

Charter Commission - cops beat journalist, confiscate camera and cellphone

From: "EditorMolokai Advertiser-News George Peabody" <MolokaiMAN@BasicISP.net>
To: <charter.commission@mauicounty.gov>, "David DeLeon" <gad@ramau.com>, <MolokaiMAN@basicisp.net>
Date: 8/7/2011 12:45 AM
Subject: cops beat journalist, confiscate camera and cellphone
CC: <jamesalandaum@earthlink.net>, <BASTIATLAW@aol.com>, "Houston Allred" <shafree@samhoustonallred.com>, "Karl Gmail" <karlalan1812@gmail.com>
Attachments: cops beat 1.jpg

Dear Maui Charter Commission: Charter should protect us from cops and other criminal government agents! We The People are the Sovereign Law Enforcement in the United States of America, unless we let the cops usurp our Original Authority like we let Obama usurp the Office of President. We must get our County Charters changed to hold police accountable to our Mayor; we must establish a real Office of County Sheriff, elected by We The People as the top LEO sworn to uphold and protect United States Citizens from cops and other government abusers; and, REAFFIRM in the Charter that We The People are the ultimate Law Enforcement superior to all cops. I told a cop with whome I was having an otherwise civil discussion about the proper role of peace officers that he was a servant, and he started yelling at me "Did just here you call me a nigger," he yelled. Cops are not our friends, they are gang members who take care of each other under color of law, and you are their enemy with a camera. Makaala !

Aloha, George Peabody <http://www.MolokaiAdvertiserNews.com>

see recent reports of abuse and murder by police officers, and prosecutors don't prosecute cops, nor rich criminals or politicians!

Remember Citizen's arrest of MPD Chief Thomas Phillips at Police Commission Meeting and threatening George Peabody.....Poncho Alcon commission chair that day.....ask him!

Remember 6-MPD cops, using MPD auto weapons shooting Molokai Ranch zoo animals at Westend on Ranch land arrested by Off. Makahanaloa upon report by George Peabody, no prosecution and inspite of through report by Internal Affairs, MPD and letters from State AG OIP to release that report to George Peabody, Molokai Advertiser News, they trash whole records. WTF ! No prosecution!

Remember six cops dragging George Peabody out of the Molokai Airport July 13, 2006 on bogus warrant when he was on his way to file campaign papers for Governor vs Lingle. 6-cops, 3-cars!

Remember Puu O Hoku Ranch owner Lavana Currier's 8-employees ordered to chainsaw down her neighbor's house lanai etc -See story Molokai Advertiser News March 2, 2011 issue located at website <http://www.MolokaiAdvertiserNews.com> front page photos, 14 page report to MPD police with photos and Complaint of Felony Criminal Property Damage, burglary, terrorism, 4th Am, conspiracy to violate rights, MPD interview Ranch employee Rune Pedersen who admits he let the operation at orders of Lavenia Currier with about 8-others and a camera lady took progressive photos of their crimes but was assured by Currier's attorneys that it was legal providing owner Mateo Madani and maintenance worker George Peabody were not on the property to be confronted. MPD police do not arrest Currier or anyone else, but do remove George Peabody name from the Complaint so they can deny him any information about their investigation if any, and Maui Prosecutors John Kim and John Tam can also deny any information about the case to Peabody and Molokai Advertiser News. MPD has radio transmitter at Puu O Hoku Ranch and MPD rankers and Maui Prosecutors are privileged guests of Lavinia Currier at Puu O Hoku Ranch. Last I heard from Det. Gene Santiago was there was not enough evidence. WTF MPD and Maui Prosecutors and Judges are CRIMINALS !

see more at <http://www.MolokaiAdvertiserNews.com> weekly and archives

08/29/11 - Item No. II.A. pgs. 1-6

Abused by the Big Island Police and Arrested for Taking Cell Phone Pictures and Camera Photos

Posted on August 6, 2011 by Damon

I went to Pahoia Village Club to cover the concert that was happening there last night and ended up with a lot more then I bargained for! I got arrested for taking pictures and videos of cops arresting people!

I will be filing a lawsuit against the Hawaii County Police department soon for a few things tomorrow...

Mainly the police have now confiscated my camera and cell phone as well as roughing me up and locking me up in a police detention holding cell for taking video and pictures of them in action from the sidewalk in front of Pahoia Village Cafe.

People are allowed to take pictures and videos of police officers w/out getting roughed up. I'm battered, bruised and bloody from an officer slamming on the sidewalk... Thankfully I have eyewitnesses that will come forward to say what happened.

My wife took pictures shortly after I was released from jail tonight...

I just want my cell phone back and camera back.... I was rolling video when the officer took me down and they took my cell phone and camera from me for "Evidence".

I can't lift my right arm above my head w/out feeling like it's ripping every shoulder muscle I have! I'm having difficulty breathing today because I have deep contusions on my ribs explained doctor, Jerry Gray, at the Hilo Medical Center. At least they aren't broken and the x-rays were able to verify that

While my body will hopefully recover... I'm pretty pissed that the officer STOLE MY CAMERA! At the time I was taking pictures of them... I was using my CELL PHONE and not my CAMERA? Why would they take my Cell Phone and CAMERA in for evidence.... when once I left Pahoia Village Club... I put that to the side and was using my cell phone! But NO!!! The cops have to take my cell phone and my camera away from me.

Do the police know that I need that phone for my FEDERAL JOB?

LAWSUIT PENDING.... STAY TUNED!

EVEN in Beautiful Puerto Rico US Territory Police Abuse In Puerto Rico

This video reflects ACLU's concerns about recent restrictions on the rights to free speech, peaceful assembly, and freedom from police violence and abuse in Puerto Rico.

see video at: <http://www.aclu.org/free-speech-human-rights/police-abuse-puerto-rico>

=====

Time for all people to carry guns to protect against police brutality, and to back up other people being brutalized by police. You have a right to defend against assault by armed and dangerous thugs even if they are members of the Blue Line Gang. Its been getting worse and more blatant over the years because cops are seldom help personally responsible for their criminal actions. We The People are the Sovereign Law Enforcement in the United States of America, unless we let the cops usurp our Original Authority like we let Obama usurp the Office of President. We must get our County Charters changed to hold police accountable to our Mayor; we must establish a real Office of County Sheriff, elected by We The People as the top LEO

sworn to uphold and protect United States Citizens from cops and other government abusers; and, REAFFIRM in the Charter that We The People are the ultimate Law Enforcement superior to all cops. I told a cop with whom I was having an otherwise civil discussion about the proper role of peace officers that he was a servant, and he started yelling at me "Did just here you call me a nigger," he yelled. Cops are not our friends, they are gang members who take care of each other under color of law, and you are their enemy with a camera. Makaala !

Aloha, George Peabody <http://www.MolokaiAdvertiserNews.com>

MauiTime publisher Tommy Russo videorecords his alleged assault by "Dog" Chapman security guard and Maui police

by Larry Geller

The camera was running during the April 12, 2011 incident posted on the MauiTime website but the protagonists weren't camera shy. MauiTime publisher Tommy Russo was able to record his own alleged assault by one of the security guards accompanying "Dog" Chapman and his entourage.

Later, when Maui Police arrived, he reports he was roughly confronted and told by an officer that he couldn't take videos of the officer without consent.



Russo's report documents what must have been a very ugly incident. Russo chose to assert his rights despite the police officer's insistence that he must turn his camera off. The audio is clear, and the letters "MPD" appear on the officer's shoulder if the picture brightness is turned up a little. There is enough detail to identify the officer who was speaking.

With the camera running, Russo has at least audio documentation of the incident.

Russo stood his ground. I imagine that most people would turn off the camera when requested to do so by the police. Perhaps that's what separates journalists from the rest of us. In doing so, the incident became the most recent example of police insisting that they have a right to not be videoed or recorded. In some states that has become law and is being challenged. In other states wiretapping laws are abused by police. For example:

Troubled by the Maryland State Police's abusive use of state wiretap laws to prosecute a motorcyclist who posted a YouTube video of an MSP trooper making a traffic stop with his gun drawn, the American Civil Liberties Union of Maryland is providing legal counsel to ensure that First Amendment principles are protected and that citizens are able to hold law enforcement officials accountable through legitimate use of cameras and audio recorders.

ACLU Defends Rights of Citizens to Monitor Police by Representing Motorcyclist Prosecuted by State Police

May 28, 2010

FOR IMMEDIATE RELEASE

CONTACT: 410-889-8555; media@aclu-md.org

BALTIMORE, MD – Troubled by the Maryland State Police's abusive use of state wiretap laws to prosecute a motorcyclist who posted a YouTube video of an MSP trooper making a traffic stop with his gun drawn, the American Civil Liberties Union of Maryland is providing legal counsel to ensure that First Amendment principles are protected and that citizens are able to hold law enforcement officials accountable through legitimate use of cameras and audio recorders.

"This prosecution by the Maryland State Police and Harford County State's Attorney is profoundly dangerous, and seems meant to intimidate people from making a record of what public officials do," said David Rocah, Staff Attorney at the ACLU of Maryland. "It is hard to

imagine anything more antithetical to a democracy than for the government to tell its citizens that they do not have the right to record what government officials say or do or how they behave."



Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

August 8, 2011

Mr. Joshua Stone, Chair and Members
Maui County Charter Commission
200 South High Street
Wailuku, Hawaii 96793

Dear Chair and Members:

Respectfully transmitted is a copy of Committee Report No. 10-79, which was adopted by the Council of the County of Maui on August 6, 2010.

Pursuant to the adoption of the Committee Report, the following items were referred to the Charter Commission:

1. The correspondence dated August 10, 2009, from the Kula Community Association; and
2. The draft resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICT".

Also attached is a copy of the minutes of the August 6, 2010 Council meeting.

Very truly yours,

A handwritten signature in black ink that reads "Danny A. Mateo".

DANNY A. MATEO
Council Chair

Enclosure
cc: Director of Council Services
County Clerk

2011 AUG -8 PM 2:22
RECEIVED
CORPORATION COUNSEL

08/29/11 - Item II.B. pgs 1-221

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 6, 2010

**Committee
Report No.**

10-79

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on July 15, 2010, makes reference to County Communication No. 09-229, from Michael J. Molina, Chair of your Committee, relating to Charter amendments.

By correspondence dated August 10, 2009, the Kula Community Association ("KCA") transmitted a proposed Charter amendment to establish new election districts for the Council. Under the KCA's proposal, the Council would be composed of nine members elected from three districts with approximately the same population. The districts would be known as the Central District (comprising the towns of Wailuku, Waihee, Waikapu, and Kahului); the Leeward District (comprising West Maui and South Maui); and the Rural District (comprising the East Maui land surrounding Haleakala and the islands of Molokai and Lanai). Three Council members would be elected from each district, and each member would have to be a resident of that district.

By correspondence dated April 23, 2010, Councilmember Jo Anne Johnson transmitted a draft resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS". The purpose of the draft resolution is to place the following question on the 2010 General Election ballot:

Should at-large elections for Maui County Council members be abolished and replaced with elections for members from each of nine election districts, with the district boundaries to be determined by a County Reapportionment Commission according to established criteria?

Your Committee notes that Section 3-1 of the Revised Charter of the County of Maui (1983), as amended, mandates that the Maui County Council be composed of nine members who are elected at-large.

Your Committee discussed the history of Council elections in Maui County. Because Maui County is comprised of multiple islands, it is particularly challenging to

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 6, 2010
Page 2

Committee
Report No. 10-79

create an election system that is constitutional and provides the fairest representation for remote areas.

Your Committee expressed concerns that, under each proposal, Molokai and Lanai would share a district with portions of the island of Maui. This could allow for a resident of Maui to become the Council representative of Molokai or Lanai, even if the individual may not have a clear understanding of the unique issues facing Molokai or Lanai.

Your Committee recognized that there was not a clear consensus on the issue of whether Maui County should adopt a district-voting system for the Council. Your Committee further recognized the importance of soliciting community input to ensure a full and fair discussion about the pros and cons of a district-voting system.

Your Committee decided that the KCA's proposal and the draft resolution should be considered by the next Charter Commission.

The Corporation Counsel informed your Committee that appointments to the Charter Commission must be made by March 1, 2011.

Your Committee voted 5-0 to recommend referral of the KCA's proposal and the draft resolution to the Charter Commission. Committee Chair Molina, Vice-Chair Mateo, and members Johnson, Medeiros, and Nishiki voted "aye". Committee members Baisa, Kaho'ohalahala, Pontanilla, and Victorino were excused.

Your Committee of the Whole **RECOMMENDS** the following:

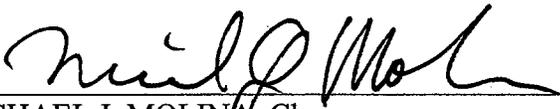
1. That the attached correspondence dated August 10, 2010, from the Kula Community Association be REFERRED to the Council Chair for the next Council term, for transmittal to the next Charter Commission; and
2. That the attached draft resolution, entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS", be REFERRED to the Council Chair for the next Council term, for transmittal to the next Charter Commission.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 6, 2010
Page 3

Committee
Report No. 10-79

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

cow:cr:10010(1)aa:kmh

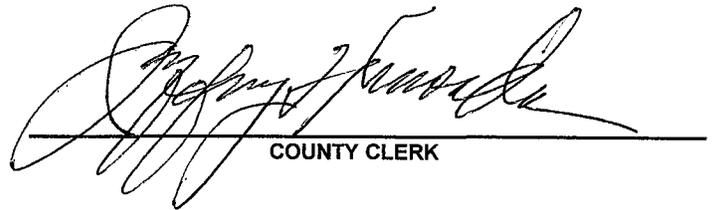
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 10-79 were adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of August, 2010, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye


COUNTY CLERK

Kula Community Association

P.O. Box 417 - Kula, HI 96790

<http://kulamaui.com>

*The vision of the Kula Community Association is to preserve open space, support agriculture, maintain a rural residential atmosphere, and to work together as a community.
The specific purpose of this association is to improve the quality of life for the residents of Kula, to promote civic welfare, and generally to benefit the community of Kula.*

August 10, 2009

TO: Chairman Danny Mateo, Maui County Council
FROM: Ron Montgomery, Vice-President, Kula Community Association
Dick Mayer, Board Member, Kula Community Association

RE: Establishment of new Maui County Council election districts

The Board of the Kula Community Association at its June 2, 2009 meeting approved the attached resolution and recommended its transmittal to the Maui County Council. We ask that the Council place a proposed County Charter amendment on the ballot for the November 2010 election.

THE ISSUE:

Ever since the Maui County charter was amended in 1991, the County Council has consisted of nine members, each representing a residential district with very unequal population sizes. Furthermore, all candidates must run countywide which places an expensive and unneeded burden on all candidates, and a special burden on new, less well-known candidates. This proposed amendment will correct that problem in a relatively simple manner.

PROPOSED MAUI COUNTY CHARTER AMENDMENT - Example of possible wording:

“Delete in its entirety Maui County Charter Section 3-1. Composition. There shall be a council composed of nine members who shall be elected-at large. Of the nine members elected to the council, one shall be a resident of the Island of L~na`i, one a resident of the Island of Moloka`i, one a resident of the residency area of East Maui, one a resident of the residency area of West Maui, one a resident of the residency area of Makawao-Ha`ikā-P~`ia, one a resident of the residency area of "Upcountry" comprising Pukalani-Kula-`Ulupalakua, one a resident of the residency area of South Maui, one a resident of the residency area of Kahului, and one a resident of the residency area of Wailuku-Waihe`e-Waikapā. The county clerk shall prepare the nomination papers in such a manner that candidates desiring to file for the office of council member shall specify the residency area from which they are seeking a seat. The ballots shall, nevertheless, be prepared to give every voter in the county the right to vote for each and every council seat.

- 1. The East Maui (Hana-Keanae-Kailua) residency area shall be described as follows:**
- 2. The West Maui residency area shall be described as follows:**
- 3. The Wailuku-Waihe`e-Waikapā residency area shall be described as follows:**
- 4. The Kahului residency district area shall be described as follows:**
- 5. The South Maui residency area shall be described as follows:**
- 6. The Makawao-Ha`ikā-P~`ia residency area shall be described as follows:**
- 7. The Upcountry (Pukalani-Kula-`Ulupalakua) residency area shall be described as follows:”**

And substitute the following:

“Section 3-1. Composition. There shall be a council composed of nine members who shall be elected from three distinct districts, each district having approximately the same population number. There will be three council members elected from each district; the elected council members must be residents of that district.

“The districts shall be known as: Central District (comprising primarily the towns of Wailuku, Kahului, Waihee and Waikapu); Leeward District (comprising primarily West Maui and South Maui); and Rural District (comprising the East Maui land is surrounding Haleakala and the islands of Molokai and Lanai). The district boundaries will initially be those of Maui County’s three State Senate districts, and after each decennial census will be reviewed, and if necessary adjusted, to reflect approximately equal population size in each of the three districts.

“The county clerk shall prepare the nomination papers in such a manner that candidates desiring to file for the office of council member shall specify the district from which they are seeking a seat. The ballots shall be prepared to give every voter in a district the right to vote for three council members from the voter’s district.”

Furthermore Section 3-2 shall be modified to read as follows:**“Section 3-2. Election of Council and Term of Office.**

1. Council members shall be elected by nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every two (2) years commencing in 2012. The special election held in conjunction with the primary election every two (2) years shall be known as the first special election. The special election held in conjunction with the general election every two (2) years shall be known as the second special election.
2. The names of all candidates for each council seat district shall be placed on the ballot for the first special election; provided, that for any council seat district with ~~two~~ six or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.
3. For any council seat district with ~~three~~ seven or more candidates, the names of the ~~two~~ six candidates receiving the highest number of votes for each council seat district in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a ~~single~~ five candidate receives the highest number of votes in the first special election and two or more candidates tie for the ~~second~~ sixth-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the ~~second~~ sixth-highest number of votes shall be placed on the ballot for the second special election.
4. At the second special election, the three candidates receiving the highest number of votes for each council seat district shall be deemed elected. If there is ~~are~~ no more than ~~one~~ three candidates for a council seat district, such persons shall be deemed elected regardless of the number of votes received.

5. The term of office of council members shall be for two (2) years, beginning at twelve o'clock meridian on the second day of January following their election. No member of the county council shall serve more than five consecutive full terms of office. (Amended 1998, 1992)"

RATIONALE FOR THE PROPOSED AMENDMENTS:

The biggest opposition to this election method will probably be the perception that isolated areas of our county with the smallest population/voice (Lanai, Molokai and Hana) will be losing representation. That is not necessarily so.

A. Each of these smaller and more isolated areas will now have three council members whom they elect and who will represent them.

B. Voters will not be limited to electing from a small population pool in a very small geographic area. With the proposed system the emphasis would be on candidate qualifications, their abilities, ideas and opinions, not simply the specific town within a district where they live. It may even be possible that three councilpersons from a most sparsely populated area could hold office if the electorate decides they are the most qualified individuals in the district.

C. With the internet and Akaku broadcasts, geographically remote areas are no longer so isolated from knowledge and information. Communication has bridged physical isolation and distance. The needs and desires of our small communities can be expressed and receive attention today in ways that barely existed a decade ago.

D. At present voters in a residential seat with a small population (such as Lanai, Molokai or East Maui) may find that the candidate whom they would want loses an election because voters in distant more populated districts vote for someone else.

Furthermore, in the "whereas" clauses of the attached resolution, there are several reasons why it would be beneficial to adopt the proposed amendments.

In the election of our Maui County council members, there is a legal requirement to have a representative system based on the principle of "one person, one vote". However, some of the present residential districts have very small populations, while other residential districts have very large population numbers.

New candidates find it very expensive to run county-wide, and thus are at a considerable disadvantage in running against well-known incumbents. Quality individuals should be elected and given the opportunity to be heard (one of the goals of the change in election method) without the financial burden of campaigning county wide.

Voters may not know each candidate well, because candidates live distant from them; consequently, voters may not vote in important council races.

It is beneficial to know that there are several council members who would feel responsible to each district's constituents and concerns.

Finally, with the proposed amendments it will be possible to solve some of the problems mentioned above with a simple remedy. Maui County would have three districts with approximately equal populations.

The Board of the Kula Community Association looks forward to working with our County Council to place the suggested amendments on the ballot in 2010.

Ron Montgomery, KCA Vice-President

Dick Mayer, KCA Board Member

CC. Mayor Charmaine Tavares
Maui News
Maui Weekly
Maui Time Weekly

*The vision of the Kula Community Association is to preserve open space, support agriculture, maintain a rural residential atmosphere, and to work together as a community.
The specific purpose of this association is to improve the quality of life for the residents of Kula, to promote civic welfare, and generally to benefit the community of Kula.*

Resolution: Election of Council members from Residential Districts.

Whereas, In the election of our Maui County Council members, there is a need to have a representative system based on the principle of "one person, one vote";

Whereas, Some of the present residential districts have very small populations, while other residential districts have very large population numbers;

Whereas, New candidates find it very expensive to run county-wide, and thus are at a disadvantage in running against well-known incumbents;

Whereas, Voters (because they live distant from candidates) may not know each candidate well, and may therefore not vote in important council races;

Whereas, It would be beneficial to know that there are several council members who feel responsible to each district's constituents and concerns;

Whereas, There exists a mechanism by which Maui County can have districts with approximately equal populations; now,

THEREFORE, BE IT RESOLVED, that Board of Directors of the Kula Community Association recommends to the Maui County Council that it shall place on the ballot in the next general election an amendment to the Maui County Charter;

BE IT FURTHER RESOLVED, that the amendment would change Maui County Charter "Article 3, Section 3-1. Composition" to reduce the number of residential districts from nine to three, utilizing the boundary lines of the State's three senate districts;

BE IT FURTHER RESOLVED, that the amendment shall allow each district to have three Council members who must be residents of that district;

BE IT FURTHER RESOLVED, that the amendment shall allow voters in each district to vote for the three council members from their residential district; and

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to all the members of the Maui County Council, Mayor Charmaine Tavares, and the Maui News.

Adopted by the Board of Directors of the Kula Community Association on June 2, 2009.

Ron Montgomery, KCA Vice-President

Dick Mayer, KCA Board Member

<http://www.co.maui.hi.us/documents/Council%20Services/2003charter.PDF>

Section 3-1. Composition. There shall be a council composed of nine members who shall be elected-at large. Of the nine members elected to the council, one shall be a resident of the Island of Lānaʻi, one a resident of the Island of Molokaʻi, one a resident of the residency area of East Maui, one a resident of the residency area of West Maui, one a resident of the residency area of Makawao-Haʻikā-Pūia, one a resident of the residency area of "Upcountry" comprising Pukalani-Kula-Ulupalakua, one a resident of the residency area of South Maui, one a resident of the residency area of Kahului, and one a resident of the residency area of Wailuku-Waiheʻe-Waikapā. The county clerk shall prepare the nomination papers in such a manner that candidates desiring to file for the office of council member shall specify the residency area from which they are seeking a seat. The ballots shall, nevertheless, be prepared to give every voter in the county the right to vote for each and every council seat.

1. The East Maui (Hana-Keanae-Kailua) residency area shall be described as follows:
2. The West Maui residency area shall be described as follows:
3. The Wailuku-Waiheʻe-Waikapā residency area shall be described as follows:
4. The Kahului residency district area shall be described as follows:
5. The South Maui residency area shall be described as follows:
6. The Makawao-Haʻikā-Pūia residency area shall be described as follows:
7. The Upcountry (Pukalani-Kula-Ulupalakua) residency area shall be described as follows:

Section 3-2. Election of Council and Term of Office.

1. Council members shall be elected by nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every two (2) years commencing in 2000. The special election held in conjunction with the primary election every two (2) years shall be known as the first special election. The special election held in conjunction with the general election every two (2) years shall be known as the second special election.
2. The names of all candidates for each council seat shall be placed on the ballot for the first special election; provided, that for any council seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.
3. For any council seat with three or more candidates, the names of the two candidates receiving the highest number of votes for each council seat in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.
4. At the second special election, the candidates receiving the highest number of votes for each council seat shall be deemed elected. If there is no more than one candidate for a council seat, such person shall be deemed elected regardless of the number of votes received.
5. The term of office of council members shall be for two (2) years, beginning at twelve o'clock meridian on the second day of January following their election. No member of the county council shall serve more than five consecutive full terms of office. (Amended 1998, 1992)

Section 3-3. Qualifications. To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, a resident of the county for a period of ninety (90) days next preceding the filing of nomination papers and at the time of filing of nomination papers a resident in the area from which the person seeks to be elected. If a council member ceases to be a resident of the county, or ceases to be a resident of the council member's residency area during the council member's term of office, or if a council member is adjudicated guilty of a felony, the council member shall immediately forfeit office and the seat shall thereupon become vacant. (Amended 1992)

Resolution

No. _____

PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Section 14-1(1) of the Revised Charter of the County of Maui (1983), as amended (Charter), it hereby proposes that Section 3-1 of the Charter, pertaining to the composition of the Council, be deleted in its entirety and replaced with the following:

“Section 3-1. Composition. There shall be a council composed of nine members who shall be elected from each of nine election districts, as established by section 3-9.”

2. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 3-3 of the Charter, pertaining to qualifications, be amended as follows:

“Section 3-3. Qualifications. To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, a resident of the county and the district from which the person seeks to be elected for a period of ninety (90) days next preceding the filing of nomination papers [and at the time of filing of nomination papers a resident in the area from which the person seeks to be elected]. If a council member ceases to be a resident of the county, or ceases to be a resident of the council member’s [residency area] district during the council member’s term of office, or if a council member is adjudicated guilty of a felony, the council member shall immediately forfeit office and the seat shall thereupon become vacant.”

Resolution No. _____

3. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 3-5 of the Charter, pertaining to procedure, meetings, rules and journal, and voting, be amended as follows:

“Section 3-5. Procedure; Meetings; Rules and Journal; Voting.

1. The council shall meet in the council room at the county building for its organization at two o'clock p.m. on the second day of January following its election, or on the following Monday if the second day be a Saturday or Sunday, at which time it shall elect one of its members as chair and presiding officer of the council. Until such time as the chair shall be elected, the [mayor] council member elected from the First Council District shall preside at such meeting[, provided that the mayor shall not have a vote]. The council shall also elect a vice-chair who shall act as the presiding officer in the event of the chair's absence or disability. The council shall appoint a presiding officer pro tempore from its own members in the event of the absence or disability of both the chair and vice-chair.

2. The council shall meet regularly at least twice in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor, the chair or [of] five or more members and, whenever practical, upon no less than seventy-two (72) hours effective notice to each member.

3. The council shall determine its own rules and order of business, provided that all members shall have an equal, inalienable, independent right to propose to the council what they believe it should consider without need for a second, and shall provide for keeping a public journal of its proceedings.

4. Voting and all motions shall be in accordance with the rules of the council and shall be recorded in the journal of the council, provided, however, a roll call vote must be taken if requested by any one council member. Five members of the council shall constitute a quorum, but a smaller number may convene from time to time and compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. Unless otherwise provided for herein, no action of the council shall be valid or binding unless adopted by a vote of five or more members of the council.”

Resolution No. _____

4. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that a new section be added to the Charter, establishing a reapportionment commission, as follows:

“Section 3-9. County Reapportionment Commission. 1. There shall be a county reapportionment commission responsible for establishing the boundaries of the council districts.

2. The initial reapportionment commission shall consist of nine members, one from each of the state House of Representatives districts; except that the Thirteenth House District shall have three members including a resident of Maui, a resident of Moloka'i, and a resident of Lana'i. The members shall be appointed by the mayor with the approval of the council.

3. Each subsequent reapportionment commission shall consist of nine members appointed by the mayor with the approval of the council, and shall include members from each council district.

4. The year of 2011 and every tenth year thereafter shall be reapportionment years. The reapportionment commission shall be appointed and confirmed by March 1 of the reapportionment year, and shall file a reapportionment plan with the county clerk by December 31 of the reapportionment year that shall be applicable to the next election at which council members are elected to regular terms. The reapportionment commission shall be dissolved after the filing of the reapportionment plan.

5. The county clerk shall furnish all necessary technical and secretarial services for the reapportionment commission. The council shall appropriate necessary funds to enable the commission to carry out its duties.

6. The reapportionment commission shall be guided by the following criteria in establishing the boundaries of the council districts:

a. No district shall be drawn to unduly favor or penalize a person or political faction;

b. Except in the case of districts encompassing more than one island, districts should be contiguous and compact when possible;

c. Where possible, district lines shall follow permanent and easily recognized features, such as streets, streams and clear geographical features, and, when practicable, shall coincide with census tract boundaries;

d. Districts shall have approximately equal resident populations; and

Resolution No. _____

e. No single district shall include both any part of the island of Lana`i and any part of Moloka`i and consideration shall be given to provide the voters of the islands of Lana`i and Moloka`i effective representation.

7. The district boundaries as established by the reapportionment commission shall be in effect at the first regularly scheduled council election following the filing of the reapportionment plan and for any subsequent council election. The district boundaries in effect prior to the filing of the reapportionment plan shall remain in effect during the duration of the term of all council members elected or appointed to represent such districts until the expiration of the full term of such council members, including any election held to fill an unexpired term under section 3-4.

8. Any registered voter may petition the proper court to compel, by mandamus or otherwise, the appropriate person or persons to perform their duty or to correct any error made in a reapportionment plan, or the court may take such other action to effectuate the purpose of this section as it may deem appropriate. Any petition must be filed within fifteen (15) calendar days after the filing of the reapportionment plan.”

5. That material to be repealed is bracketed and new material is underscored;

and

6. That, pursuant to Section 14-2(1) of the Charter, this resolution be submitted to the voters of the County of Maui at the next general election; and

7. That the County Clerk prepare the necessary ballot for presentation to the voters at the 2010 General Election; and

8. That the ballot question relating to the amendment be set forth as follows:

Should at-large elections for Maui County Council members be abolished and replaced with elections for members from each of nine election districts, with the district boundaries to be determined by a County Reapportionment Commission according to established criteria?

Resolution No. _____

9. That, upon approval of the majority of the voters as indicated by the number of votes cast and upon official certification of such result, the amendment proposed herein take effect; and

10. That certified copies of this resolution be transmitted to the Mayor, the County Clerk, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

paf:kmh:10-081a

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

August 6, 2010

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, AUGUST 6, 2010, BEGINNING AT 9:05 A.M., WITH CHAIR DENNIS A. MATEO PRESIDING.

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010, will come to order.

Mr. Clerk, may I have the roll call, please?

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, JO ANNE JOHNSON, SOL P. KAHO`OHALAHALA, WILLIAM J. MEDEIROS, WAYNE K. NISHIKI, JOSEPH PONTANILLA, MICHAEL P. VICTORINO, VICE-CHAIR MICHAEL J. MOLINA, AND CHAIR DENNIS A. MATEO.

EXCUSED: NONE.

DEPUTY COUNTY CLERK LANCE T. TAGUCHI: Mr. Chairman, there are nine Members present. A quorum is present to conduct the business of the Council.

CHAIR MATEO: Thank you very much, Mr. Clerk. Members, this morning, our opening remarks will be provided to us by -- by our Vice-Chair, Mr. Molina.

OPENING REMARKS

The opening remarks were offered by Vice-Chairman Michael J. Molina.

PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR MATEO: Thank you very much, Mr. Molina.

Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, proceeding with presentation of testimony on agenda items.

CHAIR MATEO: Thank you. Mr. Clerk, can you tell me how many individuals have signed up to provide testimony this morning?

DEPUTY COUNTY CLERK: Chairman, we have received nine requests from individuals who wish to offer testimony on agenda items. Shall we proceed?

CHAIR MATEO: Thank you. Members, before the Clerk calls up our first testifier, the Chair would like to set the parameters for anyone providing testimony to the Council this morning.

We welcome anyone wishing to provide and share your comments with the Council. You will be allowed to speak for three minutes on any of the items posted on today's agenda.

When your name is called, please advance to the podium, clearly state your name for the record. If you represent a group or organization, please so state the name of that group or organization as well. A lighting system on the podium is there to assist you with your testimony. At the start of your comments, the green light will be lit. At the two-minute-thirty-second mark, the yellow light will be lit, letting you know you have thirty seconds to conclude. And at the three-minute mark the red light will be lit, at which time you will need to conclude your testimony. If you do need, however, a little more time, an additional minute will be provided to you so you're able to conclude your comments.

And for those of us with cell phones, pagers or other noise-making devices, this would be a real good time to turn them off or set them on the silent mode. Decorum in this Chamber will be maintained at all times.

Mr. Clerk, please call up our first testifier.

DEPUTY COUNTY CLERK: The first person to testify is Jim Smith, he'll be testifying on Bill 45, Bill 47, and Committee Report 10-79, to be followed by Carol Reimann.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. JIM SMITH [testifying on Bill Nos. 45 (2010) and 47 (2010), and Committee Report No. 10-79]:

Chairperson Mateo, Members of the Maui County Council, how are you? This is really watershed moments. What is happening today is -- is we're gonna have a choice. We're gonna -- we're gonna follow process which has been in our Charter since its beginning and -- and reverence for process. And it comes to you in three bills or three items. And we're gonna look at results and we're gonna look at the consequences of focusing on results over time. Okay.

If you will look at process, you find that our Charter provides a citizen advisory committee, our Charter provides a Charter Commission, our Charter provides a Board of Variance and Appeals. And this is incorporating citizens into the process because this is what is value. It's the process. And so now we have a Charter Commission.

And before you is a very, very serious matter which is the proposal to take from me the right to vote for anyone in this County. There's a lot of bogus arguments.

If you look at the U.S. Senate, two senators from Hawaii, two senators from New York. It's not based upon population. Okay. And at the time, across the world, this was the best body of deliberative people in existence at the time. And that was because the focus was not on rancor or power, but on deliberation. And that's where the Charter Commission is.

And if you look at our -- our way of voting, it -- it advances from the U.S. Senate by giving us the vote for the representatives. So from my perspective, it is the best there can be. It brings to me someone from Molokai who is inherently connected to a rural agricultural environment. Same with Lanai. Same with Hana. It brings urban Wailuku in there. If you have a problem with power, develop your coalitions and get your people elected, but the system is beautiful.

And I would suggest it's most imperative that you transmit this to the Charter Commission. Because I don't relish the thought of a quick fix and that you should propose from this body that fix when it's not broken.

That ends my testimony on -- on this one.

CHAIR MATEO: Thank you.

MR. SMITH: The second proposal that I -- is -- is this Bill No. 47, which comes from your water. And it has to do with something that is pervasive in our -- our community. And that is, some people won't obey the law. They just won't do it. They don't have a sense. They're transient, they're from another culture, they do what they want when they want, and they don't wanna hear anything else. Okay. And you're gonna try to fix it by writing a law that they're gonna ignore anyhow. Okay. So to me, you've got to protect the people who are involved with the process.

The Department of Water Supply does one thing, it supplies water; it doesn't enforce financial taxations, it doesn't do any of those things. Water is a public resource; it's not a hamburger. I don't buy water and eat it and pay for that. I use water. And that means that I'm paying for the use of a public resource. I do not own it.

So I would ask you to change your bill from "consumer" to "agricultural water user". Okay. And then I would ask for you to incorporate the word "person" instead of "consumer". Okay.

I don't believe that this is going to help, but I'm participating with this because I feel that's the corruptive influence in this bill is the use of the word "consumer". You've transferred from size of water meter to amount of water, which really is the only concern of the Department of Water Supply, to something else, an agricultural consumer, which bifurcates and just doesn't work. But you wanna do that. I ask you keep -- keep the public resource a public resource.

Then I would ask you to delete Paragraph three of the application, which goes into a demarcation of irrigation systems and all those types of things. Really, all you need is an affidavit from these people saying that they are using their lands for farm.

I have -- I have land. I have two horses. I buy a lot of feed. I don't use much water, but it's agricultural land. I've -- State agricultural land has water. What's gonna happen to that vested right to water to agricultural land? You're changing all that. So I would ask you, please deliberate closely on this. Change -- if you can, change those words. We've got to pull back from this notion of a -- of a -- of a people as a customer. That's gotta go.

Now that's the end of my testimony on that one. The final one is something that I'll connect to this process. You know in 1992, a model of government was given to us, which was the entrepreneurial model. And that was to focus on results, that was to

increase individual power, and that was to streamline and make everything work. It was called the entrepreneurial model. And what have we got now? We've got chaos from that model.

And here we have -- I reviewed the record. Here we have, before the Committee, a former Corporation Counsel who has an appeal before the Board of Variance and Appeals, and we have a former Public Works Director. And they're advocating for a change, which means you break the law and then you make the law. And that's the premise of the entrepreneurial model, because entrepreneurs break systems. That's how they're successful. They don't make or revise or help systems, they break 'em. Okay. And that's what happens when you have a public official who never loses his power. He's now not in the County, but he's got the power and he's successful and he survives.

But our process, our political system, isn't that way. You have to protect our process for the system to survive. And you're under constant, constant threat from entrepreneurial public officials, starting with Corporation Counsel, going wherever you want with that.

So I would say this is what we need to do: BVA's the process. You've got four guys -- it's on its face, it's a special law. Okay. You did that with the Superferry. The legislature was convinced to do that with the Superferry. And here we have four -- four customers, we'll say, who have, from 2005 to 2008, difficulties getting through the system, and we're supposed to change the law so that they can get through it.

Now, to me, that's special. And it's wrong because that would assume our laws are flawed. And they're not. They had a problem with a director's decision, they go to the BVA. And that's the solution, period. That's our solution. That's the process solution. Instead, they file appeals with the BVA, and then they come here. They get double double. Is that what you want? You wanna be a part of that scenario? I say, "Sorry."

What is the connection between the approval of these and money in my pocket as a landscape worker? There is none. Okay.

How come they waited from 2005 until 2010 to get something going? Huh? Financial difficulties, Madoff, all these types -- now, at this hour, you're convinced that we need to push forward with this? For what? Not gonna happen in a day. You're not gonna stimulate the economy with one vote on a flawed idea that we should circumvent the BVA and take -- now, the director -- it's interesting. You objected to the fact that the director was restricted to the number of conditions he could make. And, in this bill, you restrict him further by saying he's limited to the permitted uses. In other words, in this document that's filed with this land, the director can do nothing

but list the permitted uses. Well, you've taken the power away right here in your -- in your -- in your report.

You said you were concerned. Well, that's not concern. That's just mouthing it.

And I would say we need to protect that process. And you guys, thank goodness, are the ones to do it. Aloha.

CHAIR MATEO: Members, is there a need to have any part of the testimony rephrased?

Thank you, Mr. Smith.

COUNCILMEMBER KAHO`OHALAHALA: Chair?

CHAIR MATEO: I'm sorry. Mr. Smith, hold on.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. Jim, thank you. You always remind us about where we should be. And I appreciate that.

Do you have anything that's listed there for those suggestions that you had stated earlier?

MR. SMITH: With regard to?

COUNCILMEMBER KAHO`OHALAHALA: Which -- with regard to language?

MR. SMITH: Of the -- of the water?

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

MR. SMITH: I have -- it's easy. That's "B", Section 2, 14.10.010, which is "B", "agricultural consumer". I'm suggesting you change that to --

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MR. SMITH: -- "agricultural water user".

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MR. SMITH: And then -- and then on the -- and use "person", use the word "person". "Each person", not "each consumer". And then when -- and you would use that in -- in the

definition. It would change your definition to say "agricultural water user" instead of "consumer". And it means a person instead of a consumer. Because it's a public resource and we share that.

And then the last one would be at the Paragraph "C" of that Section 14.10.010, which was number three on that, which is talking about what is needed on this application. And it says a description of the commercial. And I would say just delete that. This is repetitive. I think in subdivision requirements, they do all that kind of stuff. This is not to say I endorse the idea of this bill.

COUNCILMEMBER KAHO`OHALAHALA: Okay. I appreciate that. Thank you.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Just for clarification, on the last item that you testified on -- and I wrote this down -- you made the statement, you said, "Break the law and then make the law."

MR. SMITH: Okay.

COUNCILMEMBER JOHNSON: Can you clarify? Because I just wanna make sure. I think I understood what you were saying is that people that were once in government and then move outside of government --

MR. SMITH: This is interesting because when you have an entrepreneurial public official, you don't distinguish. It's about individual power. So what happens is you have, for example, a Public Works Director in office doing these things in 1996 -- or 1994, one Public Works Director who was to leave required as a condition for preliminary subdivision approval a Community Plan Amendment for a property. Okay. He required it. The next Public Works Director, while this was on appeal, sent an amendment as the SMA was going through. On the day of the SMA, there was an amendment to the preliminary approval that removed the requirement. Okay. It removed the requirement.

So I filed an appeal on that decision to remove the requirement because it already was set as a matter of law. The director made the decision. A&B had their appeal, it's pending. It's funny, A&B never withdrew their appeal until they got their -- their SMA. Okay.

But this is a public official now, okay, who has the law defined by the previous Public Works Director in a preliminary approval letter, okay, and then changes that law. So

in effort -- in effect, I say, well, he's making new law. So he broke one law, which is consistency -- incidentally, the -- conform or consistent, okay, it's the same thing. It's the -- and conformity is the only legal term that's in Black's Law Dictionary. So the consistency is simply throwing up a confusion. And all -- I mean, I don't -- I can't say. But that's intentional, I would suspect, because it's a vagary. And courts love vagaries. That's where they get their power. Have I explained?

COUNCILMEMBER JOHNSON: Yes. And -- and I do -- and I thank you for the clarification of -- could you also state which subdivision, if you --

MR. SMITH: Of -- of where this happened?

COUNCILMEMBER JOHNSON: Right.

MR. SMITH: I can give you the BVA appeal number, if you wish.

COUNCILMEMBER JOHNSON: Okay.

MR. SMITH: Okay. This is the -- this occurred in -- in August of 1994. All right. And it was the Kaunoa II Subdivision, and the tax key mark at the time was 3-8-001:064. And the LUCA file number --

COUNCILMEMBER JOHNSON: Uh-huh.

MR. SMITH: -- was 3.1638. Now, the appeal that was pending was filed by Alexander and Baldwin, and it was 94 --

COUNCILMEMBER JOHNSON: Uh-huh.

MR. SMITH: -- BVA 41. Okay. And it was scheduled for hearing on December 8, 1994. And I appeared at that hearing, and they didn't take it up. So that gave me a foot into the process because it was publicly announced.

COUNCILMEMBER JOHNSON: Okay.

MR. SMITH: But that's how I know that.

COUNCILMEMBER JOHNSON: I really appreciate that because we oftentimes don't have the institutional or the, I guess, historical firsthand experience with many of these things to give examples. So I do appreciate this.

MR. SMITH: You see, from my perspective, it's the Director of Public Works' responsibility to bring to this Council an impartial, thoroughly documented position. Okay. And

they don't do that. They're -- they get a hearing from a developer and they say, "Don't blame me, you gotta change the law." And then they come to you and say, "Look, the law," and you see all these starving people and you go, "Okay. Well, let's change the law." But that's breaking the law and then making a new one.

Bed and breakfast is another example. So that's --

COUNCILMEMBER JOHNSON: Thank -- thank you, Jim. I really appreciate your clarification. Thank you.

MR. SMITH: You're welcome.

CHAIR MATEO: Thank you very much, Mr. Smith.

MR. SMITH: You're welcome.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Carol Reimann, she'll be testifying on Bill 45, followed by George Lavenson.

MS. CAROL REIMANN [testifying on Bill Nos. 45 (2010)]:

Good morning, Chairman, Members of the Maui County Council. My name is Carol Reimann and I represent the Maui Hotel and Lodging Association. We are the legislative arm of the Maui visitor industry. And the visitor industry on Maui is the largest employer of County residents. I'm here to support Bill No. 45, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS".

There are four projects that I am aware of that are affected by this issue. They include the Westin, KORV, the Hyatt Regency, Honua Kai and the Royal Lahaina projects, all of which are currently unable to move forward. Removing the word "conformity" as stated in the bill will allow these projects to continue on with their permitting process. All of these projects have already received SMA approval and were determined to be consistent for purposes of an SMA.

Again, I'm here to provide support for the bill as proposed and would like to see the projects move to the next step.

Thank you for the opportunity to testify.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you, Ms. Reimann.

MS. REIMANN: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: George Lavenson, followed by Norm Bezane.

DR. GEORGE LAVENSON (testifying on Committee Report No. 10-79):

Good morning, Mr. Chairman, Councilmembers. I'm Dr. George Lavenson. And I am one of the members of the West Maui Charter Group that helped to develop the proposal for district voting that we are considering today.

And the reason for considering this is, right now, as you know, our representatives in our areas and districts are selected or elected by Maui as a whole and not by the direct people that they represent. And this is not true representative government. It's not the American way. And we suggest that our representatives be elected by those of us in our areas.

The problem has, and can be, that sometimes a representative is elected by Maui as a whole, but is not the choice of the people in that area that representative is supposed to represent.

We are very fortunate in West Maui, we have a representative who does represent the majority of us, but that is not always true. And like in West Maui, it's important that this be continued, that we have someone who can represent, on the one hand, having some of those revenues that we generate to fix the infrastructure so we can continue to generate revenues, and, at the same time, protecting and maintaining the charm and the specialness of Maui and of West Maui, which makes it all happen. And for which I think we have a stewardship. So we need to have a voice in who our representative is.

The rest of the government, state and national, do select their own representatives, but we, in our districts, cannot.

Now, there is concern that if our representatives are selected by Maui as a whole, they'll have a broader outlook at what's best for Maui as a whole. And, yet, both in

State government and nationally, and elsewhere, we can have representatives who not only look out for their constituents, but the responsibility as a whole.

There are some who have pointed out that to have district voting could have a negative impact for a few. Nothing's perfect. But it would have a -- a good positive out -- outlook or result for the majority of us. And any negativity could be accommodated and accomplished. There are some, I think, that are concerned they were voted in, some of you, on the existing system, that, if it's changed to district voting, you wouldn't be reelected. And I just would remind you, if you -- you're all good people and if you represent your -- the people you represent in Maui well as constituents, you should be reelected, too.

So I'm asking that you consider putting this on the ballot for the coming election and let the people decide. Don't table it. Put it to a committee, it goes on for years, but let the people decide. Those of you who say I've talked to some people who are not in favor of it, the polls say the majority want it, let the election decide. And I would --

CHAIR MATEO: One minute to conclude.

MR. LAVENSON: -- recommend and ask you to put it on the ballot this fall. Thank you very much for letting me make these comments.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you.

MR. LAVENSON: Thank you. Aloha.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Norm Bezane testifying on Committee Report 10-79, to be followed by Doreen Gomes.

MR. NORM BEZANE (testifying on Committee Report No. 10-79):

Aloha, everyone. You have an opportunity today, you know, to do a positive thing for the County.

And just as an aside, referring to the testimony of the articulate person who began today, the system is broken. The United States Senate is not elected by the people of the entire country; it's elected by people from each state. The House of

Representatives, 435 people, are not elected by the state, they're not elected by a county; they're elected by their local area. And that's what -- the system that we should have here.

It is clear that the district voting proposal could have a direct impact on your election to office. Let's be frank about this. Some of you might feel it is in your self-interest to continue the present system. In my view, you need to put this aside. You represent the people. The majority of thinking people clearly want district voting. In our County, we have a tendency to study things to death when common sense would say that an easy decision can be made.

I would hope that you would consider this issue not in your own self-interest, but in -- in the interest of the people. This is a chance for you to step up and vote in the interest of the people. In this election year, with so many candidates, people are paying a lot of attention to what you do. Some will be -- will consider how you vote on this issue in -- in their own decisions on who they're going to vote for.

I encourage you to be pono, to do the right thing, for the people, to support putting this on the ballot and not postpone this issue. Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you. Mr. Clerk.

DEPUTY COUNTY CLERK: Doreen Gomes, she'll be testifying on County Communication 10-159, followed by Alan Kaufman.

MS. DOREEN GOMES (testifying on County Communication No. 10-159):

Good morning, Chair Mateo, Members of the Council. My name is Doreen Napua Gomes, Vice President of the Kula Community Association. And this morning, I'm testifying on County Communication No. 10-159.

I support and thank Councilmember Nishiki for submitting the -- the resolution urging the Administration to negotiate a water source agreement which would require Piihola South, LLC to dedicate a fully-constructed, completed and outfitted groundwater well to the Department of Water Supply so that the County would receive 100 percent of the maximum water capacity minus water allocation credits to the well owner.

Should a developer be allowed to cut in line of all the longtime residents that have been patiently waiting? Many are discouraged with the process, but some continue

to have faith in the system so they can subdivide their properties and give their children a place to live in. On the other hand, others have lost faith in this system.

Any agreement with a developer getting 75 percent of the water compared to the County's 25 percent, in our opinion, is not in the best interest of not only the Upcountry community, but any community.

There are about 1,312 applicants, not individuals, on the Upcountry Water Meter List. Some of the applicants I am -- we are told are requesting ten or more meters. I would think that 25 percent of water allotted the County would not even take care of the first 100 applicants on that wait list.

Thank you for this opportunity to come before you this morning.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. Doreen, I'm -- I'm concerned about this testimony. Where did you get the 75/25 breakdown? And -- and the reason why is in this -- in this communication this morning from the developer, he mentions -- or they mention that the County has entered into this -- some sort of agreement and that the Council has already initiated or approved this.

To my knowledge, the Council has never entered into any water source agreement. And just recently, the Council, through its deliberations and concern, passed an ordinance because of a past agreement signed by a former Administration, which was 75/25, in which the Water Director presently canceled, because some of those tests that were performed by this private developer proved not to bear out what the actual pump capacity came out. In other words, the developer is saying that they promise that this is how much water's coming out and then only so much came out, which was less than was approved. This was done by a past Administration.

Is this agreement that you're talking about, 75/25, what was told you or your organization that is going to occur --

MS. GOMES: Mr. --

COUNCILMEMBER NISHIKI: -- for this development?

MS. GOMES: Mr. Nishiki, in all due respect for the source, to the source of this information, we did have a meeting very recently, and it was through conversation between --

between several individuals. But the source of this information comes -- and, again, I -- I would like to not disclose the actual source -- comes from within the County.

COUNCILMEMBER NISHIKI: Okay. Yeah, it is most disturbing to me because the Council made this correction and -- and -- and was concerned about this bad deal that occurred, and, also, bad results. And -- and I wish not to see this again occur. It's a bad deal for the County, developer gets 75 percent and -- and then the people of Maui County get 25 percent. And then we hear even horrific stories about now a developer selling these water meters for 20,000-plus so that, now, only the very rich can afford. And, again, it leaves those people waiting on the list probably dying before they ever get anything, if we are to continue this type of policy.

But, anyway, thank you so much.

MS. GOMES: I appreciate your comments. Chair Mateo, thank you.

CHAIR MATEO: Thank you, Ms. Gomes. I'm sorry.

Ms. Baisa, did you --

COUNCILMEMBER BAISA: No.

CHAIR MATEO: -- have questions?

COUNCILMEMBER BAISA: No.

CHAIR MATEO: Thank you. Thank you, Ms. Gomes.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Alan Kaufman, he'll be testifying on Committee Report 10-80, County Communication 10-159 and Committee Report 10-79.

MR. ALAN KAUFMAN (testifying on Committee Report Nos. 10-79 and 10-80, and County Communication No. 10-159):

Good morning. I'm Alan Kaufman. I live Upcountry.

Financial disclosures: By honoring the Board of Ethics' request requiring candidates to file financial disclosures at the same time as their nomination papers, you will help

achieve the goal of making government more efficient. Congratulations on voting unanimously to place this Charter Amendment on the ballot.

Piiholo South: It is past time for the County to develop or to purchase new water source so those on the priority list may receive meters. The County could and should wean itself from developer dependence, the practice of having those with deep pockets develop source for new projects while providing only modest amounts of water for those on the waiting list.

District voting: I'm not here today to discuss the merits of district voting. Charter amendments are put forth because there are issues that the people, not Council or commissions, should decide. How we elect our representatives is, obviously, an issue that should be determined by the people rather than by their elected representatives.

As Councilmembers, you occupy chairs in this room because you were placed here by the voters of Maui County. If you respect the individuals who voted for you, you will also appreciate these same voters are entitled to examine the issue of district voting and make their own decision.

You have the opportunity to defer this issue to a committee or to refer it directly to the voters. A vote to place district voting charter amendment on the ballot is not a vote for or against district voting. Putting this on the ballot will demonstrate the Council's confidence in and respect for Maui's people. It is my hope that all nine Councilmembers will show their commitment to Maui by providing our community the opportunity to discuss this measure in the coming weeks and to voice an opinion on it in our upcoming election. Thank you.

CHAIR MATEO: Thank you, Mr. Kaufman. Members, is there a need to have any part of the testimony rephrased?

Thank you, Mr. Kaufman.

MR. KAUFMAN: Mahalo nui.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Richard Pohle, he'll be testifying on County Communication 10-159 and Committee Report 10-79, followed by Robert Wintner.

MR. RICHARD POHLE (testifying on Committee Report No. 10-79 and County Communication No. 10-159):

I am Dr. Richard Pohle, founder of the Upcountry Meter List Association, UMLA.

UMLA supports district voting. The Charter question should be on the ballot this November. If you refer the district voting question to the Charter Commission, it won't be on the ballot until 2012, if then.

This ballot question will only discuss elimination of the current at-large system. It won't settle -- it will settle the district at-large question. The Charter Commission will be then directed to establish specific boundaries. That is when we should address the issues by Mr. Mateo's Viewpoint article, not now. Mr. Mateo does not tout the benefits of at-large voting; only the problems of a single approach.

Sending the issue to the Charter Commission will kick the issue down the road a few more terms. That's all it does.

Each district has its particular issues. People in Lahaina don't really care about Upcountry water meters. It doesn't affect them. Or, if it does, it costs them money. Our representatives serve those who elect them. District voting will ensure that the Councilmember for each district will have sufficient time, knowledge in-depth and motivation to be a strong advocate for the position of those voters he or she represents. The district council person will have the time and motivation to find out what the district voters want.

Politics is the art of compromise between districts with different needs and goals. Compromise and horse trading will occur when the various issues are well understood and strongly advocated by each district's representative. If the issues are not understood and strongly advocated because a representative attention and advocacy is diluted by county-wide voting, who cares what happens? Who cares where -- where anyone lives?

And then there is the sign pollution, the cost of running a county-wide campaign, the voters' issue of nine new candidates. Who are these people? Most don't even list their districts on the sign. When you have no real way to know the candidates except the number and color of the signs and a small statement in the election bulletin, the election will go to the best known names and special interests which tend to be county-wide.

The incumbent even gets to keep unused campaign funds for use against any newcomers next time. That is why the Council refuses to put district voting on the November ballot, it helps 'em get reelected. Once elected they stay elected.

Our at-large system does not reward competence and penalize incompetence. This is not how a representative democracy is supposed to work.

I ask the people of Maui to take this pledge. If district voting question is not on the November ballot, I will vote on principle against all Councilmembers that do not represent my district. My job as a conscientious voter of Maui just became a lot easier.

And may I say that the Senate was – the existence of the U.S. Senate was a result of a compromise. I come from Rhode Island, that was the smallest colony. We refused to join the Federation until we had a little bit of assurance that we would not be overwhelmed by Massachusetts. Therefore, they gave us two senators, the same as Massachusetts, as a compromise to induce us to come in.

That ends my testimony on district voting.

Now, this is on Resolution 10-159 by Mr. Nishiki.

Greetings. I am Richard Pohle, founder of UMLA, the Upcountry Meter List Association. I speak to proposed resolution by Councilman Nishiki. The title sounds good, but if it represents the will of the Council, it will end any more water source development Upcountry. UMLA opposes it. The resolution state that developers jump ahead. They do not. Piiholo South was drilled so that the owners might develop their land in accordance with the Show Me the Water rule. It was their money, their risk, and now it is their well. They followed County rules and requirements. If you really wanna move the list, drill your own wells, don't condemn developers who are just following your rules.

The developers are offering the County – the water to the County for no money. It is the County's responsibility to distribute water; not the developer's. This well will supply water for about 200 list names, or 300 meters. If the County bought the well, they could supply water for many more.

This resolution recommends the DWS take 100 percent of the well in return for some water allocation credits. You wait for someone to develop a resource and then you wanna seize it. That sounds like Communism. The resolution is not at all friendly in tone or fact to the other possible developers that might someday drill their own wells.

Wells are the only new possible sources near term for the Upcountry. Wells are the most reliable water sources and add to water source redundancy.

County policies have made Upcountry development of housing impossible except for those who can afford to drill their own wells. Unless you want a well and tank in every yard, the County should be encouraging these developers. Upcountry needs these people. Why do you make them sound like the bad guys in this resolution?

I question whether the Department of Water can even -- now has the authority to give water allocation credits. Section 14.13.070 [sic] of the 2009 meter list ordinance reads: "Provisions of this chapter shall not apply to applicants using source credits developed in the Upcountry water system through a previous agreement with the board or the department, which agreement was executed before the effective date of this chapter, 2009." That implies water source agreements reached after 2009 are subject to the meter list requirements. Seems to me the Council now has to approve any water source agreements that differ with that. If that is so, approval of this resolution by the Council would look ridiculous.

This resolution is a farce. It adds no water, and discourages further development of the only new Upcountry water sources available, that is wells.

Could you please reject it?

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you very much, Mr. Pohle.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Robert Wintner. He'll be testifying on Committee Report 10-83, followed by Gina Flammer.

MR. ROBERT WINTNER (testifying on Committee Report No. 10-83):

Aloha, Council. I'm Robert Wintner, representing Snorkel Bob's.

Aquarium collecting is a moral issue. Last month, Dr. Brian Tissot came here to say that the aquarium conflict has two solutions; the first solution is a ban, and the second solution is management. Dr. Tissot then reviewed twenty years of data reports, grant funding, study groups, political campaigns, more data and more reports resulting in failure. We have depleted reefs with collectors demanding more aquarium fish for an amusement hobby on the mainland.

Maui's Mayor and the entire legislative delegation want aquarium collecting controlled. They see the unlimited extraction as a severe threat to Maui's economy. Reported catch revenue here ranges to 110,000, enough to buy a small fraction of a single affordable house. The non-reported and poached aquarium catch is much greater, but only the collectors know the true volume.

Tourism employs hundreds of Maui people; not two dozen.

Aquarium collector regulation will be a big step in protecting our tourism economy. Maui suffers from adverse perceptions of poor reef health and a renegade aquarium trade with no catch limits, no limits on the number of catchers and no constraints on rare or endemic species.

In the last ten years, the number of collectors and the dollar value of the aquarium catch have increased while the catch has declined in a classic profile of a collapsing fishery. This is a resource issue.

The bill will require standards and permits for aquarium collecting in Maui County will resonate far and wide. Since we last met, the Big Island of Hawaii County Council is in the process of hearing a resolution to urge DLNR to ban aquarium collecting across Hawaii.

Yesterday, Senator Josh Green from Kona announced that he will introduce legislation to the State Legislature, in January, to ban aquarium collecting across Hawaii. That information and that story was on National Public Radio twelve hours later, this morning.

Also keep in mind that all three candidates for governor want to revive the Superferry, giving Oahu and Big Island collectors easy access to Maui County reefs.

The DAR voice on aquarium collecting calls it, and I quote, "our most lucrative near shore fishery", end quote. But that's not science; that's economics. I'm in business, and I'll bet the farm that millions in tourism is more lucrative than a hundred grand in aquarium fish. Both tourism and aquarium collecting depend on repeat business, but many happy tourists see the same fish over and over while the aquarium trade depends on fish dying to stimulate continuing demand.

The aquarium trade is a crime against nature, an affront to the host culture and a severe threat to Maui's economy.

I'd like to close on a sobering note. And it's this: Many people around the world have had a queasy feeling the last few months, watching, as gushing oil was killing a living ocean. People in Hawaii have had that same feeling for years, watching the plunder

of our reefs. We want to stop the slaughter while we can. We don't want what Kona has, an assembly line of little styrofoam coolers loaded for transport away from home reefs, leaving those reefs void of fish.

CHAIR MATEO: One minute to conclude.

MR. WINTNER: More people in Hawaii, and around the world, are learning of this travesty every day. Yet, I believe that Hawaii reefs may rebound if a chosen few can find the courage to do the right thing. Please let Maui reefs recover and thrive again with an abundance of fish.

Thank you, Council.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you, Mr. Wintner.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Gina Flammer, testifying on County Communication 10-159, followed by Zach Franks.

MS. GINA FLAMMER (testifying on County Communication No. 10-159):

Good morning. My name is Gina Flammer. And I'm here today as a Kula resident.

I first want to congratulate you on your nine-page agenda. It looks like you guys are doing a tremendous amount of work in committee. So thanks for all that work.

I'm going to clarify a question that Councilmember Nishiki asked earlier. I'm here to testify on Item 10-159, the water resolution. I was at a meeting this past Tuesday, a community meeting, when developer Clayton Nishikawa presented information on a new water agreement with Piiholo South. He explained that the agreement has been written and is about to be signed by the County. He stated that it's a standard water agreement where the developer receives 75 percent of the water and the County would receive 25 percent. Well, I have to tell you, the reaction in the room was shock and disbelief.

It was very similar to three and-a-half years ago when our community learned about the secret Maui Land & Pine well agreement. That reaction again was shock and disbelief, that the County couldn't have done a better job for us. It would seem that the County should be fighting much harder for an agreement that would benefit the people on the Upcountry water list.

At the meeting, we did a few calculations. Now, they've not been confirmed by the Water Department, but I believe that they're fairly accurate. The Piiholo South Well is anticipated to produce between 1.7 to 2 million gallons per day. Using the Water Department calculation, the two-thirds of two-thirds rule, we figured out that the well could produce about 800 gallons a day that could be used to distribute to consumers. That would mean that out of the two million gallons, the developer would get about 600,000 gallons. Kind of figured that equated to about 450 meters. I know the Department, in the past, has used 1,350 as the number to gallons per day for a meter issuance.

Upcountry residents on the meter list would only get 200,000 gallons per day. And that's less than 150 meters. And we all know that the applicants on the list, they can have more than one meter. So it doesn't look like the list is really going to get addressed all that well.

Ideally, the County would pay for the well and then use it strictly for the Upcountry Water Meter List.

Now, I can understand the Piiholo South developer getting some of the water for his own project, that makes sense, but I don't understand allowing developers to sell or allocate excess water. I know that in the previous -- in a previous agreement, not the Maui Land & Pine, the developer was allowed to sell excess water credits on the open market. And I just don't feel that that's right.

I have also included in my testimony a letter from Piiholo South showing that they will allocate 120,000 gallons per day to the Kula Ridge and Kula Ridge Mauka Subdivisions.

Now, Kula Ridge is anticipated to use over 80,000 gallons per day. That would mean Kula Ridge Mauka would get less than 40,000 gallons per day. If water meters are issued, and the water usage is much higher, you know, that's 227 acres of ag land the Kula Ridge Mauka. Well, the entire system would then be affected, if that water usage is higher than -- than we thought.

It would also seem that attaching a controversial development, the Kula Ridge, to this well agreement, it's only going to complicate negotiations with the County in an already overly-politicized environment due to the Upcountry elections.

I've also heard that the water has yet to be tested for water quality. And from what I understand, Piiholo South is a former pineapple field. And we all know --

CHAIR MATEO: One minute to conclude.

MS. FLAMMER: -- pineapple fields have had a history of contamination with water, groundwater supplies.

I would urge the Council to require water testing and also put in a provision for continual water testing over time.

And, lastly, I've also heard that the well has not -- was not inspected by the County during construction. And this also concerns me greatly. There's a reason the County has specifications and does inspections while a well is being built. And that is because, once the well is dedicated and the water meters are issued, it's the County taxpayers and the County that -- that's on the line if there'd be a failure of the well.

So thank you.

I also want to speak real briefly on the ag water rate bill. And with that, I just want to thank the Council, especially Councilmember Victorino, for -- for their work on that. You guys have obviously listened to the community on this bill. And it really shows. So my hat's off to you for doing something that no other Council has been able to do with that.

So thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Thank you, Gina. I -- I know that your representative, Gladys Baisa, again, is -- is concerned about the -- the water issue. However, my question in regards to some of the statements that you've made today, when the developer came to you -- I -- I presume -- what meeting was this that you're referring to?

MS. FLAMMER: This was a Kula Community Association board meeting.

COUNCILMEMBER NISHIKI: Okay. And -- and then the developer said that he had a signed -- I know he's coming up next, but did they represent that they had a signed agreement?

MS. FLAMMER: This was the Kula Ridge and Kula Ridge Mauka developer, Clayton Nishikawa, who said that the -- the agreement has been drafted and it's just about to be signed.

COUNCILMEMBER NISHIKI: Okay. And -- and that had nothing to do with the 75/25 percent breakdown that --

MS. FLAMMER: Yeah, he described that that's what the agreement is.

COUNCILMEMBER NISHIKI: Oh, that is what the agreement is?

MS. FLAMMER: And he said it's a standard County agreement, as if we shouldn't have issues with it because it's the standard agreement.

COUNCILMEMBER NISHIKI: Yeah. And -- and -- and I -- and I thank you for that. I'll pursue it with the next speaker. Thank you.

CHAIR MATEO: Thank you, Mr. Nishiki. Thank you, Ms. Flammer.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Zach Franks, testifying on Committee Report 10-1 -- 10-79, Committee Report 10-80, and County Communication 10-159, followed by Alice Lee.

MR. ZACH FRANKS (testifying on Committee Report Nos. 10-79 and 10-80, and County Communication No. 10-159):

Chair Mateo, I would like to ask you permission to testify separately on the questions of the Piihola Well and on the Charter amendment. May I have -- may I have three minutes for each?

CHAIR MATEO: If the Members have questions for you, Mr. Franks, you may address the questions that the Members will ask of you.

MR. FRANKS: Well, then, since -- since I'm the expert on the Piihola Well, perhaps I better give all of my time to that. You know, I -- I'm -- I've -- I'm sitting here, listening to the testimony, and I -- regarding the Piihola Well resolution.

CHAIR MATEO: Mr. Franks -- I'm sorry to interrupt --

MR. FRANKS: I'm sorry.

CHAIR MATEO: You -- you signed up to testify on several separate issues. If you wish to address these separate issues, you're given three minutes for each issue.

MR. FRANKS: Oh.

CHAIR MATEO: And should the Members have questions during each of your segments, then they will be able to ask you questions relative to the testimony you provide.

MR. FRANKS: All right. Thank you very much. Then I will testify regarding the Charter -- the Charter -- the district voting.

First of all, I imagine every -- everybody sitting in -- in -- among you Councilmembers has already made up your mind. You've heard everything you could possibly hear. You've thought about this over and over through the years. And I wouldn't expect that my testimony would have much influence on you, but at least I will give you my sense of this.

If you were to have come to me today and say, Maui County is a new thing, we want you to draw a charter, Zach, regarding whether there should be district voting or at-large voting, I would come back to you and say, well, if we do at-large voting, then -- then the Members are not directly responsible to their districts and the people are not very knowledgeable about -- about issues.

I -- I live in Kihei, Mr. Nishiki's district. I don't really know even who's running against Ms. Baisa up in Kula, and I don't know what the issues are there. But I do know what the issues are in my district a little better because I go to the Kihei Community Association meetings, I've heard Mr. Nishiki's opponent, I've heard Mr. Nishiki. So I know, you know, how to vote about that. But I don't know how to vote about what's happening in Ms. Baisa's district, or Mr. Victorino's district.

So I would say, you know, I -- it makes sense to me that we ought to have one person, one vote in -- in -- in each district.

I think that that is a negative, though, if you are an incumbent member of this -- of this body, for reasons I need not explain to you. And what I would suggest, then, is that the term -- the term limits be increased from eight years to ten years. So that if you win your district the next time, you're in for a little bit longer. And ten years does not seem to me to be substantially longer period of time. And, yet, there should be district -- there should be -- should be one man -- one person, one vote, each district. I would -- I would much prefer that and I would think it would be logical.

I am concerned, of course, Mr. Mateo, about the interests of Molokai and of Lanai. They would be somewhat less well represented in this body if you did not have separate districts. And I think that maybe they should have -- that there should continue to be separate representatives from those districts or go to the -- you know,

the State model where, you know, we have representatives and we have a state senator who represent those districts, those -- those islands and this island. And I -- I don't hear complaints about their -- the quality of their representation.

So thank you for hearing me on that matter.

CHAIR MATEO: Thank you. Mr. Franks, you may proceed on your next item.

MR. FRANKS: Okay. Oh, any -- any questions?

CHAIR MATEO: Mr. Franks, yeah.

Ms. Johnson, go ahead.

COUNCILMEMBER JOHNSON: Yes. I just wanted to clarify on the issue of the, you know, eight years as opposed to ten. It is ten years right now.

MR. FRANKS: Oh, I'm sorry. Then I would say twelve.

COUNCILMEMBER JOHNSON: Yeah. Okay.

MR. FRANKS: Some -- some incentive there because I realize people's self interest are involved.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR MATEO: Thank you. Members? Thank you. Mr. Franks, proceed.

MR. FRANKS: Okay. I -- Mr. Nishiki, you are my representative. This -- this piece of legislation that you've written is an emotional one for a lot of people. I think it might have been better if you had reached out with the aloha that you have for so many and given me a call and said, "You know, we need to talk about this." But -- so I -- I'm sorry to come up here as something that is a matter of first impression. And I -- and I would ask you to speak with me at some other time so we can talk about this and we can educate each other about our points of view and about the facts.

But let me -- let me address a -- a few really important things.

The -- the County agreement, the standard source agreement, is a 75/25 agreement with respect to 45 percent of the water in the well. As to the other 55 percent of the water in the well, the County has entire dominion. So really what happens is the County has two-thirds of the well and the developer has one-third of the well. So it's

really exactly on its head of what you're hearing. So it becomes a very emotional, a very emotional issue until you actually begin to understand what's behind it.

This will result in 320 meters, at least, in Upcountry. I want to ask this Council how many years it has taken to get 320 new meters installed Upcountry? The record of failure in the -- of providing water to lots Upcountry has been absolutely astonishing.

Now, unfortunately, what happens in this Council happens in sort of an economic vacuum. I remember testifying before this Council about the affordable housing bill in which I said 50 percent won't work, you probably should be down about 30 percent. Now you are.

For us to link in with the County will probably cost us about \$3 million. For us not to link in with the County will cost us a few hundred thousand dollars. If you want 100 percent of our water and you expect us to link in for \$3 million, it ain't gonna happen. It can't. It's not economically viable. I'm awfully sorry to say that. We'd like to be of help to the County, we'd like to be of help to people who need meters, but please let us be. This bill will be not a bill to benefit the most water meter holders, but to frustrate the most water meter holders. And once more, we will have a lot of people waiting, as Mr. Nishiki said, until they probably die, for water from the County.

Thank you very much.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Mr. Nishiki, followed --

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MATEO: -- by Ms. Baisa.

COUNCILMEMBER NISHIKI: Just because -- oh, I'll defer to Gladys.

CHAIR MATEO: Ms. Baisa.

COUNCILMEMBER NISHIKI: Before I --

COUNCILMEMBER BAISA: Thank -- thank you very much, Chair and Mr. Nishiki. And thank you, Mr. Franks, for being here this morning.

MR. FRANKS: You're welcome.

COUNCILMEMBER BAISA: You've been a subject of much discussion lately. So I'm glad you're here and you can --

MR. FRANKS: I wish somebody would call me.

COUNCILMEMBER BAISA: I'm glad you can answer some of the questions. You mentioned that 320 meters Upcountry --

MR. FRANKS: Yes.

COUNCILMEMBER BAISA: How is that calculated?

MR. FRANKS: On the basis of 600 gallons, which my understanding per -- per household per day, which is my understanding of what the Water Department uses to allocate meters.

COUNCILMEMBER BAISA: Thank you.

Another direct question: Has this well been tested by the County of Maui and inspected by the County of Maui?

MR. FRANKS: The well has been tested by certified engineers, engineers certified by the State and by the County, for water purity, which it has passed with flying colors. It is an absolutely -- it's the best -- it's as good as any water in the County, if not better. And it has been tested for flow. And it was not tested by the County because it was put in by -- as a private well. However, I wouldn't know how to test that well. We hired outside experts for that. And we have provided the County with our results. So we invite the County to verify those results. If -- if -- if the County wishes, that's fine.

COUNCILMEMBER BAISA: Okay. Let me -- let me try again. Was the well --

MR. FRANKS: No.

COUNCILMEMBER BAISA: -- inspected by the County of Maui during construction?

MR. FRANKS: No. We have provide them with as-built -- as-built specifications and we have built it to County standards. And it is the best and the most productive well that has ever been drilled Upcountry.

COUNCILMEMBER BAISA: Thank you.

MR. FRANKS: You're welcome.

CHAIR MATEO: Thank you, Ms. Baisa.

Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. And -- and -- and I thank you here for your presence.

MR. FRANKS: Thank you, sir.

COUNCILMEMBER NISHIKI: I depend upon accuracy. And this is something that you wrote to this Council and sent to us yesterday afternoon?

MR. FRANKS: Yes, sir. That is.

COUNCILMEMBER NISHIKI: Are you familiar with the letter?

MR. FRANKS: I am familiar with it.

COUNCILMEMBER NISHIKI: Despite that your -- your -- your signature is on here, do you--

MR. FRANKS: I don't -- I don't think my signature is on that letter.

COUNCILMEMBER NISHIKI: Well, Cindy Wag --

MR. FRANKS: Warner.

COUNCILMEMBER BAISA: Cindy Warner.

COUNCILMEMBER NISHIKI: Is -- is -- who is --

MR. FRANKS: That's not -- that's not me. But I -- but I'm very familiar with the letter, sir.

COUNCILMEMBER NISHIKI: Yeah. That's all I wanted to find out.

MR. FRANKS: Yes, sir.

COUNCILMEMBER NISHIKI: Now, I'm going to read from you what I talk about as being accuracy.

MR. FRANKS: Okay.

COUNCILMEMBER NISHIKI: Committee Members, if you -- Councilmembers, if you -- if you -- you need to turn to Page 2, the first paragraph. It says, "We have made significant progress in the last few months proceeding in this direction and have

executed a preliminary Piiholo South Well agreement which was delivered to the Mayor's Office and the Department of Water Supply in March of this year. This confirms that the standard source water agreement and standard formula previously approved by the Council has already been agreed to pending finalization of other terms and conditions."

Let me ask you in regards to what a water agreement is. Do you know that these water agreements now, not in prior years, need to be approved by the County Council?

MR. FRANKS: We do know that.

COUNCILMEMBER NISHIKI: Okay. Do you know that -- in here, you talk about previously approved by the Council. Do you know that the Council has yet to approve one water source agreement since that law was passed?

MR. FRANKS: I don't -- I don't know.

COUNCILMEMBER NISHIKI: You don't know that, obviously. And that's the reason why you say "previously approved by the Council."

Finally -- not finally. I got many more for you. In this water agreement, have you actually signed with the Administration? Have they put their blood onto this --

MR. FRANKS: No, sir.

COUNCILMEMBER NISHIKI: -- preliminary agreement --

MR. FRANKS: They have not.

COUNCILMEMBER NISHIKI: -- that you said that you have?

MR. FRANKS: Nor have we.

COUNCILMEMBER NISHIKI: You've not signed it yet?

MR. FRANKS: That is a -- no. It is not -- we are -- we are moving ahead on this basis.

COUNCILMEMBER NISHIKI: Okay. And does this agreement say, as you've said, in previous agreements, does this agreement say that it is a 75/25 ratio, 75 percent to the developer, 25 percent to the County?

MR. FRANKS: As to 45 percent of this -- of -- of the well, yes. But as to the rest, it's all the County's. So it's 55 percent that the County gets, and we get 75 percent of 45 percent.

COUNCILMEMBER NISHIKI: Any -- anyway --

MR. FRANKS: Anyway, what? That's a big -- that's a big issue, isn't it? Isn't that the major issue that you are making hay over?

COUNCILMEMBER NISHIKI: Wait. Wait.

CHAIR MATEO: Mr. Franks.

COUNCILMEMBER NISHIKI: Wait, wait.

CHAIR MATEO: Mr. Franks.

COUNCILMEMBER BAISA: Point of order.

CHAIR MATEO: Mr. Nishiki, ask your question, please.

COUNCILMEMBER NISHIKI: Yeah, I just asked that question. So I -- I -- I thank you for that, that answer.

MR. FRANKS: You're welcome.

COUNCILMEMBER NISHIKI: Now, in the second paragraph, I think, that Gladys alluded to, I want to read from your statement. And -- and the reason why is I'm dependent upon accuracy on -- on this, that is being represented. And so far, it's been very inaccurate.

MR. FRANKS: That's -- that's -- that's --

COUNCILMEMBER NISHIKI: "Piiholo South" --

MR. FRANKS: That's a misrepresentation.

COUNCILMEMBER NISHIKI: -- "owns a well drilled in the fall of 2008, tested in the winter of 2009. The state-of-the-art variable speed pump has a capacity of nearly two million gallons per day and was tested during the sustained pump test at a capacity of 1.728 million gallons per day. The testing of the water was completed by Pural" -- P-U-R-A-L -- "and sent to a certified laboratory confirming the water is clean, pure and free of contaminants."

Let me ask you this question so that you can understand where we're coming from. And I think that Gladys asked it, but perhaps I want to hear it again. Do you agree that the County has never been involved in this well whatsoever as you've developed it?

MR. FRANKS: Yes.

COUNCILMEMBER NISHIKI: Has there been any County inspector there, anyone representing the County of Maui, a representative?

MR. FRANKS: What are you driving at, sir? I've already said that. I've already answered that question. What are you driving at?

COUNCILMEMBER NISHIKI: What is that answer?

MR. FRANKS: I said no. I said no to Ms. Baisa.

CHAIR MATEO: Gentlemen!

Council will stand in recess for three minutes. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:14 A.M., AND RECONVENED AT 10:18 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010, will reconvene. Members, thank you for that very short recess.

Prior to the break, Mr. Nishiki was asking Mr. Franks a question. Mr. Nishiki, do you wish to continue your questioning at this point?

COUNCILMEMBER NISHIKI: Mr. Chairman, in lieu of perhaps the discussion when this resolution comes up, I will suspend any more questioning. Thank you so much.

CHAIR MATEO: Thank you, Mr. Nishiki. Members, additional questions?

Mr. Molina.

VICE-CHAIR MOLINA: Yeah. Thank you. Well, first of all, thank you, Mr. Franks, for coming here and clarifying your side.

MR. FRANKS: Thank you, Mr. Molina.

VICE-CHAIR MOLINA: But my only issue -- and I guess maybe if I can direct this to the Chair and to Mr. Nishiki, this is something -- I know the proposal was to initiate action on this resolution today, being that, you know, my community is affected. This is about taking water out of Makawao to support a project in Kula, which is the project, I think, is also -- there are some issues that the Kula Community Association brought up about that project. But my whole point is, you know, the, the Piiholo South project has brought up issues, but I believe this is something that should be discussed in committee. Because in the line of questioning, it's going towards, basically, almost a committee discussion.

So I would just respectfully ask that this matter be -- you know, at the appropriate time, be considered to send to a -- the appropriate committee, Mr. Chairman. Because we have a lot on our plate today, and being that it's become quite contentious at this point, so cooler heads can prevail, let's consider this matter -- you know, not get into any real detailed questions that may stray off of the resolution and so forth. So just -- I just ask out of respect, as a representative for the Makawao area, that, at the appropriate time, let's have a longer full discussion on this matter so my community can also hear about this.

Because when I heard about this agreement in this letter between the County and -- and the developer and Kula Ridge and all whatnot, I'm sure my community would like to be clued in. And, you know, I come from a very vocal community as well. So just out of respect for that, Mr. Chair, that's all I can. Thank you.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussions for Mr. Frank [sic]?

Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. Just one more brief question just to clarify things in the letter. Mr. -- Mr. Franks --

MR. FRANKS: Yes.

COUNCILMEMBER BAISA: -- in the letter, it mentions that the Piiholo South project is on hold. Can you -- and -- tell us what that means?

MR. FRANKS: Oh, are you -- are you speaking to the senior housing project, Ms. Baisa?

COUNCILMEMBER BAISA: In your letter --

MR. FRANKS: Yeah, that's what it refers to.

COUNCILMEMBER BAISA: Yes.

MR. FRANKS: It refers to the senior housing project. We -- the parish council leadership at St. Joseph's Church objected to senior housing at Piihola South, so we've withdrawn our plans for that. And that is part of the reason that we have been supportive of the Kula Ridge project, because they are providing senior and affordable housing which we were going to do ourselves. So that's -- that's what that is about. You know, and -- and what I've spoken to so far today is very simply about the provision of 320 water meters to, Mr. Molina, Makawao, Haiku and Kula, water meters that will not be delivered anytime soon by the County, but can be delivered through Piihola South. That is the issue today. And anybody who thinks that they can --

COUNCILMEMBER BAISA: Ah, Mr. Franks --

MR. FRANKS: Yes.

COUNCILMEMBER BAISA: -- I think you've answered my question.

MR. FRANKS: All right. Thank you very much.

COUNCILMEMBER BAISA: I have one follow-up and then we'll be done.

MR. FRANKS: Okay.

COUNCILMEMBER BAISA: What is your intent, then, to do with the rest of the water? Three hundred twenty will go to the consumers of the Water Department, and what about the rest?

MR. FRANKS: We will offset our costs by selling water meters that we have incurred by -- for linking up to the County. And as just a policy issue having nothing to do with Piihola South.

COUNCILMEMBER BAISA: Okay.

MR. FRANKS: And may I speak to -- may I -- may I speak to this because --

COUNCILMEMBER BAISA: No, sir.

MR. FRANKS: Okay.

COUNCILMEMBER BAISA: Thank you very much.

MR. FRANKS: Thank you very much.

CHAIR MATEO: Thank you, Ms. Baisa. Members --

COUNCILMEMBER NISHIKI: Chair?

CHAIR MATEO: Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. My -- my last question just because, again, you know, in yesteryears, a handshake was really something that was revered as to be gold. Mr. Franks, if you remember, clearly, at a meeting Upcountry, when you had -- and were discussing this, I asked you on the record that after -- and I'm not saying that I support your project, okay, but should this be needed water, I asked you point blank, would you negotiate first with the County. And this does not mean only Administration, this means the Council. And you said -- and I said, for the remaining water, aside from your needs for your project. And you said, yes, you would for the remainder of the water.

It doesn't seem like -- and -- and we'll -- we'll -- we'll probably have to discuss this at a later stage. It doesn't seem like all that water aside from your project needs is being negotiated with the County.

MR. FRANKS: We are perfectly happy to supply the County with our -- with our water. We've offered to sell. We've asked County to approach us with an offer to purchase our well, sir. So it's totally consistent with what I said in the past and what I'm saying to you now.

And I would also ask you, sir, for a meeting, constituent with Member, in the coming week. Will you give that to me?

COUNCILMEMBER NISHIKI: Mr. Chairman?

CHAIR MATEO: Go ahead, Mr. Nishiki.

COUNCILMEMBER NISHIKI: We will be discussing this issue at a later time today. And perhaps we'll see, and I will contact you.

MR. FRANKS: Could I have -- could I have a positive yes or no, please?

CHAIR MATEO: Mr. Franks, hold on, please.

COUNCILMEMBER NISHIKI: I'm not ready to give you a yes or no.

MR. FRANKS: Why?

CHAIR MATEO: Okay. Thank you, gentlemen. We've not gonna do a back and forth.

Members, additional questions?

CHAIR MATEO: Okay. Thank you, Mr. Franks.

MR. FRANKS: You're welcome.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Alice Lee, testifying on Bill 45 and County Communication 10-160, followed by Edwin Young.

MS. ALICE LEE [testifying on Bill No. 45 (2010) and County Communication No. 10-160]:

Good morning, Mr. Chair and Members of the Council. My name is Alice Lee. And I am testifying on Bill 45 as an individual. In my opinion, Bill 45 represents a partial solution to a problem which has existed for years. In many cases, a problem arises when properties are given a land use designation which is different from the existing zoning on their property during the Community Plan update process which takes place every ten to fifteen years.

Through no fault of the property owner, he or she can be left with a property who's zoning no longer conforms to the updated plan, albeit, it may be consistent, and is now faced with the time-consuming and costly requirement of applying for a Community Plan Amendment. Small landowners generally do not have the resources and means to pay for this process. Oftentimes, they are unaware of what happened to their property until they try to subdivide their land. The proposed bill as-is will certainly alleviate the problem of not going through the expensive and extensive community plan process.

The proposed bill does not give the Public Works Director a blank check to do whatever he wants on an application. It actually restricts the Director to making a determination on consistency only in instances where uses are already permitted in the State Land District, in County zoning and in the Community Plan, thus meeting the intent of all three land classifications and categories. To ensure that there is a check and balance between the Administration and the legislative body, I think an annual review of the director's approvals and revisiting this ordinance every two years are reasonable and should be incorporated in the bill.

I think the review provision in the Residential Workforce Housing Ordinance has served the County well, as an example. Ordinances can be changed any time;

however, an automatic review feature will ensure that there will be an ongoing evaluation of the effectiveness of the ordinance.

Thus, I ask that you pass the bill on second and final reading and consider the provisions suggested in my testimony, and those of others, perhaps. Thank you very much.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Thank you very much, Alice, for your testimony. One of the questions that I have is in regard to the scenario that you lay out with regard to community plan amendments. And, you know, many times those lines get changed or designations will get changed without the knowledge of the individuals that are impacted. So because this bill goes beyond, you know, that specific circumstance, you know, because it -- it just -- it's not saying it's a direct result of the scenario, you know. It's just saying if somebody wants to move a line or if there's difficulty, I guess, in making use of their property.

What -- what I'm trying to, I guess, get at is should there be a -- a tighter rein that maybe, instead of this kind of a bill, that if there was that kind of circumstance, where an error, or something that was harmful to an individual property owner, where they were not made aware of it, that there could be a fix through a different mechanism where there would be reversion or some other type of mechanism where they would not be harmed? Is that something that may also assist that individual?

MS. LEE: Yes, as a long-term solution, especially with the Community Plan changes. Oftentimes, the -- the property owner doesn't -- too busy with their everyday life, and they don't follow the legislative process. Some of them don't read "The Maui News", some of them don't watch Akaku. They don't know what's happening to their property. In those cases, they -- in all fairness, they deserve notice.

COUNCILMEMBER JOHNSON: Uh-huh.

MS. LEE: Now, if that becomes too costly for the County, then they -- then they deserve some kind of comprehensive zoning. Now, that, of course, is a long-term solution that will require a tremendous amount of public review and discussion.

Right now, we're talking about subdivisions, which is a smaller matter, subdivisions who meet the consistency test, but not the conformity test. And these are, I think, few and far between. In these cases, people have had their zoning for years.

I've -- I heard testifiers talk about hotels. Those hotels were zoned in the sixties, well before our time. And so as time changed and the legislative body took on these community -- general plans and community plans, etc., they did not take into consideration all the properties that were priorly zoned. And now you have this nonconformance issue. But in a case of where people meet the consistency test, where permitted uses are allowed in each one of these different classifications, then they should be given the -- the Public Works Director should be given the option to approve that -- those subdivisions. And I don't believe we're talking about a huge number of -- of cases.

So my suggestion is that you approve this bill, pass it on second and final reading, and then work really hard on -- on coming up with a -- a more comprehensive solution.

COUNCILMEMBER JOHNSON: Okay. Thank you very much, Alice.

CHAIR MATEO: You're welcome, Ms. Johnson.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman. Good morning, Ms. Lee.

MS. LEE: Good morning.

VICE-CHAIR MOLINA: First of all, you know, I want to thank you for being here. It was mentioned earlier about the importance of institutional knowledge. And you have a lot of that, you know, having been a five-term Councilmember and, also, a department head. So you served in both the Legislative and Executive Branch. So we certainly value your input.

MS. LEE: Thank you.

VICE-CHAIR MOLINA: With regards to the issue of consistency and conformity, is there a place in the ongoing process of the Island Plan, maybe that's where these issues could be resolved and addressed as well?

MS. LEE: Yes. Unfortunately, GPAC's haven't -- would -- would not have had their chance to provide input, but certainly the -- the community, CRC's, can provide input into some kind of long-term resolution.

But in -- again, in all fairness, people who've have had their zoning for years, you know. What typically happens is people inherit land. Their father never watched

what was going on with the Council. And the kids, you know, don't know, they just inherited the land. And all of a sudden, they want to subdivide and then they find out about all these things.

And, you know, even though I'm not a Councilmember, believe me, this is like a lifetime job. You can't go into a supermarket for -- for those who are going to be going off the Council, believe me, people are going to continue to think you are on the Council, will treat you like you're on the Council. You can't go into a supermarket with somebody asking to help with their sidewalks and this and that in their neighborhood. This is a lifetime job. And for all of you here, I know it will be a lifetime commitment. Because I still follow up on their concerns and refer them to the departments. This is how -- I -- I can't -- I go to church and people will tell me, "good luck in the election." You know, I haven't been on the Council for, what, ten years, right? So -- actually longer.

But this is how it is. And this is why I'm here today, because we, in prior councils, were not -- did not resolve that issue.

One of the things that I always felt would be fair was comprehensive zoning, as we did in Paia, as we did in Makawao. But I -- the majority of the Council never agreed with that approach. So maybe there's another approach, you know, or maybe revisit the same type of possible solution.

VICE-CHAIR MOLINA: All right. Thank you. And thank you for mentioning the issue of the smaller landowners. During the General Plan process, from time to time, we've been hearing from small landowners saying that they were not aware that they were left out of the proposed Urban Growth Boundary and other issues. So I think it's important that, you know, we continue to educate the public on the importance of the Island Plan and so forth. And -- and, of course, like you mentioned earlier, smaller subdivisions meet the conformity matter, but not the consistency issue. So, anyway, thank you for your input, Ms. Lee.

MS. LEE: You're welcome.

VICE-CHAIR MOLINA: Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina.

MS. LEE: You're welcome.

CHAIR MATEO: Ms. Lee, you're wanting to testify on another item, County Communication 10-160 as well?

MS. LEE: Mr. Chair, I think it was the same item.

CHAIR MATEO: Bill 45 and County Communication 160 --

MS. LEE: That's what --

CHAIR MATEO: Thank you very much.

MS. LEE: Yeah. Okay.

CHAIR MATEO: Thank you.

MS. LEE: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Edwin Young, testifying on Committee Report 10-83, followed by Charles Villalon.

(Councilmember Baisa was excused from the meeting at 10:35 a.m.)

MR. EDWIN YOUNG (testifying on Committee Report No. 10-83):

Good morning. My name is Edwin Young. And I'm here to testify on the fish, the aquatics, and the water. And I'll show you how they're related to each other. Okay.

My nickname is Skippy. My name is Skippy Piilani Keawe Kaananui Wilmington Haya Medeiros Young. That's my genealogy. I believe that I was sent here -- we were sent here by God to protect our lesser brothers from predators who will try to harm them. Our lesser brothers are the fish in the ocean and the rivers, the opae, hihiwai, o`opu, mullet, manini, . . . nai`a, which is the dolphin, the coral, even to the depths of the ocean where the opakapaka and hapu`u live, the rivers, and, last but not least, the air that we breathe for our children and our -- their children's children until the end of time.

I'm gonna get back to the rivers after I finish with this over here.

Everybody in Hana thinks like this, for we all come from the same seed. The Hawaiians in Hana are unique, even in the Hawaiian language that is spoken. For instance, in Hana, we say . . . which is a kind of shellfish. And elsewhere in Hawaii, they say Bill John Medeiros, Councilman, right there, is my cousin. He grew up

right next to me in Hana. And he knows everything that I'm saying, and he can verify everything I say. He understands.

Now that you know who I'm -- who I am, I'm gonna tell you why I'm here.

Now, my daughter asked me to testify on the aquarium -- the taking of aquarium fish. And I thought like, ahh, kind of like a waste of time, yeah, you know. And she showed me this picture right here, yeah. And this picture is of -- there's 610 fish right here that are dead. And they found this at the dump in a trash bin at Honokaa Harbor on the Big Island. And I was shocked. I mean, for a Hawaiian to see somebody throw away fish like this is -- is a sin, you know. And -- and then they show me this picture right here about how they clipping the fin off the fish. That's gonna kill the fish right there already. And then they stabbing it right here with a pin to let the air out of the airbag. And after I saw that, I said, . . . I going come testify for you and for the cause, yeah. Okay.

Now, you know, the -- what you see here that's being destroyed right here is just a -- a drop in the bucket. So the -- the law that's being -- I mean, the -- the bill that's being proposed, I think, doesn't go far enough. I think we have to stop it completely, yeah. Because 90 percent of the fish that they catch die. And then here's a sample right here, yeah.

CHAIR MATEO: One minute to conclude.

MR. YOUNG: And, you know, the -- the -- the rivers in Hana feed these fish when they're little. And the fact that nobody's watching out for our lesser brothers, that, you know, they -- they can't defend themselves, yeah. Okay.

Now right here, I passed out to each Councilmen right here. I passed out the -- the law, the State Water Code. Right. And this is HRS 174C-3.

Now my cousin in Honolulu is a judge. So I asked him, "Like what does HRS stand for?" And he said Hawaii Revised Status [sic]. I said, "That's law?" He said, "Yeah, that's law. Just like you cannot go steal from the bank or anything like that."

Okay. This law, HRS 174C, that -- I'm gonna read it to you. It says, the State Water Code shall liberally be interpreted to obtain maximum beneficial use of the waters of the state for the purpose of domestic use, agriculture uses, irrigation, agriculture, power development, so on; however, adequate protect -- provision must be made for the protection of customary Hawaiian rights and the procreation and protection of fish and wildlife in the river.

Now, where I live, in Hana, I going to pick on one river. It's Makapipi. Makapipi is bone dry. Now, U.S. Geological Survey defines Makapipi as a perennial stream.

CHAIR MATEO: Mr. Young, you're going to have to conclude.

MR. YOUNG: Well, I going talk about the rivers, too. So --

CHAIR MATEO: You're going to have to conclude your -- your communication -- your testimony this morning.

MR. YOUNG: Okay. I'll -- I'll conclude.

And that river is bone dry. And I went to see the DLNR. Now, this second right here is -- is classified confidential. And I -- I made the complaint. And it took me two months to get this back.

Now, Ron Cahill is an enforcement officer. And I told him that, you know, you carry one gun and you carry one badge, and you took a oath to swear to uphold this law right here, yeah, and I show you the law and you're not doing nothing about it 'cause the river is bone dry and all the fish and everything have long disappeared from it, everything. So I said, by right, you supposed to get fired from your job and get prosecuted and sent to jail. You took an oath to swear to uphold this law right here.

So then he thought about it. And he went and saw his superiors. And he said that he gets the order from above not to enforce the law. So I said, you supposed to turn that in. So he did over here. And if you read over here, he said he went out to Makapipi Stream, he saw the dam, fifteen feet high, twenty feet long, no water coming down after that. Just was -- it was raining real heavy, so whatever. But as soon as the rain stopped, there was no water gonna come down.

That's what I'm telling you about, bone dry, yeah. Then --

CHAIR MATEO: Mr. Young, I'm going to have to stop you. Your time is up for the testimony. Members, is there a need to have any part of the testimony rephrased?

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo Mr. Chairman. The first question for you, Mr. Chairman, is a procedure one. Did Mr. Young sign up for two items to testify on?

CHAIR MATEO: One item.

COUNCILMEMBER MEDEIROS: Just one item.

MR. YOUNG: I -- I testify, I said the aquatic fish and -- and the water one. I -- I don't know. I forgot the name of the water one --

CHAIR MATEO: Okay.

MR. YOUNG: -- Your Honor.

COUNCILMEMBER MEDEIROS: And I think, Mr. Chair, that's what he was getting to, that he wanted to testify on the first one and then, also, the second one. But I'm not sure what was signed up for.

MR. YOUNG: I forgot the number of the second one.

CHAIR MATEO: Okay. Thank you. Your testimony form only has County -- the Committee Report 10-83. The Chair will allow you three minutes to testify on the other item starting right now.

MR. YOUNG: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros.

MR. YOUNG: And he went and saw his superior and told him what he saw. And the next thing he did was go to East Maui Irrigation office. And I guess Garret Hew wasn't there. I know the second in charge is Mark Vaught. And he related to Mark Vaught that -- that there was no water in the river. And that Mark Vaught said that he is not authorized to make changes to the adjustment to that diversion.

So this law that's being broken. And, you know, the DLNR people are not enforcing it, that I don't understand. It's just like me, I go get one letter from the Water Commission -- I mean, from the Police Commission, I need money, I can go rob Safeway. Well, I got one letter from the -- you know, saying that I don't -- I -- I'm free. Okay.

Now, everybody is fighting for the water because you see how important it is. But it, also, so important to our marine life because 90 percent of our marine life, the fact that they're stopping -- this is only one river. . . . Honomanu, there's a whole bunch of other rivers that are stopped. The fish from -- the marine life from Keanae all the way to Kaupo has disappeared by roughly 90 percent.

Now, Jimmy Perry, who is the County boss in Hana, can verify that. He told me the same thing, too. And I didn't tell him anything about this. He told me that -- that down Hulaina, where his family comes from, he said about 90 percent of the fishes. I -- I agree.

Now, fresh water feeds not only humans, it also feeds seaweed, limu, yeah. And that's what the majority -- you know, algae is dependent on fresh water. And that's the -- that's -- that's the basis of our food chain. Without any algae, we're going to starve to death, yeah.

So, anyway, 90 percent of our reef fish has disappeared. So that means that 90 percent of the predatory fish has disappeared, the ulua, the uku, the kahala. You know, they eat the reef fish. And what we have to do is -- is -- I like this law. And we have to make new laws to protect our County to, so that Maui stays no ka oi. You know, Maui is no ka oi already. You know, we got the automobile -- you know, Maui High School, the -- the shop teacher for automobile mechanics. Look, the high school kids go up there to Detroit and they win number one in the nation for like about four years in a row. And if they don't, they, they in the top four.

Also, we got the windsurfing capital of the world. My -- lot of people are unemployed on, in Maui right here. And the tourism -- I like the tourism to come, but not build more hotels, but just improve on our quality so we lead the state in -- in -- in -- we -- we set an example for the rest of the state. So everybody wants to come to Maui for -- for a vacation.

Anyway, I think my time is up. So if there is any questions, I'd like to answer them right now.

CHAIR MATEO: Thank you. Members, a need to have any part of the testimony rephrased?

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And, Skippy, thank you for being here.

I just want to preface my first question by saying that the last time you testified, also, on the water issue, the streams, I got a lot of calls from people that told me when -- when they saw you on camera, like many people, you know, they judge the book by its cover, but they were really impressed by your knowledge of those things. So thank you for your testimony once again.

I want to ask you, because you testified on two items, which you identified are connected, the streams and the reef fish, you live down by Ulaino and Honomaele area in Hana?

MR. YOUNG: Yes.

COUNCILMEMBER MEDEIROS: Which the streams, you know, head to the ocean from the -- from mauka. And you mentioned Makapipi Stream, which is in Nahiku.

MR. YOUNG: Right.

(Councilmember Baisa returned to the meeting at 10:47 a.m.)

COUNCILMEMBER MEDEIROS: So does that stream affect the muliwai, the estuaries, in your area, and, also, the health of the ocean environment, the marine environment?

MR. YOUNG: Definitely. You know, there's a guy in Honolulu that works on the staff for the Water Commission. His name is Roy Hardy, yeah. He's a hydro geologist. And you also have another guy, Charley Ice, who is just a hydrologist. These guys can tell you how the water will flow from Makapipi underground, through the rocks and everything like that, and would feed all the springs down in Ulaino, all the way to Hana Bay. Even though I'm four miles away, yeah, when they stopped Makapipi, in about 1991, '95, around there, yeah, East Maui Irrigation had just made so Makapipi is bone dry because it's a perennial stream. Excuse me. The day they stopped that, all our springs started drying up, you know. During rain, the thing flows. Now, we just had a whole week of good rain in Hana. All the other rivers were flowing real strong and everything, like, except Makapipi was still bone dry. You know, even Honomanu flowed little bit, but Makapipi didn't flow at all.

See, the -- they were ordered to release water from so many rivers, and Makapipi was one of them. So Makapipi -- they released water for two months, yeah. And for about a month now, Makapipi has stopped flowing, yeah.

I saw this happen in about the seventies and eighties, in Honokohau, on this side of the island, past Honolua Bay. I used to go surfing over there a lot. And I met this old lady, her name was Vicki Andrews, she was Lucy Chun's either auntie or grandmother, yeah. And I used to go and bring her a red uhu every once in a while because I know Chinese, they like red, red color fish. And then she would -- I would sit and talk to her. And she say, you see all my taro dying. You know, she was a taro farmer. And I say, yeah. And she says, you know why, because either Pioneer Mill or the sugar company over there divert that water in Honokohau Valley over there, yeah. And she said she would have to go all the way into Lahaina and grumble with them, and then she'd water for two weeks again. And then they'd cut

off the water again. And she -- this would be repetition for a couple years. And she was like about 70, 80 years old. So in the end, she just kinda gave up.

Now that's the same thing that East Maui Irrigation is doing to Makapipi. Even though they were ordered to release the water, you have water flowing for two months and then they stop it until somebody go and complain, and then they going to release again, and then they going to stop it. There's nobody that's policing them. The DLNR supposed to do that. And if they do that, they supposed to -- to me, they supposed to arrest them because they breaking the law.

COUNCILMEMBER MEDEIROS: Okay. Cousin Skippy, I think you answered my question regarding the Makapipi and the area of our ocean environment and resources around your area.

My final question is, in Hana, and around the state, and even beyond our boundaries, you're -- you're regarded as a -- and revered as a water man, paddling canoes, fishing for akule, caring for the estuaries, you know, and the muliwai at the end of the streams where they meet the ocean. And so people look to you as a source of information when it comes to ocean environments and streams.

So I appreciate you coming all the way from Hana to testify and share this information that you have made a part of your life, and you continually research more information. So thank you for your testimony this morning and for your presence.

MR. YOUNG: You're very welcome.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Thank you, Mr. Young.

MR. YOUNG: Okay.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Charles Villalon, testifying on Committee Report 10-83, followed by Nell Woods.

MR. CHARLES VILLALON (testifying on Committee Report No. 10-83):

Good morning. My name is Charles Villalon. And as a subordinate of the County, I would really like to thank you guys, `eleu, you guys, that -- that agenda is choke. And I appreciate it. I really do. But I'm testifying on 10-83.

I got thirty years of enforcement in Maui Nui shorelines, game warden, criminal stuff at Police Department, and the last fifteen years with CZM SMA for your County Codes. And in regards to the aquarium fishing, it's just a -- it's just a automatic. It's -- it's gotta be curtailed. It's gotta be stopped. And not just stopped from harvesters, but I think the smarter way to enforce and write the bill is to get the wholesalers. Just like drug dealers, you gotta get their pocket. You gotta go to the pocket the manufacturers and where they're distributing this thing. And the bill should be written that no commercial sales, freight, or commercial shipping of freight can go out of Maui Nui. They cannot even bill of lading that thing. It's illegal. That's the way you gotta do it. It's gonna continue.

Now, these guys are going to say, oh, what about one bruddah in California, he just like one Well, you go get 'em from the, you know, the Caribbean's. No come Maui, and take 'em. There's other places that you can go procure the fish.

We are hurting. Thirty years. I don't know if you guys know Les Kanamu. He passed away. His funeral is tomorrow. And I -- I am -- I'm one of the family members that -- that harvest. Funerals, birthdays, weddings, they look at me for the opae, the limu, the pohole. And I not revering myself. It's just -- I under pressure now. 'Cause as they -- as they pass, they graduate, their weddings, I getting hard time. I mean out there, I crying. Before I used to pray, Akua, right on, thank you. And I just harvest bags. And that's enough, big party, I take 'em home. Now I hunting.

The water is dirty. The limu is -- is fragile. I no see the tangs. I no see even hinalea out there. It's dying. You guys responsible. Help us out. Help Maui out. It's crying. Going make pretty soon.

And I thank you guys for the bill. And, again, the way to write it in, I think, is to get the wholesalers, all the guys in Wailuku Industrial, all that -- all those -- all those aquarium guys, shut 'em down. I'm sorry. This is like one ice -- one ice factory, I mean, methamphetamine, shut them down, make sure they don't operate. And that's the way to get 'em. Right to the bone, right to the money, right to the pocket. Thank you. Any questions?

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

COUNCILMEMBER MEDEIROS: Mr. Chairman?

CHAIR MATEO: Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Villalon, thank you for being here and sharing your information.

I just wanted to inform you that -- and -- and you're well aware of it, being the different capacities you have been with the County, the State -- that the County's jurisdiction on the ocean resources only starts from the high water mark up. From the high water mark down into the ocean, that is under the jurisdiction of the State.

So what I have done recently is proposed to our HSAC, which is our Hawaii State Association of Counties, that puts together a legislative package to send to the next State Legislature that they would, again, try to come up, or at least propose -- because there was a bill in the recent, the one that just completed, legislature, about protecting our reefs and especially our tropical fishes. Because many of them are endemic, which means they're found nowhere else in the world. But I -- I have proposed as part of our HSAC package to, once again, support as a County, and as the rest of the counties, to have the State come up with some kind of legislative measures that would regulate that and -- and you're -- you're probably, you know, knowledgeable of that.

And so we are proceeding in that way to try and do that. So I just wanted to share that with you.

MR. VILLALON: I thank you for that initiative. Also, as my experience on the shoreline of Maui Nui, Pelekunu, Wailau to Lanai, and doing enforcement, even Kahoolawe. I was one of the first enforcement officers to actually cite tourist vessels going in there and fooling with the marine life.

But the two egregious things that are killing our reef -- and you guys going to have to attack it -- is the injection wells and these aquarium fish. Now take those as of -- those are two big kuleanas you guys are going to have to deal with, but you -- I know you guys working hard on 'em, but watch, in fact you should start to monitor 'em. As soon as you take the injection wells out and you stop the aquarium fish, I will give it two years, or --

CHAIR MATEO: Thank you, Mr. Villalon.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your response. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Nell Woods, testifying on Committee Report 10-79, followed by Flo Wiger.

CHAIR MATEO: Before the testifier starts and provide us her testimony, Mr. Clerk, will you please advise us as to the number of individuals signed up to testify?

DEPUTY COUNTY CLERK: Currently, we have 31 individuals scheduled to testify.

CHAIR MATEO: And the remaining at this point?

DEPUTY COUNTY CLERK: And we are on number 14.

CHAIR MATEO: Thank you. Thank you, Members.

Thank you for waiting.

MS. NELL WOODS (testifying on Committee Report No. 10-79):

Good morning, Chairman Mateo, Councilmembers. My name is Nell Woods.

And I was here for the July 15, Committee of the Whole meeting. And one of the things that kind of got fallen by the wayside is the fact that before the poll was conducted, this particular brochure was sent out to every registered voting household in the County. So it gave options, three options, and compared them with our current system.

And the poll that was conducted approximately a week after this was received by the voters stated that 65 percent of the registered voters that were polled were in support of single district voting. Of those, the total poll numbers, including those who were called and were not registered voters, was still 61 percent. So the great majority of those who were asked were fully aware of the parameters of the question being asked and had considered their answers by virtue of having been educated. And, you know, it wasn't a cold call poll. I mean, people were called and asked a question based on information that had been provided to them.

As -- as you all know, two years ago, two districts elected -- well, the County elected candidates that were not supported by their particular district, but were elected by the County as a whole. This year, we have two more vulnerable districts. Because of term limits, Mr. Molina and Ms. Johnson's terms are over. And the candidates that will be -- that are running for election to their terms are many and varied. And there is an excellent chance, once again, that there will be two people elected to the

Council who were not supported by the district from which they are running. And it shouldn't be that way. That just shouldn't be the case.

I urge you to recognize that we, as voters, are educated as to what district voting constitutes. We elect our House representatives and our State Senate representatives by district. We elect our Federal, State and Senate by district. We deserve the opportunity to do the very same thing here at a local level.

I urge you today to put this Charter Amendment -- to pass it on First Reading and put it on the 2010 ballot so that we have the opportunity to ensure that, starting with the 2012 Elections, the candidate supported by their core constituency in the voting booth is the candidate elected to represent them.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Possibly just one question. In the -- the mail-out that you did send out, in describing single district voting, did it describe that the districts would most likely be reapportioned into equal districts according to population, and that possibly a County like Maui County, with four islands, three that are inhabited, would mean canoe districts that we used to have before between the Big Island and Maui and Kauai and Maui? So how do you -- what -- what's your opinion on that? First of all, did -- was that part -- that information made available in that -- and mail-out?

MS. WOODS: Well, first of all, I would clarify, I didn't send this out.

COUNCILMEMBER MEDEIROS: Oh.

MS. WOODS: I was just a recipient of it.

COUNCILMEMBER MEDEIROS: Oh, okay.

MS. WOODS: But I'm basing the fact that the poll numbers were generated based on this thing. And, yes, as can you see, there is a diagram on all three options of a potential breakdown of how the -- the districts would be represented. So, yes, when -- when the question was asked of people, they were very well aware of the fact that there would be a change in the fact that there would not be a single district for Lanai and a single district for Molokai.

COUNCILMEMBER MEDEIROS: So that they possibly could be a canoe district?

MS. WOODS: If you want to use the term canoe district, that's fine.

COUNCILMEMBER MEDEIROS: That's what it was --

MS. WOODS: My interpretation would be --

COUNCILMEMBER MEDEIROS: Okay.

MS. WOODS: -- the -- just as Mele Carroll now represents that area.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. WOODS: It -- it's a canoe district. So there's no reason why the same thing couldn't happen for the Council.

COUNCILMEMBER MEDEIROS: Uh-huh. Okay. And just, finally, also in the Reapportionment Commission, part of the guidelines is to try and keep the district contiguous as possible, which this would make it very difficult to do that. It would end up with, you know, a part of one island being a part of another island as a district. I just wanted to share that information with you.

MS. WOODS: Yes, I'm aware of that.

COUNCILMEMBER MEDEIROS: Okay. Thank you.

MS. WOODS: Uh-huh.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: All right. Nell, I thank you for your -- your testimony this morning. I think you were making reference to me in your testimony by saying -- no, you --

MS. WOODS: Not -- not you alone.

COUNCILMEMBER KAHO`OHALAHALA: Not me alone. Thank you very much for that. I'm the only one that's standing alone right now, you know that.

But I wanted to ask you a question, because you make reference to that -- that mail-out piece there. Did anyone ask you the question that there might exist the possibility that in those redistricted models, those three that you described, there would be a -- there could be a possibility that, because of the population base in those redistricting, that Lanai may end up with no representative on that -- in that district?

MS. WOODS: Yes. That -- that's clear. And -- and, again, for clarification, I wasn't a poll respondent. I'm just a member of the voting public that's, you know, aware of how it was handled and the way it was done.

But the point you also have to remember is that, right now, a member may reside in the district, but he isn't elected by his district. He's elected island-wide. And so there's a -- there's a great disparity in the number of votes that need to be cast island-wide for someone to get elected and, therefore, greater diluting the vote of those on Lanai or Molokai.

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MS. WOODS: If they're in a smaller district, their percentage of the total district votes is going to be much greater than it currently is.

COUNCILMEMBER KAHO`OHALAHALA: But my -- my main question is this: In all of the -- the three different scenarios provided to the voters for consideration in terms of what you are calling district voting or district representation, are you aware that each one of them still exists in the possibility that a Lanai or a Molokai person will not be elected to their own district? Because you are re-portioning those districts based on the population. And when you join a Lanai island to another district, to make up that district, the population still is outweighed in that Lanai has only 3,000 people, and the voting population is much less than that. That it would still be outvoted and that there could exist a possibility that there will be no Lanai person elected in any one of those three districts.

MS. WOODS: Mathematically, you're absolutely correct.

COUNCILMEMBER KAHO`OHALAHALA: Okay. But that -- that is my point. And I think that needs to be shared because for -- for you now to say that because a -- a person -- the three districts are combined, but, mathematically, it may exist that Lanai will not have an elected person on that -- in that district. Then you're to say, then, that that district is going to be representative of the interests and the concerns of an island community, and that you would accept that?

MS. WOODS: I don't think you're giving enough credit to those who would run within the district in terms of their commitment to represent everyone within their district.

COUNCILMEMBER KAHO`OHALAHALA: No. I'm just asking because we need to know that there's some -- some other consequences to this as well. And while the emphasis is being placed on the idea that you -- you would be able to vote within the smaller district, you must also talk about the -- the reality that you may, in fact, not have a representative or elected person to your own island, like Lanai. I just use Lanai as the example. Because I -- I think that, you know, part of this was -- was really spurred by -- by the current situation that I'm in, where there are disgruntled people who are challenging my residency and, therefore, the idea that I don't represent my district is what's being -- what's being put out. Because it's an at-large election, therefore, Sol could not possibly represent his own island home even though that's where he's from, so let's fix it now and let's create a district that's going to allow them all to have an opportunity to vote for their own representative. But, in those scenarios, the only thing that -- that I've been concerned with is that there may be a chance that Lanai, or even Molokai, for that matter, could be outvoted in their districts, so that they would have no sitting member on the Council because they were outnumbered mathematically, as you said. But that still exists. And that -- that is my concern.

MS. WOODS: I -- I understand your concern, but, again, I think your -- your -- your fact is correct that it's very possible, and, in fact, probably likely, that the candidate that is successful in a district that includes Molokai and/or Lanai and part of Maui Island itself is very possible, and, as I say, likely that they would not be a resident of Lanai and/or Molokai. However, that does not necessarily mean that that individual that's elected from that district is not going to have the concerns of Lanai and Molokai at heart as much as part of Maui from which they reside.

COUNCILMEMBER KAHO`OHALAHALA: I -- I think you need to sit down with the people on Lanai and tell them that directly, so that they can hear you say that, that they should be happy that someone else could be elected to represent them. And then see what they think.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala. Members, further -- further questions? Thank you very much, Ms. Woods.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Flo Wiger, testifying on Committee -- Committee Report 10-79, followed by Bruce U`u.

MS. FLO WIGER (testifying on Committee Report No. 10-79):

Chairman Mateo, Members of the Council, thank you for allowing me to appear before you today. I'm here to urge you, on 10-79, to pass it on the First Reading so it can go on the ballot this Fall.

And I'm going to take a slightly different approach than a number of the people that you've heard today testifying for or against this. I'm coming at this from two perspectives.

One: I come to this as a member of a native community. I'm a Lakota from the Standing Rock Indian Reservation. And that informs my perspective and my world view in a number of ways.

One of the things that has always been very, very important in my community is having to listen to the voices of the people. That people who are put into leadership roles had a responsibility, always, to listen to the voices of the people.

And when there would be a very large issue that would come up before the community, it was a matter of people coming together, having conversation, having dialogue. Sometimes this would go on for weeks. We're not just talking about five or six hours in a meeting; it would go on for weeks, people would come back together, talk, go away, talk, come back together. At the end, they would come to some kind of conclusion that they would then say to their leadership, this is what we want. The leadership had then the responsibility of carrying that out.

So that's one perspective that I bring to this, is wanting the people to speak to this issue.

The second perspective is that of being an educator. I've been a teacher and an educator for 35 years. And I've taught at all levels of the educational system. There are two concerns that keep coming up over and over again. And I believe they're very legitimate and very valid concerns. One is, people don't really understand what this whole process is about and the implications of it. My experience as an educator and a teacher is that if you bring people together -- in my case, it's in a classroom. Here, you bring people together in meetings. And we have all kinds of processes to do that, everything from having meetings across the islands to the Akaku process. You bring people together, you have discussion, you present information, people answer questions, and then, at the end of the day, the people in those meetings will often come up with better solutions and better alternatives and better conclusions than what has been given to them in the first place. But it's a matter of not cutting off; having that discussion, soliciting the information and listening to what people say.

Thank you very much for allowing me to testify.

And I would only add one very quick comment. I know that there's concern about people looking at the Councilmembers, and, well, this one wasn't elected, this one was elected. I got to tell you, we've only lived here sixteen years, but I've been concerned about this for sixteen years, long before any of the issues were put in terms of the Councilmembers.

So thank you again.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Bruce U`u, testifying on Bill 45, followed by Ivan Lay.

MR. BRUCE U`U [testifying on Bill No. 45 (2010)]:

Good morning. Aloha, Chair Mateo and Committee Members. I'm gonna keep this very brief. My name is Bruce U`u. I'm the apprenticeship coordinator for the Hawaii Carpenters Union, Maui Office. I am here to support a bill to define consistency for purposes of approving a subdivision.

I think, two days ago, we had a meeting, some of the union reps at our office, and some staggering numbers were brought to my attention, worse than even our union. Right now, currently, we have 73 percent of our members unemployed. The Operators have 75 percent of their members unemployed. And the Masons Union has 85 percent of their members unemployed. I think by passing and moving this bill forward, any one of the four big projects could put a big dent for getting our people out the door and off to work.

And on that note, I think about two weeks ago, I had the pleasure of calling one of my apprentices on the phone. And -- and his name was Masa So I told him, "Eh, Masa, guess what, buddy? You going back to work, the guys called you up for rehire." He was ecstatic like he won the lottery. And, you know, basically, that gave 'em a shot. And the first thing he said, over the phone, he said this, "Honey, I going back work." That was good news.

And if I can do that 200 more times or 300 more times, I -- I would love to do it, but I need you guys' help. He is one of the very few people that, within the last month, went out to work. And for that matter, I have -- we have a member of the union in our audience has been laid off for a year and-a-half right now.

So how do you survive without a paycheck? You know what? Tough. Tough. I think you got to move in with your parents or -- or something like that, but it's undoable.

That's about it. Thank you for your time.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you, Mr. U'u.

MR. U'U: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Ivan Lay, testifying on Bill 45, followed by Rene Umberger.

MR. IVAN LAY [testifying on Bill No. 45 (2010)]:

Aloha, Chair Mateo and Council Members. My name is Ivan Lay and I'm a representative of Hawaii Carpenters Union here on Maui.

There are four known large projects here on Maui, Starwood, Hyatt, Honua Kai, and the Royal Lahaina, that are stuck in subdivision review to determine the consistency and conformity. All four projects received SMA approval and were determined, for their purpose of an SMA, to be consistent. We have many of our members on the bench right now and this bill will help these projects to move on to the next step.

What is interesting is Starwood -- Starwood Lot 1 and Lot 2 received building permits, but Lot 3 got this conformity comment stamped on their permit, holding Lot 3 back. But the law has not changed.

I would also like to say that this bill would not only help large landowners, but all landowners as well as those who have mismatched Community Plan and zoning designations on their parcel.

Last night, we had a fire in Kahului. I'd like to commend all the -- the Fire Department for saving houses and lives and taking care of that area.

If their parcel was on -- if their house got burned down and it was on a parcel that was nonconformity, they wouldn't be able to build their house back even though it was there already. These are issues that we got to address.

People living in valleys that are now green -- green or open space. They won't be able to build if any natural disaster happens, also.

So these are things to think about. So passing Bill No. 45 will help this process to go more smoothly. I appreciate your time.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

COUNCILMEMBER VICTORINO: Yes.

CHAIR MATEO: Mr. Victorino?

COUNCILMEMBER VICTORINO: I just -- I just wanted to ask Mr. Lay, you meant Wailuku when you said the fire.

MR. LAY: Well, from Upcountry, it's hard to tell.

COUNCILMEMBER VICTORINO: It was -- was Wailuku 'cause I was up until 2:30 this morning. So let's get the area right. That's the clarification I wanted to make sure.

MR. LAY: Okay.

COUNCILMEMBER VICTORINO: It was Wailuku Heights. It was not -- not in Kahului. But you're absolutely correct. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members? Thank you very much, Mr. Lay.

Mr. Clerk.

DEPUTY COUNTY CLERK: Rene Umberger, testifying on Committee Report 10-79 and Committee Report 10-83, followed by Ian Fisher.

MS. RENE UMBERGER (testifying on Committee Report Nos. 10-79 and 10-83):

Good morning. My name is Rene Umberger. Chair Mateo and Councilmembers, thank you so much. I'm just gonna briefly speak on the aquatic life operations bill, just because there's so many people behind me.

I just want to say that I support the work that the Public Services Committee put into getting this bill to its current state. So it now affects only the collectors and doesn't inadvertently impact others. You've all done a great job. And I ask that you please pass this bill today. That's it. Thank you.

CHAIR MATEO: Thank you. Members, any questions? Thank you very much.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify, Ian Fisher, testifying on Committee Report 10-83, followed by Jimmy Conniff.

MR. IAN FISHER (testifying on Committee Report No. 10-83):

Aloha. Good morning, Council. I'd like to just briefly touch on the district voting issue.

I heard a couple of people say that if you live in one area, you may not care about what happens on another part of the island. But I think a lot of people would agree with me that even if we live -- I live in Haiku. I care very much about what happens in Kihei and Lahaina, you know. So I would vote for people who would be representing those districts that would have my personal values influenced in that district. So we don't consider the immediate area our home, we consider all of Maui our home.

But I just wanted to speak a little bit about the fish collecting. I'm very happy to see some progress is being made, and would like to see even further progress, eventually some form of a complete ban on this.

I was pretty surprised that this even went on. Most Maui people wouldn't even consider doing this, you know, collecting all these fish for their own personal profit. It was very surprising that this was a issue.

And I tried to bring more of my fellow fishermen friends down and testify, because we all know that if you affect one part of the ecosystem, the whole -- the whole rest of the ecosystem is affected. A lot of these yellow tangs and butterfly fish aren't on the

dinner plates of -- of fishermen, so it's kind of not on their agenda. But deep sea predators like ono will feed on yellow tang, the yellow tang go out into deep waters to breed and multiply. And they're -- actually, this reef fish is a source of a deep sea predator.

I was down surfing at La Perouse a couple days ago where the road ends, right on the edge of the reserve. And there's a -- a couple visitors, a father and son. And they had spotted these yellow tangs in the waves. And you could -- when the wave came in, you could see the school of yellow tang that was feeding in a few inches of water on the seaweed there. And the look in the kid's eyes -- and the father had spotted the fish and he was so proud. And the look in the kids' eyes was pretty priceless. You know, I think that might be one of their highlights, was -- was to see that.

And so that -- being on the edge of the reserve, I don't really see a lot of that a lot of other places. I definitely don't see it in Kihei, in Lahaina, where a lot of the main collection -- collecting is happening. So it would be nice to see a little bit more of that everywhere else around.

And as someone else touched on, the collectors are not the only culprit; it's the loss of habitat, injection wells. The muliwai -- the muliwai is brackish ponds of both fresh and saltwater where the ocean meets the sea. Without our running rivers, there's an absence of muliwai. Every stream, valley that you see on this island, where it meets the ocean, should have a brackish pond. And, really, there's not even one or two truly healthy muliwais left on the island. This is a huge -- in my eyes, a huge reason why there's less fish nowadays, is the lack of fresh water coming in the ocean.

And so, you know, this -- we've all heard it so many times, that the life of the land is protected in righteousness. And when they say righteousness, that's doing what is correct for the land. And that's -- that's what I ask for, to do what's right for the land and not for personal profit.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you, Mr. Fisher.

MR. FISHER: All right. Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Jimmy Conniff, testifying on Committee Report 10-79, followed by Lance Collins.

MR. JIMMY CONNIFF (testifying on Committee Report No. 10-79):

Good morning, everyone, all of you. You're all here today. My name's Jimmy Conniff. I'm just a voter, and I don't have any special interest.

I just wanted to testify I am in favor of -- of -- I got the same one and I asked questions about it, people in my neighborhood. I am for the -- my scribblings here -- nine seats elected by districts of roughly equal population.

I am -- I have no objection to Sol's residency. I think he did a great job. I think he was -- he deserved to be elected. I can't -- I listened to his argument and -- and I -- and I understand it, but, in my heart, I can't believe that a committee of people would come up to a -- you know, couldn't resolve that question of -- of equality of the people of Lanai and their population to whatever portion of the Maui Island that they might be joined to or canoed to or annexed, you know. And I believe that -- you know, I believe -- I don't want to preach, but I believe, spiritually, that a solution could be worked out in that area. It -- people in -- in my neighborhood -- not a bunch of us, but, you know, it's a neighborhood -- it -- it seems to offend their sensibilities the way it's -- the elections -- you know, I'm not a speaker. And kind of forgive me, too, I -- I find it hard to breathe and talk at the same time. That there could be -- you know, at least let's -- I'm -- what I'm doing is I'm not asking to have it changed, but at least to have it put on the ballot to find out. At least let me put my voice to a vote instead of testifying.

Thank you. Thank you, guys.

CHAIR MATEO: Thank you. Members, is there any need to have any part of the testimony rephrased?

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Jimmy. I -- I really appreciate your comments here. And -- and, again, I think you're right, that it needs to be given some consideration. And, you know, even -- even though you -- you say that, you know, by the separate districts, you know, that, in the -- the goodness the people, they will consider putting in a Lanai, or a Molokai person, for that matter. And -- and that's very -- that's very nice to consider that that's who we are and that that's exactly what would happen. And I think it's because we don't have assurances for that, that I would be concerned. And perhaps it needs further discussion. So I just wanted to comment on -- on your thoughts. So --

(Councilmember Nishiki was excused from the meeting at 11:25 a.m.)

MR. CONNIFF: I understand. And I enjoyed meeting you at the -- at the regatta. And I know the feeling of being left out. That's really a -- a lousy feeling. And -- and in a little bit -- I feel a little bit of that now when I do vote, you know, that perhaps it's unbalanced. But I -- I believe that a committee, or whatever you guys would call it, that they could work out something like that. And if they don't, they don't, you know. Let's leave it the way it is, if it's -- but I do believe that there could be some improvement of the current conditions. Thanks.

(Councilmember Nishiki returned to the meeting at 11:26 a.m.)

COUNCILMEMBER KAHO`OHALAHALA: Okay. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

Thank you, Mr. Conniff.

MR. CONNIFF: Thank you.

CHAIR MATEO: Members, the Chair is aware of the time. We've been here for two and-a-half hours. The Chair is going to take a five-minute recess for the Members to take care of their personal needs, so we can continue with the rest of testimony before we break for lunch this afternoon. Members, we are in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:26 A.M., AND RECONVENED AT 11:37 A.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER BAISA, EXCUSED.)

CHAIR MATEO: Council of the County of Maui, regular meeting for August 6, 2010, will reconvene.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, continuing with testimony on agenda items. Calling Lance Collins, testifying on Committee Report 10-79, followed by Randy Ragon.

MR. LANCE COLLINS [testifying on Committee Report No. 10-79 and Bill No. 45 (2010)]:

Mr. Chair, I also will have a very short comment about Bill 45 afterwards, but I didn't put that on my --

Aloha. Good morning, Chairman Mateo and Members of the County Council. My name is Lance Collins. I'm a private attorney in Wailuku and I -- I also happen to be the Secretary to the West Maui Charter Working Group. And I drafted the proposal that's before you with -- before the minor changes that were made by Council Services in 10-79.

At the Committee meeting, I talked about the poll that was conducted by QMark Research that found 65 percent of the County voters in support of the proposal of nine single-member districts and how that slightly varied in some of the rural areas, 60 percent on Lanai, up to 75 percent on Molokai.

(Councilmember Baisa returned to the meeting at 11:38 a.m.)

MR. COLLINS: So I don't intend to use my testimony today to talk about that scientific poll again. I did send copies of all that information several months ago to each of your offices.

I would like to situate this in the context of the broader context of Hawaii history and Hawaiian history. At the time of Liloa, there was a significant change in Hawaii's political landscape. And when Liloa passed, he separated the Akua among his highest-ranking son Hakau and his favorite son Umi. And I won't get into the entire story about it, but, in the end, Hakau was cruel and mean and disrespectful to the kahuna, and he was eventually toppled with the assistance of Umi, and, of course, he was the guardian of the Akua ku. And when Umi came into power, instead of following the old tradition of apportionment, which, in Hawaiian, is kalai`aina he created a new system where lesser chiefs ended up being responsible for the different areas that were under his jurisdiction as -- as the king, instead of it just being his small council of high-ranking chiefs that weren't really connected in any way to the districts.

And that process, that, that type of kalai`aina continued forward until the time of the Mahele in 1848. And there were two instances during the Kingdom period that sort of pushed this organic Hawaiian way of apportionment by the wayside. The Mahele was the first part and second part was the Bayonet Constitution. And it was the sugar barons and the people who were interested in sugar and the plantation owners that insisted on centralized forms of representation because they felt that it was much easier to control everything from Bishop Street than have people that were on the ground.

And they fought when the Organic -- Organic Act happened -- I will conclude in a minute -- when the Organic Act went through, they were opposed to county governments. And that was something that Hawaiians fought for at the time of the Organic Act because it was important to have home rule. However, the compromise

was that it continued to be a centralized form that the "Big Five" held control onto until the 1960's.

I believe that district voting is a -- is a natural and organic consequence of moving away from a plantation style election system, which really supplanted a native way of representation, and moving it back onto the track of something that is more fair, more equitable and really will allow the people to have influence in who they decide to be their representative.

So I -- I hope that you will consider passing this today on First Reading, and at least allowing discussion to continue until at least two weeks from now, so that the community continue to -- can have this vibrant debate that it's been having for the last month. So I hope that -- that you will at least allow it to continue at least to -- to another reading.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

CHAIR MATEO: Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. Thank you, Lance, for sharing that. You know, I -- I have been perplexed with the -- the idea that the Constitutional premise, which is one person, one vote, is that we use currently in -- in this system in terms of finding representation, and that we would overlay a -- a premise like this that was created in America, but now is to be overlaid on the islands. And we are -- and I don't believe that the -- that when this was created that anyone thought that they would be applied to our situation, which are islands. So a comment on that? Because you're -- you're bringing into the fold other discussions about representation.

MR. COLLINS: Right. Well, you know, one of the -- in the old kalai`aina way of apportionment --

COUNCILMEMBER KAHO`OHALAHALA: Go ahead.

MR. COLLINS: The -- if the -- at least -- at least from the time of Umi forward, if there was a problem with the particular kaukau ali`i that was supervising and overseeing a particular area of land, if -- if he or she were cruel or were not -- was not connected in with the people, they had a number of -- of ways of resolving that through Piholo or

ha`ule, and I think there's a whole list of -- of ways that -- that these chiefs could be removed from office, I guess that's what you would say today. But they were able to do that because the -- it was carved up -- the -- the land was carved up in such a way that what you would call the constituents of these chiefs were small enough that it was -- it's not like Maui is today, you know, with -- there's 140,000 people of diverse ethnic backgrounds and histories and all of that sort of stuff. And so there were mechanisms in that system that allowed for that.

And it -- it -- it's -- it can't be exactly compared with one person, one vote because it -- it wasn't -- well, first of all, it wasn't a voting system. And the way that people expressed disapproval in how chiefs were removed was under a complete separate set principles. But the chief to maka`ainana was much smaller than it is today.

And so I guess the question would be if Umi were deciding how to do things today, with the amount of people and the diversity of -- of types of people, you know, what -- what would they -- what would they use. And I -- probably would not be nine single-member districts, but I don't think that it would be the current system, either. Of course, there's all sorts of, you know, ranking things with, you know, mana involved.

COUNCILMEMBER KAHO`OHALAHALA: And I -- and I think that if we were putting this forward in the -- in the manner that it is coming to the Council, that unless there are other discussions that are going to be like this in offering solutions -- and I say that -- you know, let's be real clear. When I was first elected to the Council, this was posed to me then, you know.

MR. COLLINS: I was one of the people posing it.

COUNCILMEMBER KAHO`OHALAHALA: Yes. Because I was the only second member elected from the Island of Lanai. The previous person had held this seat for 44 consecutive years. So the question to me was would you support district voting.

And I did a lot of research to try and fully understand what that was, you know, and how it could actually move. But I'm still left with the same challenge that there's a constitutional premise here of equal treatment and that we are represented by one person, one vote.

Now, given that, as the -- the premise, then I -- I'm finding it real difficult to find any other solution because we're overlaying it on islands. And then, therefore, it makes Lanai become the smallest unit in Maui County. And, therefore, if we were looking at that as a representative system, then Lanai then would be the unit of which you would measure the representation. And then applying that across the board to Molokai, Maui would become a problem, you know.

So -- so that's why I'm -- I'm trying to come to terms to understand this issue fully so that it is one that can be applied fairly, you know.

MR. COLLINS: Uh-huh.

COUNCILMEMBER KAHO`OHALAHALA: And that's what my concern is, yeah.

MR. COLLINS: Yeah. I -- I think, you know, the way that the Justice Department, when they apply some of the voting rights, principles from the Voter Rights Act, and the Fourteenth Amendment, I think they generally looked at whether people are being disenfranchised. Not if they have somebody from their neighborhood on a legislative body, but, instead, what their influence is or how a political system would dilute their vote.

And so right now, for example, although Lanai has to have somebody from Lanai on the Council, they, actually, only have a two percent vote for any of the races. And so the Department of Justice would say, okay, well, under that system their voter influence is two percent. Under nine single-member district, it's about twenty percent, slightly less. And so the comparison that they would make is twenty percent influence versus two percent influence. And, you know, I -- and so --

And I also think that, you know, how the 13th House District currently is -- I mean, you were not from Molokai, you're not from Hana, but I -- I think that you did a great job when you were in the State House representing everybody. And, also, in the previous kalai`aina, I think you did a great job representing Lahaina, and you weren't -- you didn't live in Lahaina.

And so I -- I think that, you know, the thing is, is that -- and I think there's going to be testimony from Keiko Bonk shortly. And I think what she's going to say that, actually, rural communities are more -- were more benefited when the Big Island went to district voting because they were able to boost their voter influence and their vote was not diluted in the way that people on Maui currently have it.

COUNCILMEMBER KAHO`OHALAHALA: Okay. I appreciate that. And I look forward to that kind of discussion to find more information. And I -- and I encourage everyone else to do so. Thank you.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MATEO: Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. Lance, thank you for being here. A couple of questions I have for you. What was the exact number of respondees to the poll?

MR. COLLINS: QMark used 500.

COUNCILMEMBER VICTORINO: Five hundred?

MR. COLLINS: Yeah.

COUNCILMEMBER VICTORINO: Okay. So 500 people were used to get the 65 percent of the registered voters? Well, the different numbers that you've said, 60, 70, whatever.

MR. COLLINS: Yeah, yeah, yeah.

COUNCILMEMBER VICTORINO: Five hundred total?

MR. COLLINS: Yes, using the random sampling --

COUNCILMEMBER VICTORINO: Thank you.

MR. COLLINS: -- method.

COUNCILMEMBER VICTORINO: I wanted that clarification because prior testifier had said 65 percent of all registered voters, which would have been 42,762 vote -- people. And I can tell you right now that is one heck of a poll.

MR. COLLINS: One survey.

COUNCILMEMBER VICTORINO: If it was ever done that way. So thank you for that clarification.

MR. COLLINS: That's why they use random samplings.

COUNCILMEMBER VICTORINO: Yeah.

MR. COLLINS: Because it would be impossible to call 40,000 people.

COUNCILMEMBER VICTORINO: And I wanted the people to understand.

MR. COLLINS: Sure.

COUNCILMEMBER VICTORINO: It was random, 500 selected, right?

Second question I have for you, when we look at Maui County, and we unique, the Big Island, the uniqueness is they're still land-based, everything -- you can spread a

district, you can draw a line, but it's not island based. I'm born and raised there, so when Keiko comes up, she can explain to me what she's referring to.

MR. COLLINS: Uh-huh.

COUNCILMEMBER VICTORINO: But I am saying we have three separate islands that, no matter how you contiguous them, the Island of Lanai and the Island of Molokai realistically would be really left out of the equation when you redistrict this -- this reapportionment by one man, one vote. Is that correct?

MR. COLLINS: No.

COUNCILMEMBER VICTORINO: Oh, yeah? Okay. So explain to me how.

MR. COLLINS: Well, you know, I think right now, as I had indicated, Lanai has two percent voting influence for nine races. And so everybody on Lanai could not vote for anybody and people would still get elected. None of the races in the last twenty years, since we've had our system, have come down to a two-percent swing. So, right now, Lanai doesn't really have any kind of sway over anything. So I -- I -- I believe that, actually, this system detracts them, Molokai and every rural area on this island. And -- you know, and I think that that's a commonly held belief.

COUNCILMEMBER VICTORINO: Okay. And then, finally, when you look at these re -- reapportionment districts by one man, one vote situation, how would you tell the people of Lanai, and Molokai, and Hana, for that matter, because those are the three outlying districts that would be most profoundly affected because of the small population bases, yeah, and connecting them with other areas like Lahaina or Kihei or some -- Maalaea? You know, I've seen the various proposals that are out there.

MR. COLLINS: Uh-huh.

COUNCILMEMBER VICTORINO: How would you equate that to them, that they can be still fairly represented?

MR. COLLINS: That's a -- a good question. I had actually mentioned this a couple of times. If you look -- not at Honolulu 'cause the districts are so big, but if you were to look at the Big Island, at the competitive races, and there are quite a few more, not in Hilo or Waiakea, but pretty much everywhere else on the Big Island, half of the population of Lanai could swing any -- any -- any outcome of all those competitive races on the Big Island. Because when it comes to winning, you only have to win by one. And so it's not a issue of, oh, well, the community has to have, you know, a majority or every -- you know, the district has to be just the people on that island. It's a much smaller amount of people who decide competitive elections. And so I think one of the things

is we have to be able to think outside of how we currently do it because the -- our current system does not any more promote competitive type elections, general elections.

It does sometimes promote competitive primary elections, but, because it's so big -- and that's why I wouldn't compare it to how Honolulu does it, either, because it's so big. But if you compared it to the Big Island, which has a -- a slightly larger population than Maui, half of the people on Lanai would be able to determine who would be their representative.

And that's one of the things I think Keiko is going to talk about, is how that actually forces candidates in single-member districts to actually be much more close to their constituency. And somebody who ignores twenty percent of their constituency, all of them got voted out at the next election, at least on the Big Island, and they pretty much stayed voted out.

But, of course, I'm sure we all know that, right. We've -- we've all run for office. And you don't listen to people or you don't please them, and, you know, people will try everything they can to get you out of office. And, apparently, that happened. There was a shuffling of the deck, so to speak, on the Big Island. And people learned it.

And she -- she had mentioned to me about Kau. And, apparently, that first time around, you know, there was a concern that people wouldn't listen to Pahala's needs versus Naalehu's needs. And I guess there was some historical thing with that as well. And that sort of happened and that was ended at the next election. And sure enough, the person who represents Kau now is at everything in Pahala and everything in Naalehu, and, you know, has their gas card and, and they do it.

COUNCILMEMBER VICTORINO: Okay. Thank you. And I appreciate your responses, Mr. Collins.

MR. COLLINS: Thank you.

COUNCILMEMBER VICTORINO: Thank you,

Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Thank you very much, Mr. Collins. Go ahead with your next item.

MR. COLLINS: Sure. Yeah. I -- I am testifying on my own behalf. And it's not really in -- in support or against. I just wanted to provide additional information.

I have represented the intervenors for the North Beach Lot 3 -- Lot 2, Lot 3 and Lot 4. And -- and that's being referred to as Kaanapali Ocean Resort, I think -- it's Starwood Lot 3, and Honua Kai which is Lot 4.

And I'm not exactly sure what's left to do with Honua Kai because the sequencing for the SMA was supposed to be south tower, townhouses, traffic -- updated traffic study, north tower. And then they were able to get a change from the Planning Department so that they were able to build the south tower, which is completely done, and the north tower, which I believe is also completely done, and the restaurant, and they didn't have to do a traffic study. And now I -- my understanding was that they don't have immediate intentions, anyways, to build the townhouses because of the lawsuits that were involved with the condominium selling and all of that kind of stuff. So they've actually redescribed the area where there should have been townhouses as -- as luau grounds.

And so as -- I'm not -- I'm not really sure. I thought the point of the subdivision for them was so that they could move the Nunes property up to the road, but that's not gonna -- that's not -- I mean, all of -- most of 80 -- 85 percent of Honua Kai has already been built and they already have approval, and they don't need a subdivision approval to have that built.

So I don't really understand how that ended up on the list. And it may have been an oversight or maybe they're referring to the development that, eventually, the Nunes family will -- will do. But I just wanted to share that with you because I -- I don't know -- most of you may not go out there very frequently, but you'll see there's the big south tower and the north tower. And maybe you've been to Duke's that's there. So, anyway, I just wanted to share that, that, actually, that project is almost done. So thank you.

CHAIR MATEO: Members, is there a need to have any part of the testimony rephrased?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Just, Lance, because you mentioned the last thing. I think, you know, we've heard testimony -- and I know you're not testifying in behalf of your client or whatever, but I tried to recall the name of the development company that was not from Maui who got the contract for Honua Kai. And somebody mentioned, is that Ledcor?

MR. COLLINS: Yeah. Actually -- and I don't know if Mr. U`u is still here, but he was the one that did the investigation of them using undocumented workers.

COUNCILMEMBER JOHNSON: Yeah.

MR. COLLINS: And got busted by ICE for that.

COUNCILMEMBER JOHNSON: Okay. All right.

Thank you very much.

MR. COLLINS: Uh-huh. Sure.

CHAIR MATEO: Thank you, Ms. Johnson. Thank you, Mr. Collins.

MR. COLLINS: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Randy Ragon, testifying on Committee Report 10-83, followed by David DeLeon.

MR. RANDY RAGON [testifying on Committee Report No. 10-83 and Bill No. 45 (2010)]:

Did you mention that I was testifying on Bill 45?

CHAIR MATEO: No. You signed up only for Committee Report 10-83. You wish to testify on Bill 45 as well?

MR. RAGON: Just on the amending of Chapter 18.04.

CHAIR MATEO: Thank you. Go ahead.

MR. RAGON: My name is Randy Ragon. I am a homeowner in the Olowalu Mauka Subdivision.

Our subdivision was approved under the 2372 Ordinance, but also required an SMA major permit. After over two years of complaints and the retaining of a Honolulu law firm by our owners, the County finally ruled that the -- that the developer was in noncompliance with the SMA permit that was issued in 2000.

The permit expired in 2005, and was not renewed by the developer. In the meantime, the developer, acting upon the advice of their attorney, Tom Welch, encouraged us to further divide our lots through CPR condominiumization and approved this internal process without disclosing that the permit had expired and that

the developer had not complied with the permit condition, which included millions of dollars of improvements.

This, in effect, doubled the number of families that would be put at risk, doubled the number of driveways, doubled the amount of ingress and egress, which our Council has determined is clearly in violation of Section "C" and "D" of the ordinance you are amending today. Had I known this, I would never have CPR'd my own property.

During the past five years my family has lived in Olowalu, we've experienced many life-threatening situations. Fires have burned onto our property line and throughout our subdivision. In one fire, my wife had to drive my daughter and our family dog through flames to get out of the subdivision because there was no fire road exit. On multiple occasions, we have experienced near death encounters entering or exiting the highway or driving in our subdivision because the improvements were never completed.

The DOT has informed our homeowners that occupancy should not have been granted in our subdivision until the improvements were done. The County of Maui was responsible for enforcement of the permit conditions, but did not enforce or obtain a bond from the developer.

Ten years later, the County still has not enforced against the developer. As a result, the health, safety and welfare of our homeowners is still at risk.

My attorney has advised me that the subdivision will not become legal until the developer obtains a new SMA permit. He also told me that he cannot find any legislation passed by the Council that would make the CPR condo process legal, and is advising me to undo my condo map as part of the process to make my property legal.

My understanding is that you're considering further amending of Title 18 of the Maui County Code, which is amended by Ordinance 2372, in 1994, through Bill No. 83. In the minutes of the 1994 meeting, attorney Tom Welch testified in favor of the bill, stating he represented people who have small real estate problems, including neighbors who are abutting property owners who want to relocate boundaries between them to correct encroachments. They had maybe a little bit of land from one lot to another in a situation where it's not increasing the development, impact to the County or increasing any burden on the County infrastructure, which would be situations applicable to more of a development situation.

Since the passage of Ordinance 2372, in 1994, Mr. Welch has used this ordinance to create massive subdivisions along the West Maui Mountains as well as other large ag developments on the islands. I need to know whether a 2372 subdivision that is

now being morphed into a conflicting tax designation is in any way consistent, conforming or just concocted by the attorneys, so I can sell my property with a clear conscience and get out of this nightmare.

I have attached a list of questions for the Council and the directors along with the page of the 1994 minutes that are referenced in my testimony.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Mr. Kaho`ohalahala, followed by Ms. Johnson.

COUNCILMEMBER KAHO`OHALAHALA: Yeah. Thank you. Randy, thank you for -- for being here and for expressing your -- your comments here.

And I just wanted to state for the record that, you know, I was able to visit your Olowalu Mauka property immediately after the fires that nearly came into your -- your home. But, Randy, can you help us by understanding that -- this kind of mapping division you recorded on your property, how is it different from a -- a two-lot subdivision?

MR. RAGON: As far as my own personal CPR?

COUNCILMEMBER KAHO`OHALAHALA: Yes.

MR. RAGON: Well, I have -- I have my -- my standard boundaries and then the CPR. You know, you can draw a line anywhere that you choose as the developer of your own property, but then I also have, you know, additional ingress and egress. And -- and now I have a different tax designation, which is Condo, whereas, before, it was Ag, which is, you know, substantially higher.

But the problem is, our subdivision's been -- has been determined illegal and, arguably, unbuildable. And, yet, we're getting taxed at a higher rate because we've got these CPR's. So there's multiple problems because of the -- the violations of the developer and -- and the non -- with the noncompliance and then the lack of enforcement by the County.

COUNCILMEMBER KAHO`OHALAHALA: Was there any review of this by the Administration, I mean, in your situation?

MR. RAGON: Well, we -- we filed a complaint over two years ago. And -- and it's been reviewed and -- and the County has gotten back saying that the -- the subdivision is in noncompliance.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And then --

MR. RAGON: But there wasn't any at the time that -- that the developers encouraged us to CPR, there was no disclosure to us about the fact that the SMA permit had expired in the year 2005, and that they hadn't completed their -- their permit conditions.

COUNCILMEMBER KAHO`OHALAHALA: Okay. Now, in your -- your testimony, you also mentioned that the -- your development had an SMA major and that when you recorded this new map and divided your ownership on your -- your land and added new improvements, did you have to obtain an SMA permit?

MR. RAGON: I had a different attorney do that. And there was a box that you had to check for the State under SMA. And she checked the box "no". So I just went with -- with what that attorney was doing, the work product.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And then on these land subdivision where owners are just moving a few lot lines and stuff, how many of these properties potentially are -- are involved in -- in doing this, then?

MR. RAGON: Well, we have -- we have a 14-lot subdivision, so there's the potential of, you know, 20 -- you know, doubling the -- you know the division. So there could be 14 of 'em doing it. Right now, there's -- I think about three or four have done it and another three or four are in the process.

COUNCILMEMBER KAHO`OHALAHALA: Okay. Well, thank you for that clarification.

MR. RAGON: You're welcome.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Thank you. And, you know, I really appreciate you providing us this information. I think that, you know, at least from what I'm gathering from what you've given me, I -- I try to look at the big picture of what it is you're saying, you know, separate from your particular circumstance. And if I understand, I guess, the documentation you've given us today, plus, you know, the statements contained in other conversations that we've had in the past on the Council floor, I believe what you're saying is that there is not sufficient oversight at the present time.

And perhaps even the original changes that were made to the ordinance, which we are now trying to -- I -- I guess, massage into some workable form, that those also are problematic because there is inconsistent oversight, there's not a -- I guess a -- any regulatory body or any individual who's really looking at what's going on. And, as a result of this, you've gotten yourself in a fine mess. Is that sort of a summary?

MR. RAGON: I think that -- that I found myself in a fine mess. I think that the County is in probably a bigger mess. I think the taxpayers are in a mess because, you know, this is another Palama Drive, Montana Beach situation that could ultimately turn into lawsuits against the County and millions of dollars paid out to our owners, and the whole subdivision being abandoned.

I mean, the intent of the bill is really clear when you go back to the minutes. It was just a little lot realignment for some farmers. But it's been -- you know, it's been, I think, for lack of a better term, drastically abused by the developers and the attorneys. And then it has not been enforced by the Public Works Director. And then when there's violations -- which we had to dog the County for two years to finally get them to say it was noncompliant. And then, and then now, we believe that they're not following the law because the permit expired in the year 2005. And they're negotiating with the developer, you know, on a permit that expired in 2005.

CHAIR MATEO: Thank you.

MR. RAGON: I mean, it's just not consistent.

CHAIR MATEO: Members, I'm going to have to interject.

COUNCILMEMBER JOHNSON: Okay.

CHAIR MATEO: We need to get back to the subject matter of the agenda. And the particular issue, even though a part of his testimony, does not relate to -- specifically to the item we're addressing on today's agenda. So please --

COUNCILMEMBER JOHNSON: And could I just ask him one question, then? Because the bill that we're considering today, which is the consistency, conformity issue, that particular item, because of concerns raised about, I guess, giving authority or that kind of power to one individual, if I read what you're saying correctly, that is not something you would support?

MR. RAGON: Absolutely not. I mean, all you have to do is look at the results. It's not working.

COUNCILMEMBER JOHNSON: Okay. That -- that makes it very clear.

MR. RAGON: Yeah.

COUNCILMEMBER JOHNSON: Thank you.

MR. RAGON: Thank you.

CHAIR MATEO: Thank you. And you wanted to also speak on another item as well?

MR. RAGON: No, no, no. That -- that's all that I needed to speak on.

CHAIR MATEO: Thank you --

MR. RAGON: Thank you --

CHAIR MATEO: -- very much.

MR. RAGON: -- very much.

CHAIR MATEO: Mr. Clerk.

MR. RAGON: Oh, and -- and just -- just one -- one quick comment. I want to thank Sol. I put out -- after our last fire -- again, all of our lives were in danger -- I put out a notice to all the Councilmembers and the Mayor to have a public -- what do you call -- like a hearing, you know, or whatever, just a press conference. And the only one that showed up was Sol. And I've approached the Mayor on this several times since then; no answers. So I really appreciate, Sol, you coming and taking a look at it firsthand. Thank you very much.

CHAIR MATEO: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: David DeLeon, testifying on Committee Report 10-79, followed by Geraldine Christopher Tichnor.

MR. DAVID DELEON (testifying on Committee Report No. 10-79):

Good afternoon and aloha. What an agenda. I'd like to speak to two issues related to Charter Amendments. And that is the district voting and the proposal to close the loophole in the financial disclosure requirements.

On district voting, I'd like to change the perspective a little bit and speak to those of you who are opposed to district voting, to tell you that this is your chance to defeat it. Your chance to defeat it is to put it on the ballot this year because, next year, you're not going to get a chance. Next election, we're going to be so organized that this is going to go right through. So if you want to defeat it, this is your chance, put it on the ballot.

This thing happened spontaneously from Kula, from Kihei, from the Realtors, from the Chamber of Commerce, from West Maui. This has not happened in an organized manner. And, and to the comments and concerns that this -- that we're not having a discussion, this is a discussion. We're having the discussion now, and we're going to have this discussion through November. There's plenty of time to have this discussion. You don't need -- you don't need a Ph.D. in political science to understand single-member -- single-member districts. Americans take to single-member districts like ducks take to water.

On the financial disclosure statement, I'd also like to testify in support of the proposed Charter Amendment to eliminate the 15-day loophole that allows candidates for County office to, to file their financial -- required financial disclosure statement after they have filed their nomination papers.

This 15-day window causes confusion among the candidates as well as the Board of Ethics staff. That confusion was in full display during the last election when one candidate failed to file a disclosure for 75 days.

The financial disclosures give the voters important information about who they're voting for. If the candidate has questionable financial resources, then that information should go to the voters as soon as possible.

The timeliness of this is now doubly important because the Board of Ethics has begun posting these disclosures on the County website. The disclosures are now easily available to anyone with internet access.

At it's June -- July 14 meeting, the regular meeting of the Board of Ethics, the Board unanimously approved the statement in support of this Charter Amendment -- proposed Charter Amendment. Nobody in Maui County understands the importance of this action better than the Board of Ethics. They unanimously asked that this measure be placed before the voters for their approval.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you, Mr. DeLeon.

MR. DeLEON: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Geraldine Christopher Tichnor, testifying on Committee Report 10-79, followed by Nikhilananda.

MS. GERALDINE CHRISTOPHER TICHNOR (testifying on Committee Report No. 10-79):

Thank you for listening. I'm, actually, going to be reading testimony for Keiko Bonk.

Dear County Council Chairman Danny Mateo and Maui County Councilmembers, my name is Keiko Bonk and I am writing to support the Maui County resolution that is referred to in Communication No. 10-79 which proposes a Charter Amendment to establish district races for Maui County Council. As a former elected county official and someone who understands the pressures of political office, I wish to wholeheartedly support this Charter Amendment.

The passage of a similar Charter Amendment for the County of Hawaii in 1990, led to a very significant increase in the participation and engagement of the public in their government. After the switch to district races, small business persons and engaged members of the community who were previously unable to run viable election campaigns due to the amount of money required to run an island-wide race were able to get elected to County Council.

The result has been a much closer and more engaged relationship between the elected officials and the people they represent. Those elected officials continued to represent their districts to the satisfaction of the people who lived in their districts, continued to represent their constituents with district elections.

Elected officials who represented interests other than those of the districts they represented on the Council had a harder time staying in office.

It has been said that having island-wide elections for district races is a tradition on Maui. But it is important to keep in mind that it is a tradition that came from a less democratic plantation past that enabled a handful of power brokers to have near total control of government. The residents of Maui County, especially those who live in the very different communities of Molokai, Lanai, Hana and Upcountry Maui, each

have their own unique interests which are often in conflict with the interests of people who live in other parts of Maui.

Imagine if the current system of electing Maui County Council persons were applied to our United States Congressional representatives, and the people of New York City; San Francisco; Montgomery, Alabama; and Tampa, Florida were allowed to vote on who would represent Hawaii in Washington, D.C. Would anyone consider that a truly democratic understanding of the issues in Hawaii?

Imagine you had to raise enough money to campaign all over the United States in order to represent Hawaii in Congress. That is essentially the system Maui uses to elect its Councilmembers.

Establishing district races will not solve all the problems in government, but it will go a long way towards evening the playing field and making elected officials more responsive to the people they are charged to represent.

CHAIR MATEO: One minute to conclude.

MS. TICHNOR: *As a former county council member from Hawaii Island, I know firsthand about the benefit of district council races. I was elected to represent my district both times I ran. I had only -- I had only to raise a few thousand dollars and to do a lot of grass roots campaigning to get elected because I did not accept donations from developers or big money interests. I would not have been able to get elected if I had to run an island-wide election.*

I was not the only person to get elected to the office who would not have been able to compete if they had to raise ten times as much money for an island-wide race.

The shift to district races made it possible for thousands more people to consider running for office and made those who got elected more responsive to the people in the districts they represented. District races reinforce the elected official's loyalty to their regional constituency.

Now, she has a little bit more to say. And since I am not -- I am testifying on her behalf, but I agree with what she says, could I have one more minute as if --

CHAIR MATEO: I've given you --

MS. TICHNOR: -- I signed up?

CHAIR MATEO: I've given you enough time. Members, is there a need to have any part of the testimony rephrased?

Thank you very much, ma'am. We do have Ms. Bonk's testimony. Each one of us received it, so we've had the opportunity to read it. So thank you for reading it on her behalf. Mahalo.

MS. TICHNOR: You're welcome. Thank you for listening.

CHAIR MATEO: Mr. Clerk. Mr. Clerk.

DEPUTY COUNTY CLERK: Nikhilananda, testifying on Committee Report 10-79, followed by Pam English.

MR. NIKHILANANDA (testifying on Committee Report No. 10-79 and County Communication No. 10-159):

Aloha, Mr. Chair Mateo and Members of the County Council. My name is Nikhilananda. I'm a resident of Huelo. I would ask the indulgence of the Council and the Chair if I may make a brief comment on 10-159 and then move into my testimony on, I believe it's 79 that I said I was going to testify on?

CHAIR MATEO: Go ahead.

MR. NIKHILANANDA: Okay. So I'm going to talk on 10-159.

And it's always a pleasure to, to hear Keiko's name mentioned. She's been a twenty year friend of mine. And it's an honor to follow her comments.

As far as 10-159, on Upcountry water, I also want to thank Skippy for his testimony earlier when he talked about Makapipi Stream. I live on Mokupapa Stream in Huelo. It goes through my property. Twenty feet from my property line is a dam. No water comes on the other side. It's bone dry. And it's reprehensible this is allowed to go on.

Now, what I would ask this Council -- I was at a meeting, the water meeting, a couple of years ago. And a representative of one of the current Councilmembers spoke and said that you cannot have a water catchment system on your property if you also have a County water meter. And then the head of the department, the director of the County Department of Water Supply, stood up and said that Councilmember's information is wrong, you can do that. And I -- I believe not only I, a couple other people, spoke and said, you know, we need to find out whether this is true. Two years later, I still can't find out whether that's true.

I would beg this Council to find out definitively if people can have a water catchment system. If you're really serious and sincere about having additional water, and not just paying developers to find water, but if you're serious, find out whether people can put up a water catchment system. 'Cause, you know, we're in a drought right now, and it has not stopped raining on my property. It rains every night, every morning. And I have buckets of water filled with -- buckets filled with water. So we don't have a drought. If we took the rainwater, made reservoirs, water catchment, etc. Upcountry and other areas could have water catchment and get a meter. And it's not clear -- and I see a couple shaking their heads because I know who -- who I'm talking about when I say that -- one Councilmember says you cannot and the head of -- the Administration's Director of Water Supply says you can. Find out what the fact is. Let the community know. There's 140,000 people waiting to find out. And, also, lots of people on the list for meters who have, of course, passed away waiting for their water meter.

My testimony on 10-159 is concluded.

CHAIR MATEO: Members, need to have any part of the testimony rephrased?

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I -- I -- I might give you some information. The accuracy of it, I'm not sure, so we have to check, on the water catchment. My understanding was, if you have a water catchment you cannot mix it with a County water system. So if you have one pipeline throughout your house and you get County water, but you want water catchment to supplement it, you cannot connect it to the County system because it may contaminate the County's system which goes back to the water main. And that was my understanding. But I think a more accurate response from the Department would be good.

MR. NIKHILANANDA: Right. And, Councilmember Medeiros, that's exactly the point what you just said. That's the point. And I've been hearing for years that you can't do that. And a lot of people out where I am are on water catchment. I happen to have a easement on the ditch system. So -- but lots of people have water catchment out there. So there's no meters where -- in my area, none whatsoever. But I've heard, for years, people who want to put water meter -- water catchment and they can't because they have a meter. And this has been going on for years and years and years and years. So thank you. That's the -- exactly your point. And now maybe, in public testimony, with Akaku watching and the community, we will get a definitive answer to that issue and then we know one way or the other. And then, of course, I would recommend that we make sure the law allows people to have a water meter and water catchment.

And you're right about contamination. We can deal with that, you know, EPA or Water -- Department of Health could make sure that they're separate. But thank you for your comment.

COUNCILMEMBER MEDEIROS: Okay. You're welcome. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Go ahead, Mr. Nikhilananda.

MR. NIKHILANANDA: Okay. Now I'd like to move into my testimony on the district voting issue. And everything -- almost everything has been said about district voting. So one of the things, speaking of Akaku, that we did on the board, is we allowed public testimony at the beginning of the hearing and then we added public testimony at the end of the hearing. Because what happens is comments are made by Council -- board members that you go, I want to comment on that, but -- their information's wrong or I want to just follow up or whatever. And here again, we can't do that. We have public testimony now, then you guys are going to be able to talk and you can say whatever you want and we can't respond to that. So, fortunately, since I'm coming to the end here, I decided to put most of my testimony aside and make some reference to some of the comments that were made today by various Councilmembers. So it's a little bit disjointed, but, hopefully, I can get into it.

The most important thing of government is the foundation and structure of our government. That's the most important. It's extremely significant. The structure we have now -- you can't build a house if your foundation is off. The structure we have is off. It needs to be changed.

Again, for me, that would be to have a district system. It's not going to solve all the problems.

If smaller areas want their own representative, district voting is exactly what'll give it to them. I keep on hearing some Councilmembers sitting here, and I'm shocked that they argue that district voting would take away local representatives. It's the exact opposite. You've turned it on the head.

Maui County is -- has an extremely unique government structure because we have four separate islands along with other rural areas -- rural and secluded areas. So it is unique. And -- and so, as a result, our -- our system is questionable.

And it was brought up again today. What did the Federal Government mean when they had the one person, one vote. Right now, we don't have one person, one vote. There's an island that has 7,500 persons and they, basically, have one representative. It's not equal. So when we talk about equality, that's what we want.

The expense. I'm glad I heard Keiko talk about that. Because it's unbelievable to run -- all Councilmembers have to run like they're running for Mayor. No, we need to have small districts.

Also, Councilmembers, there's nothing sacrosanct about nine members. Kauai has seven. The Big Island has nine districts and you heard Keiko, again, talk about what happened there. We could have eleven. Thirteen is what I would recommend. And one Councilmember said we could use Lanai as the smallest total. But, for example, if you have nine -- I said this before, in my earlier testimony, 15,500 people, each would represent. If you had thirteen members, Molokai would almost have their own representative, 10,700. So I would -- so I would say look at that. Put it on your motion that you -- well, first of all, it definitely should be on the ballot for the people to decide. I mean, that's an obvious no-brainer to me.

As far as -- accountability is, actually, the most important thing about that. And that is that you have a representative that represents you. Not that, right now, there's nine of you and you go, nah, he's not in my district, I don't have to worry about that.

And speaking about districts, I heard people say that there's areas that do not have representation. Well, guess what? Huelo doesn't have a representative. My Councilmember lives in Hana. Neither does Makena, Napili, Kapalua --

CHAIR MATEO: One minute --

MR. NIKHILANANDA: Olinda --

CHAIR MATEO: -- to conclude.

MR. NIKHILANANDA: -- Ulupalakua and other areas do not have representatives. That's just the situation. And I remember once voting for the State House of Representatives -- I have one more minute, right -- the State House of Representatives. I live in Huelo, East Maui. The two people running was one on Molokai and one on Lanai. I live on Maui. Neither of them are going to represent me? That's ridiculous. Of course. And then the person from Molokai beat the person on Lanai. So that's the situation. But they represented me.

And other people have talked much more eloquent than me. You don't have to have -- someone doesn't have to live on my street to represent me, but they need to live in my district.

And the way it is now, there's nine people here that we have an at-large system. It should not be. It needs to be on the ballot. And when people say that people aren't intelligent enough to figure this out, it's like all other issues, East Maui water, district

voting, whatever the issue is, water catchment, we need to put this to the people, educate them, and then they will vote. But we need a district system.

My recommendation would be thirteen Councilmembers. Expand the district. Molokai would then be covered, and the concerns that people have with that island.

Thank you very much.

CHAIR MATEO: Members, is there a need to have any part of the testimony rephrased?
Thank you very much.

MR. NIKHILANANDA: Thank you, Council.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Pam English, testifying on Bill 45, followed by Dixie Laughrey.

MS. PAM ENGLISH [testifying on Bill No. 45 (2010)]:

Aloha, Chair Mateo and Members of the Council. My name is Pam English, representing Maui Land and Pineapple Company. I'm here to testify in favor of Bill 45 to define consistency.

I thought an example might benefit. We received comments on a large lot subdivision yesterday, a comment we repeatedly see. I'm going to read it. "The Interim zoning for the subject parcel does not conform to the Community Plan designation of Agriculture, Public/Quasi-Public and Open Space. A Change in Zoning or Community Plan Amendment is required."

A background on this subdivision: A portion of the land in the middle of a gulch is Community Plan P/QP. In this general area, there was a County landfill which MLP gave to the County in 1992. At that time, a plat was processed in order to separate the parcel of land and transfer title to the County. Since the County's exempt from the burden of this Code section, there was no Change in Zoning required of the County, so the exact boundaries of the landfill were not delineated. The Community Plan had P/QP in the general area, but not exactly in the platted area. So now, as we try to process a plat, we have to either -- we have to process a Change in Zoning to fix it.

There's no common sense applied here. It's obvious that the blob was meant to designate the landfill. And it is our opinion that a plat should be processed without

delay. It's our belief that this amendment today will clarify the mapping nonconformity and let staff use common sense.

We urge you to pass this bill today without future -- without future -- further delay. Appreciate your time. Mahalo.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you, Ms. English.

MS. ENGLISH: Thank you.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Dixie Laughrey, testifying on Committee Report 10-79, followed by Dana Naone Hall.

MS. DIXIE LAUGHREY (testifying on Committee Report No. 10-79):

Aloha. Thank you for allowing me to address this issue today about district voting.

I've lived on Maui for 32 years. It was drilled into me by my father to never take voting rights as a -- for granted, that it's really important to vote. So I'm just going to speak like a regular voter.

What happens to me -- I don't know. I thought when I first moved here that we did vote by district. I don't know what year it changed where it went to at-large on the elections. But here's what happens to me when I go to the voter booth, is, when I go to vote, I don't know the other people in the different districts. So what happens is I only vote for the person in my district. And so even though it says at-large, there's so much confusion in the voter booth, when you get in there, so I go, well, I don't know what Molokai needs or Lanai needs, I'll let those people decide. So what happens is -- we're sort of doing district voting, but what happens, it's not really true representation.

So I sent a letter in before to this Committee. It was about trying to really address the issue of having district voting, but, also, have population in there, too. I don't think it should just be all just district.

I think there should be -- if Kahului and Wailuku has more residents, then they should have more than -- more representatives. I think we need more representation. So I

don't think having one person on the West side is enough. I don't think having one person for Kahului is enough.

The other issue I want to address in the district voting is I don't think it's right when somebody just rents a room in a district and now says, I'm from that area. I think there should be some residency things established -- how long somebody has actually lived in that area.

So those are some of the things that I would like to see that the Committee would actually address on this stuff.

The other thing is, I am a volunteer for Elle Cochran, who's running for the West side. And it is very, very costly to do an at-large campaign.

When she went to Hana, what happened was, they go, well, why should we vote for you, you're not from Hana, so what do you know about Hana.

So I mean this is what -- the kind of thing happens to these candidates when they're out there, trying to run, they're having to do this whole at-large thing. They're doing canoe district, Molokai, Maui, all of -- you know, it's just too much. And the people don't get the chance to really get to know the candidates for their own area.

So these are just some of the things that you want to take a look -- I'm just speaking from a personal thing. Now, I live on Front Street on a very popular intersection right by Mala Wharf. All the candidates have been coming up to me to ask to put their signs up, okay, because I'm in a popular spot. So what happened is, I go, I want to know what you stand for before you put up your sign. And so then I -- they give me the brochures, or I talk to 'em personally. I go, okay, I'll -- I'll allow to you put up your sign. What I don't like is somebody's coming and stealing the signs and then putting up other signs for candidates I never even approved. So this is some of the other problems with the at-large.

CHAIR MATEO: One minute to conclude.

MS. LAUGHREY: All these candidates have to like put their signs up everywhere, even not in their own district. And then there's a sign war going on. And my house is one of 'em. So this is just another little issue. We wouldn't have so many political signs up, be -- beautify Maui if the people who were voting in the district and only had the signs of the people that are running in that area.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

COUNCILMEMBER NISHIKI: Yeah. I got a small question just because of what you said, young lady. You know, you said people in Hana said, what are you doing in my area when you don't even live there. What if, because of what is being proposed, someone from Haiku is in that Molokai or Lanai district, and they -- they went over and they said, what are you doing in my area, you don't even live on Molokai, how would you respond to that? Or, similarly, on Lanai, if Lanai were to be merged with, I don't know what area of the County, and then somebody came over and said, what are you doing here, you don't even live on Lanai, you -- you had to catch a ferry or the airplane. That's even worse. What would you say to respond to that?

MS. LAUGHREY: Well, that's what I think why we need district voting, because this is what -- no matter where you go, no matter what section, that's what the constituents say, what can you do or what do you know about our area. It doesn't matter which area you're from, but that's the issue.

I feel like we need more Councilmembers. I mean, yeah, think about it. On the rest of -- the mainland, they have mayors of towns and they're decided by lots of people. We're expecting one representative to represent the West side, one representative for Kahului. It's -- it's too little. We need more representatives. I'd like to see this Council be bigger, that we have more districts. There's not enough Councilmembers.

COUNCILMEMBER NISHIKI: So maybe that issue needs to really be looked at thoroughly.

MS. LAUGHREY: Right. I -- I think nine is too little.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MATEO: Thank you very much. Thank you. Mr. Clerk, go --

MS. LAUGHREY: Thank you.

DEPUTY COUNTY CLERK: Dana Naone Hall, testifying on County Communication 10-159, followed by Pamela Tumpap.

MS. DANA NAONE HALL (testifying on County Communication No. 10-159):

Good -- oh, gosh. Good afternoon, Chairperson Mateo and Councilmembers. Thank you for the opportunity to testify on the resolution regarding the water agreement with Piiholo South, LLC.

As a member of the general public, the August 5, letter to the Council Chair from Piiholo South, LLC contained information that was new to me. I believe that the developer of the Piiholo South Well testified earlier, when questioned, that the preliminary Piiholo South Well agreement had not been signed. However, the first sentence on Page 2 of the August 5, letter reads, in part, "We have made significant progress in the last few months and we have executed a preliminary agreement with the County."

Even if preliminary, the word "executed" means that the document was signed. So, indeed, negotiations with, with the developer are very advanced. And the Council as a whole and the public are only now being made aware of this matter. This is disturbing.

The Council and the public are entitled to review the preliminary agreement, especially since it has been executed. We should not have to rely on representations by the developer about the water apportionment percentages or any other important details. Particularly, when the August 5, letter states, "Our land project requires only a small fraction of the full capacity of our well."

The letter also reveals an apparent agreement with Kula Ridge and Kula Ridge Mauka developers for water from the Piiholo South Well. These agreements leave the public out of the discussion.

I support the resolution before you today, so that it is clear that the County Administration's negotiations benefit applicants on the Upcountry water list and not late coming developers of other developments seeking to move ahead of people who have been on the water meter list for years.

Finally, if the County is contemplating an agreement which will commit County taxpayer dollars to transmission, pumping or any other thing associated with this well, then the project becomes a County project, and an EA is required before any contract is made or any agreement executed.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

CHAIR MATEO: Thank you, Ms. Hall.

MR. HALL: You're welcome.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Excuse me. Pamela Tumpap, testifying on Committee Report 10-79, Committee Report 10-80, Committee Report 10-83, Bill 45 and Bill 47 -- excuse me -- followed by Jocelyn Perreira.

MS. PAMELA TUMPAP [testifying on Committee Report Nos. 10-79, 10-80, and 10-83, and Bill Nos. 45 (2010) and 47 (2010)]:

Aloha, Council Chair Mateo and Councilmembers. I'm Pamela Tumpap, President of the Maui Chamber of Commerce. And I am here to address those issues, but I will be rather brief since I know you've had a long day and a lot to deliberate.

On the issue of 10-79, the issue of district voting, we are excited by the discussion that's taking place. We are continuing to review this matter, but presently, we do believe it is a matter that should be placed on the ballot. And so we -- we feel that the public should be allowed to ring in and wanted to share that.

On the issue of the Charter Amendment for dealing with financial filing, matter 10-80, we, too, support putting this measure on the ballot so that voters can ring in and determine whether the financial disclosure statements should be filed concurrently with the nomination papers for candidates. And we view this so that we can close a loophole that currently exists. And that we can meet the intent that that requirement was meant to provide.

On Item 10-83, aquatic life, we appreciate that this bill was separated from the proposed animal control bill which we saw as unreasonable and unrealistic as drafted. We appreciate that language changes have been made to clarify this bill and aim it toward the marine environment and the industry that it was intended to help regulate. And we appreciate those modifications.

On the subdivision bill, Bill 45, subdivision consistency, we lend our general support to this bill.

And on Bill 47, dealing with ag consumers, again, we appreciate the work on this bill and we appreciate the lowering of the annual income requirement to help support ag entrepreneurship.

And that would conclude my testimony on all of those items.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Thank you very much.

MS. TUMPAP: Thank you. Aloha.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Jocelyn Perreira, testifying on Bill 45, Committee Report 10-79, and County Communication 10-159, followed by Tracy Jones.

MS. JOCELYN PERREIRA [testifying on Committee Report No. 10-79, Bill No. 45 (2010), and County Communication No. 10-159]:

Good afternoon, Council Chair Mateo, Councilmembers. I'm Jocelyn Perreira with the Tri-Isle Main Street Resource Center.

The first item I'm going to discuss is 10 -- 10-45. We would like to offer our opinions and recommendation in support of Bill 45 for the following reasons:

We -- we feel that it's not only the large landowners that are impacted and affected. Some small landowners that have mismatched zoning, okay, may be impacted and they may not be fully aware.

I think who spoke very good on this today was Alice Lee that expressed a lot of our sentiments.

In this particular instance, you know, in what you're discussing, these projects have met the consistency test, but not the conformity test. Okay. These projects went through the rigid SMA process, and they should be allowed to move forward as -- as these projects will bring life support and job creation to help revive our economy, that's -- it's a particular circumstance we're in right now that calls for a different set of measures that we need to look at.

Annual reporting would be very good because that would keep you knowledgeable and keep track on what's going on to see if an amendment is necessary.

And so, again, we would like to see these projects continue with their permitting process. And as -- and -- and we appreciate the opportunity to provide this comment as we feel this is a very challenging times that we are in and they call for a different set of considerations to allow some flexibility and some understanding so that we can, in fact, keep -- you know, keep our -- keep things moving in Maui County that have been worked on for a long, long time.

Thank you.

CHAIR MATEO: Thank you. Members, a need to have any part of the testimony rephrased?

Thank you, Ms. Perreira. Go ahead.

MS. PERREIRA: Thank you. On County Communication 10-159, regarding a resolution regarding a water source, you know, water, in -- in some of the towns that we represent, and I think Maui County as a whole, it would be probably their number one issue, and is magnified today by what's happening currently.

And I think that Councilmember Michael Molina had a very, very good suggestion by saying this should go back to committee. Because I can tell you, we have not seen any of the communications that Mr. -- that Councilmember Nishiki had referred to.

I think when you're talking about water, people want to know what exactly, precisely you're talking about because it affects their lives, it affects everything. And when you get into a discussion of negotiations, or even contracts, more so people are going to want to know exactly what is going on. So for -- for that reason --

And, also, it's very unfair to have anybody come up and make a representation of what a church said or did or didn't do without having the exact words that people have stated, so it's not taken out of context. And it should be an issue that's separated from a project. So it's not the water is being tied to a project and, therefore, receiving some -- you know, some advantage that wouldn't be a consistent policy across the board with the County.

So for that reason, we -- we support sending it to committee, if that is okay with you all.

Thank you.

CHAIR MATEO: Go ahead on your last item.

MS. PERREIRA: Yeah. The last item is on the district voting. Excuse me. I'd like to reference -- re-reference our letter of July 15, to all of you, as our -- our position has not changed in -- in that -- this is such an important issue, it is so critical that it is truly, truly important that we have enough time to make sure that we're not making any -- any mistakes in all of this. You know, I mean, even our Councilmembers here have stated, yeah, that Council -- Councilmember Sol Kaho`ohalahala said he was struggling with the issue, he was trying to understand so that he could find a fair thing to do. Okay. If -- if -- and other councilors are also a little bit perplexed in -- in this.

Now, if you are -- you are confused or you're trying to grapple with, you know, what is fair and equitable and what-have-you, can you imagine the average -- average everyday person? It's like Alice Lee said, she said, people are so busy going about their everyday lives, they don't always get the chance to get well-informed.

And that's why process is there, so that it allows a process where people can talk story about it, so that it's clear that Lanai will not be swallowed up by Maui, as they will continue to seek assistance from all of their Councilmembers. That people from other districts -- you know, people from other districts, they visit other districts. If they go to Lahaina, they certainly visit other communities and other towns. So, therefore, other towns should have some say-so in what -- what is being placed upon them, what is being voted for, that it's equitably fair for everybody. If you're -- if you're giving some monies that's going to benefit the areas that -- that -- that -- that are -- are having -- having the support of the visitor industry, for example, that these other areas, these rural areas, that are impacted when people visit them, they have the same opportunities to have the voice. And not only with their person from their district, but, also, with each and every Councilmember.

It is -- it is very important all nine Members are aware and responsible to each and every citizen for a fair division of resources and opportunities for a broader field of judgment on home rule issues. We deserve the right to a discussion as to whether change is necessary and fair.

And why did the Charter Commission attempt, fail to move it forward the first time? We need all of the information, all of the facts. We need to hear point and counterpoint.

I know this is a frustrating situation for those who want to move it forward very quickly, but we must remember, even the last election, we had the Obama factor that we had to deal with, which was an unusual election. So even if you're taking stats

and information like that, we need to really try to understand this clearly and understand what happened.

And last, but not least, if I might say, I -- I think it's -- it -- it behooves us --

CHAIR MATEO: One minute.

MS. PERREIRA: -- to be respectful of the people of Molokai, Lanai, and land -- the area of Hana. It is inherently important that their voice is at the table. If their voice is not at the table, even if they represent a smaller group, I don't think that is the Hawaiian way, the Maui way. I think it's very important that we accommodate them.

So, in closing, Council Chair Mateo, I just believe that our organization, because there are merits on both sides, feel like we need to follow a process so there is more discussion. So when we come to a conclusion, it is a conclusion that has been thoroughly thought out and entirely defensible.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you, Ms. Perreira.

Mr. Clerk.

DEPUTY COUNTY CLERK: Tracy Jones, testifying on Committee Report 10-83, followed by Cindy Warner.

MS. TRACY JONES (testifying on Committee Report No. 10-83):

Good morning. Good morning, Council Chair and Councilmembers. My name is Tracy Jones, I'm the Executive Director of Pacific Whale Foundation. I'm a marine biologist and I'm an attorney.

I want to thank you for the amendments to the aquatic life operations bill, and I also want to acknowledge and thank you for the opportunity to participate in sort of the reforming of this. I did meet with Deputy Corporation Counsel Jeff Ueoka and Mr. Nishiki's Legislative Aide, Scott Kaneshina. And I appreciate the time to address the concerns I brought forth to the Council.

I support the passage of this bill. It's important to regulate an unregulated industry that we see is so detrimental to more marine environment. And I applaud the Council for coming forward and leading the charge on this for the rest of the state. I expect

the other counties will follow you. And I think that they will respect the hard work everyone's put into this bill and use it as a model. So thank you for that.

In regards to the penalty, I see it's an intentional addition that the penalty is a misdemeanor, but that the fine, instead of the standard misdemeanor penalty, is just set straight out at \$2,000 and/or up to a year in jail, or both. And I'll defer to the Council. I understand that was intentional language, rather than up to \$2,000 as is typical. And I appreciate the fact that you are trying to strengthen the penalties and illicit compliance by being straightforward in that penalty.

I have nothing further. Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

CHAIR MATEO: Thank you very much.

MS. JONES: Thanks.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Cindy Warner testifying on County Communication 10-159.

CHAIR MATEO: Cindy Warner.

Mr. Clerk, proceed.

DEPUTY COUNTY CLERK: Cindy Warner was the last person to sign up for testimony.

CHAIR MATEO: Thank you. Members -- if there is anyone in the gallery wanting to provide public testimony, please advance to the podium at this time. Yeah, we'll get it. Please state your name for the record.

MR. DAVID MOGILEFSKY (testifying on Committee Report No. 10-79):

Oh, hi. David Mogilefsky. I don't have real strong feelings about equalizing the Council districts, but I kind of got interested in it from an academic standpoint. And -- and somebody asked the question today, has the one person, one vote principle of the Constitution ever been applied to a place with islands. And, strangely enough, the answer is yes. And the place with the islands that they applied it to was New York City. This is going to sound a little humorous, although I don't intend it to be. New York City has Staten Island, has Manhattan Island, it has Long Island, which

has two districts, and it has the Bronx, which is part of the mainland. Okay. But, anyway, it had these five boroughs, and they all had -- had different numbers of people. And Brooklyn decided that they were unhappy that they had the same number of representatives on the legislative body that Staten Island did, which was a little tiny place. And -- and the thing went all the way up to the U.S. Supreme Court in 1989.

And I'll quote to you from what the Court said. That the body -- this legislative body that they had was called the Board of Estimate. The case is called Board of Estimate of City of New York, et al. v. Morris, et al. I don't know who Morris was. But, anyway, Justice White delivered the opinion of the -- for the Supreme Court. I guess that's the guy that was called Whizzer White. He said, because the boroughs have widely disparate populations, yet each has equal representation on the board, the Court of Appeals for the Second Circuit held that this structure is inconsistent with the equal protection clause of the Fourteenth Amendment. We affirm.

So it kinda looks like we're doing this in an illegal manner right now. And the sooner you get it on the ballot and change it to where each district has an equal number of people in it, the sooner we will be in compliance with the Constitution.

Thank you.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased?

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. And, Mr. Mogilefsky, I don't have a question, but I really would like to have that in writing if you -- if you could get it to us.

MR. MOGILEFSKY: Well, I've -- I read to you directly from this, which is the opinion of the Supreme Court. And you can find it easily by Googling it on your computer. And it's called Board of Estimate of City of New York v. --

COUNCILMEMBER BAISA: David, can you loan that to us so we can have staff make copies? I'd really appreciate it.

MR. MOGILEFSKY: I've underlined the part that I read to you because --

COUNCILMEMBER BAISA: Okay.

MR. MOGILEFSKY: -- widely disparate population. This was in 1989, but I found there was another case in 2002 that followed this case. So I don't think it's changed recently. If it has, I might not even know about it.

COUNCILMEMBER BAISA: Oh, thank you very much for bringing --

MR. MOGILEFSKY: As far as I can tell, we're supposed to be doing this with equal numbers of people in each district.

COUNCILMEMBER BAISA: Okay. Thank you very much.

CHAIR MATEO: Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Thank you for that testimony and information. Can you -- over here.

MR. MOGILEFSKY: Oh. Sorry.

COUNCILMEMBER MEDEIROS: Can you tell me if those islands are connected by bridges or roadways?

MR. MOGILEFSKY: I think they are except for Staten Island. I think Staten Island is only connected to New Jersey by a bridge.

COUNCILMEMBER MEDEIROS: Okay. So that makes it a little different from our islands. We're not connected by any kind of roadway.

MR. MOGILEFSKY: Bridge.

COUNCILMEMBER MEDEIROS: Or bridge.

MR. MOGILEFSKY: Or bridge.

COUNCILMEMBER MEDEIROS: So it is a little different. I just wanted to bring up that point.

MR. MOGILEFSKY: Well, I don't know. I think if somebody wanted to take you guys on and take you to the Supreme Court, that would be a pretty tough argument.

COUNCILMEMBER MEDEIROS: Yeah. I just wanted to know if those -- those islands were connected. Thank you.

MR. MOGILEFSKY: Like I said, I have -- I don't -- I have little --

CHAIR MATEO: Thank you.

MR. MOGILEFSKY: -- personal feeling on this --

CHAIR MATEO: Thank you. Thank you very.

MR. MOGILEFSKY: I'm not going to be the guy.

CHAIR MATEO: Okay. Yeah.

Mr. Clerk, was this the -- Members, this was the last individual who had approached the podium to provide public testimony. The Chair will allow anyone in the gallery, who had not testified earlier, if you wish to provide testimony, please advance at this time. Members, no one advanced, with no objections, we will close public testimony for the day. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Members, it is almost 1:00 in the afternoon. We will take our lunch break at this time. The body needs to advise the Chair, you wish to return at 2:00 or 2:30? Yeah, 2:00?

COUNCILMEMBER VICTORINO: Two o'clock is fine.

CHAIR MATEO: Two o'clock?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MATEO: Thank you. This Council will stand in recess until 2:00 in the afternoon. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:55 P.M., AND WAS RECONVENED AT 2:03 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER KAHO`OHALAHALA, EXCUSED.)

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010, will reconvene.

Members, prior to our lunch break, we closed public testimony. The Chair, also, at this point, needs to ask you, all of the communications, the testimonies that had been provided to us, with no objections, we will receive each of the communications into the record. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Thank you. So ordered.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY RECEIVED FROM THE FOLLOWING WERE MADE A PART OF THE RECORD OF THIS MEETING:

1. Cynthia Warner, Piihola South, LLC;
2. Morris Haole, Makawao Main Street Association;
3. Carol Reimann, Maui Hotel & Lodging Association;
4. Richard Pohle;
5. Gina Flammer;
6. Edwin Young;
7. Katrina Ham; and
8. Randy Ragon.

CHAIR MATEO: Mr. Clerk, let's proceed.

DEPUTY COUNTY CLERK: Chairman, proceeding with Committee Reports.

The following Committee Reports were presented.

COMMITTEE REPORTS

COMMITTEE REPORT

NO. 10-76 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That County Communication No. 09-322, from the Director of Finance, transmitting the Finance Director's Quarterly Report for Fiscal Year July 1, 2009 to June 30, 2010, and the Capital Improvement Projects Report (as of September 30, 2009), be FILED; and
2. That County Communication No. 10-51, from the Director of Finance, transmitting the Finance Director's Quarterly Report for Fiscal Year July 1, 2009 to June 30, 2010, and the Capital Improvement Projects Report (as of December 31, 2009), be FILED.

CHAIR MATEO: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO ADOPT THE RECOMMENDATIONS SET FORTH
IN COMMITTEE REPORT NO. 10-76.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to adopt the recommendations in Committee Report No. 10-76.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Chairman, this report details the Budget and Finance Committee's review of independent Capital Improvement Projects Reports from the Finance Director, spanning a period of July 1, 2009 through March 31, 2010.

The Committee focused upon capital improvement projects under the Department of Parks and Recreation, and queried Department representatives of information contained within the quarterly reports and was given update of the incomplete capital improvement projects. The report states that the Committee's recommendation for filing of County Communication Nos. 09-322 and 10-51.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-76 signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON, MEDEIROS,
NISHIKI, PONTANILLA, VICTORINO, VICE-CHAIR
MOLINA, AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER KAHO`OHALAHALA.

CHAIR MATEO: Motion is carried, eight "ayes"; one "excused", Member Kaho`ohalahala.

Mr. Clerk.

COMMITTEE REPORT

NO. 10-77 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That County Communication No. 09-321, from the Budget Director, transmitting the Capital Improvement Projects Implementation Report for Fiscal Year 2010, First Quarter (as of September 30, 2009), be FILED; and
2. That County Communication No. 10-50, from the Budget Director, transmitting the Capital Improvement Projects Implementation Report for Fiscal Year 2010, Second Quarter (as of December 31, 2009), be FILED.

CHAIR MATEO: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIRMAN, I MOVE TO ADOPT THE RECOMMENDATIONS
SET FORTH IN COMMITTEE REPORT NO. 10-77.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to adopt the recommendations in Committee Report No. 10-77.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. In association to the previous Committee Report, this report details the Committee's review of independent Capital Improvement Projects Implementation Reports from the Budget Director, spanning the first through third quarters of Fiscal Year 2010.

On this occasion, Committee focus was on the projects related to the Department of Parks and Recreation, and met with the Administration and Department representatives--

(Councilmember Kaho`ohalahala returned to the meeting at 2:06 p.m.)

COUNCILMEMBER PONTANILLA: --in query of information contained within the quarterly reports while being provided update to the incomplete capital improvement projects under the Department.

The report states the Committee's recommendation for filing of County Communications Nos. 09-321 and 10-50.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-77, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

COMMITTEE REPORT
NO. 10-78 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Bill No. 48 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2011 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2011, KAUNOA SENIOR SERVICES LEISURE PROGRAM

ACTIVITIES REVOLVING FUND, be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That Bill No. 49 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2011 BUDGET FOR THE COUNTY OF MAUI, AS IT PERTAINS TO REVENUES – FEES, RATES, ASSESSMENTS AND TAXES FOR KAUNOA SENIOR SERVICES LEISURE PROGRAM ACTIVITIES", be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That Bill No. 50 (2010), entitled " A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE, TO CREATE A REVOLVING FUND FOR THE KAUNOA SENIOR SERVICES LEISURE PROGRAM ACTIVITIES; and
4. That County Communication N. 10-132, from the Budget Director, be FILED.

CHAIR MATEO: Thank you.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO ADOPT THE RECOMMENDATIONS SET FORTH
IN COMMITTEE REPORT NO. 10-78.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to adopt the recommendations in Committee Report No. 10-78.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Chairman, this report details the Budget and Finance Committee's review and recommended approval of three revised bills that will facilitate establishing a mechanism to charge and collect fees for Kaunoa Senior Service Leisure Program Activities, to pay for activity costs, and allows for funds to be accounted for separately from the General Fund.

The Committee Report recommends passage of the three revised bills that establish and define the Kaunoa Senior Services Leisure Program Activities Revolving Fund, and, also, the filing of the Communication.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-78, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried unanimously, nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, BILL NOS. 48 (2010), 49 (2010) and 50 (2010).

COMMITTEE REPORT
NO. 10-79 - COMMITTEE OF THE WHOLE:

Recommending the following:

1. That the correspondence dated August 10, 2010, from the Kula Community Association be REFERRED to the Council Chair for the next Council term, for transmittal to the next Charter Commission; and
2. That the draft resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS" be REFERRED to the Council Chair for the next Council term, for transmittal to the next Charter Commission

CHAIR MATEO: Thank you.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman.

MOVE TO ADOPT THE RECOMMENDATIONS OF
COMMITTEE REPORT NO. 10-79.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND FOR DISCUSSION.

CHAIR MATEO: Thank you. Members, it's been moved by Mr. Molina and second by Ms. Baisa to adopt the recommendations in Committee Report No. 10-79.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman. Your Committee met on July 15, 2010, to discuss proposed Charter Amendments that would establish new election districts submitted by the Kula Community Association and referred to Committee by Councilmember Baisa, along with a draft resolution which proposes to replace the current at-large system with a system that would hold the elections for members from the nine Council Districts, that would have district boundaries established by a County Reapportionment Commission. And this matter was referred to Committee by Councilmember Johnson.

After much discussion, your Committee recognized there was not clear consensus on the issue, and further recognized the importance of soliciting community input to ensure a full and fair community discussion take place. The Committee voted 5-0 to recommend the referral of both proposals to the future Council Chair, for referral to the future Charter Commission.

Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

MOVE TO SUSPEND THE RULES OF THE COUNCIL.

CHAIR MATEO: Go ahead.

COUNCILMEMBER BAISA:

MR. CHAIR, SECOND.

CHAIR MATEO: Members, we have a motion to suspend the Rules of the Council made by Ms. Johnson and second by Ms. Baisa.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. And because we had a bare quorum at the meeting that Committee Chair Molina just spoke about, I wanted an opportunity to actually -- actually see if there is any support for either both of the items going forward to the Charter Commission -- actually, it would be to the Council Chair for the next term, or if there would be any merit to discussing the situation that we heard about today, which is that the constituents at least want us to have the discussion. And that's my reason for asking to suspend the Rules of the Council.

CHAIR MATEO: Thank you, Ms. Johnson.

Members, floor is open for a discussion. Seeing none, Chair will call for the motion to suspend the Rules of the Council. Members, all those in favor, signify by saying "aye".

COUNCILMEMBER JOHNSON: Aye.

CHAIR MATEO: Members, we have two "aye" votes on the motion to suspend the rules and there was no response to -- against that motion. The Chair needs to take a very short recess. We're going to take -- stay where you are, please -- three minutes -- a two-minute recess and we will reconvene. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:13 P.M., AND WAS RECONVENED AT 2:26 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR MATEO: Council of the County of Maui, regular meeting for August 6, 2010 will reconvene.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. Thank you for that long recess.

Anyway, Mr. Chair, I withdraw the motion that I made to suspend the Rules of the Council.

CHAIR MATEO: Thank you.

COUNCILMEMBER BAISA: And I'll withdraw my second.

CHAIR MATEO: Thank you very much.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

I NOW MOVE TO SEPARATE THE ITEMS CONTAINED, NO. 1 AND NO. 2, WITHIN THE COMMITTEE OF THE WHOLE COMMITTEE REPORT 10-79. MOVE TO SEPARATE.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Members, we have a motion to separate the question made by Ms. -- Ms. Johnson and second by Ms. Baisa.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. And -- and after discussion, I understand that that is what's required in order to accomplish at least a brief discussion about this item.

CHAIR MATEO: Thank you. Any further discussion?

Go ahead, Mr. Molina.

VICE-CHAIR MOLINA: Yeah. Thank you, Chair. Just, again, for clarification, we're separating the two, the referral from the Kula Community Association and the resolution to revise the -- establish the Maui County Council Election Districts.

CHAIR MATEO: Right.

VICE-CHAIR MOLINA: So we're going to be taking two votes instead of just one --

CHAIR MATEO: Correct.

VICE-CHAIR MOLINA: -- motion. Okay. Thank you. Just so I get a clear understanding.
Thank you.

CHAIR MATEO: Thank you.

Ms. Johnson.

COUNCILMEMBER JOHNSON: No further discussion.

CHAIR MATEO: Thank you very much. Members, on the question to separate, all those in favor, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried, nine "ayes".

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

I MOVE TO SEND FORWARD TO THE COUNCIL THE ITEM NO. 2, WHICH IS REFERRAL OF THE DRAFT RESOLUTION ENTITLED "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS". I MOVE TO SEND THAT ON TO BE PLACED ON THE BALLOT

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Members, you heard the motion made by Ms. Johnson and second by Ms. Baisa.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. And because, earlier, you know, I used an inappropriate mechanism to actually get to this discussion, I thought it was important because not all Members, in -- in all fairness, were in attendance last time. And I know that the public wanted us to at least have participation so that they felt that their voice would have an opportunity to be heard. And I did make that pledge to my community as well as the people that called my office asking me, well, what are you going to do about this.

So whether you agree or you disagree with the proposal, I think, ultimately -- Keiko Bonk's testimony was very compelling because, so many times, we get into these discussions about what we think is best. And, yet, who do we really work for? We work for the voters. We work for all of our constituents. So even though I may see some shortcomings, even though other Members maybe are seeing shortcomings, or that this is not a perfect proposal, I think I'd rather see it move forward because of the lengthy discussion. And even in the last Charter Commission, there were many proposals out there. And one of the reasons they never moved forward was because of discussions we're having here right now.

So I think, also, besides Ms. Bonk's testimony stating that, basically, people want somebody that's a little bit closer, where they have a little more of a say in who represents them, I think there is merit to that. And I believe that, right now, you know, we all are elected at-large. Myself and Member Molina, you know, due to term limits, we -- we won't be necessarily impacted by this, but other -- others on the Council now and in the future may be, if it should pass in -- you know, in a Charter Amendment, as it's voted in by the people.

But I really believe that we have to be true to the public. And as far as I'm concerned, there are merits, there are problems, you know, with regard to, I guess, the way that this might be operating. And as far as I can see, the public will participate and will try to put in their two cents before this comes up for a -- a vote to the actual -- I guess it would be the Board of Elections, it would be in the November election. So this item, actually, would end up -- I believe it would need to be reviewed by Corporation Counsel and then it would also be placed -- 'cause it needs six votes in order to pass, I believe, and then that would place it on the ballot for the November election. So that is, basically, what would happen. And I just feel at this point I'm not going to sell people one way or the other. I think people have pretty much made up their minds.

So I would at least like Members who were not able to participate previously to consider this and in the next four months have the discussion. It -- if -- if I'm correct, also, Mr. Chair, this would need another reading, is that correct, yes, in order to be placed on the ballot? So it would be sent on for First Reading.

CHAIR MATEO: Ms. Baisa.

COUNCILMEMBER BAISA: Yes, Chair. Thank you very much. And, again, I'd like to apologize to my colleagues that I was not present when this was brought forward. But I needed to be somewhere else, and, I'm sorry, but I had to go.

I'm very grateful for the opportunity to -- to have the ability to even say anything today. But, you know, we have had this great discussion all day today about representing one's constituents and representing one's district and listening to what your people tell you. Well, the district that I represent, and many others, have made it extremely clear to me that they would like very much for this issue to be on the ballot in this election.

And, you know, this is not something that I got involved with yesterday. I was involved with it a long time ago, in fact, during the last Charter Commission. I attended a lot of meetings and, you know, followed the issue very closely. And was kind of disappointed that it never got to the ballot. But here we are again with another opportunity to bring it up, talk about it, and, hopefully, let the voters decide.

I understand the fears of the outlying areas. You know, I live in the country. We always feel like nobody listens to us. That's why we don't have water and our roads are a mess or whatever. So I kind of feel kinship with outlying areas to say, well, you know, everything -- all the attention is focused in Central Maui. But that's not really true.

I also understand that just because I'm not elected from Molokai or Lanai doesn't mean that I don't care about them. I care very much about them and have very dear friends that are like family to me in every area of this island.

So, you know, it doesn't mean that -- because you're not elected from an area that you cannot care very much about that area. Because I think that every single one of us, no matter what we are elected to represent, if we want to be reelected, it is really important that we pay attention to people. And, to me, the only insurance you have of being reelected is to do a good job. Because if you don't do a good job, I think Maui County's voters are very good about bouncing out people that they feel are not doing a good job. And we've seen them do it over and over.

So, you know, there's no guarantee, just because you're in a district, that you're going to be reelected over and over. Because if you're not doing a good job with communication what it is today -- the word is out there really, really quick.

I, for one, feel that a matter this important is best decided by the voters. You know, it's very difficult for a small group of people to think of everything, represent everyone and make a thoroughly independent decision. I think our voters are well-educated. I think they can participate and intelligently make decisions. So, for me, this is democracy in action.

And I understand that there's a lot of concerns and people all have their own feelings, but this is the process, this is the way America runs. And, personally, I think it's great that we have these discussions. And if we differ, we differ. And when it's over, a decision is made, and we go forward and we work together for the good of the people.

Thank you.

CHAIR MATEO: Thank you, Ms. Baisa.

Mr. Molina, followed by Mr. Victorino.

VICE-CHAIR MOLINA: All right. Thank you very much, Mr. Chairman. You know, I'm quite torn on this, but I'm going to stick to my original recommendation that it be sent to the Charter Commission first. It's about process and education. And it can be viewed both ways.

One, we're elected representatives of the people. Because if we're going to be putting all tough matters into the hands of the general public, then why have a legislative body?

If I could parallel this with one very -- other very high-profile issue in this state, the issue of civil unions. That was a very hot topic. As we all know, our government, Governor vetoed it. And her opinion was something as difficult as that, leave it in the hands of the people. Okay. So that may be coming around the corner. So it's a matter of what -- what -- what we as legislators believe in what our people should be voting on. But I foresee this matter coming to the Charter -- I mean, coming -- being on an election ballot at some point in time in the future.

Now, for me, as far as this going onto the ballot for 2010, I would prefer that time be given for our people in the outer lying districts, Molokai, Lanai, Hana, and, also, just everybody in general, to fully understand the proposal here.

And, yes, brochures were sent. Now, how many of -- people out there truly understand the impacts, the pros and cons of it, we don't know yet.

But if we send this to the Charter Commission for now, it will give people ample time to digest it. So if it's the next Council put this -- you know, reviews this, gets a recommendation from the Charter Commission to put it on the -- the next election ballot, then so be it. But the fairest thing, in my opinion, is give the public a little bit more time.

Now, I know it was mentioned that there -- this issue came about several years ago. Now, I don't know, I'm not sure if this was the same system that was being proposed back then. I don't know that.

Just as an FYI, Oahu did change to district voting, but they went through the Charter Commission, too, and then it was put to the ballot and approved by their Council. So I'm not sure about what happened with the Big Island, if it went through their Charter Commission, or if it was just voted by their Councilmembers to be put on the ballot. I'm not clear on that. But I -- I do know the history with Oahu's change.

And it took a number of years. So this is something very, very significant. And the question is, do we rush and put this out there and people vote for something that they may not realize there could be some, I guess, unintended consequences. It's a very heavily used phrase.

So for me, I -- I cannot support the motion at this time to put it on the ballot. And I know some people have said that if you don't support this, you don't care about the voters. And that is absolutely false. The bottom line is, no matter what system we have, it's not perfect. And it comes down to your performance as an elected official. No matter what system you have, if people don't want you, they'll boot you out. If they want you back in, you'll get your job back.

So I -- I certainly appreciate the intent from Members Johnson and Baisa, because it's -- it's -- there's pros and cons to this. So it's just my personal feeling, I'd like to give the public a little bit more time to digest this because we haven't heard from other folks, you know. And, again, I -- I stress the importance to recognize those who live in our rural areas. They pay taxes just like everybody else. And they're citizens, too. So we all, to me, should give an equal opportunity for everyone to come out and give their opinions.

The Charter Commission can go out to the various Community Plan districts and hear from the public on this. So that's why, it's about process and -- and getting as much input on this as possible.

So no -- no disrespect to the folks who want to change the system. I think it's good. I mean, it's certainly a worthy proposal to consider. But out of respect for the rest of the public throughout Maui County, you know -- we are all still one county, Mr. Chairman, you know. And I would hate to see this become such a divisive issue, with pitting communities against one another. That's the whole tragedy and the -- the worst of the unintended consequences. I'd hate to see resentment from larger communities towards people who live in smaller communities. And it may be perceived as that. Maybe I'm just going out on a limb here. But that, first and foremost, I would hate to see an issue like this divide our community.

So I will not be supporting the proposal. Thank you.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion?

Yeah, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, again, it's one of those tough decisions that are before us. And, you know, I -- I've had conversation with the people that proposed this Charter Amendment. And, you know, it does have some merits, but, again, there are some shortfalls.

You know, I listen to my colleague from Lanai in regards to representation of that island. And one of the things that -- you know, we heard that a survey was taken. And, you know, one island was 65 percent for, 75 percent against. And when you get that kind number based on 500 callers, then, you know, we got to sit down and start thinking about, you know, what is, you know, really being brought here.

But I like the idea about, you know, going out to the public. In -- in this case here, I -- I -- I don't know if the Committee that decided to do this work in regards to district voting had gone to the various communities, especially those with the less population, like Hana, Molokai and Lanai. That would probably give us some other indication in regards to districting.

But, you know, I represent the district in Kahului, you know. And -- and for any politician going out and try to get elected -- of course, you got to do a good job to get reelected. But for running for office, you know, it surely would save a lot of money for any candidate. And, you know, basically, you just representing that one particular district.

But, you know, we're all sitting here, you know, elected by the people of this County. And, you know, I do get calls from all parts of Maui County. And you hear it. And, you know, we try to service the people of this County as best as we can, no matter what.

And, again, you know, the plan has merits, but I -- I think, you know, I'll -- I'll just wait for the other Members to say their piece. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla.

Members, further discussion? Mr. --

COUNCILMEMBER NISHIKI: Nobody is going to say anything?

CHAIR MATEO: Mr. Nishiki?

COUNCILMEMBER NISHIKI: I will. Mr. Chairman, Charter Commission should be allowed to consider all aspects of the Charter, including Council districts. I think between Charter Commissions, the Council should only propose Charter changes when there is an extreme need.

At this point, any Council action would be seen as being politically motivated. Why I say this. And -- and it's not whether I am for or not, but I think that -- not I think -- I know that I commend the group of people that organized this poll; however, in something this important, I feel it be left up to a Charter Commission which would not be political.

Why? As many Members have spoken before, even -- as I said the last time, when we even go out for a change of zoning and that zoning may be affecting Molokai, that Council Committee would normally go to Molokai and have this discussion and deal with the community. And I think that despite of the testimony today about Molokai and Lanai, particularly, given a chance that -- if this Charter goes through that they could come out without someone living there representing them poses a concern to me.

I think that the Charter Commission, in its due diligence, needs to go out to the different communities. This Council has not done that. We're only banking on a survey that says 500 respondents have answered. A Charter Commission would do a better job in the fact that they would go out to each community and -- and listen to the community members as to, if this is a area of discussion, then they would consider all the input. And, again, a nonelected board, perhaps, would take the politics out of it.

Finally, someone wrote to me and said, you know, there is a discussion about certain counties -- and -- and I -- this is just something for us to think about -- has been mentioned that they have district representation. One being Honolulu, the other being the Big Island. I guess the question is why not Kauai or why not Maui.

I don't know that answer. I can only point, when that person said to me, well, if it is going so well in Honolulu -- is what Honolulu is experiencing as an urban area, with the tremendous growth that Honolulu has, with the rail and the added taxes that they have with their transportation problems, with the high amount of crime that they have, with the high amount of homelessness that they have, if this is working, is this the product of district representation? And I have my question marks.

Finally, it was also mentioned and -- and someone also told me, in this County, there does not seem to be an obvious relationship between district population and campaigning costs. And let me bring you up some stats that we were able to come up with. Spending among successful candidates varied widely. In the 2008 elections, Councilmembers seemed to have spent slightly more than the State representatives that ran for office in district representation. However, spent much less than the people that were running in the State senatorial district. So looking at the smaller districts and the kind of spending, doesn't seem to me to indicate that this suit follows through about spending.

But the most concern I have is for the poor people of Molokai and Lanai. When we go there, they are often said about them always being considered the stepchildren of Maui County. And -- and I just feel that a Charter Commission would do that job that has not been done, which is going to these outlying districts and to tell the people the real story. Number one, you may not have a representative living in your district. Right now, you do.

And I'm not saying this is good or bad. All I know is that, during my term of twelve years, I've seen those representatives from Molokai and Lanai and, also, Hana, because they live there, they really know the people that they deal with. They go into the stores and they eat and shop with 'em, they goes to those beaches and family parties and whatever else and -- and -- and -- and interact with them. This, to me, is important, that they be given that opportunity to really weigh in on any Charter proposal.

So not wanting to politicize this, Mr. Chairman, I feel that it be best left up to a independent Charter Commission who can go to the different communities and listen and then come up with their recommendations. So for this reason, I am not going to be supporting the request today. Thank you.

CHAIR MATEO: Thank you, Mr. Nishiki. Members, further discussion on -- on the item?
Mr. --

COUNCILMEMBER KAHO`OHALAHALA: Chair?

CHAIR MATEO: -- Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. You know, as -- as I mentioned earlier during the -- the testimony, that this has been an area that I have been thinking about for the last twelve to fifteen years, because that question was posed to me very early on when I first got elected to the Council. And it did -- it did kind of, you know, ring true that the people of Lanai always felt that they never did get their elected official by the fact that Maui always outweighed the -- the votes, you know. So -- but as I said, in -- in trying to come to understand how changes might come about, it became clear that the Constitutional mandate, you know, that one person, one vote really did dictate this process. But that there is a resurgence, I guess, of the idea of trying to find what I -- would, hopefully, be considered a fairness in the process to elect. That it still has to deal with some Constitutional -- I mean, you can't -- you can't undo that unless you change the Constitution, you know. And until somebody wants to go ahead and take on that one, we still have to deal locally with that because that's what we ascribe to.

So I am a little concerned that these discussions perhaps have not had their -- their time in the local communities, like Lanai City. And if these discussions were also available for them to come to understand fully what this means, that they should also understand what some of those outcomes or -- or unintended consequences might be with a change or as -- as is being proposed, you know.

And if they've had an opportunity for the full discussion to know that there could be -- just in doing the math, there could be a possibility that -- in every single one of the proposed ideas, that Lanai would not have an elected person to that district.

And the -- the further question is that if the people of Lanai are willing to accept that as a potential outcome in this redistricting, then I say then that would be the kind of sanctioning that we would want to have from a community that says I understand what this means fully, I understand that it could mean that Lanai will not have a -- a person seated at the Council, but it would be represented by that district from someone else. As long as they fully understand that.

And I'm not going to speak for Molokai, but Molokai could be in the same situation as -- as well. Or -- or East Maui, for that matter. It's only because our population bases are small. So how do you link them or join them to someone else? Does that make it any better for you?

I also understand the, you know, the information brought forth in -- in this -- you know, in this process to -- to examine this, that it -- it increases the -- the percentage of representation by just a vote, from two to twenty percent, I think, was what was shared by Lance. But -- and I -- and I think that's worth considering.

I do understand that we are islands. And only now today, we have information -- and I have not had a chance to go back and -- and review that -- looking at the constitutional premise and how they are overlaid over island situations. Because I -- I don't think that that had been a consideration when that was drafted, you know.

But I hope that -- somewhere in this discussion that we will be looking for ways to find fairness. And that, to me, ultimately, would be where I think we should be going.

Yet the Charter Amendment and the process for Charter Amendment comes in, in several ways. You know, we can do it by the -- the -- by the Council and passing out by a supermajority. It also comes by petitions. It also comes by twenty percent of the electorate just coming into the Clerk and said this is what we -- we haven't taken those other options, you know. We have now only directed it to the Council and said, we need a supermajority to get this going so that it can be placed on -- on the next ballot.

That is one of the -- the options, but I would think that in -- in this particular instance, when it does involve the -- the electorate, that perhaps we should be hearing some of the -- the voices, and maybe the petitions would -- would be part of what we needed to have. Even at ten percent, it would have given us some indication that the constituency wants this. But we've been barraged by -- by phone calls and by emails just recently, but we have not been petitioned by ten percent or twenty percent of our -- our constituencies in this particular case.

So that, to me, would raise some concerns on an issue like this. It's not just something that simply can be considered, but I like the fact that -- that we are looking at trying to find a way to do this. And, you know, I'm inclined to want to support that because I think that if we can find a way to -- to bring fairness to a process, then that's where we should go.

I just don't know if this is the process that -- I think that is fair to begin with in terms of how we're going to move it forward. And I -- I don't know what -- what the timelines are, you know. You know -- and I'm trying to find it in the -- the Charter right now, and I'm not looking -- seeing where it says that there are timelines. But, you know, that's a question I would have. In looking at a petition, that would be ten percent of the electorate that would give indication to the Council as one of the ways. And then the other would be the twenty percent by the -- by the -- by the electorate, I guess. That then they could move to the Clerk and say this is what we want on the ballot, yeah. So -- but I don't know the timeframes for that.

And I don't know if it's appropriate to ask the question, you know, so that it will help me to -- to determine whether or not other -- other options are possible as well, you know. So --

CHAIR MATEO: I -- Mr. Kaho`ohalahala, I am not -- I am not aware of the timeline.

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

CHAIR MATEO: However, the Charter Commission should be established by March of -- of next year.

COUNCILMEMBER KAHO`OHALAHALA: Okay. That's the -- the Charter Commission, but I'm talking about when we're looking for a Charter Amendment in -- on the ballot, you know, what the time -- yeah.

CHAIR MATEO: We'll get that information to you.

COUNCILMEMBER KAHO`OHALAHALA: Okay. Yeah. So, I mean -- so that's my instincts right now, is I'm -- I appreciate the fact that we're moving into a direction that is, hopefully, going to be fair. I'm not sure if we've taken every opportunity to allow the people who are going to be impacted. And there's a lot of concern for what we are terming as the outer districts. I'd just like to think of us as just being the -- the sister island or the sister neighborhood. You know, we're -- we're -- we're not somehow cast aside as -- as a lot of the way we describe us to be. You know, that's always been an issue with Lanai, in how we're being described.

But here again, if you're truly concerned about this area of people, then we should be allowing them an opportunity to have a full understanding and discussion about this so that they, too, can come to understand this thoroughly and then be a part of the decision. And I don't know that we have allowed that to happen at this point.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Listening to my colleagues, both the Committee Chair of the Committee of the Whole, Mr. Molina, and Member Nishiki and Member Kaho`ohalahala, they -- they bring up very interesting discussion points that should be discussed.

East Maui sometimes is called, you know, a separate island just because of the isolation and distance to East Maui. But East Maui is a very long geographic district. We start at Kapipi Gulch, which is the gulch right after Kaupakalua Road -- and

Kaupakalua Road is like at the edge of Haiku -- and we go all the way through the little villages of Huelo, Kailua, Keanae, Nahiku, Hana, Kipahulu, Kaupo and Kahikinui, all the way the edges of Ulupalakua. With such a large geographic district, we have a very small population.

And one testifier this morning mentioned that, today, the population is so large compared to old Hawaii and -- and things that we did back in old Hawaii. But I must state that my mother, who was born in Keanae, and whose first language was Hawaiian and second language English, was able to speak to the old kupuna in the days that she traveled along the Hana coastline in search of information from them. And because she could speak Hawaiian fluently, she was able to speak to some of these kupuna because that's all they spoke was Hawaiian.

And what came to her as information, even though the kupuna would not share information that was kapu, such as burials of the alii and so forth, they did share with her that the area from the end of Makena, through Kaupo, up to Kipahulu, which has a very small population at this time, used to have 40,000 Hawaiians. That's how big that area was as far as population.

And people say how could 40,000 people survive and live along that coastline. Well, the geography of old Hawaii then, there were a lot of forests up above Kahikinui and Kaupo in those days that were cut down. So that area used to draw a lot of cloud cover and rain. And it produced enough water for people, 40,000 Hawaiians, to live along that coastline. But now that's a very barren area, very small populations.

I appreciate Member Johnson's moving on this and, also, Member Baisa seconding that motion. And this being introduced by Kula Community Association through Member Baisa and so forth, I appreciate Kula Community Association. I've always been impressed with how well organized they are. And they come together, you know, as a area and discuss very important points.

As we can see today, many of the testifiers come from this side of the island. Very few can make it to this side to attend this meeting and to testify, because it's just too far and most of the people in the East Maui area have to work in order to sustain their families. So we -- we don't hear from them unless they send us email or unless we get phone calls.

So, for me, I'm not so much taking a position on this except similar to Member Kaho`ohalahala.

I think if it's sent to the Charter Commission, then we're almost reassured that we may have district meetings available to the people that live in the rural and -- and -- and areas, you know, such as Molokai, Lanai and Hana.

And I've said this before. Hana is considered like a separate island sometimes because, in old Hawaii, it wasn't connected to Central Maui by roads. So people became very independent and stayed in their isolated area of East Maui.

But for us to not have a process where it would include district meetings for the people of those districts to participate and to give their testimony and to listen to discussions, I -- I think becomes a disservice to the people that live in those areas. And so, for me, I -- I -- I'd have to -- and I -- I want to be sure that we hear from everybody throughout the entire County of Maui, Maui Nui.

So at this point, because I haven't seen that happen -- and I'd like to see that happen -- I cannot support this at this time. And would prefer the process available to all of our constituents through the Charter Commission. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Members, further -- further discussion?

Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. I -- for the last time, just because this telephone survey was cited as an indication that a majority of the residents prefer single-member districts, I want to start by saying that phone surveys pretty well measure current sentiment, not what people would decide after considering the matter. Survey results change over time as people learn more about an issue and as they evaluate the relative importance of the issue. So to the extent that the survey results are -- are mentioned to show elected officials that they will benefit from voter concurrence in a decision, each officer needs to consider his or her specific constituency.

Finally, you know, I was fortunate enough to come to Maui about puka 30 years ago. And what got me was the personalism of people. You go and you can talk face-to-face, you can touch skin.

Not against what Lance and that group did by ringing people on the telephone, Mr. Chairman, but something this important, you want to go there and, as that one lady said that was from an Indian nation -- I said -- she said, oh, we stay there and we talk, and after we talk, we talk some more, and after they talk sometimes three or four weeks, where we talk again. This survey was not like that.

And, to me, for something as important as this -- and as I said, I don't want to to say and politicize it, I -- I think that Maui is still personal. The Charter Commission can get there, as previous speakers have said, and become personal. We can sit down with the people of Molokai and talk story, get their input, answer their questions, and

get back to them. This I don't think was done. And I -- I -- I think that -- if I see Medeiros, I can talk to him like this, I can see him eye to eye. When you talk to somebody on the phone, you don't even know, oh, this is Joe, John . . . from Honolulu with this call, telephone survey that we're doing and, you know. Oh, yeah, I stay on Molokai and I stay -- raking my mango leaves right now, you know. And then, oh, can you do this or can you do that. Oh, yeah, I think. Oh, based on this, you think. Oh, yeah, yeah, okay, okay. That's not Molokai style. That's not Lanai style. That's not Maui style.

Take it back to the people. Talk to the people.

And -- and -- and, Lance, nothing against you guys, but this kinda style still is not acceptable for Wayne Nishiki. As a local boy, born and raised, I know I can do better. So thank you.

CHAIR MATEO: Thank you, Mr. Nishiki. Members, further discussion?

COUNCILMEMBER VICTORINO: Well, Chair --

CHAIR MATEO: Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah. You know, I guess if I didn't say anything, everybody would've thought I fall -- fallen asleep on this end of the world, yeah.

I'm fortunate in the sense that I've heard all of my colleagues. And each and every one of them bring their manao to the table. They all have what I call great consideration for their constituents. And I think we're trying to listen to everybody and trying to come up with some resolution, yeah.

I fear -- and I continuously say this. I fear somehow our neighboring islands will somehow be lost in the shuffle. And that's what I'm concerned about. And I really say that in all humility. I still have a lot of family and friends on these islands. And I enjoy, when I campaign, to go there to meet with these people to discuss issues.

I enjoy all of the County of Maui. Yet, I would probably benefit, like Mr. Pontanilla, a lot more by just having a Wailuku district. I would have the least worries, the least expenses, and the closest proximity to one of the larger voting bases. But, still, I don't agree with that. I still think I want to be a part of this entire County.

Yes, districting has its merits. I'm not knocking that. And I think there's got to be more discussion. But I realize, also, that we are at a point now where these areas -- and I've gotten emails from Lanai, from Molokai, with their concerns of being left out. So I want them to be a part of this whole process.

There is no quick fix. There's no automatic, this is the answer, bam, we've solved the problem.

And I'll say it in this manner, we are one County. That's why I like Kauai in that sense, too. They are one County. They do it a little differently, they vote at-large, boom, top seven, you're in. Doesn't make difference where you live on the island, you are accountable to everybody in that County. Seven guys elected -- seven people elected, and they are accountable to every one of their constituents all throughout the County of Maui -- I mean, County of Kauai. Excuse me. So very easy. They don't worry about where they live. They're accountable to all the people.

So the Big Island, they've done this districting. But I looked at some of their numbers, I've been pondering through the numbers, 'cause numbers talk. Last election, 41 percent in the primary, 61 percent in the general. Low numbers. Low numbers. Lotta -- lotta registered voters don't show up. And Maui not much to brag about, but we did have -- we had better numbers in 2008.

So for all the discussion of district voting, I don't see a tremendous amount of turnout in the districts in that respect. For the registered voters I'm referring to. Those who vote, yeah, the numbers are fairly very equitable.

They also have some other things like -- and things that I would like to see discussed. They have where 51 percent, they're in. They don't have to have a runoff. You don't have to have another. In the primary, you get 51 percent or more, they're in.

So there's a lot of discussion to be made if we go into districting, you know. I thank Kula. I thank West Maui. I thank all the people that brought their manao to the table. I think it's important. The discussion is here, and now's the time, but I think everyone has to be -- I can tell you many of my constituents in Central Maui really don't have no preference. They really don't have any preference. Many of 'em like the system that they have.

So with that said and done, Mr. Chair, I, too, would like to see more work done on this. If it's the Charter Commission, if it's non political, let them, that's what they are charged to do, make these changes. We've let them in the past, why can't we let them do it in the future? Isn't that what they're there for? That's why, every ten years, we have this.

And if they come out with a Charter and they say they want districting, and that's what the people vote on, then I'll be happy with that. I'll be happy whatever what the people in the Charter Commission come up with, if that's what the people want. But, for right now, I cannot support -- only in the fact that I want to hear from these other

areas, only because I believe everyone should have a fair chance to say their piece, knowing -- and like Mr. Nishiki said, if Lanai and Molokai understand that if we make this change to districting that they may not have the seat or a resident from that seat, no guarantee anymore, and they accept that and they're willing to live with that, then I'll, more power to them, and more I would be in favor of districting so long as everyone is treated in a fair manner.

Whether it's Kula, whether it's Kihei, whether it's Waihee, whether it's Waikapu, I don't care which community association, they all have their differences, but they have one thing in common, they're there for the good of their communities. And they work hard for their communities. And we've seen these community associations become more vocal. Waihee has been coming here an awful lot, speaking their mind. So I'm proud to say that I think all these communities should be given a chance.

So with that in mind, Mr. Chair, I've said my piece, I thank you very much. And I will wish that whatever is decided today, most importantly, that everyone understand, and that we work hard to educate people what the ramifications of district changes would mean to that person and that area. They must understand that. And we've got to work real hard to educate 'em. And that's our responsibility as a County government, not as a Council, as a County government, to make sure everyone understands what will occur if and when this change occurs. So when they vote, they vote with a clear conscious.

All too many times, Mr. Chair, we seen amendments, people don't even know what yes means, no means, yes -- you know, so confusing. So I hope whenever this comes out, it'll be a clear, concise, and we've educated the public so, when they make the decision, none of us will look back and say they didn't know better. Because I give the people of Maui County a lot more credit than that. They're far smarter than we like to give 'em credit sometimes, Mr. Chair. And I respect them and I believe in their decision-making process.

So I like to make sure, whatever comes out, they're informed, not -- and like we were -- like somebody said, we don't do it this time, next time we'll be organized and we'll come at you. I not worried who comes at us. I'm saying the people of Maui County must have this opportunity. And I really believe this time the Charter Commission should get all these options, including some others that I -- I put forward that were kind of put to the wayside. I think those need to be explored, also. So that whatever we come up, the people will feel comfortable with. And when they vote, they'll feel -- vote with confidence.

Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino.

Members, if -- if you will, I -- I think if Maui County was comprised of a single island, like the Big Island or like Oahu, then perhaps redistricting would have been an easier process for us to address today.

What we saw today was 33 testifiers who came to the Chamber to share their manao with all of us on multiple issues. Was Molokai here? Was Lanai here? Was Hana here? The answer is no.

For the neighbor islands, we are -- there's ocean between us, so you fly here or you boat here. For Hana, it's a two-hour drive. It's not easy.

A lot of the issues we've heard from those who support the concept says one of the -- one of the benefits, it saves the candidates money from having to campaign only in your district. Well, if you live on Molokai and if you live on Lanai, there is no difference. We still will have to commute to Maui Island to campaign. Where is the fairness?

In the last -- couple of days ago, in "The Maui News", I wrote a Viewpoint regarding district voting. And district voting is something that we will address. We need to address district voting. However, without having community participation, community involvement and a genuine understanding of the impacts and ramifications involved with this process today, it is not fair.

There's a lot of people on my island, Molokai, there's a lot of people on this island, Maui, that still do not fully understand the full scope of what it means to go through a redistricting or a districting area for all of the Members.

Our island has 7,500 residents. We deserve the opportunity to participate. The current Charter guarantees Lanai and Molokai the right to participate in County government.

Unless we have the discussion, unless we can all sit down and understand the impacts, this proposal does not even tell us, Lanai and Molokai, which part of Maui Island we will be attached to. How fair is that?

I questioned the survey. I questioned the survey because I do not know what the questioning was in terms of. And it's not a sense of ignorance on my community. It is a sense of did the surveyor tell our community that if you support district voting, you do realize you will be attached to a piece or a part of Maui Island.

I believe the question was, would you want to elect your own district representative. I believe that was the question.

So, Members, you know, I thank you for the opportunity of letting me get on my soapbox, but I -- I have difficulties at this point with this. And I look forward to continuing the discussion -- discussion on it at this time. Thank you.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Thank you very much. And for my last comment, before we vote on this, I really think -- I -- I appreciate all the different points of view. And, you know, this is not politically motivated. You know, the fact is I'm a public servant. I'm doing what my constituents are asking me to do. If you think that's political, then I guess it's political, but I look at it as just doing my job that I was elected to do. I'm trying to respond the best I can to my constituency.

You talk about isolation. We have one road, basically, going into West Maui and out of West Maui. That is one of the frustrations of my community. We are oftentimes isolated, it's by fire, it's by, you know, inundation on the roadway, you -- it's not just having to be separated by a bridge or by water in between. It's that out of sight, out of mind.

And many times, my constituency in West Maui says, yeah, we get the privilege of paying the bills, but where does the money come back. And oftentimes, it does not. So there is arguments on both side of the coin about the size of a community and the amount of attention it gets.

And, fortunately, we have had on this Council, and even previous Councils when Chair Kawano was here -- I bet you if he was up for election, county-wide, that boy, you know, I mean, he -- even in -- canoed with another district, because he was representing the entire community, people realized the sincerity of his heart, you know, they -- they wouldn't have cared if they were from West Maui. A lot of it depends on the quality of the candidate you have.

If you've got one guy that never shows up for meetings that lives somewhere else, that's, you know, out carousing around to all hours of the evening, I mean, if that guy is up against somebody like Chair Kawano, well, hello. It's just simply the quality of the candidate, too. It's who you have up for election.

So this is not easy. It's sort of like trying to put a square peg in a round hole, but I'm glad we're having the discussion. And I know that we'd all rather be leaving this Council Chambers, but it's a -- it's a process. It is a process. And I think that it's good to get the feedback from the Members.

I'm not saying that this is the only solution, but I'm saying that we need to have the dialogue. And we really do need to think about -- even the question -- I was kind of shocked today because the first time this issue had come up about one man, one vote and that the Fourteenth Amendment of the U.S. Constitution, basically, said that another form of government, which was not representational, which was weighted in effect, where you have a much smaller population having equal representation, that's not one man vote, one vote. That's the first time I heard that. So I think it's important to have the dialogue, though.

Communication goes both ways. But this is not meant to polarize, it's not meant to politicize; it's to add transparency, it's to really get some of the issues out there with regard to fairness, even on the districts that are larger in scope, but have lousy voter turnout. I mean, that's the simple truth. We can -- you can have a really large voter district, but how many of those people really feel empowered? How many times do we get told, well, you guys never listen to us, anyway? So if nothing else, this is an attempt to get the dialogue going.

I think that the surveys that were done, they were meant to be impartial. I -- I wasn't privy to that, but, you know, next time, maybe that'll go better. But I think the sentiment is out there that we need to examine, much like we need to examine the failures of our Federal government and how the economic mess that we're finding ourselves victims of all came about. But this is through self-examination and introspection.

And if you don't have that discussion, it really breeds contempt, it breeds distrust, voter displeasure and, really, disenfranchisement of the general public.

So I just -- I humbly ask for people either -- you know, I pretty much know where the votes are going to be, but, you know, we try. The dialogue is the important thing. And that's what I thank you for, Mr. Chair. And, also, Member Molina, I really do appreciate, you know, you allowing this because, otherwise, I would've gotten shot down a long while ago. But, anyway, thank you so much.

CHAIR MATEO: Thank you, Ms. Johnson.

Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. I'll be brief. First of all, I want to thank everybody for the discussion. I think it's very healthy. I just want to make one comment and then I'm ready to get on with it, 'cause I can count.

I just want to respond to a Charter Commission being nonpolitical. My understanding is it's appointed by the Mayor and approved by the Council. Don't need to say anything else. Thank you.

CHAIR MATEO: Thank you. Thank you, Ms. Baisa.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Chair. For my second and last time on the motion, I'll try to keep it brief.

As I'm listening to all my colleagues, one -- one common element that we hear is the importance of reaching out and touching the people, the public. And, you know, today, you -- you know, the, the benefits of having this going to the Charter Commission, and, you know, as I had mentioned it's about the education process -- if I could parallel this with our budget hearings, would we -- would our decisions have been different on the budget if we had not gone out in the evenings to all the Community Plan districts to hear from the people that make up the -- the various communities? Maybe; maybe not.

Now, in this case, the -- the Charter Commission provides an opportunity for our community to come out at a time where it's a bit more convenient for them, rather than at a time like this. I haven't seen any kamaaina, the kupuna, yeah. I haven't seen those from the younger generations. I mean, it's important that we hear from all demographics on the matter. So that's why I -- I'm looking at it -- irregardless of what position we take on this matter, it's all about inclusion and -- and making sure that every demographic, every sector of our community is heard on this proposal.

And this was a good thing. You know, democracy is all about considering change. And that's healthy. That's a good thing. So --

And, you know, I applaud Member Johnson and Member Baisa for bringing this to the Committee and to -- for the public's attention. And, you know, I think all of us have been doing our job, whether we -- we're for sending this to the Charter Commission or not, because we represent the many views out there. And that's our jobs. That's why we are called elected representatives.

And it's important to note that it also would give the public a chance to not only familiarize themselves with the Charter Amendment, in -- in the future, whether it goes on the ballot this year or a couple of years from now.

If you recall, there was an issue brought up when people go to vote on a Charter Amendment, people sometimes, if they don't understand what it's about, they're --

they're -- they're going to vote no or they're just not going to vote at all. Okay. So that's why I think there's the -- a benefit of having -- giving the public the time to digest it. Then they can make a, a fully informed decision whether for or against. So I see a benefit to that.

And I've had people ask me the -- I want to applaud the people who are driving this, the organization. But I think the public -- I have people in the public ask me who are the forces behind this movement. I know it's been stated publicly RAM, the Realtors Association of Maui, but people would like to know who are the individuals that made up this board or this group, you know. So just talking about the issue of transparency, so at least the general public know who's the individual or individuals that are leading this movement. And that's not a bad thing, you know, to know who's behind what.

So the whole point is just about education and, you know, transparency. Because we certainly want to get everybody involved in voting on this matter, if it does, you know, get on the ballot. And I foresee something like this getting on the ballot in the future.

So I just wanted to say that and thank everyone for their input on this. Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Molina.

Mr. Medeiros, followed by Mr. Pontanilla.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Just for my second and final opportunity on this proposal. You did mention, you know, Hana being a two-hour trip for people to drive to Central Maui. And that's one way. It's a four-hour, four-and-a-half-hour round trip. You know, that's half your day almost gone coming out here. And, you know, I would say that, you know, we're farther away from Central Maui than, actually, Lanai. In road miles, we're farther away than nautical miles to Lanai. And that's the distance we deal with living in East Maui.

And I think another perspective I wanted to bring up, the demographics of the different districts for -- for most -- like for the -- East Maui is very different from South Maui or West Maui or even Central Maui. And I'll give you an example. The language difference in East Maui compared to many other districts is so different that when I took my wife to Hana for the first time, and we went to a family reunion and we stayed there, in social discussions and -- and talk story among different family and friends, she could not understand most of the men when they spoke in Hana. And that's because we grew up with our own language. And all she knew is that when they laughed, it must have been funny, so she laughed along. But she used to

have to ask me, what did they say. And I used to tell her. So I grew up, grew up being able to speak that language and, yet, speak English, too, when it called for speaking good English. And that's the kind of difference that a lot of people don't realize that make our different districts unique or different in -- in demographics and lifestyle.

So I just wanted to share that because unless you really grow up and raised in a certain district, like Hana or East Maui or Molokai, Lanai, it's hard to learn about that area from visiting it maybe once a year. It's very different.

And I appreciate this opportunity to speak the second time. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, I -- I, too, can sense that, you know, how we going to go as far as this particular item on the agenda this afternoon. But, you know, I learned something while I was working for the phone company through . . .

You know, one of the things that we talk about is change. Whenever you have change, you know, you know people sometimes get hard time digest the particular change. But change is good, provided you inform and provided that the change that's going to be affecting the people, you know, they understand what's gonna happen.

So if this thing goes to the Charter Commission, and I feel -- you know, just hearing all of the Members speak their piece -- that whenever it goes to the Charter Commission for taking it out to the public, that, you know -- that they inform the people and -- and ensure that they understand what's gonna happen in regards to district representation.

You know, we're made up of all different type of culture. And -- and, you know, we gotta respect that and -- and ensure that -- you know, I'm Filipino. And I know that there's a lot of Filipino out there that are voters probably don't understand. So we gotta make sure that all the different ethnicity understand what's gonna happen when we do go into district voting. Because I -- I think that's very important.

And when Member Molina talk about budget, you know, it's gonna be one of those very feisty type budget sessions because all of us will become interested only in our district.

Like today, you know, we -- we go out to the different communities and we listen to the same story and -- and we all get the same, I guess, thinking and compassion that we provide for our people in this County. But once we go into district -- district representation, it's gonna be a challenge. I can assure you that. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla.

Mr. Victorino.

COUNCILMEMBER VICTORINO: For my final -- second and final chance -- and I'll make it quick, too, because I think everybody has -- has kind of decided what they wanna do -- bottom line in all of this is Mr. Pontanilla is correct in one sense, we now -- this past budget was one classic example -- and we're the only Council that does that, that, actually, goes out to the various districts throughout our County.

I was surprised to find that out. Because when I was up at, at the NACO Conference, I asked my other colleagues, and they don't do that. Either, you come to the Council meeting or tough luck. You know, Big Island has one in Kona and one in -- on the east side, west side, they have that, but they don't have district meetings like we do for the budget.

This -- this Council, because we are one County, has always extended itself further than many others. And I think that's something we can be proud of. But whatever comes down -- change will come someday along the line, and I accept that as being what it is -- and I will be there to make sure -- if the good Lord wills it, and the voters will it, to make sure that it's fair to all. That's all I've ever said and that's all I ever amount to, is being fair to all.

Now, fairness may not mean you get your own representative, Lanai, Molokai, or Hana, but fairness to all is the bottom line. And so long as that comes out at the end and everyone has been informed and everyone has had a chance to express -- express their manao, express their opinions, then, and only then, would I feel comfortable, whatever change comes, it'll be a good change. And fear will not be a part of that change.

Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members, the motion on the floor is to pass on First Reading the draft resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS". That's the -- that's the motion. And the Chair is gonna call for a roll call vote.

Mr. Clerk.

DEPUTY COUNTY CLERK: Councilmember Gladys Coelho Baisa.
COUNCILMEMBER BAISA: AYE.
DEPUTY COUNTY CLERK: Councilmember Jo Anne Johnson.
COUNCILMEMBER JOHNSON: AYE.
DEPUTY COUNTY CLERK: Councilmember Sol P. Kaho`ohalahala.
COUNCILMEMBER KAHO`OHALAHALA: A`OLE.
DEPUTY COUNTY CLERK: Councilmember Bill Kauakea Medeiros.
COUNCILMEMBER MEDEIROS: NO.
DEPUTY COUNTY CLERK: Councilmember Wayne K. Nishiki.
COUNCILMEMBER NISHIKI: NO.
DEPUTY COUNTY CLERK: Councilmember Joseph Pontanilla.
COUNCILMEMBER PONTANILLA: AYE, WITH RESERVATIONS.
DEPUTY COUNTY CLERK: Councilmember Michael P. Victorino.
COUNCILMEMBER VICTORINO: NO, WITH RESERVATIONS.
DEPUTY COUNTY CLERK: Vice-Chair Michael J. Molina.
VICE-CHAIR MOLINA: NO.
DEPUTY COUNTY CLERK: Chair Danny A. Mateo.
CHAIR MATEO: NO.
DEPUTY COUNTY CLERK: Chairman, we have three "ayes" and six "noes". Motion fails.

AYES: COUNCILMEMBERS BAISA, JOHNSON, AND PONTANILLA.

NOES: COUNCILMEMBERS KAHO`OHALAHALA,
MEDEIROS, NISHIKI, VICTORINO,
VICE-CHAIR MOLINA, AND CHAIR MATEO.

EXCUSED: NONE.

CHAIR MATEO: Thank you. Members -- go ahead, Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes.

MR. CHAIR, FAILING THAT MOTION, I PROPOSE -- I'LL TAKE THESE -- BECAUSE THEY ARE SEPARATED NOW, I MOVE TO REFER THE DRAFT RESOLUTION ENTITLED "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH MAUI COUNTY COUNCIL ELECTION DISTRICTS". TO THE COUNCIL CHAIR FOR THE NEXT COUNCIL TERM, FOR TRANSMITTAL TO THE NEXT CHARTER COMMISSION.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Thank you. We have a motion made by Ms. Johnson and second by Ms. Baisa. Members, you heard -- you heard the motion. Do you wish to have it restated?

COUNCILMEMBER JOHNSON: No.

CHAIR MATEO: Thank you. Further discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: No further discussion.

CHAIR MATEO: Thank you.

COUNCILMEMBER JOHNSON: I think we have flogged this to death.

COUNCILMEMBER BAISA: Short -- short discussion. I want to say I'm doing this with reservations.

COUNCILMEMBER JOHNSON: Yes.

COUNCILMEMBER BAISA: I am a good loser.

COUNCILMEMBER JOHNSON: And -- and, Mr. Chair, I -- I would say the same thing. And I do want to thank my fellow Councilmembers for the discussion that just ensued because that's -- it's appropriate. And I'm glad we had the discussion, so then, you know, people can move on. All right. Thank you very much.

CHAIR MATEO: Thank you. There's no losers. We all, we all win. Just having the discussion was -- was, you know, a very winning effort for everybody. So there's no losers here.

Members, all those in favor of the motion as presented by Ms. Johnson, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried unanimously.

COUNCILMEMBER JOHNSON: And --

CHAIR MATEO: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. And the last item that was contained in Committee of the Whole Report 10-79, the final recommendation is No. 1, which would be the referral of correspondence.

I MOVE THAT THE REFERRAL OF CORRESPONDENCE
DATED AUGUST 10, 2009, FROM THE KULA COMMUNITY
ASSOCIATION, PROPOSING A CHARTER AMENDMENT TO
ESTABLISH NEW ELECTION DISTRICTS FOR THE COUNCIL

TO THE COUNCIL CHAIR FOR THE NEXT TERM, FOR
TRANSMITTAL TO THE NEXT CHARTER COMMISSION.

COUNCILMEMBER BAISA:

SECOND THAT MOTION, CHAIR.

CHAIR MATEO: Been moved by Ms. Johnson and second by Ms. Baisa. Members, further discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: No.

CHAIR MATEO: No discussion. All those in favor of the motion, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Unanimous, nine "ayes". Motion is carried.

Mr. Clerk.

COMMITTEE REPORT

NO. 10-80 - COMMITTEE OF THE WHOLE:

Recommending that RESOLUTION NO. 10-38, entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO FINANCIAL DISCLOSURE STATEMENTS OF CANDIDATES FOR ELECTIVE COUNTY OFFICE" be PASSED ON FIRST READING and be ORDERED TO PRINT.

CHAIR MATEO: Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman.

I MOVE TO ADOPT THE RECOMMENDATIONS OF
COMMITTEE REPORT NO. 10-80.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Molina and second by Ms. Baisa to adopt the recommendations in Committee Report No. 10-80.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman. Your Committee met on July 15, 2010, to discuss a proposed Charter Amendment from the Kula Community Association and introduced to Committee by Councilmember Baisa that would require financial disclosure statements from political candidates be filed concurrently with nomination papers.

After much discussion; your Committee voted 6-0 to recommend passage of this proposed Charter Amendment to the full Council.

I would like to note, Mr. Chairman, that a minimum of six votes are needed at both first and second Council readings for this proposal to be placed on the November 2010 general election ballot.

Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion?

Ms. -- Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you, Chair. I'll keep it brief. I'd like to thank my colleagues for the consideration of this proposal. I think it's a very good one. And I ask for their support. Thank you.

CHAIR MATEO: Thank you, Ms. Baisa. Members, further discussion? All those --

Mr. Victorino, go ahead.

COUNCILMEMBER VICTORINO: And, you know, Mr. Chair -- and I was not here for this one, also, and I apologize, but I can support it. I -- I just -- my concern was if this

could be challenged in -- as far as the Office of Elections. And I would let -- like to ask Mr. Moto, our Corp. Counsel, as far as any ability -- because we're now imposing something here in County of Maui as a requirement to file, and would that be any possibility of infringing on anybody's Constitutional rights as we've just talked about that? So, Mr. Moto, if you would -- if that's okay with you, Mr. Chair, I would like a quick comment on that, please.

CHAIR MATEO: Mr. Moto.

CORPORATION COUNSEL BRIAN MOTO: Mr. Chairman, no, I don't believe there's -- this Charter Amendment poses any problems.

There was a previous proposal that would have said that if you didn't -- if you were a candidate and you did not file -- file a financial disclosure statement concurrently with your nomination papers that you would have been disqualified from being a candidate.

COUNCILMEMBER VICTORINO: Yeah.

CORPORATION COUNSEL: And I advised the people involved in that, in -- in discussing that proposal that I thought that that would be contrary to State law. But, of course, that's not the proposal that's on today's agenda. This -- this resolution would simply say you must file your financial disclosure statement on the same day that you file your nomination papers.

COUNCILMEMBER VICTORINO: And I guess the question begs, if you didn't?

CORPORATION COUNSEL: Then it would constitute a violation of the County Code of Ethics. But you would -- under State election law, you would still be a candidate, assuming you met State requirements.

COUNCILMEMBER VICTORINO: Okay.

CORPORATION COUNSEL: Yeah.

COUNCILMEMBER VICTORINO: Just so that the public understands true ramifications. In other words, am I clear in saying that I walk in without my financial disclosure, I still can file my nominate -- nom -- excuse me -- I been here too long already -- nomination papers as required by State law, they would have to be accepted.

CORPORATION COUNSEL: Yes.

COUNCILMEMBER VICTORINO: It would be a violation, then, of the Ethics Commission as far as not giving the financial disclosure at that moment?

CORPORATION COUNSEL: Yes, that's correct.

COUNCILMEMBER VICTORINO: So you're not stopping somebody from filing; it's just a violation of the Ethics Commission?

CORPORATION COUNSEL: That is correct.

COUNCILMEMBER VICTORINO: Thank you. Thank you for that clarification.

CHAIR MATEO: Thank you, Mr. Victorino.

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And just following up on that, Mr. Moto, do -- are you aware of why there was a 15-day window? Why that number was -- no.

CORPORATION COUNSEL: Not at all.

COUNCILMEMBER MEDEIROS: Okay.

CORPORATION COUNSEL: And I don't, well, you know what, if -- plus, that -- that provision is very old.

COUNCILMEMBER MEDEIROS: Right.

CORPORATION COUNSEL: It goes back, I think, to the origins of this particular Charter. And I didn't find anything in the record that would explain why they chose that -- that wording or that -- that deadline.

COUNCILMEMBER MEDEIROS: Right. Okay. Thank you. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Members, further discussion? Thank you. All those in favor of the motion to adopt the recommendation in Committee Report No. 10-80, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
 KAHO`OHALAHALA, MEDEIROS, NISHIKI,
 PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
 AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

COUNCILMEMBER VICTORINO: No problem.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, RESOLUTION NO. 10-38.

COMMITTEE REPORT

NO. 10-81 - COMMITTEE OF THE WHOLE:

Recommending that RESOLUTION NO. 10-39, entitled "PROPOSING AMENDMENTS TO SECTIONS 4-3, 9-2, 9-5, AND 9-6 OF THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE BUDGET ORDINANCE AND CAPITAL PROGRAM ORDINANCE" be PASSED ON FIRST READING and be ORDERED TO PRINT.

CHAIR MATEO: Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman.

I MOVE TO ADOPT THE RECOMMENDATIONS OF
COMMITTEE REPORT NO. 10-81.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Molina and second by Ms. Baisa to adopt the recommendations of Committee Report No. 10-81.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. Your Committee, having met on July 15, 2010, discussed a proposed resolution submitted by the Mayor that would:

(1) Reduce by ten days the amount of time the Mayor has to veto the budget and capital program ordinances; (2) Extend by ten days, to March 25 of each year, the deadline for the Mayor to submit to Council the annual budget and capital program ordinance proposals; and (3) Extend by ten days, to June 10 of each year, the date by which the Council must pass annual budget and capital program ordinances.

After receiving an overview from the Finance Director, your Committee voted 5-0 to recommend passage of the revised proposed resolution to the full Council. And, Mr. Chairman, again, like the previous item, a minimum of six votes are needed at both first and second readings for this to be placed on the November 2010 ballot.

Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-81, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried unanimously, nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, RESOLUTION NO. 10-39.

COMMITTEE REPORT
NO. 10-82 - LAND USE COMMITTEE:

Recommending the following:

1. That Bill No. 51 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.78.070, MAUI COUNTY CODE, PERTAINING TO GENERAL STANDARDS OF DEVELOPMENT, TO PROHIBIT TRAFFIC

INGRESS AND EGRESS ON KAINANI STREET TO AND FROM THE DEVELOPMENT WITHIN THE MAUI LANI PROJECT DISTRICT", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That County Communication No. 09-65, from the Planning Director, be FILED.

CHAIR MATEO: Thank you.

Ms. Baisa.

COUNCILMEMBER BAISA:

MR. CHAIR, I MOVE TO ADOPT THE RECOMMENDATIONS IN LAND USE COMMITTEE REPORT NO. 10-82.

VICE-CHAIR MOLINA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Ms. Baisa and second by Mr. Molina to adopt the recommendations in Committee Report No. 10-82.

Ms. Baisa.

COUNCILMEMBER BAISA: Mr. Chair, your Land Use Committee met on July 14, 2010, to consider this matter. Your Committee notes that the bill was intended to address concerns from members of the public. And in particular, the Sand Hills residential community over traffic from the proposed use of Kainani Street as an entrance and exit from shopping center to be located adjacent to Kainani Street, across from Baldwin High School, and within the Maui Lani Project District.

Your Committee was advised that the property owner had revised the site plan for the shopping center project to recognize the sensitivity associated with the use of Kainani Street as an access. And that the use of Kainani Street for vehicular access is no longer proposed as part of the project. The property owner, therefore, has no objections to the proposed bill.

Your Committee voted 8-0 to recommend passage of the revised proposed bill on first reading and filing of the communication.

I thank the Council for its consideration of my motion to adopt the recommendations in Land Use Committee Report No. 10-82.

CHAIR MATEO: Thank you, Ms. Baisa. Members, further discussion?

Mr. Victorino.

COUNCILMEMBER VICTORINO: Mr. Chair, and I want to thank Ms. Baisa and the Land Use Committee for passing this out and bringing it forward. This is a classic example of a neighborhood, an old-time neighborhood, being impacted, or potentially being impacted, by a new development within their area and not being -- or at least in the initial stages, not being part of the process. This community got together and worked very hard over many meetings to ensure that this would be a street never used by this development, by this shopping center.

I want -- I want it made very clear, I want to support this. And I ask you all to support it because it is also insuring that, in the future, if there's a new owner, someone else comes into the picture, that they will not be able to just go, okay, now we can build because we didn't agree to this. This makes it permanent.

And the people of Kainani, Sand Hill, and all of Wailuku, my district, truly appreciates that. And I want to thank all of you for that.

CHAIR MATEO: Thank you, Mr. Victorino. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-82, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, BILL NO. 51, 51 (2010).

COMMITTEE REPORT

NO. 10-83 - HUMAN SERVICES COMMITTEE:

Recommending that Bill No. 52 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT.

CHAIR MATEO: Thank you.

Mr. Nishiki?

COUNCILMEMBER NISHIKI:

MR. CHAIRMAN, MOVE TO ADOPT THE
RECOMMENDATIONS IN COMMITTEE REPORT 10-83.

COUNCILMEMBER PONTANILLA:

MR. CHAIRMAN, I SECOND THAT MOTION.

CHAIR MATEO: Members, we have a motion on the floor made by Mr. Nishiki and second by Mr. Pontanilla to adopt the recommendations in Committee Report No. 10 – 10-83.

Mr. Nishiki.

COUNCILMEMBER NISHIKI: Mr. Chairman, thank you. Your Public Services Committee returned to deliberations at its meeting of July 14, 2010, regarding a bill to establish a licensing system for aquatic life business operations.

At that meeting, your Committee recommended that the Council pass on first reading a revised bill to establish a licensing system for aquatic life operations.

Your Committee continued to recognize the importance of protecting aquatic life in light of the diminishing reef fish populations in Hawaii. But also recognize the need to not impact fishermen who use their catch for consumption purposes, koi ponds, pet shops, those that irradiate our waters of invasive species, or persons that keep aquariums in their own home.

Your Committee focused on the language of the bill, to clarify that and, quote, "Aquatic life operation", end of quote, is one that harvests, holds and sells aquatic life as pets. Your Committee noted that the County largely tourism based economy and

the thousands of residents that the industry employs are dependent on the natural beauty of the islands.

Mr. Chairman, the bill that was passed out, number one, focuses the legislative intent by clarifying who is and who isn't subject to the ordinance. These are concerns raised. And that's the reason why the referral back to Committee.

The second was the term "saltwater" was removed from the definition of aquatic life in order to make absolutely clear that this ordinance shall not apply to freshwater fish, namely koi ponds.

Number three: It revises the term financial interest to no longer include the names of dependent children.

Four: It specifies that businesses must do all three things in order to be subject to this ordinance. Number one, harvest; number two, hold and transport; and, number three, sell as pets.

And, five: It removes the monetary fine range so that the unpermitted aquatic life operations shall be fined \$2,000 and permitted operations that fail to prominently display their permit shall be fined \$250.

Committee Members, Councilmembers, I think that the concern -- and I thank Mr. Molina again, as you know that they have been two bills, one we've not heard yet, but I thank Mr. Molina for making the attempt to get both bills passed out.

I think today the concern that many of us have, that Maui County is selling its soul, that Maui County is getting raped by those people that want to see our indigenous fish sent to other parts of the world. Perhaps this bill will make people think twice about this situation. I think that, unlike any parts of the world, we will hope to think that Maui County is special to those that have been born and raised here and, also, to those that have been fortunate to move here that we will continue to protect this most important resource.

For these reasons, I ask the Council's approval. Thank you.

CHAIR MATEO: Thank you, Mr. Nishiki.

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. And I want to thank the Members who supported sending this back to Committee. I think that had we passed the bill, it would have had problems with it. And it's important that when we pass anything out that we do

not pass something that will have unintended consequences. And, really, it would have dramatically brought into question our cetacean exhibition legislation, which was passed many years ago.

And so I really want to thank Tracy Jones for being a part of the solution in bringing this forward. Because if I had not heard the comments that she made about the flaws within the bill, it could have been really not -- I -- I guess we could have fixed it, but it's not the way you want to pass legislation. So I know not every person, including the Chair of the Committee, was happy about that, but I think that, in the end, it proved that that was a wise decision and that was the appropriate action to take.

So I support the bill now with the changes as it was amended because I think it's a much stronger and much more clear bill. So I want to thank the other Members for supporting this because I think that we're doing the right thing in -- in -- in a way that really doesn't create other problems for our County and for our community. Thank you.

CHAIR MATEO: Thank you, Ms. Johnson.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. First of all, I want to extend my thank yous to Mr. Nishiki. And it's quite fitting for him with this bill today because he is recognized as the, one of Maui's ocean gurus or one of the biggest advocates for our, our oceans and aquatic life. And this is a step -- certainly a step in the right direction.

As the word gets out more and more, and in light of what's happened in the Gulf, we need to be alerted to the fact that there may be outsiders coming here to try and maybe collect some of these very valuable animals from our reefs for whatever collection purposes or what. So we need to be on guard for this. We need to respect the cultural considerations that was expressed to us in testimony. Because by and by, the, the ocean plays such an integral part of all our lives here in Maui County.

And, you know, there's more to come as -- as we know. You know, I have my bill. And then, of course Mr. Medeiros is also introducing something to the HSAC related to aquatic life. And we heard from one of our testifiers, Mr. Wintner, with regards to Senator Green from Oahu who's also looking at legislation related to this, and I believe Senator Baker has also expressed a concern over this matter as well. So the -- it's building momentum, but it's all for the good and it's all to protect our resources and make sure that there is accountability and control.

So I thank Mr. Nishiki and his staff and, also, all of the interested parties outside who have concern for this particular matter.

Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion?

Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I, too, would like to thank Member Nishiki for this. And along with that, thanks to Member Molina for his -- also his legislation.

And just briefly, because everything pretty much has been discussed and explained, I would like to say that, as a younger person, diving along the reefs of Hana, we saw a lot of parrotfish, uhu, and those fishes. We also saw a lotta wrasse fishes, the hinalea species. For us during those days the hinalea wasn't something we caught for the dinner table, but the uhu was.

But I think, more importantly, these fishes are the ones that clean the reefs. And because they clean the reefs, their waste, because their biting on the reefs, becomes our sand. And without these fishes, we won't have that production of sand that we have seen in the past. And so I think it's very important.

And, you know, recently, staying at a hotel on Oahu, they had a water feature. And even though it was saltwater coming in from the ocean, it wasn't the environment for those fishes to be in. And in that water feature was the uhu, the parrotfish and, also, the hinalea, the wrasse.

So I -- I think this is something very important for our ocean environment, for our ocean resources, that this is supported. And I certainly will support this. And we await Member Molina's legislation and so that we can send this forward. And as Member Molina said, I did propose similar legislation to be considered by HSAC in order to go to the next State Legislature session. But thank you, once again, Member Nishiki and Member Molina. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros.

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And I will be supporting the proposal, although I kinda hesitate to go home this afternoon because I'm going to face my fisherman husband again who's going to say why didn't you guys ban it

thoroughly, nobody should be taking aquarium fish out of our waters. And that's his feeling. And I understand it because, you know, he's been a fisherman all his life, and his whole family before him. And there's just no fish left. And to even consider the thought of allowing people to get a permit to take fish kind of drives him crazy.

But, you know, everything happens in stages. And this is a very good beginning. And I'm encouraged that we have all these other efforts that are happening. And maybe we can stop this degradation of our ocean.

It's really, really sad because all of us who are keiki o ka aina remember our days at the beach and hukilaus and overnight lay nets and all the wonderful stuff we used to do which we cannot do anymore. So I'd like to thank Mr. Nishiki for all the work and the Members of -- the voting Members of this Committee who worked very hard on this. And imua, guys. Let's go for it. Thank you.

CHAIR MATEO: Thank you, Ms. Baisa. Members, further discussion?

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah, thank you, Chair. I, too, would like to support this. And I wanted to just reiterate some of the -- the comments that were made earlier by Skippy Young. And he said that we needed to support the lesser plants and animals and somebody needs to speak for them. And it's something that needs to be preserved for our keiki 'til the end of time. And I -- I think that's very profound because what we're really talking about is the fact that we have endemic resources that have always been a part of these beautiful Hawaiian Islands we call home.

And I was astounded in the, the weeks that we deliberated on this that there was testimony that came forward that said that, well, they're free, you know. So they're free and we can go -- we can go collect them and we can turn it into a business, you know. So somehow in that statement, I felt that there needed to be a voice or an advocacy for the fish, you know. And if Skippy is saying that, that there needs to be a voice for those that are lesser than we, but it's for the idea that we would allow them to continue to be and that we would allow them to continue to be perpetuated. And that, in that action, we would be allowing them to be here in their home in these islands as a part of where we live for the children yet unborn.

So with that, I think that this is moving us in the right direction. We need now to get further support from the State Legislature to really make this an important issue, enough that the State would -- will finally make a -- a law that does not allow them to -- to take these animals, plants and resources that are endemic to our Hawaiian Islands.

So with that, I thank all of the Members who supported this.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MATEO: Mr. Victorino.

COUNCILMEMBER VICTORINO: Real quickly. I, I too, will support this. And I think the bottom line in all of this is -- really, is for our future generations that we take the first step today.

I wanna thank Mr. Wintner, Mr. -- Ms. Umberger, Ms. Jones and all the rest who have come and -- and testified. I want to thank those who do the collection and what their concerns were. I think they brought their ideas and their wishes, but they've got to understand that we are talking about a finite resource.

We have other issues. And we all know the injection wells and other issues that need to be worked on. And those will come in -- in due time, in the very near future. But in the meantime, this is the first step. I think a good step.

I agree with Ms. Baisa, my brother-in-law guys would like us to say ban everything because they've seen the differences. They go diving almost every other weekend and they've seen the difference. But they also seen the difference with opihi, opae, all across the board, because your greed is out there. They don't take what they need; they take what they need and then some, to sell, to do whatever.

And like Mr. Young said, I no can go out, I gotta go hunt now. My brother-in-law guys say the same thing, they have to hunt now. They no longer go to their places because everybody else has gone there. Now's the time to make the first statement to say Maui is no ka oi. And this is why we're going to keep it that way.

So, Mr. Chair, I thank all of the parties that were involved, Molina, Nishiki, Mr. Medeiros, but I also want to thank all the other Members because we all stood beside them saying, yes, this is the right thing to do, we listened and we're going to support it.

Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members, further discussion? All those in favor of the motion to adopt the recommendations in Committee Report No. 10-83, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: For the record, BILL NO. 52 (2010).

Chairman proceeding with communications.

VICE-CHAIR MOLINA: Mr. Chair? I'm sorry.

CHAIR MATEO: Mr. Molina?

VICE-CHAIR MOLINA: Point of personal privilege. May we take a very brief recess for personal considerations? Thank you.

CHAIR MATEO: No. Thank you very much, Mr. Molina.

Yes, we will. Is ten minutes -- ten minutes okay with everybody? Members, Council will stand in recess for ten minutes.

(THE MEETING WAS RECESSED BY THE CHAIR AT 4:04 P.M., AND WAS RECONVENED AT 4:17 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010, will reconvene.

Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, proceeding with communications.

The following County Communications were presented.

COUNTY COMMUNICATIONS

NO. 10-150 - BENJAMIN M. ACOB, PROSECUTING ATTORNEY,
(dated July 14, 2010)

Pursuant to Appendix A of Ordinance No. 3751, transmitting a copy of a grant award letter from the Department of the Attorney General for the Special Needs Advocacy Program.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-150.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-150.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Chairman, this communication from the Prosecuting Attorney transmits to Council copy of a grant award letter from the State Department of Attorney General indicating funds appropriated for the Special Needs Advocacy Project for the period July 1, 2010, until September 30, 2011. As no forwarding committee action is required, I request to file this communication.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to file County Communication No. 10-150, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
 KAHO`OHALAHALA, MEDEIROS, NISHIKI,
 PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
 AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-151 - GARY YABUTA, CHIEF OF POLICE,
(dated July 22, 2010)

Informing of the Police Department's intent to expend \$50,000 in Federal Forfeiture Funds for their Employee Development Program to be used to fund training and related expenses.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-151.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-151.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Chairman, this communication from the Chief of Police informs Council of the Department's intent to expend \$50,000 of acquired forfeiture funds to supplement the Department's Employee Development Program to be used to fund training and -- and related expenses. As no corresponding action is required, I request filing of this communication.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to file County Communication No. 10-151, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-152 - GARY YABUTA, CHIEF OF POLICE,
(dated July 27, 2010)

In accordance with Resolution No. 90-82, informing of the receipt of \$2,120.00 in Forfeiture Funds from the Department of the Attorney General, State of Hawaii.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-152.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-152.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Chairman, this communication from the Chief of Police informs Council of the Department's receipt of funds totaling \$2,120 from the State Department of the Attorney General's -- for funds forfeited to the Maui Police Department. The intended use of the fund is for law enforcement purposes. And the Department will inform of any expenditures using these funds. As no corresponding action is required, I request filing of the communication.

CHAIR MATEO: Members, further discussion? All those in favor of the motion to file County Communication No. 10-152, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-153 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,
(dated July 20, 2010)

In accordance with Resolution No. 99-26, transmitting a report of short term investments for the quarter ended June 30, 2010.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-153.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-153.

Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Chairman, this communication from the Finance Director provides the quarterly report of the County's short-term investments for the

period ending June 30, 2010. The report conveys total income earnings from these investments for the quarter as \$1,131,951.12. As no corresponding committee action is required, I request the filing of this communication.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to file County Communication No. 10-153, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-154 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,
(dated July 26, 2010)

In accordance with Section 17 of Ordinance No. 3651, reporting on transfers from the General Fund and Department of Water Supply Revenue Fund to the Bond Fund as of June 30, 2010.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-154.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-154.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. This communication from the Finance Director summarizes transfers from the General Fund and Department of Water Supply Revenue Fund to the Bond Fund as of June 30, 2010. The temporary transfers are used to complete CIP projects and will be reimbursed from proceeds of the eventual issuance and sale of general obligation bonds during the calendar year 2010. The communication requires no corresponding committee action, therefore I request the filing of this communication.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, further discussion? All those in favor of the motion to file County Communication No. 10-154, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-155 - KALBERT K. YOUNG, DIRECTOR OF FINANCE,
(dated July 26, 2010)

Transmitting 69 contracts/grants for June 2010 for filing with the County Clerk.

CHAIR MATEO: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATION NO. 10-155.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to file County Communication No. 10-155.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. This communication from the Finance Director transmits a summary report listing 69 issued contracts and grants during the period of June 10 -- I'm sorry -- June 2010. The referenced transmittal items are for filing with the Office of the County Clerk and available for review. Members with concerns over any of the contracts or grants may refer concerns to the Council Chair for consideration. As Budget and Finance Committee Chairman, I wish to file this county communication and the 69 referenced issued contracts and grants.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor of the motion to file County Communication No. 10-155, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO'OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-156 - CHARMAINE TAVARES, MAYOR,
(dated July 14, 2010)

In accordance with Section 2.41.040, Maui County Code, informing the Council of a vacancy on the *Urban Design Review Board* due to the resignation of John Ryan on July 12, 2010.

CHAIR MATEO: Mr. Molina.

VICE-CHAIR MOLINA: Thank you Mr. Chair.

MOVE TO FILE COUNTY COMMUNICATION NO. 10-156.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Molina and second by Ms. Baisa to file County Communication No. 10-156.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. The Council has been notified by the Mayor of the resignation of John Patrick Ryan from the Urban Design Review Board effective July 12, 2010. I'd like to thank Mr. Ryan who is moving out of state for serving our community. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion? All those in favor of the motion to file County Communication No. 10-156, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-157 - CHARMAINE TAVARES, MAYOR,
(dated July 20, 2010)

In accordance with Section 2.41.040, Maui County Code, informing the Council of a vacancy on the *Council on Aging* due to the passing of Anthony Fisher on July 14, 2010.

CHAIR MATEO: Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman.

MOVE TO FILE COUNTY COMMUNICATION NO. 10-157.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Molina and second by Ms. Baisa to file County Communication No. 10-157.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman. You know, it's with a heavy heart that I speak to this. The Council received a July 20, 2010 correspondence from the Mayor informing us of the passing of Council on Aging member Anthony Fisher, more affectionately known to us as Tony. As we all know, he was a familiar face and friend with us in the Council Chambers, and certainly was a very active and hard-working and contributing member of our community who will be sorely missed. Our deepest condolences to his wife and family and much mahalo for letting him share his talents to help make us a better community. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina.

Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. And I, too, would like to take the opportunity to, once again, express my deep sympathy and condolences to the family of Tony Fisher, his wife Nancy and his son and all of the people that cared so much about Tony. He was wonderful, had the opportunity to work with him in many ways, and he will be much, much missed. And we offer you all of our love and support.

CHAIR MATEO: Thank you.

Ms. -- Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. And, also, I -- I -- was really hard to, you know, attend his services because, you know, he was such a vital part of our County. And I think of him every time testifying up at the podium, working with Mr. Tavares and the

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

NO. 10-158 - SOLOMON P. KAHO`OHALAHALA, COUNCILMEMBER,
(dated July 28, 2010)

Informing of his intention to offer the following motions:

1. A motion to DISCHARGE the Committee of the Whole from further consideration of a correspondence dated July 8, 2010, transmitting the nomination of Philip Sabado (replacing Sherry Gabriele) to the Commission on Culture and the Arts, for a term expiring on March 31, 2012;
2. A motion to WAIVE the requirement of committee referral and report;
3. A motion to APPROVE the nomination of Philip Sabado to the Commission on Culture and the Arts for a term expiring on March 31, 2012;
4. A motion to FILE the correspondence dated July 8, 2010;
5. A motion to TRANSMIT the record of the Council's action to the Mayor; and
6. A motion to FILE this communication.

CHAIR MATEO: Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair.

I WOULD LIKE TO MOVE TO DISCHARGE THE COMMITTEE OF THE WHOLE FROM FURTHER CONSIDERATION OF THE CORRESPONDENCE DATED JULY 8, 2010, TRANSMITTING THE NOMINATION OF MR. PHILIP SABADO TO THE COMMISSION ON CULTURE AND THE ARTS FOR A TERM EXPIRING ON MARCH 31, 2012. AND, ALSO, I MOVE TO

WAIVE THE REQUIREMENTS FOR COMMITTEE REFERRAL
AND REPORT.

COUNCILMEMBER JOHNSON:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Thank you. Members, we have a motion on the floor made by Mr. Kaho`ohalahala and second by Ms. -- Ms. Johnson, one, to discharge the Committee of the Whole, the Whole from further consideration of a correspondence dated July 8, 2010, transmitting the nomination of Philip Sabado to the Commission on Culture and the Arts for a term expiring on March 31, 2012. And, also, to dis -- also to --

COUNCILMEMBER KAHO`OHALAHALA: Waive.

CHAIR MATEO: Excuse me. Waive the requirements of Committee referral and report pursuant to section 6(F) of the Rules of the Council.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah. Thank you, Chair. I just wanted to make sure that we understand what's before us today is that the, in consideration for this correspondence dated June, the transmitting of this nomination of Mr. Sabado, we had a meeting of which, on May 11, 2010, Ms. Gabriele resigned as a member of the commission. And the Mayor did not submit a -- a nominee to replace Ms. Gabriele within the time period provided by Section 13-2 of the Charter. And therefore, the Council has until August 9, 2010, to nominate and approve an individual to the Commission to replace Ms. Gabriele.

At our meeting yesterday with the Committee of the Whole, we were looking at the -- considering the nomination and approval of Mr. Sabado; however, the Committee was unable to formally transmit a report to the Council for consideration at its Council meeting today. And so in order to facilitate this process and to ensure that the Council is able to meet the Charter mandated deadline of August 9, it will be necessary for the Council to discharge the Committee from further consideration of this nomination.

So I'd ask the Members to support this and we'll move on to the further nomination of the --

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala. Members, further discussion? The Chair is not going to repeat the motion. You're all -- you're all aware of the motion. All those in favor, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried. Thank you.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair.

AT THIS TIME, THEN, I MOVE TO APPROVE THE
NOMINATION OF PHILIP SABADO TO THE COMMISSION
ON CULTURE AND THE ARTS FOR THE TERM EXPIRING
ON MARCH 31, 2012.

COUNCILMEMBER JOHNSON:

YES, MR. CHAIR, I SECOND THE MOTION. AND, ALSO,
THAT WOULD INCLUDE THE FILING OF THE
CORRESPONDENCE DATED JULY 8.

CHAIR MATEO: Okay, Mr. Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Yes.

CHAIR MATEO: Thank you. Members, we have a motion on the floor made by Mr. Kaho`ohalahala and second by Ms. Johnson to approve the nomination of Philip Sabado to the Commission on Culture and the Arts for a term expiring on March 31, 2012, including the filing of the -- of the correspondence dated July 8, 2010.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. At this time I just want to say that Mr. Sabado has served this community within Maui County very well. He is originally from the Island of Molokai. I was inspired, first of all, by his artwork, having been gifted some of his -- his paintings. And, therefore, that was my first opportunity to, to get to know the name Philip Sabado. But since then, I've been able to see him in other places. He did a portrait of Father Damien during the -- during the events that were being offered at Kalaupapa. And he has now opened a nice art studio right here on Market Street. And if you have an opportunity to visit, then you will see, in his studio, the expression of the kind of art that he brings to all of us, which is reflective of where we live here in, in Maui Nui. So I believe he's very well qualified to serve on the Commission. And I'm pleased to -- to -- that he has accepted the responsibilities that come with that appointment. And I'm looking forward for him to have an opportunity to put his heart and soul back into the Commission. And so with that, I'm gonna support the Council.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala. Members, further discussion? All those in favor of the motion to approve the nomination of Philip Sabado to the Commission of Culture and the Arts, for a term expiring on March 31, 2012, including the filing of the correspondence dated July 8, 2010, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair.

THEN, LASTLY, I MOVE TO TRANSMIT THE RECORD OF
THE COUNCIL'S ACTION TO THE MAYOR AND A MOTION,
ALSO, TO FILE THIS COMMUNICATION.

COUNCILMEMBER JOHNSON:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Thank you. Members, motion on the floor made by Mr. Kaho`ohalahala and second by Ms. Johnson to transmit the record of the Council's action to the Mayor as well as the filing of this communication.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: No further . . . Thank you, Chair.

CHAIR MATEO: Thank you. Members, further discussion? All those in favor the motion, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes". Thank you very much, Mr. Kaho`ohalahala.

Mr. Clerk.

NO. 10-159 - WAYNE K. NISHIKI, COUNCILMEMBER,
(dated July 30, 2010)

Transmitting a proposed resolution entitled "URGING THE ADMINISTRATION TO NEGOTIATE A WATER SOURCE AGREEMENT WITH PIIHOLO SOUTH, LLC, RELATING TO STATE WELL NO. 5118-04 TO BENEFIT THE MOST APPLICANTS ON THE UPCOUNTRY WATER METER PRIORITY LIST".

CHAIR MATEO: Thank you, Mr. -- thank you, Mr. Taguchi.

Mr. Nishiki.

COUNCILMEMBER NISHIKI:

MR. CHAIRMAN, I MOVE FOR THE ADOPTION OF THE
PROPOSED RESOLUTION.

COUNCILMEMBER VICTORINO: Mr. Chair.

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Nishiki and second by Mr. Victorino to adopt the
resolution.

Mr. Nishiki.

COUNCILMEMBER NISHIKI: Chairman, can we have the resolution read in its entirety?

CHAIR MATEO: Mr. Clerk.

(The resolution was read in it's entirety.)

CHAIR MATEO: Thank you.

Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. Mr. Chairman, the reason why I wanted to share my
intent and reasons for introducing these proposed resolutions are, first, currently
there are like 1,300 applicants who have been waiting for years on the Upcountry
Water Meter List. In the past -- and we've heard today from members of the Kula
Community Association, that there could be a water source agreement where the
developer or the well owner would get 75 percent of the water and the County only
25 percent.

Why should we give a developer 75 percent of the available water and allow all those
people to cut in line ahead of all longtime residents that have been waiting on the
water meter list for years?

A lot of those on the list are hard-working, longtime residents who want to give their
children a place to live. Many of their children can't afford a home and are being
forced to move away from Maui County. So don't let a developer cut in line.

I think this example hits one of our Councilmembers here, Gladys Baisa, probably,
who will probably tell us about it.

Second, we heard today that the well owner intends to sell meters with any remaining water from his 75 percent portion. Why should others with money be able to cut in line?

Third, not only are developers being able to cut in line, but I believe the Upcountry residents would receive a drop in the bucket from a 75/25 percent agreement. I think our residents deserve a lot more.

An example that I'm just talked about was when our former Mayor signed with Maui Land & Pine right before they left office. As you know, the County had a water agreement with Maui Land & Pine for the Piiholo North Well that was eventually terminated. However, as I recall, the Administration had agreed to give 75 percent of the water to the developer and 25 percent to the County.

Today, we received a letter from Piiholo South, LLC, which states in the letter, number one, the testing of our water was completed by Pural and sent to a certified laboratory confirming the water is clean, pure and free of contaminants, but, when asked by Councilwoman Baisa, who holds the Upcountry seat, Mr. Franks told us that the County of water [sic] was not involved with the testing of this water. If you look above the Piiholo South Well, there's pineapple fields.

Number two: In the letter, it says, we have explored the possibility of senior housing in our lot closest to Makawao Town; however, that project is on hold at this time. So, in actuality, any well source agreement for Piiholo South is tied to or involve Zach Franks' project in Makawao Town.

Truth is, any water source agreement for Piiholo South Well would provide for three possible developments; the senior housing in Makawao Town, Kula Ridge and Kula Ridge Mauka. And I think that Mr. Molina and Councilwoman Baisa have some concerns in regards to these projects.

Number three: Piiholo South has been meeting over the past year with the Department of Water Supply and has also met with the Mayor's Office and the Water Resource Chairperson, from what he says, Mr. Victorino, on several occasions to discuss sale or dedication options. I -- I am told that Zach Franks or his partner met with the Water Director Jeff Eng only a few weeks ago, on July 27 or the 28.

Number four: It says in this letter, this will result in over 320 meters being granted off Upcountry water waiting lists. The question should be, assuming the well can provide a maximum yield of 1.7 million gallons, the County takes only two-thirds from that. This leaves about 775,000 gallons left. Seventy-five percent of this is 583,200 gallons. Twenty-five percent would guarantee us 194,000 gallons per day.

According to the Department of Water Supply, it takes 1,350 gallons per day per water meter. This equates to maybe 143 meters, as was testified by Ms. Flammer who represented the Kula Association.

Now I am told that it takes 300 -- 1,350 gallons per day and not 600 gallons per day. Using this amount, it would mean that only 143 meters would be provided those on the Upcountry water list. That by itself is not fair, but there's more.

There's 1,300 applicants, not individuals, on the Upcountry water list. Some of the applicants are requesting more than one meter. We don't know, because there's not been made available, and I am told that some applicants are requesting ten or more meters.

Now, when we talk about why the concern that the sale of these water meters are -- are of a concern, it has been pointed out by some people of the know that water meters Upcountry are being sold for \$20,000 plus. So that means that only the affluent can buy these private meters, thereby cutting in line.

And then I am told that, on top of that, the person who buys this would have to, again, pay another \$6,000 as part of the purchase of a five-eighth water meter.

I know that Councilwoman Baisa has something to say, so, with that, I'll end my concern, Mr. Chairman, today.

CHAIR MATEO: Thank you, Mr. Nishiki.

Ms. Baisa.

COUNCILMEMBER BAISA: Yes, Chair. Thank you very much. I'll try to not be too wordy 'cause I know we're all tired. It's been a long day and we have a lot more to cover. But I want to say I appreciate the testimony of Mr. Franks and all the work that Councilmember Nishiki has done.

Given the concerns raised by testifiers today, as well as Mr. Franks' willingness to discuss and negotiate for the use of water from the Piiholo South Well with both the Administration and the Council and individual Councilmembers --

I WOULD LIKE TO PROPOSE TO AMEND THE RESOLUTION. I'D LIKE TO HAVE IT SAY -- UNDER THE "BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF MAUI", I WOULD LIKE TO ADD, "3. THAT IT HEREBY URGES THE ADMINISTRATION TO NOT SUBMIT ANY PROPOSED

PROJECT, APPLICATION, OR DEVELOPMENT THAT WOULD USE WATER FROM PIIHOLO SOUTH WELL, SPECIFICALLY STATE WELL NO. 5118-04, UNTIL THE COUNCIL HAS HAD THE TIME NECESSARY TO DISCUSS AND NEGOTIATE ANY USE OF THIS WATER WITH PIIHOLO SOUTH, LLC."

AND THEN, PROCEDURALLY, RATHER THAN FILE THE COMMUNICATION, I WOULD RESPECTFULLY ASK THAT THE COMMUNICATION BE REFERRED TO THE APPROPRIATE COMMITTEE FOR FURTHER CONSIDERATION. AND I'M NOT SURE IF THIS IS PROCEDURALLY CORRECT, BUT THAT'S MY AMENDMENT.

COUNCILMEMBER NISHIKI:

SECOND.

CHAIR MATEO: Members, we have a motion on the floor.

Ms. Baisa, would you have that--

COUNCILMEMBER BAISA: Yes.

CHAIR MATEO: -- already written up?

COUNCILMEMBER BAISA: Yes.

CHAIR MATEO: So we can get copies for all the Members?

COUNCILMEMBER BAISA: Yes. May I go?

CHAIR MATEO: Go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: I would like to further say that this would send a very courteous but clear message to the Administration that the Council wishes to discuss and negotiate any use of water from this well with Piihola South, LLC prior to discussing any project application or development. Deliberating any project application or development prior to full discussion relating to the use of water from this well would confuse the issues and be detrimental to what is best for our communities.

I think that we would like the opportunity to look at the possibilities of possibly having all this water used for people like those on the Upcountry meter list before other reservations are made.

CHAIR MATEO: Thank you. Ms. Baisa, just for clarification purposes, on the -- the resolution we are recognizing right now, there is a number three already existing.

COUNCILMEMBER BAISA: Oh, well.

CHAIR MATEO: So you're saying --

COUNCILMEMBER BAISA: Can it be number four?

CHAIR MATEO: The current number three would move down to --

COUNCILMEMBER BAISA: To four.

CHAIR MATEO: Four.

COUNCILMEMBER BAISA: And number --

CHAIR MATEO: And your proposed amendment will be the next item --

COUNCILMEMBER BAISA: Yes --

CHAIR MATEO: -- Number three.

COUNCILMEMBER BAISA: Please. Thank you, Chair.

CHAIR MATEO: Okay. Members, further discussion?

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You can rule me if I'm out of order, yeah. I -- I -- I just have a question. This is not relating to Member Baisa's amendment, but I have a question for Corporation Counsel in regards to item number two, that the "Department of Water Supply, whereby County of Maui would receive 100 percent of the maximum water capacity in consideration for water allocation credits to Piihola South, LLC." I -- I need some interpretation in regards to, is it lawful for us to do that? Is it takings? Are we liable for some lawsuits?

CHAIR MATEO: Mr. Moto?

CORPORATION COUNSEL: Mr. Chairman, as I read the resolution -- and we had no role in drafting the resolution -- what it is, it's urging the Administration to negotiate. But there is no guarantee or assurance that those negotiations will lead to anything. I -- I'm aware a little bit of that -- of the fact that the Director of Water Supply has had a few conversations with representatives of Piiholo South. It's my impression that there is no agreement and it doesn't sound like there's anywhere -- anything close to an agreement. So you can -- if -- if the Council adopts this kind of resolution, it says urging -- it urges the Administration to negotiate something, but whether something actually comes out of it is -- is anybody's guess.

COUNCILMEMBER PONTANILLA: Thank you. I understand that resolutions doesn't have the power in regards to law. And, you know, I'm just foreseeing, you know, if negotiation doesn't go well, the possibility of some litigation should we take over. That's all. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla.

VICE-CHAIR MOLINA: Chair?

CHAIR MATEO: Go ahead, Mr. Molina. Excuse me.

VICE-CHAIR MOLINA: Thank you, Chair. First of all, I want to state my support for Member Baisa's amendment to the resolution and, also, the referral to committee.

And just to kind of cut to the chase, Mr. Chairman, upon testimony -- and I appreciate Mr. Nishiki bringing this matter to light -- upon the revelation of a -- several things in testimony and as well as in the Q and A session between Mr. Nishiki and Mr. Franks, I think it's appropriate that we have the discussion in a committee because, otherwise, we could be spinning our wheels here. When we have a committee discussion, we can have Director Eng and all other parties involved, where we can spend more time to do research as well as -- we heard from one testifier about the public getting more input on this, so I think that's sorely important, especially for the Kula and Makawao communities on this, where water is, you know, such a huge issue, like everywhere else.

So I'd respectfully ask that we, you know, if possible, curtail any further discussions on this and just have the matter referred to committee at this point. Thank you.

CHAIR MATEO: Thank you.

Ms. -- Ms. Johnson, go ahead.

COUNCILMEMBER JOHNSON: Yes. And -- and I would ask the same thing. And I think it should be referred to Committee of the Whole because this really is a nine -- nine-Member, you know, issue that should be discussed.

I think it's unfair when we're only getting half of the information. You know, we don't have the other part, which is the Administration's side, because, you know, we're just going by what has been stated. So I -- I really want this to go to committee. I don't think we should do anything with this except send it to committee. That's the appropriate thing.

CHAIR MATEO: Thank you.

Mr. Pontanilla, go ahead.

COUNCILMEMBER PONTANILLA: Thank you. Yeah, I can, you know, support the intent of the resolution, but I think it would be better to be discussed in committee meeting. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, further discussion?

COUNCILMEMBER VICTORINO: Yeah, Mr. Chair.

CHAIR MATEO: Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah. Thank you. And I can also support this. And -- and -- and let me make a couple of points. The meetings I've had with Mr. Franks and Ms. Warner have been informational purposes. And that is my responsibility as the Water Resource Committee Chair. And I also would hope that this would come to the Water Resource Committee, because that's where it belongs. I disagree with Ms. Johnson in that respect. But they're all welcome. Mr. Nishiki's always at our meeting, he participates. I welcome anybody to any of the meetings because we're all members of every committee. We may not be able to vote, but we're all Members of every committee. So -- and I know Mr. Molina, right now, has a very heavy schedule, so -- so do I. And everybody has heavy, heavy schedules.

So, you know, I won't belabor the point, Mr. Chair, but I think, also, one more point I want to make, that Mr. Franks in -- in many cases has said he willing to negotiate, he like to -- if the County wanted to buy it outright, he would be willing to look at it, you know what I mean. He's open to any suggestion. That man has made it available to all of us. So whatever you decide, Mr. Chair, is fine, but I can support the intent and -- and -- and see what happens from that point. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members, further discussion?

Mr. Nishiki.

COUNCILMEMBER NISHIKI: The amendment to the --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MATEO: Yeah, okay. Members, I'm going to read the amendment as being proposed by Ms. -- Ms. Baisa. And this is -- if you can follow along, on the resolution, it would be number three, and the existing number three on the resolution would become number four. And the amendment reads "That it hereby urges the Administration to not submit any proposed project, application or development that would use water from the Piiholo South Well, specifically State Well No. 5118-04, until the Council has had the time necessary to discuss and negotiate any use of this water with Piiholo South, LLC."

Included in her motion is -- instead of filing this communication, she's requesting that the communication be referred to the appropriate committee for further consideration. Okay. Further discussion, Members?

COUNCILMEMBER NISHIKI: Chair, can I ask a -- a real simple question? What -- what is the possibility of passing something out like this today, just because we know things are coming through the pipe, and -- and -- and then, also, having it referred to committee? Is that possible, for further discussion? That way, at least we're sending a message to this Administration.

CHAIR MATEO: The only --

COUNCILMEMBER NISHIKI: I know it doesn't have the force and effect of law, Mr. Chairman, but at least it lets the Administration know of the Council's concern.

CHAIR MATEO: Uh-huh. Mr. Nishiki, the only -- the only issue that I can see is, during discussion in committee, Members may come up with additional whereases or additional requirements or, you know, I guess, conditions, or whatever you going to call them, that they would perhaps want to include into the resolution. And instead of having to re-submit another resolution, it's easier for us to address it during -- during that particular discussion.

COUNCILMEMBER NISHIKI: Okay. I -- I -- I guess I can -- I can support what Member Baisa has today because we know -- well, I know that there is a affordable housing project that is coming through the pike. And, you know, in this resolution, it says that you're not to propose anything until we have a -- you know, a negotiation, which the

Council has the power to do, Mr. Chairman. And I would think that it would be throwing away our bargaining chip unless Administration listens to us.

CHAIR MATEO: Thank you, Mr. Nishiki. Members, we're going to take a real brief recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 4:59 P.M., AND WAS RECONVENED AT 5:01 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010, will reconvene.

Members, for clarification purposes, in Ms. Baisa's motion, the area regarding the communication to be referred to the appropriate committee, it's important for us to note that what is being requested is that the adopted amended resolution be referred to committee. So we just need to be real specific.

Ms. Baisa.

COUNCILMEMBER BAISA: Yes, Chair. That's correct. Thank you.

CHAIR MATEO: Thank you very much. Okay.

Members -- Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: So you're -- the floor is open for discussion on this?

CHAIR MATEO: Yes.

COUNCILMEMBER KAHO`OHALAHALA: I would support that as well. I wanted to -- to possibly add another amendment that -- that this go -- that this item be referred to the Committee of the Whole, you know. And the reason I -- I think that, because it allows all of us to sit here and make a decision. And -- and in the -- in the fact that we brought this up to the -- the full Council now, for it to go back to a five-member committee, to me, is going to take a two-step process, when we've already been discussing this as a Committee of the Whole. So I don't know how the -- the Chair feels on the Committee of the Whole, but -- I know Member Victorino would like it to go to Water, but I -- I would like to add that as additional consideration.

COUNCILMEMBER VICTORINO: Mr. Chair? Mr. Chair, I'd like to make a correction.

CHAIR MATEO: Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: Water Resource Committee is a seven-member committee --

COUNCILMEMBER KAHO`OHALAHALA: Seven.

COUNCILMEMBER VICTORINO: -- not five.

COUNCILMEMBER KAHO`OHALAHALA: All right.

COUNCILMEMBER VICTORINO: So the vast majority of this group participates. Mr. Nishiki is always there --

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

COUNCILMEMBER VICTORINO: -- and always a participant. So I -- you know, it's nothing that I have never allowed. This is a water issue and I feel strongly about it, but whatever you decide, Chair, you know, I'm willing to -- to accept that.

CHAIR MATEO: Okay. Members, further discussion on this item?

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Yeah. When I take a look at the resolution itself, you know, it does mention Upcountry water -- water meter list. And -- and, basically, we're -- in the Water Committee, we're already discussing this thing on WR-1. So I -- I think this resolution, rather than going to Committee of the Whole, you know, they have nine Members, yeah, you know, but I -- in -- in my opinion, that we should go -- this thing should be go -- should be going to the Water Resources Committee.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, further discussion?

Mr. Molina?

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. As -- as the subject of the proposed motion -- well, first, you know, I -- I appreciate, you know, Members wanting to bring this to a nine-member committee. And, you know, I would be willing to take it, but, however, you know, out of respect for the fact that it has ties to Water, and I believe Mr. Victorino's already had some form of preliminary discussions on -- on the matter with Mr. Franks for informational purposes, I would, you know, be more than happy to yield it to him if -- if he wants it. But I'll leave it to the body if that's the way -- if the majority want -- of you want to send it to Committee of the Whole, fine. But, if not, I mean, my opinion, I think, you know, Mr. Victorino has pretty much started on this, and out of respect for the fact that it has ties to -- more ties to water, if you will.

So I'll -- I'll just leave it at that and respect the wishes of the -- the body, however way it comes out. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina.

Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. If you remember what my amendment said, it said appropriate committee. And that's normally your discretion, so I'll go with your recommendation. Thank you.

CHAIR MATEO: Thank you, Ms. Baisa.

Ms. Johnson. Ms. Johnson.

COUNCILMEMBER JOHNSON: Yeah. I just had a question because, basically, the whole premise of, I guess, approving or disapproving, you know, these water agreements, where do those go? Do they go to the five-member committee? I mean, if that's what -- I mean, a seven-member committee. If that's where the water agreements are approved -- I thought it came to the Council, which is all nine of us. So it's just simply I'd like it to go the same place that the authority really rests. So if that's Committee of the Whole, where we're discussing contracts, then it should go to Committee of the Whole because that's where -- that's where the ultimate decision is gonna be made. I -- I appreciate what Mr. Victorino's saying, and, also, Mr. Pontanilla, but, you know, for me, I just -- I wanna be consistent with where we send things based on the rational nexus and what the law really says.

Thank you.

CHAIR MATEO: Thank -- thank you, Ms. Johnson. Members, further discussion?

Ms. Baisa's proposal recognizes that it be -- be referred to the appropriate committee. So, Members, if the choice is going to be left up to the Chairman, then the appropriate committee for the Chairman is the Water Committee. The Water Committee has already initiated discussions in the up water -- Upcountry water meter list. And, you know, that, to me, is just part of the responsibilities of this particular committee.

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And I understand, you know, why you would make that decision. I'd just like to respectfully ask, if we could please try to get this done as quickly as possible. And I know Mr. Victorino has a million

things in his committee. But, you know, we've been tentatively trying to schedule a meeting on Lanai in an off week, maybe we could use that day. But I'll leave it to Mr. Victorino, if it goes to his committee, that's his kuleana. But the sooner, the better, because we have a pending application which is going to come down and it's going to, in my opinion, confuse the issues if we don't deal with the disposition of the well first.

Thank you.

CHAIR MATEO: Thank you, Ms. Baisa.

Mr. Victorino, the Chair would ask you what your calendar looks like in terms of availability of scheduling?

COUNCILMEMBER VICTORINO: Well, you know, it's like everything else, busy, like everybody else, but I will make sure that either it'll be put on in the most -- the nearest meeting I can put it in or, like Ms. Baisa said, have a special meeting on it. Because of such urgency, I would not hesitate to request, and, upon your approval, of course, Mr. Chair, having a special meeting to just deal with this issue. Because I think sometimes these are the kinda issues we need special meeting where nothing else is convoluted, nothing else is on the agenda, we focus on all of this.

So I will talk to you about that at -- at -- next week on that. And we'll work on something. But I assure you we'll bring this out, eh, very quickly, like with -- hopefully, I will try to do it within the next 30 days.

And, again, I repeat, every Member is welcome. They are welcome to the meeting.

Thank you, Mr. Chair.

CHAIR MATEO: Thank you.

Members, further -- Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah, just -- just a concern.

CHAIR MATEO: Go ahead.

COUNCILMEMBER NISHIKI: Just because when I read the water source development agreements, under 14.03.025, it says "the Council shall approve by resolution any water source development agreement with private entities. For purposes of this section, a 'water source development agreement with a private entity' means an agreement, executed by the County and any person, to develop water sources by

constructing a structure to catch or convey, store, and treat currently unutilized, nonpotable surface waters; constructing facilities for current unutilized groundwater and its treatment, including pumps, motor control stations, pump control, or disinfection contact time tanks" and -- and so on.

But I can almost tell you, Mr. Chairman -- and I don't know if this changes anything for this Council -- but it is also going to entail money. So, you know, normally, it goes to Joe when you talk about money, but -- you know, I don't know what is most efficient, but that's going to be another concern, I think, that we should put on the table today as we have this discussion. And, again, Mr. Chairman, you know, I'll -- I'll -- I'll leave it up to you. But just wanted to give you more food so that you can digest and make a informed decision.

Thank you, Mr. Chair.

CHAIR MATEO: I've already gotten indigestion.

COUNCILMEMBER NISHIKI: I was gonna say ingest.

CHAIR MATEO: Thank you, Mr. -- thank you, Mr. Nishiki.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Just a comment. You know, it should go to Member's -- Member Victorino's committee. And -- and if there is any agreement of any kind, then, you know, if -- if money is an issue, then -- because we have a 2011 Budget, then it -- it would come as a budget amendment at a later time.

Thank you.

CHAIR MATEO: Thank you, Mr., Mr. Pontanilla. Members, further discussion? Members, we have -- we have the -- we have Ms. -- Ms. Baisa's motion still on the floor. And the Chair will not restate it unless there is a -- a request. Very good. Members, this is for the amendment. All those in favor, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
 KAHO`OHALAHALA, MEDEIROS, NISHIKI,
 PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
 AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Amendment passed with nine "ayes".

Members, we still have Mr. Nishiki's main motion on the floor. Okay. And the main motion is to adopt the proposed resolution entitled "URGING THE ADMINISTRATION TO NEGOTIATE A WATER SOURCE AGREEMENT WITH PIIHOLO SOUTH, LLC, RELATING TO STATE WELL NO. 5118-04, TO BENEFIT THE MOST APPLICANTS ON THE UPCOUNTRY WATER METER PRIORITY LIST", as amended. Discussion? All those in favor, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Okay. Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. I was of the understanding that we would be having this resolution be referred to Committee.

COUNCILMEMBER VICTORINO: Yeah, the Water Resource.

COUNCILMEMBER PONTANILLA: It is?

CHAIR MATEO: Yeah. Chair is going to take a very short recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 5:12 P.M., AND WAS RECONVENED AT 5:14 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR MATEO: Council of the County of Maui, regular meeting of August 6, 2010 will reconvene.

Members, for clarification purposes, we did -- we did two items. The first is Mr. Nishiki made the motion for the adoption of his resolution. The next section was Ms. Baisa proposed an amendment to Mr. Nishiki's resolution with -- with specific

changes, adding an additional item onto the resolution, as well as her request that the adopted amended resolution be forwarded to the appropriate committee for further discussion. That amendment was discussed and passed. We also returned to the main motion.

CHAIR MATEO: The main motion was Mr. Nishiki's to adopt the resolution as amended, and the item passed. This resolution is gonna be forwarded to the Administration for, I guess, her -- you know us urging her to do the negotiation. In addition, we will also have the discussion in Committee with the resolution, as amended, that will be submitted to the Water Committee.

COUNCILMEMBER NISHIKI: That was clear. Thank you.

CHAIR MATEO: Clear as --

COUNCILMEMBER VICTORINO: Mud.

CHAIR MATEO: Clear as mud. Okay. And then Mr. -- Mr. Victorino, since -- you know, since, you know, we have had the discussion, then we'll -- we'll be looking forward to the scheduling of this item as soon as possible.

COUNCILMEMBER VICTORINO: We'll meet with you very quickly, sir, and get this taken care of. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Victorino.

Mr. Clerk, can we go?

DEPUTY COUNTY CLERK: For the record, RESOLUTION 10-40.

NO. 10-160 - JOSEPH PONTANILLA, COUNCILMEMBER,
(dated July 30, 2010)

Proposing amendments to Bill No. 45 (2010) entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS".

CHAIR MATEO: Members, Mr. -- this particular item, Mr. Pontanilla has submitted proposed amendments. And the amendments is regarding Bill No. 45 (2010), that we will be addressing shortly. If there's no objections the Chair would like to postpone this county communication and move it to second and final when we call up Bill 45. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Thank you. So ordered.

Mr. Clerk.

(See page nos. 183 through 199 for discussion and action.)

DEPUTY COUNTY CLERK: Chairman, the following county communications are recommended for referral to the following committees as noted.

NO. 10-161 - LORI TSUHAKO, DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated July 19, 2010)

Transmitting a proposed resolution entitled "APPROVING A GRANT TO NA HALE O MAUI PURSUANT TO SECTION 3.35.100(A), MAUI COUNTY CODE, PERTAINING TO THE AFFORDABLE HOUSING FUND".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-161 be referred to the Budget and Finance Committee.

NO. 10-162 - JOSEPH PONTANILLA, COUNCILMEMBER, (dated July 22, 2010)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY CODE, PERTAINING TO THE APPROVAL OF PROJECTS FROM THE AFFORDABLE HOUSING FUND".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-162 be referred to the Budget and Finance Committee.

NO. 10-163 - CAROL S. GENTZ, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM MANAGER, (dated July 26, 2010)

Transmitting a copy of the "ANNUAL ACTION PLAN OF THE CONSOLIDATED PLAN FOR PROGRAM YEAR 2010 (JULY 1, 2010 THROUGH JUNE 30, 2011)".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-163 be referred to the Budget and Finance Committee.

NO. 10-164 - FREDERICK D. PABLO, BUDGET DIRECTOR
(dated July 29, 2010)

Transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2011 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2011, AFFORDABLE HOUSING FUND, HABITAT FOR HUMANITY MAUI – KAHAWAI PROJECT"; and
2. A proposed resolution entitled "APPROVING THE HABITAT FOR HUMANITY MAUI, KAHAWAI PROJECT, PURSUANT TO SECTION 3.35.100(A), MAUI COUNTY CODE, PERTAINING TO THE AFFORDABLE HOUSING FUND".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-164 be referred to the Budget and Finance Committee.

NO. 10-165 - FREDERICK D. PABLO, BUDGET DIRECTOR
(dated July 29, 2010)

Transmitting the following proposed bills:

1. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2011 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES; HANA COMMUNITY PLAN AREA, ROAD IMPROVEMENTS, KAHOLOPOO AND PAPAHAHAHAWA BRIDGE REPLACEMENTS; TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)"; and
2. "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3749 BILL NO. 37 (2010) RELATING TO THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF MAUI".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-165 be referred to the Budget and Finance Committee.

NO. 10-166 - CHARMAINE TAVARES, MAYOR,
(dated July 8, 2010)

Requesting a correction to the record of testimony given by Ms. Tamara Paltin at the Committee of the Whole meeting of June 17, 2010.

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-166 be referred to the Committee of the Whole.

NO. 10-167 - JOSEPH PONTANILLA, COUNCILMEMBER,
(dated July 23, 2010)

Relating to the matter of residential refuse collection.

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-167 be referred to the Infrastructure Management Committee.

NO. 10-168 - GLADYS C. BAISA, CHAIR, LAND USE COMMITTEE,
(dated July 19, 2010)

Relating to the Makaena Place Subdivision, transmitting a letter from Chris Hart & Partners, Inc. and the following.

1. Bill No. 90 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 109 MAKAENA PLACE, KULA, MAUI, HAWAII";
2. Bill No. 91 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 109 MAKAENA PLACE, KULA, MAUI, HAWAII";
3. Bill No. 92 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 143 MAKAENA PLACE, KULA, MAUI, HAWAII";
4. Bill No. 93 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT

- (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 143 MAKAENA PLACE, KULA, MAUI, HAWAII";
5. Bill No. 94 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 189 MAKAENA PLACE, KULA, MAUI, HAWAII";
 6. Bill No. 95 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 189 MAKAENA PLACE, KULA, MAUI, HAWAII";
 7. Bill No. 96 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 271 MAKAENA PLACE, KULA, MAUI, HAWAII";
 8. Bill No. 97 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 271 MAKAENA PLACE, KULA, MAUI, HAWAII";
 9. Bill No. 98 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 288 MAKAENA PLACE, KULA, MAUI, HAWAII";
 10. Bill No. 99 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 288 MAKAENA PLACE, KULA, MAUI, HAWAII";
 11. Bill No. 100 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 236 MAKAENA PLACE, KULA, MAUI, HAWAII";
 12. Bill No. 101 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 236 MAKAENA PLACE, KULA, MAUI, HAWAII";

13. Bill No. 102 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 174 MAKAENA PLACE, KULA, MAUI, HAWAII";
14. Bill No. 103 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 174 MAKAENA PLACE, KULA, MAUI, HAWAII";
15. Bill No. 104 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 88 MAKAENA PLACE, KULA, MAUI, HAWAII";
16. Bill No. 105 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 88 MAKAENA PLACE, KULA, MAUI, HAWAII";
17. Bill No. 106 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 64 MAKAENA PLACE, KULA, MAUI, HAWAII";
18. Bill No. 107 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 64 MAKAENA PLACE, KULA, MAUI, HAWAII";
19. Bill No. 108 (2008), entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT 26 KULA HIGHWAY, KULA, MAUI, HAWAII"; and
20. Bill No. 109 (2008), entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 26 KULA HIGHWAY, KULA, MAUI, HAWAII".

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-168 be referred to the Land Use Committee.

NO. 10-169 - KATHLEEN ROSS AOKI, PLANNING DIRECTOR,
(dated July 27, 2010)

Relating to an application submitted by Hawaiian Cement, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2669 (1998), AS AMENDED BY ORDINANCE NO. 2853 (2000), AS AMENDED BY ORDINANCE NO. 3232 (2004), TO EXTEND A CONDITIONAL PERMIT TO ALLOW THE OPERATION OF A CONCRETE RECYCLING AND GREEN WASTE COMPOSTING FACILITY IN CONJUNCTION WITH THE PERMITTED QUARRY AND ROCK CRUSHING OPERATION WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TAX MAP KEY NO. (2) 3-6-004:007, WAILUKU, MAUI, HAWAII", and related documents.

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-169 be referred to the Land Use Committee.

NO. 10-170 - JOSEPH PONTANILLA, COUNCILMEMBER,
(dated July 22, 2010)

Relating to the Maui Redevelopment Agency FY 2010 Report.

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-170 be referred to the Planning Committee.

(See page no. 204 for discussion and action.)

NO. 10-171 - JEFFREY K. ENG, DIRECTOR OF WATER SUPPLY,
(dated July 20, 2010)

In accordance with Section 2.90A.050(A), Maui County Code, transmitting copies of the water use reports for the month of June 2010.

The DEPUTY COUNTY CLERK stated that the recommended action is that County Communication No. 10-171 be referred to the Water Resources Committee.

CHAIR MATEO: Thank you. Thank you, Mr. Clerk.

Members, is there a request for consideration at this time? Hearing none, all of -- if there's no objections, each of the communications will be referred to the respective committees as recognized by the Clerk. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR MATEO: Thank you. So ordered.

Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, proceeding with resolutions for second and final reading.

RESOLUTIONS

RESOLUTION
NO. 10-35

PROPOSING AMENDMENTS TO THE REVISED CHARTER
OF THE COUNTY OF MAUI (1983), AS AMENDED, PERTAINING
TO THE AFFORDABLE HOUSING FUND

CHAIR MATEO: Mr. Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman.

MOVE TO ADOPT ON SECOND AND FINAL READING
RESOLUTION NO. 10-35.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Thank you. Members, we have a motion on the floor made by Mr. Molina and second by Ms. Baisa to pass on second and final reading.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Chairman. Resolution No. 10-35 is a proposed revised Charter Amendment extending the Affordable Housing Funds to 2015. I would ask for the Members' support to have this matter placed on the November 2010 election ballot. And if placed on the ballot by the Council, that the public support this fund as well.

And, once again, like the other Charter Amendments, this needs two-thirds vote for this to advance. Thank you.

CHAIR MATEO: Thank you, Mr. Molina. Members, further discussion? All those in favor of the motion signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: Chairman, proceeding with ordinances.

ORDINANCES

ORDINANCE NO. _____
BILL NO. 45 (2010)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04,
MAUI COUNTY CODE, PERTAINING TO
SUBDIVISION GENERAL PROVISIONS

NO. 10-160 - JOSEPH PONTANILLA, COUNCILMEMBER,
(dated July 30, 2010)

Proposing amendments to Bill No. 45 (2010) entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS".

CHAIR MATEO: Thank you.

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman.

MOVE TO PASS ON SECOND AND FINAL READING BILL
NO. 45.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: It's been moved by Mr. Molina, second by Ms. Baisa, that Bill
No. 45 (2010) pass on second and final reading.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman.

MOVE TO AMEND BILL NO. 45.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

CHAIR MATEO: Members, motion to amend Bill 45 made by Mr. Pontanilla, second by
Mr. Victorino. All those in favor, signify by saying "aye".

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MATEO: Opposed? Motion is -- excuse me. Yeah, motion to amend
Mr. Pontanilla. I'm sorry. I am just wanting to go home.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MATEO: Excuse --

COUNCILMEMBER BAISA: We noticed.

COUNCILMEMBER PONTANILLA: Okay. Members, you all received my amendment dated August 6, 2010. And let me read it. This amendment would amend Bill No. 45, Section 9, by striking the period at the end of the sentence and inserting in its place a semicolon and the phrase "provided that two years from the effective date of this ordinance, Section 2 and Section 3 of this ordinance shall be repealed, and Section 18.04.030, Maui County Code, shall be reenacted in the form in which it read on the day before the approval of this ordinance; and further provided that subdivision application that receive preliminary approval within two years of the effective date of this ordinance shall be subject to the provision of this ordinance."

Mr. Chairman, I would like to read the reasons for this amendment.

CHAIR MATEO: Go ahead.

COUNCILMEMBER PONTANILLA: Thank you. Establishing a two-year expiration date will temporarily allow the Director of Public Works to approve proposed subdivisions when the land uses are consistent with the County General Plan, the community plan, zoning and the State land use classification, even when those lands are designated to do -- and conform to each other. During this period, the Director of Public Works will be able to streamline the subdivision approval process for four major projects that have been unable to receive subdivision approval because the projects do not conform.

After the two-year period, the sections of the bill that authorize the Director of Public Works to approve applications for nonconforming subdivisions will be repealed, giving the Council and the Department of Public Works and the Planning -- Planning the opportunity to evaluate the impacts of the bill. To ensure fairness, the sunset clause would not apply to subdivision application that have already received preliminary approval.

Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, further discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. Because, you know, there's going to be things that are approved during this period of time, I guess my question would be to Corporation Counsel.

We get into this sometimes in our park assessment, the various forms that it has taken over time. And I understand, basically, that this is a period of time to see whether or not this ordinance works. But because there are people in various stages

of, I guess, approval, what will really happen to any subdivision? Is it just going to be approved during this period of time, you know, if the Director says that that's appropriate? And then what'll happen when this sunsets?

CHAIR MATEO: Mr. Moto.

CORPORATION COUNSEL: Mr. Chairman, well, if this bill passes, the -- the subdivisions will get approved, but only if they can show that their proposed uses are consistent with those uses allowed under their zoning, community plan designations, etc. The floor amendment that has just been made would clarify, through a -- basically, a transitional rule -- it's that last clause in the proposed amendment -- that because -- because it often takes quite a while for subdivision applications to be processed from start to finish, if, during this two-year period, an applicant is able to obtain preliminary subdivision approval, and the -- and the law is repealed, sunsetted, before they're -- they're able to obtain final subdivision approval, they will, nevertheless, be subject to the ordinance as amended. No, they will not be affected by the sunset because they will have progressed far enough along during this two-year period so that they won't be affected by the repeal.

COUNCILMEMBER JOHNSON: You know, I -- and I just -- you know, I pose this as a real -- I guess, a window of time which is gonna jam up, if you will, a process that is already convoluted. And if people know that they've got this narrow window in which they're just going to sneak on in, if that's possible given all of the -- I guess, the requirements -- I -- I'm not sure. I mean, I -- I -- I really am not sure. I think that what this does is it -- it muddies the water even more because the -- the other issue, too, Mr. Moto, is because, oftentimes, you look at rights, you look at interpretation and you look at precedent, if you have established precedent by, basically, giving someone something that somebody else can't get because there's this narrow little window of opportunity, what -- what happens? You know, is that a potential for some kind of litigation against the County, stating that a subdivision now that comes after the sunset date is going to be treated differently or less fairly than one that came within this period of time?

(Councilmember Victorino was excused from the meeting at 5:31 p.m.)

CORPORATION COUNSEL: Mr. Chairman, no. Well, anyone can bring a claim for almost any reason. I don't think they would be a very significant risk or -- or claim arising simply because of this proposed repeal. I will say that regardless of how you feel about this law or whether it occurs or not, the -- the -- there's always been a risk that property owners would challenge the County of Maui to the extent that we, under our current laws, denied people subdivision approval because their land use maps don't all match up with each other.

We've had people threaten us with such challenges. And I'm -- I'm assuming that, two years from now, when the law is anticipated to revert back to the way it is today that people may reassert those kinds of possible threats or challenges.

COUNCILMEMBER JOHNSON: Yeah. And -- and my reason for concern is, also, that it -- it is clear, because I know of things that have been done with the law the way that it is now. And I think it was mentioned by at least two testifiers, that the way that the law was applied, as it stands right now, as far as subdivision approval, it has not previously been an issue. And, subsequently, it has been raised now more recently that, you know, if you look at practice--

(Councilmember Victorino returned to the meeting at 5:33 p.m.)

COUNCILMEMBER JOHNSON: --you look at application of the law as it stands now, and you look at what we've done, then you look at us amending this and the entity coming back and saying, oh, yeah, but even before that, this is how you were applying it, because X, Y, Z subdivision got this, you know. In, in other words, the consist -- the consistency or conformity was not an issue on some projects because they got approved.

You know, I -- granted, Mr. Moto, anybody can sue, but I just -- I'm really concerned about this because I do not want us to fall prey to litigation because of what we've done in the past. And this just seems -- I think one of the testifiers said, you break the law and then you make the law. And, you know, that -- that is of concern to me.

So I guess, Mr. Chair, I just -- I'll have to just wait until --

CHAIR MATEO: Thank you, Ms. Johnson.

COUNCILMEMBER JOHNSON: See the way the votes go. I -- I don't know. I think it's gonna be worse rather than better.

CHAIR MATEO: Thank you, Ms. Johnson.

Members, further discussion on the amendment? If there's no additional discussion, Members, all those in favor of the motion to amend as proposed by Mr. Pontanilla, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, KAHO`OHALAHALA,
MEDEIROS, NISHIKI, PONTANILLA, VICTORINO,
VICE-CHAIR MOLINA, AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: COUNCILMEMBER JOHNSON.

EXCUSED: NONE.

CHAIR MATEO: Members, eight "ayes", one "no", Member Johnson.

Okay. Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. No further discussion.

CHAIR MATEO: Thank you very much. Mr. Pontanilla, the Chair will also entertain a motion to file County Communication 10-160 at this time.

COUNCILMEMBER PONTANILLA: Chair -- okay.

CHAIRMAN, I MOVE TO FILE COUNTY COMMUNICATION
10-

CHAIR MATEO: Dash 160.

COUNCILMEMBER PONTANILLA:

-160, SORRY.

CHAIR MATEO: No.

COUNCILMEMBER VICTORINO:

I SECOND THE MOTION, MR. CHAIR.

CHAIR MATEO: Thank you, Members. We have a motion to file County Communication 10-160. Further discussion? All those in favor of the motion, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
 KAHO`OHALAHALA, MEDEIROS, NISHIKI,
 PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
 AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Okay. Members, there is another amendment. The amendment is being proposed by Mr. Kaho`ohalahala. Members, we have another amendment. And I believe I need to get clarification from Mr. Pontanilla before I recognize Mr. Kaho`ohalahala. The Chair requests a very short recess to confer with Mr. Pontanilla. Recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 5:35 P.M., AND WAS RECONVENED AT 5:37 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER BAISA, EXCUSED.)

CHAIR MATEO: Council of the County of Maui, regular meeting for August 6, 2010 will reconvene.

Thank you very much, Mr. Pontanilla, for the clarification.

The Chair recognizes Mr. Kaho`ohalahala for the proposed amendment.

(Councilmember Baisa returned to the meeting at 5:37 p.m.)

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair.

I MOVE TO AMEND BILL NO. 45 (2010), SECTION 1, SUBSECTION 18.04.020(D), BY STRIKING THE SECOND USE OF THE PHRASE "CONSOLIDATION/RESUBDIVISION" AND INSERTING IN ITS PLACE THE PHRASE "CONSOLIDATION, CONDOMINIUM PROPERTY REGIME, OR RESUBDIVISION."

AND, SECOND, I MOVE, ALSO, TO AMEND BILL 45, IN SECTION 7 BY INSERTING THE PHRASE, ", INCLUDING CONDOMINIUM PROPERTY REGIMES," AFTER THE SECOND USE OF THE WORD "LAND".

COUNCILMEMBER JOHNSON:

MR. CHAIR, SECOND FOR DISCUSSION.

CHAIR MATEO: Members, we have a -- a motion on the floor to amend Bill 45 by Mr. Kaho`ohalahala. And you are all referring to the memo distributed to each one of us.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah. Chair, I wanted to offer this amendment just because I -- I think that if we're looking at consistency, the definition makes it consistent with subdivisions that are in Title 14.

So it seems that this would help to clear up -- earlier, we had discussions in finance when we talked about how ag lands were now being condominiumized and being now assessed at different kinds of rates. And I think that, by adding this language, we just are making it all consistent so that -- that's, I think, what we're asking for. It's simply what I think would be . . .

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

VICE-CHAIR MOLINA: Chair?

CHAIR MATEO: Members, for discussion?

Mr. Molina.

VICE-CHAIR MOLINA: Thank you, Chair. Can I get comment from the Public Works Director? Just out of consideration, because we're adding this additional responsibility, would there be any impacts on resources, personnel? Just -- just as an FYI for us.

CHAIR MATEO: Thank you, Mr. Molina.

Mr. Arakawa, are you able to provide comment?

DIRECTOR OF PUBLIC WORKS MILTON ARAKAWA: Thank you, Mr. Chair. We reviewed the floor amendment. And, actually, we -- we think the issue of condominium property regimes are, basically, a whole separate issue.

And I would also mention that this -- condominium property regimes as it results -- as it relates to the proposed bill were not discussed at all during the months of committee meetings. And, again, it's a substantial area of discussion. We're open to discussing the matter, but as a separate committee matter. And we don't believe that it should be considered as part of this -- this bill.

VICE-CHAIR MOLINA: Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina. Members, further -- further discussion?

COUNCILMEMBER KAHO`OHALAHALA: Chair?

CHAIR MATEO: Go ahead, Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah. You know, under Title 14, under subdivision, there's a definition there. And, you know, as I read that section, it said subdivision means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land, for the purpose of, whether immediate or in the future, to take sale, lease, rental, transfer or title to -- to, or interest in any or all of such parcels, and includes the process of consolidation and resubdivision, and, when appropriate to the context, shall relate to the process of subdividing land. The term also includes the construction of a building or a group of buildings other than a hotel on a single lot parcel or site which contain, result or be divided into four or more dwelling units, including planned developments, pursuant to Chapter 19.32 of this Code, condominium projects established pursuant to HRS, Revised Statutes, and other forms of development. So it's already included. The condominium projects established are pursuant to HRS is already stated as part of subdivisions. So I'm just saying that, to be consistent, we should just -- since we're looking at that right now, that this amendment simply makes it consistent with language already in -- in Title 14.

CHAIR MATEO: Mr. -- Mr. Moto, would you like to provide comments?

CORPORATION COUNSEL: Yes, Mr. Chairman. I -- I also have reviewed the floor amendment. And, in my opinion, the floor amendment constitutes a significant change that would make the bill a new and different bill. And, therefore, it's something that either should be part of a separate bill, or, if the Council decides to incorporate this floor amendment into Bill No. 45, in my opinion, it would require Bill No. 45 to go back to first reading. And that's because, number one, the issue of what -- what is a subdivision, are -- are all -- are all condominiums subdivisions is an issue that was never before addressed in this bill. Bill No. 45 always primarily pertained to the issue of consistency and conformity. And what that meant if you had -- if you were a subdivider and whether you could get subdivision approval. What the floor amendment would do is redefine the term subdivision. And for the first time, define all condominiums to be subdivisions. And -- and that has never been part of any previous draft of a bill -- of this bill, nor has it been the, the subject of -- nor was it covered under the bill passed under first reading.

CHAIR MATEO: Thank you, Mr. Moto. Members, further discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes. I -- you know, and -- and, see, the way I'm reading this, and based on what Member Kaho`ohalahala had, basically, read, I'm curious why this was never discussed. You know, if -- if it's part of the current Code, why is this just coming up now?

I mean, if CPR's are utilizing, you know, that -- the fact that that's the filing to escape analysis or escape any kind of regulation, well, I would hope and -- and, Mr. Arakawa, perhaps you can address this. If it's already in, you know, that section of the Code, why was this not discussed, or was it discussed, and what is the reason that it was never included?

CHAIR MATEO: Mr. Arakawa.

DIRECTOR OF PUBLIC WORKS: Councilmember Johnson, the bill basically just pertains to subdivision consistency and just eliminated the word "conformity". The language in Title 14 was never discussed as part of the discussions in the Committee. We were just talking about Title 18. And it kinda leads to the earlier point about just making sure that, you know, if changes to the Code are being discussed, you know, it should be discussed thoroughly to make sure that we're certain of the -- you know, the implications of what's gonna be, you know, approved. So at this point, you know, like I said, you know, we're certainly open to discussing this matter, but it should be a separate Committee matter and then it can be just fully -- discussed fully with the public's input.

COUNCILMEMBER JOHNSON: And just to clarify, there were no other sections other than Title 18 discussed in any of your review of this for consistency with other components in the County Code?

CHAIR MATEO: Mr. Arakawa.

DIRECTOR OF PUBLIC WORKS: No. The bill -- what was discussed is what you have before you, the bill that you have before you, the amendments to Title 18. That's it.

COUNCILMEMBER JOHNSON: Okay. I -- I understand that, but I guess my question -- and I'll try and state it a little bit more clearly -- is that when we consider any changes, any alterations whatsoever -- I have sat through meetings ad nauseam where we, basically, try -- even though it may be other sections of the County Code that are not the subject of the discussion, but we try to be consistent with language that exists in other parts of the Code so that we don't depart on some other, I guess, avenue, if

you will. And so that what we're doing is not going to create a conflict with any other part of the Code in terms of maybe leaving something out or not addressing something that should have been discussed. Does -- do you kind of follow what I'm saying, that --

CHAIR MATEO: Mr. Arakawa.

DIRECTOR OF PUBLIC WORKS: Councilmember Johnson, by the same token, you know, the floor amendment was never really discussed as well. So I -- and I'm -- I'm not saying we're against discussing it, I just think it should be discussed as a separate committee matter.

COUNCILMEMBER JOHNSON: Yeah. And I guess I'm not gonna get an answer to my question because, Mr. Chair, it's my feeling that we always -- as a body, we have always tried to be consistent with looking at all parts of the Code and the ramifications and what properties are impacted, any possible precedent setting, any areas that might be left out. I think that this is quite significant given the recent passage of the -- you know, the -- the taxation and how our Department of Taxation even views condominium property regimes.

So, to me, I'm not saying that, you know, it -- I'm not disagreeing with Corporation Counsel, but, by the same token, I'd rather have it go back to first reading, then, and do something that's comprehensive than not include it at all. If that -- if it's part of our Code already, then why leave it out? That's just my basic take on it. So, I mean, I certainly would support it. And, you know, like Mr. Nishiki's bill earlier, you gonna do it, do it right.

CHAIR MATEO: Thank you, Ms. Johnson.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. You know, based on Mr. Moto's comments in regards to this being a significant change, you know, I -- I would rather have this thing, as Director Arakawa has stated, be discussed in a separate meeting. And I can do the PAF to forward this change to Public Works to work on. So for me, Chairman, you know, I'm ready to move on and I'm willing to provide the PAF to Public Works for discussion in regards to this particular amendment.

CHAIR MATEO: Thank you, Mr. Pontanilla.

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah, Chair. You know, this whole thing started when we had a difficult time understanding conformity and consistency. And then now we're trying to be consistent and we have a hard time being consistent, you know which is real ironic because, if you look at Title 14, it also defines a subdivider means a subdivider as defined in Title 18 of this Code. And immediately after that, we go into what a subdivision is, and it includes all this. So to say that this is such a different bill, you know, than -- than we have discussed is almost ridiculous when we're trying to talk about consistency. So I brought this forward to -- to the body because I believe that we were trying to be consistent.

And that's why this simple addition would be consistent in the definition of subdivision. And when we make cross references in the Code, moving from 14 to 18 in terms of finding clarity, this adds to that clarity. So it is not so far removed, I think, in what I'm being -- what I'm trying to bring forward to this body to add to the bill, since we're already talking about the definition of subdivision. So -- so that's why I offer it. And so I find it real ironic that now we're talking about it being inconsistent. So that's why I'm bringing it forward, leave it up to the body. But I'd like people to know that this is what the attempt is, to try and make it consistent, because we couldn't decide on conformity and consistency. And now we're not -- now we're gonna be inconsistent.

CHAIR MATEO: Thank you. Members, further discussion? We have the amendment on the floor made by Mr. Kaho`ohalahala, and you all have it in front of you. All those in favor of the motion to amend, signify by saying "aye".

COUNCILMEMBER NISHIKI: Aye.

COUNCILMEMBER KAHO`OHALAHALA: Aye.

CHAIR MATEO: Those opposed, say "no".

COUNCILMEMBER BAISA: No.

VICE-CHAIR MOLINA: No.

COUNCILMEMBER MEDEIROS: No.

CHAIR MATEO: Mr. Clerk, roll call, please.

DEPUTY COUNTY CLERK: Councilmember Gladys Coelho Baisa.

COUNCILMEMBER BAISA: NO.

DEPUTY COUNTY CLERK: Councilmember Jo Anne Johnson.
COUNCILMEMBER JOHNSON: AYE.
DEPUTY COUNTY CLERK: Councilmember Sol P. Kaho`ohalahala.
COUNCILMEMBER KAHO`OHALAHALA: AYE.
DEPUTY COUNTY CLERK: Councilmember Bill Kauakea Medeiros.
COUNCILMEMBER MEDEIROS: NO.
DEPUTY COUNTY CLERK: Councilmember Wayne K. Nishiki.
COUNCILMEMBER NISHIKI: AYE.
DEPUTY COUNTY CLERK: Councilmember Joseph Pontanilla.
COUNCILMEMBER PONTANILLA: NO.
DEPUTY COUNTY CLERK: Councilmember Michael P. Victorino.
COUNCILMEMBER VICTORINO: NO.
DEPUTY COUNTY CLERK: Councilmember Michael J. Molina.
VICE-CHAIR MOLINA: NO.
DEPUTY COUNTY CLERK: Council Chair Danny A. Mateo.
CHAIR MATEO: NO.

AYES: COUNCILMEMBERS JOHNSON, KAHO`OHALAHALA,
AND NISHIKI.

NOES: COUNCILMEMBERS BAISA, MEDEIROS,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

EXCUSED: NONE.

DEPUTY COUNTY CLERK: Chairman, there are three "ayes", six "noes". Motion fails.

CHAIR MATEO: Thank you. Members, motion fails.

We are going -- we're gonna continue on down with this particular item, Bill 45 (2010). We are returning to the main motion. And the main motion is to pass on second and final reading Bill No. 45 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS" as amended. Members --

VICE-CHAIR MOLINA: Chair --

CHAIR MATEO: -- signify --

VICE-CHAIR MOLINA: Sorry, Chair, for -- is there another amendment consideration on the floor? I think --

COUNCILMEMBER VICTORINO: Mr. Chair, let -- let me inform the Members that I have withdrawn my amendment. So Mr. Pontanilla's amendment pretty much did what I was -- my intent. So please excuse me. I -- I was waiting for the Chair to mention that. So I withdraw my amendment, Mr. Chair.

VICE-CHAIR MOLINA: Okay. All right. Thank you, Chairman.

Thank you, Mr. Victorino.

CHAIR MATEO: Thank you. Thank you for the reminder, Mr. Molina.

We're gonna go ahead and call for the -- for the vote.

Go ahead, Ms. Johnson.

COUNCILMEMBER JOHNSON: Yeah. I just wanted to address the main motion. I still have issues with this particular measure simply because I -- and I don't often agree with Mr. Smith in his testimony, but, you know, today was one of the days where I -- I think, when I look back at the historical information we were provided by one of the testifiers, which was how this bill actually came about, and the -- how it was portrayed -- I think it was helpful to look at how it was portrayed originally. And now you look back and you look at trying to fix something that, actually, if it had not been amended to begin with, we wouldn't have to be doing this. In the meantime, you've got the Director and -- and perhaps directors before him, doing things that I think definitely were not consistent. They was -- there was not a uniform application of the law. I mean, I have many examples. I'm not gonna bore you with them all. But I think there were, at times, conflicts of interest. I think there were interpretations that were made

that were not in the best interest of the public. So for me, I don't think it's going to produce the desired result.

As you heard Mr. Collins say today -- and I remember this because I did visit with one of the intervenors -- the Honua Kai project, which was, incidentally, built by off-island labor through Ledcor, which didn't provide, you know, a lot of jobs except, perhaps, for illegal aliens. This is a problem. And right now, that project can actually go forward. It has nothing to do with what's before us here because, as was spoken about, the suit that had to do with how the condominiums or their -- their particular marketing scheme, that was at issue. So it's an economic situation.

I think people can say what they want. I don't think this is going to make a whole lot of difference because of the economy and financing. And I think to look to past history, I -- I think when any powers are rested in one individual as opposed to a deliberative body, I think that is very dangerous. It doesn't provide for transparency or public review or process. And while some people would argue differently, from past performance, I really don't have a great deal of confidence. Not necessarily in the -- you know, in -- in the position or the person that is occupying that position, but in the whole mechanism by which one individual is given that authority. Because I have seen inconsistency after inconsistency and I just think it's gonna open a can of worms. So I'm not gonna be supporting this even with this amendment.

CHAIR MATEO: Thank you. Members, Chair's gonna call for the question. All those in favor, signify by saying "aye".

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER MEDEIROS: Aye.

VICE-CHAIR MOLINA: Aye.

CHAIR MATEO: Those opposed, say "no".

COUNCILMEMBER NISHIKI: No.

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER KAHO`OHALAHALA: No.

CHAIR MATEO: Mr. Clerk, roll call.

DEPUTY COUNTY CLERK: Gladys Coelho Baisa.
COUNCILMEMBER BAISA: AYE.
DEPUTY COUNTY CLERK: Councilmember Jo Anne Johnson.
COUNCILMEMBER JOHNSON: NO.
DEPUTY COUNTY CLERK: Councilmember Sol P. Kaho`ohalahala.
COUNCILMEMBER KAHO`OHALAHALA: NO.
DEPUTY COUNTY CLERK: Councilmember Bill Kauakea Medeiros.
COUNCILMEMBER MEDEIROS: AYE.
DEPUTY COUNTY CLERK: Councilmember Wayne K. Nishiki.
COUNCILMEMBER NISHIKI: NO.
DEPUTY COUNTY CLERK: Councilmember Joseph Pontanilla.
COUNCILMEMBER PONTANILLA: AYE.
DEPUTY COUNTY CLERK: Councilmember Michael P. Victorino.
COUNCILMEMBER VICTORINO: AYE.
DEPUTY COUNTY CLERK: Councilmember -- Vice-Chair Michael J. Molina.
VICE-CHAIR MOLINA: AYE.
CHAIR MATEO: Chair Danny A. Mateo.
CHAIR MATEO: AYE.

AYES: COUNCILMEMBERS BAISA, MEDEIROS,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

NOES: COUNCILMEMBERS JOHNSON,
KAHO`OHALAHALA, AND NISHIKI.

EXCUSED: NONE.

DEPUTY COUNTY CLERK: Chair, there are six "ayes", three "noes". Bill 45 passes second and final reading.

CHAIR MATEO: Thank you. Thank you very much, Members.

Mr. Clerk, proceed.

ORDINANCE NO. _____
BILL NO. 46 (2010)

A BILL FOR AN ORDINANCE AMENDING TITLE 11,
MAUI COUNTY CODE, RELATING TO PUBLIC TRANSIT

CHAIR MATEO: Mr. Nishiki.

COUNCILMEMBER NISHIKI:

MR. CHAIRMAN, MOVE FOR PASSAGE OF BILL 46 ON
SECOND AND FINAL READING.

COUNCILMEMBER PONTANILLA:

MR. CHAIRMAN, I SECOND.

CHAIR MATEO: It's been moved by Mr. Nishiki and second by Mr. Pontanilla that Bill No. 46 (2010) pass on second and final reading.

Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you, Mr. Chair. The proposed bill would also enable the Department to establish County bus stops and related provisions governing parking, crosswalks and advertising. Your Committee believes this legislation continues to foster the development of the County's public transit system. Thank you.

CHAIR MATEO: Thank you, Mr. Nishiki. Members, further discussion? Hearing none, all those in favor of the motion that Bill No. 46 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 11, MAUI COUNTY CODE, RELATING TO PUBLIC TRANSIT", pass on second and final reading, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, JOHNSON,
KAHO`OHALAHALA, MEDEIROS, NISHIKI,
PONTANILLA, VICTORINO, VICE-CHAIR MOLINA,
AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: NONE.

EXCUSED: NONE.

CHAIR MATEO: Motion is carried with nine "ayes".

Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 47 (2010)

A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI
COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS

CHAIR MATEO: Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

I MOVE TO PASS BILL NO. 47 ON SECOND AND FINAL
READING.

COUNCILMEMBER PONTANILLA:

MR. CHAIRMAN, I SECOND.

CHAIR MATEO: It's been moved by Mr. Victorino and second by Mr. Pontanilla that Bill
No. 47 (2010) pass on Second and Final Reading.

Mr. -- Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. Bill No. 47 provides the following:
It defines "Agricultural consumer" as a County water consumer that actively engages
in crop production, livestock raising, dairy farming or aquaculture for commercial

production, and whose minimal gross annual income for such activities is \$1,000. Excuse me.

The definition of "Community garden" is to mean a parcel that is a minimum lot size of 22,000 square feet and which is actively cultivated and engaged in crop production collectively by a group of at least fifteen participants and allows the parcel owner, lessee, or licensee of the community garden to qualify and receive agricultural water rates.

It also allows nonprofit groups whose annual agricultural charitable donations made up of at least \$1,000 to qualify to receive agricultural rates.

Furthermore, it requires a specific documentation to be attached -- attached when the consumer submits an agricultural water rate application to the Department, and adds waivers provisions for consumers who do not meet the income required to qualify for agricultural consumer for the given year because their crop, stock or service did not harvest or produce for the year, or because of their operations have been compromised due to extraordinarily -- extraordinary acts of nature or persons beyond the consumers' control.

Mr. Chair, also, because of this morning's testimony, I did include the definition 14.01.040, the definition of consumer, and, also, 19.04.040, the definition of person.

As you can see, under consumer -- and I think all of you have that definitions in front of you -- the -- the "Consumer means the person, firm, corporation, association, or governmental entity, whether own or tenant, whose name appears on the record of the department as the party responsible and liable for receiving water service from the department."

The other one reads: "Person means a natural person, known and unknown, a person's heirs, executors, administration -- administrators or assigns, and also includes firm, partnerships, corporations, society, or association, and its successors or assign, or an agent of any of the above -- of the aforesaid."

So there is the definitions in front of you. I just wanted to make sure that was clarified, that the present word "consumer" includes person. And if we were to change it to "person", it excludes a few things such as governmental entities and whether owner or tenant. So, you know, these things would be not a part of it. So I will humbly ask for all of your cooperation -- or I should say respectfully ask for your -- for this Council's support on the bill. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members, additional discussion?

Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, just to be consistent. My problem is not with the bill or the language, the problem is with the threshold of the agricultural income because I don't think it's realistic. And I think it -- it just further erodes, you know, what we're really trying to do in terms of supporting our agriculture interests. And you cannot have a principal use on land and make a thousand dollars and survive. Thank you.

CHAIR MATEO: Thank you, Ms. Johnson. Members, further discussion?

Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Yeah. Thank you, Chair. If the Corporation Counsel, based on the information that was just presented by the -- the Chair of Water, and what was given in testimony, I just want to make sure that we're clear on that before we proceed.

CHAIR MATEO: Thank you.

Mr. Moto.

CORPORATION COUNSEL: Mr. Chairman, I -- I heard the testimony from the public. And it -- I don't think there's anything about Bill No. 47 that requires any changes. Within that title is -- is already a definition for consumer that is sufficient for purposes of this ordinance.

COUNCILMEMBER KAHO`OHALAHALA: Is it found in other parts of the Code?

CORPORATION COUNSEL: I don't think so. But definitely for water, there is.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And thank you for that, Corporation Counsel.

I just might -- my final comments. I'm supporting the bill. There are just two things that I thought that were issues from the onset. And I -- I just want to comment on them. That when we're defining the community garden, I was always concerned that we had somehow picked an area of 22,000 square feet as a threshold. And I never really got a clear answer from the Water Department about what was the nexus to the -- the use of 22,000 feet. Because it somehow sets that as the total standard for the idea of community gardens.

And the second part of that is the fact that we've added on, a number of people and saying that cannot be less than fifteen people. And I find that that's difficult to even try to maintain, that you can only be a community garden if you have fifteen people. And anything less than that meant that you have -- you don't -- you don't qualify as -- as being a community garden. And in anything less than 22,000 square feet, you're not a -- you know, you don't have the area and you don't have the required number of people.

Those are the only parts in the bill that I think I'm concerned with because I think that there are people that are doing gardening that do not meet these two criteria and are, in fact, doing gardening. And I happen to know some farmers that are doing with less people than this, and -- but they will not be considered because of this language. And I would have liked to take out the -- the square footage and -- and the number of people and just define it as such.

But, anyway, that being said, you know, we're at this -- this juncture now. And I think it's a better bill than it was when we first started.

And those were the two things that I would have tweaked at. So thank you.

CHAIR MATEO: Thank you, Mr. Kaho`ohalahala.

Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I'd like to thank the Chairman for Water Resources Committee, Mr. Victorino, for enduring with all of us. I know he had many meetings in regards to this particular definition. And I would also like to thank, although he's not a member of the Water Resources Committee, Mr. Nishiki, for providing us with some information from the Federal government how they identify agriculture or farmer. With the threshold of \$1,000, you know, that kind of clarified, actually, for me, in regards to the number we should place on this particular ordinance. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, further discussion? Members, all those in favor of the motion, that Bill No. 47 (2010), entitled "A BILL FOR AN ORDINANCE AMENDING ARTICLE 1," excuse me, "AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS", pass on second and final reading, signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, KAHO`OHALAHALA,
MEDEIROS, NISHIKI, PONTANILLA, VICTORINO,
VICE-CHAIR MOLINA, AND CHAIR MATEO.

CHAIR MATEO: Those opposed, say "no".

NOES: COUNCILMEMBER JOHNSON.

EXCUSED: NONE.

CHAIR MATEO: Members, we have eight "ayes"; one "no", Member Johnson.

DISCUSSION RELATING TO
COUNTY COMMUNICATION NO. 10-170

CHAIR MATEO: Okay. Members, we've concluded the section on second and final for today. Before proceeding, the Chair would just like to make a clarification. During the segment when the Clerk was reviewing all of the county communications and recognizing the specific committees that it would be -- the communication would be referred to, we have a -- the Clerk misspoke. One of the items, which is County Communication No. 10-170 regarding the Maui Redevelopment Agency Fiscal Year 2010 Report, Mr. Clerk recognized this -- this particular communication as being referred to the Water Resources Committee, and this particular communication will go to the Planning Committee. Okay. Just wanted to provide that clarification.

COUNCILMEMBER KAHO`OHALAHALA: You can give it to Water.

CHAIR MATEO: Thank you all very much.

COUNCILMEMBER VICTORINO: It's not related to water.

CHAIR MATEO: Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chairman, nothing is further, is scheduled to come before the Council.

CHAIR MATEO: Members, we've concluded this very long day. The Chair would like to acknowledge those individuals that continue to provide support to the Council: Milton Arakawa, the Director of the Public Works; Mr. Brian Moto, our Corporation Counsel; Lance Taguchi, the Deputy County Clerk; Ken Fukuoka, Director of Council Services; as well as our support staff, both Joyce Murashige and Teresa Valdez.

Members --

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MATEO: -- thank you all.

Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah. And -- and I know everybody want to run out of the door, and I gonna take, I promise, 30 seconds. I want to again praise our Fire Fighters for a yeoman's job again last night. As you're well aware, over 60 acres burned right here between Kehalani and Wailuku Heights. And let me tell you, they -- them and the Police Department were there directing evacuations and everything, sir. And they did a terrific job again. No loss of any structures and no one injured. And I think this is very important to recognize, again, a major brush fire in a major, you know, residential area. And they've done a fabulous job.

And, Mr. Chair, again, I'm sorry I took too much time, but I wanted to thank them. And this Council should thank them immensely for all their work. Not only for these fires, but others. But these two fires in Wailuku have been very much both like life-threatening and property threatening. And they have avoided either. And I think they deserve a real big kudos for all their hard work. Mahalo, Mr. Chair.

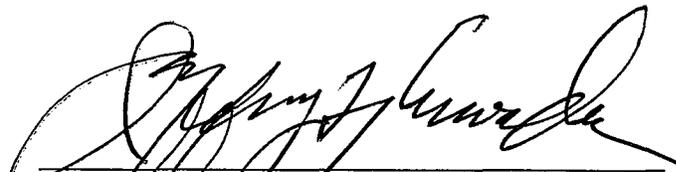
CHAIR MATEO: Thank you, Mr. Victorino. And I understand you was also supervising out in the roadways.

Members, I thank you all for your persistence in helping us meet our -- conclude our agenda for today. This was definitely one of the longest meetings I have -- I have had throughout this term. Members, thank you. Have a good weekend.

Council of the County of Maui, regular meeting of August 6, 2010 is adjourned. Good night.

ADJOURNMENT

The regular meeting of August 6, 2010, was adjourned by the Chair at 6:10 p.m.

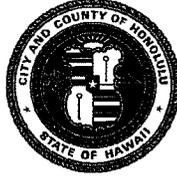


JEFEREY T. KUWADA, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

FIRE COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813
Phone: (808) 523-4246 Fax: (808) 527-6091

PETER B. CARLISLE
MAYOR



ELIZABETH C. HO
CHAIR

SYLVIA M. WAIWAIOLÉ-HOPPE
VICE CHAIR

QUENTIN K. KAWANANAKOA

NATHANIEL K. KINNEY

JAMES S. WATARU

August 9, 2011

Hon. Joshua A. Stone, Chair
County of Maui Charter Commission
c/o Department of the Corporation Counsel
200 South High Street
Wailuku, Hawaii 96793

RECEIVED
CORPORATION COUNSEL
2011 AUG 10 PM 3: 22

Dear Chair Stone and Charter Commission Members:

Re: Maui County Fire and Public Safety Commission

We understand that the Maui County Charter Commission is considering a proposal to amend Section 8-7.2 of the Charter of the County of Maui (2003 ed.) to transfer the authority to appoint and remove the Fire Chief from the Fire & Public Safety Commission to the Mayor. On behalf of the Fire Commission of the City and County of Honolulu ("HFC"), I am writing to share our perspective on this proposal.

The HFC was established in 1997 in part to eliminate politics from the appointment of the Fire Chief. In that regard, our experience has been excellent. The commission has appointed the last two Fire Chiefs for Honolulu, and during the past 14 years the Honolulu Fire Department (HFD) has enjoyed outstanding leadership, little if any political interference in departmental operations, and been nationally accredited as one of the best fire departments in the country. The HFD/HFC working relationship has been one of mutual support and close consultation. The HFC has been a conduit of community concerns to the department, a sounding board for the Fire Chief, and an interested but independent third party in advocating for matters such as salary equity for the Chief and Deputy Chief with our Salary Commission. Based on our experience, the HFC is strongly in favor of the appointment/evaluation/removal procedures established in our Charter, and wholeheartedly recommend that Maui County retain its similar current procedures with regard to these matters.

08/29/11 - Item No. II.C. pgs. 1-2

Page 2
Letter to J. Stone

The HFC unanimously voted at its regular meeting of August 8, 2011, to send this written testimony. We hope it is of value in your important deliberations. Do not hesitate to contact the HFC if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Elizabeth C. Ho". The signature is written in a cursive style with a large, stylized initial "E".

Elizabeth C. Ho
Chair

From: Maria De Melo <Maria@westmauiland.com>
To: "Lisa.Kahuhu@co.maui.hi.us" <Lisa.Kahuhu@co.maui.hi.us>
CC: Peter Martin <Peter@westmauiland.com>, Josh Stone <joshstonemaui@gmail.c...
Date: 8/11/2011 3:06 PM
Subject: Email from Peter Martin
Attachments: pmartin charter proposals.doc

Aloha Lisa,

My name is Maria de Melo and I work for Peter Martin. He requested me to email the attached as per Josh Stone's recommendation.

Below is Peter's information:

PETER K. MARTIN
590A STABLE ROAD
PAIA, HI 96779

TEL: (808) 283-1273 - Cell
(808) 877-4202 - Bus

Thank you,

Maria de Melo
West Maui Land Company, Inc.
33 Lono Avenue, Suite 450
Kahului, HI 96732

Phone: (808) 877-4202
Fax: (808) 877-9409
Email: maria@westmauiland.com<mailto:maria@westmauiland.com>

08/29/11 - Item No. II.D. pgs. 1-11

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

PROPOSAL ONE

MERGING OF SALARY COMMISSION WITH COST OF GOVERNMENT COMMISSION; MAKING COMMISSION MEMBERS ELECTED

The cost of government commission and salary commission were established to remove certain policy considerations from the realm of popular politics. Both commissions have special rules for membership, term of office and number of terms of commission members.

Fundamentally, however, both commissions are still appointed by the mayor with the approval of the council. This constrains the range of policy choices to individuals who hold similar views or opinions as the mayor or the council. It was believed that by removing these investigatory and decision-making functions to appointed commissions that politics would be removed from the process and sound economic decisions could be made.

However, the structure and experience shows that important public pressure through politics was eliminated while the influence of politicians remained. The process finds an occasional outstanding commissioner committed to government efficiency and elimination of waste, but those individuals are exceptions that have proven the rule.

The same policy considerations that guide the work of the cost of government commission ought to guide the salary commission. The cost of government commission meets for a limited period of time. The salary commission has only one charge. By adjusting both, it is possible to eliminate the second commission.

Presently, the administration must field four commission members for both commissions every year and the council must vet the nominations. By merging the commissions, lowering the number of commission members, and having the commission members elected allows the public to directly vet the candidates with the only added cost of putting an additional section on the ballot for the open seat with the election of one commission member every two year election cycle.

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779
RAMSEYER FORMAT

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

CHAPTER 15 COST OF GOVERNMENT COMMISSION

Section 8-15.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.
2. Eliminating duplication and overlapping of services, activities, and functions.
3. Consolidating services, activities, and functions of a similar nature.
4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

Section 8-15.2. Cost of Government Commission. For the purpose of carrying out the policy set forth herein ~~[the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members.~~

~~Each such commission shall:—]~~ there shall be a Cost of Government commission composed of three members, elected for a term of six years, whose terms shall be staggered every two years, At the beginning of each term, the longest serving commissioner shall serve as temporary chair until the commission elects a permanent chair. The commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission provided that the annual appropriation may not decrease from the previous year's appropriation without the consent of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council ~~[not later than eleven (11) months after its appointment]~~ annually.
5. Determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the commission shall consult with those boards and commissions which have appointing authority for department heads.

Section 8-15.3. [Term of Commission. ~~Members of the cost of government commission shall serve for staggered terms of two (2) years, with an initial appointment~~

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

~~of four members to serve two (2) year terms and five members to serve one (1) year terms. A member may be reappointed, but shall not serve on the commission for more than a total of four (4) years.]~~

Section 8-15.3. Terms, Qualifications and Election of Commission Members.

1. Commission members shall be elected by nonpartisan special elections. The names of all candidates for a commission seat shall be placed on the ballot for the first special election; provided, that for any council seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

2. The name of the candidates for each commission seat shall be placed on the ballot for the first special election; provided, that for any commission seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. For a commission seat with three or more candidates, the names of the two candidates receiving the highest number of votes for the commission seat in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidates receiving the highest number of votes for a commission seat shall be deemed elected. If there is no more than one candidate for a commission seat, such person shall be deemed elected regardless of the number of votes received.

5. The term of commission shall be for six (6) years, beginning at two o'clock meridian on the second day of January in every odd-numbered year. No commissioners shall serve more than two consecutive terms of office.

6. To be eligible for election or appointment to the commission, a person must be a citizen of the United States, a voter in the county, a resident of the county for a period of one year next preceding the filing of nomination papers. If a commission member ceases to be a resident of the county during the commissioner's term of office or if a commission member is adjudicated guilty of a felony, the commission member shall immediately forfeit office and the seat shall thereupon become vacant.

Section 8-15.4. Vacancy in office. When a vacancy occurs in the office of cost of government commission member, the vacancy shall be filled for the unexpired term at the following second special election; provided that the vacancy occurs not later than 4:30 p.m. on the sixtieth day prior to the first special election; otherwise at the second special election next following. When a vacancy occurs more than six months before the election to fill the unexpired term, the mayor shall make a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

by the council. The appointee shall serve until the election and qualification of the person duly elected to fill the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this chapter.

~~[Section 8-18.1. Organization and Functions. There shall be a salary commission, which shall consist of nine members appointed by the mayor with the approval of the council. The members of this commission shall have five-year terms, and can be reappointed once to a second five year term. Two members shall be appointed or reappointed each year, except that only one member shall be appointed or reappointed every fifth year. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing authority for department heads.]~~

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779
CLEAN

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

CHAPTER 15 COST OF GOVERNMENT COMMISSION

Section 8-15.1. Declaration of Policy. It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.
2. Eliminating duplication and overlapping of services, activities, and functions.
3. Consolidating services, activities, and functions of a similar nature.
4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

Section 8-15.2. Cost of Government Commission. For the purpose of carrying out the policy set forth herein there shall be a Cost of Government commission composed of three members, elected for a term of six years, whose terms shall be staggered every two years, At the beginning of each term, the longest serving commissioner shall serve as temporary chair until the commission elects a permanent chair. The commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission provided that the annual appropriation may not decrease from the previous year's appropriation without the consent of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council annually.
5. Determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the commission shall consult with those boards and commissions which have appointing authority for department heads.

Section 8-15.3. Terms, Qualifications and Election of Commission Members.

1. Commission members shall be elected by nonpartisan special elections. The names of all candidates for a commission seat shall be placed on the ballot for the first special election; provided, that for any council seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

election.

2. The name of the candidates for each commission seat shall be placed on the ballot for the first special election; provided, that for any commission seat with two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. For a commission seat with three or more candidates, the names of the two candidates receiving the highest number of votes for the commission seat in the first special election shall be placed on the ballot for the second special election; provided, that if two or more candidates tie for the highest number of votes received in the first special election, the names of the candidates tied for the highest number of votes shall be placed on the ballot for the second special election; and further provided, that if a single candidate receives the highest number of votes in the first special election and two or more candidates tie for the second-highest number of votes received, the names of the candidate receiving the highest number of votes and the candidates tied for the second-highest number of votes shall be placed on the ballot for the second special election.

4. At the second special election, the candidates receiving the highest number of votes for a commission seat shall be deemed elected. If there is no more than one candidate for a commission seat, such person shall be deemed elected regardless of the number of votes received.

5. The term of commission shall be for six (6) years, beginning at two o'clock meridian on the second day of January in every odd-numbered year. No commissioners shall serve more than two consecutive terms of office.

6. To be eligible for election or appointment to the commission, a person must be a citizen of the United States, a voter in the county, a resident of the county for a period of one year next preceding the filing of nomination papers. If a commission member ceases to be a resident of the county during the commissioner's term of office or if a commission member is adjudicated guilty of a felony, the commission member shall immediately forfeit office and the seat shall thereupon become vacant.

Section 8-15.4. Vacancy in office. When a vacancy occurs in the office of cost of government commission member, the vacancy shall be filled for the unexpired term at the following second special election; provided that the vacancy occurs not later than 4:30 p.m. on the sixtieth day prior to the first special election; otherwise at the second special election next following. When a vacancy occurs more than six months before the election to fill the unexpired term, the mayor shall make a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted by the council. The appointee shall serve until the election and qualification of the person duly elected to fill the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this chapter.

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

PROPOSAL TWO

REPEALING THE CHARTER PROVISION REQUIRING AFFORDABLE HOUSING FUND

The purpose of the charter is to create a structure for county government. It is not to enact government policy in the form of super-legislation which removes from the legislative branch (which represents the residents of Maui County) the ability to redefine policy considerations without having to first amend the charter. In fact, the 2010 election demonstrated the absurdity of putting ordinary, temporary legislation in the charter. Council members wanted to extend the length of the program and add additional groups to the program's beneficiaries, but was required to seek an amendment to the charter.

When the original language was proposed to voters, the main argument was that the amendment would allow the council to divert real property tax monies to affordable housing projects. However, nothing in the charter prevented the council from doing so in the absence of the amendment. However, once the amendment was adopted, the charter ended up preventing the council from making an ordinary policy change and required the council to seek an amendment for any change.

Article Nine of the Charter enumerates the process by which the County budgets and spends money and since 2006, that the County must set aside 2% of real property tax receipts to fund affordable housing. It is analogous to having a charter provision regarding the licensing of dogs in the County.

It can also not be argued that the Council was incapable of action since they have twice proposed charter amendments establishing the fund's existence and broadening the fund's duration and range of beneficiaries and adopted several ordinances to provide the rules and regulations for the fund over three different council terms.

There continues to be no justification why this piece of legislation should be enshrined permanently in the charter.

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779
RAMSEYER FORMAT

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

~~Section 9-20. Affordable Housing Fund.~~

- ~~1. In adopting fiscal years 2008 through 2011 annual operating budgets and capital improvements programs, the council shall appropriate a minimum of two percent (2%) of the certified real property tax revenues to a fund known as the affordable housing fund. In any fiscal year, the Council may make appropriations to the fund in addition to the minimum required appropriations. The revenues in this fund shall be utilized for the provision and expansion of affordable housing and suitable living environments for persons of very low to moderate income, which may include the rehabilitation of existing structures, land purchase or other acquisition of land or property entitlements, planning, design, and construction.~~
- ~~2. On an annual basis, no more than three percent (3%) of this fund shall be used for administrative expenses.~~
- ~~3. Any balance remaining in this fund at the end of each fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The revenues in this fund shall not be used for any purpose except those listed in Subsection 9-20.1. or as defined by ordinance.~~
- ~~4. The council shall by ordinance establish procedures for the administration and expenditure of the revenues in this fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made for the purposes stated in this section.~~

NO CLEAN COPY (SECTION IS BEING REPEALED)

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779
PROPOSAL THREE

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

MERGING THE DEPARTMENT OF TRANSPORTATION WITH THE DEPARTMENT OF PUBLIC WORKS

Contrary to the purpose of establishing a separate department, the Department of Transportation has not become the central coordinating agency for the County's transportation policy since the Department continues to only oversee the Maui Bus system and not the substantial grants and contracts the county has made to private non-profit entities for public transportation services. If the Council intends to continue actively directing half of the County's transportation policy, it would be more appropriate to reduce the remaining functions of transportation to a division within the Department of Public Works so that one department head can streamline remaining transportation planning and policy with the technical expertise it currently possesses in traffic matters.

It is also possible to entirely repeal the chapter establishing the department and have the Council provide for a transportation division within the Department of Public Works under the current provisions of the Charter.

In comparison: In Honolulu, the Department of Transportation Services actually handles the traffic and transportation related matters presently handled by Maui's Department of Public Works. The two remaining responsibilities are overseeing the company who operates The Bus and the new rail project. On Kaua'i, the Transportation Services Agency is an executive office operated under the Mayor's office similar to an economic development office. On the Big Island, the Mass Transit Agency is an executive office administered under the Managing Director's office. The historic traffic engineering matters of the Public Works department remain with those departments on Kaua'i and the Big Island.

PETER K. MARTIN

590-A Stable Road
Paia, Maui, Hawaii 96779
RAMSEYER FORMAT

Phone: (808) 283-1273 Cell
(808) 877-4202 Business

DEPARTMENT OF PUBLIC WORKS

Section 8-5.1. Organization. There shall be a department of public works consisting of a director and the necessary staff.

Section 8-5.2. Director of Public Works. The director of public works shall be appointed and may be removed by the mayor. The director of public works shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-5.3. Powers, Duties, and Functions. The director of public works shall:

1. Administer the building, housing, and subdivision ordinances and rules adopted thereunder.
2. Approve proposed subdivision plans, which are in conformity with the subdivision ordinance.
3. Plan, design, build, and maintain the county's highways, and drainage and flood control systems.
4. Be responsible for the planning and implementation of all modes of transportation in Maui County, including those in the air and those on water and land.
5. Be responsible for planning and developing an efficient program to facilitate the rapid, safe, and economical movement of people and goods in Maui County.
6. Coordinate Maui County's transportation programs with other county departments and with agencies of the state and federal government.
7. Perform such other duties and functions as shall be assigned by the mayor.

DEPARTMENT OF TRANSPORTATION

~~**Section 8-14.1. Organization.** There shall be a department of transportation consisting of a director and necessary staff. (Amended 2002)-~~

~~**Section 8-14.2. Director of Transportation.** The director of transportation shall be appointed and may be removed by the mayor. The director of transportation shall have a minimum of five years of experience in an administrative capacity, either in public service or private business, or both. (Amended 2002)-~~

~~**Section 8-14.3. Powers, Duties, and Functions.** The director of transportation shall:-~~

- ~~1. Be the administrative head of the department of transportation.-~~
- ~~2. Be responsible for the planning and implementation of all modes of transportation in Maui County, including those in the air and those on water and land.-~~
- ~~3. Be responsible for planning and developing an efficient program to facilitate the rapid, safe, and economical movement of people and goods in Maui County.-~~
- ~~4. Coordinate Maui County's transportation programs with-~~
- ~~5. Perform such other duties and functions as shall be assigned by the mayor.-~~

NO CLEAN COPY (SECTION IS BEING REPEALED)

SUMMARY OF PUBLIC TESTIMONY

To assist the Maui County Charter Commission in understanding and considering your testimony, please fill in and complete the following sections of this questionnaire. Your submittal of this form is completely voluntary and not mandatory, and you may chose to just rest on your oral or written testimony to the Commission. Thank you for taking the time to assist the Commission.

1) The general subject of your testimony and recommended amendment(s) to the charter:

IMPROVE THE PROCESS OF RECRUITMENT REVIEW & APPROVAL OF MEMBERS OF BOARDS & COMMISSIONS w/ DISCRETIONARY REVIEW POWERS,

IMPROVEMENTS SUGGESTED: BLUE RIBBON PANEL TO FORWARD NAMES TO MAYOR,

ACCESS TO COUNCIL DURING REVIEW & ARIANNE INFORMATION RE: NUMBER OF APPLICANTS BY DISTRICT & QUALIFICATIONS, OF APPLICANTS - NOT ONLY THOSE NOMINEES SENT BY

2) If you know, the specific existing article, chapter and section in the current Maui County Charter that your testimony will or is intended to affect [examples: Article 8 (County Departments), Chapter 12 (Department of Police), Section 8-12.2 (Police Commission); Article 8 (County Departments), Chapter 17 (Salary Commission), Section 8-17.1 (Organization and Functions):

ARTICLE 13-2 AFTER ITEM 3, TO BETTER DEFINE ROLE OF THE COUNCIL & ESTABLISH BLUE RIBBON PANEL.

(If you don't know the specific article, chapter, or section, the Commission staff will research and try to get back to you to confirm)

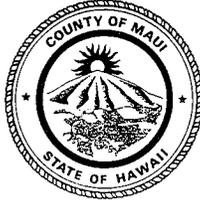
3) If called, whether you would be willing to further testify or clarify your testimony before the Commission at future meetings: yes no

If yes, please fill in contact information: PO BOX 610 HAWAII HI 96708
214-0147 lalyz@maui.net

Name: LUCIENNE de NAIE Date: AUG 15 2011

Rec'd 08/15/11 - Public Testimony - Lucienne de Naie
08/29/11 - Item No. II, E.

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawai'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@mauicounty.gov

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

August 15, 2011

Josh Stone, Chair
Maui Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

Dear Chair Stone:

SUBJECT: ADMINISTRATIONS PROPOSED AMENDMENTS TO THE MAUI COUNTY CHARTER (TABLE)

Thank you for all of your time, sacrifices, and hard work with regards to the Maui County Charter. By memorandum dated August 5, 2011, we submitted our proposed amendments to the 2003 Revised Charter of Maui County. We are submitting the attached copy of our proposed amendments in a "table format" in order to make your review easier.

Again, please know that we are more than willing to provide the Commission with unrestricted access to County personnel and documentation in order to assist in its decision making. We are excited by this year's Charter review and look forward to working with the Commission to create a better future for Maui County.

We thank you again for considering our requests and are ready to work with you to make them a reality. Please contact David Ching at 270-7210 or via email at david.ching@co.maui.hi.us for assistance with staff or documentation.

Sincerely,

A handwritten signature in black ink, appearing to be "Alan Arakawa", written over a horizontal line.

ALAN ARAKAWA
MAYOR

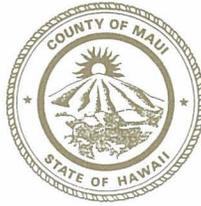
08/29/11 - Item No. II.F. pgs 1-4

No.	Article	Proposed Amendment	Reasons
1	Article 3, Section 3-2. Election of Council and Term of Office	<p>Change terms of office from a 2 year term to a 4 year term. Stagger the terms.</p> <ul style="list-style-type: none"> • Highest 4 vote getters at the next election will serve 4 years. • Bottom 5 vote getters will serve 2 years. • This would start the rotation of terms. • Not to serve more than 2 consecutive full terms • Not to serve more than a total of 12 years or 3 full terms. 	<ul style="list-style-type: none"> • There is a cost savings to the County as members would have 4 years to focus upon and complete initiatives instead of having to concentrate of re-election every other year. Efficiency is also an issue as each time there's a new councilmember elected, a lot of time and resources is required to get the person up to speed. • Throughout the U.S. most municipal boards, supervisors, councils, boards and legislative branches are elected for a four year term. • Staggering of terms would provide consistency in the overall operation if new members are elected. Consistency equals efficiency equals savings. • Term limits provide opportunity for more residents to serve on the council. This prevents individuals from making it a career and provides opportunity for others to bring new ideas and novel ways to make government more efficient.
2	Section 3-9 Office of the County Auditor	Establish an Office of the County Auditor.	<ul style="list-style-type: none"> • The Maui County Cost of Government Commission, in their Report of Finding and Recommendations for Commission Term 2009 – 2010, again recommends establishing and funding an operational auditor position (as reported in the 2008-2009 Cost of Government Commission report). Other Counties have Auditor positions. • The 2008-2009 report estimated potential savings as high as \$ 5 million annually. • Using outside auditors is expensive and time consuming, assuming a qualified person or company can be found. • An Office of the County Auditor would also establish a centralized location to house previous audit reports. • The position should be independent of both legislative and executive branches of government. • The Cost of Government Commission recommends that the Auditor reports on a regular basis, give updates, and have an ex-officio member.
3	Article 8, Chapter 7, Department of Fire & Public Safety	<p>Section 8-7.4. Powers, Duties, and Functions. The fire chief shall: * * * *</p> <p>2. Provide and perform fire fighting, rescue, <u>including ocean safety and rescue,</u> and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same. * * * *</p> <p>4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel, <u>including any reserve fire fighting and emergency rescue personal.</u></p>	<p><u>Moving Ocean Safety and Rescue under the Fire Department:</u></p> <ul style="list-style-type: none"> • The administration intends on moving the Ocean Safety Section from the Department of Parks & Recreation to the Department of Fire & Public Safety. The current Charter language allows the move, but additional language would clarify who has authority over the Ocean Safety Office. • Currently there is a statewide movement to move Ocean Safety to the Fire Department. Maui County is the last county to have ocean safety under the Department of Parks and Recreation. • Kauai and Hawaii Counties have moved Ocean Safety to the fire department. The City & County of Honolulu currently has Ocean Safety under the Department of Public Safety, but is now in the process of moving Ocean Safety to Fire Department. • Nationwide, beach/ocean rescue operations fall under the guise of the Fire Department. • The Fire Department is better equipped to provide the required quality of training and service when it comes to Ocean Safety and Ocean Rescue. <p><u>Reserves:</u></p> <ul style="list-style-type: none"> • A reserve force of the Fire Department can cut government costs while maintaining or improving public safety. • Across the U.S., fire departments are utilizing volunteer or reserves. Such reserves are highly trained and are required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid). Such reserve officers could be utilized during emergencies (tsunami or brush fires).

4	Article 8, Chapter 12, Department of Police	<p>Section 8-12.4. Duties and Functions of the Chief of Police. The chief of police shall:</p> <p>1. Be the administrative head of the department of police. * * * *</p> <p>4. Train, equip, maintain and supervise the force of police officers, <u>a force of reserve police officers</u>, and employees of the department.</p>	<ul style="list-style-type: none"> • A reserve police force can cut government costs while maintaining or improving public safety. Across the country police departments are utilizing volunteer police officers who are highly trained and required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid). • Reserve officers could be utilized during emergencies (tsunami) or other events needing additional assistance for crowd and traffic control (parades, county fair, concerts, Halloween on Front Street) where unusually large numbers of officers are needed for a short period of time. • Allowing residents to volunteer and participate in County issues will instill a sense of pride and a responsibility to keep Maui County safe.
5	Chapter 16, Cost of Government Commission	<p>Section 8-16.3. Members of the Cost of Government Commission shall serve for staggered terms of five (5) years. A member may be reappointed, but shall not serve on the Commission for more than a total of ten (10) years.</p>	<ul style="list-style-type: none"> • Currently the Cost of Government members serve for a 2 year term with the possibility of being reappointed for another 2 year term. • The change would make the terms for members of the Cost of Government Commission the same as the Salary Commission.
6	Article 9, Financial Procedures	<p>Go from an annual budget to biennial budget. Biennial budget to begin in a non-election year.</p>	<ul style="list-style-type: none"> • Current preparation of the budget is time consuming for both the executive and legislative branches of government. • When the County Council is deliberating the budget, all other matters – with a few exceptions - are put on hold. • Not having to prepare an annual budget would allow staff in both the legislative and executive branches to concentrate on operations and have time to implement initiatives to make the County more efficient.
7	Article 10, Code of Ethics	<p>Section 10-3. Financial Disclosure. 1. All elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file with the board of ethics and the county clerk financial disclosure statements <u>as required by provisions of this Article, the Maui County Code and Maui County Rules of the Board of Ethics</u> in a form or forms to be prescribed by the board of ethics. Such financial disclosure statements shall be open to public inspection.</p>	<p>Section 10-3 (1) requires all elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file financial disclosure statements. Unlike the Code and Rules of the Board of Ethics, the Charter does not provide specifics.</p> <p>Section 10-5 provides penalties for “any person who violates the provisions of this Article . . .” Penalties for violations of Charter provisions are limited, unless it requires disclosure and reports of the more specific requirements provided by the Rules of the Board of Ethics.</p>
8	Article 13, Section 13-2, Subsection 17	<p>“Within thirty (30) days [of the occurrence of a vacancy] <u>upon the date of informing the Council of a vacancy</u> the Mayor shall submit to the Council the name of the Mayor’s nominee to fill the vacancy...”</p>	<ul style="list-style-type: none"> • The current language is too broad and does not clearly define what point the Mayor’s 30 day clock to fill the vacancy begins. • The proposed language removes any doubt when the 30 day clock begins for the Mayor to submit his/her nominations to the Council.

9	Chapter 15, Dept of Environmental Management	<p>Amend title of department to: “Department of Sustainability and Environmental Management”</p> <p>Section 8-15.3. Powers, Duties, and Functions. The Director of Environmental Management shall:</p> <p>4. <u>Guide efforts to maximize opportunities for natural resource protection, conservation and restoration.</u></p> <p>5. <u>Coordinate and develop policies and initiatives that integrate sustainable resource development, support local food and energy production, and establish partnerships with agencies and organizations to implement programs, policies, and projects that promote sustainability.</u></p>	<ul style="list-style-type: none"> • Pursuant to a ballot measure in 2006, the Department of Public Works & Environmental Management was separated into two departments. At the time, it was noted that the department's responsibility was broad and its budget about \$111.6 million annually, or about 25 percent of the county budget. Dividing the department would allow administrators and workers to focus on their tasks and permit more planning in the future. • There exists the structure to support a third division, possibly named: Division of Sustainability & Environmental Protection • The Charter does not specifically delineate divisions and offices within departments. Rather, it describes the Powers, Duties, and Functions of the department director. To support such a new division and focus, we could propose amending the section to add language describing new functions to be performed. • These are forward-thinking measures (sustainability, resource protection) that will only become more important to us in the future. Forward-thinking communities (Portland, Seattle, CA cities) already have Offices of Sustainability in their bureaucratic structure.
10	Article 8, Ch. 1 Section 8-1.1. Organization	<p>“There shall be a department of management consisting of a managing director, deputy managing director and the necessary staff.”</p>	
11	Article 8, Chapter 3 Department of the Prosecuting Attorney	<p>Section 8-3.3. Powers, Duties and Functions. 1. “Appoint such deputy prosecuting attorneys, and necessary staff, including investigators who shall have all the powers and privileges of a police officer of the county, as shall be authorized by the council. Deputy prosecuting attorneys shall be from civil service and shall serve at the pleasure of the prosecuting attorney.”</p> <p>Insert : 8. <u>Prosecute offenses against the laws of the State under the authority of the attorney general of the State.</u></p>	<p>See, Attachment “B” (Memorandum dated June 27, 2011 from John D. Kim, Prosecuting Attorney to Keith A. Regan, Managing Director)</p>
12	Article 8, Chapter 9 Department of the Personnel Services	<p>Section 8-9.4. Civil Service Commission. “1. Adopt rules having the force and effect of law to carry out [the] <u>applicable provisions of the civil service laws [of the State.] as prescribed by the Hawaii Revised Statues.</u>”</p> <p>Insert: Section 8-9.3. Powers, Duties and Functions. 4. <u>“Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the State.”</u></p>	<p>See, Attachment “C” (Memorandum dated June 28, 2011 from Lance T. Hiromoto, Director Department of Personnel Services to Alan M. Arakawa, Mayor)</p>

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawaii 'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@mauicounty.gov

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

August 17, 2011

Maui County Charter Commission
Mr. Joshua Stone, Chair
c/o Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

RECEIVED
CORPORATION COUNSEL
2011 AUG 18 AM 11:15

Dear Chair Stone and Commissioners,

SUBJECT: REQUEST FOR SUBMITTAL OF PROPOSED CHARTER AMENDMENTS AND/OR RECOMMENDATIONS

At the July 14, 2011 meeting of the Cost of Government Commission (COGC), the commission passed three recommendations for amendments to the Maui County Charter. The mandate of the COGC as outlined in Section 8-16.1 of the charter is to “to promote economy, efficiency, and improved service in the transaction of the public business in the legislative and executive branches of (the) county...” The commission limited its recommendations to provisions in line with its mandate in an effort to focus on structural change in county operations that would produce, in the estimation of the commissioners, the optimal positive effect.

The recommendations are as follows:

1) To change the County’s budget cycle from an annual budget to a biennial budget.

Relevant sections of the charter:

Section 9-2 Preparation and Submission of Budget and Capital Program
Section 9-3 Scope of Budget and Message
Section 9-4 Budget and Capital Program: Notice and Hearing
Article 15 Transitional Provisions

Summary: The COGC contends that the efficient functioning of the County Council and the County Departments are compromised by the present annual budget cycle. The process of adopting an annual budget is labor intensive and time consuming, diverting energy and resources that could be used in other legislative deliberations and county departmental functions. Some potential advantages of a biennial budget include:

- Lessening the burden on county departments to engage in extensive budget preparations each fiscal year
- Opening the possibility for more in depth discussions and policy making on other issues (e.g. the structure of property tax rates)

08/29/11 - Item No. II.G. pgs 1-16

- Obviating the time and expense of holding annual public hearings on the budget in each council district

The commission recognizes that instituting a biennial budget is not an operational panacea and works most efficiently in stable economic conditions. That notwithstanding, the commission contends that sufficient processes could be set in place to deal with economic challenges as they arise within the context of a biennial framework.

The commission believes that to make the biennial framework effective other structural changes in the charter are necessary which leads to the COGC's next recommendation.

2) To change the present system of five two year terms of council members to three full four year terms. The terms of council members would be staggered. In contrast to the present charter, the limit of three full four year terms for any individual would be absolute whether or not the terms are served consecutively.

Relevant sections of the charter:

Section 3-2 Election of Council and Terms of Office
Article 15 Transitional Provisions

Summary: In its discussions on the biennial budget recommendation, the COGC recognized that other structural changes were needed to support in-depth discussions of difficult policy issues and the ability of the county to engage in both strategic and long range planning. Thus, the COGC believes the extension of the council member terms to three full four year terms with absolute term limits is necessary to make the biennial budget cycle effective.

COGC contends that extending council member terms to 4 years with absolute term limits will have the following potential advantages:

- Open the possibility for more in depth discussion and planning on issues
- Lessen the temptation to make politically expedient decisions
- Open up the council to a diverse talent pool
- Allow for more citizen participation and engagement in the political process

The COGC supports absolute term limits as a way of opening up the political process to a diverse pool of talent. The COGC recognizes the importance of experience but believes its recommendation achieves a balance for both legislative experience and allowing government to be revitalized by new persons with new ideas. This notwithstanding, the COGC suggests the constitutional implications of this recommendation be explored on both the state and federal level.

3) The creation of the Office of County Auditor and the incorporation of the COGC within the office.

Relevant sections of the charter:

Please refer to the draft resolution sponsored by Council Member Michael White attached to this letter (cf. Attachment A)
Section 8-16
Article 15 Transitional Provisions

Summary: The COGC in its 2008-2009 and 2009-2010 Annual Reports (cf. Attachment B) recommended the creation of an Office of County Auditor. The present commission continues to support this recommendation.

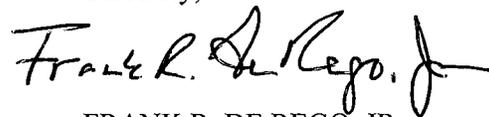
Some potential advantages of an independent Office of County Auditor are:

- the ability to conduct financial and operational audits of county operations on a regular basis
- independence from both the executive and legislative branches of government to provide objective information and advice to county government and assurance to the public on the functioning of government operations
- the detection of strength and weaknesses in the operation and finances of county government with recommendations for improvement

The commission also recommends that the COGC be moved from the Office of the Mayor to the Office of County Auditor. The commission believes that the mandate and duties of the COGC would be in line with and better discharged under the Office of County Auditor. The commission would support the County Auditor by investigating and making recommendations on issues that deserve further scrutiny by the department.

The COGC appreciates the Charter Commission's collegiality in asking other Boards and Commissions for their input. The COGC also commends the members of the Charter Commission for their time and dedication in serving the people of Maui County. The COGC offers these recommendations for consideration and support by the Charter Commission and invites any questions the commission may have on these or other matters.

Sincerely,



FRANK R. DE REGO, JR.
Chair, Cost of Government Commission

Attachment A

Draft Resolution of Council Member Michael White

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

May 3, 2011

The Honorable Danny A. Mateo, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

Dear Chair Mateo and Members:

**SUBJECT: PROPOSED CHARTER AMENDMENT TO ESTABLISH
AN OFFICE OF THE COUNTY AUDITOR (PAF 11-055)**

Please find attached a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH AN OFFICE OF THE COUNTY AUDITOR". The purpose of the proposed resolution is to establish an Office of the County Auditor to strengthen the auditing function in County government and to ensure that the agencies and programs of the County are held to the highest standard of accountability to the public.

May I request that the attached proposed resolution be referred to the appropriate standing committee for discussion and action.

Thank you for your consideration.

Sincerely,


MIKE WHITE
Council Member

pa:cmn:11-055b

Attachment

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE REVISED
CHARTER OF THE COUNTY OF MAUI (1983), AS
AMENDED, TO ESTABLISH AN OFFICE OF THE
COUNTY AUDITOR

WHEREAS, the need for accountability in government has led to a heightened demand for information about government programs and services; and

WHEREAS, taxpayers, voters, and the public as a whole are entitled to know whether government funds are being handled in compliance with laws and regulations, and whether government agencies and programs are achieving their purposes and operating economically and efficiently; and

WHEREAS, auditing is an essential tool in holding government accountable to the public; and

WHEREAS, performance audits may include the following objectives:
(1) examination and testing of processes to determine whether the laws, policies, and programs of the county are being carried out in the most effective and efficient manner;
(2) examination and testing of internal control systems to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, or error, to promote efficient operations, and to encourage adherence to prescribed management policies; and
(3) recommendations for changes in organization, management, and processes which will produce greater efficiency and effectiveness in meeting program and operational objectives; and

WHEREAS, through their respective charters, the City and County of Honolulu has established an Office of the City Auditor, the County of Kauai an Office of the County Auditor, and the County of Hawaii an Office of the Legislative Auditor; and

WHEREAS, the Council wishes to establish an Office of the County Auditor to strengthen the auditing function in County government and to ensure that the agencies and programs of the County are held to the highest standard of accountability to the public; and

WHEREAS, establishing an Office of the County Auditor in the Revised Charter of the County of Maui (1983), as amended ("Charter"), will insulate the County Auditor from undue influence by the legislative and executive branches, foster objectivity, openness, and fairness, and promote the credibility of the County Auditor's recommendations; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Article 3 of the Charter, pertaining to the County Council, be amended to add new sections to read as follows:

"Section 3-9. Office of the County Auditor Established.

1. There is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the council, by a majority vote of its membership, and shall serve for a term of six years. The county auditor may be re-appointed, or a successor appointed, by the council for subsequent terms of six years. The county auditor may hold over until a successor is appointed. The salary of the county auditor shall be determined by the salary commission. The council, by a two-thirds vote of its membership, may remove the county auditor from office at any time for cause. The county auditor shall be exempt from the civil service.

2. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification as a certified internal auditor or certified public accountant, and have at least five years of experience in the field of auditing, evaluation, or analysis. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field.

3. Except for exercising the right to vote, neither the county auditor nor any staff member of the office of the county auditor shall support, advocate, or aid in the election or defeat of any candidate for county public office.

4. The county auditor shall appoint the necessary staff as shall be authorized by the council. Persons appointed to such positions shall be exempt from the civil service and shall serve at the pleasure of the county auditor.

Section 3-10. Office of the County Auditor; Powers, Duties and Functions.

1. It shall be the duty of the county auditor to conduct or cause to be conducted:

a. The independent annual financial audit of the county, as authorized by Section 9-13;

b. Other program, financial, or performance audits or evaluations regarding county organizations, operations, and regulations; and

c. Performance or financial audits of the funds, programs, or activities of any agency or function of the county, as the county auditor deems warranted; provided that, before each fiscal year, the auditor shall transmit a plan of the audits proposed to be conducted during the fiscal year to the mayor and the council, for review and comment, but not approval.

2. Audit findings and recommendations shall be set forth in written reports of the county auditor, a copy of which shall be transmitted to the mayor and to the council, which shall be public records, except as provided by law.

3. For the purposes of carrying out any audit, the county auditor shall have full, free, and unrestricted access to any county officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the county, to administer oaths and subpoena witnesses, and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the county auditor, shall have the power to compel obedience to any process of the county auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. Notwithstanding Section 3-6(6), the county auditor may, without council approval, retain special counsel to represent the county auditor in implementing these powers.

4. For the purpose of this section, the following definitions shall apply:

“Agency or operation of the county” includes any executive agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.

“Council office” includes the council itself, the office of a council member and the council member’s immediate staff, the office of the county clerk, and the office of council services. This definition shall not be construed as excluding the office of the county auditor from the legislative branch.

“Record” includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically.”

2. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 9-13 of the Charter, pertaining to Audit of Accounts, be amended as follows:

“Section 9-13. Audit of Accounts. Within six (6) months after the beginning of each fiscal year, [the county council shall provide for] the county auditor shall conduct or cause to be conducted an independent financial audit of the funds, accounts and other evidences of financial transactions of the county and of all operations for which the county is responsible[.] for the audited fiscal year. The audit shall be [made] conducted by a certified public accountant or firm of certified public accountants[, designated by the council,] who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the [council] county auditor may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract [to be] recommended by the county auditor and signed by the council chair[,] as the contracting officer for the legislative branch, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record[.], unless otherwise provided by law.

In case of the death, resignation or removal of the director of finance, the council shall cause an independent audit to be made of the finance director’s accounts.”; and

3. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Article 15 of the Charter, pertaining to Transitional Provisions, be amended to add a new section to read as follows:

“Section 15-4. Transfer of Audit Functions to the Office of the County Auditor.

1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the office of the county auditor.

All contracts held by the office of council services relating to financial and performance audits which are to remain effective after June 30, 2013 shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated.

All financial and performance audit activities administered by the office of council services on June 30, 2013 shall be assumed by the office of the county auditor on July 1, 2013.

2. On July 1, 2013, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2013 shall be transferred to the office of the county auditor.”; and

4. That material to be repealed is bracketed. New material is underscored;
and

5. That, pursuant to Section 14-2(1) of the Charter, this resolution be submitted to the voters of the County of Maui at the next general election; and

6. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election; and

7. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

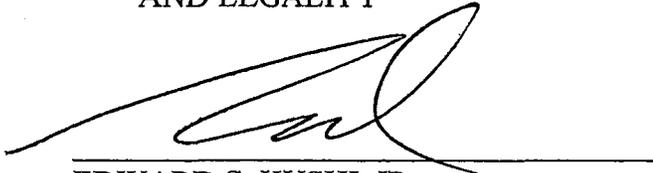
“Shall the Charter be amended to establish an Office of the County Auditor, to provide for the appointment of the County Auditor, to define the County Auditor’s duties and powers in order to increase accountability and efficiency of County operations, and to make other clarifying, conforming, transitional, and related amendments ?”; and

8. That, pursuant to Section 14-2(2) of the Charter, the County Clerk publish this proposed amendment in a newspaper of general circulation; and

9. That, upon approval by the majority of the voters as indicated by the number of votes cast and upon official certification of such result, the amendment proposed herein shall take effect; and

10. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY

A handwritten signature in black ink, appearing to read 'E. Kushi, Jr.', is written over a horizontal line. The signature is stylized and cursive.

EDWARD S. KUSHI, JR.
First Deputy Corporation Counsel
County of Maui

S:\ALL\ESK\COUNCIL\Resolution\Charter.Office of the County Auditor.doc

Attachment B

Excerpts from Cost of Government Commission's
2008-2009 and 2009-2010 Annual Reports
Supporting Creation of the Office of County Auditor

List:

2008-2009 Audit Subcommittee Report: Pages 1-3

2009-2010 Final Report Overview: Page 2 (excerpt highlighted)

AUDIT SUBCOMMITTEE REPORT

I. INTRODUCTION

The Subcommittee carried out a review of certain aspects of the audit process within the County. As with all government entities, regular audits are vital in preventing and/or controlling waste, fraud, and mismanagement. Thus, they serve as an important tool in reducing the cost of government in Maui County.

II. METHODOLOGY

The Subcommittee reviewed minutes of testimony provided to the Cost of Government Commission last year by Finance Department Auditor, Lloyd Ginoza and Finance Director, Kalbert K. Young. Reviewed letters and plans submitted by them on Mr. Ginoza's activities. Met separately with both Mr. Ginoza and Mr. Young. Reviewed a copy of the Comprehensive Annual Financial Report submitted to the Council. Met with Riki Hokama, Chair of the Maui County Council.

III. FINDINGS

Given the size and scope (i.e. expenditures exceeding \$500 million and over 2,000 employees) there is a significant potential for waste, fraud and mismanagement that can be alleviated by the audit process. At present "Financial Audits" seem to be adequately addressed by the annual audit prepared for the Council, which combines both an "Outside" contract audit report with a detailed financial analysis of all County departments prepared by the Finance Department.

Although there are several audit or audit related positions, there is no presently functioning countywide staff auditor to perform "internal audits". In fact, a lack of such audit staff capacity seems to have existed for many years. This is a serious weakness and puts the County at risk for the following reasons:

- 1) Ordering "external" i.e. outside audits using professional service contracts is expensive and time consuming. It also assumes that a qualified person or company can be found to take the job.
- 2) Outside audits tend to be ordered very infrequently and then only in response to a clearly perceived weakness or problem in a department or program area e.g. the 2006 audit of the Planning Department.
- 3) Audits that are "reactive" rather than "proactive" are likely to leave serious, but not "visible" conditions of waste, fraud, and mismanagement undetected for extended periods.

To address these circumstances audits need to be performed on a regularly scheduled basis, which is standard practice in the audit field. Such audits, which

are generally "Operational" and involve the use of on-board staff that can schedule the work and know the organization, seem to be the most effective. (Note: Operational audits can be considered as all other audits where there is a review of operational activities, processes, management procedures, regulatory compliance etc., as opposed to a financial review. Such audits can often serve as a powerful "Change Agent" by exposing longstanding practices and procedures, particularly among the career civil service, that have become outdated or ineffective, but still are resistant to change e.g. "This is the way we have always done it").

The current status of audit related positions is as follows:

- 1) Mr. Ginoza occupies an auditor position in the Finance Department. While his duties are meaningful and important, he is primarily limited to working within that department and a portion of the work he does is not audit related. Furthermore, he is constrained by a lack of independence from the Finance Department where audits are concerned.
- 2) Under the Council, there is an appointed position of Legislative Analyst (Audit and Finance). A particular advantage of such a position is that it is independent from administrative operations. Such independence is a basic tenant and longstanding practice of standardized audit procedures. However, this position has been vacant for a year and a half reportedly because of difficulty in finding someone who can do auditing. In reviewing the "duties and responsibilities" of this position, the audit component appears to under weight the importance of audits. For example, the only sentence mentioning audits states, "Accordingly, a background in accounting and auditing is desirable". A more focused description of Auditor qualifications is found in the recently advertised County Job Number 2009-10. However, since the Analyst position is under the legislative branch, a more appropriate example is probably the Hawaii State Auditor position now occupied by Marion Higa. While this is an appointed position, the term is "staggered" rather than "concurrent". Such a time frame may make finding a suitable candidate relatively easier as well as changing the job title to "County Auditor" to place the appropriate emphasis on audits.
- 3) In January 2009, Job Number 2009-10 with the title of "Auditor" was announced. While the announcement seems to be well crafted, it is unfortunate that the term "operational audit" is not used in the description of duties. Also, it is unclear where this position is located in the organizational structure. In addition to professional integrity and competence, it is also essential that the auditor have authority to operate countywide and be fully independent of those being audited. As previously noted, independence is a long standing and standardized professional requirement.

Potential Savings:

By filling the two vacant auditor positions above and having them focus full-time on operational audits, it is possible the County could achieve an estimated annual savings of up to one percent of the budget. Since the budget now exceeds \$500 million, the potential savings could be as high as \$5 million annually.

This estimated savings is predicated in part on a concept often used in business known as "shrinkage". This involves management budgeting for a certain percentage of relatively small losses resulting from a wide range of circumstances, e.g. theft, breakage, employee errors in ordering, lack of maintenance, etc. While shrinkage can never be totally eliminated, operational audits play an important role identifying changes needed in established management procedures (both formal and informal) that can help reduce these costs.

There is no central location where copies of all prior audits performed for County government are maintained. Furthermore, management responsibility for follow-up, separate from those audited, to assure that corrective action is taken on findings and recommendations is unclear and probably needs to be strengthened.

IV. RECOMMENDATIONS

A potential annual savings of up to \$5 million, which is one percent of the County budget, is estimated by implementing the following:

- 1) Significantly increase the number of operational audits and assure that they are performed on a regularly scheduled basis.
- 2) Provide capacity for internal (staff) audits by promptly filling the two positions that have been advertised.
- 3) Assure that those performing internal audits maintain independence from those audited.
- 4) Follow-up on all completed audits to assure that recommendations requiring corrective action are properly closed out.
- 5) Establish a central repository where copies of all completed audits are maintained.
- 6) The audit component of the vacant position under the Council with job title Legislative Analyst (Audit and Finance) needs to be strengthened; therefore, the job title, position description, and appointment term should be revised using the Hawaii State Auditor position as a template.
- 7) When the vacant auditor positions are filled, the incumbents should appear before the Cost of Government Commission on a regular basis with the position under the Mayor becoming an ex-officio member.

3. Process Auditor

As highlighted in the Commission's 2008 – 2009 Annual Report, the Commission believes that deploying dedicated resources to review County processes and identify opportunities for improved efficiencies would not only be self funding, but could yield significant savings to the County. The Commission again recommends establishing and funding an operational auditor position within the County staffing guides.

4. Revenues

Many efforts are underway to address the cost side of the budget. In addition to these efforts, the Commission also believes there are opportunities to impact the revenue side of the ledger and submits the following for consideration.

- a. If residential property valuations decline in FY 2011, the Commission supports an increase in residential rates to maintain current property tax collections from the residential sector.
- b. The Commission also believes there are opportunities to increase the gas tax to address the highway fund shortfall and ongoing infrastructure needs.
- c. The Maui Bus has been a huge success and ridership is at an all time high. The Commission believes that the current fare of \$1 could be raised, if not doubled, to provide additional funding.

III. SUBCOMMITTEE EXECUTIVE SUMMARIES

A. Department of Management Subcommittee

The Department of Management, as well as the County of Maui, must be able to evolve to address the ever-changing socioeconomic situation and needs of its citizens and visitors. The Subcommittee offers the following recommendations to promote economy and efficiency within the Department of Management.

1. Reorganize the Department of Management by dividing the Department into two separate departments: the Department of Management and the Department of Information Technology.

The Subcommittee estimates that if a reorganization of the Department of Management had taken place in Fiscal Year 2010, it could have resulted in a 1% savings, thereby reducing its operating budget by \$44,354.

2. Amend the County Charter to allow the executive branch, with approval by the legislative branch, to create additional departments.

Assuming language was already in place in the County Charter, the Subcommittee submits that the increased efficiency could potentially save the County .25% of total operating costs, which in Fiscal Year 2010 would have amounted to approximately \$1.15 million.

August 19, 2011

Joshua Alike Kalaunui Stone, Chair
Maui County Charter Commission
Department of the Corporation Counsel
Wailuku, HI 96793

Dear Chair Stone and Members of the Committee:

SUBJECT: REFORM OF ARTICLE 8, CHAPTER 7, OF THE COUNTY OF MAUI CHARTER:
ANALYSIS REPORT

Please find attached as prepared for the Maui County Charter Commission, REFORM OF ARTICLE 8, CHAPTER 7, OF THE COUNTY OF MAUI CHARTER: ANALYSIS REPORT. The analysis report is lengthy. However, it is a comprehensive attempt to respect your request to provide objective information regarding past and present matters concerning Article 8, Chapter 7, of the charter. Per your request, information is presented in a manner that addresses summary history, background, problems, recommendations, pros and cons, and importance as it pertains to the charter and the Department of Fire and Public Safety.

I look forward to attending and answering any questions regarding this matter at the Charter Commission meeting scheduled for August 29, 2011.

Respectfully,

GREGORY E. JENKINS

Firefighter and Molokai Resident

PO Box 1010

Kaunakakai, HI 96748

08/29/11 - Item No. II.H. pgs. 1-85

REFORM OF ARTICLE 8, CHAPTER 7, OF THE COUNTY OF MAUI CHARTER: ANALYSIS REPORT

Gregory E. Jenkins

Firefighter and Molokai Resident

Kaunakakai, Hawaii 96748

AUGUST 2011

PRELIMINARY REPORT

Prepared For:

COUNTY OF MAUI CHARTER COMMISSION

DEPARTMENT OF THE CORPORATION COUNSEL

200 SOUTH HIGH STREET

KALANA O' MAUI BLDG, 3RD FL,

WAILUKU, HAWAII 96793

TABLE OF CONTENTS

SUMMARY	2
ANALYSIS REPORT	7
APPENDIX A: DRAFT RECOMMENDED CHARTER LANGUAGE WITH MARKUP	39
APPENDIX B: DRAFT SAMPLE RECOMMENDED CHARTER LANGUAGE WITHOUT MARKUP	44
APPENDIX C: COUNTY OF MAUI CHARTER EXCERPTS	48
APPENDIX D: CITY AND COUNTY OF HONOLULU CHARTER EXCERPTS	58
APPENDIX E: COUNTY OF HAWAII CHARTER EXCERPTS	68
APPENDIX F: COUNTY OF KAUAI CHARTER EXCERPTS	79

SUMMARY

Firefighters are normal people who do extraordinary things. Firefighters are not better or more important than the citizens, public, or employees of any organization; government or private. However, when seconds count, the services your firefighters provide to all people in our county are of those with the highest value. Such value can be simply understood by reviewing our department mission statement, "To Protect and Preserve Life, Environment, and Property." Your firefighters are on the frontline every day, twenty-four seven, three hundred and sixty-five days per year, putting their lives and the sanctity of their family at risk to accomplish that mission. Thus, firefighters have earned and deserve the right to collectively bargain and take political action regarding their terms and conditions of work. Furthermore, firefighters are citizens of the United States of America and have the first amendment right to petition the government for redress of their grievances. For firefighters, such grievances usually have to do with matters of public concern such as firefighter health and safety and maintaining and or achieving high quality services. The services your firefighters provide to the people must transcend politics in general and changes in political regimes. For most, the only political special interest a firefighter has is serving and protecting the people as safely and as healthy as possible.

Such were the reasons for the proposed and approved Maui County Charter Amendment in 2001-2002 that expanded the powers of the Fire and Public Safety Commission. The proposed amendment was submitted along with testimony to the Charter Commission in 2001 by members of the Hawaii Firefighters Association L-1463. At the time the Charter Commission was meeting in 2001-2002, fire department associated labor management relations had reached an impasse. Firefighters were not able to achieve responsible compromise with the Fire Chief regarding adequate improvements to labor

initiated strategic planning; service quality improvement and maintenance; budget appropriations; and matters concerning the health and safety of firefighters and the public. Prior to the approved charter amendment in 2002 expanding the powers of the fire and public safety commission, the commission had no true oversight powers over the fire department or the fire chief. The mayor appointed and terminated the fire chief at his or her sole discretion. Oversight of all aspects of the fire department and its services were under the jurisdiction of the mayor with budget and legislative oversight by the county council. Thus, the only authoritative venue the public or labor had to address issues of public concern regarding the fire department was the fire chief, mayor, and council. If an impasse was reached with any or all of the aforementioned, the only option remaining was to give up, wait, pursue a costly legal case, or to whistle blow. It is established, that everything regarding government, including the services provided to the public, is inherently political. Such is democracy. However, democracy was and is not the problem. The genuine problem was and is, that fire department leadership and services must be transparent to, and held accountable by, the people and elected government officials.

The fire department belongs to the people. In 2001, as is in many areas today, the Fire Department has not been a truly transparent or accountable government organization. At times, the fire department has not acted on opportunities to improve specific service areas that were determined to be of the highest value by and to the community. It was and is not the case that the people, voters, or elected officials are unintelligent when considering fire department related issues, when brought to their attention. Simply, they are not being given a fair or informed opportunity to exercise their right to be heard. Additionally, elected government officials must answer to the public regarding the fire department and the services it provides. At times, elected officials fail to act on matters of public

concern within their jurisdictional power. At times, this is after such matters are brought to their attention concerning their role in oversight of the fire department. With a lack of accurate and vocational understanding of the fire service by the executive and legislative branch, coupled with both branches' general need to handle all county departments and services, the fire department and its leadership has developed strong political autonomy under the ever changing executive branch. In the past, when the fire chief was appointed by the mayor, the department as an organization was devoid of any lasting mid to long range planning or best practice direction. This was due in part to the unpredictable nature of political elections that affected department leadership and intention. Political autonomy of the fire department, without responsible public accountability for service level quality, became unacceptable. The fire department and the services it provides the public, should not be based on a good ol' boy network or social club enabled by entitlement. Instead, fire department services, affairs, operations, management, and actions should be lawful, best practice, high quality, well planned, transparent, and accountable to the people.

Giving the department back to the people through accountability, via checks and balances based in accurate vocational understanding, was the primary intent to expand the powers of the fire and public safety commission. The intent was to create an independent authoritative body in the commission's expanded powers, appointed by, but not dependant on the executive and legislative branches. The commission's expanded powers were to concern department matters including but not limited to: appointment, objective evaluation, and dismissal of the fire chief; review and recommendations regarding fire department operations based on the charter, best practice, and planning; adequacy of budget appropriations; lawful or charter based administrative actions and decisions; and other matters

of public concern regarding the department brought forth by any person or group. It was always assumed and never questioned, that a fire and public safety commission with new expanded powers would base reviews, recommendations, submittals, and decisions on thorough deliberation with consultants as well as the public. As provided by law as well as common sense, it was also assumed that labor would play a major consultant role in the aforementioned. Now, ten years later, the original intent and hopes of improvement resulting from the expanded powers of the fire and public safety commission have not been fulfilled. Regardless, some support and believe nothing is wrong with the current fire and public safety commission's powers, duties, and functions while many others believe quite the opposite. It is no secret that there is a current movement, to at the least, place the power to appoint and remove the fire chief back under the mayor's sole discretion. Key, at this juncture in time, is that such a proposed change in the charter has not been objectively justified in writing by any party. Nonetheless, our firefighters, the public, the fire chief, and political officials are at a crossroads regarding the future powers of the fire and public safety commission.

To enumerate each and every concern, perceived or actual wrongdoing, or accused failure of the fire and public safety commission to fulfill their said or defined powers, duties, or functions over the past ten years would be fruitless. The same would be true regarding related actions of past or present fire chiefs, staff, or elected government officials. Instead, a conscientious analysis of the existing charter language pertaining to the Department of Fire and Public Safety is warranted to determine if improvement is possible. It is understood that only after such an analysis and the charter commissions' careful consideration of all points of view, that any proposed changes for improvement could be included or not in the final report. Proposed changes to the county charter are a very serious matter deserving great

consideration. Regardless, allowing another ten years to go by without thorough review of charter language concerning the department is remiss.

The following analysis report serves as an objective evaluation of existing charter language concerning the Department of Fire and Public Safety. The analysis report reviews Article 8, Chapter 7, as well as, other select applicable language from the County of Maui Charter. Additionally, select and current charter language for the Counties of Hawaii, Kauai, and the City and County of Honolulu were juxtaposed against charter language for the County of Maui regarding executive powers, fire department, and police department. Such comparison is helpful when identifying the similarities, differences, and connections between, as well as uniform trends in, charter language.

ANALYSIS REPORT

COUNTY OF MAUI CHARTER, ARTICLE 8, CHAPTER 7 DEPARTMENT OF FIRE AND PUBLIC SAFETY

Section 8-7.1. Organization. There shall be a department of fire and public safety consisting of a fire and public safety commission, a fire chief, and the necessary staff. (Amended 2002, 1986)

Background: The commission was part of the charter language prior to the 2002 charter amendment. However, the commissions' powers were advisory only. The official name of the department prior to the 20002 charter amendment was the, "Department of Fire Control." The charter commission in order to bring the departments broad range of services into focus and consideration proposed on their own to change the official name of the department to, "Department of Fire and Public Safety." Again, this was not a recommendation from any known testimony but one recommended solely from charter commission deliberation. The charter commission in their final report, and not in any other document on record including ballot language, was given approval to continue to refer to itself as the, "Maui Fire Department," in common speech and its presentation to the public.

Problem: The name of the department is not consistent with common or nationally recognized practices. Many fire departments across the country have maintained or renamed themselves in the following manner: Fire and EMS; Fire and Emergency Services; Fire Rescue; Fire Department. Many types of services commonly come under the aforementioned names such as but not limited to: fire suppression; rescue; heavy rescue; search and rescue; ocean or marine rescue; EMS, emergency medical services at any level of certification; ocean safety or lifeguards; hazardous materials mitigation, response, and education; fire and building code enforcement and plans reviews; fire and emergency

public education programs; emergency management; fire and emergency services training. In Hawaii especially, as well as in other places in the country, the term "Public Safety" refers to correctional officers or a police type of law enforcement or activity. In Hawaii, the term is in conflict with the already established State of Hawaii Department of Public Safety; of which, has nothing to do with fire, rescue, or emergency services that are not correctional or law enforcement centered. A simple Google search of, Hawaii Public Safety, will result in a number one search link to the State of Hawaii Department of Public Safety.

Recommendation: Rename the Department of Fire and Public Safety to one of the following County of Maui or Maui County: Fire Department; Fire-Rescue Department; Department of Fire-Rescue; Department of Fire and Emergency Services. Input should be obtained from the public and firefighters on the significance of the name change. Propose the following County of Maui Charter Amendment language for Article 8, Chapter 7 and Section 8-7.1.: CHAPTER 7 [DEPARTMENT OF FIRE AND PUBLIC SAFETY] _____; Section 8-7.1 Organization. There shall be a [department of fire and public safety] County of Maui _____ consisting of a [fire and public safety] _____ commission, a fire chief, and necessary staff.

Pro: Correctly brings the name of the department in line both with traditional and established fire service organizational names, as well as, the types of services that fall under the organization's responsibilities.

Con: Deciding on a name may be controversial. Another proposed charter amendment that focuses on a name change.

Importance: Moderate.

Section 8-7.1: Statement of Policy (PROPOSED)

Background: No statement of policy currently exists in the Maui County Charter in Article 8, Chapter 7 for the department. The City and County of Honolulu Charter has existing charter language for the Fire Department Statement of Policy in Section 6-1002. The County of Hawaii has existing charter language for the Fire Department Statement of Policy in Section 7-4.2. The charter for both the City and County of Honolulu and the County of Hawaii provide an almost identical statement of policy that declares the purpose of the chapter in their respective county charter concerning the fire department and the establishment of a system of service and the manner in which it will be achieved. Similar statements of policy can also be found for the police departments for both the City and County of Honolulu and the County of Hawaii.

Problem: Under the Maui County Charter Section 8-7.1, the charter clearly establishes the organization of the department and what constitutes the department. However, as the charter Chapter 7 moves on, it defines the individual powers, duties, and functions of each part most specifically towards the commission and fire chief. The problem is a lack of statement of policy for the organization as a whole which defines the purpose and service establishment of the organization and not just its existence. The department currently has a mission statement developed through past strategic planning efforts which is not included in the Maui County Charter and should not be confused with a statement of policy. Our Maui County Department of Fire and Public Safety mission statement is to, "Protect and preserve life, environment, and property." Upon close examination of the powers, duties, and functions of the fire chief under our current charter, our mission statements' attributes are evident. As such, our mission statement does not need to be present in the charter due to it being clarified by and in the powers,

duties, and functions of the fire chief and the services the department provides. A statement of policy is completely different from the aforementioned mission statement. For the Maui County Charter, a statement of policy will declare the charters' goal and intent and not the strategies and tactics listed in the charter for the powers, duties, and functions of the commission or the fire chief. Thus, a statement of policy will give both the commission and the fire chief the guiding principles in executing their powers, duties, and functions. The existing charter language concerning the fire department related statement of policy for both the City and County of Honolulu and County of Hawaii is almost complete. Both clearly root the statement of policy in what we do, who does it, and how it is achieved.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2. Fire and Public Safety Commission.: Section 8-7.2. [Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council. The fire and public safety commission shall:] Statement of Policy. It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection and prevention, emergency rescue, and emergency services which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the Maui County (Name: ie. Fire Department) shall be operated in accordance with the following:

1. Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.
2. Promotions and other personnel actions shall be in accordance with all applicable laws and based upon fair and appropriate standards of merit, ability, and work performance.
3. Appropriate training shall be provided to the maximum extent possible and practicable.

The language proposed above was developed through a combination of that found in City and County of Honolulu and County of Hawaii Charters, as well as, insertion of language based on research that was determined to be of critical importance. It is requested that any variations to the above proposed charter language be thoroughly deliberated.

Pro: A statement of policy will give both the commission and the fire chief the guiding principles in executing their powers, duties, and functions. Requires commission and fire chief to be accountable to provide and maintain an established policy and system of service for the department.

Con: Increases responsibilities of commission and fire chief.

Importance: Very High

Section 8-7.2 Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council.

The fire and public safety commission shall:

Background: The amount of Fire and Public Safety Commission members, nine, is due to that number being consistent with commission representation for each county council district. While there is no specific reference to representation from each council district it has typically been the case until most recently. Section 13-2 of the Maui County Charter does address geographical considerations but does not specifically refer to council districts. Pending the outcome of a proposal for district voting, the number of commission members may need to be reconsidered. For fire, the City and County of

Honolulu has five commissioners, Hawaii County nine commissioners, and Kauai County Seven commissioners. For Police Maui County has nine, the City and County of Honolulu has seven, Hawaii County nine, and Kauai County seven. Commission member selection by the mayor with approval of the council is consistent with the County of Maui and all other counties' charter language.

Problem: Existing council districts are not ensured Fire and Public Safety Commission representation. Important language is not included for the County of Maui Charter Section 8-7.2 Fire and Public Safety Commission, but, is included by the City and County of Honolulu and County of Hawaii. The language included in for the City and County of Honolulu Section 6-1005 Fire Commission and County of Hawaii Section 7-4.5 Fire Commission reads as follows: "The commission may appoint such staff and engage consultants as necessary for the performance of its duties." The power to appoint staff and engage consultants by the commission should be an independent act and separation of power from any type directly associated with the powers or under the supervision of the fire chief. Appointment of staff for commission purposes should be by the commission and not the fire chief. Engaging of consultants should follow the same. The engaging of consultants, or in other words to involve experts or advisors to seek guidance or information from and in the making of plans, is important language and powers of the commission missing from existing Maui County Charter language in both Section 8-7.2 and 13-2.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2 : Section 8-7.[2]3. Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members [appointed by the mayor with the approval of the council]. One member shall be a resident of each council district. The commission may appoint such staff and engage such consultants as necessary for the performance of its duties. The members shall be appointed by the mayor and confirmed by the council in the manner prescribed in Section 13-2.

[The fire and public safety commission shall:]

Pro: Increased empowerment of commission through defined and separation of powers.

Improvement in ensured district representation.

Con: Fire Chief has increased separation of powers .

Importance: The commission may appoint such staff and engage such consultants as necessary for the performance of its duties. -Very High. Other recommended language-Moderate.

Section 8-7. _: Powers, Duties, and Functions (PROPOSED)

Background: The existing Maui County Charter does not contain a section stating the powers, duties, and functions of the commission as provided for the fire chief. The existing charter for the City and County of Honolulu Fire and Police, County of Hawaii Fire and Police, and County of Kauai Fire and Police contain language in a separate section titled and then enumerating the powers, duties, and functions of the commission in the same manner and format as the chiefs.

Problem: Language and format when compared to other charters is inconsistent. The Maui County Charter format for the Fire and Public Safety Commission is consistent with the Police Commission Section 8-12.2. The reason for this was that in 2001-2002 the Charter Commission looked closely at charter language for police when considering proposed charter language for the Department of Fire and Public Safety.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.4.: Section 8-7.4. Powers, Duties, and Functions. The [fire chief] _____ commission shall:

Pro: Consistent language with other county charters.

Con: Housekeeping requiring a proposed charter amendment.

Importance: Low

- 1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.**

Background: Review of rules of the administration and operations of the department were intended to be part of the duties of the commission. The commissions' review of the rules for the administration of the department and related compliance is an applicable component to the annual evaluation of the fire chief. There should not be confusion between Maui County Charter Section 8-7.2.7 and 13-2 when referring to the following: Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002) Affairs would specifically be a matter of concern of a particular person or group and the relationships, dealings, associations, contacts, and or interaction of such. Rules, policies, procedures, and best practice guidelines are organizational by nature and do not focus on any one person or specific group. Thus, review of rules for the administration of the department by the commission is important and should be within their scope. The existing charters for the City and County

of Honolulu Fire and Police, County of Hawaii Fire and Police, and County of Kauai Fire all have language that empowers the various commissions to review rules for the administration of the department.

Problem: Existing Maui County Charter Section 8-7.2.7 receives ongoing focus by the fire chief and corporation counsel as a means to limit the rules, conduct of business, and matters committed to the commissions' charge by law. If specific desired powers, duties, and functions of the fire chief as well as the commission are not clearly enumerated, regardless of redundancy in the charter as a whole, it will have the potential to cause the commission to be questioned as a matter of their power, duty, and function as may be provided by law or as otherwise provided in the charter. As part of the department organization as stated in the charter, the commission, as is a responsibility of all members of the department, should be required to become thoroughly familiar with the rules for the administration of the department.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2.1.: Section 8-7.[2]4.1. Adopt [such] rules [as it may consider] necessary for the conduct of its business and regulation of the matters committed to its charge by law and review rules for the administration of the department.

Pro: Requires the commission to review and be familiar with the rules for the administration of the department.

Con: Increases commission duties.

Importance: Moderate

2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.

Background: One of the main points of past contention with former fire chiefs and executive officers of the county was the departments' budget request. A simple best practice can be considered when making appropriations for the department, performance based budgeting. This budget practice focuses on value, measurement, and justification of need. For the department, in addition to the mission, the strategic plan serves as a primary form of justification of need that is enabled by a budget appropriation. For firefighters, budget concerns usually surround health and safety matters for firefighters and the public. Prior to the expanded powers of the commission in 2002, when an impasse was reached with the fire chief regarding a budget matter the only place to turn was to the mayor or council. The venue of dealing with the mayor or council to solve budget problems with the fire chief was not always well received. Regardless of positive intent, going against the fire chief to the mayor or council without some form of official and thorough deliberation, informally within the department first, was embarrassing and created negative perception. The solution was in the expanded powers of the commission in 2002, with the commission being responsible to review and submit to the mayor the department's request for an annual appropriation for the operation of the department. It was never assumed that the commission would be fire service budget experts. However, it was reasonable to assume that the commission could match up budget requests against a strategic plan or other prime source documents. Furthermore, it was reasonable to assume that the commission could engage consultants such as department members or the Hawaii Firefighters Association to ensure the budget adequately addressed health and safety matters for firefighters and the community prior to submittal. Based on the aforementioned the commission could submit a budget that it felt was responsible and derived through a process of quality

assurance and checks and balances. The City and County of Honolulu, County of Hawaii, and County of Kauai Fire and Police only have the power to review and make recommendations to the mayor, council, and or managing director, and not submit.

Problem: The commission, fire chief, necessary staff, and labor need to constantly ensure the budget represents the needs of the department and adequately addresses health and safety concerns for firefighters and the public. The commission should be given more time throughout the fiscal year to ensure a thorough review of the budget. The time would allow the commission to engage consultants regarding the budget.

Recommendation: None

Pro: Adequacy of budget as prepared by the fire chief for the department is determined by the commission prior to it being submitted to the mayor.

Con: Budget must pass through commission prior to submittal to the mayor.

Importance: High

- 3. Review the operations of the department of fire and public safety and civil defense agency and make recommendations for the changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.**

Background: In order to evaluate the fire chief effectively the commission needs to review the operations of the department. If the commission makes responsible and well researched operational

recommendations to the fire chief it can help the department meet quality standards of service and overall management.

Problem: Commission must take a more comprehensive approach towards and engage consultants as necessary to fulfill this duty.

Recommendation: Housekeeping language if department name is recommended to be changed.

Pro: Department has more checks and balances to ensure operational quality assurance.

Con: Fire chief must consider operational recommendations from a commission which may not have the same level of industry expertise.

Importance: High

4. **Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the chief for disposition.**

Background: Language follows same format as Maui County Charter for Department of Police Section 8-12.2.3. Charter language exists for the City and County of Honolulu Police Commission, in Section 6-1606.(d), that requires a summary of charges and their disposition be included in the annual report of the commission.

Problem: For transparency purposes, any commission written report of findings and recommendations regarding charges submitted to the fire chief, including the fire chief's disposition on the same, should be included in the commissions annual report.

Recommendation: Housekeeping language if department name is recommended to be changed. Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2.4.: Section 8-7.[2]4.4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the chief for disposition. A summary of the charges filed and their disposition shall be included in the annual report of the commission.

Pro: Increased transparency by the commission in its findings and disposition regarding charges brought forth.

Con: Requires commission to declare such information in the annual report.

Importance: Moderate.

Section 8-7.[2]4.5.: Review personnel actions within the department (PROPOSED)

Background: The integrity and morale of the department firmly rests in fair and reasonable terms and conditions of employment for necessary civil service and appointed staff. Fairness in the terms and conditions of employment are typically addressed and carried out through approved collective bargaining agreements, MOAs, MOUs, or consultations between the employer and labor's exclusive

representative. Regardless and independent from the aforementioned, when executing personnel actions, they all must be in compliance with applicable laws. In personnel matters for government employees applicable Federal, State, and Local civil service laws apply. Fire departments and government agencies across the country have long struggled with charges of nepotism, disparate treatment and impact, patronage appointments, cronyism, and other illegal, unethical, or non best practice personnel action and management. The County of Maui is not exempt from such charges. With regards to the Department of Fire and Public Safety, fair, legal, and best practice personnel actions are of paramount importance. To attempt to address the aforementioned, a transparent and accountable approach must start with who is primarily responsible for personnel action for the department, the fire chief. Section 6-3.1. of the Maui County Charter states the following: Pursuant to law the administrative heads of departments shall have the power to take all personnel actions. Of course there is support and guidance from the Department of Personnel Services, but, the fire chief is the appointing authority as defined by the Hawaii Revised Statutes. The responsible management of such authority must be accountable to review and oversight. Since the commission evaluates, appoints, and dismisses the fire chief and not the mayor; oversight in this area should at least partially rest with the commission. Furthermore, personnel actions directly impact the operations and welfare of the department which is under the purview of the commission. Charters language currently exists for the City and County of Honolulu, Section 6-1006.(e), and County of Hawaii Fire Department, Section 7-4.6.(e), that enumerates, as a power, duty, and function of the commission, to review personnel actions within the department for conformance with the policies, namely the statement of policy, for the department under the charter.

Problem: The Fire and Public Safety Commission currently does not have within their powers, duties, and functions the responsibility to review personnel actions within the department for conformance with any policies of the charter.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2.5.: Section 8-7.[2]4.5.[Evaluate at least annually the performance of the fire chief and submit a report to the mayor and council.]Review personnel actions within the department for conformance with the policies under Section 8-7.2. (8-7.2. Statement of Policy PROPOSED)

Pro: Commission would have the power to review the personnel actions of the department for compliance with the charter. Fire chief would be held accountable to fair and legal personnel actions.

Con: Increases commission duties.

Importance: Very High

Section 8-7.[2]4.6.: Strategic Planning review and recommendations (PROPOSED)

Background: Strategic plans and short, mid, or long range plans are primary tools used to guide the department in a best practice method. Plans justify budgets and budgets enable plans. Plans and budgets need to be constantly measured for performance and so do those who manage them. The person who is responsible to manage and or submit department strategic or other organizational plans is the fire chief. The fire chief should be evaluated and held accountable to the achievements of the

department regarding such plans. Since the commission evaluates the fire chief, they need this matter enumerated under their powers, duties, and functions. This particular type of charter language for a commission was found in the Charter for the City and County of Honolulu Police Department, Section 6-1606.(e) and (f).

Problem: It is not a currently enumerated power, duty, and function of the commission to review, and if necessary, make recommendations on plans for the department as submitted by the fire chief.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2.: Section 8-7.[2]4.6. [Submit an annual report to the mayor and council on its activities.] Review and, if deemed necessary, make recommendations on the strategic plan or other similar types of plans and any update of goals and objectives for the Maui County (Name: ie. Fire Department) which is submitted by the fire chief. The commission shall not have the power to approve, modify, or reject the plan or any update.

Pro: Commission is given fair opportunity to review and make recommendations on strategic planning for the department.

Con: Increase to duties of commission.

Importance: High

Section 8-7.[2]4.7.: Compare at least annually, actual achievements of the department against strategic planning (PROPOSED)

Background: Strategic plans and short, mid, or long range plans are primary tools used to guide the department in a best practice method. Plans justify budgets and budgets enable plans. Plans and

budgets need to be constantly measured for performance and so do those who manage them. The person who is responsible to manage and or submit department strategic or other organizational plans is the fire chief. The fire chief should be evaluated and held accountable to the achievements of the department regarding such plans. Since the commission evaluates the fire chief, they need this matter enumerated under their powers, duties, and functions. This particular type of charter language for a commission was found in the Charter for the City and County of Honolulu Police Department, Section 6-1606.(e) and (f).

Problem: A comparison of actual achievements of the department against the goals and objectives of the strategic plan or other similar types of plans or the latest update of such plans as submitted by the fire chief is not performed as part of the current powers, duties, and functions of the commission.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.2.: Section 8-7.[2]4.7. [Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)] Compare at least annually the actual achievements of the Maui County (Name: ie. Fire Department) against the goals and objectives in the strategic or other similar types of plans or latest update submitted by the fire chief.

Pro: The actual achievements of the department are compared against the goals and objectives of the strategic plan which can be measured by the commission and aid in the objective evaluation of the fire chief.

Con: Increase to duties of commission.

Importance: High

- 5. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.**

Background: The intent with the expanded powers of the commission to appoint and dismiss the fire chief was to ground it in due process. Due process is common to all county charters for fire and police. However, to evaluate the unique position of fire chief objectively, measurable best practices along with due process must be followed. All aspects of the powers, duties, and functions of the fire chief and related actions, decisions, and disposition should be used as tools to measure the fire chief's performance. Measurable performance of the fire chief should also include and be influenced by the operations and administration of the department. Furthermore, when evaluating the fire chief and the fire chief's performance regarding the operations and administration of the department it should measure the fire chief's leadership and performance on any form of plans including strategic plans. Without an objective, comprehensive, measurable, and transparent evaluation of the performance of the fire chief, due process can't be achieved effectively or responsibly. Thus, the annual evaluation of the fire chief would lack validity.

Problem: The methods by which the fire chief is evaluated annually must consider and contain the aforementioned, as discussed in the background for this section. Many citizens, elected officials, government workers, and firefighters do not respect or trust the commission or the fire chief regarding the current quality of process to evaluate the fire chief.

Recommendation: Propose the following County of Maui Charter Amendment renumbering for Section 8-7.2.5.: Section 8-7.[2]4.[5]8. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: Very High

6. Submit an annual report to the mayor and the council on its activities.

Background: This section is boiler plate, and consistent with the various county charters. This section and the commission's annual report on its activities is an important requirement to document and ensure that the commission is operating in accordance with the charter.

Problem: None

Recommendation: Propose the following County of Maui Charter Amendment renumbering for Section 8-7.2.6: Section 8-7.[2]4.[6]9. Submit an annual report to the mayor and the council on its activities.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: Moderate

7. **Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)**

Background: The commission should have other powers and duties as may be provided by law that are related to accomplishing their required powers, duties, and functions; or those, that while not enumerated for them under the charter are directly related to the welfare of the department. As stated in this section, such other powers shall not interfere with the administrative affairs of the department. Again, the word “affairs” and the term “administrative affairs” should be carefully examined for correct intent and responsible interpretation of this section. In layman terms, this section is designed to prevent the commission from micro managing the daily affairs of the fire chief or subordinates. It is important to understand that this section should not be used as a tool to withhold or limit the commission’s scope of information necessary for them to accomplish their powers, duties, and functions.

Problem: Ongoing correct interpretation and application of this section.

Recommendation: Propose the following County of Maui Charter Amendment renumbering for Section 8-7.2.7: Section 8-7.[2]4.[7]10. Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping

Importance: High

Section 8-7.3. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in the fire chief's dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity. (Amended 2002)

Background: Please contemplate the following quote: "I have ever observed that a choice by the people themselves is not generally distinguished for its wisdom. This first secretion from them is usually crude and heterogeneous. But give to those so chosen by the people a second choice themselves, and they generally will choose wise men. For this reason it was that I proposed the representatives, and not the people, should choose the Senate, and though I had notwithstanding that made the Senators, when chosen, perfectly independent of their electors...To make them independent, I had proposed that they should hold their places for nine years, and then go out...and be incapable forever of being re-elected to that house. My idea was that if they might be re-elected, they would be casting their eye forward to the period of election, however distant, and be currying favor with the electors, and consequently

dependent on them. My reason for fixing them in office for a term of years rather than for life, was that they might have in idea that they were at a certain period to return to the mass of the people and become the governed instead of the governor which might still keep alive that regard to the public good that otherwise they might perhaps be induced by their independence to forget.” (Thomas Jefferson, 1776)

The intent of the expanded powers of the commission approved by voters in 2002, to empower the commission and not the mayor to appoint and remove the fire chief, was grounded in the same principles stated above by Thomas Jefferson. It was understood that any person may have the tendency to choose to vote for a mayor or influence the mayor’s selection of a fire chief based on crude and heterogeneous reasons. But, the mayor as chosen by the people, would then choose, as elector, wise people to work with and administer government. Once chosen by the mayor, department heads and those commission members confirmed by the council could both fall into this category. Aside from legal due process and defined term limits, commissioners and not department heads have the most potential to be independent from their elector, the mayor. The commission, in being independent, should cultivate decisions and actions that are in the public’s best interest and not politically driven.

Furthermore, prescribed term limits and overlapping terms for commissioners selected by prior mayoral administrations can ensure a diverse range of views as well as no guarantee of re-appointment to the commission in the future. Thus, the mayor must rely on the commissioners appointed, with council approval, to independently evaluate, appoint, and if necessary remove the fire chief. Department heads, if appointed by the mayor, show the least chance for independence from, and most dependence on, the mayor. Resultant, a mayoral appointed department head could look forward to however distant

an election and have the potential to curry favor with the mayor through political affiliation or affairs to maintain their appointed position. Such dependence on the mayor could result in political bias or lack of independent leadership affecting public good in a positive or negative way. The fire chief and the services the department is charged with performing for the public, must transcend any politically driven dependence on the mayor.

The power of the commission in evaluating, appointing, and removing the fire chief was the best solution by design. Per the charter, the fire chief is still subordinate to the mayor as the executive officer of the county; however, the commission, and not the mayor, possesses the power through majority vote to appoint or remove the fire chief. Through a combination of mayoral executive leadership and jurisdiction, council legislative oversight, and judicial commission oversight, the fire chief was, and is, independent to lead the department for the public good without concern for political election results. The performance of the fire chief and subsequent valid evaluation by an independent commission, should be the determining factor for the chief to continue to serve. Each year, the fire chief possesses the opportunity, if performance lacks, to go from governor to governed as Jefferson eluded to. Again, under the current system, the fire chief is independent to be focused and dependent upon performance, as required by the charter. As stated prior, for the fire chief, this is of greater public good than being dependent on the political re-election or favor of the mayor. Thus, under the current charter language, with the commission being authorized to evaluate, appoint, and dismiss the fire chief; by theory and design, it should encourage any fire chief not to forget that they serve and must perform with regard for the public good.

Problem: Many today are in support of amending the charter to place the power to appoint and remove the fire chief back under the sole discretion of the mayor. Such a change will provide the mayor with the power to select a fire chief whom they feel will be loyal in accomplishing their political goals, as is the case with other politically appointed positions. To have a department head, such as a fire chief, who is supportive of mayoral leadership and direction is a positive for the county from a management perspective. However, it will place the leader of an emergency service agency who is already by charter under the executive authority of the mayor as a subordinate, under political subordination. The dilemma is that when it comes to public safety and emergency services, ensuring established best practices of service, while sometimes positively politically motivated, must be able to transcend political hegemony by the executive.

Recommendation: Deliberate this matter thoroughly. Renumber Section 8-7.3. to the following: Section 8-7.[3]5. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in the fire chief's dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity. (Amended 2002)

Pro: Quality of leadership for and service of the department can be positively affected.

Housekeeping due to other recommended sections.

Con: Quality of leadership for and service of the department can be negatively affected.

Housekeeping required.

Importance: Pending

Section 8-7.4. Powers, Duties, and Functions. The fire chief shall:

Background: Boiler plate language.

Problem: None

Recommendation: Renumber Section 8-7.4. to the following: Section 8-7.[4]6. Powers, Duties, and Functions. The fire chief shall:

Pro: Housekeeping due to recommended language.

Con: Required housekeeping

Importance: NA

1. Be the administrative head of the department.

Background: Boiler plate language.

Problem: None

Recommendation: Renumber Section 8-7.4.1. to the following: Section 8-7.[4]6.1. Be the administrative head of the department.

Pro: Housekeeping due to recommended sections.

Con: Required housekeeping.

Importance: NA

- 2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.**

Background: The section contains carefully thought out language for the section. The fire chief should be able and responsible to not only provide the services enumerated but also perform them. To be able to perform the listed emergency services requires ongoing maintenance of necessary certifications and training. The fire chief is considered a safety employee.

Problem: None

Recommendation: Renumber Section 8-7.4.2. to the following: Section 8-7.[4]6.2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.

Pro: Housekeeping due to recommended sections

Con: Recommended housekeeping.

Importance: NA

3. Provide public education programs related to fire prevention and public safety.

Background: This section contains carefully thought out language for the section. Public education programs related to fire prevention and public safety are essential services of the department as provided and performed by the fire chief.

Problem: None

Recommendation: Renumber Section 8-7.4.3. to the following: Section 8-7.[4]6.3. Provide public education programs related to fire prevention and public safety.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: NA

4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.

Background: This section contains carefully thought out language regarding the powers, duties, and functions, of the fire chief. This section is very important to the authority of the fire chief to accomplish the responsibilities of this section.

Problem: None

Recommendation: Renumber Section 8-7.4.4. to the following: Section 8-7.[4]6.4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: NA

5. Investigate the cause, origin and circumstances of fires.

Background: The language for this section was carefully thought out to include all fires and not just some. This is evident today by a determination of origin and cause required in all fire reports.

Problem: None

Recommendation: Renumber Section 8-7.4.5. to the following: Section 8-7.[4]6.5. Investigate the cause, origin and circumstances of fires.

Pro: Housekeeping due to other recommended language.

Con: Required housekeeping.

Importance: NA

6. Adopt rules relating to the protection of persons and property against fires.

Background: The language for this section was carefully thought out to address the adoption of uniform fire and building codes and ordinances enforced by the department.

Problem: None

Recommendation: Renumber Section 8-7.4.6 to the following: Section 8-7.[4]6.6. Adopt rules relating to the protection of persons and property against fires.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: NA

7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.

Background: The language for this section was carefully developed to address fire service nationally recognized best practices for plans review and approval. The particular service area covered in this charter section is regulated by government and typically under the jurisdiction of public fire service organizations nationally. This language has been challenged in the past in a subjective manner to the charter commission. The current language prevailed in the charter amendment of 2002. This charter language is very important to the department and the authority vested in the fire chief as the fire marshal.

Problem: None

Recommendation: Renumber Section 8-7.4.7. to the following: Section 8-7.[4]6.7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping.

Importance: NA

Section 8-7.[4].6.8.: Prepare and update strategic plans (PROPOSED)

Background: Strategic planning is an essential function of the fire chief to effectively manage the department and set responsible direction. Language was recommended in this report, under proposed charter section 8-7.4, regarding the powers, duties, and functions of the commission, to review and make recommendations regarding strategic or other types of plans and to compare actual achievements of the department against the goals and objectives of the same. The City and County of Honolulu charter contains language for the police chief, under section 6-1604.(e), regarding requirements of the police chief and their department's 5-year plan. No other county charter language exists for other county fire or police departments regarding plans.

Problem: It should be an enumerated power, duty, and function of the fire chief, required by the charter, to prepare and when deemed necessary, update a strategic or other similar type of plan. The fire chief should submit the plan and each update to the commission for review and recommendations.

Recommendation: Propose the following County of Maui Charter Amendment language and renumbering for Section 8-7.4.8.: Section 8-7.[4]6.8. [Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)] Prepare and, when deemed necessary, update a strategic or other similar type of plan of goals and objectives for the Maui County (Name: ie. Fire Department). The chief shall submit the plan and each update to the commission for review and recommendations.

Pro: The fire chief is empowered with the responsibility officially to prepare and update a strategic or other similar type of plan. Charter language pertaining to the powers, duties, and functions, of the commission regarding strategic or other types of plans would match up with this proposed section.

Con: This is a duty already informally managed by the fire chief that would require charter amendment.

Importance: High

- 8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)**

Background: Boiler plate language consistent with other sections of the county charters for the various counties dealing with police and fire.

Problem: None

Recommendation: Renumber Section 8-7.4.8. to the following: Section 8-7.[4]6.9. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)

Pro: Housekeeping due to other recommended sections.

Con: Required housekeeping

Importance: NA

APPENDIX A

DRAFT RECOMMENDED CHARTER LANGUAGE WITH MARKUP

CHAPTER 7

[DEPARTMENT OF FIRE AND PUBLIC SAFETY] _____

Section 8-7.1 Organization. There shall be a [department of fire and public safety] County of Maui _____ consisting of a [fire and public safety] _____ commission, a fire chief, and necessary staff.

Section 8-7.2. [Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council. The fire and public safety commission shall:] **Statement of Policy.** It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of fire protection and prevention, emergency rescue, and emergency services which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the Maui County (Name: ie. Fire Department) shall be operated in accordance with the following:

1. Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.
2. Promotions and other personnel actions shall be in accordance with all applicable laws and based upon fair and appropriate standards of merit, ability, and work performance.

3. Appropriate training shall be provided to the maximum extent possible and practicable.

Section 8-7.[2]3 Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members [appointed by the mayor with the approval of the council]. One member shall be a resident of each council district. The commission may appoint such staff and engage such consultants as necessary for the performance of its duties. The members shall be appointed by the mayor and confirmed by the council in the manner prescribed in Section 13-2.

[The fire and public safety commission shall:]

Section 8-7.[2]4. Powers, Duties, and Functions. The [fire chief] _____ commission shall:

1. Adopt [such] rules [as it may consider] necessary for the conduct of its business and regulation of the matters committed to its charge by law and review rules for the administration of the department.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the department of fire and public safety and civil defense agency and make recommendations for the changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.

4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the chief for disposition. A summary of the charges filed and their disposition shall be included in the annual report of the commission.

5. [Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.]Review personnel actions within the department for conformance with the policies under Section 8-7.2. (Section 8-7.2 Statement of Policy PROPOSED)

6. [Submit an annual report to the mayor and the council on its activities.] Review and, if deemed necessary, make recommendations on the strategic plan or other similar types of plans and any update of goals and objectives for the Maui County (Name: ie. Fire Department) which is submitted by the fire chief. The commission shall not have the power to approve, modify, or reject the plan or any update.

7. [Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)] Compare at least annually the actual achievements of the Maui County (Name: ie. Fire Department) against the goals and objectives in the strategic or other similar types of plans or latest update submitted by the fire chief.

8. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

9. Submit an annual report to the mayor and the council on its activities.

10. Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)

Section 8-7.[3]5. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in the fire chief's dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity. (Amended 2002)

Section 8-7.[4]6. Powers, Duties, and Functions. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.

5. Investigate the cause, origin and circumstances of fires.
6. Adopt rules relating to the protection of persons and property against fires.
7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
8. [Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)] Prepare and, when deemed necessary, update a strategic or other similar type of plan of goals and objectives for the Maui County (Name: ie. Fire Department). The chief shall submit the plan and each update to the commission for review and recommendations.
9. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)

APPENDIX B

DRAFT SAMPLE RECOMMENDED CHARTER LANGUAGE WITHOUT MARKUP

CHAPTER 7

FIRE DEPARTMENT

Section 8-7.1 Organization. There shall be a County of Maui Fire Department consisting of a commission, a fire chief, and necessary staff.

Section 8-7.2. Statement of Policy. It is hereby declared to be the purpose of this chapter of the of the charter to establish in the county a system of fire protection and prevention, emergency rescue, and emergency services which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the County of Maui Fire Department shall be operated in accordance with the following:

1. Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.
2. Promotions and other personnel actions shall be in accordance with all applicable laws and based upon fair and appropriate standards of merit, ability, and work performance.
3. Appropriate training shall be provided to the maximum extent possible and practicable.

Section 8-7.3 Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members. One member shall be a resident of each council district. The commission may

appoint such staff and engage such consultants as necessary for the performance of its duties. The members shall be appointed by the mayor and confirmed by the council in the manner prescribed in Section 13-2.

Section 8-7.4. Powers, Duties, and Functions. The fire commission shall:

1. Adopt rules necessary for the conduct of its business and regulation of the matters committed to its charge by law and review rules for the administration of the department.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the department of fire and public safety and civil defense agency and make recommendations for the changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.
4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the chief for disposition. A summary of the charges filed and their disposition shall be included in the annual report of the commission.
5. Review personnel actions within the department for conformance with the policies under Section 8-7.2.
6. Review and, if deemed necessary, make recommendations on the strategic plan or other similar types of plans and any update of goals and objectives for the County of Maui Fire

Department which is submitted by the fire chief. The commission shall not have the power to approve, modify, or reject the plan or any update.

7. Compare at least annually the actual achievements of the County of Maui Fire Department against the goals and objectives in the strategic or other similar types of plans or latest update submitted by the fire chief.

8. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

9. Submit an annual report to the mayor and the council on its activities.

10. Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)

Section 8-7.5. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in the fire chief's dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity. (Amended 2002)

Section 8-7.6. Powers, Duties, and Functions. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.
5. Investigate the cause, origin and circumstances of fires.
6. Adopt rules relating to the protection of persons and property against fires.
7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
8. Prepare and, when deemed necessary, update a strategic or other similar type of plan of goals and objectives for the County of Maui Fire Department. The chief shall submit the plan and each update to the commission for review and recommendations.
9. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)

APPENDIX C

COUNTY OF MAUI CHARTER EXCERPTS

**CHARTER
COUNTY OF MAUI
2003 EDITION**

ARTICLE 6

EXECUTIVE BRANCH

Section 6-1. Executive Power. The executive power of the county shall be vested in and exercised by the executive branch, which shall be headed by the mayor, except as otherwise provided by this charter.

Section 6-3. Powers and Duties of Administrative Heads of Departments.

1. Pursuant to law the administrative heads of departments shall have the power to take all personnel actions.
2. The administrative head of a department shall perform such duties and exercise such powers as provided for herein or as may be assigned by the mayor.

ARTICLE 7

OFFICE OF THE MAYOR

Section 7-5. Powers, Duties and Functions. The mayor shall be the chief executive officer of the county.

The mayor shall:

1. Exercise supervision directly or through the managing director over all departments enumerated in Article 8 of this charter and other agencies as provided by law.

15. Have a voice but no vote in the proceedings of all boards and commissions.

CHAPTER 7

DEPARTMENT OF FIRE AND PUBLIC SAFETY

Section 8-7.1. Organization. There shall be a department of fire and public safety consisting of a fire and public safety commission, a fire chief, and the necessary staff. (Amended 2002, 1986)

Section 8-7.2. Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council.

18

The fire and public safety commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.

2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the department of fire and public safety and the civil defense agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.
4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the fire chief for disposition.
5. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
6. Submit an annual report to the mayor and the council on its activities.
7. Have such other powers and duties as may be provided by law.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)

Section 8-7.3. Fire Chief. The fire chief shall be appointed and may be removed by the fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in the fire chief's dismissal, and after being given a hearing before the commission. The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity.

(Amended 2002)

Section 8-7.4. Powers, Duties, and Functions. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform fire fighting, rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.
5. Investigate the cause, origin and circumstances of fires.
6. Adopt rules relating to the protection of persons and property against fires.

19

7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)

CHAPTER 12

DEPARTMENT OF POLICE

Section 8-12.1. Organization. There shall be a department of police consisting of a police commission, a chief of police, and the necessary staff.

Section 8-12.2. Police Commission. The police commission shall consist of nine members appointed by the mayor with the approval of the council.

The police commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Receive, review and investigate any charges brought forth by the public against the conduct of the department or any of its members and submit a

26

written report of its findings and recommendations to the chief of police for the chief's disposition.

4. Have such other powers and duties as may be provided by law. (Amended 1992)

Section 8-12.3. Chief of Police. The chief of police shall be appointed and may be removed by the police commission. The chief may be removed by the police commission only after being informed in writing of the charges which are resulting in the chief's dismissal, and after being given a hearing before the commission. The chief of police shall have had a minimum of five years of experience in law enforcement, at least three of which shall have been in an administrative capacity.

Section 8-12.4. Duties and Functions of the Chief of Police. The chief of police shall:

1. Be the administrative head of the department of police.
2. Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the law, protection of rights of persons and property, and enforcement and prevention of violations of all laws of the State and ordinances of the county and all rules made in accordance therewith.
3. Be responsible for traffic safety and traffic safety education.
4. Train, equip, maintain and supervise the force of police officers and employees of the department.
5. Have such other powers and duties as may be assigned by the mayor or as may be provided by law.

Section 13-2. Boards and Commissions.

1. Unless otherwise provided, the members of all boards or commissions shall serve for staggered terms of five (5) years beginning on April 1 and ending on March 31, five (5) years thereafter. All members of boards and commissions recognized by this charter who hold office upon the effective date of this amendment shall continue in office for the balance of the term for which they were originally appointed and ninety (90) days thereafter to the following March 31.

Each new board or commission established by this charter shall have nine members. Of the nine members initially appointed, three shall serve for a term of five (5) years, two shall serve for a term of

four (4) years, two shall serve for a term of three (3) years and two shall serve for a term of two (2) years.

2. Not more than a bare majority of the members of any board or commission shall belong to the same political party.

3. In making appointments to all boards and commissions, the mayor shall give due consideration to balanced geographic representation.

4. Any vacancy occurring on any board or commission shall be filled for the unexpired term as provided for herein.

5. The members of boards and commissions appointed by the mayor, with approval of the council, may be removed for cause upon recommendation of such removal by the mayor and the approval of two-thirds of the entire membership of the council.

6. No member of any board or commission shall be eligible for a second appointment to the same board or commission prior to the expiration of two (2) years, provided that members of any board or commission initially

45

appointed for a term not exceeding two (2) years shall be eligible to succeed themselves for an additional term. No member of any board or commission shall serve beyond the time when his or her term expires unless the member is specifically reappointed. A vacancy shall be automatically created upon the expiration of a member's term which vacancy shall be filled as provided for herein.

7. Employees and officers of the State or county shall be eligible to serve on boards and commissions, provided that such service does not result in a conflict of interest.

8. A majority of the entire membership of a board or commission shall constitute a quorum to do business, and the affirmative vote of a majority of the entire membership of a board or commission shall be necessary to take any action.

9. Each board or commission shall select a chair from its membership annually.

10. All boards and commissions shall have the power to subpoena witnesses and administer oaths to witnesses as to all matters within the authority of such boards or commissions.

11. All boards and commissions shall hold public hearings whenever required or deemed necessary and shall provide due notice to the public by publication in a newspaper of general circulation in the county.

12. The deputies of the administrative head of any department shall be appointed by the administrative head without the necessity of confirmation by any commission or board.

13. The members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties. Necessary expenses may be paid in advance as per diem allowances as may be established by ordinance.

14. Except for purposes of inquiry and as otherwise provided by this charter or by law, no board or commission nor its membership shall interfere in any way with the administrative affairs of the department.

15. Each board and commission shall have power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

16. A vacancy on a commission or board due to the expiration of a member's term shall be filled as follows:

Not more than seventy (70) days nor less than sixty (60) days before the vacancy is to occur the mayor shall submit to the council the name of the mayor's nominee to fill the vacancy. Within sixty (60) days thereafter the council shall act to approve or disapprove the nominee. If the council disapproves the nominee, it shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten (10) days and the council shall act thereon within sixty (60) days. The process shall continue until the vacancy is filled. In the event that the council fails to approve or disapprove a nominee within the time periods provided for herein, the nominee shall be deemed appointed to fill the vacancy upon its occurrence. If the mayor fails to

46

submit the name of a nominee within the times provided for herein, the council may within sixty (60) days nominate and approve the appointment of an individual to fill the vacancy.

17. A vacancy on a commission or board due to death, resignation or removal shall be filled as follows:

Within thirty (30) days of the occurrence of a vacancy the mayor shall submit to the council the name of the mayor's nominee to fill the vacancy. Within sixty (60) days thereafter the council shall act to approve or disapprove the nominee. If the council disapproves the nominee it shall immediately so notify the mayor of its action. The mayor shall then submit the name of a second nominee to the council within ten (10) days and the council shall act thereon within sixty (60) days. This process shall continue until the vacancy is filled. In the event that the council fails to approve or disapprove a nominee within the time periods provided for herein, that nominee shall be deemed appointed to fill the vacancy upon its

occurrence. If the mayor fails to submit the name of a nominee within the times provided for herein, the council may within sixty (60) days nominate and approve the appointment of an individual to fill the vacancy. (Amended 2002, 1988)

APPENDIX D

CITY AND COUNTY OF HONOLULU CHARTER EXCERPTS

Revised Charter of Honolulu 2000 Edition, 2003 Supplement

**ARTICLE VI (See footnote 14) - EXECUTIVE BRANCH--MANAGING DIRECTOR AND AGENCIES DIRECTLY
UNDER THE MANAGING DIRECTOR (See footnote 15)**

CHAPTER 10 - FIRE DEPARTMENT

Section 6-1001. Organization

Section 6-1002. Statement of Policy

Section 6-1003. Fire Chief, Qualifications

Section 6-1004. Powers, Duties and Functions

Section 6-1005. Fire Commission

Section 6-1006. Powers, Duties and Functions

Section 6-1007. Suspension; Removal; Appeals

(As of February 20, 2001)

Section 6-1001. Organization --

There shall be a fire department which shall consist of a fire chief, a fire commission, and the necessary staff. The fire chief shall be the administrative head of the fire department. *(Reso. 94-267)*

(As of February 20, 2001)

Section 6-1002. Statement of Policy --

It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of fire protection and prevention and emergency rescue which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the fire department shall be conducted in accordance with the following:

(a) Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.

(b) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.

(c) Appropriate training shall be provided to the maximum extent possible and practicable.

(Reso. 94-267)

(As of February 20, 2001)

Section 6-1003. Fire Chief, Qualifications --

The fire chief shall be appointed by the fire commission. The chief may be removed by the fire commission only after being given a written statement of the charges and a hearing before the commission. The chief shall have had a minimum of five years of training and experience in a fire department, at least three years of which shall have been in a responsible administrative capacity.

(Reso. 94-267, section and subsequent sections renumbered)

(As of February 20, 2001)

Section 6-1004. Powers, Duties and Functions --

The fire chief shall:

- (a) Perform fire fighting and rescue work in order to save lives and property from fires and from emergencies arising on the sea and hazardous terrain.
- (b) Train, equip, maintain and supervise a force of fire fighting and rescue personnel.
- (c) Monitor the construction and occupancy standards of buildings for the purposes of fire prevention.
- (d) Provide educational programs related to fire prevention.
- (e) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.
- (f) Perform such other duties as may be required by law.

(Reso. 94-267)

(As of February 20, 2001)

Section 6-1005. Fire Commission --

There shall be a fire commission which shall consist of five members. The commission may appoint such staff and engage consultants as necessary for the performance of its duties. The commission shall be governed by the provisions of Section 13-103 of this charter. *(Reso. 94-267)*

(As of February 20, 2001)

Section 6-1006. Powers, Duties and Functions --

The fire commission shall:

- (a) Adopt rules necessary for the conduct of its business and review rules for the administration of the department.
- (b) Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.
- (c) Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the fire chief.
- (d) Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
- (e) Review personnel actions within the department for conformance with the policies under Section 6-1002 of this charter.
- (f) Hear complaints of citizens concerning the department or its personnel and, if deemed necessary, make recommendations to the fire chief on appropriate corrective actions.
- (g) Submit an annual report to the mayor and the council on its activities.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (*Reso. 94-267; 1998 Reorganization*)

(*As of February 20, 2001*)

Section 6-1007. Suspension; Removal; Appeals --

1. Suspension or removal of any officer or employee shall be made pursuant to law and the rules of the department.

2. Appeals from personnel actions shall be in accordance with Section 6-1108 of this charter. (*Reso. 94-267; 1998 Reorganization*)

CHAPTER 16 - POLICE DEPARTMENT

Section 6-1601. Organization

Section 6-1602. Statement of Policy

Section 6-1603. Chief of Police

Section 6-1604. Powers, Duties and Functions

Section 6-1605. Police Commission

Section 6-1606. Powers, Duties and Functions

Section 6-1607. Suspension; Removal; Appeals

Section 6-1608. Political Activities Prohibited

(As of February 20, 2001)

Section 6-1601. Organization --

There shall be a police department which shall consist of a chief of police, a police commission and the necessary staff. The chief of police shall be the administrative head of the police department.

(As of February 20, 2001)

Section 6-1602. Statement of Policy --

It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of law enforcement which shall be based on due regard for the constitutional rights of all persons, which shall promote the highest possible degree of mutual respect between law enforcement officers and the people of the city and which shall provide for the expeditious apprehension of those who violate the law. In order that these purposes may be achieved, the police department shall be conducted in accordance with the following:

- (a) Standards of recruitment shall be designed to attract into the service persons with high degrees of education, intelligence and personal stability.
- (b) Promotions shall be based upon fair standards of merit and ability which shall include peacekeeping and law enforcement criteria.
- (c) Grievance procedures for the people and police officers of the city shall be based on due regard for their constitutional rights.

(As of February 20, 2001)

Section 6-1603. Chief of Police --

1. The chief of police shall be appointed by the police commission for a term of five years. The chief shall have had a minimum of five years of training and experience in law enforcement work, at least three years of which shall have been in a responsible administrative capacity. The chief shall not serve beyond the expiration of a term unless appointed again by the police commission. If desiring to

do so, the police commission may appoint an incumbent chief to a new term without first engaging in an applicant solicitation and selection process.

2. Before the expiration of a term to which appointed, the chief may be removed by the police commission only for cause. As prerequisites to removal, the chief shall be given a written statement of the charge and an opportunity for a hearing before the police commission.

3. Gross or continuous maladministration shall be a cause sufficient for removal of the chief. Before removing the chief for such cause, the commission shall give the chief written notice of and a reasonable period to cure the gross or continuous maladministration. If the gross or continuous maladministration is not cured to the commission's satisfaction within the period given, the commission may proceed to remove the chief in accordance with subsection 2.

This subsection shall not be construed as:

- (a) Making gross or continuous maladministration the only cause sufficient for removal of a chief; or
- (b) Requiring the commission to give the notice and opportunity for cure specified under this subsection when removing a chief for a cause other than gross or continuous maladministration.

(Reso. 83-357; 1998 General Election Charter Amendment Question No. 6(I))

(As of February 20, 2001)

Section 6-1604. Powers, Duties and Functions --

The chief of police shall:

(a) Be responsible for the preservation of the public peace; the protection of the rights of persons and property; the prevention of crime; the detection and arrest of offenders against the law and the enforcement and prevention of violations of all laws of the state and city ordinances and all rules and regulations made in accordance therewith.

(b) Train, equip, maintain and supervise the force of police officers.

(c) Serve process and notices both in civil and criminal proceedings.

(d) Promulgate rules and regulations necessary for the organization and internal administration of the department.

(e) Prepare and, when deemed necessary, update a five-year plan of goals and objectives for the police department. The chief shall submit the plan and each update to the commission for review and recommendations.

(f) Appoint the deputy chiefs of police. A deputy chief shall have the right of reinstatement to a previously occupied civil service position in the police department when (1) the deputy chief had held a permanent appointment to the position immediately before appointment to the office of deputy chief; and (2) the deputy chief's tenure in the office has not been terminated for cause. If exercising the right, the deputy chief shall be reinstated, without necessity of examination, to the former civil service position immediately following termination of tenure as deputy chief.

(g) Perform such other duties as may be required by this charter or by law.

(1998 General Election Charter Amendment Question No. 6(II))

(As of February 20, 2001)

Section 6-1605. Police Commission --

There shall be a police commission which shall consist of seven members. The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. The commission shall be governed by the provisions of Section 13-103 of this charter.

(As of February 20, 2001)

Section 6-1606. Powers, Duties and Functions --

The police commission shall:

- (a) Adopt such rules as it may consider necessary for the conduct of its business and review rules and regulations for the administration of the department.
- (b) Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.
- (c) Submit an annual report to the mayor and the city council.
- (d) Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police. A summary of the charges filed and their disposition shall be included in the annual report of the commission.
- (e) Review and, if deemed necessary, make recommendations on the five-year plan and any update of goals and objectives for the police department which is submitted by the chief of police. The commission shall not have the power to approve, modify, or reject the plan or any update.

(f) Compare at least annually the actual achievements of the police department against the goals and objectives in the five-year plan or latest update submitted by the chief.

(g) Evaluate at least annually the performance of duties by the chief of police.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. *(1998 General Election Charter Amendment Question No. 6(III))*

(As of February 20, 2001)

Section 6-1607. Suspension; Removal; Appeals --

1. Suspension or removal of any officer or employee shall be made pursuant to law and the rules and regulations of the department.

2. Appeals from personnel actions shall be in accordance with Section 6-1108 of this charter. *(1998 Reorganization)*

(As of February 20, 2001)

Section 6-1608. Political Activities Prohibited --

Except for exercising the right to vote, no member of the police department shall support, advocate or aid in the election or defeat of any candidate for public office. Any violation of this section of the charter by a member of the department shall be cause for summary dismissal from the department. 31

APPENDIX E

COUNTY OF HAWAII CHARTER EXCERPTS

**COUNTY
CHARTER**
COUNTY OF HAWAI‘I
2010

ARTICLE VII

EXECUTIVE BRANCH-DEPARTMENTS OR

AGENCIES UNDER COMMISSIONS.....

CHAPTER 2 - POLICE DEPARTMENT

Section 7-2.1. Organization 24

Section 7-2.2. Police Commission. 24

Section 7-2.3. Chief of Police and Deputy..... 25

Section 7-2.4. Powers, Duties, and Functions of the Chief of Police..... 25

Section 7-2.5. Dismissal, Suspension, Demotion, or Grievance. 26

Section 7-2.6. Administrative Supervision. 26

CHAPTER 2

POLICE DEPARTMENT

Section 7-2.1. Organization.

There shall be a police department consisting of a police commission, a chief of police, a deputy chief of police, and the necessary staff.

(1990, Prop. 3, sec. 1.)

Section 7-2.2. Police Commission.

(a) The police commission shall consist of nine members. One member shall be a resident of each council district. The members shall be appointed by the mayor and confirmed by the council in the manner prescribed in Section 13-4.

(b) Statement of policy. It is hereby declared to be the purpose of this chapter of the charter to establish in the county a system of law enforcement which shall be based on due regard for the constitutional rights of all persons, which shall promote the highest possible degree of mutual respect between law enforcement officers and the people of the county and which shall provide for the expeditious apprehension of those who violate the law. In order that these purposes may be achieved, the police department shall be operated in accordance with the following:

(1) Standards of recruitment shall be designed to attract into the service persons with high degrees of education, intelligence and personal stability.

25

(2) Promotions shall be based upon fair standards of merit and ability which shall include peacekeeping and law enforcement criteria.

(3) Grievance procedures for the people and police officers of the county shall be based on due regard for their constitutional rights.

(c) Powers and Duties. The police commission shall:

(1) Adopt such rules as it may consider necessary for the conduct of its business and the regulation of the matters committed to its charge and may review the rules and regulations of the department.

(2) Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor and managing director.

(3) Submit an annual report to the mayor, managing director and the council.

(4) Receive, consider, and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police. A summary of the charges filed and their

disposition shall be included in the annual report of the commission. There shall be budgeted sufficient funds in the annual budget of the police department for use by the police commission to fulfill the intent of this section.

(5) Advise the chief of police on police-community relations.

(6) Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the police chief and the managing director.

(7) Evaluate at least annually the performance of the police chief and submit a report to the mayor, managing director and the council.

(8) Hire personnel necessary to carry out its functions.

(9) Except for purposes of inquiry, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.

(1979, Prop. 13; 1990, Prop. 3, sec. 1; 1994, Ord. No. 93-68, sec. 1; 2000, Prop. 2, sec. 7; 2000, Prop. 8, sec. 1.)

Section 7-2-3. Chief of Police and Deputy.

The chief of police shall be appointed by the police commission and may be removed by the police commission at its sole discretion. Any motion for removal of the chief of police must contain a statement of reasons, and the commission shall not vote to remove the chief of police

unless the chief of police has been given an opportunity to respond to the statement of reasons at a hearing before the commission. The deputy shall be appointed by the chief of police with the confirmation of the police commission and may be removed by the chief of police with the approval of the commission, without cause being stated. The chief of police shall have had a minimum of five years of training and experience in law enforcement work, including at least three years in a responsible administrative capacity.

(1990, Prop. 3, sec. 1.)

Section 7-2.4. Powers, Duties, and Functions of the Chief of Police.

The chief of police shall be the administrative head of the police department and shall:

(a) Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the law, protection of the rights of persons and property, and enforcement and prevention of violations of all laws of the state and ordinances of the county and all regulations made in accordance therewith.

26

(b) Train, equip, maintain, and supervise the force of police officers and employees.

(c) Promulgate rules and regulations for the organization and administration of the

police force.

(d) Make periodic reports to the police commission about the activities of the police department and about actions taken on cases investigated by the police commission.

(e) Have such other powers, duties, and functions as may be required by the police commission or provided by law.

(1979, Prop. 13; 1990, Prop. 3, sec. 1.)

Section 7-2.5. Dismissal, Suspension, Demotion, or Grievance.

The dismissal, suspension, demotion, or grievance of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations.

(1990, Prop. 3, sec. 1.)

Section 7-2.6. Administrative Supervision.

The police department shall come under the general supervision and control of the mayor, through the managing director.

(1990, Prop. 3, sec. 1; 2000, Prop. 2, sec. 8.)

CHAPTER 4 - HAWAI'I FIRE DEPARTMENT

Section 7-4.1. Organization. 27

Section 7-4.2. Statement of Policy..... 27

Section 7-4.3. Fire Chief..... 28

Section 7-4.4. Powers, Duties and Functions..... 28

Section 7-4.5. Fire Commission. 28

Section 7-4.6 Powers, Duties and Functions..... 28

CHAPTER 4

HAWAI'I FIRE DEPARTMENT

Section 7-4.1. Organization.

There shall be a Hawai'i fire department consisting of a fire chief, a deputy fire chief, a fire commission and the necessary staff. The fire chief shall be the administrative head of the Hawai'i fire department.

(2010, Prop. 10, sec. 2 and sec. 3.)

Section 7-4.2. Statement of Policy.

It is hereby declared to be the purpose of this chapter to establish in the county a system of fire protection and prevention and emergency services which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the Hawai'i fire department shall be operated in accordance with the following:

- (a) Standards for recruitment shall be designed to attract into the department persons

with high degrees of education, intelligence and personal stability.

(b) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability and work performance.

28

(c) Appropriate training shall be provided to the maximum extent possible and practicable.

(2010, Prop. 10, sec. 2 and sec. 3.)

Section 7-4.3. Fire Chief.

(a) The fire chief shall be appointed by the fire commission and may be removed by the fire commission at its sole discretion. Any motion for removal of the fire chief must contain a statement of reasons, and the commission shall not vote to remove the fire chief unless the fire chief has been given an opportunity to respond to the statement of reasons at a hearing before the commission.

(b) The fire chief shall have had a minimum of five years of training and experience in fire control, including at least three years of experience in a responsible administrative capacity.

(2010, Prop. 10, sec. 2 and sec. 3; 2010, Prop. 15, sec. 3.)

Section 7-4.4. Powers, Duties and Functions.

The fire chief shall:

- (a) Perform firefighting and emergency services in order to save lives and property from fires and from emergencies arising on land, on the sea and hazardous terrain.
- (b) Train, equip, maintain and supervise a force of firefighting and emergency services personnel.
- (c) Monitor the construction and occupancy standards of buildings for the purposes of fire prevention and life safety.
- (d) Provide educational programs related to fire prevention and life safety.
- (e) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.
- (f) Have such other powers, duties and functions as may be required by ordinance.

(2010, Prop. 10, sec. 2 and sec. 3.)

Section 7-4.5. Fire Commission.

There shall be a fire commission, which shall consist of nine members. One member shall be a resident of each council district. The commission may appoint such staff and engage such consultants as necessary for the performance of its duties. The members shall be appointed

by the mayor and confirmed by the council in the manner prescribed in Section 13-4.

(2010, Prop. 10, sec. 2 and sec. 3.)

Section 7-4.6. Powers, Duties and Functions.

The fire commission shall:

- (a) Adopt rules necessary for the conduct of its business and review rules for the administration of the department.
 - (b) Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor, the managing director and the council.
 - (c) Review the department's operations, as deemed necessary, for the purposes of recommending improvements to the fire chief.
 - (d) Evaluate at least annually the performance of the fire chief and submit a report to the mayor, the managing director and the council.
- 29
- (e) Review personnel actions within the department for conformance with the policies under Section 7-4.2 of this charter.
 - (f) Hear complaints of citizens concerning the department or its personnel and, if necessary, make recommendations to the fire chief on appropriate corrective

actions.

(g) Submit an annual report to the mayor, managing director and the council on its

activities.

Except for purposes of inquiry or as otherwise provided in this charter, neither the

commission nor its members shall interfere in any way with the administrative affairs of the

department.

(2010, Prop. 10, sec. 2 and sec. 3.)

COUNTY OF KAUAI CHARTER EXCERPTS

COUNTY OF KAUAI CHARTER (2010 Codified Version)

ARTICLE XI POLICE DEPARTMENT

Section 11.01. Organization. There shall be a police department consisting of a police commission, a chief of police and the necessary staff. (Amended 1984)

Section 11.02. Police Commission. The police commission shall consist of seven members appointed by the mayor with the approval of the council. The commission shall hold regular public meetings at a designated time and place. (Amended 1984, 2006)

Section 11.03. General Powers of the Commission. The police commission shall:

A. Adopt such rules as it may consider necessary for the conduct of its business and the regulations of matters relating to

-21 -(11/10)

the goals and aims of the department.

B. Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.

C. Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police within ninety days.

D. Refer all matters relating to administration of the department to the chief of police.

E. Adopt such rules to regulate political activities of the members of the police department. (Amended 1984)

Section 11.04. Chief of Police. The chief of police shall be appointed by the police commission. He may be removed by the police commission only after being given a written statement of the charges against him and a hearing before the commission. The chief of police shall have had a minimum of five years of training and experience in law enforcement, at least three years of which shall be in a responsible, administrative capacity. He shall make such reports from time to time as the commission shall require, and shall annually make a report to the commission of the state of affairs and condition of the police department. (Amended 1984)

Section 11.05. Powers, Duties and Functions. The chief of police shall be the administrative head of the police department and shall:

A. Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the law, preservation of life, protection of the rights of persons and property, and enforcement and prevention or violations of law.

- B. Train, equip, maintain and supervise the force of police officers.
- C. Be responsible for traffic safety and traffic safety education.
- D. Serve process both in civil and criminal proceedings.
- E. Perform such other duties as may be required by law or as may be assigned by the commission.
- F. Promulgate rules and regulations necessary for the organization and internal administration of the department.(Amended 1984)

Section 11.06. Discipline and Removal. The dismissal, suspension, or demotion of any police officer or employee in the police department shall be under procedures set forth by civil service

-22 -(11/10)

laws and regulations. (Amended 1984)

Section 11.07 Appeals. Appeals from personnel actions shall be in accordance with the applicable collective bargaining agreement executed pursuant to the provisions presently contained in Chapters 76 and 89 or the Hawaii Revised Statutes. (Amended 1984)

ARTICLE XII FIRE DEPARTMENT

Section 12.01. Organization. There shall be a fire department consisting of a chief, a fire commission, and the necessary staff.(Amended 2006)

Section 12.02. Fire Chief. The fire chief shall be appointed and may be removed by the fire commission. He shall have had a minimum of five years of training and experience in fire prevention and control in private industry or government service, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980, 2006)

Section 12.03 Powers, Duties, and Functions. The fire chief shall be the administrative head of the fire department and shall:

A. Appoint, train, equip, supervise and discipline the personnel of the fire department in accordance with department rules and civil service regulations.

B. Provide an effective program and leadership for county-wide fire prevention, fire control and rescue operations.

C. Control, manage and account for all property in the custody of the fire department.

D. Execute such other powers and duties as may be prescribed by law or assigned by the mayor.

Section 12.04. Fire Commission. There shall be a fire commission consisting of seven members.

Commission members shall be appointed by the mayor and approved by the council and be otherwise governed by the provisions of section 23.02 of the charter.

Section 12.05. Powers, Duties, and Functions of the Fire Commission. The fire commission shall:

A. Adopt rules necessary for the conduct of its business and review rules for the administration of the department.

B. Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.

C. Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the fire chief.

-23 -(11/10)

D. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

E. Hear complaints of citizens concerning the department or its personnel and, if the commission deems necessary, make recommendations to the fire chief on appropriate corrective actions.

F. Submit an annual report to the mayor and the council regarding its activities.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.(Amended 2006)

08/29/11 - Item No. II.I.

Submitted by Dave Delton

HAKU MO'OLELO



EDWIN TANJI

Ever since the first Maui County Charter Commission was organized in 1964, there have been debates over whether the Maui County Council should comprise elective council districts. So far, the debates have decided against elected council dis-

tricts.

In all cases, the confounding issue has been the county's geographically distinct districts of Lanai and Molokai. With their small population relative to Maui's 144,444, Lanai (3,135) and Molokai (7,345) would not stand alone as representative elective districts on a nine-member County Council.

But some of the debate devolves into confusion if not duplicity over the history of the county's governmental system. Maui County has never had elective district representation in its governing body.

When the mayor-council form was approved in 1968, the charter did not provide for council members to "represent" a district. There were residency requirements to assure access to a council member in the outlying islands.

The original Board of Supervisors, created under a 1905 territorial law, was composed of five supervisors from each of five geographical districts, all elected by the county's entire electorate. Notably, at the time, Molokai qualified as a single district in terms of population and geography as did Hana, while Lanai was attached to Lahaina.

In that initial organization for county governance, voters also elected a county sheriff, five deputy sheriffs, a treasurer, an auditor, a county attorney and the county clerk.

Over the decades, there were modifications. In 1911, the chairman of the County Board of Supervisors was elected by voters rather than by board members. In 1929, the board was increased to seven members — six supervisors and the county chairman. There still was no district election of supervisors.

Statehood and the state constitution prompted Hawaii's Neighbor Island counties to re-

form their governance with what was perceived to be a more modern system of mayor and council — an elected chief executive officer to manage county departments, guided by an elected policymaking council. In contrast, each member of the Board of Supervisors presumed to have authority over county departments, confusing oversight.

A 1966 Charter Commission dealt with the concept of elected representative districts but recognized the inequity of geographical separation of Lanai and Molokai and opted to assure access without elective representation. Its charter set up a nine-member County Council, on which two members were to be residents of Lanai and Molokai.

The issue for the residents of the outlying districts is access to an elected representative — not representation. Lanai and Molokai residents accept that the resident council members from their islands are not necessarily the choice of residents of the outlying islands. But at least there was a council member they could call or confront on issues at home in Lanai City or Kaunakakai.

Lack of access is the basis for the challenge

on Lanai to Sol Kaho'ohalahala's residency and questions about whether Riki Hokama really maintains a residence on the island. Whether they voted for Goro Hokama, Lanai voters knew there would be days when they could find Goro Hokama to express their concerns to him face to face, if only to vent over decisions from which he would not back down. Riki Hokama and Kaho'ohalahala both grew up on Lanai, but neither has been as open to hometown access once they were elected to office.

The 1976 Charter Commission confused the issue with residency requirements for five geographic areas of Maui while maintaining at-large voting for all nine seats, creating an illusion of elective districts without the substance.

The same issue applies in 2011. For residents of the outlying, small-population districts, access matters.

■ *Edwin Tanji is a former city editor of The Maui News. He can be reached at hakumoolelo@earthlink.net. "Haku Mo'olelo," "writing stories," is about stories that are being written or have been written. It appears every Friday.*

8/19/11

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawai'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@mauicounty.gov

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

August 29, 2011

Josh Stone, Chair
Maui Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

Dear Chair Stone:

SUBJECT: ADMINISTRATION'S REVISED PROPOSED AMENDMENTS TO THE MAUI COUNTY CHARTER

The administration respectfully submits its "**REVISED** Proposed Amendments to the 2003 Revised Charter of Maui County" (see, Attachment "A")¹.

Specifically, we are withdrawing Proposed Amendment No. 2, relating to establishing an Office of the County Auditor. The County of Maui already has an internal auditor with the Department of Finance, and therefore, based on our research, we do not believe the additional cost of creating an "Office of the Auditor" is justified.

While this proposed amendment was one of the numerous proposals that we researched and considered, it was not our intent to submit it for Charter Commission consideration. Apparently, during our review and vetting process this particular proposal was inadvertently included with the submitted proposals.

We apologize for any inconvenience this may have caused you. Please contact David Ching at 270-7210 or via email at david.ching@co.maui.hi.us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Arakawa".

ALAN ARAKAWA
MAYOR

082911 - Item No. II.F. pgs 1-32
(Submitted on 8/26/11)

¹ Attachment "A" - Revised Proposed Amendments to the 2003 Revised Charter of Maui County

Attachment "B" - Memorandum dated June 27, 2011 from John D. Kim, Prosecuting Attorney to Keith A. Regan, Managing Director

Attachment "C" - Memorandum dated June 28, 2011 from Lance T. Hiromoto, Director Department of Personnel Services to Alan M. Arakawa, Mayor

Attachment "D" - Revised Table of Proposed Amendments

RECEIVED
CORPORATION COUNSEL
2011 AUG 26 PM 1:45

ATTACHMENT "A"

The administration respectfully submits the following Revised Proposed Amendments to the 2003 Revised Charter of Maui County:

Added material is underscored; deleted material bracketed with strike-through.

PROPOSAL NO. 1

ARTICLE 3 – COUNTY COUNCIL SECTION 3-2. ELECTION OF COUNCIL AND TERM OF OFFICE.

Proposed Amendment:

Change terms of office from a two (2) year term to a four (4) year term. Stagger the terms.

- Highest four (4) vote getters at the next election will serve four (4) years.
- Bottom five (5) vote getters will serve two (2) years.
- This would start the rotation of terms.
- Not to serve more than two (2) consecutive full terms
- Not to serve more than a total of twelve (12) years or three (3) full terms.

Reasons:

- There is a cost savings to the County as members would have 4 years to focus upon and complete initiatives instead of having to concentrate on re-election every other year. Efficiency is also promoted as each time there's a new councilmember elected, a lot of time and resources is required to get the person up to speed.
- Throughout the U.S. most municipal boards, supervisors, councils, boards and legislative branches are elected for a four year term.
- Staggering of terms would provide consistency in the overall operation if new members are elected. Consistency equals efficiency equals savings.
- Term limits provide opportunity for more residents to serve on the council. This prevents individuals from making it a career and provides opportunity for others to bring new ideas and novel ways to make government more efficient.
- Additional comments maybe submitted at, or prior to, any hearing on this matter.

PROPOSAL NO. 2

ARTICLE 8 – COUNTY DEPARTMENTS CHAPTER 7 – DEPARTMENT OF FIRE & PUBLIC SAFETY

Proposed Amendment:

Section 8-7.4. Powers, Duties, and Functions. The fire chief shall:

1. Be the administrative head of the department.
2. Provide and perform fire fighting, rescue, including ocean safety and rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel, including any reserve fire fighting and emergency rescue personal.
5. Investigate the cause, origin and circumstances of fires.
6. Adopt rules relating to the protection of persons and property against fires.
7. Monitor the standards for construction and occupancy of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
8. Exercise such other powers and duties as may be assigned by the commission or as may be provided by law. (Amended 2002, 1992, 1984)

Reasons:

Moving Ocean Safety and Rescue under the Fire Department:

- The administration intends on moving the Ocean Safety Section from the Department of Parks & Recreation to the Department of Fire & Public Safety. The current Charter language allows the move, but additional language would clarify who has authority over the Ocean Safety Office.
- Currently there is a statewide movement to move Ocean Safety to the Fire Department. Maui County is the last county to have ocean safety under the Department of Parks & Recreation.
- Kauai and Hawaii Counties have moved Ocean Safety to the fire department. The City & County of Honolulu currently has Ocean Safety under the Department of Public Safety, but is now in the process of moving Ocean Safety to Fire Department.
- Nationwide, beach/ocean rescue operations fall under the Fire Department.
- The Fire Department is better equipped to provide the required quality of training and service when it comes to Ocean Safety and Ocean Rescue.
- Additional comments maybe submitted at, or prior to, any hearing on this matter.

Reserves:

- Across the country, fire departments are utilizing volunteer/reserves when needed. Such reserves are highly trained and are required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid). Such reserve officers could be utilized during emergencies (tsunami or brush fires).

PROPOSAL NO. 3

ARTICLE 8 – COUNTY DEPARTMENTS CHAPTER 12 - DEPARTMENT OF POLICE

Proposed Amendment:

Section 8-12.4. Duties and Functions of the Chief of Police. The chief of police shall:

1. Be the administrative head of the department of police.
2. Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the law, protection of rights of persons and property, and enforcement and prevention of violations of all laws of the State and ordinances of the county and all rules made in accordance therewith.
3. Be responsible for traffic safety and traffic safety education.
4. Train, equip, maintain and supervise the force of police officers, **a force of reserve police officers**, and employees of the department.
5. Have such other powers and duties as may be assigned by the mayor or as may be provided by law.

Reasons:

- A reserve police force can cut government costs while maintaining or improving public safety. Across the country police departments are utilizing volunteer police officers who are highly trained and required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid).
- Such reserve officers could be utilized during potential catastrophic emergencies (tsunami or flooding) or other events throughout the year needing additional assistance for crowd and traffic control (parades, county fair, fireworks shows, concerts, First Friday in Wailuku, Halloween on Front Street in Lahaina) which can be hard upon the police department because unusually large numbers of officers are needed for a short period of time. Reserve officers can allow communities and police departments to have the assistance of volunteers without the huge expense of hiring an extra 40 police officers just for one or two events per month.
- Allowing residents to volunteer and participate in County issues will instill a sense of pride and a responsibility to keep Maui County safe.
- Additional comments maybe submitted at, or prior to, any hearing on this matter.

PROPOSAL NO. 4

CHAPTER 16—COST OF GOVERNMENT COMMISSION
SECTION 8-16.3. TERM OF COMMISSION.

Proposed Amendment:

Members of the Cost of Government Commission shall serve for staggered terms of five (5) years. A member may be reappointed, but shall not serve on the Commission for more than a total of ten (10) years.

Reasons:

- Currently, the Cost of Government members serve for a 2 year term with the possibility of being reappointed for another 2 year term.
- The change would make the terms for members of the Cost of Government Commission the same as the Salary Commission.
- Additional comments maybe submitted at, or prior to, any hearing on this matter.

PROPOSAL NO. 5

ARTICLE 9—FINANCIAL PROCEDURES

Proposed Amendment:

Go from an annual budget to biennial budget. Biennial budget to begin in a non-election year.

Reasons:

- Current preparation of the budget is time consuming for both the executive and legislative branches of government.
- When the County Council is deliberating the budget, all other matters – with a few exceptions - are put on hold.
- Not having to prepare an annual budget would allow staff in both the legislative and executive branches to concentrate on operations and have time to implement initiatives to make the County more efficient.
- Additional comments maybe submitted at, or prior to, any hearing on this matter.

PROPOSAL NO. 6

ARTICLE 10 - CODE OF ETHICS

Proposed Amendment:

Section 10-3. Financial Disclosure.

1. All elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file with the board of ethics and the county clerk financial disclosure statements **as required by provisions of this Article, the Maui County Code and Maui County Rules of the Board of Ethics** in a form or forms to be prescribed by the board of ethics. Such financial disclosure statements shall be open to public inspection.

Reasons:

- **Section 10-3 (1)** requires all elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file financial disclosure statements. Unlike the Code and Rules of the Board of Ethics, the Charter does not provide specifics.
- **Section 10-5** provides penalties for “any person who violates the provisions of **this Article . . .**” Penalties for violations of Charter provisions are limited, unless it requires disclosure and reports of the more specific requirements provided by the Rules of the Board of Ethics.

PROPOSAL NO. 7

ARTICLE 13 – GENERAL PROVISIONS SECTION 13-2, SUBSECTION 17

Proposed Amendment:

Within thirty (30) days [~~of the occurrence of a vacancy~~] upon the date of informing the Council of a vacancy the Mayor shall submit to the Council the name of the Mayor's nominee to fill the vacancy...

Reasons:

- The current language is too broad and does not clearly define what point the Mayor's thirty (30) day clock to fill the vacancy begins.
- The proposed language provides more specificity and removes any doubt when the thirty (30) day clock begins for the Mayor to submit nominations to the Council.

PROPOSAL NO. 8

CHAPTER 15—DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Proposed Amendment:

CHAPTER 15 – DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENTAL MANAGEMENT

Section 8-15.3. Powers, Duties, and Functions. The Director of Environmental Management shall:

1. Supervise waste management and control of pollution, including recycling, litter control, and protection of the unique beauty of Maui County.
2. Plan, design, build, operate, and maintain solid waste collection, processing and disposal systems, including recycling programs.
3. Plan, design, build, operate, and maintain the county's sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems, and related programs.
4. **Guide efforts to maximize opportunities for natural resource protection, conservation and restoration.**
5. **Coordinate and develop policies and initiatives that integrate sustainable resource development, support local food and energy production, and establish partnerships with agencies and organizations to implement programs, policies, and projects that promote sustainability.**
6. Perform such other duties and functions as shall be assigned by the Mayor.

Reasons:

- Pursuant to a ballot measure in 2006, the Department of Public Works and Environmental Management was separated into two departments. At the time, Councilmembers supporting the proposal noted that the department's responsibility was broad and its budget was about \$111.6 million annually, or about 25 percent of the county budget. Dividing the department would allow administrators and workers to focus on their tasks and permit more planning in the future.
- The new Department of Environmental Management now is comprised of two divisions:
 - Solid Waste Division (also includes Office of Recycling)
 - Wastewater Reclamation Division
- There exists the bureaucratic structure to support a third division, possibly named: **Division of Sustainability and Environmental Protection**
- The Charter does not specifically delineate divisions and offices within departments. Rather, it describes the Powers, Duties, and Functions of the department director. To support such a new division and focus, we could propose amending the section to add language describing new functions to be performed.
- There is nothing precluding the Mayor and Budget Director from proposing to create this new division right now. Renaming the Department makes it more

significant and noticeable than just changing language in the Powers, and Functions section of the chapter.

- These are forward-thinking measures (sustainability, resource protection) that will only become more important to us in the future. Forward-thinking communities (Portland, Seattle, CA cities) already have Offices of Sustainability in their bureaucratic structure. We would be wise to do likewise, and make a strong sales pitch for the benefits of Green Economy initiatives, which keep our dollars here in the islands and create jobs and business opportunities.

PROPOSAL NO. 9

Proposed Amendment:

Amend Article 8 County Departments, Chapter 1 Department of Management, Section 8-1.1. Organization. to read: "There shall be a department of management consisting of a managing director, **deputy managing director** and the necessary staff."

Reasons:

- Additional comments will be submitted at, or prior to, any hearing on this matter.

PROPOSAL NO. 10

Proposed Amendments:

Amend Article 8 County Departments, Chapter 3 Department of the Prosecuting Attorney, Section 8-3.3. Powers, Duties and Functions. 1. to read: Appoint such deputy prosecuting attorneys, and necessary staff, including investigators who shall have all the powers and privileges of a police officer of the county, as shall be authorized by the council. Deputy prosecuting attorneys shall be from civil service and shall serve at the pleasure of the prosecuting attorney.

Insert new part to Article 8 County Departments, Chapter 3 Department of the Prosecuting Attorney, Section 8-3.3. Powers, Duties and Functions. 8. to read: Prosecute offenses against the laws of the State under the authority of the attorney general of the State.

Reasons:

See, Attachment "B" (Memorandum dated June 27, 2011 from John D. Kim, Prosecuting Attorney to Keith A. Regan, Managing Director)

PROPOSAL NO. 11

ARTICLE 8 COUNTY DEPARTMENTS

Proposed Amendments:

Amend Article 8 County Departments, Chapter 9 Department of the Personnel Services, Section 8-9.4. Civil Service Commission. 1. to read: Adopt rules having the force and effect of law to carry out [the] applicable provisions of the civil service laws [of the State.] as prescribed by the Hawaii Revised Statutes.

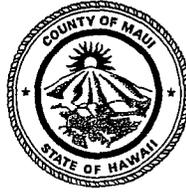
Insert new part to Article 8 County Departments, Chapter 9 Department of the Personnel Services, Section 8-9.3. Powers, Duties and Functions. 4. to read: Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the State.

Reasons:

See, Attachment "C" (Memorandum dated June 28, 2011 from Lance T. Hiromoto, Director Department of Personnel Services to Alan M. Arakawa, Mayor)

Attachment "B"

Memorandum dated June 27, 2011 from John D. Kim,
Prosecuting Attorney to Keith A. Regan, Managing Director



RECEIVED

2011 JUN 29 AM 10:01

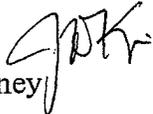
OFFICE OF THE MAYOR

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7927

June 27, 2011

MEMORANDUM:

TO: Keith A. Regan
Managing Director

FROM: John D. Kim 
Prosecuting Attorney

RE: Proposed Charter Amendments

We have proposed two amendments to the charter regarding the powers, duties and functions of the office. They are highlighted and underlined, please see the enclosure. We have also enclosed copies of charters of other counties with the appropriate sections outlining the powers, duties and functions of the other prosecuting attorneys.

The first amendment comes from similar language contained in the Charter of the City and County of Honolulu. It give police powers to the investigators in our office. This amendment is not a priority and I would note that there is a provision in our Maui County Code which empowers our investigators with police powers. This amendment would supply a basis for that ordinance.

The second amendment is more of a priority as every county in the state contains this language. That is to say, we as Maui County Prosecutors prosecute crimes under the authority granted by the Attorney General of the State of Hawaii. This proposed amendment is more than a housekeeping matter that clearly define the authority of the Office of the Prosecuting Attorney, it is an explicit declaration of the authority to prosecute offenses committed against the laws of the State of Hawaii.

JDK:kym

Enclosures

County of Maui

CHAPTER 3

DEPARTMENT OF THE PROSECUTING ATTORNEY

Section 8-3.1. Organization. There shall be a department of the prosecuting attorney consisting of a prosecuting attorney and the necessary staff.

Section 8-3.2. Prosecuting Attorney. The prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least three years.
(Amended 1992)

Section 8-3.3. Powers, Duties and Functions. The prosecuting attorney shall:

1. Appoint such deputy prosecuting attorneys, and necessary staff, ~~including investigators who shall have all the powers and privileges of a police officer of the county,~~ as shall be authorized by the council. Deputy prosecuting attorneys shall be exempt from civil service and shall serve at the pleasure of the prosecuting attorney.
2. Attend all courts in the county and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the State and the ordinances and rules of the county.
3. Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed.
4. Institute proceedings, or direct the chief of police to do so, before a judge of a court of competent jurisdiction for the arrest of persons charged with or reasonably suspected of public offenses when the prosecuting attorney has information that any such offenses have been committed, and for that purpose take charge of criminal cases before a judge of a court of competent jurisdiction, either in person or by a deputy or by such other prosecuting officer as the prosecuting attorney shall designate.
5. Draw all indictments and attend before the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before a judge or courts of record under the direction of the prosecuting attorney.
6. Prosecute administrative violations of the liquor laws before the board of liquor adjudication.
7. Perform such other duties and functions as shall be assigned by the mayor.
8. ~~Prosecute offenses against the laws of the State under the authority of the attorney general of the State.~~

Section 8-104. Powers, Duties and Functions³² --

The prosecuting attorney shall:

- (a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.³³
- (b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.³⁴
- (c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.
- (d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration;³⁵ and investigate all matters which may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.³⁶
(*Reso. 78-279, 83-357 and 84-197*)

³² Subpoena powers of prosecuting attorney are a matter of statewide concern and are limited to those authorized in HRS Section 28-2.5. Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d 1228 (1988).

³³ Prosecuting attorney is not authorized by law to bring a civil action to abate a nuisance. Marsland v. Pang, 5 Haw. App. 463, 701 P.2d 175 (1985).

³⁴ The phrase "under the authority of the attorney general" is a recognition of the attorney general's status as the State's chief law enforcement officer and cannot sensibly be construed as a reservation of power to usurp, at the attorney general's sole discretion, the functions of the public prosecutor. The attorney general may supersede the public prosecutor in the event of serious dereliction of duty to act or in the unusual case of serious impropriety should the prosecutor choose to act. Amemiya v. Sapienza, 63 Haw. 424, 629 P.2d 1126 (1981).

³⁵ The term "attend before and give advice to the grand jury" merely describes a general function and does not affect the manner in which the grand jury investigatory and indictment process is to be conducted, or require instruction on such items as the availability of defenses. State v. Freedle, 1 Haw. App. 396, 620 P.2d 740 (1980). See also State v. Bell, 60 Haw. 241, 589 P.2d 517 (1978).

³⁶ Private counsel retained by prosecuting attorney may be supervised by a duly appointed deputy. Okuda v. Ching, 71 Haw. 140, 785 P.2d 943 (1990).

(*As of February 20, 2001*)

Section 8-105. Staff --

1. The prosecuting attorney may appoint deputies, administrative or executive assistants, and other necessary staff, including investigators who shall have all the powers and privileges of a police officer of the city.
2. At the request of the prosecuting attorney, one or more officers of the police department may be

detailed by the chief of police for the purpose of doing necessary investigative work, and such police officers shall continue to serve on such a detail during the pleasure of the prosecuting attorney and as long as the necessity of such detail exists.

3. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney.
(Reso. 78-279 and 84-197; 1992 General Election Charter Amendment Question No. 12)

Hawaii County

Section 9-3. Powers, Duties and Functions.

(a) The prosecuting attorney shall:

(1) Attend all courts in the county and conduct on behalf of the people all prosecutions therein for offenses against the laws of the State and the ordinances and regulations of the county.

(2) Prosecute offenses against the laws of the State under the authority of the attorney general of the State.

(3) Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the county.

(4) Institute proceedings, or direct the chief of police to do so, before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district judges, either in person or by a deputy or by such other prosecuting officer as the prosecuting attorney shall designate.

(5) Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before district judges or courts of record under the direction of the prosecuting attorney.

(6) Investigate all matters which may properly come before the prosecuting attorney.

(b) The prosecuting attorney may:

(1) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, the council, the mayor, the Hawai'i police department and other criminal justice agencies, or the general public, as the prosecuting attorney deems appropriate.

(2) Provide crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups.

(3) Develop public education programs through various broadcast or print media, to provide the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid being victims of crime.

(4) Receive and expend financial grants, donations and other funds as permitted by the provisions of the revised charter, county ordinances and applicable county, state, and federal financial and budget policies for crime research, prevention, and education.

(1979, Prop. 13; 1990, Prop. 14, sec. 1; 2010, Prop. 13, sec 1.)

Section 9-4. Staff.

The prosecuting attorney may appoint deputies and other necessary staff. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney.

County of Kauai

Section 9A.03. Powers, Duties and Functions. The prosecuting attorney shall:

- A. Attend all courts in the county and conduct on behalf of the people all prosecutions therein for offenses against the laws of the State and the ordinances and regulations of the county.
- B. Prosecute offenses against the laws of the State under the authority of the Attorney General of the State.
- C. Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the county.
- D. Institute proceedings, or direct the chief of police to do so, before the district judge for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district judge, either in person or by a deputy or by such other prosecuting officer as he shall designate.
- E. Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before all courts of the State under the direction on the prosecuting attorney. (Amended 1972)

Section 9A.04. Staff. The prosecuting attorney may appoint deputies, investigators, and other necessary staff. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney. (Amended 1972)

Attachment "C"

Memorandum dated June 28, 2011 from Lance T. Hiromoto, Director
Department of Personnel Services to Alan M. Arakawa, Mayor



RECEIVED

2011 JUN 28 PM 12: 20

COUNTY OF MAUI
DEPARTMENT OF PERSONNEL SERVICES

200 S. HIGH STREET • WAILUKU, MAUI, HAWAII 96793-2155
PHONE (808) 270-7850 • FAX (808) 270-7969

Website: www.mauicounty.gov/departments/Personnel • Email: personnel.services@mauicounty.gov

June 28, 2011

To: Alan M. Arakawa
Mayor

From:  Lance T. Hiromoto, Director
Department of Personnel Services

Subject: Proposal to Amend the Maui County Charter

We are in receipt of the Maui County Charter Commission's request for proposed charter amendments and Managing Director Keith Regan's request that any proposed amendments be submitted to you for review and possible inclusion in the administration's overall proposal. In response to these requests, we submit two housekeeping amendments prompted by changes to the civil service law in Chapter 76 of the Hawaii Revised Statutes, and one general suggestion to align charter language among several departments.

Background:

Hawaii Revised Statutes (HRS) §76-17 authorizes the director of human resources to prescribe rules and regulations to carry out the civil service laws of the state which shall have the force and effect of law.

Prior to July 1, 2002, HRS §76-17 vested this authority only to the state Director of Personnel Services. The equivalent rule-making authority for the counties was vested to the county civil service commissions pursuant to HRS §76-78.

Effective July 1, 2002, HRS §76-78 was repealed by Act 253 SLH 2000. This act also amended HRS §76-17 and HRS §76-11 to include the various counties' personnel directors:

§76-17 Rules; policies, standards, and procedures. (a) In conformity with chapter 91, the director shall prescribe rules to carry out this chapter which shall have the force and effect of law. The rules may include any matter not

inconsistent with law concerning the establishment and maintenance of a system of personnel management based on the merit principle, including but not limited to matters set forth in this chapter, and may be amended or repealed in like manner as the same were adopted. The rules shall be in conformity with principles of good public administration.

§76-11 Definitions "Director" means the head of the central personnel agency for a jurisdiction regardless of title, whether it is the director of human resources development, director of personnel, director of personnel services, or personnel director.

Taken together, these changes removed the county civil service commissions' rule-making authority and vested it to the county personnel directors.

The same legislative act also amended HRS §76-47(c) to provide for the creation of a Merit Appeals Board in each jurisdiction, and provided such boards limited rule-making authority:

§76-47 Merit appeals boards; appointment, authority, procedures.

.....
(c) The merit appeals board shall adopt rules of practice and procedure consistent with section 76-14 and in accordance with chapter 91, except that, in the case of the judiciary and the Hawaii health systems corporation, the adoption, amendment, or repeal of rules shall be subject to the approval of their respective chief executives. The rules shall recognize that the merit appeals board shall sit as an appellate body and that matters of policy, methodology, and administration are left for determination by the director. The rules may provide for the sharing of specific expenses among the parties that are directly incurred as a result of an appeal as the merit appeals board deems would be equitable and appropriate, including but not limited to expenses for transcription costs or for services, including traveling and per diem costs, provided by persons other than the board members or permanent staff of the board. Official business of the merit appeals board shall be conducted in

meetings open to the public, except as provided in chapter 92.

As the Civil Service Commission functions as the Merit Appeals Board for the County of Maui, the Commission retains some rule-making authority for matters within its purview.

Proposal:

In recognition of the changes outlined above, we propose that the charter be amended as follows:

1) Limit the scope of rule making authority of the Civil Service Commission to those areas prescribed by the Hawaii Revised Statutes, by amending Section 8-9.4 of the charter as follows:

Section 8-9.4. Civil Service Commission. The civil service commission shall consist of five members appointed by the mayor with the approval of the council.

The civil service commission shall:

1. Adopt rules having the force and effect of law to carry out [the] applicable provisions of the civil service laws [of the State] as prescribed by the Hawaii Revised Statutes.

2) Grant rule making authority to the Director of Personnel Services as prescribed by the Hawaii Revised Statutes, by amending section 8-9.3 of the charter to read as follows:

Section 8-9.3. Powers, Duties and Functions. The director of personnel services shall:

1. Be the administrative head of the department of personnel services.

2. Be responsible for the personnel management program of the county.

3. Perform such duties as are established under the civil service laws of the State.

4. Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the State.

Honorable Alan M. Arakawa
Page 4
June 28, 2011

These proposed changes were discussed with the Civil Service Commission at their meeting of June 1, 2011. The Commission had no objections to the proposed changes.

The general suggestion that we would have concerns the language in the charter regarding departments whose director is appointed by a commission, such as Personnel Services, Police, Fire, and Liquor Control. The charter provides varying budget involvement for these commissions. For example, the Civil Service Commission is responsible to "Request an annual appropriation for the operation of the department," while the Fire and Public Safety Commission is responsible to "Review and submit to the mayor the department's request for an annual appropriation for the operation of the department." We suggest that the language be revised to be consistent among such departments, but defer to the Budget Office as to the language that would best suit their needs.

We hope these proposed changes meet with your approval, and thank you for your continuing support and understanding.

dju

Attachment “D”

Revised Table of Proposed Amendments

Rationale for Charter Proposal #7:

Provides more specific guidelines for the Mayor and Council as to when the 30 day time period starts to have a vacancy to be filled by the Mayor. Current language too broad and not specific. Prevents debate between Mayor and Council as to when the 30 day clock begins for the Mayor.

For example, in 2008. Mayor Tavares requested the Council to allow her to fill twelve board and commission vacancies past her required deadline to Council. The Council relinquished their authority given to them by the Charter and allowed her to fill the vacancies.

In 2011, Mayor Arakawa was late in filling two vacant board and commission positions. The Council chose to exercise their authority to fill those positions as prescribed by the Charter.

Why did the Council relinquish their authority to Mayor Tavares and not to Mayor Arakawa?

The proposed charter amendment language provides a more specific 30 day guideline for the Mayor and Council to follow and will prevent putting future Council's in a difficult position of having to consider abdicating their authority which could be perceived as political.

No.	Article	Proposed Amendment	Reasons
1	<p>Article 3, Section 3-2. Election of Council and Term of Office</p>	<p>Change terms of office from a 2 year term to a 4 year term. Stagger the terms.</p> <ul style="list-style-type: none"> • Highest 4 vote getters at the next election will serve 4 years. • Bottom 5 vote getters will serve 2 years. • This would start the rotation of terms. • Not to serve more than 2 consecutive full terms • Not to serve more than a total of 12 years or 3 full terms. 	<p style="text-align: center;">REVISED (08/29/2011)</p> <ul style="list-style-type: none"> • There is a cost savings to the County as members would have 4 years to focus upon and complete initiatives instead of having to concentrate of re-election every other year. Efficiency is also an issue as each time there's a new councilmember elected, a lot of time and resources is required to get the person up to speed. • Throughout the U.S. most municipal boards, supervisors, councils, boards and legislative branches are elected for a four year term. • Staggering of terms would provide consistency in the overall operation if new members are elected. Consistency equals efficiency equals savings. • Term limits provide opportunity for more residents to serve on the council. This prevents individuals from making it a career and provides opportunity for others to bring new ideas and novel ways to make government more efficient.
2	<p>Article 8, Chapter 7, Department of Fire & Public Safety</p>	<p>Section 8-7.4. Powers, Duties, and Functions. The fire chief shall: * * * * 2. Provide and perform fire fighting, rescue, including ocean safety and rescue, and first-responder emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same. * * * * 4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel, including any reserve fire fighting and emergency rescue personnel.</p>	<p><u>Moving Ocean Safety and Rescue under the Fire Department:</u></p> <ul style="list-style-type: none"> • The administration intends on moving the Ocean Safety Section from the Department of Parks & Recreation to the Department of Fire & Public Safety. The current Charter language allows the move, but additional language would clarify who has authority over the Ocean Safety Office. • Currently there is a statewide movement to move Ocean Safety to the Fire Department. Maui County is the last county to have ocean safety under the Department of Parks and Recreation. • Kauai and Hawaii Counties have moved Ocean Safety to the fire department. The City & County of Honolulu currently has Ocean Safety under the Department of Public Safety, but is now in the process of moving Ocean Safety to Fire Department. • Nationwide, beach/ocean rescue operations fall under the guise of the Fire Department. • The Fire Department is better equipped to provide the required quality of training and service when it comes to Ocean Safety and Ocean Rescue. <p><u>Reserves:</u></p> <ul style="list-style-type: none"> • A reserve force of the Fire Department can cut government costs while maintaining or improving public safety. • Across the U.S., fire departments are utilizing volunteer or reserves. Such reserves are highly trained and are required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid). Such reserve officers could be utilized during emergencies (tsunami or brush fires).
3	<p>Article 8, Chapter 12, Department of Police</p>	<p>Section 8-12.4. Duties and Functions of the Chief of Police. The chief of police shall: * * * * 1. Be the administrative head of the department of police. * * * * 4. Train, equip, maintain and supervise the force of police</p>	<ul style="list-style-type: none"> • A reserve police force can cut government costs while maintaining or improving public safety. Across the country police departments are utilizing volunteer police officers who are highly trained and required to go through the same or similar hiring process and training as regular officers. The benefit – they are volunteers (not paid). • Reserve officers could be utilized during emergencies (tsunami) or other events needing additional assistance for crowd and traffic control (parades, county fair, concerts, Halloween on Front Street) where unusually large numbers of officers

		officers, <u>a force of reserve police officers</u> , and employees of the department.	are needed for a short period of time. <ul style="list-style-type: none"> • Allowing residents to volunteer and participate in County issues will instill a sense of pride and a responsibility to keep Maui County safe.
4	Chapter 16, Cost of Government Commission	Section 8-16.3. Members of the Cost of Government Commission shall serve for staggered terms of five (5) years. A member may be reappointed, but shall not serve on the Commission for more than a total of ten (10) years.	<ul style="list-style-type: none"> • Currently the Cost of Government members serve for a 2 year term with the possibility of being reappointed for another 2 year term. • The change would make the terms of the Cost of Government Commission the same as the Salary Commission.
5	Article 9, Financial Procedures	Go from an annual budget to biennial budget. Biennial budget to begin in a non-election year.	<ul style="list-style-type: none"> • Current preparation of the budget is time consuming for both the executive and legislative branches of government. • When the County Council is deliberating the budget, all other matters – with a few exceptions – are put on hold. • Not having to prepare an annual budget would allow staff in both the legislative and executive branches to concentrate on operations and have time to implement initiatives to make the County more efficient.
6	Article 10, Code of Ethics	Section 10-3. Financial Disclosure. 1. All elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file financial disclosure statements. Unlike the Code and Rules of the Board of Ethics, the Charter does not provide specifics.	Section 10-3 (1) requires all elected county officers, all candidates for elective county office, and such appointed officers or other employees as the council shall designate by ordinance shall file financial disclosure statements. Unlike the Code and Rules of the Board of Ethics, the Charter does not provide specifics.
7	Article 13, Section 13-2, Subsection 17	Section 10-5 provides penalties for “any person who violates the provisions of this Article . . .” Penalties for violations of Charter provisions are limited, unless it requires disclosure and reports of the more specific requirements provided by the Rules of the Board of Ethics.	Section 10-5 provides penalties for “any person who violates the provisions of this Article . . .” Penalties for violations of Charter provisions are limited, unless it requires disclosure and reports of the more specific requirements provided by the Rules of the Board of Ethics.
8	Chapter 15, Dept of Environmental Management	“Within thirty (30) days [of the occurrence of a vacancy] upon the date of informing the Council of a vacancy the Mayor shall submit to the Council the name of the Mayor’s nominee to fill the vacancy...”	<ul style="list-style-type: none"> • The current language is too broad and does not clearly define what point the Mayor’s 30 day clock to fill the vacancy begins. • The proposed language removes any doubt when the 30 day clock begins for the Mayor to submit his/her nominations to the Council.
8	Chapter 15, Dept of Environmental Management	Amend title of department to: “Department of <u>Sustainability and Environmental Management</u> ” Section 8-15.3. Powers, Duties, and Functions. The Director of Environmental Management shall: 4. Guide efforts to maximize opportunities for	<ul style="list-style-type: none"> • Pursuant to a ballot measure in 2006, the Department of Public Works & Environmental Management was separated into two departments. At the time, it was noted that the department’s responsibility was broad and its budget about \$111.6 million annually, or about 25 percent of the county budget. Dividing the department would allow administrators and workers to focus on their tasks and permit more planning in the future. • There exists the structure to support a third division, possibly named: Division of Sustainability & Environmental Protection

		<p><u>natural resource protection, conservation and restoration.</u></p> <p>5. <u>Coordinate and develop policies and initiatives that integrate sustainable resource development, support local food and energy production, and establish partnerships with agencies and organizations to implement programs, policies, and projects that promote sustainability.</u></p>	<ul style="list-style-type: none"> • The Charter does not specifically delineate divisions and offices within departments. Rather, it describes the Powers, Duties, and Functions of the department director. To support such a new division and focus, we could propose amending the section to add language describing new functions to be performed. • These are forward-thinking measures (sustainability, resource protection) that will only become more important to us in the future. Forward-thinking communities (Portland, Seattle, CA cities) already have Offices of Sustainability in their bureaucratic structure.
9	Article 8, Ch. 1 Section 8-1.1. Organization	<p>“There shall be a department of management consisting of a managing director, <u>deputy managing director</u> and the necessary staff.”</p>	
10	Article 8, Chapter 3 Department of the Prosecuting Attorney	<p>Section 8-3.3. Powers, Duties and Functions. 1. “Appoint such deputy prosecuting attorneys, and necessary staff, <u>including investigators who shall have all the powers and privileges of a police officer of the county,</u> as shall be authorized by the council. Deputy prosecuting attorneys shall be from civil service and shall serve at the pleasure of the prosecuting attorney.”</p> <p>Insert : 8. <u>Prosecute offenses against the laws of the State under the authority of the attorney general of the State.</u></p>	See, Attachment “B” (Memorandum dated June 27, 2011 from John D. Kim, Prosecuting Attorney to Keith A. Regan, Managing Director)
11	Article 8, Chapter 9 Department of the Personnel Services	<p>Section 8-9.4. Civil Service Commission. “1. Adopt rules having the force and effect of law to carry out [the applicable provisions of the civil service laws [of the State.] as prescribed by the Hawaii Revised Statutes.”</p> <p>Insert: Section 8-9.3. Powers, Duties and Functions. 4. “<u>Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the State.</u>”</p>	See, Attachment “C” (Memorandum dated June 28, 2011 from Lance T. Hiromoto, Director Department of Personnel Services to Alan M. Arakawa, Mayor)