

**2009-2010 HAWAI'I COUNTY
CHARTER COMMISSION**

8th Session
Friday, October 9, 2009
County Council Chambers
Ben Franklin Bldg. 2nd Floor
333 Kīlauea Avenue
Hilo, Hawai'i 96720

CALL TO ORDER:

CHR. HAITSUKA: Good afternoon everyone. Today is October 9, 2009 and the time is approximately 1:39 p.m. I call this meeting of the Hawai'i County Charter Commission to order. We are at the County Council Room at the Ben Franklin Building in Hilo.

ATTENDANCE:

Present: Mr. Ed Haitzuka, Chair
Mr. David Fuertes, Commissioner
Ms. Daphne Honma, Commissioner
Ms. Casey Jarman, Commissioner (*via videoconference, Kona*)
Mr. Guy Kaulukukui, Commissioner
Ms. Jamae Kawauchi, Commissioner
Mr. Alapaki Nahale-a, Commissioner (*1:45 p.m.*)
Mr. Todd Shumway, Commissioner
Mr. Scott Unger, Commissioner

Excused: Mr. Joseph Kealoha, Commissioner
Ms. Susie Osborne, Commissioner

Also Present: Mr. Bill Takaba, Managing Director
Mr. Lincoln Ashida, Corporation Counsel
Mr. Jay Kimura, Corporation Counsel
Ms. Pat Nakamoto, Elections Program Administrator
Ms. Deanna Sako, Deputy Finance Director
Lono Tyson, Department of Environmental Management Director
Mr. Kenneth Goodenow, County Clerk
Mr. Levi Hookano, Legal Specialist
Mr. David Hirt, Legislative Assistant (*videoconference, Kona*)
Mrs. Manu Hanano, Council Aide (*videoconference, Waimea*)
Ms. Karen Eoff, Secretary

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

CHR. HAITSIKA: Next on our agenda is Statements From The Public On Agenda Items, and for the people who are here today to testify, we will be limiting testimony, per the Commission rules, to three minutes per item. If you change topic or item, please let us know and we will reset the clock. Thank you. First up, we have Margaret Wille. Good afternoon, Ms. Wille.

MARGARET WILLE

(At this time Margaret Wille came forward to address members of the Charter Commission.)

MS. WILLE: I am Margaret Wille from Waimea. I do have a Communication on the agenda, but I wanted to take advantage of this opportunity to comment on some of the amendments that are being proposed that you have before you to vote on. The first one is CA-6, and that has to do--and also which relates to Communication 34 from Mayor Kenoi--with the process of removal of the heads of the Merit Appeals board, Human Resources, Water, and Liquor Control. I just want to say that I agree with Mayor Kenoi, that going through that process of stating reasons why those people who are “at will” employment, why they would be removed. I don’t think that’s a good process. I think that if they are “at will” employees, it should be “at will” employment, and that’s what they signed on to.

Second--and this is another item, but I don’t have a lot of time on these first ones so--is CA-9, and this has to do with providing electronic notice in the case of special meetings. I think there is a Communication 43 which is related to this. I really feel that it is important, in terms of whether it is a regular meeting or a special meeting, when you say electronic notice that you include that it be included on the County’s calendar of events. If you go on the web and you click on the site, you click up---It’s a whole calendar, and each day it shows when you are meeting, or when the Council is meeting. That is where the public looks, and then you click on that site, and for yours or the Council, you can go to the agenda. In contrast, say the Planning Commission, I’d be surprised how few people in this room know how to go and find the agenda for the Planning Commission. I would really think that not just posting it on a particular web site, but putting it on that single calendar, so some of us who might have a blog, we put your calendar right there and you can click on it, and anyone can go look and see when these meetings are going on. So it’s a matter of just adding those few words, and at some point I can submit that. Specifically, this is CA-9, and the whole intent here is to improve getting access to the public in a manner that many in the public can access in the customary mode at this time, and not go to the Ben Franklin post board out here, or the Clerk’s office, which I don’t even know where that is. That’s separate on that one.

On CA-10, this has to do with the Department of Environmental Management. There was a series of letters that were sent out. One had to do with what the requirements for the job would be. There were also what should be really the scope of this department and whether there should additionally be added to whatever current scope there is, considering energy and food sustainability. If you were to look in the Charter as it stands right now, it’s under Chapter 10, page 23, Section 6-10.1. The way it reads to me is your amendment, which is under CA-10, would be to modify Section 6-20.4, which is Powers, Duties and Functions; to

add the provision to modify those powers, duties and functions to also be, not just by ordinance and not just solid waste, but also as directed by the Mayor. I think that's important and very good. Along that same line, if you look up in the section 6-10.2, I don't see that section is proposed to be modified, and I think it is very limiting. Right now it says, "The Department of Environmental Management is established to protect, preserve, and enhance our environment by promoting the wise management of our waste." I will write all of this up; but since these are on the agenda now, I want to just run through them. I would cross out "...by promoting the wise management of our waste." You talk about the powers and duties down in 6-10.4, and I don't think you should really have where this policy statement of what the purpose of this department is to be limited. I'm just going to give a specific practical example. I've been trying to go through a number of different grants that are available, and I was helping people do some for the Hawaiian Tourism Authority and also a lot of the Federal grants, and it would nice on some of those environmental ones to have nice statement here on what the department is, and if you put the wise management of our waste, that doesn't have to do with something like self-sufficiency and environmental concerns. So I just think that you ought to consider revising Section 6-10 too.

One of the questions that keeps coming up is what about issues of sustainability, and whether they would become also long term economic development. I know at one point Mayor Kenoi in one of his submissions talked about if Research and Development should also be considered Economic Development, or what do we do with Food and Energy Sustainability, and I think Environmental Management said, "no," we really don't think that should be under our department, or it's not under us, should it be under Research and Development. I just think there is a lot of confusion, it's all getting shifted around, and I'm afraid it's going to get lost. So again, here is an issue--you are not meeting again for another 10 years--where the whole focus is on self-sufficiency and sustainability, and perhaps there is a way, despite the economic circumstances, to establish a Department of Agriculture, Energy, and Economic Sustainability. I think that you would, twenty-fold, get money if you did that, to promote agriculture and economic self-sufficiency, including promotion of small scale community-based farming initiatives, or to coordinate with governmental agencies to enhance agriculture and energy, and economic sustainability; all of those things. When I read through the minutes, and I read through the different responses, it's sort of being looked at and being pushed elsewhere. If you just look up, whatever it is, grants.gov, these are the words that you want to have in there. To the extent that you all can assist with that, I think that this goes along with Mayor Kenoi's bit that we may need to hire additional people to move us forward, just as Obama said that is critical.

Fourth is Communication 41, which is by Mike Johnson. He is addressing looking at the Ethics Board, and just asking that you consider--and I think that this will come up later, but just to comment on it--that there should be a separate entity for ethics violations. My understanding is that right now enforcement is by referral to the Council and the Mayor. I'm not sure what the right answer is, but his communication addresses the current problem, and I think that there is certainly a feeling of what dealing with conflict of interest issues. To the extent that you can address that, that would be great. I don't know whether this person is here or not, so I just raise that concern since it is on your agenda, Communication 41.

Here is probably the most important one that I want to mention. That is Communication 44, which Councilmember Brenda Ford submitted. That has to do with the Standing Committees of the Council, and basically ensuring that all nine members, all representatives from all districts will be able to be on those committees, and be able to submit legislation. Right now, I see this as critical to ensuring some trust from the public to the Council, and the whole structure of the County government right now. With all of the reorganization that is going on in the Council--which, if you look at other Counties, where they have gone and have sort of majority heads of each of the key departments--it is sort of a step by step process, to the point where--and I think one other County in Hawai'i does it--a Councilmember cannot submit legislation unless it is approved by the person who is the head of that standing committee. So, you get sort of a lock control to even hearing certain bills. If you look at--and I assume Brenda will be talking about it later--basically, that Communication 44, the heart of it is to ensure there is proper notice getting out to the public, and two, that it ensures to the public and all of the different districts that they know that regardless of whether there is anyone anywhere on their side of the island or anyplace, who is head of a committee, that they cannot be prevented and barred from proposing legislation.

The last one that I want to comment on is Communication 28, from Jay Kimura, I think it is under Old Business. He requests--and it is a little bit vague in how it is written up--basically he asks that the last sentence of one paragraph be deleted. My understanding of that last sentence that he is requesting to be deleted is that in case of an impeachment, such as for malfeasance or willful violation of the law, it says, basically that the County will defend any member of any board, except where it is for impeachment based on the finding of a willful violation or malfeasance. I don't feel that, if there is a finding, if someone is being impeached for a found willful violation that the taxpayers should be paying for that person's legal fees, or that should be representing them by the County Counsel. I think that is a conflict of interest, and I think it is wrong to do. So, those were other comments and communications that are being submitted, and I went through them, and I just thought I would take the opportunity to give my opinion on some of those that you are reviewing. Thank you for the opportunity.

CHR. HAITSUKA: Are there any questions of Ms. Wille?

MS. KAWAUCHI: Chair Haitsuka, I think she is not done.

MS. WILLE: Excuse me, Karen asked me to bring up a Communication that was from Zion Estes on the possibility of live-streaming video casting your sessions. I believe she may have passed out a copy of that--so I just bring that to your attention--summarizing basically the two options. If you wanted meetings to be live-broadcast and also so then later they could go to your site and go on-demand, and watch the proceedings, then he sets out one price. Then if you want in addition, there is a high grade DVD that you would then have available. This is a great deal more work, I hadn't realized, but there is a second price for that. She has his email address, and if you are interested you can contact him. So, it would be just filming, and then anyone from all around the island would be able to watch. Or, if they are not available, they would just press, later in the day, on-demand, and they could watch the proceedings. Thank you very much.

MS. KAWAUCHI: I had a question. Are we able to ask for comment from---I had a question for Mr. Takaba following Ms. Wille's testimony. Is it possible to ask him that question now, or do we wait until later to ask that question?

CHR. HAITSUKA: Does it relate to something on our agenda?

MS. KAWAUCHI: It relates to something that Ms. Wille testified to.

CHR. HAITSUKA: But is it something we are going to cover on our agenda that we can call him up for then?

MS. KAWAUCHI: Good question. The question had to do with Ms. Wille's suggestion concerning the creation of a new department, which I don't remember being on the agenda as a proposed amendment.

MS. WILLE: Under the Environmental Management---

CHR. HAITSUKA: Why don't we finish the public testimony first, and then we can call on Mr. Takaba. Thank you. Next we have Barbara Lively. Good afternoon, Ms. Lively.

BARBARA LIVELY

(At this time Barbara Lively came forward to address members of the Charter Commission.)

MS. LIVELY: Good afternoon. I've been taken out of order, but that's okay. I want to start by thanking you all for taking on this responsibility and thank you for doing this work for us. It's very important work, so thank you. I just have three comments, and I should be able to wrap it up in three minutes.

First of all, I'm opposed to any change in the council term limits. I'm opposed to that because I think that waiting four years in between elections, denies public participation in the process. It also delays our ability to make changes that we want to make. It also encourages complacency and apathy in the process because after waiting three years, you just throw your hands up in the air and say, oh well. I can understand that it can save us money in the long run to not have to have elections every two years, but I think that the social costs, or the social loss, should outweigh that worry. I also think that elections are actually opportunities for community building and relationship building within communities. Politics are discussed, it comes around every two years, people get excited, they help each other, they attend fundraisers, parties, whatever. So, I see it as an opportunity to build communities, and build relationships within communities. I also have just a few questions about changing the council terms to four years. How would that affect the House Bill 661, and that's the comprehensive public funding option for the County Council races here in Hawai'i County? From my understanding, the House Bill sets up a program for the 2010 election, the 2012 election, and the 2014 election. If we move to four years in 2010, what will that do to the 2012 election? I would like to have an answer on that, but I probably won't get one today. But, I'm thinking that, if you change the council terms, then in some way you are kind of

negating the House Bill. I also think that if we are going to move to implementing four-year terms, that the ballot question should be phrased in such a way that people understand that they cannot then make Charter amendments, or they cannot bring initiatives forward for four years.

I also wanted to comment on Communication 45. I believe that is a communication that has been proposed by Debbie Hecht. I support the idea of moving the 2% ordinance into the Charter. I believe that we owe it to the voters who voted for it to move it into a situation where it would guarantee deposits and it would protect the fund itself, and the purpose of the fund. So, I do like that idea, and also I think the ballot question should also be easily understandable.

The last one is that I support Communication 46, also proposed by Ms. Hecht, giving the public a say in filling Council vacancies. If a vacancy comes up on the County Council, right now, I think it is up to the Chair, or the rest of the Council members to go ahead and try to fill that vacancy, but I can see a benefit in letting the public have a say in that process. Debbie, I believe, has proposed to let the second highest placing vote earner take the office. I think that's a good idea, but I would just like to add a caveat, that that second place person should have gotten at least 25% of the total votes cast. That second place person isn't just the only other person that there was. I don't think that would truly represent the people, unless they had at least 25% of the overall votes cast. I think that's it. Thank you very much.

CHR. HAITSIKA: Are there any questions for Ms. Lively? Thank you very much. Next we have Bett Bidleman. Good afternoon, Ms. Bidleman.

BETT BIDLEMAN

(At this time Bett Bidleman came forward to address members of the Charter Commission.)

MS. BIDLEMAN: Aloha. I thought that actually Rob was going to speak first and I was going to follow up on his testimony, so I guess I'm going to just start talking about Communication 48, which came from Friends of Puna's Future. This testimony was brought to your attention on including Community Development Plans (CDP's) and their Action Committees in the County Charter, by Margaret Wille. She brought this up first. When I was reading her testimony, actually I was able to watch it, because it was the one time we had a video recording and it was on the internet. I followed up by reading the written testimony. One of you, I believe it was Commissioner Fuertes, asked about what the Charter could do, what the Commissioners could do, that would put teeth into the CDP's. Our written testimony is really about some of the things that we would like to see if you decide to put this on the ballot. We would want to see the language fall under the General Plan, so it is an integral part of planning for our County. We would like it to state clearly that every ten years, there will be public meetings every ten years to address it; and until that CDP is replaced by another one that CDP will remain in place. We are really concerned about the amount of time--in the Puna district, we were the first group that started this process, and we were the ones that got our ordinance passed first, and here we are, it's over a year, and we still don't have our Action Committee. So, to us, these delays are important to change. We

would like to see language in there that sets a time frame for the appointments to be made. If we have a ten-year process, to delay the Action Committee, which is the oversight committee for the public, where the public input comes in. If we delay that indefinitely, we are taking away that ten year period, when we were expecting our plan to be implemented. So, that's why it is so important to us. I know time frames are difficult to put into a Charter which stays pretty general, but I know that in different places, looking through the Charter, you do have some time frames; and that is why it is so important to us.

Also, as far as the CDP having teeth, we think it is really important that any large subdivision, any plans for rezoning that would affect what is in the CDP, be reviewed by the Action Committee. We think it is important to put language in there and we provided that in our written testimony. I believe that is my time frame. Thank you.

CHR. HAITSUKA: Are you going to speak on any other issues?

MS. BIDDLEMAN: I could do that as well. In our proposals in Communication 48 we had two other proposals. One of them was to support Margaret Wille's testimony, which was about including live broadcasting on the internet of decision-making government bodies. Also, on-demand, as I just explained to you that is how I got interested in testifying. That is why I got interested in the Charter, was seeing her testimony. It had more impact on me than simply reading the public notices; it was dramatic. Many of us, we do get our news by the internet. I also see that we have a ten year period. Here it is. People have been using the internet for ten years, and we are just now talking in this County about making it a requirement that it be on the internet; that meetings be posted on the internet. For those of us---I read my local newspapers online, so I don't get those public notices unless I have access to them on the internet, I don't know about them unless someone gives me a call and tells me about it. So, to wait another ten years is a long time. We are also trying to go through other routes to get this to people's attention, but by putting it in the Charter--I don't know the language that you would use, because we know that it would take some time to establish this. If a private individual could tape the testimony of Margaret Wille, I believe that our County government could do it in a more comprehensive way.

The final one was in support of Debbie Hecht's amendment proposal about the 2% Land Fund. It was a demoralizing experience for people who went out and collected signatures and found out that it passed, and then turn around and lose the funding for two years. And we don't know for how long that will go on. One thing that impressed me personally, is I have lived in Hawai'i for five years, and my experience on coming here was that the public so often gets involved in negative campaigns. It is always, we don't want this, and we don't want that. This was the first campaign I saw where it was positive, it is saying we do want to protect open access. We do want to protect lands for our future generations. I thought this was really a new event, and I hope it means that things are going to change; a turn around here, where people are going to start being more positive about what they want for their future. So, it was demoralizing to see us lose it so quickly. From reading Debbie Hecht's testimony and information she has gotten out to us on her blog, I understand that other counties in Hawai'i do have some sort of land fund that the public has put it in their Charter. So we do have a precedent here for this Commission to do the same. Thank you.

CHR. HAITSUKA: Are there any questions for Ms. Bidleman? Thank you Ms. Bidleman. Next we have Ms. Joyce Folena. Good afternoon, Ms. Folena.

JOYCE FOLENA

(At this time Joyce Folena came forward to address members of the Charter Commission.)

MS. FOLENA: Good afternoon, sir. The first matter that I would like to talk about is that I strongly oppose changing the terms of the County Council members back to four years. We passed the two-year terms for a very good reason. I'm not going to mince words. We passed the two-year term limits, and did away with the four-year term limits in order to dissuade the perception and the reality of corruption, and the old term that power corrupts, and absolute power corrupts absolutely. When you have two terms, in my opinion sirs and madams, you definitely do away with a lot of the corruptive in roads into our politics and our business in the County of Hawai'i. On the good side, you also increase the viability of worthy council members to retain their seats, and you give the public a chance to voice their opinions every two years, instead of every four years. Four years is a darn long time for a representative to be set in stone. Two years is the acceptable term limit. Thanks.

Referring to the Puna CDP, and all Community Development Plans, we definitely--we meaning folks I've talked to, and myself--want to see a law, something in the County Charter saying there have to be Action Committees connected to all the CDP's within one year of the CDP being completed. Our Puna Community Development Plan has been sitting on the desk now for too darn long. All the work that went into it--I've been involved in it for maybe 12 or 14 years--way back, when people were talking about doing this, before it actually birthed itself, before the people birthed it. So, this is a long, long process, sitting in people's rooms, sitting in their houses, talking it over, figuring out what we need, how do we get it, how do we control wholesale development in our island, how do we control turn over pancake land for profit, how do we protect our environment, how do we protect ourselves, how do we protect our descendents? There are, as you know, unscrupulous money-making machines in our world, nationally and internationally, that don't give a rip about, can we breathe the air in 50 years; can we breathe the air in ten years. They care about money. One year after these Community Development Plans are completed, we need to have it mandated by law that we have an Action Committee; a working Action Committee. We are asking, why were 36 people trashed out of the original list, and why is that plan sitting in Mr. Kenoi's office in an unusable position. We haven't gotten any answers yet. Thanks.

Everything that Margaret Wille had to say, from an attorney's standpoint, and I'm not an attorney. I'm not saying that, but because she is an attorney, I trust what she has to say. And what she has to say makes a lot of sense to me. Rather than go on and on and on about it, I augment Margaret Wille's testimony, thank you, in all aspects. I want to talk something about redistricting and reapportionment. I understand the difference between the words redistricting and reapportionment. As far as I'm concerned, even being a lay person, I'm going to say openly that I feel that what happened nearly ten years ago was illegal concerning the redistricting of the County of Hawai'i. We have a Reapportionment committee; we don't have a Redistricting committee. We need to have that committee changed from

reapportionment to redistricting so that actually the redistricting can take place as it's supposed to without gerrymandering; which it did happen. Gerrymandering did happen when District 3 threw a leg--a very thin leg--into District 5, in order to keep Jimmy Arakaki in his seat. If that redistricting had been done correctly, Jimmy Arakaki wouldn't have had a seat. So, redistricting means changing the geographical boundaries to legally conform with population growth, without political, private interest gerrymandering creating non-contiguous districts with odd shapes. When you look at the maps, you are going to see that District 3 has kind of an odd shape right now, and District 5 has a odd in-road into it. We want that done away with. Reapportionment--I'm just going to say this for the record--as far as I understand it, means that you create a different number of representatives into a district for the set boundaries. Now, what happened ten years ago was the boundaries were changed. It didn't change the number of representatives in it. So, it was not reapportionment, it was redistricting, and it was illegal. So, please, will you please refer to that, and give us a fair chance in our island with the next redistricting to have it done properly, with a real redistricting committee. Thank you.

Referring to the Ethics Board--I don't know if all this is agendized in your present meeting but--there is one communication that refers to penalties and how would they be imposed, how would they be collected, so on and so forth. I just want to say for the record, so the public will know that Ordinance 08-57 has been languishing for 17 months. It was signed into law by Mayor Harry Kim, May 8, 2008. That ordinance gives the Ethics Board the power to impose fines of not more than \$1,000 for each violation committed by a county official in violation of the Code of Ethics. Now, I spoke to Rene Schoen today, who is the Deputy Corporation Counsel for ethics matters. I asked Rene Schoen what the difference is between a formal hearing and an informal hearing, and how do we get a formal hearing; and is it true that only a formal hearing will result when this ordinance is implemented, for any county official being fined. And she said that is true. So what happens is that--for instance we have matters before the Ethic Board--anyone writing in a petition request, and filling out a petition stating, so and so did so and so and we want it heard, it's going to be an informal hearing. The first time a county official is found guilty of a particular type of ethics violation, according to Ms. Schoen, who is a very respectable lady, that person will be warned; don't do it again. But, if the person continues in that vernacular, and commits the same type of ethics violation, then there would be a formal hearing and that person would be fined. We are at an impasse here. Somewhere in your Charter---

Although the County says it's burdensome to create an appeals agency on the County level in order to conform with HRS, there is a new law which says that violations to ethics, you have to have a County appeals agency, and so you can't use the circuit court. That is the big reason why the Ethics Board doesn't have any teeth and can't impose any penalties of any money. The public has been laughing at the Ethics Board saying we don't like what so and so does, but what's the good of taking it to the Ethics Board, they don't do anything about it. This coming Legislature, if that particular portion of HRS is not repealed, and if the County cannot use the circuit court as an appeals agency for County officials found in violation of ethics violations, then I think it should be mandated in the Charter that the County of Hawai'i has to have an appeals agency. Either you are going to change our HRS--and this is the

second time it has been attempted to change the HRS--or, the County of Hawai'i has to conform with the intent and purpose of Ordinance 08-57 and create an appeals agency.

One last thing, and this is not on your agenda, but we have noticed that the Rules of Procedure for the County Council have no penalties. Somehow, consulting with your legal people, we request that there are penalties somehow written into the Rules of Procedure of the County of Hawai'i. What's the use of having the rules, if part of the time they are not adhered to, and when someone is caught up in it, okay well alright, we won't do in any more. That's not good enough for the public. We want penalties attached to infractions, breaking the Rules of Procedure of the County Council of the County of Hawai'i. Thank you.

CHR. HAITSUKA: Are there any questions for Ms. Folena? Mr. Fuertes has a question.

MR. FUERTES: First of all, I thank you for coming in and testifying. When you spoke about the CDP, in your opinion, how do you validate that the CDP actions represent the community as a whole? I notice that there are many CDP's that are working hard in our communities, but how do we validate that it really represents that particular community?

MS. FOLENA: How do you validate it? If you research it sir, and you understand it, there have been, my god, I don't know how many public meetings and avenues for the public to interact within the Puna CDP. That would answer your question, sir. You would have to research that. In fact, if you really want to know, you should talk to Barbara Lively. Barbara Lively has been intimately associated with the workings of the Puna CDP for ages. I am a small peon in it; I never held any position in it. I went to meetings in people's homes, I talked to the public, people were interested in it; I went to formal meetings, informal meetings etcetera. So, I think it's the responsibility of the public themselves when public notice is given that a Community Development Plan meeting is being held. It's the responsibility of the public to come up and attend it. I'm sorry, could I go on about a couple of other things here quickly. They are different agendized items.

CHR. HAITSUKA: Alright, go ahead.

MS. FOLENA: Thank you, sir. May I address Mr. Fuertes, Mr. Chair?

CHR. HAITSUKA: Yes.

MS. FOLENA: Was that okay with you? I know you still have a question on it. I think what you were getting at sir was that not enough people knew about it. I'm sorry, go ahead.

MR. FUERTES: As much as we want to have public input, some of our people don't like to be in those kinds of meetings, and don't come to meetings. So, I just want to think about different communities and how they do things. I just question if it is really representing what the community is saying. Some people just don't want to come to meetings and I'm hoping that the CDP has outreach in which people who don't want to be at those kind of formal meetings will have their---

MS. FOLENA: Their input and their say and their concerns heard?

MR. FUERTES: Yes.

MS. FOLENA: That's why we had meetings in different people's homes, because a lot of people don't like to go to the formal meetings.

MR. FUERTES: Thank you.

MS. FOLENA: There were untold numbers of meetings all over, in every subdivision, in people's homes; there were 130 meetings. Rob Tucker can answer those questions. We have two of the outstanding movers and shakers here.

MR. FUERTES: Alright, thank you.

MS. FOLENA: You are welcome, sir. Budgetary independence of the office of the Legislative Auditor in order to dispel the conflicts of interest, we are very, very supportive of this. I can say that in a nutshell. Regarding public notice requirements for council meetings, there was a lot of flack about whether the public notice was right or wrong when the public notice of the June 16, 2009 meeting--the first reorganization meeting--that the notice was not given in due time. We support that change in Communication 43, no later than 4:30 p.m. on the sixth day before every meeting, whether they be Council meetings or Committee meetings. We do want the Standing Committees to be included in the County Charter. We are supportive of that. We do also want the live broadcasts of policy-making boards and commissions on the internet. We think that should be a definite requirement in our County because a lot of folks, as Mr. Fuertes has said, do not like to go to formal meetings. It is a lot easier to flip on your computer and watch it on the internet, so yes, and thank you. I think that's it.

CHR. HAITSUKA: Thank you, Ms. Folena. Next we have Mr. Gregory Smith. Good afternoon, Mr. Smith.

GREGORY SMITH

(At this time Gregory Smith came forward to address members of the Charter Commission.)

MR. SMITH: Good afternoon and thank you for letting me speak. I'll try to keep this as brief as possible. My very great concern of course is putting the elections at four years. I think the Council is very much, in my mind, where the rubber hits the road in local government. To have council people in a four-year term seems to me like they kind of lose touch. Maybe they get stuck in a groove, or they get influenced by too much. To me it seems that the two-year term makes the council members more answerable to the folks. Because if they do something outlandish or something they don't like, then they can vote them out; they do have the ballot and that is helpful. As far as the 2%, I'm very much in support of this because I, and other people, have collectively worked many, many thousands of hours to get that 2% bill in. It had wide support island wide from all communities on the island. To have it just arbitrarily smacked down, because of what will probably be a short-

term budget short fall, at the whim of the Mayor, I think is wrong; I think the Mayor can do other things to balance the budget. As far as having all standing committees, I agree with that. Basically, that is it. The Ethics Board, yes, we need teeth in that. Much of what Margaret Wille has put out as well as what Debbie Hecht has put out, I do agree with, just to keep it short. Thank you all for your time.

CHR. HAITSIKA: Are there any questions for Mr. Smith? Thank you, Mr. Smith. Next we have Barbara Kahn-Langer. Good afternoon, Ms. Kahn-Langer.

BARBARA KAHN-LANGER

(At this time Barbara Kahn-Langer came forward to address members of the Charter Commission.)

MS. KAHN-LANGER: Aloha, my name is Barbara Kahn-Langer. Thank you for the opportunity to address you on a number of topics. I didn't quite expect that, you are very gracious. Thank you very much. What I'd like to do, very briefly with your permission, is go through the communications list and just tell you those that I support. I think there has been ample testimony from other people of why they support that, so I don't want to belabor any of that or take up your time. I support Communication 38, the authority to retain independent legal counsel for the Legislative Auditor. It speaks for itself, it makes imminent good sense. Communication 40, from Councilmember Brenda Ford, I support that, regarding budgetary independence for that office of the Legislative Auditor. If you are going to have a position, the position has to have a budget. And if you are going to have a position such as an auditor, that auditor needs a budget with which to act and perform their duties. I support Communication 42, in terms of not extending a term limit to four years. I could give you all kinds of reasons; suffice it to say I would prefer two years. I think there is a reason why in our Federal government we have a Senate and we have the House of Representatives. The closest legislative body to the people is those legislative bodies that have two years responsibility to go back to their community. I support Communication 45, sponsored by Debbie Hecht; and I support that strongly. I support Communication 46, proposing a new section to the Charter regarding vacancies in office, and I would like to speak to Communication 48.

Specifically, my name is Barbara Kahn-Langer, and my basic purpose for coming here today is to discuss the Community Development Plan process, particularly the Puna Community Development Plan process. Commissioner Fuertes, perhaps some of my comments would answer some of your statements or concerns. When the Puna Community Development Plan was first announced in the Hawai'i Tribune Herald in 2005, my husband and I immediately signed up to participate in the process. We opened our home to neighbors, and encouraged their participation, even though we were told by long-time residents that it was a waste of our time, the plan would sit on a shelf that other plans sit on, nothing would happen. I didn't believe that, and I thought I could be of value to the process. I became Mayor of my small city in California in the mid 1980's after successful community litigation forced the city to develop its first General Plan as required by the State. The resulting community involvement process beckoned new community leaders. It educated the community as a whole, and brought the city into the then 20th century, in terms of community involvement in land-use planning. Prior to that successful litigation and subsequent moratorium on all development, a

small group of real estate and development interests controlled all land use and zoning decisions.

From that experience I expected that at most the Puna Community Development Plan process would take two years participation. The remaining eight years before the development of the next General Plan would be used by the County to implement what the people supported in their CDP's. Land use maps would be adjusted, where needed, revision of the County Code would be adjusted, and the result would be a partnership between all stake holders so that land use would proceed according to the values of each identified planning community. Community Development Plans are not meant to be static creations; they are living governmental organisms. They involve action, community participation, and by their specific nature, subsequent, timely implementation by the County. From my participation in this process, from the beginning, I'm very concerned about the County government's ability to move forward on what the people supported in their plan. I see the need to incorporate time requirements within the County Charter so that implementation of the CDP's occurs before the next revision of the General Plan. It is one matter to say legislatively say, "we should," it's another different matter to know, "we must." By including the Community Development Plans and their Action Committees in the County Charter, we will be protecting the integrity of the community's participation in this planning process. Further, it will guide future planning efforts required by law to take place in a timely manner.

I would like to speak directly to some of your comments. In my experience, and my experience living here in Hawai'i, there are always people, such as myself, who pay attention to governmental matters in their community. We read about it in the paper, and we physically take action to be part of the process. Similarly, there are always people who don't do that. They don't do that for a variety of reasons. In the subdivision where I live, Hawaiian Paradise Park, people routinely only show up to say, "no." There are all kinds of notification, there are all kinds of ample time to get involved, to look at road plans and other matters, but these folks basically want to say, "No." They want to oppose anything happening by any form of government, and so I'm suggesting that some of what we see as non-participation is from people--not because they are uncomfortable with participating--they just prefer to say, "no" because it's easier. Are there any questions? Thank you very much.

CHR. HAITSUKA: Do we have anyone else here to testify, anyone in Kona, Waimea?

MR. HIRT: Good afternoon, we have two testifiers here in Kona. Our first testifier today is Debbie Hecht, speaking on behalf of herself, in support of the 2% Land Fund.

CHR. HAITSUKA: Good afternoon, Ms. Hecht.

DEBBIE HECHT

(At this time Debbie Hecht came forward to address members of the Charter Commission via videoconference from the Kona office.)

MS. HECHT: Aloha Commissioners. I have four things actually that I want to speak on, several of the communications. As I'm listening to the other testifiers, I realize these will all become ballot questions when the Commissioners hopefully approve a lot of these things to put it on the ballot and let the people decide. To start out, on Communication 45, which is the 2% Land Fund, just a short history that some of you may not know about this initiative. It was an initiative petition that was brought forward by voters when the Council was unresponsive to this issue. In 2006, 63% of voters who voted on this measure approved it. This fund has been plagued with takeovers. That's why this extraordinary step to put in on to the Charter has been taken. During the Kim administration, Mayor Kim himself went to the Open Space Commission looking for their support to use this fund for maintenance. This fund was never meant to be used for maintenance; it was for property acquisition only. Mayor Billy Kenoi asked the Council to suspend the deposits to the fund for two years, which will end up costing the fund \$4,000,000. Actually, it's \$4,000,000 a year, so it would be about \$8,000,000, and frankly, I don't think anybody is sure that it will be resumed after the two-year hiatus. \$4,000,000 out of a yearly budget for the County of Hawai'i is less than one percent of the budget. This is not a big deal in any business, to cut one percent. This shouldn't represent a hardship, in prudent fiscal planning.

Back in 2006, in four months, over 100 dedicated volunteers collected almost 10,000 signatures on initiative petition to get this question on the ballot. The question became whether to set aside 2% of property taxes. This is a resounding mandate, and the purpose clause in this amendment is, "To save land for public recreation and education, including access to beaches and mountains; to preserve historic or culturally important land areas and sites; to protect our natural resources including buffer zones and watershed areas, to preserve water quality and water supply; and to preserve the forests, beaches, coastal areas, natural beauty and agricultural lands."

Currently the County council has prioritized 5 parcels of land for acquisition. In order of priority, Kawa Bay in Ka'u, which is valued at \$5 million by the owner, Pao'o, in North Kohala, valued at about \$2 million, Kaiholena, adjacent to Pao'o in North Kohala, 253 acres and Puapua'a in Kona which is eight acres along Ali'i Drive valued at approximately \$8 million. The total to acquire all of these properties is approximately \$30 million. Right now there is \$11 million in the fund and the great gift to the people on our island is to take this \$11 million and go out and find matching funds. The matching funds have been acquired so far for Kawa Bay for instance for the hawksbill turtle out of the U.S. Fish and Wildlife Service. Other properties were acquired with the National Oceanic Funds and then there is also the State's Legacy Lands Fund which have traditionally been used.

This is not a new idea for the State of Hawai'i. In 2006, voters in Honolulu County approved a Charter amendment to set aside property taxes for open space acquisition and fair housing. Kauai voters approved this way back in 2002, and in 2003, Maui County formed the Open Space, Natural Resources, Cultural and Scenic Views Preservation Fund. So, this isn't a new idea for our State. Please remember that our Hawaii State Motto states, "The Life of the Land is perpetuated in Righteousness." That's why this incredibly onerous process is undertaken by the public to set aside 2% of property taxes.

When I look at this, it is sort of involved. The first part in this proposed new section talks about the fund itself, how it is established, and how deposits are made. It is very important to have that in there so that when the deposits are actually made by the Department of Finance, which would be twice a year after property taxes are collected. It is also important to include the purpose clause so this fund then can be used to acquire the land as was stated in the initiative petition. It is also important to lay out how the Commission is appointed, and then the duties and responsibilities of the Commission, so they are all in the Charter. The prioritized list, this last year in front of the Council, there was quite a bit of political wrangling over the prioritized list. They did finally come up with the list of five, but really, the problem we found was that several of the properties that were originally prioritized weren't even for sale. Now, yes, the County could go out and condemn, but that's fairly widely unpopular to condemn land for parks property or recreation. So, we put in here that ten properties should be prioritized, so the Department of Finance can move through them.

So, we ask you to put this on the ballot once again and let the people decide. There has been island wide support for this as a Charter Amendment. It maybe should have been done as a Charter Amendment initially, so we are asking you to put it on the ballot.

I wanted to move on to Communication 47, which is about Boards and Commissions. This is a pretty simple change, and the reason that I am bringing this forward is because, as I understand it, in Puna for their CDP Action Committee, there were quite a few people that applied--I'm not sure if someone from Puna wants to correct me, if I'm wrong--I think there were about 30 people that applied and they were in the process of doing this, and there were problems with it. I know the Friends of Puna's Future ended up asking for disclosure as to the criteria for appointments and also to look at the applications. Instead of the Mayor's office to bring that forward, they went back and started over, which is one of the reasons for the delay for their appointments.

As I thought about this further, and I looked at the existing part of Section 13-4, on Boards and Commissions, I saw that the Mayor is the person who brings forward the nominations to the Council. Now, most of the Boards and Commissions, when I looked at it are island wide, which means that out of each there is one seat per district. Now, a Mayor in Hilo cannot really know what in Kona, Ka'u, or Kohala, who is on the street doing their volunteer work, is well informed, and who is engaged and involved in the community. For that reason I feel it's most important for the Council members to make the nomination, send them to the Mayor's office, get the Mayor's feedback and recommendations and background check, and then it goes back to the Council to be voted upon by the County Council, and approved or rejected. At the time that it is approved or rejected by the County Council, the public has their input on the whole issue. I think that is a much more fair process. I think that right now, a lot of the boards and commissions are heavily weighted with people that are--I don't want to say a political pay back, but--certainly cronies of the sitting Mayor. I don't know if that really serves the island well in terms of those people who are actually informed and involved in their particular community.

So, that's why I'm bringing this forward. In addition, this amendment also includes that information shall be posted on a website that lays out what the qualifications and criteria for

selecting members is, the name of the contact person for the board or commission, and other relevant information concerning the board or commission. It also states the authority and powers of the commission. Now, for instance, I thought--and I wanted to thank you too--it was very helpful to be coming before the Charter Commission and having just a short biography of who I was addressing. So, I appreciate that you were willing to put that on your website, short bios for each of you. I think that's important for community members to be able to know who they're talking to. So, I also included that information in this Charter Amendment.

I'm moving on to Vacancy in Office. If you are going to be considering four years in office, a very stout and very easy to follow to recall Charter amendment would be important to balance a four-year term. That way, if someone gets in to the Council office, the Mayor's office, or the Prosecuting Attorney--because those are the only three offices that are elected in our County--and they are not doing their job, or something happens or whatever, then you are going to want to balance a four-year term with an easier recall method. Well after we went through that onerous process of how is the vacancy filled. When I looked at that process, if there is a vacancy in a council office, the ruling majority will vote to replace the council member. Now, I don't know that that would serve the interests of the island well, because that would only support the majority.

If a vacancy occurs in the Mayor's office, right now the Managing Director takes over, and that's not someone who ran for office. And that may not be someone who has leadership capabilities. If a vacancy occurs in the Office of the Prosecuting Attorney, his appointee, the first deputy, takes over. That person may not be the best for a leadership position. So, in my proposal, this Charter Amendment says, "The person who received the next highest number of votes in the last general election (or in the primary election if the official won in the primary election) shall be appointed to serve the remainder of that term." Now, Barbara Lively had a really good point. If that person only got 10% of the vote, I don't know if that is a real citizens' mandate. I also had several comments from other people about that and that it wasn't the best way to go. As I rethink that, maybe that isn't the best way to go. So, after six months in office, if there are more than six months left in office, maybe it should go back to the people and also in a special election by mail. If it's less than six months, the County Council could appoint someone to serve out the term. So that's what I'm proposing on that.

On the last one, which is Communication 51, amending or revising the Charter--as I was reading that one--it becomes very difficult. The reason I know it becomes difficult is because when we did the 2% for Open Space as an amendment, we had a very, very difficult time as a citizens' group understanding the process by which the ordinance could be amended. Also, dealing with the County as to whether we could collect more signatures, when to get in the petitions, the signature verification process, whether a signature was viable. As a matter of fact, one of the big issues we had was the most signatures that were deleted or found to be invalid were found because the date was incorrect. People left off the year, '06. That was kind of "nit-picky" because it started in April and ended in July. It wasn't like it ran from year to year. So that was one of the largest reasons why people's signatures were kicked off

and secondly because the residence address was incorrect. For an island wide initiative, I believe those signatures should have been rendered valid.

So, as I was looking at this Section 15-1, on amending the Charter, I thought it was very important to include that procedure as part of the procedure to amend the Charter. That was vetted by voters, it was supported by the League of Women Voters, we went around to all the council members and incorporated their comments, we worked with the Office of Elections, we worked with the County Clerk, and then voters passed it. So this is sort of something that has already been accomplished, and it will certainly lay out the process and procedures to amend the Charter too. So, I ask you to consider--all I said was, "replace with (b) By petition, which shall use the same process as outlined in Article XI, Initiative and Referendum of this Charter." So that just refers to the other process and procedure. That's all I have, so if you have any questions, I'd be glad to answer them and I'll be here later as you do your discussion, to answer questions also.

CHR. HAITSUKA: Are there any questions for Ms. Hecht? Mr. Unger.

MR. UNGER: Debbie, can you hear me?

MS. HECHT: Yes, I can.

MR. UNGER: As far as having the County Council nominate board and commission members, have you gotten any feedback from the County Council as to whether that is a good idea. I don't know how many boards and commissions are out there. I know there are a lot, and I have a feeling this whole process would be pretty time consuming. I would be interested in hearing from our County Council if this is something they think is a good idea and they have time to undertake.

MS. HECHT: May I respond to that?

CHR. HAITSUKA: Yes.

MS. HECHT: I know that under the Kim administration, Harry would ask Council Members for their recommendations. It was an informal process, but he afforded them the respect of asking them their ideas of who should be nominated from the district. I know that was the preferred way to do it. Under this administration, that is not the case. Right now the Mayor appoints, and the Council approves. So, to me it is kind of backwards, meaning that the Council Members really do know the people in the district better than the Mayor can. I did talk to several Council Members about it; three that I can think of and they thought it was a good idea too.

CHR. HAITSUKA: Are there any other questions for Ms. Hecht? Thank you, Ms. Hecht. Do you have someone else in Kona to testify?

MR. HIRT: Yes, our final testifier today is Brenda Ford, representing herself and speaking in support of Communications 27, 32, 40, 43, 44, 46, 47, 50, and 51, CA-8, CA-9, CA-11 and CA-12.

BRENDA FORD

(At this time Brenda Ford came forward to address members of the Charter Commission via videoconference from the Kona office.)

MS. JARMAN: As you can see, we are all moving away from our Council Member because she has the flu.

CHR. HAITSUKA: Good afternoon Ms. Ford.

MS. FORD: Commissioners, first of all I would like to thank you for taking on a very time consuming and very difficult job. While the Commission meets only once every 10 years, your responsibility is equal to or greater than the County Council. I say that because--my estimate--90 percent of the things that come before the County Council are routine business for the County, but the difference in what you have is that whatever you put on the ballot, the people will ratify or vote it down. You have, in my opinion, an even greater responsibility because you are touching the document that is the ultimate law passed in Hawai'i County. When I think about legislation that I personally write, I always try to keep in mind a few concepts. One is that I want to have a government be honest, accountable, and transparent to the taxpayers. I always consider the best interest of the public, the taxpayers, and the voters, not whether or not it is comfortable for me or takes extra time for me to do something. It is strictly about what is best for the public, the taxpayers, and the voters. What we put into the Charter is not about making life easier for the elected officials. It is our duty to perform as you direct us to perform, and the people who vote on those issues that you put on the ballot indicate that they want us to perform. Elected officials need to represent their constituents and should not be barred from presenting legislation, participating in discussion or voting. To stop any of that is to disenfranchise the constituents of that district. I'll be talking more about that later.

Additionally, we have the issue of ease of the public access on the public notices of meetings. I would like to talk first about Ms. Margaret Wille's testimony and her letter, Communication 50. I would like to start there. I support this in its entirety, but there are a couple of things I don't think she talked about, although it's in her letter, and I would like to talk about them with you. At the very bottom of the first page of Communication 50 it says, "Require that a separate attorney be appointed to represent County Council and be independent from Corporation Council." I think this is vitally important. While Corporation Counsel is the counsel for the County, they have to straddle a fine line between the Executive Branch and the Legislative Branch. I know, probably every attorney will tell us, it can be done. But, those of us watching the process, frankly, have doubts. It's not because of malicious intent; it's just very difficult to serve two masters. So, I would support that we have our own independent counsel, independent Corporation Counsel; someone who would actively defend the position of the Legislative Branch within the County.

The second thing that I would like to talk about that Ms. Wille suggested, is that the County Clerk be an elected rather than an appointed official. I know that we can think back to circumstances where the County Clerk has made recommendations that have gone array, and we have wound up in court. I think it's important that a County Clerk be as politically neutral as humanly possible; and that's really hard because every incoming Council has a majority and a minority. It's almost impossible over time for a Clerk to be neutral unless they are a really, really akamai County Clerk. Thank you, I do support that.

I would like to go down the list here of your Communications, and say generically, I can make some of my testimony very quick. Communication 30 on the Legislative Auditor, I support this in its entirety. The Auditor should be able to retain independent legal counsel. The Auditor has one of the most important functions in the County. While the Auditor is selected by the Legislative Branch, the Legislative and the Executive Branches will be audited by the Auditor. We passed an amendment at the last election to hire the Auditor for six years, and within approximately two months of the Auditor being hired, an attempt was made to take money from that budget which would have impeded the Auditor's ability to do the auditing job the way it needs to be done, and advance it to a more professional level. We have a really good Auditor, and she has made many wonderful recommendations on how the County can bring things up to a more professional standard, protect the taxpayers and protect the County. No Auditor should be inhibited by having to face raids on her funds for the Office of the Auditor, either by the Mayor's Office or by the Council. So, in order to provide budgetary independence, I have submitted my recommendations in Communication 40. The bulk of it is that budgetary independence is at the heart of autonomy for the Office of the Auditor. This is a national recommendation. If you will notice in Communication 40 there is an attachment, a letter I received from the Association of Local Government Auditors. You can see from that, that this issue is rearing its head in a lot of different communities. I think it is important for our County to provide this kind of budgetary independence, and to prevent any political hampering of the Auditor's ability to do the function of the office, which is to audit and make recommendations without fear of reprisal or threats of political influence or bias, or a threat of censorship or retaliation.

I'm not going to go through the whole thing, but I think one of the most important things that is in here is on page two of the draft that I had submitted to you. I want to be very clear on how this calculation takes place. You add the Operating Budget and the Special Funds Budget together, and then you do a calculation based on that total. The calculation is one quarter of one percent as a minimum. In a given year, if the Auditor thinks he or she needs more, they can apply through the normal process to the Mayor to ask for more money. There may be something that we cannot even conceive of, but the Mayor has the choice on that issue. But, the one quarter of one percent would be allocated from the General Fund, not from Special Funds; it would be the General Fund. Unexpended money would, of course, go back to the General Fund. The Auditor can release funds during any given year if she knows that she won't be using the funds. The Auditor is still subject to the scrutiny of the Mayor and the Council. Even though that amount would be the minimum amount, the Auditor must submit a budget to the Mayor and the Mayor's staff. It will be scrutinized by the County Council. Those are the highlights. I also agree with retaining independent legal counsel for the Auditor's office. So, this amendment in Communication 40, I hope that you will support.

Next is Communication 42, which is term limits for the Council Members. I know there has been a lot of discussion on this. Life as a council member is not designed to be easy. It's not designed to be hard, but it's not designed to be easy. It is our job, our duty, to perform for the public and the constituents of our districts. I do not support four-year terms. I think that when a person comes into the Council office, they need to be able to prove themselves to their constituents that they are doing the job that the constituents hired them for. I believe that two-year terms do that. It keeps the Council Member on their toes at all times, responding to the needs of their constituents. If they don't, they are going to be out of the job. There might be the possibility of a compromise here. We could start off by having a Council Member run for a two-year term, and their second term, they could run for a four-year term. So, a total of six years consecutively, and then they would have to step down. The first two years, they are going to have to prove themselves to their constituents, or they cannot get the four-year term. It is difficult to run an election. We have to do it every other year, and yes, it takes time, a great deal of time. I guess there are some Council Members that can do it during the daytime, but I was never able to do my job and be a Council Member. I had to do my campaigning mostly on personal time, and it's tough. I admit, it's tough to do it every other year. But, it's not about whether it is tough for the Council Member; it's about what is best for the public. In my opinion two-year terms are best for the public.

If you did go to a two-year, four-year scenario, then if the Council Member is not doing their job, then they can go to the recall or impeachment process depending on what the issue is. Those two processes, even though they are being vastly improved by the suggestions of Ms. Hecht, they are still very onerous for the public. That is the reason that I support the two-year terms. It doesn't cost the public anything more to have an election every two years. Then if the person is not behaving themselves in some way or not doing what they campaigned to do, then the public can go to the impeachment and or recall process; but they are very onerous. I think our primary function is to make it easy on the voters to get the kind of person they want on the Council for their district.

I would like to now go to Communication 43, Public Notice of Council Meetings. We have a State law that says we are supposed to provide public notice of our agenda six calendar days before the meeting. We are all aware of what's been going on in the past few months, but the problems that we're facing have been going on for a long time. Fortunately we now have the internet and a lot of people have access to it and it makes it easier. I think it is important that we adhere to this law of six calendar days. However, with that said, the close of business for the County by Mayoral directive is 4:30 p.m. The community at large should be able to get their hands on that agenda by 4:30 p.m. on the sixth calendar before that meeting takes place. By public access, not only should it be prior to--or no later than--4:30 p.m. on that day, but there should be some changes made on how we do it. First of all, since this is the Legislative Branch, public notice should be physically posted outside the building where the County Clerk resides. It shouldn't be locked up behind two sets of locked doors, over weekends, over holidays, and not posted on the internet as some of the other people have already testified to. That's the first place it should be. It should also be posted at the main buildings for the Mayor's office, wherever those buildings might be; there is one in Hilo and one in

Kona. It should also be posted on the internet at the same time. This is not an onerous thing to do. In our Council Rules, which unfortunately aren't followed very well, we are supposed to have this notification out seven days before the meeting, and we don't seem to do that very often. It is hard on the staff, I admit that; but it's not about whether it's hard on the staff and hard on the Council Members, it's about the public's right to know and the public's need to be able to access this information in a reasonable amount of time and the State said six calendar days. I'm saying it is six calendar days with a 4:30 p.m. deadline.

I'm going on to Communication 44, regarding standing committees, including the public notice requirements. There is nothing in our Charter at all on Standing Committees of the Council, so I added a section to add Standing Committees, that all Standing Committees shall have all members of the Council on every committee and have voting privileges. Several terms ago, before I ever got on to the Council, there was an attempt to consolidate control of legislation by giving the Chairman of the Standing Committee the right to determine if a particular piece of legislation would ever see the light of day. This goes on at the State right now. A Chairman can legally bury something in the committee and it will never come forward, even if it's a great piece of legislation, would have massive benefits for the public, it can be killed in a committee. That attempt, many terms ago, is something we should not allow. Every single council person should have the right to bring forward legislation, and all legislation has to start through committee process unless it is waived by the committee chairman to the council. We should not be constraining our council members from producing legislation. If we do not pass this law, I think we are going to face this dilemma again in the future. I explain how it would go about happening; I explain about the minimum six calendar days, I explain about the 4:30 p.m. deadline which is exactly the same as it is on the council amendment that I proposed.

On Communication 45, I support this exactly the way it is written. I think the ceasing of funding for at least two years is a terrible miscarriage of the public trust. I cannot even begin to describe how terribly hard it is to do an initiative and get something on the ballot, have the people vote in a great majority, and then have the county--whether it is the administration or the legislative branch--just say, "We're going to change that." That is not the intent that the public went forward with when they did this process. It should be put into the Charter, and it should be funded at all times.

On Communication 46 regarding vacancies in office, I like what Ms. Hecht actually wrote. I think it is important that you guys really discuss this one. I think it is unfortunate that the current law says that within the first 30 days, the Council can appoint a person to fill the vacancy, because the Council majority will always put in somebody aligned with them. And, after the 30th day, on the 31st day, then the Council Chairman can assign somebody. Again, that doesn't necessarily give the best representation to the district. I do like Ms. Lively's suggestion that if you are going to choose the second person from the last election--whether it was the general or the primary--they should have at least 25% of the vote. That would occur only if there is six months or less left in the term, because the most important thing we do as Americans is vote. We need to have the people of the district choose their elected officials when it is at all possible; but, I've got to tell you frankly, that to pull off an election in two to three months, and then there is only three months left in the term, and to have that

position vacant would be a tremendous difficulty not only for the community but for the other council people. There would be no representation out of that district, no one speaking for the district.

On Communication 47, regarding boards and commissions, I support Ms. Hecht entirely on this one. Communication 51, her initiation of amendments or revisions, I also think this is excellent, and I hope you will put it on the ballot for the people to vote on.

Then, we have CA-7 on recall procedures. I agree with Ms. Hecht and what CA-7 says. I think that is very good. We may not get all of the things that we think are important into some of these amendments that you produce, but I think you guys have made a really good faith effort to get some of the most important ones in there, and so I support that.

CA-8, which is really something that needed to be corrected a long time ago; there is absolutely no reason for claims to go to the County Clerk. The County Clerk takes care of the Legislative Branch. Claims need to go to Corporation Counsel, that's where we have our attorneys that handle these things. So, please put this on the ballot so we can get that little mistake cleaned up. I hope that was a mistake and not somebody's real intent.

On CA-9, regarding special meeting notice, I agree with this. We need to have electronic notice, and I hope you make it for the Council and the Standing Committees by 4:30 p.m. on the sixth calendar day.

Environmental Management, CA-10, I see what your amendment is, and I need to take exception with this. I know that I differ slightly from this particular Charter Amendment. I refer you to Communication 27, which is Mr. Tyson's evaluation of Environmental Management taking care of this. I do agree that a civil engineering degree, or a professional engineering degree should be required, or something so close to it that it would be an inconsequential change. The reason I say that is, especially with wastewater management, solid waste too, these subjects are pretty intricate. Wastewater management is all civil engineering and to have someone who may not be an engineer and may not even understand the concept of engineering, I think would be a great difficulty. I know I differ from you on that, but I would like you to think about that later. Mr. Tyson is willing to have the authority and responsibility over the food and energy sustainability program. A lot of this would be taken care of by---We don't have any place to put this right now except for Research and Development, and I think that until we have Agriculture and Energy Department--because they do actually go together--I think it is important that they be put into Environmental Management. Right now, I would probably have a problem supporting a new department in and of itself because of the financial situation that we are in, so for the time being, I think that this is a reasonable choice.

The initiation of amendments, I have already discussed, and the mandatory charter review, I have no comment on that. I think those are all fine. I am available here on reapportionment to talk to you. You know I have testified before. I support your amendment; I wish you would put in everything. I want to counsel you though, while you may have existing mandatory criteria, they were pretty seriously abused in the last redistricting which we

unfortunately called reapportionment. There are a lot of federal cases that have set down case law on other criteria. I would suggest that in addition to your mandatory criteria, you allow some latitude for case law, federal law, as it comes out of the U.S. Supreme Court to also add criteria. If they came down and said you have got to do “x” then the Charter would be in conflict with the Supreme Court ruling. So, I think you should have something in here that would grant a little latitude for case law as is set by the United States Supreme Court.

That is pretty much what I wanted to say. I will be here for a little while, and I’m willing to answer any questions that you might have. There was a question earlier, about you wanted to know what the council members thought about nominating people. I will tell you frankly, it was a wonderful thing that former Mayor Kim did for our communities; not for the council members. It does take a little bit of time to do your homework--which I am a big fan of homework--to choose people that are not only compatible, but have the expertise for a particular committee. I think that the council members know the people in their community extremely well, and if they don’t have somebody with a particular area of expertise, we can hunt for it. We can bring them in, and talk to these people, and then nominate them to the Mayor. My feeling is that the council member should be nominating the people--and I hope the council people nominate more than one person and give the Mayor some alternatives--and I hope we should be nominating at least two. I would be afraid to put that on there, because we are going to cause a problem if we cannot find a second person willing to serve. That’s why I think one is sufficient, but I would rather see more than that. Send the nominations over to the Mayor, let the Mayor’s staff do all of the background work, then let the Mayor select from the list the council member has provided, and then it goes back to the Council for ratification, approval of that person. I think that is the best, the fairest way. The council member becomes really aware of the people in their district. I think it is important that this is a joint process between the Council Member and the Mayor’s office. I think it is important to have these nominees vetted first by the Council Member. I would hope that nominations sent to the Mayor would have the background and the willingness to serve on these different boards and commissions. I think it is vitally important that it come from the council member first, and then give the Mayor the choice of however many nominees you send forward.

I have one more thing regarding ethics violations. Ethics violations should not go back to the Mayor or the Council, because all they can do is make a political decision on penalties. We need a separate agency or commission or something. You might want to consider--since that is a penalty decision board--whether that commission or board or agency, or whatever you want to call it, should be elected by the people of the county and have representation by all nine districts. We need to get the Board of Ethics out of the politics; they need to be neutral. They need to also do their investigation and then send it forward to a less political agency for the determination of any penalties. Thank you very much for your time, I’ll be here for awhile.

CHR. HAITSUKA: Do we have any questions of Ms. Ford? Thank you Ms. Ford. Next we have Mr. Tim Reese. Good afternoon Mr. Chairman.

TIM REESE

(At this time Tim Reese came forward to address members of the Charter Commission.)

MR. REESE: Thank you Mr. Chairman and Commission Members, I have got to apologize; it slipped my mind that this meeting was today and I definitely wanted to come down and have some input, but I'm not quite as prepared as I wanted to be. There are about four or five items that I wish to speak on and I'll keep it as brief as I can. I'll start with the one that I listed on there specifically, and that is CA-12. That will kind of be a good overview of all my other statements here. I consider you to be an extremely important commission for our community here, but I have a counter mentality on---I really don't want to see the ballot loaded up with so many proposed amendments that the public just doesn't have a clue what is going on in there. I'm going to admit to you that I have been guilty in the past when I'm trying to perform my civic duty the best that I could; I get nervous. For the most part it is voting for the politicians and important State matters. It might be school board issues or what have you and I try to keep up with all of it. I've got to admit, when I've gone in on Charter initiatives, if there is more than I can comprehend after all that other stuff at the moment of voting, I feel there is a physical limit, and a mental limit as to what people can truly digest and intelligently vote on when they are down there at that moment. I do mention the thing of nerves; I've actually come down to eenie, meenie, miney, moe. I'm ashamed to admit it, but to point out the interest; and I've really been trying to follow these things. In the past years that I have been trying to follow the County Council, I've often times had contentious issues with the Council and pointed out where I thought they might be violating the Charter.

I've seen technical revisions that were needed in the Charter. I couldn't find anybody that wanted to take an interest in it. And that's a shame, because anybody that looks through the Charter will note the technical problems and minor things that need to be dealt with. Then, we have on the other side, very important issues; separation of powers issues, it comes up with the representation of the Corporation Counsel. I came across some minute notes and I know that some of the people on this Commission are doing a very good job of looking into some of those issues and I really commend you for that. They are not easy to resolve, but I guess what I am getting at is that I would hate to see six or seven kind of trivial revisions on the ballot and it ends up having an effect where the people might get kind of flustered or confused about what are the really important matters. I want to relate that to the statistics that kind of surprise me. I felt that people would be more conservative when they go into the voting booth and they would tend to--if they don't really understand the issues, vote no on it, unless they really understood what it was proposing. I figured they would kind of go along with the thought process of, we have a good Charter, it's our main constitution for the County level, it's been carefully prepared and gone through by many, many intelligent people through the years, they have all had the same intention of producing the best possible document that we can; so we should be slow and careful about changing it unless it is really necessary and it makes a lot more sense. I was completely wrong. It turns out people generally vote in favor, whether they understand them or not. I'm not trying to put down the general public in any fashion; it's more a matter of too much information overloading you at one time. People have tended to go to that and I can say it with some clarity because I've had people who have seen me on Na Leo, talking at the Council meetings, ask me right there

at the voting booth how they should vote on the Charter initiatives, the Charter amendments proposed. I felt insulted, because I can barely keep track of what's on there myself. Enough said on that one.

On CA-13, the Mandatory Charter Review, I think this is great; proposing to increase the amount of time the Commission has to complete its work. As I stated earlier, these are very important issues. These are not ordinances, these are not things that can be quickly repealed and fine tuned, so it's real important that you have enough time, and the community has enough time to give proper input to these. Hopefully, tight budget times, hopefully there is money in the media, the radio, and these other guys, we'll have some of the testifiers here today, some of our council members in, some of you folks in, to where the message gets out more to the broader community about what's really being proposed; what are the repercussions of these, pros and cons.

Let me move on to CA-7, Recall Procedures. I think this is a good---Again, in a conservative mind set, we don't want the disruptive procedure of recall or impeachment. Personally--and this is dealing with recall--I feel that the impeachment process right now as it stands is pretty good. I actually was surprised to see that in the past it was only 100 petition signatures required to impeach somebody. You have the extra safeguard of having a Circuit Court judge looking at it, and trying the person, seeing if there was misfeasance or malfeasance. I believe the other conditions are maladministration or misadministration. Those are pretty easy thresholds to hit, but the fact that it takes about 205 signatures, the way the formula works out for the district voters, I think that is pretty fair. I was surprised to see that it was less than that. I felt that could have been too easy and somewhat disruptive. But, the recall procedure, it seems proper here to go to 25% of the total number of votes cast. I think it is a better target to hit and a requirement to hit, 25% of the votes cast. We are a lot bigger population these days, and the number of 25% of registered voters in the last election might be a pretty impossible target to hit where you really do have somebody really abusing their position.

I would like to go to Communication 42. My apologies to Greg Smith and Joyce Folena, I haven't read through this communication, but I've heard some comments on this from previous testifiers. I've been following the Council--and I am by no means the word on how these things should work--and my gut feeling is that a two-year term is too short. We are asking members of our general population to come forward and serve the County, you are going to learn parliamentary rules that you may have no experience with whatsoever, but you might be perfectly qualified and you might be a great benefit to our community to run for Council, putting input and trying to better the community. These are some interesting things to learn and they are pretty involved. So, I believe two years is just practically too short with the requirements of running for office and all of that. There is a lot of distraction that goes from just really getting down to the business. If you were going to ignore the cost of elections, I think three years is perfect, because I also personally feel that four years is way too long. You might have a bad apple and then you are forced to go to recall, whereas you can kind of bide your time, come down and testify, give your input, and then support the candidate you want next time around. It's a less disruptive system, and there are other safeguards built in where you don't have to recall people, you don't have to impeach

everybody. You vote them out, that's the American way if you are not happy with their representation. So, unfortunately, I guess all I want to say on that is I hope that there is a not too costly way to look into a three-year cycle, but I wouldn't ask this board to endorse my opinion that three years would be just about right. Two is too short, four is too long. I would also like to say that any kind of system where you have an initial two-year term for non-incumbents, and then they prove they can do the job, and then a four-year term for incumbents; that is just eminently unfair. That gives such an advantage to incumbents. Incumbents have a huge advantage when it comes to election time. That is just impractical and it doesn't fit well with our constitutional provisions of equal protection under the laws, especially related to voting and elections.

I would like to support Communication 44. This is the communication from Council person Brenda Ford proposing a new section regarding standing committees, including public notice requirements. I tend to agree with her. These standing committees are extremely important for fine tuning proposed legislation. Legislation might be kind of trivial, it might be extremely important. You run the gambit of all these subjects that come before the County Council. Standing committee process, it's not there so that guys like me can come in and get every chance they want to testify or what have you. It's not to slow down the process, the real intent there is to fine tune proposed legislation. Anyone who has been following the County Council would readily acknowledge that there are a lot of bills put forward that just don't make sense in the first run. Essentially council members are kind of asking for the input of other council members, amendments to be proposed to fine tune it. That really should be done at the committee level, instead of tying up the council meeting time. When it comes to the council meeting, this stuff should be worked out so we can move our business forward and keep progressing.

I believe that was about it. My main concern is truly that I am very concerned that with all the good work that you will do, and you will perform, proposing very good Charter amendments, there has to be some provision---You cannot limit the number of amendments that you put forward, but I would hope that our council members would at least recognize what I stated about the problem of overloading people at the time of voting. I would hope they would not necessarily conflict with you, even though right now it is perfectly legal to do that. I would hope they maintain that the public had good reason why we ask for the Charter Commission to convene, and to look at it, and I think we need to respect your proposals. Our opportunity is to vote them down or vote for them in the ballot booth. It is our job to get as educated on that as we can, and we can present what we would like to see to you just as in this forum here. So, thank you all very much for your work.

CHR. HAITSIKA: Do we have any questions for Mr. Reese? Mr. Unger.

MR. UNGER: On this whole recall issue, my understanding, based on testimony, is that there are no criteria for recalling a person. It is just basically if there is a group of people that want to recall, they can start the whole process. Let me ask, say, the next Mayor's race the winning candidate gets 48% and the second, or the one that is the runner up comes in with 40% of the votes. What is being proposed is that 25% of the voting public, if they choose to recall, and they get the signatures, they can move forward with it.

MR. REESE: The way I understand it is right now--and I haven't looked at every detail--is it would be total votes cast, whether for or against that particular candidate.

MR. UNGER: Yes, 25% of the voting public, or those who voted. Maybe it's just me, but it doesn't seem like it would take that much for the runner-up to turn around and get 25% of the voting public to support a recall right off the bat. Does that make any sense at all?

MR. REESE: I understand what you are saying, but I would say in practicality that really hasn't ever happened. Even under the current system there is something--I don't know the right word for this--like almost an aggressive move to come out and say, "We're going to recall this guy, we don't have anything he did illegal or unethical; we just don't like him." That could really backfire.

MR. UNGER: I understand that, I realize it would still be a little difficult. But, what I'm saying is that 25% of the voters is not much. I'm thinking that in the back of mind that isn't a whole lot to go out and get if you really wanted to pursue an issue like this.

MR. REESE: I don't recall the exact numbers, but let's say for instance on the Mayor; weren't there 70,000 votes on that? I'm not sure of the number, but if anyone knows, 25% of that is clearly a significant number of votes to get. If you have ever been involved in petitions, it's pretty hard to get those signatures even if people agree with what you are trying to do, a lot of people are hesitant to actually do that move to put their name behind it. I think that the number is reasonable. I'm not saying that 25% of votes cast is necessarily the right target. I think it should be reduced some from 25% of the registered voters. I hope that answers your question.

MR. UNGER: Yes, thank you.

CHR. HAITSUKA: Are there any other questions for Mr. Reese? Thank you, Mr. Reese.

MR. HIRT: Mr. Chair, we have one more testifier.

CHR. HAITSUKA: We have one more here. I'm going to take the one we have here and then we will get back to the one we have in Kona. Mr. Tucker.

ROB TUCKER

(At this time Rob Tucker came forward to address members of the Charter Commission.)

MR. TUCKER: My name is Rob Tucker. I am the President of the Friends of Puna's Future. We are a non-profit group that was formed as a late process in the Puna Community Development Plan in which county officials came to public meetings and suggested that for the Puna Community Development Plan to be successful, it really required ongoing support from the community. So we were suggested to find a way that we could keep our support consistent and forward looking as the process rolled forward. So for that purpose, Friends of Puna's Future was formed as a 501(c)4 for a lobbying group for Puna's interests. We

decided not just to focus on the CDP, but to look at district issues on a county, state, and federal level. In approaching this subject, our membership now includes a majority of the boards of directors of the subdivisions of the Puna area which has us expanding our membership rather broadly.

The first of the amendments that have been proposed that I want to discuss with you concern the Puna Community Development Plans, or all of the Community Development Plans that are proposed. At this time that this was all initiated, under the Kim administration, we were assured with a county commitment that this time these community plans would have meaning and would be fruitful. There was a history--that some people have mentioned at a number of public meetings--in which these efforts have gone forth before, hundreds of hours were devoted, and then these community efforts have been laid on a shelf. We were assured, rather stressfully and directly, by Mayor Kim that this time it really mattered. In witness to that, I believe about \$2 million dollars has been spent in funding this process. It has also brought forth thousands of participants across the island, with many thousands of hours devoted to these plans. As we watch this community effort as a manifestation of democracy and community interest here on the island, we think it is extremely critical and important that these be codified within the County Charter. We see the Community Development Plans not as a static document that was done some time ago and was passed; this is an ongoing process that started a few years ago. It has a history, it has a present and it has a future. The Charter is the best environment in which to maintain that future.

To the degree that we have worked on it in Puna, we may have had a different experience than they have had in Kohala, and they have had a different experience in Kona, or Ka'ū, or in Hāmākua. I think that is appropriate; these are different communities with different resources come together. In our work in Puna, we were extremely proud of the fact that over 1,300 people stepped forward in the process. As it was mentioned by Mr. Fuyertes, some of these people were not comfortable going to public meetings, so a lot of the initial input from 130 small group meetings was taken in private homes. As that evolved later on with the working group process and the working groups were formed, there was a really strong devotion to paying attention to the input from the community and from those 130 small group meetings. We saw evidence of what you were speaking about as far as the presence of the community. In the statistics provided by the Planning Department on this, I thought it was important to note that for those participants who identified themselves as Native Hawaiian heritage, the county identifies as approximately 11% of our population here on the island at this point in time. Within the small group meetings and the community input that was taken, they provided 26% of the input. So, a lot of the local folks who for their own reasons and for their own culture don't always step forward into the spotlight at a lot of public meetings, they were very "there" as this process initiated. It was the foundations and stones that they laid that created the Community Development Plan as it was developed onward.

We support a Charter amendment to bring the Community Development Plans, all of them, into the Charter as a protective measure to keep them from the whims of political influence. We think the timelines for forming the Action Committees need to be tightened up; we have suffered over a year delay now in the Puna Plan trying to achieve an Action Committee so

we can start to deal with the today issues. All the Community Development Plans have a past, and they have present, and they have a future. We need the implementation of these Action Committees to bring it into the present and help carry it into the future. If you have any questions on the CDP portion of my testimony, I could end my testimony on the CDP's with that, and answer any questions if you should have some.

The next area that I was hoping to speak on, if I may, was proposal CA-9 on the 2% Land Fund. I, myself, did not participate heavily on the 2% Land Fund initiative, except to vote. But, as we have expended our energies in Puna, we have learned to appreciate what has gone on to bring an initiative to the ballot and to get that language crafted, and to get that language in front of the public, and to educate the public to a successful vote. It was a very meaningful thing. It was somewhat disheartening to watch it become a political football as far as budget and community interest went from the last budget cycle. I was a little concerned--Friends of Puna's Future proposed to Council, and we proposed to the Mayor that there was a way to compromise on the 2% Land Fund and meet both the purposes of the budget and the integrity of initiative by treating this two years of funding as a loan to the County that could be repaid in better times, and still respect the intentions of the initiative. By just taking the money, and removing it from the process and leaving open the possibility for more of that to occur, I think was a rather wrenching event for a lot of the folks who put forth their emotions and their time and efforts carrying this effort to success back in 2006; and we never did get a reply from the administration on why the \$8 million dollars could not be treated like a loan. We all know in the history of our government and our own economies and our own personal finances that there are peaks and there are valleys. There are times when you go to your cousin and say, "Hey, listen, I'm short on cash, I'm good for it, I just need \$8 million dollars for a couple of years, and I'll pay you back later." That didn't occur, and I think that because that didn't occur, is a really strong argument for the 2% Land Fund to be carried forth as a Charter Amendment, back to the people. I have had a council member say to me, "Well, if this was put up to a vote now, I don't think it would pass." I was like, well, it did pass once, it was put up for vote and it did pass. How many times do we have to figure out? Apparently we have to figure it out twice. So, we are in support of figuring it out this second time, and we think the people should vote on it, and we should vote on a Charter Amendment. That concludes my testimony on the 2%.

MS. KAWAUCHI: I have a quick follow-up question. Concerning your testimony regarding the 2% issue, I just want to know your thoughts on why you believe that fund is important if the county is having trouble. I don't want you to take this question as an adversarial question, or a challenging question; I just want more testimony on it. What are your thoughts and why you believe that setting aside money to purchase public land or open space or public parks is a higher priority than paying for roads or infrastructure or safety? In terms of balancing the budget and making sure that all of those things are paid, is it still important for us to set that money aside, and keep it aside, for us to purchase that land for that purpose.

MR. TUCKER: In my 40 years of business at this point, and in my life and in my business, and in my operations, I've had to face dilemmas at times where I've had to make hard choices sometimes between one thing or another. When I'm faced with those two

difficulties; how do I balance the budget, how do I meet another goal at the same time, the first thing I look at is how to achieve both. I look to see if it's possible to meet both needs at the same time. That is why we made the suggestion we did to the administration that they could treat this as a loan, the \$8 million or whatever it is could be borrowed from the fund, respectively, to the voters who had placed it there, with a promise to repay at a future day. Which is what I would do as a business person and I was running my business and I had multiple obligations to meet. We did feel that the needs of the budget were legitimate, and we are, and continue to be in a financial situation.

There is an argument that I've heard that the funding within the 2% Land Fund is capable of bonding its way into larger amounts that could help acquire and preserve land at more aggressive rate. In a down market is the time to buy, so taking a tough economy and losing the opportunity to buy low while you can is short sighted and short term point of view. Meanwhile, we understand that you need to serve this year's budget as well; there are short-term needs that have to be addressed. So, we thought we had a proposal that at least had enough of an ability to solve both problems at once, to be at least worthy of discussion. But, it never even got to a point of discussion, it was just dismissed. I really do believe the evidence is there that our sister county, the City and County of Honolulu, facing even more dire finances than we have faced on this island in this last year, at the same time they dealt with their financial crisis, they acquired 5,600 acres of land for preservation; because it was in their Charter. That long term, societal investment, in the future of the environment and the life of ourselves and our children, is something that just doesn't get neglected. The farmer does not destroy his fields for this year's crop; they save their seed corn. This is the way it's done. I think we need to be following that philosophy myself. It is within your abilities here, I think, to put this question back to the population; back to the voters, where I think it is appropriate to be. Let them either verify or not verify whether these are the priorities, they are important to the people of this island. I think it's been answered once, and we are prepared to live with the answer again, let the argument be re-argued, if that's what it takes. That's the point, apparently the point we've been brought to. I'll vote again, like I did last time, unless someone can persuade me otherwise. Does that answer your question?

MR. NAHALE-A: First, I really understand how hard community work is, and the dedication it takes to do it. I've heard the passion from folks at all of our meetings sharing some of the pain that has gone on with putting their heart and soul into an issue and not having it come to fruition, so I thank you guys for doing it. It is the most important work; it's certainly why I choose to be on commissions like this. I think the community has to be involved. That being said, I'm curious what your perception is on why there has been a delay on the Puna CDP. I don't want us to get into a whole long speculation, but a lot of what I've heard is some innuendo, or typical political background; I don't know, I don't know the answer myself, so before I ask the administration, I'm curious to know what your perception is.

MR. TUCKER: I can give you my perception, and that's all it will be. It's based on conversations I've had with people who are directly involved in this process. One of the perceptions that I have that concerns the Puna Development Plan---The Puna Development Plan consists of 89 pages of document that were crafted by the community with the help of a

consultant from Oahu, Plan Pacific. That 89 page document was brought in to replace what we considered to be the previous development plan for Puna, which consisted of three words and was written by we don't know who, and we don't know when. The previous plan proponent was, drive to Hilo. So, when we depart from a three word plan into an 89 page plan put together by the community, it's going to affect some people who had interest in the previous plan.

Now, bluntly and frankly, without trying to overstate anything, in a conversation with Shipman Limited, their CEO, I was told that if the Puna Community Development Plan cannot be amended when they want it to be amended the way they want it to be amended, they want to see it fail. This kind of relates back to a well quoted book that most people around here, or many have on their shelves, Land and Power in Hawai'i. It goes back to the plantation way that things ran here for a long time. And they ran well that way for a long time until the collapse of many of the plantation industries and things had to shift into new economic modes and models. But, there are ways that things can progress within this community that can be beneficial to both the large landowner interest and the small property owner interest. They do not have to be mutually exclusive. Friends of Puna's Future has looked into the interest of what we have for our large landowner's interest. We recognize them within Puna, and we think they have their legitimate place. But, there is a difference between a philosophy of one man, one vote, and a philosophy of one acre, one vote. I think to a degree, that is what we are up against. I know that in the process of approving the CDP, with it facing 59 proposed amendments, that the only people that were consulted in the drafting of those 59 amendments, that I'm aware of, was actually one person; and that was the CEO of Shipman Limited. I know that from him, I know that from talking to the council members, and I know that from our attempts as the participants in the CDP, to have a voice in those offices at those moments when those amendments were being drafted. So, when you are asking about my perceptions, I didn't come here to try to raise a bunch of political hay.

But, these are my perceptions, and I would rather try to deal with reality than fantasy. The fact is we are now 14 months down the road, and we still have a vaguest of ideas on when Puna might or might not achieve an Action Committee. Now, if and when it takes it place; and I expect it will because there are a lot of us around here who are devoted to seeing that happen, and the efforts that have gone on with the Planning Department for the second go around, to come up with nominations. All that we are assuming, and all that we know and hear are that there are good people being nominated. We have never made a complaint about any nominee. We just want to see it staffed and put into operation. I also think that other secondary issues that are mentioned here about if there is a vacancy in the council and how do you create a nominee from the district, an effective Action Committee within each district might be a source of nominees to fill vacancies from within the district. Does this help answer?

MR. NAHALE-A: Yes, and thank you for your directness, I appreciate it.

CHR. HAITSUKA: Mr. Tucker, do you have testimony on any other agenda items?

MR. TUCKER: I did want to speak personally, but not as President of Friends of Puna's Future, on a couple of items that I have not discussed thoroughly with my board but I have been thinking about. It has to do with the term limits and the discussion about extending the terms to four years on council. I think that's directly related to proposals to amend the recall qualifications and processes. Personally, I can find reasons to be in favor of four-year terms; and there are good arguments both ways. I do not think any consideration of a four-year term should be done without definite carrying forward an amendment to the recall petition. That is the balancing of the two issues, giving the people the flexibility to be flexible and pull things back if it gets out of hand. Four years is a long term. There are arguments to be made both ways, but I wouldn't approach a four-year term without a liberalization of the recall. It's my understanding that amongst all of the County Charters here in this state, that the current standing of the recall language in this county is the strictest and most difficult for the people to handle of all of the County Charters. That concludes my testimony, and I thank you.

CHR. HAITSUKA: Are there any other questions for Mr. Tucker? Thank you, Mr. Tucker. We are going to take a quick recess before we get to the one in Kona. We'll come back with the testimony from Kona.

RECESS: At 3:55 p.m., the Chair called for a 15-minute recess.

RECONVENE: The meeting was reconvened at 4:12 p.m.

CHR. HAITSUKA: Are we ready for the testimony from the person in Kona? I note the absence of Commissioner Kawauchi.

MR. HIRT: Thank you Mr. Chair. Our final testifier today is Marne Herkes. She is representing herself and she would like to comment on Charter Amendments.

MARNE HERKES

(At this time Marne Herkes came forward to address members of the Charter Commission via videoconference from the Kona Council office.)

MRS. HERKES: Good afternoon Commissioners. I feel for you; I was on the Charter Commission ten years ago, and I brought up some of what I'm going to bring up again, partly to have it in the minutes, because it's a little late to start this now. On County government structure, my favorite structure is the six-three districts, four year terms, and a Managing Director for the County rather than a Mayor. Those structures can all be found on the internet, they are fairly common with other municipalities, but I just want to put that in the minutes so it's brought up again. We will bring it up every ten years, and maybe we'll be ready for that big change. That's a much better way to make our government work better. As far as boards and commissions, I think whatever you can do to make it easy for the general public to volunteer for boards and commissions. It's an uphill struggle. Ten years ago we made it so one member from each council district was on each board and

commission. But, I don't think they've ever really been full, so I think that it is really incumbent upon the council members to nominate people and keep nominating them, even if they have to keep nominating them to the Mayor. Let the Mayor know; give him a list of names of people from each district. It doesn't do any good if you put it in the hands of the council and people still don't volunteer. Whatever you can think of that makes it easy to volunteer. That's the easiest way and the most important way to participate in government is to be on boards and commissions. It's the way you learn how things work, and it's the way you can make a difference.

The other thing I wanted to talk about is my friends, the engineers. I don't think that the Department of Environmental Management, or the Department of Public Works, or any department needs to be run by an engineer; or should have engineer in the qualifications. The qualifications for running a county department should be that you can manage people, that you understand financial requirements and parameters, that you can write requests for proposals. An MBA is a really good example of a qualification for a department head, rather than somebody that has an engineering degree. A really good manager will hire really good engineers, and they will monitor them and encourage them. I know, from ten years ago, that you will be deluged by engineers that want engineer requirements in a lot of county structure. I'm not sure why that is, but I know they are out there. What we did with the Department of Public Works, is we made the head of Public Works a department head, and wrote in that they had to be an engineer just because of the amount of pressure we were getting. But, I don't think that is a requirement for good management. That is all I have to say. Thank you very much, and good luck. I know this is coming down to some tough choices here.

CHR. HAITSUKA: Are there any questions for Ms. Herkes? Thank you Ms. Herkes.

CHR. HAITSUKA: Is there any one else to testify?

APPROVAL OF MINUTES

CHR. HAITSUKA: Do I have a motion to approve the minutes of the September 11, 2009 meeting?

Ms. Jarman moved to approve the minutes of the September 11, 2009 meeting of the Hawai'i County Charter Commission. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi, Kealoha and Osborne.

COMMUNICATIONS

CHR. HAITSUKA: Let's move on to Communications.

COMM. 34: From Mayor William P. Kenoi, dated September 4, 2009, transmitting the Administration's comments regarding CA-1 through CA-6.

CHR. HAITSUKA: Do we have anyone from the County administration who would like to address this particular communication?

BILL TAKABA

(At this time Bill Takaba, Managing Director, came forward to address members of the Charter Commission.)

MR. TAKABA: Good afternoon. First of all I would just like to say, I am representing the administration on behalf of Mayor Kenoi, who was not able to be here. We sent two letters to you. The first one contained an incorrect spelling of the Chairman's name, and I apologize for that. We did it better on the second letter, and we got it correct, so we do apologize. We are just commenting on CA-1 through CA-6. We have no problems with CA-1 through CA-3. Originally we had some concerns about CA-4, but after we re-evaluated our comments, and we talked about it some more, we decided to withdraw our comments on CA-4, if that's okay with the Commission. We have no objections to CA-5. Just to summarize, with regards to CA-6, we just feel like the Commission appointed department heads, the four that are mentioned here, should be treated no different from the Mayor's appointees. They serve at-will and that is the way they should continue. If they need to be removed, then it's up to the Commission to be able to just remove them. That is our feeling on that, so these are our comments.

CHR. HAITSUKA: Do we have any questions for Mr. Takaba? Mr. Takaba. Are you going to hang around a little bit more? We might have some questions on some other matters.

CHR. HAITSUKA: Thank you. Is there any discussion on Communication 34? Do I have a motion to file?

Mr. Nahale-a moved to file Communication 34.
Seconded by Ms. Honma and carried by the
following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

COMM. 38: From Colleen Schrandt, Legislative Auditor, dated September 16, 2009, transmitting proposed amendments to Section 3-18, to provide the Legislative Auditor the authority to retain independent legal counsel; Section 10-13, regarding Post Audit procedures; and Section 13-13, providing for a right-to-audit in contracts with private parties.

CHR. HAITSUKA: I believe Colleen Schrandt is here today.

COLLEEN SCHRANDT

(At this time Colleen Schrandt, Legislative Auditor, came forward to address members of the Charter Commission.)

MS. SCHRANDT: Good afternoon.

CHR. HAITSUKA: Good afternoon. Will you give us a brief overview of your proposed amendments?

MS. SCHRANDT: Yes. When you were going through Section 3, I had come before you and you had asked if we had any recommended changes. Since that time a couple of things have come to light, so that's why we submitted this. The first one was just---Most of them are just kind of clerical type changes. The numbers 1 through 3 are pretty much substantive. They are to give the office the right to hire independent legal counsel. That is the change to Section 3.

Section 10 was about the "Post-Audit." What we did is we went and looked at the language for all the other counties, just to bring it in line. The term post-audit has been somewhat confusing in the past, so looking at the language for the other counties; we were just recommending that it be changed to "Audit of Accounts and Financial Transactions."

The line, "...in accordance with recognized government auditing standards," we didn't want to put any specific standards because there is the possibility that the "recognized" could change, so we just wanted to leave it whatever is recognized as being the standard. The rest of the language was taken pretty much from the City and County of Honolulu and it is just clarifying that the particular scope of the audit will be defined by the contract.

The last change was from "shall" to "may." When we looked at this we thought it was pretty much saying, as an example with the last election when Mr. Takaba, then became Managing Director, does this language say that they were required to do an audit. We didn't think that was probably appropriate to do, so we were suggesting that be changed to the language "may" rather than "shall."

DEANNA SAKO

(At this time Deanna Sako, Deputy Finance Director, came forward to address members of the Charter Commission.)

MS. SAKO: I'm Deanna Sako, the Deputy Director of Finance, and because the term "Post Audit" has been confusing, that section has typically be interpreted to do a full inventory any time there is

a change over in a department head. If anything is found to be missing, then that department head would be responsible for that before leaving office. By changing some of the wording to be clearer, much clearer, in terms of audit of accounts and financial transactions, changing it to a “may” would be extremely helpful.

CHR. HAITSUKA: Thank you. Ms. Schrandt, are you recommending a change in Section 13-13?

MS. SCHRANDT: Yes, I’m sorry, the last change was that we would like it to be very clear by the Charter that any contracts issued by the County are subject to audit. We ran into, in the past, some question in this regard, and we felt that it should be made very clear that any contacts will be, or are subject to audit.

MS. SAKO: I don’t think we are opposed to the Legislative Auditor going out and doing audits. Our concern is that by putting it in the contracts that it could either limit potential bidders, or increase the costs in the future of being subject to that. So, I guess if it could be an ordinance or something more like on a trial basis, just to see what impact it would have on procurement first, before going in the Charter, I think we would be happier with that. We definitely would appreciate Ms. Schrandt being able to audit those contracts, we are just not sure what impact it might have on procurement.

CHR. HAITSUKA: Do we have any questions for Ms. Schrandt or Ms. Sako?

MR. NAHALE-A: In your perception--I’m assuming that the authority to retain legal counsel--who is going to pay for that counsel?

MS. SCHRANDT: It would have to come out of my office’s budget, obviously.

MR. NAHALE-A: So, you would anticipate having a set line item, or something like that?

MS. SCHRANDT: Well, right now, we do have a line item that is for outside professional services, outside contracts. We are just anticipating that we would have to portion some of that in the event that we would feel the need to go out for independent counsel.

MR. NAHALE-A: Thank you.

CHR. HAITSUKA: I have one question for Mr. Ashida.

LINCOLN ASHIDA

(At this time Lincoln Ashida, Corporation Counsel, came forward to address members of the Charter Commission.)

CHR. HAITSUKA: Here it says contracts have to be reviewed by the Corporation Counsel. I don’t know if you have any comments or if you have had a chance to look at Ms. Schrandt’s proposal.

MR. ASHIDA: Good afternoon, members of the Charter Commission. Yes, I did see the one sentence in Subsection 5, is that what you are talking about?

CHR. HAITSUKA: I was looking at her proposed amendment to Section 13-13, which requires contracts to contain a “right to audit” clause.

MR. ASHIDA: No, I’m sorry, I haven’t looked at this. Your question is what the administration’s position would be with respect to this proposal?

CHR. HAITSUKA: I guess I’m asking more from an attorney’s standpoint, because it says here that the Corporation Counsel is going to review all contracts. I don’t know if that is going to be a problem with any types of contracts that the Corporation Counsel is going to review. I can’t think of any myself, but I don’t know if there are going to be some contracts where it may not be appropriate to have that particular language.

MR. NAHALE-A: I think my question is real similar, so maybe Lincoln can consider them at the same time. If this right already exists, is my question.

MR. ASHIDA: Whether the Legislative Auditor presently has the right to inspect the records, property, and equipment that is related to the contract?

MR. NAHALE-A: To private contracts, correct.

MR. ASHIDA: I think so; maybe Colleen can answer that more accurately. My understanding is you currently have that access, correct? This is just putting the notice in the contract, right?

MS. SCHRANDT: Yes, it’s to clarify, because again, there was an instance with a particular audit where the contractor would not permit us to come on site.

MR. NAHALE-A: What was the result of that?

MS. SCHRANDT: We were not permitted to go onsite. It is since that point that we have been discussing this. If it is a program supported by County funds, I think there are provisions existing such as in the Hawai‘i Revised Statutes (HRS) and in the General Terms and Conditions, but those were enforced at that time, and there was still an argument that we did not have that right.

MR. ASHIDA: I guess my initial gut reaction to this is that it is probably okay. I guess what would need better clarification is exactly what is the extent of the records property facility and the equipment pertinent to it. Clearly, if it is just those documents which are submitted to the County, then if they are submitted pursuant to certain state purchasing or procurement laws, and Ms. Sako can correct me if I’m wrong, but some of those records are maintained as confidential. Is that correct? If it’s properly defined, I don’t think that what’s envisioned here is a situation where the County could ask the vendor or the contractor to produce documents that were not already produced for the County, because they may be proprietary. They may wish to assert a certain privacy interest, but personally I am in agreement with Colleen that this right already exists. I

think it's a good idea if we are spending tax payer money, but I think there needs to be perhaps better clarification about what reach of the authority is. Does that make sense?

MR. NAHALE-A: Yes, it does. So, then why don't we just write it into every contract? I'm not really into overburdening the Charter, if it's just a best practice, let's just do it.

MR. ASHIDA: Yes, we could do that. We'll start that Monday; just kidding.

MR. NAHALE-A: I say that, because maybe I'm missing something, I'm not an attorney; I'm not a business guy so---

MR. ASHIDA: I think there is an expectation that when we deal with the various contractors I think they understand that certain records that are provided to us may at some time become public records. Now this is a little different, because really what Colleen is talking about here is not necessarily making it a public record, but making it available to her office for the purpose of performing an audit. It would seem to me that would be reasonable.

MS. SCHRANDT: If I may, the other situation that we are trying to address is the instance that I'm referring to where the contractor said, "tell me what document you want to see, and I will send it over." But, part of the audit process was some verification of the actual process under the program, and it's not a matter of sending a document over.

MR. FUERTES: I don't understand all of this, I am going to be truthful with you. You are legislative, you are more the administrative, correct? So, the audit part, you have your role as the administrative part to audit, so why are we having duplication? Or is it duplication? No, it's not, okay, I just want to be clear on this. Your role is legislative, your role is to get it done, right?

MS. SAKO: Each claim for payment that comes to the County, we audit 100%. In addition to that, the construction contracts and other larger contracts have project managers on them, different engineers or people that will review it more closely; the labor reports and different things that come through. But, in the accounts division of Finance, they actually do look at each individual claim to make sure it matches; and it's a legal type expenditure for the County, to know there is no illegal activity going on. But that is kind of where it stops. I think Ms. Schrandt would like to go further than that to see what the different contractors have in their offices and possibly their processes and procedures.

MS. SCHRANDT: To take it a little bit further, Finance has their own controls and procedures in place, that they want to know that somebody involved overseeing that program is signing off before they make a payment. They have those kinds of controls in place. If you go back and look at our audits, you will see there are departmental programmatic controls that are not in place, and that's what my office looks at. Those are the kinds of things--we may know that a vendor turned in a claim for processing X and all of the signatures are there to make the payment-- I want to look at is how do we know they actually did process what they are saying they processed. That's our role.

MR. FUERTES: Okay, thank you.

CHR. HAITSUKA: Mr. Nahale-a.

MR. NAHALE-A: We went over this a little bit a few meetings ago, but what would trigger you to choose to audit a private entity?

MS. SCHRANDT: First of all, we really wouldn't be auditing the private entity, all we would be auditing is---An audit scope that we would be looking at, if we were looking--as an example, just to give you one we have done--would be the Environmental Management Recycling and Diversion, which at that time was called a grant program. We looked at tire recycling, glass recycling, what have you. We didn't go and audit any one of the vendors who have the contracts to recycle those commodities, but as part of the audit of the County's recycling and diversion, there are pieces of that vendor's program that we need to look at to make sure that we can say, "yes," the dollars being expended, there are controls in place to know that we are getting what we are paying for; that it is in compliance with legal requirements, it is in compliance with County policy, it is in compliance with the contract, those types of issues.

MR. NAHALE-A: So, you would only go into private, private contracts with private vendors if you were already auditing a program or department. That is the only time you would actually---

MS. SCHRANDT: Yes. That is why it says, "...as it pertains to an audit scope." We are not going to just go in and say, "We want to look at your books; we want to look at everything that you have." That isn't appropriate, so it's only to look at those pieces that pertain to an audit scope.

MR. NAHALE-A: Where does it say that?

MS. SAKO: It doesn't say that, Colleen, and that's why we are having trouble; it is like pertinent to a contract.

MS. SCHRANDT: Again, pertinent to a contract. Obviously, we can't just go in and say, "We want to see everything." It has to pertain to a contract they have to do a service, process or whatever for the County.

MR. NAHALE-A: I think the distinction is important, because if you are going to get there because you are already auditing a program or department, then that makes more sense to me. But, the way it stands, you could take any contract that's out there. It's just confusing to me, like when would this occur.

MS. SCHRANDT: There needs to be clarification that that contract---But, what we are looking at, again, is any contract with the County, that if it should be a part of an audit, that we do have the privilege of going in and looking at that part of their process or business that pertains to that program or audit. That is going to come under a contract that they have with the County, that's why it's worded that way.

CHR. HAITSUKA: I have a comment. The reason why I asked Mr. Ashida to comment on this was because I noticed that most of the provisions in this particular section are pretty general as far

as the process, and what has been suggested, seems to me like a specific provision. When I draft contracts, normally I have like 15 standard provisions that I have in every single contract, and this might be one of them. As an attorney, we sometimes need to have the ability to look at each particular provision to see when that applies to a particular contract. If we put this in here, it's going to have to apply to every single contract. Then I don't know if we have to have the other standard provisions in here; fully integrated clauses and all of that other stuff. I agree this is probably a good process, this is probably something you have the ability to do for any County funded contract, but I don't know if it belongs here. That is why I asked Mr. Ashida to comment.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: I think I heard you just say that it doesn't belong here because she already has that right. But, how can that be if she was denied the right to get it? So, I think maybe there isn't that right for the Auditor to be able to get the information she needs to complete an audit. If you just need to put some language in there that says, "...to a contract with any private party in relation to an audit being conducted by the Legislative Auditor," I think we could easily add that language if that would help. I would ask Colleen what she thinks about that.

CHR. HAITSUKA: Ms. Schrandt.

MS. SCHRANDT: Frankly, I'm comfortable with being told it will be in every contract as a clause. Because of being denied the access and information we needed, I'm just trying to make sure that we aren't denied that in the future.

MS. SAKO: Those of us in Finance and purchasing probably were not aware that Ms. Schrandt had this problem, so this has never come up that I am aware of, to me. It's not that we are against putting this in the contracts; we have just never really had the opportunity to discuss it with Ms. Schrandt's office.

MR. ASHIDA: Also, Mr. Chairman, I think that as Ms. Sako has indicated, this is a good idea; that's not the issue. I think the Chairman hit it right on the head, it's simply a matter of whether this is the appropriate place in the Charter for it. As a practical matter, what occurs with our contracts--our contracts are forms--are works in progress. We continually refine them in order to not only comply with prevailing federal or state law, but also those provisions we feel are necessary to best protect the interests of the County. Colleen, this particular provision, have you ever suggested this to any of the attorneys in our office to have it included in our standard package? We do contract training, county wide, regularly. I'm sorry, because I didn't see this particular one being suggested.

MS. SCHRANDT: It's been a couple of years since we ran into this, but actually, yes, we did talk about it. The argument that came back was, "well, we're not sure what impact it would have on procurement and the willingness of people to bid or join in the procurement process."

MR. ASHIDA: That was suggested to our attorneys that represent the Finance Department? Do you know off-hand?

MS. SCHRANDT: I don't recall which attorneys, but yes, we did have the discussion.

MR. ASHIDA: But you don't recall who it was?

MS. SCHRANDT: No, but I'd be happy to go back and look up any documentation.

MR. ASHIDA: Let me know, because like I said, something like this should be handled--I don't know if it needs to be handled at this level, at the Charter Commission. This is an operational thing, and it shouldn't be that difficult to do.

CHR. HAITSUKA: But as far as Ms. Jarman's comments about giving her the authority and the power, maybe we need to have something like this in the section on the Legislative Auditor that she has the ability to audit all private contracts.

MS. SCHRANDT: I believe that section already covers it. It was a matter of making sure that it is clarified in the contracts because of the situation we ran into.

CHR. HAITSUKA: Mr. Takaba, do you have a comment?

MR. TAKABA: I just want to add more confusion to this. I used to work for an office that did a lot of contracts. There were two types of contracts. One is like a performance contract where you just judge them on the product that they provide. It could be a construction project or it could be you buying services from a particular agency that all they are required to do is furnish you the service and you pay them \$10 per unit of service; and that is one type. The other type is a grant in aide, and this may be what we are talking about, where you are reimbursing the agency or the company for services that they are providing you. So, if they charge you \$20 as a reimbursement for a particular service, then you have to make sure they did in fact expend that money. I'm not sure what we are meaning here when we say all contracts. Is that we go into Isemoto and go and audit their books based on the funding or contract that we gave them. Do they have to open up all their books and give us all their records of what they spent, and whatever?

MS. SCHRANDT: No, that's why I'm saying, it has to be relevant and pertinent to an audit that we are doing.

MR. TAKABA: Going back to what Mr. Ashida said, by putting it in the Charter, that's really like the final step. If you say all contracts, then all contracts will be done that way. There is another step too. There are some things that should be in the County Code, rather than the Charter; something that you can change from time to time. There are the procedures of the administration like in the Corporation Counsel office where they set up their own procedures of what the elements of a contract should be; indemnification clauses and right to audit. When we used to get Federal grants, the Federal agency that gave us the grant would say, "Your records shall be open to us, and everybody you contract with shall have their records open to you." That's how we got passed the ability to audit or go into their records and check to make sure, if it was reimbursable, then we

could follow that trail. If it's a service that we procure, like as I mentioned earlier if we were buying services per unit, there's really no reason for us to go in and see how they spent their money. There may be a distinction between the two and I don't know if we want to put something like that into the Charter that really is going to make every company that contracts with us accountable for how they spend their money.

MR. FUERTES: Thank you very much Mr. Takaba. That was very well explained.

CHR. HAITSUKA: Are there any more questions for Ms. Schrandt? Thank you Ms. Schrandt. Do we have a motion to refer Communication 38 to our Commission Attorney to prepare a draft of a proposed amendment, or a motion to file?

Ms. Jarman moved to refer Communication 38 to Commission Attorney, Levi Hookano, to draft a proposed amendment. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Huitsuka.

Noes: None.

Absent: Commissioners Kawauchi, Kealoha and Osborne.

COMM. 40: From Council Member Brenda J. Ford, dated September 28, 2009, transmitting proposed amendments to Section 3-18, regarding budgetary independence for the Office of the Legislative Auditor.

CHR. HAITSUKA: Is there any discussion on Communication 40? Ms. Sako.

MS. SAKO: If I could just make a brief comment. The Department of Finance is really opposed to fixing any amounts for anyone's budget in the Charter, especially during these extremely difficult economic and challenging times that kind of makes it difficult for the Finance Department to balance the budget. In addition, 76% of our budget is fixed, salaries, wages, debt services, and those types of things, so there is very little room to mover around with. I did do the calculation as presented here in (d) (2) and .0025 of the current year's budget would be \$968,000.00, roughly. Currently in the fiscal year 2010 budget the Legislative Auditor has \$777,000.00. So that would be an increase of nearly \$200,000.00, and when all other departments are taking budget cuts, that would be extremely difficult as well.

CHR. HAITSUKA: Mr. Nahale-a.

MR. NAHALE-A: I move to file

MS. JARMAN: Mr. Chair, may I ask a question.

CHR. HAITSUKA: Ms. Jarman.

MS. JARMAN: If we file it does that preclude one of the Council members from asking our attorney to draft this up? That doesn't preclude that does it?

CHR. HAITSUKA: Mr. Hookano.

MR. HOOKANO: My direction from this matter would come from a Commission member and not a Council member, since they are not from this board.

MS. JARMAN: No, but if I would agree to file it, but I wanted to put some or all of it before the Commission, I could still ask you to draft something to put before us, is that correct?

MR. HOOKANO: Oh, yes, if it is coming from a Commission member, yes; but not from a Council member in this instance.

MS. JARMAN: So voting in favor of filing would not preclude that.

MR. HOOKANO: No.

CHR. HAITSUKA: We do have some time constraints, right?

MR. HOOKANO: The deadline would be the end of this month for me to draft it and submit it to the Secretary for the next agenda.

CHR. HAITSUKA: So, we would need to have the proposed amendment by the end of the month.

MR. HOOKANO: That is correct.

MS. JARMAN: I can call him on the phone.

CHR. HAITSUKA: So, we have a motion pending, a motion to file, that has been seconded. Is there any further discussion?

Mr. Nahale-a moved to file Communication 40.
Seconded by Ms. Honma and carried by the
following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

COMM. 41: From Michael Johnson, dated September 28, 2009, regarding Section 14-5, Board of Ethics procedures.

Mr. Nahale-a moved to file Communication 41.
Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

COMM. 42: From Gregory T. Smith and Joyce A. Folena, dated September 29, 2009, regarding changing term limits for council members.

CHR. HAITSUKA: Do we have any discussion?

MR. NAHALE-A: Mr. Chair, if I could suggest a process that really we should have a motion first, so we know what we are discussing.

CHR. HAITSUKA: Alright, do I have a motion?

Ms. Jarman moved to file Communication 42.
Seconded by Mr. Nahale-a and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

COMM. 43: From Council Member Brenda J. Ford, dated September 29, 2009, transmitting proposed amendment to Section 3-7 regarding Public Notice Requirements for Council Meetings.

Ms. Jarman moved to refer Communication 43 to Commission Attorney, Levi Hookano, to draft a proposed amendment based on Communication 43, from Council Member Brenda Ford. Seconded by Mr. Nahale-a.

CHR. HAITSUKA: Is there any discussion?

MR. SHUMWAY: I was wondering--this seems reasonable--if there was any concerns by the Council, or the Council staff.

CHR. HAITSUKA: Mr. Goodenow.

KENNETH GOODENOW

(At this time Kenneth Goodenow, County Clerk, came forward to address members of the Charter Commission.)

MR. GOODENOW: Thank you; Ken Goodenow, County Clerk. I just note, first of all, that this is different than what's required by State law under Chapter 92(f). While I think it is possible, my question would be; if we have until midnight under the State law, and up until 4:30 p.m. under this---The time factor involved, and given the fact that our office closes at 4:30 p.m., I'm not sure what the benefit would be as outweighs the possible potential that when you have an item--for instance there's a mistake on something from administration--we have to run out and get them to correct it before actually putting it out there. There are times when that has actually happened; and it has the potential of delaying something. There is always that, whereas the benefit, I think, would be perhaps not that great. I really don't have any---It's up to you, but you have something to weigh. There are times when we notice things, we are making the agenda; we don't review them because say it's from the administration, we notice there is something wrong in the title; we can fix it, just give us some more time. The other fact would be what if the State law changed. If the State law changed, and this was in the Charter, it could impact that.

MR. NAHALE-A: Mr. Chair, I withdraw my second.

CHR. HAITSUKA: I have a comment, Mr. Goodenow.

MR. NAHALE-A: Technically, we need a second, because there is no motion on the floor.

MR. HOOKANO: You would need somebody to still have a second.

CHR. HAITSUKA: I will second it. Mr. Goodenow, part of this proposed amendment is requesting that notice be posted outside of the building. Is that something that can be done?

MR. GOODENOW: I'm glad you asked me that. Technically we have our Kona office, we have our Hilo office, and what would we define as the building that houses the Office of the County Clerk? Maybe it's more than one building? Let's say we put it outside the Hilo building, but we have a Kona office. Might someone sue us on that ground? I don't know. Right now, it is set by ordinance, the official County bulletin board is located at---In our Code I think it's a little ambiguous.

CHR. HAITSUKA: Where is the bulletin board located in the building?

MR. GOODENOW: In our Code it states---Ms. Jarman probably remembers, we had to amend the Code because originally it's in front of the County building, but when we moved here, we amended the Code to put it in front of Aupuni Center, the official bulletin board. We also post in front of this building, but that's not required.

CHR. HAITSUKA: Is that the bulletin board as you come up the stairs, right outside?

MR. GOODENOW: Right, but that's not the official County bulletin board, but we do post it there.

CHR. HAITSUKA: Is the official County bulletin board accessible to the public where it's at?

MR. GOODENOW: Yes, it's at 101 Aupuni Center where all departments, all boards, everyone is posting there.

CHR. HAITSUKA: Is it accessible to the public after hours?

MR. GOODENOW: Yes, it is.

CHR. HAITSUKA: Is there any further discussion?

MS. JARMAN: Mr. Chair, I think there are many parts to this, other than just what time and where it is going to be posted. It talks about putting it on the website, so there is better public access to it, and I guess my interpretation of where the County Clerk's office is, is wherever the County Clerk works. Right now it is the Ben Franklin building, and in another couple of months it will be the County building. Right now it is done outside the County Clerk's office; it's put on the bulletin board. It's required to do that under the State Sunshine Law essentially.

If the Sunshine Law were to be revised to make it---The Counties can always make something stricter than the Sunshine Law; you just can't make it any more lax than the Sunshine Law. The chances of that happening are slim, and if it does happen, the Sunshine Law would be governing anyways. So, it really doesn't matter, and that could be changed without much problem eventually through a Charter amendment to make it be consistent with the Sunshine Law. I think it's worth putting this together and having some discussion on it because I think there are many parts of this that I think are important. I would like to see us take a look at all of it and then if we decide we want to take out a certain part, we could do that once we have it in a format we could actually debate, and go into a first reading on it. Thank you.

CHR. HAITSUKA: Is there any further discussion?

MR. NAHALE-A: I'll be voting against the referral, and I think that the State law governs, and should govern, and I think the things we could improve on, we can do without putting in the Charter. I have said many times, I don't want to overburden the Charter; I don't think

that's the role of a Charter. I also agree with Mr. Resse's point, the more things we put on the ballot, the harder it is for the public to digest what is going on. Lastly, I don't want to get into this habit, where we are going to refer everything to our attorney. Unless this body is really considering putting it on the ballot, we shouldn't add work to the plate. I'll be voting against the referral.

CHR. HAITSUKA: We have a motion pending. I'm going to do a role-call vote on this one.

The motion was seconded by Chairman Haitsuka and failed due to a tie vote:

Ayes: Commissioners Jarman,
Shumway, Unger, and
Chair Haitsuka.

Noes: Commissioners Fuertes, Honma,
Kaulukukui, Nahale-a,

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

CHR. HAITSUKA: We have a tie vote.

MR. FUERTES: Mr. Chair, parliamentary procedure rule is if there is a tie vote, the Chair must cast his ballot, correct?

MR. HOOKANO: Well, in this case, in our rules, we give the Chairman the ability to vote anyway. In other bodies, the Chairman does not vote unless there is a tie. But here we give the Chairman the authority to vote. If it would result in a tie---I actually will have to look this one up.

MR. NAHALE-A: Mr. Chair, while our attorney is looking that up, if I could make a process point. I don't want folks to think I'm trying to be difficult, we have a lot of communications, so to me, we should have a motion on the floor so we know if we are filing it or referring it, so we are all on the same page; and we are not going in a circle. I'll leave it at that. Just to clarify, if we do vote anything down, any Commissioner can still make the request directly. Is that correct?

CHR. HAITSUKA: Yes. Let's move on to Communication 44.

COMM. 44: From Council Member Brenda J. Ford, dated September 29, 2009, proposing a new Section to Article III, regarding Standing Committees including Public Notice Requirements.

Mr. Shumway moved to file Communication 44.
Seconded by Mr. Unger and carried by the
following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitzuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 43 (Revisited)

MR. HOOKANO: Mr. Chair, regarding Communication 43, according to Robert's Rules, a tie vote on a motion is not a majority, therefore, the motion fails.

CHR. HAITZUKA: Alright, the motion to refer Communication 43 to the Commission's Attorney to draft a proposed amendment has failed.

MR. NAHALE-A: So, are we on Communication 43 again then? Don't we have to file it or do something else with it?

MR. HOOKANO: Yes, a motion to file Comm. 43 would be appropriate.

Mr. Nahale-a moved to file Communication 43.
Seconded by Mr. Kaulukukui and carried by the
following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitzuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 45: From Debbie Hecht, dated October 3, 2009, proposing a new Section to Article X, regarding Open Space and Natural Resource Preservation Fund (also referred to as the 2% Land Fund).

CHR. HAITZUKA: Do I have a motion?

Mr. Kaulukukui moved to refer Communication 45
to Commission Attorney, Levi Hookano, to draft a
proposed amendment. Seconded by Mr. Nahale-a.

CHR. HAITZUKA: We have a motion to refer to our Commission Attorney to prepare a proposed amendment, it has been seconded.

MR. KAULUKUKUI: I have a question for Mr. Hookano. My primary question regarding this set aside would be, if we place it in the Charter, is it any more protected from situations like have occurred recently, than if it is simply in the ordinance.

MR. HOOKANO: Off the top of my head, I would have to say that it would be much more difficult than what had just happened. By a Charter mandate it would essentially require that this fund be established and money go into it. Diverting money from it would be much more difficult because this is established by Charter and only the voters can approve it; as opposed to an ordinance where the Council has possession of it once it's passed. It becomes a law and they can amend as necessary.

MR. KAULUKUKUI: Is it very difficult, or impossible?

MR. HOOKANO: Very difficult, because this is one of those things where it is decided on by the voters, so I would say it would definitely make it much more difficult; not impossible.

CHR. HAITSUKA: Is there any further discussion?

MR. UNGER: I have a question. Levi, is this basically duplicating the ordinance language in this amendment?

MR. HOOKANO: I haven't gone through it line by line to compare it with the ordinance, but, it does look very similar. But, line by line, exactly the same; I can't say right now.

MS. JARMAN: Mr. Chair.

CHR. HAITSUKA: Yes, Ms. Jarman.

MS. JARMAN: Debbie Hecht, who is the author of it is here. Would you like her to answer that question?

CHR. HAITSUKA: Yes, please.

MS. HECHT: There are a couple of changes about prioritizing properties that were problems that were run into during this last budget, or last Council, when that came up. Also, we included for the uses of the funds, there were broad discussions about using the money in the fund to pay bonds if we wanted to expand the use--if we wanted to go out and buy more property--that we could use the money from the fund in order to pay the principal and interest payments on bonds. That's pretty much it. It is very, very, similar to the ordinance that has proven the test of time.

CHR. HAITSUKA: Does anyone have any questions for Ms. Hecht? Thank you, Ms. Hecht.

MS. SAKO: I just wanted to reiterate that we really would prefer nothing to be designated. However, just to clarify, in the communication, it's been said that the 2% is less than 1% of the total Operating Budget. But the \$400 million is really the---The total operating budget is

\$387 million, and in that is Highway Fund, which is fuel tax money and is restricted for road purposes; Housing Fund, which is Federally funded and must be used for those purposes; Solid Waste Fund, Sewer Fund, other funds that have specific designations for their revenues. So, really in terms of the true flexibility of the County, it is much greater than, it is not less than 1%. Again, a big portion of our budget is fixed. If, however, the Commission feels that this would be a good Charter Amendment, I just want to clarify, in the communication, that for the City and County of Honolulu, ½% goes to the Open Space Acquisition while another ½% goes to Fair Housing. So Open Space is ½%. That's also what it is for Kaua'i and Maui is 1%. I have their Charters if you want to see them. Thank you.

MS. JARMAN: Excuse me, Mr. Chair. I believe the motion on the floor is to refer; it's not to debate the merits of the proposal itself. It's just whether or not to refer it so that we can debate it in public later.

CHR. HAITSUKA: Thank you. Thank you Ms. Sako.

MR. NAHALE-A: I have a clarifying question of Mr. Kaulukukui. I think the proposal deserves further consideration. I seconded the motion so I'm asking. And I'm not sure what the motion is. I'm not in support of the proposal as drafted, and I don't want Mr. Hookano to just take this language. I'm just interested in pursuing this further. So, when we say refer to Mr. Hookano, I'm not sure what we're asking him to do. Does he just cut and paste this into a proposal format? I would be interested in some more general language that allows the conversation to move forward.

CHR. HAITSUKA: I think we can do that, but we have to give him instructions as to what we want.

MR. NAHALE-A: That's why I'm deferring to Mr. Kaulukukui who made the motion.

MR. KAULUKUKUI: The intention of my motion was to move this forward so we would have the opportunity to openly debate the merits of what ultimately might end up being a Charter amendment.

CHR. HAITSUKA: We can have Mr. Hookano draft it, and when we have it here we can bring it up for first reading and we can amend prior to second reading. Or, if you want to---I think we have a motion to refer it the way it's drafted.

MR. KAULUKUKUI: Correct.

CHR. HAITSUKA: We would have to withdraw that motion if you want to amend it and then I think refer it to Mr. Hookano with amendments to draft a proposed amendment.

MR. HOOKANO: Mr. Chair, if I may comment. For me, personally, the easiest way, if you want to make amendments, would be to draft it first on the Commission's format, and then amend it at that time, rather than making verbal amendments here that I would have to keep

track of and incorporate. So, from my perspective, it would be easier if I just took this, put it into our format, made it all properly aligned and everything is easy to read. Then submit it to the Commission for your opinions and amendments, rather than making amendments here.

CHR. HAITSUKA: Thank you. Is there any further discussion on the motion? All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne.

COMM. 46: From Debbie Hecht, dated September 30, 2009, proposing a new Section to the Charter regarding Vacancies in Office.

CHR. HAITSUKA: Do I have a motion?

Ms. Jarman moved to file Communication 46.
Seconded by Mr. Nahale-a and carried by the
following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 47: From Debbie Hecht, dated September 30, 2009, proposing an amendment to Section 13-4 regarding Boards and Commissions.

CHR. HAITSUKA: Is there a motion?

Ms. Jarman moved to file Communication 47.
Seconded by Mr. Kaulukukui.

CHR. HAITSUKA: Is there any discussion?

MR. SHUMWAY: I have a comment.

CHR. HAITSUKA: Mr. Shumway.

MR. SHUMWAY: I'm kind of interested in having more discussion on this. I don't know the best way. If we file it, it would have to be brought back up by one of us individually.

CHR. HAITSUKA: That is correct. Mr. Kaulukukui.

MR. KAULUKUKUI: It's my belief that the Council already has the opportunity to approve appointments to boards and commissions. I don't think that this proposed amendment really changes that very much. The Council has the final decision with respect to who ultimately serves on commissions, such as our own.

CHR. HAITSUKA: Thank you. Is there any further discussion? We have a motion to file that has been seconded. All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma,
Jarman, Kaulukukui, Nahale-a,
Unger, and Chair Haitsuka.
Noes: Commissioner Shumway.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 48: From Bett Bidleman, Friends of Puna's Future, dated September 30, 2009, proposing a new section regarding Community Development Plans; proposing to amend CA-9 to include live broadcasts of policy-making boards; and proposing a new section to establish an Open Space Natural Resource Preservation Commission.

Mr. Nahale-a moved to file Communication 48.
Seconded by Ms. Jarman.

CHR. HAITSUKA: Is there any discussion?

MR. NAHALE-A: I think , a lot of good thoughts; they just don't belong in the Charter.

CHR. HAITSUKA: Any further discussion? All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 49: Memo from Commission Attorney, Levi Hookano, dated October 2, 2009, regarding funding for the Hawai'i County Civil Defense department.

Ms. Jarman moved to file Communication 49.
Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 50: From Margaret Wille, dated October 2, 2009, outlining with more specificity proposed amendments presented at the Commission's public hearings and as set forth in her COMM. 30.

CHR. HAITSUKA: Do we have a motion?

Mr. Alapaki moved to file Communication 51.
Seconded by Mr. Shumway

CHR. HAITSUKA: Is there any discussion? Ms. Wille.

MS. WILLE: I was told by Karen that you had a very long agenda today, so I just sort of put something as a summary. She indicated that at the November meeting I would be able to bring something more specific up on those. So, I was not looking for a vote on these issues, and I just ask that I can bring something specific from there at the November meeting. I'm just getting a little confused because I know there was an October 31st deadline, and I just didn't want there to be some issue about bringing something forward at the next meeting. So I just wanted to have some clarification.

CHR. HAITSUKA: There is a motion just to file the communication, not to take any other action. A Commission member can introduce, independent of what ever action the board takes---

MS. WILLE: I didn't go through anything on my communications during the public statements; I went through my comments on what other things were going on. I would just as soon, if it were possible, postpone anything on that communication and bring it up at the next meeting. I'm just not sure of the process, and maybe I misunderstood Karen when she explained it to me.

CHR. HAITSUKA: Is there any further discussion? We have a motion to file, no further discussion. All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 51: From Debbie Hecht, dated October 2, 2009, proposing an amendment to Section 15-1 regarding Initiation of Amendments or Revisions to the Charter.

Mr. Shumway moved to refer Communication 51 to Commission Attorney, Levi Hookano, to draft a proposed amendment. Seconded by Ms. Jarman.

CHR. HAITSUKA: We have a motion to refer to our counsel to prepare a proposed amendment. It has been seconded, is there any discussion? Ms. Hecht.

MS. HECHT: I am pleased you are going to do that. It is very important to have the process laid out as clearly as we did for initiative and referendum so any citizens' group would have an easy process and procedure on how to go ahead and amend the Charter also. Right now there is just a lot of loop holes in it, and it's unclear, and I think citizens' groups need a clear direction when they are doing initiative and referendum amendments.

CHR. HAITSUKA: Thank you very much. Is there any further discussion? We have a motion to refer to the Commission Attorney to prepare a proposed amendment, it's been seconded; no further discussion. All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne.

UNFINISHED BUSINESS

COMM. 26: From Frances Wong, dated August 5, 2009, regarding guidelines governing Council Member attendance at council meetings.

CHR. HAITSUKA: This communication was postponed from our September 11, 2009 meeting for discussion.

Ms. Jarman moved to file Communication 26 and refer it to the County Clerk. Seconded by Mr. Unger and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi, Kealoha and Osborne

COMM. 27: From Lono Tyson, Director, Department of Environmental Management, dated August 11, 2009, transmitting recommendations for Charter Amendments pertaining to the Department of Environmental Management.

CHR. HAITSUKA: This communication was postponed from our September 11, 2009 meeting. I believe we have Mr. Tyson from the Department of Environmental Management here. Mr. Tyson, do you want to address the Commission?

LONO TYSON

(At this time Lono Tyson, Department of Environmental Management Director, came forward to address members of the Charter Commission.)

MR. TYSON: Aloha and good-day.

MS. JARMAN: Excuse me, Mr. Chair, did somebody make a motion that he can respond to?

CHR. HAITSUKA: Let's have a motion.

Ms. Jarman moved to file Communication 27.
Seconded by Mr. Nahale-a.

CHR. HAITSUKA: Please proceed.

MR. TYSON: Aloha and good-day, I just want to say it's a pleasure for me to come here and be part of this process. Good-day, Casey. I'm sorry I had to meet you via the videoconference link.

MS. JARMAN: Hi, Lono.

MR. TYSON: Aloha, Casey. Good to see you. I just wanted to say that this is a very important time for our department and I appreciate many of the issues that you brought to our attention and asked me to comment on. I see that two of the three issues that we provided some recommendation on are being carried forward. I appreciate the opportunity to debate each one of those during this process. I don't think I'm going to discuss the two that you are going to read later on today. I just want to make sure that you understand that we are still

evolving as a department. This department was created in 2000 as a result of a Charter amendment, and a voter initiative. So, we are still getting our feet underneath us. Any positive and constructive changes to our department will certainly be looked upon favorably by me as the director. I think you have some very difficult decisions to make. I think the Department of Environmental Management, over the last nine years now, has really started to take on a lot more of the challenges that perhaps the Solid Waste and Wastewater Divisions weren't taking on originally when they were in the Department of Public Works. When we start talking about the responsibilities or the qualifications of the director, I ask that you remember that Wastewater Divisions and Solid Waste Division were both located within the Department of Public Works prior to the Charter amendment, and take that into consideration when looking at the qualifications for future directors. I don't have any other specific comments, but I'm here to answer any questions that you may have.

CHR. HAITSUKA: Are there any questions for Mr. Tyson? Thank you, Mr. Tyson. Is there any other discussion on this communication? We have a motion to file that has been seconded. No further discussion, all in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 28: From Jay Kimura, Prosecuting Attorney, dated August 14, 2009, suggesting changes to the Charter relating to the role and function of the Prosecuting Attorney's Office.

CHR. HAITSUKA: This communication was postponed from our September 11, 2009 meeting to allow Mr. Kimura to provide more specific language for a proposed Charter amendment. Do I have a motion?

Mr. Fuertes moved to file Communication 28.
Seconded by Ms. Jarman.

CHR. HAITSUKA: We have Mr. Kimura here today. Mr. Kimura, thank you for coming.

JAY KIMURA

(At this time Jay Kimura, Prosecuting Attorney, came forward to address members of the Charter Commission.)

MR. KIMURA: Good afternoon, Mr. Chairman and members of the Commission. I forwarded an additional communication dated October 9, 2009, outlining in more detail provisions that I recommended. First is the powers, duties, and functions of the Prosecuting

Attorney, and I cite Reese versus Carlisle, which was a case that was decided by the Supreme Court. Pretty much, I was outlining what the Court felt was a Prosecutor going beyond the scope of the Charter. The second is allowing the Corporation Counsel or a Special Counsel to represent the Mayor, Council members, officers, and employees performing their duties; representation and possible impeachment.

CHR. HAITSUKA: Are there any questions of Mr. Kimura?

MS. JARMAN: Mr. Chairman, I have a question. Thanks very much for clarifying. When I read your recommendations, do you interpret them to include giving you the authority to spend County funds to lobby in favor of any Charter amendment or piece of legislation; or to spend County funds doing what I think Mr. Reese attempted to do which was to influence the passage of a Constitutional amendment? Is this what you believe it is giving you the authority to do among other things?

MR. KIMURA: I believe it does, to the extent that those resources are available.

MS. JARMAN: Which particular language? I don't believe we should spend County funds that way, but a lot of what you put in here, I do agree with. What portion of what you wrote do you believe would give you the authority to do that?

MR. KIMURA: I think it is the portion that provides for developing public education programs. It would be providing the general public information about crime prevention; or it could be the section that talks about expending financial donations, or other funds permitted by provisions of the Charter. What happened in the Reese case is that Peter pretty much asked some deputies to sort of use their efforts on County time to promote one of the Charter amendments, which was the direct file bill. That raised the issues of whether the public prosecutor had the authority to do acts like that.

MS. JARMAN: Thank you very much.

CHR. HAITSUKA: Are there any further questions of Mr. Kimura? Thank you, Mr. Kimura.

MR. KIMURA: Thank you.

CHR. HAITSUKA: So, we have a motion to file, it's been seconded, no further discussion. All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

CHR. HAITSUKA: Next we have our Committee Reports from our Ad-Hoc Committees.

COMM. 31: Ad-Hoc Committee Report: Article I, Sec. 1-2; Geographical Limits.

CHR. HAITSUKA: Discussion on this report was postponed from our September 11, 2009 meeting. Is there a motion?

Ms. Jarman moved to file Communication 31.
Seconded by Mr. Shumway.

CHR. HAITSUKA: Is there any discussion?

MR. NAHALE-A: I missed the last meeting, and reading the minutes, there is three readings and you couldn't deliberate last time. Would you mind please explaining that again?

MR. HOOKANO: This meeting is the third and final meeting regarding the Committee Reports. This is the meeting where you debate and discuss the report openly. Everything is open, and you guys come to a decision on what action you want to take on these reports; whether it is something you as a Commission want to move forward on, with the recommendations, or you disagree with the recommendations. This is really where everything comes out regarding what the Ad-Hoc Committee did.

CHR. HAITSUKA: Alright, is there any discussion?

MR. NAHALE-A: I know Ms. Kawauchi would have said something, and she isn't here, so I'll step up. We really felt that Mr. Kahawaiola'a had a lot of really good points about jurisdictional issues on Hawaiian Homelands, but ultimately, as the State authorizes our Charter basically, we realize that whatever we did would be subject to their interpretation. Therefore, we decided not to cloud the waters of our effort with something that we probably couldn't create clarity around. That is why we chose to not take action.

CHR. HAITSUKA: Is there any further discussion? All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

COMM. 32: Ad-Hoc Committee Report: Article III, Sec. 3-17; Reapportionment Commission

CHR. HAITSUKA: Discussion on this report was postponed from the September 9, 2009 meeting. Do I have a motion?

Ms. Jarman moved to refer the recommendations in Communication 32 to Commission Attorney, Levi Hookano, to draft a proposed amendment. Seconded by Mr. Unger and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi, Kealoha and Osborne

COMM. 33: Ad-Hoc Committee Report: Article III, Sec. 3-2; Composition and Terms.

CHR. HAITSUKA: Discussion on this was postponed from the September 9, 2009 meeting.

Mr. Nahale-a moved to refer the recommendations of the Ad-Hoc Committee in Communication 33 to Commission Attorney, Levi Hookano, to draft a proposed amendment. Seconded by Mr. Shumway;

CHR. HAITSUKA: Is there any discussion?

MR. NAHALE-A: As I was remiss to really put much detail in the Committee Report, I think the public deserves some comment on why we did discuss the benefits of two-year terms in allowing the public to participate in the selection of council members. Ultimately we felt that two-year terms created a hardship for council members that took them away from council business. By extending their term we could get better work from elected officials; more focused on all the endless amount of stuff that has to get done. We were hopeful that four-year terms would encourage more people to want to run for office; maybe are willing to do the work, but really don't want to do the campaign part of it. We thought for both reasons, it would be a benefit. We also talked about the fact that we believe it would save some dollars in these tough times in terms of the cost of running elections every two years versus four. I will say I did like the idea of three year terms. I think that's a nice amount of time, but I don't think it is real practical given the way the other election cycles are run.

CHR. HAITSUKA: Is there any further discussion? All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi, Kealoha and Osborne

NEW BUSINESS

CHR. HAITSUKA: Let's move on to New Business. First we have the First Reading of proposed Charter Amendments.

CA-7 RECALL PROCEDURES

Amends Sections 12-1.1, 12-1.3, 12-1.5, 12-1.6. Changes County's recall procedure by (1) amending the information required from signers of a recall petition; (2) amending the requirement that the number of signatures required be 25% percent of the votes cast, rather than 25% of the total number of persons who registered in the last election; (3) allowing the clerk more time to review supplemental petitions, and; (4) amending the number of votes required for an official to be successfully recalled.

MR. UNGER: I'm just curious, does any body else have any thoughts on the new verbiage they have suggested. I have already stated my point of view. The 25% of the total number of people who voted, to me--and I have no barometer on this--it strikes me as being a little too liberal. I don't want frivolous claims to come forward, and I'm just thinking that--- Again, I stated the example of an upcoming election--granted it's a lot to put together a petition and what not--if it's a real bitter race, and someone barely loses, say loses with 45%, I don't see it unreasonable for them to come up with 25% of their constituents to come up with a claim just out of pure spite. But, I don't know. I don't what the number is. I do think it needs to be lower than what is currently stated, I just wonder about the 25%.

MS. JARMAN: Excuse me, Mr. Chair. We don't have a motion on the floor.

CHR. HAITSUKA: Yes, thank you. And I think the way we are going to handle these will be by a roll-call vote. What I'd like to get is a motion, as we discuss each one, to refer the proposed Charter Amendment to our Commission Attorney and for our second reading. If that fails, then I believe that will be the end of that particular Charter Amendment that doesn't get the required number of votes to move on to the second reading. Ms. Jarman.

MS. JARMAN: Did you say the motion should state, what?

CHR. HAITSUKA: I'd like to get a motion to refer the proposed Charter Amendment to the Commission Attorney and for a second reading; for each of these Charter Amendments. I think if the motion fails, then that would be end of the proposed amendment.

MS. JARMAN: But, why would we refer it to the attorney, rather than just move to approve the Charter Amendment?

CHR. HAITSUKA: According to Mr. Hookano, I think we have to send it to him for a final legal review.

MR. HOOKANO: Well, between readings one and two, I do a legal review of each Charter Amendment. So, I think Ms. Jarman is actually correct, you could just make it to Second Reading, and I'll automatically have to review it between now and then..

CHR. HAITSUKA: Alright, that's fine, thank you. We have clarification; for each of these proposed Charter Amendments we'll have a motion, and by roll-call vote to refer the proposed Charter Amendment for a second reading. If that motion fails, then that will be it for that proposed amendment. Do I have a motion?

Ms. Jarman moved to approve CA-7, and forward it to second reading. Seconded by Mr. Nahale-a.

CHR. HAITSUKA: Is there any discussion? Mr. Nahale-a.

MR. NAHALE-A: Mr. Unger asked for other thoughts. I do think it is very, very hard to get 25% of the votes cast. Having done some of that work before, it's a lot harder than it seems. I know what you are saying, and if somebody could motivate people to accomplish that, they would have gotten elected in the first place. I am curious--and Mr. Hookano would be the one to answer--I actually like the thought of connecting this proposal with the increase from two to four-year terms. I do think those things go together well. You are making it easier to recall, but at the same time you are giving folks a longer stay. Do you have suggestions on how to do that?

MR. HOOKANO: I think once Charter amendments go through this process, this Commission can form an ad-hoc committee to review all of the proposals that have gone through two readings and see how they interact with each other. That is part of the duty of that ad-hoc committee; and how to best organize the amendments so that they work coherently as an entire package. That would be the job of an ad-hoc committee that you guys form later on.

MR. NAHALE-A: Thank you.

MR. SHUMWAY: I have a comment. When we were originally discussing this, I recall we actually had some numbers or some approximate numbers of voters. I'd like to ask Casey if she remembers, I thought maybe you knew, like for one of the last elections; for Scott's purposes. How many people actually voted, so what kind of numbers are we talking about for 25%?

MS. JARMAN: I remember Pat gave us those numbers, but I don't recall off-hand what they were. I know that was part of our discussion, but I don't remember what the numbers were. What she said made me feel comfortable with 25% of the votes cast. They still would have to---If you get the number of signatures, then it has to go to another election. So I don't really worry that we are going to have one election and then a month later, another one.

CHR. HAITSUKA: Is there any further discussion? Mr. Nahale-a.

MR. NAHALE-A: This is in line with other Counties.

CHR. HAITSUKA: Is there any further discussion? All in favor say, "aye."

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

CA-8 CLAIMS AND ANNUAL REPORTS

Amends Section 13-18 to remove the requirement that claims against the county be filed with the county clerk. Instead, claims will be filed with the corporation counsel; and Section 13-19 to remove the requirement that the annual report be filed with the county clerk. Instead, the annual report will be filed with the office of the mayor.

Ms. Jarman moved to approve CA-8, and forward it to second reading. Seconded by Ms. Honma.

CHR. HAITSUKA: Is there any discussion? Mr. Shumway.

MR. SHUMWAY: I read--I don't know if the others have read it--in the communications we received today from Joe Kamelamela, Corporation Counsel, he wrote in opposition to this; and I thought, convincingly. I'm not so sure there is a need for this; that the County Clerk is really the place where this information should be filed. It will be referred to Counsel, but I think it is important to have that record in the County Clerk's office. I'm not sure that I see the need for this, and after reading what Mr. Kamelamela said, I found that convincing.

CHR. HAITSUKA: Thank you Mr. Shumway.

MS. JARMAN: Mr. Chair, may I respond?

CHR. HAITSUKA: Yes Ms. Jarman.

MS. JARMAN: I disagree with Corporation Counsel. He made a few statements that I disagree with. Clearly, it doesn't matter from a legal point of view where it's lodged, but the way it is now, it comes into the County Clerk's office, the staff person makes a copy of it, and then we keep a copy, and then it gets sent over to Corporation Counsel anyways and either the original or the copy sits in the County Clerk's office and is filed somewhere nobody looks at. He said that the council members look at it, but they don't even know when they come in because they are not given any notice that a claim has been filed against them. It just seems to me that it is an extra step and a waste of paper to have it come to the County Clerk's office just so it can be sent over to Corporation Counsel, and so it will just sit in the Clerk's office if anybody wants to see it. I seems like they could request it from Corporation Counsel just as easily as they could request it from the County Clerk's office. Again, I still think the Annual Report should be filed with the Mayor, since it is applicable to the

Executive Branch, not the Legislative Branch of government. He didn't convince me to change my mind.

CHR. HAITSUKA: Thank you. Is there any further discussion?

MR. NAHALE-A: I certainly want to defer to Ms. Jarman's experience in the Clerk's position, so for me, I really don't know where it belongs. I think the public tends to go to the Clerk's office in general, so this might just confuse it more. So then in that case, and in the light of trying to minimize the number of things in the Charter, I'm going to be voting no. But I certainly don't oppose the intention.

CHR. HAITSUKA: Is there any further discussion? We will have a roll call vote.

The motion failed due to a tie vote:

Ayes: Commissioners Fuertes, Honma,
Jarman, and Unger,
Noes: Commissioners Kaulukukui, Nahale-a,
Shumway, and Chair Haitsuka.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

CA-9 SPECIAL MEETING NOTICE REQUIREMENT

Amends Section 13-20(c). Adds language to require that electronic notice of special meetings be linked on the appropriate council, board, or commission webpage.

Mr. Shumway moved to approve CA-9, and forward it to second reading. Seconded by Mr. Kaulukukui, and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

CA-10 DEPT. OF ENVIRONMENTAL MANAGEMENT, Powers, Duties, Functions

Amends Section 6-10.4. Expands the powers, duties, and functions of the department to include exercising other functions prescribed by ordinance or the mayor. Currently the department only exercises other functions as prescribed by ordinance.

Mr. Fuertes moved to approve CA-10, and forward it to second reading. Seconded by Mr. Unger, and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

CA-11 DEPT. OF ENVIRONMENTAL MANAGEMENT, Requirements of Director

Amends Section 6-10.3. Requires the director of the department of environmental management to have had a minimum of five year's administrative experience in a related field AND possess a degree in a related field.

Ms. Jarman moved to approve CA-11, and forward it to second reading. Seconded by Mr. Unger.

CHR. HAITSUKA: Is there any discussion? Mr. Kaulukukui.

MR. KAULUKUKUI: I said this when we discussed this before, but I'll say it again. I don't think we need to be this specific in the Charter in terms of requirements for the position of a department head or a director. I think the oversight is in place with regards to the Council's ultimate approval, and the Council's responsibility.

CHR. HAITSUKA: Thank you. Is there any other discussion? If no further discussion, we will take a roll-call vote.

The motion carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Shumway, Unger, and Chair Haitsuka.
Noes: Commissioners Kaulukukui, Nahale-a
Absent: Commissioners Kawauchi,
Kealoha and Osborne

CA-12 INITIATION OF AMENDMENTS OR REVISIONS

Amends Section 15-1. Changes the information that needs to be provided to the County to verify the identity of persons signing a petition for a charter amendment so that the Office of Elections may easily verify signatures; and change the requirement of the number of signatures necessary from 20% of the registered voters to 20% of the votes cast in the last general election. This proposal also increases the amount of time the office of the county clerk would have to verify the signatures on the petition from twenty working days to thirty working days.

CHR. HAITSUKA: Is there a motion?

MS. JARMAN: Mr. Chair, I think I will make a motion to postpone because I think this is the same issue that we referred to our attorney. So maybe we could postpone this, and discuss both of them at the same time.

Ms. Jarman moved to postpone CA-12 to the next meeting on November 6, 2009. Seconded by Mr. Nahale-a.

CHR. HAITSUKA: Ms. Jarman, which one does this relate to that we referred to our Commission Attorney?

MS. JARMAN: I think the one of Ms. Hecht's, having to do with Communication 51.

CHR. HAITSUKA: Thank you. Mr. Hookano, if we postpone to the next meeting, then we don't have any Charter Amendment?

MR. HOOKANO: Well, currently CA-12 is drafted in Charter Amendment form.

CHR. HAITSUKA: That's right, sorry. So we do already have an amendment.

MR. HOOKANO: There's one, and with Communication 51, that would be a competing amendment, or it could be an amendment to CA-12, however the Commission wants to introduce it.

CHR. HAITSUKA: Alright, so we are just postponing the first reading. Is there any further discussion. We'll take a roll-call vote on the motion to postpone.

The motion to postpone was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi, Kealoha and Osborne

CA-13 MANDATORY CHARTER REVIEW

Amends Section 15-3. This charter amendment proposes to increase the amount of time the Commission has to complete its work. Currently the commission is appointed by the fifteenth of January of a charter review year, and this amendment would change the date to the first day of July prior to the charter review year to give the commission more time to thoroughly review the charter.

CHR. HAITSUKA: Do I have a motion?

Ms. Jarman moved to approve CA-13, and forward it to second reading. Seconded by Mr. Unger.

CHR. HAITSUKA: Is there any discussion?

MR. NAHALE-A: I have a question and then a potential amendment about the line, “Commission members, no more than a majority of whom shall belong to the same political party....” I don’t remember being asked about political party affiliation.

MR. HOOKANO: I think that was on the application.

MR. NAHALE-A: It was on the application? Was that something that we tracked? So, can we make amendments to this now? Can I move to amend the proposal?

MR. HOOKANO: We prefer that amendments be made in writing so we can actually see what the proposed amendment would do.

CHR. HAITSUKA: Can we submit a proposed amendment to the proposed amendment?

MR. HOOKANO: Yes.

MR. NAHALE-A: So, I will be submitting a written proposal to strike out, “...no more than a majority of whom shall belong to the same political party...,” since we are now non-partisan. I imagine that was done when we had partisan elections in the County. Just for the record.

CHR. HAITSUKA: Is there any further discussion? We’ll do a roll-call vote.

The motion was carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Huitsuka.

Noes: None.

Absent: Commissioners Kawauchi,
Kealoha and Osborne

CHR. HAITSUKA: That’s the end of our New Business.

REPORTS

CHR. HAITSUKA: Next on our agenda is Reports, and we don’t have any.

REFERRALS FOR EXECUTIVE SESSION

CHR. HAITSUKA: Let's move on to Referrals for Executive Session, we don't have any referrals.

ANNOUNCEMENTS

CHR. HAITSUKA: We'll move on to announcements.

MR. KAULUKUKUI: Mr. Chair, I have a question regarding the additional communications that we got today. Will we see this on our next meeting agenda?

MR. HOOKANO: Those that were filed will not be on the next agenda, those that were referred to---

MR. KAULUKUKUI: No, excuse me.

MR. HOOKANO: Oh, those are just for this meeting. The public testimony, that you are speaking of---

MR. KAULUKUKUI: We got additional communications when we came in today, beginning with Communication 34.1.

MR. HOOKANO: Those will always be in your possession, but when they are submitted as testimony they are just attached to whatever matter is on the agenda. So, if you file a communication that has a point number that is attached to it, those all just get filed along with the main item that was on the agenda. So like Communication 34.1; that is filed, it's done.

MR. KAULUKUKUI: Okay, so then how about Communication 70?

MR. HOOKANO: This matter was attached to CA-8.

MR. KAULUKUKUI: And then, Communication 52 is a form letter; we got many of them.

MR. HOOKANO: Right, that is just public testimony; that is just for your information. No action is taken on public testimony.

MR. KAULUKUKUI: Okay, for Communication 55.

MR. HOOKANO: Yes, those are all just filed; no action is taken on any of these. Unless it is placed on the agenda, then no action is needed.

MR. KAULUKUKUI: So all the way through that's the same thing.

MR. HOOKANO: Yes, the same thing all the way through.

MR. KAULUKUKUI: Thank you, Mr. Chair.

MR. NAHALE-A: I'm kind of confused too. So we went through a whole list of communications that were in the manila folder---Just so that I know, if folks submit things by a certain deadline, then it's on the agenda? And if not, then it's---

MR. HOOKANO: Well, the majority of the communications that were placed on the agenda, those all recommended charter proposals in some form or another. In discussing things with the Chair and the Secretary, to give the Commission the opportunity to decide if they want to move forward with those proposals, they were placed on the agenda. They are not required to be placed on the agenda, because really the agenda is for proposals that all of you want to see discussed.

MR. NAHALE-A: That part, I got. What I want to do is differentiate those from the ones that we got when we got here, like the ones that were just read off, which are also proposals. Are they not on the agenda because they missed the deadline, or because in the process they were not---

MR. HOOKANO: The communications?

MR. NAHALE-A: Yes.

MR. HOOKANO: No, those were submitted in time for this agenda deadline.

MR. NAHALE-A: No, the ones that we just went over that---

MR. HOOKANO: Oh, those.

MR. NAHALE-A: My guess is that they just missed the deadline, and so that's why they are just testimony, and not on the agenda. Is that correct?

MS. EOFF: The communications that I put into the folders came in the last several days, so I wasn't able to put them on the agenda, but I wanted you to see them. Most of them are similar in format, but there are a few that are actual proposals that we haven't discussed at all. I'm not sure either, if there are some you would want me to put on the next agenda, or if after you read through them, you could always submit that to me. One of the Commissioners could submit that proposal.

MR. KAULUKUKUI: My preference would be that if there are communications that are in there that are actual proposals that we have not taken up before, that we do get the opportunity to see it; rather than dismiss them with communications that have already been filed.

MR. FUERTES: I agree.

MR. HOOKANO: Mr. Chair, if I may have something to say on this. Because there is no meeting scheduled between now and November, and our internal deadline is October 31st, at this point it is incumbent on the Commission members themselves to draft their own amendments that they want to see and bring them forward at the next meeting. They should be filed with our Secretary prior to October 31, 2009, because anything time stamped after that would require a 2/3rd vote to get on the agenda.

CHR. HAITSUKA: I think this all was provided to us with an abundance of caution so we could have it prior to the deadline. How we treat it is some of the questions that I see being asked, if we are going to put it back on the agenda. Perhaps we can go over that administratively prior to the next meeting to see what we can, or what we should put on the next agenda.

MR. HOOKANO: Mr. Chair, I'll send out a memo to all of the Commissioners outlining the process from this point on.

CHR. HAITSUKA: Thank you.

MR. NAHALE-A: Thanks that would be helpful. I think it's important for us to have this conversation on the record because for those folks who maybe didn't understand those deadlines and they submitted proposals; I don't want them to feel like we just dismissed it. It would behoove us to look at those on our own, and submit them if we think they are worth agendizing. Again, it's our last chance, so I don't want to make a misinterpretation. There's no sense to agendize these communications, because it's too late for an action. We would have to take these communications, turn them into a proposal, and agendize them for an action. Correct?

MR. HOOKANO: That's correct.

MR. NAHALE-A: Thank you.

CHR. HAITSUKA: Is there any further discussion?

MR. HOOKANO: Mr. Chair, if I may make one announcement. I have seen some communications going around that says that the next months meeting is the last meeting of the Charter Commission. That is incorrect. This Commission will continue on until the day after the General Election next year.

MR. HOOKANO: Mr. Nahale-a, did you circulate that rumor?

MR. NAHALE-A: Absolutely not! I do have one other announcement. It is kind of a sour one. For those who haven't heard, Commissioner Osborne--you know she has missed a couple of meetings--her dad passed away yesterday. She is up there again, so we want to send her our condolences. I did get to talk to her, and she still understands her responsibilities here.

CHR. HAITSUKA: Thank you. As far as announcements, we do have a public hearing immediately following this meeting tonight. This concludes our last district public hearing. I don't know if we are going to go out again, we can talk about that at our next meeting. We did the required meetings, but that's just the minimum of what's required under the Charter. Our next regularly scheduled meeting is Friday, November 13, 2009 at 1:30 p.m. in Hilo at the Ben Franklin Building.

MS. HONMA: I can't make that meeting.

CHR. HAITSUKA: Alright, Ms. Honma will not be able to make that meeting.

MS. JARMAN: Mr. Chair, I can't make that meeting either.

CHR. HAITSUKA: Alright, Ms. Jarman is unavailable.

MR. KAULUKUKUI: Mr. Chair, I'll not be able to be there.

CHR. HAITSUKA: That's three. I don't know if Ms. Osborne will be back. I don't know if we should reschedule, we are down three; that means we have eight left. I don't about Ms. Osborne, I guess we can presume she might not come. That will bring us down to seven.

MR. NAHALE-A: I'm almost certain she'll be here. I don't know what her schedule is, but I know she'll be back.

CHR. HAITSUKA: Are there any preferences as to whether we should reschedule?

MS. JARMAN: If it's possible, that would be great.

MR. FUERTES: How is November 6, 2009?

CHR. HAITSUKA: There is a proposal to move it to November 6, 2009, any discussion or comments?

MS. JARMAN: That's fine with me.

CHR. HAITSUKA: Mr. Hookano, you are doing the brunt of the work during this period of time; how is that as far as your schedule? And Ms. Eoff's schedule.

MR. HOOKANO: I could certainly finish all the assignments by then. I will not be present on that day, I have a meeting in Honolulu. If you are going to move it to November 6, 2009, it would be considered a special meeting, since it is not on a regular scheduled meeting day, so you would have to announce here the time and place.

CHR. HAITSUKA: Can everybody make it on November 6, 2009?

MS. HONMA: I just might be late. I have an appointment up in Waimea before I can come down, so I might be late.

MR. NAHALE-A: I'm a little nervous about not having Mr. Hookano here.

CHR. HAITSUKA: We can move it forward, or we can move it to another day of the week.

MR. HOOKANO: I'm touched that Paki feels so---

MS. JARMAN: How is November 20, 2009?

MR. SHUMWAY: I will be gone on November 20, 2009.

MR. FUERTES: I can't make it.

CHR. HAITSUKA: Mr. Shumway and Mr. Fuertes are not going to be here; anybody else? Do you want to try Thursday, November 12, 2009?

MR. HOOKANO: I'm not here that day either. I could request an attorney from Corporation Counsel be present.

MR. NAHALE-A: I would recommend since everybody can be here on November 6, 2009, that we just live without Levi.

CHR. HAITSUKA: The meeting moved kind of fast the last time he wasn't here. So, on November 6, 2009 everybody can make it except Levi. So we will schedule a special meeting on November 6, 2009 at 1:30 p.m. in Hilo at the Ben Franklin Building. Do I have a motion?

Mr. Fuertes moved to schedule a special meeting of the Hawai'i County Charter Commission to be held on November 6, 2009 at 1:30 p.m. in Hilo at the Ben Franklin Bldg. Seconded by Mr. Shumway and carried by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman, Kaulukukui, Nahale-a, Shumway, Unger, and Chair Haitsuka.

Noes: None.

Absent: Commissioners Kawauchi, Kealoha and Osborne

ADJOURNMENT

CHR. HAITSUKA: Next on the agenda is adjournment.

There being no further business, at 6:11 p.m.,
Ms. Jarman moved to adjourn the meeting.
Seconded by Mr. Kaulukukui and carried
by the following vote:

Ayes: Commissioners Fuertes, Honma, Jarman,
Kaulukukui, Nahale-a, Shumway,
Unger, and Chair Haitsuka.
Noes: None.
Absent: Commissioners Kawauchi,
Kealoha and Osborne

CHR. HAITSUKA: The meeting is adjourned. Thank you.

Respectfully Submitted,

Karen Eoff, Secretary

Approved:

Mr. Ed Haitsuka, Chair
Hawai'i County Charter Commission