

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

May 21, 2002

Committee
Report No. 02-58

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.

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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.

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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).

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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.

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- 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

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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).

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- 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.

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- 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.

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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.

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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.

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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.

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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

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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 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

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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

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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

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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

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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

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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.

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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

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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

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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

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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);

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- 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.

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DAIN P. KANE **Chair**

PATRICK S. KAWANO **Member**

G. RIKI HOKAMA **Vice-Chair**

MICHAEL J. MOLINA **Member**

ALAN M. ARAKAWA **Member**

WAYNE K. NISHIKI **Member**

ROBERT CARROLL **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**