

Maui County Charter Commission
C/O Corporation Counsel
200 S. High Street
Wailuku, HI 96793

RECEIVED
CORPORATION COUNSEL
2011 OCT 18 PM 3:01

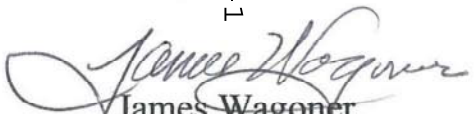
October 16, 2011

Attn: Joshua Stone, Chairman

Dear Sir:

One cannot travel the roads and streets of Maui without encountering vacancy upon vacancy of shops and stores that once occupied those shuttered spaces. Those empty offices of darkness encapsulate the dreams, happiness and fortune of so many of Maui's finest people. Most of us understand that every economy has its up and downs. With this understanding however, we also expect the county government to reduce, and be miserly, with its spending. In today's world, every dime spent should be held to a standard of absolute necessity.

I therefore tell you that there is nothing standard or necessary which calls for Maui County to establish a "Division of Sustainability and Environmental Protection." The purpose and value of such a division is questionable and the timing is simply dreadful. Thank you for your consideration.


James Wagoner
P. O. Box 600
Kula, Hawaii 96790
808-878-6622
Jwagoner2@gmail.com

Charter Commission - Charter Commission Meeting Announcement

From: "EditorMolokai Advertiser-News George Peabody" <MolokaiMAN@BasicISP.net>
To: <charter.commission@mauicounty.gov>, <sherrybroder@sherrybroder.com>, <jonmvandyke@gmail.com>
Date: 10/19/2011 11:46 AM
Subject: Charter Commission Meeting Announcement
CC: <MolokaiMAN@basicisp.net>, <michelle.esteban@co.maui.hi.us>, <editor@mauiweekly.com>, <lahnews@maui.net>, <info@manaoradio.com>, <editor@mauitime.com>, <editor@themolokaidispatch.com>, <rod.antone@co.maui.hi.us>, <ryan.piros@mauicounty.gov>

Dear Sherry Broder 531-1411 and Charter Commissioners:

Why has the proposal to have Mayor appoint Police Chief and delete the Police Commission so we have some accountability for MPD?

Put that back on the table and approve it immediately because the Mayor has no control of MPD, and the sycophants on the Police Commission have no control over MPD, and We The People are victims of bad policy and criminal behavior by MPD Chiefs and their "just following orders" minions. MPD chiefs conspire with crooked and complicit judges violating our lives and liberty and the Constitution for the United States of America and the Hawaii constitution every day, and they do it with IMPUNITY and NO accountability and SHOPO is a terrorist organization supporting this ORGANIZED CRIME.

Charter Proposal: Mayor appoints MPD Chief and Council controls funding; MPD must be dedicated to protecting and enforcing Constitutional law to protect society from criminals who take our lives, liberty, and property without accountability or regard for the Law of the Land; ALL police records public, including police I.D. and no immunity or coverup Internal Affairs for criminal behavior by police; No deals for SHOPO to negate transparency and accountability; No deals for loot sharing with DEA, FBI, TSA, Obamanazis. Right now, MPD is a rogue criminal organization and the Mayor and Council and Commission and We The People are helpless victims at their whim, and our Charter must prohibit and punish it.

Put MPD Chief appointed by Mayor on the ballot for our Maui Charter!

George Peabody editor for Molokai Advertiser-News since 1984

<http://www.MolokaiAdvertiserNews.com> weekly with archives

=====

PRESS RELEASE

The Maui County Charter Commission will continue making preliminary decisions on what proposed charter amendments should be placed before the public at its next meeting, Monday Oct. 24, Commission Chair Josh Stone announced.

The general topic areas the commission is reviewing include: the Council elective process; Council approval of department heads; the Mayor approving the appointment of the Fire Chief; changing the County's budget process to a 2-year cycle; changing the rules for initiatives, referendums and recalls; and creating a position of county auditor.

At its last meeting the Commission made tentative decisions to propose: the Council's term of office increasing

from two to four-year terms; returning to a partisan election system; and to leave the governance of the Department of Water Supply under the Mayor and County Council. Ultimately, the Commission will make its proposals for changing the Charter to the voters in the 2012 election.

"Our goal is to reach tentative approval of these issues before December so that we can take these proposals to public hearing countywide and hear the residents' opinions on these complex and diverse issues. Our plan is to work on each of these issues over the next two months, hopefully approving the less complex or divisive first and saving the hardest ones for last," said Commission Chair Josh Stone.

The Charter Commission is an 11-member board appointed by the Mayor and approved by the Maui County Council to conduct a review of the County Charter. The charter is the equivalent to the County's constitution, the blueprint that sets the structure of county government. The Commission may make recommendations to amend the charter to the voters in the next election.

The commission will also take testimony from the public on any subject related to the County Charter.

The Oct. 24 meeting will be held from 10 a.m. to 4 p.m. at the Planning Commission Conference Room in the county complex on High Street in Wailuku. For more information about the meeting, call 270-7742. email: charter.commission@mauicounty.gov and website: www.mauicounty.gov see top left of cover page.

Charter Commission - [Possible SPAM] Testimony - in support of certain charter amendmens

From: "tairak001@hawaii.rr.com" <tairak001@hawaii.rr.com>
To: <charter.commission@mauicounty.gov>
Date: 10/20/2011 10:52 AM
Subject: [Possible SPAM] Testimony - in support of certain charter amendmens

Mr. Chair and members of the charter commission:

I wish to add my testimony if favor of the following:

1. **District representation** - I understand the charter commission's predicament . How can we assure that each populated island have representation in the council while maintaining equality among the voters? Currently the residency requirement for a council seat has a disparate population from which a candidate can be drawn. This means that one council member must be drawn from a population of about 3,000 in the case of Lanai and 7,000 in the case of Molokai and 30,000 in the case of Wailuku. This is the unfair. Moreover the candidate may lose in the resident district and win countywide. Is that appropriate representation? Additionally, the incumbent has greater advantage in name recognition and in raising money for the election. A challenger would find it difficult to raise funds and run a very costly campaign countywide. Finally, the U.S. Supreme Court in REYNOLDS V. SIMS, ruled that a state legislature must allocate seats on a population basis so that the voting power of each voter be as equal as possible to that of any other voter. In that ruling, Chief Justice Earl Warren said "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." Does the current charter allocate each council seat on a population basis? While the Supreme Court ruling may not be applicable to the Council, I feel we should comply with its intent I believe nine districts with approximately equal number of voters or population is the best answer. With district representation term limitations may not be needed.
2. **Party affiliation** – Any information the public receives about the candidate would be helpful. Knowing the candidate's party affiliation would reveal his/her philosophical leanings regarding governance – liberal vs conservative. This would be helpful to the voters.
3. **Legislative Auditor** – I strongly urge the commission establish an office of legislative auditor. Maui county is the only government in this state that does not have a legislative auditor. Such an office will be a great asset to the council in carrying out its responsibility of determining if the administration is carrying out its mission in the most effective manner. Moreover, questions asked by the auditor would require a response and made public.
4. **Transparency** – Report s to the council from/via the administration should be available to the public. Reports should be made available in public libraries and on the county website. Even though the charter requires an annual report and other periodic reports informing the public as to county policies, program

111411 - Item No. II.C. pgs 1-2

and operations – I have to see any of it published. State of the county is not an annual report.

Thank you for receiving my testimony

Kenneth Taira

389 Ulumalu Rd.

Haiku, HI

Ph – 572-9379

FREE Animations for your email – by IncrediMail!

Click Here!



Charter Commission - Comments on Council District elections

From: Greg <gastratton@gmail.com>
To: <charter.commission@mauicounty.gov>
Date: 10/23/2011 10:11 PM
Subject: Comments on Council District elections

The Charter Commission should take action to implement representative democracy for Maui. The current system has many problems that must be corrected.

The first is the legality of the current approach. Maui is a diverse County, with the demographics varying widely among our different communities. The 'At Large' elections therefore discriminate against minorities by diluting their voting strength, and thus violates their Civil Rights. The residency rules can't correct that, the winners may have to live in a district, but it is still the majority of the County electorate that determines the winner. Many times the winner is not the choice of the residents of the district. The Courts are requiring real district elections in many communities around the nation as the solution to this problem.

The residency rules themselves are legally suspect. The system appears as an attempt to disguise an unconstitutional location based representation system by pretending its a legal one person - one vote system. Our votes may be the same, but our opportunity to run for office is dependent on the location of our residence. The courts will see right through this masquerade.

Beyond the legal problems, there are also many fairness issues that can be raised. The residency requirement has been severely abused. We had a councilman who didn't live in the district serve years on the Council! More importantly, having a representative who simply lives in your area is not the same as having someone from your area that you and your neighbors elected. Once elected, who do they represent - you or the people who elected them?

While the whole county votes, the candidates must live an arbitrary set of district boundaries. Boundaries were set based on old rules, and are not required to be adjusted to reflect any changes in population. Moreover, running Countywide is very expensive, and increases the impact of big supporters to all the districts. Money rules in these elections, and incumbents are very hard to beat.

So this is our opportunity to correct this problem. For most of us, there won't be a big change except for the right to elect our own councilman. But there will be some new districts that will elect new people. Currently the boundaries of one House District - less than 26000 people - includes the residence areas of 4 Councilman. The other 128,000 of us have the other 5 on the Council living in our neighborhoods. With fair, equal council districts of approximately 17 thousand, there will be two new council districts, one on the east and one on the west, to better represent all the citizens of our County. I would suggest that Molokai and Lanai should be put into one district so that they will be able to control the agenda for that districts representative.

The time for this has come.

Greg Stratton
 Kihei

891-0745

Charter Commission - County Manager

From: Bruce Erfer <khillside@hotmail.com>
To: <charter.commission@mauicounty.gov>
Date: 10/25/2011 9:11 AM
Subject: County Manager
Attachments: Cty manager [v6.0].cwk (WP).pdf

Charter Commissioners:

The attached was my view point published in the Maui News several years ago regarding need for a "County Manager." It is very pertinent and I would appreciate your review of it.

Thank you.

Bruce Erfer

11411
Item No. II.E. pgs 1-4

A NEED TO CHANGE OUR COUNTY FORM OF GOVERNANCE

The January 2, 2004, Maui News Editorial stated, "Perhaps one of the biggest obstacles to effective, efficient government is time...It is all too easy to spend those hours, days and months ricocheting from one crisis to another, leaving essential long-term plans for sometime later. That is exactly why Maui's major problems exist today." The editorial describes a disease; its cure is a governmental transplant. Maui County needs to adopt a council-manager form of local government combining the strong political leadership of elected council members, with the strong managerial and planning experience of an appointed county manager. This is hardly a radical proposal, as 59% of U.S. cities with populations over 25,000 have adopted this council-manager form of governance. It is the most widely used form of municipality management in the U.S. It is used in San Diego, Austin, Des Moines, Long Beach, Palo Alto--the list goes on and on.

My proposal is not an indictment nor criticism of the current Mayor, nor of any of his predecessors. It is not meant to demean nor disparage any current or past employee of Maui County or any elected official. But, my proposal is an indictment of our current system. A city or county manager is a career professional, with the educational and professional training and experience that translates into an effective and efficient use of our taxes, leaving political matters to the elected officials. The mayor's essential position would continue to exist, but would not be responsible for the implementation of the policies of the elected Council. The manager, appointed (hired) by the Council, would have the responsibility for "running" the County: preparing the budget, hiring and firing personnel, directing day to day operations, recommending policies or programs to the Council, and providing the Council with information to aid decision making. The elected mayor would be given the time and freedom to pursue the issues that presumably got him/her elected. This "system" would help ensure that a mayor's vision is given the focus and energy necessary for implementation.

We cannot afford to continue the wasteful transitions from one mayoral administration to the next. With each new mayor comes a somewhat random firing and hiring of department heads. Persons deemed qualified and competent by last week's mayor are considered unqualified and incompetent by this week's mayor--at extreme cost to the taxpayers. Departmental policies/programs of last week are not considered worthy of implementation this week. How can you plan long-term when your planning horizon is only until the next election? How can you make the really tough fiscal decisions when you need to be reelected? This wholesale transition of administration is ridiculously wasteful in terms of time, money and training, reeks of political favoritism, and simply ensures that millions of dollars are flushed down the toilet with every mayoral change. And what of the County

employee who witnesses her progressive and competent boss being fired so the new mayor can appoint "his person" in that position.

We, as taxpayers, deserve, and should demand to have the County employ the most competent and effective managers and department heads. The current system, by its nature, does not allow for this. Politics has no place in the workplace; it wastes time, money, and people, and we should demand better. When you need a professional to file your taxes, or to invest your savings, or to put a new roof on your house--you hire someone with specific knowledge and experience. Shouldn't this also be the criterion for the hiring of the person who directs the day-to-day operations of our County government?

Long term municipal planning is an art; it's a juggling act that beckons for public and fiscal support. It is, or should be, an investment in our future. Politics tends to muddle planning, and rarely supports the tough--but necessary, difficult--but often unpopular, decisions that must be made.

Similarly, politics confuses issues involving enforcement, which should not be administered via elected officials. Enforcement and politics don't mix. Why were affordable housing agreements with past developers not enforced? Why have we allowed our property tax situation to become untenable?

Whether you like it or not, Maui has grown up--in many ways. It's tough to run an island (and in our case three of them). The place for politics is within the County Council. The day-to-day operations of our government should be in the hands of a trained professional, not an elected official. Now, if we can only pay this trained professional enough so he/she can afford to live here.

An example: most municipalities in warm weather climates routinely “seal” their asphalt roadways with an oil and crushed rock process, that lengthens the life of the road, saving money in the long run and keeping the road in good shape in the short run. It is an intelligent fiscal investment for a community to make. We do not “seal” our roads on Maui, because we do not have the money! And we don’t have the money because we’re spending it on repaving that wouldn’t be necessary if the roads had been sealed. I don’t dare ask if we change the oil in County vehicles. When an elected Mayor is faced with a fiscal decision of whether to allocate monies to seal roads or alternatively to support a popular human services issue, the decision may not be popular or even understood. But in the long run a decision today to seal roads will allow us to put more future money into the needs beckoned by the populace. You rarely hear a mayor pushing to have the County change the oil in its vehicles more often! These examples are very basic, but illustrate the fiscal and long term planning analyses that a manager must make for a municipality, while leaving politics to the politicians.

corpcoun - Input on the Mayor's Proposal

From: LauraMarie Herrmann <lauramarie@antartists.com>
To: "corpcoun@mauicounty.gov" <corpcoun@mauicounty.gov>
Date: 10/25/2011 1:17 PM
Subject: Input on the Mayor's Proposal

Aloha -

I have a few remarks about the impact the Mayor's proposal to add the function of sustainability to the Department of Environmental Management may have on the work of the MEDB. Please forward.

Aloha Frank DeRego --

Please consider the impact that creating a Division of Sustainability within the Department of Environmental Management would have on the work of the Maui Economic Development Board. It would enhance the function of the Maui Economic Development Board by providing it with the infrastructure it will need to pursue and implement funding opportunities in the dawning era of sustainability. For example, 33 million dollars is being made available to fund sustainable projects through NIFA this year alone. Were the MEDB in a position to consult *any* official office of sustainability actually within the count charter when seeking funding and grant opportunities for the emerging sustainability economy, the MEDB would be competitive in a way it will not if such an office doesn't exist. Once we have the infrastructure to support sustainability within the architecture of our county government (and currently we do not) the MEDB will be set free to pursue new (and quite well endowed) funding and job building opportunities. The proposal by Mayor Arakawa to add the function of sustainability to the Department of Environmental Management is, in my opinion, the best most expedient way to realize this objective. It's really a rather brilliant way to efficiently address a detrimental, structural flaw in our system which is already negatively impacting our county's revenue stream, and I hope you will consider supporting his proposal to create this division on behalf of the community and the work the MEDB does but could be better supported in doing also. -- best regards,
 LM Herrmann *resident of Haiku, HI*

To: Maui County Charter Commission
From: Sally Raisbeck, 427 Liholiho St Wailuku Hi 96793
808-244-9604 sallyraisbeck@hawaii.rr.com
Date: 10/27/11

2011 NOV -1 AM 10: 23

Subject: Request to add information to list of active proposals

The list of active proposals is clear, and very helpful to those wanting to understand what the commission is doing. Additional information would add to its usefulness.

If each active proposal had a line added, giving the dates when commission meetings involving that proposal were held, it would allow those people interested in a particular proposal to refer to the minutes of those meetings.

This would be similar to the practice in Hawaii Revised Statutes, of listing concisely the dates of original passage and amendments to a given law.

As an example, if one were interested in Active Proposal #3.13 - Proposal to Return to a Closed Primary System, a line would be added saying (6/29/11, 7/5/11, 10/3/11) if those were the dates on which the commission had considered that proposal.

Thank you for your consideration of this request.

Sincerely,

Sally Raisbeck

Sally Raisbeck

11/4/11
- Item
No. 11.1.1
pg 1 - 1

Charter Commission - [Possible SPAM] DISTRICT VOTING

From: Sally Raisbeck <sallyraisbeck@hawaii.rr.com>
To: maui news <letters@mauinews.com>
Date: 10/28/2011 9:49 AM
Subject: [Possible SPAM] DISTRICT VOTING
CC: Charter Commission <Charter.Commission@mauicounty.gov>

To the Editor:

DISTRICT VOTING

The Charter Commission is currently weeding out proposals for charter changes. I hope they keep District Voting, aka one-man-one-vote, as an Active Proposal. The voters, not the commission, should decide whether Maui wants to have true representation on the Council.

When this Commission was appointed, I thought them intelligent and knowledgeable. I hoped they would give District Voting a fair shake. Unfortunately I think the Commission was stacked against District Voting.

The members from Lanai, Molokai, and Hana are expectably opposed to District Voting. What I did not expect was that most of the others are also dedicated to the status quo. That system is so illogical that new voters have difficulty understanding it. Describing the present system takes a lengthy explanation of political history and why it was necessary to "cleverly" circumvent constitutional requirements of one-man-one-vote.

Suppose we start from scratch: "Here is a group of 3000 residents, and they get a Council member. Here is another group of 7000 residents, and they get a Council member. Here is another group of 28,000 residents, and they get a Council member." And so it continues. Would we think that fair?

The most obvious practical effect of our present system is that incumbents have an unbeatable advantage over challengers. And if they take a 2-year vacation after 10 years, they can have a lifetime job as a Maui Council member. That makes them professional politicians. Auwe.

Write the Charter Commission now, if you want to keep District Voting alive.

Sally Raisbeck, Wailuku

427 Liholiho Street Wailuku 96793 808-244-9604 sallyraisbeck@hawaii.rr.com

From: "J. Piller" <balconyboy@juno.com>
To: <charter.commission@co.maui.hi.us>
Date: 11/3/2011 5:03 PM
Subject: district voting

Once again I emphatically urge you to place the question of district voting on the ballot for the citizens of Maui Co. to decide this issue. From the coverage of this issue I have seen in the Maui News it is obvious that you, as a group, are not in step with the community at large on this issue. This is no longer the "good ol' plantation days" where a few decide what is best for the the rest of us.

The ideal of 1 man = 1 vote should be made available to the citizenship.
Put this issue to a vote of the people.

Jerry Piller
Kihei

Doctors' #1 Skin Cream
Learn Doctors' #1 Wrinkle Cream Formula for Just \$5
<http://thirdpartyoffers.juno.com/TGL3131/4eb355e6c996310b3095st06vuc>

11411 - Item No. I.I.I. pg 1-1

**Sherry P. Broder
Jon M. Van Dyke**

Attorneys at Law
Seven Waterfront Plaza, Suite 400
500 Ala Moana Blvd.
Honolulu, Hawai'i 96813
Tel: 808-531-1411
sherrybroder@sherrybroder.com
jonmvandyke@gmail.com

November 4, 2011

Chair Joshua A. Stone and Charter Commission Members
Maui County Charter Commission
200 High Street, 3rd Floor
Wailuku, HI 96793

Dear Chair Stone and Charter Commission Members:

This memorandum responds to a request from a commissioner regarding the applicability of *Brown v. Thompson*, 462 U.S. 835 (1983), to the manner in which districts could be structured for the Maui County Council.

The challenges presented by the apportionment of Maui's County Council result from the population distribution in the County. Estimates for 2010 put the population of the Island of Maui at 140,339, Molokai at 7,276 and Lanai at 3,735 – for a total County population of 151,350. If nine districts contained equal population, each district would contain about 16,817 residents. If Lanai were to be given its own separate district, the population of that district would thus be 77% below the “ideal” population level of 16,817, and if Molokai were given its own district, the population of that district would be 56% below the ideal mean. If Lanai and Molokai were combined into one single district, its population would be 34% below the ideal mean for Maui's nine districts.

The constitutional requirements for apportionment of governmental bodies was established in *Reynolds v. Sims*, 377 U.S. 533 (1964), where the U.S. Supreme Court ruled that the Equal Protection Clause of the U.S. Constitution requires that each person's vote have an equal weight. This decision established the “one-person/one-vote” requirement, whereby apportionment of voting districts should be based solely on population. The Court explicitly rejected the idea that rural or less-populated areas could receive enhanced voting clout simply because of their geographic size or uniqueness. In his majority opinion, Chief Justice Earl Warren explained that: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." The Court did, however, also rule that some deviations from strict mathematical equality would be acceptable, and said in *Reynolds* that legitimate state interests include (1) maintaining contiguous and compact districts; (2) sustaining core districts, communities of interests, and the overall integrity of political subdivisions; and (3) preserving natural and historical boundary lines. Maintaining the integrity of political

subdivisions has been viewed as important so that each subdivision will have at least one legislator who represents the entire political subdivision to contact for assistance rather than being forced to work through several legislators, each of whom represents only part of the political subdivision. The Court cautioned in *Reynolds*, however, that if “as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired.” *Id.* at 581.

In *Brown v. Thomson*, the U.S. Supreme Court ruled by a 5-4 majority that Wyoming's allocation to each of Wyoming's counties of at least one representative in its state House of Representatives was not unconstitutional even though one of the resulting districts in the state's House of Representatives fell 60% below the number of residents that would have resulted from a completely equal apportionment. This disparity was challenged by voters of the more populated districts, and the Court's majority rejected this claim, saying that the impact on these voters was “de minimis.” 462 U.S. at 846-47.

The majority in *Brown* reaffirmed that any apportionment plan with disparities larger than 10% “creates a prima facie case of discrimination and therefore must be justified by the State.” *Id.* at 842-43. The Court's majority nonetheless upheld the Wyoming plan despite the substantial deviation, emphasizing the “character” of the consideration that led to the disparity, *id.* at 845, and noting that Wyoming was seeking to maintain the integrity of its political subdivision, through a system that “has been followed by decades” without any “built-in bias tending to favor particular political interests or geographic areas.” *Id.* at 844. It is not clear whether this result would have been the same had the challenge been to the apportionment plan as a whole, rather than as an attack on the seat given to the smallest county based on the impact on voters in more populated counties, but in any event the provision in the Wyoming Constitution requiring that each county have representation in the state's House of Representatives was declared unconstitutional by a federal judge in 1991. *Gorin v. Karpan*, 775 F.Supp. 1430 (D.Wyo. 1991). The court recognized that “many Wyoming counties possess a sense of identity, a sense of neighborhood and a sense of community interests,” but stressed nonetheless that “the bottom line is that citizens and not governmental units or regional interests are entitled to elect lawmakers.” *Id.* at 1442. In striking down the Wyoming constitutional provision, the judge observed that:

The size and extent of population inequality throughout the election districts for both houses of the legislature, and the fact that the 1991 Act takes significant representation away from some in order to give to others, make it readily apparent that the magnitude of intrusion on the individual voting rights of Wyoming citizens under the present Act is significant, indeed. More accurately, the magnitude of intrusion, as evidenced by the degree of malapportionment, is overwhelming.

Id. at 1441. The apportionment based on the one-county-one-representative requirement “constitutes an invidious discrimination and violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.” *Id.* at 1445.

The conclusion that *Brown v. Thomson* is something of an anomaly is reinforced in a decision rendered six years after *Brown v. Thomson*, where the U.S. Supreme Court reaffirmed that it would not accept dramatic disparities based on geography or other concerns. In *Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989), the Court explicitly ruled unconstitutional an apportionment scheme with a disparity in the 75-78% range. This disparity resulted from a scheme whereby the presidents of each borough had a seat on the Board of Estimate, with equal voting power, meaning that the president of Staten Island (with a population of 352,151) had the same voting clout as the president of Brooklyn (with a population of 2,230,936). Citing *Brown v. Thomson*, the Court said that “[w]e know of no case of ours that has indicated that a deviation of some 78% could ever be justified,” rejecting the argument that voting districts could be justified based on “natural and political boundaries as well as local interests.” *Id.* at 702. “At the very least, the local government seeking to support such a difference between electoral districts would bear a very difficult burden...” *Id.* The Court explained that a citizen would be “shortchanged...if he may vote for one representative and the voters in another district half the size also elect one representative.” *Id.* at 698.

The Hawaii Supreme Court cited *Brown v. Thomson* several years ago, in *Citizens for Equitable & Responsible Govt. v. County of Hawaii*, 108 Hawaii 318, 120 P.3d 217 (2005), emphasizing the language in *Brown*, 462 U.S. at 842-43, that said that any deviation that is more than 10% “creates a prima facie case of discrimination and therefore must be justified by the state.” The Hawaii Supreme Court noted that the district apportionment adopted by Hawaii County deviated by 10.89% from the ideal mean, but permitted this deviation because it was “only slightly over the acceptable 10% variation” and resulted from the Reapportionment Commission’s use of “total” population rather than “resident” population, which was a rational policy designed “to achieve inclusiveness and equal representation.”

In 1995, the Hawaii Supreme Court distinguished *Brown v. Thomson* in a case where Waipahu had been divided into two council districts by noting that “unlike... Wyoming, Honolulu does not have a historical policy of using community boundaries for redistricting.” *Kawamoto v. Okata*, 75 Hawaii 463, 475, 868 P.2d 1183 (1994).

In *Travis v. King*, 552 F.Supp. 554 (D.Hawaii 1982), the federal court concluded that the State of Hawaii’s goal of providing “meaningful representation in the two state houses” to Hawaii’s “four basic island units” based on “the unique geographic and economic insularity” of Hawaii’s islands “along with the state’s simplified and centralized form of government” was “rational,” *id.* at 560, but it nonetheless ruled that the apportionment scheme that had a maximum deviation of 43% for the state Senate was facially unconstitutional and that the plan’s 16% maximum deviation for the state House was unconstitutional because it did not reasonably advance the state’s rational goal.

Because *Brown v. Thomson* was based on the goal of maintaining the integrity of political subdivisions, it is not clear whether it has direct applicability to the Maui County situation, where no formal political subdivisions exist. Insofar as guaranteed separate representation as separate districts for Lana’i and Moloka’i is a departure from current or historic practice, or if disparities are simply too large to be justified by such historic practices, it might be subject to an

equal protection challenge. For example, the court in *Travis v. King* rejected a districting plan for the Hawaii state senate with a 43.18% total deviation even though the state invoked the need for separate representation of the state's island units as a justification for the disparity. 552 F. Supp. at 560, 562-63. *See also, e.g., Bd. of Estimate of N.Y. City*, 489 U.S. at 702-03 (concluding that “accommodat[ion] [of] natural and political boundaries as well as local interests” was insufficient to justify a 78% disparity in representation of New York City's five boroughs on a municipal board).

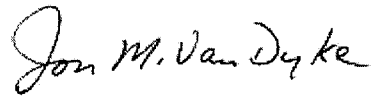
One very recent lower-court case examined a geographical situation somewhat similar to that of Maui County, and it may offer some guidance. This recent decision is *Toerner v. Cameron Parish Police Jury*, 2011 BL 210342 (W.D. La. Aug. 15, 2011), which involved the districts within sparsely-populated Cameron Parish in southwestern Louisiana. This parish contains extensive marshes, three major lakes, and the Calcasieu River, and travel within the parish is difficult. No bridge crosses the Calcasieu River, and if the ferry becomes inoperative because of weather conditions, it becomes difficult to get from one part of the parish to another. Flooding can also block roads. The federal district court upheld deviations among the seven districts in the parish that included one district that exceeded the mathematical ideal by 23.1% and two others that were between 20% and 21% below the mathematical idea because the plan “respects communities of interest, and preserves the core of prior judicial districts.” *Id.* at *12.

Certainly the geography of Maui County presents some of the same challenges regarding easy movement as are presented by Cameron Parish in Louisiana, so it might well be possible to argue that these geographical realities should justify a larger than usual deviation from the ideal mean of 16,817 residents in each districts. But no recent case appears to have permitted a deviation as large as the one that would be created if Lanai and Molokai were each to be given their own districts in a nine-member County Council. It could certainly be argued that Lanai and Molokai have their own unique “communities of interest” to support having their own council seat, and the deviation in *Brown v. Thomson* itself was in the range of the deviation that would be presented by such an approach. But subsequent cases have required governments to justify any deviation that is more than 10%, and the Hawaii Supreme Court has also used that same standard.

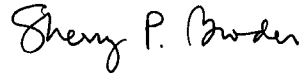
To summarize, the federal courts have held that the Equal Protection Clause of the Fourteenth Amendment requires states to ““make an honest and good faith effort to construct districts [for legislative representatives] as nearly of equal population as is practicable.”” *Larios v. Cox*, 300 F. Supp. 2d 1320, 1339 (N.D. Ga. 2004) (quoting *Reynolds v. Sims*, 377 U.S. 533, 556 (1964)), *aff'd*, *Cox v. Larios*, 542 U.S. 947 (2004). It would appear, therefore, that a districting scheme that gave Lanai and Molokai their own districts, and then allocated the other seven districts to the Island of Maui, dividing them on the basis of equal population, would face a very steep uphill battle in any judicial challenge. A plan that allocated one district to Lanai and Molokai together, and then divided the other eight based on population among the residents of the Island of Maui, might have a better chance of being found to be constitutional, but would face a heavy burden of justification.

Please do not hesitate to contact us should you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Jon M. Van Dyke".

Jon M. Van Dyke, Esq.

A handwritten signature in cursive script that reads "Sherry P. Broder".

Sherry P. Broder, Esq.

cc: Lisa Kahuhu, Supervising Law Technician
Edward S. Kushi, Jr., Deputy Corporation Counsel

**Sherry P. Broder
Jon M. Van Dyke**

Attorneys at Law
Seven Waterfront Plaza, Suite 400
500 Ala Moana Blvd.
Honolulu, Hawai'i 96813
Tel: 808-531-1411
sherrybroder@sherrybroder.com
jonmvandyke@gmail.com

November 7, 2011

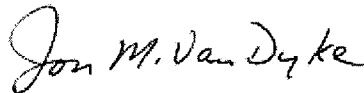
Chair Joshua A. Stone and Charter Commission Members
Maui County Charter Commission
200 High Street, 3rd Floor
Wailuku, HI 96793

Dear Chair Stone and Charter Commission Members:

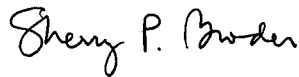
This letter is written to follow up on the work of the Charter Commissioners at the October 24, 2011 meeting. There were no new proposals, no new requests for legal information and/or opinion requiring a written response, and four new possible charter amendments, one of which is being submitted as separately, which is the creation of the independent office of auditor. Attached to this letter are the following possible charter amendments.

- Proposal to Adopt New Name for Department of Fire and Public Safety Department and Commission
- Proposal to Assign Ocean Safety and Rescue to the Fire And Public Safety Department
- Proposal to Adopt Biennial Budget Process

Sincerely yours,



Jon M. Van Dyke, Esq.



Sherry P. Broder, Esq.

cc: Lisa Kahuhu, Supervising Law Technician
Edward S. Kushi, Jr., Deputy Corporation Counsel

**ACTIVE PROPOSALS FOR SUBSTANTIVE CHANGES TO THE
MAUI COUNTY CHARTER**

November 7, 2011

Sherry P. Broder, Esq. and Jon M. Van Dyke, Esq.

Article 3, County Council

Subject Matter – District Elections – Discussed but additional information requested

#3.2 - Amended Proposal to have a general discussion on proposals of Single Member Districts

#3.3 – Amended Proposal to have as part of a general discussion on Single Member Districts – Single Member District Proposal with Lanai and Molokai in Separate Districts

Amend Section 3-1, Composition, to change the composition of the Maui County Council to Nine Single Member Districts but without placing Lanai and Molokai in the same council district

#3.4 - Amended Proposal to have as part of a general discussion on Single Member Districts - Single Member Districts Proposal with Self-Rule for Lanai and Molokai

Amend Section 3-1, Composition, to change the composition of the Maui County Council to Nine Single Member Districts and grant Lanai and Molokai self-rule

#3.5 - Amended Proposal to have as part of a general discussion on Single Member Districts - Proposal to Create Three Single Member Districts and Three Geographic Districts for Lanai, Molokai and Maui

#3.6 - Amended Proposal to have as part of a general discussion on Single Member Districts - Proposal to create Island Boards for the Islands of Lanai and Molokai.

These would be elected bodies of five (Lanai) to seven (Molokai) members who would (1) replace and would take on the responsibilities of the appointed planning commissions and (2) in addition have authority over all other land use approvals on the island, including zoning and variances. These bodies would also (3) be the official voice of their communities, at the County, State and national levels.

#3.7 - Amended Proposal to have as part of a general discussion on Single Member Districts Proposal with Lanai, Moloka'i, and Hana in one district together

Amend Section 3-1, Composition, to change the composition of the Maui County Council to Nine Single Member Districts and grant Lanai and Molokai self-rule

#3.8 - Amended Proposal to have as part of a general discussion on Proposal to Retain At-large Districts with Geographic Residency

Do not amend Article 3, County Council, Section 3-1, Composition

#3.9 - Amended Proposal to have as part of a general discussion on Proposal to Expand the Number of Council Members to 13

#3.10 - Amended Proposal to have as part of a general discussion on Proposal to have three Council members in each of three districts

#3.11 - Amended Proposal to have as part of a general discussion on Proposal to have six Council districts with equal population plus three at-large Council districts

#3.40 – Proposal for Amend Section 3-1, Composition, to have three districts and three Council persons from each district, and have the districts organized as follows: (1) Lanai, Lahaina, and part of South Maui; (2) Molokai, Kahului, and maybe Paia, and (3) part of South Maui, Upcountry, and Hana.

Subject Matter -- Nonpartisan elections

Do not REMOVE FROM ACTIVE LIST

Then we would stay with the current system

6-4 to leave it on the active list

We will make a proposal to change the system

Second motion – to put it on the ballot

Chair will vote in favor 6 yes

#3.13 - Proposal to Return to a Closed Primary System

#3.14 - Proposal to Abolish Nonpartisan Elections for County Council

Amend Article 3, County Council, Section 3-2, Election of Council and Term of Office, to delete nonpartisan elections and implement a system of partisan elections in the primary and general elections

Subject Matter – Residency Requirements

DEFER TO GET ANSWERS TO QUESTIONS - 9 yes

What about persons under the age of 18 years of age?

How often are the off island people reimbursed for travel? What is the per diem budget?

What about sunshine law and use of video conferencing?

How do you define the word “live”?

**Can clerk identify voters that voted in the last election?
Can the county clerk define the word "live" and can the clerk be here at the next meeting?**

#3.15 - Proposal for Residency Requirements for County Council Members

Amend Section 3-3, Qualifications, to require that candidates have lived in and voted in the district in the previous election for which they are currently running

Amend Section 3-3, Qualifications, to require that candidates have lived in the district for one year

#3.16 - Proposal to adopt a Five-Year Residency Requirement for County Council Members

Amend Section 3-3, Qualifications, to require that candidates have lived in the district for which they are running for at least five years.

Subject Matter – Term Limits

Take to amendment stage

3 terms of 4 years and absolute/never mind if not consecutive/and staggered

And how to transition into it

How to make it apply to those that are currently serving

What if they have already served their 12 years

Can it apply ex post facto to those currently in office?

See Mayor's proposal

See also state reapportionment commission and how to implement the new districts

Vote – 6 yes

#3.17 - Proposal for Eight-Year Term Limits

Amend Section 3-2 (5), Election of Council and Term of Office, to limit a council member to two terms of four years or four terms of two years for a total of eight years altogether and, after the eight years have been exhausted, to prohibit the individual from ever serving on the Council again

#3.18 - Three-Term Four-Year Term Limits Proposal

Amend Section 3-2 (5), Election of Council and Term of Office, to limit a council member to 3 terms of 4 years

#3.19 - Two-Term Four-Year Term Limits Proposal

#3.20 - One-Term Four-Year Term Limit Proposal

#3.21 - Proposal to change the present system of five two-year terms of Council members to three full four-year terms, whether consecutive or not, and to require that terms of Council members to be staggered.

#3.22 - Proposal to Amend Term of Office for Council Members from a Two-Year Term to a Four-Year Term, to Stagger the Terms, and to Limit the Number of Terms

Amend Section 3-2, Election of Council and Term of Office, from a two-year term to a four-year term, stagger the terms by implementing for the first election the highest four vote getters who will serve four-year terms and the next highest five vote getters will serve two year terms, limit the terms to two consecutive terms and a total of 12 years or three full terms.

#3.23 - Proposal to Retain Article 3, Section 3-2 (5), Term of Office for Council Members, for a two-year term

Subject Matter – Council Power

Move to take off the active list

Unanimous

#3.33 - Proposal to Amend Section 3-6, Powers of the Council, to require that the Council approve the appointments of all department heads

In the alternative, require that the Council approve the appointments of the Planning Director and the Director of the Department of Finance

Subject Matter – Structure of Office of the Executive

Move to take off the active list - unanimous

#7.2 - Proposal to Make the Office of the Mayor Ceremonial and Implement an Appointed County Manager as Chief Executive Officer

Amend Section 7-5, Powers, Duties and Functions, to change the powers of the Mayor to be ceremonial, to include accepting service of process and to be recognized by the Governor for civil defense and military purposes and to allow the County Council to appoint an interim mayor in the event of a vacancy

Amend Article 8, County Departments, Chapter 1, Department of the Management, Section 8-1.1 Organization, [1] to change the title of this section to Office of the County Manager, [2] to provide that the County Manager will be selected by the County Council, [3] to require that the County Manager have proven administrative qualifications, [4] to require residency in Maui only after selection, [5] to set forth a procedure for removal from office that includes the

conduct of a hearing, [6] to provide the County Council with final authority for removal and [7] to Amend Section 8-1.3, Powers, Duties and Functions, to enumerate the duties of the County Manager and make other conforming changes in Article 8

Article 8, County Departments

Chapter 1, Department of Management

Move off the active list unanimous

#8.1.1 - Proposal to Amend Section 8-1.1, Organization, to specify that there shall be a deputy managing director

Chapter 3, Department of Prosecuting Attorney

Move both of these to the amendment stage – housekeeping - unanimous

#8.3.1 - Proposal to Section 8-3.3 Powers, Duties and Functions, to clarify that the investigators in the prosecuting attorney's office have all the powers and privileges of a police officer of the county

#8.3.2 - Proposal to Section 8-3.3 Powers, Duties and Functions, to clarify that the County Prosecuting Attorney prosecutes offenses against the law of the State of Hawaii under the authority of the Attorney General of the State of Hawaii.

Chapter 7, Department of Fire and Public Safety

Defer to next meeting

#8.7.1 - Proposal to Abolish the Department of Fire and Public Safety, to Require the Fire Chief to Report to the Mayor, and to Set Minimum Qualifications for Fire Chief and Other High-Ranking Fire Officials

Delete Section 8-7.2 Fire and Public Safety Commission, and amend Section 8-7.3, Fire Chief, to give the Mayor the authority rather than the Fire and Public Safety Commission to appoint the Fire Chief, and require the Fire Chief and Assistant Chief to have a four-year college degree and the Battalion Chief to have a two-year college degree as one of the minimum requirements

#8.7.2 - Proposal to give the Mayor the authority to in the selection and removal of the Fire Chief.

Amend Section 8-7.3 to require approval by the Mayor of the Commission's recommendation to remove the Fire Chief **GET DE LEON's REMARKS**

Amend Section 8-7.3 to require that the Mayor initiate and the Commission approve the request to remove the Fire Chief by a majority vote

#8.7.3 - Proposal to Amend Chapter 7, Department of Fire and Public Safety, to change the name of the Department of Fire and Public Safety and delete the term Public Safety in order to more accurately reflect the duties of the Fire Department, and to conform other provisions of the Charter to reflect the new name

Suggested new name - Fire Protection and Prevention and Rescue

#8.7.5 - Proposal to Amend Chapter 7, Department of Fire and Public Safety, Section 8-7.2, Fire and Public Safety Commission, to delete the current language and to add new language on a Statement of Policy as follows:¹

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 INSERT NEW NAME OF DEPARTMENT shall be operated in accordance with the following:

The goal of the county shall be to have qualified and professional leadership and personnel in this department

Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability

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

Appropriate training shall be provided to the maximum extent possible and practicable

#8.7.5 *Corrected* - Proposal to Amend Chapter 7, Department of Fire and Public Safety, Section 8-7.2, Fire and Public Safety Commission,²to add new language on a Statement of Policy as follows:

It is hereby declared to be the purpose of this chapter of the charter to establish

¹ For the working purposes of the Commission, corrections to this proposal have been made and are as follows in the next #8.7.5 corrected proposal.

² The exiting charter language was just being moved to a different section and not completely deleted.

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 INSERT NEW NAME OF DEPARTMENT shall be operated in accordance with the following:³

Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability

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

Appropriate training shall be provided to the maximum extent possible and practicable

#8.7.6 - Proposal to Amend Section 8-7.2, Fire and Public Safety Commission, to have one member from each council district, to expand the powers of the Commission to appoint such staff as it needs and to engage consultants as necessary for the performance of its duties and to add that the Commission members be appointed by the Mayor and confirmed by the Council in the manner prescribed in Section 13-2.

#8.7.7 - Proposal to Amend Section 8-7.2, Fire and Public Safety Commission, to expand and clarify the powers, duties and functions of the Commission to do one or more of the following:

Expand the authority of the Commission to review rules for the administration of the Department.

Add to subsection 4 - publish a summary of the charges filed against members⁴ and officers and the disposition of each charge to be included in the annual report of the Commission.

Review personnel actions within the Department for conformance with the policies under the statement of policy.

³ This language was removed as being duplicative: The goal of the county shall be to have qualified and professional leadership and personnel in this department

⁴ Added the term "members" to reflect intent to include all employees of the department

Review and recommend on the strategic plan for the Fire Department or other similar type of plans

Add to subsection 5 regarding the annual evaluation of the fire chief that the Commission shall at least annually compare the actual achievements in the strategic or other similar types of plans or latest update submitted by the fire chief

Submit an annual report to the mayor and the council on its activities.

#8.7.8 - Proposal to Amend Section 8-7.2, Powers, Duties and Functions of the Commission, to require that a summary of the charges filed and their disposition shall be included in the annual report of the Commission.

#8.7.9 - Proposal to Amend Section 8-7.4, Fire Chief, Powers, Duties and Functions to add the following:

Prepare and, when deemed necessary, update a strategic or other similar type of plan of goals and objectives for the Maui County [NEW NAME OF FIRE DEPARTMENT]. The chief shall submit the plan and each update to the Commission for review and recommendations.

#8.7.10 - Proposal to Amend Section 8-7.4 (4), Powers, Duties, and Functions, to add and assign ocean safety and rescue to the Department of Fire and Public Safety

#8.7.11 - Proposal to Amend Section 8-7.4 (4), Powers, Duties, and Functions, to clarify that reserve fire fighters and emergency rescue personnel can be trained and utilized, when needed.

#8.7.12 - Proposal to Delete Section 8-7.2 to eliminate the Fire and Public Safety Commission

#8.7.13 – Proposal to add to #8.7.2 to include the following language: Four out of the nine members of the fire and public safety commission shall be nominated to the mayor by the fire fighters labor union. The fire fighters labor union shall submit names of nominees for up to four out of the nine fire and public safety commissioners that shall be appointed by the mayor and confirmed by the council in the matter prescribed in Section 13-2.

#8.7.14 – Proposal to change the names to Fire Department and Fire Commission and to amend section 8-7.1 to provide that the Fire Department shall consist of the Fire Chief, Fire Commission and the necessary staff.

#8.7.15 – Proposal to amend Sections 8-9.4, 8-12.2, 8-13.2, and 8-13.4 to create consistency in the powers and duties of the Fire and Public Safety, Police, Liquor, and the Civil Service

Commissions and the due process afforded directors of these departments in the event of dismissal.

Subject Matter – Housekeeping: Chapter 9, Department of Personnel Services
Approve to amendment stage – unanimous

#8.9.1 - Proposal to Amend Article 8, County Departments, Chapter 9, Department of Personnel Services, Section 9.4, Civil Service Commission, with a housekeeping measure to align the Maui County Charter with the Hawaii Revised Statutes regarding recent changes to the civil service law.

Subject Matter – Water Supply Department and Board

Chapter 11, Department of Water Supply
Remove from Active List – unanimous

#8.11.1 - Proposal to Eliminate the Board of Water Supply

Delete Section 8-11.3, Board of Water Supply and Section 8-11.4 Powers Duties and Functions, in order to eliminate the Board of Water Supply.

#8.11.2 - Proposal to Amend Article 8, County Departments, Chapter 11, Department of Water Supply, Section 8-11.3 Board of Water Supply and Section 8-11.4 Powers Duties and Functions, to strengthen the independence of the Board of Water Supply and to establish it as a semi-autonomous entity and to have some or all of the following powers:

- * issue revenue bonds
 - * hire its own legal counsel, so that it does not need to the Corporation Counsel
 - * set rates
 - * promulgate rules and regulations
 - * set its own budget
-
- * appoint the Director of the Department of Water Supply
 - * use as a model the provisions in the Charter of the City and County of Honolulu
 - * use as a model the provision proposed by the 2001 Maui County Charter Commission
 - * complete an independent authority for rules, budget, fees, and rates

#8.11.3 - Proposal to amend Section 8-11.5, Powers Duties and Functions [of Director of Water Supply], to increase his or her powers

report to either the Council or the Board of Water Supply on all issues to eliminate piecemeal authority

#8.11.4 Proposal to delete the requirement in Sec. 8.11-5 that the Director of the Department of Water Supply be confirmed by the County Council

Chapter 12, Department of Police

Remove from active list – 6 yes

Micromanage

#8.12.4 - Proposal to amend Section 8-12.2, Police Commission, to add a new subsection to require that the Police Commission hold public meetings in truly public venues in different parts of the County four times a year.

Chapter 15 – Department of Environmental Management [current section was in the 2006 Charter Amendment]

Move to next meeting – unanimous

Request the department head of environment, mayor and someone else

#8.15.1 - Proposal to Amend Article 8, County Departments, Chapter 15, Department of Environmental Management, to add the function of sustainability to the Department of Environmental Management and change the name of the department to Department of Sustainability and Environmental Management, and thus to create a new department entitled the Department of Sustainability and Environmental Management :

Add specific language to include the function of sustainability as follows:

Guide efforts to maximize opportunities for natural resource protection, conservation, and restoration.

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

Chapter 16 –Cost of Government Commission [formerly section 15 in 2003 edition of the Charter]

#8.16.1 - Proposal to Amend Article 8-16.2, Cost of Government Commission, to require that its annual appropriation not be less than the year before, and that the Commission decide the compensation of elected officials, appointed directors, and deputy directors

of all departments, consulting with the boards and commissions which have appointing authority for department heads.

#8.16.2 - Proposal to Amend Article 8-16.3, Term of Commission, from a two-year term to a four-year term and to limit the number of terms

#8.16.3 – Proposal to Amend Article 8-16.3, Term of Commission, from a two-year term to a five-year term and to limit the terms to two consecutive terms for a total of ten years

#8.16.4 – Proposal to Amend Article 8-16.3, Term of Commission, from a two-year to a six-year term and to require that members must have been a resident of Maui for at least one year preceding the filing of nomination papers and have voted in the last election, and must continue to reside on Maui for his or her elected term. Vacancy in office shall be filled at the next special election, unless it is more than six months before, and then the Mayor shall make the appointment to serve until the next special election

#8.16.5 – Proposal to Amend Article 8-16.3, Term of Commission, to have three members, elected for six years, whose terms shall be staggered every two years. The longest serving commissioner shall serve as temporary chair until the Commission elects a permanent chair

#8.16.6 – Proposal to Amend Article 8-16.3, Term of Commission, to have Commission members elected in a nonpartisan special election, with a second special election where necessary

#8.16.7 - Proposal to Amend Article 8, Section 16.3, Term of Commission, to conform the term of the Cost of Government Commissioners to be the same as the terms and the timetables of other commissions as provided in the Charter in Article 13, General Provisions, Section 13.2, Boards and Commissions.

~~#8.16.8 – Proposal to establish an Independent Office of County Auditor, to have the Commission on Government be attached to the Office of County Auditor, and to have the Commission on Government have the power to hire and fire the County Auditor.~~

Subject Matter - Independent Counsel for Boards and Commissions [new section]

#8.New.3 – Amended Proposal to Create an Office of Independent Counsel for Boards and Commissions – General Discussion of Independent Counsel for Boards and Commissions

Amend Article 8, County Departments, to add a new section to create an Office of Independent Counsel separate from the Department of Corporation Counsel to provide independent legal advice to County boards and commissions

Subject Matter - Article 9, Financial Procedures

#9.1 - Proposal to Amend Article 9, Financial Procedures, Section 9-2, Preparation and Submission of Budget and Capital Program to change from an annual budget to a biennial budget to commence in a non-election year.

#9.2 - Proposal to Amend Article 9, Financial Procedures, Section 9-2, Preparation and Submission of Budget and Capital Program, to change from an annual budget in odd years for the operating budget and even years for the CIP budget.

Subject Matter – Discussion on Voter-Initiated Ballot Measures

Article 11, Initiative

#11.1 - Proposal to Reduce Number of Signatures Required for Initiative Petition

Amend Section 11-3(2), Petitions, to reduce the percentage of signatures required from 20% to 10% of voters, and to amend the definition of "voters" from those who were registered to those who voted

#11.2 - Proposal to Require Explanation of the Effect of Blank Votes on Ballot Initiative

Amend Article 11-6(2), Action on Petitions, to add a new section to require an explanation on the ballot itself of the consequence of leaving the vote blank

Article 12, Recall

#12.1– Proposal to Reduce Number of Signatures Required for Recall Petition

Amend Section 12-3(2), Petitions, to reduce the percentage of signatures required from 20% to 10% of voters, and to amend the definition of voters from those who were registered to those who voted

#12.2 - Proposal to Extend Time to File Papers for Recall Petition

Amend Section 12-4, Filing and Certification, to extend the date for filing all papers comprising a recall petition from 30 days to 180 days after the filing of the affidavit (to conform to the initiative requirements).

#12.3 - Proposal to Reduce Number of Votes Required to Recall

Amend Section 12-6, Recall Election, to change the definition of voters from those who were registered to those who voted

#12.4 – Proposal to Require Explanation of Blank Vote on Ballot for Recall

Amend Section 12.7, Ballots, to add a new section to require an explanation on the ballot itself of the consequence of leaving the vote blank

#14.5 - Proposal to Reduce the Number of Votes Required for Charter Amendment Petition

Amend Section 14-2(3), Initiation of Amendments, to reduce from 20% to 10% the percentage of voters required to sign a petition to change the County Charter, and amend the definition of voters from those who were registered to those who voted

Subject Matter – General Discussion on Boards and Commissions

Article 13 – General Provisions

#13.1 - Proposal to Amend Section 13-2 (16), Subsection 17, to clarify that the 30 days for the Mayor to submit to the Council the name of the Mayor's nominee to fill the vacancy commences upon the date of informing the Council of a vacancy.

#13.2 - Proposal to Remove the Council's power to nominate and approve Board and Commission Members under Sections 13.2-16 and 13.2-17

#13.3 - Proposal to Require Interactive Communications Access for the Public to All County Public Meetings and to County Departments

Amend Article 13, General Provisions, to add a new section to require interactive communications access for the public to all County Public Meetings and to County Departments

#13.4 - Proposal to Add a New Paragraph to require that all county boards and commissions post on the county website [1] the minutes of any public meeting or hearing within a certain number of days after the meeting and [2] any and all internal policies of all departments

#13.5 - Proposal to Amend Article 13, General Provisions, to create a new section to require telecommunications access for Hana, Lāna'i, and Molokai residents to all County Public Hearings with the capability for Hana, Lāna'i, and Molokai residents to testify remotely at all County Public Hearings

#13.6 - Proposal to Amend Article 13, General Provisions, to create a new section to establish a blue ribbon committee to make recommendations to the Mayor for appointments to boards and commissions

Amend Article 13, General Provisions, to add a new section to require the creation of a blue ribbon committee to make recommendations to the Mayor for appointments to Boards and Commissions, with three members to be appointed by the Mayor and three to be appointed by the Council, to serve for two-year terms that can be renewed one time. Recommendations shall be revealed to the Mayor only and the Mayor shall make every effort to utilize the Committee's recommendations.

#13.7 - Proposal to Amend Article 13, General Provisions, to add a new section entitled reports to make available all reports required by Charter, Code or Ordinance to be posted and available to the public at no cost.

#13.8 - Proposal to delete Section 13.2, Boards and Commissions, Subsection 2, which requires that no more than a majority of the members of a board or commission can belong to the same political party

#13.9 - Proposal to Amend Section 13-2 (3) Boards and Commissions to require that each board or commission include a qualified resident of Lanai and Molokai

#13.10 – Proposal to amend Article 13, General Provisions, Section 2, Boards and Commissions, to add provisions requiring the county to indemnify and fund the legal representation of members of Boards and Commissions in the event of civil action as a result of the lawful performance of their duties.

Article 14, Charter Amendments

#14.3 - Proposal to Amend Article 14, Charter Amendment, Sections 14-1, Initiation of Amendments, Subsections (1) and (2), to delete the power of County Council to amend the Maui Charter during the time that a Charter Commission is constituted

#14.4 - Proposal to Amend the Charter Commission Appointment Process, Sec. 14.3, so that it follows the time requirements for regular Maui County boards and commissions in Sec. 13.2-16.

#14.9 – Proposal to Extend the Term of Charter Commissioners to 18 months

#14.10 – Proposal to require that the Charter be republished each time it is amended, with a significant amendment

New Article – Office of County Auditor

A. Proposal to Establish an Office of County Auditor to include one or more of the following:

- * be independent of both the Mayor and Council/complete autonomy
- * perform all financial and operational audit functions
- * coordinate with the COG or otherwise work with COG
- * complete discretion to prioritize assignments
- * administrative assigned to the Council
- * possible appointment by the Judiciary
- * possible appointment by a committee
- * county auditor could be removed only by a 2/3rds vote of the council [as in Honolulu Charter]
- * model powers and duties after the Auditor for the City and County of Honolulu

#8.16.8 – Proposal to establish an Independent Office of County Auditor, to have the Commission on Government be attached to the Office of County Auditor, and to have the Commission on Government have the power to hire and fire the County Auditor.

Maui County Charter
Article 3
County Council Term Limits
Proposed Charter Amendment

[added material is underlined, deleted material is bracketed.]

Amend Section 3-2. Election of Council and Term of Office, Paragraph 5. as follows:

The term of office of council members shall be for [two (2) years] four (4) 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] three full terms of office, whether consecutive or not consecutive. The terms shall be staggered.

The staggering of the terms of councilmembers shall commence on January 2, 2015 and be implemented in accordance with this section.

The ~~five~~ councilmembers who have received the highest number of votes shall be elected to four year terms. The remaining four council members shall be elected to two-year regular terms commencing on the same date.

Questions on details

How many years at the time of implementing this staggered system can a person who is elected to the two year term serve? Should it be two or three additional terms – ten or fourteen years?

How many additional terms currently elected council members should have in this staggered system? Should these council members have the time served count toward the twelve year limit? Under the current system, council members do not have to count time already served, so long as it is not consecutive. Should that same rule apply if these proposed new limits are submitted to and adopted by the voters? In other words, should a break in time allow the candidate to start all over again?

102411 - Item No. IV. B. pg 1-1

(Deferred)

Maui County Charter

Article 8

County Departments

Chapter 9

Department of the Personnel Services

Proposed Charter Amendment

[added material is underlined, deleted material is bracketed.]

Amend Section 8-9.3. Powers, Duties, and Functions. The director of personnel services shall:

Add a new paragraph as follows:

4. Adopt rules having the force and effect of law to carry out the provisions of the civil service laws of the state.

Amend 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.

102411 - Item No. IV.C. pg 1-1

(Deferred)

Maui County Charter

Article 3

County Departments

Chapter 8

Department of the Prosecuting Attorney

Proposed Charter Amendment

Amend Section 8-3.3. Powers, Duties and Functions as follows [added material is underlined, deleted material is bracketed.]

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.

and

Add a new paragraph 8.

8. Prosecute offenses against the laws of the State under the authority of the attorney general of the State.

11411
Item No. IV.G pg 1-1

102411 - Item No. IV. D. pg 1-1

(Deferred)

MAUI COUNTY CHARTER

ARTICLE 3
ELECTION OF COUNCIL AND TERM OF OFFICE

ARTICLE 7
ELECTION OF MAYOR AND TERM OF OFFICE

Proposed Charter Amendments

[added material is underlined, deleted material is bracketed]

Amend Section 3-2. Election of Council and Term of Office, Paragraphs 1 through 4, as follows:

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] partisan elections in accordance with the election laws of the state, insofar as applicable.

[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.]

Amend Section 7-2. Election of Mayor and Term of Office, Paragraphs 1 through 4, as follows:

1. The mayor shall be elected by [nonpartisan special elections. Such special elections shall be held in conjunction with the primary and general elections every four (4) years commencing in 2002. The special election held in conjunction with the primary election every four (4) years shall be known as the first special election. The special election held in conjunction with the general election every four (4) years shall be known as the second special election.] a partisan election in accordance with the election laws of the state, insofar as applicable.

[2. The names of all candidates for mayor shall be placed on the ballot for the first special election; provided, that if there are two or fewer candidates, the names of the candidates shall appear only on the ballot for the second special election.

3. If there are three or more candidates, the names of the two candidates receiving the highest number of votes 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 candidate receiving the highest number of votes shall be deemed elected. If there is no more than one candidate for mayor, such person shall be deemed elected regardless of the number of votes received.]

PROPOSED BALLOT QUESTION

Shall Sections 3-2 and 7-2 of the Revised Charter of the County of Maui (1983) be amended to delete the reference to nonpartisan elections, and provide that Council members and the Mayor shall be elected by partisan elections in accordance with the election laws of the State of Hawaii ?

Maui County Charter

Article 8, County Departments, Section 7, Fire Department and Public Safety

Adopt New Name for Department of Fire and Public Safety Department and Commission

Proposed Charter Amendment

Shall Section 8-7 of the Charter of the County of Maui be amended to provide that the name of Department of Fire and Public Safety and Fire and Public Safety Commission be amended to be the Maui County Fire Department and the Maui County Fire Commission?

[added material is underlined, deleted material is bracketed.]

CHAPTER 7

MAUI COUNTY FIRE DEPARTMENT [OF FIRE AND PUBLIC SAFETY]

Section 8-7.1. Organization. There shall be a Maui County Fire Department [department of fire and public safety] consisting of a Maui County Fire Commission [fire and public safety commission], a fire chief, and the necessary staff.

Section 8-7.2. Maui County Fire Commission [Fire and Public Safety Commission]. The Maui County Fire Commission [fire and public safety commission] shall consist of nine members appointed by the mayor with the approval of the council.

The Maui County Fire Commission [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 Maui County Fire Department [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 Maui County Fire Department [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.

Section 8-7.3. Fire Chief. The fire chief shall be appointed and may be removed by the Maui County Fire Commission [fire and public safety commission]. The fire chief may be removed by the Maui County Fire Commission [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.

Article 15

Transitional Provisions

Add a new section.

Upon adoption of the proposed 2012 amendment to Section 8-7, the Maui County Fire Department shall provide the timetable for the transition to its new name.

Maui County Charter

Article 8, County Departments, Section 7, Department of Fire and Public Safety

Assign Ocean Safety and Rescue to Department of Fire and Public Safety

Proposed Charter Amendment

Shall Section 8-7.4 (4) of the Charter of the County of Maui be amended to assign ocean safety and rescue to the Department of Fire and Public Safety?

[added material is underlined, deleted material is bracketed.]

CHAPTER 7

DEPARTMENT OF FIRE AND PUBLIC SAFETY

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, ocean rescue and safety, 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, ocean rescue and safety and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting, ocean rescue and safety 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.

Add a new section.

Upon adoption of the proposed 2012 amendment to Section 8-7, the Maui County Fire Department shall provide the timetable for the transition to include the functions of ocean rescue and safety.

Maui County Charter

Article 9, Financial Procedures

Adopt Biennial Budget and Capital Program in Non-election Years

Proposed Charter Amendment

Shall Section 9.2 of the Charter of the County of Maui be amended to provide that the Budget and Capital Program be prepared on a biennial basis and in non-election years?

111411 [added material is underlined, deleted material is bracketed.]

111411 Section 9-1. Fiscal Year. The fiscal year shall begin on the first day of July and end on the thirtieth day of June of the succeeding year. All fiscal affairs of the county during any fiscal year shall be controlled by a budget ordinance and a capital program ordinance adopted on a biennial basis for that fiscal year.

Item No. IV.K. Section 9-2. Preparation and Submission of Budget and Capital Program.

1. On or before the fifteenth day of March before the ensuing fiscal year begins, in non-election years, the mayor shall submit to the council (a) an operating budget for the ensuing two fiscal year[s], including an executive operating budget and a legislative operating budget, (b) a capital program, and (c) an accompanying message.

2. Upon submission, the budget, the capital program and the message shall be a public record in the office of the county clerk and shall be open to public inspection. The mayor shall at the same time make available copies of the budget, the capital program and the message for distribution to interested persons.

Section 9-3. Scope of Budget and Message.

1. The budget shall present a complete financial plan for the operations of the county and its departments for the ensuing two fiscal year[s], showing all county funds on hand whether encumbered or unencumbered and estimated reserves and revenues. It shall be set up as provided by the council after consultation with the mayor.

2. The estimated revenues, proposed expenditures and total appropriations for the ensuing two fiscal year[s] shall be equal in amount.

3. The mayor's message shall explain the budget both in fiscal terms and in terms of work to be done. It shall outline the proposed financial policies of the county for the ensuing two fiscal year[s] and describe the most important features of the budget plan. It shall indicate any major changes in financial policies and in expenditures, appropriations and revenues as compared with the two fiscal year[s] currently ending, and shall set forth the reasons for the changes. The message shall include a list of pending and proposed capital improvements together with the mayor's comments on such list. The message shall also include such other supporting or explanatory material as the mayor deems desirable.

Section 9-5. Budget: Council Action.

1. After the public hearing, the council may pass the budget with or without amendment. In amending, it may add new items or increase items in the budget. It may decrease or delete items, except appropriations required by law and appropriations to pay any indebtedness. In all cases the estimated revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount.

2. The council shall pass the budget on or before the thirty-first day of May of the fiscal year currently ending in a non-election year. If it fails to do so, the budget submitted by the mayor shall be deemed enacted as the budget for the ensuing two fiscal year[s].

3. The enacted budget shall be in effect on and after the first day of the two fiscal year[s] to which it applies. By virtue of the adoption of the budget, the several amounts listed in the budget column entitled "Appropriations" shall be appropriated to the specified departments and programs.

Section 9-6. Capital Program: Scope; Council Action.

1. The capital program shall contain at least the following:

a. A simple, clear general summary of the detailed contents of the program.

b. The capital improvements pending or proposed to be undertaken within the ensuing two fiscal year[s], together with the estimated cost of each improvement and the pending or proposed method of financing it.

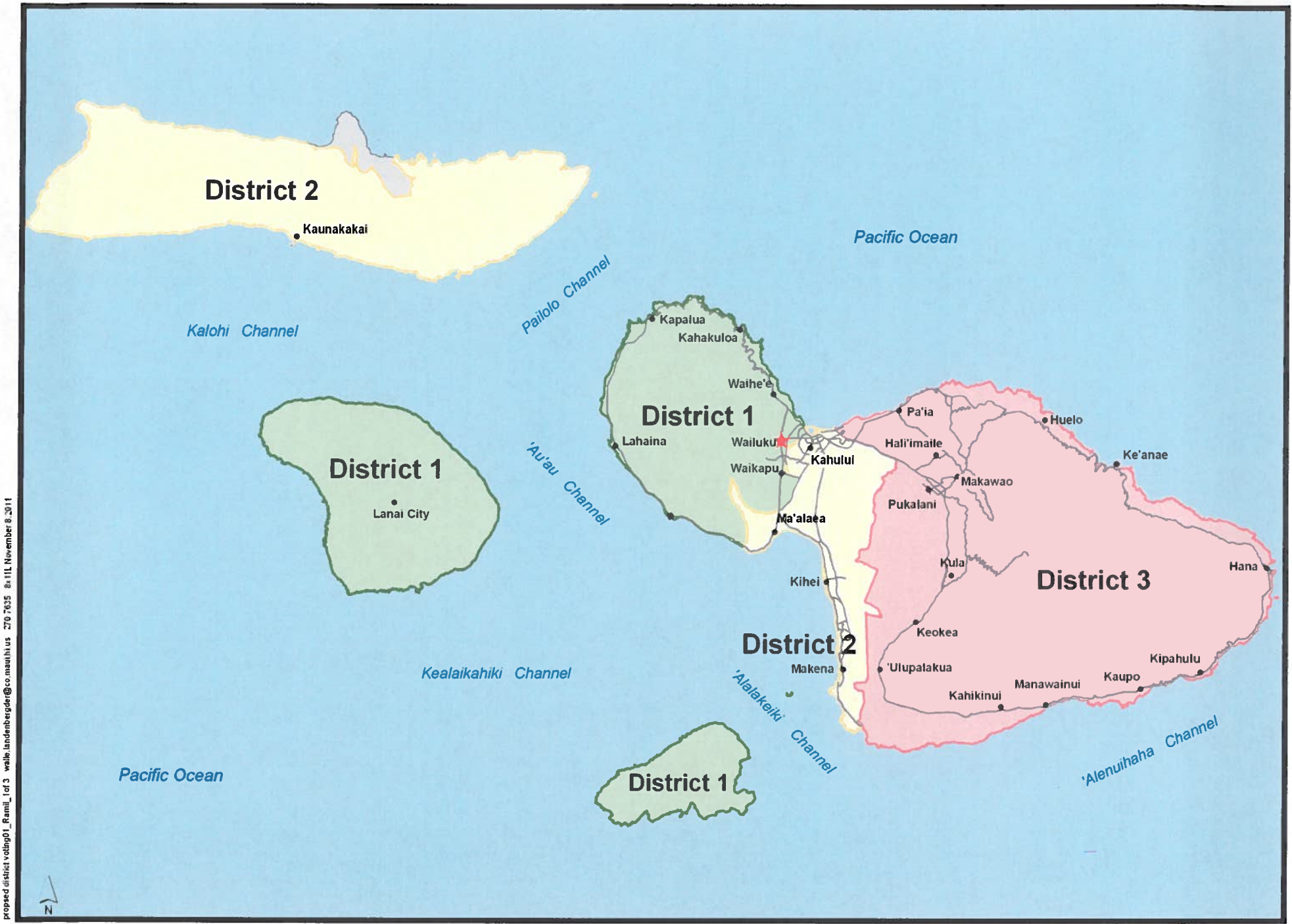
c. The capital improvements proposed for the five (5) years next succeeding the ensuing fiscal year, together with the estimated cost of each improvement and the proposed method of financing it.

2. Capital expenditures to be financed from current revenues in the ensuing two fiscal year[s] shall be included in the budget as well as in the capital program. Appropriations for such expenditures shall be included in the budget.

3. After the public hearing on the capital program, the council may pass the program with or without amendment.

4. The council shall pass the capital program on or before the thirty-first day of May of the fiscal year currently ending in a non-election year. If it fails to do so, the program submitted by the mayor shall be deemed enacted as the program for the ensuing two fiscal year[s]. The enacted program shall be in effect on and after the first day of that fiscal year in a non-election year.

5. At any time during a fiscal year the capital program may be amended by ordinance.



Proposed district voting01_Ramit_1 of 3 wolk.landenberger@co.maui.hi.us 270.7635 8/11/11 November 9, 2011

Map Provided by County of Maui
 Department of Management
 GIS Division
 November 2011

Maui County Charter Commission

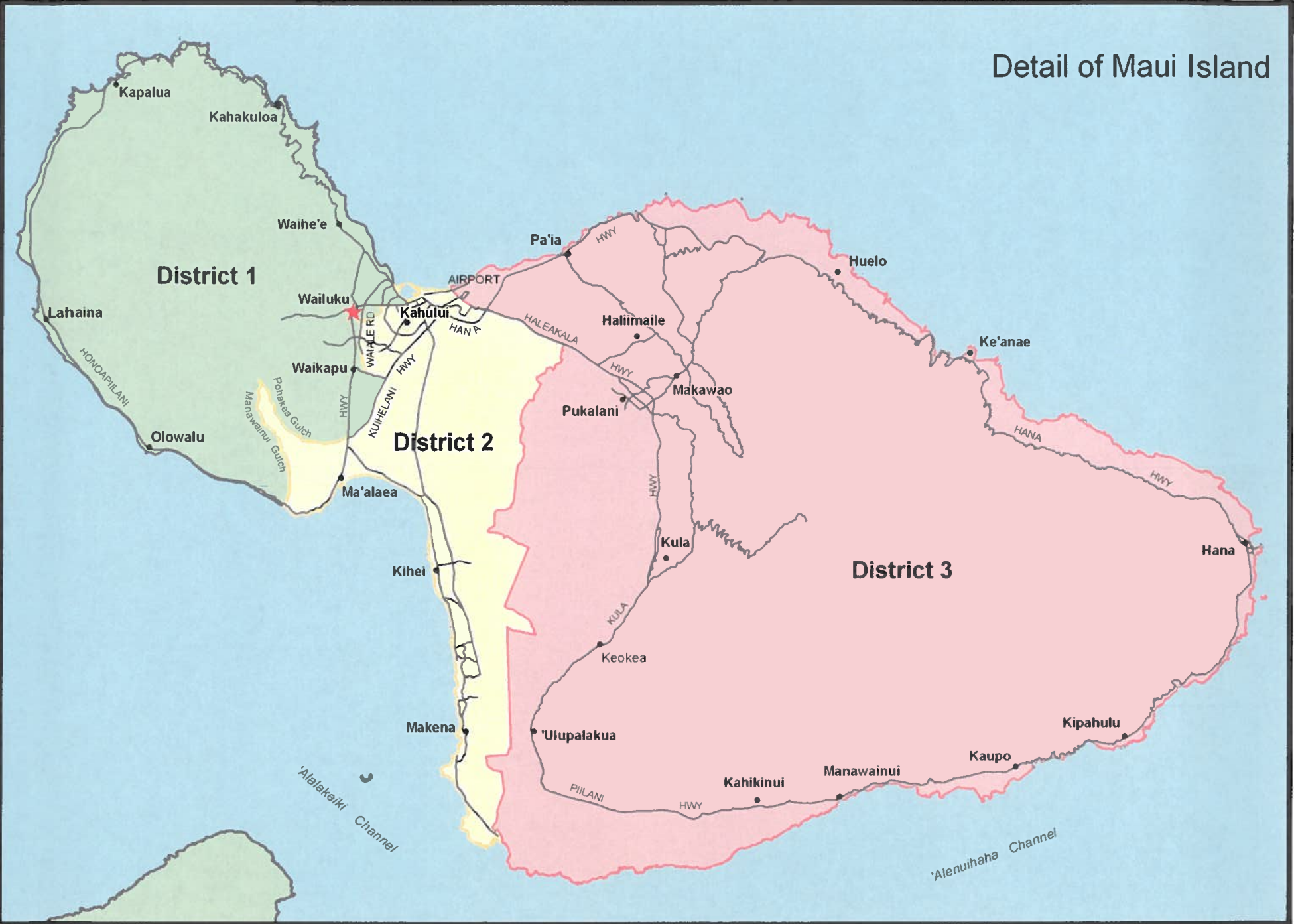
November 14, 2011

Scenario 1

Sheet
 1 of 3

111411 - Item IV.A.

Detail of Maui Island

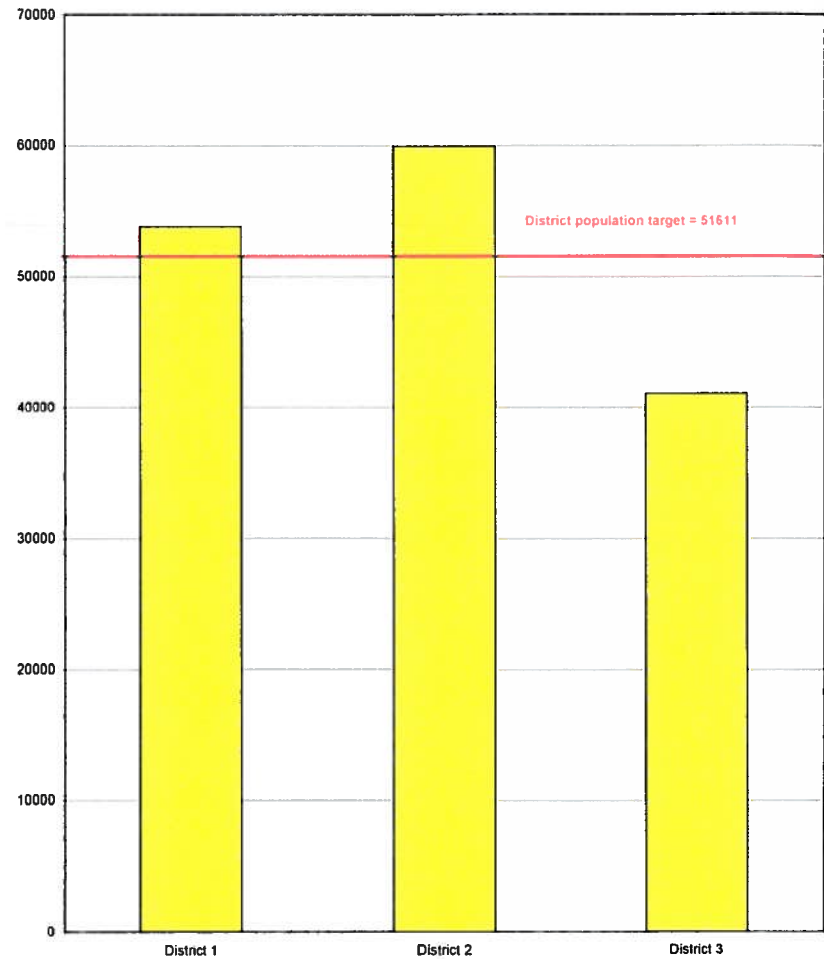


Proposal 1_mauideptgl_Rumi.mxd walk.lindenberger@co.maui.hi.us 270.783.8111 November 8, 2011

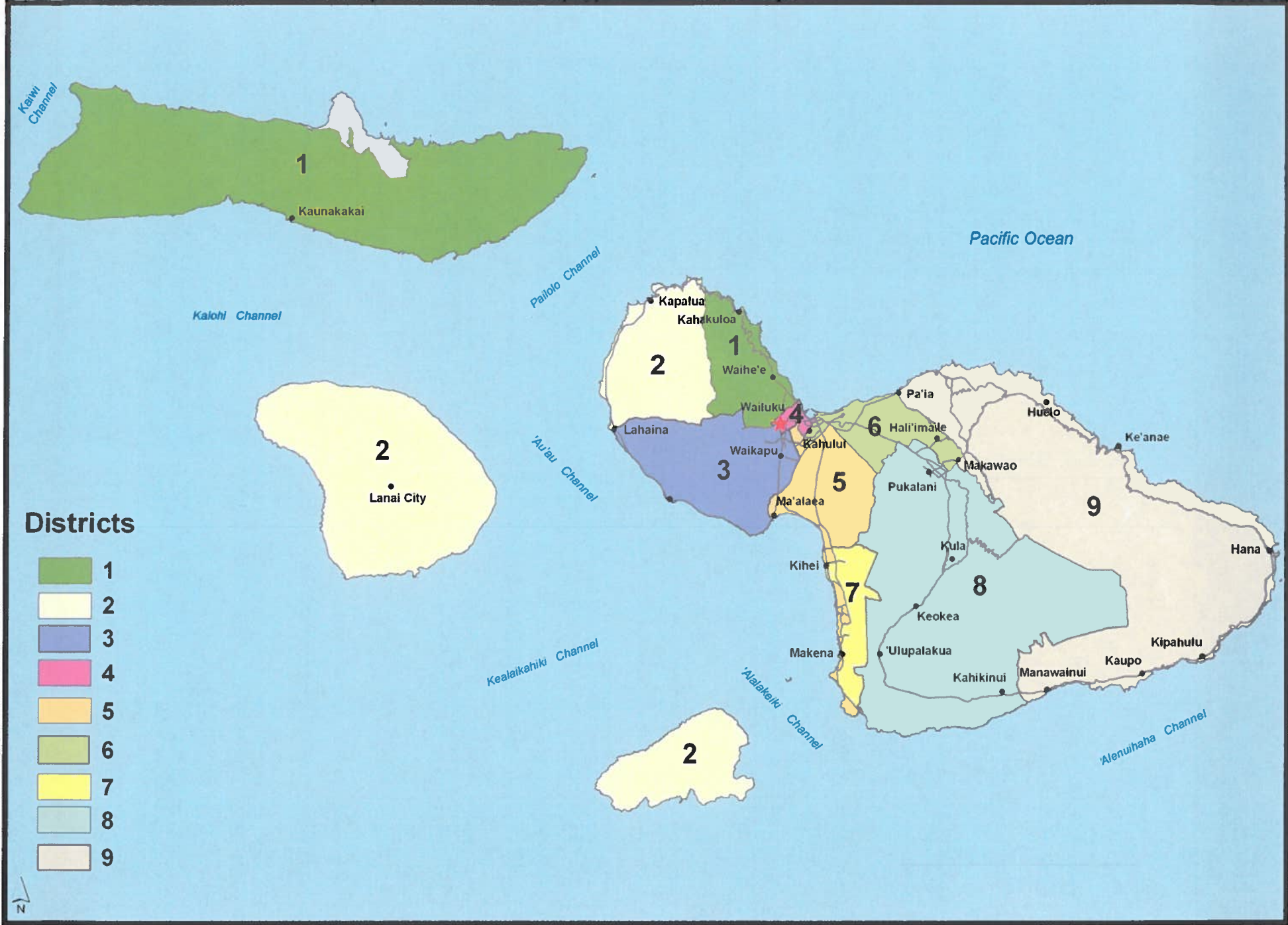
Map Provided by County of Maui
Department of Management
GIS Division
November 2011

Maui County Charter Commission Districting Scenario 1				
(3 districts, proposed by T. Ramil)				
District	Region	Population	Dev ±	Dev %
1	Lanai, West Maui, Wailuku	53826	2215	4.29
2	Molokai, Kahului, South Maui	59935	8324	16.13
3	East Maui, Paia, Makawao, Upcountry	41069	-10542	-20.43

**Maui County Charter Commission
Districting Scenario 1**



Proposal_2_v2_1of3.mxd walis.landsberger@co.maui.hi.us 270 7835 8:11L November 8 2011



Districts

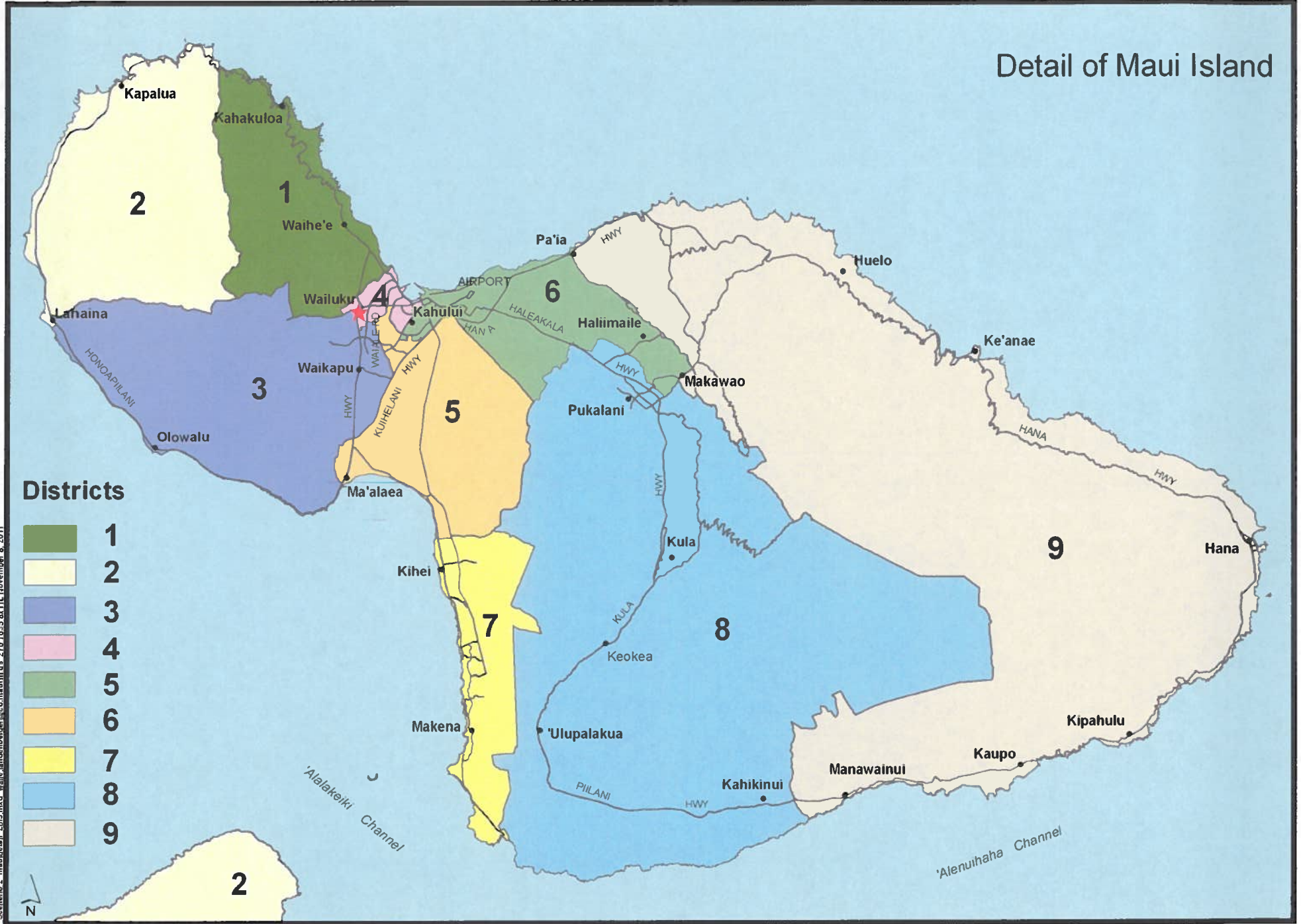
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

Map Provided by County of Maui
Department of Management
GIS Division
November 2011

Maui County Charter Commission

November 14, 2011

Detail of Maui Island



Districts

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

Scenario 2_mauideatil_2010.mxd, wglte.sanders@co.maui.hi.us, 270.765.58.111, November 8, 2011

Map Provided by County of Maui
 Department of Management
 GIS Division
 November 2011

Maui County Charter Commission

November 14, 2011

Scenario 2

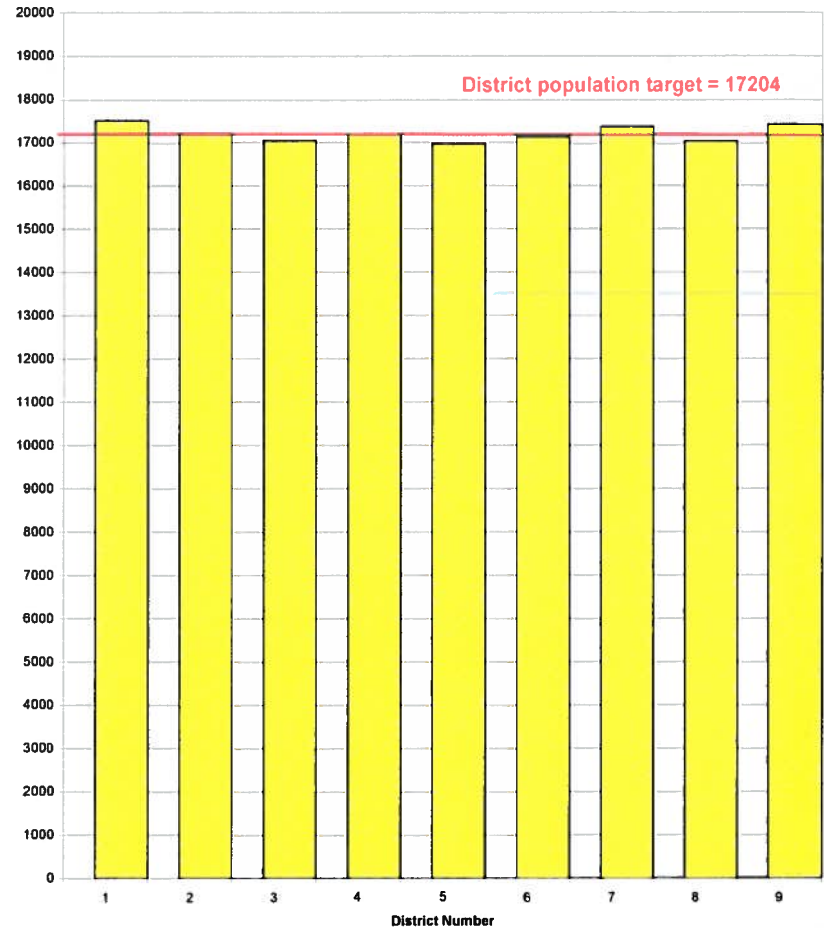
Sheet 2 of 3

**Maui County Charter Commission
Districting Scenario 2**

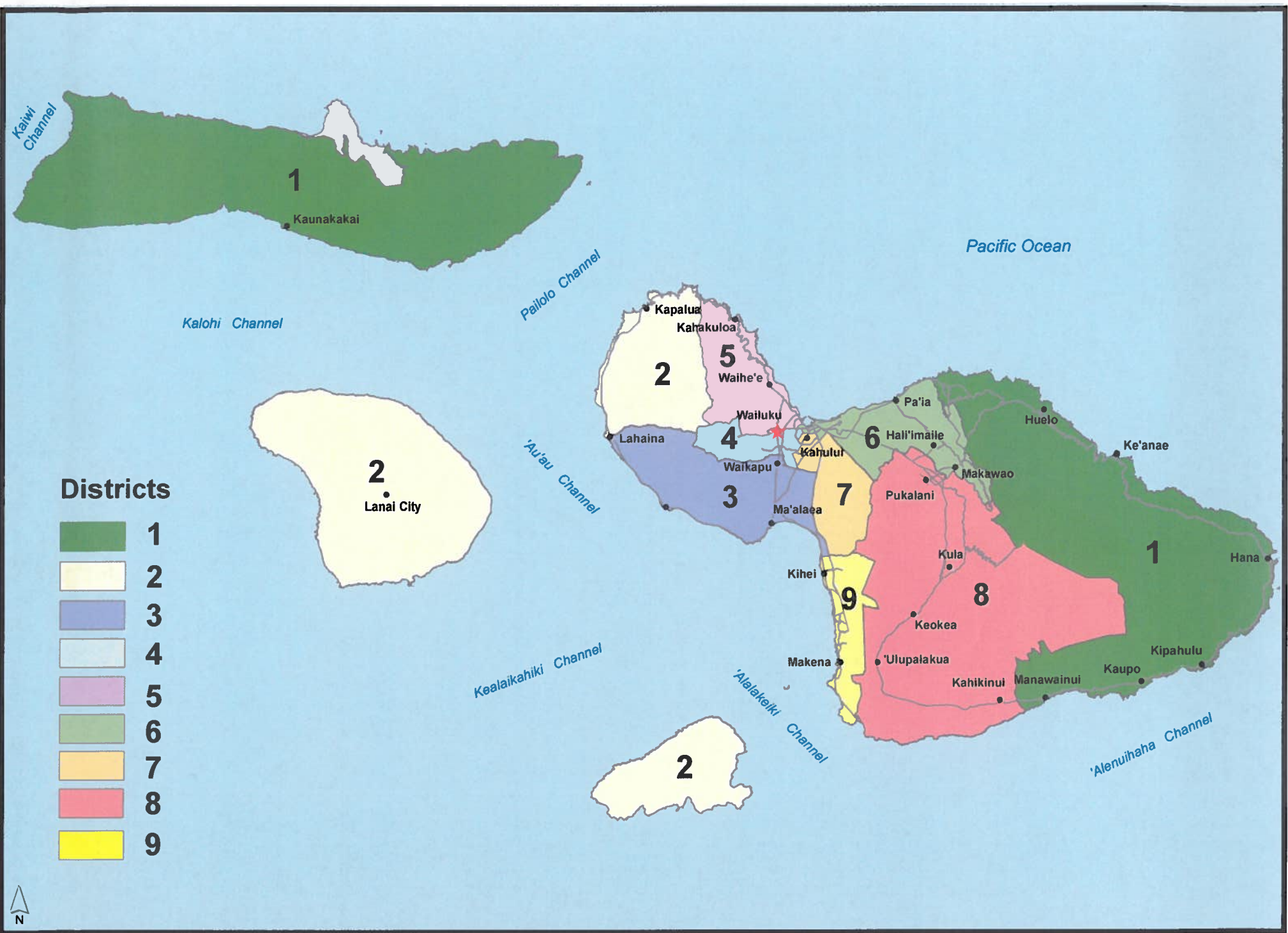
(9 districts, Molokai with Waihee, Lanai with Lahaina)

District	Region	Population	Dev ±	Dev %
1	Molokai, Waihee, Wailuku	17505	301	1.75
2	Lanai, West Maui (north)	17225	21	0.12
3	West Maui (south) Waikapu	17039	-165	-0.95
4	Kahului (portion)	17189	-15	-0.09
5	Central Maui (south)	16956	-248	-1.44
6	Kahului Makawao	17127	-77	-0.45
7	South Maui	17364	160	0.93
8	Upcountry	17020	-184	-1.07
9	East Maui	17409	205	1.19

**Maui County Charter Commission
Districting Scenario 2**



Scenario 3_1of3_mxd walf.landenberger@co.maui.hi.us 270 7635 8x11L November 8, 2011

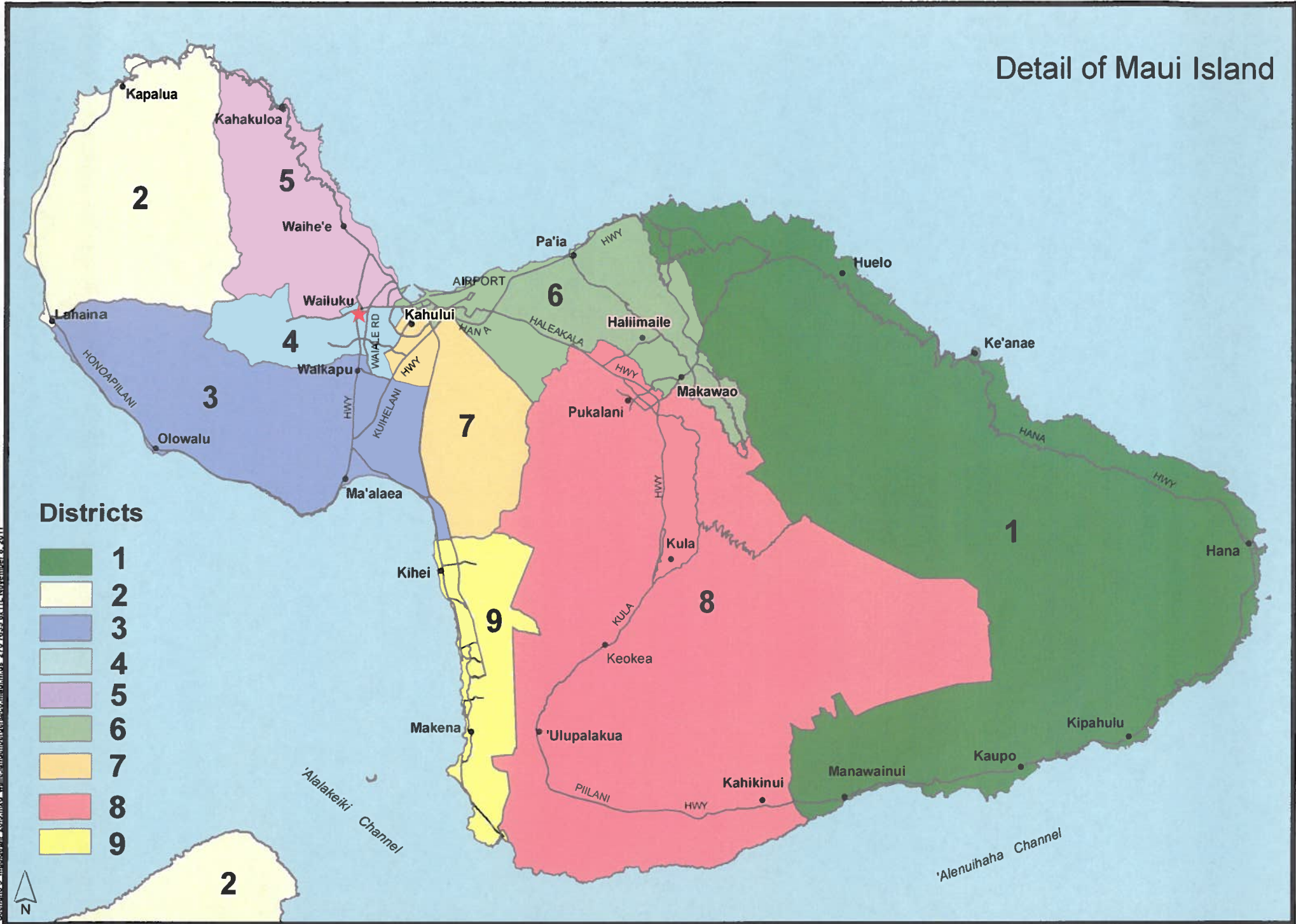


Districts

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9



Detail of Maui Island



Districts

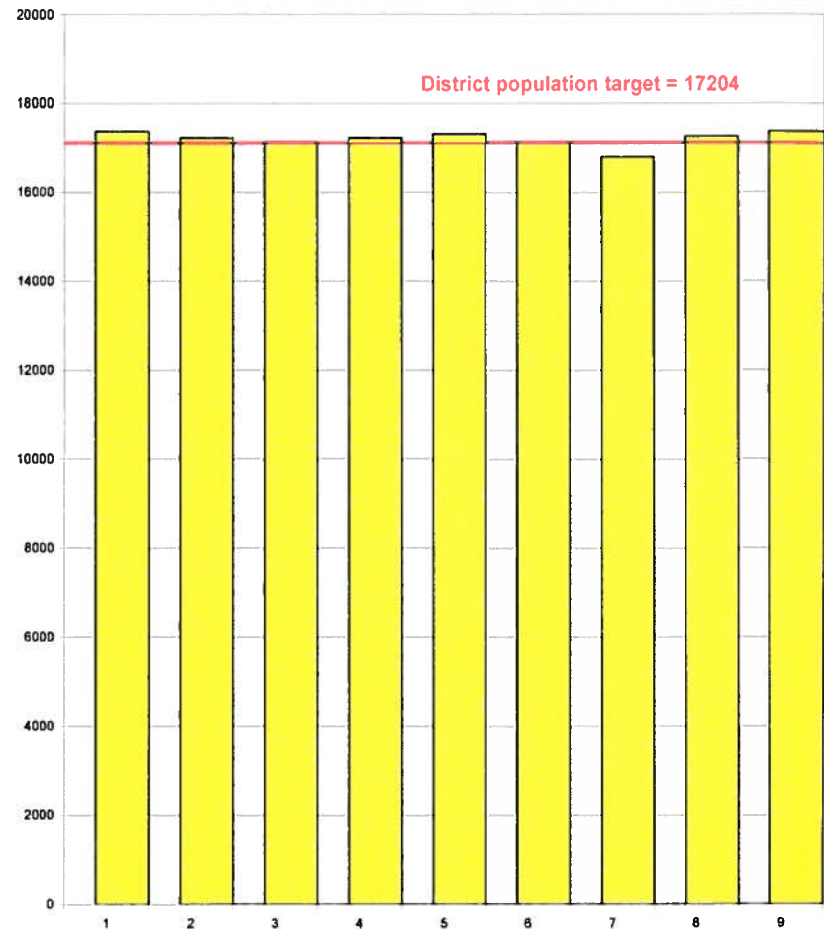
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

**Maui County Charter Commission
Districting Scenario 3**

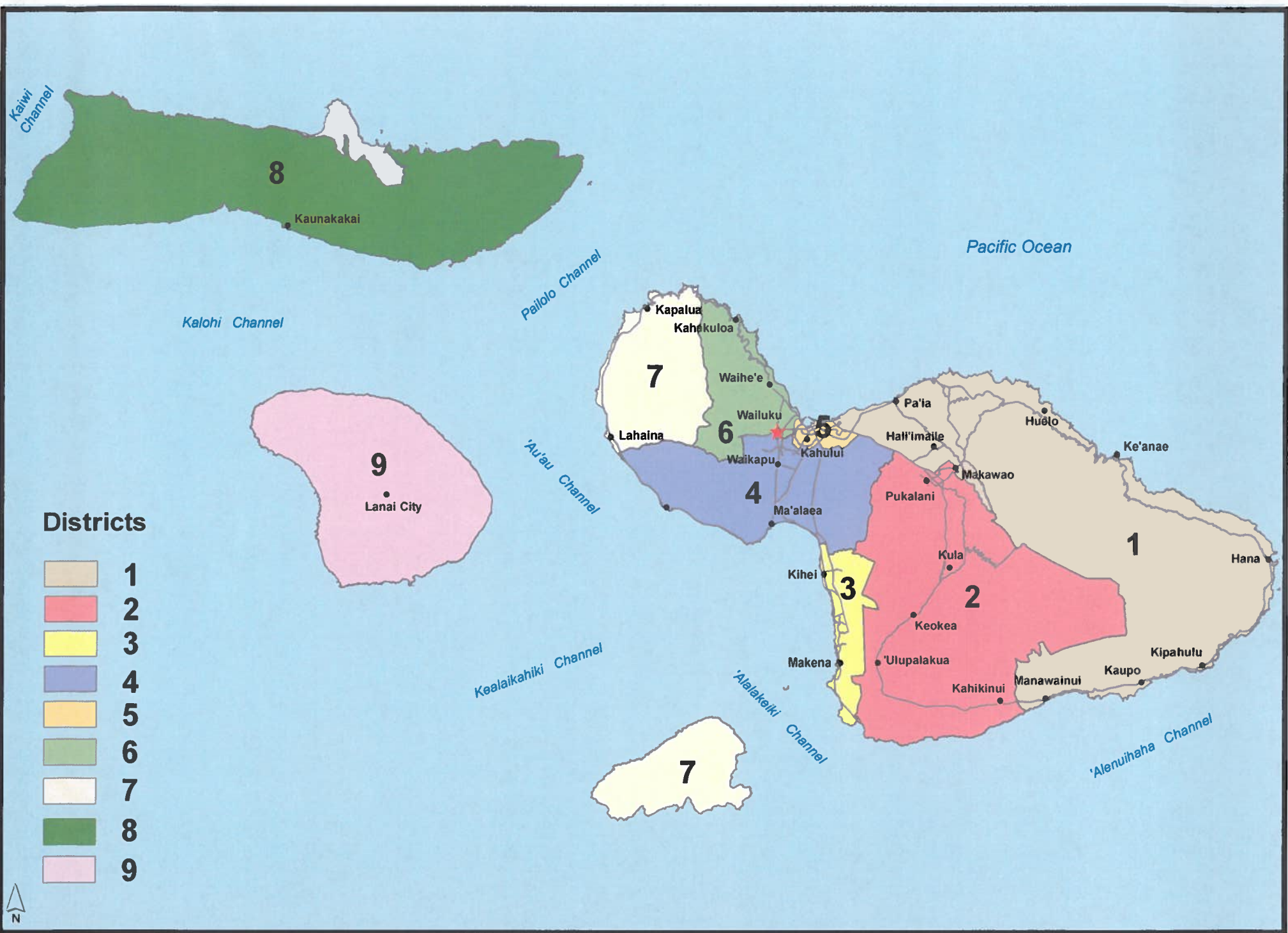
(9 districts, Molokai with East Maui, Lanai with Lahaina)

District	Region	Population	Dev ±	Dev %
1	Molokai, East Maui	17367	163	0.95
2	Lanai, West Maui (north)	17225	21	0.12
3	West Maui (south), Waikapu	17151	-53	-0.31
4	Wailuku	17228	24	0.14
5	Waiehu, Waihee	17311	107	0.62
6	Kahului, Paia, Makawao	17141	-63	-0.37
7	Kahului, Kihei (north)	16794	-410	-2.38
8	Upcountry	17253	49	0.28
9	South Maui	17364	160	0.93

**Maui County Charter Commission
Districting Scenario 3**



Scenario 4_10e3.mxd walle.landenberger@co.maui.hi.us 270 7635 8x11L November 8 2011



Map Provided by County of Maui
Department of Management
GIS Division
November 2011

Maui County Charter Commission

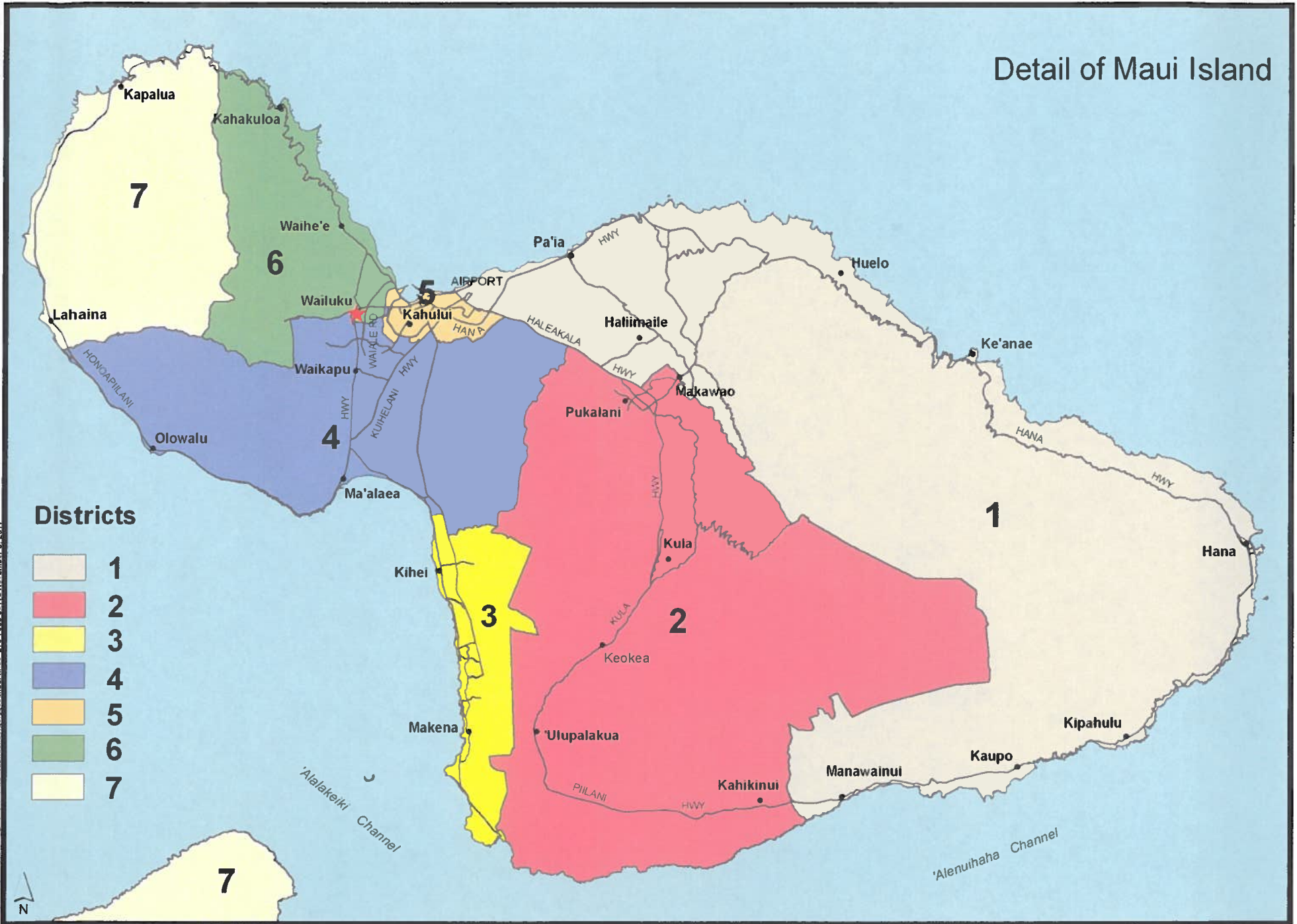
Scenario 4

Sheet
1 of 3

111411 - Item No. IV.A.

November 14, 2011

Detail of Maui Island



Districts

- 1
- 2
- 3
- 4
- 5
- 6
- 7

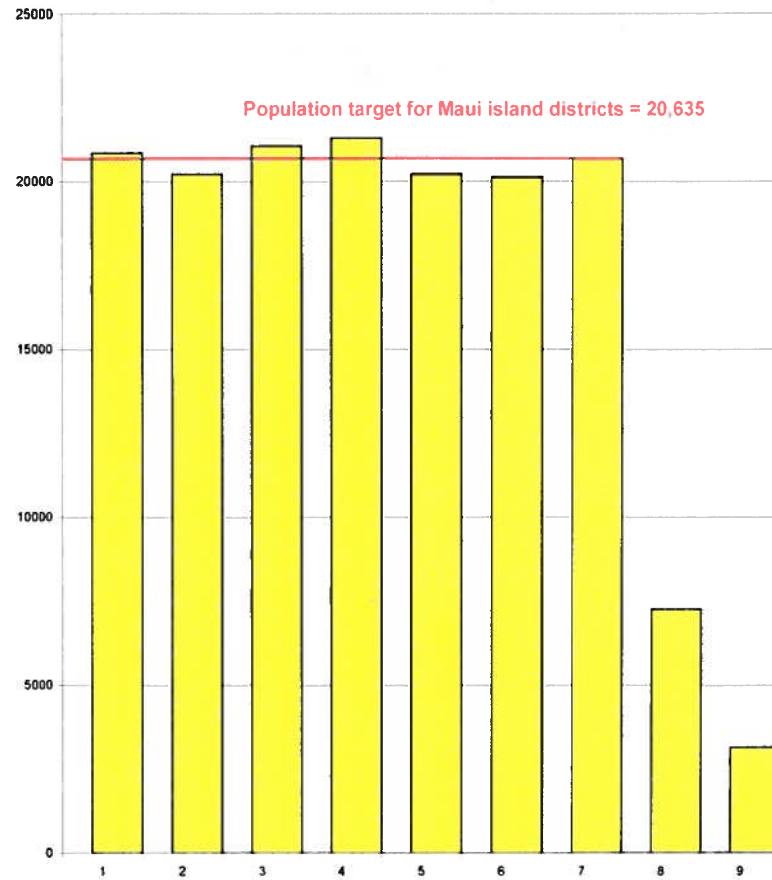
Scenario 4 maui.dem.2 of 3.mxd w:\gis\landuse\scenarios\maui\hi.us_270.7635.gis\11L November 8, 2011

**Maui County Charter Commission
Districting Scenario 4**

(9 districts, with 7 relatively equal districts on Maui island, and Molokai and Lanai as individual districts)

District	Region	Population	Dev ±	Dev %
1	East Maui, Paia	20851	216	1.05
2	Upcountry	20218	-417	-2.02
3	South Maui	21058	423	2.05
4	Olowalu, Central Maui	21302	667	3.23
5	Kahului	20214	-421	-2.04
6	Wailuku, Waihee	20124	-511	-2.48
7	West Maui (north)	20673	38	0.18
8	Molokai	7255	0	0
9	Lanai	3135	0	0

**Maui County Charter Commission
Districting Scenario 4**



ALAN M. ARAKAWA
Mayor

KEITH A. REGAN
Managing Director



Joshua A. Stone, Chair
Wayne N. Hedani, Vice Chair
Artemio C. Baxa
Stephanie S. Crivello
David P. DeLeon
Frank R. De Rego, Jr.
Clifford P. Hashimoto
Susan A. Moikeha
Linda Kay Okamoto
Yuki Lei Sugimura
Flo V. Wiger

CHARTER COMMISSION
COUNTY OF MAUI
C/O DEPARTMENT OF THE CORPORATION COUNSEL
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
Email: Charter.commission@co.maui.hi.us

November 10, 2011

Via email only @ barbara.ankersmit@euthologygroup.com

Barbara Ankersmit
Q-Mark Research

RE: Questions regarding April 2010 Survey regarding single member district voting in Maui County

Aloha Ms Ankersmit:

My name is Josh Stone and I am the Chairman of the Maui County Charter Commission. I'd like to thank you very much for taking the time to clarify the survey presented to us as information to be used in our deliberations on the District Voting issue for Maui County. The commissioners asked to have the following questions passed on to you prior to our phone meeting:

1. How many surveys distributed? Or calls made?
2. Demographic of respondent pool?
3. What were the specific/exact questions asked?
4. How many respondents per islands?
5. How many respondents per Districts?
6. How many brochures mailed?
7. To whom and where?
8. How soon after the brochure mailed did you do survey?
9. Is there a breakdown on the 351 households surveyed on Maui as to their location (i.e., South, West, East etc.)?

10. How was it determined how many households would be interviewed?
11. Was there any predetermined criteria as to who would be interviewed in the household (i.e., age, gender, registered voter, first person to answer the phone, etc.)?
12. Was the surveyor able to communicate with those who did not speak English as their first language, and were those with physical disabilities, (i.e., hearing impairments) given an opportunity to participate?
13. Were there definitions given by the surveyor if the participant didn't understand what a "single member district voting is"? If so was the definition read from a predetermined script or it was conveyed by the surveyors based on their own understanding of the subject matter?
14. Once the survey was completed how were the initial results distributed (report form, raw data, etc.)? Who received the initial report, and did they make any edits prior to distributing the final report that we have today?
15. Did the survey ask the households interviewed for more information than was in the final report? If so what else was asked?
16. How many households (including the general location i.e., South Maui, West, Central, etc.), did the educational flyer (see copy attached) go to within the County of Maui?
17. If it was not to every household what was the methodology used to determine which households received the educational flyer that was sent out prior to the survey and when was it sent out?

In general, I would like to see a more detailed and in-depth explanation of the methodology used to conduct the survey, including the script used to make the phone calls. So far we have only a one sentence statement on the methodology.

Barbara Ankersmit
Q-Mark Research
Page 3

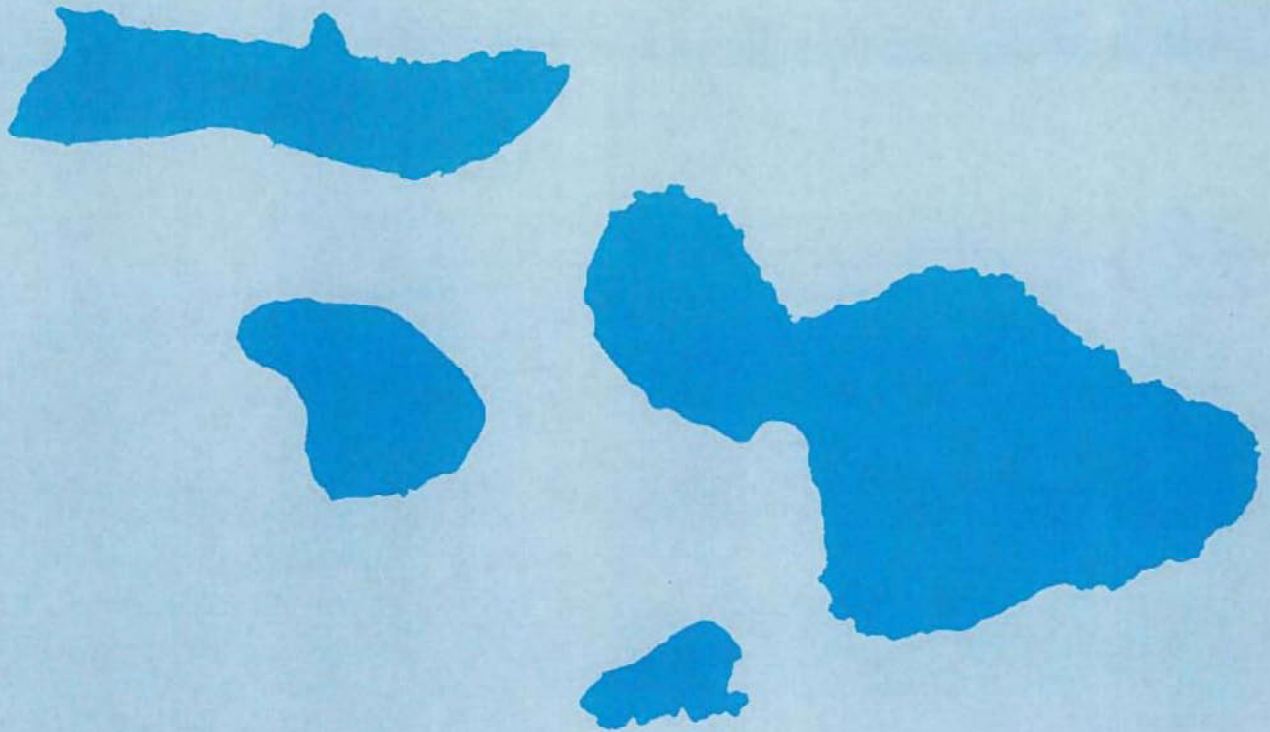
Thanks again and look forward to talking to you November 14th.
Please contact me if you need any clarification.

Mahalo,

JOSHUA A. STONE

Joshua A. Stone
Chairman,
Maui County Charter Commission

Attachment



What Is District Voting?

Introduction: What Is District Voting?

Recently, District Voting for the Maui County Council has received a lot of attention around the County. In line with its mission, the directors of the North Beach West Maui Benefit Fund commissioned Professor Jon Van Dyke, respected constitutional law scholar, to provide this educational brochure to help our community better understand what District Voting is. This brochure gives an overview of district voting and compares some of the different proposals that have been offered by different groups over the past couple of years.

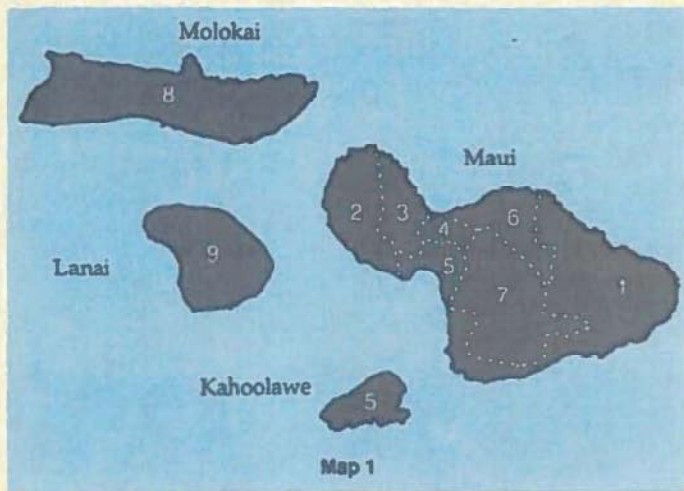
Constitutional Requirements

In *Reynolds v. Sims* (1964), the U.S. Supreme Court ruled that the Equal Protection Clause of the U.S. Constitution required that each person's vote have equal weight in all elections. This decision established the "one-person/one-vote" requirement, whereby apportionment of voting districts be based solely on population. The Court explicitly rejected the idea that rural or less-populated areas could receive enhanced voting clout simply because of their geographic size or uniqueness. In his majority opinion, Chief Justice Earl Warren explained that: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."

The Challenge Presented by Maui County's Population

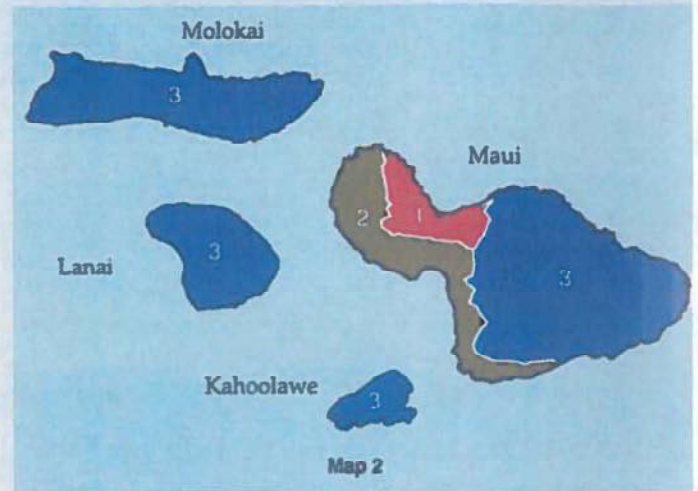
Maui County's population is not evenly distributed. Estimates for 2010 put the population of the Island of Maui at 140,339, Molokai at 7,276 and Lanai at 3,735 – for a total County population of 151,350. If Maui County were divided into districts for the purpose of electing members of the County Council, under the "one-person/one-vote" requirement, Lanai would be entitled to have its own councilmember only if the Council had 40 members. Even if Lanai and Molokai were combined, they would together be entitled to a single councilmember only if the Council had 14 members. Courts have permitted local governments, like Maui County, to elect councilmembers "at large" (i.e., with each legislator being elected by the entire County) while requiring that some or all of the councilmembers live in defined "residency areas." This system ensures that councilmembers have some geographic diversity while being technically consistent with the "one-person/one-vote" requirement. Many have expressed concerns that, as Maui has grown, the current "at large" system should be replaced with District Voting.





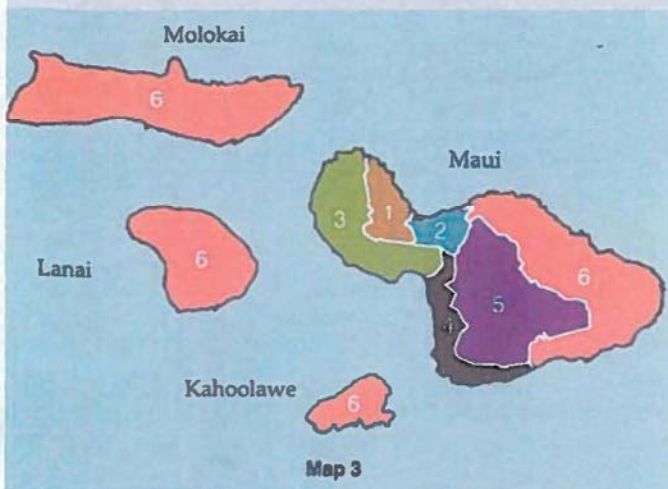
**The Present System:
One County-wide District
with Nine Residency Areas**

Currently, each Maui County voter is entitled to cast a vote in all nine elections for members of the Maui County Council, but the candidates running must reside in one of the nine separate geographically-defined "residency areas," as illustrated in Map 1. This system ensures that a councilmember reside in each of the less populated areas of the County like Lanai, Molokai, and East Maui. Because voters from throughout the County vote in each of the nine councilmember races, candidates must campaign for votes from across the County (thus requiring expensive campaigns) and sometimes do not have the support of voters in the area in which they reside. As a practical matter, the voters from the more heavily-populated areas (Wailuku and Kahului) determine who will win the elections for councilmembers seeking to represent the less populated areas simply because more votes are cast in the heavily-populated areas.



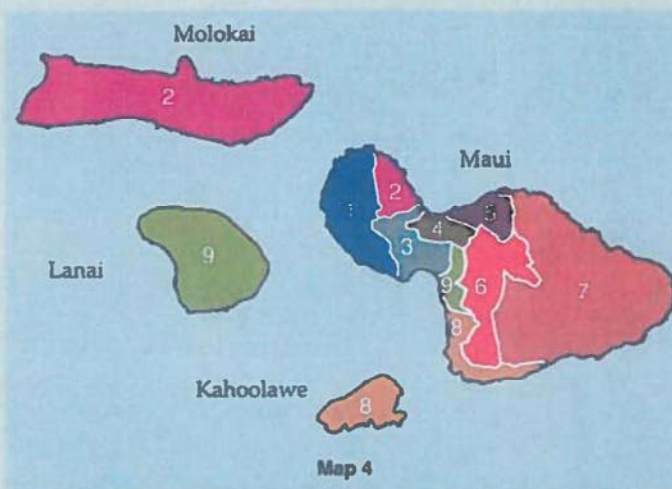
**Option One:
Three Multi-Member Districts**

Option One utilizes the three current Maui Senate Districts, illustrated in Map 2. Voters in each of these districts would cast up-to-three votes for their favorite candidates, and the top three vote-getters in each district would become councilmembers. Under this approach, the candidates would run in only one-third of the County, thus reducing campaign expenses. Once elected, they would still represent a large portion of the County. Because voters can vote for three candidates, voters can promote perspectives they favor or divide their votes in a manner that leads to diversity among the councilmembers.



**Option Two:
Six Single-Member Districts
Plus Three At-Large Districts**

In this approach, one council member would be elected from each of the six current Maui House-of-Representative Districts, illustrated in Map 3, and three would be elected at-large by voters throughout the County. This approach would allow closer ties between voters and elected council members in the six single-member districts and would lower campaign costs. It would also continue to allow certain candidates the opportunity to campaign throughout the County and to represent the entire County in the Council, including those who might seek to promote greater name recognition for a future race for Mayor or some other office.



**Option Three:
Nine Single-Member Districts**

Under this approach, Maui County would be divided into nine geographical districts, each representing about the same number of voters, as is done in Honolulu and the Big Island. A nonpartisan apportionment commission would create nine districts based on the needs and preferences of the different communities around Maui County. Map 4 shows one possible configuration. Many other configurations are also possible. The advantages of this approach are that the candidates would run in small regions, keeping campaign costs as low as possible and strengthening voters' connection with their individual council member. A possible disadvantage is that some councilmembers may be focused only on the district they represent, and may ignore concerns relevant to the other parts of the County.



**North Beach-West Maui
Benefit Fund Inc.**

PO BOX 11329
Lahania HI 96761-6329
www.northbeachmaui.org

PRESORTED
STANDARD
U.S. POSTAGE PAID
HONOLULU, HI
PERMIT NO. 1023

From: Barbara Ankersmit <Barbara.Ankersmit@anthologygroup.com>
To: Lisa Kahuhu <Lisa.Kahuhu@co.maui.hi.us>
CC: Edward Kushi <Edward.Kushi@co.maui.hi.us>
Date: 11/10/2011 2:24 PM
Subject: RE: Maui County Charter Commission Questions re: April 2010 District Voting Survey

Dear Lisa:

I have received your email and will be prepared to address the items specific to the work I did.

You should understand that the flyer was not part of my assignment and I had no role of any kind in its writing, preparation or distribution. The copy you sent me was the first time I had ever seen a copy of it. Therefore, I cannot answer any questions about the flyer at all.

Best regards,

Barbara

Direct line 808 544 3020
Mobile phone 808 372 4414

-----Original Message-----

From: Lisa Kahuhu [mailto:Lisa.Kahuhu@co.maui.hi.us]
Sent: Thursday, November 10, 2011 11:05 AM
To: Barbara Ankersmit
Cc: Edward Kushi
Subject: Maui County Charter Commission Questions re: April 2010 District Voting Survey

Aloha Barbara, thank you again for assisting the Charter Commission in this regard.

Attached is the letter from Chair Stone with various questions the Commissioners have. I hope this will help you to prepare.

I am looking to call you somewhere between 11:30 a.m. and 1:00 p.m. on Monday, 11/14/11 at 808-544-3020. I hope this time schedule will work with you. If not, please let me know.

Please send me a short reply so that I know that you received this.

Again Mahalo for making yourself available.

Sincerely,

Lisa A. Kahuhu,
 Supervising Law Technician
 Department of the Corporation Counsel
 270-7585

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of the intended recipient.
 If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal.
 Thank you.

 County of Maui
 IT Security measures will reject attachments
 larger than 11 MB, and will block or quarantine
 high-risk file types in attachments

From: Barbara Ankersmit <Barbara.Ankersmit@anthologygroup.com>
To: Lisa Kahuhu <Lisa.Kahuhu@co.maui.hi.us>
Date: 11/11/2011 3:07 PM
Subject: Report for charter commission
Attachments: MAUI-COUNCIL-CLIENT-MAY10 - 11-11 docx

Dear Lisa:

As part of my testimony, I would like the commission to have the attached document which is a report that was generated for my client. At the back of the report is the complete questionnaire. I will address some of the commission's questions using this document.

Best regards,

Barbara

BARBARA ANKERSMIT
President
QMark Research
Pauahi Tower
1003 Bishop Street - 9th floor
Honolulu, HI 96813
Direct line(808)544 3020
Cell phone (808) 372 4414

[ANTHOLOGY]

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain information that is confidential and protected by law from unauthorized disclosure. If you are not the intended recipient, please contact the sender by selecting reply and delete the e-mail from your system.

Please consider the environment before printing this e-mail.



**MAUI COUNTY COUNCIL
STUDY**

**Prepared for:
North Beach West Maui Benefit Fund**



BACKGROUND & METHODOLOGY

North Beach West Maui Benefit Fund has contracted QMark Research to conduct a quantitative study in the form of a telephone interview among residents of Maui County.

The field work began on April 20, 2010 and ended on May 1, 2010. A total of 503 interviews were conducted with the following breakdowns; 50=Lanai, 50=Molokai, 52=Hana, 351=Maui (excl Hana). The data was then weighted to reflect population estimates for adults 18 and over in each area based on U.S. Census data.

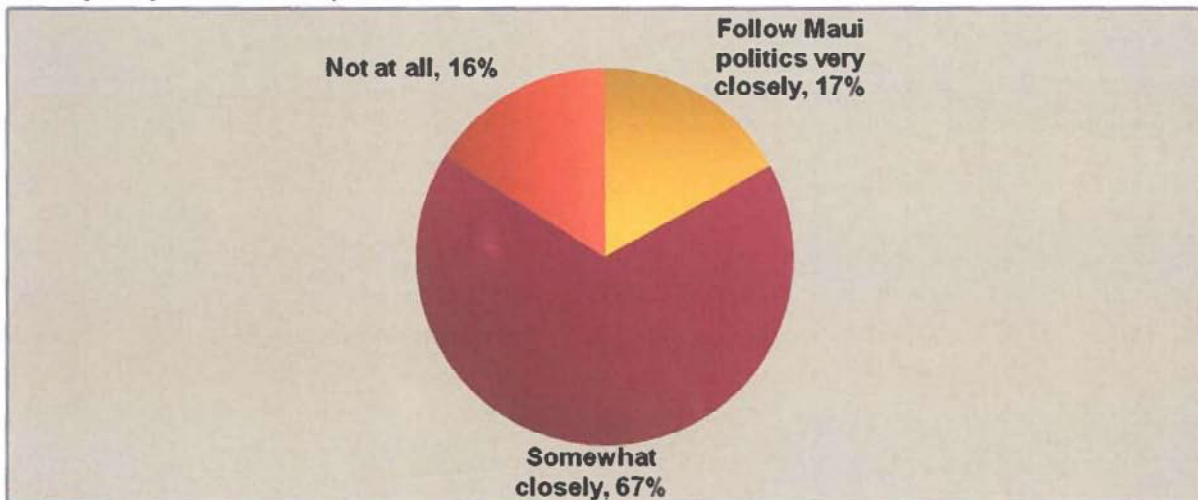
A sample of this size (n=503) has a margin of error of +/- 4.38 percentage points with a 95% confidence level.

The sample was derived from a listing generated from QMark's Random Digit Dialing Software. Each respondent was screened to ensure they lived on Maui at least six months out of the year and were not employed in any of the following fields; marketing, market research, advertising, public relations or active duty military.

SUMMARY OF FINDINGS

MAUI COUNTY COUNCIL

At the outset of this section of the research Maui residents were asked to estimate how closely they follow local politics.



Overall, 17% of those polled say they follow Maui politics very closely. Of the remainder, a majority (67%) indicate they follow it somewhat closely while 16% do not follow it at all.

Those who reside in Hana, Molokai and Lanai have a higher proportion of residents who follow Maui politics very closely as compared to those living in the rest of Maui.

	Maui (n=351)	Hana (n=52)	Molokai (n=50)	Lanai (n=50)
Follow Maui politics very closely	16%	21%	22%	20%
Somewhat closely	69%	60%	52%	42%
Not at all	15%	19%	26%	34%
Don't know	0%	-	-	4%



Aided Awareness – Council Election Process

Next, Maui residents were presented with five statements related to the election process of the Maui County Council. After being read each statement they were then asked if they were aware of this prior to taking part in the study. The table below highlights the percent that were aware of each fact prior to taking part in the study.

PERCENT AWARE – AIDED AWARENESS	OVERALL	Maui (n=351)	Hana (n=52)	Molokai (n=50)	Lanai (n=50)
All 9 council members are elected county wide just like the mayor but are required to reside in one of the 9 so called "residency" areas around the county	78%	78%	87%	74%	70%
This election system allows candidates to be elected even if they are not supported by voters in the "areas" in which they are required to reside	49%	48%	60%	62%	58%
This election system gives voters living in less populated areas less influence on who represents them (for instance Molokai would have a maximum influence of 5% of the total vote for each of the 9 council races even if everyone there voted for the same candidate)	48%	46%	62%	62%	66%
There are proposals to change the system to "single member districts" where council members reside in and are elected by specific districts of roughly equal population like most legislative bodies throughout the United States	41%	40%	38%	48%	50%
That Oahu and the Big Island use "single member district voting" already	27%	27%	19%	22%	32%

Forty-one percent of those polled was aware that efforts are being made to convert the current system to "single member districts" where council members must reside in the districts they serve.

The research shows the item with the highest aided awareness (78%) pertains to the issue related to the fact that all nine Maui Council members are elected county wide and are simply required to reside in one of the nine areas.

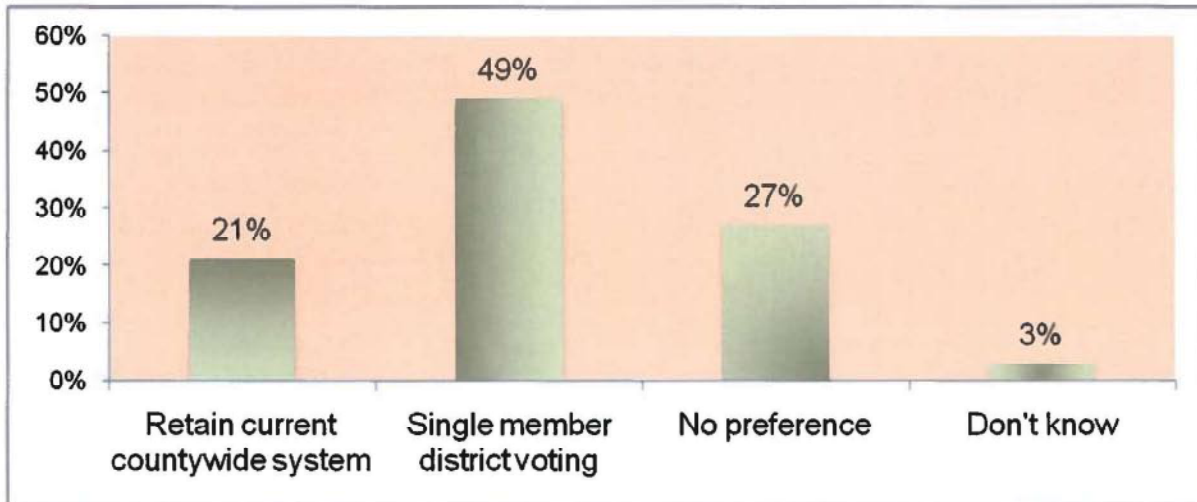
Roughly half (49%) the respondents polled say they were aware that the current system allows a council person to represent a specific district even though they may not have the support of the residents of the area. A near equal (48%) number were also aware that this system provides less influence for those living in less populated areas.

Just one in four (27%) respondents was aware that "single member districts" are currently being used on Oahu and the Big Island.



Preference- Council Elections

After Maui residents had a chance to familiarize themselves with this issue in the prior section they were then asked which of the two methodologies described to them they preferred most.



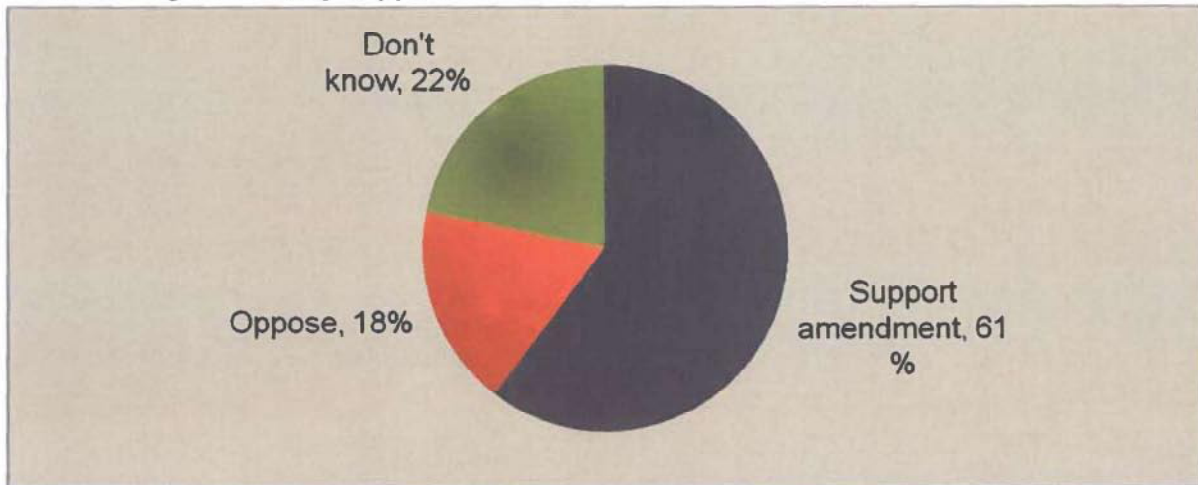
The results show one in five (21%) respondents prefers to keep the current system in place. Roughly half (49%) would like to see the change made to single member voting districts while 27% express no preference. Three percent are undecided.

The change to single member district voting is the preferred choice in each of the areas tested.

	Maui (n=351)	Hana (n=52)	Molokai (n=50)	Lanai (n=50)
I would like to see the current system remain as is where all 9 council members are elected by voters countywide	21%	27%	16%	12%
I would like to see "single member district voting" like Oahu and the Big Island	49%	44%	58%	42%
I do not have an opinion either way	27%	25%	24%	34%
Don't know/ Refused	3%	4%	2%	12%

Charter Amendment

Regardless of the way they responded in the prior section each individual was asked if a charter amendment were proposed to change the current system to single member district voting would they support it.



Currently, 61% of those polled indicate they would support an amendment changing the current system to single member districts.

Support for this amendment is prevalent in each of the areas tested.

	Mau (n=351)	Hana (n=52)	Molokai (n=50)	Lanai (n=50)
Support amendment to change system to single member districts	60%	69%	74%	60%
Would not support	18%	19%	14%	8%
Don't know/ Refused	22%	12%	12%	32%

- When the results are filtered to show the opinions of just registered voters we find a slight bump for those preferring single member voting districts rising from 61% in the overall to 65% among just registered voters.

Next, those individuals with an opinion either way on this proposed amendment were asked why they would support or oppose it.

SUPPORT N=304		OPPOSE N=87	
33%	District should have own representation	26%	Don't know
17%	More fair	24%	Like current system



15%	Residents should represent own district	11%	More populated areas should have more impact
13%	Preferred/ better for district	11%	No trust in political system

Among those who indicate they would support this measure the reasons cited for doing so include the belief that it is important for each specific district have its own representation, that it is simply the fairer of the two options, that residents should represent the district they live in and that it is simply the better choice.

Familiarity

At the conclusion of this section of the research respondents were asked to rate their familiarity with this particular voting issue prior to taking part in the study. They were asked to quantify their perceptions using a standard four-point rating scale (very familiar=4/ somewhat familiar=3/ somewhat unfamiliar=2/ very unfamiliar=1). The table below highlights the percent results as well as the mean or average score. The higher the mean score the greater the perceived familiarity with this particular issue.

	OVERALL (N=503)	SUPPORT (N=313)	OPPOSE (N=85)	UNDECIDED (N=105)
Very familiar (4)	16%	19%	20%	4%
Somewhat familiar (3)	37%	42%	42%	21%
Net Familiar	53%	61%	62%	25%
Somewhat unfamiliar (2)	23%	23%	16%	30%
Very unfamiliar (1)	23%	16%	23%	43%
Net Unfamiliar	46%	39%	39%	73%
Don't know/ Ref	0%	-	-	2%
MEAN	2.46	2.64	2.59	1.86

Overall, just 16% of those polled consider themselves to be very familiar with this topic. Another 37% considers them to be somewhat familiar with this issue. When these scores are combined we have 53% or roughly half who express at least some familiarity with this issue. At the opposite end, 23% each are somewhat or very unfamiliar with this topic resulting in a net of 46%. These scores combined result in a mean or average score of 2.46 out of a possible 4.0.

When familiarity is measured comparing supporters and opponents of this amendment we find no significant differences between the two camps. Many who are undecided express unfamiliarity with this topic.



The table below highlights the results by area. The results show familiarity higher on Molokai and Lanai with this particular issue.

	Maui (n=351)	Hana (n=52)	Molokai (n=50)	Lanai (n=50)
Net Familiar (Very Familiar/ Somewhat)	53%	57%	62%	62%
Net Unfamiliar (Very Unfamiliar/ Somewhat)	47%	42%	38%	34%
MEAN	2.45	2.52	2.66	2.54

APPENDIX



Interviewer _____

Date _____

50=Lanai
50=Hana
50=Molokai
350=Rest of Maui

**Maui County Residents
Maui Council Study
QMark Research
March 2010**

Hello, I'm _____ from **QMark Research**. We're conducting a market Research survey on an important issue concerning Maui County residents today/this evening and we would like to include your opinion. This is strictly market research as we do no product promotion or selling. May I speak to someone 18 years of age or older who lives in this household?

[REPEAT GREETING ONCE APPROPRIATE PARTY IS ON THE TELEPHONE.]

A. Are you or is anyone in your household employed in marketing, market research, advertising, public relations or active duty military?

[IF "YES", THANK AND TERMINATE, CODE ON CALL RECORD SHEET.]

THANK AND TERMINATE & CODE ON CALL RECORD SHEET	-----	No Yes
---	-------	-----------

B. Are you a resident of Maui County (lives on island at least 6 months out of year)?

[IF "NO", THANK AND TERMINATE, CODE ON CALL RECORD SHEET.]

THANK AND TERMINATE & CODE ON CALL RECORD SHEET	-----	Yes No
---	-------	---------------

↓



1. First, I will read you a list of island issues. As I read each one, please tell me if you think that issue is Very important, Somewhat important, Somewhat unimportant or Very unimportant.

- 1 **very important**
- 2 **somewhat important**
- 3 **somewhat unimportant**
- 4 **very unimportant**

How important would you rate...

[ROTATE LIST]

- a. the issue of the cost of living on Maui _____ (xx)
- b. the issue of traffic congestion on Maui _____ (xx)
- c. the price of gasoline on Maui _____ (xx)
- d. energy and utility costs _____ (xx)
- e. ensuring there are available, good paying jobs on Maui _____ (xx)
- f. ensuring availability of affordable housing _____ (xx)
- g. ensuring access to healthcare providers and facilities _____ (xx)
- h. increasing higher education options _____ (xx)
- i. increasing public transportation options _____ (xx)
- j. working to reduce taxes _____ (xx)
- k. the impact of growth of the timeshare industry on Maui _____ (xx)
- l. improving existing infrastructure (roads, highways) _____ (xx)
- m. the issue of development in terms of both residential and commercial projects on Maui _____ (xx)
- n. the local environment, protecting Maui's natural resource _____ (xx)

2. Would you say you follow Maui politics..... _____ (xx)

- 1 Very closely
- 2 Somewhat closely
- 3 Not at all



3. Now, I will read you a list of facts about the Maui County Council election process. Were you aware that....

		Yes	No	
a.	All 9 council members are elected county wide just like the mayor but are required to reside in one of the 9 so called "residency" areas around the county?	1	2	(xx)
b.	This election system gives voters living in less populated areas less influence on who represents them (for instance Molokai would have a maximum influence of 5% of the total vote for each of the 9 Council races even if everyone there voted for the same candidates)?	1	2	(xx)
c.	This election system allows candidates to be elected even if they are not supported by voters in the "areas" in which they are required to reside?	1	2	(xx)
d.	There are proposals to change the system to "single member districts" where council members reside in and are elected by specific districts of roughly equal population like most legislative bodies throughout the United States?	1	2	(xx)
e.	That Oahu and the Big Island use "single member district voting" already?	1	2	(xx)
4.	Which of the following statements best describes your views on future Maui County Council elections?			_____ (xx)
	1 I would like to see the current system remain as is where all 9 council members are elected by voters county-wide.			
	2 I would like to see "single member district voting" like Oahu and the Big Island			
	3 I do not have an opinion either way			
	4 Don't Know			
5.	If a charter amendment were proposed changing the current system to single member districts, would you support such an amendment?			_____ (xx)
	1 Yes			
	2 No			
	3 Don't Know			



6. Why do you say that? _____ (xx)
_____ (xx)
7. Before this survey, how familiar were you with this voting issue? _____ (xx)
Would you say...
- 1 Very familiar
 - 2 Somewhat familiar
 - 3 Somewhat unfamiliar
 - 4 Very unfamiliar
8. What is your general attitude towards the Councilmember who lives in your area? Would you say have a.... _____ (xx)
- 1 Very favorable opinion
 - 2 Somewhat favorable opinion
 - 3 Somewhat unfavorable opinion
 - 4 Very unfavorable opinion
9. Would you say the attention given your specific area by the County Council in general is very good, somewhat good, somewhat poor or very poor? _____ (xx)
- 1 Very good
 - 2 Somewhat good
 - 3 Somewhat poor
 - 4 Very poor
10. Would you say the attention given your specific area by the Council member who lives in your area is very good, somewhat good, somewhat poor or very poor? _____ (xx)
- 1 Very good
 - 2 Somewhat good
 - 3 Somewhat poor
 - 4 Very poor



11. What sources of information do you use to get information on this type of issue? _____ (xx)
- 1 Newspapers _____ (xx)
 - 2 Television _____ (xx)
 - 3 Radio
 - 4 Internet
 - 5 Word of mouth from friends and family
 - 6 State representatives/senators
 - 7 County Councilmembers
 - 8 Other (specify _____)
 - 9 Don't use any sources

And a few last questions for classification purposes only.

- D1. Are you a registered voter of Hawaii? _____ (xx)
- 1 Yes
 - 2 No

- D2. In the elections held since you've been old enough to vote, would you say you have voted in all of them, most of them, some of them or just a few of them? _____ (xx)
- 1 All of them
 - 2 Most of them
 - 3 Some of them
 - 4 Just a few
 - 5 **(FIRST TIME VOTER)**
 - 9 **(DON'T KNOW)**

- D3. Which of the following best describes you? _____ (xx)
- 1 Strong Democrat
 - 2 Leaning Democrat
 - 3 Independent
 - 4 Leaning Republican
 - 5 Strong Republican

- D4. Are you or is anyone living in your household a member of a union? _____ (xx)
- 1 Yes
 - 2 No



- D5. What was the last level of schooling you completed? _____ (xx)
- 1 Less than high school graduate
 - 2 High school graduate
 - 3 some college
 - 4 College graduate (bachelors degree)
 - 5 Post graduate and beyond
 - 6 Refused
- D6. Do you own or rent your home? _____ (xx)
- 1 Own
 - 2 Rent
- D7. Did you attend high school in Hawaii? _____ (xx)
- 1 Yes (Specify _____)
 - 2 No
- D8. Do you have access to the internet? _____ (xx)
- 1 Yes
 - 2 No
- D9. What was your age on your last birthday? _____ (xx)
- D10. How many years have you lived in Hawaii? Would you say ... _____ (xx)
- 1 less than five years
 - 2 Five years but less than Ten
 - 3 Ten years but less than Twenty
 - 4 Twenty years or more
 - 5 All your life
- D11. How many years have you lived in **Maui County**? Would you say....
- 1 less than five years
 - 2 Five years but less than Ten
 - 3 Ten years but less than Twenty
 - 4 Twenty years or more
 - 5 All your life



D12. What is your ethnic identification? _____ (xx)

[IF MORE THAN ONE, ASK: "With which do you identify the most?"

IF NO CHOICE, CIRCLE MIXED]

- 1 Caucasian
- 2 Japanese
- 3 Chinese
- 4 Filipino
- 5 Hawaiian/Part-Hawaiian
- 6 African-American
- 7 Other (SPECIFY: _____)
- 8 Mixed

D13. Finally, I will read some broad categories of income and I would like you _____ (xx)

to tell me when I come to the category that includes your household's income before taxes for 2009. Please consider and include in your thinking the income of all persons living in your household as well as income from all sources including investments, retirement funds, etc.

[INTERVIEWER: READ CATEGORIES]

Again, just stop me when I come to the correct category.

- 1 Less than \$25,000
- 2 \$25,000 but less than \$50,000
- 3 \$50,000 but less than \$75,000
- 4 \$75,000 but less than \$100,000
- 5 \$100,000 and over
- 6 DON'T KNOW/REFUSED

D14. **[Record, DO NOT ASK:]** Gender: 1 Male 2 Female _____ (xx)

*Those are all the questions I have, thank you for participating in our survey!
May I please have your name, just in case my supervisor needs to verify I did this survey?*

Name _____ Telephone number _____

Maui County Charter

Establish an Independent Office of the County Auditor and Define its Duties and Provide that the County Auditor be Appointed and Removed by the Cost of Government Commission

Proposed Charter Amendment**

“Shall the Charter be amended to establish an independent Office of the County Auditor, to provide for the appointment and removal of an Independent County Auditor by the Cost of Government Commission, to define the County Auditor’s duties and powers in order to increase accountability and efficiency of County operations, to be appointed by and removed by the Cost of Government Commission and to make other clarifying, conforming, transitional, and related amendments?”

** STAFF COMMENTS - The commission's current proposal would greatly increase the power/authority of the COG from the current charter-created, advisory commission whose task is to complete and submit a report to the council to a board/commission similar in power/authority to the Police or Fire commissions, which directly appoint its "CEO", i.e., the Fire and Police chiefs. Accordingly, Section 8, Chapter 16, would probably need to be amended further to reflect the creation of such authority.

** STAFF COMMENTS - It might make sense for the Charter Commission to consider moving the independent office of the county auditor from Article 8, County Departments, Section 16, Cost of Government Commission to create a separate department. The motion that passed seemed to continue its existence in Article 8, Chapter 16, Cost of Government Commission. See Active Proposal #8.16.8

**STAFF COMMENTS -- In addition to its appointing authority, the Cost of Government Commission would also be making budget/funding requests to the council for the new department as well as other matters.

[added material is underlined, deleted material is bracketed.]

1. Amend Article 8, County Departments, Section 16, Cost of Government Commission, as follows:

Chapter 16

[Cost of Government Commission]

Office of the County Auditor

Section 8-16-4. 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 cost of government commission, 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 Commission 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 cost of government commission, 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 commission. Persons appointed to such positions shall be exempt from the civil service and shall serve at the pleasure of the county auditor.

Section 8-16-5. 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

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. Amend Section 9-13 of the Charter, pertaining to Audit of Accounts, 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.

3. Amend Article 15 of the Charter, pertaining to Transitional Provisions, 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.”.

