs more arrests, bringing total to 127, *Honolulu Star-Advertiser* (Oct. 29, 2019) available at: <https://www.staradvertiser.com/2019/10/29/hawaii-news/kahuku-wind-project-spurs-more-arrests-bringing-total-to-127/>; Stewart Yerton, PUC's former lawyer says approval of Kahuku wind farm violated law, *Civil Beat* (Oct. 28, 2019) available at: <https://www.civilbeat.org/2019/10/pucs-former-lawyer-says-approval-of-kahuku-wind-farm-violated-law/>; Andrew Gomes, Leila Fujimori, and Mark Ladao, Police deny Kahuku wind farm protestors were mistreated (Oct. 25, 2019) available at: <https://www.staradvertiser.com/2019/10/25/hawaii-news/police-deny-kahuku-wind-farm-protesters-were-mistreated/>; Rosemarie Bernardo, Police outnumber demonstrators at Kahuku, Kalaeloa wind-farm protest sites, *Honolulu Star-Advertiser* (Oct. 29, 2019) available at: <https://www.staradvertiser.com/2019/10/29/hawaii-news/newswatch/police-outnumber-demonstrators-at-kahuku-kalaeloa-wind-farm-protest-sites/>; Hawaii News Now staff, 6 protesters arrested as more wind farm equipment transported to Kahuku, *Hawai'i News Now online* (Oct. 20, 2019) available at: <https://www.hawaiinewsnow.com/2019/10/21/honolulu-police-arrest-more-opponents-blocking-convoy-kahuku-wind-farm/>; Blaze Lovell and Christine Jedra, Wind farm protesters arrested as they blockage road for construction vehicles, *Civil Beat* (Oct. 18, 2019) available at: <https://www.civilbeat.org/2019/10/wind-farm-protesters-arrested-as-they-blockade-access-road-for-construction-vehicles/>; Associated Press, The Latest: Wind farm votes to be good neighbor; 55 arrested, *U.S. News online* (Oct. 18, 2019) available at: <https://www.usnews.com/news/best-states/hawaii/articles/2019-10-18/the-latest-55-hawaii-wind-farm-protesters-arrested>; Hawaii News Now staff, "55 protestors arrested as wind farm convey complete journey to Kahuku," *Hawaii News Now* (Oct. 17, 2019) available at: <https://www.hawaiinewsnow.com/2019/10/18/opponents-kahuku-wind-farm-say-theyre-ready-long-fight/>; KITV Web staff, Peaceful protests continue against controversial Kahuku wind farm, putting a pause on construction, *KITV.com* (Oct. 14, 2019) available at: <https://www.kitv.com/story/41178666/peaceful-protests-continue-against-controversial-kahuku-wind-farm-putting-a-pause-on-construction>

136 Hawai'i at 411, 363 P.3d at 259 (Pollack and Wilson, JJs concurring) (exercise of traditional and customary Native Hawaiian rights was found in *Iao* to be a property interest). Environmental groups asserted property interests defined by article XI, §9 are similar to Hawaiian property interests in traditional and customary rights. *MECO*, 141 Hawai'i at 261, 408 P.3d at 13 (Similar to the Native Hawaiian water rights asserted in *Iao*, Sierra Club's asserted property interest is defined by State constitutional and statutory law. 'The right to a clean and healthful environment' is a substantive right guaranteed to each person by article XI, section 9 of the Hawai'i Constitution[.]").

2. *The Director's procedures entailed a high risk of erroneous deprivation.*

The Director's procedures did not protect property interests and violated due process. *See supra* Part II.A. The Department of Planning and Permitting's (DPP) rules did not require public notice of the Director's decision. Instead, DPP Rule §1-2 provides that the public "may obtain information about matters within the jurisdiction of the department" by going to their physical offices in Honolulu. The only provision for public hearings concern rulemaking proceedings. DPP Rule §2-4. No public hearing was held on the CUP minor permits CUP-49 or -69. *See* NPM Exh. 2 at 6 ¶II.J ("No Public Hearing was held by the OPP. The CUP minor does not require a Public Hearing."); NPM KNSC Exh. 7 at 6¶III.K ("No Public Hearing was held by the DPP. CUPm does not require a Public Hearing.").

The Director's procedure stands in stark contrast to those of the County of Maui Department of Planning procedures concerning notice provided for those seeking to appeal Maui Planning Director's decisions. Pursuant to Maui County Rule (MC) §12-202-26, titled "Appeal of director's decision; filing the notice of appeal":

- (a) Appeal of the director's decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the

Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the filing of the notice of appeal.

MC §12-202-26(a). The Maui Planning Director will notify the Maui Planning Commission of, for instance, issuance of special management area minor permits, "at the commission's next regularly scheduled meeting" and "receipt of which shall be acknowledged by the commission." MC §12-202-14(c). That is, under Maui Planning Commission rules, interested persons who do not receive personal notice, could be notified through publication of the Maui Planning Director's decision as part of the agenda for the Planning Commission's regular meeting or at the meeting itself. The Director in the instant case, by contrast, employs procedures with no such provisions for even constructive notice.

Notably, after the NPM CUP minor permits were issued, the 2017 City Council amended the City Land Use Ordinance to require a CUP major permit for wind machines with a rated capacity of more than 100 kilowatts. *See* ROH §21-5.700 (2019); City and County of Honolulu Ordinance No. 17-46 (2017). Concerns about the NPM project in Kahuku led KCA to propose amending the wind turbine ordinance to require CUP major permits because CUP major permits would require public hearings, and also let residents to testify in support of those proposals. Ka'ili Decl. ¶¶15-16; KCA Exh. 10; Riviere Decl. ¶23, KNSC Exh. 06. Therefore, contrary to NPM's doomsday predictions, upholding the due process rights of KNSC and KCA will not have an impact on future developers who are now expressly covered by the 2017 ordinance.

The Director's procedures are further insufficient because they were employed for approvals that exceeded the Director's authority. The general requirements for CUPs further provide, in relevant part: "[a]t no time may the director modify the minimum standards for a specific conditional use." LUO §21-2.90-2(c). The minimum requirements for wind turbine CUPs require them to be set back from all property lines a minimum distance equal to the height of the wind turbine system. LUO §21-5.700(a) (specific use standards for wind machines). By letter dated June

7, 2019, the Director modified setbacks under 2019/MOD-34 & -35 and 2019/MOD-36, which impermissibly modified minimum standards for NPM's wind turbine setbacks. NPM KNSC Exhs. 5 & 10; LUO §21-2.90-2(c).

As in *Unite Here! Local 5 v. Department of Planning and Permitting (PACREP)*, 145 Hawai'i 453, 454 P.3d 394 (2019), the record lacks evidence establishing that NPM "had publicly announced or filed a written request seeking to modify [the permits.]" *Id.*, 145 Hawai'i at 486, 454 P.3d at 427, *distinguishing Citizens Against Reckless Dev. v. Zoning Bd. of Appeals (CARD)*, 114 Hawai'i 184, 187, 159 P.3d 143, 146 (2007). Under the Director's procedures, Appellants were required to have anticipated even unlawful actions that exceeded the Director's authority. There is a high risk of erroneous deprivation under procedures actually used.

3. *The City and the Director supported governmental burdens of further notice.*

Even the Director testified in support of the bill that would become Ordinance No. 17-46, which would require large turbine projects to obtain the CUP major permits through procedures including public hearings. Riviere Decl. ¶23, KNSC Exh. 07. That is, even the City and the Director endorsed additional procedural safeguards for permitting large wind turbine projects such as the NPM project at issue here. The governmental burden of requiring applicants to hold public scoping meetings for large wind projects is not objectionable.

Although the permits were processed as CUP minor applications, such that public hearings were not required, additional government burdens of individual notice through mailing or personal service to Appellants would not have been impracticable. Appellants are "interested persons" within the meaning of DPP Rule §6-2 and should have been known to the Director because they were named in documents on file with the Director, including those required to be reviewed under HRS chapter 343 environmental review processes.

Appellants were publicly visible as persons with interests and concerns about the project. KCA participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project and have held their own community meetings at which concerns about the project were discussed. Ka'ili Decl. ¶8. In 2010, KCA voted to strongly oppose O'ahu Wind Works, LLC proposal to place four industrial wind turbines in the Kahuku Agricultural Park because they would be too close to dwellings. *Id.* ¶9; KCA Exh. 08.

Since at least May 2013, the Kahuku Community Association has actively engaged NPM's project through participation in numerous community meetings, agency hearings, city council initiatives, and providing comments as part of the environmental review process under Hawaii Revised Statutes (HRS) chapter 343. Ka'ili Decl. ¶¶10-11; KNSC Exh. 01 (showing KCA as a consulted party for the NPM EIS).

On January 10, 2014, KCA representatives attended and testified at a community public scoping meeting concerning the project in Kahuku and transcripts of meeting were included in the NPM EIS. Ka'ili Decl. ¶13; KNSC Exh. 04.

In March 2014, the Kahuku Community Association voted against supporting the construction of any further industrial wind turbines in Kahuku. Ka'ili Decl. ¶12.

In a comment on the NPM FEIS submitted on August 10, 2015, KCA voiced its strong opposition to the NPM project as part of the HRS chapter 343 environmental review process, and further attached petitions with signatures and comments from thousands of people, including many Kahuku residents. Ka'ili Decl. ¶14; KCA Exh. 09.

On September 28, 2015, KCA submitted a charter amendment proposal to the Honolulu Charter Commission, seeking to amend LUO § 21-5.700 governing "wind machines" to allow impacted communities the opportunity to be heard via a hearing process because the then-current conditional use permit (minor) process did not require any community input to the City in its

decisionmaking. The proposal specifically identified the NPM project. Ka‘ili Decl. ¶15; KCA Exh. 10. KCA submitted testimony in support of their proposed City Charter Amendment, which testimony included resolutions to create acceptable buffer zone of at least a ¾ mile between large industrial wind machines and residences and to have the City amend LUO §21-2.40 to require conditional use permit major, instead of minor, for wind machines in excess of 350 feet. Ka‘ili Decl. ¶16; KNSC Exh. 06. In 2017, KCA supported the City council’s Bill No. 54, enacted as Ordinance No. 17-46, which required a conditional use permit major for wind machines with a rated capacity of more than 100 kilowatts. *Id.* ¶17.

KNSC’s members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project. Riviere Decl. ¶8. KNSC was a consulted party for the Environmental Impact Statement prepared for the Na Pua Makani Wind Project (NPM EIS). *Id.* ¶18; KNSC Exh. 01. KNSC’s president submitted comments on the NPM EIS by letter dated June 6, 2016 and these were included in the final published NPM EIS. *Id.* ¶19; KNSC Exh. 02. The EIS also included transcripts from a January 10, 2014 community public scoping meeting concerning the proposed Na Pua Makani wind turbine project in Kahuku at which KNSC’s president, Gil Riviere, attended and testified. *Id.* ¶21; KNSC Exh. 04. KNSC’s president also signed a petition opposing the, then- Champlin Wind Energy wind turbine facility in Kahuku on December 16, 2013. The petition is on file with the Director’s office in a file named “NPM Community Opposition 2.” *Id.* ¶20; KNSC Exh. 03. Additionally, KNSC was a party opposing the Director based on environmental interests in lands near to the Kahuku project site at Turtle Bay on O‘ahu’s North Shore. *See Unite Here! Local 5 v. City & Cty. of Honolulu*, 123 Hawai‘i 150, 155, 231 P.3d 423, 428 (2010) (recognizing KNSC’s standing to represent environmental public interests on the North Shore); Riviere Decl. ¶9.

Under these circumstances, the Director would have easily been able to identify Appellants interested persons for whom notice was due.

By contrast, Appellants received no notice that the initial minor conditional use permits (CUPm), waivers, or modifications had been approved, even though KNSC leadership had engaged the project and community consultation processes. Ka‘ili Decl. ¶¶18-25; Riviere Decl. ¶¶8, 13, 17. There was no reason that Appellants should have known that the Director approved the CUP minors in 2016 or modified them in 2019.

That the Director knew, or should have known, that Appellants were interested persons is material to whether heightened notice requirements for Appellants would be an undue governmental burden limiting Appellants’ due process rights. *PACREP* concluded “heightened procedural protections” were appropriate where the Director had been aware of the appellant’s concerns and issues. *Id.*, 145 Hawai‘i at 483, 454 P.3d at 424 (the Director “acknowledged that he had been aware of Local 5’s concerns; he knew it was an issue ‘that [Local 5 was] concerned about.’”). Under these circumstances, NPM’s protestation that the Director would have had to conduct a five step review process to discern interested persons is unpersuasive. NPM KCA mtn. at 17. The issue is that no notice, not even constructive notice, was provided. The Director knew or should have known Appellants as interested persons, as well as others who were consulted in, and commented on, the preparation of environmental review documents and were named in documents relating to the project on file at the DPP.

D. Fewer procedural protections exist in the instant case than in *PACREP*

NPM seeks to distinguish the holding of *PACREP* from the instant case. NPM KCA mtn. 15-19/ NPM KNSC mtn. 10-16. This is relevant in one way, which is that *PACREP* arose from a set of facts that *included* public hearings on Waikīkī Special District (WSD) permits. *Id.*, 145 Hawai‘i at 458, 454 P.3d at 399. At those public hearings, at least 23 persons were able to testify, and the

*PACRED* appellant “actively participated[.]” *Id.*, 145 Hawai‘i at 485, 454 P.3d at 426. Even though public hearings were held on the disputed permits, the *PACREP* held additional notice was required to protect the rights of *PACREP* appellants, including mailing or personal service, even where the appellants had not requested notice under DPP Rule §6-2. *Id.*, 145 Hawai‘i at 485, 454 P.3d at 426.

Where the record demonstrates that the interested party advocated for certain conditions in a permit, the permit was approved with those conditions, and the permitting authority knew the importance of the conditions to the interested party, that interested party is entitled to heightened procedural protections regarding later decisions to modify that permit.

*Id.*, 145 Hawai‘i at 487, 454 P.3d at 428 (citation omitted).

In any case, rule provisions requiring appeals within thirty days cannot be strictly applied where procedures are insufficient to afford due process and particularly where the action subject to notice was illegal. “State law justiciability policies must be applied as the ‘needs of justice’ require.” *Aged Hawaiians v. Hawaiian Homes Com’n*, 78 Hawai‘i 192, 205, 891 P.2d 279, 292 (1995) quoting *Life of the Land v. Land Use Comm’n*, 63 Haw. 166, 176, 623 P.2d 431, 439 (1981). Preventing Appellants from protecting their rights and interests where the Director’s procedures afforded no notice constitutes a violation of due process. The Director’s procedures would effectively bar review of even illegal and ultra vires actions of the Director, such as exceedances of authority in modifying minimum standards for setbacks. LUO §21-5.700(a). Justice requires more meaningful protections.

E. Permits granted upon improper procedure are vacated pending reparative procedures.

Because Appellants were not afforded due process, the challenged permits must be vacated pending the completion and disposition of contested case proceedings. Put otherwise, NPM points to no authority that a person granted a permit upon invalid procedures has a right or entitlement to continue to act in the absence of a permit. *See c.f. Kentuckians for the Commonwealth v. Rivenburgh*, 206 F. Supp. 2d 782, 806-07 (S.D. W.Va. 2002), rev’d on other grounds, 317 F.3d 425 (4th Cir. 2003) (a permit holder’s “expectation that the permit was issued correctly is simply an expectation and assumption, which does not and cannot bind the [Army Corps of Engineers] to maintain the permit,



wrongly issued.”). Where a permit is granted pursuant to “flawed procedures,” including the failure to hold a contested case hearing on the property interests of Hawaiian cultural practitioners, the permit itself is vacated. See *Public Access Shoreline Hawaii by Rothstein v. Hawaii's County Planning Com'n by Fujimoto*, 79 Hawai'i 425, 429, 903 P.2d 1246, 1250 (1995) (affirming a court's decision that “essentially vacated the permit by remanding to the [planning commission] with instructions to hold a contested case hearing in which both [appellants] would be allowed to participate. In other words, because the SMA permit was the circuit court implicitly concluded that the SMA permit was void.”). BLNR improperly granted a permit prior to holding a contested case and thereby denied Hawaiian cultural practitioners' due process right to be heard at ‘a meaningful time and in a meaningful manner.’” *Mauna Kea Anaina Hou*, 136 Hawai'i at 380, 363 P.3d at 228 quoting *Sandy Beach Def. Fund v. City & Cnty. of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). Likewise, in *Sandy Beach Defense Fund*, an agency issued an invalid Special Management Area use permit because it failed to first conduct a contested case hearing. *Id.*, 70 Haw. at 361, 773 P.2d at 253.

Should the Board determine to dismiss this appeal, Appellants are entitled to seek judicial review. This is because the circumstances presented here are distinguished from those in which an agency actually provided public notice and a petitioner failed to follow “the applicable agency rule delineating the specific procedures for requesting a contested case hearing.” *Hui Kako'o Aina Ho'opulapula v. Bd. of Land & Nat. Res.*, 112 Hawai'i 28, 40, 143 P.3d 1230, 1242 (2006) (because “Appellants failed to follow the requisite procedures, there was no contested case from which the Appellants could appeal, pursuant to HRS § 91-14(a)”), *abrogated on other grounds by Tax Found. of Hawaii v. State*, 144 Hawai'i 175, 439 P.3d 127 (2019). *Hui Kako'o* concerned an appeal from a decision of the state Board of Land and Natural Resources (BLNR), which was made at a duly noticed regular meeting that was open to the public. HAR §§13-1-5(d); -11.1. Because KNSC's due

process rights were violated by the procedures actually employed, the denial of a contested case falls within HRS §91-14 judicial review provisions.

### III. CONCLUSION

For the foregoing reasons, Appellants KEEP THE NORTH SHORE COUNTRY and the KAHUKU COMMUNITY ASSOCIATION pray that the Board deny NA PUA MAKANI POWER PARTNERS, LLC's and the DIRECTOR OF DEPARTMENT OF PLANNING AND PERMITTING, CITY AND COUNTY OF HONOLULU's motions to dismiss the appeals, filed March 27, 2020.

DATED: Honolulu, Hawai'i

April 2, 2020



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LAW OFFICE OF LANCE D COLLINS  
LANCE D. COLLINS  
LAW OFFICE OF BIANCA ISAKI  
BIANCA ISAKI  
Attorneys for Kahuku Community Association &  
Keep the North Shore Country

BEFORE THE ZONING BOARD OF APPEALS  
CITY AND COUNTY OF HONOLULU  
THE STATE OF HAWAII

In the Matter of the Petitions of ) Case No. 2019/ZBA-7 (Consolidated)  
)  
KEEP THE NORTH SHORE COUNTRY, a ) DECLARATION OF GIL RIVIERE  
nonprofit corporation, and THE KAHUKU )  
COMMUNITY ASSOCIATION, a nonprofit )  
corporation, )  
\_\_\_\_\_ )

DECLARATION OF GIL RIVIERE

I, GIL RIVIERE, do declare under penalty of law that the following is true and correct.

1. I make this declaration based upon my personal knowledge, information and belief.
2. I am a resident of the island of O‘ahu and the City and County of Honolulu.
3. I am the President of Appellant KEEP THE NORTH SHORE COUNTRY, a nonprofit corporation (KNSC), in the above captioned proceedings concerning approvals granted by Respondent DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING, CITY AND COUNTY OF HONOLULU (Director) for siting and setbacks of the Na Pua Makani Power Partners, LLC wind turbine project in Kahuku, O‘ahu.
4. KNSC is a grassroots, volunteer-based North Shore non-profit, formed in 2006, “to preserve, protect and enhance the heritage and rural character of the North Shore of O‘ahu Hawai‘i, in partnership with communities from Ka‘ena Point to Kahalu‘u.”
5. KNSC’s members include those who live, recreate, study, and work in Kahuku, including those who would be under the shadow of the Na Pua Makani Wind Project located at Tax Map Keys (1)5-6-005:018 (portion); (1)5-6-006:018, 47, 51, 55; and (1)5-6-008:006 (portion), Koolauloa District, island of O‘ahu (project). The massive structures pose a physical threat to Petitioner’s members because of their proximity to homes, schools, and farmlands, as well as

through their operation, which entails shadow flicker, stray voltage, and other phenomena that have untested impacts on human health and the environment.

6. KNSC's members have specific and personal recreational, aesthetic, cultural, scientific, and spiritual interests, including members whose traditional and cultural, recreational, and aesthetic practices include and rely on native birds and 'ōpe'ape'a that will be adversely impacted by the installation and operation of the wind turbines proposed as part of the project. They have interests in protecting endangered and threatened species, native species, and wildlife. KNSC's members have volunteered on wildlife conservation projects throughout the state, including Kahuku Point, Malaekahana, and James Campbell National Wildlife Refuge, near or within the area affected by the Project.

7. KNSC's members include those whose children regularly attend Kahuku Elementary and High schools.

8. KNSC's members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project

9. The Hawai'i Supreme Court recognized KNSC's standing to represent environmental public interests on the North Shore in *Unite Here! Local 5 v. City and County of Honolulu*, 123 Hawai'i 150, 231 P.3d 423 (2010), in which the Director was an opposing party.

10. The Director did not mail or personally serve notice to KNSC or its president when project proponent, Intervenor NA PUA MAKANI POWER PARTNERS, LLC (NPM) sought a conditional use permit minor (CUPm-69) for its subproject-A on November 29, 2016.

11. The Director did not mail or personally serve notice to KNSC or its president when CUPm-69 for NPM's subproject-A was granted on January 20, 2017.

12. The Director did not mail or personally serve notice to KNSC or its president when NPM sought a modification for CUPm-69 on May 1, 2019.

13. The Director did not mail or personally serve notice to KNSC or its president MOD-34 and MOD-35 were granted for CUPm-69 on June 7, 2019.

14. The Director did not mail or personally serve notice to KNSC or its president when NPM sought a conditional use permit minor (CUPm-49) for its subproject-B on August 26, 2016.

15. The Director did not mail or personally serve notice to KNSC or its president when CUPm-49 for NPM's subproject-B was granted on October 26, 2016.

16. The Director did not mail or personally serve notice to KNSC or its president when NPM sought a modification for CUPm-49 on May 8, 2019.

17. The Director did not mail or personally serve notice to KNSC or its president MOD-34 and MOD-35 were granted for CUPm-49 on June 7, 2019.

18. KNSC was a consulted party for the Environmental Impact Statement prepared for the Na Pua Makani Wind Project located at Tax Map Keys (1)5-6-005:018 (portion); (1)5-6-006:018, 47, 51, 55; and (1)5-6-008:006 (portion), Koolauloa District, island of O'ahu (NPM EIS). Attached as Exhibit "01" is a true and correct copy of Section 7.0 of the NPM EIS, dated July 23, 2016.

19. I submitted comments on the NPM EIS by letter dated June 6, 2016 and these were included in the final published NPM EIS. Attached as Exhibit "02" is a true and correct copy of the letter from Senator Gil Riviere to Suzanne Case, Chair, Department of Land and Natural Resources, Re: Na Pua Makani Project Second DEIS (June 6, 2016).

20. I signed a petition opposing the, then- Champlin Wind Energy wind turbine facility in Kahuku on December 16, 2013. The petition is on file with the Director's office in a file named "NPM Community Opposition 2." Attached as Exhibit "03" is a true and correct copy of the petition, including pages listing my signature, excerpted from the Director's files.

21. On January 10, 2014, I attended and testified at a community public scoping meeting concerning the proposed Na Pua Makani wind turbine project in Kahuku. Transcripts of the

January 10, 2014 community scoping meeting were included in the NPM EIS. Attached as Exhibit “04” is a true and correct of the “HEPA Public Scoping Meeting Na Pua Makani Wing Project (Question and Answer Portion)” Jan. 10, 2014, as presented in the NPM EIS.

22. Attached as Exhibit “05” is a true and correct copy of the City and County of Honolulu Ordinance No. 17-46 “Relating to Wind Machines”, approved August 24, 2017, *available at:* [http://www4.honolulu.gov/docushare/dsweb/Get/Document-197177/DOC009%20\(9\).PDF](http://www4.honolulu.gov/docushare/dsweb/Get/Document-197177/DOC009%20(9).PDF).

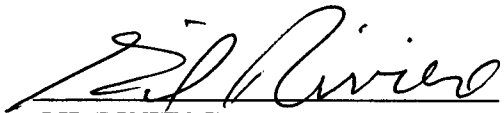
23. Attached as Exhibit “06” is a true and correct copy of testimony from Kent Fonoimoana, former President, Kahuku Community Association, to the Honolulu City and County Charter Commission on Proposal 8, dated Feb. 2, 2016, *available at:* <http://honoluluchartercommission.org/images/testimony/TESTIMONIES-Proposal008-Feb04thMtg.pdf>.

24. The City and County of Honolulu Committee on Zoning and Housing reported that the Acting Director of Planning and Permitting testified in support of Bill 54 (2017). Attached as Exhibit “07” is a true and correct copy of the Report of the Committee on Zoning and Housing to Ron Menor, Chair, City Council, City and County of Honolulu, from Committee Meeting Held June 29, 2017 *available at:* [http://www4.honolulu.gov/docushare/dsweb/Get/Document-195521/CR-272\(17\).pdf](http://www4.honolulu.gov/docushare/dsweb/Get/Document-195521/CR-272(17).pdf).

DECLARANT, FURTHER SAYETH NAUGHT

DATED: Haleiwa, Hawai'i

March 30, 2020

  
GIL RIVIERE  
Declarant

BEFORE THE ZONING BOARD OF APPEALS  
CITY AND COUNTY OF HONOLULU  
THE STATE OF HAWAII

In the Matter of the Petitions of	)	Case No. 2019/ZBA-7 (Consolidated)
	)	
KEEP THE NORTH SHORE COUNTRY, a	)	DECLARATION OF TĒVITA O. KAʻILI
nonprofit corporation, and THE KAHUKU	)	
COMMUNITY ASSOCIATION, a nonprofit	)	
corporation,	)	
_____	)	

DECLARATION OF TĒVITA O. KAʻILI

I, TĒVITA O. KAʻILI, do declare under penalty of law that the following is true and correct.

1. I make this declaration based upon my personal knowledge, information and belief.
2. I am a resident of the island of Oʻahu and the City and County of Honolulu.
3. I am the President of Appellant KAHUKU COMMUNITY ASSOCIATION, a nonprofit corporation (KCA), in the above captioned proceedings concerning approvals granted by Respondent DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING, CITY AND COUNTY OF HONOLULU (Director) for siting and setbacks of Intervenor NA PUA MAKANI POWER PARTNERS, LLC (NPM)'s wind turbine project in Kahuku, Oʻahu.
4. KCA was formed to develop community interests, provide a place for individual and community opinion, to find and study the needs of the community and carry out projects or activities to meet these needs, to act as the voice of the community in dealing with governmental and other outside agencies, and to develop and promote recreational programs to fulfill the needs of the community with special reference to the needs of the youth in the community.
5. KCA's members are those who live, recreate, study, and work in Kahuku, including those who would be under the shadow of the Na Pua Makani Wind Project located at Tax Map

Keys (1)5-6-005:018 (portion); (1)5-6-006:018, 47, 51, 55; and (1)5-6-008:006 (portion), Koolauloa District, island of O‘ahu (project). The massive structures pose a physical threat to Petitioner’s members because of their proximity to homes, schools, and farmlands, as well as through their operation, which entails shadow flicker, stray voltage, and other phenomena that have untested impacts on human health and the environment.

6. KCA’s members have specific and personal recreational, aesthetic, cultural, scientific, and spiritual interests and practices that are directly and indirectly impacted by the Director’s permitting of the location of the turbines.

7. KCA’s members include those whose children regularly attend Kahuku Elementary and High schools, recreate in the nearby Kahuku District Park, and who would live nearby the proposed wind turbines

8. KCA’s members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project and have held their own community meetings at which concerns about the project were discussed.

9. In 2010, the Kahuku Community Association voted to strongly oppose O‘ahu Wind Works, LLC proposal to place four industrial wind turbines in the Kahuku Agricultural Park because they would be too close to dwellings. Attached as Exhibit “08” is a true and correct copy of the Tsetimony of Kent Fonoimoana, President, Kahuku Community Association, to the State Senate Committees on Energy and Environment/ Water, Land, and Hawaiian Affairs, on SB No. 2526, submitted Feb. 16, 2010.

10. Since at least May 2013, the Kahuku Community Association has actively engaged Intervenor NA PUA MAKANI POWER PARTNERS, LLC’s (NPM) Wind Project - Subprojects A and B, located at 56-668 Kamehameha Highway, Kahuku, O‘ahu on Tax Map Keys (1) 5-6-006:008 and 5-6-006:018 respectively (project) through participation in numerous community meetings,



agency hearings, city council initiatives, and providing comments as part of the environmental review process under Hawaii Revised Statutes (HRS) chapter 343.

11. KCA was a consulted party for the Environmental Impact Statement prepared for the Na Pua Makani Wind Project located at Tax Map Keys (1)5-6-005:018 (portion); (1)5-6-006:018, 47, 51, 55; and (1)5-6-008:006 (portion), Koolauloa District, island of O‘ahu (NPM EIS).

12. In March 2014, the Kahuku Community Association voted against supporting the construction of any further industrial wind turbines in Kahuku.

13. On January 10, 2014, KCA representatives attended and testified at a community public scoping meeting concerning the proposed Na Pua Makani wind turbine project in Kahuku. Transcripts of the January 10, 2014 community scoping meeting were included in the NPM EIS.

14. In a comment on the NPM FEIS submitted on August 10, 2015, KCA voiced its strong opposition to the NPM project as part of the HRS chapter 343 environmental review process, and further attached petitions with signatures and comments from thousands of people, including many Kahuku residents. Attached as Exhibit “09” is a true and correct copy of the comment from Kent Fonoimoana, President, Kahuku Community Association on the Na Pua Makani HCP DEIS, dated Dec. 2, 2013.

15. On September 28, 2015, KCA submitted a charter amendment proposal to the Honolulu Charter Commission, seeking to amend Section 21-5.700 of the City Land Use Ordinance (LUO) governing “wind machines” to allow impacted communities the opportunity to be heard via a hearing process because the then-current conditional use permit (minor) process did not require any community input to the City in its decisionmaking. The proposal specifically identified the NPM project. Attached as Exhibit “10” is a true and correct copy of the Kahuku Community Association Charter Amendment Proposal form, submitted to the Charter Commission of the City and County of Honolulu on September 28, 2015.

16. On or about February 2, 2016, KCA submitted testimony in support of their proposed City Charter Amendment, which testimony included resolutions to create acceptable buffer zone of at least a ¾ mile between large industrial wind machines and residences and to have the City amend LUO §21-2.40 to require conditional use permit major, instead of minor, for wind machines in excess of 350 feet.

17. In 2017, KCA supported the City council's Bill No. 54, enacted as Ordinance No. 17-46, which required a conditional use permit major for wind machines with a rated capacity of more than 100 kilowatts.

18. KCA has no record of the Director mailing or personally serving notice to KCA when NPM sought a conditional use permit minor (CUPm-69) for its subproject-A on November 29, 2016.

19. KCA has no record of the Director mailing or personally serving notice to KCA when CUPm-69 for NPM's subproject-A was granted on January 20, 2017.

20. KCA has no record of the Director mailing or personally serving notice to KCA when NPM sought a modification for CUPm-69 on May 1, 2019.

21. KCA has no record of the Director mailing or personally serving notice to KCA when MOD-34 and MOD-35 were granted for CUPm-69 on June 7, 2019.

22. KCA has no record of the Director mailing or personally serving to KCA when NPM sought a conditional use permit minor (CUPm-49) for its subproject-B on August 26, 2016.

23. KCA has no record of the Director mailing or personally serving to KCA when CUPm-49 for NPM's subproject-B was granted on October 26, 2016.

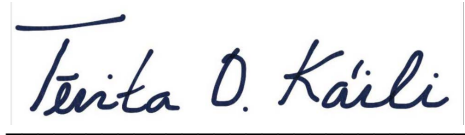
24. KCA has no record of the Director mailing or personally serving to KCA when NPM sought a modification for CUPm-49 on May 8, 2019.

25. KCA has no record of the Director mailing or personally serving to KCA MOD-34 and MOD-35 were granted for CUPm-49 on June 7, 2019.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kahuku, Hawai'i

April 1, 2020

A handwritten signature in black ink, reading "Tevita O. Kaili", enclosed within a thin black rectangular border. The signature is written in a cursive style.

TĒVITA O. KAʻILI  
Declarant

# **EXHIBIT 01**

## 7.0 CONSULTED PARTIES

### 7.1 Consultation

Early coordination meetings with agencies, Kahuku Community Association, Kahuku organizations, and community members began in May 2013. The list of parties consulted before and during the development of the EISPN and Draft EIS is presented below in Table 7-1.

**Table 7-1. Consulted Parties**

<b>Agency/Entity</b>	<b>Contact Name</b>
U.S. Fish and Wildlife Service	Mr. Aaron Nadig Ms. Jodi Charrier Mr. Dan Clark Ms. Dawn Bruns Mr. Ian Bordenave Ms. Jenny Hoskins Mr. Ken Foote
Maui and Oahu National Wildlife Refuge Complex	Mr. David Ellis
U.S. Army Corps of Engineers, Honolulu District	Ms. Katy Damico
U.S. Department of Agriculture	Mr. Larry Yamamoto, State Conservationist Mr. Mike Johanns, Secretary of Agriculture
Marine Corps Base Hawaii	Ms. Tiffany Patrick
U.S. Army Garrison, Hawaii Department of Army, Kahuku Training Area	Mr. Daniel W. Whitney
Federal Aviation Administration	Flight Standards District Office
U.S. Legislators	Senator Brian E. Schatz Senator Mazie K. Hirono Representative Tulsi Gabbard Representative Colleen Hanabusa
State of Hawai'i, Department of Land and Natural Resources (DLNR)	Mr. William Aila, Chairperson (former) Ms. Suzanne Case, Chairperson (current)
State of Hawai'i, DLNR, Land Division	Mr. Russell Tsuji, Administrator Mr. Ian Hirokawa Ms. Malama Minn
State of Hawai'i, DLNR, Division of Forestry and Wildlife (DOFAW)	Ms. Afsheen Siddiqi Ms. Angela Amlin
State of Hawai'i, DLNR, Historic Preservation Division	Ms. Nona Neboa
State of Hawai'i, Department of Business, Economic Development and Tourism (DBEDT)	Mr. Mark Glick, Administrator Mr. Cameron Black Ms. Veronica Rocha
State of Hawaii, Department of Agriculture	Mr. Russell Kokubun, Chair
State of Hawaii, Office of the Governor	Governor Neil Abercrombie Mr. Bruce Coppa, Chief of Staff
State of Hawai'i Legislators	Senator Clayton Hee Senator Mike Gabbard Representative Chris Lee Representative Richard Fale
City and County of Honolulu, Office of the Mayor	Mayor Kirk Caldwell
City and County of Honolulu, Department of Planning and Permitting	Mr. George I. Atta, Director
City and County Legislator	Mr. Ernest Martin, Chair Mr. Reed Matsuura

**Table 7-1. Consulted Parties (continued)**

Agency/Entity	Contact Name
Landowner	Mr. Aaron Campbell
Community Groups	Kahuku Community Association Laie Community Association Hau ula Community Association Koolauloa Neighborhood Board North Shore Neighborhood Board Koolauloa Community Health and Wellness Center Turtle Bay Resort Kahuku Medical Center Keep North Shore Country Laie Hawaii Temple Kahuku Elderly EAH Housing North Shore Community Land Trust Sunset Beach Community Defend Oahu Coalition Kahuku High and Intermediate School Kahuku Elementary School Laie Elementary School Kamehameha Preschool Kahuku

**7.2 EISP Distribution**

The parties listed below in Table 7-2 were provided a copy of the EISP for review during the 30-day public comment period that ended on January 22, 2014, following the notice of availability published in the OEQC's *Environmental Notice* on December 23, 2013. They also received the republished EISP for review during the second public comment period that ended on December 8, 2014, after a second notice of availability was published in OEQC's *Environmental Notice* on November 8, 2014.

**Table 7-2. EISP Distribution List**

Name	Organization
Ernest Y.W. Lau	Board of Water Supply
Chris Takashige, P.E.	City and County of Honolulu
Lori M.K. Kahikina	City and County of Honolulu
Michele K. Nekota	City and County of Honolulu
George I. Atta, FAICP, LEED AP, CEI	City and County of Honolulu
Michael D. Formby	City and County of Honolulu
Manuel P. Neves	City and County of Honolulu
Sophie Cocke	Civil Beat Honolulu
Carolyn Unser	First Wind
	Hawaii State Library (Honolulu), Hawaii Documents Center
Kaiulani Shinsato	Hawaiian Electric Company
	Kahuku Public Library
Rachel James	Office of Congresswoman Tulsi Gabbard
Vandeth Sek	Office of Congresswoman Tulsi Gabbard
Kamana'opono Crabbe	Office of Hawaiian Affairs
Russell Kokubun	State of Hawaii
Richard Lim	State of Hawaii

# **EXHIBIT 02**



# The Senate

STATE CAPITOL  
HONOLULU, HAWAII 96813

RONALD D. KOUCHI  
PRESIDENT

WILL ESPERO  
VICE PRESIDENT

SAM SLOM  
MINORITY LEADER

FIRST DISTRICT  
KAIALI KAHELE

SECOND DISTRICT  
RUSSELL E. RUDERMAN

THIRD DISTRICT  
JOSH GREEN

FOURTH DISTRICT  
LORRAINE R. INOUE

FIFTH DISTRICT  
GILBERT S.C. KEITH-AGARAN

SIXTH DISTRICT  
ROSALYN H. BAKER

SEVENTH DISTRICT  
J. KALANI ENGLISH

EIGHTH DISTRICT  
RONALD D. KOUCHI

NINTH DISTRICT  
SAM SLOM

TENTH DISTRICT  
LES IHARA, JR.

ELEVENTH DISTRICT  
BRIAN T. TANGUCHI

TWELFTH DISTRICT  
BRICKWOOD GALUTERIA

THIRTEENTH DISTRICT  
SUZANNE CHUN OAKLAND

FOURTEENTH DISTRICT  
DONNA MERCADO KIM

FIFTEENTH DISTRICT  
GLENN WAKAI

SIXTEENTH DISTRICT  
BRENE HARIMOTO

SEVENTEENTH DISTRICT  
CLARENCE K. NISHIHARA

EIGHTEENTH DISTRICT  
MICHELLE N. KIDANI

NINETEENTH DISTRICT  
WILL ESPERO

TWENTIETH DISTRICT  
MIKE GABBARD

TWENTY-FIRST DISTRICT  
MAILE S.L. SHIMABUKURO

TWENTY-SECOND DISTRICT  
DONOVAN M. DELA CRUZ

TWENTY-THIRD DISTRICT  
GIL RIVIERE

TWENTY-FOURTH DISTRICT  
JILL N. TOKUDA

TWENTY-FIFTH DISTRICT  
LAURA H. THIELEN

CHIEF CLERK  
CAROL TANGUCHI

IND-92

June 6, 2016

Chair Suzanne Case  
DLNR  
1151 Punchbowl St.  
Honolulu, HI 96813

RE: Na Pua Makani Wind Project Second DEIS

To whom it may concern:

I have read the Second Draft Environmental Impact Statement for the proposed new wind project, Na Pua Makani, and have the following questions and comments. References to the existing wind turbines relate to the First Wind / Sun Edison Project in Kahuku.

## QUESTIONS

1. The proposed blade length is substantially longer than the blades of the existing wind farm in Kahuku. It is my understanding there was some difficulty delivering the blades along the narrow Kamehameha Highway in areas such as Waimea. Has a survey been conducted along the entire route to ensure that a truck can physically navigate the proposed blades around all bends in the road without requiring extended road closures?
2. What is the calculated delivery time for each blade from storage to project site?
3. How long will traffic be impeded along the various choke points during blade deliveries?
4. What is the velocity of the blade tip and how does this compare to the existing wind turbine blade tips?
5. If the velocity of the blade tips is faster than the existing wind turbine blade tips, how does this affect the calculations for potential take of bats and other wildlife?
6. It appears that calculations for potential takings are based on the number of towers, yet the proposed towers are substantially larger than the existing wind turbines. The rotor sweep is 13,300 sq. meters compared to 8000 sq. meters on the existing wind turbine. How does the much larger sweep affect calculations for potential environmental taking?



7. Even with fewer turbines, the total sweep of the proposed blades (Option 2a) is greater than the original proposed blades (Option 2), yet the estimated takings and environmental impacts are "similar." Is this accurate? Should additional explanation be added to the report to clarify why there is no difference?
- 6 8. The existing wind project (420 ft.) is very large and dominating on the landscape. In comparison, the proposed turbines are significantly more gigantic (565 ft.). What aesthetic criteria are used to determine when wind turbines are too big for a location? Can a project be too big for a location? If so, please describe.
- 7 9. "Environmental justice is the right of every person in Hawai'i to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect their environment and health." What meaningful involvement in the decision making process do the residents of Kahuku really have? If the impacted community does not want this project, what authority does it have to prevent it from being developed?
- 8 10. "Environmental justice in Hawai'i recognizes that no one segment of the population or geographic area should be disproportionately burdened with environmental and/or health impacts resulting from development, construction, operations and/or use of natural resources." Kahuku residents already live below the 420 ft. towers. Other wind projects in Hawaii are more distant from residential communities. Please explain how the proposed 565 ft. towers would not disproportionately burden the population of this geographic area?
- 9 11. To support bat habitat, tree trimming will be restricted during certain months. How is the habitat maintained if trees are trimmed in some months but not others? Will the recommended minimum heights and densities be maintained during the unrestricted months?
- 10 12. Fig 4.6-1 and 4.6-3 show the calculated noise levels. Is it accurate that the noise levels near the proposed towers will be lower with the taller towers and that the noise levels at various distances are essentially the same?
- 11 13. It is my understanding that in order to qualify for Federal Production Tax Credits, wind projects needed to be substantially under development and equipment secured by a certain date. If so, what are those deadlines and when did this project meet them? If so, when was the relevant equipment secured? If the relevant equipment was secured and substantial progress requirements were met, how can changing out the equipment now maintain that qualification for the tax credits?
- 12 14. What long range bond or security will ensure financial capacity to deconstruct and decommission the project if it is not continued beyond the 20-year term?

#### COMMENTS

- 13 The proposed turbines are much too big for this location. The tower closest to the residences and schools should not be built there. These are gargantuan structures, much larger than any buildings in Hawaii. They must not be placed so close to Kahuku Town. The proposed turbines

are so much larger than the existing wind project that I must object on the grounds of environmental justice. Why must the residents of Kahuku uniquely endure such impacts?

14

The simulations do not truly represent what a person will observe. The existing wind turbines are very large and noticeable today, yet they appear to be tiny poles in the lower right corner of some images. This may be technically factual, but deceiving nonetheless as that is not how we perceive our surroundings in real life.

The sun shines regularly in Malaekahana and Kahuku. Hiding the simulated towers in the mist and clouds is unacceptable. New photos with clear skies should be taken and the simulations should be redone.

15

We must not have extended road closures if something goes wrong during delivery of the wind turbines. In this case, standard phrases and generalities about delivery plans are inadequate. Detailed analysis of the route and potential impediments and solutions must be considered now. Mistakes that close our highway for extended periods of time must not occur.

Thank you for allowing me this opportunity to ask questions and provide comments.

Sincerely,



Gil Riviere  
Senator, District 23  
Oahu's North and Windward Shores  
808.586.7330  
SenRiviere@capitol.hawaii.gov

✓cc: Tetra Tech Inc.

# **EXHIBIT 03**

William Aila, David Ige, and Randy Iwase

Greetings,

Stop the Champlin Wind Energy Project in Kahuku

Aloha,

5 Champlin Wind Energy is proposing a 45-90 megawatt wind turbine facility in Kahuku. This translates into 15-30 fifty story tall machines in addition to the 12 existing forty two story tall machines we already have. Portions of the project will be upwind and in very close proximity to Kahuku Schools and community. The existing 30 megawatt facility coupled with this new proposal will effectively surround Kahuku on three sides which is unacceptable and irresponsible siting policy.

We, the undersigned, strongly reject this project for the following reasons:

6 1- Health

There are independent studies that support the existence of adverse impacts on humans who live in close proximity to these machines. Sleeplessness or sleep deprivation caused by noise and vibration has had detrimental impacts on folks already living in close proximity to windmills. People across the nation and worldwide are suffering vertigo, headaches, irritability, and a host of other ailments that they attribute to large industrial windmills erected too close to their homes. The subsonic sound created is known as "Infra-sound" and is inaudible to most folks. The condition has been termed "Wind Turbine Syndrome" and is gaining credence as more and more folks are reporting ill effects.

Placing these machines upwind from our schools, hospital and community may impact the health and wellbeing of our children, elderly and common residents.

7 2- Safety

Current safety buffer zones between these machines and occupied structures are woefully inadequate and the City has acknowledged this deficiency. Placing 500' tall machines with moving parts 1200' upwind and in close proximity to Kahuku



schools and community creates an untenable safety hazard. It is not if, but when a major hurricane strikes Oahu, Kahuku residents will be unnecessarily endangered *due to poor siting policy*. These machines include three 150' blades at 300' diameter that are designed to be light and aerodynamic. Each of the three blades on a single turbine weigh in excess of 14,000 lbs. and could become windblown debris that would likely impact human life. To date, not one wind turbine worldwide has been subjected to an 'Iniki type event. To surround Kahuku community with these machines is unacceptable, irresponsible and may be a life altering disaster for some of us who live here.

### 3- Environmental Impact

- 8 There is a significant impact on avian and bat species. The EIS of the First Wind project as well as this proposal failed to address all avian species as the impacts on 'Iwa or Frigate bird was not studied.
- 9 There is a robust colony of Wedge Tailed Shearwaters in close proximity to the proposed site.
- 10 The FAA required flashing red night lights contribute to light pollution and reportedly attracts avian and bat species into the blades that are spinning at the rate of 150-180+ mph.
- 11 Installation of these facilities often require the removal of surface vegetation as well as the installation of unpaved roads. This practice adds to flooding, topsoil loss as well as increases in "brown water" runoff that may impact our flood prone community and near shore waters.

### 4- Financial Impacts on the Community

- 12 Statistical studies show that wind farms placed in close proximity to residential homes has a detrimental impact on the value of private real property. Across the country, realtors have noted increased difficulty in selling homes that are near wind energy facilities. Also, it is more difficult to sell a home that is in close proximity to wind farms and many US municipalities now require the developer to place monies in an escrow account to cover losses suffered by private homeowners whose home values drop or can't be timely sold and if the homeowner choses to move away from wind farms due to adverse impacts.
- 13 Additionally, HECO has stated that Kahuku is at or beyond the saturation rate for renewable energy. The existing wind energy facility has usurped private consumer's options for photo-voltaic panel installation and the addition of another facility in Kahuku will more than likely severely limit or prevent private citizens options to utilize other renewables. According to HECO, should a homeowner desire to install PV, there may be a discriminatory fee involved for Kahuku consumers as well as other consumers who live near or downstream of a wind energy facility.
- 14 Also, the power delivered fluctuates greatly and there is a detrimental impact on privately owned electrical devices of nearby consumers.

## 5- Epilogue

- 15 The State and Federal Government have initiated a policy to commit to renewable energy yet the vast majority of State and Federally owned buildings lack PV panels or any other renewable energy source.
- 16 The federal government prohibits the installation of wind mills in close proximity to the Kahuku Army training facility as well as the James Campbell Bird Refuge. The health and welfare of our avian friends are very important and deserve protections. Kahuku residents deserve the same.
- 17 Kahuku community has done its share for Oahu and it's time for others to do the same. Oahu's rural communities do not want to bear the brunt of our island's energy needs.

# Signatures

Name	Location	Date
Kent Fonoimoana	Kahuku, HI	2013-12-16
Niue Suschnigg	Kaaawa, HI, United States	2013-12-16
Ben Shafer	Hauula, HI, United States	2013-12-16
Tanoai Reed	Laie, HI, United States	2013-12-16
Angela Huntmer	Kahuku, HI, United States	2013-12-16
Lopaka Aku	Kaneohe, HI, United States	2013-12-16
Bonnie Abzug	Haleiwa, HI, United States	2013-12-16
Carl Hubbell	Laie, HI, United States	2013-12-16
Suzanne Reed	Laie, HI, United States	2013-12-16
James Mccarron	Rush City, MN, United States	2013-12-16
Steven Nihipali	San Antonio, TX, United States	2013-12-16
Coreen Williams	HAUULA, HI, United States	2013-12-16
Lani Tanoai	Kailua-Kona, HI, United States	2013-12-16
Rita Kahaialii	Makawao, HI, United States	2013-12-16
Alani Vaioleti	Kahuku, HI, United States	2013-12-16
Gaye Aalona	Lakewood, WA, United States	2013-12-16
Brian Walsh	Kaaawa, HI, United States	2013-12-16
Susana Wong	Aiea, HI, United States	2013-12-16
Tiffany Reed	Panama City, FL, United States	2013-12-16
JEFFERY COMPOC	KAHUKU, HI, United States	2013-12-16
Jess Kaala Lundgren	Waialua, HI, United States	2013-12-16
Shelley Williams	Madison, AL, United States	2013-12-16
sina auelua	Laie, HI, United States	2013-12-16
Ben Shane	Metairie, LA, United States	2013-12-16
Joshua Bohnet	Provo, UT, United States	2013-12-16
Mae Bruhn	Kaneohe, HI, United States	2013-12-16
Lloyd Hekau	Kahuku, HI, United States	2013-12-16
Barbara Phillip	Kahuku, HI, United States	2013-12-16
rosalie Slater	HNL, HI, United States	2013-12-16
Cindy Tutor	Laie, HI, United States	2013-12-16

Name	Location	Date
Latu Hafoka	Kahuku, HI, United States	2013-12-16
Oreta Tupola	Kahuku, HI, United States	2013-12-16
Robin Kaye	Lānaī City, HI, United States	2013-12-16
David Niu	Laie, HI, United States	2013-12-16
beveriy zigmond	Ianai city, HI, United States	2013-12-16
Mareva Johnson	Las Vegas, NV, United States	2013-12-16
geoffrey paterson	kailua, HI, United States	2013-12-16
Kathryn Vaioleti	Magna, UT, United States	2013-12-16
John Schaumburg	Lanai City, HI, United States	2013-12-16
Sam Moe	Laie, HI, United States	2013-12-16
George Outlaw	Honolulu, HI, United States	2013-12-16
Harold Toelupe	Laie, HI, United States	2013-12-16
Fung sim Wong	Hauula, HI, United States	2013-12-16
Michael Allred	SLC, UT, United States	2013-12-16
Marina Toelupe	West Valley City, UT, United States	2013-12-16
Ron McOrnber	Lana'i, HI, United States	2013-12-16
lauren achitoff	Kaaawa, HI, United States	2013-12-16
Burton Greene	Hauula, HI, United States	2013-12-16
Panos Prevedouros	Honolulu, HI, United States	2013-12-16
vaifoou vaioleti	kahuku, HI, United States	2013-12-16
Kimo Sutton	Honolulu, HI, United States	2013-12-16
Dr. Kioni Dudley	Kapolei, HI, United States	2013-12-16
andrea anixt	Kaaawa, HI, United States	2013-12-16
Clare Carr	Waialua, HI, United States	2013-12-16
Gil Riviere	Waialua, HI, United States	2013-12-16
Brew Rudd	Hauula, HI, United States	2013-12-16
Steven Stone	Wahiawa, HI, United States	2013-12-16
Toni Auld Yardley	Honolulu, HI, United States	2013-12-16
Marian Grey	Honolulu, HI, United States	2013-12-16
Delsa Moe	Laie, HI, United States	2013-12-16
Kahi Wight	Honolulu, HI, United States	2013-12-16
robert trotter	kahuku, HI, United States	2013-12-16



# **EXHIBIT 04**

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KATHRYN PLIZGA

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HEPA PUBLIC SCOPING MEETING

NA PUA MAKANI WIND PROJECT

(QUESTION AND ANSWER PORTION)

PLACE: Kahuku Community Center  
56-576 Kamehameha Highway  
Kahuku, Hawaii

DATE: January 10, 2014

TIME: 7:35 p.m.

20

21

22

23 Reported by:

24 Kathryn Plizga, RPR

25 Hawaii CSR No. 497

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2

1 APPEARANCES:

2 Leland Chang, Mediator/Facilitator

3 Ned Busch, Mediator

4 Mediation Center of the Pacific

5 245 N. Kukui Street

6 Honolulu, HI

7

8 ON BEHALF OF CHAMPLIN WIND HOLDINGS, LLC

9 Michael Cutbirth, President and CEO

10 2020 Alameda Padre Serra, Suite 123

11 Santa Barbara, CA 93103

12

13 ON BEHALF OF MUNEKIYO & HIRAGA, INC.:

14 Charlene Shibusya

15 Gwen Ohashi Hiraga

16 735 Bishop Street, Suite 238

17 Honolulu, HI 96813

18

19 ON BEHALF OF TETRA TECH, INC.:

20 Briita Woeck

21 Amy Rosenthal

22 737 Bishop Street, Suite 2340

23 Mauka Tower

24 Honolulu, HI 96813

25

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12	Reed Matsuura	13
13	Kent Fonoi moana	14
14	Allitasi Ponder	15
15	Verla Moore	16
16	Allitasi Ponder	17
17	Kela Miller	19
18	Kent Fonoi moana	20
19	Henry Curtis	23
20	Allitasi Ponder	23

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1 (7: 35 p.m.)

2 P R O C E E D I N G S

3

4 MR. CHANG: Okay, so for the next 30 minutes  
5 or so, you know, it's a chance for you folks to ask  
6 questions that you might have, the right people  
7 here in terms of Mike and Brita. They'll do their  
8 best to respond. If they can't, at the very least,  
9 they will encourage you -- they'll take it back and  
10 they'll consider it further.

11 So who would like to go first? Does anybody  
12 have a question?

13 Okay, Carl?

14 MR. HUBBELL: Carl Hubbell. I have a  
15 question for Mike.

16 MR. CUTBIRTH: Yes, sir.

17 MR. HUBBELL: So you're going to saturate  
18 the system and we're not going to be able to put in  
19 our own solar panels if you go up first. Is that a  
20 true statement?

21 MR. CUTBIRTH: So, I don't think that's a  
22 true statement. And I asked the folks at HECO  
23 transmission about this question.

24 And the existing wind projects and our  
25 proposed project connects to the high voltage

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1 distribution line, the 46 kv main. Rooftop solar  
2 connects to the residential feeder lines, the low

3 voltage residential feeder lines. So, the issue of  
4 capacity on the distribution lines is really a  
5 separate issue for how much rooftop solar can be  
6 built.

7 This is something that I've asked HECO if  
8 they could address this issue to the community  
9 because I understand it's an important issue. And  
10 they indicated they are going to work on putting  
11 together a statement. And potentially we could  
12 organize a meeting with someone from HECO to better  
13 address that question.

14 MR. HUBBELL: Will that happen on Wednesday?

15 MR. CUTBIRTH: I don't know that that could  
16 be done unless we -- the Wednesday meeting is really  
17 oriented for its health impacts of wind turbines.

18 One of the issues that we've heard from the  
19 Community is a concern about health impacts. And  
20 there's going to be a presentation on what the  
21 research and data and reports have shown.

22 MR. CHANG: Okay. Thank you, Carl.

23 MR. HUBBELL: One more question. When we  
24 contacted the representative, he said that HECO would  
25 be able to answer those questions. Isn't he supposed

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1 to be hosting this meeting along with you guys?

2 MR. CUTBIRTH: Well, he may have a  
3 representative from HECO here, but I haven't talked  
4 to him directly about that, so I don't know.

5 MR. CHANG: The question is noted. Next

31H\_Public Scoping Meeting. Kahuku. 1-10-14  
6 question.

7 MR. HUBBELL: I thought that was the  
8 purpose.

9 MR. RIVIERE: Thanks, my name is Gil  
10 Riviere.

11 Is this a 20-year project and then you take  
12 them down at the end of 20 years or what happens when  
13 it's done? Will you restore the ground and what  
14 happens then?

15 MR. CUTBIRTH: So, the project will have a  
16 20-year power contract. So we would expect the  
17 project to go for at least 20 years. If there's no  
18 further agreements to purchase power, then our  
19 obligations would be to restore the land to the  
20 condition that it was in before the project was  
21 built.

22 MR. RIVIERE: Does that include removing the  
23 entire concrete pads?

24 MR. KENT FONOI MOANA: No, they take up the  
25 top three feet. I'm just answering.

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1 MR. CUTBIRTH: I mean, my understanding is  
2 we remove the improvements that we put in there.

3 MR. KENT FONOI MOANA: Except for the top  
4 three feet of the concrete when you pass, which your  
5 engineers shared with me.

6 MR. CHANG: Yes, ma'am.

7 MS. MILLER: Mike, Kela Miller.

8 What kind of impact do you see happening on  
9 not only Kahuku but on Laie, Pupukea, you know

10 further on down the coast line? What kind of impact  
11 do you see it would have on the rest of the  
12 communities?

13 MR. CUTBIRTH: Well, I think the most  
14 obvious impact is just the visual impact. The  
15 Environmental Impact Statement that will be prepared  
16 will address all of the impacts of the project. And  
17 to me, that's the most obvious, is that you could see  
18 the turbines once they're up.

19 MS. MILLER: Who needs to be able to see it?

20 MR. CHANG: I guess the EIS -- if that's  
21 what is suggested -- needs to look at the impacts on  
22 either side of the Leeward communities.

23 Kent, question?

24 MR. KENT FONOI MOANA: Question. If everyone  
25 between Kahuku and Pupukea or Wai alua installed solar

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1 panels on their homes, everyone, and took advantage  
2 of the tax credits being available for them, would  
3 that impact your tax credits negatively?

4 MR. CUTBIRTH: No.

5 MR. KENT FONOI MOANA: And would this project  
6 still be feasible?

7 MR. CUTBIRTH: Yes.

8 MR. KENT FONOI MOANA: We need to have HECO  
9 here to answer that question honestly.

10 MS. MOORE: I am going to ask the question  
11 that was asked last night over and over, and they  
12 waited for you to come before them.



13           What would it take for you to stop this  
14 project should the people decide they overwhelmingly  
15 don't want it? Are you willing to give this up? And  
16 at what point would you determine that it is still no  
17 go?

18           MR. CUTBIRTH: Well, our company has made a  
19 commitment to Hawaiian Electric and the state to  
20 build a renewable project here, and to generate power  
21 at about half the cost of burning oil.

22           Any decision to not honor those commitments  
23 that we've made is something that would have to be  
24 from our management. So I don't have any specific  
25 criteria that I can give you for that.

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1           I think what we really would like to do  
2 though is to work with the Community to make sure  
3 that we address the issues. To the extent that there  
4 are issues of concern, that we can address, we would  
5 like to try and do that.

6           And as an example, since we started working  
7 with the Community about nine months ago, we have  
8 actually modified the proposed plan, the layout of  
9 the project, removed four proposed turbines from --  
10 (Cross Hill) -- and relocated one turbine from the  
11 adjacent site.

12           And this really is trying to address the  
13 issue and concern about setbacks as well as noise.  
14 So that's really our preferred approach. That's  
15 typically what we've done on other projects; trying  
16 to work with the Community, identify what the issues

17 are, and actually try and work with them to see if we  
18 can get them figured out.

19 MS. MOORE: Okay.

20 MR. CURTIS: Henry Curtis. I know from  
21 sitting on the Public Utilities Commission  
22 Reliability Standards Working Group, that wind  
23 fluctuates and that the utility grid has to fluctuate  
24 in reverse to offset the impact of wind. And,  
25 therefore, the cost to a wind is both the direct cost

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1 at the wind site and also the system costs to adjust,  
2 to deal with the winds coming in. And therefore,  
3 your component is half the cost of the grid. But  
4 what is the other component cost?

5 MR. CUTBIRTH: Again, that's probably a  
6 question better asked to HECO, that's not really  
7 something that I could address.

8 MR. CURTIS: They haven't either.

9 MR. CHANG: Put that in to them when they  
10 come.

11 Next.

12 MS. VASA TAVALII: Vasa Tavalii.

13 I have a question for you. If the approval  
14 for this project was given to you by the City, the  
15 State, then why are we having this discussion? If  
16 you're pushing the project forward with adjustments,  
17 with the determination to implement the project --  
18 because the question still hasn't been answered --  
19 what would it take for you to discontinue the

20 31H\_Public Scoping Meeting. Kahuku. 1-10-14  
project?

21 MR. CHANG: Do you recall your prior --

22 MR. CUTBIRTH: I don't know that I've got  
23 anything additional to add other than what I already  
24 stated to that question.

25 MR. CHANG: Okay, so one of the recurrent

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1 themes we're getting is what would it take for this  
2 project to basically have it bungled?

3 MS. VASA TAVALLI: Would the land owners  
4 keep --

5 MR. CHANG: Anybody else not have a chance?  
6 Hold on.

7 MR. BROWN: Aloha. I'm looking in your  
8 brochure. And it says "How will the Project Benefit  
9 Us?" And I'm not seeing us being (inaudible)  
10 Community or people of Hawaii. Most likely at this  
11 point, here Kahuku. How would it benefit us? As I  
12 read some of these things in here, I'm not sure that  
13 any of them -- some of them is true -- like will it  
14 benefit us by bringing our electricity rate down?

15 You don't control that. That's HECO and  
16 them, they saying to that. So to me I'm kind of  
17 thinking it's on here, because it is going to  
18 benefit package. And if there is a benefit package  
19 to the Community, what are they looking at? What are  
20 you talking about? What figures came over, you know,  
21 can we talk?

22 MR. CUTBIRTH: Right. So, with regards to  
23 the cost of the electricity, the state has got a goal

24 to reduce the cost of the electricity to rate payers.  
25 And this project will cost about half of what burning

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1 oil to generate electricity costs. And Hawaiian  
2 Electric included in their filings for the state a  
3 statement to the effect that by adding this project,  
4 it will avoid spending millions of dollars in  
5 purchasing oil. So I think they've tried to, at  
6 least, put some kind of quantification on this.

7 So, with regards to benefits, I think that  
8 you can look at benefits from a number of levels.  
9 You can look at it from a state standpoint, the  
10 standpoint of trying to reduce the cost of the  
11 electricity; of helping to reduce the imports of  
12 foreign oil. The State currently spends over  
13 four million dollars buying oil from foreign  
14 countries. And that's money right out of the economy  
15 of Hawaii.

16 Additionally, because a portion of this land  
17 is State land, the State would receive revenues, base  
18 revenues, for 20 years. Additionally, there are jobs  
19 that will be created from the project, short-term  
20 construction jobs as well as long-term operations  
21 jobs. I believe the First Wind project employs about  
22 50 percent locally, and we think we can do at least  
23 that well.

24 Additionally, the original developer of this  
25 project had proposed to the Community a Community

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1 benefit fund. And that was \$10,000 per wind turbine  
2 per year over the life of the project. So, if you  
3 look at that in terms of the Phase I project, that  
4 would be \$80,000 over a 20-year life or about  
5 \$1.6 million. If the second phase project was built,  
6 that would be \$150,000 per year over the 20-year life  
7 or \$3 million.

8 This concept is something that's unique for  
9 our company, we have not had a Community Benefit Fund  
10 for any of our other projects. But this is something  
11 that we propose to honor, a commitment that was made  
12 by the prior developer.

13 So those are a few of what we think are  
14 pretty tangible benefits. Thank you.

15 MR. CHANG: Kent, I know you have a  
16 question. Anybody else have a chance to raise a  
17 question yet?

18 MR. REED MATSUURA: My name is Reed  
19 Matsuura. Last night there was a question about the  
20 agreement that was signed with the windmill project.

21 My question is, the agreement is between you  
22 and the private owner of the property or the City?  
23 And if this owner somehow renig on this agreement or  
24 whatever, are you still planning -- because this is  
25 property -- but I have from my understanding is most

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1 of the property is owned by the private owner -- we  
2 not focus on wind mills. So I just want to know if

3 the agreement was with you, your company, or with the  
4 City or -- and then the other part is, does that  
5 interfere with you stopping the project? No?

6 I'm trying to, you know, rephrase the  
7 question earlier, that what it takes for you to stop  
8 the project. If that's why you cannot stop the  
9 project because of the agreement?

10 MR. CHANG: I guess the essential question  
11 is about the ownership of the land. If something  
12 happened with that, you know, the agreement with  
13 that, would that be enough to, you know, change  
14 direction?

15 MR. CUTBIRTH: So, a portion of the project  
16 is planned on State land. And that would be five  
17 turbines, and if just the first phase project was  
18 built, there would be three additional turbines on  
19 the adjacent private land.

20 The State land agreements are with our  
21 company, and it's actually the project company which  
22 we own. And likewise, the lease on the private land  
23 is a different land owner than our project land.

24 MR. CHANG: Thank you.

25 MR. KENT FONOI MOANA: The first question

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1 real quick, are you not the CEO of Champlin Wind  
2 Energy?

3 MR. CUTBIRTH: I am.

4 MR. KENT FONOI MOANA: So you are part of the  
5 management. Should the management make a decision to

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stop the project, you are the top.  
MR. CUTBIRTH: I report to a board, and I am the CEO. But that board is actually the group that makes major decisions.

MS. PONDER: I would like to know, Mike, your job project history in terms of like what you've done in wind development in the last 10 years; and what projects you oversee of this magnitude or close to this magnitude in that time frame.

That's one question. And then I have another.

MR. CHANG: Track record.

MR. CUTBIRTH: So just kind of a brief history, I got into the wind industry about 18 years ago and joined a company called Zond Corporation. Zond was one of the pioneers in wind energy, they built one of the first projects to sell electricity to Southern California Edison.

While I've been in the wind industry, I've personally been involved in over 750 megawatts of

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projects, development projects. And our company management team has been involved with about double that amount.

My role over the years, I've had different hats. When I first got into the industry, my responsibilities were in the area of finance. And over time, took the lead on the development of projects.

I personally have not had any involvement in

10 the operations and maintenance of the projects.

11 MS. PONDER: So none here in Hawaii?

12 MR. CUTBIRTH: While Zond and Enron Wind  
13 worked on a number of projects -- and in fact, the  
14 original developer of this project was a colleague of  
15 mine at Zond and Enron -- and he's been involved in a  
16 number of projects that were developed here in  
17 Hawaii. This is my first -- personally my first  
18 experience in Hawaii.

19 MS. MOORE: I would like to ask one last  
20 question before I have to leave. And this may come  
21 as part of a study. You mentioned the Community set  
22 this package up at about \$10,000 per turbine. I put  
23 up a PV system on my home a year ago. It saved me  
24 \$400 a month. Times that by 12, it's \$4,800 just the  
25 past year. Two households of HV system would equate

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1 to a benefits package of one turbine.

2 My question is -- well -- actually my  
3 statement is in comparison, if we had 1,000 homes  
4 with PV systems on their homes, multiply that by  
5 savings of \$400, this is a direct savings to the  
6 customer, that's a benefits package of \$400,000 a  
7 year -- a benefit, that's huge. So I think the  
8 benefits package pales in comparison. There's never  
9 been a comparison study with PV, individual PV versus  
10 all these turbines.

11 I understand people wanting to get off the  
12 fossil fuel, I totally understand that. But when you



13 generate that energy and you redistribute the cost to  
14 Oahu to one million customers or whatever we have, I  
15 think that's a savings of about one and half cents a  
16 year. That's nothing. It's negligible.

17 So something really has to be addressed. If  
18 we're going to pull through with this, there's no  
19 turn-around in this project -- if I was the community  
20 leader I would up the ante for every single one of  
21 those turbines that go up so that it equates to the  
22 number of the homes in this Community -- let's start  
23 with this Community alone -- that at least \$400 go  
24 back in their pocket on a monthly basis. To me  
25 that's fair.

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1 If we're going to move and there is no point  
2 of return, what is fair is to put the savings right  
3 in their pockets. And don't tell them we're going to  
4 save because HECO is going to save. Because there is  
5 no reason for limiting this -- I apologize, but I  
6 have to leave.

7 MR. CHANG: Thank you.

8 Do you have a comment, Mike?

9 MR. CUTBIRTH: Well, I would just say the  
10 one comment is that rooftop solar and an additional  
11 wind project are not mutually exclusive. Additional  
12 rooftop solar as well as wind projects and utility  
13 sides of solar is part of the energy plan for Hawaii.

14 So, the fact that individuals want to add  
15 solar is not something that -- from what I understand  
16 and from what I have been told from HECO -- is that

17 is going to be impacted by this project.

18 MS. PONDER: Well, it is, and it's on your  
19 site -- it is on HECO's site -- that it is a direct  
20 correlation between these wind projects and the  
21 number of households that can have it. You will have  
22 to address that issue.

23 MR. CUTBIRTH: We'll try and help facilitate  
24 getting someone from HECO to address that because I  
25 know this is an important issue to everyone.

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1 MR. CHANG: Thank you. Thank you, Mike.

2 MS. MILLER: Do we know, since First Wind  
3 went up, that there was a decrease in electric bills  
4 in any of communities here, the residents?

5 And do we see in the future, with this other  
6 wind mill that's going to go up, that there will  
7 definitely be a decrease in electric, in our electric  
8 bills?

9 Is there something that we can truly say,  
10 HECO will actually decrease our electric bill?  
11 Because we have not seen one bit of decrease -- I  
12 don't think so -- anybody have. So that would be  
13 something of a concern, that if we do this -- if --  
14 that there will definitely be a decrease in our  
15 electric bill.

16 I know we all pay the price on electric.  
17 And so, I think that's a really big concern for all  
18 the Community. Thank you guys, so much.

19 MR. CHANG: Thank you, Ms. Kela.

20 So the question has to do with at what point  
21 do people actually see a reduction or lowering of  
22 their light bills because of alternative energy.

23 MR. CUTBIRTH: Just a couple of comments. I  
24 would just say that this is an important goal for the  
25 state. In HECO'S filings with the State, they have

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1 indicated that this project will save millions of  
2 dollars over time.

3 I realize that it's frustrating to have a  
4 renewable project go on line and then not be able to  
5 look at your bill and see a reduction. And I think  
6 that one of the issues is that the cost of  
7 electricity that everyone pays is an average. And  
8 there's -- I don't know what the number is -- that  
9 1,200 megawatts of total generation on the island.  
10 And right now there's just a very small percentage of  
11 renewables.

12 As that percentage increases over time to  
13 meet the State's laws for renewables, it seems  
14 logical that the bills would go down. But I think  
15 this is really a better question for HECO to have  
16 them actually try and give you an estimate on that.

17 MR. CHANG: I'll take one question. I see  
18 two people. Three more, and then we are going to ask  
19 Mike to say aloha and mahalo and good night.

20 MR. KENT FONOI MOANA: Three quick rapid-fire  
21 questions since my time is short, maybe four.

22 Has the Kahuku Community Association --  
23 you're sitting in right now -- have they endorsed

24 this project?

25 MR. CUTBIRTH: I don't think that the

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1 association -- the KC Board -- is that what you're  
2 referring to?

3 MR. KENT FONOI MOANA: The association, have  
4 they endorsed this project through a general  
5 membership meeting or any forum?

6 MR. CUTBIRTH: You're not referring to the  
7 KC Board?

8 MR. KENT FONOI MOANA: I am.

9 MR. CUTBIRTH: So I don't believe the Board  
10 has endorsed it.

11 MR. KENT FONOI MOANA: Thank you. That's my  
12 first question.

13 Are you -- because we are short on time I'm  
14 just trying to --

15 MR. CHANG: Thank you, appreciate it.

16 MR. KENT FONOI MOANA: Are you aware that  
17 last night the Kahuku Neighborhood voted down the  
18 resolution to increase the amount of setbacks from  
19 the current one-time item turbine to the three-  
20 quarters of a mile is what this Kahuku Neighborhood  
21 Board, which represents the entire community -- are  
22 you aware of that?

23 MR. CUTBIRTH: Yes.

24 MR. KENT FONOI MOANA: Are you aware that  
25 when First Wind proposed to put five more turbines on

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1 the stretch here right before you got -- right across  
2 the street from our -- that the Kahuku Community  
3 Association in response to Keith Avery, your partner  
4 or your prospector as I prefer to call him --  
5 although you don't like that term, that is exactly  
6 what he does -- that we, in response to his request  
7 to put this other project up here as well as First  
8 Wind's which we gave out the -- the Kahuku  
9 Association came out with our position saying we  
10 don't want any more.

11 And this is back in 2010. Are you aware of  
12 that?

13 MR. CUTBIRTH: I'm not.

14 MR. KENT FONOI MOANA: I have a copy for you,  
15 I can provide that for you.

16 MR. CHANG: Next question.

17 MR. KENT FONOI MOANA: Last question.

18 In jumping through all these hoops with this  
19 EIS process that we're doing right now, the process  
20 up at the PUC, you guys filing for a non-competition  
21 clause with other vendors, don't you think the first  
22 move that you should clear would be the Community?

23 MR. CUTBIRTH: Kent, well, like I said, we  
24 have been -- I think we started talking to the  
25 Community about this project more than nine months

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1 ago; had our first meeting in front of the KC Board,  
2 I believe that was in May of last year.

3           So we've actually -- we've started that  
4 work -- we know we have more work to do. But we  
5 sincerely do want to try and -- as best as we can --  
6 address any issues that the Community has.

7           MR. KENT FONOI MOANA: Like no?

8           MR. CURTIS: One of the things that Champlin  
9 Wind Holdings is fond of using is reference to the  
10 energy agreement of the Hawaii Clean Energy  
11 Initiative because it's often quoted but seldom read.

12           That document says that short-term electric  
13 bills will rise and then stabilize. The HCEI  
14 agreement says nothing about lowering costs and  
15 nothing about -- but that it's always quoted as going  
16 down.

17           It says that when you add wind and you add  
18 solar, you have to put in a smart grid, you have to  
19 put in batteries, it will raise the price. But since  
20 the price of oil is expected to rise also, eventually  
21 the wind and the solar will come out less than the  
22 oil. But in the short term, it will go up.

23           MR. CHANG: Thank you, Henry.

24           So our last question or comment.

25           MS. PONDER: Okay. The fact that this is

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1 the last question allowed is actually part of my  
2 concern. Okay?

3           The tactic that I see being taken in getting  
4 this project shoved up our butts is to keep walking  
5 us along toward the Nazi showers as we make

6 conversation together getting our last questions in.  
7 But in actuality, we're being marched along, given  
8 very little time.

9 What you've said is you have been in  
10 conversation with this Community for nine months and  
11 the conversation has gone like this. You say this is  
12 what we want to do. The collective says no. You say  
13 this is what we want to do. The collective says no.

14 So, it's kind of like a kid asking  
15 permission but not taking in the information. We  
16 don't want this here. Okay?

17 The only people that I know that are even  
18 open to this -- we have been here six generations in  
19 Kahuku, my grandfather worked at the sugar mill --  
20 okay, the only people that I know that are open to  
21 this are people who we understand have been  
22 approached by either you or someone in your group and  
23 incentivized in some way, whether it's now or in some  
24 future time.

25 Okay? So I have a real problem with the

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1 tactic of making nice, but not taking in the  
2 information, not really giving us the answer, but  
3 passing the buck. Passing on the question to people  
4 that are not here in this room like HECO or the  
5 management, you know. So the same thing that  
6 happened to us last night.

7 Having meetings on Friday nights when you  
8 know that is very -- you know -- what do they say in  
9 the business? The best time to give out bad news is

10 on a Friday night.

11 So, it's not -- you're making it look like  
12 you're talking to us -- but you're really not. It's  
13 not a two-way conversation.

14 Okay, I have a question.

15 How much have you or other projects of this  
16 size paid out to those whose medical conditions  
17 existing were new, have been impacted by projects  
18 like this? I would like to know that. Have you been  
19 approached by people in those areas? Have you had to  
20 pay out in like projects?

21 So, I want to know in another project where  
22 you are this close to the community -- that's two-  
23 part -- and in those communities, how long have they  
24 been putting up with the wind turbine, the turbine  
25 syndrome as we all know it, is called.

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1 And if they put up with it for one year, the  
2 project being there 10 years, during the course of  
3 that time what has been the reporting of medical  
4 conditions?

5 How have you collected the information? So  
6 that you can't say, oh, no one has reported it  
7 because there's no place to report it.

8 MR. CHANG: Thank you.

9 So as I understand it, next Wednesday is  
10 about the research. Sort of health events.

11 But the other question is, you know, in your  
12 experience, have there been claims brought because



31H\_Public Scoping Meeting. Kahuku. 1-10-14  
13 of, you know, health impacts as a function of these  
14 projects?

15 MR. CUTBIRTH: So, I've been with four wind  
16 companies over the last 18 years; and I'm not aware  
17 of any claims that were paid to anyone claiming to be  
18 sick as a result of it.

19 And with regards to your question about  
20 addressing the issues, the focus of the meeting plan  
21 next Wednesday is to actually provide the community  
22 with the data and research and surveys in a summary  
23 form by a Harvard medical physician who is an expert  
24 in this area, and give the Community an opportunity  
25 to talk to him about this so called wind turbine

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1 syndrome.

2 MS. PONDER: But not somebody paid for --  
3 just someone who's on their own just coming on their  
4 own defense?

5 MR. CUTBIRTH: I'm not aware of anybody that  
6 would come to Hawaii for that purpose on their own  
7 nickle.

8 MS. PONDER: So a disinterested party is  
9 coming?

10 MR. CUTBIRTH: An individual physician that  
11 has been involved in this area for years.

12 MS. PONDER: In other projects?

13 MR. CUTBIRTH: No, no, in this area of  
14 research and health impacts of wind turbines.

15 MS. PONDER: And who is that person? I  
16 would like to know that.

17 MR. CHANG: Come next Wednesday, you will  
18 find out.

19 MS. PONDER: No, I would like to know the  
20 name of that person, so we can be prepared.

21 MR. CUTBIRTH: Dr. Robert McCunney,  
22 M-C-C-U-N-N-E-Y.

23 MR. CURTIS: Robert what?

24 MR. CUTBIRTH: McCunney, M-C-C-U-N-N-E-Y.

25 MR. CHANG: Okay, so just for myself, I want  
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1 to say that how appreciative I am of the input you  
2 provided and you're a great group to work with. And  
3 I am going to just turn this over to Mike, send you  
4 off to begin your weekend. So I will say aloha for  
5 myself and mahalo.

6 MR. CUTBIRTH: Thank you so much for  
7 attending tonight and all your good questions. We  
8 appreciate you coming out.

9 (The Question and Answer Portion of the  
10 Kahuku Scoping Meeting was concluded at 8:12 p.m.)

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C E R T I F I C A T E

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STATE OF HAWAII )

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CITY AND COUNTY OF HONOLULU )

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6

I, KATHRYN PLIZGA, RPR, CSR

7

No. 497, State of Hawaii, hereby certify:

8

That the proceedings herein were by me

9

taken down in machine shorthand and thereafter

10

reduced to print via computer-aided transcription;

11

that the foregoing represents, to the best of my

12

ability, a complete and accurate transcription of

13

said proceeding.

14

15

DATED: Honolulu, Hawaii, \_\_\_\_\_

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\_\_\_\_\_

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KATHRYN PLIZGA

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# **EXHIBIT 05**



**A BILL FOR AN ORDINANCE**

RELATING TO WIND MACHINES.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The Council finds that large, utility-scale wind machines have the potential to adversely affect view planes and community character. The purpose of this ordinance is to amend the permitting requirements for wind machines.

SECTION 2. Chapter 21, Table 21-3 ("Master Use Table"), Revised Ordinances of Honolulu 1990, as amended, is amended by amending the "Wind machines" use in the Utilities and Communications category to read as follows:

**"TABLE 21-3  
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

- KEY:** Ac = Special accessory use subject to standards in Article 5  
 Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)  
 C = Conditional Use Permit-major subject to standards in Article 5; public hearing required  
 P = Permitted Use  
 P/c = Permitted use subject to standards in Article 5  
 PR = Plan Review Use  
 U

USES (Note: Certain uses are defined in Article 10.)	ZONING DISTRICTS																						
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1		
<b>UTILITIES AND COMMUNICATIONS</b>																							
Wind machines Up to 100 kW		Cm Ac	Cm Ac	Cm Ac	Cm	Cm								Cm	Cm			Cm	Cm			Cm	
Wind machines Over 100 kW		C	C	C																			



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## A BILL FOR AN ORDINANCE

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SECTION 3. Chapter 21, Section 21-5.700 ("Wind machines"), Revised Ordinances Honolulu 1990, is amended by amending subsection (c) to read as follows:

"(c) In the agricultural and country zoning districts, accessory wind machines shall have a rated capacity of no more than 100 kilowatts. Wind machines with a rated capacity of more than 100 kilowatts shall not be deemed accessory to other uses and require a conditional use permit [(minor)] (major)."

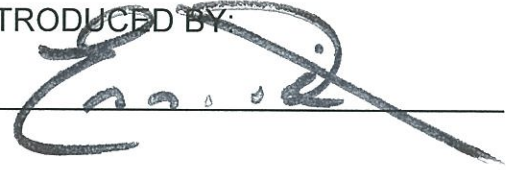
SECTION 4. In Section 2 and 3 of this Ordinance, new ordinance material is underscored and ordinance material to be deleted is bracketed. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.



A BILL FOR AN ORDINANCE

SECTION 5. This ordinance takes effect upon its approval.

INTRODUCED BY:

  
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\_\_\_\_\_  
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DATE OF INTRODUCTION:

**MAY 22 2017**

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel DON S. KITAOKA

APPROVED this 24<sup>th</sup> day of August, 20 17.

  
\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu

2017 MAY 22 10:52 AM  
CITY AND COUNTY OF HONOLULU

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

ORDINANCE 17 - 46

BILL 54 (2017)

Introduced: 05/22/17

By: ERNEST MARTIN


Committee: ZONING AND HOUSING

Title: A BILL FOR AN ORDINANCE RELATING TO WIND MACHINES.

Voting Legend: \* = Aye w/Reservations

06/07/17	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND HOUSING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE.
06/29/17	ZONING AND HOUSING	CR-272 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
07/01/17	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
07/12/17	COUNCIL/PUBLIC HEARING	CR-272 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND HOUSING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, OZAWA, PINE. 1 ABSENT: MENOR.
07/19/17	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
08/02/17	SPECIAL ZONING AND HOUSING	CR-305 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
08/09/17	COUNCIL	CR-305 ADOPTED AND BILL 54 (2017) PASSED THIRD READING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 ABSENT: KOBAYASHI.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
\_\_\_\_\_  
GLEN T. TAKAHASHI, CITY CLERK

  
\_\_\_\_\_  
RON MENOR, CHAIR AND PRESIDING OFFICER



# **EXHIBIT 06**

**From:** admin@honolulu charter commission.org  
**Sent:** Tuesday, February 02, 2016 2:16 PM  
**To:** admin@honolulu charter commission.org  
**Subject:** TESTIMONY submission

<b>Agenda Item*</b>	Proposal #8 Require a Conditional Use Permit - Major for wind machines in excess of 100 kw and exceeding rural height height restrictions.
<b>Name*</b>	Kent Fonoimoana
<b>Phone</b>	8082949991 - 8082949991 - 8082949991
<b>Email (required to send confirmation email)*</b>	Kent@TRIsland.com
<b>Your position on the subject*</b>	Support
<b>Representing*</b>	Organization (Please fill in field below)
<b>Organization</b>	Kahuku Community Association President
<b>Written Testimony</b>	<p>Aloha Chair Rae and Charter Commission members,</p> <p>My name is Kent Fonoimoana and I am the President of Kahuku Community Association as well as Kahuku's representative to the Ko'olauloa Neighborhood Board.</p> <p>After the installation of SunEdison's Kahuku project near Ko'olau Housing in Kahuku (formerly Firstwind), the community became</p>

concerned about issues related to wind machines. These issues include but are not limited to; proximity to community, health, safety, property valuation, impacts on ability to install rooftop PV solar systems and impacts on view-planes.

Following the 2008 approval of SunEdison's project, Champlin Wind Energy (dba Na Pua Makani) proposed adding 15 additional wind machines that would in effect surround Kahuku's Ko'olau Housing on on three sides. Some of Na Pua Makani's proposed wind machines would be in excess of 510' tall and in close proximity to the surrounding residential area, Kahuku High, Intermediate and Elementary schools. The clear majority of the entire Ko'olauloa district is opposed to Na Pua Makani's proposal.

Petitions were generated as a means to grow awareness and give the impacted community a voice. Approximately 2,000 signatures were gathered and submitted to state and city agencies. Despite this effort, the State Public Utilities Commission (PUC) denied our community's application to intervene. The PUC also denied the community participant status in their proceedings and on December 30, 2014, they approved Na Pua Makani's application for their Power Purchase Agreement (PPA) and the project was approved despite the lack of an approved Environmental Impact Study or assessment. Interesting fact - on January 1, 2015, certain federal wind energy tax programs were to expire. The Department of Planning and Permitting is currently in discussions with Na Pua Makani but have yet to allow equal access to the community.

In spite of the community's clear opposition to Na Pua Makani's plans, construction of Na Pua Makani's proposed wind machine project is scheduled to start in the early part of 2016.

The Kahuku Community Association as well as the Ko'olauloa Neighborhood Boards overwhelmingly passed a resolution requiring greater set-backs. A subsequent resolution was unanimously passed by both Boards that advocates for amending the LUO to require a Conditional Use Permit-Major for industrial scale wind machines. There is also proposed City Council Resolution currently pending introduction. I have provided documentation regarding the aforementioned resolutions. It is important to understand that the community is in support of renewable energy as well as excising faith in the process - but that support fades when we are not allowed to fully participate in the process and our concerns fall on deaf ears. Democracy fails when citizens are not allowed to fully participate in a fair process.

The Kahuku and broader Ko'olauloa community would like a larger role in the process of steering projects that impact us.

Please consider moving this issue forward to the next phase of this process.

Mahalo nui -

Kent Fonoimoana - President Kahuku Community Association

PO Box 122  
Laie, Hawaii 96762  
Kent@trisland.com

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Approved and passed Kahuku Community Association, Ko'olauloa Neighborhood Board Resolutions and C+C proposed Resolution regarding Wind Machines

Proposing a Resolution to create an acceptable buffer zone between large industrial wind machines and occupied dwellings.

TO BE SUBMITTED TO: Ko'olauloa Neighborhood Board #28

SUBJECT: Resolution to create a buffer zone for the placement of large industrial wind turbines and towers.

INTRODUCED BY: Kent Fonoimoana, sub district 01 Representative (Kahuku), Chair - Ko'olauloa Neighborhood Board Agriculture Committee (KNBAC)

WHEREAS, according to a 2008 Congressional Research Service report, wind power is the fastest growing source of new power generation in the United States; and

WHEREAS, the report also finds that utility-scale wind turbines have increased in generating capacity from dozens of kilowatts per turbine in the late 1970s and early 1980s to as much as six megawatts or more per turbine; and

WHEREAS, large wind turbines may measure in excess of 490 feet high from base to tip of the rotary blade; and

WHEREAS, wind turbines produce constant mechanical noise, created by the operation of mechanical elements of the drivetrain, and aerodynamic noise, caused by blades passing through the air; and

WHEREAS, wind turbines also create shadow flicker from the moving wind turbine blades casting shadows on the surfaces below that may be annoying for residents who live in close proximity to wind turbines; and

WHEREAS, the media and the wind energy literature report that persons living in close proximity to large wind turbines have complained of various negative health effects, including irritability, headaches, dizziness, and loss of sleep; and

WHEREAS, wind turbine noise impacts may be more pronounced for persons residing in rural areas where background noise levels are low; and

WHEREAS, the Ko'olauloa region of the city and county of Honolulu is designated as a rural area; and

WHEREAS, the rural town of Kahuku located within the Moku of Ko'olauloa has been at the forefront of wind power development and has supported the development of wind energy technology, and

WHEREAS the Ko'olauloa Neighborhood Board has recognized that improper placement of large towers and turbines will have a detrimental impact on residents, employment centers, hospitals, schools, future wind energy projects, and visitor opinions; and

WHEREAS, the city land use ordinance (LUO) allows wind machines with a conditional use permit (minor) in the residential zoning districts, the resort zoning district, the business zoning districts, the I-1 Limited Industrial zoning district, the I-2 Intensive Industrial zoning district, and the IMX-1 Industrial-Commercial Mixed Use zoning district, and as an accessory use with a conditional use permit (minor) in the agricultural and county zoning districts, and

WHEREAS, the Ko'olauloa Neighborhood Board believes that current LUO requirements for wind machines setbacks to be woefully inadequate; and

WHEREAS, state and local governments in the U.S. have adopted or are considering increased wind turbine setback requirements that are more stringent than the standards currently set forth in the city's LUO; and

WHEREAS, given the heightened interest in developing renewable energy sources and increases in wind turbine generating capacity, Ko'olauloa Neighborhood Board firmly believes it timely to adopt recommendations for increased setback requirements for wind machines to ensure the health and safety of residents; and

WHEREAS, safety, noise and shadow flicker issues are mitigated simply by placing these machines at an appropriate distance from occupied dwellings; and

WHEREAS, noise and shadow flicker caused by large industrial turbines have been shown to be sufficiently mitigated at .75 of a mile (3960 feet); and

WHEREAS, safety for nearby people who occupy dwellings in close proximity to large industrial wind turbines is paramount; and

Whereas, the safety of first responders is also of great concern; now therefore

BE IT RESOLVED that the Ko'olauloa Neighborhood Board adopts and supports a .75 mile (3960 feet) minimum buffer zone placed between large industrial wind machines and existing community boundaries or the exterior of the nearest occupied dwelling located in a city and county approved structure not on agriculturally zoned land; and

BE IT FURTHER RESOLVED that a buffer zone of .25 of a mile be placed between large industrial turbines and any state or county roads or highways; and

BE IT FURTHER RESOLVED that at the cost of the developer, all prudent and approved safety measures, special training or equipment are to be in place on-site and complete prior to commencing power generation; and

BE IT FURTHER RESOLVED that copies of this resolution be distributed to the Neighborhood Commission, the Department of Planning and Permitting, to the Mayor of the City & County of Honolulu, all members of the Honolulu City Council, the City Planning Commission, the State Office of Planning, the State Land Use Commission, and all Neighborhood Board chairs.

Conditional Use Permit-Major

Resolution to amend Sec. 21-2.40 of the County's Land Use Ordinance (LUO) to require a Conditional Use Permit-Major for wind machines in excess of 350'

SUBMITTED TO: Ko'olauloa Neighborhood Board #28

SUBJECT: Resolution to amend Sec. 21-2.40 of the County's Land Use Ordinance (LUO)

INTRODUCED BY: Kent Fonoimoana, Sub district 01 Representative (Kahuku), Chair - Ko'olauloa Neighborhood Board Agriculture Committee

Date: August 13, 2015

WHEREAS, the Ko'olauloa Neighborhood Board believes that current LUO requirements for wind machines permitting to be outdated; and

WHEREAS, the City and County of Honolulu's LUO currently permits wind machines with no height limitations within residential zoning districts, the resort zoning district, the business zoning districts, the I-1 Limited Industrial zoning district, the I-2 Intensive Industrial zoning district, and the IMX-1 Industrial-Commercial Mixed Use zoning district, and as an accessory use with a conditional

use permit (minor) in the agricultural and county zoning districts, and

WHEREAS, according to Sec. 21-2.40-2 of the County's Land Use Ordinance Downtown structure heights in excess of 350 feet require a Conditional Use Permit - Major; and

WHEREAS, the height regulations in Ko'olauloa and other rural residential areas of the City and County of Honolulu are considerably more stringent than downtown; and

WHEREAS, large wind turbines placed in rural Honolulu County have no height limit and current wind machine proposals within Honolulu County measure in excess of 500 feet high from base to tip of the rotary blade; and

WHEREAS, protection of Oahu's view planes are of significant benefit to residential dwellers and visitors alike; and

WHEREAS, according to Article 4 Sec. 21-4.60 of the Land Use Ordinance regarding General Development Standards pertaining to heights which states that "The council finds and declares that there is a significant public interest served in protecting and preserving the aesthetic beauty of the city. Further, the council finds that the indiscriminate and uncontrolled erection, location, and height of antennas (or similar structure\*) can be and are detrimental to the city's appearance and, therefore this can cause significant damage to the community's sense of well-being, particularly in residential areas, and can further harm the economy of the city with its tourist trade which relies heavily on the city's physical appearance." (\* comments in parenthesis and underline added by resolution author)

WHEREAS, A Conditional Use Permit-Minor is a discretionary/ministerial permit that does not require public comment while a Conditional Use Permit-Major allows for public participation via the City Council; and

WHEREAS the Ko'olauloa Neighborhood Board recognizes that public participation is paramount in the effort to protect our communities from detrimental impacts on residents, employment centers, hospitals, schools and visitor opinions; now therefore,

BE IT RESOLVED that the Ko'olauloa Neighborhood Board hereby adopts this resolution and we strongly urge the Department of Planning and Permitting to allow public participation by amending the City and County of Honolulu Land Use Ordinance Sec. 21-2.40 and require all structures within Honolulu County in excess of 350' to require a Conditional Use Permit-Major designation, and

BE IT FURTHER RESOLVED that copies of this resolution be distributed to the Neighborhood Commission, the Department of Planning and Permitting, to the Mayor of the City & County of Honolulu, all members of the Honolulu City Council, the City Planning Commission, the State Office of Planning, the State Land Use Commission, and all Neighborhood Board chairs.

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO WIND MACHINES.

WHEREAS, utility-scale wind machines, which may be over 400 feet tall, can significantly impact view planes and alter the character of a community; and WHEREAS, the City's Land Use Ordinance ("LUO") presently requires the procurement of a Conditional Use Permit-minor (CUP-minor) for wind machines; and WHEREAS, unlike the CUP-major process, the CUP-minor process for wind machines does not require a public hearing, presentation to the area neighborhood board or community association, notification to nearby property owners of the pending permit application, or posting of a "notice of pending permit" sign on the property; and WHEREAS, the Council desires to provide greater opportunity for public input for utility-scale wind machine projects; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended ("RCH"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and WHEREAS, the term "zoning ordinances," as used in RCH Section 6-1513, includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990, as amended ("ROH"), establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to RCH Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and

CITY COUNCIL



	<p>CITY AND COUNTY OF HONOLULU  HONOLULU, HAWAII  No.  RESOLUTION  OCS2015-0923/9/22/2015 9:02 AM 2  BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and  BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.  INTRODUCED BY:</p>
<b>Testimony Attachment</b>	N/A
<b>Disclaimer*</b>	By checking this box, I understand that testimony submitted through this website is now a part of public record, including any information you may have furnished.
Static Content	<p><b><u>Testimony Submittal Information</u></b></p> <p><b>Providing responses to these items will help the Commission's deliberations, especially when additional information or research is required. Please be aware that these documents will be part of the public record and may be available to the public.</b></p>
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Static Content	<p><b><u>Testimony Submittal Form</u></b></p>

**EXHIBIT 07**

# REPORT OF THE COMMITTEE ON ZONING AND HOUSING

## Voting Members:

Kymerly Marcos Pine, Chair; Ikaika Anderson, Vice-Chair;  
Brandon Elefante, Ann H. Kobayashi, Joey Manahan

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Committee Meeting Held  
June 29, 2017

Honorable Ron Menor  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Housing, to which was referred Bill 54 (2017) entitled:

"A BILL FOR AN ORDINANCE RELATING TO WIND MACHINES,"

introduced on May 22, 2017 and which passed First Reading at the Council's meeting of June 7, 2017, reports as follows:

The purpose of the Bill is to amend the Land Use Ordinance (LUO) relating to the regulation of wind machines. Under the proposal, wind machines in the Agricultural and Country zoning districts with a capacity greater than 100 kilowatts would require a Conditional Use Permit-major (CUP-major).

The Acting Director of the Department of Planning and Permitting testified in support of the Bill.

Your Committee received written testimony from the Hawaii Construction Alliance offering comments on the Bill.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON

JUL 12 2017

COMMITTEE REPORT NO. 272



# REPORT OF THE COMMITTEE ON ZONING AND HOUSING

**Voting Members:**

Kymerly Marcos Pine, Chair; Ikaika Anderson, Vice-Chair;  
Brandon Elefante, Ann H. Kobayashi, Joey Manahan

---

Committee Meeting Held  
June 29, 2017  
Page 2

Your Committee on Zoning and Housing is in accord with the intent and purpose of Bill 54 (2017) and recommends that it pass Second Reading, be scheduled for public hearing, and thereafter be referred back to Committee. (Ayes: Pine, Elefante, Kobayashi – 3; Noes: None; Excused: Anderson, Manahan – 2.)

Respectfully submitted,

  
\_\_\_\_\_  
Committee Chair

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON JUL 12 2017

COMMITTEE REPORT NO. 272

# **EXHIBIT 08**

## Testimony- SB 2526

Committees: Energy and Environment/Water, Land and Hawai'ian Affairs

Room: 225

Hearing Date: February 16, 2010, 2:45 pm

Aloha Chairmen Gabbard, Hee, and Joint Committee Members,

Thank you all for the opportunity to present testimony regarding Senate Bill 2526.

My name is Kent Fonoimoana and I reside at 56-423 Pahelehala Loop in Kahuku. My residence is in Ko'olau Housing which is bordered by the state agricultural park in Kahuku. I have been blessed with the opportunity to serve my community as I am an elected member of the Kahuku Community Association (KCA) Board of Directors. Although a member of KCA, the following comments are my own but may reflect the sentiments of a significant portion of the community.

I strongly support renewable energy technology and recognize the need to minimize our dependence on fossil fuels. Some of the oil we purchase on the world market may come from sources that knowingly or inadvertently support organizations that are not our friends and may wish to do us harm. Environmental and economical pressures may require our quick and decisive adaptation to changes occurring throughout the world. Our existence may depend on it. All of us need to adapt, and soon, or; we may

become beholders instead of partners, followers instead of leaders, unhealthy wishing we were healthy, and wondering where all the critters went.

On Friday the 12<sup>th</sup>, of February, another KCA board member, two area residents, and I had the opportunity to tour Kaheawa wind farm on Maui. I had a positive experience and I appreciate the site developer's efforts to work us and with the Maui community to provide our state with current and future renewable energy. I absorbed quite a bit and was able to gain first hand knowledge on some of the issues our community may have, be they perceived or real. One of these perceptions is noise. Our guide was good enough to stop at several distances and locations for us to make observations. I observed a moderate noise level directly below the turbines. At approximately ¼ mile away (1300 feet +/-) from the closest turbine, the sound level was diminished, but was still quite perceivable. At approximately ½ mile (2500 feet +/-) away from the closest turbine, little if any sound was detectable by my ears. Others in our group made similar observations.

Kahuku has played a significant part in wind energy development and research. The community is proud of this contribution and wishes to continue its efforts in this partnership. As partners, we would like the opportunity to meet with the developer, state, and local agency leaders to discuss the possible placement of a wind farm placed within the state agricultural park which abuts the Ko'olau Housing subdivision. Members of the Kahuku community at large and KCA would like to first meet together before this bill advances. A KCA quarterly general membership meeting is scheduled for 7:00 pm February 18, 2010 at the Kahuku Community Center.

In October or November of 2009, Keith Avery of O'ahu Wind Works LLC presented the current wind farm proposal to members of the Kahuku community. This specific discussion was subsequently placed on the Board's January agenda. On January 21, 2010, the KCA Board met with O'ahu Wind Works, First Wind, and HECO officials to discuss; the placement of a wind farm within the Kahuku agricultural park, set back recommendations, and other potential impacts on the community. It is my understanding that the issue is on the March 2010 agenda of the Ko'olau Neighborhood Board. The developer, the Kahuku community, state and local agency leaders, and the public at large should meet together to further discuss and explore issues associated with wind turbines placed in close proximity to a residential neighborhood. Besides the obvious visual impacts, there are other issues. Homeowner equity issues, health affects, and most of all, safety implications must be addressed before determining any standardized set back distance. Many European counties that have long used this technology recommend a 1.5 – 2.0 kilometer set back. One prominent factor in the determination of this recommendation was to bolster public acceptance.

The Kahuku area is unique as it is well suited for the application of wind energy development and the community has accepted the opportunity to contribute. However, the Kahuku community may have valid issues with portions of the planned wind farm to be located within the nearby state agricultural park. Of the ten turbine sites proposed by O'ahu Wind Works LLC, most Kahuku residents have concerns with four that may be installed nearest to the community's mauka boundary. These four turbines and tower sites are proposed to be placed approximately 1200'-1500' from the



community boundary on foothills directly behind Ko'olau Housing. The proposed towers and turbines are the largest that are available, 400 feet plus from base to maximum tip height. Their large size in addition to being placed on an elevated site will be quite intrusive and will "loom over" the neighborhood. In the afternoon hours, area residents will be subject to continuous shadow flicker caused by the rotating blades. Audibly, the residents will be exposed to constant and/or intermittent noise depending on the wind conditions.

With full consent and Board backing, I now speak as a representative of KCA Board of Directors. The KCA Board strongly opposes the placement of four of the ten turbines that O'ahu Wind Works LLC has proposed to install within the Kahuku state agriculture park. Although the four turbines in question may be a little more than 1000 feet away from the closest offsite dwelling, the potential impacts on the entire community are unacceptable. We respectfully ask O'ahu Wind Works LLC, or any future developer, to move the four sites to a more acceptable site.

Therefore, based on KCA's position, other issues mentioned above, and my personal observations, I oppose this bill as written. It may be prudent to amend the language concerning the distance requirement to read "no less than 2500 feet from the nearest offsite dwelling". Or in the alternative and to avoid implementing an arbitrary distance, deferring SB 2526 until the proper site specific studies have been undertaken, completed, and disseminated. An assessment that specifically addresses risks to those who live in close proximity to these four particular turbines must be done first. These risks and issues may include, but are not limited to: industrialized

look of area, loss of view, lower property valuation, adverse affects to health and wellness, and potential safety issues that may occur as a result of a nature related event such as a hurricane.

Thank you,

Kent Fonoimoana  
56-423 Pahelehala Loop  
Kahuku, Hawai'i 96731

Proposed Amendment to - SB 2526

Committees: Energy and Environment/Water, Land and Hawai'iian Affairs

Room: 225

Hearing Date: February 16, 2010, 2:45 pm

Aloha Chairmen Gabbard, Hee, and Joint Committee Members,

Section (14) currently reads:

(14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land; provided that any wind energy facility utilizing wind turbine generators with the capacity to generate 1 megawatt or more shall be located no less than one thousand feet from the nearest off-site residential dwelling unit in existence at the time of the application for necessary permits, measured from the center of the wind turbine generator to the exterior of the residential dwelling unit;

I propose amending the language concerning minimum distance to read:

(14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land; provided that any wind energy facility utilizing wind turbine generators with the capacity to generate 1 megawatt or more shall be located no less than **two thousand five hundred feet** from the nearest off-site residential dwelling unit in existence at the time of the application for necessary permits, measured from the center of the wind turbine generator to the exterior of the residential dwelling unit;

Amending the distance requirements may; increase public acceptance of large wind tower and turbines in other suitable sites, increase the margin of safety for residents living in close proximity to large 1 megawatt turbines and towers, lower adverse affects on health and wellness issues that may be detrimental to humans.

Respectfully,

Kent Fonoimoana  
56-423 Pahelehala Loop  
Kahuku, Hawai'i 96731

# **EXHIBIT 09**

----- Forwarded message -----

From: **Kent Fonoimoana-TRIsland** <[kent@trisland.com](mailto:kent@trisland.com)>

Date: Mon, Dec 2, 2013 at 1:59 PM

Subject: Na Pua Makani HCP DEIS

To: "[napuamakanihcp@fws.gov](mailto:napuamakanihcp@fws.gov)" <[napuamakanihcp@fws.gov](mailto:napuamakanihcp@fws.gov)>

To whom it may concern,

ACK

I am submitting comments in strong opposition to the wind farm that is proposed for properties located at Malaekahana and the Kahuku State Agriculture Park. In 2011, as a member of Kahuku Community Association, I and my fellow board members took a position against the installation of any more industrial sized wind turbines in the Kahuku area. The community support for this position was and is overwhelming.

The reasoning for my position are as follows:

HAZ 1  
HAS 2  
PRO 1  
REG 2

1- Current safety zones between these machines and occupied structures are woefully inadequate. Placing 500' tall machines with moving parts 1200' upwind from Kahuku schools and community creates an untenable safety hazard. It is not if, but when a major hurricane strikes Oahu and these machines are composed of 150' blades that are designed to be light and aerodynamic. Each of the blades on a single turbine weigh in excess of 14,000 lbs. and could become windblown debris that could impact human life. To date, not one wind turbine worldwide has been subjected to an 'Iniki type event. To surround Kahuku community with these machines will likely be a life ending disaster for some of us who live here.

HAS 1

2- There are independent studies that support adverse health impacts on humans who live close proximity to these machines. Sleeplessness caused by noise and vibration has detrimental impacts on folks already living in close proximity to windmills. Others across the nation and worldwide are suffering vertigo, headaches, irritability, and a host of other ailments that they attribute to large industrial windmills.

ACK

3- This proposed project will surround Kahuku community on three sides which is unacceptable as well as irresponsible.

ACK

4- The power delivered fluctuates greatly and there is a detrimental impact on privately owned electrical devices of nearby consumers.

WIL 1

5- There is a significant impact on avian and bat species. The EIS of the First Wind project failed to address all avian species as the impacts on 'Iwa or Frigate bird was not studied.

ALT 1  
SOC 2

6- There are other alternatives available that will not impact private consumers. HECO has stated that Kahuku is at or beyond the saturation rate for renewable energy. The existing wind energy facility has usurped private consumer's options for photo-voltaic panel installation. According to HECO, should a homeowner desire to install PV, there may be a discriminatory fee involved for Kahuku consumers.

ACK

7- Kahuku community has done its share for Oahu and it's time for others to do the same.

ALT 2

8- The state has initiated a policy to commit to renewable energy yet the state lacks committment as the vast majority of state owned buildings lack PV panels or any other renewable energy source.

REC 1

9- The federal government has committed to green energy yet they hypocritically prohibit the installation of wind mills in close proximity to the Kahuku Army training facility.

DSC 3

10- Tourists and residents do not appreciate the industrialized look that these turbines create.

11- Installing these unsightly machines in close proximity to communities will have an adverse impact on future projects. Proper installation of wind turbines at appropriate sites may lessen legal challenges that may/will arise.

Mahalo,

Kent Fonoimoana

Board member - Kahuku Community Association

Board member - Ko'olauloa Neighborhood Board #28

# **EXHIBIT 10**

Menu ▾

◀ Previous

✎ Save

✓ Save & Close

✕ Close

🔗 Help

## Submission details

Form	Submit Charter Amendment Proposal
Date Created	28 September 2015 10:25:05
Created By	
IP Address	██████████
Country	(Unknown Country?)
Browser	Chrome
Operating System	Windows

## Submission data

Page 1

✎ Edit

Static Content:

# Proposal Submittal Information

**Providing responses to these items will help the Commission's deliberations, especially when additional information or research is required. Please be aware that these documents will be part of the public record and may be available to the public.**

Name:

Kent Fonoimoana

Email (required to send you confirmation):

██

Phone:

██████████████████████████████████████

Address:

██████████████████████████████████

Representing:

Organization (Please fill in field below)

Organization:

Kahuku Community Association

Static Content:

# Charter Amendment Proposal Form

1. Please provide a brief description of: The Proposed Charter amendment, the purpose of the proposed Charter amendment, the issue or problem to be addressed by the proposal, and how the proposal would address the issue or problem.:

The Kahuku Community Association (KCA) respectfully requests that Sec. 21-5.700 of the Land Use Ordinance (LUO) regarding Wind machines be amended to allow impacted communities the opportunity to be heard via a hearing process. Currently, issuance of permits for wind machines of any height is a discretionary or ministerial process where no community input is received by the city.

KCA would like Sec. 21-5.700 (c) of the LUO to be amended to allow for public comment. Sec. 21-5.700 (c) currently states "In the agricultural and country zoning districts, accessory wind machines shall have a rated capacity of no more than 100 kilowatts. Wind machines with a rated capacity of more than 100 kilowatts shall require a conditional use permit (minor). A conditional Use Permit (minor) does not provide for community input. KCA respectfully requests that the previous statement above be amended to read "(c) In the agricultural and country zoning districts, accessory wind machines shall have a rated capacity of no more than 100 kilowatts. Wind machines with a rated capacity of more than 100 kilowatts shall require a conditional use permit (major). Amending the permit classification would allow citizenry the opportunity to comment on wind farms that impact our collective well-being.

**2. If applicable, list the Charter provision(s) affected by the proposal::**

Sec. 21-5.700(c)

**3. If the proposal is based on a provision or provisions in the charter or laws of another jurisdiction (e.g., another county, city, or municipality), name the jurisdiction and, if possible, attach a copy of each provision or law.:**

Many municipalities across the United States require a public hearing prior to issuing conditional use permits. Maine, Minnesota, Connecticut and New York State are some examples.

**Relevant Provision:**

Other Municipalities - Great Lakes Manistee\_GLREA\_model\_ordinance.doc  
([http://honoluluchartercommission.org/images/jsnuniform/jsnuniform\\_uploads/2/201509282225th26\\_6936668262447\\_other\\_municipalities - great lakes manistee\\_glrea\\_model\\_ordinance.doc](http://honoluluchartercommission.org/images/jsnuniform/jsnuniform_uploads/2/201509282225th26_6936668262447_other_municipalities - great lakes manistee_glrea_model_ordinance.doc))

**4. If the proposal is based on any written materials you have, please attach a copy of each with a citation to its source.:**

N/A

**5. Attach the text of the proposed Charter amendment in Ramseyer format (see instructions below):**

Sec. 21-5.pdf  
([http://honoluluchartercommission.org/images/jsnuniform/jsnuniform\\_uploads/2/201509282225th27\\_4403406715545\\_sec.21-5.pdf](http://honoluluchartercommission.org/images/jsnuniform/jsnuniform_uploads/2/201509282225th27_4403406715545_sec.21-5.pdf))

**Static Content:**

**Ramseyer format:**

- **AMENDING AN EXISTING CHARTER PROVISION:** Indicate by underscoring, any language being proposed to be added to the Charter and indicate by [bracketing], any language being proposed to be deleted from the Charter.
- **REPLACING AN EXISTING CHARTER PROVISION:** [Bracket] the article, chapter, or section of the Charter proposed to be deleted, and underscore the text of any provision proposed to replace the deleted material.
- **ADDING A NEW CHARTER PROVISION:** Provide the text of the new provision and, if possible, indicate where in the Charter the new material should be added.

**Static Content:**

**All proposals must be submitted by October 31, 2015.**

If for any reason you are having difficulty using our online submission process, you may submit your proposal by mail or email:

2015-2016 Charter Commission  
City and County of Honolulu  
530 South King Street, Room 501  
Honolulu, Hawaii 96813  
cclcharter@honolulu.gov (mailto:cclcharter@honolulu.gov)



BEFORE THE ZONING BOARD OF APPEALS  
CITY AND COUNTY OF HONOLULU  
THE STATE OF HAWAII

In the Matter of the Application of ) Case No. 2019/ZBA-7  
)  
KEEP THE NORTH SHORE COUNTRY, a ) CERTIFICATE OF SERVICE  
nonprofit corporation, )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the above was duly served upon the following parties by e-mail or U.S. Mail, postage prepaid on this date as follows:

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DATED: Honolulu, Hawai'i

April 2, 2020



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