

## MINUTES

### **PUBLIC WORKS COMMITTEE**

**June 13, 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 Shaylene Iseri-Carvalho, Vice-Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, June 13, 2007, at 11:29 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Shaylene Iseri-Carvalho  
Honorable Ron Kouchi  
Honorable JoAnn A. Yukimura (left at 4:40 p.m.)  
Honorable Bill "Kaipo" Asing, Ex-Officio Member  
Honorable Jay Furfaro, Ex-Officio Member

EXCUSED: Honorable Mel Rapozo

There being no objections, the Committee recessed at 9:15 a.m.

The meeting was called back to order at 3:38 p.m., and proceeded as follows:

The Committee proceeded on its agenda items as shown in the following Committee reports which are incorporated herein by reference.

**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.]**

SHAYLENE ISERI-CARVALHO, PUBLIC WORKS COMMITTEE VICE CHAIR: I will suspend the rules.

There being no objections, the rules were suspended.

GLENN MICKENS: For the record Glenn Mickens. Thank you Shaylene. Sorry Mel can't be here. I hope he's feeling better, he's watching us. I have a short testimony and I'll read it for the record please. As long as this communication stays on the agenda, I will be here in this chair to ask the questions that I've been asking for a long time with no factual answers forthcoming. I really applaud Councilman Rapozo for diligently keeping this issue on the agenda and I cannot remember any communication standing before the Council for such a long period of time. Regretfully, the general public that is watching these sessions on Hō'ike must

wonder how this government can operate in such an inefficient manner. Again, if Mel didn't have the (inaudible) and Shaylene (inaudible) to stay after this issue, it would've been received long ago and the public wouldn't have known what was really going on. In my opinion, it is absolutely horrible to see any issue take up the Council's time... all of you for eight (8) months or more when all that has been asked for are answers to some relatively simple questions yet this Administration has given every excuse in the book to either fail to show up at these meetings or refuse to answer questions that have been continually given to them well in advance to the agenda item. My list of questions have been submitted before this Council many times and I have been assured that this list has gone over to the Administration along with the Council's list. Either the Administration cannot answer these questions or they just don't want to. Whatever the reason, I believe that is a slap in the Council's face as well as an insult of the public who pays their salary, thank you.

Ms. Iseri-Carvalho: Any questions for Mr. Mickens? There being none, thank you Glenn. Anyone else who wishes to testify on this matter? If not, if we could get Ian Costa or Doug Haigh or Donald Fujimoto. State your name for the record.

DOUG HAIGH, CHIEF OF BUILDINGS DIVISION: Doug Haigh, Department of Public Works.

Ms. Iseri-Carvalho: Okay, we provided a list of questions on June 1 over to your Department, do you have responses to those questions?

Mr. Haigh: We sent up a letter requesting deferral on that item yesterday. We are not ready to respond to those questions and we're working on them.

Ms. Iseri-Carvalho: Well, I guess what I would ask you to do then, in light of the fact that there was a meeting with respect to an amended SMA permit regarding the bikepath issue at the Planning Commission yesterday, if you could provide that application, and discuss with us the request that you had made in the amendment, all the request for amendments that were provided to Planning Commission yesterday.

Mr. Haigh: Okay um.

Ms. Iseri-Carvalho: And I believe at some point we had asked for the application and I had not seen the application for the SMA permit amendment. Do you have that readily available?

Mr. Haigh: I have a copy of it right here with me, yes, I brought the copy of the application with me.

Ms. Iseri-Carvalho: Okay, so maybe what we'll do then at this point is I'll take a ten (10) minute recess, we'll make a copy so all the members have a copy of the SMA permit and we'll go through the SMA amendment that you provided to Planning yesterday. Ten (10) minute recess, return back at 3:55, thank you.

There being no objections, the Committee recessed at 3:44 p.m.

The meeting was called back to order at 3:57 p.m., and proceeded as follows:

Ms. Iseri-Carvalho: At this time, they are still working on documents, we will recess this Committee and move on to Finance, thank you.

There being no objections, the Committee recessed at 3:58 p.m.

The meeting was called back to order at 4:17 p.m., and proceeded as follows:

Mr. Furfaro was noted excused from the meeting at 4:18 p.m.

Ms. Iseri-Carvalho: Planning Director first because he had two (2) questions that he needed to answer from our last communication.

IAN COSTA, PLANNING DIRECTOR: Good afternoon Councilmembers, Ian Costa, Planning Director.

Ms. Iseri-Carvalho: Yes, Mr. Costa, um, we are in receipt of your communication sent to us or your response on June 12, 2007 and the question for your Department was whether or not... well, not whether or not, to provide the letters and copies of returned receipts for each adjacent landowner required to be notified for the development vicinity of Otsuka's Store. Now at the last meeting before June 12, I guess that would've been June 28 or thereabouts. We were informed at the end of the meeting that you were making copies to be provided to us of the returned receipts, that was what was relayed to us.

Mr. Costa: Oh, I don't know who relayed that. We were never copying receipts, otherwise you would have those.

Ms. Iseri-Carvalho: Okay, and I guess that...

Mr. Costa: I think we were making copies of the, what's attached to your correspondence.

Ms. Iseri-Carvalho: Okay, well, we did previously receive that and I do have copies of that... that we had requested some time ago and based upon the communication that we received from Mr. Jasper that he had not been in receipt of the SMA required notification. It was then that we requested of your department to provide us proof that he, in actuality, got receipt of the development that was going

to be occurring adjacent to his property. Okay, so what we're asking for today is the actual return receipts, or some proof of notification to Mister, especially Mr. Jasper because it was an official complaint that was filed with our office regarding him not receiving notification.

Mr. Costa: Okay um.

Ms. Iseri-Carvalho: And we had this, I believe, six (6) months ago and we're still waiting.

Mr. Costa: Okay, well, if you would, I guess I read the response and we don't have the green cards. They are not in the file and I guess further I go on to kind of cite the requirements of the notice, both from the CZO as well as the SMA rules and what is required is a list of the properties or owners to be notified as well as an affidavit that the applicant caused notification to happen.

Ms. Iseri-Carvalho: Okay, and...

Mr. Costa: Or notification to be served, I guess.

Ms. Iseri-Carvalho: And the applicant is the County, isn't that correct?

Mr. Costa: Yes, in this case.

Ms. Iseri-Carvalho: Yes, and who is the person who holds the records for the County to show us proof of notification?

Mr. Costa: Whoever is the applicant.

Ms. Iseri-Carvalho: Okay.

Mr. Costa: If it's involving public lands, typically, the Department of Public Works.

Ms. Iseri-Carvalho: Okay.

Mr. Costa: In this instance, I think in my response, I do state that we do have a transmittal letter attached to the packet that I attached as an exhibit which states that they were also transmitting the green cards, so it appears that the Department received green cards, but as I stated they're not in the file.

Ms. Iseri-Carvalho: Okay, and I guess my question would then be again, which Department received the proof that the owner, the adjacent owner is claiming, and he claimed back from October 2006 that he did not receive notification since that time.

Mr. Costa: That would be us, the Planning Department.

Ms. Iseri-Carvalho: Okay, and so now what is the remedy if you are not able to show proof that this owner received a proper notification for an SMA?

Mr. Costa: Well, I think I... and maybe I might seek a legal opinion for that, but if you read the requirement to provide the list, so that we can double check that those are indeed the people and the affidavit. I believe that puts the burden of notification on the applicant.

Ms. Iseri-Carvalho: I believe you're incorrect. If somebody files an affidavit and if the affidavit is inaccurate, right, somebody contesting the credibility of that affidavit, then the burden would be on the person who applies for that to show proof.

Mr. Costa: Let me restate that...

Ms. Iseri-Carvalho: That they received the return receipt...

Mr. Costa: I guess also...

Ms. Iseri-Carvalho: Because who is the record keeper? The County?

Mr. Costa: Also, the affidavit states that you cause notice to be served on at least a certain percentage. I believe in this case, eighty-five percent (85%) um.

Ms. Iseri-Carvalho: Again, we need to.

Mr. Costa: So clearly there wasn't... there isn't a government requirement to notify every single, or to show proof that you notified every single person.

Ms. Iseri-Carvalho: In this case, we have not shown proof of a single person receiving notification. We have not seen a single green card, we have not seen absolutely nothing to show anybody got proof except an affidavit by a person claiming that they provided proof, but we have no proof.

Mr. Costa: You know, I would apologize that I cannot, we cannot find it. It's probably a stack of green cards like that which would not fit in the project file. The Planner, as I stated before, that worked on the permit, is deceased. And I hear what you're saying, but I'm not sure why the law doesn't even mention green cards.

Ms. Iseri-Carvalho: The question...

Mr. Costa: Or require it?

Ms. Iseri-Carvalho: And maybe we can get an opinion from the County Attorneys with respect to this. A landowner raises an issue that they did not receive notification, the burden of proof is to indicate to this landowner that, in fact, him or eight-five percent (85%) of the adjacent landowners. I don't know what number is that, what is it eighty-five percent (85%)?

Mr. Costa: I believe that's what it was.

Ms. Iseri-Carvalho: Okay, received notification that there was going to be a development that there was going to be developed adjacent to his area. They ask us for the proof because he claims he did not receive notification and we cannot provide the proof at this point. What is the liability for the County now that the development has already occurred and maybe that's the question for the County Attorney. Maybe at this time, let me ask the County Attorney, so can we have the County Attorney present please, because I think...

Mr. Costa: I guess I also stated that we have requested that the consultant give us copies. We haven't received that yet, we are still trying to look at every nook and cranny to see if we can find it.

Ms. Iseri-Carvalho: And, you know, it may not be Ian, and the problem that I have is because this question went out back in October of 2006, so it's almost been a year. It would seem that it would be a simple thing to obtain because we need to provide that kind of proof and whether those records does not exist in the County, I would think that at least the consultant who prepared the affidavit would've had some record to justify his position on the affidavit.

Mr. Costa: I would admit that it is a simple thing in most cases because it's a matter of two (2) or three (3) sheets of green cards. It's a little more complex than this one and not that that's an excuse, it's just that in terms of record keeping and bulk, you know, I'm not too sure what happened, but we'll continue to look.

Ms. Iseri-Carvalho: Did we check with the consultant who prepared the affidavit?

Mr. Costa: I mentioned that we have requested and we're... he's trying to send us what he can.

Ms. Iseri-Carvalho: Okay, so... but the request went out back in October 2006, so we're talking about October, November, December, January, February, March, April, May, June, so we are talking about eight (8) months, and we have received zero (0) response. We have received response that says that they could not find any proof.

Mr. Costa: There weren't contact eight (8) months ago, we were really looking, because we know that it was transmitted to us. Normally, we would have it in the file, in this case, it was not.

Ms. Iseri-Carvalho: Okay, and I guess... and we can bring back the minutes, but there were more than several times that we'd ask and we said we can get that to you, we can get that to you, we can get that to you, on the record. Like I said, we still haven't been able to receive it, so when was the next... I mean when was the time that you contacted the consultant to provide proof of these notification?

Mr. Costa: The last time?

Ms. Iseri-Carvalho: Well, or any time. I mean, you said you contacted the consultant to provide proof, when was that?

Mr. Costa: Um, actually, on several occasions I asked Doug Haigh to do that, but again I think the message came back that they had transmitted to us, which I guess it's evidenced by my attachment.

Ms. Iseri-Carvalho: Well, I can see them transmitting, oh, I don't know if I would transmit the original being that my credibility would be on the line, that I would keep some sort of record to indicate that I complied with the affidavit that I'm filing as a legal document with the Planning Commission, with the Planning Director. Right, I mean, I wouldn't just give the originals and not keep any record.

Mr. Costa: Agree.

Ms. Iseri-Carvalho: And not protect myself.

Mr. Costa: Neither would I.

Ms. Iseri-Carvalho: Right, so that's all we asking, where's the proof? I mean, especially when we are being contested. I mean, that there is a landowner out there who is contesting the fact, and maybe you know more than one, but at least one and I think the burden is on us to provide proof because that's how we authorize the issuance of the SMA permit, but we have the County Attorney here. What is our liability now or would you prefer to answer that in Executive Session? If we cannot provide proof that, in fact, this owner has had been notified properly or that eighty-five percent (85%) of the owners had been notified which is a requirement prior to issuing an SMA permit.

JAMES TAGUPA, DEPUTY COUNTY ATTORNEY: I prefer if you discuss that matter in Executive Session because you're talking about liabilities of the County.

Ms. Iseri-Carvalho: Alright, we'll take that in Executive Session, thank you Mr. Tagupa. Alright, I guess at this point that is the remedy, we'll check with the County Attorney with respect to that issue. Now, the follow up issue to that, in light of the fact that we cannot establish, it appears at this point that there was proper notification that was done on the initial SMA permit. My understanding is that, yesterday, there was an amendment to an SMA permit. What process was used to established that we had met with all the requirements for an application for the amendment to the SMA permit?

Mr. Costa: I can get you those green cards.

Ms. Iseri-Carvalho: Well, I mean I just want to know what the process was?

Mr. Costa: The same process.

Ms. Iseri-Carvalho: Okay, so they would have to fulfill all of the requirements of notification...

Mr. Costa: That's right.

Ms. Iseri-Carvalho: And all of that?

Mr. Costa: Yes.

Ms. Iseri-Carvalho: And I think we're going to be discussing that right after you sit down, so Doug Haigh was about to discuss the SMA amendment application process.

Mr. Costa: It is the same process.

Ms. Iseri-Carvalho: Okay, so it would be as if, if you were going to apply for an amendment to an SMA permit, you would apply as if it's a whole new permit? As far as the requirement?

Mr. Costa: The procedure is same, the same procedure.

Ms. Iseri-Carvalho: Okay, so we may be since you're here, you...

Mr. Costa: Except there is a permit number assigned and a permit assigned, so you are not generating a whole new permit. You're doing an amendment, but the procedure is the same as if it was a new application.

Ms. Iseri-Carvalho: Okay, and that procedure, do you have that in front of you?

Mr. Costa: Um yeah.

Ms. Iseri-Carvalho: So what was the procedure that they filed? You have the date that they filed to get the amendment to the SMA permit?

Mr. Costa: Um, I think the initial, I'm not sure that was the question, but I can get those dates to you. It expands a period of time because they first submitted a while ago and we needed more information to have enough to explain what the request was all about. And there was also a postponement in the initial public hearing I think to... so that amendments to that application could or... I'm sorry, because of faulty notification which was due to in this particular case... the applicant sent to all the party's adjacent landowners, but there is also a list of parties who are interested in receiving all SMA permit applications. They did not send those out. So as a result, we re-noticed and they had to send out notices again, including those interested parties.

Ms. Iseri-Carvalho: Okay, so the amendment process I guess was halted to provide notices to those who weren't, I mean weren't provided notice before.

Mr. Costa: To interested parties.

Ms. Iseri-Carvalho: Right, not the...

Mr. Costa: Outside of the adjacent landowners, yeah, so we have to keep track of those too.

Ms. Iseri-Carvalho: Alright, why don't... at this time, let me gather the information.

Mr. Haigh: Doug Haigh, Department of Public Works.

Ms. Iseri-Carvalho: Okay, and I think the Committee members received a copy I have before me. I guess this wasn't initially sent to us. Doug, is that right?

Mr. Haigh: Um, I don't believe we sent you this document. There may be an earlier one that we sent to you, but I don't believe we sent this one to you.

Ms. Iseri-Carvalho: Alright, and I guess you know part of the questions that we had ask earlier. Doug, was that what the process of when you need to amend an EA or not? And so maybe you can answer that question, so that we can determine that this was not one that required an amendment to the EA and that it required just approval by the Planning Commission or submittal of an application to the Planning Commission.

Mr. Haigh: I'm not qualified to give a formal response on what the requirements as far as having to amend an EA.

Ms. Iseri-Carvalho: Okay, so how do we know that we didn't need to do a formal amendment to the EA?

Mr. Haigh: Ah?

Ms. Iseri-Carvalho: I mean because we didn't seek an amendment to the EA, right?

Mr. Haigh: Okay, yes, well, we as Department of Public Works did not see any significant change to the EA that would cause a change in the finding of no significant impact.

Ms. Iseri-Carvalho: Okay, so where is that criteria?

Mr. Haigh: Um.

Ms. Iseri-Carvalho: Where can we find that criteria?

Mr. Haigh: I don't know of any specific criteria for that.

Ms. Iseri-Carvalho: Or this is something arbitrary that the applicant decides whether or not it meets the qualification of a substantial change or not?

Mr. Haigh: I cannot answer that question.

Ms. Iseri-Carvalho: But a decision was made that it did not so...

Mr. Haigh: We did not see this as something that having significant impact.

Ms. Iseri-Carvalho: But there's no, what you're saying is there no statutory or legal authority that supports your position.

Mr. Haigh: I am not an expert in that matter.

Ms. Iseri-Carvalho: Is there any questions for Doug Haigh before I continue? Okay, well, I guess I fail to understand how we continue to seek these amendments without even knowing what the process is number one, and those questions had been submitted earlier which you were able to answer. But yet, you're making a decision that we don't need to seek an amendment to an EA in order to proceed with these deviations from the EA and there's no oversight. I mean, how do

we know that won't be challenged later on that we did not obtain an appropriate amendment to an EA? Or whether or not it was necessary?

Mr. Haigh: Well, we worked with Department of Transportation Federal Highway on the project and they clearly didn't see any issues here that they felt required because these are things that were within the construction contract that required an amendment to the ARC(sp.?) a problem there.

Ms. Iseri-Carvalho: Okay, so you're saying that we did have oversight that the Federal Highways did review?

Mr. Haigh: Where they have oversight of the project, so when we awarded the design/build project, they were aware of this scope and the contract and they approved that.

Ms. Iseri-Carvalho: Right, but they were...

Mr. Haigh: Now as far as their specific review of the project, in reference to environmental assessments, I am not qualified to comment on that, I am not an expert in that field.

Ms. Iseri-Carvalho: Did we seek oversight by the Federal Highways after there were deviations that were made from the final EA?

Mr. Haigh: Every change or the construction, the design/build contract is approved by Federal Highway, and so far every change order that we have made has been approved by Federal Highway. Future change orders may not be approved by Federal Highway because there's been a recent change where they've given increased authority to the State Department of Transportation and the State Department of Transportation is assuming... some of... Federal Highways past responsibilities, also every contract and every change order has been also approved by the State Department of Transportation.

Ms. Iseri-Carvalho: Mr. Haigh, I'm not talking about change orders, I'm talking about amendments to SMA's.

Mr. Haigh: Okay, any amendment, anything that is being done in the project is either covered by the construction contract or covered by contract change orders. So they would be approving those type of scope, they are working on those type of scope issues.

Ms. Iseri-Carvalho: These amendments that you had submitted.

Mr. Haigh: The...

Ms. Iseri-Carvalho: For review by the Planning Commission on an amended SMA permit.

Mr. Haigh: Okay, these are amendments um, okay, go ahead.

Ms. Iseri-Carvalho: Have they been reviewed by the State as being changes that do not require amendments to EA?

Mr. Haigh: Okay, what we are amending is what's already been approved as part of the construction contract or the design plans by the Department of Transportation. They have reviewed the design plans, so it's... we didn't go back to them and ask them to reapprove what they already approved, no.

Ms. Iseri-Carvalho: Not... well, that wasn't in the EA, the structures were not in the EA.

Mr. Haigh: The design/build construction contract included the structures which was approved by State Department of Transportation and the Federal Highway Administration.

Ms. Iseri-Carvalho: Are you saying that all of these changes that you're making now, amendments that you sought before the Planning Commission yesterday that all of those were in the final EA?

Mr. Haigh: No, I am not saying, I never said that.

Ms. Iseri-Carvalho: Okay, so...

Mr. Haigh: I did not say that.

Ms. Iseri-Carvalho: Okay, how many changes did you seek in your SMA amendments?

Mr. Haigh: Do you want me to go over the list?

Ms. Iseri-Carvalho: Yes, because I can tell you that we were told... while you were here in the spirit of open communication by your boss that's sitting back there, that we would be informed as to the progress of what you all have been doing. We had been previously informed that you were going to seek amendments to the pavilion, the structures, and that it was it. Then I learned in an article yesterday or yesterday afternoon, I learned that they were, in fact, multiple changes that you guys were seeking in your SMA amendment, is that accurate?

Mr. Haigh: Okay, they were... there's only, okay, there were a total of five (5) items in the SMA modifications and amendment request that we submitted to the Planning Department and we...

Ms. Iseri-Carvalho: Have all of these been submitted to Council? Did you, did you or your Department discuss all of these amendments with the Council?

Mr. Haigh: I cannot respond to that.

Ms. Iseri-Carvalho: As was previously agreed to by the Administration that they would discuss with the Council things, the progress of the bikepath and then we find out in the newspaper that there's numerous changes that are taking place when we were advised about only one which was the structures, the roofs of the pavilions, so it's news to me when we learn that there's these numerous other... to me, numerous because there's at least four (4) others changes that are being done at the application SMA permit when we, in fact, ask for the amendment that was being submitted and we did not receive a copy and it kept getting deferred and we never received a copy. So...

Mr. Haigh: If a request had come in to me in writing, I would've gotten one to you right away. I believe I can't recall, right now, whether or not we had sent you the earlier one or not. There was only a minor change between this one and the earlier request, I can't remember whether or not but...

Ms. Iseri-Carvalho: Well, why don't you just start by going over the changes...

Mr. Haigh: Okay.

Ms. Iseri-Carvalho: That you submitted in your SMA amendment...

Mr. Haigh: Okay.

Ms. Iseri-Carvalho: Permit.

Mr. Haigh: Um, site plan modification that's number one (1), bikepath reroute south of Mohukea Bridge, the bikepath had been rerouted due to concerns of shoreline erosion. This is near Kapa'a Beach Park which we had discussed on the Council floor. Design modifications, rest stops number two (2), four (4), six (6) typical...

Ms. Iseri-Carvalho: Okay, one (1) question when you go back to one (1) anybody has any questions with respect to item one (1) on the realignment of the bikepath mauka of the parking lot. And I guess the question that I have, we brought this up and if you look at the final EA, that was an option that was proposed and actually was deemed infeasible right? Do you recall that or not?

Mr. Haigh: No, I do not.

Ms. Iseri-Carvalho: Do you want to take a recess so you can review that?

Mr. Haigh: Not really. For me, to review the EA in detail would be more than just a few minutes.

Ms. Iseri-Carvalho: Well, I guess the question that I have here is that, again, it goes back to the same question, when do you need to get an amendment to an EA? If you're changing the alignment when we had talked to State Highways, they said that that was something significant. Now you're telling me that it isn't significant? And then I'm asking you where are you utilizing, and what criteria are you utilizing to determine that it's not significant? That you don't need an amendment to an EA? And are you able to answer that?

Mr. Haigh: No, I'm not.

Ms. Iseri-Carvalho: Okay, go on to number two (2).

Mr. Haigh: Number two (2), design modification rest stops number two (2), four (4), five (5), and six (6), typical rest conceptual rest area plan altered by removing landscaping, adding a covered shelter and moving away from the bikepath... landscaping removed due to unavailability of irrigation water and to minimize maintenance, add coverage, provide shelter from rain and sun since no landscaping, move rest area away from bikepath to minimize congestion on the path. Item number three (3).

Ms. Iseri-Carvalho: Wait, before you go on, explain that, which rest stops are you talking about and the location?

Mr. Haigh: This is rest stops number two (2), four (4), five (5), and six (6). I believe, last week, we discussed this a little. Well, last Council meeting that we were here, we discussed this a little bit, um, number two (2) is the that located near Kawaihau Road, um, number four (4)...

Ms. Iseri-Carvalho: Is number two (2) the one that is adjacent to Otsuka's?

Mr. Haigh: Yes, it's nearby Otsuka's, the closest to Otsuka's.

Ms. Iseri-Carvalho: And this is the one that we received the complaint from the landowner?

Mr. Haigh: That is correct.

Ms. Iseri-Carvalho: About not receiving notification?

Mr. Haigh: That is correct.

Ms. Iseri-Carvalho: Okay, with respect to this rest stop, what are you going to do?

Mr. Haigh: Just what I said. We're going to add a covered shelter.

Ms. Iseri-Carvalho: Alright, go ahead even if you cannot prove whether or not he got notice of...

Mr. Haigh: Well, he... this went back for an amendment so in the amendment process notifications were sent out. My understanding is he received a notification because the Planning Commission did receive a letter from him expressing his concern of the modification.

Ms. Iseri-Carvalho: But if the process was flawed to begin with, does that excuse the flaw? I mean, I don't think you can answer that.

Mr. Haigh: I'll refer to the County Attorney for those types of answers.

Ms. Iseri-Carvalho: Okay, what are you going to do with rest stop number four (4), so you adding a covered shelter and you are moving it away from the bikepath?

Mr. Haigh: As far as you know, how much each one moved, I cannot answer you specifically right now. This language would develop by our consultant, so I'm not sure of the specifics of each one on how far it was moved from the path.

Ms. Iseri-Carvalho: Oh, okay, we need to take a short break to change the tape.

There being no objections, the Committee recessed at 4:44 p.m.

The meeting was called back to order at 5:04 p.m., and proceeded as follows:

Ms. Iseri-Carvalho: At this time, what I'd like to do, we were talking on the rest stops and we have hooked up on the computer the actual rest stops, so that the public will have the benefit of knowing what number is associated with what, so we'll put that up now and go back to one. Okay, pavilion one (1), okay, what is the status of this rest stop and what's going, is this part of the SMA? And any updated information?

Mr. Haigh: (Inaudible) Okay, this was not included in the SMA amendment, so it currently does not look like that. It currently has a wooden roof on it and it is the Administration's plan to remove that roof and just have the bench

and table, bench and tables.

Ms. Iseri-Carvalho: Okay, and Doug I don't remember when you exactly gave this presentation, but as you indicated, it changed and they do have roofs and so what is going to happen and what date will those, will that roof be removed?

Mr. Haigh: We have not scheduled that at this time.

Ms. Iseri-Carvalho: Okay, and then this is the one in front of the neighborhood center, yeah?

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: Okay, so rest stop number two (2)? Again, what is the current status of that?

Mr. Haigh: This one is...

Ms. Iseri-Carvalho: They also have a...

Mr. Haigh: We reapplied for the amendment and it is built, um, I forget how far the roof structure is along, but we included this in the amendment request and so we are waiting for Planning Commission action.

Ms. Iseri-Carvalho: Okay, now with respect to this, what are you requesting as part of the SMA?

Mr. Haigh: Amendment to allow us to have a roof structure.

Ms. Iseri-Carvalho: And what else?

Mr. Haigh: That's primarily it. The thing is... yeah, okay.

Ms. Iseri-Carvalho: Okay, and I guess the question that I have is by looking at your response here and you indicate that you are moving this.

Mr. Haigh: Okay, if you look in the EA and Ian reminded me of this before he left. The EA, the very conceptual sketch shows the rest area right adjacent to the path and so what the consultants are saying is some of them... we move... various distance from the path and some of them aren't right immediately adjacent to the path.

Ms. Iseri-Carvalho: Okay, so what is the distance?

Mr. Haigh: I don't know exactly for each one.

Ms. Iseri-Carvalho: And I guess...

Mr. Haigh: Some of them are fairly close, this one is actually fairly close to the path. Some are farther away and the one we looked at, number one (1), is the farther distance away than this one, and I think the one at Kuna Bay is probably the one that is farthest from the path.

Ms. Iseri-Carvalho: Okay, Doug...

Mr. Haigh: But I don't know the exact distances.

Ms. Iseri-Carvalho: Well, we know that the bikepath had been laid in this area, right?

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: Okay, so I guess the question would be you're seeking this after this, the bikepath has already been laid and the rest stop has already been constructed, right?

Mr. Haigh: That's correct.

Ms. Iseri-Carvalho: So how do we move... I mean, are we going to move it now that it's been constructed already or did we move it before we applied for this SMA amendment?

Mr. Haigh: Okay, as I thought I explained, in the EA it showed the very conceptual plan for the rest areas immediately adjacent to the plan, adjacent to the path and we had moved them various distances from the path.

Ms. Iseri-Carvalho: So why do you need a SMA amendment?

Mr. Haigh: I mean that has been so discussed thoroughly and I am not an expert on that, I will defer to the Planning Department and the County Attorney why there's an SMA amendment, I will not answer that question.

Ms. Iseri-Carvalho: Wait, wait, wait. Who is asking for an SMA amendment, isn't Public Works?

DONALD FUJIMOTO, COUNTY ENGINEER: Donald Fujimoto, County Engineer. I'd like to clarify that and, again, I think we brought this up before, the first SMA permit that was issued was very clear on the structures and it specifically identified the two (2) rest pavilions within the SMA area and the nine (9) picnic shelters. It did not address the rest area and that is why we're in for the SMA amendment.

Ms. Iseri-Carvalho: Donald, I'm not talking about the roofs, I'm talking now about the distance. You guys are seeking an amendment to the SMA permit that it was initially submitted, and the reason why you're saying that you're seeking an amendment is because you're now moving away from the bikepath, that is what it says here.

Mr. Fujimoto: Well, again maybe it's just semantics, but the rest areas was identified in the original SMA permit. It did identify that we were going to have rest areas along the bikepath.

Ms. Iseri-Carvalho: I know that, but you are moving it away from the initial location as to what Doug Haigh is saying...

Mr. Haigh: In, in...

Ms. Iseri-Carvalho: That was in the EA?

Mr. Haigh: As I had stated.

Ms. Iseri-Carvalho: Hold on. I'm not finished, I'm talking to...

Mr. Fujimoto: Yeah, and...

Ms. Iseri-Carvalho: Mr. Fujimoto.

Mr. Fujimoto: I think, again, in my mind, is again, relative when you say away, how far away, it's not a hundred (100) feet away. I mean, we're talking about, you know, twenty (20) or thirty (30) feet away from the path which is you know, again, close proximity of the bikepath.

Ms. Iseri-Carvalho: Donald, the question I'm asking is why did you need to seek an SMA amendment? This is all the... you guys are telling me these are the reasons why you went to go get an amendment to an SMA permit.

Mr. Fujimoto: Okay, well, again, yeah, then I would have to defer to the Planning Department if that, if the verbiage was really needed to actually explain that it is away from the bikepath and what is relative to say what is away.

Ms. Iseri-Carvalho: No, but you are the applicant.

Mr. Fujimoto: My understanding. Okay, from my point of view, the way I see this is we just need to get structures approved because the rest areas, the concept of the rest areas was already approved in the original SMA permit.

Ms. Iseri-Carvalho: Donald, that's why I am asking. This is information you guys provided, you provided this information to us that in your

SMA, these are, it says right here, okay, let me state what your memorandum says, Department of Public Works request review of site plan modifications and amendment to the SMA permit originally submitted on September 23, 2003 and approved on January 13, 2004. The site plan modification review and amendments are being requested as there have been deviations from the original environmental assessment which is referenced by the SMA permit. However, the deviations were made as a result of detail design and further qualifications that were not available at the time of the SMA permit submittal. The deviations, in your opinion, yeah, this is from the County Engineer. The deviations still meet the spirit and the intent of the original SMA permit conditions and then you proceed to list that these are the deviations. And one of the deviations, number two (2), it says that the reason why you are seeking an SMA amendment, right? Is it because the typical conceptual rest area plan was altered by removing the landscaping, you are adding a covered shelter and you are also moving away from the bikepath. That is the reasons why you state that you are seeking an amendment to the SMA permit, right? So it is a deviation, now you're just saying that you are only seeking an SMA amendment for the structure, but that's not what is contained in your memo, in your letter to Planning.

Mr. Fujimoto:       Okay.

Ms. Iseri-Carvalho:       There are other deviations, so I'm asking you on those deviations. One (1), again, we talked about the structure, okay, so that's been explained now. We're talking about moving away from the bikepath, what was in the initial EA, how much was the deviation, and why is it necessary to seek an amendment to the SMA permit that was originally submitted. Those are the three (3) questions for each of these, these deviations just answer those.

Mr. Fujimoto:       Okay, I can't answer you. You pointed out something that I wasn't...

Ms. Iseri-Carvalho:       Aware of?

Mr. Fujimoto:       Aware of, and it appears... so by your answers to me that you are not aware of what you had submitted to Planning because you are saying you thought was only under structures and now this, signed by... from the County Engineer, you know and now you're saying I don't know what you're saying and it's here I'm reading it.

Mr. Haigh:       Let me clarify that a little bit, this document and this language here was specifically worked up between the consultant and the Planning Department in trying to work out... this is the reason why it took us, one of the reasons why it took us so long to get this SMA amendment process to move forward because Planning and the consultant were working on which issues did they really want to have addressed in this amendment.

Ms. Iseri-Carvalho: Donald, I mean, Doug...

Mr. Haigh: So that's and then...

Ms. Iseri-Carvalho: My question is not, if you could hold on please?

Mr. Haigh: Okay.

Ms. Iseri-Carvalho: You're confusing the issue. The issue is that this communication...

Mr. Haigh: Right.

Ms. Iseri-Carvalho: States that it came from the County Engineer and it does not state that it was a result of some consultation between the Planning Department and your consultant or whatever you guys submit us, documentation with signature on it, right? Donald Fujimoto, right? And now you're telling us that, why, no, he doesn't even know what's on this communication that's been signed.

Mr. Haigh: I'm not saying that, I...

Ms. Iseri-Carvalho: Oh not you, Donald is saying that.

Mr. Haigh: I'm giving you background on how this document was developed.

Ms. Iseri-Carvalho: The question is, I'm asking because it came from... otherwise do you want to redact this and change it and say where it's from, so you can give us accurate information?

Mr. Haigh: This is a document that was submitted to the Planning Department for request of the SMA amendment. That's what this document is, I will not retract that fact, that is what this document is, that's what you asked for and that's what we gave you.

Ms. Iseri-Carvalho: You're missing the point, the point is this document is saying that it comes from the County Engineer...

Mr. Haigh: We are the applicant.

Ms. Iseri-Carvalho: You are saying...

Mr. Haigh: In this case, but a consultant helped us prepare this letter and the consultant worked in hand with the Planning Department to develop this, these five (5) items that they felt that were appropriate to have the Planning Commission review and make decisions on.

Ms. Iseri-Carvalho: Regardless of what your explanation is, the record speaks for itself. As to who signed it and who is responsible for the information that is contained in this document, that's what I'm saying. Legally, who's going to be responsible? Is it going to be the consultant? No, the consultants don't even appear on this document.

Mr. Fujimoto: And you're correct, I am responsible for that letter.

Ms. Iseri-Carvalho: Can believe it. So you are unaware of this movement as a result of seeking an amendment to the SMA, Donald?

Mr. Fujimoto: Well, I was aware of the amendments just not to that level of detail.

Ms. Iseri-Carvalho: Okay, well let's move on and we'll get... because this is from you and you signed. I'm going to be speaking directly to you because you're the one responsible for the content of this information. Okay, so we'll ask in a follow up questions with respect to what was the requirement from Planning and what they relied on in determining that required an amendment to the SMA. Alright, okay, so then if we could move on to the next rest stop Donald. Three (3) and this one is...

Mr. Haigh: This one is number three (3) and it is not part of the amendment request.

Ms. Iseri-Carvalho: Okay, so what?

Mr. Haigh: So our plan is to the Administration's plan is to remove the roof.

Ms. Iseri-Carvalho: Okay, and...

Mr. Haigh: And leave just the benches and the table?

Ms. Iseri-Carvalho: Um, this is the one in front of the Friendship House? Is that...

Mr. Haigh: Close to Friendship House, yes.

Ms. Iseri-Carvalho: Alright, and what is the reason for not requesting amendments for the... because the structures are already up, right? I mean the roof?

Mr. Haigh: That is correct.

Ms. Iseri-Carvalho: Okay, so what is the reason that the Administration was seeking removal of just some of them and not all of them, even though all of them didn't have permits for the structures? Is there a rational basis why all of them weren't removed because of the view plain or was there other criteria that was used as to why certain ones were kept and certain ones weren't? Do you know? I mean, you guys applied for some and didn't apply for some and didn't apply for others. I mean and we are trying to find a rational basis, in light of the fact that all of them didn't have permits...

Mr. Fujimoto: Right, I guess based on the discussion that was brought on the floor and the level of intensity, I guess of the issue of (inaudible)... And that kind of issue, I believe it was Administration's so called belief that this is a so called compromise to eliminate areas with high visibility.

Ms. Iseri-Carvalho: So it was the Administration's view?

Mr. Fujimoto: Intent to...

Ms. Iseri-Carvalho: That the one behind by the Neighborhood Center that isn't visible to the passing cars, and the one at Otsuka which is visible to passing cars, that one we'll keep, because it doesn't impose on the view plain, but then the Friendship House one, that is also visible to the cars, that one we'll remove?

Mr. Fujimoto: Right.

Ms. Iseri-Carvalho: I... does that seem rational?

Mr. Fujimoto: Well, again, I am just telling you the intent.

Ms. Iseri-Carvalho: Okay, I... it just doesn't seem rational to me that, if that was the only criteria that was used, I mean as far as view plain, was there any other criteria that was used? That you know of?

Mr. Fujimoto: Um, just, again, the intent was to try to indicate the concerns about why there were so much, um, I guess issues on this roof structures.

Ms. Iseri-Carvalho: And the reason why I'm bringing this up Donald, is that the person who complained about the rest stop number two (2)... the one who didn't complain about the notification, right? He complained and we're trying to still provide proof. That one appears to be right in town, I mean, you know, if anything, I mean, that obstructs view, right? I mean I don't know what to tell you, but in my... I cannot see the difference between that one and the Friendship House.

Mr. Fujimoto: Well, again you know you could say that because there's already structures along the coastline that doesn't really stand out as much as like

number three (3).

Ms. Iseri-Carvalho: Because even in front of that area, right? Isn't that a soft sandy shoreline as opposed to where the Friendship House location is?

Mr. Fujimoto: I'm not real sure about that.

Ms. Iseri-Carvalho: Well, go back to number two (2), there, that's the beach right there. It's really close to the ocean, I mean, this rest stop. I mean, I don't know how much feet, but I don't think it is forty (40) feet.

Mr. Haigh: It is not within the setback.

Ms. Iseri-Carvalho: It is not, okay, so how many? That's my problem we are looking at, you know, shoreline setback of approximately how much?

Mr. Haigh: So it's at least, it's beyond the forty (40) foot setback, it's mauka of... I'm not sure.

Mr. Bynum: It's right here. Twenty-eight (28) feet.

Ms. Iseri-Carvalho: Twenty-eight (28) feet? He said it's mauka of the forty (40) feet.

Mr. Bynum: It's twenty-eight (28) feet behind the forty (40) foot shoreline.

Ms. Iseri-Carvalho: Okay, but that is a sandy shoreline, right?

Mr. Haigh: I believe so, yes.

Ms. Iseri-Carvalho: Okay, now go back to number three (3), and number three (3) where the Friendship House, isn't that a rocky shoreline?

Mr. Haigh: That is a rocky shoreline.

Ms. Iseri-Carvalho: Okay, but we're going to... we want the roofs off of that because of the view plain, anything else? With respect to this stop, and we don't know when the roofs will come down on those, and it will be the roofs and the... I guess the poles that hold up the roofs, right? So it would just be picnic benches and table.

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: Okay, go to the next one please. Okay, and, again, just for the public's benefit, this is... there's more development that has occurred, right?

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: They have structures, I mean, roofs on them?

Mr. Haigh: This one, I believe, just has the roof framing.

Ms. Iseri-Carvalho: I'm sorry it has a...

Mr. Haigh: The roof framing.

Ms. Iseri-Carvalho: Roof framing, alright, okay, and this one is located just a brief description where this one is?

Mr. Haigh: Near the Friendship House.

Ms. Iseri-Carvalho: Oh, this is the Friendship House?

Mr. Haigh: This is number three (3) still.

Ms. Iseri-Carvalho: Okay, the next one, this one number four (4) is where?

Mr. Haigh: This one is located in the South end of Keālia Beach upon the rocky... upon the cliff overlooking the beach.

Ms. Iseri-Carvalho: Okay, and what modifications are you seeking for this one?

Mr. Haigh: To allow the roof structure.

Ms. Iseri-Carvalho: Anything else?

Mr. Haigh: Well, this one is fairly close to the path.

Ms. Iseri-Carvalho: Okay, so you not moving away from the path on this one?

Mr. Haigh: No.

Ms. Iseri-Carvalho: Okay, that is number four (4), next one.

Mr. Haigh: Those are the beach pavilions, not the rest area.

Ms. Iseri-Carvalho: The other ones, you don't have the fifth (5<sup>th</sup>) and sixth (6<sup>th</sup>) one?

Mr. Haigh: This is the location at pineapple dump.

Ms. Iseri-Carvalho: And, um...

Mr. Haigh: It's the same thing we planned to allow. We are requesting to keep the roof structure and it's a little bit off the path.

Ms. Iseri-Carvalho: Okay, on this pineapple dump one, how much construction had occurred? I mean, subsequent to this of course because we don't show anything here.

Mr. Haigh: My memory is the columns. I don't know if there was roof structures built yet or not, I'm... I don't have a perfect memory of that.

Ms. Iseri-Carvalho: Okay, and on this, you moved away and you don't know what this is?

Mr. Haigh: No, I don't.

Ms. Iseri-Carvalho: And the reason you were moving away from the bikepath?

Mr. Haigh: This is set up to over look the pineapple dump and help tell the story of the pineapple dump and give background having interpreted signage there to tell the story of the pineapple industry and interpretive information. So that was the intent to create this pavilion to kind of tell the story there.

Ms. Iseri-Carvalho: Okay, but...

Mr. Haigh: Or find an area to rest and be able to observe it.

Ms. Iseri-Carvalho: But wasn't that the intent when the initial SMA...

Mr. Haigh: Yes.

Ms. Iseri-Carvalho: Permit was applied?

Mr. Haigh: Yes.

Ms. Iseri-Carvalho: Yeah, so why we need an amendment now? If we had the same intent that we had when we initially applied for an SMA?

Mr. Haigh: Well, initially, I mean the EA is very conceptual. So, in the EA, we did not define what was happening in the pineapple dump. We had a general conceptual idea that we defined interpretive signage, but we did not come up with a more detailed design of what was actually going to occur at the pineapple dump.

Ms. Iseri-Carvalho: So is that a requirement if we're going to come up with a more detailed design that we need to seek an amendment to an SMA permit?

Mr. Haigh: The reason why we're asking for amendment is because we added the roof structure. That's the primary reason.

Ms. Iseri-Carvalho: Okay, so you're saying that this is all... it didn't require an amendment to an SMA permit if we were seeking anything more than the roof structures?

Mr. Haigh: My understanding if we weren't asking for the roof structures, the fact that we moved the rest areas a little bit from the bikepath, I don't think Planning Department would require us to go for an SMA amendment.

Ms. Iseri-Carvalho: But you're saying...

Mr. Haigh: Because it's such a significant change and in the EA, they never identified the exact location of the rest areas.

Ms. Iseri-Carvalho: But that's your opinion?

Mr. Haigh: That's my opinion and that's why we went to the Planning Department to ask them what they wanted us to do as far as the amendment. We relied on their expertise and our consultant's expertise to develop what needed to come in for an amendment.

Ms. Iseri-Carvalho: Okay.

Mr. Haigh: That is not my level of expertise.

Ms. Iseri-Carvalho: And we'll check with Planning, okay. Go ahead next rest stop.

Mr. Haigh: This is the one, this is the one at on the south side of Kuna Bay.

Ms. Iseri-Carvalho: Number six (6)?

Mr. Haigh: Yes, this would be number six (6).

Ms. Iseri-Carvalho: Okay, and what was, what has occurred subsequent to this?

Mr. Haigh: We're... it actually... we just had a ready to pour the foundation, I don't even believe the slabs been poured. I don't believe the concrete slabs been poured, I just think there's just rebar there.

Ms. Iseri-Carvalho: Okay, and what are you guys going to do here?

Mr. Haigh: We'll be adding the roof structure and this one is a little bit further away from the path. It's probably the one that is farthest away from the actual path.

Ms. Iseri-Carvalho: Okay, we'll go on to number... well, we actually have the deal with picnic shelters, I don't know. Do we have photos of the picnic shelters because number five (5) deals with the picnic shelters. Do you recall if this slide, this presentation had...

Mr. Haigh: You went through them very quickly. There's was just some general photos of the picnic shelters.

Ms. Iseri-Carvalho: Okay, can you stop.

Mr. Haigh: Back the other direction, one more, there we go. That's showing the picnic shelters in the middle of the beach.

Ms. Iseri-Carvalho: Okay, and...

Mr. Haigh: Four (4) of them there.

Ms. Iseri-Carvalho: And what are the, they are identified by numbers?

Mr. Haigh: Yes.

Ms. Iseri-Carvalho: Okay, here you talk about Keālia Beach picnic shelters on number five (5) of your correspondence.

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: Two (2) picnic shelters were relocated to the north and due to ADA access and view plain issues.

Mr. Haigh: That's correct.

Ms. Iseri-Carvalho: Okay, and I guess, which ones?

Mr. Haigh: They don't...

Ms. Iseri-Carvalho: Because these things are finished, built already.

Mr. Haigh: Yeah, that's correct.

Ms. Iseri-Carvalho: They'd been finish from when?

Mr. Haigh: I forget the completion date.

Ms. Iseri-Carvalho: I mean, at least three (3), four (4) months, yeah?

Mr. Haigh: Yeah, that sounds about right.

Ms. Iseri-Carvalho: Alright.

Mr. Haigh: So in this area, these are generally located where they were shown on the plan, but we did discover that one of them wasn't even close and is actually within the forty (40) foot setback and the contractor is going to tear it down and relocate it, the current plan is to relocate it.

Ms. Iseri-Carvalho: Which one?

Mr. Haigh: The one closest to us in this photo.

Ms. Iseri-Carvalho: Um, you got the red thing Donald, I mean the laser, can you give it to him?

Mr. Fujimoto: Under the tree.

Mr. Haigh: That one right there. Yes, we've since discovered that the contractor made, they had a surveying mistake and put it in the wrong place, so we did not... we are asking for approval where it's located, we're putting it back to where it was originally located.

Ms. Iseri-Carvalho: How much is in the setback?

Mr. Haigh: The majority of it, yes.

Ms. Iseri-Carvalho: You know, and this is my problem. Okay, we've raised this issue numerous times and argued wholeheartedly that these... at least, I mean, there was one that was put in that you guys said none of them, you and Planning came here and said none of them was...

Mr. Haigh: That was our...

Ms. Iseri-Carvalho: In the setback.

Mr. Haigh: Understanding at the time and it wasn't until, ah shoot was like three (3), four (4) weeks ago that I discovered that it wasn't and I asked them to go back and double check it because I was looking at some drawings and saying, hey, wait, there's a problem here. This isn't jiving, so they went back and double checked and there was a blow in the surveying and their layouts so...

Ms. Iseri-Carvalho: Did you think then, that it would've been important to notify the *Garden Island* after you guys made all these statements saying that all of these were within the setback. Don't you think that that would've been a prudent thing for the Administration to do to take responsibility for errors? I mean, did you notify anybody including us? That we were in fact correct, that this was in the setback that we had believed that it was? I mean, did any of you take any time to notify any of us? That we were correct after you, you know, you guys took the opportunity to inform the newspaper that the only errors that the Administration made and that we were basically making up all of these things, about it not being within the setback, I mean, did anybody even care to let us know that we were correct and that you guys were wrong? Did you guys even think that that would've been the responsible thing to do? You know, it's just unbelievable. And now you're saying this pavilion is in, like the majority?

Mr. Haigh: Excuse me?

Ms. Iseri-Carvalho: You said that it's... majority of this structure is how much of it is within the setback, do you know?

Mr. Haigh: The majority of it is within the setback, that's correct.

Ms. Iseri-Carvalho: Do you have the numbers?

Mr. Haigh: It's in the exhibit, you can see in the exhibit, that's exhibit number eight (8) I believe.

Ms. Iseri-Carvalho: Okay, but here, okay, I just want to state...

Mr. Haigh: If you look at exhibit number eight (8).

Ms. Iseri-Carvalho: Okay.

Mr. Haigh: And where you can see the driveway coming in, you can see that we show that constructed picnic shelter to be relocated. The one on the right hand of the sheet.

Ms. Iseri-Carvalho: I guess this is my problem, okay, you're saying that there was a surveying mistake but which number is this? It's not...

Mr. Haigh: It would be number four (4), if you're counting from the... if you're counting from...

Ms. Iseri-Carvalho: The one by the tree?

Mr. Haigh: South heading north, yes.

Ms. Iseri-Carvalho: Okay, so when you guys refer these two (2) picnic shelters that were relocated to the north end, which picnic shelters are these? Due to ADA access and view plain...

Mr. Haigh: Those are on the other side of the beach.

Ms. Iseri-Carvalho: Okay, so...

Mr. Haigh: Those are closer to the lifeguard tower, down the north. If you kind of look where... on the (inaudible) on the left hand side of the screen.

Ms. Iseri-Carvalho: Maybe you can use the pointer.

Mr. Haigh: There were, my memory is they were going to be put in this area and kind of close to the lifeguard tower over in this area and that's where we relocated them over to this area. And part of that decision was there was a grade change so to do the ADA connection was going to be a little difficult and also we had gone back to Planning last year for site plan modification on the comfort station and Planning expressed a lot of concern about the view plain issue right there by the lifeguard tower and, so the decision was... is that those two (2)? It'll be probably smart to move it over here where they are less exposed to the view plain.

Ms. Iseri-Carvalho: I guess, Doug, the question that I have is, it's an issue of timing, right? These structures are already completed?

Mr. Haigh: That is correct.

Ms. Iseri-Carvalho: It had been completed? When were they finished? Months ago, right?

Mr. Haigh: That is correct.

Ms. Iseri-Carvalho: At least four (4), five (5) months ago and we were here having discussions week after week after week, right, about changes and the only changes that the Administration said that were incorrect or did not have a permit, was the roof and now you're saying that in fact these two (2) picnic shelters,

right? Had been an error? And that you needed to get an SMA permit now after you already constructed them?

Mr. Haigh: My understanding at the time when we built them that the... the buildings had approved building permits and Planning was aware of the change and did not see that as a significant issue to have to go back. But once they worked with the consultant and went through the whole project and tried to figure, okay, what would be appropriate to have the Planning Commission to discuss then they identified, well, this issue changed a little bit, so maybe we ought to throw this one in too and give the Planning Commission an opportunity to review and discuss it. As far as the decision on selecting that, that was between our consultant and the Planning Department deciding to bring this issue forward to the Planning Commission.

Ms. Iseri-Carvalho: I guess we'll just discuss that with Planning as to what needs a permit, what doesn't and what point do we need it, and what point we don't, but we'll move on. The second, the third and that would finish with the pavilions. We go to the third one and it says site plan modification, horse trail reroute mauka of bikepath of the final EA. See Exhibit six (6) near Keālia Beach Park, horse trail, not makai of the bikepath near the vegetation line along the sand area. Transition back onto the path will be difficult and questions on sandy shoreline prohibited by the State. Anybody have any questions on this issue?

Mr. Asing: I have. I guess, yes, I have questions. Doug, whatever happened to the study that we were going to do on the horse trail?

Mr. Haigh: Okay, well, the status on the horse trail, we had an original workshop meeting where we discussed the horse trail, we went back and worked with Keālia Kai and identified additional lands that we need to be acquired in order to provide the five (5) foot clearance and all areas along the path. We identified that... worked with Keālia Kai and at the same time, we were looking at the rock falls hazard, and so we are working on getting a rock fall hazard study done to analyze the potential rock fall hazard in that area, particularly in this narrow corridor and the results of that study and how we would mitigate that hazard. We'll have potential impact on the horse trail and path, so we don't want to move forward with anymore work on the horse trail issue until we resolve the rock fall hazards issue.

Mr. Asing: Okay, then I have to tell you that I am very disappointed, I'm very disappointed because you made a commitment to Councilmembers who attended that meeting that you would be doing the study, but nothing was going to happen and we were going to have other meetings before proceeding.

Mr. Haigh: Well, I...

Mr. Asing: Wait a minute now, you are proceeding and not even keeping us informed as to what is happening, you are just moving ahead with doing the horse path and, you know, what happened to that free flow information that working together... that we were going to do from that first workshop that we had, it apparently is not happening and...

Mr. Haigh: We...

Mr. Asing: And I'm just disappointed at that.

Mr. Haigh: We are not doing any construction or final design of the horse path in that area of major concern. We are waiting...

Mr. Asing: (Inaudible) horse trail reroute.

Mr. Haigh: We fully plan to have another public workshop meeting with the Council and Administration to go over the horse issue that is fully our intent. What we want to do is complete this rock fall hazard study first, so that when we do have the next meeting, we keep coming back with good information and I am upset also that it's taking so long to move forward on the study and delaying resolution of that issue. It's been very frustrating that we haven't moved quicker on this, but that is taking time.

Mr. Asing: And I understand that though, but, you know, you have here, site plan modification, horse trail reroute mauka of bikepath.

Mr. Haigh: Okay, if you look on, if you look at the exhibit, we're only referring to the area right at Keālia Beach.

Mr. Asing: I understand that.

Mr. Haigh: We're not referring to the other area, so we're not going with final design on this yet.

Mr. Fujimoto: Yes, and I think when we did the workshop, we did cover that. I think originally, the horse path was on the makai side, and we've agreed that that's not the best place because we would have to cross and, so this is really just moving the horse path on the mauka side.

Mr. Asing: Ah, Donald, I think the idea first of all is the question that we needed to address was simply, are we going to allow a horse path in this area, that's the question? Are we going to allow it first? We haven't done that yet and you are moving a horse path. What are you doing making any... we need to determine first whether we're going to do a horse path or not first and we had the first meeting, we're still waiting for the second meeting, and apparently I get the feeling you make me feel as though you have gone through the process. You moving

this rerouting of this horse path, you're doing the study of the rocks, you know, you moving forward with a horse path and we're not involved, but, you know, you told us that we were going to meet again to come up with a decision on whether we're going to move forward with a horse path.

Mr. Fujimoto: Correct.

Mr. Asing: But you are in fact moving.

Mr. Fujimoto: Well, again...

Mr. Asing: I want to let you know that you know...

Mr. Fujimoto: Okay, well, I guess we apologize for not communicating more, but, again, the intent is since we are going for the amendment this is the proper time to address this issue. Whether we actually do it or not would depend on the outcome of the workshop.

Mr. Asing: Okay, it's important that, you know, you keep in close communication because that's... you know, this just gives me the feel that you don't care about what we think, you know, you're just moving... you going ahead and that is not what we talked about in the first meeting. Okay, I just want to let you know that. And maybe this is not the time to do it, but I can tell you now that I am concerned right now on your handling of the rules, regulations, and policies that you're going to be making with the administrative rules regarding use of the path and because there are people using the path without rules and regulations through the administrative rules process bothers me. You have in the Lydgate area, the pathway that has been, you know, operational for quite awhile. There is no rules and there is a question on are you going to allow dogs on this path? I don't know right now, but I do see people walking with dogs on the path and, you know, I want to know whether it's yes or no, but when are you going to do those rules? I mean, you need to do those rules, how fast can I... Can I peddle on this path? Can I go twenty (20) miles now? You know, that's pretty fast, but some people want to do that or will there be limitations and rules set up through the administrative rule process on this area. You can do this, and this area you cannot do this and slow down if somebody's walking, but these rules, you need to get it in place right now because people are using the path so.

Mr. Haigh: I know there was some work on the rules, Parks or the Recreation Division Office of the one that no longer exist was working on the rules, and I'm sure that Parks Department will continue that work. They kind of held off on moving forward because of the question issue because they were doing two (2) simultaneous, so I know that Parks Department is looking to that development of that rules.

Mr. Asing: Thank you.

Ms. Iseri-Carvalho: Thank you Council Chair. I think also the question and we've raised this with the County Attorneys and several times I think in our discussions that really, you know, the County currently... the law prohibits dogs, it prohibits horses, I mean that's what the law is and you know a lot of times when we are talking about issues, we say, well, what is the law today. You know, if the law today is the setback is forty (40), you know, or it can be varied, then we'll look at what the law is today even though, you know, there's a shoreline bill that's up for hundred ten (110) plus erosion rate, but what is the law today? And we know, and so the County, by openly condoning illegal activity because that is illegal activity, the County knows that people are using it illegally. I mean, all it takes is for somebody to get hurt and whose liability is that? Now, it has been your representation that we don't own that, that right now, that jurisdiction is within Glover and I believe Donald, that is your guys position? Because we had asked several times.

Mr. Fujimoto: Yes, from my understanding, is that Glover has direct responsibility over the construction area.

Ms. Iseri-Carvalho: And remember we had discussed this about when they sue, they're now only going to sue Glover. They're going to sue the deep pockets which will be the County especially when the County knows, I mean, because they're blatantly violating the law and yet we are not taking any interest in trying to resolve the issue because it's been at least, you know, several months that people have been using the path, so, you know, I think that's something that needs to be discussed with our County Attorney because I don't know when the project is going to be completed. That was part of the question that we had asked several times and I think, you know, as a matter of commentary, I mean, the reason why we have these on the agenda weeks after weeks after weeks, is because we don't get all our questions answered and we learn something new all the time. I mean, you know, I can tell you I was shocked to read that in my box when we got back from the conference and, Donald, you were at the conference. I mean, not once had it been brought up to us. I mean, I seen you more than several times, you know, about these different varying request and, you know, again, you talk about relationship building and we discussed this with the Administration and we talk about a effective communication. I mean, it's on the agenda. It raises issues on the agenda and yet, you know, just zero, nothing. I mean, we didn't get a single update about your guys request and that's disheartening because it's not as if we haven't tried.

Mr. Fujimoto: Ah which, and I apologize for that, which specifically... which request was this?

Ms. Iseri-Carvalho: These SMA amendments that you guys did.

Mr. Fujimoto: Oh, yeah, and again, except for the last one which is the building that was found to be inside of the setback. I thought we discussed most of

those issues already.

Ms. Iseri-Carvalho: About moving away from the bikepath...

Mr. Fujimoto: Well, again that...

Ms. Iseri-Carvalho: Rules...

Mr. Fujimoto: That part I wasn't real intimate with it as far as the verbiage and the...

Ms. Iseri-Carvalho: About the horse trail realignment?

Mr. Fujimoto: Again, we discussed in the workshop that was brought up in the workshop that the horse path was going to be mauka. I mean, that was the more logical alignment.

Ms. Iseri-Carvalho: I don't think that there was anything resolved because we needed to get the rock study first.

Mr. Fujimoto: Correct.

Ms. Iseri-Carvalho: So you know you cannot say that that's what we decided.

Mr. Fujimoto: Right.

Ms. Iseri-Carvalho: But there was no decision.

Mr. Fujimoto: And, again, you know, whether it's resolved or not, we just wanted this to be brought up to this process since we going through the SMA amendment to save time. I mean, you know, again, we... it does take a lot of time to go through this process and we are just trying to do this as fast as we can in the most efficient way.

Ms. Iseri-Carvalho: And I agree we can still continue to do that by effectively communicating what the issues are, you know, it's been months. I mean, ask Glenn Mickens, he raises this all the time, it's been months, and, you know, we ask questions and questions, and questions, and you know, it gets deferred and deferred and deferred. You know, it would be nice if we could get this off the agenda.

Mr. Fujimoto: Well, again, I apologize and I'll try not to assume too much and try to keep you guys informed on the progress of this matter.

Ms. Iseri-Carvalho: Any further questions on the amendments on the SMA, and we have the permit, do we have the actual permit application?

Mr. Haigh: This memo is the...

Ms. Iseri-Carvalho: Oh, this cannot be the permit application because Ian said that in order to do an amendment, you need to do a whole new application.

Mr. Haigh: This is what we submitted to the Planning Department.

Ms. Iseri-Carvalho: This is like a memo of two (2) pages.

Mr. Haigh: That is correct.

Mr. Fujimoto: It's an amendment.

Ms. Iseri-Carvalho: It's an amendment, we got information from Ian Costa right before... I don't know if you were sitting there, that said that an application for an amendment is the same as an application for an initial SMA permit.

Mr. Fujimoto: That is correct and I believe that this addresses the amendment issues.

Ms. Iseri-Carvalho: This isn't even in complete sentence.

Mr. Haigh: That's probably for Ian to respond to these questions because...

Mr. Fujimoto: Yeah, right.

Mr. Haigh: This is what they asked for, this is what we submitted, this is what we done in the past.

Ms. Iseri-Carvalho: Alright, that's for Ian. But you heard him say the exact same procedure as applying... does this look like the same procedure and forms that you use? I can tell you now that I have a copy of the SMA permit right over here.

Mr. Haigh: It may, he may be referring to the procedures that they go through. So our notification was the same and the notification of public hearings remains the same that maybe the procedures that you're referring to, but I don't want to answer you even though he said Donald can answer for him.

Mr. Fujimoto: Yeah, that's okay.

Ms. Iseri-Carvalho: You're not going to care to venture there Donald? Donald, I guess we had brought up the question about, you know, making sure that the content of what you put your name on because you're the one that's going to be ultimately responsible for the content of what's contained in the document. I would, you know, again, just try to bring that forth to your attention. Any other questions on the SMA? Yes, Councilmember Bynum?

Mr. Bynum: Thank you. I just want to agree with something you said a minute ago Donald that other than the moving of the pavilion that was found to be built, you know, I have heard all of these issues discussed here on the Council floor. I'm looking at the memo from March 21 that you said that has an issue about the alignment of the horse path, it has the issue about moving the pavilions away from the... you know, they may not be word discussed specifically in terms of what would be included in the amendments, but they were discussed here. The two (2) pavilions that were moved because of the view plain, Ian talked about here months ago and his opinion that he would include that and part of the amendments that went to SMA. So other than that, one issue which is, you know, just discovered two (2), three (3) weeks and so that the contractor made that error, so they have to bear the responsibility for moving it and correcting it, is that right? So they'll be no additional expense to the County I'm assuming?

Mr. Haigh: That is correct.

Mr. Bynum: And so... and then I just want to clarify when I read the documents that you provided here today. It gave the rationale for these, let's move rest area away from bikepath to minimize congestion on the path, and so if I'm clear that the reason that you decided to go to the SMA was primarily for the amendment, was primarily because of the roof, which had been pointed out here that the initial SMA permit described rest areas and said that their exact location would be determined. It describe them as having tables and benches but did not describe roofs.

Mr. Haigh: That is correct.

Mr. Bynum: And so that was the main reason to go back to the SMA.

Mr. Haigh: That is what triggers us to go into the process.

Mr. Bynum: And then you consulted with Planning and said while we're coming... what else of this changes, other changes, or variation which were reported to us in this memo of March 21. The variations... there were a long list of them, or fairly long, you ask Planning which of these should we include in our amendment?

Mr. Haigh: That's correct. Planning and the consultant, the design/build consultant worked together in identifying and Planning came back

said, include these items.

Mr. Bynum: And then, so that's why the five (5) items were chosen. Those were the ones that they thought, well, let's inform the Planning Commission of these changes, so they, you know, can have the accurate information and then yesterday at Planning, they had an opportunity to ask questions and as they were going through their process, right?

Mr. Haigh: That is correct.

Mr. Bynum: Making... And then the Administration decided to remove two (2) of the roofs that had been put on, so the decision was made out of the six (6) that formed them... you wanted to leave on and two (2) of them... the Administration (inaudible) that the Mayor decided that, and if my recollection of all the meetings that I've attended and the ones I watched on television before I was a Councilperson, those two (2) roofs were the ones that strenuously discussed here at Council. The one in front of the Neighborhood Center, that would be in the view that from the Neighborhood Center because there's a conceptual plan to put a lanai in the back of the Neighborhood Center and that would put that... and that was a kind of shady spot already with the palms trees there, so I believe that would be a rationale for that. The other one that is most, you know, kind of isolated out there on the shoreline, right? That there aren't any other structures. It's the one that's on the front page of the newspaper today, alright? It's the one that has become icon for should we have a roof or not and the Administration decided that because it was out there alone that that would be one that... but the other ones, they felt was a rationale to keep the roofs, that was the decision, is this all accurate what I'm saying? Okay, I just wanted to make sure I was clear about these issues, but the exception of that one pavilion that is being moved because of the contractor messed up. I heard all of these things discussed, either discussed on the floor or read in previous memos.

Ms. Iseri-Carvalho: Anymore questions? Councilmember Bynum, you are in error. There have been minutes where Mr. Jasper had testified extensively, he'd written letters about wanting removal of the structure that was in the vicinity of Otsuka's, you can review the minutes, got tons of those there, which you failed to mention. Alright, any other questions?

Mr. Kouchi: Yeah.

Ms. Iseri-Carvalho: Yes.

Mr. Kouchi: You mentioned the public hearing yesterday, was there any action at the public hearing?

Mr. Haigh: They did not take action. They closed the public hearing.

Mr. Kouchi: That would be an action, right?

Mr. Haigh: The action was to close the hearing.

Mr. Kouchi: Thank you.

Ms. Iseri-Carvalho: And it's your understanding after closing they have thirty (30) days in order to make the decision?

Mr. Haigh: I'm not sure what their rules are.

Mr. Fujimoto: We're going to try to put it on the 27<sup>th</sup> I believe.

Ms. Iseri-Carvalho: The 27<sup>th</sup> meeting?

Mr. Haigh: The 26<sup>th</sup>.

Mr. Fujimoto: The 26<sup>th</sup>.

Ms. Iseri-Carvalho: 26<sup>th</sup>, that's a Tuesday?

Mr. Fujimoto: Right.

Ms. Iseri-Carvalho: Alright, we're still waiting for... you said there was notification that was given to Mr. Jasper the second time around?

Mr. Haigh: That's my understanding.

Ms. Iseri-Carvalho: Okay, so...

Mr. Haigh: Because he did submit a letter to the Planning Commission that the Commissioners mentioned yesterday.

Ms. Iseri-Carvalho: Alright. If we could get one, did you receive a copy of that, was it addressed to your Department?

Mr. Haigh: The letter that he sent to the Commission, I might have a copy of it.

Ms. Iseri-Carvalho: I mean, I don't know who Mr. Jasper is. All I know is that we received a complaint back in October and then he came here and testified that he wanted that removed.

Mr. Haigh: I do know in the Planning Commission yesterday, they discussed that concern.

Ms. Iseri-Carvalho: They discussed that that was his request?

Mr. Haigh: That there'd been a complaint, yeah, that there'd been a complaint from Jasper concerning that and they were asking how close it was to his property line and why.

Ms. Iseri-Carvalho: Now, we'll go to the other questions and I don't know, you don't have a written response, but I'll ask you to give a verbal response, explain the differences between a design/build contract compared to a design/build bid process.

Mr. Fujimoto: We'd like to defer to give us more time to give a more really clear explanation on those questions. I think they get into some kind of deep areas and we asked that we be given some time to answer that.

Ms. Iseri-Carvalho: Okay, and I guess for the benefit of the public because they've asked us these numerous questions that we been able to send over and maybe you have answers for them. They were waiting for a long time to get these answers, if you don't and you want to defer, I'll go question by question, so they know what questions are on the table especially for Mr. Mickens who writes, you know, everyday about the questions that he wants us to answer. Number 2: Has the bikepath project portion that is in the construction stage been submitted to the disability and the communication access board pursuant to H.R.S. 103-50?

Mr. Haigh: It has been submitted, I'll be giving you documentation.

Ms. Iseri-Carvalho: Okay, you don't have the date?

Mr. Haigh: No, I don't. It's been submitted several times already I believe.

Ms. Iseri-Carvalho: Okay, and the other question is, so please attach the supporting documentation and the final document review. The third question is, what criteria are (inaudible) triggers an application for an amendment to an environmental assessment? Who decides when an amendment to an EA is necessary? What is the process for approval to an EA? What is the estimated time frame that is necessary to seek approval of an amendment? Can the County be penalized financially and/or legally for seeking a deviation from the EA and also ask you to cite the relevant statutory authority.

Mr. Haigh: We're asking the County Attorney to assist us in answering that.

Ms. Iseri-Carvalho: Okay, the fourth question is: What is value engineering? Who developed the criteria for value engineering? Who was on the Committee for value engineering? How are they selected? How was this process of

value engineering apply to the bikepath?

Mr. Haigh: And we're developing the answers to that.

Ms. Iseri-Carvalho: Number five (5): for the various segments of the path, what are the contract amounts awarded to each of the consultants, the percentage of work completed on each contract, the amount paid thus far for each of the consultants, the work still outstanding, and the anticipated completion date of the services of the consultants?

Mr. Haigh: We're preparing that response.

Ms. Iseri-Carvalho: Number six (6) is: what efforts have been made to determine who is responsible for the construction costs of the roofs on the rest stops, and who will be responsible for the costs of removal of the roofs if it is deemed necessary?

Mr. Haigh: I believe we're asking the County Attorney to assist in that as well.

Ms. Iseri-Carvalho: Number seven (7), okay, but the one that you mentioned here, about the one that was within the setback, that one you said that that has already been decided that the contractor will be responsible for the entire cost of the removal.

Mr. Haigh: We've discussed...

Ms. Iseri-Carvalho: As well as the reconstruction?

Mr. Haigh: We discussed it with him and there hasn't been any indication that he feels otherwise and he's totally responsible.

Ms. Iseri-Carvalho: Okay, so is that yes?

Mr. Haigh: That's yes. We've... I mean he hasn't moved it yet, but we discussed it and it appears he accepts full responsibility.

Ms. Iseri-Carvalho: Okay, number seven (7): please explain the reasons for the differences in value for all structures in the (inaudible) and this is the one that you guys provided in your response.

Mr. Haigh: We need to get back to you.

Ms. Iseri-Carvalho: Okay, between the bid and the contract listed on that spreadsheet. Number eight (8) was, please provide copies of all change orders, the persons who requested the change orders, the persons who approved the change

orders, the reasons for the change orders, the cost, the written approval from the State and Federal authorities that the change orders did not require seeking any amendments on any County, Federal, State applications.

Mr. Haigh: We are compiling that information.

Ms. Iseri-Carvalho: Number nine (9): please provide corrected figures for Waiakea Canal, Moikeha Canal, and Kapa'a bridges and explain the reasons for the differences in size and value from the bid and the contract.

Mr. Haigh: We're working on that.

Ms. Iseri-Carvalho: Number ten (10): what is the definition of temporary bridge? What is the definition of permanent bridge? Please site your source of authority? What kind of bridge is proposed for the Wailua cane haul road portion of the bikepath? If it is temporary, please indicate the reasons that a temporary bridge was chosen as opposed to the permanent bridge and what is the width of the path of the cane haul road and will bicycles and pedestrians be able to safely use that path?

Mr. Haigh: We're asking Hawai'i Department of Transportation to assist us with the majority of that question and the design consultant for the bike, for the bridge to answer part of that question.

Ms. Iseri-Carvalho: Alright. Number eleven (11): what was the cost, size and date that the retaining wall that was used on Kuhio Highway (I guess this was in reference to our last meeting) was built and please provide a photo.

Mr. Haigh: We're asking HDOT Hawai'i Department of Transportation to assist us in answering that.

Ms. Iseri-Carvalho: Number twelve (12): what is the cost of concrete versus asphalt? What was the cost savings obtained as a result of using asphalt versus concrete on the path from the north end of Keālia to Kuna Bay? What kind of maintenance is required for either type of material and what is the difference in maintenance cost for each type of material? Where else is it anticipated that asphalt will be used instead of concrete.

Mr. Haigh: We're compiling that information.

Ms. Iseri-Carvalho: And that is the (inaudible)?

Mr. Haigh: We're having the contractor...

Ms. Iseri-Carvalho: Contractor.

Mr. Haigh: With some of the cost issues.

Ms. Iseri-Carvalho: Thank you. This one, I don't know, you might be able to provide an answer today. The physical size of the Keālia Beach Park comfort station, the Keālia Kai parking lot comfort station and the Lihi Park comfort station.

Mr. Haigh: We're compiling that information.

Ms. Iseri-Carvalho: Okay, so you don't have that information?

Mr. Haigh: No.

Ms. Iseri-Carvalho: And then the changes if there were any between the filing of the EA.

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: And the cost savings obtained. This was, I believe, Councilmember Furfaro's questions as a result of the changes. The next one was please provide the process required to be followed when bones are discovered and proof of documentation that the County complied with (inaudible) process including SHPD and the burial council input.

Mr. Haigh: I believe we're asking the contractor to answer that question.

Ms. Iseri-Carvalho: Okay, fifteen (15) it was. What is the status of the rock wall study? Who determined that the County should be responsible for the study? From what account are funds being drawn from, is it part of an eighty-twenty (80/20) funding match? Did we obtain a legal opinion as to the responsibility of who should pay for the study given the fact that is Keālia Kai's property that is deteriorating and should the contractor also be responsible for this cost, you're assist...

Mr. Haigh: We're going to multiple sources to help answer that complex question.

Ms. Iseri-Carvalho: Okay, and then I guess I'll consult with the County Attorney's as well. Sixteen (16): please provide the dates that work has been halted, the reasons for the stoppage, the date that work was expected to continue and the date that was expected to be completed for all the structures and those were in the spreadsheet.

Mr. Haigh: We're trying to compile that.

Ms. Iseri-Carvalho: Seventeen (17): what is the revised completion date of the contract? Please provide the reasons for inclusion or exclusion of time periods that were attributed to the amended date, if there are delays attributable to the contract that would've occurred respective of the county's delays, is the contractor still responsible for the penalty for failure to complete in a timely matter?

Mr. Haigh: We're compiling that information.

Ms. Iseri-Carvalho: What is the status of the Kawaihau Road spur?

Mr. Haigh: That is, I can answer that one.

Ms. Iseri-Carvalho: Okay.

Mr. Haigh: It's the plan to include part of the design for the Lydgate to Kapa'a as I believe in that (inaudible) we have not finalized whether it would be part of the base contract or added alternative.

Ms. Iseri-Carvalho: I'm sorry included in the design?

Mr. Haigh: It included, our intent is to include it in the design in the Lydgate to Kapa'a project, and we aren't sure whether or not to include in the base contractor, include it as an added alternate.

Ms. Iseri-Carvalho: Okay, because that area, we still are in the planning stage and we haven't gotten in the design stage yet.

Mr. Haigh: That is correct, we're...

Ms. Iseri-Carvalho: Okay, and...

Mr. Haigh: In the final stages of planning.

Ms. Iseri-Carvalho: Final stages of planning, so when would the design the estimated time that the design stages are going to start?

Mr. Haigh: We're waiting for Federal Highway Administration to declare their (inaudible) ...and once they declare their finding of no significant impact, then we'll be ready to move forward on the design and as I stated at the last meeting before we move forward on the design, we're going to come...

Ms. Iseri-Carvalho: (Inaudible).

Mr. Haigh: This body to talk about land acquisition.

Ms. Iseri-Carvalho: Oh, we need land?

Mr. Haigh: Because we want to resolve those issues before we move into design because once we move into design, then we're making commitment to Federal highway that we move forward.

Ms. Iseri-Carvalho: Okay, so you would need the land acquisition decision before you move...

Mr. Haigh: Before we move, yes, into final design.

Ms. Iseri-Carvalho: And the land acquisition was what part of Kawaihau Road?

Mr. Haigh: Well not, well Kawaihau Road actually...

Ms. Iseri-Carvalho: That was fine?

Mr. Haigh: That we're requiring that by Executive Order and the county already received it by Executive Order for housing purposes and I've been in conversations with DLNR and what the issue is as far as getting it identified also for the bikepath usage. We already have an existing easement within that property, but would be modifying that easement in order to try to obtain ADA grades for that...

Ms. Iseri-Carvalho: Which part of Kawaihau I mean...

Mr. Haigh: Okay, this is below Mahelona, it's a very steep vertical.

Ms. Iseri-Carvalho: Oh, okay, going up from...

Mr. Haigh: Yeah.

Ms. Iseri-Carvalho: Going up to the school?

Mr. Haigh: It's that old trail that kind of comes down from (inaudible) park area.

Ms. Iseri-Carvalho: Okay, so that area we have the existing easement?

Mr. Haigh: Well, we have the existing parcel has been, I believe, dedicated to the County by Executive Order for housing, that's the one that's also... it's a huge parcel and the upper part of the parcel, I believe, is intended for low income housing, but this parcel also includes kind of the gully area that comes down the hill and that's the area where we're going to have our switch backs in order to maintain ADA grades.

Ms. Iseri-Carvalho: Oh, okay, alright. So we'll follow up, if you can follow up Doug with respect to that question.

Mr. Haigh: Yes, we'll have a detailed answer.

Ms. Iseri-Carvalho: Yes, about which parcel because I think if those are part of the executive orders, we're doing RP's right? Right now for the...

Mr. Haigh: They're working on that...

Ms. Iseri-Carvalho: Housing, right?

Mr. Haigh: That's correct.

Ms. Iseri-Carvalho: Okay, so...

Mr. Asing: I..

Ms. Iseri-Carvalho: Check if that's part...

Mr. Asing: I have a question on that.

Ms. Iseri-Carvalho: Yes, Council Chair?

Mr. Asing: I guess Donald and Doug, are you satisfied that the residence in the area want to have that path done, and the reason for my asking the question is what happened to the houseslots you know, problem, so I'm... my reason for asking the question is if you're satisfied then you have enough documentation and enough information, you're comfortable then that's fine, if you don't, that's my reason for asking the question.

Mr. Haigh: We did not receive... I can't remember any comments, negative comments concerning that path. There is an existing path in the area already and what we're doing basically is upgrading the existing to make it more ADA compliant.

Mr. Asing: Yeah, I understand all of that.

Mr. Haigh: I hear what you're saying.

Mr. Asing: And that's not...

Mr. Haigh: I am confident, but it's not my decision.

Mr. Asing: My question, you know, where I'm coming from. I don't want to get into a mess like the mess that we got into with the Houselots area.

Ms. Iseri-Carvalho: I guess the follow up question would be and you can answer when you return these questions is just what efforts are you making to assure that the community wants the path and how much detail has been provided because I think the Wailua Houselot meeting was, I mean, part of the community had wanted it and didn't want... I mean, there was that, but more was like on the specifics when you actually talked about where it was going and exactly how much land, you know, that they weren't going to be increasing the road even though Donald said you know it wouldn't be safe if we don't increase it. But, you know, at the public meeting, they said we weren't going to increase it, and so you know then people started backing up and I said well, you know, (inaudible) and so, so there may have been initial support for it, but then when they actually found out the details and the design details of what it would encompass in order to do that there was a lot of opposition.

Mr. Asing: Yes, let me make it clear. I want to make it clear that I don't have any problem with it, if the community wants it, then that's what we should do, but I just want to let you know that my concern is if they want it, fine, let's do it.

Ms. Iseri-Carvalho: Okay, and you guys planning to do any other public meeting before you guys get into the design phase after the land acquisition? Or before the land acquisition?

Mr. Haigh: No, we do not plan any more meetings before the design stage. The meetings will be during the design stage besides the land acquisition issue meeting with the Council here.

Ms. Iseri-Carvalho: Okay, but I think we had also talked about notification too, yeah, at the design meetings, I mean nothing would be in stone until the public had an opportunity to comment, right? Okay, so if you can just provide detailed information about how that process will take place.

Mr. Haigh: Okay.

Ms. Iseri-Carvalho: That was question eighteen (18). Nineteen (19): the status of the Wailua Houselot spur, we had discussed this...

Mr. Haigh: And the Mayor has made the administrative decision, we will not move forward with that.

Ms. Iseri-Carvalho: Okay.

Mr. Haigh: It will not be included as part of the design package.

Ms. Iseri-Carvalho: Okay, and I guess the question was the existence of it in environmental assessment whether we needed to amend the environmental assessment to ensure that if there was any future change in Administration, that view would still exist regardless of who was in that position.

Mr. Haigh: We will respond (inaudible).

Ms. Iseri-Carvalho: Okay, you going follow up with that more specifically?

Mr. Haigh: Correct.

Ms. Iseri-Carvalho: Number twenty (20) is, when is the Keālia-Kapa‘a bikepath expected to open?

Mr. Haigh: We will respond to that.

Ms. Iseri-Carvalho: Ah twenty-one (21): please provide a copy of the entire bike/pedestrian contract file that includes all contract bids received.

Mr. Haigh: Now when you say contract file...

Ms. Iseri-Carvalho: I guess it would be...

Mr. Haigh: That because... that's every single piece of correspondence that ever occurred.

Ms. Iseri-Carvalho: Okay, we'll clarify that question.

Mr. Haigh: If you could because it would be about a ten (10) foot pile of papers.

Ms. Iseri-Carvalho: Well, we'll probably look through at least a one (1) foot. Twenty-two (22): please provide, yeah, we'll clarify...

Mr. Haigh: Thank you.

Ms. Iseri-Carvalho: Because there's certain parts there we have been concentrating on at these updated meetings and please provide a copy of all, okay, attendance sheets of the public informational meetings, that was twenty-two (22). I think there were some that you guys have provided...

Mr. Haigh: We've already submitted quite a few, but we'll go ahead and resubmit one last, one additional time all the ones that we have.

Ms. Iseri-Carvalho: Yes, alright. And then twenty-three (23): please state all the beginning dates for construction anticipated completion dates and the funding source and cost amount of each segment of the bikepath that has not commence yet. And I know you guys did provide early on, but I don't know if there has been any changes.

Mr. Haigh: There's been lots of changes...

Ms. Iseri-Carvalho: Yes.

Mr. Haigh: And at this point, we don't know yet, we just got a correspondence from Department of Transportation that they are working on finalizing the six (6) year STIP.

Ms. Iseri-Carvalho: Okay.

Mr. Haigh: And that's going to be occurring in late July. That's when they'll be getting the information in late July, so we really won't be able to respond in detail to that question late July and we'll explain this in our respond...

Ms. Iseri-Carvalho: And just, yes, late July you'll be able to respond.

Mr. Haigh: Yes.

Ms. Iseri-Carvalho: That'll be fine. Um, and I guess give us an update as to what is occurred because I think from the last report you gave, you were saying that there were changes and then we still need to wait to get our final information.

Mr. Haigh: Lots of changes and it is not good news.

Ms. Iseri-Carvalho: Yes, okay, so you'll let us know that, good or bad, you'll let us know. And then the signage was the question with DLNR, so we can respond to remember the monk seal one. Please provide all location of any signage along the bikepath and we also had questions about the ADA... (change tape) ...the Council Chair had brought up about speed if that's still being discussed in the rules, that's fine.

Mr. Haigh: Okay, I'm glad you're clarifying because I was thinking really of just responding concerning the interpretive sign.

Ms. Iseri-Carvalho: Oh, yes, if you could respond.

Mr. Haigh: But as far as the...

Ms. Iseri-Carvalho: The usage rules.

Mr. Haigh: Usage, it's... there's some, you know, okay.

Ms. Iseri-Carvalho: Okay?

Mr. Haigh: We'll get you the plan on that.

Ms. Iseri-Carvalho: Alright, any other questions or any... Yes,  
Mr. Bynum?

Mr. Bynum: So we went over the twenty-four (24) questions that were included in the most recent correspondence and some of those questions have four (4), five (5) questions inside of them, so it's a lot of questions, and if I heard you correctly, you need to consult, to answer some of these questions, you need to consult with a number of people. Can you tell me who just... off the top of your head, who was it that you need to correspond with to get answers to some of these questions.

Mr. Haigh: Okay, we're going to be working with Kaua'i Department of Transportation, the County Attorney, within Public Works, construction management section of engineering is going to be working on this also, and all these people are very busy, so we in our deferral request, we stated that we hope to get the majority questions in two (2) weeks and that is kind of optimistic, but at least at that time we will have a response and tell you the status of where we are on getting the answers.

Mr. Bynum: So some of these people are in the County and some are in the State or Federal Highways...

Mr. Haigh: And that's correct.

Mr. Bynum: Consultants, or contractors, and so you have to like write them a letter and e-mail and, you know, kind of...

Mr. Haigh: We assigned this to my new helper and he's... we've already sent out quite a bit of correspondence, that's the first step is to send out the correspondence to get people working on the answers and then he's going to start working on the answers that we have the information, of course, I'll be involved.

Mr. Bynum: Okay, and you're targeting that you think you could have most of this done by the 27<sup>th</sup>?

Mr. Haigh: I said the majority.

Mr. Bynum: Majority.

Mr. Haigh: Majority is more than half, it's optimistic. I'm hoping that we can, there's... as you mentioned some of these questions are very complex when you get into the detail and there's like three (3) or four (4) questions within one, but we're going to do our best and at least be able to give you the status of how we planned to be able to respond and how it's moving forward.

Mr. Bynum: Okay, thank you.

Ms. Iseri-Carvalho: Thank you Doug and Donald, you know, for trying to answer all of these questions. I mean, the reason why these questions are really important is because things are being dealt as we're discussing it. You know, things are being... I mean they are happening at the same time and, so, you know, and a lot of these questions they... that we're asking, I mean we should've had the answers before we're building, you know, about whether we need an amendment, whether we need this, whether we got to go SMA, whether we got to amend the EA, I mean all of those questions, we should've had before the project even started. I mean, I think, because these are processed questions, so that you know that's my concern that maybe we might not have done it right early on, but we're learning and the next phases that come up, you know, we'll have all these things in place and we'll make sure that we follow all the correct process. So it won't be challenged in court and, you know, we won't have to return Federal funds or, you know, we'll get the support of other agencies like, you know, DLNR or you know especially with the setback and with the monk seals habitats. We'll get the support from SHPD as far as the burials because we've had inquiries about the burials and the bones that they found and how we're handling. So, you know, we can garner a lot more support for the project as the new phases come up. Any other questions? If not, thank you very much and we don't need to send over another list, yeah? You have all the questions and there is just maybe a couple that we added about the public meeting, but otherwise these will keep you busy.

Mr. Haigh: I don't need any more questions.

Ms. Iseri-Carvalho: Yes.

Mr. Haigh: You need answers.

Ms. Iseri-Carvalho: If there's anyone and is there anyone else? Ian left the building.

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

Ms. Iseri-Carvalho: Any further discussion? If not, what we'll do is I'll ask for a motion to defer.

Mr. Furfaro: Oh, I'm sorry I had one...

Ms. Iseri-Carvalho: Oh, you do? Okay, I'm sorry Jay. Go ahead. Did you have a question for either of them?

Mr. Furfaro: No, I'm just clarifying our question. The one piece we wanted to understand if some of the savings was reflected in the interpretive signage and the graphics, and if it was something that someone other than the general contractor was doing, I just wanted to clarify that, that was what that question was.

Ms. Iseri-Carvalho: Okay.

Mr. Furfaro: Thank you very much.

Ms. Iseri-Carvalho: You got that Donald? Okay, anything else Councilmember Furfaro?

Mr. Furfaro: No, that was it.

Ms. Iseri-Carvalho: No, okay. If there's no other discussion, the Vice Chair would entertain a motion to defer.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Kouchi, and unanimously carried, PW 2007-3 was deferred.

**CR-PW 2007-17:** on PW 2007-6      Communication (5/7/2007) from Mel Rapozo, Public Works Committee Chair, requesting agenda time to have experts brief the Committee members on issues regarding the seawall fronting the Pono Kai development in Kapa'a as it relates to the impact of the seawall on the shoreline and the proposed Kapa'a-Keālia bicycle/pedestrian pathway project.

**[Received for the record.]**

**CR-PW 2007-18:** on Resolution No. 2007-80

RESOLUTION AUTHORIZING THE SALE OF A PORTION OF REAL PROPERTY IDENTIFIED AS TMK: (4) 4-4-04-03: PORTION OF OLD RAILROAD RIGHT-OF-WAY TO ABUTTING LAND OWNERS, KAWAIHA DISTRICT, COUNTY OF KAUA'I

**[Received for the record.]**

There being no further business, the meeting was adjourned at 6:40 p.m.

Respectfully submitted,



Darrellyne Simao  
Clerk Typist

APPROVED at the Committee Meeting held on August 1, 2007:



---

MEL RAPOZO  
Chair, Public Works Committee

