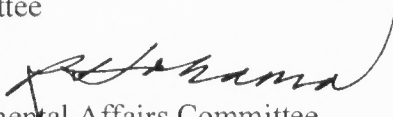


September 30, 2013

MEMO TO: Members of the Committee

F R O M: G. Riki Hokama, Chair   
Policy and Intergovernmental Affairs Committee

SUBJECT: **COUNCIL INVESTIGATION OF OLD WAILUKU POST OFFICE** (PIA-41)

Pursuant to the “Old Wailuku Post Office Investigation Scope, Investigative Process, and General Rules”, adopted by the Committee at its August 14, 2013, meeting, I hereby submit the following status report on the Committee’s progress with its investigation of the Old Wailuku Post Office.

### **BACKGROUND**

Pursuant to Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended (“Charter”), the Council has the power to conduct investigations of the operation of any department or function of the County and any subject upon which the Council may legislate. Based on this power, the Council authorized the Policy and Intergovernmental Affairs Committee to conduct an investigation into the Old Wailuku Post Office through Resolution 13-83, adopted on July 5, 2013, and as amended by Resolution 13-104, adopted on September 6, 2013.

### **SUMMARY OF COMMITTEE WORK**

The Committee met on this item on August 12, 2013, August 14, 2013 (reconvene), and September 25, 2013. At its reconvened meeting on August 14, 2013, the Committee received from the Committee Chair the document entitled “Policy and Intergovernmental Affairs Committee, Old Wailuku Post Office Investigation Scope, Investigative Process, and General Rules”. The Committee also discussed the extent of the Council’s subpoena powers when conducting an investigation pursuant to the Charter.

By correspondence dated August 26, 2013, the Chair, on behalf of the Committee, requested the County Auditor to conduct a performance or financial audit into the Fiscal Year 2012 appropriation for the Old Wailuku Post Office Rehabilitation Project.

By correspondence dated September 6, 2013, the County Auditor informed the Committee he is unable to commit to performing the requested audit until he has properly staffed the Office of the County Auditor and established auditing standards. The County Auditor did state that the requested audit will be given serious consideration for inclusion in the Office’s plan of audits to be initiated in Fiscal Year 2014.

RECEIVED AT PIA MEETING ON 09/30/13

At its meeting of September 25, 2013, the Committee met with the County Auditor. The County Auditor informed the Committee that he intends to present the Council with a plan of audits for Fiscal Year 2014 by January 2014, at the latest.

The Committee has received, under Committee item PIA-1(26), 12 requests for special counsel for employees of the Executive Branch relating to the Council's investigation. The proposed resolutions authorizing the hiring of special counsel for the employees have not been scheduled for a meeting and remain on the Committee's master agenda.

### **COMMITTEE CHAIR'S RECOMMENDATION**

One of the core functions of the Council is to exercise legislative oversight of the operations of the Executive Branch of County government. Another core function of the Council is to legislate appropriations for County purposes. In the Fiscal Year 2012 Budget, the Mayor proposed and the Council appropriated funds for rehabilitation of the Old Wailuku Post Office. The appropriation was based on expert inspections of the building who found the building suitable for rehabilitation.

When the decision was made to demolish the Old Wailuku Post Office and begin plans to expand the County campus, the Mayor was required to come to the Council and request the appropriate budget amendments. The Mayor has publicly admitted that his administration made a mistake and did not follow Charter-mandated procedures. The Council now has a duty to investigate how the Charter deviation occurred, and establish procedures to avoid similar deviations in the future.

When the Council members became aware of the demolition, they were prohibited by Section 3-8(2) of the Charter from ordering a stop to the demolition. Had a Council member tried to intervene in such a manner, the member would have been subject to removal from office by impeachment. The Council's only authority is to investigate the matter.

It is the Administration's mistake that is causing the delay and added costs to the people of this County. Like the fruit of the poisonous tree, if the process is flawed at its inception, everything that flows from it is likewise flawed and cannot be cured later in the process.

It is fortuitous that the Office of the County Auditor has been established concurrently with the Council's decision to conduct an investigation. Unfortunately, the Office of the County Auditor will take time to organize, hire staff, establish auditing standards, and be in a position to conduct an audit of the nature requested by the Committee. However, the Office of the County

Auditor was established specifically to undertake these types of audits, if deemed warranted by the County Auditor.

The Charter gives the County Auditor greater flexibility than it gives the Council to conduct a full and fair inquiry into the potential misuse of County funds, including the ability to subpoena witnesses and to compel document production. The County Auditor also possesses a greater ability to enforce non-compliance with subpoenas and requests for documents.

Additionally, the County Auditor will have more flexibility than a third-party contracted by the Council to conduct an audit. Hiring a third-party to conduct the audit will also result in additional costs to taxpayers.

The process of the investigation must be fair, and provide for adequate procedural safeguards. Any findings and recommendations must be based on a complete and thorough investigation, free of bias and political influences. Any findings and recommendations must be able to withstand the highest degree of scrutiny that they will be given by the Administration, the Council, and the public. Lastly, the investigation should be conducted efficiently and at minimal cost to the taxpayers.

Therefore, it is my recommendation that the Committee give the County Auditor the time needed to consider the requested audit for his plan of audits for Fiscal Year 2014. If the requested audit is not included in the County Auditor's plan of audits, the Committee may reevaluate its options at that time.