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**2009-2010
HAWAI‘I COUNTY
CHARTER COMMISSION**

To: Chair Edmund K. Haitzuka and
Members of the Hawai‘i County Charter Commission

From: Levi K. Hookano, Attorney

Date: January 19, 2010

RE: Relating to CA-31: Department of Agriculture and Energy

Dear Chair Haitzuka and Members of the Hawai‘i County Charter Commission,

There may be an issue with CA-31, which would create a county department and board of agriculture and energy. The main issue is with agriculture portion of the proposal. The energy aspect of the proposal appears to be fine since the Hawaii Revised Statutes specifically allows the counties to explore alternative energy resources, “defined as geothermal, solar, wind, ocean power, biomass and solid wastes in joint venture with an end user or public utility pursuant to a plan for the direct utilization of the energy sources by an end user or public utility.”¹

As a general rule, where a county law conflicts with a state law, the state law will control. There is a state department of agriculture; therefore a county department of agriculture would likely not be able to promulgate agricultural policies and directives that conflict with the state policies. The county’s primary authority as it relates to agriculture is through the county’s zoning authority.² So this is not to say that there *nothing* the county can do as it relates to agriculture. If the county decides to move forward with creating a department of agriculture the county must be cautious that it does not overstep its authority and conflict with state laws. Therefore, it is recommended that language be inserted into this amendment that would clarify how this department is to interact with the state department of agriculture.

If you have any questions regarding these matters, please do not hesitate to contact me.

Levi K. Hookano
Commission Attorney

¹ See Haw. Rev. Stat. § 46-19 (2009).

² Haw. Rev. Stat. § 46-4(a)(1) (2009).