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April 30, 2010

MEMO TO: Michael J. Molina, Chair
Committee of the Whole

F R O M:  Michael J. Hopper, Deputy Corporation Counsel

SUBJECT: **NOMINATIONS TO BOARDS, COMMITTEES AND COMMISSIONS**
(COW-2)

Introduction.

The purpose of this memorandum is to respond to your April 22, 2010 memorandum, in which you ask for legal advice as to whether Section 13-2 of the Revised Charter of the County of Maui (1983), as amended ("Charter"), applies to the Urban Design Review Board ("UDRB") and the Kula Agricultural Park Committee ("KAPC").

Short answer.

Section 13-2 of the Charter does not apply to the KAPC. Although Section 13-2(1) of the Charter applies to the UDRB, the other provisions of Section 13-2 do not.

Analysis and discussion.

Section 13-2 of the Charter, entitled "Boards and Commissions", has seventeen subsections covering a variety of matters related to boards and commissions, including procedures for the appointment of members, filling of vacancies, election of officers, and adoption of rules.

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Section 13-1(1) of the Charter defines "board" or "commission" as "a board or commission established by this charter."

The Charter establishes by explicit reference many boards and commissions. For example, Section 8-8.1 of the Charter states:

There shall be a department of planning consisting of a Maui planning commission, a Moloka`i planning commission and a Lana`i planning commission, ... a board of variances and appeals and the necessary staff.

The Maui, Molokai, and Lanai Planning Commissions, and the Board of Variances and Appeals, are therefore boards and commissions "established by the Charter." As such, they are subject to Section 13-2 of the Charter.

As noted in your letter, both the UDRB and the KAPC are established by ordinance.¹ Neither is referenced in the Charter. Therefore, neither the UDRB nor the KAPC are boards or commissions "established by the charter", as such phrase is used in the Charter.

Many boards and commissions that are established by ordinance, but not referenced in the Charter, are made subject to Section 13-2 of the Charter by the ordinance governing the respective board or commission. For example, Section 2.37.020(B), Maui County Code, pertaining to the Commission on Culture and the Arts, states:

Terms and Operation. Section 13-2 of the revised charter of the County of Maui shall apply to the commission on culture and the arts in the same manner as said provisions apply to boards and commissions recognized by the revised charter.

¹ The UDRB is established pursuant to Chapter 2.26, Maui County Code. The KAPC is established pursuant to Chapter 22.04A, Maui County Code.

Many other ordinances that establish a board or commission contain similar provisions making Section 13-2 of the Charter applicable to the respective board or commission.²

In contrast, the ordinance establishing the KAPC does not include a provision making Section 13-2 of the Charter applicable to the KAPC. A number of other boards and commissions established by ordinance also lack this reference to Section 13-2 of the Charter.³ As the KAPC was not established by the Charter, no portion of Section 13-2 of the Charter applies to the KAPC.

Section 2.26.030(C), Maui County Code, pertaining to the UDRB, makes only a portion of Section 13-2 of the Charter applicable to the UDRB. Section 2.26.030(C) states:

The members of the board shall be appointed by the mayor with the approval of the council. The members of the board shall serve for a term of five years; provided, however, such members shall serve for staggered terms pursuant to section 13-2.1 of the revised charter of the county (1989 edition).

The specific reference in Section 2.26.030(C) to Section 13-2(1) of the Charter, and the omission of the rest of Section 13-2, appears to have been intentional. Had the Council intended to make all of Section 13-2 of the Charter applicable to the UDRB it could have adopted the more comprehensive reference to Section 13-2 that was used in establishing commissions such as the Commission on Culture and the Arts and other boards and commissions.

Further, both the UDRB and KAPC are subject to unique Maui County Code provisions that may explain the absence of a provision making them subject to Section 13-2 of the Charter in its entirety. For example, the UDRB is the only County board

² See, e.g., §2.88.030(D), Maui County Code (Cultural Resources Commission); §2.39.010(B), Maui County Code (Commission on Children and Youth); §12.24A.030(B), Maui County Code (Maui County Arborist Committee).

³ See, e.g., Maui County Code §2.80B.040 (General Plan Advisory Committees); §2.80B.080 (Community Plan Advisory Committees). Neither section references Section 13-2 of the Charter.

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with four "alternate members".⁴ The KAPC has eleven members, of whom one is a representative of the Council and another is a representative of the Office of the Mayor.⁵

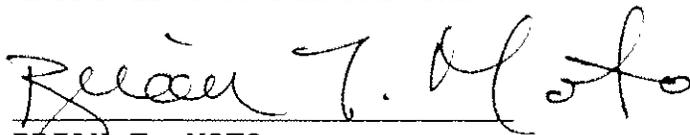
Though not specifically addressed in your memorandum, we note that Chapter 2.41, Maui County Code, relating to nominations and appointments to boards, commissions, and committees, is not applicable to the UDRB or KAPC. As discussed above, neither the UDRB nor the KAPC are boards established by the Charter or "subject to the provisions of section 13-2 [of the charter]". Therefore, Chapter 2.41 does not apply to the UDRB or KAPC.⁶

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cc: Marian Feenstra, Office of the Mayor
Kathleen R. Aoki, Planning Director
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Webpage

APPROVED FOR TRANSMITTAL:



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⁴ §2.26.030(B), Maui County Code.

⁵ §22.04A.070(A), Maui County Code.

⁶ §2.41.010, Maui County Code. Though §2.26.030(C), Maui County Code, requires that the members of the UDRB serve staggered terms as provided in Section 13-2(1) of the Charter, this does not make the UDRB subject to all of the provisions of Section 13-2 of the Charter such that Chapter 2.41 would be applicable to the UDRB.