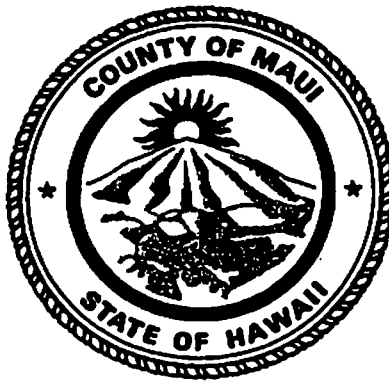


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**2001 - 2002**  
**MAUI COUNTY CHARTER COMMISSION**



***FINAL REPORT***

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## 2001 - 2002 MAUI COUNTY CHARTER COMMISSION FINAL REPORT

### BACKGROUND

The eleven members of the 2001-2002 Maui County Charter Commission were nominated by Mayor James "Kimo" Apana on January 30, 2001, and were subsequently confirmed by the County Council on April 20, 2001. The members originally appointed and confirmed were:

Terryl Vencl, Chair  
Carole Ameral  
Vince Bagoyo, Jr.  
William Fuhrmann  
Gwen Hiraga  
Stephen Holaday  
R. Sean McLaughlin  
Karolyn Mossman  
Stephen Petro  
Erlinda Rosario  
Donn Takahashi

Commission member Carole Ameral resigned on September 23, 2001, and was replaced by Ray DeMello on January 22, 2002.

### ORGANIZATION

The Commission's first meeting was held on April 30, 2001. The Commission elected R. Sean McLaughlin to serve as Vice-Chair of the Commission at its second meeting on May 21, 2001. The Commission adopted organizational and procedural rules for the conduct of its business. The Commission hired Ke'ala Pasco to serve as its Assistant. The Commission has also been aided throughout by representatives of the Department of the Corporation Counsel, particularly James Takayesu, Corporation Counsel, and Brian Moto, First Deputy Corporation Counsel.

The procedures governing Charter Commissions listed in the Charter itself, Section 14-3, differ in some respects from those laid out in Chapter 50 of the Hawai'i Revised Statutes, so the Commission had to decide which procedures to follow. The Commission determined that the Charter Commissions in the other counties have generally followed their own rules rather than those listed in Chapter 50. The Commission requested an opinion on this matter from the State Attorney General, but no answer was received from that office. Based on the advice received from Maui's Corporation Counsel, James Takayesu, and in order to avoid any possibility of challenge to the Commission's work, the Commission decided to follow the timetable and procedures established in H.R.S. Chapter 50.

The Commission established a website and put all its documents, agendas, and schedules on that website in a timely fashion. The Commission followed all the rules established by the State's Sunshine Law in posting agendas in a timely fashion and in allowing public testimony at all its meetings. Commission documents and the minutes of its meetings have also been made available to the public at the County building, at public libraries, and at councilmembers' offices in Hana, Lāna'i, and Moloka'i.

The Commission met for discussion and deliberations at Kalana O Maui on June 4, 2001, and June 18, 2001. The Commission held eight public meetings after its initial organizational meetings in order to develop a record of public concerns regarding the Maui County Charter. These public meetings were held at the following dates and locations (all starting at 6:30 p.m.):

June 20, 2001	Hannibal Tavares Center, Pukalani
June 26, 2001	Lahaina Civic Center
July 25, 2001	Kihei Community Center
August 1, 2001	Pā'ia Community Center
August 8, 2001	Old Hāna High School
August 15, 2001	Mitchell Pau'ole Center, Moloka'i
August 22, 2001	Lāna'i Community Center
August 29, 2001	County Council Chambers, Wailuku

The Commission then held a series of meetings to discuss the issues that had been raised and to make its initial recommendations to take back to the community for further public input. The Commission's deliberative meetings were held in the County building in Wailuku on September 10, 2001, September 24, 2001, October 8, 2001, October 22, 2001, November 5, 2001, November 19, 2001, December 10, 2001, January 7, 2002, and January 15, 2002 (in October 2001, the Commission selected Jon M. Van Dyke to serve as its Analyst). The subsequent eight public meetings were held at the following dates and locations, all beginning at 6 p.m.:

February 6, 2002	Kihei Community Center
February 13, 2002	Kaunakakai School Cafetorium, Moloka'i
February 20, 2002	Hale Kūpuna, Lāna'i
February 27, 2002	Pā'ia Community Center
March 6, 2002	Old Hāna School Cafeteria
March 13, 2002	Wailuku Community Center
March 20, 2002	Hannibal Tavares Center, Pukalani
March 27, 2002	Lahainaluna Chorus Room, Lahaina

After this second round of public hearings, the Commission met again in Wailuku for a series of meetings to make its final recommendations. These meetings were held on April 1, April 3, April 10, and April 17, 2002. The Commission took its final votes on April 17, 2002, and approved this report for transmission to the Mayor and County Council.

## **CHARTER COMMISSION REPORT**

The report that follows presents the proposed amendments of the Revised Charter of the County of Maui (1983), as amended, resulting from the deliberations of the 2001 - 2002 Charter Commission.

## RECOMMENDATIONS FOR SUBSTANTIVE CHANGES TO THE MAUI COUNTY CHARTER

### PROPOSAL ONE - AMEND THE PREAMBLE TO RECOGNIZE THE EQUAL WORTH AND DIGNITY OF EVERY INDIVIDUAL (Section 1-1)

The Commission recommends that the opening provision of the Maui County Charter be amended to confirm as the primary basis for county governance that each individual is recognized as having equal worth and dignity. This recognition forms the foundation for the democratic form of government established in this Charter.

The specific language change proposed is as follows:

Section 1-1. Incorporation. The people of the county of Maui, as a basis for this incorporation confirm the equal worth and dignity of every individual, and by this charter shall be and continue as a body politic and corporate by the name of "County of Maui," hereinafter in this charter called "county." By that name it shall have perpetual succession.

In reaching the conclusion that this change should be recommended, the Commission considered the following competing arguments:

#### PROS:

\* A commitment to equal worth and dignity is essential in the diverse community that makes up Maui County, and it affirms the fundamental basis for democratic governance.

#### CONS:

\* Equality is a complex term, and has led to different interpretations in matters regarding, for instance, affirmative action programs.

PROPOSAL TWO - LENGTHEN TERMS OF COUNCILMEMBERS FROM TWO (2) TO FOUR (4) YEARS

(Section 3-2(5))

The Commission proposes that the term of each councilmember be extended from two years to four years, with staggered terms for councilmembers (*i.e.*, five will be elected in one election, and the four others will be elected two years later).

The Commission, after much deliberation based on extensive public testimony that expressed concern about the accumulation and potential abuse of power, decided to maintain term limits for councilmembers, but to adjust them slightly to accommodate the increased length of the terms for councilmembers. The Commission thus decided to allow councilmembers to have three consecutive four-year terms (for a total of twelve consecutive years) rather than the five consecutive two-year terms (for a total of ten consecutive years) allowed in the present charter. Because some present councilmembers may have some two-year and some four-year terms, the proposed Charter revision would permit a total of twelve consecutive years on the Council for those councilmembers serving at the time of transition.

If this proposal is adopted, in the 2004 election, the five elected councilmembers receiving the largest number of votes will be given four-year terms, and the next four elected councilmembers will be given two-year terms. Thereafter, all elected councilmembers will have four-year terms, with five elected in those elections divisible by four and four elected two years thereafter. The proposed transitional language also says that if one of the five top Council vote-getters in the 2004 election will exceed twelve consecutive years with a four-year term, that person will be awarded a two-year term, and the next highest vote-getter will be awarded the four-year term.

The specific language to be changed would be as follows:

Section 3-2(5). The term of office of councilmembers shall be for [two] four 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] three consecutive full terms of office

or more than twelve consecutive years in office, whichever shall be longer.

Section 15-1. Council Elections. In the 2004 election for members of the county council, the five elected councilmembers who will have received the largest number of votes shall have four-year terms of office, and the remaining four elected councilmembers shall have two-year terms of office. Thereafter, all councilmembers shall serve for four-year terms. If any of the five elected councilmembers receiving the largest numbers of votes in the 2004 election would exceed the twelve consecutive years in office limitation by serving for four years, those members shall be given a two year term, and the elected councilmembers with the next largest number of votes shall be given a four year term.

The Commission considered the issues raised by the lengthening of Council terms to be as follows:

**PROS:**

- \* Councilmembers would have the time to develop and pursue a more comprehensive legislative agenda during their term and would take a longer view of County activities.

- \* The Council would have greater continuity, and a complete changeover of councilmembers would never occur. Currently all nine council seats could change hands, bringing in a completely new, and inexperienced, group of councilmembers.

- \* Councilmembers would not have to campaign as frequently, thus reducing the need to raise campaign contributions and to engage in countywide campaigns.

**CONS:**

- \* Councilmembers would be somewhat less accountable to the electorate, because they would not have to face reelection as frequently.

- \* The two-year term reduces the need to utilize the recall procedure to remove ineffective Councilmembers.

**PROPOSAL THREE - CLARIFY THE RESPONSIBILITIES OF THE CORPORATION COUNSEL (Section 8-2(3))**

The Commission proposes to clarify the role of the Corporation Counsel to recognize the broad responsibility of this office to represent the County in a variety of situations (1) by changing the present language of 8-2(3)(b) ("Be the chief legal advisor and legal representative of the council, the mayor, all departments, all boards and commissions, and of all officers and employees in matters relating to their official duties.") to a broader formulation ("Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, all boards and commissions[.]; and of all officers and employees in matters relating to their official duties.") and (2) by changing the present language of 8-2(3)(d) ("Perform such other duties and functions as shall be assigned by the mayor.") to a broader formulation ("Perform such other duties and functions as may be incident to the department or required by law.").

The specific language to be changed would be as follows:

**Section 8-2(3). Powers, Duties, and Functions. The corporation counsel shall:**

- a. Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel.
- b. Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions[.]; and of all officers and employees in matters relating to their official duties.
- c. Represent the county in all legal proceedings.
- d. Perform such other duties and functions [as shall be assigned by the mayor] as may be incident to the department or required by law.

The Commission recognized the issues raised by this proposal as follows:

**PROS:**

\* This change would make it clear that the Corporation Counsel is responsible for representing the County of Maui in all respects, and does not solely represent the Mayor. With this change, it would

be clear that the Corporation Counsel represents the Council and the boards and commissions as well as the executive branch of the County.

CONS:

\* The Corporation Counsel may face conflicts when the interests of the Mayor conflict with those of the Council or the boards and commissions.

**PROPOSAL FOUR - GRANT INVESTIGATORS WORKING FOR THE PROSECUTING ATTORNEY  
THE POWERS AND PRIVILEGES OF POLICE OFFICERS WHILE ACTING WITHIN THE SCOPE OF  
THEIR OFFICIAL DUTIES (Section 8-3(3))**

The Commission proposes amending Section 8-3(3) to give the investigators who work for the Department of the Prosecuting Attorney the same powers as police officers while they are working within the scope of their official duties. These investigators have the frequently dangerous obligation to find and apprehend individuals, and at present, they must coordinate their duties with the police, raising costs and causing delays. Every other county gives their prosecutorial investigators the power to carry firearms and make arrests, like police officers, and Maui is alone in denying these powers. A similar proposal was presented to the voters by the 1991 - 1992 Charter Commission, and was rejected at that time, apparently because of fears that it might cause abuses and inconsistencies with police responsibilities. The Commission feels that the investigators should have police powers to undertake their duties properly, and that the language proposed should limit abuses, by specifying that investigators have police powers only when they are "acting within the scope of their duties as investigators." It should also be noted that the four investigators who work for the Department of the Prosecuting Attorney are all well trained, experienced former police officers.

The specific language proposed is as follows:

Section 8-3(3). Powers, Duties, and Functions. The prosecuting attorney shall:

- a. Appoint such deputy prosecuting attorneys and necessary staff 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. The prosecuting attorney may appoint investigators who shall have the power and privileges of police officers while the investigators are acting within the scope of their duties as investigators.

The Commission adopted this proposal after considering the following arguments:

**PROS:**

\* This language will give Maui's investigators the same powers that investigators have in the other three counties, and will reduce costs and delays required by coordinating arrests with police officers.

**CONS:**

\* This language gives investigators police powers that could potentially be abused.

**PROPOSAL FIVE - BROADEN THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT TO INCLUDE ENVIRONMENTAL MANAGEMENT AND CHANGE ITS TITLE TO THE "DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT"**

(Section 8-5(3))

The Commission proposes to change the title of the Department of Public Works and Waste Management to become the "Department of Public Works and Environmental Management" and to change the "Powers, Duties, and Functions" of this Department to broaden its responsibilities regarding environmental management and eliminate the explicit reference to maintaining County buildings. The County's buildings are, for the most part, maintained by the departments that use them, with the current Department of Public Works and Waste Management maintaining those not connected with any

particular department. Environmental issues are diverse and complicated, but at least those concerned with managing pollution and degradations should be centralized in one department, and this Department appears to be the most logical home for these responsibilities, because it already deals with solid waste, sewers, and waste waters.

The specific language change under this proposal would be as follows:

**CHAPTER 5**  
**DEPARTMENT OF PUBLIC WORKS AND [WASTE] ENVIRONMENTAL MANAGEMENT**

Section 8-5(1). Organization. There shall be a department of public works and [waste] environmental management consisting of a director and the necessary staff.

Section 8-5(2). Director of Public Works and [Waste] Environmental Management. The director of public works and [waste] environmental management shall be appointed and may be removed by the mayor. The director of public works and [waste] environmental management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-5(3). Powers, Duties, and Functions. The director of public works and [waste] environmental management shall:

1. Administer the building, housing, and subdivision ordinances and rules adopted thereunder.
2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.
3. Supervise and maintain the county's highways, drainage and flood control systems and sewer systems and maintain the county's buildings.
4. Perform such other duties and functions as shall be assigned by the mayor.

The Commission understands the issues raised by this proposal as follows:

**PROS:**

\* This Department currently has responsibility over waste management, but the Charter makes no mention of other aspects of environmental management, such as recycling, litter control, and protecting the universally-recognized unique beauty of Maui County; this proposed amendment will give this Department expanded power to take responsibility over these areas and expanding this Department seems preferable to creating a new department at this time.

\* The Charter currently gives this Department responsibility over the maintenance of County buildings, but in practice the different departments maintain their own buildings – *i.e.*, the Fire Department and Parks Department each maintain their own structures; the proposal to eliminate a specific reference to maintaining county buildings will recognize the current situation, but this Department will still maintain those buildings that are not the specific responsibility of other departments.

**CONS:**

\* These proposals will lead to an expansion of governmental responsibilities and will require additional personnel and resources.

\* Creating a separate Department of Environmental Management would give this area even greater focus and emphasis.

\* The Department of Public Works and Waste Management is already the largest county department, by far, and these additional responsibilities may become lost among all the other responsibilities of the Department.

\* The Planning Department also has some responsibilities for environmental matters.

**PROPOSAL SIX - RENAME THE DEPARTMENT OF FIRE CONTROL TO BE THE "DEPARTMENT OF FIRE AND PUBLIC SAFETY," RENAME THE PUBLIC SAFETY COMMISSION TO BE THE "FIRE AND PUBLIC SAFETY COMMISSION," GIVE THIS COMMISSION THE RESPONSIBILITY TO HIRE AND FIRE THE FIRE CHIEF (WITH DUE PROCESS PROTECTIONS GIVEN TO THE CHIEF) AND TO REVIEW THE BUDGET OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY, AND CLARIFY THE DUTIES OF THE FIRE CHIEF (Article 8, Chapter 7)**

The Commission proposes restructuring the Department of Fire Control and the Public Safety

Commission. The Department would be renamed the "Department of Fire and Public Safety," the Commission would be renamed the "Fire and Public Safety Commission," the Commission would be given power to hire and fire the Fire Chief (giving the Fire Chief the same due process protections now provided to the Police Chief in Section 8-12(3)), and the same power to review the budget of the Department that the Police Commission has regarding the Department of Police (in Section 8-12.2(2)). In addition, the duties of the Fire Chief would be clarified, and expanded in certain respects. The Civil Defense Agency would continue to be reviewed by the renamed Fire and Public Safety Commission.

The specific language changes are as follows:

CHAPTER 7  
DEPARTMENT OF FIRE [CONTROL] AND PUBLIC SAFETY

Section 8-7(1). Organization. There shall be a department of fire [control] and public safety consisting of a fire and public safety commission, a fire chief, and the necessary staff.

Section 8-7([4]2). Fire and Public Safety Commission. The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council.

The fire and public safety commission shall:

[3]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.

[1]3. Review the operations of the department of fire [control] and public safety and the civil defense agency and make recommendations for changes [which] that may be desirable to improve the performance of emergency functions and the provision of public safety services.

[2]4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire [control] 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.

[4]7. Have such other powers and duties as may be provided by law.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.

Section 8-7([2]3). Fire Chief. The fire chief shall be appointed [by the mayor] and may be removed by the [mayor] fire and public safety commission. The fire chief may be removed by the fire and public safety commission only after being informed in writing of the charges that are resulting in his or her 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.

Section 8-7([3]4). Powers, Duties, and Functions of the Fire Chief.

A. The fire chief shall:

1. Be the administrative head of the department.
- [1]2. Provide [fire protection to the people and property of the county] and perform fire fighting, rescue, and emergency services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.
3. Provide public education programs related to fire prevention and public safety.
4. Train, equip, maintain, and supervise the force of fire fighting and emergency rescue personnel.
- [2]5. Investigate the cause, origin and circumstances of fires.
- [3]6. Adopt rules relating to the protection of persons and property against fires.
- [4]7. Monitor the construction and occupancy standards of buildings for the purposes of fire prevention and life safety and approve building plans as provided by law.
- [5. Coordinate and provide rescue protection to persons in the county.]
- [6. Provide for the mitigation and stabilization of hazardous materials and incidents relating to the same.]
- [7]8. Exercise such other powers and duties as may be assigned by the mayor or as may be provided by law.

B. In order to establish in the county a system of fire protection consisting of fire suppression, fire prevention, rescue, and emergency services that shall be based on qualified and professional leadership and personnel, the department shall be conducted in accordance with the following:

1. Standards for recruitment shall be designed to attract into the fire department persons with appropriate education, physical performance, and personal stability.
2. Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, comprehension, and work performance.
3. Appropriate updated training shall be provided that meets or exceeds

national standards.

\*\*\*\*\*

## CHAPTER [15]16 CIVIL DEFENSE AGENCY

Section 8-[15]16(1). Organization and Functions. There shall be a civil defense agency whose powers, duties, functions and organization shall be as provided by law. The fire and public safety commission, as established in Section 8-7([4]2) herein, shall review the operations of the agency and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services. The commission shall receive and investigate any complaints brought forth by the public against the conduct of the agency or any of its members and submit a written report of its findings and recommendations to the civil defense administrator for his disposition.

In deciding to propose these changes, the Commission considered the following competing arguments:

### PROS:

\* These changes will give the Public Safety Commission responsibilities similar to those now held by the Police Commission, namely the power to hire and fire the Fire Chief and the power to review the budget of the Department of Fire Control.

\* The proposed changes would give the Fire Chief the same due process protections now given to the Police Chief in the event of an effort to terminate the employment of the Chief.

### CONS:

\* These proposed changes would reduce the power of the Mayor over the Department of Fire Control, and would thereby, to some extent, reduce the direct accountability regarding activities of the Department.

PROPOSAL SEVEN - CLARIFY THE RESPONSIBILITIES OF THE DEPARTMENT OF PLANNING WITH REGARD TO LONG-RANGE PLANNING, CULTURAL RESOURCES, ENFORCEMENT,

**TIMELY DECISION MAKING, AND THE COMMUNITY PLANS** (Section 8-8)

The Commission proposes revising the responsibilities of the Department of Planning and the Planning Commissions by:

**\*\* Requiring the Department to prepare and administer (a) long range planning programs to implement the General Plan and (b) a cultural resources management program (Section 8-8(3)).** The Planning Department is currently in the process of establishing a Long Range Planning Division and currently provides administrative support for the County's Cultural Resources Commission. The proposed amendments would identify these functions as an integral part of the Department's responsibilities.

**\*\* Requiring the Department to enforce zoning ordinances (Section 8-8(3)).**

**\*\* Requiring the Planning Commissions to review and take action on revisions to the General Plan and other land use ordinances and amendments within defined time limits (180 days and 120 days respectively) after the final public hearing (Section 8-8(4)).** These deadlines will provide for timely review by the Planning Commissions of General Plan revisions and proposed land use ordinances and amendments.

**\*\* Clarifying the purpose and nature of the General Plan by incorporating language from Hawai'i Revised Statutes Section 226-58 regarding county General Plans (Section 8-8(5)).** These changes will provide a more specific description of the General Plan, consistent with State law, and will provide a framework for further legislative initiatives in defining the process and other requirements for the development of the General Plan. Details regarding the boundaries for community plan districts will be addressed by County ordinances rather than in the Charter.

**\*\* Clarifying the role of the Citizen Advisory Committees in the planning process, by adding language saying that the community plans, once approved, will become part of the General Plan.**

(Section 8-8(5)).

**\*\* Requiring the Council to review and take action on revisions to the General Plan and other land use ordinances and amendments within defined time limits (one year and 180 days, respectively) after transmittal (Section 8-8(6)).**

The specific language changes proposed by the Commission are as follows:

**Section 8-8(3). Powers, Duties, and Functions. The planning director shall:**

- 1. Be the administrative head of the department of planning.**
- 2. Serve as the chief planning officer of the county and as the technical advisor to the mayor, council and planning commissions on all planning and related matters.**
- 3. Recommend revisions of the general plan at least every ten years to guide the development of the county.**
- 4. Prepare, administer, and enforce long-range planning programs.**
- 5. Prepare, administer, and enforce a cultural resource management program.**
- [4]6. Prepare, [and] administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto.**
- [5]7. Review the lists of proposed capital improvements projects contemplated by the county and recommend the order of their priority to the mayor.**
- [6]8. Perform such other duties and functions as shall be required by law or as shall be assigned by the mayor.**

**Section 8-8(4). Planning Commissions. Each planning commission shall consist of nine members appointed by the mayor with the approval of the council. The members of each planning commission shall be residents of the island of the planning commission on which the member serves. The director of the department of public works and waste management and the director of the department of water supply shall be non-voting ex-officio members of each commission.**

**Each planning commission shall exercise its powers, duties, and functions as follows:**

- 1. The Maui planning commission shall be concerned with the area encompassing the islands of Maui and Kaho'olawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.**
- 2. The Moloka'i planning commission shall be concerned with the area encompassing the island of Moloka'i and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement.**

3. The Lānaʻi planning commission shall be concerned with the area encompassing the island of Lānaʻi and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto.

The appropriate planning commission shall:

1. Advise the mayor, council, and the planning director in matters concerning planning programs.
2. Review the general plan and revisions thereof prepared by the planning director or at the request of the council. The commission shall hold public hearings on such plans and revisions thereof and shall transmit them, with its findings and recommendations to the council for consideration and action no later than one hundred and eighty (180) days after the final public hearing.
3. Review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearings, transmit such ordinances with its findings and recommendations thereon to the council for consideration and action no later than one hundred and twenty (120) days after the final public hearing.
4. Act as the authority in all matters relating to the Coastal Zone Management law.
5. Adopt rules pursuant to land use ordinances or law.
6. Have such other powers and duties as may be provided by law.

Section 8-8(5). General Plan and Community Plans. [The General Plan shall recognize and state the major problems and opportunities concerning the needs and the development of the county and the social, economic and environmental effects of such development and shall set forth the desired sequence, patterns and characteristics of future development.]

1. The General Plan shall be developed after input from state and county agencies and the general public, and shall be based on sound policy and information.
2. The General Plan shall indicate desired population and physical development patterns for each island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments. The General Plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development.
3. There shall be a Citizen Advisory Committee for each community plan area. Each Citizen Advisory Committee shall consist of 13 members, with nine

- appointed by the council and four appointed by the mayor. Each Citizen Advisory Committee is charged with reviewing and recommending revisions to the community plan for its community plan area. Each Citizen Advisory Committee shall remain in existence until its revisions are adopted, modified, or rejected by the council and until such action is approved, modified, or rejected by the mayor.
4. The community plans created and revised by the Citizen Advisory Committees shall set forth, in detail, land uses within the community plan regions of the county. The objectives of each community plan shall be to implement the policies of the General Plan. Each community plan shall include implementing actions that clearly identify priorities, timelines, estimated costs, and the county department accountable for the completion of the implementing actions.
  5. The community plans generated through the Citizen Advisory Committees and accepted by the planning commission, council, and mayor shall be part of the General Plan.
  6. The planning director shall issue a report annually providing a detailed explanation of the implementation and enforcement of the General Plan and the community plans.

**Section 8-8(6). Adoption of General Plan and Other Land Use Ordinances.**

1. The County shall adopt revisions to the General Plan by ordinances.
2. Any revisions of the General Plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director. Any such revision shall be referred to the appropriate planning commission by resolution. If the planning commission disapproves the proposed revision or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of the hundred twenty (120) days after receipt of the referral, the council may nevertheless pass such revision, but only by the affirmative vote of at least two thirds of the council's entire membership.
3. Revisions to the General Plan proposed by the planning director shall be reviewed and acted upon by the council no later than one (1) year after receipt of the transmittal from the planning director.
4. Revisions to zoning and land-use ordinances proposed by the planning director shall be reviewed and acted upon by the council no later than one hundred and eighty (180) after receipt of the transmittal from the planning director.

The Commission adopted these recommendations after considering the following arguments regarding them:

**PROS:**

- \* These proposed changes will clarify the Department of Planning's responsibilities, particularly with regard to the central role of the General Plan in guiding the County's growth.
- \* The importance of long-range planning and protection of cultural resources will be emphasized.
- \* These changes will emphasize the necessity to enforce zoning ordinances.
- \* These changes will strengthen the importance of the community plans generated by the Citizen Advisory Committees (CACs).
- \* These changes will promote timely action regarding changes to the General Plan and other land use ordinances and amendments.

**CONS:**

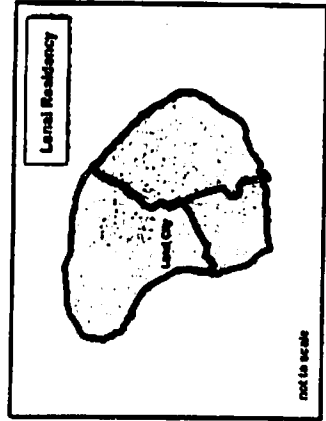
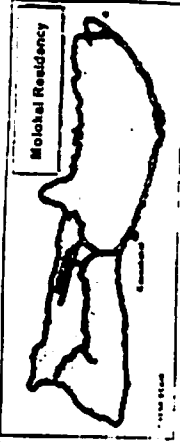
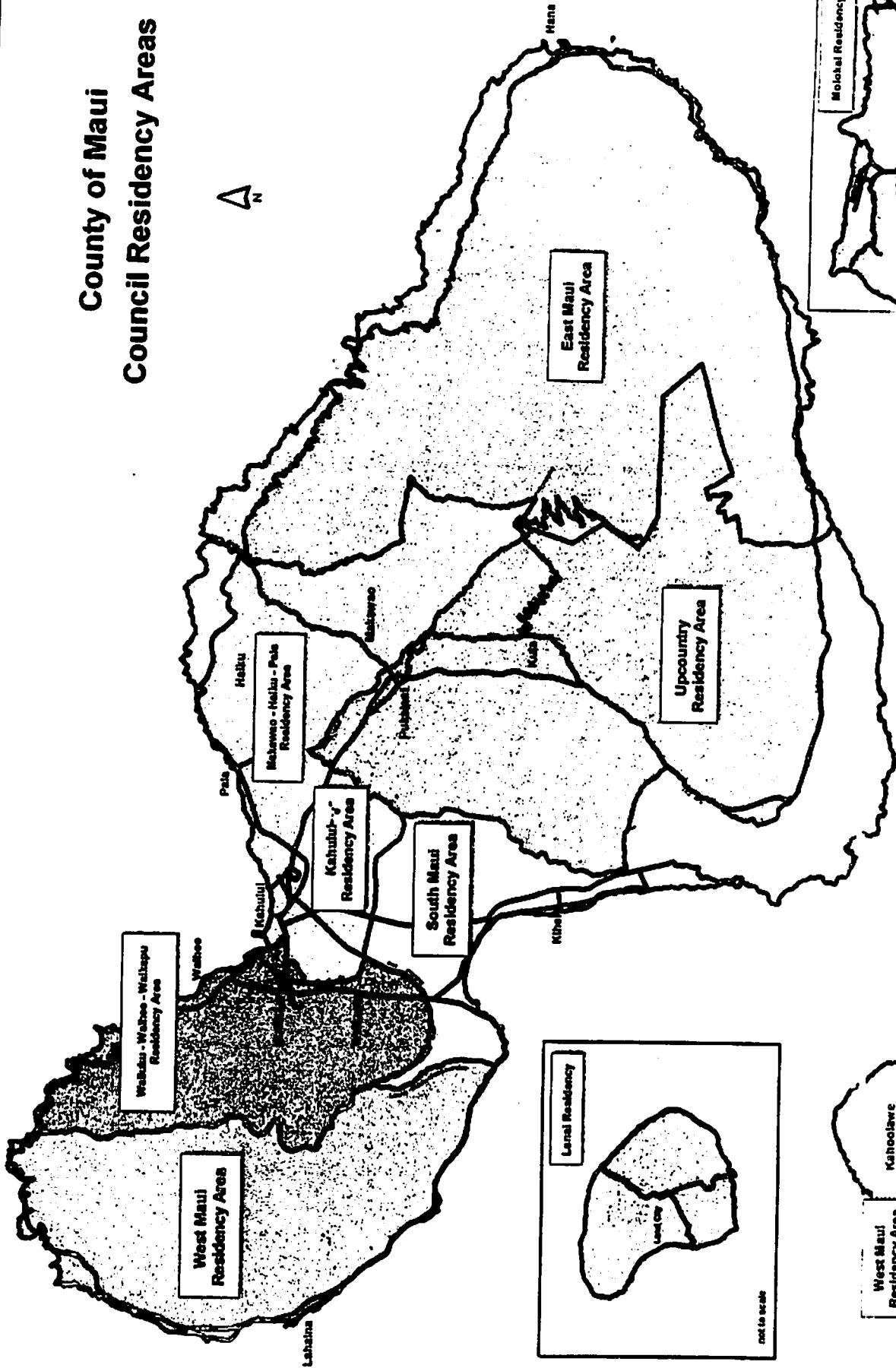
- \* These changes will impose greater workload responsibilities on the Department of Planning.
- \* By requiring timely action on proposed amendments to the General Plan and on other land use ordinances and amendments, these changes may require that action be taken before full consideration of the changes has been completed.
- \* By strengthening the importance of the community plans generated by the Citizen Advisory Committees, these changes may reduce the role of trained planners in the Department of Planning.

**PROPOSAL EIGHT - PROVIDE DUE PROCESS PROTECTION IN THE EVENT OF THE TERMINATION OF THE DIRECTOR OF PERSONNEL SERVICES (Section 8-9(2))**

The Commission recommends providing the Director of Personnel Services with the same due process protections, in the event of a termination, that are now provided to the Chief of Police in Section 8-12(3).

The specific language changes proposed are as follows:

# County of Maui Council Residency Areas



## **SOUTH MAUI**

Beginning at Lahaina-Wailuku District boundary and Pohākea Gulch  
Proceed southeast, then east along Pohākea Gulch to Honoapi'ilani Highway  
North on Honoapi'ilani Highway to Kū'ihelani Highway  
Northeast on Kū'ihelani Highway to East Waikō Road  
East on East Waikō Road to Spanish Road  
Southeast, then east on Spanish Road to Lowrie Ditch  
South along Lowrie Ditch to Pūlehu Gulch  
Southeast along Pūlehu Gulch to Waiakoa Road  
South on Waiakoa Road to Kihei CDP boundary  
South along Kihei CDP boundary to unnamed road  
Southwest, then south on unnamed road to unnamed stream (west of Keonekai Road)  
East on unnamed stream to Kula Highway  
Southwest on Kula Highway to jeep trail (abutting Tiger 2000 line 85098642)  
West, then south on jeep trail to Kanaio-Kalama Park Road ('Ulupalakua Road)  
Southeast along Kanaio-Kalama Park Road to Pi'ilani Highway  
Southeast, then east on Pi'ilani Highway to Kepuni Gulch  
Southeast along Kepuni Gulch to shoreline  
Southwest, west, north, northwest, southwest then northwest along shoreline to Lahaina-Wailuku District boundary (Manawainui Gulch)  
North along boundary to point of beginning

## **UPCOUNTRY**

Beginning at Lowrie Ditch and Kailua Gulch  
Proceed southeast along Kailua Gulch to Haleakalā National Park boundary  
Southwest, southeast, east, then southwest along Haleakalā National Park boundary to Kahikinui Forest Reserve boundary  
Southwest along Kahikinui Forest Reserve boundary to Kepuni Gulch  
South along Kepuni Gulch to Pi'ilani Highway  
West on Pi'ilani Highway to Kanaio-Kalama Park Road ('Ulupalakua Road)  
Northwest along Kanaio-Kalama Park Road to jeep trail  
Northeast on jeep trail to Kula Highway (abutting Tiger 2000 line 85098642)  
Northeast along Kula Highway to unnamed stream  
Northwest, then west along unnamed stream to unnamed jeep trail  
North on unnamed jeep trail to unnamed road  
North on unnamed road to Kihei CDP boundary  
North on Kihei CDP boundary to Waiakoa Road  
North on Waiakoa Road to Pūlehu Gulch  
Northwest along Pūlehu Gulch to Lowrie Ditch  
North, then northeast along Lowrie Ditch to point of beginning

Section 8-9(2). Director of Personnel Services. The director of personnel services shall be appointed and may be removed by the civil service commission. The director may be removed by the civil service commission only after being informed in writing of the charges that are resulting in his or her dismissal, and after being given a hearing before the commission. The director of personnel services shall be thoroughly familiar with the principles and methods of personnel administration and shall believe in applying merit principles and scientific administrative methods to public personnel administration.

The Commission makes this recommendation after considering the following arguments regarding this proposal:

**PROS:**

\* This change would give the Director of Personnel Services the same protections in the event of termination that are currently provided to the Chief of Police, *i.e.*, written notice of the charges and a hearing before the commission, which in this case would be the Civil Service Commission. These same protections are also being proposed for the Fire Chief in Proposal Six.

**CONS:**

\* This change would limit the flexibility of the Civil Service Commission somewhat.

**PROPOSAL NINE - RESTRUCTURE THE DEPARTMENT AND BOARD OF WATER SUPPLY TO GIVE IT MORE AUTONOMY (Section 8-11(1))**

The Commission recommends that the Charter provisions governing the Department and Board of Water Supply be restructured to give these bodies greater autonomy than they now have. These bodies are now "semi-autonomous," because the rules of the Board of Water Supply (including rules setting rates and fees) take effect only if approved by the Mayor and the Council, and the Mayor's approval can be vetoed by a two-thirds vote of the Council. The Commission recommends that the Board of Water Supply become more autonomous, with the power to set rates, adopt regulations, and make

decisions regarding the development of water supplies, unreviewable by any other county authority. To ensure proper expertise and coordination with other County operations, the Director of the Department of Planning and the Director of the Department of Public Works and Waste Management (or the Department of Public Works and Environmental Management if Proposal Five is adopted) would be voting members of the nine-member Board. The Director of the Department of Water Supply would be evaluated annually by the Board, and the accounts, financial status, and management operation of the Department would be audited annually by an outside certified public accountant. The Board would be empowered to hire outside legal counsel when necessary. The Commission also recommends that the Board be authorized to coordinate private water systems to promote the public trust interests in water, while respecting private property rights.

The specific language changes proposed by the Commission are as follows:

## CHAPTER 11 DEPARTMENT OF WATER SUPPLY

Section 8-11(1). Organization. There shall be a department of water supply consisting of a board of water supply, a director, a deputy director, and the necessary staff.

Section 8-11(2). Functions of the Department.

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems. The department shall also have authority to coordinate private water systems in order to promote the policies stated in the Hawai'i State Constitution and other applicable state laws, while also respecting existing private property rights.

3. The department shall implement the county's General Plan and community plans in the administration of its affairs. The department shall prepare a water use and development plan for each community plan district, which shall be consistent with land-use and zoning classifications, the county's general plan and community plans, and which shall include an inventory of existing water uses and sustainable yields, projected water demand, proposed public and private water system improvements and water source developments (along with

alternative options), storage, and costs. [There shall be]The department shall also prepare a long-range capital improvement plan [of the department which] designed to ensure proper maintenance of existing public water systems and to increase the publicly-owned and publicly-maintained water systems and infrastructure. The water use and development plans for each community plan district and capital improvement plans shall be completed by January 2, 2004, shall be subject to the approval of the county council, as provided by law, and shall be updated, as required by the board, at least every five (5) years.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

Section 8-11(3). Board of Water Supply. The board of water supply shall consist of nine voting members, seven of whom [who] shall be appointed by the mayor with the approval of the council, one of whom shall be the director of the department of planning, and one of whom shall be the director of the department of public works. The appointed members shall serve for three year terms, and can be reappointed (subject to reconfirmation by the council).

Section 8-11(4). Powers, Duties, and Functions. The board of water supply shall:

1. Appoint, evaluate annually, and remove the director of the department of water supply.
2. Have the authority to create and abolish positions.
3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water, [; such rules and regulations shall be adopted as provided under Section 8-11(8) below.]
4. Adopt an annual operating and capital budget.
5. Have the authority to issue revenue bonds under the name of the board of water supply.
6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.
7. Perform such other duties and functions as shall be prescribed by law.

Section 8-11(5). Director of Water Supply. The director of the department of water shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or [his] the deputy director shall be a registered engineer.

Section 8-11(6). Powers, Duties, and Functions. The director shall:

1. Recommend rules and regulations for adoption by the board.
2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.
3. Prepare and implement long range capital improvement plans, which have been

adopted by the board.

4. Appoint a deputy director.
5. Prepare an annual operating and capital budget for the board's review and action.
6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
7. Perform such other duties and functions as shall be prescribed by law.

Section 8-11(7). Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

[Section 8-11(8). Approval of Rules. The adoption, amendment, and repeal of all rules adopted pursuant to Subsection 8-11(4)(3) shall require action by both the mayor and the council. The mayor shall either approve or disapprove and transmit the request to the council within fifteen (15) days of receipt. The request shall be deemed approved and transmitted to the council on the sixteenth day if the mayor takes no action.

[Within forty-five (45) days of receipt from the mayor, the council may confirm the mayor's action by majority vote or may override any action by the mayor by a two-thirds (2/3) vote of its entire membership. If the council takes no action within forty-five (45) days, the proposal shall be deemed approved.]

Section 8-11(8). Independent Audit and Council Oversight. The accounts, financial status, and management operation of the department shall be examined and audited annually by a certified public accountant whose services shall be contracted for by the council and whose fees shall be paid by the council. After the audit is prepared, its results shall be made public, and the council shall review it, make recommendations for any changes that may be appropriate, and, if necessary, enact legislation that may be appropriate in light of the audit.

Section 8-11(9). Legal Counsel. The corporation counsel of the county shall be the primary legal adviser of the department, but the board of water supply shall be empowered, by a two-thirds vote of its entire membership, to hire special counsel for any special matter presenting a real necessity for such employment, without regard to the requirements of section 3-6(6) of this charter. All legal services required by the department and the board shall be paid from the revenues of the department.

The Commission adopted this proposal after considering the following arguments on this issue:

**PROS:**

\* This proposal is based somewhat on the model provided by the Board of Water Supply in the County of Honolulu, where the Board has greater autonomy and greater rate-setting authority. Under this model, the Department and the Board would operate as an autonomous business, and would be

expected to operate in a self-sufficient and self-sustaining fashion.

- \* Having a more autonomous water board would promote greater continuity and thus permit more long-term planning.

- \* Even though the Board of Water Supply will have more autonomy, the Planning Department will still review CIP projects to determine if they conform to the Community and General Plans.

**CONS:**

- \* This proposal would reduce direct political accountability, and would not allow voters to affect water decisions directly through their votes for Mayor and Councilmembers.

- \* The annual audit would be somewhat expensive.

**PROPOSAL TEN - CREATE A NEW DEPARTMENT OF TRANSPORTATION (Section 8-14)**

The Commission proposes to create a new Department of Transportation to address the serious transportation issues that are facing the County of Maui. During the past 30 years, the population of Maui County has tripled in size, but no major new roads have been built during that period. Residents and visitors now spend substantial amounts of time stuck in traffic, causing widespread dissatisfaction and inefficiencies.

This new Department, if adopted, would have responsibility for the planning of new highways, but the Public Works Department would continue to have responsibility for the building and maintaining of these roads. In addition to roads, this new Department will have responsibility for planning, developing, and regulating public transportation and for planning, developing, and regulating transportation by sea and air. This Department will coordinate closely with state and federal agencies, but would take initiatives specifically addressing Maui's needs to solve its traffic problems.

The specific language proposed to adopt this new Department is as follows:

CHAPTER 14  
DEPARTMENT OF TRANSPORTATION

Section 8-14(1) Organization. There shall be a department of transportation consisting of a director and necessary staff.

Section 8-14(2). Director of Transportation. The director of transportation shall be appointed and may be removed by the mayor. The director of transportation shall have a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.

Section 8-14(3). Powers, Duties, and Functions. The director of transportation shall:

1. Be the administrative head of the department of transportation.
2. Be responsible for the planning and implementation of all modes of transportation in Maui County, including those in the air and those on water and land.
3. Be responsible for planning and developing an efficient program to facilitate the rapid, safe, and economical movement of people and goods in Maui County.
4. Coordinate Maui County's transportation programs with other county departments and with agencies of the state and federal government.
5. Perform such other duties and functions as shall be assigned by the mayor.

The Commission adopted this proposal after considering the following arguments regarding this issue:

**PROS:**

\* The Public Works Department currently has responsibility over highways, but the Charter makes no mention of public transportation; with the increasing need for the development of systems of public transportation, it is necessary to determine where responsibility for this development should lie; creating a new department will recognize the importance of addressing Maui's transportation problems immediately.

**CONS:**

\* Transportation issues are now being addressed by the County Transportation Coordinator, who is administratively assigned to the Department of Management, and located within the Department of

Planning for purposes of coordinating with long-term planning. Some testifiers said it was premature to establish a separate Department of Transportation at this time.

\* Responsibility for transportation could be assigned to the Department of Human Concerns or to the Planning Department.

#### PROPOSAL ELEVEN - STAGGER THE TERMS OF MEMBERS OF THE SALARY COMMISSION

(Section 8-16(1))

The Commission recommends amending the appointment process of the Salary Commission so that the nine members of this Commission will have staggered five-year terms, with two being appointed (with approval of the Council) every year (one in the fifth year), to provide greater continuity. The Salary Commission has substantially less responsibility than it used to have, because of recent state legislation requiring the Mayor to decide the salaries of appointed officials, and is now empowered only to determine the salaries of elected officials. The Commission nonetheless proposes that the Salary Commission make recommendations to the Mayor regarding the salaries of appointed officials, in order to have a citizen-based body participating in that decision.

The specific language changes being proposed are as follows:

#### CHAPTER 16 SALARY COMMISSION

**Section 8-16(1). Organization and Functions.** There shall be a salary commission, which shall consist of nine members appointed by the mayor with the approval of the council. [The term of office of the salary commission members shall end with the term of office of the mayor.] The members of this commission shall have five-year terms, and can be reappointed once to a second five-year term. Two members shall be appointed or reappointed each year, except that only one member shall be appointed or reappointed every fifth year. The commission shall determine the compensation of elected officials and make recommendations to the mayor for the compensation of appointed directors and deputy directors of all departments of the county provided, however, in [establishing] evaluating the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing

authority for department heads.

The Commission adopted this recommendation after considering the following arguments regarding this proposal:

**PROS:**

- \* This change is designed to provide greater continuity to the Salary Commission, which currently has an entirely new composition after each mayoral election.
- \* The changes make the Charter consistent with state law.

**CONS:**

- \* This change will reduce the authority of an incoming Mayor, who, at present, has the power to name all the members of the Salary Commission.

**PROPOSAL TWELVE - COMMIT THE COUNTY TO A PLAN OF OPEN-SPACE ACQUISITION** (Article 9 & Section 8-6)

The Commission recommends that Maui County commit to a program of acquiring more land for open space, by adding language to the Charter that would annually set aside a minimum of one percent (1%) of the certified real property tax revenues to establish a fund to purchase and conserve lands that are valuable to the public and visitors as parks, recreation areas, open space, view corridors, natural resources, and wildlife habitats, including beaches, coastal areas, forests, watersheds, and cultural and historic sites, with the requirement that the remaining balance in the fund at the end of each fiscal year will not lapse, but will remain in the fund, accumulating from year to year.

The specific language proposed by the Commission is as follows:

Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

1. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent (1%) of the certified real property tax revenues to a fund known as the open space, natural resources, cultural resources, and scenic views preservation fund. The revenues in this fund shall be utilized for 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.

2. Any balance remaining in this fund at the end of the fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The revenues in this fund shall not be used for any purpose except those listed in paragraph 1 of this section.

3. The council shall by ordinance establish procedures for the administration and expenditure of the revenues in this fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made.

\*\*\*\*\*

**Section 9-11. Lapse of Appropriations.** Every appropriation, except an appropriation for a capital improvement or for the open space fund established in Section 9-19, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered by as written contract. An appropriation for a capital improvement shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation for a capital improvement shall be deemed abandoned six months after the close of the fiscal year to the extent that it has not been expended or encumbered by a written contract.

The Commission adopted this recommendation after considering the following arguments regarding the creation of this Open Space Fund:

**PROS:**

\* This proposal will commit the County to a program of open-space acquisition, but will give the Mayor and Council flexibility to determine the actual budgetary amounts that should be committed to this program.

\* By establishing a fund that will retain and accumulate unspent moneys from year to year, the

County will maintain a growing resource to utilize in purchasing land for open space as such land becomes available. Because the County will not always have to purchase property through condemnation, it will be able to buy properties before prices are inflated.

- \* Having an established fund would allow bonds to be floated to increase the amount of land that can be purchased.

**CONS:**

- \* This proposal will require the County to acquire additional land for open space rather than utilizing other strategies, such as zoning of privately-owned land, to maintain open space.

- \* This proposal will require the appropriation of one percent of certified real property tax revenues regardless of changing economic or fiscal conditions and, to that extent, may reduce the Council's ability to adjust budgets accordingly.

**PROPOSAL THIRTEEN - AMEND THE ETHICAL STANDARDS GOVERNING DECISION MAKING ON BOARDS AND COMMISSIONS (Section 10-4(1)(f))**

The Commission proposes amending Section 10-4(1)(f) to allow greater opportunities for residents of the smaller islands and communities in Maui County to participate in decision-making on boards and commissions. The amendment redefines and modifies those circumstances when a county officer or employee may be disqualified from voting. This proposed change will allow a member of a board or commission to vote on matters affecting the member's employer unless the member serves in a management position for the employer. This provision is designed in particular to allow greater participation on boards and commissions in Lana'i and other similar small communities. The Commission understands the word "management" to refer to a person who has the ability to hire, fire and impose disciplinary sanctions, and who would be vulnerable to pressure from the employer without

protection from such pressure from a union contract, and understands that this term would not cover, for instance, the lead worker on a ground crew.

The specific language change proposed is as follows:

**Section 10-4. Prohibitions.**

**1. No officer or employee of the county shall:**

.....

f. Fail to disclose a financial interest in any matter which may be affected by an action of a county agency or vote [on any matter affected by such interest] or take any official action on any matter affecting a business or undertaking in which such officer or employee is (i) employed or engaged in a management or representative capacity by the business or undertaking; or (ii) has a "controlling interest," an interest that is sufficient to control, whether the interest be greater or less than 50%, of the business or undertaking; or (iii) in which such vote or official action would, based on the belief of such officer or employee, tend to create a conflict with the public interest. For the purpose of this section, the terms "financial interest" and "official action" shall have the meaning assigned in the State of Hawai'i Standards of Conduct, H.R.S. 84-3, or its successor statute.

This proposal was adopted after considering the following arguments:

**PROS:**

\* The current language restricts the majority of residents of Lana'i from participating in decision-making on boards and commissions, thus reducing citizen participation.

**CONS:**

\* This change may subject some employees to pressure from their employers.

**PROPOSAL FOURTEEN - PROVIDE GREATER NOTICE OF MEETINGS (Section 13-2(11))**

The Commission recommends amending Section 13-2(11) to require that notices of public hearings be conveyed through the best available means to reach the public, including the most accessible technology. This proposal is written in flexible language, to allow county officials to determine the most appropriate methods for reaching the public. In Lana'i and Moloka'i, for instance, local island

newspapers can be used for public notices, along with county office bulletin boards and internet websites. Email messages could be sent to all those requesting such notification. Minimum notice requirements are set by State law (H.R.S. Chapter 92) and cannot be reduced by counties, but they can be expanded.

The specific language changes recommended are as follows:

**Section 13-2. Boards and Commissions.**

.....

11. All boards and commissions shall hold public hearings whenever required or deemed necessary and shall provide due notice to the public by publication in a newspaper of general circulation in the county and also through other means designed to reach the public including the most accessible technology.

This recommendation was adopted after considering the following competing arguments:

**PROS:**

\* This proposed change is designed to make it easier for citizens to learn about forthcoming public hearings held by boards and commissions, but would be phrased in flexible language to allow methods of notice to evolve along with changing technology.

**CONS:**

\* Providing notice a certain number of days in advance of a meeting limits the flexibility of the board and commission.

**PROPOSAL FIFTEEN - ALLOW BOARDS AND COMMISSIONS TO MEET IN ACCESSIBLE PRIVATELY-OWNED LOCATIONS (Section 13-9(2))**

The Commission proposes amending Section 13-9(2) requiring meetings of boards and commissions to be held "in the county building or other publicly owned place" to read "in the county building or in facilities that are accessible to the public." This provision is designed to give boards and commissions greater flexibility in scheduling meetings, in light of the limited number of publicly-owned

buildings and the increase in the number of public meetings. The Commission recommends that meetings be held in publicly owned buildings whenever possible because of the appearance of neutrality and inclusiveness that flows from such locations, but recognizes that some flexibility is needed on occasion and recommends this amendment to permit meetings to be held in other publicly-accessible venues when necessary in light of the nature of the meeting or the crowded schedule of public meetings. The proposed terminology will allow meetings to be held in privately-owned facilities, but is designed to limit meetings to locations that meet the requirements of the Americans with Disabilities Act.

The specific language proposed is as follows:

**Section 13-9. Records and Meetings Open to Public**

.....

2. All meetings of boards and commissions shall be held in the county building or other publicly owned place. In the event that a publicly-owned building is not available or appropriate for the meeting, the meeting can be held in another facility that is accessible to the public.

The Commission adopted this recommendation after considering the following competing perspectives:

**PROS:**

\* The present language restricts the locations that boards and commissions can use, sometimes preventing them from meeting when they need to. The proposed change will allow such bodies to use the many privately-owned facilities that can accommodate public events.

**CONS:**

\* This change will lead to meetings being held in more diverse locations.

\* Public meetings held in private facilities may lead to perception of favoritism associated with the private facility.

## PROPOSAL SIXTEEN - TRANSITIONAL CHANGES

The Commission proposes eliminating the outmoded transitional provisions in Article 15 drafted by previous Charter Commissions and including three new transitional provisions to address issues raised by the proposed amendments:

### ARTICLE 15 TRANSITIONAL PROVISIONS

[Section 15-1. Schedule. After the approval of this charter by the voters, this charter shall take full effect on January 1, 1983, except that the election of the council in 1982 shall be in accordance with the then existing provisions of the charter of the County of Maui. Thereafter, the mayor and the members of the county council shall be elected in accordance with the provisions of this revised charter, and will assume their duties according to this revised charter both as to their terms of office and powers thereunder.]

[Section 15-2. Existing Laws and Conflicting Laws. All laws, ordinances, resolutions, and rules in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are hereby continued in force until repealed, amended or superseded by proper authority. All laws which are inconsistent with this charter shall be superseded by the provisions of this charter at its effective date. All laws relating to or affecting this county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when this charter takes full effect, are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.]

[Section 15-3. Status of Departments and Transfer of Functions. When this charter takes full effect all departments, the status of which are not specifically changed or abolished by this charter, are hereby recognized, continued and established and shall have such powers, duties and functions as provided by this charter.]

[Section 15-4. Transfer of Records and Property. All records, property and equipment whatsoever of any department which are assigned to another department by this charter, shall be transferred and delivered to the department to which said functions are so assigned.]

[Section 15-5. Lawful Obligations of the County. All lawful obligations of the county and its departments existing on the effective date of this charter, and all fines, taxes, penalties, forfeitures, obligations and rights due, owing or accruing to the county and its departments, and all writs, prosecutions, actions and proceedings by or against the county and its departments shall remain unaffected by the adoption of this charter.]

Section 15-1. Council Elections. In the 2004 election for members of the county council, the five elected council members who will have received the largest number of votes will have four year terms of office, and the remaining four elected council members will have two year terms of office. Thereafter, all councilmembers will serve for four year terms. If one of the five elected council members receiving the largest numbers of votes in the 2004 election would exceed the 12 consecutive years in office limitation by serving for four years, that member will be given a two year term, and the elected council member with the next largest number of votes will be given a four year term.

Section 15-2. Transition Provisions Concerning Fire and Public Safety Commission.

1. Upon adoption of the proposed 2002 amendments to article 8, chapter 7, the fire chief serving on January 1, 2003 shall continue serving as interim fire chief until the appointment or reappointment of a chief by the fire and public safety commission. Should the office of fire chief become vacant before appointment of a fire and public safety commission, the mayor may appoint an interim fire chief, or, in the absence of such an appointment, deputy fire chief shall serve as interim fire chief.

2. Upon adoption of the proposed 2002 amendments to Article 8, Chapter 7, the current members of the Public Safety Commission shall continue to serve on the new Fire and Public Safety Commission until the end of their term of appointment.

Section 15-3. Salary Commission. Upon adoption of the proposed 2002 amendment to Section 8-16.1, the current members of the salary commission shall determine by lot the lengths of their terms to facilitate the appointment or reappointment pursuant to the annual sequence adopted in the 2002 amendment beginning in 2003.

## **PROPOSAL SEVENTEEN - HOUSEKEEPING CHANGES**

The Commission proposes a series of language changes designed to clean up the Charter, eliminate sections that have no further purpose or are inconsistent with other sections, and conform the language to current usage. None of these proposed changes are designed to have any substantive impact on the governance of Maui County or the rights of any individuals, but they are designed to give the Charter consistency, clarity, and conformity to modern usage.

### **A. UTILIZE GENDER-NEUTRAL LANGUAGE THROUGHOUT THE CHARTER.**

The Commission proposes revising all language that is not gender-neutral and substituting for such language words that are gender neutral. Under this proposal "chairman" and "vice-chairman" in Sections 3-5(1), 3-5(2), 9-13, 9-18(3), and 13-2(9) will become "chair" and "vice-chair"; "he" in Sections 4-

3(1), and 4-3(2) will become "the mayor; "he" in Sections 10-2(5) and 10-4(1)(b) will become "the officer or employee"; "he" in Section 12-5(2) will become "the clerk"; "he" in Section 12-9 will become "the officer"; "his" in Sections 3-8(1) and 4-3(1) will become "the mayor's," "his" in Section 3-8(2) will become "the councilmember's," "his" in Section 8-4(3)(1) will become "the director's," "his" in Section 8-15(1) will become "the administrator's," "his" in Section 8-7(4)(2) will become "the chief's" (if Proposal Six is not adopted), "his deputy" in Section 8-11.5 will become "deputy director" (if Proposal Nine is not adopted), "his" in Sections 8-12.2(3) and 8-12(3) will become "the chief's," "his" in Section 8-15(1) will become "the administrator's," "his" in Sections 10-4(1)(a), 10-4(1)(b), and 10-4(1)(c) will become "the officer or employee's," "his" in Section 12-3(4)(b) will become "the circulator's," "his" in Sections 5-3(2), 11-4(2), 11-5(3), 12-4(2), and 12-5(2), will become "the clerk's," "his" in Section 12-8 will become "that person's," "his" in Sections 14-1(2) and 14-1(3) will become "the"; "of him" in Section 8-1(3)(f) will be eliminated, "him" in Section 10-4(1)(a) will be replaced with "the officer or employee"; and "governs himself" in Section 10-3(5) will be replaced with "acts." In addition, this proposal would eliminate as unnecessary the second sentence in 13-15 "When any personal pronoun appears in this charter, it shall be construed to mean either sex."

These proposed changes will emphasize the inclusive nature of the Maui County Government and confirm the commitment of Maui County to recognizing the equal worth of every individual. Previous Charter Commissions have sought to remove gender-specific language, but a few gender-specific terms can still be found in the Charter. These changes will make the Charter consistent with other governing documents, including the Hawai'i State Constitution and the Hawai'i Revised Statutes.

#### **B. UTILIZE HAWAIIAN LANGUAGE SPELLING FOR HAWAIIAN PLACE NAMES**

The Commission proposes that the language referring to geographical boundaries of geographical areas for Council seats in Section 3-1 and the references to Hawai'i, Lāna'i, Kaho'olawe, and

Moloka'i, in other parts of the Charter utilize the diacritical marks in Hawaiian place names to honor the Hawaiian language and conform to current usage.

C. REDESCRIBE THE COUNCIL RESIDENCY AREAS IN GEOGRAPHICAL TERMS (Section 3-1)

Section 3-1 currently describes the seven Council residency areas on the island of Maui in terms of election precincts, which change every ten years, requiring changes in the Charter language. In order to avoid having to make these regular changes, the Commission proposes that the residency areas be redescribed in geographical terms (see Attachment; Exhibit A).

D. ELIMINATE REFERENCES TO POLITICAL PARTIES TO FILL COUNCIL VACANCIES.

The Commission recommends eliminating the specific references to political parties in Sections 3-4(1) regarding the filling of vacancies for Council seats, because the elections for the Council are now nonpartisan in nature after the 1998 amendments (see Sections 3-2 and 7-2). (The Commission does not recommend a change in the language of Section 13-2(2) requiring membership on boards and commissions to be balanced between the political parties, because it remains important to have diversity and balance on these bodies, and because state and federal elections still recognize political affiliation.)

E. CHANGE "CRIME OF MORAL TURPITUDE" TO "FELONY" IN SECTION 7-3 INVOLVING DISQUALIFICATION OF THE MAYOR.

The Commission recommends that the phrase "crime of moral turpitude" be changed to "felony" in Section 7-3 in the sentence specifying when a Mayor forfeits office. This change is designed to make the terminology in Section 7-3 concerning the disqualification of the Mayor (which says termination of office occurs when the Mayor "is adjudicated guilty of a crime involving moral turpitude") consistent with that of Section 3-3, which concerns disqualification of councilmembers.(which says termination occurs when "a council member is adjudicated guilty of a felony"). Because "felony" is a more precise

**CHAPTER [14] 15**  
**COST OF GOVERNMENT COMMISSION**

**Section 8-[14]15(1). Declaration of Policy.** It is declared to be the policy of the county to promote economy, efficiency and improved service in the transaction of the public business in the legislative and executive branches of county by:

1. Limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions.
2. Eliminating duplication and overlapping of services, activities, and functions.
3. Consolidating services, activities, and functions of a similar nature.
4. Abolishing services, activities, and functions not necessary to the efficient conduct of government.

**Section 8-[14]15(2). Cost of Government Commission.** For the purpose of carrying out the policy set forth herein the mayor with the approval of the council shall biennially appoint a cost of government commission consisting of nine members.

Each such commission shall:

1. Prepare and submit to the mayor a request for an appropriation for the operation of the commission.
2. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.
3. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.
4. Submit a report of its findings and recommendations to the mayor and council not later than eleven months after its appointment. (Amended 1988).

**Section 8-[14]15(3). Term of Commission.** Members of the Cost of Government Commission shall serve for staggered terms of two years, with an initial appointment of four members to serve two year terms and five members to serve one year terms. A member may be reappointed, but shall not serve on the Commission for more than a total of four years.

**CHAPTER [15]16  
CIVIL DEFENSE AGENCY**

Section 8-[15]16(1). Organization and Functions. There shall be a civil defense agency whose powers, duties, functions and organization shall be as provided by law. The fire and public safety commission, as established in Section 8-7([4]2) herein, shall review the operations of the agency and make recommendations for changes which may be desirable to improve the performance of emergency functions and the provision of public safety services. The commission shall receive and investigate any complaints brought forth by the public against the conduct of the agency or any of its members and submit a written report of its findings and recommendations to the civil defense administrator for his disposition.

**CHAPTER [16]17  
SALARY COMMISSION**

Section 8-[16]17(1). Organization and Functions. There shall be a salary commission which shall consist of nine members appointed by the mayor with the approval of the council. The term of office of the salary commission members shall end with the term of office of the mayor. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing authority for department heads.

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**COMMISSION POLICY RECOMMENDATIONS**

In addition to the proposed Charter revisions explained above, the Commission members, based on their year-long study of Maui's governance, makes the following policy recommendations to the Mayor, the Council, and the other governmental bodies of Maui County:

- \* The Mayor should appoint and utilize a geographically-diverse nominating committee to generate names of individuals for appointment to County boards and commissions.

- \* The provisions of the Charter should be followed and enforced more vigorously than they have been in the past. The Commission members urge all County officials to pay particular attention to Sections 10-5 and 13-10 of the Charter, and urges the Council to enact the ordinances called for in those

provisions..

- The council and administration should review the non-charter boards and commissions and consider consolidating them and combining their responsibilities.

- When available, addresses as well as TMK references should be included in public notices.

- The Council should continue to review and revise the planning process through ordinance to ensure and facilitate community participation. All county bodies should fulfill their responsibilities regarding the planning process in a timely fashion.

## EXHIBIT A

### COUNCIL RESIDENCY DISTRICTS

#### EAST MAUI

Beginning at shoreline and Kakipi Gulch  
Proceed to Kepuni Gulch  
North along Kepuni Gulch to Kahikinui Forest Reserve boundary  
Easterly along Kahikinui Forest Reserve boundary to Haleakala National Park boundary  
Northwest, west, northerly, then southeast along Haleakala National Park boundary to Waikamoi Stream  
North along Waikamoi Stream and continuing due west to Ka'ili'ili Road  
West on Ka'ili'ili Road to Opana Gulch  
North along Opana Gulch to jeep trail  
Easterly on jeep trail to Palama Gulch then northeasterly to Halehaku Gulch  
North along Halehaku gulch to Kakipi Gulch  
North along Kakipi gulch to point of beginning

#### MAKAWAO-HA'IKU-PĀ'IA

Beginning at shoreline and Kanaha Beach Park boundary  
Proceed east along shoreline to Kakipi Gulch  
South along Kakipi Gulch to Halehaku Gulch  
South along Halehaku Gulch to Palama Gulch  
Southeast along Palama Gulch to unnamed jeep trail  
Northwest, then southwest along jeep trail to Opana Gulch  
South along Opana Gulch to Ka'ili'ili Road  
East on Ka'ili'ili Road to Waikamoi Stream  
South along Waikamoi Stream to Haleakala National Park boundary  
Northwest, then southwest along Haleakala National Park boundary to Kailua Gulch  
Northwest along Kailua Gulch to Lowrie Ditch  
Southwest along Lowrie Ditch to Haleakala Highway  
Northwest along Haleakala Highway to Kalialinui Gulch  
Northwest along Kalialinui Gulch to 'Āmala Place  
Northwest along Kanaha Beach Park boundary to point of beginning

## **KAHULUI**

Beginning at shoreline and Kanaloa Avenue extension  
Proceed east along shoreline to Kanahā Beach Park boundary  
Southeast along Kanahā Beach Park boundary to Kalialinui Gulch  
Southeast along Kalialinui Gulch to Haleakalā Highway  
Southeast on Haleakalā Highway to Lowrie Ditch  
Southwest along Lowrie Ditch to Spanish Road  
West, then northwest on Spanish Road to East Waikō Road  
West on East Waikō Road to Wai'ale Road  
North on Wai'ale Road to Wai'inu Road  
East on Wai'inu Road to Pu'umele Street  
North on Pu'umele Street to Mahalani Street  
East, then north on Mahalani Street to Ka'ahumanu Avenue  
East on Ka'ahumanu Avenue to Kahului Beach Road  
Northwest on Kahului Beach Road to Kanaloa Avenue extension  
Northeast on Kanaloa Avenue extension to point of beginning

## **WAILUKU-WAIHE'E-WAIKAPU**

Beginning at shoreline and Lahaina-Wailuku District boundary  
Proceed southeast along shoreline to Kanaloa Avenue extension  
Southwest on Kanaloa Avenue extension to Kahului Beach Road  
Southeast on Kahului Beach Road to Ka'ahumanu Avenue  
West on Ka'ahumanu Avenue to Mahalani Street  
Southwest on Mahalani Street to Pu'umele Street  
Southwest on Pu'umele Street to Wai'inu Road  
West on Wai'inu Road to Waiale Road  
South on Wai'ale Road to East Waikō Road  
East on East Waikō Road to Kū'ihelani Highway  
Southwest on Kū'ihelani Highway to Honoapi'ilani Highway  
South on Honoapi'ilani Highway to Pohākea Gulch  
West, then northwest along Pohākea Gulch to point of beginning

## **WEST MAUI**

Beginning at shoreline and Lahaina-Wailuku District boundary at Po'ehea Bay  
Proceed south along boundary to shoreline (Manawainui Gulch)  
Northwest, north, then northeast along shoreline to point of beginning (includes the islands of Molokini and Kaho'olawe)