

## MINUTES

### **PUBLIC WORKS COMMITTEE**

**April 4, 2007**

A meeting of the Public Works Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, April 4, 2007, at 9:15 a.m., after which the following members answered the call of the roll:

Honorable Mel Rapozo  
Honorable Tim Bynum  
Honorable Shaylene Iseri-Carvalho  
Honorable Ron Kouchi  
Honorable JoAnn A. Yukimura  
Honorable Bill "Kaipo" Asing, Ex-Officio Member  
Honorable Jay Furfaro, Ex-Officio Member

Minutes of the March 9, 2007 Public Works Committee Meeting.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Kouchi, and unanimously carried, Minutes of the March 9, 2007 Public Works Committee Meeting was approved.

The Committee proceeded on its agenda item as shown in the following:

**PW 2007-3** Communication (2/15/2007) from Mel Rapozo, Public Works Committee Chair, requesting that the Administration be present to give an update and status report on the County's bicycle/pedestrian pathway project which encompasses various segments from Ahukini to Anahola.  
**[This item was deferred until the May 2, 2007 Public Works Committee Meeting.]**

**MEL RAPOZO, PUBLIC WORKS COMMITTEE CHAIR:** While we await the arrival of Public Works, I will suspend the rules and take public testimony.

There being no objections, the rules were suspended.

Mr. Rapozo: Is there anyone in the public that would like to testify on this issue? Mr. Mickens?

**GLENN MICKENS:** Good morning Councilmembers. I see that we are back on this (inaudible)... you know how many months, years this will continue, but maybe the Administration will decide to show up and give some answers. Anyway, for the record, if I might, let me read my communication. Since communication

PW 2007-3 is again on the agenda and due to legal questions about SMA and setback permits getting top priority and I agree that they should. The question that Councilman Rapozo has repeated asked for months that the Administration be present to give an update and status report on the County's bicycle/pedestrian pathway project which encompasses segments from Ahukini to Anahola has not been addressed. Since this path is projected to run from Nāwiliwili to Anahola as I understand it, I would add the Nāwiliwili to Ahukini segment to his communication as well. My friend Andy Parks has brought a couple of very interesting questions that definitely need answers. Since the Federal government is funding 80% of this project and Federal guidelines under USC 217 states that, "no bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation rather than recreation purposes." Even if this 23 mile path were completed which is unlikely, it still would be used for recreation and not for transportation. We would still have no written authorization from the Secretary of Transportation saying that she approves this type of usage. But, even more (inaudible) as Andy said of only segments of this path are completed as with the part in Lydgate Park, then the Federal government was deceived when they understood that they were funding a 23 mile path that was supposed to ease traffic congestion.

In other words, it is impossible to use a segmented path for anything, but recreation, so the plan presented to the FHA was false. This untruthfulness makes the chances of the Feds asking for their money back a high probability. Mel and Shaylene have sent over a long list of questions to the Administration that either vague answers or no answers at all. For instance, 1) What is the actual route of this path from Nāwiliwili to Anahola? 2) What will be the total cost of this project using the figures that should have been given to us from the planners and designers for over \$3 million we have given them? 3) What do we have documented showing that an EA was done on the total path and that a segmented EA is legal? 4) For what other projects will be added to this path as the wall for the golf course is being added and at what cost? 5) What land acquisitions or land condemnation will be needed and what cost? 6) What happened to the Project Manager that this Council appropriated funds for and what happened to the funds? 7) How will this path get enough... get through the Foodland/Safeway shopping center with no bridge over the creek end and what about the traffic? 8) What (inaudible) to the Gateway Project since the maintenance of the Gateway Project is almost \$500,000 per year and what will be the maintenance cost for this 23 mile path? Jay said about \$400,000, but I think this may be low. There are many more questions and these including the legal ones, but it would be nice... Mel, do you want me to come back or...

Mr. Rapozo: I am trying to find where you are at now.

Mr. Mickens: I am on the second page down in the middle.

Mr. Rapozo: If you could just wrap up and...

Mr. Mickens: I got just another page.

Mr. Rapozo: Another page? No, you are past number 8 already, right? Yes, why don't you just finish up.

Mr. Mickens: The last page only has two (2) sentences.

Mr. Rapozo: Roll up the next three (3) minutes for Mr. Mickens please? Thank you.

Mr. Mickens: There are many more questions including the legal ones, but it would be nice hearing answers. A citizen who is a worldly bike rider, you probably read his letter in the forum, but has done some serious research in this entire project states in the letter to the forum (3/24). I think that the County Council should in parallel continue to pursue the questions of the goal of the overall project and the company to achieve it. Under no circumstances should the County move forward with other phases until these issues are sorted out. I think that the desire by several Councilmembers to treat the problems as simple mistakes and sweep them under the rug is deplorable. For me, words of wisdom and I believe that certain members of this Council are doing their best to abide by these words. Also, in a view point article in the forum, the one that Walter Lewis stated, Kaua'i citizens should demand that our government make disclosure of the financial and operational facts about the path project and conduct the public hearing of the viability to project. Let's do it. Thank you Mel for letting me go past my time.

Mr. Rapozo: Thank you Glenn. Any questions for Mr. Mickens? If not, thank you Glenn. Mr. Taylor?

KEN TAYLOR: Chairman and members of the Commission, my name is Ken Taylor. As you know in the past, I have spoke in favor of the bikepath. I passed out some information from around the country showing the activities of bikepaths all over the United States. I have today, two (2) more articles to give you and one is from the Seattle Post dated March 28 this year. They are talking about a 10 year plan calls for more than 200 miles of designated lanes. I think this is just another example of why it is so important to complete this project. Now, as I have said in the past, I do believe that there has been some problems and we can continue to make problems out of them or we can try to come to grips with solving the problems and I think that is your job. Get these problems resolved and move on.

In another article from the BBC News, Mexican officials to bike to work once a month. The officials in Mexico City will be biking and the ones that are incapable of biking are being required to at least ride the bus system. Again, I think this is a show to the community the kind of things that you folks have to step up to the plate and take into control and show the public that, yes, if all of us at least once a month would get out of the car and either ride our bike or take the bus to do our chore for

the day, we would alleviate some traffic. As more people do it and the operation happens on a more frequent basis, we will find. Let's face it, we have one of the finest places in the world for climate and this is the place to be on the bicycle. I mean, this first article is from Seattle where it is drizzly raining constantly most of the year up there. I will turn these two (2) papers in for you and I would just like to say again that let's stop fighting, let's get the problems resolved and move forward. Thank you.

Mr. Rapozo: Thank you Mr. Taylor. Councilmember Iseri-Carvalho?

SHAYLENE ISERI-CARVALHO: Yes, I do. I guess just some clarification Mr. Taylor. Where do you foresee the fighting is occurring?

Mr. Taylor: I am sorry?

Ms. Iseri-Carvalho: Where do you foresee that the fighting is occurring? You said stop this fighting. Fighting of what?

Mr. Taylor: Well, you know, we talk a lot about the problems that have been raised. The question about the shoreline... hardening of the shoreline or the...

Ms. Iseri-Carvalho: And I guess... maybe it is a matter (inaudible), but I don't consider that fighting when you are raising the legal issues that are in the book (Hawai'i Revised Statutes) and they are brought to the attention of the attorney to resolve these issues. I wouldn't consider that fighting per say, but tell me how you see that as fighting?

Mr. Taylor: I see more... my personal feeling is that there is more activity going on to put road blocks in the way of resolving these problems than to move forward with them.

Ms. Iseri-Carvalho: Okay, so can you tell me what those activities are to put road blocks that are not supportive by what is contained in the law? I mean, are you saying that we should disregard what the law says? Is that what you are saying?

Mr. Taylor: You asked me that question once before and I gave you an answer.

Ms. Iseri-Carvalho: Well, I am asking if maybe your position has changed because it seems like that is what your position is today.

Mr. Taylor: I believe that there are two (2) ways of approaching an issue and one is to move forward with the decisions that we are going to resolve these problems. How are we going to resolve the problems? I am not sure how we are going to resolve the problems, but you folks have an obligation to the community to

resolve these problems. And if you put road blocks along the way along the process, you create the problems and I think that is wrong. You know, maybe I...

Ms. Iseri-Carvalho: I'd like to respond to that. I would like to respond about the road blocks first of all, okay, because I don't consider it a road block when a person goes in and applies for a permit and get the permit for a certain type of activity and then without a permit, decides to build whatever he wants that is not in the permit and that we should ignore that number 1. I would just like to pose this scenario to you. Suppose you were a resident that lived next to a rich landowner and the rich landowner decides that they want to build wedding chapels because they want to do weddings on the beach and they have a residence... I don't know, 10,000 square foot residence and they want to build this huge gazebos or chapels and they go ahead and they build them. They did not get any permits for it and now blocks the people's view and people are complaining and we should say, no, they had expended so much money there, why should we require them to tear it down because, you know, let them go back to the Planning Commission and get an after-the-fact permitting. It is the same situation, so I would like to you to ponder that situation and to see that this could have a lot more ramifications than just this one case.

We are not just talking about the bikepath, we are talking about every other person that seeks an SMA permit and doesn't get a permit, but decides to build anyway without a permit, then who are we, the County, to say that you can't do it if we ignore what is currently happening now? (Inaudible) contractors and this bikepath project, it is the exact same thing, so I think you need to broaden your perspective and look at it that every other property or every other landowner decides that they want to build without a permit and does so, then who are we to come in and say, well, tear it down because you didn't do that when the County had done that when they had built their illegal structures. The fact that those structures are legal is already documented. It has been admitted to by the Department of Public Works as well as the Planning Department. There were even those clusters that they moved of those pavilions and even those did not get a permit. Based upon the Planning Director's testimony on that issue, he said, you know, they would have been required to seek an amendment for moving those pavilions that deviated from the plan.

Mr. Taylor: There are two (2) issues as I see it. One is the structures that you are talking about and I certainly agree that there is a problem there. The bikepath itself is another issue because we talk about building a bikepath, but reality is, what we are doing is paving an existing roadway. I am sorry, I don't buy into some of the needs that are being pushed forward and yesterday going...

Ms. Iseri-Carvalho: I am sorry, what needs are you talking about?

Mr. Taylor: The bikepath itself, the path, we are not building a new roadway. The road is there.

Ms. Iseri-Carvalho: That is not true. There are certain areas where they have repaved what existed and there are certain areas where they are creating new ground in order to continue the bikepath, so be accurate in your information. Not the entire bikeapath is already paved and is already on a road that currently existed. That is definitely not true.

Mr. Taylor: Well, there has been some minor adjustments in the existing roadway, but I don't foresee that.

Ms. Iseri-Carvalho: That is not true at all.

Mr. Rapozo: Hang on Mr. Taylor. Anymore questions for Mr. Taylor?

Ms. Iseri-Carvalho: I do.

Mr. Rapozo: Go ahead.

Ms. Iseri-Carvalho: I want to also ask you to refer to two (2) articles that were in the Honolulu Advertiser two (2) weeks ago. One was on the Haleiwa bikepath that had gone into the ocean because of the erosion and they had not considered the erosion, so there went the bikepath.

Mr. Taylor: The whole bikepath or just a small portion?

Ms. Iseri-Carvalho: Not a small portion, a humongous portion and others are set to go in too, so refer to that article and you can find it... it was a huge article two (2) weeks ago in that same Honolulu Advertiser newspaper on that same day. They also published an article about the bus facility. There was a bus facility that was built with Federal highway transportation funds and what the City & County did was they moved the building of where they are supposed to have been built without going through the whole process of even informing the Federal Highways or getting the new permits for the new location did not comply with the permitting process. Now, the City & County is required to pay back the Federal government \$35 million for that facility. That could happen here and that is the precautionary and prudent measure I believe that this Council is taking in trying to resolve these issues before we continue further and they are faced with the kind of liability that the Honolulu City & County currently faces. So consider those issues when you come up and make these kinds of statements because these are... we not only do research and the testimony that the citizens provide. We do research on Chicago bypass, we do research in Seattle, we do research on Colorado, we do research in California. We pulled down all of the ordinances regarding bikepath and the development of bikepath. We look at the USC codes, we look at all the Federal highway regulations, we look at the County regulations, so there is a whole gamut of law that we look at to determine the legality of what is being produced because, in the end, it is you taxpayers that are going to have to pay if we don't do our job.

So I suggest to you that I think we are doing it as comprehensive research as possible to assure that the bikepath is legal and that the people are allowed to use it and not have them pay later on five (5) years from now. The fact that it falls into the ocean, number 1, or the fact that end up having to pay back Federal highway funds in millions, millions of dollars.

Mr. Rapozo: That wasn't a question Mr. Taylor. Anymore questions for Mr. Taylor? Thank you.

Mr. Taylor: Just one comment please.

Mr. Rapozo: Real quick.

Mr. Taylor: The County has more miles of hardened seashore than any individual property owner or probably all property owners combined on this island. What are those hardened seashore lines... how much of them are creating some of the problems that may be coming down the pike.

Mr. Rapozo: That is all, that was your point. Thank you. Anybody else want to testify? Thank you. Go ahead Sir. Just come up and state your name for the record in the mike.

GREGORY DI-SILVESTRI: I would like to say that it is nice to see progress on the path and I believe two (2) people were here a few months ago, maybe November from Georgia and Denver speaking about the bikepath. I had asked them how much... what percentage of path has lanes on it? They never answered me because the answer is 99% have lanes in lines. I have logged over 20,000 miles on a bicycle, 8 different countries. I have ridden maybe 6,000 to 7,000 miles on Kaua'i on paved property and unpaved property. I don't know if I should say that, but lines are really important. We need lines on those paths. People are going to get killed. I have ridden on bikepaths everywhere and people are going to get killed if there are no lines, simple. People are walking with their children and they have every right to walk on it, but if there are no lines, they are taking up both sides. You can't use it as a viable transportation if there are no lines.

Mr. Rapozo: Thank you very much. As I was in Long Beach, the bikepath is lined and it is clearly marked and I really appreciate you coming up because that was always the concern of this Council was the safety factor. I mean, imagine having horses and what is your position on that? Horses, kids, pedestrians and bicycles on the same unlined path?

Mr. Di-Silvestri: From my understanding, what this man read, the money was given for a bicycle transportation path and that should be the main focus. I don't think horses and bikes really go together. I have ridden in Colorado where there is horse paths, dirt paths 10 feet away from the bikepath, but this bikepath doesn't call for it in a lot of areas. There is not room and what they are talking

about in Keālia, that could be pretty dangerous in some spots if you put horses over there.

Mr. Rapozo: Thank you because it is not often that we have experienced bicycle riders come in that have bicycled across the country and the other parts of the world because we are often told about the beautiful places in Tacoma and Seattle and I agree. What I have always said is, Tacoma, Seattle, all of these inland States that have lakes or ponds, they don't have the Pacific Ocean with four (4) to five (5) feet erosion rates that affect the shoreline. It is apples and oranges, so I appreciate you coming up Sir, I really do, thank you. What was your last name again?

Mr. Di-Silvestri: Di-Silvestri.

Mr. Rapozo: Okay.

Mr. Di-Silvestri: I am also in the transportation business here and I have been for six (6) or seven (7) years, so I see what goes on in the road a lot and I see that a bikepath really could help in a lot of ways.

Mr. Rapozo: And I agree. Any questions for Mr. Di-Silvestri?

Mr. Di-Silvestri: May I add one more thing?

Mr. Rapozo: Sure.

Mr. Di-Silvestri: Obviously, in areas where like Lydgate Park, you don't need lines and you don't want lines inside the park areas because that keeps people in check, under control and speed down.

Mr. Rapozo: I would suggest that you contact Public Works and maybe you can get on one of those committees that they have and help out with some of your expertise because I think that is what they need. Thank you. Go ahead Councilmember Yukimura.

JOANN A. YUKIMURA: Yes, I was just interested in your last comment about not needing lines in Lydgate Park. You see a different function on the park than for the rest of the bikepath?

Mr. Di-Silvestri: Absolutely, in the park, you have a lot of foot traffic. A lot of people using the facilities there and if you have lines, a cyclist may assume that, you know what, they can continue on their 10 to 15 mile an hour speed which can be deadly.

Ms. Yukimura: Uh huh.

Mr. Di-Silvestri: When you take away the lines and if anybody is in that path, that cyclist needs to slow down and yield for everybody who is in that path where if there was a line, they can go around.

Ms. Yukimura: Okay, so for you, the line signals free flowing passage versus no lines meaning slow down a bit because there might be a crazy mix of...

Mr. Di-Silvestri: Same thing compared to a car on the road. If you are on a small road and there is no line, you have to yield and give way to people. If there is a line, you can continue on with your momentum.

Ms. Yukimura: Okay, thank you.

Mr. Di-Silvestri: And if people are in that line, you obviously can move out of that line and that is also defined by the line. Single lines, dotted lines, double lines, it is easy. I asked the person, I guess, who is in charge of... who received the Federal money about the lines and he said that they have to have somebody to paint the lines he said. That was the answer. Wasn't that a good thing... you make another job.

Ms. Yukimura: Thank you.

Mr. Rapozo: Thank you again. Anybody else in the public wishing to testify? Public Works is still not here and I know that they are watching. Doug, okay, can you come up please? Before Doug starts, I do want to... that article that Councilmember Iseri-Carvalho referenced was March 27 and we will make this available to whoever wants it. I want to read it because I think it is exactly why we do what we do and it is funny because in Honolulu, it is a role reversal. It is the Administration that is saying, hey, we are not going to proceed and it is the Council that is saying, no, finish the path because we need the votes. We have to get the votes to... I am going to read this straight from the paper. For the second time in seven (7) years, the City's plans to complete a well used bikepath from Pupukea to Sunset Beach have been cancelled because of unexpected problems. This time, the discovery of erosion control problems has doubled the price of constructing a 700 foot extension, just 700 feet of the path to \$300,000. Boy, we should get their contractor leading some residents and officials to wonder whether it will ever get done. The Administration, Chief of Traffic Engineering Division said, "this is one of those that is nice to have, but we feel it is too expensive project." And then the article goes on and at the end, it says that the contractor won the bid for three (3) bikepath projects and he applied for a single permit for all three (3) and this goes into what Mr. Mickens continuously says. You get one permit, one EA... one of the paths held up the permit and eventually all three (3) projects lost their funding. This time, the design didn't take into account an erosion issue that was not included in the contract, Oshiro said. It might have been an oversight. Of course, City Councilman Donald DelaCruz now, is saying, no, build the path and the Administration is saying, it is not feasible, it is not prudent because of the erosion

control problems. Really, while we are here today, it is not about the path in the non-erosion places. It is in the areas that the erosion is a problem. It is about the places of the path and I want everyone to understand, it is about the places of this path that are questionable as far as where it is at. Many of these locations, a lot of the places this path goes across is in the setback or could be in the setback area which means, it is subject to erosion. So do we wait, make sure it is right or do we... like Honolulu is doing which I have to applaud Honolulu Administration or do we just say, no, build it, let it go, stop fighting, get it done and worry about the erosion three (3) years from now when the path starts falling in the ocean. I mean, I don't see what it is so hard to understand, but, anyway, Mr. Haigh. Go ahead Mr. Kouchi.

RONALD KOUCHI: Based on some of the public testimony, I just briefly wanted to say that, you know, certainly, one of the foundations of the U.S. Constitution is equal protection and, you know, it has been troubling in years past on some personnel matters that when we tried to terminate an employee who we felt was not performing up to standard, all they had to do is prove that we kept an employee who was as bad as or worse than the person we attempted to terminate. The County loses the lawsuit, needs to reinstate the employee which is the only point that I believe that my colleague Shaylene is trying to make. That, if, in fact, we don't enforce the laws on ourselves, then should we find any other violator under the equal protection clause of the constitution, we are not going to have the legal basis and grounds by which to enforce the law because we have not equally applied the law. And to even insinuate that we have some kind of latitude or choice to even make in considering what is a good law to enforce or what one we shouldn't really be pursuing because it is a little inconvenient. I just want to say that I had the pleasure of taking the oath 11 times, so I remember it by heart. To support and defend the Constitution of the United States, to support and defend the Constitution of the State of Hawai'i, to support and defend and uphold the Charter of the County of Kaua'i. That is what you have to say before you get this job and that is what you agreed to do when you accept the job and it doesn't give you that ability to pick and choose. So it is just very distressing when we get commentary whether here at meetings or in communications or letters to the forum to even insinuate that we have some kind of latitude, so I am just always distressed when I hear this and I know it sounds really like civics except that, you know, it is Civics 101 and, you know, I don't know how many times you have to say it, I don't know why we even have to continue saying it, but as long as they don't get it, I guess I feel like a teacher that you need to be repetitive before it finally perhaps sinks in. Anyway, thank you Mr. Chairman.

Mr. Rapozo: Thank you. Mr. Haigh? I am sorry.

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: As a non-committee member.

Mr. Rapozo: You are a Committee member Sir.

Chair Asing: Ex-Officio, very good.

Mr. Rapozo: So we don't have to suspend rules anymore.

Chair Asing: This is in relation to some of the comments that were made. When I hear the word fighting, when I hear the word our responsibility is to resolve problems, I want the public to know, yes, it is our responsibility to resolve problems, but there are two (2) sides. Problem involves working together with the Administration and it is both sides. We need to work together. We can't do it by ourselves. We need to have this combination of both the Administration and the Council coming together to work and resolve the problems. I want the public to know that this Council has always tried to work with the Administration. We don't go on our own. We try very hard to work with the Administration to resolve problems. Thank you.

Mr. Rapozo: Thank you Mr. Chair. Mr. Haigh? I am hoping that we can get the questions answers today and hopefully end this discussion. I am not sure if that is possible. I have not seen the responses of the questions and I am not sure if the other members have received the questions that have been sent over. Has anybody... can we get some of the copies to the members? I don't have a copy either, so...

Ms. Yukimura: Is the Planning Director going to be here?

Mr. Rapozo: If there are some Planning questions. I am not... I am not sure. Is Planning coming? Staff, can we check? Ian can be here? Everybody should have received the responses to the March 12 questions that were sent over by myself and it was a packet about this thick. I am not sure... I know I instructed staff to have this made available to every member. Do you guys recall?

JAY FURFARO, EX-OFFICIO MEMBER: I want to ask, though, as an ex-officio, is the material that was just passed out, does that supercede the time request that we got from the Deputy County Attorney Mr. Tagupa that said it was a short work week?

Mr. Rapozo: That was for the Council item (full Council) and that was deferred last week to next week.

Mr. Furfaro: So that was only for the Council item and not for the Committee?

Mr. Rapozo: Which was the legal question on the shoreline.

Mr. Furfaro: Thank you Mr. Rapozo.

Mr. Rapozo: Thank you.

TIM BYNUM: Chair, I would just like to point out that this is the first time that I have seen these questions is today.

Mr. Rapozo: Me too.

Mr. Rapozo: So...

Ms. Yukimura: The one that I sent out on March 12 and this was the responses that were done and we received at the last Committee meeting, but the matter was deferred.

Mr. Furfaro: I think there were some members that were just saying, the ones that were just handed out, for them, it was the first time seeing those.

Mr. Rapozo: What I want to do is cover the March 12 questions first which are made up of four (4) questions which we would probably need the Planning Director here or somebody from Planning, but there is the responses dated March 21. I know we passed them out.

Mr. Furfaro: Yes.

Mr. Bynum: If I might clarify, I did see these March 12... and the response. I didn't see the March 30.

Mr. Rapozo: And neither have I and that is why we are here today.

Mr. Furfaro: So Mr. Chair, was that your request that you are asking someone from Planning to come over now?

Mr. Rapozo: Yes, but my question to the members are, if you have any questions regarding the responses that were submitted dated March 21 and this was in response to the March 12 questions. There are just four (4) questions and, actually, it would be just three (3) questions because the fourth question was not agenda, so we really cannot discuss the fourth question, but we can, the first three (3). I think the first three (3) was the... when was the application for proposed amendments to the SMA use permit for Kapa'a/Keālia project submitted to the Planning Commission? Who was identified as the applicant for the amendment? Please provide copies and appropriate documentation? The second one: What cost have been incurred to date for the entire bicycle/pedestrian pathway project? Please include funding sources, grant sources, in kind matching sources and, what, if, any amounts are reimbursable? The third: What are the plans for the current alignment of the bicycle/pedestrian pathway in the vicinity of the Wailua Golf Course? We had that discussion already in detail in fact. So do we have any other questions regarding the first two (2) questions on the March 12 memo? Okay,

thank you. Now we will move onto the March 30 memo and this was...

Ms. Iseri-Carvalho: Committee Chair, is it possible to ask the question for the public's benefit, so that they are aware that we did ask these questions and then the responses because these were questions that we had asked of the Administration and that we were going to get a response. I know that there were people that were watching the hearings and had inquired of myself prior to me receiving the response, what the responses were, so I think it is important...

Mr. Rapozo: You mean the responses on the March 21?

Ms. Iseri-Carvalho: March 12.

Mr. Rapozo: Yes, but the responses that were dated March 21 from the Administration?

Ms. Iseri-Carvalho: Yes.

Mr. Rapozo: Sure. Did you want to do that or do you want me to do that?

Ms. Iseri-Carvalho: You can.

Mr. Rapozo: Okay, I will do it. The first question was, when was the new application for the proposed amendments to the existing SMA use permit for the Kapa'a/Keālia project submitted to the Planning Commission? Who was identified as the applicant for the amendment application and who was authorized to submit the SMA use permit amendment application? Please provide copies and these are all available for the public as well. You can get it from our staff. The answer was, the completed application for the amendments referred to above was received by the Planning Department on March 20, 2007. The applicant is identified as the County of Kaua'i, the authorized signature for applications by the County of Kaua'i is the County Engineer and they have the exhibit attached that states or shows the application. So March 20, 2007 was the answer for the first question.

The second: What cost have been incurred to date for the entire bicycle/pedestrian pathway project? Please include funding sources, grant sources, in kind matching sources and what, if any, amounts are reimbursable the Highways Grant. Please refer to Exhibit B, so there is an exhibit B as well which basically says, Federal Highway reimbursements to date. It talks about the cost to date and this was dated... it is not dated, but I would assume that it is the date of the memo. It is \$12,145,877 and this is from the Nāwiliwili to Anahola project. The Federal Highway reimbursements to date is \$10,670,387 and the total scope of work approved to date is \$18,927,060. Again, these are available at Council Services should anybody be interested in getting the actual documents.

What are the plans for the current alignment of the bicycle/pedestrian pathway in the vicinity of the Wailua Golf Course? Again, they have an Exhibit C. We did discuss that in detail at the last meeting quite extensively, so, obviously, the path is going to run along the golf course as opposed to going along the coastline or through the golf course, it will not run along the golf course on the makai side of the ditch.

Ms. Yukimura: But the mauka side of the golf course.

Mr. Rapozo: Yes and the makai side of the highway.

Ms. Iseri-Carvalho: I just wanted to...

Mr. Rapozo: And we are still on March 12 memo, right?

Ms. Iseri-Carvalho: Right, and with respect to the Wailua Golf Course alignment, that is the proposed alignment that was provided by the Administration. At this time, there was testimony that they do not have sufficient funding to complete that alignment. There were concerns... I just wanted to reflect by Council Chair Asing regarding the wall or the concrete wall, that he would be against placement... not only placement, but I guess construction of a wall as described by the Administration. I would also like to note that I would also be opposing any sort of blockage as that is described by the Administration with respect to those plans for that alignment.

Mr. Rapozo: Thank you. Any other comments or questions on the March...

Mr. Furfaro: I have a question.

Mr. Rapozo: Sure.

Mr. Furfaro: I would like to get some clarification on Councilwoman Iseri-Carvalho's statement. I heard her talking in terms of the blockage of the view that she couldn't support that...

Ms. Iseri-Carvalho: Well, the blockage of the entire wall.

Mr. Furfaro: In summary, you said for the alignment, so it is both...

Ms. Iseri-Carvalho: Well, it is the current alignment, that is correct, as well as the proposal of the wall.

Mr. Furfaro: The view plain blockage. Thank you for the clarification.

Mr. Rapozo: Thank you. I don't think you can have one without the other because of the safety factor on that course. If the alignment goes along that makai side of the ditch, then you are going to have to have the wall.

Mr. Furfaro: I appreciate your opinion Mr. Rapozo as Chairman of the Committee. I just wanted to get clarification.

Mr. Rapozo: Well, thank you.

Mr. Furfaro: I have not been totally involved in that alignment, but I would think it would take an engineer to tell us specifically with some golf management background, what are the areas that are very dangerous and...

Mr. Rapozo: Well, all you have to really do is count the number of golf balls in the ditch and you know that if you are on a bike or you are walking on the path, you are at risk because there are quite a few golf balls. In fact, I have to go there... I think they buy them at 50 cents a piece and make some money. Councilmember Yukimura?

Ms. Yukimura: I presume we will have further discussion of this, but, I mean, a screen that does not block the view might block the golf balls.

Mr. Rapozo: Again, you know, I don't think we need to discuss it here today and I agree and I think they have considered all of the alternatives as we were instructed that they were told the day we went on the tour or the site visit, but the recommendation at this point is a... I think maintenance is an issue and if you are going to put a screen, maintenance is horrendous on the screen and the liability as well. You have a hole in the screen and the ball gets through it, so, again, I don't think we are going to debate what we are going to put up, but the reality is something needs to go up and that is what Mr. Okamoto has recommended.

Mr. Furfaro: Thank you for that clarification because it depends on what goes up whether the alternative route is deemed safe or not.

Mr. Rapozo: Exactly.

Mr. Furfaro: You could have a screen and some portions does meet the safety requirement.

Mr. Rapozo: Correct, exactly.

Mr. Furfaro: But I think we can take that subject up later.

Mr. Rapozo: And that is going to be based on a recommendation of the Administration. I am not going to try to get into that and I am not an engineer as you state and I am just saying what common sense tells me as you go down that

path because I am a very arrant golfer. My ball has an extremely high velocity. It just does not go straight, so I can kill a human being, I am not kidding.

Ms. Iseri-Carvalho: With the ball.

Mr. Rapozo: With the ball of course. Okay...

Ms. Iseri-Carvalho: I just wanted to clarify since Councilmember Furfaro inquired whether I was in support of that alignment or not. The alignment is not necessarily only at the golf course. There are places that the path would be within a very close distance to the road and also within a foot of the water pump that they have that runs the entire golf course, maybe even less than a foot. And it also... the alignment would require cutting down of some trees, coconut trees, kaimana trees, etc., so it is on a whole broader scope, not just necessarily the wall itself.

Mr. Furfaro: Well, again, I was only focusing on your statement not regarding the other deviations with wells, water, trees and so forth, but specifically above the wall.

Mr. Rapozo: Any questions? I know we have more questions for Doug, but as far as the March 12 memo.

Ms. Iseri-Carvalho: Is it the Chair's recommendation that the last question that will be agenda for another time.

Mr. Rapozo: If, in fact, that is the desire of the Committee, yes. It talks of the shoreline certification on an entirely different project.

Ms. Iseri-Carvalho: On different projects, but I would like to know and I believe soon we are going to have the setback on the shoreline that... the shoreline setback bill that increases the shoreline coming up on the agenda. I would like both of these to be at the same time if possible.

Ms. Yukimura: And, actually, they are more appropriately a Planning Committee. I think the fourth question is a Planning Committee item.

Ms. Iseri-Carvalho: That would be fine. I don't care which Committee it goes into, but if we could have the item addressed at the same time that the certified shoreline bill, I understand that it is here already and should be set on the agenda. I would be requesting that.

Mr. Rapozo: As well as we will have had the opinion from the County Attorney's Office regarding... well, next week, we will have that, so we will properly agenda those items as requested. Thank you.

Mr. Bynum: The fourth question, the written response didn't fully answer the question, so let's wait until we...

Mr. Rapozo: Yes and we will send it, again, properly to the Planning Committee and then handle it at that level because I think you are right. So March 30 which is a communication from Councilmember Iseri-Carvalho to the County Engineer and the Planning Director. Interestingly, we have the buildings guy here, but I guess you are here for Public Works?

DOUG HAIGH, BUILDING DIVISION: Douglas Haigh, Department of Public Works.

Mr. Rapozo: Thank you. Mr. Tagupa?

JIM TAGUPA: Jim Tagupa, Deputy County Attorney.

Mr. Rapozo: Thank you. Okay, were you...

Ms. Yukimura: Mr. Chair, what is the status of the Planning Director? They are either coming or not coming and if they are coming...

Mr. Rapozo: Did you have any specific questions as far as the... if we are looking at the March 30... here he is. Ask and you shall receive. Okay, so we will start with number 1. Doug, did you have time to review the questions?

Mr. Haigh: I actually received a legible copy of this yesterday.

Mr. Rapozo: A legible copy?

Mr. Haigh: Legible. The FAX copy I guess came Monday which I got yesterday morning and I managed to get a legible copy late morning. I have gone over and what I would like to do is just let you know how we are going to respond because, clearly, I can't give you a complete response today.

Mr. Rapozo: And that is fine and that is fair because of the time requirement. That is fine.

Mr. Haigh: Let me just go over this. Item number 1 is easy. That, I can provide right away. The cost of each...

Mr. Rapozo: Right away meaning today?

Mr. Furfaro: Hold on a second. I want some clarification. You are going to actually provide us a cost immediately or you are going to provide to us a budget for these items? Let's be very clear. I mean, you are giving us some estimates and I am sure that they have some contingency for these particular phases of the project.

Mr. Haigh: My understanding, this question, is referring strictly to the Kapa'a/Keālia project and that is how I was interpreting this letter. As such, we do have a construction contract in place, a design build construction contract to build these items.

Mr. Furfaro: But they are done in certain incremental stages. They are not all complete yet.

Mr. Haigh: No, they aren't, but we do have a contract value for them.

Mr. Furfaro: So you can specify the contracted price?

Mr. Haigh: Correct.

Mr. Furfaro: Thank you, versus the cost.

Mr. Haigh: And then some of these, we do have some change order pieces to tie into it, but this is the question. The cost of each major bicycle/pedestrian pathway development component listed below, the bridges, the bathrooms, the culverts, the rest stops, the pavilions and the concrete pathway.

Mr. Rapozo: Okay.

Mr. Haigh: You know, I have the contract value, but I need to do a little more research to filter out any of the change orders how they impacted these specific items.

Mr. Rapozo: So we can...

Mr. Haigh: That I will follow up on.

Mr. Rapozo: We can expect a number that includes the contract price plus the change order.

Mr. Haigh: Any actual executed change orders.

Mr. Rapozo: And you said immediately, but what... is two (2) weeks going to be enough?

Mr. Haigh: Yes.

Mr. Rapozo: Okay, thank you.

Mr. Haigh: Okay, for that item. The next question, for each component in item number 1 above, please provide a chart indicating the minimum requirements by Federal, State and/or County regulations, the cost of producing the minimum requirements... the specifications were actually built... the cost of the current specifications and whether or not payment has been made. This is a quite complex question. First, I would just like to make this statement that this project was value engineered from a \$14.6 million project to a \$11.97 million project, so considerable effort went in to cut cost. To apply this question to the bridges is beyond my expertise and we probably have to hire a bridge structural engineer to do a detailed analysis to do alternative methods. So that one, I am not sure. I haven't had a chance to sit down with (change side of tape)... maybe more complicated.

Mr. Rapozo: Doug, let me just ask this question. The... as a design build project, who determines the capacity and the size of the bridge? Is it the County gives it to the contractor or does the contractor determine what the bridge will look like at the end?

Mr. Haigh: Those were actually determined during the environmental planning stage. As part of the environmental planning contract, they developed a scope of work which identified criterias that had to be met, so they picked up the initial criteria.

Mr. Rapozo: Councilmember Furfaro, I know you are quite familiar with that one bridge that you keep talking about. What was the capacity of that bridge, the one in Kapa'a, the one bridge on the bikepath? Do you remember the capacity? I mean...

Mr. Furfaro: (Inaudible, mike off).

Ms. Yukimura: Is your mike on?

Mr. Furfaro: There were three (3) "I" beams put in and the capacity was probably calculated, I am assuming, for some pretty heavy emergency equipment, but we really got kind of a clarification.

Mr. Haigh: Actually, there was a communication that came to us asking us what the design load was for the bridge and how were we to determine... in my memory which I want to double check was that it was a hundred pounds per square foot and it was based on the Uniform Building Code requirement for pedestrian walkways. That is my memory.

Mr. Rapozo: So who determines the size of the bridge? Does the contractor do that or does the County do that?

Mr. Haigh: We determine the criteria that they are to follow in conjunction with the State Department of Transportation because the State Department of Transportation reviews these bridges.

Mr. Rapozo: So the question is, yes, it could be complex in getting the answer, but the question is, the simple question is, what was the minimum requirements for a bicycle pedestrian bridge over the stream or the river or whatever it is? What did we build? In other words, I don't know what the capacity of that bridge, is it huge. What is it? It has to be... I mean, it is...

Mr. Haigh: My memory is that it is built for 100 pounds per square foot.

Mr. Rapozo: As far as tons, like, you know, we...

Mr. Haigh: Well, what happens with that bridge, the Kapa'a stream one is complex because it is such a long span and that is kind of what it... it is such a long span, those gutters are actually the longest gutters made in the State of Hawai'i. Those are the longest ones you can buy and they just barely made it for the bridge. So you are seeing this substantial structure because it is such a long span and you are holding... the live load is really a minor part of that bridge design, the dead load... the load of the bridge itself is what is really creating the structural requirements.

Mr. Rapozo: The simple question is this, Doug, could we have gotten away with a smaller bridge? I think that met every requirement (Federal/State).

Mr. Haigh: My understanding is, no, but I am really not qualified to make structural statements on bridges.

Mr. Rapozo: Right, so who is...

Mr. Haigh: It will be structural engineer bridge designer.

Mr. Rapozo: Who... you said that we gave the...

Mr. Haigh: I need... I am going to consult... I plan in helping to answer this question... is consult with the bridge engineer with the Hawai'i Department of Transportation who is involved in this project both during the planning stage, the design/build procurement stage and review of the final design. I will consult with him and he has much greater knowledge than I and, hopefully, will help steer me in a certain direction to be able to answer this question. Right now, I don't have the answer...

Mr. Rapozo: And that is fine and that is fair Doug. Councilmember Yukimura?

Ms. Yukimura: I just wondered. The purpose of asking this question is because we are concerned that the bridge might be over built and more costly than expected?

Mr. Furfaro: I guess...

Ms. Yukimura: Because we kind of have to measure the cost of getting the answers with...

Mr. Furfaro: Again, I want to go back to previous dialogue that I have had at this Council table and if I may continue to answer the question. Mr. Chair, the fact is, we are going to have "x" amount of dollars to complete the bikepath based on what we have in the way of land assets to leverage the Federal dollars. So if we get, you know, \$10 million of appraised value of land, we are going to be able to get \$50 million worth of Federal dollars. So what we need to make sure is that the \$50 million targeted budget, in fact, gives us all 17.2 miles of coverage. So what we are asking and I used this terminology earlier and Doug could relate to it... we need to make sure that we do some valued engineering the along the way, but what I am hearing from Doug is the fact that, between the State and Federal people that contribute to the project, they actually are determining the minimum requirement for these bridges to meet their codes. Therefore, you are going to consult with our bridge expert to find out what drove that. But at the bottom line to answer Councilmember Yukimura's question, we need to make sure that, at some point, and, again, I mentioned this two (2) weeks ago when we got the gift through the Kua'i Lagoons that allowed us to leverage more Federal dollars. We just want to make sure that we don't come up short on the entire potential draft of money to get all 17.2 miles. We don't want to end up no money and only 15 miles is the point. Thank you very much.

Mr. Rapozo: Thank you. Councilmember Yukimura?

Ms. Yukimura: So if it is that these are minimum requirements of the DOT and the Feds in order to build a bikepath, we don't have much choice to build under that standard, right? And that is what we are going to determine here.

Mr. Furfaro: That is what we are going to try to determine.

Mr. Haigh: Correct.

Mr. Rapozo: That is what the question asks and I think the chart just simply says, what was the minimum standards, what did we build them to. And, in fact, if that is a minimum... my gosh, the highway bridge is huge the one that would accommodate cars and trucks and buses.

Ms. Yukimura: Yes, I mean I understand.

Mr. Rapozo: And I think that is the purpose of the question is, did we build to minimum standards or safe standards for pedestrians and bicycles or did we take an opportunity to spend as much Federal money as we could? The point that Jay just made is, is perfect, right on target that if we are going to spend the money on these amenities, then we shorten the path as opposed to using that money to expand the path. I think that is... so I don't think it is an unfair question and if the staff could take note that we should... (inaudible) as well, submit a communication over to the State asking the same question regarding the minimum standards of a bike/pedestrian bridge over the streams that we had to go across.

Mr. Furfaro: I just want to add. Doug, at the same time, could you find out... maybe we are required to go to that type of structure as the Feds or the State might want to have alternative responses to emergency equipment (fire trucks, ambulance). It is quite possible that that was also driving and it is worth asking the question.

Mr. Haigh: Just for clarification, are you going to ask the question of the State?

Mr. Rapozo: No, I want you to.

Mr. Haigh: Okay.

Mr. Rapozo: We will as well.

Mr. Haigh: And just in response to Councilmember Furfaro's statements on this, the Mayor very much has given me the same message that he wants miles, not amenities, so in the future stages, he has given me clear direction to try to minimize future amenities, so that is...

Mr. Rapozo: It was always the Mayor's vision to have a lei around the island. One that I think that everyone could embrace.

Mr. Haigh: Of course, you know, when we go to the public...

Mr. Rapozo: When we have kuku'i nuts here and we have some plumerias here and kamani, so, anyway, I think the Mayor's vision was a very commendable vision. I mean, to have a lei around the island to protect lateral access was one thing. What we have today is incredible.

Mr. Haigh: But then, of course, as we go through the public planning process, there are amenities that are identified and reviewed as far as being appropriate. This Council itself, last meeting, gave me a very clear message that there is a feeling that a rest, comfort station in the Kuna Bay area would be an appropriate amenity. Those are the issues and we can say, well, we don't want any amenities... as we go through the public process, we identify and evaluate potential

amenities, but the Mayor has his... he has given me a strong direction, minimum amenities.

Mr. Rapozo: And the reason we are here with these questions that have not been answered and we are really just trying to get the answers. It just concerns... what I am baffled with is when we had the Olohena Bridge situation, when we've had other discussions about bridges, it is funny how the highways... Is that you JoAnn? Aw, we are going to have to start fining people for their phones going off. Donald Fujimoto owes us like \$40 already. Anyway, when we had that discussion on the Olohena Bridge, for me, anyway, it sounded like that it was appropriate to put an Acrow Bridge. Now, an Acrow Bridge is nowhere near the complexity of what we put at Kapa'a. The Acrow Bridge that we were contemplating putting up to accommodate trucks and cars and not just bicycles and pedestrians and I don't know... I think, Doug, that is the question for me is, what are the minimum standards and if that is the case, we got some serious issues on some of the other bridges that accommodate vehicles on this island. I think we are in for a big, big shakedown if, in fact, we have to bring all those bridges up to standard. Okay, so bridges, bathrooms, culverts, rest stop, pavilions and concrete pathway, two (2) week is fine, right?

Mr. Haigh: For item number 1, but the response... these two (2), I am going to have to do research as far as the minimum standards for the bathrooms. I will have to touch base with Federal Highways to see if they have any such that I am not aware. Rest stop pavilions, I am not aware of any minimum standards there. The concrete pathway, there are ASHTO guidelines which is the Association of State Traffic Engineers and that is kind of the bible that we followed and I can address those issues.

Mr. Rapozo: Can I get some clarification from Councilmember Iseri-Carvalho. Regarding your request, were you also wanting to get information on minimum standards for bathrooms, rest stops, for everything?

Ms. Iseri-Carvalho: (Inaudible).

Mr. Rapozo: Yes, no, I just was wondering, I don't know. Are there minimum standards for rest stops? I mean, is there such a thing?

Mr. Haigh: I am not knowledgeable of such.

Mr. Rapozo: Okay, that is fine. Number 3...

Mr. Haigh: But it may take up to a month or so to answer those because I..

Mr. Rapozo: You will be back in two (2) weeks to address number 1 and, at that time, if you need to, we can defer.

Mr. Haigh: Item number 3, I have asked help from...

Mr. Rapozo: Let me just let the public know, it is the date that work began on each component listed on item 1 above and the status of the work of each component. If work has been halted, the date that the work was halted, the reason for the stoppage, the date that work is anticipated to continue and the date that it is expected to be completed. For each component, also indicate if there is a penalty that is assessed to the County for missed deadlines?

Mr. Haigh: On this one, I am seeking help from the Engineering Division from the construction manager of the project who is more intimately knowledgeable of these types of details. Hopefully, in two (2) weeks, we will have an answer on that.

Mr. Rapozo: Okay, but you are clear on the question, Doug?

Mr. Haigh: Yes. And then item number 4, same thing. I am going to be working with the construction manager who knows the status of the current contract change orders and the current completion time. Of course, we do have the impact of that three (3) week construction suspension and we are not sure yet what the total impact of that suspension will be both in cost and time to the project.

Ms. Iseri-Carvalho: Can I ask just for clarification, Doug, because this question has come up. With respect to the bridges, none of those were affected by the discussions regarding the shoreline and the SMA permits, correct?

Mr. Haigh: That is my understanding.

Ms. Iseri-Carvalho: Okay, because it wasn't the understanding because there was a letter that came in saying that the County Council was responsible for stoppage of the construction on the bridges which is totally incorrect.

Mr. Haigh: That is... the direction from the County Engineer to the contractor was to stop all work on the project and that included everything. Now, I will tell you that during that period, we were still working... the issue right now on the bridge is the railings. That is the key thing to get done and there is approach work to the railings that could have been done also, but wasn't. But we did continue working on the railings and we are just about finalized approval on the railings and hopefully they will be under fabrication very shortly and we will be able to get those onto those bridges, but you have the approach that needs to be finished up.

Ms. Iseri-Carvalho: Doug, those bridges that were there and I had spoken to you and I had also spoken to the County Engineer that the reason why they had remained unused for such a long time and were blocked off was because the contractor and even the Lihi Bridge was because the contractor had removed the old bridge without having the new materials in order to replace the old bridge.

Mr. Haigh: That is correct. Like I mentioned, the railings is a key component on getting those bridges ready to be completed. That is also the approach to tie into the bridge of the bikepath.

Mr. Rapozo: But project had been halted prior to the Council's voicing its concern about...

Mr. Haigh: That is correct.

Mr. Rapozo: And I think that was the question and, again, I think the message that gets out there to the public, you know, we get the stink mail, the hate mail saying, hey, Council stopped the project. That project was stopped well before the Council made an issue of the shoreline. That bridge has nothing to do with the shoreline. The contractor, again, as Shaylene said, the contractor removed the bridge without having the other bridge ready to put in. So our fishermen, oama fishermen cannot fish because there is no bridge. So, anyway, I am glad that you brought that up and thank you because I think...

Mr. Haigh: Okay, so then...

Mr. Rapozo: I think Councilmember Kouchi?

Mr. Kouchi: To interject at this particular point because Doug wasn't even here that day. Donald was present, but first of all, according to the Charter, the Council can't order any administrative department to do anything because that is illegal and we don't have that authority. Second, when we talked about the permits or something possibly being invalid, the County Engineer looked at us and said, what do you want me to do and we said, I don't know. You need to ask the County Attorney for advice, but you do realize that if something is invalid and you are illegally performing work, then you may become personally liable, so seek legal advice as to what you think is your most prudent course of action. And whether it was in consultation with the County Attorney, the Mayor or of his own initiative, the instruction to stop work came from the County Engineer, but there was no instruction from the Council to stop work. There was no suggestion about what should be done. We merely asked the questions and, you know, advise the County Attorney. He needed to seek legal advice to do what he would think is appropriate and then it was done. I mean, I just wanted to get the sequence of facts back out again as I recall.

Mr. Rapozo: And in the Mayor's defense, I will tell you that, in fact, at that meeting, we were on extended break because I was on the phone with the Mayor and it was just out of courtesy that he requested that the work be stopped. Courtesy to the Council's concerns. Again, as Ron says, we cannot tell anybody in the Administration to do anything. Obviously, it was clear that we felt that the

work should not continue because of the questionable shoreline setback and, in fact, the Mayor decided to stop the work and I applaud him for that because I think that was the prudent thing to do. So, anyway, any more questions on number 4?

Mr. Haigh: Just on item, question number 4, I made my statement that we will be getting that answer.

Mr. Rapozo: And number 5?

Mr. Haigh: 5 and 6...

Chair Asing: What was the completion date for the...

Mr. Haigh: Like I mentioned, I am going to be working with the construction manager who is more intimately knowledgeable on these sort of details and we still haven't gotten the analysis of the impact on the total project schedule of the three (3) week work stoppage. So we don't have that information. I may not be able to have that answer within two (2) weeks. I will get you where we are to date, the best information that we have, but I may not have the final answer. No matter what, I won't have the final answer, but I may not be able to address the work stoppage issue at this point.

Chair Asing: Then maybe it is a two (2) part question because, Doug, when the contract was signed, there was a completion date.

Mr. Haigh: Absolutely.

Chair Asing: Well, what was the completion date?

Mr. Haigh: Well, the original completion date was in November 2006 and there had been several change orders issued to date which affected that time and there are some other issues out there that we know will also be affecting the contract time and I need to consult with the people who are more intimately knowledgeable in that area to be able to give you a good answer.

Mr. Rapozo: And who would that be Doug?

Mr. Haigh: That would be either the Construction Manager within the Engineering Division.

Mr. Rapozo: Here, our County.

Mr. Haigh: County of Kaua'i, Engineering Division.

Chair Asing: Okay, I will accept that except that, you know, when you sign the contract, there is a date and every time you make an amendment to that

contract, there is a date.

Mr. Haigh: Correct.

Chair Asing: So those are the dates that we are looking at and those dates are available. You have those dates already.

Mr. Haigh: Absolutely. I can get you today what the current contract completion date is as of the last contract change order. I could get that to you today.

Chair Asing: Okay, thank you.

Mr. Furfaro: Doug, I said this two (2) weeks ago and I will say it again. I will put my Finance Chair hat on. When it also comes to tracking any potential delays as it relates to the CDUA, the SMA, any of those particular parts, let's remember that although the County is the applicant, the contractor specifically was the responsible party to see those particular permits were in order. So if there comes to a point that we have a decision and some of the delays are related to the permits not being in order, let's make sure we point that out to the contractor that he was part of that shortcoming.

Mr. Haigh: Let me assure you that I have repeatedly pointed it out to the contractor already.

Mr. Furfaro: I know that I brought this to the discussion two (2) weeks ago, but I want to raise that again. Thank you Mr. Chair.

Mr. Rapozo: Thank you Mr. Furfaro. Any other questions on number 4? Okay, and, Doug, I guess you will let us know the contract date. I guess at the next... whenever you have all of that together and it may not be in two (2) weeks, maybe we can have the contract people here as well from Engineering. We have specific questions specific to the contract change orders and I don't know who is answerable to that, but we would also want them here as well. So if there are any questions, we can close it up. Number 5, provide a letter and the copies of return receipts for each adjacent landowners required to be notified. This was the...

Ms. Iseri-Carvalho: This was for the Planning Director.

Mr. Rapozo: Okay.

Mr. Haigh: And just the final question. That one...

Mr. Rapozo: That would be for Planning, Doug.

Mr. Haigh: I don't know if you want to move that to the Planning Committee also or not.

Mr. Rapozo: No, no, it will stay here. It is just that we will...

Mr. Haigh: The question is, it seems general to me what the SMA rules that apply to applications for amendments to an SMA permit.

Mr. Rapozo: But if you look at the question, it is in relation to the Kapa'a/Keālia, so anymore questions for Doug or Mr. Tagupa? Thank you Doug, Mr. Tagupa.

Mr. Furfaro: Doug, I want to thank you for paying attention to these particular concerns. At the end of the day, this is a Public Works project for the entire community. It is a great vision and I just want to thank you for really taking note on the Council's concerns and working as diligently as you have been and we look forward to your next visit to give us an update. Thank you. Thank you Mr. Chair.

Mr. Rapozo: Thank you Jay. If there are no more questions or comments, thank you very much Doug and Mr. Tagupa. Ian?

IAN COSTA, PLANNING DIRECTOR: Good morning Councilmembers. Ian Costa, Planning Director, life long resident and fourth generation, Kaua'i kanaka maole.

Mr. Rapozo: Welcome Ian and thank you for being here today. Questions... well, 5 and 6 actually apply to you Ian or to your department and the first one is the question that we've asked a while ago and I know we did receive a response, but we did not receive the return receipts and I guess the question is, we have received the complaints actually from the landowner in that area that claims that they never received notice during the process of the environmental assessment or any of the amendments, so is that something that you have available?

Mr. Costa: First of all, I guess I have to apologize for that because I assumed that within the project file at Public Works, they would be able to provide that. We also make copies of that, so I can provide that for you. I did not provide that today.

Mr. Rapozo: Thank you.

Mr. Costa: I did, however have circulated written response for item number 6 and I will make sure that I get the copies of the receipts, return receipts, to you as soon as possible.

Mr. Rapozo: If you can just FAX it over to us, that would be fine.

Mr. Costa: Also, along with that, we require that they provide an affidavit of the mailing, so we will provide all of that.

Mr. Rapozo: We received that, but all that affidavit tells... we have the affidavit and all that says is that the attorney mailed it out, but it doesn't show proof that it was actually received. So, anyway, we had a whole list of names on there and, anyway, thank you Ian. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Ian, I guess, I mean, the response doesn't really address the question. I guess the rules that I was asking for was when an SMA permit amendment is submitted like, for example, a list of requirements that you would need to fulfill for an SMA permit or for a variance permit, we have those rules. But when there is an amendment to an SMA permit, where is it in the rules that list what the requirements are in order to fulfill supplying you with a application for an amendment? And that was all that question asked.

Mr. Costa: Well, actually, I was asked by what authority and what section of the SMA provides the Commission authority to amend the SMA. That is what I was asked.

Ms. Iseri-Carvalho: Not in this question. This question says, what are the SMA rules that apply to applications for amendments to an SMA permit? That is what the question says.

Mr. Rapozo: Which one are you reading? We are back to March 12?

Ms. Iseri-Carvalho: March 30, number 6. And that was the same question that I asked two (2) weeks ago was what is the process is that a person who is going to apply for an amendment to an SMA permit need to comply with? Where in the rules does it list what those requirements are?

Mr. Costa: Sounds like you are speaking more about a check list almost or a...

Ms. Iseri-Carvalho: Well, I don't know what your rules are. I looked through all of the rules and...

Mr. Costa: There is only one SMA rule.

Ms. Iseri-Carvalho: There is an SMA rule, okay, go ahead. I know what the SMA and if you can say for the public's benefit.

Mr. Costa: So there is no other. You seem to be referring to some other SMA rules.

Ms. Iseri-Carvalho: No, no, no. I read through the entire SMA rules. I have read through the entire Planning Commission rules. I read through all the CZO, the H.R.S.'s and I have not found a section under the law or the rules and regulations that allow a person to follow a certain procedure in order to get an amendment to an SMA permit granted.

Mr. Costa: I think if you look at the response, obviously, there is the authority vested in the Commission, but it is through the Commission's rules that provide for various scenarios if you will.

Mr. Rapozo: What one are you referring to? Section 1-12-1 or 1-12-9? I am looking at your response.

Mr. Costa: Both 1-12-1 and 1-12-9 of the Commission rules. First of all, Section 1-12-1, this chapter shall apply to all zoning permits, various variances, use permits, special management area permits, special permits, State Land Use District Boundary amendments, GP amendments, zoning amendment and other permit or approval within the jurisdiction of the Commission for the purposes of this chapter. Permit means any permit amendment or other approval mentioned above.

Ms. Iseri-Carvalho: Right, and Ian, I understand the authority that gives that ability to the Planning Commission. That is fine and I understand that, but once it goes to the Planning Commission, they are saying, H.R.S. says that the Planning Commission needs to adopt rules that any citizen who wants to get a permit has the same rules applied to them when they want to apply for an amendment. So I am looking for those rules that gave... you are right, the Planning Commission has that jurisdiction to review permits, but it says also on their administrative rules that they need to create a set of rules on how a person who is seeking an amendment is going to do that. How are they going to do that? What are the requirements to seek an amendment? What are the requirements whether there be public hearing or not public hearing? How much days do you have in order to seek an amendment and things like that? The rules that allow the amendments.

Mr. Costa: Planning Commission rules that I just stated.

Ms. Iseri-Carvalho: No, that doesn't give you the rules. What it does is, it says that you are granted the authority to make rules for people to apply or alter or modify or revise.

Mr. Rapozo: Ian, do you have...

Ms. Iseri-Carvalho: ...answer from the Planning Director.

Mr. Rapozo: I know he offered a check list scenario, is that... do you folks have a checklist process? I think that is what the Councilwoman is asking is, is there a process in place that if I wanted to go amend my SMA permit, I walk in,

what is the process? Is it an entirely brand new SMA permit? Do I go through the entire process again? Is an amended version or amendment to the SMA, an abbreviated version or a shorter version? I think that is...

Mr. Costa: Amendment is only applicable when you actually have a permit, so contrary to statements made here about an illegal project, there was a permit.

Mr. Rapozo: Right.

Mr. Costa: So, you know, I would like to use the analogy too, that, you know, if you build your house and you use jalousie windows instead of sliding windows, does that mean your house is illegal?

Mr. Rapozo: It is non-conforming to the permit and, okay...

Mr. Costa: But you have a permit.

Mr. Rapozo: Exactly, and if I have a license to drive and I go 100 m.p.h. down the road, am I legal or illegal? I am a legal driver, but I am violating the law and I think that is what... we are violating the permit, but let's not talk about jalousies and windows, let's talk about... because the agenda is on this bikepath. Let's talk about the pavilion or the rest... whatever it is called. I have heard that thing being called so many differ...

Mr. Costa: Amendments can only be sought when you actually have a permit otherwise it is an entir...

Mr. Rapozo: We have a permit or we don't have a permit?

Mr. Costa: I think we made that clear.

Mr. Rapozo: Okay, so now, what is the process to amend the existing permit?

Mr. Costa: You file a request for amendment with the Planning Commission and then pursuant to its rules stated here...

Mr. Rapozo: And I think that is what Councilmember Iseri-Carvalho is asking, which rules cover the process for an amendment to an SMA permit that already exist?

Mr. Costa: Now I am going to say it three (3) times. Commission rules, Section 1-12-1 or Section...

Mr. Rapozo: I am reading that, but it doesn't tell you the process. The rule is not broken down and the question is, do they exist or don't they exist? Do we have a set of rules that cover an amendment to the SMA process? If you are saying that

this is all you have and that is your answer, then that is fine and then the answer is answered.

Mr. Costa: With respect to officially adopted rules and regulations, this is it. We do have some handouts which help applicants better understand the details if you will or the elements of an application that would help facilitate timely review.

Mr. Rapozo: And that would be helpful to us.

Ms. Iseri-Carvalho: Committee Chair, if we could, I think maybe have them... a review by the County Attorney. We have a Deputy County Attorney there present and maybe the question is not clear to Mr. Costa. Maybe the Deputy County Attorney who is present is allowed to point out in the Planning Commission rules or the SMA rules or the variance rules, where in it, does it state the process on what you need to do in order to amend an SMA permit? Maybe we can defer this to allow time for the County Attorney if he is not prepared to answer that question at this time and that would be fine. But I don't think the question has been answered by the Planning Director and I think that maybe he can get the assistance of the Deputy County Attorney to allow that.

Mr. Rapozo: Well, I guess, Ian, is there something besides Section 1-12-1? Is there anything in the Commission rules that spell out the process of getting an amendment to the SMA? Or do you rely on the rules or the requirements for an new SMA?

Mr. Costa: The Commission rules goes further to talk about timely filing. The timely decision making and that is... I mean...

Mr. Rapozo: There is no...

Mr. Costa: If you want, I can forward you a copy of the rules.

Ms. Iseri-Carvalho: I have the rules right here. The rules of the Planning Commission. I have all of the chapters, I have all of the amendments and there is nothing there that states...

Ms. Yukimura: Mr. Chair?

Ms. Iseri-Carvalho: Can I finish my statement? I would again request that the Deputy County Attorney be given an opportunity to review this question with the Planning Director and it is fine if it is deferred. But, you know, I don't think we are going to make any further strides on this issue.

Mr. Rapozo: Thank you and we will do that. Councilmember Yukimura?

Ms. Yukimura: Yes, thank you Mr. Chair. Just one question of Mr. Costa

or Mr. Tagupa. Is it possible in the absence of specific rules regarding amending the SMA that the process is that which is followed for the application of an SMA?

Mr. Rapozo: That was my last question, but I don't know.

Mr. Tagupa: Just briefly, if you are talking about modification of the SMA...

Ms. Yukimura: Amendment.

Mr. Tagupa: (Inaudible)... 1-12-9 states that (inaudible) that you have to follow Section 1-12(inaudible).

Ms. Yukimura: And what is...

Mr. Furfaro: What is 1-6-16?

Mr. Tagupa: It states motions and it tells the procedure that you have to go through (inaudible). Excuse me.

Ms. Yukimura: Can you just repeat that?

Mr. Tagupa: Sure. Modifications or deletions of conditions for permits is in Section 1-12-9 of the rules and in it Section (inaudible)... that if you want to file a motion to modify, then you have to comply with the conditions of 1-6-16 and it is titled motions and it gives the procedures.

Mr. Rapozo: And 1-6-16 has the procedures spelled out?

Mr. Tagupa: That is correct. It has (inaudible) procedures for filing a motion to modify your permit.

Ms. Yukimura: Okay, so the position of Planning Department and the County Attorney's Office is that the procedure for amendments of the SMA or modification of the SMA permit is through that section that you've mentioned, is that correct?

Mr. Tagupa: That is what the rules states.

Ms. Yukimura: Okay, thank you very much.

Mr. Rapozo: Thank you Councilmember Yukimura. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Then I have a question for the County Attorney with respect to... it says that motions may be made before or during a hearing. When is the hearing date supposed to be set? And it says motion made after a

hearing shall be made on a particular time. What I am looking for is a time chart of exactly when an SMA permit can be requested? When it has to be heard? What are the exact requirements that you need to place in an SMA permit? What are the exact qualifications of the persons who have to review this process? What kind of notice did you need? Who do you give notice to on this motion for hearing? Those are the specificity kinds of issues that I am looking for. There is a blanket, big process and I am asking that the rules, looking for the rules that provide what is the exact criteria because we were informed two (2) weeks ago that applications had been submitted back and forth between the Planning Department and the Department of Public Works and it was unacceptable and I am trying to find out what was the reason for it being unacceptable to the Planning Director based on the rules and not based on the discretion of the Planning Director. So you may not have been privy to that information beforehand. So that was my question and there were some discussion as to what were the requirements and that was the reason why the Public Works said that they were not... they weren't able to provide an application for an amendment to an SMA permit until the day before the hearing two (2) weeks ago even though they had informed the paper and everyone else five (5) months ago that they had submitted an application.

Mr. Costa: I know you named off a bunch of things you wanted, but, actually question 6 just says, SMA rules that apply, so maybe if you could list those concerns that you have, so that we can properly respond.

Mr. Rapozo: Ian, what we are going to do because we can sit here and argue all day. What we are going to do and this is going to be deferred anyway. We will send over a specific list of questions that will go to you as well as the County Attorney to find out, if, in fact, we are complying with the rules of the Commission or the law. I think at the very basic form, I think what I am looking at is, what is the process in place, so if John Doe needed to amend an SMA, where would he go? I understand that the rules state the process, but I think what are the specifics within that? It is much like in the Police Commission investigation. You know, you get so many days to respond. They have so many days to do the investigation, they have so many days to turn it over to the Police Chief, the Chief has so many days to make... something like that, so that we understand if, in fact, we are even in compliance with that. If you look at the Commission rules, I don't know if it is specific. I don't have it in front of me, but what we will do is rather than go back and forth on this rule, we will defer it. It is deferred anyway and we will bring back question 6 and we will send over more specific questions as far as what any Councilmember has pertaining to number 6. Councilmember Kouchi?

Mr. Kouchi: I guess the other question that I'd like asked and answered is... it seems to me that it is clear in the Director's mind that they have rules, adopted rules, by which you would apply for the amendment. So if in answering Councilmember Iseri-Carvalho's question, your answer is, yes, they have adopted rules. I think the second question is, do you believe that the rules as they are adopted sufficiently meet what is required in the statute and would you need more

specificity to process or is it what they have now is that, okay, as it is relating to the law because you may have been doing it that way all along. We kind of use past practice as the way to do it, but we may find out through this research that, actually, we need to do it a little differently and we need to adopt some clearer set of rules for all applicants as they go forward would be one. And then just for the sake of argument accepting the Director's memo on that second page 1-12-9, modification or deletion of conditions, subsection B which states, for good cause shown as the threshold of when the Commission may act to modify or delete. Would the response or justification of, I didn't like what my permit approved, so I chose on my own to move the pavilion qualifies as good cause or is good cause financial hardship? Is good cause some act of God that affected the property that now requires me to modify my permit? Is good cause a change law that now requires me to use some different material on new technology that would have me come forward, but it seems that I did not like where my permit required me to build, so I choose on my own to move the pavilions would qualify as for good cause shown. But that would just be an opinion of mine and certainly not a legal opinion at this point. But those would be my two (2) questions.

Mr. Rapozo: Thank you. We are going to have to take a short recess. I was just informed that we have to do a tape change, so let us do the caption break and get that out of the way. 10 minute recess and be back at 11:00 a.m.

There being no objections, the Committee recessed at 10:46 a.m.

The meeting was called back to order at 11:05 a.m., and proceeded as follows:

There being no objections, the rules were suspended.

Mr. Rapozo: Do we have any questions of Mr. Costa or Mr. Tagupa? Anymore questions for Mr. Costa or Mr. Tagupa? As I stated before the break, we will be deferring this matter and we will be sending over more specific questions pertaining to item number 6. So if we don't have anymore questions for the gentlemen... Mr. Bynum, thank you, go ahead.

Mr. Bynum: Is it unprecedented for there to be an SMA amendment or does that happen occasionally or routinely?

Mr. Costa: It is not something that has only occurred with my presence. It has been actually occurring over as long as we had the SMA permits.

Mr. Bynum: So it is not unprecedented that an SMA permit gets amended?

Mr. Costa: No.

Mr. Bynum: I will have further questions when you are back here next time.

Mr. Rapozo: Thank you. Any other questions? If not...

Ms. Iseri-Carvalho: I guess my question would be that I had discussed with the County Attorney the due process requirements in applications for an SMA permit and would be... they are not prepared to answer their question at this time. I would also like to request that the actual application that was filed with the Planning Commission be forwarded to us and ask... I believe it will take at least a month to review the due process... investigate the due process for applications of SMA permits as I have discussed with the County Attorney. He intends to do a comprehensive research regarding this issue as well as check with other jurisdictions. Therefore, I would be requesting for the legal analysis to be provided in a month.

Mr. Rapozo: And I think just for time sake, my recommendation... well, anymore questions for the gentlemen, if not, we are just going to release them and come back into discussion. If not, thank you Mr. Costa and Mr. Tagupa.

Mr. Costa: Thank you.

Mr. Tagupa: Thank you.

The meeting was called back to order, and proceeded as follows:

Mr. Rapozo: You know, it will be my intention to really defer this. I am looking at the calendar, maybe to May 2. No sense coming back in two (2) weeks getting partial answers and then having to defer again, so we will... that would be the motion that I would be entertaining after discussion. It will be a deferral to May 2 and that will give the Administration time to prepare comprehensive answers to our questions. Okay, having said that, any further discussion by any Councilmember? If not, I do want to... I know that we will be scrutinized again for asking these questions and I know that and it is something that we just expect. You know, some of the questions that we asked today about the bridge, the bridges, the culverts, I had the opportunity on the tour that we went on with Mr. Haigh and Mr. Dela Cruz, I did take some photos of the culvert and, you know, part of the questions and I think Jay said it best where the more amenities you put up, the less paths. If you go beyond the minimum standards and we spend more money on the design/build, really, who stands to gain is the designer, the builder, the contractor. If he can convince the County to build bigger bridges and bigger culverts, who makes money? We have beautiful bridges and we have beautiful culverts, but reality is, we shorten the path. It was never the intention of this Council... I think Jay said it best, 17.2 miles and that is what we want to end up with. We are already way over budget and we don't want to be over budget and under length of path. So I did take a couple of pictures just so the people can understand where we are coming from. When I go out and I see the bridge for a bike and pedestrian path that exceeds most of our vehicle bridges on the island... Ōpaeka'a Bridge, the old Olohe... these bridges are substandard and, yet, we are coming up with bike and

pedestrian path and because it is Federal money and it is not free. I don't care what anybody says, it is not free money. The designer, the builder, he gets to put the biggest amenities and charge the most money and we keep doing change orders and I cannot wait to see the change orders. But I wanted the people... I didn't take pictures of the bridges, but I did take pictures of the culvert because I wanted the people to understand that it is not something that we are just the nitpickers and we are just trying to stall this project. I wanted the public to understand and maybe I am wrong. If I am wrong and I will open this up to anybody in the audience, I will suspend the rules again just for anyone here after seeing those pictures can come up and tell me that I am wrong, I will be more than happy to do it. I want you guys to see what we built with your money for a bicycle and pedestrian path.

So Peter could we... this is a series of three (3) photos. This is the bridge or the little stream that goes through the Keālia Kai property. That is the culvert. It is a beautiful culvert and it is with some (change tape)... we should prepare for the 100 year flood, but that is this current flow, the stream, that is the beach in the back and it is a beautiful area and I encourage everyone, once the path opens, not that people are acknowledging that now, but I don't think that there is any enforcement. So that is what the stream looks like. It really doesn't look... the magnitude is not really expressed in these photos. So what I did, I ran down and I jumped inside and the next photo you will see... you can go to the next one. That is me and that is not my kid, my infant, that is 5'10", 200 pounds, standing in a culvert that we spent heaven knows what. I heard \$300,000 and I don't know what it is and that is what we are asking for. So the question is, was that necessary? Was the triple beam bridge necessary? What is the exercise here? Is it to produce a beautiful bike and pedestrian path for the people of Kaua'i or to fund a contractor's project to an amount that we don't even know what it will be.

Now, again, I will give you folks an opportunity and I am wide open to constructive criticism, but I have to tell you, I think that is over kill for a bike and pedestrian path. That is just my opinion. That is huge and I am waiting to see what we eventually... what we finally paid for this thing, but that is some designer tiles, that is a beautiful, beautiful structure that I wish our citizens would have the ability to enjoy as well on our bridges throughout the island (on our roads) and so forth. Anyway, I bring that up just so the people can understand why we ask the questions that we ask. It is not far from the ocean. That culvert was specifically to cross that... it used to be, as I am told, by a former Planning Director is that that used to be a wooden bridge... like a little wooden culvert across. Again, I see Ian nodding his head and maybe that is wrong, but that is what I was told. So we are not going to get into the debate of who is right and who is wrong. I am just saying that however you slice it, again, that is quite a huge, huge monstrosity of a culvert. With that, like I said, I will suspend the rules. If anybody has anything, that disagrees, I would like to hear it because I think... that is your money and it is not just mine. I pay taxes and we all pay taxes. Go ahead, please Sir. You need to come up to the mike and state your name.

There being no objections, the rules were suspended.

PETER BILBO: Hi, my name is Pete Bilbo. My question is, is that the same bridge location where the one washed out in the floods several years back? I can answer why there is so much space under there is because there was so much that went don't there. There was an existing bridge and there were smaller culverts. All the concrete structure, it all went away. If you have ever walked that area, there are huge blocks of concrete that was built around that structure and it just washed away. That is when the water came over the road up Kūhiō Highway, so I would think that that was built in response of hundred year floods or whatever.

Mr. Rapozo: And that is what we were told. Again, when we asked the question of minimum standards versus maximum standards and I am just questioning if that is, in fact, what we really needed to build with...

Mr. Bilbo: It looks like there was survivability that they are trying to...

Mr. Rapozo: Unfortunately, we don't use those standards for our roads and our bridges for the rest of the people that drive on the island and that is my concern. Thank you.

Chair Asing: I have a question for you.

Mr. Rapozo: Go ahead Mr. Chair.

Chair Asing: Looking at that, it looks as though it was done with designer type tiles. Do you think that maybe regular stone would have done the job also and cost much, much less than designer type tiles?

Mr. Bilbo: Well, I don't know the specifics. I don't know if the County has the ability to purchase stones at a great discount over the average person or, you know, the form material required to build that type of facade on the front of that was no more expensive. I mean, it was just a matter of forming that up with concrete. Maybe it just the same price as a straight platform. It is beautiful though.

Mr. Rapozo: It is. I have to say that it is one of the... when we...

Mr. Bilbo: We all like to have a beautiful Kaua'i and that is a nice bridge.

Mr. Rapozo: That is and I appreciate that. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: You know, I have also seen those ceramic tiles and that is a pedestrian bridge and it is not meant for vehicles, but it is also... they've got... and you can't really see it through the photo, but they've got tiny specs of glints of pearls in it too. You know, you might want to... when the path opens,

enjoy the bridge because I am sure that it cost a lot of money and that was the concern that was raised by a lot of other citizens that felt that we could have much extended the path for the cost of potentially and there were contractors too saying, why was that bridge built because I know that I could have built one to provide the same purpose that was necessitated with much cheaper...

Mr. Bilbo: Discussions came up with the Olohena Bridge as well, you know.

Ms. Iseri-Carvalho: Right, and I guess that was another \$600,000.

Mr. Bilbo: I have another point of view of that might be. This pathway is inaccessible from a lot of points up on Kūhiō Highway. Maybe these bridges are required to be able to support emergency vehicles. Say somebody has a heart attack down there or something. I have no idea.

Mr. Rapozo: Yes, and that is why we've asked the questions and, again, that is where we've asked for the minimum standards as well as the standards that we used and I think it is a fair question and I really appreciate your point of view because that is what we were told that it was to accommodate the hundred year flood.

Mr. Bilbo: Yes, well, it makes sense.

Chair Asing: I have another question. I am curious as to what type of work you do.

Mr. Bilbo: I am a builder.

Chair Asing: You are a builder?

Mr. Bilbo: Yes.

Mr. Rapozo: Are you the design builder? I don't know.

Mr. Bilbo: No. I wouldn't be struggling. I wouldn't be up here talking about vacation rentals if I was building bridges like that.

Chair Asing: Well, you gave some good answers.

Mr. Rapozo: And I appreciate that. Thank you very much.

The meeting was called back to order, and proceeded as follows:

Mr. Rapozo: Any further discussion? If not, I will be entertaining... JoAnn, I saw that hand going for that mike.

Ms. Yukimura: You know, we don't know the cost factors in this and it could very well be that there was extravagance involved. I don't know, but I also know that when you look at places like Central Park in New York City and some public structures that are esthetically really beautiful and have lasted a long time. We need to include art and beauty in our structures as well as long as it doesn't be overly expensive and that is a hard balance to keep. Because I don't know the figures yet, we may have really gone over board, but I think making things both esthetically beautiful and structurally sound over the long term are important factors. I think, certainly, sizing it for a hundred year flood is not unreasonable especially if there is past experience with bridges washing away. I just want to say that somewhere in all of this, you know, you hope that we can incorporate art and beauty.

Mr. Rapozo: That is why I am standing in the culvert.

Ms. Yukimura: That is definitely an improvement.

Mr. Rapozo: Thank you Councilmember Yukimura. Any other discussion? And I agree with your commentary. You know, the one thing though is, when you have the proposed project which includes all the path, all the amenities, all of that, and that is what was approved. That is what the public basically agreed on and as time goes on, the amenities increase, they get bigger, they get more expensive and we go from a \$30 million project to a \$50 million project. Now you are tying up public funds that may not have been considered at the onset. Not long ago in this Council Chambers, they tried to crucify a Mayor for getting a lease on a vehicle that would have extended beyond a year of the budget. Really, the obligations of the taxpayers. You are all familiar, the red car and it is what it is, impeachable offense because you dare try to take money from the taxpayers from next year's budget without coming to Council. And we sit here in a \$20 million difference and... my point is this, if the project is a lei around the island, let's stick with the lei around the island and get the 17.2 miles of path for what we agreed. Now, if the designer/builder has the opportunity to change along the way, change from shade trees to structures all to pad the pocket and we are here just signing change orders saying, go ahead, go ahead, go ahead. All of a sudden it is at a point now where it is quite expensive and we don't even know what the final cost will be. We simply do not know, so that is a problem I have and what I am saying is, let's build what we said we were going to build and don't overspend on these kinds of things. And, again, that is just one man's opinion.

Ms. Yukimura: Yes, and I want to say that I think I was one of the first to raise the question about the advisability of design/build and I questioned whether that is a good process for something as new and innovative as a bikepath. So I agree with, you know, I think there are many risky arenas in that framework.

Mr. Rapozo: The concept was good I think. I don't think it was any bad intentions that went that route. I think even talking to the State, they have design build projects that have gone south.

Ms. Yukimura: And one of the purposes of design/build is to reduce the cost.

Mr. Rapozo: It surely didn't work in this case.

Ms. Yukimura: Well, I don't know, if it comes under the original cost... \$14 million to \$11 million was the... \$11.9 million was the reduction, but we still have a lot to look at and I think there has been a lot of anticipated events in the unfolding of this bikepath.

Mr. Rapozo: One of the questions that I will be asking for is, I want to see the entire contract file because I want to track the project from day 1. What do you call that when you want to downside the number? Jay, you used the word earlier.

Mr. Furfaro: Value engineer.

Mr. Rapozo: Value engineer and then it doesn't make any sense if we value engineer a contract in the front end and then allow the change orders to go beyond what the original contract was in the back end. That is totally... I am not going to say it. Anyway, any other... Mr. Bynum?

Mr. Bynum: I have been trying to just watch the process and, you know, save my comments for when we get answers and I appreciate all of the questions and I understand the Councilman concern about whether the things are overbuilt or concern about whether there is an attempt for a contractor to inflate what is necessary. On the other hand, I think that I did attend many meetings about this path over a six (6) year period that lots of public members were at and there was a sense that this was a legacy for our island for the future that we wanted it built well and done properly and not just done at the minimal and that there be concern to the esthetics of the path that it is a legacy that is something that we will leave for future generations. I know this particular culvert and I am very interested in the answers to the questions about whether it was over built or un... anything done inappropriate, but I also know that it does need to accommodate a hundred year flood. I know that my recollection is a requirement that it support emergency vehicles and that it had to be built to a standard that a rescue fire truck could cross. If there is some reasonable level of cost and it improves the esthetics, I think that is, you know, a good thing to do if those costs are reasonable. If it doubles it, triples it and if it is excessive, then I will be as outraged as the next person. So I will wait patiently for the answer to these questions and I think they are very reasonable questions and should be answered. I will reserve my judgment until I see the answers.

Mr. Rapozo: Thank you. Go ahead.

Ms. Iseri-Carvalho: Let me just comment. When we talk about cost, it is kind of like we are caught in that situation because there was a Charter amendment that went out about the Parks & Recreation Department splitting up and we had a letter that we just received by a Charter member who had said, yes, we all wanted to have a Parks & Recreation believing that it would provide better service and more attention to, yet, the people weren't told that it is going to cost almost \$2 million in order to just create that department. I would apply the same analogy and the same thinking here. Everybody wants the bikepath. I do and I think the whole island would love to have a bikepath. Again, there weren't at these informational meetings, the value or the cost that we are going to be involved in. Like O'ahu as we discussed the case earlier that was printed in the March 27 article in the Advertiser there where the Administration said, we are not spending anymore money on a bikepath that falls into the ocean. We have made that decision while we all loved to have that bikepath and we would love to repair it. For that span of length of path, \$300,000, it is not going to be worth us doing it. We have other more pressing issues that we need to attend to, so it is a matter of cost and, so there may have been people that wanted a lot of things at the public informational meetings. But I can tell that they were not told how much the cost were going to be. I think in all fairness, that is what we need to balance. When we hold these public informational meetings for the public, they need to be aware of all of the parameters that are involved in the construction and designing and building of County projects. So they are full aware that when they make a decision, they are more than happy to have whatever it takes to support that whether it be an increase in the taxes that we have been getting a lot of complaints on, whether it has to be an increase in other kinds of services like sewer or water and whether you are going to have to pay for all those to support the bikepath. That is the kind of policy decisions that the public needs to weigh, but they need to be given all the information and not just say we want a bikepath and that is it, but provide all the realistic numbers and realistic figures as to how much it is going to cost and that it may lead to an increase of people's taxes, it may lead to an increase in other financial cost down the road. So I think it is an important statement to make along with the lines that have already been spoken by my colleagues.

Mr. Rapozo: Thank you very much. Mr. Kouchi?

Mr. Kouchi: I really hadn't planned on weighing on, but since we are now talking about how important esthetics are. As always, it is also difficult because everyone has their own perception or value about what they believe is tasteful, what is nice and what would work for our community. As an example, I am not a big fan of modern art. I like art that I can look at the picture and understand exactly what I am looking at. I cannot help but feel when I look at the slide from Councilmember Rapozo about the lost opportunity of having a smooth surface and inviting our high school students to come out and paint onto that blank canvas their vision of the opportunity that the bikepath would create and what Kaua'i is and hopefully by

engaging our students, we would also help perhaps deter graffiti and things like that. I just look at that and, you know, unfortunately, you can't help thinking negatives, but I thought, boy, just seeing the graffiti on that already. You know, in my mind, I really thought how beautiful... like I said, again, that would have been to have turned that over to our students and let them express themselves and express themselves to the rest of the world who were inviting to come here at very little monetary cost, but as a commercial says priceless in human capital. But that was my only 2 cents.

Mr. Rapozo: Thank you very much. Mr. Furfaro?

Mr. Furfaro: I need to say here, so there is not any confusion. When you choose a project to be a design/build, the specifics there are two (2). You have a fixed price bid to accomplish a scope that has been laid out and you save time because the design is going on while you are building. What our questions are here are, what are the minimum standards for Federal government and State that are driving some of these amenities and those are the objective parts that we need to realize. If you don't manage that, you end up with many change orders and you don't end up with a benefit of having a fixed cost bid. It is very different from a design spec bid where you actually design the particulars, you look at the amenities, you know what the tile is going to look like, you know what the landscaping is going to look like and something goes out to bid. That takes a lot of time, so we have two (2) components here and I want to make sure. The design/build is more driven by objectivity as meeting minimum standards. The actual out to bid after design deals with esthetics and other particulars and I think Councilman Kouchi is exactly right on when you deal with personal taste. You know, some (inaudible), sometimes art is very simple, okay, and other times you find yourself in a situation that you have to understand what the benefit was of having a design/built and it was supposed to save us time. Unfortunately, this has not worked. An art is not as objective, it is subjective on particular people's taste. I do agree with Councilwoman Yukimura, we want to get the best possible product for the best price and thank you for letting me weigh in on this.

Mr. Rapozo: Thank you. Okay, Mr. Chair.

Chair Asing: I guess it is my turn. I just want to make one comment. I was going to make this comment when the Building Superintendent Doug Haigh made the comment that we save money from the original bid of \$14 million, valued down to \$11 million. I want the public to know that when you start reviewing... Councilmember Rapozo made reference that he would like to review all the contract. You will find that the lowest bidder did not get awarded the contract, so you can start from there also because that wasn't the lowest bidder that got this contract. It was another bidder that bid that did not get the contract because of the method of the design/build contract. It is a different approach to awarding of contracts, so I want to make that known to the public. Thank you.

Mr. Rapozo: Thank you and more so that I would ask at the next meeting in May that we have the contract people here as well to explain that because I actually am quite surprised to hear that. Okay, any other comments by the Councilmembers? Questions? If not, let me just close by saying, nobody on this table or across the street at the Administration, nobody has the authority to spend money that we don't have and that is the bottom line. We do not have the right to spend any money whether it is Federal, State, local money that we don't have and that is my concern. Now we are scrambling and looking for ways to find matching funds, looking for people to give us land to go put in for request for the Feds to match. We just do not have that authority to spend money that we don't have. We should not be doing that anyway, so with that, I will be asking for a motion to defer to May 2.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Yukimura, and unanimously carried, PW 2007-3 was deferred until the May 2, 2007 Committee Meeting.

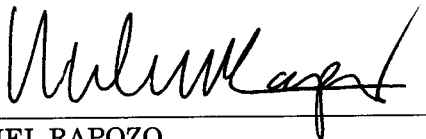
There being no further business, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on May 2, 2007:



MEL RAPOZO  
Chair, Public Works Committee