

COUNCIL OF THE COUNTY OF MAUI

PLANNING AND LAND USE COMMITTEE

November 21, 2003

Committee

Report No. 03-146

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

Chair and Members:

Your Planning and Land Use Committee, having met on January 21, 2003, August 12, 2003, September 16, 2003, September 18, 2003, September 23, 2003, and September 30, 2003, makes reference to Bill No. 84 (2002), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80A, MAUI COUNTY CODE, PERTAINING TO THE GENERAL PLAN AND THE COMMUNITY PLANS".

The purpose of Bill No. 84 (2002) is to amend the general and community plans update process by requiring, among other things:

1. an island-wide land use strategy for Maui, Molokai, and Lanai, developed by a general plan advisory committee, and driven by a managed and directed growth plan, and regulatory urban and rural growth boundaries;
2. implementation programs for the general and community plans containing numeric prioritization of implementing actions and identification of funding sources;
3. benchmarks and annual status reports; and
4. staggered consideration of community plan updates based upon the date of each plan's prior adoption.

Your Committee notes that the Council passed Bill No. 84 (2002) on the first of two necessary readings on December 17, 2002. Your Committee further notes that the Council also adopted Planning Committee Report No. 02-204 on December 17, 2002. Planning Committee Report No. 02-204 recommended passage of an attached proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80A, MAUI COUNTY CODE, PERTAINING TO THE

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GENERAL PLAN AND THE COMMUNITY PLANS". The Council approved a technical amendment to the bill before passing Bill No. 84 (2002) on first reading.

At the Council meeting of December 17, 2002, seven people testified on Planning Committee Report No. 02-204. Three people testified in support of amending the proposed bill attached to Planning Committee Report No. 02-204 to provide that the General Plan is "conceptual" and not "regulatory". One person urged the Council to refer the proposed bill to the respective planning commissions in accordance with Section 8-8.6 of the Charter of the County of Maui. Another person urged the Council to schedule a public hearing on the proposed bill. Another person urged the Council to amend the proposed bill to require a Council public hearing prior to enactment of any bill amending the General Plan or a community plan. One person testified in support of Planning Committee Report No. 02-204.

Dan Davidson, representing the Land Use Research Foundation of Hawaii, submitted written testimony urging that the proposed bill be amended to ensure that the General Plan (including urban growth boundaries) is "conceptual" and not "regulatory". Jim Smith submitted written testimony urging that Planning Committee Report No. 02-204 be recommitted because of technical and legal flaws in the proposed bill.

Your Committee also notes that the Council considered passage of Bill No. 84 (2002) on second and final reading on January 10, 2003.

At the Council meeting of January 10, 2003, 27 people testified on Bill No. 84 (2002). Seven people testified in support of passing the bill on second and final reading. Nine people urged the Council to consider referring Bill No. 84 (2002) to a Council committee. Five people urged the Council to refer Bill No. 84 (2002) to the respective planning commissions. Four people provided comments on the bill. Two people urged the Council to pass Bill No. 84 (2002) on second and final reading, subject to various amendments

The following submitted written testimony urging the Council to consider referring Bill No. 84 (2002) to the respective planning commissions: Bob McNatt, representing the Hawaii Resort Developers Conference; attorney B. Martin Luna of Carlsmith Ball; Randall H. Endo, representing Maui Land & Pineapple Company, Inc.; and Warren A. Suzuki, representing the Land Use Research

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Foundation of Hawaii. The following submitted written testimony urging the Council to consider referring Bill No. 84 (2002) to a Council committee: Benjamin Saguibo, representing Laborers' International Union of North America, Local 368; Mercer "Chubby" Vicens, representing A&B Properties, Inc.; Joseph Phillip, representing Hawaii Masons Unions, Locals 1 and 630; and Don Fujimoto. The following submitted written testimony urging the Council to pass Bill No. 84 (2002) on second and final reading, subject to various amendments: Buck Buchanan; Lynne Woods, representing the Maui Chamber of Commerce; and Karolyn Mossman, on behalf of the Kula Community Association.

At its meeting of January 10, 2003, the Council referred Bill No. 84 (2002) to your Planning and Land Use Committee.

By correspondence dated January 15, 2003, the Chair of your Committee transmitted a draft resolution entitled "REFERRING BILL NO. 84 (2002), PERTAINING TO THE GENERAL PLAN AND THE COMMUNITY PLANS, TO THE PLANNING COMMISSIONS". The purpose of the draft resolution is to refer Bill No. 84 (2002) to the planning commissions, pursuant to Charter Sections 8-8.4 and 8-8.6.

By correspondence dated January 15, 2003, the Chair of your Committee requested that the Corporation Counsel approve the draft resolution as to form and legality.

By correspondence dated January 20, 2003, Jim Smith submitted written testimony providing comments on Bill No. 84 (2002).

By correspondence dated January 21, 2003, the Council Chair transmitted a chart exhibiting differences between Bill No. 84 (2002) and corresponding existing provisions in the County Code.

By correspondence dated January 21, 2003, the Chair of your Committee submitted proposed revisions to Bill No. 84 (2002) from Councilmember Charmaine Tavares.

At its meeting of January 21, 2003, your Committee met with the Planning Director and a Deputy Corporation Counsel.

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Your Committee received public testimony from 12 people. Five people testified in support of Bill No. 84 (2002), subject to various amendments. Six people testified in support of the draft resolution. One person offered comments about the bill.

Buck Buchanan submitted written testimony in support of Bill No. 84 (2002), subject to various amendments. Sally Raisbeck submitted written testimony providing comments about Bill No. 84 (2002). The following submitted written testimony urging the Committee to recommend that the Council refer the bill to the respective planning commissions: Lynne Woods, representing the Maui Chamber of Commerce; Christopher L. Hart, landscape architect and planner of Chris Hart & Partners, Inc.; Randall H. Endo, representing Maui Land & Pineapple Company, Inc.; Dan Davidson, representing the Land Use Research Foundation of Hawaii; and Mercer "Chubby" Vicens, representing A&B Properties, Inc.

The Planning Director informed your Committee that enactment of Bill No. 84 (2002) would enhance the Department of Planning's upcoming efforts to commence the decennial General Plan update. He further advised your Committee that the bill's requirement for a map delineating urban and rural growth boundaries on the island of Maui would enhance the County's land-use-planning capabilities. The Planning Director noted that the General Plan map would be much less specific than the various community-plan maps. For instance, the General Plan map would exhibit the desired areas of urban growth, but the community-plan maps would indicate the precise forms of urbanization for specific parcels (residential, commercial, industrial).

Your Committee noted that Charter Section 8-8.6 states: "Any revisions of the general plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission . . ." The Deputy Corporation Counsel informed your Committee that Bill No. 84 (2002) is not a "land use ordinance" as that term is used in Charter Section 8-8.6 and that, therefore, the bill does not need to be referred to the Lanai, Maui, and Molokai planning commissions prior to enactment.

Nonetheless, your Committee observed that it would be useful to receive comments on the bill from the respective planning commissions. The Chair of

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your Committee advised that he would make a written request for the planning commissions' comments on Bill No. 84 (2002).

Your Committee deferred consideration of the matter pending receipt of the planning commissions' comments.

By correspondence dated February 7, 2003, the Council Chair transmitted correspondence dated February 5, 2003, from Charlie Jencks, transmitting a written copy of the testimony provided at your Committee's meeting of January 21, 2003.

By correspondence dated February 21, 2003 and March 6, 2003, the Chair of your Committee transmitted Bill No. 84 (2002) and supporting documents to the Planning Director and requested that the Lanai, Maui, and Molokai planning commissions review and comment on the bill.

By correspondence dated July 15, 2003, the Planning Director transmitted the respective planning commissions' comments and a revised Ramseyered version of Bill No. 84 (2002) incorporating the planning commissions' suggested amendments. The Planning Director advised that the planning commissions supported the policy objectives reflected in the bill. The planning commissions recommended that, in addition to the Planning Director and the Council, other individuals and entities be allowed to apply for non-decennial General Plan amendments. The planning commissions also recommended that non-decennial amendments to the various community plans by individuals and entities other than the Planning Director or the Council be accepted only during July of each year (and, for Molokai, not within five years of the Molokai Community Plan's enactment). The planning commissions also suggested other amendments designed to promote internal consistency and technical accuracy. In addition, the Planning Director transmitted proposed technical amendments recommended by the Department of Planning.

By correspondence dated August 11, 2003, attorney B. Martin Luna of Carlsmith Ball submitted written testimony in opposition to restricting acceptance of applications for non-decennial amendments to the various community plans.

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By correspondence dated August 12, 2003, Dean Uchida, representing the Land Use Research Foundation of Hawaii, submitted written testimony in opposition to regulatory urban growth boundaries.

By correspondence dated August 12, 2003, Marcia Godinez submitted written testimony in support of regulatory urban growth boundaries and in support of restricting acceptance of applications for non-decennial amendments to the various community plans.

At its meeting of August 12, 2003, your Committee met with the Planning Director, the Planning Program Administrator of the Long Range Planning Division from the Department of Planning, and the Corporation Counsel.

Most of the testimony focused on two issues:

- Should the urban growth boundaries to be included as part of the proposed General Plan map be “conceptual” (i.e., without legal effect) or, as provided in Bill No. 84 (2002), “regulatory” (i.e., legally effective)?
- Should applications for non-decennial amendments to the various community plans by individuals and entities other than the Planning Director or the Council be accepted without limitation or restricted to certain time periods? For example, the planning commissions recommended that non-decennial amendments be accepted only during July of each year.

Your Committee received public testimony from 25 people. Six people testified in support of regulatory urban growth boundaries and in support of restricting the acceptance of applications for non-decennial amendments to the various community plans. Eight people testified in support of regulatory urban growth boundaries. Three people testified in opposition to regulatory urban growth boundaries and in opposition to restricting acceptance of applications for non-decennial amendments to the various community plans. One person testified in opposition to regulatory urban growth boundaries. One person testified in support of consistency among all State and County land-use maps. Six people testified in general support of the bill.

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Mercer "Chubby" Vicens, representing A&B Properties, Inc., submitted written testimony in opposition to regulatory urban growth boundaries and in support of allowing individuals and entities the opportunity to apply for non-decennial General Plan amendments each July. Daniel Grantham, representing the Sierra Club; Peter McKenney; and Lloyd Fischel submitted written testimony in support of regulatory urban growth boundaries and in support of restricting acceptance of applications for non-decennial amendments to the various community plans. Gregg Blue and Sally Raisbeck submitted written testimony in general support of the bill.

In response to your Committee's questions, the Planning Director said that it would be impossible to predict the precise contours of the urban growth boundaries to be included in the General Plan map because Bill No. 84 (2002) merely is enabling legislation; the map itself would be enacted by the Council pursuant to the process described in the bill.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence September 4, 2003, the Planning Director requested the opportunity to make a presentation on Bill No. 84 (2002) at your Committee's next meeting on the legislation.

By correspondence dated September 9, 2003 and September 12, 2003, the Council Vice-Chair transmitted a proposal to amend Bill No. 84 (2002) to ensure that the legislation would not apply retroactively to applications submitted to the Department of Planning prior to the date the ordinance is enacted.

By correspondence dated September 16, 2003, the Council Chair transmitted correspondence dated September 15, 2003, from the Planning Director, transmitting minutes of the planning commission meetings on Bill No. 84 (2002).

By correspondence dated September 16, 2003, Councilmember Danny A. Mateo transmitted a proposal to amend Bill No. 84 (2002) to provide that the proposed General Plan map shall be initially drafted by an independent consultant.

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By correspondence dated September 16, 2003, Councilmember Charmaine Tavares transmitted a proposal to amend Bill No. 84 (2002) to provide that "Community plan advisory committee" means the same as "citizen advisory committee" in Charter Section 8-8.5(4).

By correspondence dated September 16, 2003, the Council Chair transmitted a research report relating to the long-term consequences of urban growth boundaries and other matters.

At its meeting of September 16, 2003, your Committee met with the Planning Director, the Deputy Planning Director, a Staff Planner from the Department of Planning, and the Corporation Counsel.

Your Committee received written testimony in support of Bill No. 84 (2002) from Michael Gallup, Steve and Fran Goldstein, Linda McCullough Decker, Summer Grotelueschen, Joy Brann, Abbie Murray, Tom Faught and Wendy Hudson, Neida Bangerter, Diane Petropulos, David and Clara Henry, Frederick Pablo, Elaine Gima and Thomas Calhoun, Karen P. Jones, Jim Hylkema, Lucinda J. Hylkema, Acacia C. Van Dorland, Will Wolff, Stephanie and Gary Landis, Rob Lafferty, Mary Murphy, Daniel Grantham, Barbara Long, Dominique Shelton, Carol Horton, Ann Fielding, Mary M. Hertz, Tony Angelini, Kristin Gillette, Gregg and Wanda Shelton, Darlene Carter, Grace West, Richard H. Larson, Douglas Anderson, Connie Sutherland, Elizabeth Chenoweth, Carol Stowell, Joyce Downey, and Danielle Elkin.

Your Committee received written testimony opposing, raising concerns about or suggesting substantive revisions to Bill No. 84 (2002) from Dean Uchida, representing the Land Use Research Foundation of Hawaii; Charlie Jencks; attorney Thomas H. Welch, Jr. of Mancini Welch & Geiger; Randall H. Endo, representing Maui Land & Pineapple Company, Inc.; Peter Martin; Christopher L. Hart, landscape architect and planner of Chris Hart & Partners, Inc.; and Bob Babson.

The Council Chair submitted the following documents:

1. Report entitled "INFORMAL COMMUNITY WORKSHOPS TO IMPROVE THE GENERAL PLAN AND COMMUNITY PLAN

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UPDATE PROCESSES” by Councilmember Charmaine Tavares, Chair, Planning Committee (July 5, 2001).

2. Report entitled “SECOND ROUND OF INFORMAL COMMUNITY WORKSHOPS TO IMPROVE THE GENERAL PLAN AND COMMUNITY PLAN UPDATE PROCESSES” by Councilmember Charmaine Tavares, Chair, Planning Committee (January 10, 2002).

The Department of Planning provided a brief presentation on Bill No. 84 (2002).

Your Committee received public testimony from 27 people. Twelve people testified in general support of the legislation. One person testified in support of an amendment to Bill No. 84 (2002) to require the County to promptly resolve inconsistencies among land-use maps. Thirteen people testified regarding concerns about regulatory urban growth boundaries. One person testified in opposition to Bill No. 84 (2002).

Your Committee recessed its meeting to September 18, 2003.

At its reconvened meeting of September 18, 2003, your Committee met with the Deputy Planning Director and a Deputy Corporation Counsel.

Your Committee received correspondence dated September 18, 2003, from the Council Chair to the Planning Director, requesting clarification regarding various issues relating to Bill No. 84 (2002).

Your Committee recessed its meeting to September 23, 2003.

At its reconvened meeting of September 23, 2003, your Committee met with the Planning Director, the Planning Program Administrator of the Long Range Planning Division, and a Staff Planner from the Department of Planning; and the Corporation Counsel.

Your Committee received written testimony from an anonymous “concerned Maui citizen” expressing concerns about possible conflicts among the General Plan, community plans, and zoning. In addition, your Committee

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received written testimony in support of Bill No. 84 (2002) from Mele Stokesberry and Charles M. Carletta, Diane Valenti, Patty and Steve Sadler, and Rebecca Ashton.

The Planning Director provided an informal depiction of urban and rural growth boundaries on a hypothetical General Plan map. He also transmitted a list of proposed amendments to Bill No. 84 (2002).

Your Committee received correspondence dated September 23, 2003, from Councilmember Charmaine Tavares, transmitting proposed amendments to Bill No. 84 (2002) to provide that non-decennial amendments to the General Plan by an individual or entity other than the Planning Director or Council shall not be accepted within three years of the decennial General Plan update and that non-decennial amendments to any community plan shall not be accepted within three years of the decennial community plan.

Your Committee also received correspondence dated September 23, 2003, from Councilmember Jo Anne Johnson, transmitting a proposed amendment to Bill No. 84 (2002) to provide that non-decennial amendments to a community plan may be proposed by the relevant community plan advisory committee.

In addition, your Committee received correspondence dated September 23, 2003, from the Council Chair, transmitting the following proposed amendments to Bill No. 84 (2002):

1. Clarify that the General Plan shall include both a map and urban growth boundaries.
2. Revise the text of the first subsection for the proposed section to community plans to provide clarity and internal consistency.
3. Require that community plan areas correspond to Council residency areas.
4. Provide that the respective community plans shall include the following components: (a) an urban-growth boundary and map

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delineating urban and rural areas; and (b) a designation of specific land uses within the urban and rural growth areas.

5. Revise the composition of the general plan advisory committee for Maui.
6. For the decennial General Plan update, require the planning commissions to review both the Planning Director's proposed revisions and the general plan advisory committee's recommendations.

The Chair of your Committee provided correspondence dated September 22, 2003, from Rick Holt, Holt & Everhart, Fairview, Oregon, to the Planning Director, regarding urban growth boundaries in Portland, Oregon.

In addition, your Committee received correspondence dated September 23, 2003, from Barbara Long, providing information relating to the impacts of urban growth boundaries in Portland, Oregon.

Your Committee raised concerns about the potential legal risks and liabilities and financial exposure arising from the enactment of Bill No. 84 (2002), especially because of the authorization for regulatory urban growth boundaries. In response to questions, the Corporation Counsel advised that it is difficult to evaluate the legal and financial impacts of the legislation, but that it is possible that property owners will sue the County if urban growth boundaries operate to prohibit landowners from developing their property as desired. The outcome of such lawsuits would depend on the facts and circumstances of the case, according to the Corporation Counsel.

Your Committee voted to amend Bill No. 84 (2002) as follows:

1. Provide that "Community plan advisory committee" means the same as "citizen advisory committee" in Charter Section 8-8.5(4) (corresponding to a proposal by Councilmember Charmaine Tavares in correspondence dated September 16, 2003).
2. Provide that the legislation shall not apply retroactively to applications submitted to the Department of Planning prior to the

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date the ordinance is enacted (corresponding to a proposal by the Council Vice-Chair in correspondence dated September 12, 2003).

3. Provide that non-decennial amendments to the General Plan by an individual or entity other than the Planning Director or Council shall not be accepted within three years of the decennial General Plan update and that non-decennial amendments to any community plan shall not be accepted within three years of the decennial community plan (corresponding to a proposal by Councilmember Charmaine Tavares in correspondence dated September 23, 2003).
4. For the decennial General Plan update, require the planning commissions to review both the Planning Director's proposed revisions and the general plan advisory committee's recommendations (corresponding to the sixth proposal by the Council Chair in correspondence dated September 23, 2003).
5. Provide that the respective community plans shall include the following components: (a) an urban growth boundary and map delineating urban and rural areas; and (b) a designation of specific land uses within the urban and rural growth areas (corresponding to the fourth proposal by the Council Chair in correspondence dated September 23, 2003).
6. Revise the first subsection to the section on community plans, providing clarity and internal consistency (corresponding to the second proposal by the Council Chair in correspondence dated September 23, 2003).
7. Add a new subsection at the end of the section on community plans to provide that: (a) upon the adoption of a community plan, lands designated for a less intensive use shall be zoned accordingly within eighteen months of adoption of the subject plan; and (b) if zoning is not adopted within the specified period, a parcel may be developed pursuant to applicable laws (corresponding to the second proposal by the Planning Director in correspondence dated September 23, 2003).

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8. Expand the membership of the Maui general plan advisory committee from 18 to 25 members.
9. Incorporate the planning commissions' recommendations, subject to revision to provide clarity and consistency with the Charter and other provisions of the bill, as amended.

Your Committee deferred the matter pending receipt and review of a revised version of Bill No. 84 (2002), incorporating the above-referenced revisions.

By correspondence dated September 24, 2003, the Chair of your Committee requested that the Corporation Counsel approve as to form and legality a revised version of Bill No. 84 (2002), incorporating the revisions approved by your Committee.

By correspondence dated September 24, 2003, the Corporation Counsel transmitted the requested revised bill, identified as Bill No. 84 (2002), Draft 1.

By correspondence dated September 24, 2003, Lynn Lincoln submitted written testimony in support of Bill No. 84 (2002).

At its meeting of September 30, 2003, your Committee met with the Planning Director, the Planning Program Administrator of the Long Range Planning Division from the Department of Planning, and the Corporation Counsel.

Your Committee received correspondence dated September 30, 2003, from the Council Chair, proposing amendments to the bill, primarily to promote clarity and internal consistency.

Your Committee received public testimony from ten people. One person testified in support of Bill No. 84 (2002), Draft 1. Another person suggested the bill be amended to allow for administrative correction of mapping errors. Another person requested deletion of the three-year waiting period for non-decennial amendments to the General Plan and community plans requested by individuals and entities other than the Planning Director or the Council. One person

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requested that the five-year waiting period for non-decennial amendments to the Molokai Community Plan by those other than the Planning Director or the Council be revised to be consistent with the standards for other community plans. Three people requested deletion of the requirement that all administrative actions comply with the General Plan and community plans. One person requested procedural revisions to provide internal consistency. Two people requested that the urban growth boundaries be conceptual, not regulatory.

The following provided written testimony in opposition to or expressing misgivings about Bill No. 84 (2002), Draft 1: Mercer "Chubby" Vicens, representing A&B Properties, Inc.; Harold Edwards, representing Molokai Properties Limited; Hans Riecke, representing the Maui Chapter of the American Institute of Architects; and Dean Uchida, Executive Director, Land Use Research Foundation of Hawaii. DeGray Vanderbilt transmitted proposed amendments.

Your Committee reviewed the following text that it had inserted in a non-codified section of the bill at the reconvened meeting of September 23, 2003: "This ordinance shall not be applicable to applications filed prior to the effective date of this ordinance."

To provide greater clarity, your Committee voted to amend that text to provide that the ordinance shall not apply to applications that are filed and complete prior to the effective date.

Your Committee authorized its staff to work with the Corporation Counsel to revise the bill to ensure that it is internally consistent, accurate, and furthers your Committee's expressed intent.

The Corporation Counsel advised that, notwithstanding the revisions, the bill could be passed on second and final reading.

Your Committee expressed its support for the legislation's improvements to the updating processes for the general and community plans, including the emphasis on community involvement and collaboration.

Your Committee voted to recommend passage of the bill, as revised, on second and final reading.

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Your Committee is in receipt of a revised Bill No. 84 (2002), Draft 1, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80A, MAUI COUNTY CODE, PERTAINING TO THE GENERAL PLAN AND THE COMMUNITY PLANS", approved as to form and legality, reflecting your Committee's recommendations.

Your Planning and Land Use Committee RECOMMENDS that Bill No. 84 (2002), Draft 1, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80A, MAUI COUNTY CODE, PERTAINING TO THE GENERAL PLAN AND THE COMMUNITY PLANS", be PASSED ON SECOND AND FINAL READING.

Adoption of this report is respectfully requested.

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WAYNE K. NISHIKI **Chair**

DANNY A. MATEO **Member**

G. RIKI HOKAMA **Vice-Chair**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

JOSEPH PONTANILLA **Member**

JO ANNE JOHNSON **Member**

CHARMAINE TAVARES **Member**

DAIN P. KANE **Member**