

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

August 12, 2013

Council Chamber, 8th floor

CONVENE: 1:34 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Elle Cochran, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember Don S. Guzman
Councilmember G. Riki Hokama (in 1:48 p.m.)
Councilmember Mike White (in 1:35 p.m.)

NON-VOTING MEMBERS:

Councilmember Gladys C. Baisa (out 2:04 p.m.)

STAFF: Scott Jensen, Legislative Analyst
Yvette Bouthillier, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Kyle K. Ginoza, Director, Department of Environmental Management (IEM-2) Rowena
Dagdag-Andaya, Deputy Director, Department of Public Works (IEM-4, IEM-49)
Nolly Yagin, Civil Engineer, Department of Public Works (IEM-49)
Victor Ramos, Assistant Chief, Department of Police (IEM-4, IEM-18, IEM-49)
Ricky Uedoi, Lieutenant, Department of Police (IEM-4, IEM-18, IEM-49)
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
(IEM-4, IEM-18, IEM-49)
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
(IEM-2)
Richard Rost, Deputy Corporation Counsel, Department of the Corporation Counsel
(IEM-2)

OTHERS: Shelley Maddigan, (IEM-4)
Bobbie Patnode, Vice-President, Kula Community Association (IEM-4)
Others (5)

PRESS: Akaku: Maui Community Television, Inc.

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CHAIR COCHRAN: . . .(*gavel*). . . Will the Infrastructure and Environmental Management Committee Meeting now come to order. Aloha, I am the Chair of the Committee, Elle Cochran, and it is around 1:34 p.m. in the afternoon on Monday, August 12, 2013. And before we begin, please silence any noise-making devices and I shall introduce the Members that are here today. I have Vice-Chair Stacy Crivello.

VICE-CHAIR CRIVELLO: Aloha, Chair.

CHAIR COCHRAN: Aloha. Mr. Bob Carroll.

COUNCILMEMBER CARROLL: Aloha, Chair.

CHAIR COCHRAN: Aloha. Mr. Donald Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR COCHRAN: And Mr. Guzman.

COUNCILMEMBER GUZMAN: Good afternoon, Chair.

CHAIR COCHRAN: Aloha. Mr. Hokama and Mr. White are both excused for the moment. And joining us today, we have a special appearance by Ms. Gladys Baisa. She is a non-voting member, but we have quite a, an important item on the agenda and Ms. Baisa definitely wants to be participating in that. So, thank you for being here, Council Chair.

COUNCILMEMBER BAISA: Thank you very much, Chair.

CHAIR COCHRAN: You're welcome. Also, Administrative officials, we have, we will be having, and I'll just go down the list of everyone that has been called to, request to be in attendance today. From Public Works, Rowena Dagdag-Andaya for Items 18, 49 and 4. Currently sitting here with us is Director of Environmental Management, Kyle Ginoza, who will be participating with IEM-2. Managing Director, Keith Regan or David Ching, First Assistant to Mayor, may be available. Present here today, also, Assistant Chief, Victor Ramos, Maui Police Department, for Items 18, 49 and 4. Lieutenant Ricky Uedoi, Traffic Section of Maui Police Department, for Items 18, 49 and 4. Richelle Thomson, Deputy Corporation Counsel, IEM-2. And I see Richard Rost here also. And Michael Hopper, Deputy Corporation Counsel, IEM-18, 49 and 4. So we have quite a array, a big lineup of participants here from Administration. Thanks to everybody. Committee Staff here will be Secretary Yvette Bouthillier. Also, Legislative Analyst, Scott Jensen. And joining us is Councilmember Mike White. Aloha, Mr. White --

COUNCILMEMBER WHITE: Aloha.

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CHAIR COCHRAN: --nice to have you. Thank you for being here. Okay, in a few moments, we shall take public testimony. And just to lay the groundwork for that. If anyone is wishing to testify, please sign up at the desk out in the lobby here on the 8th floor. And the testimony will be limited to the items on the agenda today. Also, the testifiers will be able to have three minutes with one minute to conclude. And we have a connection to our District Offices so residents there can now participate in testimony. I will rotate through the sites throughout testimony period. And at this point, I shall open up the, I shall call on the Hana Office. Ms. Lono, are you there?

MS. LONO: Yes, good afternoon, Chair, this is Dawn Lono at the Hana Office, and I have no one waiting to testify.

CHAIR COCHRAN: Thank you, Ms. Lono. In the Lanai Office, Denise Fernandez, are you there?

MS. FERNANDEZ: Good afternoon, this is Denise Fernandez at the Lanai Office and we have no one waiting to testify.

CHAIR COCHRAN: Mahalo, Denise. And the Molokai Office, Ella Alcon.

MS. ALCON: Good afternoon, Chair, this is Ella Alcon on Molokai, and there is no one here waiting to testify.

CHAIR COCHRAN: Thank you, Ms. Alcon. Thank you, ladies, for being there. I'll come back to you in case you do have people that walk in for testimony. At this time, I shall open up the Chamber floor for testimony. And I have here, first on the list, that looks like Shelley Maddigan testifying on Item No. 4.

...BEGIN PUBLIC TESTIMONY...

MS. MADDIGAN: Aloha, Madam Chair, Council, thank you, or Committee. Thank you so much for listening to safety concerns on Haleakala Crater Road regarding bike traffic. I've been a resident on Crater Road for 13 years and the bike safety issue has been a non-stop issue since long before I arrived. It got worse, then better, now worse again. Safety has never appeared to be a paramount focus. It has been stated that this experience rates number one for our visitors even with accidents, near accidents daily, and deaths. Safety is nonexistent. Popularity of biking up, as well as down, is growing. Getting out of our driveways can be very challenging to say the least, no spacing between groups, many times a group of 15 bicyclers followed by a van, then by another group of 20, then another van, yet another group and another van. So, of course, people get a little irate, rage, road rage starts. It's rude and I think breaking the rules set forth by this Council for operation of this activity. Lack of road courtesy has now taken over once again. Attitude of tour van drivers often is one of hostility and intimidation. Road rage from locals getting to work or school also occurs. We are only lucky that so far we have not had any head-on car collisions from people trying to get around these tour groups. It's an industry that is not doing our local residents any good. It is just waiting until we have a colossal pile up of bodies. And our Highway Department assured us that when they did the resurfacing last year, that they made our bike lanes larger. It doesn't seem to be the case in many areas. They seem to

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be actually smaller, impossible in some areas for bikers to get off the road. On my way down here today, I forgot to mention in my written testimony about the individual riders who do not follow any rules. They are dangerous to themselves and to the people on the highway. I've had them coming up the wrong side of the road, down the wrong side of the road, and if any of you've been up Crater Road, you know there are a lot of sharp turns and it's scary. So, please, do what we can to improve this situation.

CHAIR COCHRAN: Thank you, Ms. Maddigan. Members, any need for clarification from testifier? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Madam Chair, and thank you, Ms. Maddigan, for being there. I noticed in your, you have written testimony as well, so kind of the same thing you did. You mentioned that rules were set forth by this Council for the operation of that activity. Do you know what those were?

MS. MADIGAN: I only know that at some point, I believe the Council, the Committee, did set forth when there was new insurance policies required, there were changes for the tour groups. And for a while, the road was shared properly. Now it's chaos again. The bikes, I mean, they're backed up. They do not stagger and it just causes unsafe conditions for everyone.

COUNCILMEMBER COUCH: Okay. Thank you, thank you, Madam Chair.

CHAIR COCHRAN: Thank you. Members, any further need for clarification from testifier? Seeing none, Ms. Maddigan, thank you for being here. Next testifier in the Chamber is Bobbie Patnode. And just a notation, Ms. Patnode is the final person signed up to testify here in our Chambers. So if anyone else is present and wants to do so, please sign up at the table out in the lobby. Go ahead, Ms. Patnode. Thank you for being here.

MS. PATNODE: Aloha. Aloha, Ms. Cochran. My name is Bobbie Patnode. I'm Vice-President of the Kula Community Association. I'm also Chair of the Bike Safety Committee. And I'm happy to see this on the agenda today, but I would write a little bit about what's going on because several of the, actually I think all the people on the Committee were not here at the last time this came before Committee. Only people who were here before were Ms. Baisa and Mr. Victorino. Bike tours down Haleakala Highway are conducted daily by several companies. Other companies rent bikes to visitors to ride unescorted. Visitors are driven up to the Crater to view the sunrise, then are taken outside the park to start their tour or unescorted ride. The park no longer allows bike tours in there because of the accidents and the dangerousness. Bike tours are usually 12 riders with a leader followed by a van. These groups often stretch out as much as 300 yards down the highway, depending on the skill of the riders and the leader. There's only one spot where I have ever seen these groups travel at the 30 miles an hour speed limit. On days when we have a ship in the harbor, like today, several tours can be stacked up one after the other. Consequently, the bike tour groups and unescorted riders create a hazard for automobile traffic. Drivers get frustrated, try to pass on dangerous curves, crossing double yellow line even into oncoming traffic. Escort vans will pull over and wave cars past into oncoming traffic. I recently saw a bike tour passing another bike tour into oncoming traffic. Unescorted riders ride below the speed

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limit in the middle of the road and prevent cars from passing. I've had bike riders turn to admire the view and fall off their bike right in front of my car. On a daily basis, Upcountry residents negotiate the bike tours and do their best not to harm anyone but continue to fear terrible accidents. I hope that you all have a copy of the Kimura Bike Study, which was done in 2010, and I really hope that's in your binder. The County paid \$250,000 for this study and I believe it was done well. The findings and recommendations almost all are still relevant. The recommendation shows that the situation can be improved. In the fall of 2010, after receiving the Kimura Study, the Kula Community Association Bike Safety Committee met to review recommendations and contribute to the downhill bicycle tour study consensus along with Maui Bicycle Alliance, Upcountry Citizens for Bike and Traffic Safety and Cruiser Phil's Bicycle Tours, and I attached that summary sheet when I sent in my testimony. I also attached the additional comments from the Kula Community Association. Early in 2011, I met separately with both Elle Cochran and David Goode to discuss what could be done. Essentially Mr. Goode said that we would have to have some bills drafted by the legal staff and really nothing has happened since then. The Kula Community Association Board believes the easiest and most obvious recommendation to implement as soon as possible is to close the permit loophole. At the time of the study, there were seven companies operating and only three had permits. I'd like to know how many are in effect today. It's only \$100. Without permits, in the event of a lawsuit resulting from an accident or damage, the County is liable. Other regulations that could be implemented in the short term include prohibiting tours on road segments, regulating spacing of groups, regulating mandatory use of pullouts and requiring use of a speedometer by the leader. And I would just conclude with that. I'm very happy that we're talking about this again. I'm not going to give up. We need to do something, and I, I really, I depend on you to help us make it safer. Thank you.

CHAIR COCHRAN: Thank you, Ms. Patnode. Members, any need for clarification or restating of testimony? Seeing none, Ms. Patnode, thank you for being here. And let me go back to our District Offices. To the Hana Office, Ms. Lono, do you have anyone waiting to testify? Ms. Lono, are you there, hello? Lanai Office, Denise?

MS. FERNANDEZ: The Lanai Office has no one waiting to testify.

CHAIR COCHRAN: Thank you. Molokai, Ella, are your there?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR COCHRAN: Thank you. And going back to Hana. Maybe...Ms. Lono, are you there?

MS. LONO: The Hana Office has no one waiting to testify.

CHAIR COCHRAN: Thank you. So, and anyone in the Chamber willing, needing to come down and testify? I believe there isn't anyone else. So, Members, without objections, I shall close the floor for testimony.

COUNCIL MEMBERS: No objections.

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CHAIR COCHRAN: Thank you. So ordered, Members. Thank you very much.

...END OF PUBLIC TESTIMONY...

ITEM NO. 2: RESOLUTION AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY INTERESTS AT WAILUKU (CONSENT DECREE SEWER REHABILITATION PROJECT) (CC 13-27)

CHAIR COCHRAN: Okay, moving on. We will be discussing four items on the agenda and three of these items are being heard by this Committee for the very first time, although the bike tour safety matter has been discussed during previous terms. As Ms. Patnode mentioned, there's just a couple Members here that have been through it and the rest of us have not. The crosswalk matter was heard by the Committee last term and has been referred to the Traffic Safety Council, who recommended that the crosswalks not be installed. However, this item did not auto file at the end of last term and instead was auto referred. So I intend to either recommend that this item be filed or passed following today's discussion. We'll also be discussing an item transmitted to the Council from the Chief of Police, as well as the previously mentioned referral regarding bike tour safety from the Kula Community Association. And before moving on I want to recognize Councilmember Hokama has joined us.

COUNCILMEMBER HOKAMA: Chair.

CHAIR COCHRAN: Aloha. IEM-2 is a Resolution Authorizing Proceedings in Eminent Domain for the Acquisition of Real Property Interests at Wailuku (Consent Decree Sewer Rehabilitation Project). This is, this is County Communication 13-27 from Director of Environmental Management, transmitting a proposed resolution to authorize proceedings in eminent domain to acquire a perpetual, non-exclusive subsurface easement for sewer line purposes on a portion of TMK: (2) 3-4-043:001, consisting of approximately 671 square feet, as part of the Consent Decree Sewer Rehabilitation Project in Wailuku, Maui, Hawaii. The correspondence is dated July 8, 2013, from the Department of Corporation Counsel, transmitting a revised proposed resolution entitled Authorizing Proceedings in Eminent Domain for the Acquisition of Real Property Interests at Wailuku, Maui, Hawaii. The revised proposed reso incorporates a missing Exhibit "1". So at this point, with this IEM-2, I'll open up the floor to Director Ginoza to share on the item or if Corporation Counsel needs to have some opening comments about the item.

MS. THOMSON: Thank you. Good afternoon, Chair Cochran and members of the Committee. So the resolution before you is authorizing Corporation Counsel to proceed in eminent domain to acquire a small easement for sewer line purposes. The property is the location of the Jack in the Box restaurant on Lower Main Street. There are two existing easements for utilities and sewer lines dating back to 1934 and 1999. Back in 2009 the Wastewater Division notified the landowner by certified mail that as part of this project, the Division would be relocating and replacing gravity sewer lines along Lower Main Street in Wailuku and a portion of which project would run through their property. The Wastewater Division was also later contacted by Jack in

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the Box restaurant, which leases the space, and Corporation Counsel and Jack in the Box's legal department worked on a right of entry related to the project, which is included in your binders. Negotiations for the easement were unsuccessful, which is why we're before you today.

CHAIR COCHRAN: Thank you, Ms. Thompson. Mr. Ginoza, did you have anything to add at this point?

MR. GINOZA: Nothing further, thank you.

CHAIR COCHRAN: Okay, thank you, Director. Members, the floor is now open for discussion, questions. Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Madam Chair. To either Corp. Counsel or Mr. Ginoza, looking at some of the maps, you have an easement A-1-A and then easement 2. And easement 2 is the one that we want to do eminent domain on, is that correct?

MR. GINOZA: Yes.

COUNCILMEMBER COUCH: Okay. Then that takes away a need for, you know, that portion of easement A-1-A. Are we doing anything with that? Is that a separate issue or how does that work?

MR. GINOZA: No, Ms. Chair, can...

CHAIR COCHRAN: Yeah, go ahead, Director.

MR. GINOZA: We, we still need, we still require easement A-1-A --

COUNCILMEMBER COUCH: All of it?

MR. GINOZA: --because, yes, because what happens is that coming from Lower Main Street, that, that sewer line is actually to the, coming from the Nisei Veterans coming down. So we still require use of that --

COUNCILMEMBER COUCH: Oh, the whole thing?

MR. GINOZA: --that _____ A-1-A.

COUNCILMEMBER COUCH: Okay, so you're just adding on to that?

MR. GINOZA: Yes.

COUNCILMEMBER COUCH: And no reason, is there any reason why we couldn't just go in that existing easement, just as an engineering issue or?

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MR. GINOZA: Basically it is an engineering issue, where if we tried to connect to that existing sewer line, there wouldn't be enough slope. As it is, we, we try to get about one percent slope in this kind of gravity sewer line and as it is, it's like .2 percent slope. And so if we connected to that, it would be even less.

COUNCILMEMBER COUCH: Okay.

MR. GINOZA: And so just from a engineering and reliability standpoint, we needed to try to maintain as much slope as possible.

COUNCILMEMBER COUCH: Okay. Thank you, Madam Chair.

CHAIR COCHRAN: Okay, thank you, Mr. Couch. Members, any further questions, concerns for Department or Corporation Counsel? No, oh, Mr. Couch, again?

COUNCILMEMBER COUCH: Yeah, sorry --

CHAIR COCHRAN: Okay, no problem.

COUNCILMEMBER COUCH: --I was waiting for everybody else, but. So eminent domain is, is very tricky. Did the, the landowner hasn't, hasn't complained about us trying to do eminent domain or is he just saying, he/she just saying whatever happens, happens?

MS. THOMSON: The landowner is aware that we're going to be proceeding to condemn the easement. You know, we, we did try to work it out amicably prior to this, but, you know, we're very far apart on pricing.

COUNCILMEMBER COUCH: Okay. Alright, thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Couch. Any more, any other Members have any concerns or questions for Corporation Counsel or Department? Seeing none then, I'll entertain a motion at this point then to recommend passage on first reading of the proposed resolution and filing of County Communication, but I guess...Mr. Jensen, can you clarify that actually there's two readings that this process needs to go through, is that correct?

MR. JENSEN: Absolutely, as this is a resolution for eminent domain, it will require passage on two readings as you indicated. So the Committee's recommendation would be for passage on first reading of the revised proposed resolution.

CHAIR COCHRAN: Okay. So let me remake my motion then to reflect what Mr. Jensen just said. I recommend, I'll entertain a motion to recommend passage on first reading of the revised proposed resolution and filing of County Communication. Is that correct, Ms. Bouthillier? Yes.

VICE-CHAIR CRIVELLO: So moved.

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COUNCILMEMBER COUCH: Second.

CHAIR COCHRAN: Thank you, Vice-Chair. So it's been moved by Ms. Crivello and seconded by Mr. Couch. Members, any further need for discussion on the matter? Mr. Couch.

COUNCILMEMBER COUCH: Yes, Madam Chair. You know, while I understand the issues that we have with...the, the Department is having with the landowner, I'm very hesitant to, to do eminent domain unless there's a very, very pressing need. This one appears to be that way, but I just want it to be on record that eminent domain is, is kind of a last resort and it's unfortunate that we have to go to that at this point. And one of the things, and correct me if I'm wrong Corporation Counsel, that once we pass this resolution in Council, then the eminent domain is done. It's just a matter of the price then. The Mayor doesn't have any say in it or anything else. Just the matter of haggling over the price with the Courts, is that right?

MS. THOMSON: Right. Richard Rost is here to answer more of the questions that have to do with the Court procedure, but, yes, it would have to be a court-approved price. And we're not seeking the fee interest, it's simply condemning the easement area.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR COCHRAN: Was that answered to your satisfaction, Mr. Couch? 'Cause we, I guess we have Mr. Rost here --

COUNCILMEMBER COUCH: ...*(Inaudible)*...

CHAIR COCHRAN: --for a resource. Okay, thank you, Mr. Couch, and I hear your concern also. Mr. White.

COUNCILMEMBER WHITE: Thank you, Madam Chair. Is, is there any concern from the landowner that this is gonna provide an interruption to his business or her business? And is that why the discrepancy in the understanding of price?

MS. THOMSON: From, from my communications with the landowner, the work is done. So, and it's, you know, subsurface, the area's been returned to, you know, normal asphalt and the driveway is repaved and all. So I don't believe that that is a concern as far as the, the work that's, you know, that's already in place.

COUNCILMEMBER WHITE: But, I'm, from the look of it, there was probably some substantial business interruption during construction, and, is there, maybe this is for Mr. Ginoza, whether there's a provision for us to offset any kind of business losses when we're, when we're digging up somebody's parking lot that serves their business, or seems to be by the, by the map?

MR. GINOZA: Typically, we, we enter into a temporary right of entry and we don't give any concession for that privilege. But in the public good, we, we seek that. So that's our normal process is, we approach the landowner with this project that requires rehabilitation or

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replacement and request the right of entry. And so they're aware of the plans of what we intend to do and, you know, we do the project and after the project we, we seek the non-exclusive, perpetual easement. And the reason why we don't do it in the front end is in case we run into some unforeseen circumstance that might have to divert the line somewhere else. And so we go in with the understanding that we're going in for the right of entry, for the purpose of doing this sewer line replacement, and that we will be going in for an easement at a later date.

COUNCILMEMBER WHITE: And do you know how long this particular project took?

MR. GINOZA: I don't know, I don't know offhand. It was on the order of months versus years. I mean, but the business remained open...oh.

CHAIR COCHRAN: Yes, Richelle.

MS. THOMSON: I have some information on the specifics of this project. There was a temporary right of entry executed with Jack in the Box and I know that there were extensive accommodations made as far as the timing of the work. So I believe the work was all done at night during the restaurant's least busy hours and things like that. So there were, you know, we, I think that our Wastewater Division did go out of its way to make sure the impacts were as minimal as could be.

COUNCILMEMBER WHITE: Okay, so then it was, it was put back together with, with whatever means necessary?

MS. THOMSON: Yes.

COUNCILMEMBER WHITE: So that it was operational during business hours?

MS. THOMSON: Right. And I think that the project as it related just to that parcel, didn't take that long, on the, the order of, you know, a week --

COUNCILMEMBER WHITE: Uh-huh.

MS. THOMSON: --or so.

COUNCILMEMBER WHITE: Okay, great. Thank you, Madam Chair.

CHAIR COCHRAN: Okay, thank you, Mr. White. Yes, Mr. Couch. Anyone else before I go back to Mr. Couch? Okay, yes, Mr. Couch.

COUNCILMEMBER COUCH: Corp. Counsel brought up another question and maybe we do need Mr. Rost there. You said it wasn't a fee simple, we aren't doing eminent domain for the fee, we're just doing it for the entry. What does that mean to us? I mean, we won't own the land, we're just, I guess I would need a little bit more explanation as to exactly what we're getting and what we're taking away from somebody.

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MR. ROST: Well, we're condemning an easement, which is something we've done in the past.

CHAIR COCHRAN: Mr. Rost, can you introduce yourself?

MR. ROST: Oh, I'm sorry, Madam Chair. Deputy Corporation Counsel, Richard Rost. Good afternoon
--

CHAIR COCHRAN: Thank you.

MR. ROST: --Madam Chair. Good afternoon, members of the Committee. The easement we're condemning is a non-exclusive, perpetual easement, which means it's essentially going to be there forever, but we're not interfering with their ability to do anything with the property other than they can't remove our sewer line. So it goes into the valuation. If we were taking the fee, it would be more expensive, but our appraisal was based on this easement.

COUNCILMEMBER COUCH: Okay, so we're not really getting land, we're just, where the pipe is, they can't tear it up?

MR. ROST: Correct.

COUNCILMEMBER COUCH: Wow, okay, thank you.

CHAIR COCHRAN: Thank you, Mr. Couch. And, Members, we have Mr. Rost here, anyone have any questions for Mr. Rost? Seeing none, oh, yes, Mr. White.

COUNCILMEMBER WHITE: Yeah, just looking at the, at the drawings again. Are we giving up the earlier easement or a portion, any portion of the earlier easement.

MR. GINOZA: No, we're not. If you looking at, if you look from...

COUNCILMEMBER WHITE: Yeah, I'm looking at drawing...

MR. GINOZA: Exhibit "1"? If you're looking at the engineering drawing that says Consent Decree Sewer Rehabilitation Project...

COUNCILMEMBER WHITE: Yes --

MR. GINOZA: Is that the one?

COUNCILMEMBER WHITE: --that's the one.

MR. GINOZA: Okay, so, if you can, you see it's kind of a, like an "L" shape, the old easement.

COUNCILMEMBER WHITE: Right.

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MR. GINOZA: So the bottom portion of the “L” is where I had mentioned to, in response to Mr. Couch’s question, that that’s coming from the Nisei Community Center or whatever that property is across the street.

COUNCILMEMBER WHITE: Uh-huh.

MR. GINOZA: So that’s their, the sewer line going that way. If you see it’s kind of coming to a “T” where that, I said “L” but it’s really a “T”, that’s where the old sewer line was, the gravity sewer line. So along Lower Main Street, before this project, the sewer line came across a number of, within the properties --

COUNCILMEMBER WHITE: Uh-huh.

MR. GINOZA: --on the Waihee side of Lower Main Street. So it actually was going in properties. So for us to replace that gravity line, we’d have to kind of tear up individual properties. So in order to not have to do that, we moved the sewer line more along Lower Main Street.

COUNCILMEMBER WHITE: Uh-huh.

MR. GINOZA: So the old sewer line was along that alignment you see in that “T” portion. And so we still, to answer your question, we still need the full easement because there’s a Nisei Veteran’s line connecting to where this, this new sewer line will connect to that line going to basically toward the Y Hata area along Waiehu Beach Road.

COUNCILMEMBER WHITE: Okay.

MR. GINOZA: So we’d still need the full easement.

COUNCILMEMBER WHITE: Thank you. Thank you, Chair.

CHAIR COCHRAN: Okay. Thank you, Mr. White. Members, any further need for discussion or questions for our Corporation Counsel or Director? Okay, so the motion has been made by Ms. Crivello, seconded by Mr. Couch. And all those in favor of the motion, please say “aye”.

COUNCIL MEMBERS: “Aye”.

CHAIR COCHRAN: Any opposed, say “no”. Okay, seeing no opposition, motion passes with 7 ayes, 0 noes.

VOTE: AYES: Chair Cochran, Vice-Chair Crivello, and Councilmembers Carroll, Couch, Guzman, Hokama, and White.

NOES: None.

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ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

**ACTION: FIRST READING of revised resolution; and FILING of
communication by C.R.**

CHAIR COCHRAN: And thank you, Corporation Counsels and Director Ginoza --

MR. GINOZA: Thank you.

CHAIR COCHRAN: --for being here.

ITEM NO. 18: MOBILE ELECTRONIC DEVICES (CC 13-222)

CHAIR COCHRAN: Next item, Members. Let's move on to IEM-18 and this is for Mobile Electronic Devices. And this in particular is a County Communication 13-222 from Chief of Police, transmitting a proposed bill entitled A Bill for an Ordinance Repealing Section 10.52.260, Maui County Code, Relating to Mobile Electronic Devices. And the purpose of this proposed bill is to repeal Section 10.52.260, Maui County Code, in its entirety. By Act 74 (2013), the Legislature established a Statewide ban on the use of cellular phones and other mobile electronic devices while operating a motor vehicle, effective July 1, 2013. Act 74 (2013) supersedes Section 10.52.260, Maui County Code. And so this, I will now receive comments. Do we have mister, who's gonna be representing Maui Police Department, Mr. Uedoi, or I'll have Maui Police Department come on down to the floor, please. Thank you. And I believe Mr. Jensen just distributed a copy of Act 74 (2013) for all of us to review. And I will open the floor for comments, I guess, from Mr. Uedoi, Officer Uedoi, if you don't mind, please introduce yourself and give us comments on the item _____.

MR. UEDO: Good afternoon, Chair. Lieutenant Ricky Uedoi, Traffic Commander at the Police Department. Act 74 became a Statewide law. Basically they wanted uniformity across the State so that the State could be consistent with the violations. The only changes that the State law has that the County didn't have was that those under 18 years old are not allowed to use hands-free devices while operating a vehicle. And also that, the fines now are graduated fines. So the first offense is a \$100 fine plus administrative fees. And then if you get caught within a certain amount of period, then the fines goes up to 200 and up to \$300 plus the fees. Also, the State law made it that the fines would double in construction and school zones.

CHAIR COCHRAN: Okay, is that everything, Lieutenant?

MR. UEDO: Yes.

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CHAIR COCHRAN: Thank you. Any comments, Mr. Hopper, at all?

MR. HOPPER: Madam Chair, my only comment would be on, on page 7 of the House Bill that you were given, I would note that in Subsection (h), it states, this section shall supersede any County ordinance relating, regulating the use or utilization of mobile electronic devices while operating a motor vehicle. So that's a very clear preemption provision that was placed by the State Legislature, so that, that I, I believe prompted the repeal in the County ordinance of the County's own mobile electronic device law.

CHAIR COCHRAN: Thank you, Mr. Hopper. Members, the floor is now open for yourselves for discussion, questions, comments. Mr. Hokama.

COUNCILMEMBER HOKAMA: I thought our legislation regarding minors has merit, still has merit. So why wouldn't that be still left incorporated in the Code since it just makes it stricter? We're not reducing the statute in any way. Why wouldn't we be able, why wouldn't we consider keeping that component of the ordinance?

CHAIR COCHRAN: Mr. Hopper.

MR. HOPPER: Thank you, Madam Chair. I would note for the record, I wasn't involved in the drafting of this repeal, but, and so if this is an area we want to look at in a bit more detail, we could, but given the language by the State Legislature, it's, it's, appears clear that this was an area that the State intended to preempt the counties completely. Now normally if, if a State law, like for example, the Agricultural Zoning Law, just as an example, comes up, the counties can be more restrictive in some of their, their terms. But generally if a State law makes very clear that they intend to preempt the counties in all aspects of that law, then, then generally the County would not be able to pass legislation on that area, which in this case would be mobile electronic devices. We, we could research this a bit more. It's not an area that I, that I specifically looked at. I'm not sure if our office looked at that or if the Police Department had an interest in retaining that provision. So I can't speak to, to the merits of that but I would say generally with preemption language like this in the law, I do think it would be difficult for the counties to enforce any type of mobile electronic device ordinances with this express preemption language in this.

CHAIR COCHRAN: Thank you, Mr. Hopper.

COUNCILMEMBER HOKAMA: Well, you know how I feel about the State's ability to believe they can exercise their options on us since at the end of the day, it is still a County employee that is required to enforce this State policy. But I appreciate, you know, Mr. Hopper's counsel to the Committee. But my other question would be then, Chair, since we having our Police Department and whatnot here, where is this in your enforcement priorities right now, Lieutenant? I, you know, we know you folks have a lot of pressing things, every day things come up, unforeseen. But, in general...

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MR. UEDO: It's one of top priorities, along with speeding and seatbelt use. Distracted driving across the nation has, there's been a rise with injuries as a result of people using a cell phone or electronic mobile device, so we do place it in our top three in our enforcement efforts.

COUNCILMEMBER HOKAMA: Uh-huh. Are you aware if there is Federal funds or other type of funds that assist you like the, with the DUI component of enforcement?

MR. UEDO: Yes, we do have a distracted driver grant that, it's coming up towards the end and I just applied for fiscal year, Federal fiscal year for 2014 and it gives us overtime money to do enforcement on the distracted driving grant.

COUNCILMEMBER HOKAMA: Uh-huh. Do you find--you know, maybe you deal with this enough, more than us--that...is there a specific target group that tends to be the problem core? Like is it mothers taking their kids to school in the morning, that's one of the main problems with this device? Is it young people, high school age...

MR. UEDO: With regards to this, with regards to this, we find pretty much everybody.

COUNCILMEMBER HOKAMA: Everybody.

MR. UEDO: Everybody, yes. We couldn't just isolate it to a specific age group or target any, any kind of background. It's, we see everybody from young to, to the old. So, it's a problem that, it seems like it's getting better. So we notice, we notice that our enforcement, you know, has curbed some of this activity.

COUNCILMEMBER HOKAMA: Yeah. In your enforcement activities, what is the most common response? They weren't aware there was a law against such activity, or, or, they forgot? I mean, what is the normal response your officers deal with.

MR. UEDO: It's usually, the phone just rang and I was gonna tell 'em that I would call 'em back. That's one of the common ones. And then to give you an idea, back in April we, we dedicated that whole month and we issued 1,122 citations in, in the month of April itself. And then we did a...

COUNCILMEMBER HOKAMA: Eleven hundred?

MR. UEDO: Eleven hundred, twenty-two. And then we did a follow-up in June for a one-week period --

COUNCILMEMBER HOKAMA: Uh-huh.

MR. UEDO: --before the law took effect and we issued 265 in one week. And we plan on doing something to follow up. And now with this new State law --

COUNCILMEMBER HOKAMA: Uh-huh.

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MR. UEDO: --it's a mandatory court appearance. That was different from the County ordinance where they could just mail in the payment --

COUNCILMEMBER HOKAMA: Uh-huh.

MR. UEDO: --so now they have to appear in court and be assessed the fine because of the graduated fines.

COUNCILMEMBER HOKAMA: You know, it's a tough responsibility, but, you know, we thank you for your Department for doing the best it can. Thank you.

MR. UEDO: Thank you for your support.

CHAIR COCHRAN: Yes, Mr. Hopper.

MR. HOPPER: Madam Chair, if I may. One of the points Councilmember Hokama brought up was the minor provision in our current Code. That's in Subsection D and it, it appears to state that a, essentially someone holding a instructional permit or a provisional license is further prohibited from using hand-free technology to assist with the use of a mobile electronic device, that additional ban. In, in the State law, this is Page 4 of your, of your, of your State law, it states that no person under 18 years of age shall operate a motor vehicle while utilizing a hands-free mobile electronic device except for the sole purpose of making a 911 emergency communication. So while that doesn't exactly match the County's language, there is a provision for the restricting the use of hands-free technology to those under 18 years of age. So, just, I wanted to note that because I was not aware of that until going through this just now.

CHAIR COCHRAN: Thank you, Mr. Hopper. Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: Well I thank the Counselor for sharing that information, Chair. But since, you know, I was listening to one of the earlier testifiers, Lieutenant. I know this is more about driving, you know, four-tired vehicles, but any additional comments on mopeds, bicycles and other type of potentially motorized although maybe not as fast as --

MR. UEDO: With regards to --

COUNCILMEMBER HOKAMA: --a vehicle.

MR. UEDO: --the cell phone?

COUNCILMEMBER HOKAMA: Cell phones, please.

MR. UEDO: The definition of a motor vehicle would cover mopeds and motorcycles. So that we would enforce, too, if they were on a --

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COUNCILMEMBER HOKAMA: Yeah.

MR. UEDO: --cell phone.

COUNCILMEMBER HOKAMA: But riding down Haleakala, 45 miles an hour on one bicycle and using a phone, that currently is not one illegal activity?

MR. UEDO: Correct. It's not wise to do.

COUNCILMEMBER HOKAMA: It's not wise to do or smart to, but it's not prohibited?

MR. UEDO: Correct.

COUNCILMEMBER HOKAMA: Okay, thank, thank you for that, Lieutenant.

CHAIR COCHRAN: Done, Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chair.

CHAIR COCHRAN: Okay. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Madam Chair. One thing you mentioned, that mopeds would be considered a motor vehicle, because right now according to State Department of Transportation, if it's 55 ccs or less, it's not considered a motor vehicle. That's why we have the issue with them on the bike path on Mokulele Highway.

MR. UEDO: If you look in the HRS, I believe there's three different definitions of a vehicle and some of them conflict with one another.

COUNCILMEMBER COUCH: Yeah.

MR. UEDO: So there would be a violation under one of the definitions.

COUNCILMEMBER COUCH: Oh, okay. Good. The other question I have is, and there's, you know, there isn't much you can do unless, again as Mr. Hokama says we can make it stricter or maybe not depending upon what Section 8 says, you know, when you talk about drivers using a two-way radio or private land-mobile radio system or those with fleet vehicles, those usually are big trucks and one would think that if it's dangerous for somebody in a car, it's much more dangerous with somebody in a, in a big truck like that. I understand emergency responders 'cause you gotta do your radios back and forth, but these big fleet vehicles, which by the way apparently include buses, it's really discerning to see somebody in a truck like that talking on the cell phone or even a bus driver talking on a cell phone when, when the people in the smaller cars or mopeds can't. Is there, in your experience, you know, and I'm not trying to put you on the spot here, but in your experience is that something that you might, would consider us kind of restricting further or?

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MR. UEDO: I believe there's something that is being looked into regarding that by the DOT, that they want to consider having that revisited for future legislation.

COUNCILMEMBER COUCH: Okay.

MR. UEDO: But, it is a problem and nobody is exempt from being involved in a crash because of a, you know, being distracted by using --

COUNCILMEMBER COUCH: Right.

MR. UEDO: --a device. So, I mean, it can happen to anybody, even with law enforcement who are exempt, we still can get into a crash because it has the ability to --

COUNCILMEMBER COUCH: Uh-huh.

MR. UEDO: --you know, distract you from operating a vehicle, so.

COUNCILMEMBER COUCH: Right. Yeah, and again, it's understandable with emergency services, Police, Fire and Ambulance, but, and Mr. Hopper, maybe this goes to you. Can we be more strict? I know your response to Mr. Hokama makes it seem like we may not be able to because of Section (h) on Page 7, but if we wanted to do something like that, what would be our course of action?

MR. HOPPER: I think, Madam Chair, thank you.

CHAIR COCHRAN: Yes.

MR. HOPPER: I, I, I mean, I think we would need an amendment in the State law to at least be a little bit more lenient than Section (h) is. I mean, that does appear to be a very clear intent to preempt. It even mentions county ordinances specifically. So while I would agree generally, there's an argument in laws that don't have language like this that we can be more restrictive, that's not to say we wouldn't be challenged. I know that, for Statewide, when counties have more restrict Ag standards or, or issues in the Ag, Ag zoning areas, there's been grumblings about that, and I've talked with other county attorneys on that and the position is that yes, the counties can be more restrictive but that, that law does not have a, a section like Section (h) here that's very clear. We could look at the legislative history but, as I think the Lieutenant commented, if the intent of this law was to get uniformity throughout all of the counties, that there would appear to be an intent that this is it for all of the counties and we don't want variation, even if it is more strict. And so that's my initial opinion in looking at this. We could look in more detail but I would frankly doubt there would be much leeway. Again, I'm sure if the County has serious concerns, that it wants to, that it thinks this law hasn't addressed, going to the Legislature about that may be, may be worthwhile but with provision here now, I think that would be difficult.

COUNCILMEMBER COUCH: Okay. Thank you, Madam Chair.

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CHAIR COCHRAN: Thank you, Mr. Couch. Members, anyone else have questions, comments, further discussion? And thank you, and, you know, Mr. Hokama, I know the whole State superseding county thing and, but, you know, I do, I want to, I brought this up because it was just sent to my Committee last month and I wanted to expedite it through this Committee for, you know, to work with Maui Police Department to start getting, I guess, that uniformity Statewide and implementing and getting on the, this project of, you know, enforcement on this level. So at this point, Members, without further discussion, I shall make my recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR COCHRAN: Thank you. I shall entertain a motion to recommend passage on first reading of the proposed bill and filing of this County Communication.

VICE-CHAIR CRIVELLO: So moved.

COUNCILMEMBER COUCH: Second.

CHAIR COCHRAN: Thank you. It's been moved by Ms. Crivello, seconded by Mr. Couch. And the floor is open again for discussion. Members, any need? Seeing none then, I shall call for the vote. All those in favor say "aye".

COUNCIL MEMBERS: "Aye".

CHAIR COCHRAN: Any opposed, say "no". Seeing no opposition, motion passes with seven ayes, zero noes.

VOTE: AYES: Chair Cochran, Vice-Chair Crivello, and Councilmembers Carroll, Couch, Guzman, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FIRST READING of bill; and FILING of communication by C.R.

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CHAIR COCHRAN: Thank you, Members, and thank you, Lieutenant, for being here. Maui Police Department, thank you for your time and work that you do out there.

ITEM NO. 49: BILL ESTABLISHING CROSSWALKS ON KANALOA AVENUE AND WELLS STREET (WAILUKU) (CC 12-96)

CHAIR COCHRAN: Members, moving on to IEM-49. This is a Bill Establishing Crosswalks on Kanaloa Avenue and Wells Street, which is in Wailuku. And this is a County Communication 12-96 from Director of Public Works, transmitting a proposed bill entitled A Bill for an Ordinance Amending Section 10.60.042, Maui County Code, Relating to the Establishment of a Crosswalk on a Portion of Kanaloa Avenue and on a Portion of Wells Street, Wailuku, Maui, Hawaii. The proposed, the purpose of the proposed bill is to allow the installation of crosswalks on Kanaloa Avenue fronting baseball field 2 of the War Memorial Complex and on Wells Street in the vicinity of the tennis courts at Wells Park, Wailuku, Maui, Hawaii. I have here with us, looks like Department of Public Works Deputy Director, Rowena Dagdag-Andaya, with us today and sorry, with you is?

MS. DAGDAG-ANDAYA: I'll introduce him.

CHAIR COCHRAN: Oh, okay, and introduce who's with you joining us from Public Works also. I shall open up the floor for your comments --

MS. DAGDAG-ANDAYA: Okay.

CHAIR COCHRAN: --after that.

MS. DAGDAG-ANDAYA: Good afternoon, Madam Chair, and Members of the Committee. Rowena Dagdag, Public Works, Deputy Director, and I have here with me our traffic engineer, Nolly Yagin. And as the Chair had mentioned previously, this item involves the installation of two mid-block crosswalks. One is at Kanaloa Avenue between the War Memorial ball fields and the Boys and Girls Club, and the other is on Wells Street, about 200 feet east of South Market Street. The Department received these requests which were analyzed by our staff and then transmitted to the Traffic Safety Council for their review and recommendation. I know that the Committee previously met on this matter, but I just wanted to give a, an overview of what had transpired since the Traffic Committee met and also give a brief overview of what happened at the last Committee meeting. So the Traffic Safety Council met on April 4th and voted to not approve or support the proposed crosswalks at these locations. In their letter to the Director of Public Works, the Traffic Safety Council wrote and stated that the proposed crosswalk at Kanaloa Avenue was discussed by them at their June 8, 2010 meeting, was also discussed at their June 8, 2010 meeting and at that time they also did not support the additional crosswalk at the location. Regarding the proposed crosswalk on Wells Street, the Traffic Safety Council members felt that the proposed crosswalk would create pedestrian use and travel where there is little to no accompanying sidewalk facilities on the north or west, or the Waihee side of Wells Street. And this is on the side where you find the Maui Realty building and I believe it's like a boys home. In June of 2012, this item was reviewed by the Infrastructure Management

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Committee, where it was deferred. At that meeting, discussion regarding the proposed crosswalk at Kanaloa Avenue involved the proposed location near ball field no. 2 and that it would be located between two existing crosswalks that are about 680 feet apart. These crosswalks are also pedestrian activated, which means that there are push buttons that would allow lights to come on when a pedestrian is ready to cross the crosswalk. The Traffic Safety Committee felt that the existing crosswalks were adequate and that was what our Director had also related at this Committee meeting. Also wanted to note that the Traffic Safety Council did indicate that there was an issue regarding the dropping off of equipment, or a potential issue, and that maybe a loading zone might be appropriate, in which case, we would need to perhaps take one or two stalls there and create a loading zone. The loading zone would also need Council approval. Now with regards to the proposed crosswalk at Wells Street, the Department's position at that time, at that June meeting, was to defer the recommendation until the Department was able to insert a sidewalk in our Wells Street Federal Aid project. At this time, however, we are not able to insert that sidewalk on the Waihee side of Wells Street, and there's also a sidewalk improvement project that we have going on, and this is a separate CIP item. That Wells Street sidewalk improvement project is actually a joint project with the Parks Department to fix the sidewalks adjacent to the parks, the tennis court and also extends toward the swimming, swimming pool area. At this time, the Department's position remains the same, but we most certainly can take a look at other alternatives that the Committee suggests. And as I mentioned earlier, I have Nolly Yagin of our Traffic Section here with us and we'd be happy to answer any questions that you have.

CHAIR COCHRAN: Thank you, Director. And, Members, I also have, I guess, Maui Police Department is here to, to chime in and share comments if need be in regards to perhaps safety issues or traffic issues too in regards to these items. The floor is now open for you folks if you have questions and comments. Mr. Couch, you're grabbing your microphone.

COUNCILMEMBER COUCH: I was waiting for everybody else.

CHAIR COCHRAN: Okay. The floor is yours if you want it.

COUNCILMEMBER COUCH: Madam Chair, this is, maybe we do need the Police Department up here but this is also for the Department, who made the recommendations to or request to put those sidewalks in?

MS. DAGDAG-ANDAYA: Madam Chair.

CHAIR COCHRAN: Yes.

MS. DAGDAG-ANDAYA: I believe it was a request from the public that came out. I can't remember exactly who those requests were from, I mean, who the actual person was, but they were from, made from the public and I believe, too, that in reviewing some of the Committee minutes, I believe also Councilmember Victorino's office was contacted for these items.

COUNCILMEMBER COUCH: Was contacted or asked to...

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MS. DAGDAG-ANDAYA: That Councilmember Victorino's office did propose it. At least, that's what was said at the Committee meeting. However, I know Councilmember Victorino wasn't present there.

COUNCILMEMBER COUCH: Madam Chair, on the Kanaloa one, there are, I mean, if you look at the, what was handed out here, there's four from the parking lot at War Memorial football stadium all the way down to essentially, well I guess that's field 3 or is that field 1, the one that's closest.

MS. DAGDAG-ANDAYA: The one that's closest --

COUNCILMEMBER COUCH: To us.

MS. DAGDAG-ANDAYA: --towards Kaahumanu or, towards us, would be, I believe that's field 1.

COUNCILMEMBER COUCH: Okay. So in that space, there's four. I guess the question would be to the Police Department, is there a need for one by field 2? It looks like the spaces are pretty well, you know, it's pretty adequate the way it is.

MR. UEDO: We did go out and take some measurements. So at Halia Nakoia, which is the entrance to the War Memorial Gym, there's a crosswalk there, and at field 3 by Boys and Girls Club, it's a distance of 650 feet. So with the entrance to field 2 from the Boys and Girls Club, it would be a crosswalk of, the distance would be reduced to 332 feet. So it's kind of putting it right in the middle. So if you ask me for my opinion, it's, there is, I feel there is adequate crosswalks already available.

COUNCILMEMBER COUCH: Yeah.

MR. UEDO: And, like the Deputy Director said, you gonna have to take away parking, too, and ...

COUNCILMEMBER COUCH: Yeah. Plus we're looking towards more healthier community, so if they have to walk a little extra. What are your instances of jaywalking in that area? Is that, is that why that was brought up, possibly?

MR. UEDO: Anytime there's events, there's usually, they do request a off-duty police officer.

COUNCILMEMBER COUCH: Right.

MR. UEDO: So we really don't have much jaywalking over there. But if it's just a weekend softball or baseball games and there is no regulation by police, I have seen that people would be lazy and just dart across the road without going to one of these crosswalks, but that's going with any road.

COUNCILMEMBER COUCH: Uh-huh.

MR. UEDO: Yeah, but when we have County Fairs or events where they're at the Botanical Garden --

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COUNCILMEMBER COUCH: Right.

MR. UEDO: --the organizers generally hire off-duty police officers to staff the crosswalks.

COUNCILMEMBER COUCH: Okay. That's a, that one is, I know, it seems to be fairly self-evident, but I'm not, you know, I'm not speaking for the rest of the Committee. But the one on Wells, again, I kind of want to side with the, Madam Chair, with the Traffic Safety Committee. There's no, I mean, it's a crosswalk to possibly that parking area, but that parking area, I believe, is a private parking area for that office building. So that would be the only reason to see that, or I don't know, it doesn't look like, if we invite a crosswalk there, people who park or whatever at Wells Street, go across the street, there's no place for them to go to. There's no sidewalks. So maybe the Police Department has a comment on that as well.

MR. UEDO: Yeah, right in front the tennis courts, I mean, if you go right up to Market Street, we have a crosswalk available up there and, like you said, it's a private parking lot. And, generally, when you come out of a parking lot, people tend to look left and if we put the crosswalk just below that entry/exit, you gonna have people, drivers by habits, bad habits, or whatnot, they gonna see a car and they're gonna try and just beat, coming out of parking lot and make a right turn and not realizing potentially you got pedestrians in the crosswalk over there now. So it can be dangerous, and across the street there's no on-street parking. That would require, you know, a crosswalk in that area. So I wouldn't be in support of a crosswalk over there.

COUNCILMEMBER COUCH: Thank you, Madam Chair.

CHAIR COCHRAN: Thank you, Mr. Couch. Thank you, Lieutenant. Members, any further comments? Mr. White.

COUNCILMEMBER WHITE: Yeah, I concur with Mr. Couch that it doesn't seem like we'd have a driving need. And it pains me to agree with him --

CHAIR COCHRAN: I know, he's shocked --

COUNCILMEMBER WHITE: --you know, but.

CHAIR COCHRAN: --beyond all.

COUNCILMEMBER WHITE: But it doesn't appear that we have a real driving need for either of these recommendations, but, thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. White, for your comments. Members, any more further discussion? Yeah, and, you know, my intention is because this has been, kinda been sitting on the dockets or up my books, for quite a few years now, I wanted to bring it back up for this discussion. And, you know, following up on Traffic Safety Council, sidewalks, crosswalks normally lead to somewhere. I mean, you have a safe starting point and a safe ending point

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when you're going across, and Wells does not have that at this point. I know Ms. Andaya mentioned that it's part of the pavement preservation plan, which is, will be coming forth to us, so looking forward to that. But in the meantime, Members, it is an item here and this is why I brought it for discussion. And I would like to get it moving one way or the other. And, so, with, yes, Mr. Guzman, you have comments?

COUNCILMEMBER GUZMAN: Thank you, Chair. I just had a question for Ms. Andaya. In regards to the future plans of putting in a sidewalk in that area, on Wells Street, is there a plan that actually indicates that sometime in the future that we will have a sidewalk down there?

MS. DAGDAG-ANDAYA: Chair.

CHAIR COCHRAN: Yes.

MS. DAGDAG-ANDAYA: We currently don't have any plans for a sidewalk. We thought we could probably insert it into our Federal Aid project for Wells Street and perhaps even that separate CIP item, but we just weren't able to do it. I think the Chair had also alluded to our complete streets efforts --

COUNCILMEMBER GUZMAN: Yes.

MS. DAGDAG-ANDAYA: --that are coming up in the future. And perhaps this is a section that might come up in the future, but for now we don't have any immediate plans based on the existing projects that we have. But perhaps in the future this is something that we can take a look at, and then at that time if it warrants a crosswalk, then we'll take a look at it at that time as well.

COUNCILMEMBER GUZMAN: I like the fact that you brought up the complete streets project or plans, especially the fact that there is, you know, tennis courts there and that there could be possible bike, bike lanes going to there and maybe a possible crosswalk in the future. But I agree also with my colleagues at this point. It's premature to go ahead and put something there that could cause us liability. Thank you.

CHAIR COCHRAN: Okay, thank you, Mr. Guzman. Members, any further discussion? If not, then I shall make my recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR COCHRAN: Thank you. I shall entertain a motion to recommend passage on first reading of the proposed bill and filing of the County Communication.

VICE-CHAIR CRIVELLO: So moved.

CHAIR COCHRAN: Any second to Ms. Crivello's motion on the...sorry...

COUNCILMEMBER COUCH: Short recess --

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CHAIR COCHRAN: Oh, yeah --

COUNCILMEMBER COUCH: --Madam Chair.

CHAIR COCHRAN: --short recess. . . .(gavel). . .

RECESS: 2:37 p.m.
RECONVENE: 2:38 p.m.

CHAIR COCHRAN: . . .(gavel). . . Will the Infrastructure and Environmental Management Committee now reconvene. Members, thanks for that brief recess. And, Ms. Crivello.

VICE-CHAIR CRIVELLO: I will withdraw my motion.

CHAIR COCHRAN: Thank you. Ms. Crivello has withdrawn the motion. And I shall now ask for, with no objections, I shall recommend filing of this County Communication.

VICE-CHAIR CRIVELLO: So moved.

COUNCILMEMBER COUCH: Second.

CHAIR COCHRAN: It's been moved by Ms. Crivello, seconded by Mr. Couch. Members, any further discussion upon filing of this communication? Seeing none, then, all those in favor, say "aye".

COUNCIL MEMBERS: "Aye".

CHAIR COCHRAN: Any opposed, say no? The motion has passed with seven ayes, zero noes. Thank you, Members.

VOTE: AYES: Chair Cochran, Vice-Chair Crivello, and Councilmembers Carroll, Couch, Guzman, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FILING of communication by C.R.

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ITEM NO. 4: BIKE AND BIKE TOUR SAFETY ON MAUI ROADS (CC 13-59)

CHAIR COCHRAN: The final item on the agenda is IEM-4, which is the Bike Tour Safety on Maui Roads. And this one, in particular, is a County Communication 13-59 from Council Chair Gladys Baisa, referring the matter of bike and bike tour safety on Maui roads. And this Committee, looks like we'll be getting a presentation by Public Works. So, Ms. Andaya, do you need a, you going to do a PowerPoint with us?

MS. DAGDAG-ANDAYA: Yes I do, Chair.

CHAIR COCHRAN: Okay. So we shall have a brief recess to set the room up for a PowerPoint presentation from Public Works. We are now in recess. . . .(gavel). . .

RECESS: 2:39 p.m.

RECONVENE: 2:43 p.m.

CHAIR COCHRAN: . . .(gavel). . . Will the Infrastructure and Environmental Management Committee now reconvene. Deputy Director, the floor is all yours for your presentation.

MS. DAGDAG-ANDAYA: . . .(PowerPoint Presentation). . . Good afternoon once again, Madam Chair and Committee. I am presenting before you the Bike and Bike Tour Safety on Maui's Roads. This item came up as part of today's discussion as a result of communications from Councilmember Gladys Baisa. And typically my Director does these presentations before the Committee, but he's on vacation right now and does want to, he did want to move this item forward. So I'll try my very best to make this presentation before you. What I'd like to do today is just give a brief overview of the key events that took place with respect to bike and bike tour, bike tour safety on Maui and also the events, or the study that was presented by Kimura International. So with that, I'd like to start off with the key events. So the issue of bike tours actually began back in the '80s but in 1995 there was an ordinance that was established to permit, or have a permit requirement for bike tour businesses. And between the months of November 2005 to March 2006, there were some Public Works Committee meetings where public hearings were held to, related to downhill bicycle tours. In February of 2007, Mayor Tavares, at that time, signed an ordinance to increase the liability insurance requirement from 1 million to 3 million. So all permitted bike tour companies now needed to have this insurance requirement placed upon them. In June of 2007, the State Legislature actually passed a bill giving the counties more power to regulate bike tour operations. And this is also in the presentation today. So I'll go over that bill and how it relates to, to our operations here. In September of 2007 there was an incident where a bike tour client was killed inside the Haleakala National Park, culminating a 12-month period where there were two fatalities and three other serious accidents. And as a result of that, in October of 2007, the National Park Service imposed a stand-down of 60 days where there were no bike tours that were held within the National Park area. Following that, in February of 2008, the National Park Service released a safety analysis report and shortly after that they extended their moratorium on commercial services that operate

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within the National Park. And I believe today, it still remains the same where there are no bike tours that occur or start within the park area. They now have to take place outside the park area. In May of the same year, that's when the Maui County Downhill Bike Tour Study began with Kimura International. And between the months of July 2008 to November 2008, there were public meetings that were held in Makawao and Kula and also meetings and interviews with State, Federal, County agencies, as well as community organizations, such as the Kula, the Kula Community group and with bicycle companies. In June of 2010, the report was finalized for public review. And then following that in August, the report was presented to the Infrastructure Management Committee and at that time a plan was established, there were some recommendations that were provided, as well as some analysis as to what and how bike tours operate. There were also traffic analysis and, and so on. Now our current Code as it relates to bike tours, can be found in Maui County Code, Section 5.22 and in the Code it requires a permit for any business or person to conduct a bicycle tour on County property, and I underlined County property because bike tours do operate on State roads, but our current ordinance does not make any notice of that. The application is actually filed with the Department of Finance and the Police Department reviews the application and provides recommendations. And also in the ordinance, it states that conditions can also be made. So once the Police Department is completed with their recommendations and proposed conditions, then it goes back to the Finance Department and then the Finance Department either denies or approves the application. There's no involvement by Public Works in this application process. And as I mentioned earlier, it requires a liability coverage of 3 million. And, also, there's a penalty for operating without a permit. And it involves a fine of not less than \$100 and no more than \$500. And, in addition, the Code states that it's the applicant's responsibility to comply with laws of Federal, State and County governments applicable to the applicant's business. So that in a nutshell is what our current Code says with respect to downhill bike tours. As I mentioned earlier, as well, the State, back in 2007, created a new law and if you take a look at the red, it says each county shall follow Federal guidelines for commercial bicycle tours that begin from Federal or State parks and continue on to State highways. So essentially, what the State law says is that the counties can go ahead and create a policy or an ordinance which regulates bike tours. And with anything dealing with the State law and our current Code, I'm gonna have to defer to our Corporation Counsel, Mike Hopper, for any, to answer any questions related to that. And as you can see here, if you take a look at where that, the green area is, that's where Haleakala National Park is located. And prior to I believe in 2008, tours were able to start in there and now they are required to start outside where the entrance is located. The red areas indicate the route where the bike tours operate. And bike tours currently, as I mentioned, start from outside the Park boundaries, then it heads down on Crater Road, which is owned by the State, State of Hawaii, and then on to Haleakala Highway. It continues on towards Hanamu Road and then also down on Baldwin Avenue. In this map, it's also depicted here, another route that heads down on Baldwin Avenue and then onto Hana Highway, that's continuing on where the red line goes. In the purple, that heads down to Kokomo Road, which is a County road. So this is the path which most bike tours take. In the Kimura study that was presented to the Council in 2010, it identified two major concerns. The number one issue was regarding safety and ensuring the operations were safe. And then the other one was about traffic impacts. And as it related to traffic impacts, what the study did was took a look at the number of vehicles traveling along the bike routes during peak hours. Now based off of the Kimura report, we came up with a couple of recommendations that

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the Department felt were important, and these recommendations we actually submitted to Corporation Counsel for review and what's pending right now is a draft bill. So these are our recommendations: to allow for regulation on State Highways, to regulate guided and unguided tours, including rentals of bicycles that are rented for the purposes of taking specific tour routes. And I believe our first testifier this morning had alluded to that and stated her concerns regarding the unregulated bike tours. What was also recommended was to prohibit tours from riding through Makawao and Paia towns and then to also prohibit bike tours between 7:00 a.m. and 8:00 a.m. except on weekends and holidays. Our second testifier today talked about the spacing of bike tour convoys. I believe that was, she had made mention of that, and also the first testifier had said that as well. And also to require a minimum safety standards, including but not limited to a safety video briefing riders, having van identification and contact info and the use of a speedometer by the tour leaders. So all of these initiatives would require the drafting of a bill for an ordinance and that's what we're working towards today. This other recommendation requiring the use of pullout areas by escort vans and support where available, this involves the implementation of pullouts so that a convoy can move off the travel lane and allow motorists to pass. Pullout locations are proposed on Crater Road and Haleakala Highway, and I believe at that August 2010 meeting when the report was presented to Council, State DOT had come in and had said that they had initiated the process of implementing pullouts. For the County portion, it was suggested that pullouts be proposed for Baldwin Avenue. Finally, our objective is to continue working with Corporation Counsel. And we also do recognize that we'll need to have further work with the Council's Committee, this Committee, and with staff and also to have discussions with the Department of Finance, the State Department of Transportation, and also Maui Police Department in moving draft legislation forward. So with that, you know, we do anticipate a very good discussion today on regulating bike tours and hope that we can gather some suggestions as to how to move forward and what the Committee's priorities are as well. So, thank you.

CHAIR COCHRAN: Thank you, Ms. Andaya. Members, we shall now take a brief recess to reset the room for Committee work again. We're in brief recess. . . .(gavel). . .

RECESS: 2:54 p.m.
RECONVENE: 2:56 p.m.

CHAIR COCHRAN: . . .(gavel). . . Will the Infrastructure and Environmental Management Committee please reconvene. And thank you, Ms. Andaya, for that presentation. Members, at this point I shall turn the floor over to you folks and open up the floor for discussion. We have discussion? Yes, Mr. White.

COUNCILMEMBER WHITE: Thank you, Madam Chair. I think this is a very important issue because we have here a really fun activity. I've been on it, I don't know if others of you have. It's a great activity, it's a great activity for our visitors, but at the same time, we have a responsibility to conduct it in as safe a manner as possible. And along with some of these recommendations, I think it would be interesting for us to take a look at funding the turnouts using some of the TAT monies that come to us from the State each year, because the original purpose of that fund is to allow the counties to take care of some of the visitor-related challenges. So as we go through

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this, I'd like everyone to just be thinking about the fact that maybe there is a significant nexus here that should allow us to set aside some of those visitor-generated funds to solve a problem that's being created for the folks that are in the communities that the tours are going through. So, just my two cents.

CHAIR COCHRAN: Thank you. Thank you, Mr. White, for those comments. And yes, well taken. Members, any...yes, Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. A question for Corporation Counsel.

CHAIR COCHRAN: Sure.

COUNCILMEMBER CARROLL: We approached this many years ago, I mean like 10, 12 years ago, and we had many things on the table. One was the use of Baldwin Avenue because by Rainbow Park and the other areas was so dangerous, and we talked about at that time about, in the presentation about Paia, not having the bikes go through there. And we had a lot of different legal opinions at that time, that bicycles had the right-of-way of road, et cetera, et cetera, et cetera. That was really interesting, the presentation, and the State, what they have given us to work with and also that on the Federal side what we need to honor. But how far can we actually go, in, practically, when we're talking about stopping tours from going through Makawao town or through Paia and regulating the times and et cetera, number of tours and everything else? But mostly Paia and Makawao and regulating or preventing them from going into certain areas, legally, how strong are we on that?

CHAIR COCHRAN: Yeah, Corporation Counsel.

MR. HOPPER: Yes, thank you, Madam Chair. I mean, this would be looking at not prohibiting bicycles from going through the town, it would be prohibiting the tours from going through the town and also defining the town. So, if the County has the authority to issue a permit for a tour activity, then normally it can decide which areas that the County would permit the tours to take place in. The, some of the issues, there's a State law on this, HRS §46-16.3. It goes over a lot of these issues. It says there can be ordinances relating to the number of tours, number of bicycles within a tour, scheduling of tours, physical spacing of tours, rules of the road, health and safety requirements, equipment maintenance, driver and guide qualifications, driver and guide drug testing, accident procedure and reporting and financial responsibility requirements. And those are including, but not limited to. So one thing we are looking at in the ordinance is defining--and this is something that Council can look at--defining the areas where the tours may or may not operate. So that's something that through the permits, we do believe that the Council could decide, as far as regulating the tours, the location of the tours. Now, the issue of regulating them on State highways, this is something, again, in the State ordinance, it does give the County the authorities to regulate tours on State highways. However, to what extent the Council would do that or we would advise the Council to do that is another issue that I think we would need to explore, because you are talking about regulating an activity over a roadway that the County does not have the ability to maintain or repair, for example, so that's another issue to look at. So with the draft bill which, which is looking at a variety of these issues, we've set it up so far in the

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draft stages to, to deal with as many of the issues as we, as we possibly could, and look forward to exploring those, you know, with the Council as the bill comes out. But there are, we're not denying that there's some difficulty in looking at, at a lot of these issues and acknowledge that, particular the State highways issue is one that we will be looking at in drafting the ordinance.

COUNCILMEMBER CARROLL: Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Carroll. Members, further discussion? Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I think Corporation Counsel pointed out something that was interesting to me. So are saying that okay from this HRS section basically the State has granted us the power to regulate the tours, but yet in the same breath are you also saying that they're not willing to accept part of the responsibility of the road maintenance if something happens?

MR. HOPPER: Well...

COUNCILMEMBER GUZMAN: They didn't put in any indemnification stuff in here. So they basically say okay, go ahead, use our roads, figure out the regulations, but yet they're not off the hook if something happens as well, right?

MR. HOPPER: Madam Chair. Here's what the State said. I'll just read what is in the State law to make it clear. It says, any law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating commercial bicycle tours on State and county highways. So that's what they wrote, nothing else.

COUNCILMEMBER GUZMAN: Right.

MR. HOPPER: So this is, this is a situation where it's a State highway, it's still going to be a State highway. I think we would argue that if there's an accident based on the failure to maintain or repair the roadway, it would be the State's responsibility still, but you do have the issue of the County issuing a permit for that activity. There are insurance requirements in the existing Code. They were strengthened in 2007 in order to require, as Ms. Dagdag-Andaya had indicated, a higher limit but also requirements regarding with the type of policy it has to be, the rating of the insurance companies, et cetera. But this is perhaps better addressed in executive session to get into more detail, but we're not saying that simply because the State authorizes the counties to regulate towards over State highways, that it's, that it's something that we would, not something we would enter into without, without lots of consideration is how I would put it.

COUNCILMEMBER GUZMAN: Follow up, Chair?

CHAIR COCHRAN: Sure, go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Ms. Andaya, how many of the routes are consisted of portions of the State highway, right now, existing?

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MS. DAGDAG-ANDAYA: Well, the only map that I have is the one that was presented in today's presentation. That, I got from the Kimura study.

COUNCILMEMBER GUZMAN: Oh.

MS. DAGDAG-ANDAYA: So looks like, I mean, we have that.

COUNCILMEMBER GUZMAN: That was back in 2010, yeah?

MS. DAGDAG-ANDAYA: That was back in 2010. And so that is basically the only information that I have. I would want to work with the tour companies to find out what route they take, but in general, those are the routes that they take. They either go down on Baldwin Avenue or they access Kokomo Road.

CHAIR COCHRAN: Yeah, Mr. Hopper.

MR. HOPPER: Just a note, there is a requirement in the permit applications for a description of the areas, locations or routes to be utilized for the proposed bicycle tour businesses. So I'm not certain if, probably the Finance would have some of that information on file. They would do the permitting. But that is a required portion of the permit.

COUNCILMEMBER GUZMAN: I guess, just to let everybody know that I was trying to find a nexus between what Councilmember White was suggesting, to somehow connect up, if we could possibly use TAT money in helping out this tour enforcement or whatever, if we're going to be using State highways. So that's my line of questioning at this point. So I'm finished at this point to refer it down the line for my colleagues to ask further questions. I was just trying to look into things. Thanks, Chair.

CHAIR COCHRAN: Thank you, Mr. Guzman. Yes, Mr. White.

COUNCILMEMBER WHITE: Thank you, Madam Chair. As to the routes, most of them go down, well, all of them come down Haleakala Highway --

CHAIR COCHRAN: Uh-huh.

COUNCILMEMBER WHITE: --until they get to Hanamu Road, and then depending on whether they're guided or unguided, they go the right way or the wrong way. So the tours end up, the unguided ones, sometimes go down Haleakala Highway all the way, some turn on Makawao Avenue and finally get over to Baldwin again, some go down Kealaloa, some go down Olinda Road. On my way to work, I find them all over the place and help 'em get back to where they need to be. But the...I lost my train of thought beyond that but --

CHAIR COCHRAN: The bike ride.

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COUNCILMEMBER WHITE: --I guess I lost my way too. But I think it's, it's important for us to...oh, I know what my question was. For the Department was, how do you intend to proceed with this? Are you all going to be getting the bike companies together for discussion of what, which of these recommendations they agree with, go along with, can support either in spirit or financially and how, how do you see proceeding with this process of bringing this to a resolution? This has been around for a long, long time and I know it's a difficult one, but it's one we, we need to address both for our visitors and our residents in the Upcountry area.

MS. DAGDAG-ANDAYA: Chair.

CHAIR COCHRAN: Yes, go ahead.

MS. DAGDAG-ANDAYA: I, we haven't had any formal discussions on how we are to proceed once we get a draft ordinance in place. I do anticipate bringing the other departments appropriate, appropriate departments like Finance Department, MPD, together to discuss the proposed draft. And then similar to some of the ordinances that we've brought before this Committee, we would want to consult with the community organizations and also with the bike tour companies. That's pretty standard. Basically, that's what we've been doing with all of our other ordinances as well. And then, hopefully, bringing it back to Committee for further discussion and implementation.

COUNCILMEMBER WHITE: Any kind of timing in your, in your view at this point?

MS. DAGDAG-ANDAYA: I'm going to defer to Corp. Counsel as to when they would be able to provide us with a draft bill but that, yeah, I'm not sure what their timeline is, but we do hope to, once we get the draft bill, just run with it and start making the contacts necessary.

COUNCILMEMBER WHITE: So your thought is to come up with a draft bill before you talk to community organizations and the bike companies?

MS. DAGDAG-ANDAYA: That is correct.

COUNCILMEMBER WHITE: It's not the other way around?

MS. DAGDAG-ANDAYA: Well, we've pretty much been doing that with some of our other proposed ordinances where we have a draft in place and then we took it to some consultants or plumbers or, and, and then make any changes and then bring it back to Council so.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. White. Members, any further discussion? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Madam Chair. And I just wanted to mention something. You know, it was mentioned that this affects the people who live Upcountry, yes it does. But it also affects, I mean, it affects me when I drive down there. I've not yet gone down that road without hitting at least one tour. It affects anybody. I mean a lot of tourists from South Maui,

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West Maui, all go up to see Haleakala. A lot of residents go up to see the sunrise at Haleakala. So it affects almost everybody on this island at one point or another. So I wanted to, as well as, more directly, the residents who live on that road. The question I have is, the draft legislation that you have come off of this study, is that right, that was done with extensive discussions with the industry, is that right?

MS. DAGDAG-ANDAYA: Chair.

CHAIR COCHRAN: Yes.

MS. DAGDAG-ANDAYA: That's correct. The recommendations that my Director came up with were based off of the study. So, and that is currently with Corp. Counsel right now.

COUNCILMEMBER COUCH: Okay, and I guess this would be for Corp. Counsel. You know, if we, if we do the legislation and it says well, you know, you have to use the turnouts and you have to do whatever it's suggested here in the study, is that only going to be effective on the routes that they're permitted to take or is that on any, any routes that can come down, you know, down from Upcountry? Like Mr. White says, he sees them all over the place. So, is this, are we going to make it so that it is effective for any kind of either guided or unguided tours, these are the places you can go and these are other places you can't go? And then, one way or the other on that, how do we distinguish between our residents who, or even visitors who, come and just bike around the area, and we see those guys all over the place? We have one of 'em here in the audience, I think, still, who...how do we distinguish them from the unguided tours and the guided tours?

CHAIR COCHRAN: Yes, Mr. Hopper.

MR. HOPPER: Thank you, Madam Chair. I think you're getting into some of the things that was a challenge in our drafting and among them, you had a few questions. One, one, the current definition of tour means a group organized for the travelling from place to place for enjoyment, pleasure or sightseeing. And so that goes into basically anyone using County property for the purpose of conducting a bicycle tour is required to get a permit. It's not limited that, that I can see, to a specific area. It just may be that Upcountry may be the only area that has these tours but I'm not certain. So actually it would apply to any area. The Council can look at, obviously you're the Council, and you're looking at the legislation at, at marrying that, expanding that, stating that only certain areas can be, can have bicycle tours conducted over them, et cetera. Now the guided and unguided tour is also a challenge. If you're talking about simply handing out a map while renting a bicycle, enforcement becomes an issue there. The bicycle tour definition in the State law says, includes both guided bicycle tours and unguided bicycle rental operations. I'd note though that the State does not appear to have extensive, you know, bike tour permitting legislation. They've kind of left it to the counties to work on both in the County and the State highway systems. So they do go into finding, you know, counties you have the authority to regulate unguided bike tours, and exactly what that means, you know, it does say unguided bicycle rental operations. That's something we're going to need to look at defining in the ordinance as to, you know, at what point does it become a tour. If you're renting a bicycle, it's an unguided tour. You don't need a guide then. Well, then, what is it? And I think we

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looked at various definitions in our drafts and when we do come out with one, it's certainly going to be an area where, you know, the Council, we'd be looking for input from the Council as to what tours are to be regulated. But you're right, it goes beyond just having a guide with a group that goes up in a van, that's relatively simple to identify as a tour. But if you're looking at regulating unguided tours, which is something that the Council can do, and was one of the recommendations of the Department, that's going to be something to look it. Now, whether it's a resident or, or not, it doesn't matter. It depends on whether or not they've actually gone into a tour or not, but this doesn't regulate generally a, you know, a bicyclist who just wants to bike Upcountry without a tour and someone who just rents a bicycle for the purpose of going wherever they want to. However, it should be emphasized too that this isn't a substitute for basic traffic laws as they, you know, with respect to bicycles. If they're violating traffic laws, whether they're on a tour or not, that's something that, you know, they would have to be held accountable for under the existing traffic codes.

CHAIR COCHRAN: Thank you, Mr. Hopper. Further --

COUNCILMEMBER COUCH: Yeah, Madam Chair --

CHAIR COCHRAN: --_____, Mr. Couch, go ahead.

COUNCILMEMBER COUCH: --if I might follow up. When we, when we start working on this, I would not, I would hesitate to be, try to be as all inclusive and therefore not doing anything because we're just stuck trying to solve all solutions. So maybe if we start, we'll deal with the, the guided tours and then add upon that and modify as, as we see how it goes. So I guess, Madam Chair, we gotta start somewhere, so --

CHAIR COCHRAN: Uh-huh.

COUNCILMEMBER COUCH: --let's --

CHAIR COCHRAN: Right.

COUNCILMEMBER COUCH: --see if we can start with at least the guided tours for now.

CHAIR COCHRAN: Thank you, Mr. Couch. Yeah, and that's why it's here today, 'cause we need to start somewhere and get something going. Mr. White, you had comments?

COUNCILMEMBER WHITE: Yes.

CHAIR COCHRAN: Yes.

COUNCILMEMBER WHITE: Thank you, Chair. Ms. Andaya, do you have, are there studies that show any difference in the safety issues between the guided and unguided tours? Was that included in the, in the review?

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MS. DAGDAG-ANDAYA: Chair.

CHAIR COCHRAN: Yeah, go ahead.

MS. DAGDAG-ANDAYA: I believe that was also addressed in the, in the study. I'll need to take a look at it a little bit more in depth to get more information, but I do believe that was in there as well.

COUNCILMEMBER WHITE: Okay, great. Thank you, Chair.

CHAIR COCHRAN: Thank you. And, Members, Maui Police Department is still here in the audience for resource people if we need to bring them down for further questions and comments on their behalf too. Anyone open to having, needing Maui Police Department here on the floor? Yes, Mr. Couch.

COUNCILMEMBER COUCH: Sure.

CHAIR COCHRAN: Okay. Mr. Uedoi or I think Mr. Ramos is here, if either of you would like to join us again. Thank you. And just backing up Mr. White, I've done this tour four times. As a concierge, I had to go on the tour myself to experience it firsthand to sell the tour, and it's a ton of fun. And again, you know, at the time, I do recall the companies that I went with, I felt were, were quite courteous and, you know, aware of local traffic, and we pulled over and, you know, did the whole nine yards, and I was very confident in selling the tour. But as the years, this is many years ago, so as the years progressed I guess it's been, it's becoming more congested. It's becoming an issue and what have you. So it looks like times have changed since I've done the bike tour. So here we are discussing it, but the TAT idea that you brought up, I think, is wonderful and very worthy in looking into with the budget cycle, you know, coming upon us again. It, the intention of that TAT as I understand is to address impacts of tourism and this is a, it's a tour done by, you know, residents and tourists alike, but it's impacting, and so how we can utilize some of those funds to address it would be awesome. And so I'm looking forward to that discussion. But thank you, Mr. Uedoi, for being here. And, Members, we have Lieutenant joining again. Mr. Couch.

COUNCILMEMBER COUCH: Just quickly before we talk to Mr. Uedoi. You did mention the TAT and there's also in here about a surcharge and it wasn't wildly received, at least in this assessment. But in my thoughts, it would be one of the things, part of the permitting fee would help and make the permitting fee substantial to help with subsidizing whatever it takes to, to make it safer for the pullouts or whatever.

CHAIR COCHRAN: Uh-huh.

COUNCILMEMBER COUCH: So hopefully that will be in the legislation as well. And right now, the way the fines are, and maybe the Police Department can help us out with that. Those are more like daily cost of operation. They're so tiny, which, and now we're stuck at \$1,000 is as high as we can go. So we have to consider that as well. Anyway, for the Police Department, what are

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your, I mean, I'm sure you guys get a lot of complaints. I'm assuming you guys get a lot of complaints about this. Is that a valid assumption?

MR. UEDO: Unfortunately we haven't had a chance to review the study or the topic today. But in my short time that I have been in the traffic division, I haven't had any complaints to look into regarding any of the bicycle tours. Not to say that we haven't received any, but I haven't personally.

COUNCILMEMBER COUCH: And, I guess, hopefully by the time of the, the draft legislation comes, if we can get a compilation of statistics that you guys might have, both in any complaints you've had, statistics on accidents.

MR. UEDO: Accidents or anything to do with accidents or citations, we probably can get that information. So in time we can do a study and get that information.

COUNCILMEMBER COUCH: And also whether or not you guys support this kind of direction that we're going in or if this is something that might be difficult for you guys to enforce.

MR. UEDO: You know, after we review all the data that we compile, then we can make a sound decision as far as how our input should be.

COUNCILMEMBER COUCH: Okay. Thank you, Madam Chair.

CHAIR COCHRAN: Thank you, Mr. Couch. Thank you, Lieutenant. Members, any further questions or discussion needed with any of our Departments and Corporation Counsel? No? Okay then, without further ado, I will look to defer this item, Members, with no objections.

COUNCIL MEMBERS: No objections.

CHAIR COCHRAN: Thank you. 'Cause this is just the beginning of another beginning, I guess, phase, in discussing this matter it seems. So I want to thank everyone who participated today and the presentation, Maui Police Department, Corporation Counsel and everyone. Members, without further business scheduled today, then this meeting is adjourned.

ACTION: DEFER pending further discussion.

ADJOURN: 3:21 p.m.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE MINUTES
Council of the County of Maui

August 12, 2013

APPROVED:

A handwritten signature in cursive script that reads "Elle Cochran". The signature is written in black ink and is positioned above a horizontal line.

ELLE COCHRAN, Chair

Infrastructure and Environmental Management Committee

iem:min:130812:ap

Transcribed by: Annette L. Perkett

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE MINUTES
Council of the County of Maui**

August 12, 2013

CERTIFICATE

I, Annette L. Perkett, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 3rd day of September, 2013, in Haiku, Hawaii.



Annette L. Perkett