

October 3, 2009

Hawaii County Charter Commission:

Edmund Haituka

David Fuyertes

Daphne Honma

Casey Jarman

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Jamae Kawauchi

Joseph Kealoha

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Susie Osborne

Todd Shumway

Scott Unger

**RE: Charter Amendment to set aside 2% of Property Taxes to acquire lands for Public Access, Open Space and the Preservation of Natural resources.**

Aloha Commissioners-

The attached is taken from the Hawaii County Code Chapter 2, Article 42, relating to the Public Access, Open Space and Natural Resources Preservation Fund, part of which was approved by voters in 2006. Approval of this amendment by voters would delete this part of the code. We would like to include this as a charter amendment to remove the fund from the yearly budget wrangling and to honor the voter's mandate. In 2006, 63% of voters who voted on this measure approved it. This fund has been plagued with attempted take overs. During the Kim administration it was proposed by Mayor Kim himself to the Open Space Commission that they recommend to the county council that the fund be used for property maintenance. The commission voted NO and the message to the Mayor was to use the Department of Parks and Recreation funds to maintain parks. Mayor Billy Kenoi asked the county council to suspend deposits to the fund, which they have voted to do. We learned that 2% of property taxes is approximately \$4 million per year. This represents only 1% of a \$400 million budget. For a government with a prudent fiscal policy, cutting 1% of the budget should not represent a hardship.

To demonstrate how important this fund is to the citizens of Hawaii County, at this years budget hearings, 150 people took time from their busy days to testify to the Council to leave the fund alone. Over and over they said that, "Now it's the time to buy land and honor what the voters decreed in 2006."

By including this charter amendment, you will be honoring the voter's mandate and preserving this fund to do as the voters asked in 2006- preserve Hawaii County's treasured lands. We should have submitted this to voters as a charter amendment in 2006. We respectfully request that you submit the 2% Land Fund issue to voters once again, and give citizens the opportunity to decide.

In 4 months in 2006, over 100 volunteers collected almost 10,000 signatures on a petition initiative to get the question on the ballot: Whether or not to set aside 2% of property taxes each to acquire Hawaii county's treasured lands. 63% of voters approved this measure. This is a resounding mandate for county government 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 lands 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: Kawa Bay in Ka'u (coast

line land valued at \$5 million), Pao'o in North Kohala (valued at \$2 million), Kaiholena adjacent to Pao'o in North Kohala (253 acres of coastline valued at approximately \$15 million) and Puapua'a in Kona (8 acres of coast along Ali'i Drive valued at approximately \$8 million). The total to acquire all of these properties is approximately \$30 million. There is currently almost \$11 million in the fund. By using these funds to attract equal amounts of matching funds we may be able to acquire most of these properties.

This is not a new idea for the State of Hawaii! In 2006, voters in Honolulu County approved a charter amendment to set aside 1% of property taxes for open space acquisition and fair housing. In 2002, Kauai voters approved a measure that established their "Public Access, Open Space, and Natural resources Fund". In 2003, Maui County formed the Open Space, Natural Resources, Cultural Resources and Scenic Views Preservation Fund as apart of their charter by setting aside 1% of property taxes.

I think it is important to remember that our Hawaii State Motto states:  
*The Life of the Land is perpetuated in Righteousness.*

I especially like the Honolulu County preamble to the revised charter of the City and County of Honolulu, for it's highest priority of preserving land, which states:  
*We, the people of the City and County of Honolulu, accepting responsibility to seek to achieve in our time that righteousness by which the life of our land is preserved and to encourage an enable our people to participate in their governance, do hereby adopt this Charter of the City and county of Honolulu.*

We humbly ask you to include the 2%Land Fund in the charter amendments, put it on the ballot once again and allow Hawaii county citizens to vote for preserving the great places that give our county it's unique identify.

A heartfelt Mahalo-  
Debbie Hecht [hecht.deb@gmail.com](mailto:hecht.deb@gmail.com) or 989-3222  
Campaign Coordinator,  
Save our Lands Citizens Committee for the 2% Land Fund

SEE 2% LAND FUND CHARTER AMENDMENT ATTACHED TO THIS EMAIL.

**Links:**

To go to the Hawaii County's Public Access, Open Space and Natural Resources Preservation Commission's site: <http://www.hawaii-county.com/finance/ponc.htm>

Kauai County Open Space Commission information:  
<http://www.kauai.gov/Government/BoardsampCommissions/OpenSpaceCommission/tabid/294/Default.aspx>

Kauai County Charter- <http://www.kauai.gov/Government/PublicDocuments/tabid/362/Default.aspx>  
Section 19.15 Fund Administration- See Public Access, Open Space and Natural Resources Fund.

Honolulu County Open Space Charter Amendment-, ballot question go to:  
<http://www.honolulu.gov/chc/question3.htm>

Maui County Open space amendment since 2003- <http://www.co.maui.hi.us/index.aspx?nid=162>  
Look for Article 9, Section 19

**Proposed Charter amendment, October 2009:**

**Public Access, Open Space and Natural Resources Preservation Fund or the 2% Land Fund**

*NOTE: If approved by voters, the placement of this amendment in the Hawaii County Charter shall cause the corresponding ordinance in the Hawaii County code to be deleted*

***EXISTING Article X- Financial Procedures (in italics)***

**Section 10-12. Special Funds.**

*Upon recommendation of the mayor, the council may by ordinance abolish or establish such special funds as may be necessary for the proper and efficient segregation of fiscal operations of the county.*

**PROPOSED NEW SECTION:**

**Section 10-13. 1. Public access, open space, and natural resources preservation fund or the 2% Land Fund.**

(a) A public access, open space, and natural resources preservation fund is hereby established. This special fund shall be administered and managed by the finance department for the specific purpose of property acquisition and shall not be part of the county budget. Monies deposited in this fund shall be invested in a conservative, interest-bearing account that will allow monies to be available for property acquisition and prevent any erosion of the fund's principal amount.

(b) The fund shall consist of monies from:

(1) The proceeds from the sale of any general obligation bonds, authorized and issued for the purposes of this article;

(2) Council appropriations for the purposes of this article;

(3) Any source of revenue dedicated by the Hawai'i County Charter or the Hawaii County Code for the purposes of this article;

(4) Grants and private contributions intended for the purposes of this article;

(5) Two percent of Hawai'i County real property tax revenues collected annually (including penalties and interest). Deposits will be made to the fund on December 30, 2010 (initially prorated and calculated from November 3, 2010 to December 30, 2010) and then the period from December 30, 2010 to June 30 2010, and on December 30 and June 30, in successive years, with deposits being calculated on all real property tax revenue (including penalties and interest) received in the time since the last deposit.

(6) Monies from items numbered (1), (2), (3), and (4) above, shall be deposited as received;

(c) Monies in this fund may be used to pay the principal and interest payments on a Bond used to acquire lands according to the purposes and procedures of this section.

(d) Any balance remaining in the fund at the end of any fiscal year shall not lapse, but shall remain in the fund accumulating interest from year to year. The monies in this fund shall not be used for any purpose except those listed in this section.

**Section 10.13.2. The purpose of the 2% Land Fund.** The highest and best use of this fund is to leverage funding to attract matching funds and grants

The fund shall be used for acquiring lands or property entitlements in the County of Hawai'i for the following purposes:

(a) Public outdoor recreation and education, including access to beaches and mountains;

(b) Preservation of historic or culturally important land areas and sites;

(c) Protection of natural resources, significant habitat or eco-systems, including buffer zones;

(d) Preservation of forests, beaches, coastal areas, natural beauty and agricultural lands; and

(e) Protection of watershed lands to preserve water quality and water supply.

**Section 10.13.3. Public access, open space, and natural resources preservation commission.**

(a) There is an established a public access, open space, and natural resources preservation commission.

(b) As a vacancy occurs on the commission, the council member representing the district of that vacant seat shall nominate at least one person. Persons nominated must reside in the district of the vacancy. The Mayor shall do a background check of each person, make a report of findings and make recommendations to the council. The nomination shall be placed on the council agenda at the first meeting at which the matter can be legally agendized. The County Council without delay shall vote upon this nomination.

(c) A member may be removed upon recommendation by the mayor or the council and approved by the other entity. The members shall serve staggered terms of five years.

(d) No member shall be eligible for a second appointment to the commission until two years have passed.

(e) No member whose term has expired shall continue to serve on the commission, except that if no successor has been appointed and confirmed, the member shall continue to serve for ninety days or until a successor is appointed and confirmed, whichever comes first.

(f) Any vacancy occurring in the commission shall be filled for the unexpired term.

(g) Not more than a bare majority of the members shall belong to the same political party.

(h) Members shall receive no compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties. Necessary expenses may be paid in advance as per Diem allowance pursuant to article 16.

(i) A chairperson shall be elected from the commission members annually.

(j) The commission shall have the power to establish its rules of procedure necessary for the conduct of its business, which rules shall contain the time and place of all regular meetings, and which shall specify that a quorum shall be a majority of the members to which the commission is entitled.

(k) The affirmative vote of a majority of those members present shall be necessary to make any action valid.

(l) No person shall, by reason of occupation alone, be barred from serving as a member of this commission.

(m) The redrawing of the council district boundaries during a member's term shall not affect the remainder of their term.

(n) Staff shall be provided by the department of Finance. The Finance department shall give a written update of the progress of property acquisition and a financial report of the 2% Land Fund balance to the Open Space commission at each of their monthly meeting.

(o) Staff shall be required to maintain a Public Access, Open Space and Natural Resources Commission website which shall be easily available to the public. The website shall provide:

(1) The criteria for selection of commissioners

(2) The name, a short biography and resume of each commissioner.

(3) The name, phone number and email of the secretary of the commission, who shall be the contact for the commission.

(4) A form that shall be used to submit properties to be considered for acquisition by the commission.

(5) A monthly update report on the deposits made to the fund, the principal balance of the fund, expenditures and any interest earned.

(6) A monthly update report on the acquisition of prioritized lands listed for acquisition, including but not limited to current negotiations and matching funds sought and any other information deemed important by the commission.

(7) Annual reports to the Mayor and Council,

**Section 10.13.4. Duties and responsibilities of the commission.**

The duties and responsibilities of this commission are:

(1) To develop and submit to the mayor and council, a prioritized list of at least ten qualifying lands worthy of preservation by December 31 of each year. Priorities shall be listed on an island-wide rather than district basis.

(2) To explore methods of funding land acquisition and make recommendations to the mayor.

(3) The commission shall give emphasis to land acquisitions where the County's contribution can be leveraged to obtain State, Federal, and/or private funds. (2005, Ord. No. 05-166, sec. 4.)

(4) Conduct island wide meetings once per year to obtain input from citizens advocating for properties for preservation and acquisition by the County of Hawaii.

**Section 10.13.5. Prioritized list of qualifying lands worthy of preservation; land acquisition process**

(a) The prioritized list of qualifying lands worthy of preservation developed by the commission shall be submitted to the mayor and council for comments and recommendations by December 31 of each year. The list shall contain 10 properties listed in order of priority, the significance and the reason for the priority, the common name of the property, whether it is currently for sale, the community's anticipated use after acquisition, the council district of the property's location, the TMK number, the approximate acreage and the number of any resolution that has been passed regarding the acquisition of this property.

(b) Within forty-five days after receipt, the mayor will submit the list to the council with comments and recommendations.

(b) The council shall, by resolution, select the land or lands to be preserved and require the Director of Finance to enter into negotiations for the acquisition of these lands in the order of the prioritized list developed by the commission. Such resolutions shall remain in effect only until such time as the new updated prioritized list is received by the county; provide however those resolutions involving lands for which the negotiation process has already begun shall remain in effect until the director of finance has exhausted all efforts of negotiating the purchase of such lands.

(c) Under no circumstances shall the purchase price paid for a property exceed the appraised market value as prepared by an independent appraiser engaged by the County.

(b) Negotiations for acquisition of lands to be preserved shall occur between the County and the seller or its commissioned agent, or a licensed broker only. The commission shall have no role in the negotiations other than in its advisory capacity.

(c) Appraisals, title reports, surveying and other costs incidental to the acquisition of land shall be permitted uses of this fund.

(d) Management and/ or development of properties shall not be an expense of this fund.

(e) Adequate staff to carry out the provisions of this article and to manage the land acquired shall be provided in the department of finance to maximize the use of available funds by minimizing the payment of commission to outside agents to put together funding plans and to ensure that the County is a good steward of any land that comes under its control through this article.