

**COUNCIL OF THE COUNTY OF MAUI**  
**PUBLIC WORKS COMMITTEE**

December 19, 2006

**Committee**  
**Report No.**

06-172

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

Chair and Members:

Your Public Works Committee, having met on November 28, 2005, March 3, 2006, and November 21, 2006, makes reference to County Communication No. 05-318, from Councilmember Michael J. Molina, transmitting copies of correspondence from Jimmy Muschietti, expressing his concerns relating to downhill bicycle tours, specifically the lack of enforcement of traffic laws.

By correspondence dated November 4, 2005, the County Clerk transmitted correspondence from Jimmy Muschietti, relating to bicycle tour businesses, which was attached to County Communication No. 05-354. In his correspondence, the County Clerk noted that the Council filed County Communication No. 05-354 at its meeting of November 4, 2005, and requested that the correspondence from Mr. Muschietti attached to the communication be transmitted to your Committee.

By correspondence dated November 18, 2005, the Chair of your Committee informed various bicycle tour companies of his intention to discuss this matter at your Committee's November 28, 2005 meeting, and requested responses regarding their policies involving staff training and oversight of compliance with traffic laws and public safety.

By correspondence dated November 23, 2005, Brian Kramer, General Manager, Mountain Riders, submitted a response describing company policies.

By correspondence dated November 23, 2005, the Chair of your Committee transmitted correspondence dated November 22, 2005, from Phillip Feliciano, Owner, Cruiser Phil's Volcano Riders, responding to your Committee Chair's November 18, 2005 request.

Your Committee is in receipt of correspondence from Ralph Johnson, Bike It On Maui No Ka Oi LLC, responding to your Committee Chair's November 18, 2005 request.

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By correspondence dated November 28, 2005, Steven Mark submitted written testimony expressing safety concerns with respect to downhill bicycle tours.

By correspondence dated November 28, 2005, the Chair of your Committee transmitted correspondence dated November 28, 2005, from Helaine Borge and Nancy Shearman, respectively, each expressing their dissatisfaction with the current operation of downhill bicycle tours.

At its meeting of November 28, 2005, your Committee met with the Director of Public Works and Environmental Management; an Assistant Chief of Police; a Deputy Corporation Counsel; and Charlene Shibuya, Assistant District Engineer, Maui District Office, State Department of Transportation.

Your Committee received public testimony from 21 people. Four of these people also provided their testimony in writing. Of these 21 people, 13 testified as individuals and 8 testified on behalf of companies or organizations.

Of the 13 people who testified as individuals, 9 expressed displeasure with the downhill bicycle tour companies, citing traffic safety concerns including escort vans cutting off motorists trying to pass the bicyclist, road rage, traffic obstructions and congestion, escort van drivers directing motorists to pass in an unsafe manner, and disregarding traffic control devices such as stop signs. Three people urged the regulation of the downhill bicycling industry, and 3 others urged stricter enforcement of existing traffic safety laws. Three people stated the need for downhill bicycle tour companies to respect local residents. Other comments included the tremendous amount of animosity between motorists and downhill bicycle tour companies, the need for education about the sacredness of Haleakala, the need for immediate action to address the safety and traffic concerns, problems relating to rubbish and downhill bicycle tour participants using the bathroom on the side of the road and leaving human waste and toilet tissue alongside the roadways, the possible elimination of escort vans, and the need for pull-out areas for the tours.

Three individuals, all employees of downhill bicycle tour companies, testified in support of downhill bicycle tour companies. They expressed safety concerns related to motorists who speed, pass in an unsafe manner, and are impatient.

One individual expressed a neutral position, but commented that motorists that work on Haleakala often drive unsafely. He urged enforcement of existing laws.

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Of the 8 people who testified on behalf of companies and organizations, the representative of the Kula Community Association provided comments regarding safety concerns, enforcement of existing laws, public education, limits on the number of and intervals of downhill bicycle tour trips, the need for pull-out areas, rest stops, portable restrooms, and specific guidelines for downhill bicycle tour companies to follow.

The representative of the Makawao Main Street Association urged the regulation of downhill bicycle tour companies and provided comments including safety concerns, the need for enforcement of existing laws, and the degradation of the Haleakala National Park due to downhill bicycle tours.

Five people representing downhill bicycle tour companies spoke in support of the industry. They noted that the industry provides an adventurous experience and has produced positive economic impacts. These representatives also expressed concerns about traffic safety, the need for cooperation between the industry and the public, the need for pull-out areas for the downhill bicycle tours, the need for enforcement of existing laws, and acknowledged the animosity between the tour companies and the public. One representative noted that the National Park Service has reduced the number of downhill bicycle tours at sunrise from 35 to 19 per day on an interim basis. This representative also indicated that no new downhill bicycle tour permits are being issued for sunrise tours, and that day permits are also being limited.

One person represented a company that conducts business at the summit of Haleakala. This representative expressed displeasure with the downhill bicycle tour companies due to traffic safety concerns in general, and especially with regard to young children participating in the tours. He urged more regulation of the industry.

Many of the testifiers commented on the need for "Aloha" and mutual respect. Many also expressed support for and interest in participating in a working group to discuss the conflicts and concerns between the industry and the public in order to attempt to reach a mutually agreeable solution.

The Assistant District Engineer stated a need to meet with the downhill bicycle tour industry in order to plan for pull-out areas. She indicated that she lives on Crater Road and has observed the interactions between downhill bicycle tours and the public. She said that the State received many comments from people with differing opinions on

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solutions to the problems noted by the testifiers. She indicated that the State currently has funding for the design of pull-out areas on Crater Road.

The Director of Public Works and Environmental Management clarified that the Federal government has jurisdiction over the road from the summit of Haleakala to the boundary of Haleakala National Park, the State has jurisdiction over the roadway below the park boundary, Kekaulike Highway, and Haleakala Highway, and the County has jurisdiction over some of the smaller roadways being used by the downhill bicycle tour companies such as Hanamu Road, Olinda Road, and Baldwin Avenue. He indicated a willingness to participate in a task force or subcommittee to further discuss this matter.

The Assistant Police Chief noted that the roadways being used by the downhill bicycle tour companies were not originally designed for this type of traffic. He further noted that bicycles do have a right to be on the roadways, but that both the industry and the public must respect one another. He indicated that the Department of Police intends to meet and discuss traffic safety concerns with the industry prior to any law enforcement campaigns.

Your Committee briefly discussed the possibility of the formation of a working group to discuss and gather information to be transmitted to your Committee.

Your Committee deferred the item pending further discussion.

By correspondence dated December 2, 2005, Councilmember Anderson transmitted an article from the November 28, 2005 issue of *Maui Time*, entitled "Look at our Office. What it's like to work guiding tourists down the mountain". The article was written by a bicycle tour company employee.

By correspondence dated December 14, 2005, Councilmember Anderson transmitted a copy of correspondence dated October 27, 2005, from the Deputy Director of Finance, to the Council Chair, in response to the Chair's inquiry regarding bicycle permits.

By correspondence dated December 15, 2005, Councilmember Anderson transmitted a copy of correspondence dated November 2, 2005, from the Director of Finance, to the Council Chair, responding to questions regarding the permit for one particular bicycle tour company, as well as other enforcement and permit renewal questions.

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At its meeting of March 13, 2006, your Committee met with the Director of Public Works and Environmental Management; a Lieutenant, a Sergeant, and an Officer, Department of Police; and a Deputy Corporation Counsel.

Your Committee received public testimony from 6 people. Four of these people also provided written testimony. Additional written testimony from 7 individuals was submitted, including one from a community group of citizens.

A representative of the Kula Community Association expressed concern for the safety of bicyclists and other issues related to the downhill bicycle tours, but said that the Association had not yet adopted a position on this matter, nor were they ready to supply specific recommendations at this time.

All of the public testimony expressed concern for the safety risks inherent in the current downhill bicycle tour operations, and asked for greater regulation by the County in this regard. One testifier asked that such bicycle tour companies be required to operate along separate pathways and not along public roadways.

The Director reiterated the various government jurisdictions involved with this issue. He stated that many general recommendations had been raised, including the possibility of increasing regulations, imposing taxes or a moratorium, or stepping up enforcement.

The Lieutenant stated that in response to the issue of downhill bicycle tours, an officer had been assigned to submit a report on the findings of an investigation underway by the Department of Police.

The Police Officer reviewed the investigation he had conducted. He stated that he had observed violations involving both bicycle and vehicular traffic, and he further mentioned the issue of unguided bicycle tours. All aspects of the investigation will be discussed in the report, which was anticipated to be made available to your Committee.

Your Committee discussed the level of complaints that the Department of Police had received regarding downhill bicycle tour operations, as well as the level of review that the Department gives each application for a bicycle tour license.

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The Lieutenant stated that complaints had rarely been received, and acknowledged that safety reviews were dependent upon a certain degree of self regulation by the industry.

Your Committee discussed the liability that the County currently faces and mechanisms to limit the County's exposure. Your Committee further expressed interest in exploring a mechanism to establish a task force or working group to further study this issue.

The Deputy Corporation Counsel stated that other than Chapter 5.22 of the Maui County Code, relating to bicycle tour business licenses and regulations, there is no real mechanism to regulate this activity. She stated that any restrictions on bike activity along certain roadways would require studies in order to avoid legal challenge.

Your Committee deferred the item pending further discussion.

By correspondence dated March 30, 2006, Councilmember Molina transmitted a copy of correspondence dated March 29, 2006, from Walter Enomoto, on behalf of the Maui Bicycle Alliance, submitting various proposals to alleviate traffic flow along Baldwin Avenue.

By correspondence dated June 8, 2006, the Council Vice-Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 5.22.060, MAUI COUNTY CODE, RELATING TO BICYCLE TOUR OPERATIONS". The purpose of the draft bill is to prohibit bicycle tours along Baldwin Avenue.

By correspondence dated June 19, 2006, the Chair of your Committee requested that the Chief of Police transmit a copy of the Department of Police's study of the downhill bicycle tours and their impact on traffic.

By correspondence dated June 26, 2006, the Chief of Police transmitted a copy of the report entitled "Haleakala Downhill Bike Survey".

By correspondence dated July 6, 2006, the Chair of your Committee requested that the Department of Public Works and Environmental Management prepare a traffic impact analysis for downhill bicycle tours operating on County roadways, and inform your Committee of the anticipated timetable for the completion of such a study.

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By correspondence dated July 11, 2006, the Director of Public Works and Environmental Management informed your Committee that it would take a few weeks to work with a traffic consultant to develop a scope of work and estimate a timetable for completion of the study.

By correspondence dated July 21, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel draft a proposed bill to increase insurance requirements for downhill bicycle tour companies, and asked that any applicable recommendations made by the Department of Police in the report transmitted on June 26, 2006, be incorporated in the proposed bill.

By correspondence dated August 9, 2006, the Director of Public Works and Environmental Management transmitted the proposed scope of work for the traffic impact analysis for downhill bicycle tours operating on County roadways. The correspondence noted that supplemental funds would be needed to pay for this study.

By correspondence dated October 24, 2006, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.22, MAUI COUNTY CODE, RELATING TO BICYCLE TOUR BUSINESS". The purpose of the proposed bill is to increase insurance requirements for downhill bicycle tour companies.

At its meeting of November 21, 2006, your Committee met with the Director of Public Works and Environmental Management; the Director of Finance; the Motor Vehicle and Licensing Manager, Department of Finance; a Captain and two Sergeants, Department of Police, and a Deputy Corporation Counsel.

Your Committee received public testimony from 9 people. Three of these people also submitted testimony and related documents in support of the proposed insurance bill. One written testimony received was in opposition to the proposed bill, citing the importance of the downhill bike tours to Upcountry businesses.

Five people spoke in support of the proposed bill to increase insurance requirements for the downhill bicycle tour companies, and suggested that the proposed legislation was a good first step in addressing their concerns regarding the industry.

Three people representing downhill bicycle tour companies spoke in support of the industry and in opposition to the proposed bill, citing the adverse economic impacts

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that would result from the increased insurance premiums, which are expected to double, should the proposed bill go into effect.

A representative of the Maui Bicycle Alliance spoke in opposition to the proposed bill, at least given the current definitions that include references to nonprofit groups conducting bicycle tours. He further pointed out that some commercial groups operate outside the geographic area dominated by the majority of downhill bicycle tours, and that it would be unfair to require the same insurance coverage of them.

The Director of Public Works and Environmental Management reviewed the status of the planned traffic impact analysis and stated that funding will come from either a supplemental appropriation or a request to be made for the Fiscal Year 2008 Budget.

The Motor Vehicle and Licensing Manager stated that the Department of Finance primarily serves to process the applications upon recommendation from the Department of Police.

The Director of Finance stated that in many respects the Department of Finance is limited by the human resources they have available for this matter. They have attempted to notify all potential businesses that should be licensed, but noted that of the 12 companies contacted, only 5 are currently permitted.

The Deputy Corporation Counsel commented that further research would need to be done regarding the number of legal cases resulting from downhill bicycle tour accidents and the alleged liability to the County.

The representatives from the Department of Police stated that during their enforcement action, nine equipment violations and eight moving violations resulted in citations, with fines averaging between \$30-\$40 per violation. The representatives further stated that the author of the report prepared by the Department of Police had since been promoted and was now on Molokai and unavailable for your Committee's meeting. They further suggested that additional enforcement officers may be necessary to better regulate the downhill bicycle industry, referencing the additional enforcement personnel required as a result of ocean activity regulations.

Your Committee discussed the need to further address related issues involving the downhill bicycle tour operations in addition to the proposed bill to increase insurance requirements, and again promoted the idea that a working group or committee meet to



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continue dialogue between the community representatives and the downhill bicycle tour industry.

Your Committee voted to recommend passage of the proposed bill to increase insurance requirements for downhill bicycle tour companies.

Your Public Works Committee RECOMMENDS that Bill No. \_\_\_\_\_ (2006), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.22, MAUI COUNTY CODE, RELATING TO BICYCLE TOUR BUSINESS", be PASSED ON FIRST READING and be ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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**JOSEPH PONTANILLA** **Chair**

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**G. RIKI HOKAMA** **Member**

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**MICHAEL J. MOLINA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**ROBERT CARROLL** **Member**