

# **GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**Online Only via BlueJeans Link**

**November 24, 2021**

**RECONVENE: 1:30 p.m.**

**PRESENT:** Councilmember Michael J. Molina, Chair (arrived at 2:01 p.m.)  
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair  
Member (left at 2:41 p.m.)  
Councilmember Gabe Johnson, Member  
Councilmember Tasha Kama, Member  
Councilmember Kelly T. King, Member  
Councilmember Alice L. Lee, Member  
Councilmember Tamara Paltin, Member (excused from 2:37 p.m. to  
3:36 p.m.)  
Councilmember Shane M. Sinenci, Member  
Councilmember Yuki Lei K. Sugimura, Member

**STAFF:** Shelly Espeleta, Supervising Legislative Analyst  
James Forrest, Legislative Attorney  
Kasie Apo Takayama, Legislative Analyst  
Jerry Paredes, Legislative Analyst  
Pauline Martins, Committee Secretary

Davideane Sickels, Executive Assistant to Councilmember Kama  
Ellen McKinley, Executive Assistant to Councilmember King  
Evan Dust, Executive Assistant to Councilmember Kama  
Jordan Helle, Executive Assistant to Councilmember Sugimura  
Kate Griffiths, Executive Assistant to Councilmember Johnson  
Sarah Pajimola, Executive Assistant to Councilmember  
Rawlins-Fernandez

**ADMIN.:** Moana M. Lutey, Corporation, Department of the Corporation  
Counsel  
Richelle Thomson, First Deputy Corporation Counsel, Department  
of the Corporation Counsel  
Keola Whittaker, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Daniel Kunkel, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Michael Hopper, Deputy Corporation Counsel, Department of the  
Corporation Counsel

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Andrew Martin, Prosecuting Attorney, Department of the  
Prosecuting Attorney  
Gregg Okamoto, Captain, Department of Police  
Carmelito Vila, Motor Vehicle and Licensing Administrator,  
Department of Finance  
Michele McLean, Director, Department of Planning  
Danny Diaz, Zoning Administration and Enforcement Division  
Chief, Department of Planning  
Jordan Molina, Deputy Director, Department of Public Works  
Karla Peters, Director, Department of Parks and Recreation  
Lisa Almeida, Park Permits Officer, Department of Parks and  
Recreation

**OTHERS:** Christine Sabado, Chair, Maui County Sister Cities Foundation  
Adele Rugg  
Annette Matsuda, Maui Branch, Highways Division, Department  
of Transportation, State of Hawaii  
Ben Hall  
Sam Small  
Phil Feliciano  
Dick Mayer  
Aaron Moose Reichert  
John Simpliciano  
Mike Moran  
Junya Nakoa  
Plus (3) other people

**PRESS:** *Akaku Maui Community Television, Inc.*

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VICE-CHAIR RAWLINS-FERNANDEZ: . . . *(gavel)*. . . Aloha ‘auinalā kākou. It was 1:30 on  
November 24th, and will the recessed meeting of Wednesday, November 20...no, sorry.

COUNCILMEMBER LEE: Tuesday.

VICE-CHAIR RAWLINS-FERNANDEZ: Tuesday, last Tuesday. Well, today is recessed  
meeting, Wednesday, November 24th, 2021, at 1:30 for the Government Relations,  
Ethics, and Transparency Committee, please come to order. Okay, I will be filling in  
today as your Chair until about 2:00, when our GREAT Committee Chair should be  
arriving. This online meeting is being conducted in accordance with the Governor’s  
most recent emergency proclamation on COVID-19. Please see the last page of the  
agenda for information on meeting connectivity. Committee Members, the Governor’s  
most recent emergency proclamation also includes the following mandate. A board  
holding a remote meeting pursuant to this section shall not be required to allow  
Members of the public to join board Members in person at nonpublic locations where

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board Members are physically present, or to identify those locations in notice required by 92-7 HRS, provided that, at the meeting, each board Member shall state who, if anyone, is present at the nonpublic location with the Member. In accordance with the Governor's mandate, if you are at a nonpublic workspace with...when your name is called, please identify by name who is present with you in the room, vehicle, or workspace. And today's greeting from Chair Lee comes from France, and it's salut. Aloha 'auinalā, Member Gabe Johnson. Salut.

COUNCILMEMBER JOHNSON: Salut to you, Vice-Chair Keani Rawlins-Fernandez, and all of my other Councilmembers. It is the day before Thanksgiving, I am home alone, and the bird is in the fridge, ready to be in the oven tomorrow.

VICE-CHAIR RAWLINS-FERNANDEZ: So wonderful. Pro Tem Tasha Kama, salut.

COUNCILMEMBER KAMA: Salut, Vice-Chair, and aloha to all of my Councilmembers. Looking forward to definitely having a GREAT (*phonetic*) meeting today. Thank you, Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Pro Tem Kama. Councilmember Kelly Takaya King, salut.

COUNCILMEMBER KING: Salut, mes amis, and aloha to everyone. I'm coming to you live from the Big Island, and I'm in a workspace where no one else is present.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Council Chair Alice Lee, salut.

COUNCILMEMBER LEE: Salut, Vice-Chair Rawlins-Fernandez. I'm home alone in my workspace. My dog is about seven feet away from me, listening to...listening to the proceedings. For tomorrow, I don't get to make the turkey. I'm relegated to doing the dip...artichoke dip for Thanksgiving. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Yum. Okay, and Councilmember Tamara Paltin, salut.

COUNCILMEMBER PALTIN: Salut and aloha 'auinalā, mai ka Malu Ulu o Lele. I'm here at the District office by myself, and so I turned off the lights. . . .(*laughing*). . .

VICE-CHAIR RAWLINS-FERNANDEZ: And Councilmember Yuki Lei Sugimura, salut.

COUNCILMEMBER SUGIMURA: Salut, everyone. I'm here at the County building on the 8th Floor, and I'm thinking, I think there's a neighbor down across the hallway, I hope. Mr. Sinenci, yeah? That's true. I heard some voices. Nice to see you all. Happy Thanksgiving. I have my turkey ready to roast for tomorrow, and looking forward to a productive meeting.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. And I think I skipped Councilmember Shane Sinenci, salut.

COUNCILMEMBER SINENCI: Salut, Chair, salut, and salute to our veterans. 'Auinalā no kākou. I too, am at the 200 South High Street, 8th Floor, with my persimmons. Mahalo, Member Sugimura.

UNIDENTIFIED SPEAKER: Yeah. Thank you. That's right.

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah, mahalo Member Sugimura. Mahalo, Member Sinenci. And I am at the Moloka'i District Office, alone on my side of the office. Okay, well, we will have Corporation Counsel and members...representatives from the Administration join us for each item. For Committee Staff, we have Supervising Legislative Analyst Shelly Espeleta, salut.

MS. ESPELETA: Salut, Members. Good afternoon.

VICE-CHAIR RAWLINS-FERNANDEZ: Legislative Analyst Kasie Apo Takayama, salut.

MS. TAKAYAMA: Salut, Vice-Chair and Members.

VICE-CHAIR RAWLINS-FERNANDEZ: Salut. One of our new Legislative Analysts, Jerry Paredes, salut.

MR. PAREDES: Salut, Vice-Chair and Members.

VICE-CHAIR RAWLINS-FERNANDEZ: Legislative Attorney James Forrest, salut.

MR. FORREST: Salut, y'all.

VICE-CHAIR RAWLINS-FERNANDEZ: And Committee Secretary Pauline Martins, salut.

MS. MARTINS: Salut, and good afternoon, Members.

VICE-CHAIR RAWLINS-FERNANDEZ: Good afternoon. Okay. Members, mahalo for making yourselves available for this afternoon's GREAT Committee meeting. This is a recessed meeting from November 16th, 2021 at 9:00 a.m. Your Chair has anticipated this meeting to last no longer than 4:30 p.m.

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**GREAT-42      AUTHORIZING THE MAYOR TO ENTER INTO AN  
INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT HOMELAND SECURITY  
INVESTIGATIONS (CC 21-413)**

VICE-CHAIR RAWLINS-FERNANDEZ: As a recap, at the November 16th GREAT meeting, your Committee deferred GREAT-42. The Chair intends to bring that matter up at a future meeting, possibly when the new police chief is on board. That leaves three items remaining on the agenda; GREAT-44 Bicycle Tour Public Safety and Related Legislative...Legislative...Litigation Concerns; GREAT-36 Construction on Lower Honoapiʻilani Road, Nāpili; and GREAT-39 Establishing a Sister City Relationship with San Cristobal Island, Galapagos, Republic of Ecuador. If there are no objections, the Chair will be taking up GREAT-39 first, then proceeding with GREAT-44, and ending with GREAT-36. Are there any objections, Members?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

VICE-CHAIR RAWLINS-FERNANDEZ: Wonderful. Mahalo. Okay, and then as a reminder, public testimony was taken at the November 16th meeting, and so is closed for today's meetings...meeting. Okay, are there any questions before we continue?

**GREAT-39      ESTABLISHING A SISTER-CITY RELATIONSHIP WITH SAN CRISTOBAL  
ISLAND, GALAPAGOS, REPUBLIC OF ECUADOR (CC 21-308)**

VICE-CHAIR RAWLINS-FERNANDEZ: All right, we'll proceed with GREAT-39 Establishing a Sister City Relationship with Cristobal Island, Galapagos...San Cristobal Island, Galapagos, Republic of Ecuador. The Chair would like to first defer to Councilmember King on opening comments on the proposed resolution. The Chair would like to designate Sister Cities Foundation Chair, Christine Sabado, as a resource person. As a result of the November 16th meeting, the Committee has also requested that Adele Rugg, who helped to formulate the sister city relationship was employed...while employed under the former Mayor Arakawa, the resource person for this item. If there are no objections, the Chair would like to designate Ms. Christine Sabado and Ms. Adele Rugg as resource personnel for this item in accordance with Rule 18 of the Rules of the Council. Are there any objections?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, mahalo. So we'll start with Member King for opening remarks, and then I will open up the floor to questions from the Members for Member King or either of our two resource personnel with three minutes on the clock. Okay, Member King.

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COUNCILMEMBER KING: All right. Thank you, Chair, and thank you Members, for allowing me to go first, since we have these two wonderful resource persons here with us today. So the...Members, since 2005, Maui County has had a Friendship City relationship with San Cristobal Island. And during this time, the relationship has been strengthened in various ways. Some examples of this include the National Oceanic and Atmospheric Administration's National Marine Sanctuary program on Maui, having hosted managers and scientists from San Cristobal Island, Galapagos, Republic of Ecuador; a pen pal relationship between students at the Kihei Charter School and students in the Galapagos; and students and teachers from a number of Hawai'i schools had traveled to San Cristobal Island to work with the crew of the Hōkūle'a while it was stopped there. In addition, Maui County and San Cristobal Island, Galapagos both deal with managing the effects of globalization and rapidly growing tourism, along with their environmental impacts. And San Cristobal, Island has been globally recognized for implementing "responsible tourism." Responsible tourism prioritizes the needs of local communities and establishes strict best practices to preserve and conserve natural resources, and Maui County has much to learn from their successes. Similarly, some of our recently-passed measures, such as the chemical sunscreen ban, may be of great interest to the Galapagos. Establishing a sister city relationship would bring about a greater bond and bridge of understanding between Maui County and San Cristobal Island. And as you know, Members, I had recently visited Galapagos just before the pandemic. And the lesson there is, if you think it's something you want to do, do it when you have a chance, because had I waited a few months, it would...it would have been impossible. But you know, there were many things that they did upon arrival when I flew over there and then got on the cruise. And there were also some things that I noticed that they didn't do that they could possibly learn from us, but one of the things that happens when you fly into the Galapagos is, before you get off the plane, they go...they open every overhead bin and they spray for bugs...for invasive species on your luggage. The one thing I noticed that they didn't do is they didn't require us to use, you know, sunscreens. So there are some things that we can...you know, some things we have to offer, as well as some things we can learn from Galapagos. And I'm thrilled to have Christine Sabado here from the Sister Cities program, and Adele Rugg here, who has been working on this for several years, and was trying to get approval for me to take a letter to the Governor of the Galapagos back in 2019. That didn't quite happen on time. So with that, I'll...I'll see if there are any questions for myself, or our resource people.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member King. Okay, Members, do you have any questions for Member King, Ms. Sabado, or Ms. Rugg?

MS. ESPELETA: Vice-Chair Rawlins-Fernandez, this is Staff. I apologize. Resource personnel Christine Sabado, she is...oh, she has just joined.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

MS. ESPELETA: Mahalo. Sorry for that.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Espeleta. Okay. Okay. I...I don't see any hands, so I...

MS. SABADO: Apologies for joining you late. We have a class going on behind me, so I had to key in fast. So I'm happy to be amongst you, and happy that we're still discussing this. And again, (*audio interference*) is 100 percent on board, and we're really very excited about this new sister city if everything works out. Mahalo for all your participation.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Sabado. Member Paltin.

COUNCILMEMBER PALTIN: I guess some of my questions are, is there an expense to the County to add a sister city, and do we need their permission to be sister cities with us, and did they agree to it?

COUNCILMEMBER KING: I think that could be answered...the expense part could be answered by Ms. Sabado, and the relationship issue could be answered by...probably by Adele Rugg.

VICE-CHAIR RAWLINS-FERNANDEZ: Ms. Sabado?

MS. SABADO: Yes, we currently have 22 sister cities in the world, so the point is, wouldn't everybody like to be a sister city of Maui, and of course the answer is yes, but I think the Galapagos has a lot more significance right now, considering our sustainability and the water theme that we're now entertaining for 2022. With 22 sister cities that we have actively now in Maui, the issue...or not issue, but the challenge is communication. You know, continuing the communications throughout the world because of the pandemic. And I think we've done a great job in that, and we're evolving on that level. But it...it's one more sister city is not going to make or break us in that respect. We entertain and we appreciate all the sister cities that we can have a relationship to. I hope that answers your question. Yes? No?

COUNCILMEMBER PALTIN: Sure. Yes.

MS. SABADO: Thank you. Great. Mahalo.

COUNCILMEMBER KING: Well, maybe Adele Rugg could answer the question of the mutual...the mutual request for the sister city.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha, Ms. Rugg. Did you hear the question? Oh, I'm sorry. You...you'll need to unmute. Maybe pushing the letter M on your keyboard?

MS. RUGG: Did that work? Oh, dear.

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VICE-CHAIR RAWLINS-FERNANDEZ: Yes, we can hear you now.

MS. RUGG: *(audio interference)*

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha.

MS. RUGG: Aloha. Please repeat the...the question?

VICE-CHAIR RAWLINS-FERNANDEZ: Member Paltin.

COUNCILMEMBER PALTIN: Oh, I just was wondering if we need permission from San Cristobal, Galapagos, to become a sister city, and if they're accepting of it.

MS. RUGG: Thank you for that question, a very good question. Actually we created a Friendship City back in April of 2005. Back in January of 2019, the Governor of the Galapagos wrote to the Administration asking for Sister City status. And so we've been working on it since then. But yes, they were very excited about it, and actually, believe it or not, the world is small, the priest at St. Theresa Church, the Hispanic priest, is from San Cristobal. And so he's also . . .*(timer sounds)*. . . excited.

COUNCILMEMBER PALTIN: Thank you, Ms. Adele...Ms. Rugg.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Paltin. Members, any other questions for Member King or our two resource personnel? I guess I have a follow-up question...Miss...Member Paltin's question. So in the second whereas, it cites the 2005 Friendship City relationship, which...should we have a whereas clause that acknowledges that they would like to have a sister city relationship with us?

MS. RUGG: Are you...are you asking me? Adele? I...I didn't make the resolution.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes. I...or Member King.

COUNCILMEMBER KING: Well, we could put that in there, for sure. I mean, it didn't occur to me, since I think that the prelude to the Sister City relationship was the Friendship City relationship. So, you know, I'm good either way, if you want to add something to it.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, I found a whereas clause, right before the be it resolved clauses, whereas the County of Maui is pleased and honored to receive steadfast intent by officials from San Cristobal Island, Galapagos, Republic of Ecuador, and support from the County of Maui residents to establish sisterhood ties and mutually promote enhanced trade, tourism, culture and education. So I think that would suffice.

COUNCILMEMBER KING: That should *(audio interference)*, I think.



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VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Okay, any other questions, Members? If not --

MS. RUGG: Thank you.

MS. ESPELETA: Chair?

VICE-CHAIR RAWLINS-FERNANDEZ: -- the Chair will entertain a motion to recommend adoption of the proposed resolution and filing County Communication 21-308.

COUNCILMEMBER KING: So moved.

COUNCILMEMBER SUGIMURA: Second.

COUNCILMEMBER KAMA: Second.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Moved by Member King, seconded by Member Sugimura. Member King, would you like to speak to your motion?

COUNCILMEMBER KING: Well, I...I don't know what else I can say that I haven't already said. I think it's a great sister city relationship. I'm excited that we're able to, after many years of working on this, Adele is finally able to see fruition of her efforts. And...and I think we should all go to the Galapagos while they're still...while...while they're still there. And you know, I...one of the...I think one of the probably most salient points about the Galapagos is all of their endangered species that they've been...been able to save and actually restore. And since we just committed by resolution to focusing on biodiversity, I think this is a key point of moving forward with that biodiversity...biodiversity effort. And while I was there, Chair, I was able to...we were able to visit the Darwin Research Center, where they were housing the...probably one of the oldest tortoises...well, he was the oldest in captivity, he was over 240 years old, and had fathered thousands of offspring to repopulate the island that that particular species of tortoise came from. And you know, six months later after our visit, they finally let him go into the wild. He had done his job of repopulating the island, and it was just a wonderful thing to experience. To be part of that history of some...some...of a creature that was that old, but had done so much for helping his own species survive.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member King. Yeah, o ulu ka tortoises o Galapagos. Member Sugimura's...oh, Member Sinenci, I see your hand up. Would you like to speak to the motion?

COUNCILMEMBER SINENCI: Yeah, I just wanted to add my support to adding the Galapagos Islands to our sister cities. You know, when it comes to tourism, I believe that if you're visiting the islands, you need your own personal tour guide to take you around. So I think we can learn a lot from their...their tourism model. I...I believe you

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also have to pay an impact fee, just to...to help with the conservation efforts, including addressing their invasive species. So I'm looking forward to partnering and maybe sharing some of their...their program initiatives. Thank you, Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Sinenci. Okay, anyone else wishing to speak to the motion? Seeing no hands, I'll call for the question. All those in favor of the motion, please raise your hand and say "aye."

**COUNCILMEMBERS VOICED AYE.**

**VOTE:**       **AYES:**   **Vice-Chair Rawlins-Fernandez, Councilmembers Johnson, Kama, King, Lee, Paltin, Sinenci, and Sugimura.**

**NOES:**   **None.**

**ABSTAIN:**   **None.**

**ABSENT:**   **None.**

**EXC.:**    **Chair Molina.**

**MOTION CARRIED.**

**ACTION:**    **ADOPTION OF REVISED RESOLUTION AND FILING OF COMMUNICATION.**

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I see all ayes. Eight ayes, zero noes, one excused, Member Molina. Okay, and we'll --

COUNCILMEMBER KING: Thank you, Members.

VICE-CHAIR RAWLINS-FERNANDEZ: -- thank Ms. Sabado and Ms. Rugg for joining us today and serving as resource for our Committee. Aloha.

MS. RUGG: Thank you so much. Thank you. Aloha.

MS. SABADO: Aloha, mahalo from Sister Cities. Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha. Okay. All right, Members, we were very efficient, so you've earned yourself an early recess. And Member Molina should be joining us very soon. So we will...I don't see Member Molina on. Oh, unless Mike M. is Member Molina. Oh, okay. All right, sounds good. We'll take a recess until 2:00? I

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mean, it's...so just so Member Molina can join us, and then he'll take the Chair. Okay. All right, it's 1:53 on November 24th, and the GREAT Committee will return...reconvene at 2:00. GREAT Committee in recess. . . .(gavel). . .

**RECESS: 1:53 p.m.**

**RECONVENE: 2:01 p.m.**

CHAIR MOLINA: . . .(gavel). . . The GREAT Committee meeting for Tuesday, November 24th...excuse me, Wednesday, November 24th, will now come to order. Of course, this is the recessed meeting of November...Tuesday, November 16th. I'm Committee Chair Mike Molina. And first of all, I'd like to thank my Committee Vice-Chair Keani Rawlins-Fernandez for doing such great yeoman's work for starting our meeting off, and getting GREAT Item 39 moving forward out of Committee. Mahalo for your help, Vice-Chair Rawlins-Fernandez, as well as to my fellow colleagues on the Committee. And thank you for your patience. I know I'm a little bit tardy today. So I was dealing with grade school kids today, and my constituents, and I was hearing a lot from them. But anyway, we have two more items to address today. And Members, just for information, this is an off-week meeting for anyone who's wondering. And I appreciate all of you being here. Typically, for the public's information, the off week for the Councilmembers is a time where Councilmembers can network with their constituents, or do site visits, and other matters. So I appreciate you taking time out of your respective busy schedules to be here to address these two matters that's left on our agenda for today. And speaking of which, let's get right into that. That would be GREAT Item 44, and this has to do with the bicycle tour matter.

**GREAT-44 BICYCLE-TOUR PUBLIC SAFETY AND RELATED LITIGATION  
CONCERNS (CC 21-453)**

CHAIR MOLINA: Members, the Chair's intention today is to have a discussion on this proposed resolution and proposed bill, and obtain comments from various Department representatives; from Police, the Prosecuting Attorney, Planning Department, Public Works, and Department of Finance, and the Parks Department. So at this point, we've got a number of resources waiting to give their thoughts. But before that, the Chair would like to share with his thoughts as to why we're here with this item. I introduced this bill to address community safety concerns about the commercial bike tour operations in the Upcountry and North Shore areas, specifically Pā'ia, Ha'ikū, Makawao, and Kula. The bill also will address insurance requirements and related County indemnity for all bicycle tours in the County, as recommended by the Corporation Counsel's Office. My office has worked with Corporation Counsel to bring this bill signed as to form and legality, and per State HRS, the Council has significant power to regulate this commercial operation. When the resolution, which is urging the Mayor to enforce Chapter 5.22 was up for referral back on the September 17th Council agenda, my office sent letters to what's on record as three permitted bicycle

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tour operations, notifying them of their opportunity to testify and give comment on this bill. The resolution also included response letters from Police and Finance regarding the amendments to 5.22 that...that are now being proposed in the bill. Chair's intent, again, is not to pass the bill out today, it's to have the initial discussion and bring this matter back for possible action sometime early next year, possibly January or February. And just to go over what our major components of this proposed bill are: unguided tours are being proposed to be prohibited; no more than six guided tour companies are allowed to operate each day; guides are required at the front and back of the tours; guided tours may only operate between 9:00 a.m. and 1:00 p.m.; each tour company may only operate one guided tour for two hours in Upcountry and North Shore Community Plan areas; operators must have guests sign the Bike Pono Pledge; and finally, for the entire County, bicycle tour insurance is being increased; and County indemnity language is being further enhanced for...with regards to this proposed bill. So with that being said, we're going to also add additional resources if there are no objections. Mr. Phil Feliciano will be a bike tour industry rep, and Mr. Dick Mayer from the Kula Community Association, at some later point today will...you can ask him for comments on the KCA proposed bill. As it relates to Council Rule 18, any objections to having these individuals as resource personnel?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR MOLINA: Okay, so noted. Very good. Well, I'd like to start first by recognizing Captain Gregg Okamoto from the Police Department. And to all of our resource people, because of some time constraints, I emphasized to the Members that this meeting would not go past 4:30 today. I'm going to be a little tight on time because we have one other very important item to address after the bike tour. So I'm going to ask everybody to stay within a three-minute presentation time. So I'll have our...Ms. Espeleta, if you could set the timer for all of our resource personnel? So with that said, Captain Okamoto, if you could please provide comment on the proposed bill.

MR. OKAMOTO: Hey, good afternoon, Chair. Good afternoon, Committee Members. Yeah, for...for the...from the Police Department's point of view, you know, I listened in on public testimony at the previous meeting, so yeah, we can respect everyone's...you know, people are trying to say they are trying to...trying to cover their living and all that. But when...when it comes to the...the Police Department, you know, our primary responsibility is...is the safety of the public as a whole. So we support some sort of regulation, you know, as far...as far as conducting these tours. And, you know, there...there are parts of the bill that we appreciate the...the Committee took into consideration our...our opinion and...and...and comments. So again, yeah, it's up for discussion, but definitely we support regulation of...of...of the industry, so...thank you, Chair, yeah.

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CHAIR MOLINA: Okay. Thank you very much, Captain Okamoto. So Members, I'm going to proceed. I'm going to have comments being provided to us first by all the resource personnel, and then we'll go into the Q&A phase. Also, I wanted to recognize another resource person, Ms. Annette Matsuda from the State DOT. Any objections to having her as a resource person?

## **COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR MOLINA: Okay, very good. All right, let's go to our next Department. We'll go with the Prosecutor, Mr. Andrew Martin, if you could provide comment on the bill. Mr. Martin?

MR. MARTIN: Good afternoon, Chair. As we...as I stated in our detailed remarks, and to keep this pointed and short, really, we had two recommendations for the Committee. Number one was with respect to the penalty imposed for violations of the proposed amendments to Chapter 5.22, you know, we recommend setting a...a...a penalty at a petty misdemeanor level or lower. And I went into detail in my written remarks as to why that is. And I think it's still achieves the goals that the Committee wants in terms of deterrence and ensuring that the...those that are permitted to run the tours understand the seriousness of violations of any regulations. It provide...would provide for a 30-day...a 30-day jail term for the most egregious offenders. And we would also recommend setting the minimum fines as indicated in our response. The reason for the difference with respect to Section...the proposed amendments to Section 5.22.025 is just that those violations, potentially those...the individuals who would be...would be cited for those violations would be the tour guides themselves, and so that first offense at \$500, I think it's safe to assume that would be a...a reasonably large hit for an individual working as a tour guide as a first offense, with that second or subsequent offenses within one year, rising to a \$1,000 minimum. We do believe that that would achieve, I think, what the Committee's goals are, but do it in a way that I think is just more efficient and cost effective from an overall criminal justice standpoint. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Martin. Okay, let's go next to Public Works. I believe we have either Director Dagdag-Andaya or Deputy Director Molina to provide comments on the proposed bill.

MR. MOLINA: Chair?

CHAIR MOLINA: There we go. Okay. Good afternoon, Director Molina.

MR. MOLINA: Good afternoon, Members of the GREAT Committee, Jordan Molina, Deputy Director with Public Works. We have one...well, we have a few comments. I think property tax pointed this out, but defining bicycle consistently with definitions that are already established in HRS, I did see a great need to develop a unique definition for the purposes of this bill. The other comment was regarding citations and

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enforcement, it wasn't clear to me who is in charge of enforcement. There is multiple entities identified that may enforce, but probably should put somebody in charge of enforcement.

CHAIR MOLINA: Okay, is that...is that it, Mr. Director?

MR. MOLINA: Then the...the last thing was just kind of about prohibiting traffic on Federal Aid roads, and whether that's going to be a concern. Or...or maintenance of these roadways are (*audio interference*) and that...that's the extent of our comments. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Mr. Director. Okay, moving on now, let's go to the Planning Department, I believe, Director McLean. Do you have any comments on the proposed bill? Please share that with us. Good afternoon, Director.

MS. MCLEAN: Good afternoon and salut, Chair and Committee Members. We provided our comments in writing, and I'll just summarize them really briefly. They really relate to the role of the Board of Variances and Appeals. The bill calls for appeals to be heard by the BVA, and we have a general concern about that because it's kind of outside the areas where BVA usually considers appeals and variances. Although admittedly, there are other areas in the Code where appeals do go to BVA that are outside their expertise. So I don't want to say this would be the first and only one that's outside of construction and development. It may be that a different panel someday is...to...could get formed to hear all the...hear all those random kinds of appeals. If BVA is used, I wanted to point out that the criteria in the bill are the same that BVA currently uses, so we support using those same criteria. Thank you for that. However, the language allows BVA to agree with, or turn down, an appeal, or amend the decision. Right now, the BVA does not have authority to amend. It's either an up or down vote, and we would prefer that it stay that way, especially because this ventures into issues that they're not used to dealing with. So if they are used, we would just request that that be amended to be they can grant the appeal, or deny the appeal, and that's the extent of their authority. Thank you for asking for our input on this.

CHAIR MOLINA: Okay. Thank you very much, Madam Director. Okay, moving next to the Department of Finance, we have Mr. Lito Vila. Mr. Vila, comments on the proposed bill related to the bike tour industry?

MR. VILA: Good afternoon, Mr. Chair. My camera is not working, so can you hear me?

CHAIR MOLINA: Yep. You're coming in loud and clear.

MR. VILA: Okay. Thank you. Somehow I cannot turn on my camera, sorry. I am here. Anyway, I'm going to be the resource for...your resource from the Department of Finance, and we have submitted our...four of our main comments via writing. And

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basically, I'm here, since you have it, I will not reiterate those. I'll be here to answer any questions the Committee may have, since you're pressed for time. Thank you.

CHAIR MOLINA: Actually, Mr. Vila, if you could just basically summarize the four key points. And...and yeah, thank you for reminding us that yeah, we do have everything in writing in our Granicus, but this is just more of a courtesy for those who may be viewing the meeting this afternoon. So if you could just briefly touch upon the...the main points of the Department of Finance's comments on this?

MR. VILA: Okay, yes. We certainly...the first point was to provide more of a definition for application, which means a form provided by the Department that must be submitted to initiate a new permit request, an amendment of an existing permit, or the renewal of an existing...of a permit. So those are the three stages that we would want to see an application come through. The next one is...it was mentioned earlier, is to provide clarity...the definition of bicycle. We are recommending that that conforms to HRS 249-1, which is the section where bicycles are defined for licensing. So all bicycles are required to be licensed. So I would recommend that it...it be referred to that, because...especially when you get into electric bicycles, there's...which has a limitation on the number of watts that's allowed, otherwise is going to get classified as something else. There's also other things, where people may now put an electric motor on the front and the back, even though it's 750 watts, it's going to be a lot more, because they're putting two motors, and that doesn't fall in that scope. And the proposed ordinance cites maximum allowed tours. We'd like to provide clarity on that, Council to consider providing more clarity as to what methodology will be assigned to allocate those six tours. As the Department that will be receiving those applications, we'd like better clarity so that, you know, it's fair, equitable, everybody knows what they're applying for, and how are those limited licenses or permits be issued. And finally, it requires the non-granting of the license if there's been citations issued to that tour company or that business. The Department does not have any means to receive those, or get...get that information. So we would like that to be part of the review process, probably more in line with requesting Police, if they could probably provide that. So in a nutshell, that was our input, but we support the intent of the bill. We think it's good. We've been issuing licenses ever since the early '90s, and it continues to be a challenge. And thank you for taking this up.

CHAIR MOLINA: Okay. Thank you very much, Mr. Vila, and appreciate those comments in the end, because it seems like, as I'm hearing all of this, that there's been very little to no regulation of this industry. So we need to maybe tighten a few things up with regards to this type of operations, just for the public's sake, yeah, who have concerns. All righty, very good. Let's go on next to our Parks Department. I believe we have Ms. Lisa Almeida, who is representing Director Peters, for comments on the proposed bill? Oh...oh, we do have...is that Dr. Peters? Okay, there you are. Go ahead.

MS. PETERS: Aloha, Chair. Aloha (*audio interference*), and we have Lisa here too. So as our Park Security Officers issue citations when violations occur on the property under the

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control and management of the Department, I'll turn it over to Lisa for her comments. Thank you.

MS. ALMEIDA: Thank you, Director. So good afternoon, Chair and Councilmembers. As Director Peters just mentioned, right now our authority is limited to violations that occur on property under the control and management of the Department. And that's due in large part to our familiarity with the type of use permits that we issue, as well as any license agreements or contracts for property use within the 2,500 acres we're currently trying to manage. So just a little bit of concern, I guess, on how this would connect to the Parks Department, and how we would be able to enforce, because the data will be held at the Finance Department. I know typically, County does have enforcement arms within the departments that issue some of the permits or licenses, so I don't know if that's a possibility. So that's just one of our bigger concerns. Currently, we're just doing items on our property.

CHAIR MOLINA: Okay. Thank you, Ms. Almeida. Anything else, Dr. Peters or Ms. Almeida, before we move on?

MS. PETERS: Thank you, Chair. No, that...we summarized it all up in that comment.

CHAIR MOLINA: Okay. Thank you very much. All right. Let's go on to our State Department of Transportation representative. Ms. Matsuda, if you have any comments on the proposed bill, please proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair?

CHAIR MOLINA: Ms. Annette Matsuda? Yes, Vice-Chair?

VICE-CHAIR RAWLINS-FERNANDEZ: I did see her drop off a minute ago, and I didn't see her rejoin. She was on...on the meeting. I'm not sure if she lost connectivity or...or something happened.

CHAIR MOLINA: Okay, okay. If she comes back on, we'll definitely recognize her and get some comments on that. Very good. Let's ask Corporation Counsel for some comments. I guess we have Mr. Kunkel?

MR. KUNKEL: Yes, salut, Chair Molina. I guess, yeah, if...if you're wanting comments in general at this time. Yeah, when...when we received your proposal, our, you know, intent has been to help facilitate, you know, the...the changes that you want. And we've inferred from, you know, what we've seen from you, that you...you wanted to focus on making sure that it was enforced, in particular, in a particular geographic area that had not been focused on in the past; the Makawao, Pukalani, Kula, and Pā'ia and Ha'ikū Community Plan areas. We also inferred from this that, you know, enforcement is an issue. And we were, you know, reviewing the suggestions about increasing the penalties. And then, as you know, the...the Maui Charter limits



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penalties to \$1,000, can't go above that. So then, you know, people started thinking at the Department of Corporation Counsel, so what alternatives are there for penalties? So then criminal liability is the apparent alternative, and therefore, that suggestion for it to be a misdemeanor or, as Prosecuting Attorney Andy Martin said, possibly a petty misdemeanor. And then that would...that would bring in police enforcement into this because, you know, as it is now, it...it's my understanding that the...the main enforcement mechanism is when the bicycle tour companies apply for the permit at the Department of Motor Vehicles, and you know, they're...they're reviewed for that. But then thereafter, you know, who is literally monitoring them on the roads? And that's...that's a legitimate question and concern that...that seems worthy of addressing. Let's see now. We also...you know, we noted that as the law has been, you know, it was enacted in '95, it's been amended, I believe, in 2001, 2007, 2010. But in its current form, it applies only to County property. And so there was a feeling among some members that the Department of Corporation Counsel that it...some of the sections needed further clarification, to make clear where this is being enforced, namely County property. The...the enabling statute that the State of Hawai'i enacted, that would be HRS Section 46-16.3, authorizes, but does not mandate, the counties to regulate bicycle tour companies on both County roads and State roads. Again, it does not mandate it, so it's up to the counties to decide what they want to regulate and what they don't. And as it is now, the...the County of Maui regulates only on the County roads. And yeah, again, some...some of the suggested revisions relate to that, to just further clarify it, so...to make it more understandable. The insurance requirement has been further modified at the suggestion of risk managers at the Department of Corporation Counsel. Because I think typically a bicycle tour company might take that section of the ordinance, show it to their insurance company and say, see, this is what I need. And so there's an interest in making sure that it's using the most up-to-date terms, and that...that insurance companies use nowadays, since the original, you know, ordinance was enacted over 25 years ago, and just to try and make it very understandable when they're going out and getting the insurance that's required for this. There seems to be, you know, no absolute right or wrong answers in a lot of this. A lot of this is...rests in public policy decisions for the Council to make about whether it wants to regulate the bicycle tours, and then to what degree. And so that's...that's what I think what the current proposals reflect.

CHAIR MOLINA: Okay. Thank you very much for your comments on that, Mr. Kunkel. And I believe Ms. Matsuda from the State Department of Transportation is now back online. Ms. Matsuda, if you could provide comments on the proposed bill from the State's perspective?

MS. MATSUDA: Yes (*audio interference*)

CHAIR MOLINA: Ms. Matsuda?

MS. MATSUDA: This is Annette Matsuda.

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CHAIR MOLINA: Oh, there you go. Okay, go ahead.

MS. MATSUDA: This is Annette Matsuda. I'm representing the Department of Transportation Highways Division, the Maui District. I don't have any prepared statement, but I am available for any questions that you may have from our perspective.

CHAIR MOLINA: Okay. Do you have anything that you'd just like to summarize basically on what the State's perspective is, just...just so we can give our Members and our viewing audience an idea of how the State is looking at this proposed bill, at least from the Highways or Transportation Department's perspective?

MS. MATSUDA: Well, the...the roads that the bike tours take from the Crater Road down to Pā'ia, there is a lot of winding roads with minimal shoulders, and the riders themselves are not really experienced bicycle riders, so it isn't the most ideal situation. And then, of course, as you know, it does create some road rage amongst the community members. So we do have concerns...we have had concerns over the years about the situation, and we fully support your efforts.

CHAIR MOLINA: Okay. Thank you very much, Ms. Matsuda. All right, Members, at a later point, we'll get...I'll give you guys an opportunity to ask our...our other resource personnel some questions, namely Mr. Feliciano or Mr. Mayer. At this point, I'd like to open up the floor for questions for the resource personnel that gave their comments on the bill from the Government perspective. Let's see, who would like to go first? I'll give my Vice-Chair the opportunity to go first. Committee Vice-Chair Rawlins-Fernandez? Or if you don't mind, I'll ask Chair Lee, and then we'll go to you. Protocol.

VICE-CHAIR RAWLINS-FERNANDEZ: *(Audio interference)* --

CHAIR MOLINA: Okay, all right. Chair Lee --

VICE-CHAIR RAWLINS-FERNANDEZ: -- Molina.

CHAIR MOLINA: All right. All right, Members, the three-minute timer will be on, so this is your opportunity to ask any of our resource personnel questions with regards to their comments on the bill. So let's start with Chair Lee. Salut.

COUNCILMEMBER LEE: Salut, Mr. Chair. Welcome back. I heard the Corporation Counsel make a reference to the ordinance from 25 years ago. So this how...this is how long this problem has been going on. My...my question is, is this bill just focusing on the permittee, the people who have permits? Or does it also affect those riders who, you know, violate the law going down the hill on the bike ride?

CHAIR MOLINA: Yeah, I guess...I guess that would be maybe a question for me, as the proposer. It's a combination of both. It would seem like there's been very little

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regulation on...on the industry over the years. So based on the complaints and concerns from the citizens, I thought it was an opportunity to put out there a proposal. Of course, nothing's etched in stone, it will be up to this Committee as to what we want with regards to regulations down the proverbial road, if you will. So it's, you know, maybe...we want to be absolutely sure that everyone in this industry is permitted, and they're following the rules and regulations, and whatever additional regulations this Committee would like to consider.

COUNCILMEMBER LEE: So is this like the honor system, self-reporting violations?

CHAIR MOLINA: It could be complaint driven. The way I see it, on occasion...for example, if it's Police will be the enforcement arm, they could do spot checks. And this would be...because right now, I...I believe it's just...there really is nothing, it would seem like, until there's an accident that occurs. But as you heard from Mr. Vila, it...it would seem like there's...you know, there's a lot of questions as to who's going to...you know, who enforces. And, you know, so there's...there's nobody, there's no real watchdog or watch group. So that's kind of the intent of this, is to establish some guidelines and regulations, and who's going to be doing the enforcement.

COUNCILMEMBER LEE: Okay. Thank you very much.

CHAIR MOLINA: All right. Thank you. Thank you, Chair. Okay, let's go to...I know Vice-Chair Rawlins-Fernandez, you have to leave temporarily, yeah, so I'd like to give you the floor if you'd like to ask questions for your three minutes?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Yeah, I wanted to...okay, get some clarification on, I guess enforcement. So Deputy Director Molina mentioned that there are several entities cited in the bill that would be responsible for enforcement, or could be responsible for enforcement. Was that your intention as the author of the bill, to allow for the different departments to be able to enforce? Or is there a way...okay, okay, go ahead, Chair.

CHAIR MOLINA: Yeah, no. Again, it's...this is...this is why we're having the meeting, is to decide who would best be able to enforce, and what all the agencies impacted by this type of industry. I guess come to consensus as to see how best to enforce this...this industry, or regulate this industry, I should say. So that's kind of my rationale for this.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Mahalo, for that explanation. I totally understand that. It didn't sound like any of the departments was jumping up and down with their hand up, wanting to be the enforcement arm. So I guess it...it will end up being us to figure that out. And then in response to Director McLean's comments about the BVA, I know they have appeals in the name of the board. I don't...I don't...I don't know if, you know, like the Public Works Commission would

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make sense? I don't know. I...I...I haven't, like, looked at all the boards and commissions to see what would make the most sense. So yeah, I don't know.

CHAIR MOLINA: Yeah, and if I can jump in...jump in on that. That's another thing we've...we've discovered along the way with this proposal. So there's a lot of things where, like, wow, I didn't realize, you know, this is not happening, or that doesn't occur. So it's a good lesson for all of us to take a deeper look into this industry and why there are so many questions as far as regulations and enforcement goes. So, you know, one person suggested maybe the Department of Finance Director be the discretionary authority as far as, you know, issuing permits. If you have a permittee that gets cited for violations, leave it to the Director of Finance to make that decision of whether they want to renew their permits. It's sort of like the Liquor Adjudication Board for liquor licensees. If they get cited for violations, it's up to that...that body, if you will, to, you know, revoke their liquor license. In this case, you could...I'm not sure, if it's not BVA, I don't know if we could look at some other board that could possibly, you know, hear an appeal. Or could we make...just make it discretionary to the Finance Director. So those are some ideas that we're going to be exploring.

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah, and I hope, you know, the...those interested in the Kula Community Association are also listening and taking note of some of the...you know, just the details and nuances of, you know, this process, so that they can help. Okay, mahalo, Mr. Mayor; he's listening. And then that way, you know, we have more great minds thinking this through with us, and have ideas to bring forth for our consideration to make something like this work for...for everyone. Mahalo, Chair.

CHAIR MOLINA: Good point, Vice-Chair. Certainly, I...I'm looking at this as a joint effort between Government and...and the community, and of course, we invite the industry to provide solutions to these concerns as well. So...so that's what...that's the reason why we're, here to discuss all of these concerns and how we're going to resolve this. Okay, so Member Sugimura has...certainly her district is impacted by this industry. You have your three minutes to ask any of our resource personnel questions.

COUNCILMEMBER SUGIMURA: So I want to first thank you, Chair for bringing this up. And it sounds like we're going to hear from the different departments and defer this, and then take it up again, because the Kula Community Association, as you know, has given a December 1 kind of time frame to start talking to the tour companies, and from the community members to hear what their input is. So we'll be digging into that next month. And then at the right time, I guess we'll have Corp. Counsel look at some of the suggestions, I think we'll need to. My question is this, as I hear this often from the Kula Community Association members, that it would be a solution, and I don't know if it's Public Works or also State DOT to have pullouts, so when the bikes are coming down, I...I...I guess Crater Road, or wherever...wherever it is, just...just pull...create these pullouts. So my question is, how much would it cost, is there any plans for anything like that, and I don't see pullouts readily available for bikers. There's a big concern for safety. So whoever you think can answer that question.

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CHAIR MOLINA: Okay, we'll ask either Public Works Director Molina, or State DOT Representative Matsuda if they have any response for that, any potential costs with regards to pullouts. So I guess we'll start with Deputy Director Molina, any thoughts?

MR. MOLINA: Thank you, Chair, and Member Sugimura. We would need to do an extensive analysis to figure out how...how many pullouts we would need, what kind of spacing we would need, where there's land, where there isn't land, we're talking about from the top of the mountain down to Pā'ia Town. It's going to be a lot of money, so if you guys want to put it in the budget, we can get started working on it, at least on the County side. Not --

COUNCILMEMBER SUGIMURA: So right now, you don't have any pullouts for bikers?

MR. MOLINA: Just from my knowledge of the area, there's some areas, but I wouldn't call them, you know, officially or improved pullouts for the purposes of *(audio interference)*

COUNCILMEMBER SUGIMURA: Okay, thank you. And I hear it...I hear this often, so I...I see Miss...DOT, State DOT is on. I wonder if you can give some input on that?

CHAIR MOLINA: Okay, Ms. Matsuda? Ms. Matsuda, are you still with us? She may have dropped off. Maybe she's having some technical difficulties.

VICE-CHAIR RAWLINS-FERNANDEZ: She's muted, Chair. *(Audio interference)* unmuted her.

CHAIR MOLINA: Okay?

MS. MATSUDA: Oh, can you hear me?

COUNCILMEMBER SUGIMURA: Yes.

CHAIR MOLINA: Oh yeah, we can hear you now. Go...go ahead. Member Sugimura, would like to repeat your question to Ms. Matsuda?

COUNCILMEMBER SUGIMURA: Oh, yeah. Thank you. Thank you, Annette. So I'm just wondering, because I hear this often from the Kula Community Association members, or Upcountry, is that there are...to develop bike tour pullouts, or pullouts on the road, so that the bikers could pause? Are there...in your...in...in State highways, are there pullouts available for bikers?

MS. MATSUDA: There are some pullouts on Crater Road. I think there might be two or three within the ten-mile length, and then below that, there is...there are no pullouts, no official ones. And the...the right of way, we would have to accumulate more right of way to begin with to even consider creating more.

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COUNCILMEMBER SUGIMURA: Okay. So from both sides, I hear that it's not anything that . . . *(timer sounds)*. . . oops...readily available. I just want to read...I got a text message earlier from Albert Perez. He says, hi Yuki, just sharing that today I had to swerve to avoid hitting one of the bike tour guides who was walking around on the center lane of Hanamu Road by the triangle. The bike tours were partly in the lane as well. So he's been concerned because of the safety and what he's seen, and he lives up, you know, in Kula, and he's had several encounters. I just wanted to share that it's a big concern for him and other residents that are part of the Kula Community Association. I'm sure you will hear more from Dick Mayer, but it...it is kind of a growing, big concern. I'm grateful, Chair, for you to take it up. So that's it.

CHAIR MOLINA: Okay, thank you very much, Member Sugimura. I saw Member Paltin, I know she had to leave, I don't know if she's still available, if she wants to take an opportunity to ask questions. Is she still on the call? Still with us yet? Okay, if not, we'll move forward. I saw Member Johnson had his hand up, and then, I believe, followed by Member Sinenci. Member Johnson, questions for any of our research personnel? Please proceed.

COUNCILMEMBER JOHNSON: Thank you, Chair. I just have a clarifying question for Corporation Counsel, Mr. Kunkel. He spoke on the idea that...as the law is now, that the County can make the laws regarding bike tours on State roads? Is...is that my understanding, and then could you explain that a little bit in deeper...more depth?

MR. KUNKEL: Yes. Yes, Councilmember. The...the law again is HRS Section 46-16.3, 46-16.3, and it specifically authorizes the counties to regulate commercial bicycle tours on State and County highways. It does not mandate it, but it authorizes the counties to do that. So there's...and as you might have heard in the testimony, there are some people who want to ban all bicycle riding. There's other people who want to repeal all bicycle regulation. And then there's a whole bunch of people in between. So there's a very broad spectrum of opinions on this. And something that gets lost sometimes very easily in this, and...and it's totally understandable, is that these paths that the bikes are on are a mix of State highways and County roads. It's my understanding that Crater Road is a State highway. Haleaka...I'm sorry, yeah, Haleakalā Highway is a State highway. And so it very quickly involves the State of Hawai'i, right? As some of these --

COUNCILMEMBER JOHNSON: Right.

MR. KUNKEL: -- when...when you're talking about things like pullouts. But yeah, and it's up to the County to decide it. And so far, anyway, the County of Maui has imposed this ordinance only on County property. Current ordinance, for example, if you look at Section 5.22.020, Subsection A, it refers to County property. It says it is unlawful for any business or person to conduct a bicycle tour on County property. So it's...it's only being enforced on the County roads at this time.

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COUNCILMEMBER JOHNSON: Okay. All right. Thank you for that. I...I...I'm curious to...to what it all means, as they say, like does that include the old Government roads, and does that...I mean, if...if the State's going to allow us to regulate it. And if we want to put in a pullout, for example, or some kind of striping or some kind of signage, the State doesn't have any...any...they're not going to help us with those fundings? Is it just going to be us guys who are going to be in charge of it all, it seems? So that's kind of where I was wondering, you know, beating the question down, like, what...if they want us to...if they're giving us powers over their roads, as they say, then are we on the hook for funding it all? So that...that's my clarifying question. I don't know if it has a...oh, seems that Ms. Thomson's on the call, so...

MS. THOMSON: Thank you, Councilmember Johnson. I just wanted to...to add that in terms of the physical improvements to State highways, that would have to be done by the State itself. And as . . . *(timer sounds)*. . . far as, you know, pullouts or anything that involved County roadways, of course, then we would negotiate with whoever the owners are on the...the adjoining properties, and probably need to do...as the State said, you know, acquire those land interests to be able to put in the...the pullouts.

COUNCILMEMBER JOHNSON: Okay, thank you. Thank you, Chair. My...my question has been answered. Thank you.

CHAIR MOLINA: All right. Thank you very much, Member Johnson. Let's go to Member Sinenci. Questions for our resource personnel?

COUNCILMEMBER SINENCI: Mahalo, Chair, and mahalo to the departments for their presentations. Yeah, I had a question for Officer Okamoto. So I was just wondering if there was, or did...did we receive, Chair, any data that reflected either vehicular accidents caused, or related to, the bicycle tours? Or even fatalities associated with the tours?

CHAIR MOLINA: I know we made the request. Let me ask Staff if we received that information yet. Ms. Espeleta, any...did we get any feedback as far as the total number of accidents or injuries of that nature?

MS. ESPELETA: Chair, yes. Police did respond to your letter, and it is uploaded in Granicus as of today. They provided annual statistics for the years 2011 to 2021. It is in Granicus.

COUNCILMEMBER SINENCI: Oh, okay. Thank you.

UNIDENTIFIED SPEAKER: Mr. Sinenci *(audio interference)*

COUNCILMEMBER SINENCI: Yeah, I can look that up. And then my other question, so if this, just as Mr. Kunkel mentioned, just on County roads, this section of the highway

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is the...the lower sections that go through Pā'ia, I believe Baldwin...Baldwin Avenue is the only County sections? I apologize, I'm not totally familiar.

CHAIR MOLINA: Mr. Kunkel, are you able to respond to Member Sinenci's questions?

MS. THOMSON: *(Audio interference)* Chair, I'll take --

MR. KUNKEL: I'd defer to Richelle Thomson.

MS. THOMSON: Thanks. I'll take that question.

UNIDENTIFIED SPEAKER: Okay.

MS. THOMSON: So while the...so the ordinance itself requiring the bicycle companies who are conducting commercial tours where they're operating, they have to be permitted. So you have to be permitted for operating. I think separately, though, Councilmember Molina was wanting to further restrict operations in those two community plan areas, and those two community plan areas, I think, are the bulk of the routes that go...the downhill by tours from the top of Haleakalā. And so restricting...restricting those, currently would be restricting it just to the County roadways. I think that the effect of restricting it, though, is that, you know, whether you come down from the State highway, you are going to be going into the County roadways before you conclude your...your ride or your tour. So, you know, the effect of...of restricting it on County roadways does also...you know, would affect the entire operation, really.

COUNCILMEMBER SINENCI: Okay. Thank you, Ms. Thomson. And then just a clarification. Mr. Kunkle said the State highway...I mean, is there a Federal section? Or the State highway would just start from the summit, Crater Road, and then --

MR. KUNKEL: It's my understanding that the park...the park ones are Federal, and then I believe...I believe...you know, I got to be careful, but I...it's my understanding that Crater Road is a State highway, and that Haleakalā Highway is a State highway. To put...to put in a --

COUNCILMEMBER SINENCI: So would it end at the kiosk, the kiosk as you're entering into the park? Or continues past...past the...the National Park kiosk?

MR. KUNKEL: You know, I'm...I'm not exactly sure where the boundary is, but yeah, it goes from Federal to State. And again, this ordinance is not being enforced beyond County property, nor is it being proposed right now to enforce it beyond County property.

COUNCILMEMBER SINENCI: Okay. Chair, I see Officer Okamoto.

CHAIR MOLINA: Okay. Captain Okamoto, would you like to add additional comment? Just go ahead.



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MR. OKAMOTO: This is just a...a response to Representative...or Councilmember Sinenci's question as far as jurisdiction. So anything below the...the park is really State or County. So everything above that is...is Federal. But we are...we do have MOEs [sic] between all agencies represented on Maui, whether it's the park rangers, State sheriffs, where, you know, we can fight or enforce laws on either...either/or. So it's...it's...it's a partnership, so...I don't know if...if that...if that helps Councilmember Sinenci's question, so...

COUNCILMEMBER SINENCI: Thank you for that clarification. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Member Sinenci. Member King? Oh, I'm sorry, Captain Okamoto, before I recognize Member King, you have one additional comment? Go ahead.

MR. OKAMOTO: Oh, sorry. I'm really pressed for time, Chair, but...and I...I don't see Vice-Chair Rawlins-Fernandez here anymore, but I think this goes...kind of goes towards her...her concern, as far as, like, the amended language to...to the bill, as far as citations. So, you know, to go back to my point about we have agreements with...with the different agencies, so in specific, that 522.061 to Citations. I read it as basically just expanding the authority of who can enforce the...or who can issue the citations. So I...I think that...again, going back to the point I made as far as agreement, I think that...that that should...should remain because, you know, to put the burden of enforcement on just one agency is kind of impractical, and I...I guess unfair. So I'm not sure if...if that's the...the intent of this, but as far as the way I'm reading it, I think I'd appreciate having that...that clarification where other law enforcement officers, park security officers, and not just the...the County police officers, can...can issue citations. Because the reality is, is that, you know, a lot of times it's going to be reactive. You know, best case scenario, we see an on-view violation and we can, you know, cite. But, yeah, just...just having it in there, it's...it's...I think it's good like that. So thank you, Chair.

CHAIR MOLINA: Okay. All right. Thank you, Captain, for your perspective. Sort of, I guess, a focus on shared enforcement, if you will, yeah? All right, Member King, go...go ahead. You have your three minutes to ask any of our resource personnel questions.

COUNCILMEMBER KING: Yeah. First of all, just my thought on that last statement was that shared enforcement could be kind of tricky, because you don't know whose responsibility, so it becomes nobody's responsibility sometimes. But my...my basic question was about whether this bill is intended to enforce against bike...bicycle rentals, because I don't know what we're calling unguided tours. But I did get a...a very deep concern from a constituent in South Maui who rents out bikes, doesn't do organized tours, and doesn't go Upcountry. And it's sort of like, you know, we...we allow rental car companies to rent out cars, but we don't make them enforce against where people go, or how they go where they go. And so I think that's one of the

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concerns is, is this meant to regulate bicycle rentals as well? I guess that's a question for you, Chair, as the writer of the bill.

CHAIR MOLINA: Well --

UNIDENTIFIED SPEAKER: *(Audio interference)*

CHAIR MOLINA: -- that's not *(audio interference)* for...for those types of rentals. Well, I'm viewing it more...well, the complaints that I've been getting have been coming out of my district, these unguided tours going in...you know, onto Ha'ikū Road and Kaupakalua Road. These roads are not designed for this type of activity. And again, it's...I put it out there, because I've had people tell me we should ban these unguided tours, because it's causing a problem, and a potential mishap, exposure to the County's liability. That's something we --

COUNCILMEMBER KING: But what's the difference --

CHAIR MOLINA: -- all of us need to be --

COUNCILMEMBER KING: -- yeah, I'm just wondering what's the difference between a bicycle rental and an unguided tour? Because if you rent a bike to somebody, just like when you rent a car to somebody, you're not --

CHAIR MOLINA: Yeah, well...well that's what we got to --

COUNCILMEMBER KING: -- *(audio interference)*

CHAIR MOLINA: -- figure...that's what we've got to figure out here, Member King. Okay?

COUNCILMEMBER KING: Absolutely.

CHAIR MOLINA: That's certainly a good point you bring up, but we...we won't have time today to figure out that answer. But that's why I'm going to bring this back next year. And so by that time, we'll have the answer to that question of yours.

COUNCILMEMBER KING: Okay, so --

CHAIR MOLINA: Okay? Yeah, I --

COUNCILMEMBER KING: -- *(audio interference)* I think that --

CHAIR MOLINA: -- *(audio interference)* --

COUNCILMEMBER KING: -- Ms. Thomson --

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CHAIR MOLINA: Maybe...Ms. Thomson. Yeah. Go ahead, Ms. Thomson.

MS. THOMSON: Sure, thank you, Chair. But just a quick...I just wanted to point out one of the definitions. So unguided bicycle tour means a bicycle tour that is not led or accompanied by a guide throughout the ride, in which transportation to or from the route is provided or arranged by the bicycle tour business. And my understanding is the reason behind that definition is to differentiate it from, as you were saying, Member King, with those operations that only rent the bike, that don't tell you where you're going to go. Bicycles do...and you know, MPD can comment further, but bicycles do have to apply by the rules of the...of the road in the same manner that...you know, that cars do. So they can be cited for, you know, operating illegally in terms of, you know, individual riders just riding around. But my understanding is that this...this bill is, and the restrictions on those two Community Plan areas are primarily aimed at the unguided tours, where they --

COUNCILMEMBER KING: Okay. *(Audio interference)* --

MS. THOMSON: -- get dropped off at the starting point.

COUNCILMEMBER KING: That's really helpful, because, you know, at the time when we're trying to encourage more bicycle riding, more multi-modal transportation, that it...it's kind of a tricky area to differentiate between, you know, wanting people to ride their bikes, and who...and...and if someone has a bike . . . *(timer sounds)*. . . and wants to ride it, how does...where does that fall? So that...that's really helpful. Thank you, Chair. I think that was the three minutes.

CHAIR MOLINA: Okay. Thank you, Member King. And another point that should be made is, like, Member King, in your district, your roads are better...are better for biking. You look at the roads in Member...Member Sugimura and my districts, these roads are not, you know, designed for these types of, you know, activities, at least not from a commercial standpoint. So you do have better roads in your district. So now, one option this Committee could consider is restricting these types of tours on certain roads, and allow for it --

COUNCILMEMBER KING: Sure.

CHAIR MOLINA: -- *(audio interference)* areas where the roads are better, yeah, more appropriate for bike...bicycling.

COUNCILMEMBER KING: *(Audio interference)* yeah, we're trying to encourage more bike riding in our district, so...all right. Thank you, Chair.

CHAIR MOLINA: No problem. Thank you. Okay, let's go to Member Kama. Do you have any questions for our resource personnel? I saw Member Kama on earlier. Is she still on, or did she have to go? Okay, I guess not.

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COUNCILMEMBER KING: I don't see her anymore.

CHAIR MOLINA: Yeah, she was on earlier, so I guess Staff will follow up to see if she's still...I know we were told Member Paltin and Member Rawlins-Fernandez have to leave. But Member Paltin will return at a later point. So with that said, in the meantime, I'd like to get...we do...do you have any...Members, do you have any questions for our resource personnel, Mr....Mr. Mayer, as a representative of the Kula Community Association with their proposed bill, and also Mr. Feliciano as the bike industry representative? Members, any questions for them? Member King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, I did...I wanted to ask Mr. Feliciano, if he's still on. Phil, are you still there?

MR. FELICIANO: I'm still here.

COUNCILMEMBER KING: Oh, okay. You know, if there...if there was an effort by the State or the County, we're talking about County roads, to create these pullouts, you know, specifically for the bike tours, is this something that the bike industry...the bike tour industry could participate in financially as a public-private partnership?

MR. FELICIANO: I can't speak for all the companies, but...but yes, almost all of them would agree to some sort of fee to help fund that.

COUNCILMEMBER KING: Okay.

MR. FELICIANO: And we would use them 100 percent.

COUNCILMEMBER KING: Okay. All right. That's the only question I have. Thank you.

MR. FELICIANO: *(Audio interference)*

COUNCILMEMBER KING: Thank you, Chair.

CHAIR MOLINA: Okay, thank you very much *(audio interference)* Hang on. Hang on. I...I want to go Member Kama. Member Kama, do you have any questions first for our Government resource personnel?

COUNCILMEMBER KAMA: No.

CHAIR MOLINA: Then I'll go back to *(audio interference)* Members' questions for Mr. Mayer or Mr. Feliciano.

COUNCILMEMBER KAMA: No, Chair, I don't. Thank you.

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CHAIR MOLINA: Okay. All right. Great. Mr...Mr. Mayer, you...did you want to follow up on Mr. Feliciano's comments with regards to Member King's questions? Mr. Mayer, if you could unmute yourself?

MR. MAYER: Thank you. Sorry. I have a bullet point list of items I just wanted to mention to you that supplement some of the earlier statements and...and stuff that wasn't covered that probably should be. Our...our main concern is the...is safety. And that's safety, both for the residents and the riders themselves that so far, we haven't discussed as much, the riders' own safety, and that's important to us. We're also concerned about the County's liability. And in the draft that the Kula Association's putting together, we think that it may be useful for you to consider having all riders on these tours sign a waiver that they recognize the real, real danger of riding on roads that weren't designed, bicycles [sic] that are extremely windy, that have...do not have adequate shoulders, et cetera, and that somehow they waive responsibility...to...to...to waive the ability to sue the County and the State on the (*audio interference*) highway, and perhaps the adjacent property owners if they should crash on somebody's property. If they really recognize this is a dangerous situation, the hospital records will reflect the many people who have gotten hurt. Another concern was obviously the interaction between the County and the State. We're asking that the County and the State work together on this, utilizing the State statute that was mentioned, so pullouts and other things can be designed properly, and perhaps certain roads actually can be designated; these are the only roads that can be utilized by a bike. Maybe the Police Department or the Parks Department or somebody would designate the proper roads for this. We also look at enforcement, and we note that the Department...Police is an obvious one that could be enforcing, but also the...the Department of Parks. In the...in the title, it's Department of Parks and Recreation. This is a recreation activity, and consequently, it probably, for this at least area, may not just be applying to lands that the Parks Department regulates, but also on County roads, et cetera. On this recreational activity, they may want some of their rangers at some time to be able to do spot checks on an occasional basis to make sure the industry is working effectively. Those are some of the issues, and the Kula Association has gotten lots of feedback from the bike companies. And the interesting thing there is that we're getting feedback not only from the companies that rent out...that guide to...the guide tours, but from companies that just rent individual bicycles to people in West Maui and South Maui who have nothing to do with the downhill tours at all. And so...and I looked at the County ordinance...the Maui County Code, and put in the words "bicycle" and "bike" in there to see what other regulations there are. A few minutes ago, it was mentioned that bicycles are regulated, you know, as to what they can do on the roads. I saw no reference in Maui County Code. So it must be State roads, State...State legislation that may guide the behavior of bicyclists on the road, and whether an individual bicyclist (*audio interference*) can be sued. At least I think...so the Kula Association is going to take all this input, try to come up with something in early December. . . .(*timer sounds*). . . Back to you.

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CHAIR MOLINA: Okay. All right. Thank you very much, Mr. Mayer, for your...your comments, and getting out those points with regards to the proposed KCA bill. All right, Members, just...I believe we'll give you one last opportunity to ask Mr. Feliciano or Mr. Mayer any questions with regards to the industry and the proposed KCA bill before the Chair will defer this matter. Members, any other questions for our resource personnel, or comments from me as the proposer of the County's bill? Okay. I...oh, go ahead, Member Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. I think it's a general question for you maybe, but for the next meeting, but all the bike companies, are they all permitted, and are they in...according to DMV or whoever would regulate this, are...are they are permitted as needed? I guess --

CHAIR MOLINA: *(Audio interference)*

COUNCILMEMBER SUGIMURA: -- even for the...even for the bike rental companies, I guess they're --

CHAIR MOLINA: *(Audio interference)*

COUNCILMEMBER SUGIMURA: -- going to send people on the road.

CHAIR MOLINA: Member Sugimura, that is a very good question. Let's ask Mr. Vila. To date, all the bike companies that are permitted as far as that are on County record. Mr. Vila, I was wondering if you have that information you could share with the Committee?

MR. VILA: Yes. Thank you, Mr. Chair. As of November 9, 2021, there are currently four bike tour permits [*sic*] that are permitted. Since then, our office has received several more that are going through the review process. And to answer the question about regulating the rentals, the DMV has no...does not license rental...bicycle rental companies.

CHAIR MOLINA: Okay, Member Sugimura, go ahead.

COUNCILMEMBER SUGIMURA: Can you...Lito, can you tell us the names of the four bike tour permits that are legal in your perspective?

MR. VILA: Well, these are the licenses...business...bicycle tours that are currently licensed; Maui Sun Riders Bike Company, Incorporated; Haleakalā Bike Company, Incorporated, d/b/a Bike Maui; Mountain Riders Bicycle Tours, LLC; Matthew Domenichini, d/b/a Maui Bombers. Those are the four that have permits that has not yet expired.

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COUNCILMEMBER SUGIMURA: And are there more bike...you...do you know if there are other bike companies operating? We should look at that, maybe, Chair.

CHAIR MOLINA: Yeah, good...good point, Member Sugimura. So...so Mr. Vila, you mentioned that there are some bike companies that are currently in the process of getting permitted. When did you get this request to...from these bike companies to become permitted? How...how recent has that been?

MR. VILA: Yeah, Mr. Chair, I would...I would have to check our records. I know some have been sent to Police, some we have rejected because...returned to the applicant because they are not complete. I know one is...is having issues with the insurance requirement, so that's going through the review process.

CHAIR MOLINA: You...you know --

MR. VILA: I can get that for you --

CHAIR MOLINA: Okay.

MR. VILA: -- if you send a request. Thank you.

CHAIR MOLINA: Yeah, we...we'll do that. I will definitely do that. Okay. Thank you, Mr. Vila. Okay, Members, last opportunity for any questions for our resource personnel before the Chair makes the official request to defer? Okay, seeing no other requests for questions, I'd like to thank all of our resource...resources that joined us here for this Committee meeting. And again, you know, when...bottom line is when all is said and done, when it comes to operating on our Government roads, as it is when we're getting our own driver's license, operating on our roads is a privilege, not a right, okay? So I look forward to all of the minds coming together prior to our next meeting, which will likely be in January or February, to come up with solutions to address some of these concerns. So from the bike industry, on to the Community Associations, and concerned citizens, certainly all of your input is welcome, so we can see, well...or see how we can help move, you know, providing more enhanced regulations on the industry that is satisfiable to all. So Members, any objections to deferral of GREAT Item 44?

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused KRF, TP)

**ACTION: DEFER.**

CHAIR MOLINA: Okay, so ordered. This item is deferred. Okay, Members, Chair wants to take a short recess. We have our last item of the day, which is GREAT Item 42 [sic]. Chair would like to take a recess till 3:10 p.m. The recessed GREAT meeting of November 16, 2021, is now in recess until 3:10 p.m. ...*(gavel)*...

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**RECESS: 3:02 p.m.**

**RECONVENE: 3:10 p.m.**

CHAIR MOLINA: . . .(*gavel*) . . .The recessed GREAT Committee meeting of November 16, 2021, is...will now come back to order. The time is ten minutes after the hour of 3:00 p.m. Today's date is Wednesday, November 24th, 2021. Thank you very much, Members, for allowing the Chair to take that break to confer with Staff on a technical matter.

**GREAT-36 CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI) (CC 21-242)**

CHAIR MOLINA: We're on our last agenda item for today, and that is GREAT Item 36, which relates to...which relates to construction on lower Honoapi'ilani Road in Nāpili. Now, Members, as you recall, we met on this issue back on June 29th, where we received a PowerPoint presentation from the Planning Department. The PowerPoint provided an overview of the Nāpili property in question, which includes location, zoning, permitting and processing issues that have come to the Department's attention, and conceptual views of the proposed construction, property zoned Nāpili Bay Civic Improvement District, and uses allowed in this district are similar to the hotel zoning district. The hotel zoning district allows also for uses...the same uses in the apartment district and residential district. And when this matter was discussed back in June, the building height in the Nāpili Bay Civic Improvement District was limited to two stories. And some of the issues for further consideration after that meeting was the SMA exemption criteria, building permit review of the Nāpili Bay Civic Improvement District zoning standards, and also, were the plans for the structure accurate in terms of square footage, and is the construction following plans as it relates to height, and was the makai retaining wall permitted? So with that said, I'd like to turn matters over to our Planning Director, Michele McLean, to provide us a status update on this issue. Director McLean?

MS. MCLEAN: Thank you, Chair.

CHAIR MOLINA: Yeah, yeah, you know what, Madam Director, sorry, before I recognize you, also Members, any objections...as a resource, we have Mr. Junya Nakoa, a West Maui resident, as per our Council Rules. Any objections to having Mr. Nakoa as a resource person?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR MOLINA: Okay, no objections. So noted. Okay, proceed, Madam Director.



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MS. MCLEAN: Thank you, Chair. I'm not sure if this was brought up at the last meeting, but the Department did issue a notice of warning for a makai wall that was constructed on the property without an SMA...without SMA review. Generally, before we issue new permits on a property, we check to make sure that there aren't any existing compliance issues on the property. That's not always the case, but it's often the case with a property like this. We did want to check compliance before taking action on that after-the-fact SMA application. Our inspectors did conduct a compliance inspection. As probably everybody now is aware, the key issues for this structure have been the square footage, which relates to the SMA exemption, reminding everyone that single-family homes are eligible to get an SMA exemption if they are 7,500 square feet or smaller. The SMA exemption for this property was granted because the home was stated to be 7,483 square feet. So we wanted to make sure that the...that the structure was, in fact, 7,483 square feet, or certainly not exceeding 7,500 square feet, which made it eligible for the SMA exemption. Another issue that has been raised about the structure is the number of stories. At the time the building permits were approved, the stories in the Nāpili Bay Civic and...or excuse me, the building height in the Nāpili Bay Civic Improvement District was limited to two stories, but did not have a measurement in feet. This Council has since amended that zoning district to keep it at two stories, but also to impose a height limit of 35 feet. That does not apply to this structure at this time because those permits were issued prior to the change. However, the...the structure was still subject to the two-story limit. Like I said, before we take action on the after-the-fact SMA application for the wall, we wanted to do a compliance inspection for those two issues, and anything else that we might see. And we had to wait--I...I want this to be clear to everybody, because I've seen a lot of chatter about what's taking the Planning Department so long--we had to wait until the structure was framed to such a degree that we could measure the square footage, and that we could assess stories. The structure got to that point sufficiently for our inspectors to conduct an inspection. And we did look at the number of stories in the structure, and we did look at the square footage of the structure as it's currently being built. And it does appear that there are violations of both the square footage and the number of stories. I want to make it clear that I'm saying it appears that way. We have not yet taken action on the results of our inspection. We want to review those clearly with our plans reviewers, with the planner, with our inspectors, and with Corporation Counsel before we take any action, but it does appear that that's the direction we are going in. This Council is well aware of the repercussions that could happen if we take that action, so we want to be very clear, and very diligent, and thorough, and certain before we take action. I'm happy to answer any questions you might have.

CHAIR MOLINA: Okay. Thank you very much, Madam Director. So just briefly, you mentioned that, as you said, it appears there may be violations. How long ago did you make that assessment, or did the Department make that assessment?

MS. MCLEAN: The inspection was conducted last week.

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CHAIR MOLINA: As of last week.

MS. MCLEAN: Yes.

CHAIR MOLINA: Okay. All right. Okay. Also, I...I've called upon Deputy Director Molina to provide additional comment. I'm not sure if he's on the call yet. But in the meantime, Members, if you have questions right now for Director McLean, we can do that. And also, when Mr. Nakoa...I guess Mr. Nakoa's on the call, you have questions for Mr. Nakoa as well. I saw Councilmember Johnson, you had your hand up? Questions for Director McLean, followed by Member King.

COUNCILMEMBER JOHNSON: Thank you, Chair. Good afternoon, Director McLean. My question is clarifying in regards to what is the actual feet that you guys came up with, square feet?

MS. MCLEAN: I...I'm not being demure, I don't have a specific answer yet. That's one of the things that we want to clarify before we take action. But it's...it's a few hundred square feet. We're not talking, you know, five feet in excess.

COUNCILMEMBER JOHNSON: Okay.

MS. MCLEAN: Significant enough to be clear.

COUNCILMEMBER JOHNSON: Okay. Thank you for that clarification. Next question was, and what is the specific height? It has...what's the specific height on it?

MS. MCLEAN: Again, the...there isn't a height limit in feet. The height limit is stories, and the structure has two main floors, which is what we had originally considered, but there is area between the first and second floor and also on the roof, that does meet the zoning code's definition of stories.

COUNCILMEMBER JOHNSON: Okay.

MS. MCLEAN: And so those --

COUNCILMEMBER JOHNSON: But you said they were out of compliance in two areas; the square footage and the height. Am I saying that wrong, or did I mishear?

MS. MCLEAN: The height, as it relates to stories.

COUNCILMEMBER JOHNSON: So a very tall story. I guess one story was 50 feet, for example, like way over what we're calling a story.

MS. MCLEAN: No, there's not a limit on the --

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COUNCILMEMBER JOHNSON: Okay.

MS. MCLEAN: -- on the height of stories. So you know, two stories is pretty clear. This building is kind of like this, where it has this in between that could be counted as a story. So that's what we're looking at. It...it's --

COUNCILMEMBER JOHNSON: And that is a violation, the way that is?

MS. MCLEAN: Correct. Because it's an additional story, it would make...it would make it exceed two stories.

COUNCILMEMBER JOHNSON: Okay, thank you. I...I'm a little bit short on time, so let me just clarify, what's the options of your actions?

MS. MCLEAN: Well, there...there's a number of options, and I don't want to suggest that any or all of these will be taken. We can issue notices of warning that gives the...the violator an opportunity to come into compliance. We could rescind or suspend our sign-off on the building permits or our issuance of the SMA exemption. We can issue notices of violation that impose fines, and have fines accrue every day until the violations are cured. So those are the things that we need to discuss with Counsel before issuing.

COUNCILMEMBER JOHNSON: And do you have a preference for any one of those, or are you still in discussion?

MS. MCLEAN: My preference is to go with what's most legally sound.

COUNCILMEMBER JOHNSON: Okay. . . .*(timer sounds)*. . . Perfect timing. Thank you, Chair. No further questions.

CHAIR MOLINA: Okay. Thank you very much, Member Johnson. After Member King completes her line of questioning for the Director, we do have Deputy Director Molina on the line to provide additional comment on this matter. And then we'll go back to the Q&A phase. Member King, questions for Director McLean?

COUNCILMEMBER KING: Okay. Thank you, Chair. This...the first question may be for Member...or for Director Molina. But my understanding, I kept reading that...that there was going to be a stop order. Was a stop order put on this property already, so there's no continuation of construction as we're deciding violations?

CHAIR MOLINA: Okay, is that for Director Molina?

COUNCILMEMBER KING: Well, if I can ask him, I...I --

CHAIR MOLINA: Okay.

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COUNCILMEMBER KING: -- think it was supposed to Public Works that did that.

CHAIR MOLINA: Okay, I think he's...he...he just joined us. Director Molina, are you online right now on the call?

MR. MOLINA: Thank you, Chair. At this time, the stop order...work order has not been issued yet.

COUNCILMEMBER KING: Okay, so...so I guess my...my question to Director McLean is, you...you...you were trying to clarify the violations, but you're pretty sure there are violations, and the person is continuing to construct their house, which seems like additional violations. So how...how is that possible? Why would we not put a stop order, as soon as even one violation has been...you know, has been unearthed?

MS. MCLEAN: Once we have clearly established that a violation has occurred, and we take action on that, then Public Works will likely issue the stop work order. I shouldn't say likely, I...I am quite confident that they will. Public Works doesn't administer the Zoning Code or the Special Management Area. As far as we know, there aren't any violations under the laws that Public Works administers. So they wouldn't have a reason to issue a stop work order until it has been established that there is a violation. So they need us to do that first. And so when we do that, I...I think they are poised and ready to issue the stop work order.

COUNCILMEMBER KING: Okay. Because I had heard, and I thought I read earlier, you know, weeks or months earlier, that there was a violation in a rock wall that was built without a permit. So that wouldn't be enough to create a stop work order?

MS. MCLEAN: I...I believe, and...and Mr. Molina can confirm this, that a stop work order was issued from the wall.

COUNCILMEMBER KING: Oh, okay.

MS. MCLEAN: Because we did issue a notice of warning for the wall.

COUNCILMEMBER KING: Oh, okay, so they're...we're kind of taking...piecemealing it; as you find the violation, you can stop the work on that particular piece?

MS. MCLEAN: Correct. You...you stop the work on what is in active violation.

COUNCILMEMBER KING: Okay, so if you get...if...if the violations are, you know, that you mentioned, several things, could the house be...could the requirement be . . . *(timer sounds)*. . . to the house? Is that one of the options?

MS. MCLEAN: I'm sorry, the bell interrupted you, could the violation be what?

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COUNCILMEMBER KING: To level the house? Remove it from the property?

MS. MCLEAN: I...I suppose in theory it could be, I...but that would have to be something we confer with Counsel on.

COUNCILMEMBER KING: Okay. All right. Thank you, Chair. I...I do have other questions, if we get to a second round. I know time's a --

CHAIR MOLINA: Okay. So noted. Director Molina, would you like to provide comment before I go back to Q&A from the Members?

MR. MOLINA: We have no comments at this time. Thank you.

CHAIR MOLINA: Okay. All right. Let's go to anyone else who's got questions for Director McLean or Director Molina. I see Member Sinenci, go ahead.

COUNCILMEMBER SINENCI: Thank you, Chair. Yeah, just questions for Director McLean. So was there a mistake when...made in issuing the building permit?

MS. THOMSON: If I could, Chair, I'd like to just interrupt briefly.

CHAIR MOLINA: Go ahead, Ms. Thomson.

MS. THOMSON: We need to be careful...thanks. I...I'm sure all of you are...are, you know, keen on this issue. So some of the Department's actions may result in, you know, a legal challenge to their authority, or to the claims that, you know, are being...are being brought. So we just need to be careful in terms of some of the questioning. This may be proper for executive session, so if anyone does want to go into executive session to discuss the...the potential ramifications in terms of liabilities or the powers of the County, we can do that, but it would, you know, take, obviously, a motion to go into executive session. Thank you.

CHAIR MOLINA: Thank you, Ms. Thompson. Mr. Sinenci? You could continue --

COUNCILMEMBER SINENCI: Okay. Thank you, Chair, and thank you, Ms. Thomson. Yeah, I was just trying to establish, and...and maybe Member King had kind of alluded to some of my questions. What would be the process in rectifying this situation? And I think she...she mentioned, does that mean that the house needs to be either torn down, or does it just need to come into compliance with...with the building code?

MS. MCLEAN: With any violation that we see, there usually are several ways to achieve compliance. Sometimes it's removing illegal construction, sometimes it's getting an after-the-fact permit. So there is more than one way to resolve the violations that we believe are present on this property.

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COUNCILMEMBER SINENCI: Okay.

MS. MCLEAN: It's not our role, necessarily, to tell them which of those options to pursue, but we can tell them what options are available to them. Certainly, tearing the house down would resolve violations, but there are other...there are other ways to achieve compliance.

COUNCILMEMBER SINENCI: Okay. Thank you, Director McLean. And then Chair, if Mr. Nakoa is on the line, I...I know he's just kind of been, you know, the watchdog for his community. I just had a question, you know, how he came to, you know, be a part of this process.

CHAIR MOLINA: Yeah. Okay, yeah, Member Sinenci, we'll get to Mr. Nakoa after we've completed our line of questioning for Director McLean and Director Molina. So we'll...we'll --

COUNCILMEMBER SINENCI: Okay.

CHAIR MOLINA: -- we'll provide you that opportunity to ask Mr. Nakoa --

COUNCILMEMBER SINENCI: Okay, thank you, Chair.

CHAIR MOLINA: -- questions. Okay, any other Members who have not had a chance to ask questions of Director McLean or Director Molina? This is your chance right now. Okay. Oh, Member Kama, go ahead.

COUNCILMEMBER KAMA: Thank you, Chair. So I just wanted to know, are there any other structures in that vicinity or in that area that may have similar types of violations, or is that the only one?

MS. MCLEAN: That's a great question. We are not aware of any that have likely violations, but there are a couple of large single-family homes in the area that we do want to go take another look at to see if there are similar concerns.

COUNCILMEMBER KAMA: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: All right, thank you Member Kama. Okay, Members, at this time, any other question...I see Member King, you told me you wanted...you had more questions. Would that be for Director Molina or Director McLean?

COUNCILMEMBER KING: I do, Chair, but I'm...I'm not sure if it...if it's a executive session question. Because I do have concerns about something that came up in a previous hearing, and in your Committee, and we were discussing this about, you know, bribery charges. And the...the Department said they would look into it. So I wanted

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to find out if that had been...that sounds like it might be an executive session question issue.

CHAIR MOLINA: Okay --

COUNCILMEMBER KING: Can Ms. Thomson --

CHAIR MOLINA: Let me ask Mr. Thomson or Ms...Director McLean if they're...can provide us a broad response to that question? I guess we'll go with the Corporation Counsel, Ms. Thompson.

MS. THOMSON: Well, *(audio interference)* I think that one of the things is that...that's not the...that's not on the agenda, in terms of, you know, your...your agenda is really to discuss this house and some of the issues that have been raised, both in the community and...and by this Council. So I...I would leave it at that --

COUNCILMEMBER KING: *(Audio interference)*

MS. THOMSON: You know, that's a --

COUNCILMEMBER KING: Yeah, it was about this house, Ms. Thompson. It was about this house. It came up from a testifier.

MS. THOMSON: Yes. Well, obviously, anything that involves potential claims against employees of the County would...we would want to handle that in a confidential executive session.

COUNCILMEMBER KING: Okay. Okay. Thank you.

CHAIR MOLINA: Okay, thank you, Member King. I saw Chair Lee put your hand up. Go ahead, Chair.

COUNCILMEMBER LEE: Thank you, Chair. Director McLean, is this house located in an improvement district, a special district?

MS. MCLEAN: Zoning for the property is the Nāpili Bay Civic Improvement District.

COUNCILMEMBER LEE: Okay. Does the district have different standards from the Code?

MS. MCLEAN: It has its own standards, exclusive to properties with that zoning.

COUNCILMEMBER LEE: Okay. Can you tell me what some of the differences are?

MS. MCLEAN: It does not have standards like setbacks. As this Council is aware, the standard for height was in stories, and not in feet. The uses allowed in the district

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refer to another section of the County Code, to the hotel district, for what uses are allowed--not development standards, but just uses--that's kind of unusual. It doesn't have special uses listed, it doesn't have accessory uses listed, it refers solely to the hotel district. And up until recently, with the action this Council took, it hadn't been amended...that zoning district hadn't been amended since, like, 1960, so it was very outdated.

COUNCILMEMBER LEE: 1960. Well, that's...that's...that's even before the Council was formed.

MS. MCLEAN: That was when the County Code was first adopted.

COUNCILMEMBER LEE: Yeah. Okay. So what was the intent of that special district?

MS. MCLEAN: Well, I can read to you from the Code, read you its purpose and intent. In order to encourage, secure, and maintain the orderly and harmonious appearance and esthetic development of land and structures in the following described areas, and in order that the most appropriate use thereof be determined and protected, it is deemed essential by the County of the...by the Council of the County, that the Nāpili Bay Civic Improvement District be established in the following areas.

COUNCILMEMBER LEE: Okay. So were there...are there other improvement districts throughout the County?

MS. MCLEAN: Not that I know of.

COUNCILMEMBER LEE: Okay. All right. Thank...thank you. Thank you for the information. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Chair Lee. Members, any other questions for Director McLean or Director Molina before I open up the floor for questions from [sic] Mr. Nakoa, our resource person? I believe Member Sinenci, you had a question. So go ahead, Mr. Sinenci, with your question for Mr. Nakoa, and welcome, Mr. Nakoa. Proceed, Mr. Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Aloha, Mr. Nakoa. Yeah, I just wanted to, you know, ask of your involvement, and how you became part of, you know, the...the process of this project?

MR. NAKOA: Well, some of the braddahs who go over there, they surf every...you know, surf or hang out, go drink beer down in Nāpili Bay, they seen the project going up, and they went notify me. I live in Nāpili, but brah, I no...I no pass my house...that...that property is past my house, so I no go past that every day. So when they called me, I just went go look at 'em, and then when I looked at 'em, I seen Brown Development on top. So I go call up Brown, because I was, you know, I was working with him with the



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Makila Kai project. So when I called 'em, I told, 'ey brah, whose house is that, that you building? Then he told me that was his one. That was his house. I was like, oh, Jesus Christ. Brah, you know, the thing is so huge, and all the kine, the people of the community no like 'em. And then he was like, oh, okay, well, in all honesty, you know, this is for my family, and this and that, and blah blah blah. So okay, cool, whatever. But then, at...and...and then when I...I took notice of that, I did my research, I talked to the neighbors, my aunty live across the street, and all that kine stuff. She said she wanted for protest the thing every day, go drink beer in front the property, and try just make noise. Yeah. And just...that's...that's how we (*audio interference*) aunty, is that how she would...she would do. And then I told Greg Brown, braddah, you get the Hawaiians all pissed off across the street. So I...I just told him, brah, you better watch out, braddah, the...the Hawaiians is pissed off, the surfers are pissed off, the project is in the wrong place, and all that stuff, so...I figure he going talk...you know, going work...work diligently with me, but he be...he was arrogant. He said I get 'em...I get all my...I get my legal team, they're on it. I guess it's a old Corporate Counsel guy. And then he said I get my team all on this, and that we good, Junya, we good. And then...so my aunty going come over there probably this weekend, she...when she off. He said, brah, see if you can tell her for stop. So 'ey, he gave me...he went gave me some money for go give them for go buy their beers, but no come in front da kine. So we did. I did. I took 'em, I gave 'em to aunty them, and she went party, I guess. I don't know, what the hell. Okay, they went...they went kept on going, and then I guess some more people was...was keep on talking about 'em like, going up, and I guess you...you guys hear about the name coming around? I deal with him sometimes. The guy, Chris Salem. I coach against him, baseball. And so he called...he called me, and then duh-duh-duh-duh. We came up his house, so he brought up some issues, and then we...we seen 'em...I seen 'em, because he was working for the Mayor at that time. He said some violations was being taken, so you better go into 'em, Junya. So I try...try...try call...try call up the...the Planning, try call up the Public Works. I said, oh, brah, mahalo, for the info, brah. I going check 'em out. So I just went go check 'em out, and then I called Public Works, and Rowena Dagdag, and I called Michele McLean. This was...this was, like, in the beginning of March, the ending of February kine, when I started doing that. And dealing with them, brah, Michele McLean went say oh, we know...that's a Public Works part in the...in the...in the permitting process. So I call up Public Work. Public Works say this and this and this. And then I...I ask...I ask Rowena Dagdag what's the difference between height and stories? . . . (*timer sounds*). . . and all of that. So I kept on asking about that, and then just, you know, I mean, so then after that, Dagdag throw 'em back to Michele McLean. Michele McLean saying she only in charge of the zoning part. And so...so me, I'm getting thrown all around, back and forth, frustrated, because --

CHAIR MOLINA: Mr. Nakoa?

MR. NAKOA: And then (*audio interference*) --

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CHAIR MOLINA: Junya? I...I sorry...I have to stop you now, the timer went off, but we...we'll continue. I'll ask if any other Members have questions for you. Well, you know what? I have one quick question for you, Junya. Since, you know, I took that site visit with you back in June, has the place looked a lot different since the site visit back in June?

MR. NAKOA: Yeah.

CHAIR MOLINA: What looks different now?

MR. NAKOA: Well, again, okay, already...the thing was already huge, right, when we went there, right? Was already looking like went exceed the two stories, right, when we was there? Went look like it went exceed that. Because had that elevator, da kine, stuff, yeah? But then, just recently, they went put one crane, they had one crane over there, putting up some more, like just like was another story or something. So more building on top of the roof. So again, that's exceeding the two stories. And so it's...it's just getting bigger and bigger. And it's because, I guess...I don't know why, you know. I mean, you know, I know that Michele was saying about the...you know, they got to wait for timing or stuff, but what? What is it? What...why they was put 'em from the beginning, because just from the...just the drawing alone was question marks. Because it's like how she...how she said, there's two solid floors, but there's in...in the piece...in between floors, there's certain spaces that they was calling, like, one dead space or something. But that is where get the other floors, you know. So just looking at the plans, just that alone, you know me, I not going call it, but I could tell you the buggah was all...exceeding the two floor...the two stories just by looking at that. And so...you know, so yes, it went changed from the plans, the day we had the first community meeting there with Michele McLean and Jordan Hart, then to the time that you came, and the thing's, you know what I mean, the thing still kind of went add little bit after the public meeting. But then they went stop for a little while, and then just recently, they started working on 'em again, and then they got higher. And again, like I said, they had...they had one crane over there.

CHAIR MOLINA: Okay.

MR. NAKOA: So that means they going more higher. So that's how I did...they're planning changes.

CHAIR MOLINA: Okay. All right. Thank you, Junya. Okay, joining us, we have Member Paltin. Thanks for rejoining us. Member Paltin, do you have any questions for Director McLean, Director Molina, or Mr. Nakoa as it relates to this matter?

COUNCILMEMBER PALTIN: I think my question would be for Corp. Counsel. Like, where do we go from here?

CHAIR MOLINA: Okay. All right, Ms. Thompson, can you provide a response for Member Paltin?

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MS. THOMSON: Thank you. So I think you've...well, Member Paltin, you weren't here, I don't think, when the Departments were presenting, but Director McLean said that she and her staff are looking into various issues regarding square footage and some of the other matters that have been discussed previously. And when they have concluded their investigation, then they have, you know, some options of types of enforcement that they may consider. Right now, I don't believe that there has been a stop work order issued by the Department of Public Works. So right now, at any rate, it sounds like we're still in the information gathering and analyzing mode, prior to taking any type of...of legal action.

CHAIR MOLINA: Member Paltin, I...I think you're muted right now, yeah.

COUNCILMEMBER PALTIN: Oh, thank you, sorry. And...and the unpermitted wall, is...is that...does it...how does that whole after-the-fact permit happen, and how do you, like, have it torn down? Because it looks like the neighbor's wall is like this, and then the other wall is like this, and so it's like their wall turns into a retaining wall for this real tall wall. And I mean, I guess, you know, my concerns are like, safety. If there's going to be a pool on the ground floor and a pool on the third floor, like, it just seems kind of...and...and it's being a little bit...the property's being held up by the neighbor's lower wall, and then there's that tall wall, and it just looks kind of sketchy on the safety side to me. I mean, I don't know how it got past all the permitting stuff, but that's not my call.

CHAIR MOLINA: Director McLean, would you like to respond to that? Go ahead.

MS. MCLEAN: Thank you, Chair. We issued a notice of warning because the wall was built without permits. Apparently, a building permit is not needed for the wall, but SMA review would be required. We have not issued that permit or made a determination on that yet. Having that permit to process was the impetus for us to conduct our compliance inspection for the site. And for us to take action on that wall, whether to issue an exemption, or issue an SMA permit, we would have to be able to make conclusions based on SMA criteria, and it's not clear to me that we are able to do that, given . . . *(timer sounds)* . . . that the wall wasn't reviewed before it was built. So we haven't made the call yet on that wall, but it...I don't know that we'll be able to approve it.

COUNCILMEMBER PALTIN: So I...just to clarify, a wall wasn't...a permit wasn't needed for the wall; is that what you said?

MS. MCLEAN: A building permit was not needed for the wall.

COUNCILMEMBER PALTIN: Oh, but an SMA permit was needed.

MS. MCLEAN: Correct.

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COUNCILMEMBER PALTIN: Okay. Okay, thanks for that clarification.

CHAIR MOLINA: Okay, thank you, Member Paltin. Mr. Nakoa, you wanted to add something quickly to Member Paltin's question? Go ahead.

MR. NAKOA: Yeah. You know, about the retaining wall, like, thank you for bringing that up, Tamara. The...you know, as...as a build...I used to work in construction. I did grading. When used to dig the foundation, and then the concrete guys put in the rebar for retain...retain the wall...to be a legal retaining wall, one inspector from the County, from either Planning or Public Works, would have to come and approve of that...of that...the wall, and the...the...the foundation and the rebar --

COUNCILMEMBER PALTIN: Footings.

MR. NAKOA: -- footing...yeah, the footing, is legal as a retaining wall. So why wasn't, you know, now have one inspector come check that out? Because right now, we don't know if the wall is one legal retaining wall. So that's...that's...that's, like you said, a safety issue for the neighbor's yard. So they...so that's...that should be done, you know? Yeah, and that's...that's Toby's wall, that...that...you know what I mean? He...yeah, and then so, that's...that's one...that's one big no-no. You got to...to get a retaining wall, you got to build the footing, one solid footing, and then you can pour the concrete after you pour...and then...then you can build the wall. All of that's supposed to be done before you build one retaining wall, and the Public Works told me that is considered a retaining wall.

CHAIR MOLINA: Okay. All right. Thank you very much, Mr. Nakoa. Members, any other questions for Director McLean, Corporation Counsel (*audio interference*) I'm sorry, for Mr. Nakoa, at this time? Sorry I went off a little bit. Okay?

COUNCILMEMBER PALTIN: I --

CHAIR MOLINA: Okay. If anyone does not ask a question, we'll, then go back to Member Paltin. Go ahead, Member Paltin.

COUNCILMEMBER PALTIN: I just was wondering if we're looking at any kind of time frame. As Ms. Thomson said, you know, they're still in the investigation phase. Like, for the public purposes, is there a...a time frame? And if it's still under investigation, it looks like while the investigation is going on, it's still going up higher and higher. Like, I can see it from my house now, you know?

CHAIR MOLINA: Yeah, okay. I guess, Director McLean or Director Molina? I know it's been stated that it appears that there are violations. Any specific time frame, if the Departments were to proceed with a, you know, stop work order? Can you --

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MS. MCLEAN: For the...for the Planning Department's actions...and again, the stop work order would come from Public Works. For the Planning Department's actions, we've...we've briefly discussed with Corporation Counsel, and we're looking to finalize that discussion either this week or early next week. So any action that we take should be next week at the latest.

CHAIR MOLINA: Okay. Member Paltin, anything else?

COUNCILMEMBER PALTIN: Just that it almost looks as though we can get...I mean, I know many people said many times you can sued for anything, anywhere, anyhow, but it looks like the County could get sued from both sides on this. Like, Brown, because he got his permits, and then the community, because it's out...egregious or whatever. And in that case, what...what do we need to do then? We just take it from both sides?

CHAIR MOLINA: Seems like it...that that may be the case, Member Paltin, yeah. It's --

MS. MCLEAN: Chair, I'll just comment --

CHAIR MOLINA: -- darned if you do, and if you don't. Go ahead, Director.

MS. MCLEAN: That's why...thank you. That is why we are taking our time with this, and conferring with Counsel before we take action.

COUNCILMEMBER PALTIN: Okay.

MS. MCLEAN: You know, that...you know, you can't prevent anything like that from happening, but we can do our best to have a solid case, and to protect the County.

COUNCILMEMBER PALTIN: Okay. Thank you for that.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Before I recognize Member Sinenci, Director, in testimony at our recessed meeting on November 16, it was mentioned, I guess signing off the permits initially, I know you...you weren't...I guess you...you were on vacation at the time, and there was an employee of the Department that signed off on it, and who was, I guess, in testimony stated that that person is no longer with the Department; can you verify that?

MS. MCLEAN: Got a few things twisted up there. I did not sign off on the SMA exemption or the building permit, because I never do. Our Department processes thousands of applications a year, and most of them are processed by Staff.

CHAIR MOLINA: So...so the staff person that signed --

MS. MCLEAN: Under my authorization. So the SMA exemption was signed off by...SMA exemptions are typically signed off by the division chief. That division chief was on

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leave, and the two section chiefs were sharing the division chief's responsibility. So a section chief...excuse me, a section chief signed off on the exemption. That's not unusual, and I don't think that the division chief's presence would have changed anything. And those staff members are still with the Department. The building part...the building permit was signed off by a plans examiner, and we have several plans examiners who sign off on plans without supervisory review; they consult with their supervisor if they need to. The plans examiner who signed off on that was still with the department at the last meeting. That person has since retired.

CHAIR MOLINA: Okay. Thank you for clearing that up for us, Director. I believe Member Sinenci had a question for either...both of our Directors or Mr. Nakoa. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I think Member King had a question. If you wanted to go back to her question, I can go after her.

CHAIR MOLINA: Okay, Member King, proceed.

COUNCILMEMBER KING: Oh, thank you. I appreciate that, Member Sinenci. That was the question that I was...Ms. Thomson said that we should reserve for executive session. So I withdrew...I withdrew that question, but I appreciate you.

COUNCILMEMBER SINENCI: Oh, okay. Thank you. I...I guess my question would be for the...Director McLean about hotel standards. Does the house...was the house exempted for an SMA as a hotel, or a residential home?

MS. MCLEAN: SMA exemptions can be issued for single-family dwellings, but cannot be issued for new hotels. So that was --

COUNCILMEMBER SINENCI: That this --

MS. MCLEAN: -- issued for a single-family dwelling.

COUNCILMEMBER SINENCI: Would the additional square footage or additional rooms count towards hotel standards, or that hasn't been considered or anything like?

MS. MCLEAN: The...the zoning district allows the uses from the hotel district, but not the standards. The standards are things like height and setback, and floor-area ratio.

COUNCILMEMBER SINENCI: And just to be clear, hotel is not allowed in this...in this area.

MS. MCLEAN: This Council recently amended the zoning district to prohibit new hotel uses, so that wouldn't apply to the structure in this property.

COUNCILMEMBER SINENCI: Oh, okay. Thank you. Thank you, Chair.

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CHAIR MOLINA: All right. Thank you very much, Mr. Sinenci. Member Paltin, questions? Go ahead.

COUNCILMEMBER PALTIN: I think my question would be for Ms. Thomson. You know, like, we get multiple emails a day, multiple emails a week, and like that, calling us to take action. And I just was wondering, beyond what Chair Molina is doing here to get an update and get more information in this public setting, that's the extent of our role, right? I just wanted to clarify, because it's an impeachable offense for us to try and tell Director McLean or Director Dagdag-Andaya, or Deputy Director Molina what to do, and like to try and control things. So I just wanted to clarify what it is that's within our purview to do, besides what Chair Molina is doing right now, and besides our changing of the law for Nāpili Bay Civic Improvement District in the past. Is there more things legally that we can and should be doing, or is that the extent of it?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you for the question, and it's a really good question. So, you know, I think the way to answer it is that, you know, all of...all of us in the...in the different bodies have our roles. So, you know, in terms of a Corp. Counsel's role in this, you know, we advise, you know, you as...as...as the Committee and the Council. We also advise the Departments. At the end of the day though, enforcement is the purview of, in this case, the Planning Department or the Department of Public Works, or both, and...you know, depending on their specific territory and jurisdiction and the County Code. And so they will be the entities that either do or don't take action ultimately. But what this Council can do, and what the Committee can do, is there are going to be issues that have been brought to life through this situation that you can look at in terms of Code changes like the one that you already have made to stories and the maximum height. But there...you know, there may be other...other areas of the Code that this particular issue has brought to light that can be addressed. So I...I think that is...is the best active role that the Council would play in this.

COUNCILMEMBER PALTIN: Okay, great. Thank you. But it wouldn't apply retroactively, it would only apply moving forward. So it wouldn't...if we change the Code, it wouldn't be able to affect this particular situation, only moving forward; is that correct?

MS. THOMSON: Correct. Yeah. That's...it...that's...that's generally correct. Yes.

COUNCILMEMBER PALTIN: Okay, so anything more from this particular case, not for future cases, is what we're doing, is what you're saying.

MS. THOMSON: You know, I...I understand, you know, that the reason that you're having these sessions is because there has been a significant amount of interest, and also interest within, you know, the Committee and the Councilmembers themselves. Because like you said, you're...you're also getting a lot (*audio interference*) from members of the (*audio interference*). So, you know, I...I do think that this is probably

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the...the extent right now, you know, in terms of this project is, you know, just giving a venue for discussion and...and updating. But we can...you know, if you have ideas that come from the situation in terms of (*audio interference*) will help you with that.

COUNCILMEMBER PALTIN: Okay, I...I've been asked to stop doing PAFs for a while, so as soon as I'm off that little break, I'll work on it.

CHAIR MOLINA: Okay. All right. Thank you very much, Member Paltin. And just to add in, yeah, and that was a good question to bring up, Member Paltin. This is the purview of the Administration. I guess the old proverbial, the ball is in their court. Now certainly, any Councilmember can add their opinions or thoughts, but ultimately it's the Administration's call on this. And as it was stated by Director McLean, I guess the...both Public Works and Planning, I guess, will hopefully come to some final decision as to what they do with regards to the building permit sometime next week. And if the evidence is certainly strong that supports that there are violations...it's been stated for now it appears, but if the evidence is overwhelmingly in favor of violations, then the Departments will do what they have to do. Mr. Nakoa, you had one...you had a question or comment you wanted to make related to the questions asked, Mr. Nakoa?

MR. NAKOA: Yeah, yeah, we get like...yeah, the stories, you know, I mean, yeah, you guys went change the law and all that kind stuff. But our concern is, a single-family home, when the (*audio interference*) one single-family home, us, the public, we couldn't talk, yeah? Because never have one hearing. But now with all this things coming up, it seems like it's a hotel, or at least one vacation home. So that would have been to the point of where we would have public hearing, you know, and all that stuff. So that's...that's one of the main concerns. You know, what I'm trying to get at, is the people...the community, they pissed off because we never have no chance to...you know, for chime in on this project. And we got stopped by Planning Department and Public Works because they went issue the SMA permit. So we got...we got...we got cheated. And now you guys...and then hope...like, you know, and then all these violations was done by their inspector, by...by...they saying Government record is in KIVA. You know, I mean, so I don't know what they're waiting for. And yeah, so everything is...I'll tell you go hana 'ino (*phonetic*) the...the two departments, if they got off their ass and they actually would go do 'em, you know, but like I said, if it...we never make hana 'ino them about the wall, they wouldn't have known that the wall was there. You know, so the thing stay. You guys get all the evidence that this buggah is illegal; square footage; scoring; the illegal wall with no permits; safety hazard, you know. And...and...and if the wall is not...is not permitted or not legal, that make...should get rid of the SMA permit, because now that...all that foundation and that thing can roll into our ocean. You go look at the grade. I've been at that thing couple of times. The grading, you can see the thing flowing straight down the road into our ocean. So I...I just wanted for say that, you know what I mean? So stop playing the games, brah, pointing fingers at each other. Get this thing done. Because if you guys going let him go more and more higher, it's more...more safety issues. And



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what did somebody get hurt? What if the thing fall down? Then what you guys going say? Aw, shucks, we should have done something. If...it...this...this is a public issue, safety issue, so stop playing and pointing fingers. Then...well, I going say 'em. Somebody...somebody should be fired because like the Corp. Counsel lady said, you know, all the things, you might have department actions that might have legal procedures or whatever (*audio interference*). Fricken' fire 'em. You know what I mean? If they...if they costing us guys money...costing the taxpayer's money, and they're getting paid by us, the taxpayers, fire 'em. You know what I mean, because I thought...I tired, brah. We tired.

CHAIR MOLINA: Okay. All right. Okay, mahalo, thank...thank you, Junya. Appreciate your...your comments. Okay, Members, any other questions for the Departments or Mr. Nakoa before the Chair...well, Chair's recommendation is defer, because as we...it's been stated, that the Department's going to make a decision in terms of what they're going to do based on the evidence they have with regards to the square foot violations, as well as the height violations. So I think it...it would be best to keep the item open, and then allow the Department to make the decision, and then we shall see what happens after, assuming a decision is made, which I believe should occur sometime next week. So any final thoughts from Corporation Counsel, or the Departments, or Members before we defer and adjourn our agenda today? Director McLean?

MS. MCLEAN: Chair, we will forward your Committee any documentation of any action that the Department takes so that you will be kept up to speed. I did also want to recognize Mr. Nakoa and others in the community who have brought matters to our attention. I completely sympathize with their frustration and impatience, and I'm sorry that it has taken so long. But I feel that the direction that we're going in is the most responsible, given the things that are at stake here, and will be in the overall County's best interest, even though the Nāpili folks, I know, are really ticked off at us. And I...I appreciate your ongoing involvement.

CHAIR MOLINA: Thank you very much, Madam Director. And, you know, in hindsight, unfortunately there...I'm not sure what type of mechanism could have been used to at least have the community provide input, you know, when this building was in the early stages of construction, or being proposed to be constructed. Who knows, maybe we wouldn't be here if there was an opportunity at an earlier point for the community to give comment, and...and, you know, all sides could have been heard and maybe we could have prevented, you know...

MS. MCLEAN: We have learned a few lessons from this, believe me.

CHAIR MOLINA: Yeah, yeah. All of us have learned. And...and thank you for your openness, Director. Member King?

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COUNCILMEMBER KING: Thank you, Chair. And I think Director McLean addressed it, but I was just going to point out that, you know, it's true what Corp. Counsel said about, you know, us looking at the laws and how we can change things. But I also hope that the Department takes a hard look at how this happened, you know, who they're giving responsibility for signing off on these things, and...and take a look at that procedure. Because ultimately it's the responsibility...responsibility of the Department and the Director, everybody underneath that person who signed. So that's one opportunity that they have to fix the...the protocol that they use, and the processes they use, and we'll look at what we can do for the future. But I think the Department needs to look at what they can do for the future. Thank you.

CHAIR MOLINA: Thank you, Member King. Very good points. Members, any other final comments before we close? Okay, seeing none, then the Chair will, if...if there are no objections, will defer GREAT Item 36 related to construction on lower Honoapi'ilani Road. Any objections to defer?

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused KRF)

**ACTION: DEFER.**

CHAIR MOLINA: Okay. All right. Very good. Staff, is there anything the Chair needs to be reminded of before we adjourn?

MS. ESPELETA: Chair, there's nothing further.

CHAIR MOLINA: All right, very good. All right. The Chair would like to thank Director McLean, Director Molina, and of course, Mr. Nakoa, for your input on this very important matter, and to all of you and everyone else viewing in. And of course, you, Members, for taking time out of your busy schedule on an off-week day before Thanksgiving to discuss these very important matters. So with that said, I'd like to take an opportunity to wish all of you are very happy and safe Thanksgiving holiday weekend. So...

MR. NAKOA: Yassah.

CHAIR MOLINA: Yassah, yeah, that's right. Okay, mahalo, Mr. Nakoa.

MR. NAKOA: *(Audio interference)* have a good weekend, Thanksgiving, gobble-gobble. Yassah, have a great weekend, guys. . . .*(laughing)* . . .

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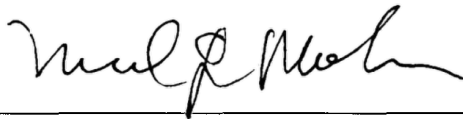
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CHAIR MOLINA: All right. I...I couldn't say it any better. All right. The recessed meeting of November 16th, 2021, today is Wednesday, November 24th, the time is four minutes after the hour of 4:00. The recessed GREAT meeting of November 16th is now adjourned. ...*(gavel)*...

**ADJOURN: 4:04 p.m.**

APPROVED BY:



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MICHAEL J. MOLINA, Chair  
Government Relations, Ethics, and  
Transparency Committee

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Transcribed by: Kaliko Reed

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CERTIFICATION

I, Kaliko Reed, hereby certify that pages 1 through 51 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 5th day of January 2022, in Wailuku, Hawai'i

A handwritten signature in black ink, appearing to read "K. Reed", is written over a horizontal line.

Kaliko Reed