MINUTES
PUBLIC WORKS COMMITTEE
March 13, 2006
Council Chamber, 8th floor

CONVENE: 9:03 a.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Michael J. Molina, Vice Chair
Councilmember Robert Carroll, Member (in 10:47)
Councilmember G. Riki Hokama, Member (in 10:30)
Councilmember Danny A. Mateo, Member

Councilmember Dain Kane, Nonmember (out 9:22)
Councilmember Charmaine Tavares (in 10:30)

STAFF: Scott Jensen, Legislative Analysts
Yvette Bantilan, Committee Secretary

ADMIN.: Lieutenant Jeffery Tanoue, Department of Police (PW-42)
Sergeant Mitchell Pellazar, Department of Police (PW-42)
Officer Jeff Mahoney, Department of Police (PW-42)
Wendy Kobashigawa, Civil Engineer, Engineering Division, Department of Public Works and Environmental Management (PW-54)
Joe Krueger, Civil Engineer, Engineering Division, Department of Public Works and Environmental Management (PW-55)
Milton Arakawa, Director, Department of Public Works and Environmental Management
Cindy Young, Deputy Corporation Counsel, Department of Corporation Counsel

OTHERS: PW-42: Rici Conger, Kula Community Association
Elliott Krash, Kula Community Association
Jimmy Muschietti
Camille Lyons
Paula Holroyde
Peter Capriotti, former Officer Haiku Community Association, Makawao Main Street

PW-55: Joe Bertram III, Chair Roads, Greenways, and Roundabouts Committee, Kihei Community Association
Takeshi Matsuk kata, Towne Development of Hawaii, Inc.
Karilynn Kawahara, Munekiyo & Hiraga, Inc.

PW-58: Harold Edwards, Senior Vice President, Molokai Properties, Inc.

Chair Pontanilla: (gavel) Good morning, Members. The Public Works Committee meeting is now in session. Today’s date is March 13, 2006. Members this morning we have four items on the agenda, and what the Chair would like to do this morning is to take public testimony on . . . as we go through the agenda itself. For those of you that wanna testify this morning, if you need to be at work or, or catch a plane back to Molokai, you can also do your testimony . . . , testimony prior to the agenda being brought up. So Joe Bertram you wanna go up now?

Before Mr. Bertram gives his testimony, testimony will be limited to three minutes, an additional minute will be granted to the person that’s testifying. If you need an additional three minute, after your first three minutes you can come back after the last testifier has testified. Members in the audience as well as Members on the floor if you could turn off your cell phones or put it on the silent mode. Thank you. Go ahead, Mr. Bertram.

. . . BEGIN PUBLIC TESTIMONY . . .

Mr. Bertram: Thank you. Good morning, folks. Glad to be here. I’m representing the Kihei Community Association this morning. I’m here, we’re here to fully support the acquisition of the property along the north-south collector corridor to implement our greenway plan for our community. I wish I brought my big maps. I, I think you have a map of the area before you, but we also that . . . we’d like to see that, that the Council take some leadership on this particular issue besides acquiring this, but to attach to this acquisition an actual study of that corridor, especially the southern end of it which is where this particular acquisition is taking place. This whole corridor is really gonna be main, mainly a walking and biking corridor. Public Works as far as I understand has no other plans for roadway development in the north-south corridor in this, in the southern portion of this, and there are other right of way issues that are at stake in this corridor. I know the Mayor right now has some funds available and are . . . is pursuing the southern most terminus end of the corridor which is a property on Punana(?) Street, but there are other acquisition right of ways that need to addressed further up at, at Walaka Street and at Kanani Street as well, and this is very critically important that these also be acquired in order for this acquisition to make sense as far as this being our greenway or walkway that would actually go through the entire length of the corridor all the way through the middle of our community. This kind of a condition is very similar to what was put on when you folks purchased our park next to the Kihei School. You put on a condition that there be
a out ... an open space master plan created that actually looked at how that park sat in with other parks and our other park needs in the area, as well as how it could all connect with our open space, and that was very helpful. That really did address a lot of those needs. So please do take a look at those, at these right of way issues that this is not just one. That if you’re gonna spend your money wisely it needs to be looked at in the context of keeping this whole corridor open specifically for walking and biking not for roadway, but for just walking and biking as delineated in our community plan which says that where no roadway is built the entire right of way will be used for a greenway for ... and, and expanded to create parks through the middle of our community, and this particular area is very . . . bereft of parks. So this corridor will be an excellent area for us to create this park . . . this linear park through the middle of our community. Thank you.

CHAIR PONTANILLA: Thank you, Mr. Bertram. Members, any questions for the testifier? If not, thank you again.

MR. BERTRAM: Thank you.

PW-54 ACQUISITION OF REAL PROPERTY INTERESTS
(WAILUKU) (C.C. No. 06-58)

CHAIR PONTANILLA: Any other person that wanna testify this morning on any of the agenda items? If not the Chair will keep the testimony open.

This morning, Members, we do have again four items on the agenda. The first item that the Chair would like to bring up is the acquisition of real property interests here in Wailuku PW-4 [sic]. This is a result of County Communication No. 06-58 transmitting a proposed resolution authorizing proceedings in eminent domain to . . . acquisition of real property interests to make certain improvements on Market Street in Wailuku. This include the reconstruction of pavements, installing drainage, installing curbs and sidewalks, and the construction of driveways. The Committee received a revised resolution for this purpose to authorize proceedings in eminent domain. At this time I’d like to call on the Public Works Director to give us some comments.

MR. ARAKAWA: Thank you, Mr. Chair. This item, as you mentioned, pertains to a proposed resolution which would authorize proceedings in eminent domain for the acquisition of real property interests in the Wailuku area as part of the Market Street improvements project. The Market Street improvements projects includes reconstructing the existing Market Street pavements, installing a drainage system, installing concrete curbs and sidewalks, constructing driveways, and installing other streetscape improvements. The project extends from Wells Street to
Mokuhau Road. We are proposing to initiate eminent domain proceedings relating to three properties, and I have circulated a map which provides additional information on the location of these three properties.

The first property is a perpetual nonexclusive drainage easement on property identified as a portion of TMK: 3-4-32: parcel 1, comprising 8,564 square feet. This drainage easement is needed in order to construct a 48-inch drain line from Market Street to Alahee Drive to the drainage easement which then drains into Iao stream. The owners of this property are Hawaiian Land and Farming Company, LLC; and Lindsey’s LLC. Our appraisal shows that the estimated fair market value of the easement is $1,542.

The second property is a purchase of the fee simple interest in property identified as a portion of TMK: 3-4-33: parcel 9, comprising 36 square feet. This is a triangular sliver of property on the Wailuku Town side of the intersection with Ulei Place. The sliver is triangular in shape and it’s .96 feet at its widest point, and this property is needed in order to keep the improvements consistent along this stretch of Market Street, and it should be noted that the proposed right of way along this portion of Market Street is approximately 36 feet. The owner of the property is David Singer, and our appraisal shows that the estimated fair market value of the sliver to be $1,345.

The third property is a purchase of the fee simple interest in property identified as a portion of TMK: 3-4-33 parcel: 12, comprising 157 square feet. This property is located on the Wailuku Town side of the previously mentioned property. The purchase extends along this property’s frontage, and the width varies from 2.03 feet to 2.39 feet. And like the second property this property is needed in order to keep the improvements consistent along this stretch of Market Street. The owner of this particular property is David Henderson Brown Trust, and our appraisal for this portion of the property shows an estimated fair market value of $6,630.

With regard to the first and second properties, we have been in discussion with the owners, and have been unable to reach an agreement on the purchase price via negotiation. With regard to the Brown Trust property, the owner in that particular instance has been unwilling to answer our, our written inquiries.

The resolution entitled “AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY INTERESTS AT WAILUKU, MAUI, HAWAII”, is before you for your review and consideration, and we respectfully request your approval.

CHAIR PONTANILLA: Thank you, Mr. Arakawa. Before we go any further I’d like to introduce the Members that are present this morning. We do have the Vice-Chair Member Michael Molina, as well as Member Danny Mateo from Molokai. Also
joining us this morning is Councilmember Dain Kane. From the Administration you already met Mr. Arakawa, and we do have Cindy Young.

MR. ARAKAWA: And I also have our engineer from our Engineering Division, Wendy Kobashigawa.

CHAIR PONTANILLA: Thank you. And from the Council staff we do have Scott Jensen, as well as Yvette Bantilan. Members, are there any questions for the Director? Member Molina.

VICE-CHAIR MOLINA: Yeah, thank you, Mr. Chairman. Good morning, Mr. Arakawa. Thank you for bringing this matter to the Committee. You mentioned that the reason why we’re considering going this route is because I guess negotiations have broken down with the property owners, and I guess one has not responded. My question has to do first with the appraisal values. The first property was, you know, roughly 8,500 square feet and the appraisal came in at $1,542 whereas the next two properties combined we’re looking at over just 200 square feet, and there’s the value... SS value is, you know, close to $8,000... can you explain why these two properties, even though they’re smaller in square footage, are assessed at a much higher value than the first property.

MS. KOBASHIGA WA: The easement D-3 that drains down to the Iao stream is an easement so I did get a lesser valuation and it’s also, if I understood correctly, in a flood plain area that’s why it’s such a lower value.

VICE-CHAIR MOLINA: The resolution mentions that, you know, if we don’t use the condemnation process for this or actually the condemnation process should be used for public interest, can you explain why this is needed? I mean if we don’t do it then what are the consequences for the County, or the people down there in Happy Valley and other parts of Wailuku?

MR. ARAKAWA: With regard to the drainage easement, of course part of the project involves drainage improvements which would, you know, benefit not only the areas of Market Street, but the general area as well. So if, if this easement is not obtained then obviously the drainage system won’t work as, as planned, and it’ll continue pretty much as it is currently when there is a flooding event then, you know, basically flooding will occur.

In the case of the other two properties where we’re purchasing... we want to purchase property on Market Street, I would note that Wailuku Town of course is an older established town, and rights of way are already substandard. So we’ve worked with the owners in trying to minimize the amount of property that’s needed for acquisition, and in this case although the slivers are fairly narrow, they
are needed for basically a sidewalk improvements. If, if we cannot purchase these properties, then we will have a discontinuous sidewalk in that, that area.

VICE-CHAIR MOLINA: Okay, thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Member Molina. I got a question for the Department. In regards to the eminent domain on North Market Street, is this part of the North Market Street improvements from Piihanu to ... I think it’s Wells Street?

MR. ARAKAWA: Mr. Chairman, yes, it is.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Public Works Director? If not, if there’s no . . .

VICE-CHAIR MOLINA: Chairman, question.

COUNCILMEMBER KANE: Sorry, Mr. Chairman.

CHAIR PONTANILLA: Mr. Kane.

COUNCILMEMBER KANE: Thank you, Mr. Chairman. Director Arakawa we’re looking at this map so I, I took the highlighter . . . so I just wanted to make sure that that long sliver on the mauka side of Market Street it runs continuously from the Singer property all the way over to Kahawai Street is that correct?

MR. ARAKAWA: That’s correct.

COUNCILMEMBER KANE: Okay. Singer, the Singer property they have agreed and on the negotiated number is that correct in the Singer property?

MR. ARAKAWA: No. The Singer property they have not agreed. So that’s why we are here for condemnation asking for authorization to proceed with condemnation.

COUNCILMEMBER KANE: Okay. And on the Singer property that’s the one that you described as less than a foot? Can you give the dimensions again that triangular. It’s 36 square feet you said total. Is that correct?

MR. ARAKAWA: It’s 36 square feet and it’s a triangular . . . you can barely see it on this graphic that I’ve handed out because of the scale, but it’s little less than one foot at its widest point .96 feet.

COUNCILMEMBER KANE: How does that impact the existing building? I know that on the Singer property there been a lot of recent renovations to their property so
they have . . . from my understanding they have parallel parking stalls coming off of that building which people would be ingressing and egressing right onto Market Street is that correct (inaudible)

MS. KOBASHIGAWA: They have vertical perpendicular parking stalls to the building--

COUNCILMEMBER KANE: I'm sorry, I meant vertical, yes.

MS. KOBASHIGAWA: --but we did provide, we did discuss it with Mr. Singer and we do provide him a long driveway in the front so his vehicles can still have access to the parking.

COUNCILMEMBER KANE: Okay. And then as for the, the other trust which one’s did agree if any as far as for the condemnation or for the easements?

CHAIR PONTANILLA: Department.

MS. KOBASHIGAWA: We did get an agreement from the Kalakaua property which is just on, on the corner of where Alahee Drive is. It’s not labeled, but it’s kind of like a triangular parcel, and then there’s another parcel beyond that, that A&B property owns where Spreckles Ditch is that they also agreed to our offer.

COUNCILMEMBER KANE: Okay. I’m just trying to understand so the road widening parcel 2-B that’s marked.

MS. KOBASHIGAWA: Oh, I’m sorry. Market, on Market Street the first parcel off of Kahawai Street, which is owned by the Uchida’s, they have agreed . . .

COUNCILMEMBER KANE: Okay. Go ahead.

MS. KOBASHIGAWA: . . . the Anbe’s and also the Honda’s have agreed.

COUNCILMEMBER KANE: Okay, great, thank you. So the only one on that, that continuous . . . that was my focus of my questions, yeah, because that needs to be a continuous piece, yeah, right there from that less than a foot out to 2.0 something feet as its widest correct?

MS. KOBASHIGAWA: Correct.

COUNCILMEMBER KANE: Okay. So the only one that disagreed at this point is the Brown Trust?

MS. KOBASHIGAWA: Mr. Brown and Mr. Singer.
COUNCILMEMBER KANE: Okay. Thank you. Thank you for the clarification.

CHAIR PONTANILLA: Members, any more questions for the Department? If not, the Chair would like to make a recommendation if there’s no objections. The Chair would like to recommend the approval of the revised . . . (pause) . . . approval for the proceedings in eminent for the acquisition of real property interests at Wailuku, Maui, Hawaii, for Market Street improvements (Wells Street to Mokuhau Road). This is a Federal Aid Project STP-3405(1).

VICE-CHAIR MOLINA: So move.

CHAIR PONTANILLA: For first reading.

VICE-CHAIR MOLINA: So move.

COUNCILMEMBER MATEO: Second.

CHAIR PONTANILLA: Thank you. We have a motion to approve and a second. All in favor say aye.

VICE-CHAIR MOLINA: Aye.

CHAIR PONTANILLA: Thank you very much.

VOTE: AYES: Councilmember Mateo, Molina, and Chair Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Carroll and Hokama.

MOTION CARRIED.

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

PW-55 ACQUISITION OF REAL PROPERTY FOR NORTH-SOUTH COLLECTOR ROAD (KIHEI) (C.C. No. 06-59)

CHAIR PONTANILLA: Members, the second item we have this morning again is in regards to acquisition of real property for North-South Collector Road in Kihei,
PW-55. This is a result of County Communication No. 06-59, transmitting a proposed resolution to authorize proceedings in eminent domain in order to obtain portions of real property in Kihei identified as Tax Map Key 3-9-20:parcel 4 and 3-9-2500:parcel 16 [sic]. This property is needed in order to complete the construction of a section of the North-South Collector Road between Walua Place and Keonekai Road. At this time the Chair would like to have the Department . . . Director to give some comments on this particular project. Mr. Arakawa.

MR. ARAKAWA: Thank you, Mr. Chair. This item pertains to a proposed resolution which would authorize proceedings in eminent domain for the acquisition of real property in the Kihei area as part of the North-South Collector Road between Walua Place and Keonekai Road. This portion of the North-South Collector Road is delineated in the Kihei-Makena Community Plan, and is intended for future construction as part of the County's Federal Aid Project. However, as . . . however on September 14, 2004, Towne Development received special management area use permit approvals from the Maui Planning Commission to construct its Kealii Kai II Project, and Kealii Villas Project. Both of these projects abut the future North-South Collector Road, and I have circulated a map which notes the location of these two projects. As part of the SMA approvals, Towne is required to work with the County to ensure that a two-lane north-south collector roadway would be constructed between Kealii Alanui and Keonekai Road. This includes that Towne and its affiliates pay for permitting, design, right of way acquisition, and construction of this section of the North-South Collector Road. Just for your reference, a short portion of the North-South Collector Road between Kealii Alanui and Walua Place is already existing. A separate Environmental Assessment and special management area permit were required for the construction of the roadway, and in coordination with the County, Towne has done the design of the roadway and obtained the necessary permits and entitlements. The proposed right of way width for the North-South Collector Road is 60 feet, and as noted in the map, the County owns or has rights to portions of this planned right of way. These are noted on your map in green. As part of their two developments, Towne will also be dedicating road widening frontages. These are noted in yellow on your map. And Towne has also been working to purchase properties from other abutting property owners. They have obtained rights of entry to two properties. One designated as TMK: 3-9-20:parcel 12, owned by United Realty, Inc.; and the other right of entry being TMK: 3-9-20:parcel 7, owned by Aloha Mansions, LLC. Towne has negotiated with the two remaining owners for purchase of the rights of way necessary for this segment of the North-South Collector Road, but thus far has been unable to come to agreement. The two properties are as noted.

One is a purchase of a fee simple interest in property identified as a portion of TMK: 3-9-20:parcel 4, comprising 48,935 square feet. This property is owned by No Ka Oi Development, LLC. And on our graphic it mentions the ownership as a
Jame...Jane Yamane Sawyer Trust, but the Trust sold that property to No Ka Oi Development, LLC. The entire 60 foot width of the right of way is located within this property. The appraisal, which was commissioned by the County, shows that the estimated fair market value to be $475,000.

The second property is a purchase of fee simple interest in, in property identified as a portion TMK: 3-9-20:parcel 16, comprising 4,949 square feet. This property is owned by Kihei Alii Kai Condominium. The road widening lot is 31.55 feet in width along that property’s frontage, and the appraisal commissioned by the County shows that the estimated fair market value to be $116,500.

Should the Council approve the proceedings in eminent domain, I would like to note that the developer will pay for the right of way acquisition cost including, but not limited to, the fair market value of the fee simple interest acquired, attorneys fees, appraisals, maps, documents, subdivision, and severance damages. Just a note on the appraisals, although the appraisal in this particular case was commissioned by the County, it was paid for by Towne.

The resolution entitled “AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT KIHEI, MAUl, HAWAII FOR THE NORTH-SOUTH COLLECTOR ROAD” is before you for your review and consideration, and we respectfully request your approval.

CHAIR PONTANILLA: Thank you, Mr. Director. Members, any questions for the Director? Member Molina followed by Member Mateo.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. Good morning, Mr. Arakawa. Again, you mentioned that Towne is pretty much picking up the tab for nearly everything. So again what would be our portion calculating at a rough estimate what are we gonna...what other side I guess costs included are we looking at?

MR. ARAKAWA: The, the only thing that Towne needs from us is the property to complete the road, and for that they need...they have been unable to reach agreement on these two outstanding properties and so they need condemnation powers to do that. All the costs otherwise would be incurred and paid for by Towne development or its affiliates.

VICE-CHAIR MOLINA: So just the condemnation cost for the purchase of the two.

MR. ARAKAWA: Well, they will pay for the condemnation cost, but they need government’s power to condemn the property.
VICE-CHAIR MOLINA: Okay. So this is virtually almost nothing out of our pockets then in terms of cash.

MR. ARAKAWA: Yes.

VICE-CHAIR MOLINA: Okay, thank you. Thank you, Chairman.

MS. YOUNG: Mr. Chair, if I may also--

CHAIR PONTANILLA: Corporation Counsel.

MS. YOUNG: --we would note for the Committee that we will be coming to the Committee of the Whole I believe tomorrow, it's slated for tomorrow, we are requesting authorization to hire outside counsel for this so that outside counsel would be doing the primary work on, on this eminent domain proceeding if, if authorized by Council.

CHAIR PONTANILLA: Thank you. Member Mateo.

COUNCILMEMBER MATEO: Chairman, Chairman, thank you. Maybe for the... if the Department can tell us is there a specific reason why no agreement can be made other than going into eminent domain?

MR. ARAKAWA: Our understanding is that Towne has been in development... I mean in discussions with these four outstanding properties, and perhaps if I can refer that question to Takeshi Matsukata with Towne, and they have been the parties that have actually dealt with these owners directly.

CHAIR PONTANILLA: If you could come forward, please. And please state your name and the organization that you represent. Thank you.

MR. MATSUKATA: Good morning. My name is Takeshi Matsukata. I'm with Towne Development Hawaii, Inc. The... so far we have been successfully negotiated to have these two parties agree with the condem... I mean to, to, for us to build the road and to dedicate to the County, but the other two parcels we have not been able to do that. One is a condominium which is a very unique situation since you have to have 100 percent ownership to agree to this to, to sell the property which is virtually impossible because there's always gonna be like one person who is not willing to do that at a certain value. So this one almost certainly by its nature it has to go into eminent domain process, and the board will be able to deal with the County for the... or the court to determine the value. So it's... as a process we have to go I think this, this route. The other party No Ka Oi Development, LLC, we have been simply not been able to agree on the value. Thank you very much.
CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MATEO: Chairman, if I could.

CHAIR PONTANILLA: Yeah. Sir. Mr. Mateo.

COUNCILMEMBER MATEO: Thank you. For that property that’s part of the condo...

MR. MATSUKATA: Yes.

COUNCILMEMBER MATEO: ... has the AOAO of that condominium taken a position on the pending action of eminent domain?

MR. MATSUKATA: Actually the board members are expressing that they’re willing to cooperate but they understand (end of tape) are not provided so that they have representations on selling the property.

COUNCILMEMBER MATEO: And the actual appraisal was that a current appraisal?

MR. MATSUKATA: The Director stated the values five minutes ago. Those appraisals were done about six months ago. We were asked to do a update and the update recently came in and... did you receive the new values?

CHAIR PONTANILLA: Milton.

MR. MATSUKATA: Mr. Arakawa.

MR. ARAKAWA: I’m not sure if we did to tell you the truth.

MR. MATSUKATA: Oh, okay. So I think it’s probably still in the mail, but we been requested to update the appraisal and we’re getting the new figures.

COUNCILMEMBER MATEO: Okay. And with that new appraisal estimation, you do not expect No Ka Oi Development to still be interested reaching a resolve versus going through eminent domain?

MR. MATSUKATA: At this point I believe it’s gonna be very difficult.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Mr. Mateo.

MR. ARAKAWA: Mr. Chair, sorry--
CHAIR PONTANILLA: Mr. Arakawa.

MR. ARAKAWA: --as part of ... I guess we recently received the update on the appraisals, and I can give you the values that the appraiser came up with.

CHAIR PONTANILLA: Yeah, if you could.

MR. ARAKAWA: The, for the portion of TMK: 3-9-20:parcel 4 in which the taking area is 48,935 square feet, the value as appraised is $460,000. On the other property 3-9-30:parcel 16, pertaining to 4,949 square feet, the value would be $98,000.

CHAIR PONTANILLA: So the value had reduced according to the new appraisal?

MR. ARAKAWA: Yes, that’s correct.

CHAIR PONTANILLA: I got a question. In regards to these two properties, for negotiation purposes what figure will be used?

MR. ARAKAWA: Well, one of the concerns of the owners was whether or not the appraisal was current so, you know, Towne has made the effort to update the appraisals so, you know, our intent is to use the most current value.

CHAIR PONTANILLA: Thank you. Member Mateo.

COUNCILMEMBER MATEO: Chairman then if we’re looking at the more current value then the resolution we’re looking at is gonna be, need to be amended because we’re looking at the higher values at this point. So how do we address approving a resolution at this point when the apparent value is not yet determined in terms of which one we’re gonna be using?

CHAIR PONTANILLA: Maybe Mr. Arakawa or Ms. Corporation Counsel.

(note: pause)

MS. YOUNG: Mr. Chair, if the Committee wanted to revise the resolution to refer to the more updated values we could amend the whereas clause ... I believe it’s the tenth whereas clause that states the fair market value of the two ... the two fee simple interests, and also we would, we would revise ... we would revise “BE IT RESOLVED” number 5, section 5 to refer to the updated sum.

CHAIR PONTANILLA: Thank you, Corporation Counsel. Member Mateo.
COUNCILMEMBER MATEO: Chairman, I have no problems with that and that would have been the, you know, the process. It's just that at this particular point just to be assured that the Department is looking at the more recent number versus what we've been, been given here which . . . because that is a reduction in, in cost for us.

MR. ARAIZA W A: That's correct.

COUNCILMEMBER MATEO: Okay, thank you.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MATEO: At the appropriate Chairman . . . at the time, Chairman, when we're ready.

CHAIR PONTANILLA: Okay. All right, any more questions for the Department or Corporation Counsel? So at this time the Chair would like to recommend that the approval for first reading of the proposed resolution.

VICE-CHAIR MOLINA: So move.

MS. BANTILAN (spoke away from the microphone): As revised.

CHAIR PONTANILLA: As revised.

COUNCILMEMBER MATEO: Thank you very much, Chairman, and I'd second.

MS. BANTILAN: Filing.

CHAIR PONTANILLA: And the filing of the communication. Moved by Member Molina, seconded by Member Mateo. Member Molina.

VICE-CHAIR MOLINA: Thank you very much, Mr. Chairman. So again that comes with the revised figures under the whereas that would be I guess what 4 . . . ?

COUNCILMEMBER MATEO: Sixty.

VICE-CHAIR MOLINA: Four sixty and . . .

COUNCILMEMBER MATEO: Ninety-eight.

VICE-CHAIR MOLINA: . . . ninety-eight thousand five hundred I presume, right, or is it just straight ninety-eight thousand? And then under the five . . . number five under the "BE IT RESOLVED" that will read 598,000?
CHAIR PONTANILLA: You wanna go through a motion on that, Mr. Molina?

VICE-CHAIR MOLINA: Do we need to make a formal amendment to . . .

CHAIR PONTANILLA: Yes.

VICE-CHAIR MOLINA: Okay. Move to amend.

COUNCILMEMBER MATEO: Second.

CHAIR PONTANILLA: It’s been moved by Member Molina that we amend the portion of the tenth “whereas” to replace the figure of $475,000 with $460,000 and we revise the $116,500 with $98,000. On the “BE IT RESOLVED” portion item number five, the revised figure now is $558,000. All in favor of the motion to amend?

VICE-CHAIR MOLINA: Aye.

COUNCILMEMBER MATEO: Aye.

CHAIR PONTANILLA: Thank you.

\[VOTE: AYES: Councilmember Mateo, Molina, and Chair Pontanilla.\]
\[NOES: None.\]
\[ABSTAIN: None.\]
\[ABSENT: None.\]
\[EXC.: Councilmember Carroll and Hokama.\]

\[MOTION CARRIED.\]

\[ACTION: APPROVE AMENDMENT TO MAIN MOTION (revise resolution to reflect the current fair market value and compensation sum for said property)\]

CHAIR PONTANILLA: Coming back to the main motion as amended. All in favor say aye.

VICE-CHAIR MOLINA: Aye.
VOTE: AYES: Councilmember Mateo, Molina, and Chair Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Carroll and Hokama.

MOTION CARRIED.

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

CHAIR PONTANILLA: Thank you very much. That takes care of PW-55. Before we go on to PW-58, the Chair would like to take three minutes recess. (gavel)

RECESS: 9:43 a.m.

RECONVENE: 9:48 a.m.

CHAIR PONTANILLA: (gavel) The Public Works Committee meeting is now reconvened. Thank you, Members, for that short break. I needed to get some wet stuff down on my throat.

Members, the third item on the, on the agenda is PW-58, the dedication of roadway lots for the Maunaloa Village Subdivision on Molokai. This is a result of County Communication No. 06-71 transmitting a proposed resolution to accept various roadway lots in Maunaloa Village Subdivision, Molokai. Before we call on the Director to give us some comments, I’d like to call on Harold Edwards for public testimony. Mr. Edwards you have three minutes to testify, one minute to conclude. If you wanna come back after your first three minutes you could. At this time please state your name and the organization that you represent. Mr. Edwards.

MR. EDWARDS: Thank you, Honorable Pontanilla and Members of the Public Works Committee. I’m Harold Edwards, Senior Vice President of Molokai Properties, Ltd.

The roadways in Maunaloa Village were accepted by the County by letter dated April 19, 1997. Almost nine years have elapsed since our com... since then our company continues to bear the burden on maintaining these roads. We’re pleased that the Public Works submittal is before you now. However that submittal is accompanied by a lengthy and costly punch list of repairs that these now nine year old roads require. I’d briefly like to go through that history of... over those nine years with you if I could.
On April 9th, 1996, then Public Works Director Charles Jencks in writing to the Department of Agriculture said the subdivision infrastructure was now 95 percent complete. The roads have been constructed to an acceptable standard for dedication, and when dedication instruments for the roads within Section C are submitted they will be processed expeditiously.

By memo dated February 26 of 1997, the punch list was transmitted to our contractor for the roadways.

On April 25th, 1997, the County writes that the inspection of April 22nd found that those improvements have been inspected, approved, and accepted by the office.

There’s several other ones. I’ll kind of skip through some of this and go through the highlights. You have my written testimony.

On October 2nd, 1997, we submitted a revised dedication deeds to the Department of Public Works.

In January of ‘98 Public Works released the subdivision bond noting that all the improvements had been satisfactorily completed.

In January 2001 we requested again that the roadway dedications be acted on.

December of 2004 the Corporation Counsel resubmitted roadway deeds for Maunaloa Village to Public Works.

And then on January 1st of 2005, we received a first new punch list.

In October we came to grips with that punch list has grown, and because of the length of that punch list we hired a contractor to do sidewalk repairs at a cost of $38,000.

November of '05 we submitted deeds again to the Department, and then in January . . . or December 24 of '05 the punch list was inspected and approved, and then on January 30th and then subsequently we received additional punch list, and this last time the issue of wheelchair ramps was raised.

Molokai Properties is keenly aware that the County of Maui pours millions upon millions of County dollars into Molokai for County services that far exceed the real property tax revenues that originate on Molokai. We understand the current shortfall to be about $10 million a year. We understand that pain well as our operating losses continue in the $3.5 to $4 million range per year as we try to
maintain employment on the island and develop a community master plan for our lands that will restore our company’s financial viability.

It is regrettable that other pressing businesses kept these deeds from being processed in a timely manner. However, in the case of the roadway dedications in Maunaloa, we would ask that you consider our good faith efforts to deal with this in a timely manner and accept the dedication of these roads without having to endure further financial hardship. Maunaloa Village has wheelchair ramps that are serviceable and met the County’s standards at the time of the construction and acceptance.

I thank you again for this opportunity to provide testimony. I’d be happy to try to answer any questions that you have.

CHAIR PONTANILLA: Thank you, Mr. Edwards. Members, any questions for the testifier? Seeing none, thank you again.

MR. EDWARDS: Thank you.

PW-58 DEDICATION OF ROADWAY LOTS FOR THE MAUNALOA VILLAGE SUBDIVISION (MOLOKAI) (C.C. No. 06-71)

CHAIR PONTANILLA: Members, any questions . . . at this time I’d like to have the Public Works Director give some comments.

MR. ARAKAWA: Thank you, Mr. Chair. This item pertains to the proposed dedication of roads within Maunaloa Town on Molokai. A proposed resolution entitled “ACCEPTING DEDICATION OF ROADWAY LOTS FOR THE MAUNALOA VILLAGE SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE” has been transmitted to the Council, and a map has been circulated which delineates the location of the roadways. And just to go down the list of streets that are involved, there are two segments of road widening lots on Maunaloa Road within Maunaloa Town that are part of the dedication documents. Kaana Street, Puumanlu Street, Mahiki Place, Kahakahi Street, Linohau Place, Waiele Street has basically two segments that are involved for dedication, Halena Street, Puunana Street, Oha Street, Hoalua Street, Unaha Street has three segments involved, Hoea Street, Hoiaikane Street has two segments involved, Wahnani Street, and Mokio Street. And these are basically all the streets, a number of streets within Maunaloa Town on, on Molokai.

The approval of the subdivision was based upon Resolution No. 94-88 entitled “APPROVING THE MAUNALOA VILLAGE REDEVELOPMENT PROJECT,
PURSUANT TO SECTION 201E-210, HAWAII REVISED STATUTES”. Resolution No. 94-88 was adopted by the County Council on September 2, 1994. The subdivision was granted final subdivision approval on February 13, 1995.

The improvements within the jurisdiction of the Department of Public Works and Environmental Management were satisfactorily completed and approved on January 2nd, 1998. Subsequently approximately eight years have passed since the improvements were deemed satisfactorily completed. As a result remedial work is required prior to acceptance of the roadways. I have also circulated a letter dated March 9, 2006, to Molokai Properties Limited, which details the punch list of 19 outstanding items required for dedication. Most of these items involved relatively minor repair or replacement such as a cracked catch basin lip, sunken sidewalk, or faded or missing signs. And there’s also one more item which we recently received in the police report that stop bar at Mokio Street and Oha Street intersection is faded and needs to be repaired. So this probably should be added to the punch list as well.

One outstanding item relating to the reconstruction of the sidewalk access ramps to current ADA standards should be brought up before this Committee. At the time that the roadway improvements were deemed to be satisfactorily completed back in 1998, the handicapped access ramp, ramps were satisfactorily constructed in accordance with standards that were prevailing at the time. However, the design for satisfactorily handicap access ramps as determined by the Disabilities and Communications Access Board has changed over the years. So the existing ramps in Maunaloa Town are not in compliance with the . . . I should rephrase it. Most of the existing ramps in Maunaloa Town are not in compliance with the current interpretation.

And as you know there are also, there are two sides to every story and on the one hand the developer has constructed the ramps in conformance with applicable subdivision regulations at the time of approval. Thus there’s an equity issue involved here since the developer has constructed the ramps to one set of standards in order to obtain final subdivision approval, and must now reconstruct in order to dedicate the roads to the County. On other hand the County is just about completing construction of handicap ramps in conformance to a Federal consent decree. So should the County accept dedication of ramps which are not in compliance, then we would be required to update the ramps to current standards at taxpayer expense. In our preliminary look at it is that there are approximately 54 ramps that would need to be upgraded, and if we were to do it our rough cost based on current construction cost would be approximately $800,000.

That concludes my report, and I’d be happy to answer any questions which the Committee may have.
CHAIR PONTANILLA: Thank you. Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Arakawa, good morning again. Can you tell me what happened that it took eight years for the Department to . . . because eight years and three directors later, you know, from the developer that had submitted at that time which was roadways that in fact met County requirements and standards . . . and my reason for asking ‘cause I’d like to hear, yeah, but you know it’s just logical sequence that as the years continue to progress the checklist continues to get bigger and bigger because the continued evolution of County requirements, Federal requirements, etcetera. So I’m looking at us putting the developer in a real difficult situation because of our inability to move a request that was presented to us eight years ago. Could you comment.

MR. ARAKAWA: I have had conversation with Molokai Ranch on this particular issue, and actually it’s kind of bothered us as well . . . as far as the time involved. I can mention to the Committee at least what I am familiar with.

During much of that time there were discussions, which we were actually not a part of, relating to a package dedication of items involving the park in Maunaloa Town, as well as other discussions which took place regarding dedication of lands in Kaunakakai, and so much of that time was actually not . . . we weren’t really privy to those discussions. And so basically when we received the transmittal back from Corporation Counsel’s office back in late December, I think it was December 2004, is when we looked at it in detail and looked at the various punch list items that needed to be done in order to get the roads dedicated. So if there are some other information the Committee would want, probably I would suggest talking with the Parks and Recreation on these, these other dedication issues that were also involved with the roadway dedication.

COUNCILMEMBER MATEO: Okay. So I’m just sticking with the roadway dedication and your reference to the handicap ramps that would be needed. When they, when Molokai Ranch had initially done that component of the requirement that met at that time County standards?

MR. ARAKAWA: That we reviewed. It, it goes off to DCAB, it went through our regular building permit reviews, and it did meet the standards that were prevailing at that time, yes.

COUNCILMEMBER MATEO: What is it that differs now in terms of specifications or requirements that they are not in compliant with?

MR. ARAKAWA: It basically just a different design that is required by DCAB to be in compliance with Americans with Disabilities Act, and I don’t, I don’t believe it
was any statutes change that was involved. It’s basically an interpretation by DCAB as far as how the ramps should be constructed. So as you’ve... as I’ve mentioned, you know, we do have a consent decree on us to bring up our roads to the current standards and so... basically if the developer in this case does not bring it up to standard it’ll be... have to be done basically on County expense.

COUNCILMEMBER MATEO: Okay. And the ramps at this point that is the largest cost item in the punch list?

MR. ARAKAWA: Yes.

COUNCILMEMBER MATEO: And this punch list is what punch list? This is number...?

MR. ARAKAWA: Oh, in the letter that I’ve submitted to you it’s number one.

COUNCILMEMBER MATEO: Oh, okay. And this is one... do you know how many punch list that they had to go through?

MR. ARAKAWA: Well, we did several inspections, and as Mr. Edwards mentioned, the punch list kept on getting more additions, but we did meet on it and hopefully this is the final punch list that we are submitting to Molokai Ranch to complete that’s, that’s our position. I’ve asked our staff to, to complete this final punch list and in the mean time we have submitted it to the Council for your decision based on the dedication.

COUNCILMEMBER MATEO: Okay.

MR. ARAKAWA: I do also want to mention, you know, for the Committee’s review or for the review and consideration of the Committee, as you’re going through the subdivision, usually what a subdivider does they submit the construction plans, which normally are suppose to be done to County standards, and in this case they have of course... it gets reviewed by all the agencies and it gets constructed in accordance with those plans. However, the dedication process is a separate process, and usually it takes place after all the subdivision improvements are completed, and maybe people have already moved into the development as well so it may... there’s also a time lag there, but I do wanna mention, do wanna mention there are... it’s a separate process and there... time lag of couple years, two, three years is not uncommon. Eight years is long.

COUNCILMEMBER MATEO: Thank you. No, that, that was just my point. I thank you for your information. Mr. Chairman, I think my biggest concern is if you take a look at this specific request, this specific request started with my predecessor. Council Chair Kawano was involved in this very process, and the
County still had not provided the appropriate responses to the developer that provided a request to the County of Maui for the acceptance and dedication of their roads that not only . . . that met and in part superseded County requirements in expectations of the developer. This is almost nine years ago. To me there really is as the Director had indicated three to four years might be an acceptable period of time for the dedication process, but to wait for eight to nine years, Chairman, is not acceptable, and I think the long wait has put the developer at a very precarious position of now taking a look at the continuously growing checklist and the demands of the developer. So I would, you know, I’m worried about the process, I’m worried about the unfair position that this request has put the developer in at this particular point, Chairman, and I just needed to express my own, my own concerns about it. Thank you.

CHAIR PONTANILLA: Thank you, Member Mateo. Point well taken. Question for Corporation Counsel in regards to the testimony, the written testimony that was given us this morning, on item seven on January 2nd, 1998, Public Works released the subdivision bond noting all improvements have been satisfactorily completed. If we had released the subdivision bond, does the developer still have more obligations to meet after that date?

MS. YOUNG: Thank you, Mr. Chair. My understanding is that the subdivision bond covers the subdivision requirements and that, and that release of the subdivision bond indicates only that the improvements have been completed per the construction plans that were approved by the Public Works Department.

CHAIR PONTANILLA: Meaning Public Works Director, if they had followed the construction plan to, you know, as designed, shouldn’t it meet all of the requirements of Public Works at that time?

MR. ARAKAWA: Yes.


MR. ARAKAWA: Yes. Back in 1998 they had met all the applicable requirements at that time that were prevailing at that time.

CHAIR PONTANILLA: So if the committee at that time would have taken action on this particular item we wouldn’t be here today?

MR. ARAKAWA: Mr. Chair, as I mentioned, normally the subdivision construction plans are reviewed and then the subdivision construction improvements are normally done. After those are all done then the bond is released after the improvements are completed. Thereafter it’s, the onerous is on the applicant to provide all of the necessary ownership documents and deeds to the County, and
actually come forward for dedication so a time lag is not uncommon, but what is uncommon here is that the time lag was fairly long. In this case eight to nine years, which we acknowledge is very long, and that’s why we tried to bring it up to the Council, you know, in a timely manner as soon as we’d been aware of it.

CHAIR PONTANILLA: Coming back to the ADA compliance, if we went ahead and approved this resolution as is, to meet the ADA compliance, what is the, the date that we need to be completed as far as Maui County?

MR. ARAKAWA: This, this would be of course outside of the current consent decree, but basically I don’t know of any . . . specific time frame, but it, it is something that will be looming out there, and it will be something that we would need to bring up to the current standards. So we basically have to ask an appropriation to bring it up to code.

CHAIR PONTANILLA: Thank you. Members, any more question for the Director? If not the Chair would like to recommend that we adopt the proposed resolution for item PW-58.

COUNCILMEMBER MATEO: So move.

VICE-CHAIR MOLINA: Second.

CHAIR PONTANILLA: Moved by Member Mateo, seconded by Member Molina. Any discussion, Members? All in favor of the motion say aye.

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Thank you very much. Motion carried.

VOTE: AYES: Councilmember Mateo, Molina, and Chair Pontanilla.
NOES: None.
ABSTAIN: None.
ABSENT: None.
EXC.: Councilmember Carroll and Hokama.

MOTION CARRIED.

ACTION: ADOPTION of proposed resolution; and FILING of communication by C.R.
CHAIR PONTANILLA: Members, at this time the Chair would like to take the morning break. We’ll reconvene at 10:25. Recess. (gavel)

**RECESS:** 10:10 a.m.
**RECONVENE:** 10:30 a.m.

CHAIR PONTANILLA: (gavel) Thank you, Members, for the recess. At this time the Public Works Committee meeting is now reconvened. Members, this morning we have our last item on the agenda PW-42 downhill bicycling tours. This is a result of County Communication No. 05-318, transmitting correspondence from Jimmy Muschietti, expressing concerns relating to downhill bicycling tours, specifically the lack of enforcement of traffic laws. Okay, this morning we do have from the Police Department Lieutenant Jeff Tanoue, officers . . . Officer Jeffery Mahoney, as well Sergeant Pellazar.

Members, at this time we’ll take public testimony on item 42 and we do have several people that wanna testify this morning (end of tape) testifying. The Chair will allow you three minutes to testify, one minute to conclude, or if you wanna come back for another three minutes after your . . . after the first three minutes, you can come back after the last testifier has testified for another three minutes. At this time I’d like to recommend that you turn off your cell phones or put it on the silent mode. The first testifier on item 42 is Rici Conger.

MS. CONGER: Good morning. My name is Rici Conger, and I live on Crater Road up in Kula. I have two written testimonies that I would like to read this morning. One is from my husband who is on the mainland and can’t be here in person, and then I will read one from . . . that I have written after that.

The burgeoning problem involving clusters of bicyclists commandeering the public thoroughfare from the top of Haleakala to Paia has grown so overpowering as to be a constant threat to island life. It seems that with each passing week there are more companies capitalizing on the opportunity to make a profit at the expense of local residents’ needs to travel around Maui to conduct the affairs of everyday life. There seems to be no time of day that one’s progress on the public streets upcountry is impeded by these hordes of helter-skelter recreants wobbling down the center of the road sometimes stacked up three or four companies at a time apparently oblivious to the fact that they are not in conformance with local safety, speed and other traffic regulations. Regardless of past testimony from the owners of these many bike firms, the riders do not proceed at the speed limit. They do not pull over for vehicular traffic to pass when needed, and do not appear to be under control of the individual bikes at any time. We’re not against any enterprise making a dollar based on the special qualities Maui has to offer, but when the profit making endeavor has essentially taken over the Upcountry public thoroughfares which the bike companies utilize for free, and continues to grow
exponentially, we feel there must be some strict limitations imposed in order for local taxpayers to at least regain access to the streets and highways which they must use in order to maintain some semblance of normal life. The existing situation must not be allowed to continue. Sincerely, Thomas Conger.

I’d like to now read written testimony that I am submitting. I would like to express my concern about the safety of the bike tours guided and unguided that come down Crater Road. I’ve witnessed almost on a daily basis unsafe operation of the bike vans, guides, and their clients. Our home is located on a part of Crater Road where there is a spectacular view, and because of this people become distracted and end up in accidents regularly. I have guided and unguided bikers coming up our driveway for help to use our phones because cell phones do not work in this area, to get ice for broken bones, and bandages for cuts and scrapes. A recent bad accident happened when a woman ran into the bike in front of her, fell and broke her hip. She fell on the centerline of the road and could not be moved. As it was raining, I brought her blankets to keep her warm while we waited 25 minutes for the ambulance to arrive. Also because she was in the middle of the road we had to conduct traffic control while sightseeing buses, and construction vehicles, and other traffic went by us on both sides. Another incident that disturbed me is one morning my trash can had rolled out into the road after it had been emptied by the refuse collection. As I went to get it, I saw a bike group coming down the hill, and I was not able to get back across the road before the group went by, and ended up standing in the middle of the road while several groups of riders and their escort vans went by with cars and trucks going by me on the other side. Not one bike group stopped or even slowed down to let me cross back safely. As far as obeying traffic laws, the tour seem to have a general disregard for these laws. Many of the guides ride sidesaddle on their bikes looking back towards their group and not looking forward to see what they may be encountering. Also I do not appreciate the escort vans waiving me to go around them while they have pulled over on a blind curve yet the bikers are still ahead of them, and I do not know what I will encounter. It is extremely dangerous and I am always apprehensive to pass when they tell me to. One of the most nerve-racking things is never knowing if a biker will fall over in front of you while you’re driving behind them or trying to pass them.

With the unguided tours they seem to think they can go down the middle of the driving lane and never pull over. There also seem to be much younger children on these tours as well as tandem bikes, which I think is a really bad idea. This is a very busy highway. They renamed it from Crater Road to Haleakala Highway, and it can be dangerous if you’re not paying attention. I do not think young children, and I’ve seen some as young as six and seven years old, have the capacity to be able to handle this kind of activity for 30 plus miles downhill.
I am also concerned that with the emergency response teams coming up so often that they are not available for the other residents of Kula who are paying the taxes for these services. These are just a few of my comments and concerns.

I would like to see the tours limited in number, spread out in distance and time, and be better regulated. Those of us that live on Crater Road are constantly frustrated with the disregard that these companies have for us in the Upcountry community.

MR. JENSEN: Three minutes.

MS. CONGER: If you would like to ask me any questions I’d be happy to answer them. Thank you.

CHAIR PONTANILLA: Thank you, Ms. Conger. Members, any questions for the testifier? If not, thank you very much. The next testifier is Elliott Krash.

MS. KRASH: Mr. Chairman, I’ll first read testimony from Gina Flammer, who is an Upcountry resident who uses the highway where the bike tours are often traveling.

CHAIR PONTANILLA: Thank you. Members, I’ll allow the testifiers to read some of the letters that their counterparts have given them to read to us this morning. So I’ll provide that time for each of the testifier to do. Go ahead, Elliott.

MS. KRASH: Thank you, Mr. Chairman. Hello, my name is Gina Flammer. I am grateful to be given this opportunity to express my concern over bike riders, especially young children riding down Haleakala Highway. Over the past few years I’ve seen a dangerous . . . a rise in dangerous bike riding by what appeared to be novice riders. Often I see families riding down with young children who appear to be unaware of the dangers of riding on a major roadway. It often amazes me that people who would never dream of riding a bicycle on a major highway at home seem lulled by our beautiful scenery and treat the road as though it were a bike lane through a park. On several occasions I’ve driven next to a family who has realized the danger and is panicking on the road. Recently one father was in the middle of the road to protect his 10-year-old son who was on his right. The young boy seemed paralyzed with fear and the father’s behavior made the situation all the more dangerous. I recently drove behind a young boy who was swerving back and forth in the road oblivious to the fact that he was traveling on a road with cars behind him with his father blocking the path so that the child could ride recklessly. Imagine my surprise when I rounded one of the bends and came upon this. Luckily I drive slowly and was able to slam on my breaks. I had two small children in the car with me who could have been injured in an accident and most definitely traumatized if I had hit the man and his son.
I am encouraged by the Council’s willingness to address this safety problem. I ask that at a minimum Council members consider an age restriction on children riding down the crater. A mandatory information leaflet outlining the responsibilities of riders would also help the situation. Thank you for your time.

I could add that Gina’s one of the members of our Kula Community Association Health Safety Committee and she’s one of the one’s who’s volunteered to work with the citizens ad hoc committee that is looking at this issue.

And now, Mr. Chairman, I can present the Kula Community Association testimony.

CHAIR PONTANILLA: Thank you and go ahead.

MS. KRASH: Thank you. Yes. Good morning, Members. My name is Elliott Krash and I’m speaking for the Kula Community Association as the Health Committee Chair. I’m testifying on behalf of the Kula Association on item PW-42, downhill bicycling tours.

First of all, I wanna thank you all for taking this issue up again and keeping it moving. And I wanna thank individual Council members who have taken the time to meet with members from the Kula and the Makawao communities and discuss the issues, and discuss possible solutions and remedies.

At this time the Kula Association has not yet adopted a position. We’ve had briefings by the ad hoc committee at our board meetings and at our general meetings, but we haven’t adopted any specific positions or recommendations. We’re still in the process at the citizens committee level of gathering our information, gathering our data, and looking at some of the suggestions that have emerged those which you’ve just heard from the individuals who are working with us.

Our goals as a committee . . . our primary concern is the safety issue as is yours I’m sure and everyone. And we also are looking at a win-win solution, something that’s gonna balance all of the interests and needs, the tourists and the residents, the cyclists, and the motorists, the businesses, and the residents, all of those, and we know it’s a difficult balancing act, but I think we can get there. We’re getting there.

We’ve looked at some of the data that we were able to collect. We started at the top. The top of the mountain that is. Haleakala National Park. We had excerpts of the visitor safety section of their annual plans for 2002 and 2004, and a few items. I’ve listed them for you. They mentioned in there bicycle tour accidents
are the largest single factor affecting the overall number of park visitor safety incidents, tour ... bike tour incidents increased in FY 2003, uncontrolled growth in numbers of bike clients will result in a greater number of accidents. These are verbatim excerpts from their report. Data that they’ve cited is between 1992 and 1996. They had an average of over 26 incidents, accidents a year. In 2001 it dropped to 18, 2003 it was 25. During some of that period of time as you’ll notice they had 228 percent increase in the number of bike tour clients. So that showed, showed some improvements. What did they do? Some of the safety measures they require a safety plan as part of their process of permitting for the commercial companies that operate starting up at the top ... in, in their territory, vigorous monitoring for compliance with those safety plans, enforcement of safety by the ranger patrols, limit of the number of riders per tour, and recently as you’ve read in the media limit of the number of tours per certain times of the day. We don’t yet have the data on the results of the recent cutback that they did in November, but we’re anxious to see what that is, and we’ll be contacting park staff to meet with them. We also have tried to collect data--

MR. JENSEN: Three minutes.

MS. KRASH: I’d like to wrap up ... data from the Maui County Fire Department, Police Department, Medical Center, ambulance, in trying to get the first responders information. From the Fire Department you see for the six year period we have six bicycle accidents total. Police Department total of nine involving bicycles. Maui Memorial Medical Center data is not yet available. Ambulance we don’t have it separated by bicycle trauma. Only motor vehicle accidents.

Conclusions. We can’t draw conclusions from this data. Obviously we need some systematic way of collecting data that’s gonna show us what the scope of this problem is. And I guess the main conclusion ... one of the conclusions that I personally drew is that there may be ... there appears to be a connection between some of the safety measures that the park has implemented, and the improvements that they’ve seen. And at the bottom of the testimony page that I’ve given you--

MR. JENSEN: Four minutes.

MS. KRASH: --I’ve listed some of the suggestions that have come from our citizens committee such as modifying our permit process, and increasing fees, and using those fees to hire someone to help with data collection and monitoring.

CHAIR PONTANILLA: Thank you, Ms. Krash. Member Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. Good morning, Ms. Krash. Thank you for your involvement on this matter, and I know you have been very active with the Kula Community Association. Can you help me recall, I believe several
years ago there was a bike tour task force. Do you recall any type of task force formed? I've heard from some people and informally that a prior administration had formed ... or was part of a prior administration’s idea because of the concerns with the bike tour that a task force be formed.

MS. KRASH: I, I’ve heard about that, and I personally did not serve on it. I wasn’t with our health safety committee at that time. Probably one of our other testifiers could speak to that. I see Peter here and others.

VICE-CHAIR MOLINA: Okay, all right, thank you. And I guess Mr. Chairman if, maybe through Committee at a later time if we could get some research done to find out more about this bike task force that was supposedly put together, and maybe it’s something we should also consider either through the urging of the ... through letter from the Committee or however other means to get maybe a task force together to look at this issue closer, Chairman. Thank you.

CHAIR PONTANILLA: Thank you, Member Molina. I understand that the small town association ... oh, Wailuku Main Street had a task force at one time. I was trying to get some information in regards to their findings and I still awaiting for those information. Member Hokama.

COUNCILMEMBER HOKAMA: One question for clarification, Chairman. Ms. Elliott, Maui Fire Department you listed six accidents, and under Police nine involving bicycles. These would be separate unrelated or could they be duplicated numbers?

MS. KRASH: We don’t know, and I can’t explain how these relate to the numbers that come from the parks service.

COUNCILMEMBER HOKAMA: Okay.

MS. KRASH: And then I will say that Curt Muromoto of AMRI, the ambulance service, has offered to collect data from that ... separately next year and from ... henceforth and he has said that the most useful data for us will be the ambulance data and some of us feel also we should have ER room data because some people go to ER on their own, they don’t use the ambulance, so then we would get both of those. So we’ve talked with Curt about the data collection issue.

COUNCILMEMBER HOKAMA: If I may ...
COUNCILMEMBER HOKAMA: . . . just to follow up, please. Regarding that data from our emergency room at Maui Memorial Medical Center is that something that is currently ongoing? They’re assisting you in trying to get a quantitative sense of a bicycle related accidents?

MS. KRASH: We had made an initial request in December, and apparently the way . . . again they have the same problem these others do. The way the data is collected is difficult to pry out the pieces that you need, and so we’ve since followed up and hopefully we will have some data soon.

COUNCILMEMBER HOKAMA: Thank you.

MS. KRASH: Mr. . . . I’m sorry.

CHAIR PONTANILLA: Oh, you had something to say?

MS. KRASH: Yes, Mr. Chairman--

CHAIR PONTANILLA: Okay.

MS. KRASH: --if you’ll indulge me for a minute. I wanted to say a special thank you to the Police Department for following up with the training session they did on traffic laws following the last public meeting that you had and I know that . . . or I’ve heard that that was attended by representatives each of the guided tour companies and we’d . . . our ad hoc committee has received copies of the presentation on the traffic laws so we really appreciate that effort.

CHAIR PONTANILLA: Thank you. Any more questions for the testifier? I just wanna add my thank you to the association for looking into this matter as a community. Thank you.

MS. KRASH: And I’d like to add my . . . emphasize that it’s the citizens where this request has come from and how they’re all working together. So thank you.

CHAIR PONTANILLA: Thank you. Okay, the next testifier is Jimmy Muschietti.

MR. MUSCHIETTI: Aloha. Thank you very much Committee for taking up this matter. I also would like to put out a shout for the Maui Police Department, and I appreciate very much the efforts they put towards trying to help us solve this problem. I wanna thank, thank you for taking up this important issue. As you may have read in the Maui News several weeks ago, one of the ER doctors at Maui Memorial Hospital Dr. John Mills was interviewed. He stated that the commercial bike operations were the second most dangerous activity that could be done on Maui. When I personally spoke to Dr. Mills he told me that the ER is
treat on the average about one injury every other day. I believe you can imagine the resources this uses. Resources it should be used and paid for to benefit Maui residents for the most part.

When I appeared before this committee in November of 2005, I testified to the many violations that the bike companies had in relationship to the traffic laws of this State and County. Additionally, I spoke as many others did of the abusive and rude behavior of these companies towards the general public. I also sat in the audience and listened to the owners or representatives of the bike companies tell the committee that they didn’t violate the laws, and that they will try to work harder improving relationships with the general public.

After that meeting most of the companies met with some members of the Maui Police Department. The police told the companies that they had to obey the laws of the road. The police also clarified what these laws were. They told them for example that when they reached the stop signs they would have to stop, dismount from their bikes and walk through the intersection before remounting.

For a few weeks the companies did make some changes. However, these changes were not to last. For the past two months the bike companies have returned to all the same behaviors that were... they were doing that prompted me to file original complaint with you. Examples of these behaviors are as follows: Refusing to pull to the far right of the road when going below the speed limit. Many times that is going 15 miles an hour in a 30 mile per hour zone, which is a violation of traffic code.

Failure to stop at stop signs. This includes the vans as well as the bike riders violation of traffic code.

Stopping in the middle of the roadway and are stopping where the van is straddling the yellow line. (Being in both lanes. Completely blocking the lane they are in, and impeding traffic, as well as partially blocking the incoming lane, and creating a dangerous situation or traffic going in both directions. Violations of the vehicle code.)

Stopping and blocking entrance ways into local business. (Another violation of the vehicle code.)

Pulling into oncoming traffic lanes (opposite side lane) to block vehicles from passing them within legally marked passing lanes (another violation of the vehicle code).
Having several companies following each other (as opposed to keeping a distance between these tour group) so as not to take up so much roadway which impedes the flow of traffic.

Lead riders go . . . lead riders riding as much as 200 yards ahead of the next bike in the tour group.

Lead riders showing themselves as bad examples by “hot dogging on the bikes” or in other words riding in an unsafe and dangerous fashion such as side saddle or standing up and weaving from one side of the lane to the other. Lead riders--

MR. JENSEN: Three minutes.

MR. MUSCHIETTI: Lead riders showing the finger to passing drivers and using profanity (sometimes in front of the children of these drivers).

Van drivers showing the finger to passing drivers and using profanity (sometimes in front of the children of these drivers).

Independent tour riders failing to yield to traffic. (I have seen group which includes children ride down the middle of the lane, going half the posted speed limit or less, cars behind them sometimes as many as four or five, vehicles honking at them and the bikes do not move off to the far right of the shoulder, violations to the vehicle code).

I’ve interviewed many of these groups and at both the Kula Lodge and at the Kula Sandalwoods, where the riders have stopped for breakfast or lunch. I have asked these people several questions. One, did the company tell you about the dangers of riding on the roadway? (Answer no.) Two, did they inform you of the many accidents as well as deaths that have been . . . have taken place with these type of activities? (Answer no.) Did they saying anything to you about the traffic laws? (Answer no.) Did they say where (on the road) where you can ride your bikes? (The answer has always been consistently: “They said we can ride on the road, but we can’t go over the yellow line.”) The company I am referring to is Haleakala Bike Company, the worse of the bunch. I’m also told this company--

MR. JENSEN: Four minutes.

MR. MUSCHIETTI: --has a unique style of operation. They no longer rent bikes to the public. Now they “sell” the bike to the rider at the beginning of the tour and “buy” it back from them at the end of the tour. This is done (I’m told) to circumvent the need for certain types of insurance.
I have asked several of our congress person as well as one senator to ask the Attorney General’s office for their opinion on the legality of this.

The situation has blown up to unbelievable proportions. There been a few fights. One more recently in front of Pollis’ in Makawao town where the Maui police were called.

In the past two weeks I’ve been given the finger twice, and it’s been all that I can do to continue to show restrain at this abusive and offensive behavior.

If the Committee does not take action you can count on more violence in the future as well as liability. I know this is a big issue. However, it’s not bigger in most respects to other businesses such as concessions at the beach, jet ski rentals, motorcycle rentals, companies that rent or have tourists using kayaks in the ocean, kite surfing and jet ski activities.

I think the most important thing that we can . . . that can be done out, I’ll close up with this, even if it’s the only thing is to empower the public. This is the one act alone that will have the effect of reducing the level of anger and frustrations in the general public. If we were empowered we can have a way for our complaints to be heard and acted upon. If we were empowered we can be sure the bike companies will mend their ways and follow the laws as other persons and companies do. If these companies follow the laws and are made accountable for the potential for accidents in the following liability and suffering these events will be reduced. If we are empowered we can show that this is a government for the people and by the people. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for Mr. Muschietti? Member Tavares.

COUNCILMEMBER TAVARES: Yes, thank you. I can yield to Members of the Committee if you’d like.

CHAIR PONTANILLA: Go ahead.

COUNCILMEMBER TAVARES: Thank you. Thank you for being here.

MR. MUSCHIETTI: Thank you.

COUNCILMEMBER TAVARES: In your last paragraph you talked about if you are empowered.

MR. MUSCHIETTI: Yes.
COUNCILMEMBER TAVARES: What kind of empowering are you referring to?

MR. MUSCHIETTI: Well, I'm referring to when this whole thing started with me I went to the Maui Police Department substation in Makawao to make a complaint of multiple violations that led to me almost having an accident which almost killed my dog that was thrown out of my truck which was leashed in the back of my truck. And the officer was sympathetic, but said there was nothing that he could really do because unless they witness it, it wasn't enough that it happened to me and I witnessed it. So I was encouraged to go to in front of groups like you to try and get some... that situation changed so that we can have perhaps a 800 number on the van like the helicopter has, and the public can call in, and that those calls are related somehow like the Better Business Bureau thing to the actual keeping of their licenses. So if there's multiple calls maybe their license will be put on suspension or they'll be given a notice, and eventually maybe if they didn't correct their patterns they would actually have their license withdrawn, and their ability to have a business withdrawn. And I think since money is a bottom line that would have an affect, but for us the public, if we had that number and it was posted on the van and we could make a call that would help tremendously.

COUNCILMEMBER TAVARES: Uh-huh.

MR. MUSCHIETTI: You know reduce our frustrations and we would know, the van people would know this, and their arrogance would drop because they'd know, you know, we can do something about this, and they wouldn't be flipping us off and, and ignoring the laws.

COUNCILMEMBER TAVARES: So you see by us or someone implementing some regulations and some rules that that in turn will empower the public to have at least a say in how these businesses are conducted.

MR. MUSCHIETTI: Yes, I do, and that is my mission. I'm gonna take that as wherever I have to take it. If it's not this committee it's some other committee, legislation, whatever, I'm not gonna stop until that's done.

COUNCILMEMBER TAVARES: Okay.

MR. MUSCHIETTI: And then I can rest at night, and if there's another accident I can feel at least I did my best to prevent it.

COUNCILMEMBER TAVARES: Okay. Thank you, Mr. Muschietti.

MR. MUSCHIETTI: Okay, thank you very much.
CHAIR PONTANILLA: Thank you, Mr. Muschietti. The Chair failed to recognize the attendance of Member Tavares. Good morning.

COUNCILMEMBER TAVARES: Good morning. Thank you.

CHAIR PONTANILLA: How come you late? (laughter) The next testifier is Camille Lyons.

MS. LYONS: Good morning. My name is Camille Lyons. I been a resident of Kula for over 60 years, and I drive down the Kekaulike and Haleakala Highway everyday to work so I'm very familiar with the bike tour companies and, and how they've grown throughout the years. I'm here personally just to, to tell my own experience in how I feel, and I wanted to ask you how you would feel if everyday when you arrived at work you were angry, upset, and almost shaking sometimes because your heart is just pounding so rapidly because you just missed an accident or nearly . . . or witnessed one, and those most common ones are the ones that I've seen are vans that pull over and motion you to pass, an oncoming car comes, and you're stuck with a biker in the lane and an oncoming car, and now that we have the guardrails there is no room to pass. There's not much safe room. And the other is you're passing a line of bikers 'cause you been motioned to pass on, and one biker decides that he's gonna stand up and pedal, and oops, you're just going by him, and you know what happens when you stand up and pedal they zoom into you or swerve into your lane. That has happened so many times and my heart just pounds thinking I could be hitting somebody or hurting somebody. I use to call everyday . . . when I got to work I use to call the bike companies and complain and say this is the bike van, this is the driver or the license plate number, but it got old, and I didn't see any results, and I finally decided that this was unhealthy for me so I gave up. I'm now happy to see that something . . . that there is a committee involved and I support them wholeheartedly. I did see or find myself nodding to just about everything that was said. I've experienced pretty much everything that was said to you today. So I urge you to look into the matter and thank you very much.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? not, the next testifier is Paula Holroyde.

MS. HOLROYDE: Good morning. First I would like to read testimony from Lani Worth. Dear Chairman Pontanilla and the Maui County Council Public Works Committee: Thank you for this opportunity to submit testimony regarding PW-42. I urge this Public Works Committee to consider both immediate and long-term action as it relates to who the bicycle tour companies operate their business on public roads.
The issues that have impacted the Kula community for 20 plus years are many: health and safety, traffic law violations, bicycle accidents, ambulance availability, verbal assaults, County and taxpayer liability, just to name a few.

As a Kula resident (who also works in Kula), each day I experience and witness many of the same frustrations and concerns of other community members. They are numerous examples and I submit the following for your consideration.

At the intersection of Kekaulike and Crater Road, I came within six inches of colliding with a Mountain Rider van and trailer. Without warning, the van sped through the intersection and came to an abrupt stop in the middle of the road, actually crossing the double line and encroaching into the opposite traffic lane. This could have been a very serious accident as I had a one-year-old infant in the car. Because the bicycle van failed to follow the roads signage on Crater Road it caused me to break and skid into the lane of oncoming traffic. I am thankful that there were no oncoming vehicles. I immediately called Mountain Riders about the incidents, and their response was obviously scripted . . . “sorry, but we are under obligation to protect our customers.”

Approached by a woman to use my telephone to call Haleakala Bike Company. Her husband and daughter (seven years old) (end of tape) the girl had flown over the handlebars of the bicycle and may have broken her wrist.

A tourist car stopped to ask for direction to the nearest emergency car. This car had stopped on Crater Road to render assistance to a bicyclist from Haleakala Bike Company who had fallen off her bike and was bleeding from the mouth.

March 7 the bicycle group leader (Maui Downhill) riding sidesaddle, legs perched on the bicycle bars, no hands on the steering handle bar, and facing backward toward the group, occasionally turning to look in front.

March 10, 2006, rear left break lights of van’s trailer not functioning (Maui Mountain Cruisers).

March 11, bicycle van (Maui Downhill) pulls over to the right and signals me to pass on a double yellow line. However, the bicycle group front, in front does not pull into the bike lane and proceeds riding in the middle of the road. This accomplishes nothing.

March 12, girl (age 10, 8 to 10) riding in the center of the Haleakala Highway. Poor riding skills—wobbling and uncoordinated, and barely able to reach the bicycle pedals. (Haleakala Bike Company).
What time has shown since the first Public Works Committee meeting on the downhill bike tours is the bike companies can behave on the roads for few weeks or until the public outrage calms. They have--

MR. JENSEN: Three minutes.

MS. HOLROYDE: They have provided the public with the appearance of compliance with traffic laws and safety, but their efforts fall short of what our committee [sic] deserves. It is time to regulate the downhill bicycle industry and provide the public with oversight and enforcement with teeth. The bicycle businesses have had since 1983 to get their act together. Please help our Upcountry communities. That concludes for Lani Worth.

I have submitted in writing some information from the committee that we're working with as far as possible changes for a contract or changes for the permits, and the permit process . . . and then my testimony.

Good morning, Chairman Pontanilla, and Members of the Public Works Committee and Council members. I am Paula Holroyde, a resident of Kula, and I would like to start today by reading a few lines from the Star Bulletin article written by Gary Kubota.

A bicycle ride down Haleakala can be a breathtaking experience at sunrise with clouds mist drifting below, but some visitors have found the 38 mile ride with hairpin turns from 9,700 foot level can hurt or kill. Park officials recorded 117 accidents, about one every two and half days. Les Wyatt says he hopes more information can be given about the potential of death and injury on bicycle rides. His wife was killed. I don't think the companies deliberately set out to deceive anybody, but I did feel there would be more full disclosure about the hazards. This article is from 1998.

Members of the Kula Community have been working diligently for months on this growing bike problem in our community. Mayor Hannibal Tavares tried to deal with it, but for the last 18 years the problems have only gotten worse. Now the Maui Memorial Emergency Room averages one victim every other day. We have presented to you today in written form ideas we feel will improve the bike experience for Maui bikers, residents, and the environment. Every resident who travels any of the roads the bike tours, or rentals could stand before you and testify any number of horrendous incidents.

The problem of the safety of the bikers, the residents, and the environment have been established. There is a problem of enforcing the existing laws and regulations, there's the problem of the burden of the bike incidents are putting on the police, fire, ambulance, and emergency room. I personally would prefer the
police force . . . to have our police force dealing with the ice epidemic on Maui, rather than bike rules infractions, but this problem is not going away without the help from the police, the whole County Council, the State Legislature, the Mayor, the Governor, and the community. The community is going to work with every part of the government to ensure there are changes for the safety of all.

The tensions and animosities are increasing, not decreasing, as the altercation between bike guides and patrons, and a resident in Makawao demonstrates. Maui County does not need a road rage incident between bikes and automobiles.

MR. JENSEN: Three minutes.

MS. HOLROYDE: Maui County does not need the bike companies to carry the expensive burden that they are placing on the infrastructure.

We do know some issues are more difficult to solve. We know there are some that can be done quite quickly. We hope the Maui County Council will make a commitment to find solutions to a very complex and difficult issue. Fortunately, there are several other for profit private businesses using public facilities to pattern after. I guarantee the community will continue to work diligently for a resolution.

In the interim we will continue to meet. We will continue to collect data. We will continue to record violations. We will continue monitoring the number of bikes coming down the mountain. We will continue to monitor the intervals between bike groups. Thus far, we are please to see a few companies providing relief facilities. That ends my testimony.

CHAIR PONTANILLA: Thank you. Members any questions for the testifier? If not, thank you, Paula.

MS. HOLROYDE: I have one more.

CHAIR PONTANILLA: Oh, go ahead.

MS. HOLROYDE: For Fred Rohlfing who pri..., who’s at a dentist appointment was hoping to get here on time.

Good morning, Chairman Pontanilla: My association with bike tours started when I first moved to Maui in 1984 from Honolulu. I learned very fast to avoid the tours below my house on Kekaulike by using Kimo Drive or Pulehu Road on my commute to work as Corp. Counsel during the Tavares administration.
My next association occurred when I served as U.S. . . . United States Magistrate Judge for Maui County. From 1991 to '95 I ruled on charges against tours by bike law enforcement officials. The most frequent infractions were tours traveling less than ten minutes apart. There were many other safety and staging park rule violations as I recall.

While I still avoid the tours on my decent down the mountain, I have seen dangerous acts while driving home up Haleakala Highway. I have had to move to the right hand shoulder to avoid being struck by cars coming down who are passing tours. I have also personally observed bike tours run the stop sign at the intersection of Crater Road and Kekaulike Avenue. A week ago Sunday on my way to a “Talk Story” meeting in Makawao, I observed at least two bike tours bunched together just below Kula Lodge. I turned around in the last driveway before the hairpin turn, reversed direction and went down Kimo Drive.

I also have frequently heard ambulance and fire truck sirens on their way up to Crater Road, presumably to administer to some fallen bike rider or other mishaps. I am concerned about the diversion of these vital services from residents use as potential . . . at potential critical times.

I am appalled at the failure of these tours to provide adequate sanitary facilities for their patients. This issue alone should merit suspension of tours until it is adequately addressed.

Despite my annoyance and other stated concerns, I do not favor a total ban. Instead I strongly believe that all commercial bike operations (guided and unguided) on Maui should be firmly regulated.

The Kula Community Association is submitting a comprehensive list of reasonable reforms that should be enacted by the County for all roads under its jurisdiction. Stronger insurance provisions are vital (talk to your litigators from Corp. Counsel about this). Permit fees should be substantially increased to repay the taxpayers spend . . . to repay what taxpayers spend on public services used by the bike tours.

As a majority of the roads used by the tours are State owned, a delegation of power to the counties to pass legislation affecting the commercial bike use may have to be obtained to complete an effective regulatory scheme for State and County roads. The County should approach the Maui legislative delegation now to accomplish this.

MR. JENSEN: Three minutes.
MS. HOLROYDE: I urge the County to give this matter your urgent attention in the best interests of both County residents and the patrons of the tours.

CHAIR PONTANILLA: Thank you, Paula. Members, any questions in regards to the written testimony as read? If not, thank you again. The last person to testify on PW-42 is Peter Capriotti. Peter.

MR. CAPRIOTTI: Aloha, and thank the Council for hearing this issue. A very important issue to Upcountry people in general. I've watched for over 30 years Upcountry roads be taken over by bicycle tours, and talked to many people in the community, it was an officer involved in Makawao and Haiku community association. Most of the complaints are focused around the mountain Haiku, but really started when I woke up one morning in Olinda and I heard a little bling, bling noises coming down, and I said gee, what's a commercial bicycle tour doing here. This was quite some time ago, and I watched it just get worse and worse. I've had . . . I've known very good friends. One of my good friend's worked with Cruiser Bob, was one of the original tour guides, and very conscientious fella, an ex-marine. Unfortunately he fell off a bicycle and he was paralyzed for the rest of his life really when it came down to it. I worked with this gentleman for over 15 years. We had a . . . he had a security company here on Maui to work with Cruiser Bob. He told me some of the ins and outs, and he really believed in the organization and so did Cruiser Bob, but when he first started realized that the operation really couldn't sustain on County roads. They thought that it was a wonderful gift that they were able to run their business on County roads, but they saw that as more came on there would be more competition, and more traffic, and they just wouldn't be able to continue riding on County roads. They thought this was a great start for their business, but eventually they would have to lease land and develop their own roads. Well, Cruiser Bob was bought out by Rich Goodenough, so forth and so on, who says that work is becoming safer, but when you have this many incidents, accidents, and I know for a fact that . . . you know I've been trying to put a report together for mostly Haiku and Makawao . . . the roads are very inadequate. We did an extensive study on the intersection of Baldwin Avenue and Olinda Road there. What you've got here is communities being . . . well, there's no way around Makawao Avenue the intersection there. Because of the geological formation there's no plans being made to bypass that. If there was an accident and people couldn't get pass that intersection you'd have isolated communities—Olinda could be isolated, Haiku, Kokomo. Now, all these communities are growing. Haiku you can't . . . where is Haiku? People say gee, I don't see any growth in Haiku. Well, we're one of the fastest growing communities in the State, 35 percent growth. People are growing. That means more cement trucks, more pump trucks, more traffic, and these roads really weren't meant for . . . most of them were built by the marines during the war, after the war. The high . . . the walkways—
MR. JENSEN: Three minutes.

MR. CAPRIOTTI: --the walkway from Makawao comes out . . . it was built by WBA(?). These roads sometimes they’re not even standard of the County of 21 feet. They’re not wide enough. You’ve got larger vehicle traffic. You got Humvees, larger vehicles, and then everyone trying to use that same road as they have for years, walking horses, bicycling, and you know we use to ride our horses in town. Can’t do that anymore. We found that the only way we can ride is to go on to private roads, and to make an agreement, get insurance and so forth and so on, but everyone wants to use the road. It’s the only road, and there’s no plans to widen it, bypass it, or anything else. So we’ve got quite inadequate roads that’s the main thing to understand here in Upcountry, particularly from Makawao to Kokomo, and now to exacerbate the problems which we’ve got no place to go off on the road. We’ve got no place to walk really if you go pass that WBA(?) walkway, and on the side of the road there’s sometimes potholes--

MR. JENSEN: Four minutes.

MR. CAPRIOTTI: --all types of things that would prevent any normal person from thinking that it’s safe there. I think that anything other than vehicle traffic is really unsafe. I really feel sorry for the unguided bicycle tours that you see ‘em at St. Joseph, you see ‘em at . . . they’re at Kokomo Road and they’re thinking where do I go next. I almost got hit. My kids almost got hit. I’m looking at the map where do I go? People are blowing, honking their horns. There’s really no safe place to go. I did see a really bad accident on Maliko gulch. The rider came down, hit the bridge, went over, they had to close the road off. Now we’ve got a lot of bicycle tours unguided as was spoken to, they merely sell the bicycles, they have no liability, they give ‘em a map and say oh, this is bicycle safe. It is not safe.

I have a solution, and my solution is that the bicycle companies be forced off the road, we don’t wanna put anybody out of business, but if the County made a regulation saying that they couldn’t use County roads, believe me they would take some of their $10 million and they would develop their own roads as we have a place to, for us to ride horses, for them to run their commercial tours. You know I am just outraged that somebody . . . the County would spend their money helping these tours in any way to spend the time this would solve the problem completely. If they developed their own road they won’t have any problems. The County won’t have to regulate anything. It would be up and away. If we don’t do this there will be constant, constant--

CHAIR PONTANILLA: Mr. Capriotti, can you conclude.
MR. CAPRIOTTI: Yes. There’ll be constant conflict between the bicycle companies and the public you can mark my word unless they are forced to take an alternate route which is privatized roads to ride on.

CHAIR PONTANILLA: Thank you. Members any questions for the testifier? If not, thank you very much. Is there anyone else that wanna testify at this time? If not, if there’s no objection the Chair would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you very much, Members.

... END OF PUBLIC TESTIMONY . . .

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PW-42    DOWNHILL BICYCLING TOURS (C.C. No. 05-318)

CHAIR PONTANILLA: Okay, at this time I’d like to give the Public Works Director few minutes to comment.

MR. ARAKAWA: Thank you, Mr. Chair. This item was initiated by a letter written by Mr. Jimmy Muschietti to the Council. The main concern of Mr. Muschietti relates to bike tour companies and issues pertaining to compliance with traffic rules and regulations. The Committee last met on this matter on November 28, 2005, and I did want to reiterate the various jurisdictions of some of the roadways utilized by the bike tours. Crater Road from the summit to the boundary of the National Park is under Federal jurisdiction. Haleakala Highway and Crater Road up to the National Park guard station are under the jurisdiction of the State. Hanamu Road, Olinda Road, and Baldwin Avenue are under the jurisdiction of the County. At the Committee meeting, as well as subsequent to that, there have been other broader concerns raised such as increased regulations on the bike tour companies, possible moratorium on new companies, imposition of taxes or fees on the bike tour companies, as well as enforcement issues.

CHAIR PONTANILLA: Thank you. Before we ask the Members to ask questions of the Public Works Director, we do have members of the Maui Police Department. If they could come down and provide some comments in regards to . . . our last meeting back in November up to today. We do have Lieutenant Tanoue as well as Officer Mahoney.

MR. TANOUE: Hi, good morning, I’m Lieutenant Jeff Tanoue with the traffic section of the Maui Police Department. This issue came about I believe it was some time in
later part of last year. I hope I’m pronouncing your name right, sir. Is it Muschietti?

MR. MUSCHIETTI (from the audience): Muschietti.

MR. TANOUE: Muschietti. When we received a telephone call from Mr. Muschietti, I personally did not speak to Mr. Muschietti. It was one of my traffic officer’s that did. What we did, the Police Department, we listened to his concerns, and we held a meeting I believe it was on December 7th. We had one meeting at our station with the majority of the bike tour representatives, and our stand on this was just to ensure that we’ll listen to what their concerns are and we wanted them to know what our concerns were also. And I had Officer Jeff Mahoney do a presentation to all these representatives from the bike tour companies in regards to laws and regulations regarding bike tours and bike riding and so forth. And what we did further it was in the February . . . I believe it was February 21st . . . we actually ran two operations regarding this. I had Officer Mahoney and another officer go up to that area, that Upcountry areas and to view and to look to see if there’s any type of violations that they could see. I wanted to run other operations, but we had four fatalities in the past two months that my investigators were kind of busy and tied up with these investigations. We ran an operation last week again with Officer Mahoney and another officer just to see what the type of violations, you know, they could view. I really can’t divulge much more information regarding this, but we do have future plans, enforcement plans that are forthcoming, and Officer Mahoney here has been instructed to submit a report on all our findings, also enforcement efforts which are forthcoming.

MR. MAHONEY: Council members, Officer Jeffery Mahoney. As the Lieutenant mentioned, I was assigned to go up and investigate the complaints against the downhill bicycle tour groups. What I did was I conducted three separate surveys. The first of which was a preparation for my meeting that I was having with the tour groups just to see the route itself, the obstacles that were faced out there, and some concerns. Through that I did begin from the ranger station all the way down to the base in Paia, stopping along the way to look at various situations, road conditions, shoulder width, etcetera. Then I had the presentation with the bike tour members, and at that time we issued them the HRS laws regarding bicycles, bicycle operations, certain vehicle traffic codes, and we also presented them a packet upon their leaving this meeting, and addressed concerns about the intersection at 377, 378 Crater Road, Haleakala, but in regards to stop signs not being adhered to.

The other two surveys . . . well, one was conducted because the tour groups operating different periods of the day. The first was mid-morning, afternoon type survey where we monitored group activity coming down the mountain at that time, and did make some physical observations of some of the things that were
mentioned by the testifiers today. Primarily major concern is the bicycle tour groups utilizing the entire downhill lane of travel. With regards to shoulder areas, in many places the shoulder is not adequate to fit a bicycle and rider so they have to ride the roadway, but if they have to do that then they are required to ride to the right hand side of the road. This is compounded by the use of a trail van, and these trail vans are large. Sometimes they’re towing bicycle trailers as well, they’re difficult to see around, and there’s not many opportunities for these large vans to get off the road to allow building traffic to pass. And certain circumstances I had to go about three to four miles behind the tour group before they can adequately get off the road, and there are other circumstances where they tried to pull off the road, but did not get completely off the road, and as testified earlier they would try to indicate to traffic to come around their position causing them to cross over into the oncoming lane of travel, and not being able to technically to really see the bicycle traffic ahead.

The third one was the morning traffic, catching the sunrise groups, the early, early risers. We went up the mile post mile six on Crater Road, and about 7:30 a.m. to 7:45 a.m. I observed approximately 100 bicycles, several different groups, pass our position in less than eight minutes. This was detrimental to any traffic on the road. There’s just no way that many bicycles in conjunction with one another can adequately travel down that mountain without causing some kind of traffic concern. There were safety issues, this was a foggy day, very little visibility, about 100 yards visibility. There was no lighting on these bicycles. There’s no reflectors on these bicycles. You would see them emerge from the fog, and then disappear again as they turned the road. So that was some of their concerns. Also observed some problems with the lead guides, again, straddling bicycles, not riding with hands, having legs over the bicycle, facing rear instead of forward, problems with the vans being operated by persons not wearing seatbelts, equipment violations on the vehicles, missing tail lights, break lights, not driving with headlights, etcetera. So there are, there are definitely issues from the bike aspect of this.

Secondary to this is motor vehicle traffic, and I would say the majority of vehicles traveling on the same stretches of road do not follow the posted speed limits. Vehicle traffic is anywhere from 8 to 15 miles over the posted speed limit in many locations. Most of the areas are 30 miles per hours. You do have some warning signs posted indicating slower speeds for certain curves in the road, or speed is not being adjusted, and impatience on behalf of the motorist so it’s a compounded problem.

Lastly the unguided tours. In my opinion this was the most unruly of the groups because again they are unguided, unfamiliar with their terrain on where they’re going, utilizing the majority of the road, not adhering to any traffic regulations at all, and the spacing . . . sometimes these groups will get distracted, they wanna
stop different people at different spots, and you know you’ll find that they get spread out through a large area. And with these concerns there’s a ... as I spoke to my Lieutenant about it, need for enforcement for both sides, bicycles and motor vehicles as well in particular areas Upcountry.

CHAIR PONTANILLA: Thank you. Members, at this time open up for question either Public Works, or Corporation Counsel, or the Police Department. Member Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. The question for the Police Department ... first of all thank you for the very enlightening study that you did. Have your levels of complaints risen over the last say year or two years? And I ask that because of the County growing at the rate it does and our traffic concerns, but in particular with the bike tour industry have you seen a significant increase in the number of complaints from people for various reasons with the bike tours?

MR. TANOUE: You know I’m quite surprised. I’ve been in the traffic section now for almost three years, and this is the first complaint that I’ve had, I received. I’m not sure if the people are use to this going on for so many years, but this is the first, actually the first complaint that I’ve received regarding this situation here.

VICE-CHAIR MOLINA: It’s interesting. Earlier I guess one of the testifiers made a suggestion that maybe develop some type of a hotline or something with regards to bike tours. Is that something ... could I get comment from you on that? Is that something that might be helpful?

MR. TANOUE: I believe it would be helpful, but I’m not sure who would be the one to answer the telephones and so forth in regards to this. It’s something that, you know, we need, we’d need to look into. Like I said earlier, Officer Mahoney he’s gonna submit a pretty comprehensive report regarding all of the ... our enforcement efforts, our observations, and he’ll also include a recommendations from the Maui Police Department.

VICE-CHAIR MOLINA: That’ll be very helpful. Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Member Molina. Member Mateo followed by Member Hokama.

COUNCILMEMBER MATEO: Thank you. Is the Police Department involved in any of the applications or the applicants, application for business in terms of getting a better understanding of their safety requirement?

MR. PELLAZAR: Councilman Mateo I can answer that. Sergeant Mitchell Pellazar. Previously as my assignment as a community police officer, the application
process did require the department to comment on the permits that were submitted to the driver licensing bureau. These applications were forwarded by I guess Lito Vila of the driver licensing bureau to the department at which point we would comment . . . basically more on the route that was taken . . . if there was any concerns with the route and just the . . . I guess the, just to verify the business location for the individual company. There was no real I guess safety standards set as of this point. It’s kinda like a self-regulating industry right now.

COUNCILMEMBER MATEO: So in reviewing the permit, the application then, are there recommendations of monitoring that you would make a recommen...?, the department make a recommendation to the business in terms of monitoring its safety plans?

MR. PELLAZAR: Like I said it’s a self-regulating their . . . I don’t know what’s . . . requirements the driver licensing bureau is putting on the companies themselves, but from the permits I’ve reviewed, the only safety requirements that I had noted on there was, you know, the use of safety helmets, adequate eye wear, and that the bicycles were properly taxed, and if there was some kind of maintenance record kept with the individual business on the bicycles that were used. As far as who would inspect that that . . . that I have no idea on who would actually do that.

COUNCILMEMBER MATEO: Chairman, for the officers at this point I, that would be it for me. However, I would like the opportunity to ask Corp. Counsel a question when the rest of the committee has completed their questions.

CHAIR PONTANILLA: Thank you, Mr. Mateo. Member Hokama.

COUNCILMEMBER HOKAMA: Thank you. Lieutenant when you do anticipate Officer Mahoney to complete his report for your internal review? In a month or . . . can we just get a sense of approximately when (end of tape)

MR. TANOUE: . . . in fact as soon as we’re done with our enforcement efforts his report should be completed within a few days to a weeks time.

COUNCILMEMBER HOKAMA: And the enforcement process that the officer and your section is gonna go through that’s what within what two, three month period, Lieutenant.

MR. TANOUE: We’re looking at within a month’s period.

COUNCILMEMBER HOKAMA: Within a month’s period. Okay. That would be helpful. Is there any information you get from the National Park Service regarding complaints or violations that occur within the parks that would show up
in your data? Would National Parks call in case there's a bicycle situation in Haleakala National Park?

MR. TANOUE: If it's... I've never had the conversation with them or they never gave me a call regarding any concerns regarding, regarding this matter.

COUNCILMEMBER HOKAMA: Okay. At this point in time would you be able to recommend to us whether or not certain... maybe cer..., instead of a complete ban of the industry are there maybe certain places that is very inappropriate whereby we should consider a ban of maybe certain regional or district... or neighborhood areas... you know if one of the concerns is, you know, they're on a State roads, and the State road is a 45 mile an hour speed limit, what would be the minimum the bike would need to maintain a bicyclist?

MR. TANOUE: Okay, let me turn it over to Officer Mahoney, please.

MR. MAHONEY: If there's a posted 45 mile hour speed limit, you're considered impeding traffic at 10 miles below the posted speed limit.

COUNCILMEMBER HOKAMA: Below the posted speed limit--

MR. MAHONEY: But that's only for roads of 45 miles an hour and up.

COUNCILMEMBER HOKAMA: Okay, is it 10 mile an hour the general rule officer? So if we're in a 30 mile speed limit, anything 20...

MR. MAHONEY: There's no laws on record that indicate any speed, substandard speed for roads below 45 miles per hour.

COUNCILMEMBER HOKAMA: Okay. Would you, would the department also consider suggesting to, to this Committee that maybe we'll look at maybe a, the speed limit as part of the restrictions or parameters that they would not be able to go on any roads over 30 miles per hour speed limits or that type of regulations, proposed regulations?

MR. MAHONEY: Could be considered. It's typically like slow moving vehicles, the electric cars and etcetera, where they're limited to roads 30 miles an hour or less, very similar to that.

COUNCILMEMBER HOKAMA: Okay. Lieutenant do you think you may have some suggestions to Maui County Code, Chapter 5.22, which is currently the chapter that has I guess the permitting of bicycle tours in the County, have you had an opportunity to review that chapter and maybe present to us some suggestions or revisions?
MR. TANOUE: No, sir, not. I haven’t reviewed that chapter yet.

COUNCILMEMBER HOKAMA: If you deem it worthy, I would just ask maybe if you folks might take a look at it, and again, I’m not too sure whether or not the Traffic Safety Council needs to participate in recommendations before us, but I just share that information and ask if you deem it worthy to give us comment in that area too, please. I’m, I’m done, Chairman. Thank you.

CHAIR PONTANILLA: Thank you, Member Hokama. Members, any more questions for Police Department? If not I--

COUNCILMEMBER HOKAMA: One question, please, Chairman--

CHAIR PONTANILLA: Go ahead, Mr. Hokama.

MR. CAPRIOTTI (spoke from the audience): Pardon me. I would request that the Police Department survey Makawao as well, the intersection of Makawao.

CHAIR PONTANILLA: Thank you for that information. Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: Let me see what I was gonna get back to you...? Suggestion also under fines and penalties, Lieutenant, maybe if you and your section would consider whether or not we need to consider proposing proper amount of penalties or violations, and what that... those type of financial finds might, might be considered by us, or do we... would you feel if the current I guess violation is sufficient enough under our Code if you could give us comment.

MR. TANOUE: Yeah, I believe after we’re done with the report that is submitted by Officer Mahoney and his recommendations, then we’ll meet and look into all these matters.

COUNCILMEMBER HOKAMA: That would be appreciated. Thank you.

CHAIR PONTANILLA: Thank you. Member Tavares.

COUNCILMEMBER TAVARES: Yeah, Mr. Chair, thank you. Does the Police Department, I know we heard one time that the way that you track calls that come in that have to do with accidents or crashes, that there was no distinction between a bicycle involved in an accident rather than a vehicle. Is there a way that you folks are tracking these things, or can track them separately now?
MR. TANOUE: Bicycle involved accident, if it’s just a bicycle and the rider, then it’s considered a miscellaneous type accident. If it involves a vehicle, and then it becomes a traffic matter, a traffic crash. So there’s a difference there. So we may, you may not be notified of the crash depends... unless it’s something that is serious...

COUNCILMEMBER TAVARES: Uh-huh.

MR. TANOUE: ...yes, then they’ll contact police, and then they’ll allow... again document what is called a miscellaneous type accident, but again if it involves a vehicle then it becomes a traffic accident.

COUNCILMEMBER TAVARES: So even if it involves a vehicle and a bicycle, it goes under the vehicle?

MR. TANOUE: It goes under traffic crash.

COUNCILMEMBER TAVARES: Traffic crash.

MR. TANOUE: It would be--yes. We consider that traffic crash.

COUNCILMEMBER TAVARES: Okay, thank you.

CHAIR PONTANILLA: I just have a question for any of you. In regards to the State highways as far... as well as the County roadways, do we have proper signage in regards to bicycling being shared or indicating that this particular area allows for people to ride their bikes?

MR. MAHONEY: There’s, there’s numerous signs up and down the roadways like watch for bikers or bicyclists, and those are pretty prevalent throughout the majority of the route. That’s about the only signage that I noted out in those particular areas.

CHAIR PONTANILLA: Thank you. Members any more questions for the Police Department. If not, officers, thank you very much--Lieutenant Tanoue, Officer Mahoney, and Sergeant... oh, one more.

COUNCILMEMBER HOKAMA: Chairman, I really apologize.

CHAIR PONTANILLA: Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: One of the... I guess multiple testifiers shared some concerns about very young riders. I don’t know why I thought the age of 12 was mentioned, but we’re talking about minors... and you folks also gave us
comment regarding the unguided tours. Is this something that we need to maybe move in advance of the report regarding the safety factor of minors? I do know that we’ve had some form..., past claims and settlements requests regarding claims against the County for road or road, road side accidents. Is this something that we might wanna move more quickly forward in addressing this concern of the minors?

MR. MAHONEY: You know in, in . . . excuse me . . . in my observations it’s difficult to tell sometimes the age with all the riders having helmets on, some adults could be very small adults. There are children riding these tours, there are also elderly people who haven’t ridden bikes in many years, different skill levels, so you have a lot of factors not necessarily just children causing problems in tour groups themselves . . . spacing, riding capabilities, being able to control a bicycle, you know, so I don’t think you can isolate just the children at this point right now.

COUNCILMEMBER HOKAMA: Okay. I just bring it up Officer Mahoney because like vehicles, you know, we made a decision nothing under . . . no one under the age of 15 is allowed to even attempt to drive a vehicle. So for this commercial type of operations, you know, does it make sense for us to look at some age, age factors and set up proper safety parameters? And again, you know, I’m looking at what we’ve been paying out as, as legitimate claims and settlements that could have possibly been avoided should we have maybe a more detailed and enforceable program regarding this industry.

MR. PELLAZAR: Councilman, if I could comment on that. In the, in the permitting process itself I believe there’s, there’s no indication as far as like age or skill level at the . . . as far as I believe that 5.22 that you mentioned earlier. I guess if there was some kind of wording in there as far as limiting the age of the participants that, that might I guess kind of curtail some of the litigation that’s going on, but I don’t, I don’t believe right now in the permitting process itself that there’s any kind of restriction on age or skill level at this time.

COUNCILMEMBER HOKAMA: Is it something we should take into our considerations from your department or from our side? You think it’s a worthy area of review?

MR. TANOUE: I think, Chairman Hokama, is that we need to look into this, and maybe look at the data and statistics to find out how many younger children or kids are being injured in regards to the other age groups also.

COUNCILMEMBER HOKAMA: Okay. I understand that. Thank you, Chairman, for that, allowing that question.

CHAIR PONTANILLA: Thank you, Member Hokama. I have a question here. One of the testifiers said that some of these bike tours have tandem bikes. Do you see
that as more hazardous than single bikes, or you know should these bikes be just banned?

MR. MAHONEY: In the times that I was making my surveys I did not see any tandem bikes. The dynamics of a tandem bike versus a single rider bike are definitely different, the handling capabilities, steering capabilities, balance with the occupants on there. The conditions of some of the turns in the road are not conducive to a larger scale bike such as a tandem.

CHAIR PONTANILLA: Thank you. The other question that I had, you know, you seen a lot of violations as the bike tours came down the mountain. Have we cited any of those guys as you see ‘em?

MR. TANOUE: We haven’t done any enforcement right now. Again, I assign my officers to go there just to see ... and to observe any type of violations, and then we were gonna do enforcement. In this situation it’s unusual because once we cite one van driver, or once we cite one bicycle in, within a minute or so time I think every van operator, every bike company operator would know that we’re there, and so it was something we didn’t wanna jump into immediately. I wanted to look at the entire picture first, and the situation, and then come up with a plan of action.

CHAIR PONTANILLA: Thank you. Members, any more questions for ... Member Molina.

VICE-CHAIR MOLINA: Yeah, thank you very much, Mr. Chairman. Lieutenant Tanoue just to follow up to your comments, so as part of analyzing the data, would you suggest then maybe some type of task force, or something be formed to get as much data as possible, would that be helpful to, to your I guess findings as well?

MR. TANOUE: I know it was mentioned earlier about a task force. I think that’s a great idea if we can have representatives from all the different like groups of interests regarding the bike tours.

VICE-CHAIR MOLINA: Okay, thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Member Molina. Any more questions before I dismiss the Police Department? If not, thank you again, guys. I think Member Mateo had a question for Corporation Counsel.

COUNCILMEMBER MATEO: Yeah.

(note: pause)
COUNCILMEMBER MATEO: Chairman, thank you very much. And the question has to do with the line of questioning that Mr. Hokama was asking a few minutes ago. We’re looking at, at an industry that is unregulated. We’re looking at an industry that for us at this particular point it’s questionable in terms of their enforc..., their own ability to enforce their, their safety plans that they identify were . . . we’ve heard from the Police Department that continue to . . . the Officer referenced the large use of vans followed by an attached trailer, poor visibility, etcetera. We also know that the permitting that goes through Mr. Vila’s office that goes through different departments for comments, the comments are still limited, and yet this industry continue to use County roadways as well. Our exposure is huge you know. What is it Corp. Counsel can do to help advise us in closing some of these loopholes in terms of limiting the County’s exposure to, to a industry that at this particular point is questionable in terms of practice or, or safety practice and procedures.

CHAIR PONTANILLA: Corporation Counsel.

MS. YOUNG: As you can imagine that’s a quite broad question, and our office has had some discussion about this issue as well. Currently, besides the traffic regulations, the only real regulation is Chapter 5.22 of the Maui County Code. We would note that, that chapter I think could use some amending because it is a little outdated, it is very vague as far as regulations, there’s only certain requirements that are set forth. So one option available to Council could be to revisit Chapter 5.22, and maybe make some modifications and revisions to it. The other thing, I think that’s come up in discussion that’s been alluded to, is restricting bike activity. We could not do that on State roadways because that’s not within the County’s jurisdiction, but we could do that on Hanamu Road and Baldwin Avenue . . . I think there’s a third . . . Olinda Road that are I guess typically used for these type of tours, and we could look at restricting bicycle activity on, on those roadways. Typically restriction, however, would, would be supported by some kind of a study that, that the County would do because there is a regu..., there’s a provision in the Hawaii Revised Statutes, and specifically it’s, it’s Section 291C-53(a), which allows the counties by ordinance to regulate or prohibit use of a highway within their . . . within its respected jurisdiction by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. So in other words the study would support a finding by the Council that a type of traffic in this case . . . oh, I’m sorry, class of traffic, in this case bicycles, would be . . . is incompatible with the normal and safe movement of traffic. So those are kind of the things that were alluded to and those would be our comments on that.

COUNCILMEMBER MATEO: So a potential ban on the use of, of County roadways would be a consideration that, that could be looked at?
MS. YOUNG: That’s been alluded to. Obviously there should be some kind of a study because again you would have to find that, that kind of vehicle on the roadway is not compatible with the normal and safe movement of traffic.

COUNCILMEMBER MATEO: And that study or that ... say like the report that Officer Mahoney will be providing to us that would suffice as a study?

MS. YOUNG: Well, it’s hard for me to comment without seeing the study and seeing what kind of information is provided, but that could be depending on what kind of information it contains.

COUNCILMEMBER MATEO: And maybe to Public Works Director if you might be aware of the application process in terms of the request for their safety plans, is the department able to impose whatever teeth necessary so that the safety requirements are actually enforced?

CHAIR PONTANILLA: Director.

MR. ARAKAWA: Councilmember Mateo, typically our department would be involved in the actual construction and maintenance of the roadways themselves, but operations of the vehicles upon those roadways are generally I would say probably under the jurisdiction of the Police Department.

COUNCILMEMBER MATEO: Okay, thank you. Thank you, Chair. I’m done.

CHAIR PONTANILLA: For your information, Member Mateo, Chapter 5.22 in regards to enforcement of rules, regulations, it comes under ... presently under the Director of the Finance. So that’s an avenue that we can take a look at.

COUNCILMEMBER MATEO: Thank you.

CHAIR PONTANILLA: Member Molina.

VICE-CHAIR MOLINA: Thank you, Mr. Chairman. Just a follow up to Member Mateo’s question with regards to regulating this industry on County roads, and thank you for that response Corporation Counsel. So again we cannot place any type of limitations unless we have a verified study am I correct? In spite of like say for example you get a lot of complaints from our citizens but it has ... before we enforce any type of regulation it has to be done by a verified study.

MS. YOUNG: I guess one would have to look at all of the facts and circumstances. Our comment is more that, that typically this kind of finding would ... you would want it to be supported by a study or some kind of a report or something.
VICE-CHAIR MOLINA: Okay. With regards to the issuance of permits and setting a limitation on the amount of companies, is that something we can do? I mean, say for example if it was the direction to . . . because there seems to be a proliferation of the amount of bicycle tour companies, both guided and unguided, which has caused in my opinion a legitimate concern, what parameters or powers do we have in terms of setting, you know, creating a limitation on the amount of businesses or permits to be issued to these kinds of businesses?

CHAIR PONTANILLA: Corporation Counsel.

MS. YOUNG: You . . . you have 5.22 currently. As far a limiting the number of bike companies, you know, I would say typically this, and this is just a very, very general statement, typically the more onerous type of licensing requirements are typically done by the State and regulated via the Department of Commerce and Consumer Affairs. So they are, you know, the set up of the State is typically more able to handle these types of regulations on businesses as far as qualifications, and, and whatnot, you know, very specific regulations. For example, DCCA currently regulates professions, they regulate certain types of businesses . . . and so I guess you know we could look at parameters if it’s the will to amend Chapter 5.22.

VICE-CHAIR MOLINA: So you’re saying we need to network more with our Maui legislative team I guess up, up at the Legislature to get these concerns out if we were to encourage, you know, stricter parameters I guess for the issuance of permits for these kinds of businesses then?

MS. YOUNG: Yes, we would note that a lot of these concerns are also broader issues than just County roadways or County licensing. You know they also touch upon, they also touch upon State regulations. Traffic code is a State law. So those things could be looked at, and I believe our office talked to the, to representatives of the Kula Community Association and the . . . and made that comment as well.

VICE-CHAIR MOLINA: Okay, thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions for either Corporation Counsel or Public Works? The Chair is aware of the time, and the Chair has in mind of deferring this particular item. There are a lot of information that was presented by the Kula Community Association, and the Chair along with the Committee of the Whole Chair, as well as Public Works, would like to meet with the Council Chair in regards to this particular matter. Because it’s so broad that we need to focus on this particular issue and we don’t want this thing to die. So with that is there any comments to my recommendations.
VICE-CHAIR MOLINA: Yeah, thank you, Chairman.

CHAIR PONTANILLA: Member Molina.

VICE-CHAIR MOLINA: I can totally wholeheartedly support your recommendations, Mr. Chair, and also by whatever means that I think we consider, you know, whether it be through this Counc..., through this body or otherwise that the formation of some type of task force be put together because I see the problem it’s starting to . . . you know level of concerns at least from the community, the calls that I have been getting, are starting to rise, and being that it’s . . . we’re dealing with both the State and County roads, I think it’s . . . we need to get as much input as we can, and I think it should start at least with via task force some kind of a comments from the rest of the community on this matter. Thank you.

CHAIR PONTANILLA: Thank you, Member Molina. Any more comments? Member Tavares.

COUNCILMEMBER TAVARES: Yeah, thank you, Mr. Chair and Members. If you would like to witness this for yourselves, there’s a very good vantage point from the now called Sandalwood Restaurant in Kula that use to be the old Silversword I think it was, but you can go up there and have breakfast before you come to work, and witness for yourselves the bike tours coming down. If you get there by eight o’clock or a little before eight, you can see what happens, and I, I not suggest that we do a site inspection as a committee because that has to be posted so everybody will know when we’re gonna be there and that’ll . . . might change their behavior. But if you just go up there casually, and observe it, it’s quite interesting to see what has occurred. And I believe early on, in my first term I think it was on the Council this issue came up, first or second term, and the industry folks were here telling us that they were going to regulate themselves, and while Cruiser Bob was involved it was regulated. I mean we . . . the complaints sort of went down. They were spacing themselves out so even the Makawao people were, you know, okay with the, with it being spaced out, but you see it now and it’s like a continuous line and . . . you know I think something has to be done. We’ve already had too many fatalities and bad accidents involving these bicyclists, and I think we need to take a more active role in trying to resolve this situation. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you, Ms. Tavares. The Chair agree with your comments. We need to ensure that we adhere to public safety as well as trying to regulate an industry that operates on a State highway as well as the County roads. You know this thing has gone for decades, and it’s about time that we come up with some rules that can be adhered to. I don’t know back then, you know, if Cruiser Bobs or whoever belong to the committee had jotted down anything in writing. You know to this day the Chair don’t have any other information other
than what was brought up by the Kula Community Association, and I thank them for that, and I thank Mr. Muschietti for bringing this thing out into the public's eyes. As far as this particular item the Chair will defer this item. We'll give the Police Department some time to do the enforcement and to provide us that information. I know we're going into budget, and once budget is concluded we'll take up this matter again, and hopefully by then the Police Department had done some enforcement to let the tour bike companies know that, you know, we're really, really looking after their business as far as safety and traffic issues. So with that, if there's no objection the Chair would like to defer this item.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you very much.

ACTION: DEFER pending further discussion.

CHAIR PONTANILLA: Members, that's all the items that we have this morning, but I failed to . . . I just wanna make sure that you guys are aware that on PW-54, along with the recommendation, we'd like to include the filing of that communication also. Okay, Members, thank you very much. At 1:30 we do have the HHS meeting. This meeting is now adjourned. (gavel)

ADJOURNED: 12:03 p.m.

APPROVED:

[Signature]
JOSEPH PONTANILLA, Chair
Public Works Committee

Transcribed by: Yvette Bantilan