

MAUI COUNTY CHARTER COMMISSION PUBLIC MEETING  
County Council Committee Room, Maui  
Monday, December 17, 2001  
8:30 a.m.

PRESENT

Teryl VencI, Chair  
R. Sean McLaughlin, Vice-Chair  
Vince Bagoyo  
Bill Fuhrmann  
Gwen Hiraga  
Stephen Holaday  
Karolyn Mossman  
Stephen Petro  
Erlinda Rosario  
Donn Takahashi

STAFF

Brian Moto, Corporation Counsel  
Ke'ala Pasco, Charter Commission Assistant  
Jon Van Dyke, Charter Commission Analyst

CALL TO ORDER

Chair VencI called the meeting to order at 8:33 a.m. Commissioners present: Bagoyo; Fuhrmann; Hiraga; Holaday; Mossman; Petro; Rosario; Takahashi. Vice-Chair McLaughlin is expected soon. Also present: Counsel Brian Moto; Analyst Jon Van Dyke; and Assistant Ke'ala Pasco. Chair VencI explained the testimony rules of three minutes plus one with the option of coming back to continue testimony once everyone has testified. She called up the first person to testify.

TESTIMONY

MS. SALLY RAISBECK

Ms. Raisbeck submitted written testimony. She outlined her requests:

- 1) She asked that if the Commission recommends more autonomy for the Water Board, they also present the alternative of making the Water Department a regular department of the County with an advisory Water Board. This alternative route was recommended by former Mayor Linda Lingle and council members Carroll and Tavares.
- 2) Ms. Raisbeck also requested that commissioners Bagoyo, Holaday, and Takahashi recuse themselves on final Charter recommendations for this issue due to their responsibilities with large corporations with ongoing business with the Water Board and Water Department. She then ran out of time and asked to come back to finish later.

MR. JIM SMITH

Mr. Smith proposed amendments to the Charter for Article 8, Section 2 regarding Corporation Counsel. This included two documents that put his suggestions regarding a public acts review board into context. He also made recommendations regarding the organization, requirements, and responsibilities of Corporation Counsel (please see his handout for specifics).

Mr. Smith mentioned that there was no reference on the agenda for consideration of the Board of Water Supply. Any decision-making should be listed on the agenda. Agendas might be too broad. Very specific items should be listed if the Commission intends to act on it that day.

Regarding the Planning commission, Mr. Smith wants the wording to reflect keeping the government *responsible* to the people, versus *accountable* to the people. Responsibility has to do with vision; accountability has to do with doing something wrong. The Land Use and Codes Administration would be a separate department; it resonates with moral responsibility. He asked that the Commission take the Board of Variances and Appeals and allow for anyone to appeal a decision of a director to that board. Mr. Smith thanked the commissioners.

Commissioner Hiraga asked if any citizen should be able to appeal, and Mr. Smith replied either or both, and began to discuss fees, but his time ran out, so he thanked the Commission. Chair Venci called up the next person to testify.

MS. BARBARA LONG

Ms. Long said that this revision of the charter would bring planning up to speed. She wants the commissioners to determine if the job is big enough to warrant two directors, or if one experienced, trained person could lead the department. This person should be thoroughly familiar with personnel. She suggested that the planning director have an urban or regional planning degree, five years' experience, and a familiarity with long range planning. We need a qualified, competent leader to provide Maui with the very best in planning for the next 100 years.

Ms. Long added that she hopes Commissioners Holaday and Petro have changed their views regarding appointments. She believes they should be reviewed more by the public. The Mayor appoints, and if the public rejects them, they'll be taken out. However, this thinking is flawed because of the delayed reaction.

Chair Venci indicated that it was time for the next testifier. Ms. Long asked to return later for three more minutes.

MR. JONATHAN STARR

Mr. Starr testified as an individual regarding the proposed amendment and wording on 8-11. He feels that what the Commission is doing is merely a palliative or "feel good" measure for the public, which is not at all satisfied with the Board of Water Supply's productivity (neither is he). A lot of the problem is with its makeup. They're not getting the job done or creating new sources of water that we need at an affordable price. Shortages upcountry will continue; we've run out of sources in central Maui. The department's been losing \$6 M a year. There's no water development use in place (no solid progression).

Having run fairly large corporations, Mr. Starr knows that this corporation wouldn't exist; it'd just be absorbed by another entity (County of Maui). He feels this should happen to the Board of Water Supply, and that the powers of the Board should be reduced, not expanded. Actual activity should be under a stronger administration that can hire and fire the director. While Mr. Starr has been on the Board for three years, he still hasn't been able to participate in a review of its director. He doesn't understand this; something is very wrong when this occurs (it's dysfunctional). Many people feel that the director has a credibility and truth problem.

Mr. Starr concluded by saying that if we want Maui to have adequate supplies of water in the future, we need to give the Board the opportunity to change the structure and get away from something that hasn't worked and is unfair. They need to create plans, an overview, of what's needed. He wished the Commission well in its deliberations.

Commissioner Bagoyo thanked Mr. Starr for his testimony, and said he couldn't believe that the director hasn't been evaluated yet. According to 8.11.4 and 5, this is one of the board's responsibilities.

Mr. Starr answered that they've had two different Chairs, and months and months of how they'd evaluate them, but the Chairs haven't been willing to put it on the agenda. It surprises and infuriates him because he has issues with the current director, and hasn't been able to voice them. The Chair has absolute control of the agenda.

Commissioner Bagoyo asked how an item is placed on the agenda (he doesn't recall it requiring a vote). He thought that as a member of the Board, he could request to place certain items on the agenda. He also added that when he was there, he had plenty of evaluations, and asked the Board to make the last evaluation he had public. Perhaps it's something he should bring to the attention of corporation counsel. Mr. Starr replied that he brings it up month to month, but it doesn't seem to work.

Commissioner Takahashi asked Mr. Moto about the legalities of that. He answered that while he agrees that it should be taken up by the Board, he's leery about getting involved and making an opinion. Boards themselves are masters of their agenda. The Chair or Vice-Chair has exercised leadership with a draft of the agenda.

Commissioner Bagoyo said that 8-11.4 specifically states that the Board evaluate the director of the department; under the charter they're mandated to do so. He doesn't think it's at the discretion of the director; it's a little unusual that this particular item couldn't be put on the agenda.

Commissioner Mossman noticed that while the charter says the director needs to be evaluated, there's no time frame. She suggested that perhaps we should put that in.

Chair Venci acknowledged Vice-Chair McLaughlin's arrival. He asked about changing the Board of Water Supply's appointing process. Mr. Starr replied that it might help somewhat, but it's too much of a responsibility to ask for without pay (conflict with their duties in the community, businesses to run). It would create a greater diversity.

MR. DICK MAYER

Mr. Mayer testified as an individual. He followed up on a list of planning issues that he passed out several months ago:

- 1) Citizen advisory committees should have some sort of permanent status. We should establish some way to keep that group meeting on a long-term basis. They should at least stay until the plan is passed.
- 2) We need to work on enforcement. One of the major concerns is that glorious plans aren't being carried out properly. The Council must have a deadline. He mentioned that it's possible the Prosecutor's Office and staff could do this.
- 3) We need community boundaries; there's a question of jurisdiction. Community associations are not always within boundaries. Where's the line that separates these areas? Perhaps we should design districts that correlate with Council seats. One of the benefits of having a boundary line would be giving people a sense of ownership for their community. Some of the less populated areas are okay, but Kula needs clearer boundaries.

- 4) Regarding the selection of people on all boards and commissions, the Mayor currently selects all. Given family ties and relationships, it's very difficult for the Council to say no. Mr. Mayer suggests that when a committee is appointed, each council member appoints one person, the mayor possibly two. Submit names for at least the most important ones (water, planning, etc.). We should have better balance of people on those boards, perhaps a "blue ribbon" committee to nominate. Reduce the length of term from five to three years.
- 5) We may wish to consider a secret or silent ballot, so we're not insulting individuals personally. It's very tough to say no to someone.

More discussion followed about the selection process and the blue ribbon committee. Mr. Mayer stressed that the advantage is balance. If each council member appoints one person, there's more variety.

Regarding boundaries, Commissioner Bagoyo said that we have nine community plan districts, and he could never understand why Sprecklesville is with Kahului. Mr. Mayer replied that some areas are overlapped. In addition to that, Wailuku and Kahului should be separated. Commissioner Bagoyo verified that Mr. Mayer was using census data as a guide ("yes, it's relatively easy to get feedback"). Commissioner Mossman thought census boundaries were based on population density, but Mr. Mayer explained that she's referring to voting areas. The census boundaries have nothing to do with voting. Boundaries could be expanded. When Commissioner Mossman asked if it was his plan to have the CACs match those boundaries, he answered that the CACs may incorporate several communities. Some communities have no community association and no responsibility.

Vice-Chair McLaughlin said that a lot of things being discussed are covered in ordinances; help us focus on what fundamental aspects need enabling or guiding language at the charter level to enable the new, smarter process to be developed. We want to be really careful not to meddle with that too much. He asked how to avoid fixing things we don't like by charter. His second question has to do with district boundaries. There's no language in the charter about this. He heard Mr. Mayer's suggestion about having them overlap or coincide with the council districts; if CACs are empowered to be more functioning bodies, then those districts and boundaries become really important. He asked if that was consistent with Mr. Mayer's suggestions.

Mr. Mayer mentioned again the two significant non-overlaps, Kaho`olawe and Wailuku/Kahului. He supports having districts correlate to those of council districts.

Regarding compliance and enforcement, Mr. Mayer said the authority to enforce should be given to the prosecuting attorney's office. They'd have the capability of saying that something significantly violated the plan. Vice-Chair McLaughlin asked if he meant making violations criminal actions. Other testifiers said the only recourse is civil court; we haven't heard specific proposals on how we might address that.

Commissioner Mossman addressed Mr. Mayer's idea of planning originating at the communities/development district level, asking how he envisioned the overall needs of the larger county being included in those plans. Mr. Mayer replied that the county general plan should handle it. It's currently reviewed every ten years; maybe it should be reviewed after three or five years. He still envisions the general plan being developed first. The two of them should not be in contradiction. Long range planning makes sure we have a good general plan. The nine level districts should be integrated with the general plan. When the County passes each of the nine

development plans, they should be thinking about the general plan. In theory, the general plan should be the overriding thought in their mind.

More discussion followed on the topic of having permanent CACs and enforcement. Commissioner Bagoyo asked if one commission or entity would handle the community and general plans. Mr. Mayer said that would have the advantages of being easier, smoother, and faster. On the other hand, the planning commission would feel less tied to it if they don't have a say. He might be able to make some recommendation to the Council. One other option would be to have the Chair of each of them make up planning commission. It's a possibility; each community would be represented and they'd have diversity.

Commissioner Petro asked about the community plan being adopted by the planning commission and the council planning committee. What about the idea of the CAC being in existence until the adoption of the community plan? Mr. Mayer said he'd like to see the community plan passed every even year. Pass a different one each year so we'd always know which one is coming up. We might want to give some smaller ones the chance to be passed on the same year.

Commissioner Petro then mentioned that Moloka'i's plans haven't been acted on for seven to eight years; major revisions will take place on those plans. What about the community advisory council being reactivated to review? The members feel that community plans are completely ignored. Mr. Mayer said it shouldn't go seven years, and asked what justifies reconvening. Shorten it into a two year period. He likes the permanent idea. If a need for change arises, they can meet again.

MS. KELLY ARBOR

Ms. Arbor testified on behalf of council member Jo Anne Johnson. She reiterated some earlier testimony that was previously submitted in writing:

- 1) About the public works department and putting responsibility in the planning department: regarding land use and codes, questions arose about subdivisions and ordinance. The process is non-conforming with the general plan. Perhaps it's time to put power into the purview of the planning department. She referred to Kaua'i's charter (article 14). A new subdivision was allowed without infrastructure planning. Honolulu also has a division of planning and permitting. There's better communication between division heads. Planning has to go back to land use files; they don't always know where we're at. It doesn't always have to be zoning for semi-agricultural areas.
- 2) Previously spoke about environmental management. Some counties adopted it for solid waste and wastewater divisions. The engineering responsibility is different. Big Island recently adopted this; they created a division with just the director and a secretary. It is coming from their special funds. They also have an environmental management commission. It's an interesting situation regarding how much policy the commission should take on. Need more staff? Personnel and county specialists would be beneficial. Wanted you to know it helps relieve the burden to other areas.

Commissioner Bagoyo said he was reviewing council member Johnson's letter of October 27. He wanted to clarify about the shift of the planning department, recommending that the planning department include zoning, building, and long range planning, so basically all responsibility would move to the planning department. He recalled that it used to be like that in the early 70s, and asked she felt about the Board of Variances and Appeals being under the Board. Ms. Arbor replied that she knew of some enforcement functions that have been moved.

She mentioned a county in Florida that has permitting and planning in one department; it creates better communication.

Commissioner Bagoyo asked for Mr. Van Dyke's and Mr. Moto's suggestions. They'll come back with them.

Vice-Chair McLaughlin summarized that we're looking at enforceability, urban design review, variances, ordinances, and appeals. Also considering an ongoing, permanent CAC, focused around the general plan focusing on a district basis, giving them correlating responsibilities; and restructuring the organizational, on legislative or representative side, permanent body at the district level.

Ms. Arbor said it's always been a struggle with the map, and following it. She hopes it can be cleaned up in the next round. She thinks the Urban Design Review Board can benefit from a permanent structure.

#### SALLY RAISBECK

Ms. Raisbeck wanted to repeat for Vice-Chair McLaughlin the two points she made earlier. She asked that commissioners Bagoyo, Holaday, and Takahashi recuse themselves on the subject of water due to deep, thorough, and wide-ranging financial arrangements for the water department. Her second request was that if the Commission is going out to public hearing with this draft, then have a change with Water Board. We have to have a change, but don't go to the public with only one suggestion. It's better to go under the mayor in that department. A viable alternative should be presented at the public hearing. Think of it as if I think something's wrong, I can work hard on county and the mayor's elections to see that we get a good county government. If there's no direct way to make displeasure about water known, they don't have any recourse. A basic concern: direct accountability to the voters, through the mayor and council, is the best way of getting expertise and management practices.

Vice-Chair McLaughlin said that other departments are practically autonomous, and clarified that Ms. Raisbeck was suggesting that we take a function that manages water and remove a layer of oversight that's separate and distinct. Rather than make it more autonomous or less accountable, is it just because of the details of water and the way it's broken down? Should we look at other areas? Ms. Raisbeck replied that direct accountability is separate because the mayor is allowed to override. Civil service has a particular flaw. If there's a problem with the police commission, we expect the prosecuting attorney to pursue it. This would be different. Most people have told you that Water is dysfunctional. She happens to know why Water is dysfunctional: they're volunteers, not getting paid, too many hours, they're burned out. People who are there are people who have a financial interest, so it's cleaner and more democratic if it goes from voter to mayor.

#### BARBARA LONG

Ms. Long picked up where she left off. She's in an awkward situation because of what Councilmember Tavares has been up to, wanting to make changes by ordinance. Have council here to tell you. First she said they can do most by ordinance. The Charter must provide structure so it "can't be messed with." The first consideration should be the people of Maui.

8-3.3 #5, priority of capital improvements isn't happening; we need to enforce the Charter rules. She'd like to add a historical and preservation specialist to coordinate these issues

like council member Johnson suggested (add a cultural and historical preservation component to planning, education and background).

- 8-8.4 Deal with what Council's planning committee comes up with ... it's beneficial in the democratic process to have permanent community boards for various community plan districts. Beginning with the board, with appropriate input, with information on carrying capacity and resources assessment, the process could really become a valuable planning document. Prioritize CIPs. Take over B and Bs, vacation rental approvals, and special use permits. Let the planning commission deal with county wide issues.

She wanted to reiterate the need to do away with arbitrariness in Section 7 (planning commission's duties), and to comply with all policies and objectives.

- 8-8.5 General plan development appears three times. Semantically, the general plan should be a guide for a vision of Maui's people, a statement of consensus everybody's committed to work for.

Commissioner Mossman said based on the best information available at the time, the framework for decision making is based on a shared vision with goals and precise objectives, which are then prioritized with the community plan. The general plan referred to a vision of what they think the future should be.

Ms. Long said anything that makes logical sense with accountability. A Council member is accountable for whether the plan is being followed and sounds logical.

Commissioner Petro asked about the community plan becoming law once it's adopted; and the provision to appeal. Who would be that body? Ms. Long answered that there's no problem now with changing the map; the community plan amendment goes to the planning department. CACs are continuous; they'd be first line of appeal, a community-based process. She also has proposals that in the future, the planning commission could be advisory to the county council for changes in the community plan, where it'd go into the appropriate committee. Hopefully in the future we won't have delays. More discussion followed in which Commissioner Petro got further clarification on this issue.

Commissioner Fuhrmann asked if an SMA would go back to that community group. Ms. Long said no because it's a totally different issue. She's definitely in favor of keeping the planning commissions with the authority as it is now, with the expectation that they would make wise decisions.

Trying to understand the problem on the community plan, Commissioner Bagoyo asked if it was the decision that isn't acceptable. Ms. Long replied that the process DOES work, but at this point, it's better to address local concerns at the local level.

Commissioner Bagoyo brought up the fact that during first round of public meetings, one of the things heard was that the community plan should be law. Ms. Long replied that several years ago, the planning commission was not advised of text specific to a parcel that they were being asked to make a decision on. Neither the planning commission or the Council caught it; the applicant got the community plan amendment, the right to develop commercially. Policy in the text would have prevented that. Besides that, there was no appeal. With the recognition of not just the map but the text of the community plans, there'd be some way to prevent this. The commissioners get a stack of things; it's very difficult to expect volunteer commissioners to read everything. That's what staff is for, but staff screws up. Council member Tavares says if it's in the Charter and can't be messed with, then the public is protected.

Commissioner Takahashi tried to follow the train of thought for Commissioner Petro. The general plan is reviewed every ten years; the current CAC hasn't been approved by council? Commissioner Petro said they submitted the seven year old plan (today); trying to make the CAC permanent. Commissioner Bagoyo offered a brief clarification: we need a time limit for approval by the planning commission. We don't have that in the community plan; we've tried to insert that. Once it's received, it should be acted upon within a certain time period.

Chair VencI thanked Ms. Long. She then called a fifteen minute break.

#### BREAK

The meeting reconvened at 10:48 a.m. Chair VencI asked for approval of the December 10 minutes. Motion was made (Bagoyo) and seconded (Rosario). Vice-Chair McLaughlin had a correction to make in the last paragraph of page three. All commissioners were in favor of accepting the minutes as amended. There were no communications to accept into the record. Chair VencI said she's moving Introductory Remarks down on the agenda as she'll be talking about the Commission's calendar and time frame.

She had a couple questions for Mr. Moto and Mr. Van Dyke, saying we need clarity regarding the "follow up reports" portion of the agenda. It opens up everything, not just what's on the agenda. In my mind, we are always to take testimony on all sections of the Charter. She's not sure if that's clear enough. Besides that, we are also supposedly in a decision-making mode. She's asking for clarification and guidance on how to move the process faster, and how to make the agenda clearer to the general public.

Mr. Moto replied that it's his personal belief that "follow up reports" should be related to agenda items as they come up. What tends to happen is that now the meeting becomes diluted because testimony is not only on agenda item that's listed, but on previous items as well. Unless it's urgent, we can follow up when the next meeting comes up. It's very broad; we can talk about anything.

Mr. Van Dyke added that it's obviously important to give the public as much notice as possible. He proposed for the following for January 7 and 14: include a broad agenda item regarding decision making for proposed charter amendments to be taken to the community meetings. We ultimately have to have general discussion on areas then need to come back with specific language regarding these items. Spend a little time on each issue that's come up (on the 7<sup>th</sup>) and will bring the language on the 14<sup>th</sup>.

Chair VencI asked if our January 7 agenda says we're going to discuss proposed amendments, could people testify again. Mr. Van Dyke answered that we could anticipate a very long meeting. Testimony this morning took up more than half our meeting. Commissioners should be prepared to stay a very long time.

Commissioner Mossman said she didn't think our agenda was what brought people out; it was a reaction to our decision on Water. I don't want us on the follow up reports, and don't want to wait until the day it comes up again. I'd prefer to get it ahead of time so I have a chance to review it and to formulate questions. Commissioner Holaday agreed with her, saying it'd be a lot more efficient and practical if we can get it ahead of time.

Commissioner Mossman stated that this would be part of the minutes; she'd moved that we accept Commissioner Bagoyo's proposal. We specifically asked Mr. Van Dyke to come back



with a proposal, so can't we legally discuss that as part of the minutes? Mr. Moto said yes, to the extent that you can identify any other agenda items that they reasonably relate to. It's a judgment call; if you tend to go into any reasonable depth, you should identify it separately.

Chair Vencl said that January 7 and 14 are going to be really heavy days. She said to go on to Planning and make decisions later.

Chair Vencl introduced John Min and said that the planning process and SMAs are what's being talked about. We'd like to hear questions answered, and move on to discussion.

#### JOHN MIN

John Min passed out copies of HRS Chapter 25A, saying it'd give an idea of what the SMA authority is about. The Hawai'i coastal zone was adopted and has been around for a number of years. Hawai'i County and Maui County planning commissions are advisory only; the City Council determines.

Chapter 25A is a statewide law. Various policies: recreational; historical; scenic and open space ... these policies are included in rules and regulations of various planning commissions. These are guidelines for review of permits and discuss what types of development may be exempt. It talks generally about procedures and planning commission rules; basically an SMA permit is subject to review. This allows any person to file a petition to show that they have an interest. They receive an average of about six a year. Roughly 5% of applicants are reviewed by the planning commission. On average, four are either settled or withdrawn; thus, about two of six applications go on. In terms of petitions, probably 2/3 of petitions (roughly 2%) go on to a contested case hearing.

Also in this chapter are provisions for shoreline setbacks (state law). Special Management Area is probably the most substantial. Maui County processes more than Hawai'i, Kaua'i, and the City and County of Honolulu combined. It's one of the largest chunks of work in our department.

Regarding the current procedure for a brief pardon, let's say an intervener goes through an SMA proceeding. If the intervener doesn't agree, his recourse is that he can take the Planning Commission to 2<sup>nd</sup> Circuit Court.

Another state law we work with is land use law and agricultural rule issue. The state provides basic standards; these are permitted uses. Anything else needs a special use permit. If a party wants to appeal, they go to court. They have to prove that they have a special interest.

Commissioner Bagoyo asked Mr. Min what he as the department head thought we should work on and if there was anything we could improve on. Mr. Min replied that one suggestion in general is that there's a real need for planning (more than just updating plans). They need to develop good informational capabilities, access to decision making, and pull a lot of information together to help them make decisions. Long Range Planning should monitor and help them make plans. The way plans are currently structured, it's very difficult ... Kihel has at least a hundred plans to be implemented, with no priorities. There are all these various implementing actions, but no priorities. Secondly, if you have the chance to read a community plan, I think what you may begin to get a sense of is that there's a lot of "stuff" in there like the preservation of significant cultural sites, and encouraging development in areas identified in the community plan. So in their review of applications (change of zoning or SMA), decision makers have to try to interpret to the best of their ability how to incorporate some of the community

plans. They need to figure out how to go about resolving the issue, and making a determination that a proposal is consistent is part of the process the decision makers have to do.

Commissioner Bagoyo asked for Mr. Min's comments regarding council member Johnson's recommendations. He also asked if he supports within the department of planning to amend it to include Long Range Planning, zoning, building, etc. Mr. Min commented that Randy Fujii (City and County of Honolulu Planning) said it's working pretty well. The key is good department heads (it's a management thing). In general, it's an important part of making things work. They need the resources and staffing to carry out the responsibilities they've been charged with.

Commissioner Bagoyo clarified that he just wanted to look at the structure itself (not the resources); just the concept of structural changes within the department. Mr. Min said he currently isn't sure if building would best fit in the planning department; he thinks the subdivision review can see logically as relating to work they're doing.

Commissioner Mossman asked where the infrastructure development for open space was in the planning process. Mr. Min responded that if they're going to acquire open space, they should incorporate it in the budget. That's been one of the required mechanisms. That's one issue for the general plan of Maui. A community plan gets down to the specifics. He personally thinks that if we want to be more aggressive in supplying secure open space, we have to look for a dedicated source of funding. He believes that adequate opportunities to designate open space are incorporated in the planning process.

Mr. Min also said they have a committee, which has had several meetings and two workshops with Maui, Moloka'i, and Lana'i. The open space bill is a fairly complicated one. There's a lot of discussion, but he thinks they're pretty close to a bill they can put out for public hearing.

Vice-Chair McLaughlin asked that as they reorganize the department, what is there in the Charter that is either getting in the way, and if most of these changes could be provided for by ordinance. Mr. Min said that aside from the recommendation he made earlier regarding the department, some of these other issues regarding the community plan process and content are being addressed and can be addressed through the legislative process. It might be more appropriate.

Vice-Chair McLaughlin continued, saying that the only appeal is litigation; it's been a particular issue, is it the best way? We've gotten different opinions, both legal and personal, about the appeal process. Is there a mechanism that could give the planning commission the necessary authority to take an active determination that won't be final until the Council approves it? Would that meet state law requirements? Mr. Min replied that with respect to the current appeal procedure, he's not convinced that the court appeal process is effective. He made a personal comment: people have questioned why they're looking at a commercial product for a residential area. Oftentimes, the people opposing or who are concerned about a project are really questioning a policy. The planning commission gets caught up in it through no fault of their own. The actual number of cases that actually go to appeal is minimal ... look at the numbers. A handful is expected, but by and large the numbers are small.

Vice-Chair McLaughlin asked about the enforcement of permits, saying that Dick Mayer mentioned "criminalized" and referred to the prosecuting attorney. Could you eliminate that now? What's the current mechanism? Mr. Min said there are two avenues to enforce a land use violation: prosecute, it's a criminal procedure, and have them file an appeal; or use the civil procedure. Their philosophy for enforcement has been encouragement; we want them to apply so we work with them in doing that. From a broader standpoint, the community plan ...

land use violations, criminal proceedings or civil ... getting into policy areas; not so clear-cut. Establish priorities. Commissioner Petro said a prominent lawyer strongly recommended that if we change it, the public won't have the opportunity to reconvene or to report to the legislative body. Mr. Min thinks there's merit to those comments. With the legislative process at the Council level, state law does not apply to the County level.

Commissioner Petro stated that with regard to open space, land designated as open space sends a message that you can't do anything with it. If we're going to designate it as such, the administration has a responsibility to put money where its mouth is. Purchase it. Should the Mayor's suggestion for a designated 1% be an item this charter should address? Mr. Min chose to refer that question to the Mayor.

Commissioner Bagoyo said it takes a tremendous amount of time to prosecute B and Bs, and a number of suggestions were made this morning. There are currently nine Community plan boundaries, including Kaho`olawe. Do you support the existing boundaries or a change? Mr. Min replied that one of the elements is to define the current boundaries. Simply fall in those districts, also the census data, but those are the reasons for that. Adjustments should be looked at.

Commissioner Bagoyo then asked what Mr. Min's opinion was on making CACs permanent. Mr. Min personally wishes we could look at some alternatives. The community plan update process has been spread out over so many years; that time span is too long. By that time, there are different people in the communities with different ideas. To be relevant, the plan has to move quickly. He would like to see community plan reviews every year.

Commissioner Bagoyo requested that Mr. Van Dyke and Mr. Min collaborate and come up with some language that would address some of these suggestions made by Dick Mayer and the final one from Ms. Long that requires some experience in planning. He tried to have some minimum qualifications for this important position.

Commissioner Mossman stated that sometimes less is more, but we had tons of testimony on this issue. She doesn't want to leave it up to ordinances and be remiss. This is a primary area of concern. In theory, she wants flexibility, but doesn't want to leave it up to chance. She recognizes that the CACs were relatively new, and sees a rotation on creating a position for CACs. She agrees with moving the street signs, etc. to these boards. But we also need for those boards or CACs to have the advisory capacity to be in place when these projects come up, so we're able to have historical memory. She wants to put something in the Charter about this, but not fine details, specifics. The general plan framework needs to be more specific. We need to include infrastructure and open space. She agrees with the long term planning component.

Mr. Min said he'd provide descriptions that identify open space, etc. He can take a stab at the language.

Commissioner Mossman asked what Mr. Min meant regarding a different structure. He answered that council member Tavares is currently looking at that and that he's working with her on that.

Commissioner Mossman said that these two processes have been colliding, and asked why it's happening now. Mr. Min said we need to take a look at how we want to handle this the next time.

Commissioner Takahashi said the matrix is a compilation; and asked if that lack of priority means different plans, a longer term and review process. Mr. Min said implementing actions that are CIP, is changing a law. It would help ... many of these implementing actions are being worked on. Priorities are important. Whether this should be part of the ongoing work, he hopes that ... they should be able to relate it to priorities.

Commissioner Takahashi said that some testimony recently received said they wanted "more teeth." If you establish priorities, it'd probably help putting the teeth out.

Chair VencI asked about council member Tavares' findings; isn't she going to discuss that? Commissioner Bagoyo said she sent us a discussion page that's very helpful.

Vice-Chair McLaughlin asked how many different boards and commissions in were in the planning department. Mr. Min said it's hard to say. County revenues are more than just ... maybe a public works or water department issue.

Chair VencI thanked Mr. Min and said she'd like to move on with discussion about the next meetings. There still remains a question on the 7<sup>th</sup> with regards to this committee room. They haven't gone into the next year with their date book. She suggested that we plan meetings for January 7 and 14 at 8:30 a.m. She'd like to see the meeting on the 7<sup>th</sup> to include planning and public works (David Goode). He's the last director we're going to invite. We'll have lunch brought in, take a break, then use the afternoon for decision making. Everything starting from January 16 gets pushed back one week. We're sending out a press release immediately upon confirmation of those venues. In the afternoon of January 7, she'd like to begin with Mr. Van Dyke's summary. She'd also like to go through the request we made of him regarding the water department. On the 14<sup>th</sup>, she'd like to move ahead with decisions about planning, ethics, and any other things hanging out there. Would you consider leaving Wednesday 16<sup>th</sup> open all day as an additional workday? We could begin talking about all things in the summary and maybe water in the afternoon of the 7<sup>th</sup>; may not get to planning. If we post the agenda correctly, people may provide testimony.

Vice-Chair McLaughlin said he supports her plan and procedurally, that's a good methodology; but it's the opening day of the legislature on the 16<sup>th</sup>. Chair VencI wasn't aware of that; she'll look at that date again, didn't know that. Any other questions about calendars? Chair VencI then asked Mr. Van Dyke if he had anything he'd like to add.

Mr. Van Dyke expressed nervousness about the opportunity to put the consensus together; we're going to have to have some real time for discussion of the issues. He doesn't understand the direction the group wants to go on. Districting merits some talk. He's been gathering maps; it's not easy to get a simple graphic, but he'll try to have something visual to look at. The other thing to think about is that some testifiers from this morning said to offer divergent solutions to the public.

Commissioner Bagoyo thanked him for putting it in great form. Mr. Van Dyke said he wanted to give the commissioners something to look at.

Chair VencI said she showed the display board and Mr. Van Dyke can do the wording; we'd carry the boards with us, display them, and possibly have them downsized into a collateral (handout) piece.

Vice-Chair McLaughlin said our next round to the public is to test our own hearing and processing of which issues are of a broad enough community interest. His personal view is that

our public presentations should give recommendations, pros, and cons. He doesn't think we'll get to the level of language until the next round. We need the public's help in narrowing it down. He doesn't think it's going to happen by the January round. So in the next couple of meetings, we should really define those areas and get the public's response. He said his last closing tidbit: he really strained with getting as much community participation as possible, so he made mauicharter.net as an easy way for the public to access the information.

Chair Venci reiterated that these are not the amendments going on the ballot; these are just ideas we've gotten from the public. That really is the thrust at this point. This is not meant to go out in the proper language. We're going to show the public what we've gotten, and ask for them to tell us more. Vice-Chair McLaughlin agreed, saying it's only the concepts, ideas, pros, and cons of the Commission.

#### CONCLUSION

Chair Venci adjourned the meeting at 12:35 p.m.

  
Ke'ala Pasco, Charter Commission Assistant



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*Charter Commission*  
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December 13, 2001

Ms. Terry Vincel, Chair  
Charter Commission  
c/o Maui Hotel Association  
1727 Wili Pa Lp, Suite B  
Wailuku, HI 96793

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**RE: Open Space Charter Amendment Draft**

Ms Terry Vincel

Please find enclosed a copy of Maui Coastal Land Trust's proposed draft of the open space charter amendment, prepared in consultation with the Trust for Public Lands ("TPL"). This draft has also been submitted to the Mayor and we expect that he will submit a revised version to the Charter Commission.

We believe Maui County's citizens support County financing of open space. Two years ago TPL surveyed Maui voters on this issue and found 77% supported such County spending. Because preserving Maui's open spaces is critical to tourism, we believe Maui's visitor industry will support an open space amendment as well.

We hope the Charter Commission will give serious consideration to an open space provision in the County Charter and we look forward to working with the Commission during the upcoming deliberative process.

Very truly yours,

*Dave Mackwell*

**RESOLUTION**

**NO. \_\_\_\_\_**

**PROPOSING AN AMENDMENT OF THE REVISED CHARTER  
OF THE COUNTY OF MAUI (1993) TO CREATE THE  
OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES,  
AND SCENIC VIEWS PRESERVATION FUND**

**BE IT RESOLVED** by the Charter Commission of the County of Maui:

1. That it does hereby propose that Section 9 of the Revised Charter of the County of Maui be amended include a new provision for establishment of a fund to purchase and conserve lands that are valuable to the public and visitor industry as parks, recreation areas, open space, view shed corridors, natural resources, and habitats, including beaches, coastal areas, forests, watersheds, and cultural and historical sites, by annually setting aside 3% of the county's unrestricted budget in a fund to be known as the "Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund," further described below:

**"Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.** In adopting each fiscal year's budget and capital program, the council shall appropriate at least 3 percent of the county's budget, not including restricted funds identified in section 9-7, to a fund known as the "Open Space, Natural Resources, Cultural Resources, and Scenic Views



**Preservation Fund."**

**1. The appropriations to the Fund shall not substitute, and shall be in addition to, those appropriations historically made to and for the Department of Parks and Recreation.**

**2. Any balance remaining in the Fund at the end of the fiscal year shall not lapse and shall remain in the fund, accumulating from year to year.**

**3. The Fund shall be for the purpose and furtherance of purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Maui for the following purposes: public outdoor recreation and education; preservation of historic or culturally important land areas; protection of significant habitat or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality; conserving land for the purpose of reducing erosion, floods, landslides and runoff; and improving disabled and public access to, and enjoyment of, public land, open space and recreational facilities.**

**4. The mayor shall propose and the council shall by ordinance establish procedures for the council's expenditure of the Fund; the procedures shall include and provide for, but not be limited to, the following: grants to qualified land conservation organizations to make acquisitions; public reporting; management; an annual audit; minimum requirements for public hearings prior to acquisition of any**

real property or real property entitlements; setting an internal operating budget that shall not be greater than 5% of the yearly appropriations to the Fund; and, minimum due diligence requirements before acquisitions.

5. There shall be a citizen's advisory board comprised of thirteen voting members, serving staggered terms and selected as follows: (a) nine of the voting advisory members shall be appointed by the nine council members, with each having the right to appoint one voting advisory member from that council member's council district; (b) four of the voting advisory board members shall be appointed by the mayor; (c) however, of the thirteen voting advisory members, at least six shall have special qualifications, four of which shall have experience in environmental, natural resource or conservation endeavors, at least one member shall represent a Maui based land trust and at least one member shall represent native Hawaiian cultural concerns. The remaining members shall represent a wide variety of interests on Maui,

6. In addition to the thirteen voting members, for four non-voting members may be appointed for the purpose of providing education and support to the voting members and acting as liaisons between the citizens advisory board and the mayor and the council, as follows: (a) the mayor may appoint one non-voting member employed by the department of parks and recreation and one non-voting member employed by the department of planning; (b) the council may appoint two of its

members or employees of any of the council members or council services.

7. Appropriations from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund require the final approval of the County Council. However, the Council may only approve appropriations from the Fund that have been affirmatively recommended by the citizens Advisory Board.