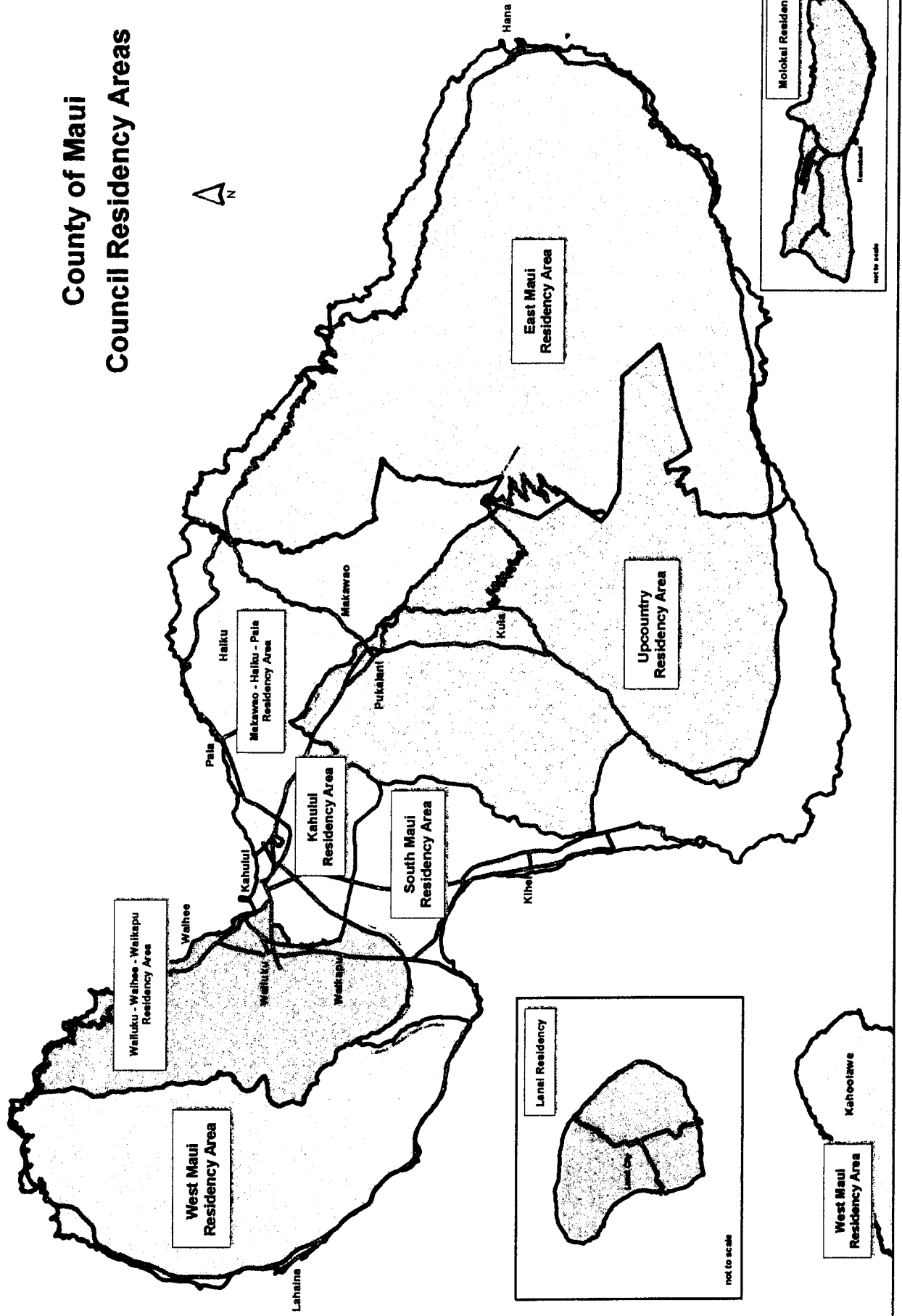


County of Maui Council Residency Areas



Subj: **Testimony for June 5th Charter Commission meeting**
Date: 6/4/02 6:17:56 PM Pacific Daylight Time
From: Wayne.Nishiki@co.maui.hi.us
CC: TVenc1@aol.com
Sent from the Internet (Details)

**** High Priority ****

NOTE: A signed copy of the following testimony has been submitted to the Mayor's Office for transmittal to the Charter Commission for tomorrow morning's meeting.

Honorable James "Kimo" Apana
Mayor, County of Maui
Wailuku, Hawai'i 96793

For transmittal to:

Ms. Terryl Venc1, Chair
and Members of the Charter Commission
County of Maui
Wailuku, Hawai'i 96793

Dear Chair Venc1 and Members:

SUBJECT: ETHICS PROPOSAL (PAF 02-152)

Thank you for the opportunity to testify in opposition to PROPOSAL THIRTEEN of the Charter Commission's Final Report, which would amend the ethical standards governing decision making on boards and commissions. Specifically, according to the Final Report, the proposal "would 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."

The Council has also taken a formal position in opposition to PROPOSAL THIRTEEN (see Committee of the Whole Committee Report No. 02-58). But I am offering this testimony in my capacity as an individual Council member. I note that I have a Sunshine Law and First Amendment right to offer this testimony.

I oppose PROPOSAL THIRTEEN and respectfully urge the Charter Commission to not place it on the general-election ballot for the following reasons:

1. For more than 20 years, the Board of Ethics has concluded that it is unethical for board and commission members to vote on their employers' development projects (see Board of Ethics Deleted Opinion No. 81-5). In recent years, the dominant landowner and employer on the island of Lana'i (Castle & Cooke) has continually sought to overrule the Board of Ethics' conclusion via a Charter amendment that would weaken ethical standards for their employees who serve on the Lana'i Planning Commission; the Council and the Board of Ethics have consistently voiced their opposition to the proposals (see Committee of the Whole Committee

Tuesday, June 04, 2002 America Online: TVenc1

Report No. 02-58).

2. There is no dispute that Castle & Cooke is the special interest behind this proposal and that the Lana'i Planning Commission would likely be the body most impacted by its enactment. There is a perception that, because of the company's dominant position on Lana'i, it is difficult to identify potential Lana'i Planning Commission members who would be able to ethically vote on matters within the commission's jurisdiction (i.e., the company's development projects). I am not aware of any empirical evidence in support of this assertion. But if this is truly such a major problem, there are more reasonable remedies available (such as decreasing the number of members on the commission).
3. Lana'i's unique economic situation is no reason to weaken ethical standards. Indeed, as the dominant landowner, Castle & Cooke already wields vast influence over all economic activities on the island. To additionally provide the company with special privileges within County government is untenable as a matter of fairness.
4. This proposal, unlike earlier proposed Charter amendments in this area, would apply to all County boards and commissions, not just the Lana'i Planning Commission. This is a drastic step, providing a "solution" that is vastly disproportionate to the purported problem. What justification can there be, for example, for allowing Maui Planning Commission members who work for hotels in South or West Maui to vote for their employers' projects?
5. This proposal, if enacted, could expose the County and board and commission members to massive liability. In contested cases, all parties have a constitutional due process right to an impartial tribunal, free from even the appearance of impropriety (see *Sussel v. City & County of Honolulu Civil Service Commission*, 71 Haw. 101, 784 P.2d 867 (1989)). Every vote cast by employees in favor of their employers' projects would be constitutionally suspect because, at a minimum, it would appear that a conflict of interest existed. The County could face an avalanche of litigation, with both the County and the individual members named as potentially liable defendants. Why should the County take this risk?
6. This proposal has been miscast as increasing public participation on boards and commissions, when its actual effect would be to increase special interests' influence in County government, to the detriment of average residents.
7. I do not believe that any category of employee (management or non-management) should be allowed to vote on an employer's project. But it is irrational to disallow managers to vote on their employers' projects, while permitting other employees to do so. Managers often possess greater economic security and career options than other employees, potentially affording them greater independence in voting. Non-management employees would almost always be under enormous pressure to vote in favor of their employers' interests. Even if an employee's job were protected by a collective-bargaining agreement, the employer would have many direct and indirect means of expressing displeasure with the employee, short of termination. Without the employer even taking any action to try to coerce the employee to vote for the employer's project, a reasonable employee would feel conflicted when asked to find on the employer's project.
8. The national trend, at all levels of government, is to impose

stricter standards of conduct for elected and appointed officials. It would be an embarrassment for Maui County to go in the opposite direction.

In addition, may I respectfully suggest that, if the Charter Commission proposes any Charter amendment relating to the Code of Ethics, that it include the following elements (as recommended by the Council in Committee Report No. 02-58):

1. Provide the Board of Ethics with independent staff (modeled after the second paragraph of Section 11-107 of the Revised Charter of Honolulu);
2. Require a lobbyist-registration ordinance (modeled after Section 11-108 of the Revised Charter of Honolulu); and
3. Require that the Board of Ethics make reasonable efforts to efficiently disseminate its opinions to the public, officers, and employees, including through the Internet.

As stated in Committee Report No. 02-58:

"[T]he Board of Ethics' ability to ensure government integrity under the Charter's Code of Ethics is currently hampered by the lack of an executive director and legal counsel. The Board is staffed by the Department of the Corporation Counsel, which maintains an attorney-client relationship with all officers and employees under the Board's jurisdiction, creating potential conflicts of interest. In addition, there is no means by which the public or County officers and employees can readily access the Board's opinions, which greatly limits the opinions' value. Although a lobbyist-registration ordinance currently exists, a Charter provision could require that such an ordinance be retained and strengthened."

Thank you for your consideration of my testimony in opposition to PROPOSAL THIRTEEN.

Sincerely,

WAYNE K. NISHIKI
Councilmember

paf:dmr:02-152a

cc: Mr. James B. Takayesu, Corporation Counsel
Mr. Brian T. Moto, First Deputy Corporation Counsel

From: Diane Zachary <dzachary@maui.net>
To: <TVenc1@aol.com>
Date: 6/4/02 8:28AM
Subject: Suggested Charter Amendment #12 language changes

Dear Terry!,

Thanks so much for sending the ballot language the Charter Commission will be considering on June 5. After careful review by Maui Coastal Land Trust, The Nature Conservancy-Maui Field Office, and Trust for Public Land, a representative of the 3 groups will be testifying at the meeting to suggest slightly revised ballot language so that it begins with the purpose of the amendment, followed by the mechanism for achieving it.

Our suggestion will be:

Should an Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund be created for the purpose of protecting land around rivers, streams and coast to preserve water quality, protect native forests and wildlife habitat, preserve native Hawaiian historical and cultural sites, improve recreational opportunities, and protect agricultural lands that might otherwise be developed, to be funded by a minimum of 1% of ~~existing~~ property tax revenues and should the unspent yearly revenues not lapse and thereby accumulate in the fund from year to year?

You mentioned you will undertake a public education campaign and I would guess that you will include Pros and Cons for each amendment. After review, we suggest changes to one of the Pros and one of the Cons so the statements are more accurate. The proposed change and rationale for each is noted below.

PRO

OLD: Having an established fund would allow bonds to be floated to increase the amount of land that can be purchased.

NEW: Having an established fund would allow the funds to be leveraged to increase the amount of land that can be purchased.

RATIONALE: Floating bonds would be just one method of leveraging the new county fund. Funds could also be leveraged to secure public and private grants.

CON

OLD: 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.

NEW: This proposal could encourage the County to protect additional land for open space only by direct acquisition rather than also utilizing other strategies, such as zoning of privately-owned land,

to maintain open space.

RATIONALE: Acquisition of land will be just one method available to the county, not the only method. We tried to reword this to be more factual.

A thousand thanks to you and the Commission for your hard work over the past months. The community appreciates you!

Best regards,
Diane

--

Diane Zachary
265 Alaume Street
Kihei, HI 96753
(808)875-4300
cell (808) 280-3045
dzachary@maui.net

CC: <jvandyke@hawaii.edu>

PROPOSAL 13

To Charter Commission, June 5, 2002

This was not taken out to the public

Proposed by attorney for the Lanai Company affiliate

Name two Lanai residents not connected with the Lanai Company that provided testimony in support of this amendment.

PROPOSE TO DELETE THIS ENTIRE SECTION:

Is the implied definition of a financial interest as proposed by the Commission amendment okay in light of definition of "financial interest" contained in 84-3 HRS?

IF NOT DELETED, BALLOT LANGUAGE NEEDS TO BE AMENDED TO ...as stated earlier today in discussing other amendment ballot language objective... "be forthright and open with voters"... "to let the voters know what the proposed amendments will do"... "to be clear and get the point across as to what the consequences of the amendment will be"... "to be voter friendly"

IF NOT DELETED PLEASE CONSIDER ALTERNATIVE BALLOT LANGUAGE ALONG THE LINES OF WHAT IS SHOWN BELOW: Addition underlined, take out bracketed.

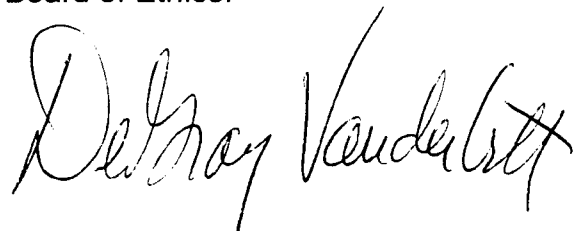
"Should the ethical guidelines governing decision making on boards and commissions be modified to permit members who are employees of companies to vote or take action on applications that have been submitted to the board or commission by the respective employers of the members, unless [they] the members (A) are employed in a management or representative capacity by the company, or (B) have a controlling interest in the company, [or (C) believe that their vote or action would tend to create a conflict with the public interest?]

The last sentence confuses the issue and should be deleted. There is no need for it. Individual members already recuse themselves if they feel they have a conflict.

If they are not sure about a conflict they ask the Board of Ethics.

Thank you for your consideration.

Respectfully submitted, DeGray Vanderbilt



"KIMO" APANA

DAVID C. SOODE
DirectorMILTON M. ARAKAWA, A.I.C.P.
Deputy DirectorPhone: (808) 270-7955
Fax: (808) 270-7955LLOYD KAMINE, L.S., P.E.
Codes AdministrationLLOYD KAMINE, P.E.
Wastewater Regulation DivisionLLOYD P.C.W. LEE, P.E.
Engineering Division

Highways Division

JOHN D. HARDER
Solid Waste Division

DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT

200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

June 3, 2002

APPROVED FOR TRANSMITTAL

Mayor

Date

Honorable James "Kimo" Apana
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

For transmittal to:

Ms. Terryl Vencl, Chair
Maui Charter Commission
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Chair Vencl:

Post-it® Fax Note	7671	Date	6/3/02	# of pages	4
To	Terryl Vencl, Chair	From	Brian T. Molo, Esq		
Co./Dept.	Charter Commission	Co.	Corp. Counsel		
Phone #	244-8625	Phone #	270-7740		
Fax #	244-3094	Fax #	270-7152		

SUBJECT: DRAFT AMENDMENTS TO CHAPTER 5 OF THE
CHARTER OF THE COUNTY OF MAUI

We would like to take this opportunity to request that the Charter Commission consider two (2) revisions to the draft amendments to the Charter of the County of Maui.

First, we would like to request that Section 8-5.3 relating to the powers, duties and functions of the Department of Public Works and Waste Management be clarified. We have included a separate and distinct description of the responsibilities relating to the Solid Waste and Wastewater Divisions. These are important existing functions of the Department which are not specifically mentioned in the current Charter. Mention of recycling and reclaimed water programs have also been included within Section 8-5.3 to ensure that these programs will continue to be included as part of the functions of the Department. We are also proposing the removal of existing Charter language which directs the Department to "maintain the County's buildings". Although we do maintain

Honorable James
Fortensmiller
Ms. Terryl Venci, Chair

Page 2

some County buildings such as Kalana O Maui and Kalana Pakui, we do not maintain County buildings under the jurisdiction of the Departments of Parks and Recreation, Housing and Human Concerns, Police and Fire Control. We believe that our current building responsibilities can be covered under "other duties assigned by the Mayor".

Secondly, we believe that the current name of our department, the Department of Public Works and Waste Management, or simply the Department of Public Works, accurately reflects our mission as reflected in the foregoing proposed amendments to Section 8-5.3 of the Charter. The proposed name, Department of Public Works and Environmental Management, obviously imparts a greater emphasis on the environment. While we do not disagree conceptually with this emphasis, the term "environmental management" is significantly broader than our current powers, duties, and functions. The meaning of the word "environment" could be defined as follows:

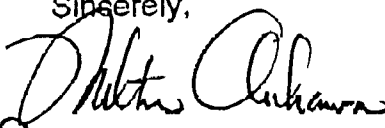
The totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives.

Based on the definition and plain meaning, a broad array of tasks and functions could be construed by the public as being under the jurisdiction of our Department when it is not covered under our powers, duties and functions. For instance, the term "environmental management" may include areas such as clean air, clean water, ocean water quality, soil remediation, underground storage tanks, wetlands, noise, endangered species, historic preservation, vector control, and open space. These are parameters which are not regulated by our Department, but are within the jurisdictions of other governmental agencies.

Honorable James "Kimo" Apana
For transmittal to:
Ms. Terryl Vencel, Chair
June 3, 2002
Page 3

We respectfully request your approval of the proposed revisions. Enclosed is a ramseyered version of amendments to Chapter 5 of the Charter of the County of Maui for your review and consideration. I would be happy to answer any questions or concerns which the Commission may have.

Sincerely,


for DAVID GOODE
Director

DG:MA:jso
Enclosure

xc: Grant Y. M. Chun, Managing Director
James B. Takayesu, Corporation Counsel
s:\milton\transmittals\charter

CHAPTER 5
DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT

Section 8-5.1. Organization. There shall be a department of public works and waste management consisting of a director and the necessary staff. (Amended 1996, 1992)

Section 8-5.2. Director of Public Works and Waste Management. The director of public works and waste management shall be appointed and may be removed by the mayor. The director of public works and waste management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both. (Amended 1992)

Section 8-5.3. Powers, Duties and Functions. The director of public works and waste management shall: (Amended 1992)

1. Administer the building, housing, and subdivision ordinances and rules adopted thereunder. (Amended 1996)

2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.

3. Plan, design, build [Supervise] and maintain the county's highways, drainage, and flood control systems [and sewer systems and maintain the county's buildings].

4. Plan design, build, operate and maintain solid waste collection, processing and disposal systems, including recycling programs.

5. Plan, design, build, operate and maintain the county's sewer treatment plants, pump stations, sewer lines, reclaimed water distribution systems and related programs.

6. Perform such other duties and functions as shall be assigned by the mayor.

Subj: **Suggested Charter Amendment #12 language changes**
Date: 6/4/02 11:28:02 AM Pacific Daylight Time
From: dzachary@maui.net
To: TVenc1@aol.com
CC: jvandyke@hawaii.edu
Sent from the Internet (Details)

Dear Terryl,

Thanks so much for sending the ballot language the Charter Commission will be considering on June 5. After careful review by Maui Coastal Land Trust, The Nature Conservancy-Maui Field Office, and Trust for Public Land, a representative of the 3 groups will be testifying at the meeting to suggest slightly revised ballot language so that it begins with the purpose of the amendment, followed by the mechanism for achieving it.

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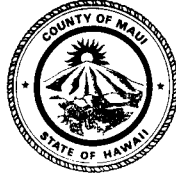
RATIONALE: Acquisition of land will be just one method available to the county, not the only method. We tried to reword this to be more factual.

A thousand thanks to you and the Commission for your hard work over the past months. The community appreciates you!

Best regards,
Diane

--

**JAMES "KIMO" APANA
MAYOR**



**CLAYTON T. ISHIKAWA
CHIEF**
**RICHARD A. FERNANDEZ
DEPUTY CHIEF**

**COUNTY OF MAUI
DEPARTMENT OF FIRE CONTROL**

200 DAIRY ROAD
KAHULUI, MAUI, HAWAII 96732
(808) 270-7561
FAX (808) 270-7919

May 24, 2002

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

Dear Chair and Members:

I would like to take this opportunity to thank each and every one of you for the time you have all spent in the review process of the current Maui County Charter, for it is a very important document.

Upon review of the proposed "Final Report" Charter Amendment pertaining to the Fire Department, I have listed my concerns that should be considered so the Fire Department can continue in its efforts to maintain a well trained, professional fire department to the entire community of Maui County.

PROPOSAL SIX:

Rename the Department of Fire Control to be the "DEPARTMENT OF FIRE AND PUBLIC SAFETY,"

REQUEST FOR CHANGE:

To change the name from Department of Fire Control to be the "COUNTY OF MAUI FIRE DEPARTMENT."

Reason for change:

The Department of Fire Control has always been referred to as the Maui Fire Department whenever the fire department is discussed, whether within the County, State of Hawaii or nationally. Therefore to be consistent with what everyone refers to the County of Maui Department of Fire Control, such

as The City and County of Honolulu Fire Department is always referred to as Honolulu Fire Department.

The reason for keeping the County in front of the Maui Fire Department is because the islands of Molokai and Lanai are part of the County of Maui Department of Fire Control presently, and reference to them should always be within the County.

The HFFA Maui Chair had made his statement and explanation on why "Public Safety" should be deleted and the Department of Fire Control concurs with the reasons given.

SPECIFIC LANGUAGE CHANGES:

Section 8-7(2). Fire and Public Safety Commission.

- (2). Review and [submit] to the mayor the department's request for an annual appropriation for the operation of the department.

Reason for deletion of the word "submit"

For the "Fire and Public Safety Commission" to be involved in preparing a department's budget where they are not involved with the daily operations and hardly has a feel for what the department's needs are, will become cumbersome and overwhelming for the commissioners to be responsible for, as was the present Police Commission.

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

- (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.

REQUEST FOR CHANGE:

Provide fire fighting, rescue, and emergency medical first responder services in order to save lives and property from fires and other emergencies arising on land, sea, and hazardous terrain, including the mitigation and stabilization of hazardous materials and incidents relating to the same.

[4]7. Ascertain compliance and enforcement of the current County of Maui Fire Code.

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.

Delete the above Section B.

Section B as referred to under Section 8-7. Powers, Duties, and Functions of the Fire Chief should be deleted as the Council also recommends deletion of this Section B. As under Section B, item #1 and item #2 falls under the Department of Personnel Services responsibilities. The Fire Department is asked to submit input that applies to item #1 and #2. Item #3 is presently being followed as recommendations from the National Fire Protection Association Standards. Most fire departments do not adopt the NFPA Standards because most of the fire departments cannot meet the NFPA Standards as a whole. With this language it may force the department to adopt the NFPA Standards and the fire department, like most of the fire departments throughout the nation as it stands now cannot meet all of the NFPA Standards.

I would once again like to thank all of you for your consideration to the proposals listed above. If you have any questions, please feel free to call me at 270-7561.

Sincerely,



CLAYTON T. ISHIKAWA
Fire Chief

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

Chair and Members:

Your Committee of the Whole, having met on March 14, 2002, May 8, 2002, and May 9, 2002, makes reference to the following:

1. County Communication No. 02-25, from the Council Chair, regarding Charter Commission recommendations.
2. Committee Report No. 02-43, from the Planning Committee, recommending that a proposed resolution entitled, "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE DEPARTMENT OF PLANNING" be adopted. The purpose of the proposed resolution is to propose a Charter amendment incorporating various revisions to the community planning process.
3. County Communication No. 02-75, from Councilmember Jo Anne Johnson, transmitting a draft resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO REPRESENTATION OF THE COUNCIL IN LEGAL DISPUTES WITH THE EXECUTIVE BRANCH". The purpose of the draft resolution is to propose a Charter amendment empowering the Council to authorize attorneys within the legislative branch to represent the Council in litigation against executive-branch officials.

By correspondence dated February 5, 2002, the Council Chair transmitted correspondence from Councilmember Charmaine Tavares dated January 30, 2002, requesting that Teresa McHugh from The Trust for Public Land provide a presentation regarding open space and land acquisition programs.

By correspondence dated February 12, 2002, the Council Chair transmitted correspondence from the County Clerk, dated February 8, 2002, transmitting a legal opinion from the Department of the Corporation Counsel, dated February 5, 2002, relating to Chapter 50, Hawai'i Revised Statutes.

At its meeting of March 14, 2002, your Committee met with a Deputy Corporation Counsel.

Your Committee received a PowerPoint presentation from Teresa

McHugh, Project Manager for The Trust for Public Land, regarding the community benefits of open space and land-acquisition programs. Ms. McHugh also provided your Committee with the following documents:

1. Correspondence entitled "Public Funding Information", compiled by The Trust for Public Land, March 2002.
2. A booklet entitled "Land Vote 2001, Americans Invest in Parks & Open Space", published by The Trust for Public Land and the Land Trust Alliance, 2002.
3. A booklet entitled "The Economic Benefits of Parks and Open Space, How Land Conservation Helps Communities Grow Smart and Protect the Bottom Line", by Steve Lerner and William Poole, published by The Trust for Public Land, 1999.

Your Committee deferred consideration of this matter pending further discussion.

By correspondence dated March 19, 2002, the Chair of your Committee requested a legal opinion from the Department of the Corporation Counsel regarding the Council's express authority to unilaterally place proposed Charter amendments on the 2002 general election ballot.

By correspondence dated April 1, 2002, the Committee Chair transmitted paper copies of Ms. McHugh's PowerPoint presentation.

By correspondence dated April 18, 2002, Councilmember Charmaine Tavares transmitted a proposed resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO BOARDS AND COMMISSIONS". The purpose of the proposed resolution is to authorize the Council to nominate and appoint individuals to fill vacancies on boards and commissions when the Mayor fails to submit nominees within the times provided for by the Charter.

By correspondence dated April 19, 2002, the Chair of your Committee transmitted a *Maui News* article entitled "Charter panel finalizes its changes".

By correspondence dated April 22, 2002, the Council Chair transmitted the Charter Commission's Final Report, dated April 22, 2002.

By correspondence dated April 25, 2002, the Chair of your Committee explained the procedures for consideration of the 17 proposals submitted in the Charter Commission's Final Report.

By correspondence dated May 6, 2002, the Council Chair transmitted an e-mail message from Lee Altenberg, Ph.D., attaching a report entitled "Democracy denied: the barriers to citizen use of the ballot initiative on Maui".

By memorandum dated May 6, 2002, the Hawaii Fire Fighters Association, Maui County Division, transmitted proposed changes to Proposal Six.

By correspondence dated May 6, 2002, Councilmember Charmaine Tavares transmitted a correspondence from the First Deputy Corporation Counsel, dated May 3, 2002, transmitting a proposed resolution entitled "PROPOSING AMENDMENTS TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, RELATING TO THE DEPARTMENT OF WATER SUPPLY". The purpose of the proposed resolution is to propose a Charter amendment to make the Department of Water Supply a regular County agency (subject to the Mayor's executive management and the Council's legislative oversight).

By correspondence dated May 7, 2002, the Prosecuting Attorney transmitted copies of documents submitted to the Charter Commission regarding the authority of investigators within the Department of the Prosecuting Attorney.

Your Committee notes that its meetings of May 8, 2002 and May 9, 2002 were conducted pursuant to Chapter 50, Hawai'i Revised Statutes. On April 22, 2002, the Charter Commission submitted its "Final Report" containing 17 proposals for revisions to the Charter of the County of Maui (1983), as amended. Chapter 50 provides that the Council has 30 days from its receipt of the report to propose alternatives to the Charter Commission's proposals. The Charter Commission then has 30 days after receiving any Council's alternatives to either: (1) accept the Council's alternatives and incorporate them into the Charter Commission's proposals that will be placed on the general-election ballot in November; or (2) reject the Council's alternatives. Any rejected Council alternative will be placed on the general-election ballot in November in competition with the corresponding Charter Commission proposal (unless the Council recalls or retracts the alternative within 10 days of being notified of the Charter Commission's rejection).

Your Committee commends the members and staff of the Charter Commission for their many months of hard work on behalf of the residents of Maui County. Your Committee offers this report with respect and admiration for the Charter Commission's diligent efforts.

The following are summaries of the Charter Commission's submitted proposals, followed in turn by your Committee's corresponding recommendations to the Council (as further discussed later in this report):

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

Your Committee recommends that the Council encourage the Charter Commission to reassess the importance of and need for this proposal.

- **PROPOSAL TWO:** LENGTHEN TERMS OF COUNCIL MEMBERS FROM TWO (2) TO FOUR (4) YEARS (Subsection 3-2(5))

Your Committee recommends that the Council encourage the Charter Commission to delete the final sentence of proposed Section 15-1.

- **PROPOSAL THREE:** CLARIFY THE RESPONSIBILITIES OF THE CORPORATION COUNSEL (Section 8-2.3)

Your Committee does not have any recommendations in response to this proposal.

- **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 (Subsection 8-3(3))

Your Committee recommends that the Council encourage the Charter Commission to delete this proposal.

- **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" (Subsection 8-5(3))

Your Committee does not have any recommendations in response to this proposal.

- **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)

Your Committee recommends that the Council encourage the Charter Commission to delete the existing Charter language requiring the Fire Chief to perform duties "assigned by the mayor" and to delete the proposed Subsection B of the section relating to the Fire Chief's powers,

duties, and functions.

- **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)

Your Committee recommends that the Council adopt a proposed resolution to propose an alternative to this proposal by making citizen advisory committees permanent within each community plan district. Your Committee also recommends that the Council encourage the Charter Commission to delete proposed deadlines for the planning commissions' and Council's review of community plan updates and other land use ordinances. In addition, your Committee recommends that the Council encourage the Charter Commission to replace the text of proposed Subsection 8-8.5(7) with the following text: "The planning director shall prepare an annual report on the status of implementing actions in each community plan to the mayor and the council."

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

Your Committee recommends that the Council encourage the Charter Commission to delete this proposal.

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

Your Committee recommends that the Council adopt a proposed resolution to propose an alternative to this proposal by making the Department of Water Supply a regular County agency (subject to the Mayor's management and the Council's legislative oversight).

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

Your Committee recommends that the Council encourage the Charter Commission to delete this proposal.

- **PROPOSAL ELEVEN:** STAGGER THE TERMS OF MEMBERS OF THE SALARY COMMISSION (Subsection 8-16(1))

Your Committee recommends that the Council encourage the Charter Commission to delete the portion of this proposal that would strip the Salary Commission of the authority to establish the salaries of department directors and deputy directors.

- **PROPOSAL TWELVE:** COMMIT THE COUNTY TO A PLAN OF

OPEN-SPACE ACQUISITION (Article 9 & Section 8-6)

Your Committee does not have any recommendations in response to this proposal.

- **PROPOSAL THIRTEEN:** AMEND THE ETHICAL STANDARDS GOVERNING DECISIONMAKING ON BOARDS AND COMMISSIONS (Subsection 10-4(1)(f))

Your Committee recommends that the Council encourage the Charter Commission to delete this proposal. If the proposal is retained, your Committee recommends that the Council encourage the Charter Commission to revise the proposal by adding provisions to: (a) provide the Board of Ethics with independent staff (modeled after the second paragraph of Section 11-107 of the Revised Charter of Honolulu); (b) require a lobbyist-registration ordinance (modeled after Section 11-108 of the Revised Charter of Honolulu); and (c) make reasonable efforts to efficiently disseminate its opinions to the public, officers, and employees, including through the Internet.

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

Your Committee does not have any recommendations in response to this proposal.

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

Your Committee does not have any recommendations in response to this proposal.

- **PROPOSAL SIXTEEN:** TRANSITIONAL CHANGES

Your Committee recommends that the Council encourage the Charter Commission to delete the final sentence of proposed Section 15-1.

- **PROPOSAL SEVENTEEN:** HOUSEKEEPING CHANGES

Your Committee does not have any recommendations in response to this proposal.

At its meeting of May 8, 2002, your Committee met with Professor Jon M. Van Dyke, the Charter Commission's Analyst; the First Deputy Corporation Counsel; the Fire Chief; the Prosecuting Attorney; and the Deputy Director of Public Works and Waste Management.

Your Committee received the following documents:

1. Written testimony from the Maui Chamber of Commerce Board of

Directors, commenting on various proposals.

2. Written testimony from the Maui Coastal Land Trust, supporting the intent of, but requesting revisions to, Proposal Twelve.
3. Survey results relating to open-space acquisition in Maui County, submitted by The Trust for Public Land.
4. Written testimony from Sean McLaughlin, Vice-Chair, Charter Commission, relating to the enforcement of Charter provisions.
5. Written testimony from the Kula Community Association (KCA), commenting on various proposals.
6. Written testimony from Dick Mayer, regarding KCA's proposal for a nominating committee to submit candidates for boards and commissions.
7. A matrix providing a side-by-side comparison of Proposal Seven and the proposed Charter amendment, addressing similar topics, recommended by your Planning Committee (Committee Report No. 02-43).
8. A proposed alternative to Proposal Thirteen, relating to the Code of Ethics, submitted by Councilmember Wayne K. Nishiki.

Your Committee received public testimony from Lynne Woods, Maui Chamber of Commerce (commenting on various proposals); Diane Zachary, Tom Pierce, and Dave Mackwell, Maui Coastal Land Trust (supporting Proposal Twelve); Teresa McHugh, The Trust for Public Land (supporting Proposal Twelve); Alvin Kamoku, Hawai'i Fire Fighters Association (suggesting revisions to Proposal Six); Ron Sturtz (opposing Proposal Thirteen); Don Couch, former Chair of Board of Ethics (in his individual capacity, suggesting revisions to Proposal Thirteen); Elliot Krash and Dick Mayer, Kula Community Association (commenting on various proposals); Sean McLaughlin, Vice-Chair, Charter Commission (in his individual capacity, urging the Council to enact an ordinance imposing penalties for Charter violations); Jonathan Starr, Member, Board of Water Supply (in his individual capacity, opposing Proposal Nine); DeGray Vanderbilt (opposing Proposals Two and Thirteen); Michael Quinn and David Craddick, Department of Water Supply (supporting Proposal Nine); and Ron McOmber (opposing Proposal Thirteen).

Your Committee discussed Proposal One, which would amend the Charter's preamble to expressly recognize the equal worth and dignity of every individual. Your Committee questioned the relative need for the proposal,

especially considering the large number of other proposals, many of which appear to address matters of greater legal significance. Therefore, your Committee voted to recommend that the Council encourage the Charter Commission to reassess the importance of and need for this proposal.

Your Committee discussed Proposal Two, which would lengthen the term for Council members from two to four years. The proposal would allow Council members to serve for a maximum of three consecutive four-year terms and provide for the staggering of Council elections so that in each election year either four or five of the nine seats would be contested. Your Committee requested that due consideration be given to the relationship of this proposal to Proposal Sixteen relating to transitional changes (i.e., to avoid confusion or inconsistency if only one of the proposals is approved).

Your Committee discussed Proposal Three, which would clarify the responsibilities of the Department of the Corporation Counsel by expressly stating that County attorneys represent the County of Maui and revising Subsection 8-2(3)(d) by providing that the attorneys shall perform duties "as may be incident" to the Department of the Corporation Counsel (instead of "as shall be assigned by the mayor"). Your Committee noted that it shared the proposal's apparent objective (i.e., to ensure that the Corporation Counsel is not overly responsive to the Mayor to the detriment of the County as an entity or other County entities), but expressed uncertainty that the proposal's text provided the best means of achieving that goal.

Your Committee discussed Proposal Four, which would grant investigators employed by the Department of the Prosecuting Attorney the powers and privileges of police officers while acting within the scope of their official duties. The Prosecuting Attorney noted that the electorate rejected a similar proposal in 1992. He said that the authority to be provided by the proposal was of vital importance to his department for the security and efficiency of investigators. The Prosecuting Attorney indicated that he would be pleased to have the authority granted either by Charter or, if legally possible, by ordinance.

Your Committee discussed Proposal Five, which would rename the Department of Public Works and Waste Management as the Department of Public Works and Environmental Management. Your Committee noted that the proposal's text did not include any reference to the department's powers, duties, and functions relating to environmental management. Your Committee was advised that this was an inadvertent omission.

Your Committee discussed Proposal Six, which would rename the Department of Fire Control to the Department of Fire and Public Safety; modify the department's powers, duties, and functions; rename the Public Safety Commission to the Fire and Public Safety Commission; and modify the

commission's powers, duties, and functions (including by granting the commission the power to hire and fire the Fire Chief). The Fire Chief noted that Department of Fire Control is commonly known as the "Maui Fire Department", and that the MFD abbreviation is commonly displayed on official and unofficial attire and equipment. He also noted that the revised title, including "Public Safety", could be misleading and overly board. The Fire Chief noted that the proposal arose from suggestions submitted by the Hawai'i Fire Fighters Association, the union representing Maui County's firefighters. He said he met with union leaders and informed them that he supported their primary goal of creating a commission to provide executive management of the department. Members of your Committee noted that the proposed revised Subsection A (regarding the Fire Chief's powers, duties, and functions) could be revised to specify that the department is responsible for the indicated services, as opposed to the Fire Chief individually. The First Deputy Corporation Counsel informed your Committee that the proposal included inadvertent technical errors (specifically, proposed new text was not underscored), which would be corrected by the Charter Commission at its June meeting.

Your Committee recessed until May 9, 2002.

At its reconvened meeting of May 9, 2002, your Committee met with Professor Jon M. Van Dyke, the Charter Commission's Analyst; the First Deputy Corporation Counsel; the Fire Chief; the Planning Director; and the Director of Public Works and Waste Management.

Your Committee received the following documents:

1. Written testimony in opposition to Proposal Nine, relating to the Department of Water Supply, submitted by DeGray Vanderbilt.
2. Arguments in support of proposed alternative to Proposal Thirteen, relating to the Code of Ethics, submitted by Councilmember Wayne K. Nishiki.
3. Written testimony in opposition to Proposal Thirteen, relating to the Code of Ethics, submitted by DeGray Vanderbilt.
4. A proposed alternative to Proposal Nine, submitted by Councilmember Charmaine Tavares.
5. Written testimony regarding the identity of an individual who testified before the Charter Commission in support of Proposal Thirteen, relating to the Code of Ethics, submitted by DeGray Vanderbilt.

Your Committee further discussed Proposal Four, which would grant investigators within the Department of the Prosecuting Attorney the powers and privileges of police officers while acting within the scope of their official duties. Your Committee noted that the subject powers and privileges can apparently be granted by ordinance, as evidenced by Section 2-10A, Hawai'i County Code. Therefore, your Committee voted to recommend that the Council encourage the Charter Commission to delete this proposal.

Your Committee further discussed Proposal Five, which would rename the Department of Public Works and Waste Management to the Department of Public Works and Environmental Management. Your Committee again noted that the proposal's text inadvertently omitted reference to the department's authority relating to environmental management. Professor Van Dyke exhibited draft language that would expressly establish the department's responsibility to "supervise the control of environmental management and pollution, including recycling, litter control, and protection of the unique beauty of Maui County." He noted that he would recommend the draft language to the Charter Commission at its June meeting for possible inclusion within Proposal Five.

Your Committee again discussed Proposal Six, relating to the proposed Department of Fire and Public Safety and the proposed Fire and Public Safety Commission. Because the proposal would provide the Fire and Public Safety Commission with the authority to hire and fire the Fire Chief, your Committee opined that it would be advisable to delete the Charter language indicating that the Fire Chief shall exercise duties "assigned by the mayor". Your Committee voted to recommend that the Council encourage the Council to delete such language.

In further discussion on Proposal Six, the Fire Chief informed your Committee that the Department of Fire Control currently performs the functions listed in Subsection B of the proposal's section relating to the Fire Chief's powers, duties, and functions. Your Committee noted that Subsection B appeared superfluous and contained the type of specific management mandates that are inappropriate for a constitutional document such as the Charter. Your Committee voted to recommend that the Council encourage the Charter Commission to delete the proposed Subsection B of the proposal's section relating to the Fire Chief's powers, duties, and functions.

Your Committee discussed Proposal Seven, which would revise the community plan update process, establish the roles of the citizen advisory committees, and clarify the Department of Planning's powers, duties, and functions. Your Committee reviewed a matrix providing a side-by-side comparison of Proposal Seven and the proposed Charter amendment, addressing similar topics, recommended by your Planning Committee (Committee Report No. 02-43). Professor Van Dyke informed your Committee

that ensuring better "implementation" of community plan policies was one of the Charter Commission's primary goals, partially in response to substantial public testimony. The Planning Director informed your Committee that the Department of Planning had consulted with the Charter Commission on Proposal Seven and shared the goal of improving community plan implementation. He also said that Proposal Seven's express authority for "long-range planning" by the Department of Planning was important.

In further discussion on Proposal Seven, Professor Van Dyke informed your Committee that the Charter Commission wanted to recognize the role of citizen advisory committees (CACs) for community plan updates. The Planning Director noted that, under Proposal Seven, CACs in each community plan district would continue to exist until the relevant community plan update was enacted.

In continuing its discussion on Proposal Seven, your Committee noted the importance of improving community plan implementation. To provide more direct language on this subject, your Committee voted to recommend that the Council urge the Charter Commission to replace the text of Subsection 8-8.5(7), contained in Proposal Seven, with the following text: "The Planning Director shall prepare an annual report on the status of implementing actions in each community plan to the mayor and the council." (modeled after Subsection 8-8.3(5) of the proposed Charter amendment recommended in Committee Report No. 02-43).

Your Committee discussed Proposal Seven's requirement that the respective planning commissions transmit their recommendations on proposed community plan updates and other land use ordinances within specified time periods, which were recommended by the Department of Planning, according to the Planning Director. Your Committee noted that delay by the planning commissions has not been a noticeable problem and that necessary amendments to the timelines for community plan updates could be achieved by an ordinance amending Chapter 2.80A of the Maui County Code. Therefore, your Committee voted to recommend that the Council encourage the Charter Commission to delete the proposed deadlines for the planning commissions' review of community plan updates and other land use ordinances.

Your Committee further discussed Proposal Seven, specifically relating to CACs. The Charter Commission proposed that each CAC would expire 60 days after enactment of the relevant community plan updates.

Your Committee noted that a permanent CAC could review implementation reports for its own community plan and, because of its specialized area of interest, could provide particularly useful comments to the Council and the Administration. Your Committee further noted that, under the current Charter's system of at-large Council election, there is no one in County

government that specifically represents the interests of any particular district. Permanent CACs for each community plan district would help alleviate this problem.

Your Committee noted that the proposed Charter amendment recommended by Committee Report No. 02-43 contains a section that would institute permanent CACs. The Planning Director noted that the Department of Planning had not supported permanent CACs before the Charter Commission, in part because of the substantial administrative burdens that would be placed on the department if it were required to staff nine new deliberative bodies on a permanent basis. He further noted that existing processes provide for sufficient community input regarding community plans. Your Committee conceded that the creation of permanent CACs would likely create additional costs. Your Committee nonetheless expressed the view that such costs would be justified by the invaluable role in community planning that could be performed by permanent CACs. At a minimum, residents of Maui County deserve the opportunity to vote on the following question: "Shall there be a permanent citizen advisory committee for each community plan district?"

Your Committee indicated its support for the Charter Commission's proposed approach for selecting CAC members; for each CAC, nine would be selected by the Council and four by the Mayor. Terms, qualifications, and other details regarding CAC membership could be established by ordinance.

Your Committee voted to recommend that a proposed alternative Charter amendment to create permanent CACs be transmitted to the Charter Commission, pursuant to Chapter 50, Hawai'i Revised Statutes. The text of the proposed alternative Charter amendment was modeled after corresponding text in the proposed Charter amendment recommended by Committee Report No. 02-43, although your Committee recommended deletion of the CACs' responsibility to recommend annual revisions to community plans and to review and make recommendations on proposed developments and included the Charter Commission's suggestion for 13-member CACs.

Your Committee is in receipt of a proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), as amended, relating to CITIZEN ADVISORY COMMITTEES". The purpose of the proposed resolution is to propose an alternative Charter amendment to create permanent CACs, as recommended by your Committee. Your Committee notes that this proposed resolution is intended only to propose an alternative to the provisions of Proposal Seven that relate to CACs.

In further discussion on Proposal Seven, regarding proposed Subsection 8-8.5(2), your Committee noted that it may be advisable for the Charter

Commission to use "projected population" instead of "desired population". Projected population is a more relevant basis for making planning decisions than desired population.

Additionally, your Committee voted to recommend that the Council encourage the Charter Commission to delete the proposed deadlines for the Council's review of community plan updates and other land use ordinances in proposed Subsections 8-8.6(3) and (4) of Proposal Seven. The timelines may be unduly restrictive, raise legal and constitutional questions (e.g., relating to separation of powers and legislative discretion). If such deadlines are deemed warranted, however, they could be enacted by an ordinance amending Chapter 2.80A of the Maui County Code.

Your Committee discussed Proposal Eight, which could clarify that the Director of Personnel Services is entitled to due process of law prior to termination and that the Civil Service Commission has the authority to terminate the director. The First Deputy Corporation Counsel informed your Committee that the Charter is currently silent on these matters. Notwithstanding the Charter's silence, however, he opined that the Director of Personnel Services would likely be provided due process prior to termination and that the Civil Service Commission likely has the authority to terminate the director. Therefore, your Committee voted to recommend that the Council encourage the Charter Commission to delete this proposal.

Your Committee discussed Proposal Nine, which would provide the Board of Water Supply with more autonomy over the Department of Water Supply, including the authority to unilaterally set water rates, to "coordinate" private water systems, and to retain special counsel. Professor Van Dyke informed your Committee that the Charter Commission believes that greater autonomy would provide "less politicization" and "more businesslike" management in the management of the County's water supply.

Your Committee expressed the view that eliminating the Board of Water Supply's autonomy as a final decision-making authority (by making it an advisory body) and making the Department of Water Supply a regular County agency (subject to the Mayor's executive management and the Council's legislative oversight) would provide a higher level of accountability, which is necessary to ensure that water-related decisions are made in the public's interest. Major water decisions are of such grave importance that they need to be made by elected officials, not appointed executives and volunteer board members.

Your Committee, therefore, voted to propose an alternative Charter amendment to eliminate the Board of Water Supply's autonomy and make the Department of Water Supply a regular County agency, pursuant to Chapter 50, Hawai'i Revised Statutes.

Your Committee is in receipt of a proposed resolution entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), as amended, relating to THE DEPARTMENT OF WATER SUPPLY". The purpose of the proposed resolution to propose an alternative Charter amendment to make the Department of Water Supply a regular County agency, as recommended by your Committee.

Your Committee discussed Proposal Thirteen, which would expressly allow employees who serve on boards and commissions to vote on matters relating to their employers. For example, employees of Castle & Cooke (the dominant landowner and employer on Lana'i) who sit on the Lana'i Planning Commission would be able to vote on Castle & Cooke's applications for special management area permits. Your Committee voted to recommend that the Council encourage the Charter Commission to delete this proposal. Your Committee notes that a review of the Charter Commission's meeting minutes reveals that:

- The only verbal testimony to the Charter Commission supporting the proposal at its meetings on Lana'i was provided by Castle & Cooke officers or employees and construction-union representatives from Maui.
- The main proponent of the proposal appears to be a Castle & Cooke attorney and vice president.

Your Committee further notes that representatives of Castle & Cooke (and related entities) have been seeking a proposed Charter amendment to allow their employees to vote on Castle & Cooke projects since 1995 (see County Communication No. 95-246). Your Committee further notes that both the Board of Ethics and the Council have opposed the proposed Charter amendment (see Committee of the Whole Committee Report No. 99-65) because the Charter's existing provisions relating to voting by board and commission members are satisfactory.

Your Committee discussed Proposal Ten, which would create a new Department of Transportation to address traffic and other transportation-related problems throughout Maui County. Your Committee acknowledged the need to address transportation issues, but questioned whether sufficient study had been conducted on the ramifications of a new department, including necessary costs. The Director of Public Works and Waste Management informed your Committee that the Administration is concerned about the proposal, specifically including language that would authorize the proposed new department to regulate transportation in the air and sea, partly because of jurisdictional questions. Your Committee notes that the State and Federal departments of transportation (and

other State and Federal agencies) have substantial authority in various modes of transportation, particularly including air and sea travel, which preempt the County's authority. In addition, the Director of Public Works and Waste Management informed your Committee that the County currently has a newly created Transportation Coordinator position housed in the Department of Management. The Director of Public Works and Waste Management suggested that the proposal may be premature because the Transportation Coordinator has not yet had the opportunity to facilitate new initiatives. Your Committee voted to recommend that the Council encourage the Charter Commission to delete Proposal Ten.

Your Committee discussed Proposal Eleven, which would stagger the terms of Salary Commission members and, consistent with a State Attorney General opinion, strip the Salary Commission of its authority to set salaries for directors and deputy directors. Your Committee questioned the validity of the Attorney General opinion and voted to recommend that the Council encourage the Charter Commission to delete the provision that would strip the Salary Commission of its authority to set salaries for directors and deputy directors. Your Committee notes that a bill passed by the Legislature and awaiting the Governor's signature would clarify the Salary Commission's authority to set salaries for directors and deputy directors. Because the bill was part of the Governor's legislative package, it is expected that the bill will be signed into law.

Your Committee discussed Proposal Twelve, which would commit the County to an open-space-acquisition program by providing that 1 percent of annual real-property-tax revenues shall be set aside for an acquisition fund. Professor Van Dyke informed your Committee that the Charter Commission regarded the proposal as establishing a minimum level of open-space funding. The Chair of your Budget and Finance Committee informed your Committee that 1 percent of tax revenues for Fiscal Year 2003 would be projected at slightly more than \$1 million. Your Committee noted that surveys have indicated that most Maui County residents support increased funding for open-space purchases.

Your Committee considered a proposed alternative to Proposal Thirteen that would have required all County officers and employees to provide "fair and equal treatment" (modeled after Section 11-104, Revised Charter of Honolulu).

Your Committee voted to recommend that, if Proposal Thirteen is retained, that it provide the Board of Ethics with independent staff (modeled after the second paragraph of Section 11-107 of the Revised Charter of Honolulu); require a lobbyist-registration ordinance (modeled after Section 11-108 of the Revised Charter of Honolulu); and require that the Board of Ethics make reasonable efforts to efficiently disseminate its opinions to the public, officers, and employees, including through the Internet. Your Committee noted that the

Board of Ethics' ability to ensure government integrity under the Charter's Code of Ethics is currently hampered by the lack of an executive director and legal counsel. The Board is staffed by the Department of the Corporation Counsel, which maintains an attorney-client relationship with all officers and employees under the Board's jurisdiction, creating potential conflicts of interest. In addition, there is no means by which the public or County officers and employees can readily access the Board's opinions, which greatly limits the opinions' value. Although a lobbyist-registration ordinance currently exists, a Charter provision could require that such an ordinance be retained and strengthened.

Your Committee discussed Proposal Fourteen, which is intended to encourage greater notice of public hearings conducted by boards and commissions, including the use of "the most accessible technology". Your Committee noted that the proposal's requirement that notices of public hearings be conveyed through "the most accessible technology" might create an unnecessarily stringent legal standard. Also, this standard may not always facilitate greater notice (e.g., in some parts of Maui County, there may be other ways of enhancing awareness of meetings besides technological means). In addition, your Committee noted that the proposal's title in the Final Report might not accurately reflect the content. Finally, your Committee noted that the proposal's scope could perhaps be enlarged to apply to all County bodies (i.e., not just boards and commissions created by the Charter). The First Deputy Corporation Counsel opined that, although the proposed text would only expressly apply to boards and commissions created by the Charter, the proposed text would likely be interpreted as applying to all boards and commissions (including those created by State statute or County ordinance).

Your Committee discussed Proposal Fifteen, which would allow boards and commissions to meet in places other than publicly owned buildings, when appropriate. Your Committee noted, however, the proposal perhaps could be more clearly understood if the proposed new text were incorporated into the first sentence of Subsection 13-9(2). The existing sentence in Subsection 13-9(2) provides an absolute prohibition, with no apparent exceptions. Therefore, to avoid confusion, it may be advisable to add the proposed new language to the existing sentence by adding a comma or semi-colon and an appropriate connecting phrase (such as "provided that"). Your Committee notes that, to be consistent with existing style in the Charter, the phrase "publicly owned" should not be hyphenated.

Your Committee discussed Proposal Sixteen, which would incorporate transitional changes, and again discussed Proposal Two, relating to Council terms. Your Committee expressed concern about the Charter Commission's proposed transitional provisions for Council terms and suggested that it might be advisable for the Charter Commission to consider following the example of Section 16-122 of the Revised Charter of Honolulu. The creation of staggered,

four-year Council terms would create the need for some two-year Council seats and other four-year Council seats starting after the 2004 elections. Your Committee noted that, under the Charter Commission's proposal, neither candidates nor voters would know the term of specific Council seats at the time of the 2004 elections. This is undesirable from the perspective of both candidates and voters. The Honolulu transitional framework has the benefit of determining the term of all Council seats prior to the elections for those seats. In addition, your Committee expressed concern about the potential arbitrariness and unfairness of automatically limiting a particular Council member to a two-year term if he were elected in 2002 and 2004. Therefore, your Committee voted to recommend that the Council encourage the Charter Commission to delete proposed Section 15-1 in Proposals Two and Sixteen.

Your Committee discussed Proposal Seventeen, which would incorporate "housekeeping" measures. Your Committee expressed concern about the Charter Commission's proposed re-description of Council residency areas in geographical terms. Members of your Committee noted that the proposed re-description includes vague terms (e.g., "unnamed street") and is much longer than the existing descriptions. The members further noted that it might be more efficient to continue basing descriptions on the boundaries of State House districts, notwithstanding the decennial redistricting of those boundaries.

Your Committee deferred consideration of this matter pending further discussion.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), as amended, relating to CITIZEN ADVISORY COMMITTEES" be ADOPTED;
2. That Resolution No. _____, attached hereto, entitled "PROPOSING AN ALTERNATIVE AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), as amended, relating to THE DEPARTMENT OF WATER SUPPLY" be ADOPTED; and
3. That, with reference to the 17 proposals contained in the Charter Commission's Final Report dated April 22, 2002, the Charter Commission is encouraged to CONSIDER the following:
 - A. Reassess the importance of and need for Proposal One;

- B. Delete Proposals Four, Eight, Ten, and Thirteen;
- C. Within Proposals Two and Sixteen, delete the final sentence in proposed Section 15-1 relating to Council terms;
- D. Within Proposal Six, delete the existing Charter language requiring the Fire Chief to perform duties "assigned by the mayor" and delete proposed Subsection B of the section relating to the Fire Chief's powers, duties, and functions;
- E. Within Proposal Seven, delete proposed deadlines for the planning commissions' and Council's review of community plan updates and other land use ordinances;
- F. Within Proposal Seven, replace the text of proposed Subsection 8-8.5(7) with the following text: "The planning director shall prepare an annual report on the status of implementing actions in each community plan to the mayor and the council.";
- G. Within Proposal Eleven; delete the portion that would strip the Salary Commission of the authority to establish the salaries of department directors and deputy directors; and
- H. Within Proposal Thirteen, if retained, add provisions to:
 - i. Provide the Board of Ethics with independent staff (modeled after the second paragraph of Section 11-107 of the Revised Charter of Honolulu);
 - ii. Require a lobbyist-registration ordinance (modeled after Section 11-108 of the Revised Charter of Honolulu); and
 - iii. Require that the Board of Ethics make reasonable efforts to efficiently disseminate its opinions to the public, officers, and employees, including through the Internet.

Adoption of this report is respectfully requested.

cow:cr:0241ba:rkk/dr

DAIN P. KANE

ChairPATRICK S. KAWANO

Member

G. RIKI HOKAMA

Vice-Chairmichael j. molina

Member

alan m. arakawa

MemberWAYNE K. NISHIKI

Member

robert carroll

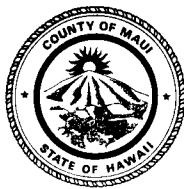
MemberCHARMAINE TAVARES

Member

jo anne johnson

Member

JAMES "KIMO" APANA
MAYOR



OFFICE OF THE MAYOR

Ke'ena O Ka Meia

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May 13, 2002

Honorable James "Kimo" Apana
Mayor, County of Maui
200 South High Street
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL

Grant Y. Kim 5/17/02
Mayor Date

For transmittal to:

Ms. Terryl Vencl, Chair
and Members of the Maui Charter Commission
1727 Wili Pa Loop
Wailuku, HI 96793

Dear Ms. Vencl and Members of the Commission:

Please be informed that the Legislature has passed Senate Bill 2757, S.D. 2, C.D. 1, entitled "A BILL FOR AN ACT RELATING TO AMENDMENTS TO ACT 253, SESSION LAWS OF HAWAII 2000." This law corrects an inadvertent omission in Act 253 which deleted the Salary Commission from determining the salaries of appointed officials, department directors and deputies, of the County. We expect that the Governor will sign this bill into law.

With the enactment of Senate Bill 2757, S.D.2, C.D.1, the Salary Commission will again be responsible for determining compensation for the Mayor, the Council and the appointed department directors and deputies. Attached for your perusal is a copy of the final version of Senate Bill 2757, along with a status of the bill.

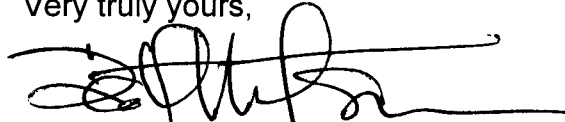
We have reviewed the Charter Commission's proposal to increase the terms of the Council members and have noticed that the Commission has included amendments to change the powers of the Salary Commission as well. This provision provides that the Salary Commission only be responsible for recommending salary levels for department directors and deputies, keeping in line the change in responsibility based on the passage of Act 253. However, due to the recent passage of S.B. 2757, C.D.1, we would like to request that the Charter Commission delete the change to the charter provision regarding the responsibilities of the Salary Commission.

RECEIVED
MAY 17 AM 10:53
OFFICE OF THE MAYOR

Honorable James "Kimo" Apana
For transmittal to:
Ms. Terry Vencel, Chair
May 15, 2002
Page 2

Your attention regarding this request is greatly appreciated. Should you require additional information, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Scott Matsuura', with a long horizontal line extending to the right.

SCOTT MATSUURA
Chair
Maui County Salary Commission

attachment

Hawaii State Legislature

Bill Status

SB2757 SD2 HD2 CD1

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Measure Title: RELATING TO AMENDMENTS TO ACT 253, SESSION LAWS OF HAWAII 2000.

Report Title: Amendments to Civil Service Modernization Act

Description: Extends the sunset date for the Separation Incentive Program to June 30, 2008; clarifies that compensation of excluded employees whose pay is prescribed by a salary commission shall not be adjusted under chapter 89C but will remain limited or fixed by the salary commission. (CD1)

Package: Gov

Companion: HB2499

Introducer(s): Bunda (BR)

Current Referral: LAB, FIN

Date		Status Text
1/23/02	S	Introduced and passed First Reading.
1/30/02	S	Referred to LBR, WAM.
2/1/02	S	Bill scheduled to be heard by LBR on 02-06-02 at 1:30 pm in conference room 229.
2/6/02	S	The committee(s) on LBR recommend(s) that the measure be PASSED, WITH AMENDMENTS.
2/6/02	S	The votes in LBR were as follows: 5 Aye(s): Senator(s) Nakata, Ihara, Hanabusa, Kawamoto, Slom; Aye(s) with reservations: none ; 0 No(es): none; and 4 Excused: Senator(s) Chumbley, Kanno, Matsuura, Sakamoto.
2/8/02	S	Reported from LBR (Stand. Com. Rep. No. 2062) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM. Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
2/19/02	S	Notice of public decision making by WAM on 02-21-02 at 1:00 pm in conference room 211.
2/21/02	S	The committee(s) on WAM recommend(s) that the measure be PASSED, WITH AMENDMENTS.
2/21/02	S	The votes in WAM were as follows: 11 Aye(s): Senator(s) Taniguchi, Hanabusa, Buen, Chun, Chun Oakland, English, Ige, Kawamoto, Kokubun, Sakamoto, Hemmings; Aye(s) with reservations: none ; 0 No(es): none; and 4 Excused: Senator(s) Inouye, Kim, Tam, Slom.
		Reported from WAM (Stand. Com. Rep. No. 2631) with recommendation of passage

3/1/02	S	on Third Reading, as amended (SD 2).
3/1/02	S	48 Hrs. Notice 03-05-02.
3/5/02	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) Menor). Transmitted to House.
3/6/02	H	Received from Senate (Sen. Com. No. 273) in amended form (SD 2).
3/7/02	H	Pass First Reading
3/12/02	H	Referred to LAB, FIN, referral sheet 23.
3/15/02	H	Bill scheduled to be heard by LAB on Tuesday, 03-19-02 at 8:45 am in House conference room 309.
3/19/02	H	The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 8 Ayes: Representative(s) Saiki, Garcia, Espero, Nakasone, Yoshinaga, Moses, Pendleton, Rath; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) Souki.
3/21/02	H	Reported from the committee on LAB (Stand. Com. Rep. No. 808-02) as amended in (HD 1), recommending passage on Second Reading and referral to the committee on FIN.
3/21/02	H	Passed Second Reading as amended in (HD 1) and referred to the committee(s) on FIN with none voting no and Representative(s) Gomes, Hiraki, Kahikina excused.
3/27/02	H	Bill scheduled to be heard by FIN on Thursday, 03-28-02 at 3:30 pm in House conference room 308.
3/28/02	H	The committees on FIN recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 12 Ayes: Takamine, Kawakami, Cabrerros, Magaoay, Nakasone, Saiki, Suzuki, Yonamine, Djou, Leong, Moses, Rath; Ayes with reservations: none; 0 Noes: none; and 2 Excused: Espero, Davis.
4/5/02	H	Reported from the committee on FIN (Stand. Com. Rep. No. 1206-02) as amended in (HD 2), recommending passage on Third Reading.
4/5/02	H	Forty-eight (48) hours notice Tuesday, 04-09-02.
4/9/02	H	Passed Third Reading as amended in (HD 2) with none voting no and Representative (s) Souki, Yoshinaga excused.
4/9/02	H	Transmitted to Senate.
4/11/02	S	Received from House (Hse. Com. No. 451).
4/11/02	S	Senate disagrees with House amendments.
4/11/02	H	Received notice of disagreement (Sen. Com. No. 621).
4/15/02	S	Senate Conferees appointed: Nakata, Chair; Taniguchi, Co-Chair(s); Fukunaga, Ihara, Hemmings.
4/15/02	H	House conferees appointed: Saiki, Nakasone Co-Chairs; Moses.
4/15/02	H	Received notice of Senate conferees (Sen. Com. No. 663).

4/17/02	S	Received notice on 04-15-02 of appointment of House conferees (Hse. Com. No. 567).
4/22/02	S	Senator(s) Fukunaga discharged as conferee(s).
4/22/02	H	Received notice of change in Senate conferees (Sen. Com. No. 674).
4/25/02	S	Bill scheduled for conference committee meeting on 04-26-02 at 1:30 pm in conference room 225.
4/26/02	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS.
4/26/02	S	The votes of the Senate Conference Managers were as follows: 4 Aye(s): Senator(s) Nakata, Taniguchi, Ihara, Hemmings; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/26/02	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 3 Ayes: Representative(s) Saiki, Nakasone, Moses; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/26/02	S	Reported from Conf. Com. as amended CD 1 (Conf. Com. Rep. No. 84-02).
4/26/02	S	48 Hrs. Notice 04-30-02.
4/26/02	H	Reported from Conference Committee (Conf Com. Rep. No. 84-02) as amended in (CD 1).
4/26/02	H	Forty-eight (48) hours notice Tuesday, 04-30-02.
4/30/02	S	Passed Final Reading, as amended (CD 1). 25 Aye(s); Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
4/30/02	H	Passed Final Reading as amended in (CD 1) with none voting no and none excused.
5/1/02	H	Received notice of Final Reading (Sen. Com. No. 738).
5/2/02	S	Received notice of passage on Final Reading in House (Hse. Com. No. 649).
5/7/02	S	Enrolled to Governor.

\$ = Appropriation measure

ConAm = Constitutional Amendment

Report Title:

Amendments to Civil Service Modernization Act

Description:

Extends the sunset date for the Separation Incentive Program to June 30, 2008; clarifies that compensation of excluded employees whose pay is prescribed by a salary commission shall not be adjusted under chapter 89C but will remain limited or fixed by the salary commission. (CD1)

THE SENATE

TWENTY-FIRST LEGISLATURE,
2002

STATE OF HAWAII

S.B. NO. 2757
S.D. 2

H.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO AMENDMENTS TO ACT 253, SESSION LAWS OF HAWAII
2000.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Act 253, Session Laws of Hawaii 2000, is amended by amending section 107 to read as follows:

"SECTION 107. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

"§89C-2 Adjustments authorized; limitations, restrictions. Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action,

or prescribed by a salary commission, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body [+] or salary commission;

(2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;

(3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;

(4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;

(5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and

(6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law."

SECTION 2. Act 253, Session Laws of Hawaii 2000, is amended by amending section 124 to read as follows:

"SECTION 124. This part shall be repealed on June 30, ~~[2003-]~~ 2008."

SECTION 3. Statutory material to be repealed is bracketed

and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2002.

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Ms. Terryl Vencil, Chair, and
Members of the Maui County Charter Commission
Maui County Building
Wailuku, Maui, Hawai'i

Dear Chair and Members: _____

_____ Committee Report No. 02-58 of the Maui County Council Committee of the Whole provides a summary of the decisions and recommendations of the Council regarding the proposals of the Charter Commission. This Report is presented to provide the Members of the Charter Commission with additional information about the two-day meeting of the Maui County Council and some additional options for the Commission to consider in refining the proposals for presentation to the voters.

A common theme among the Councilmembers was that too many proposals were being offered to the voters and that the voters would be confused by the number of proposals. This concern seemed particularly strong among those Councilmembers who thought the Council might also be offering one or more proposals to the voters for the coming election.

Proposal Two – Several Councilmembers pointed out that an awkward situation would arise if Proposal Two were adopted, but Proposal Sixteen (transitional provisions) were rejected, or *vice versa*, and therefore I recommend that the reference to the new proposed Section 15-1 be removed from Proposal Sixteen (and, as explained below, that Proposal Sixteen be eliminated altogether).

It was also suggested that the Commission consider the approach utilized in Honolulu regarding the transition to staggered terms. In the Honolulu Charter, Section 16-122 mandates that if the total number of votes in the 2000 mayoral election is an odd number, then the councilmembers elected from odd-numbered council districts (I, III, V, VII, and IX) would have four-year terms and those from even-numbered districts (II, IV, VI, and VIII) would have two years. If, on the other hand, the total number of votes were determined to be an even number, then the councilmembers from even-numbered residency areas would have four year terms, and those from odd-numbered residency areas would have two-year terms.

The advantage of this approach, if a comparable approach were to be utilized in Maui, is that candidates running for council seats in the 2004 election would know whether they were running for a two or four year term. In addition, it would be easier to determine, in the future, which seats were up for election in any forthcoming election, because all odd-numbered districts would be elected together, and even-numbered districts would be elected in the following two-year election.

One difference between Honolulu and Maui, however, is that the Lāna'i and Moloka'i residency

areas are not given numbers in the Charter. If this approach were determined to be desirable by the Commission, these residency areas could be given numbers, or they could be linked to numbered residency areas – *i.e.*, Lāna'i could be linked with odd-numbered districts and Moloka'i could be linked with even-numbered districts, or both could be linked with even-numbered districts.

Proposal Four – It was discovered during the Council meeting that the County of Hawai'i gave their prosecutorial investigators the powers and privileges of police officers through the adoption of an ordinance, and so the Commission may want to consider whether it is appropriate to have this matter dealt with by ordinance in Maui County as well. Prosecuting Attorney Richard Bissen informed the Council that he would be comfortable with these powers being granted through an ordinance.

Proposal Five – It was discovered during the Council meeting that our Final Report left out brackets around “[and maintain the county’s buildings]” in Section 8-5(3), so these have now been put in.

It was also discovered that our proposed language failed to describe the expanded environmental management responsibilities of the Department of Public Works and Environmental Management, even though the Report describes these responsibilities in its narrative section. I quickly drafted language, which the Commission should review to ensure that it reflects the Commission’s intentions. The proposed language would add a line 4 to Section 8-5(3), which would read as follows:

4. Supervise environmental management and control of pollution, including recycling, litter control, and protection of the unique beauty of Maui County.

Proposal Six – Both Elvin Kamoku and Chief Clayton Ishikawa expressed concern about the new title of the department as being possibly misleading, and preferred simply “Maui Fire Department,” which is how the department is commonly characterized. They were concerned that many people would assume that the Department of Public Safety would have responsibility over police, law enforcement, and medical staff, which will not be the case.

The Chief also expressed concern that the requirement that he provide “emergency services” in proposed Section 8-7([3]4)(A)([1]2) was too broad, because his responsibility has been simply to provide “first-responder” emergency services.

Several councilmembers felt that language in proposed line “7” was misleading, and suggested revising it to read “Monitor the standards for construction and occupancy of buildings for the purposes...” This change would make it clear that the Fire Chief monitors the standards, but does not monitor whether each and every building meets these standards.

It was also pointed out that the renumbered line “8” should be revised, in light of the other changes proposed, to read as follows:

[7]8. Exercise such other powers and duties as may be assigned by the [mayor] commission or as may be provided by law.

The Fire Chief proposed deleting all of “B” in Section 8-7([3]4), as being too detailed, because (1) and (2) are the responsibility of the Department of Personnel Services and are subjects of collective bargaining, and because the training now provided does not “meet or exceed national standards.”

During the discussion, it also became clear that it would be better to have the transitional provision (Section 15-2) included directly into the main proposal, to avoid any confusion that would

occur if Proposal Six were ratified, but Proposal Sixteen were rejected, or *vice versa*.

Proposal Seven – The Council has proposed its own alternative proposal on the planning issues.

Several councilmembers thought the Commission had put too many topics together, and that the status and role of the Citizen Advisory Committees and the timelines should be offered as separate ballot proposals.

Proposal Nine – The Council has proposed its own alternative proposal on the water issue, which would give the Department less autonomy, by placing it under the Mayor.

With regard to the Commission's proposal, the Council said that the intent of the Commission with regard giving the Department "authority to coordinate private water systems" was unclear.

The Council also asked whether the Council's power to "enact legislation that may be appropriate in light of the audit" (in proposed Section 8-11(8)) was consistent with the greater autonomy that would be given to the Department and the Board, and whether there would be any limitations on the power of the Council to enact legislation.

Proposal Eleven – The Hawai'i State Legislature enacted a statute that restores the power of the Salary Commission to determine the salaries of appointed officials, making the amendments the Commission proposed to Section 8-16(1) irrelevant. I would propose going back to the original language the Commission had been working with on this proposal:

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 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.

During the discussion, it also became clear that it would be better to have the transitional provision (Section 15-3) included directly into the main proposal, to avoid any confusion that would occur if Proposal Eleven were ratified, but Proposal Sixteen were rejected, or *vice versa*.

Proposal Fourteen – Several councilmembers commented that the title was not as informative as it might be, and suggested "PROVIDE NOTICE OF MEETINGS THROUGH ADDITIONAL LOCATIONS AND TECHNOLOGY."

Also, several councilmembers suggested that the broadened notices should be extended to all meetings, not just public hearings.

They further expressed concern that the term "most accessible technology" might lead to legal

challenges, and suggested changing the language to read 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 of their meetings and hearings by publication in a newspaper of general circulation in the county and through other means designed to reach the public including accessible locations and technology.

Proposal Sixteen – After the discussion of this proposal, it occurred to me that it was really unnecessary as a separate proposal, in light of the proposals above to move several provisions to be linked to their substantive partners, and could easily be folded into the “housekeeping” proposal, because all it contains are the elimination of obsolete provisions and the renumbering of some others.

The proposed ballot language follows:

PROPOSED BALLOT LANGUAGE FOR THE PROPOSED AMENDMENTS TO THE CHARTER OF THE COUNTY OF MAUI

1. Should the Preamble of the Charter be amended to recognized the equal worth and dignity of every individual?
2. Should the terms of Councilmembers be lengthened from two (2) to four (4) years, beginning in 2004, with terms to be staggered?
3. Should the responsibilities of the Corporation Counsel be clarified to state explicitly that the Corporation Counsel is the legal advisor and representative of the County of Maui, the Council, the Mayor, all county departments, and all boards and commissions, and to state that the Corporation Counsel shall perform additional duties “as may be incident to the department or required by law” instead of the current “as shall be assigned by the mayor”?
4. Should investigators working for the Prosecuting Attorney be granted the powers and privileges of police officers while they are acting within the scope of their official duties?
5. Should the name of the Department of Public Works and Waste Management be changed to be the “Department of Public Works and Environmental Management” and should its responsibilities be broadened to include supervision of environmental management and pollution, including recycling, litter control, and protection of the unique beauty of Maui County?
6. (A) Should the name of the Department of Fire Control be changed to be the “Department of Fire and Public Safety,” (B) should the name of the Public Safety Commission be changed to be the “Fire and Public Safety Commission,” (C) should this Commission be given the responsibility to hire and fire the fire chief (with due process protections provided in the event of a firing) and the power to review the Department’s budget, and (D) should the duties of the Fire Chief be clarified to include responsibilities over rescue and first-responder emergency services, public education, training, and monitoring

construction and occupancy standards of buildings?

7. (A) Should the responsibilities of the Department of Planning be clarified to include long-range planning and managing of cultural resources, (B) should the Department be required to administer and enforce zoning ordinances, (C) should the Planning Commissions be required to review and take action on revisions to the General Plan and on amendments to land-use ordinances within 180 and 120 days respectively after the final public hearing, (D) should the purpose and nature of the General Plan be clarified by incorporating language from Section 226-58 of the Hawai'i Revised Statutes, (E) should the role of the Citizen Advisory Committees be clarified by stating that these committees are an integral part of the planning process, that these committees shall stay in existence until action has been taken on their plans, and that the community plans, once approved, will become part of the General Plan, (F) should the Director of the Department of Planning be required to issue an annual report on the implementation and enforcement of the General Plan and the community plans, and (G) should the County Council be required to take action on revisions to the General Plan proposed by the Planning Director within one year and on proposed revisions to zoning and land-use ordinances within 180 days?

8. Should the Civil Service Commission have the power to remove the Director of Personnel Services, but only after the Director has been given notice of charges and has been granted a hearing?

9. Should the Department and Board of Water Supply be restructured to have more autonomy to operate, whereby (A) the Department would have the authority to coordinate private water systems (while respecting existing property rights), and (B) the Department would have the responsibility to prepare water use and development plans for each community plan district and a long-range capital improvement plan (both of which would be updated every five years), whereby (C) the Board of Water Supply would be restructured so that the Directors of the Departments of Planning and Public Works become voting members of the Board and the other seven members would be appointed by the Mayor with approval by the Council for three-year terms (subject to being reappointed once), (D) the Board would be given the power to establish rules and set rates without further review, (E) the Board would be required to evaluate the Director annually, and (F) the Board could hire (using the Department's revenues) independent legal counsel by a two-thirds vote when necessary, and whereby (F) an independent audit would be conducted annually, after which the Council could make recommendations for changes or enact legislation that might be appropriate?

10. Should a new Department of Transportation be created, to be directed by a Director of Transportation, who would have responsibility for planning and coordinating the development of new highways and public transportation as well as transportation in the air and on water?

11. Should the terms of the members of the Salary Commission be staggered so that two of the nine members would be appointed (or reappointed) each year (except that only one would be appointed or reappointed every fifth year)?

12. Should a minimum of one percent (1%) of the property tax revenues be put into the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund to be used for purchasing lands or other property entitlements to preserve open space, and should the unspent revenues in this Fund remain in the Fund, and not lapse, thereby accumulating from year to year?

13. Should the ethical guidelines governing decision making on boards and commissions be modified to permit members to vote or take official action on matters unless they (A) are employed in a management or representative capacity by the business, (B) have a controlling interest in the business, or (C) believe that their vote or action would tend to create a conflict with the public interest?
14. Should the Charter be amended to require boards and commissions to give notice of their meetings and public hearings in accessible locations and technology as well as in newspapers?
15. Should boards and commissions be allowed to meet in accessible privately-owned locations when publicly-owned buildings are not available or appropriate for their meeting?
16. Should the provisions of the Maui County Charter be modified by nonsubstantive "housekeeping" changes including (A) removing obsolete provisions, (B) using gender-neutral language throughout the Charter, (C) using Hawaiian language spellings for Hawaiian place names, (D) describing the Council residency areas in geographical terms (instead of by reference to voting precincts), (E) eliminating references to political parties to fill Council vacancies, (F) changing "crime of moral turpitude" to "felony" with reference to the disqualification of the Mayor, (G) clarifying restrictions on County employees appearing before boards and commissions, and (H) renumbering sections as appropriate in light of other amendments.

Respectfully submitted,

Jon M. Van Dyke

**MATRIX OF PROPOSED AMENDMENTS TO CHAPTER 8 OF THE COUNTY CHARTER
RELATING TO THE DEPARTMENT OF PLANNING, 05-08-02**

PLANNING COMMITTEE PROPOSAL		CHARTER COMMISSION PROPOSAL	COW COMMITTEE COMMENTS
<p>Section 8-8.1. Organization. There shall be a department of planning consisting of a Maui planning commission, a Molokai planning commission and a Lanai planning commission, a planning director, <u>citizen advisory committees</u>, a board of variances and appeals, and the necessary staff.</p>		<p>Section 8-8.1. Organization. There shall be a department of planning consisting of a Maui planning commission, a Molokai planning commission and a Lanai planning commission, a planning director, a board of variances and appeals, and the necessary staff.</p>	
<p>Section 8-8.2. Planning Director. The planning director shall be appointed and may be removed by the mayor. The planning director shall have had five years experience in the field of planning, three of which shall have been in an administrative capacity.</p>		<p>Section 8-8.2. Planning Director. The planning director shall be appointed and may be removed by the mayor. The planning director shall have had five years experience in the field of planning, three of which shall have been in an administrative capacity.</p>	
<p>Section 8-8.3. Powers, Duties and Functions. The planning director shall:</p> <ol style="list-style-type: none"> 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, and citizen advisory committees on all planning and related matters. 3. Recommend <u>annual revisions</u> of the general plan [at least every ten years] and <u>community plans</u> to guide the development of the county and to facilitate the implementation and enforcement of the general plan and community plans. 4. Prepare and administer zoning ordinances, zoning maps and regulations and any amendments or modifications thereto. 5. <u>Prepare an annual report on the status of implementing actions in each community plan to the mayor and the council.</u> [5.] <u>6. Review the [lists of] county budget and proposed capital [improvements] improvement projects [contemplated by the county] for conformance with the general plans and community plans, and [recommend the order of their priority] submit an annual written report of findings to the mayor, the council, and the citizen advisory committees.</u> [6.] 7. Performs such other duties and functions as shall be required by law or as shall be assigned by the mayor. 		<p>Section 8-8.3. Powers, Duties, and Functions. The planning director shall:</p> <ol style="list-style-type: none"> 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. <u>Prepare, administer, and enforce long-range planning programs.</u> 5. <u>Prepare, administer, and enforce a cultural resource management program.</u> [4]6. Prepare, [and] administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto. 7. <u>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. (From Commission Section 8-8.5.)</u> [5]8. Review the lists of proposed capital improvements projects contemplated by the county and recommend the order of their priority to the mayor. [6]9. Perform such other duties and functions as shall be required by law or as shall be assigned by the mayor. 	

PLANNING COMMITTEE PROPOSAL	CHARTER COMMISSION PROPOSAL	COW COMMITTEE COMMENTS
<p>Section 8-8.4. Planning Commissions. Each Planning commission shall consist of nine members appointed by the mayor with the approval of the council. <u>At least one member from each citizen advisory committee shall be a member of the appropriate planning commission.</u> The <u>remaining</u> members of each planning commission shall be residents of the island of the planning commission on which the [member] <u>members serve[s]</u>. 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.</p> <p>Each planning commission shall exercise its powers, duties and functions as follows:</p> <ol style="list-style-type: none"> 1. The Maui planning commission shall be concerned with the area encompassing the islands of Maui and Kahoolawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. 2. The Molokai planning commission shall be concerned with the area encompassing the island of Molokai 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] Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement. 3. The Lanai planning commission shall be concerned with the area encompassing the island of Lanai and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. <p>The appropriate planning commission shall:</p> <ol style="list-style-type: none"> 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 or a citizen advisory committee. 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. 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. 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. 	<p>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.</p> <p>Each planning commission shall exercise its powers, duties, and functions as follows:</p> <ol style="list-style-type: none"> 1. The Maui planning commission shall be concerned with the area encompassing the islands of Maui and Kahoolawe and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. 2. The Molokai planning commission shall be concerned with the area encompassing the island of Molokai 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] Kalaupapa, Kalawao, and Waikolu and commonly known and designated as the Kalaupapa Settlement. 3. The Lanai planning commission shall be concerned with the area encompassing the island of Lanai and all other islands lying within three nautical miles of the shores thereof, and the waters adjacent thereto. <p>The appropriate planning commission shall:</p> <ol style="list-style-type: none"> 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 <u>no later than one hundred and eighty (180) days after the final public hearing.</u> 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 <u>no later than one hundred and twenty (120) days after the final public hearing.</u> 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. 	

PLANNING COMMITTEE PROPOSAL	CHARTER COMMISSION PROPOSAL	COW COMMITTEE COMMENTS
<p>Section 8-8.5. Citizen Advisory Committees. There shall be a citizen advisory committee for each community plan region of the county. Each citizen advisory committee shall consist of members in a manner prescribed by law. Each citizen advisory committee shall:</p> <ol style="list-style-type: none"> 1. Develop a community vision to guide the improvement and development of its community plan region. 2. Promote public participation by serving as a coordinating body between individual citizens, community associations and other interested groups. 3. Formulate implementing actions that support the improvement and development of the community plan, including priorities, timelines, estimated costs, and the county department accountable for completion of the implementing actions. 4. Monitor the implementation and enforcement of the general plan and community plans, and recommend annual revisions to its community plan based upon the status of plan implementation and enforcement. 5. Review proposed development projects within their district and make recommendations based upon its community plan vision. 6. Review comprehensive revisions to the general plan and community plans at least every ten years as proposed by the planning director. <p>Section [8-8.5.] 8-8.6. General Plan and Community Plans.</p> <ol style="list-style-type: none"> 1. 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. The general plan shall contain a Maui island regional plan that encompasses the various community regions on the island of Maui. 2. The community plans 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 which clearly identify priorities, timelines, estimated costs, and the county department accountable for completion of the implementing actions. 	<p>Section 8-8.5. General Plan and Community Plans.</p> <ol style="list-style-type: none"> 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. <p>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.</p> <ol style="list-style-type: none"> 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. <p>Section 8-8.5. General Plan and Community Plans. [1. 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.]</p> <ol style="list-style-type: none"> 1. The general plan shall be developed after input from state and county agencies and the 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 the 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. 	

PLANNING COMMITTEE PROPOSAL	CHARTER COMMISSION PROPOSAL	COW COMMITTEE COMMENTS
<p>Section [8-8.6.] 8-8.7. Adoption of General Plan and Other Land Use Ordinances.</p> <p>1. The County shall adopt revisions to the general plan and <u>community plans</u> by ordinances.</p> <p>2. Any revisions of the general plan and community plans, 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 <u>one hundred twenty (120) days</u> 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.</p> <p>3. Any revisions of the general plan and community plans proposed by the council or prepared by the planning director shall be reviewed by the appropriate citizen advisory committee prior to being referred to the appropriate planning commission. The appropriate citizen advisory committee shall submit its recommendation to the appropriate planning commission within <u>one hundred twenty (120) days</u>.</p>	<p>Section 8-8.6. Adoption of General Plan and Other Land Use Ordinances.</p> <p>1. The County shall adopt revisions to the general plan by ordinances.</p> <p>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 <u>one hundred twenty (120) days</u> 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.</p> <p>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.</p> <p>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 <u>one hundred and eighty (180) after receipt of the transmittal from the planning director.</u></p>	