

MINUTES

PUBLIC WORKS COMMITTEE

June 27, 2007

A meeting of the Public Works Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, June 27, 2007, at 9:53 a.m., after which the following members answered the call of the roll:

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

EXCUSED: Honorable Shaylene Iseri-Carvalho

Minutes of the May 16, 2007 Public Works Committee Meeting.

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Bynum, and unanimously carried, Minutes of the May 16, 2007 Public Works Committee was approved.

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

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

MEL RAPOZO, PUBLIC WORKS COMMITTEE CHAIR: Just for the Committee's information, I did meet with the Administration (Doug Haigh and Kylan Dela Cruz) yesterday and in front of you, you should have all the responses or the response from the June 25... I am sorry, the last communication that we sent over and there are a lot of questions that cannot be answered at this time. The Administration is still waiting from... assistance or responses from either the contractor or other agencies, so it is my intent to defer this again. However, if anyone has any questions for Doug, I will bring him up, so he can answer any questions that you may have. I did request the presence of the Planning Department and I am hoping that they come. Again, they need to be here and if someone could call because I do have some questions for the Planning Department.

I don't have anything for Doug today, so before we go there, anybody in the public?
Mr. Mickens?

There being no objections, the rules were suspended.

GLENN MICKENS: Thank you Mel. For the record, Glenn Mickens. I (inaudible) to be able to see those responses that you have and I didn't get a chance to get a copy of those yet, but I would be happy to get those. You have a copy of my testimony and I will read it for the viewing public for the record. I would once again like to compliment Public Works Committee Chair Mel Rapozo for keeping this communication on the agenda. As I said in the previous testimony, I cannot ever remember any communication staying on the agenda for the many months that 2007-3 has been before you and without the leadership of Councilmembers Rapozo and Iseri-Carvalho trying to get answers to at least 25 very relevant questions about this path, this project would have moved forward and letting it move forward without their concerns being addressed would have created more problems and cost the taxpayers a lot more wasted money. As Jay so vividly pointed out, almost everything that this Administration does is ready, fire, aim. If the planning and design stages of this path had been properly done, there is no way that we would have been bogged down wasting time and money as we are now. We have spent months on this white elephant just trying to get from Lydgate Park to Pono Kai and one road block after another keeps surfacing. We keep hearing that an EA was done on all prospective routes, but how is this possible when each route shows another problem. Was the correct information given to get an accurate EA. As I said before, we are trying to retrofit a path in an area already saturated with commercialism and it won't work. The dream of a path following the shoreline is just that, a dream and for me a bad one.

Obviously, no one in planning or design looked at the big picture or they never would have considered this route. However, the designers get paid no matter what they put on paper, who changes have to be made, so blame doesn't stop at their desk. We haven't even gotten resolution to the horse problems associated with this path nor has the route by the golf course been settled. The spur to the homelots, houselots was shut down and the crossing of Kūhiō Highway by Kintaro's Restaurant is still in limbo. Another trip signal from what Donald said for a casual bike rider to further back up traffic, that makes a lot of sense. Please, let's live in the real world and stop using our valuable time, resources and money for a project that is unrealistic at best and not any priority list to benefit the masses of citizens on Kaua'i.

Mr. Rapozo: Thank you Glenn. Any questions for Glenn? If not, thank you very much.

Mr. Mickens: Thank you Mel.

Mr. Rapozo: Bruce?

BRUCE PLEAS: Good morning, Bruce Pleas for the record. Let's see. Okay, in today's *Garden Island* I will read. I have just reading to do at this point. Rapozo and Iseri-Carvalho also reiterated that the shoreline certification had to be current in line with the State law to protect the coastline from erosion. This is about the Planning Commission okays the second phase of the path. County officials have said that certifying the shoreline every year was not feasible. County Planning Department officials said as much in a department report the Commission used before acting yesterday. The department said that there is no State or County requirements to maintain a current certified shoreline throughout the construction period on a project. Now this is true. You don't have to maintain your shoreline certification during a project, but State law... this is Title 13, DLNR, subtitle 10, Land Division, Chapter 222, Shoreline Certifications, subchapter 2, Section 13-222-11 (validity of certified shoreline). A) Certification of the shoreline shall be valid for a period no longer than 12 months from the date of certification. That is State law. County: shoreline setback rules and regulations, Planning Department, County of Kaua'i, Section 6 establishment of the shoreline. Maps showing the location of a shoreline shall be based upon actual field surveys conducted by a registered land surveyor within six (6) months prior to filing of an application for any construction or use relative to lands adjacent to an inland of the shoreline under these rules and regulations. These are the guidelines for State and County. What I would like the Council to look at and verify is the timeline for your shoreline certification on this project. I believe 2002 was the last shoreline certification. I would like to know the exact date and what is the date of the building permits submittal and acceptance.

The shoreline certification is only good for 12 months, so the date of the permit, submittal and acceptance has to be within 12 months of the shoreline certification. I am not here about the path or anything. I am here about the precedent setting and what is happening with the shoreline certification. If we are allowed the shoreline certification to be ignored by the County, it sets a precedent across the whole County and we end up in trouble. All I want is that the shoreline certification is verified to have been done within 12 months of when the building application for the bikepath was done. That is all I want verified. If it is not, they have to go back and do a shoreline certification. This has been done on resorts that I have worked with and everything. You have to have it before you can get your building permits.

Mr. Rapozo: Thank you Bruce.

Mr. Pleas: Thank you.

Mr. Rapozo: Hang on. Mr. Bynum?

TIM BYNUM: Bruce, I just would encourage you to have a close look at the public record. This question was first raised at Council in January. It was

discussed repeatedly on a number of occasions and the determination was detailed in this yesterday or in the staff report was that in this instance, the shoreline certification was used properly and there was not a need to renew that for building permit. The laws that you cite is for what purpose. Those timelines are for the purpose and this instance of the SMA application and this has been discussed repeatedly and addressed repeatedly and I think the answer is clear.

Mr. Rapozo: Thank you Tim. Anymore questions for Bruce? If not, Bruce, thank you. I hope you hang around because I have a real short presentation later and it will appear that you and I probably met and conspired to put it together because exactly what you said is what I am trying to say. The problem, Bruce, is that the interpretation that you and I have is different from the interpretation that the Planning Commission has. Again, I think my slides... I think you explained it quite well. The reality is that... and we have Imai here today. I saw him walk in and he probably walked out when he heard the topic, but he will... we will try and get it from him and I have all of that on the chart. I agree with you 100%. I think that the intent of the law, and Tim is right, we have discussed this time and time... we've asked the question, we've gotten different answers, so it is what it is. The Commission has ruled yesterday, you are right, you read accurately, they did approve the amendment. I am in total agreement with you that it is not about the path, it is about the process because what we did yesterday... with the Planning Commission's ruling yesterday, we just opened the door for anybody that has a valid SMA permit today regardless if the shoreline certification was done years ago, will be able to build with that old setback. That is what we have done and I don't know if they realize what they've done. I have spoken to Commissioners whether they agree or disagree, that is what we have done. We have set a precedent today for not the bikepath which is a good project, but for the projects that are in development today in planning stages in lots that have done their SMA permit, we have allowed them to basically keep that certification as long as it was valid at the time of the SMA permit and that is what basically we have set. So I appreciate your comments and I hope you stay around and we will discuss that a little further.

Mr. Pleas: I will be here, but within the last year, the Planning Commission has required developers to redo the shoreline certification that is on the record.

Mr. Rapozo: That is and I think if you talk to past Planning Directors... in fact, again, you will see some... in my presentation, you will see what I am trying to get across and that, really, nobody that has authority to do anything is listening, so, anyway, thank you very much. JoAnn, you have a question?

JOANN A. YUKIMURA: No, just a comment.

Mr. Rapozo: If no question, then thank you Bruce. Anybody else? Caren?

CAREN DIAMOND: Aloha, good morning, Caren Diamond. Sorry, just on a practical level and certainly on a legal level, shoreline certifications are good for one year, but on a practical level for the County, if you look at using a 2002 shoreline certification, what you have today is a path that is sited where erosion is occurring right there and you have a bikepath sited in a hazardous manner that is hazardous. Whether it is something that is used for a public purpose or a private purpose, it doesn't really matter. The safe siting of structures is crucial, so it is really important that things like that don't happen. This isn't a novel thing that is setting a precedent. This is how the County has been operating, so that in Wainiha right now, we have a project that is going on that is using a 1995 SMA permit that is being developed on the shoreline right now. No new shoreline certification, no new nothing. That is just how things have been happening right now and there are a number of structures that are very hazardous in their siting right now. I really thank Councilmembers Rapozo and Iseri-Carvalho for really taking up this issue and I can urge you to continue on because shoreline certification and the safe siting of our structures is really crucial.

Mr. Rapozo: Thank you. Any questions for Caren? If not, anyone else? You have a question JoAnn?

Ms. Yukimura: Yes, I agree with you that it is... I don't necessarily agree that that is what the law requires right now, but I think that with the shoreline setback bill, we are going to be closing that loophole. Isn't that true?

Ms. Diamond: Yes, hopefully we will, but right now, the State is really clear. A shoreline is valid for 12 months and that is it.

Ms. Yukimura: I don't disagree with that. The thing is, how it interfaces with the County planning process and I think that is what we are addressing in the shoreline setback bill to make it very clear whereas, right now, it is pretty unclear.

Ms. Diamond: It really needs to be addressed.

Mr. Rapozo: Thank you. Tim?

Mr. Bynum: I just also comment... clearly, this whole circumstance (inaudible) now that we have been talking about for more than six (6) months is complex and complicated and it is in flux. It is very, you know, in a good sort of way and that is what I love about public process. We have this discussion. We find errors of flaws in the way things are, but we also have to go by the law the way it is currently structured. Well, we are working on changing that which is a good thing and the Planning Commission has latitude about how they do things and I think that they are being educated and changing the way they put down conditions and expectations. So we have to make a distinction between the way... what the law says currently and whether things are being followed properly or not and, you know, what we need to do to be better stewards of the shoreline and, of course, your

involvement is very helpful along those lines, but we have to be clear and accurate about the way things are and move judiciously to change things the way that they should be. So one of your comments Caren was, and I agree with you that there are structures that have been built that are hazardous to the shoreline. We just had Chip Fletcher and Dolan Eversole here who reviewed the current alignment of the bikepath that is under construction and basically endorsed it and say that they didn't see any problems along those lines. So...

Ms. Diamond: I remember Chip saying that the bikepath might last for two (2) to ten (10) year, so if it was sited with shoreline erosion in mind and cited with proper setbacks and sited from a current shoreline certification, it probably would have a lot longer lifetime and people's money would have been spent a lot wiser. If we have a large erosion event, 25 or 30 feet of coast can go over a couple of days and the bikepath will be gone just like that. I think government has an even higher responsibility to site public structure as well.

Mr. Rapozo: Let's try to get back. Any other questions for Caren pertaining to the item on the agenda? Thank you very much Caren. Anyone else? If not, I will call the meeting back to order.

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

Mr. Rapozo: Before entertaining a motion to defer, is there...

Ms. Yukimura: Planning is here.

Mr. Rapozo: Okay, Planning, Mr. Aiu...

RON KOUCHI: Before you suspend the rules, I just had a comment. I'd like to say that I did also hear Dr. Fletcher's presentation with the analogy of, if, you know, he jumps off the cliff, does that mean I am going to jump off the cliff. You know, I have been impressed with some of the work he did and I don't particularly think that he had a particularly good day the last time he was here because I don't buy into his comment of, well, if it last two (2) years, at least you had the benefit for two (2) years. What kind of philosophy is that? Then just do anything and if it was there for a day, then the public had it. I thought that was absolutely crazy and while I support a lot of the work that he has done and acknowledge the expertise that he has in this coastal erosion area, certainly that philosophy is not one that I support and not one that I adhere to and want to be clear about that. Thank you.

Mr. Rapozo: He also stated that his first recommendation was to purchase Pono Kai and I also... I don't have the...

JAY FURFARO, EX-OFFICIO MEMBER: Not the whole thing, just one building.

Mr. Rapozo: Yes, which he thought was a million dollars and I don't do this to demean him or to belittle him, but I have to say and I don't have it in front of me and it will be available at the next presentation that we actually do. But I have his official recommendation from 2005, his written recommendations that went to the consultant and I will tell you, it is a 180 degree turn from what he spoke at the last meeting. I have it writ... it is his own paper that stated some recommendations that we choose not to follow, but it is interesting that when he came at the last meeting, all of a sudden, it is all good. So, again, and this is just really to validate what Ron is saying. It is based on the person that speaks and their opinion, but I am not here today to debate opinion, I am not here to debate the legal issue, I am just trying to figure out what is the process. I know Glenn always says thank you to Mel Rapozo, but you should be thanking the Administration for not answering the questions because if they did, this would be gone. If we had gotten the answers on process, it would be gone. This matter would not be on the agenda, but it is here because every time we ask the question, we either get a non-response or a different response and I am so happy that we have Planning here today because it is really hard to catch you guys and get you here on a Wednesday. And I apologize that Ian is not here, but I am hoping to settle that matter once and for all. Okay, this is the...

Ms. Yukimura: I just want to have comments in response to what has been said. You know, there were different. You know, there were different parts of the bikepath that were spoken about at different times at that meeting. One of them was... I think at one point, Dr. Fletcher said, I've only really... in this inspection looked at the Keālia portion and I thought he was speaking about that being a reasonable location between... you know, you only have so much room between the highway and the sandy area, so I would like to just remember that we can't apply his comments to every portion of the bikepath.

Mr. Rapozo: Exactly, again, you know, I am just looking at a Committee report from 2006. This goes way back before... it is more than months, this has gone years and Dennis Wong was here, well respected expert and I have it right here. Councilmember Rapozo asked whether a 12 foot wide concrete path is considered a structure. Mr. Wong or Wine or whatever his name is said it is wiser to have an erosion study before any development... so my point is this, I can take stuff out of every expert, put it together and validate my opinion, but what I am trying to do right now and it is taking a long time because this has gone on for so long is to put everything together in a comprehensive chronological order which I fully intend to send to another agency outside of the County and the State because we are not getting the results or the answers here. That is what we are trying to do, Councilmember Iseri-Carvalho and I are trying to work at this, put something together that includes everything, not just the context of what one guy said on this date and one guy said on that date, but put it all out and somebody review the entire file and say, you folks did it right or you folks did it wrong. Any other comments before we suspend the rules? Ron?

Mr. Kouchi: And the comments that I was referring to from Dr. Fletcher were specifically when he and Mr. Eversole was here talking about the Pono Kai segment because after his comment, then Mr. Eversole said that without any certified permits or paperwork, then DLNR may not be able to certify anything in the first place. So, you know, that was the specific topic and the specific attribution as to what would last (inaudible) that I don't agree with.

Mr. Rapozo: And that will be discussed at the next agenda item which is the Pono Kai seawall. At this time, I will have... we will suspend the rules and we have Mr. Aiu here. It is not your first time at Council, I believe, right?

There being no objections, the rules were suspended.

IMAIKALANI AIU, DEPUTY PLANNING DIRECTOR: No, it is.

Mr. Rapozo: Any questions for Mr. Aiu? No questions, okay.

Mr. Aiu: Awesome.

Mr. Rapozo: No, no, from them. I have some questions and my questions is... let me do this. Nobody has any questions for Imai? You do, okay. Mr. Furfaro?

Mr. Furfaro: And I am going to make them in kind of a rather broad statement because, quite frankly, I think we've got several things all mixed up in this agenda item and I did hear the Chairman and I am sorry that I am speaking as a non-member, ex-officio of your Committee. But it was, in fact, on my recommendation that we sent this thing back to the Planning Department for the process in reviewing the permit and so forth. I want to ask you, in doing such, it was my hope that we would get some clarity on some of the permitting and you've closed the hearing and I guess what I would like to ask is, during that process, did you get comments back from any of the agencies that brought up any red flags about the permit process?

Mr. Aiu: Let me think about... I would have to honestly refer back to the full file and see what Mike did on it.

Mr. Furfaro: I am talking since I encouraged this to go back to the Planning Department, so that we could get some closure on this Public Works project. I will state my question again to you as the Assistant Director of Planning. Did you get commentary from agencies on this particular review of the applicant that set any red flags off? Corp of Engineers, Fire Department, all of the particular agencies that are supposed to make commentary when you open up a public hearing.

Mr. Aiu: Not that I recall, but to be absolutely sure, I should look at the file.

Mr. Furfaro: And could it be a... in my opinion, could it be a situation which perhaps other than the questions we directed at the Pono Kai seawall, is it possible that that was one of the reasons that the Commission felt they could close the hearing because they got no red flag responses from these agencies?

Mr. Aiu: Either that or they felt that the comments if there were any, could be handled with conditions.

Mr. Furfaro: So we are very vague here Mr. Imai. You are telling me that you don't know what the commentary was on any of the red flags and when I asked if there was anything specifically that said that they could not recall any red flags being raised, you then said, if I can revisit this or the Commissioners felt that there wasn't anything there that they couldn't handle without additional conditions? Did they come up with any additional conditions?

Mr. Aiu: No.

Mr. Furfaro: Mr. Chairman, thank you for letting me ask those questions and that is the review process and clearly, you know, that was one of the reasons I sent it back to the Planning Department, so that they had an opportunity to solicit other commentary from other agencies.

Mr. Rapozo: Thank you.

Mr. Furfaro: Thank you.

Mr. Rapozo: Councilmember Yukimura?

Ms. Yukimura: In preparing for this, did you review the file?

Mr. Aiu: Did I, no. This one went to a planner.

Ms. Yukimura: Okay, but then maybe you could send the planner here or have them be here.

Mr. Aiu: He is on O'ahu today.

Ms. Yukimura: Okay, but you didn't get to look at the file itself?

Mr. Aiu: I didn't review the file myself personally.

Ms. Yukimura: Okay.

Mr. Rapozo: Well, that is fine.

Mr. Furfaro: And then as an ex-officio, non-member of the Committee, I have one more question. You've touched on it and I am just going to raise the question. Has there been any luck finding the particular documentation regarding the Pono Kai...

Mr. Rapozo: We will have that at the next item.

Mr. Furfaro: I guess what I am leading up to... will Pono Kai become a separate item?

Mr. Rapozo: It is a separate item and it will be discussed right after this item.

Mr. Furfaro: Because I do want to share with the staff... I asked Councilwoman Iseri-Carvalho three (3) specific questions that I did not see get recorded in this transmittal as far as responses and that is why I asked the question.

Mr. Rapozo: Oh, okay.

Mr. Furfaro: You were not here last week, but they were specific to Pono Kai and I have to concur with you that if you are going to make the seawall a separate item, I think that is exactly where it should be.

Mr. Rapozo: It is and it is an entirely different circumstance.

Mr. Furfaro: They were sent in the questions.

Mr. Rapozo: The one that went for Pono Kai?

Mr. Furfaro: In this communication.

Mr. Rapozo: Okay.

Mr. Furfaro: So that is why I followed up on...

Mr. Rapozo: Thank you Mr. Chair for letting me have some time. Anybody else? Any questions? You know, Imai, what I am going to do... Mr. Aiu, I am sorry.

Mr. Aiu: Imai is fine.

Mr. Rapozo: We will call the meeting back to order and I am going to relinquish my chairmanship over to Mr. Bynum because I cannot be the Chair and

do the presentation, so I will relinquish the Chair to Mr. Bynum. I will do a presentation and Mr. Aiu, you can sit right there and watch and it is really a very generic presentation and it is basically quoted right out of our laws and then I had some specific questions... I know that you are a former Planning Commissioner and you are now the Deputy Planning Director, so I just have some questions and it is real simply. It is yes or no. Have we done this? Have we done this? Have we done this and that is all that I am asking for as far as it pertains to the amendment to the SMA permit which until today, we have not really gotten a response as to the definite process, so this is really trying to help me understand the process because, you know what, I may be totally off base here, but I need to be told that. Okay, thank you. Mr. Bynum?

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

Mr. Rapozo: Thank you again and I appreciate the patience. I put together some slides really just to... more for the public. I know that many of these slides have been seen before. It is not a very long presentation, but it is one that I need to put out there because I am trying to determine what is the actual process. I think we have all been asking that question, what is the process as far as an SMA permit and an SMA amendment which was recently approved yesterday by the Planning Commission as far as the amendment for the bikepath. It was quite disturbing to read what was approved yesterday especially since the Planning Department... we will go through some of these slides, but let me just start by saying and this is H.R.S. and I know that Bruce read some text that was basically out of administrative rules, but this the actual H.R.S. Chapter 205 regarding the CZM (coastal zoned management)... shoreline setbacks... (inaudible) of the shoreline, the Board of Land & Natural Resources shall adopt rules pursuant and so forth... it talks about the process to establish the shoreline, but the important thing and I think this has been said several times today by various speakers provided that no determination of a shoreline shall be valid for a period longer than 12 months. That is the State law that is not a County rule. That is a State law and that is not in dispute and I know Councilmember Yukimura referenced as far as the application of the S... as far as the permitting, but this, in fact, is the State law, so when we talk about a shoreline... when we talk about a shoreline in any of the discussions, it is really a shoreline that is valid for only... a certified shoreline has been valid for only a period of 12 months.

In the Public Works Committee meeting on June 13, this was the discussions that were asked of... Mr. Costa was here, the Planning Director, and really the line of questioning was about the process for an amendment to the SMA permit because it had been discussed in many other meetings prior that you treat an SMA amendment as you would a normal SMA permit. That is not in dispute and, in fact, Mr. Costa said, except... the only exception is that there is a permit number assigned already because you already had an SMA, an existing SMA permit and a permit assigned, so you are not generating a whole new permit. You are doing an amendment, but the procedure is the same as if it was a new application. That is

not in dispute. We had said that many times. Now, whether or not that is the practice at the Planning Department is not my concern. It is what is the process. The process is right here and this is verbatim... this ain't something I drew up. It is... except that there is a permit number assigned and a permit assigned, so the permit number doesn't change, so you are not generating a whole new permit, but you are doing an amendment, but the procedure is the same as if it was a new application. My daughter, my nephews in the fifth grade can read that and understand that. The lawyers make it difficult, but the normal human being can understand that.

SMA rules, regulations of the County and now we are going into the County rule and this is where I want Mr. Aiu to pay attention because I am going to ask as we just say in the amendment application. When you file an amendment, any person proposing a use, activity or operation required to be subject to assessment shall be reasonable filing the following with the agency. Number 1, a tax map key description of the property on which the applicant proposes his project. Number 2, a plot plan of the property drawn to scale with all the proposed structures shown thereon and any other information necessary to a property determination relative to the specific request. Number 3, a written description of the proposed project and a statement of objectives. Number 4, a statement of the valuation. Number 5, an EIS if required under Chapter 343 H.R.S. or when required by the Planning agency. It is "E," I am sorry. (F), if required by the agency, a written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's coastal zone management act and the guidelines of the special management area as provided herein. (G), a shoreline survey when the parcel abuts the shoreline and when required by the Planning agency. (H), any other relevant plans or information required by the agency, but (G) is important. A shoreline survey when the parcel abuts the shoreline and when required by the Planning agency.

This was meeting at the Planning Commission and this is what is in the newspaper *Garden Island*. Meeting at the Līhu'e Civic Center, the Commission approved the Administration's request for amended permits to put roofs on six (6) rest areas. That is not true. The recommendation was for roofs on four (4). Build a horse trail... is Kaipo in here? Good, Kaipo, I am glad you are here. Build a horse trail and align... although I wasn't present at the last meeting, I watched it on t.v. Build a horse trail and realign some parts of the path within the second phase... a 4.3 mile portion of the Kapa'a to Keālia and which is part of the 16 mile project, the Planning Department recommended approval of the amended SMA use permits and a shoreline setback variance sought by the County Administration. This was kind of interesting. I get more credit than I deserve, but Rapozo and Iseri-Carvalho, of course, because we are the champions, right? We have been pegged the people that are trying to kill this project. Rapozo and Iseri-Carvalho also reiterated the shoreline certification had to be current in line with a State law to protect the coastline from erosion which is what I think the intent of that H.R.S. is. I didn't think that was there just to... for fun. But County officials have said that certifying

the shoreline every year was not feasible. Oh, wow, we can override State law if it is not feasible. I think this is one of the most ridiculous statements I have seen because I use the analogy of Wailua stretch, Coco Palms. It is feasible to have a speed limit on that road at 35 m.p.h., I don't think so. There is nothing there. There used to be a hotel, so at that time it was, but today it is not and it is a 35 m.p.h. speed zone. Is it feasible to have a 35 m.p.h. speed zone... set up a speed trap, so we can site people or is it feasible for that to be a 50 m.p.h. speed zone.

Okay, so somebody in the County decides, hey, you know what, that is feasible. So, you know what, it is okay to go 50 m.p.h. because somebody in the County... some County officials said that it is not feasible to have a 35 m.p.h. speed limit and many of you may be giggling and laughing saying that is apples and oranges, but it is not. We have a State law and the County doesn't have the authority to say, that is not valid because it is not feasible. That is not. H.R.S. 205, determination of the shoreline provided no determination of a shoreline shall be valid for a period of longer than 12 months. So who are we to arbitrary say... because it is not feasible, we are not going to abide by it. Who are we? Who is that County official? I am dying to find out and I hope Imai can help me with that. At the request of the Commission, Chairman Daligdig III, the Commission approved permits for roofs of the four (4) rest areas that were recommended by the Planning Department and roofs for a fifth and sixth rest area. Wow. They even went beyond what the County Planning Department was recommending because they felt that it was okay. Kaipo, this is for you. For the 4.3 mile project, the Commission also approved the realignment of a part of a 1.8 mile horse trail in a section mauka side of the Kapa'a Park due to erosion issues and elimination of an exit to the Kapa'a Lookout due to safety concerns. Now, I heard Kaipo's... the Chair's comments at the last meeting and I have to agree with him, Mr. Chair. What happened to the process that we all agreed on? That is all that I have for the presentation.

I will go back to my seat Mr. Bynun and you can... if you want to, you can give me back the chairmanship.

Mr. Bynun: Thank you.

Mr. Rapozo: I know that Tim has a presentation as well.

Mr. Bynun: Thank you Councilmember Rapozo and you may have the chairmanship back.

Mr. Rapozo: Thank you and I just put that in because I wanted to... after reading the article today, actually, I talked to Doug yesterday and I basically said, we are going to defer this matter, but when I read the article today and seen that the Planning Commission had approved it and we still have questions. I guess what I am seeing is that the process is real simple now. I talked about the precedent setting decision yesterday is really... if you look at the... Peter, don't put the slide back on, so I don't have to... if you look at the modification... if you look at

the amendment that was provided and this is it, it is memo basically saying that they wanted to modify the SMA permit of 2004 (that was approved January 2004) and they had five (5) items, very broad, and according to Mr. Haigh, this was what was required of Buildings by the Planning Department. So Mr. Haigh did what he was supposed to do and he submitting what Planning requested and it was submitted and at the end of the day it was approved.

My question is, as I talked about the SMA rules and this is where... let me suspend the rules at this point because I wanted to ask Mr. Aiu as the Planning Department... you saw it on the board the Section 7 which is the assessment procedures and the requirements that is required for an SMA application. You also saw Mr. Costa's testimony that an amendment to an SMA application is no different than the original application except you keep the same number. Maybe Ian misspoke, I don't know, he is the Planning Director and I kind of accepts what he says. So my question is, have we complied with our own SMA rules and regulations, Section 6 and Section 7 or those requirements met. I am talking about (A) the tax map key, (B) the plot plan, (C) a written description of the proposed project, (D) a statement of the valuation, (E) an EIS if required, (F) if required by the agency a written description of the affected environment, (G) a shoreline surveying when the parcel abuts the shoreline, and (H) any other relevant plans or information required by the agency. Have we complied with all of that County rules? And remember I said earlier that it is just a yes or no.

Mr. Aiu: We did not have a shoreline survey.

Mr. Rapozo: Did we have the tax map key?

Mr. Aiu: Yes.

Mr. Rapozo: Did we have the plot plan drawn to scale?

Mr. Aiu: Yes.

Mr. Rapozo: And a written description of the proposed project?

Mr. Aiu: Yes.

Mr. Rapozo: A statement of the valuation?

Mr. Aiu: That one I don't honestly remember, but I would have to check the file.

Mr. Rapozo: I am looking at it here and I don't see it. I see the maps, but I don't see a valuation. An EIS if required under Chapter 343 was... or when required by the Planning agency? Do you know or did we even bother to check if, in fact, that the EA needed to be amended?

Mr. Aiu: Again, I would have to talk with the planner.

Mr. Rapozo: And that is fine. Written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's coastal zone management act and the guidelines of the special management area as provided herein? Is that here? Unless I am missing something, this is what I got from Planning. This is it and I don't see that. A shoreline survey, obviously, we didn't have and any other relevant plans or information required by the agency. I am... I didn't realize and I wish I had known. I should have paid more attention. In fact, yesterday, I guess I was meeting with... I don't know what time the Planning Commission meeting was, but I really wished I had... I saw the note and I obviously got here after-the-fact and I didn't get a chance to... I wish I had been there, but I don't think it would have mattered because I think this matter had been decided well before the meeting yesterday especially when you see the approval of additional roofs against the Planning Department's recommendation. So Imai, that is what I was looking for, basically, yes or no. I don't know what we do next. I can tell you that it is disturbing, but I am glad that we finally got that settled once and for all. We have been asking that for a long time and as I discussed with Doug the other day, you know, it is really not about the past and I think Mr. Pleas talked about that earlier today. It is not about the path, it is about the process and I almost can hear Kaipo in my younger years watching these things on t.v. or... I can remember that he used to really drag out the enunciation of "process" (change side of tape). Why is it so difficult to follow "process" and that is what gets me. Is there anything that you want to add to that, if not, I am going to open it up for questions.

Mr. Aiu: No.

Mr. Rapozo: JoAnn?

Ms. Yukimura: Yes, Mr. Aiu, the application was for an amendment that would approve roofs, is that correct?

Mr. Aiu: Yes, basically, yes.

Ms. Yukimura: So it wasn't about what distance the roofs were going to be from the shoreline, was it?

Mr. Aiu: No.

Ms. Yukimura: I mean, because the foundation was already in?

Mr. Aiu: Yes.

Ms. Yukimura: So, I mean, does the Planning Department go back to a

developer who has put in a foundation and a structure that abided by all the requirements and say, well, now it is longer than one year from the shoreline certification and you need to do a new shoreline certification?

Mr. Aiu: You know I can't speak to that exact scenario in a case history. I am not that familiar with it.

Ms. Yukimura: I am talking about a completed structure. I am talking about a completed structure that was done all to scale.

Mr. Aiu: And, okay, a completed structure done all to scale and then the applicant wishes to...

Ms. Yukimura: And then I mean the shoreline certification is old.

Mr. Aiu: Okay.

Ms. Yukimura: Do you impose another requirement for a shoreline certification after the structure is built?

Mr. Aiu: After a structure is built?

Ms. Yukimura: Yes.

Mr. Aiu: No.

Ms. Yukimura: Okay, so there was some logic in not requesting a shoreline certification for roofs.

Mr. Aiu: Yes.

Mr. Rapozo: The application was not only on roofs.

Ms. Yukimura: Well, okay, so what else was it for?

Mr. Aiu: Realignment of areas of the bikepath.

Mr. Rapozo: Does that bikepath abut the shoreline?

Mr. Aiu: Yes.

Mr. Rapozo: That is what I thought.

Ms. Yukimura: So is it your argument, Mr. Rapozo, that a shoreline certification is needed for that portion, but not for the roofs? Would they have had to do a shoreline certification for the whole path where the roofs were or just where

the realignment was?

Mr. Rapozo: At this point, it doesn't matter. I think the applicant...

Ms. Yukimura: But we are talking about process.

Mr. Rapozo: Right, and the process...

Ms. Yukimura: What would have been right process?

Mr. Rapozo: Whatever the Planning Department felt was necessary on a portion of that project that was abutting... that met the rule.

Ms. Yukimura: The thing that I am trying to point out and I don't know if I am going to be able to do it. It is not an easy concept, but it is really critical when we do... actually, you got it when we were discussing the drafts of the amendments. There needs to be a cutoff time in the permitting process where you rely on a certain shoreline certification. I mean, the question is and where is that cut off is the question about right process because the permitting process often takes more than a year. If every year, every time the year expires, you are asked to get a shoreline... a new shoreline certification, you are going to have to keep redrawing plans. You could, in fact, even just keep going in a circle. You know, you get up to a Class IV zoning permit and you go beyond the one year and then they would say, okay, you have to stop now, you have to get a new shoreline certification or you go up to building permit and they say, okay, it is expired, so now you have to go get a new shoreline certification and you can literally go back, redraw the plans on a rapidly changing a shoreline possibly or even not, you still have to... maybe even if it is just a little change, will you then be required to change your plans a little bit? How does that enable a developer to draw plans and actually go through the entire planning process?

Mr. Aiu: It has come up as a problem before.

Ms. Yukimura: And so one of the questions then would be, so where does the Planning Department now draw the line?

Mr. Aiu: We draw it basically at time of application.

Ms. Yukimura: Of?

Mr. Aiu: Class IV.

Ms. Yukimura: So you draw it at time of application for a use permit?

Mr. Aiu: Yes, any Class IV.

Ms. Yukimura: And you say that as long as that shoreline certification is current, i.e., within the... actually, six (6) months, isn't it or one year?

Mr. Aiu: Six (6) months.

Ms. Yukimura: Six (6) months, so it is even a stricter standard than the State? As long as it is current within six (6) months and maybe that is good because you are giving another six (6) months to get things done, then you can draw your plans and proceed based on that shoreline certification. So that is where you have drawn the line right now. If a person proceeds through the regular course of the development process, then he gets the building permit not too far from the time of certification... maybe one or two (2) years?

Mr. Aiu: Around there I would guess.

Ms. Yukimura: But there are some people who will get their Class IV zoning permit and then not build for several years, does that happen?

Mr. Aiu: It has.

Ms. Yukimura: You folks don't require them to build within so many years of getting...

Mr. Aiu: Oh, we do.

Ms. Yukimura: The Class IV zoning permit?

Mr. Aiu: We do and...

Ms. Yukimura: So did you require the bikepath to be built within so many years of the Class IV zoning permit?

Mr. Aiu: I would have to check the record.

Ms. Yukimura: And that may be have been the problem?

Mr. Aiu: Maybe.

Mr. Rapozo: I believe it was a five (5) year condition.

Mr. Aiu: Was it?

Mr. Rapozo: I believe. I remember reading... there was a five (5) year condition and I can't remember for which permit, but there was a five (5) year completion.

Mr. Aiu: I, myself, don't know.

Ms. Yukimura: Okay, so it may have been a wrong decision, but the policy decision was, you shall have built within... start construction within five (5) years or complete within five (5) years?

Mr. Aiu: I don't know. I am not going to...

Ms. Yukimura: But, anyway, you will have finished the construction or started substantial construction within six (6) years or five and a half (5 ½) years of the shoreline certification process, no? Well, we don't know what the...

Mr. Aiu: I don't know what the timeline was.

Ms. Yukimura: What the time was between shoreline certification and obtaining the Class IV zoning permit.

Mr. Rapozo: That is why I had requested the planner as well, but unfortunately, he is not here, but that is fine.

Ms. Yukimura: The question is, if we are looking at process, are we saying that a development has to...

Mr. Rapozo: Well, JoAnn, I want to...

Ms. Yukimura: They pretty much solidified within one year of the shoreline certification.

Mr. Rapozo: What I want to do is not debate the logic of the law right now. I want to discuss and talk about the actual permit that is on the agenda, the project that is on the agenda. Really, so I said, I don't know where we go from here as far as... is that SMA application even valid and that is my concern. Now, whether we agree or disagree with six (6) months or a year, that is not the issue. The issue is not about feasibility of this. It is about what is the law and I think the law is quite clear and I think it is, but it is just my opinion. So I guess if you want to ask the question of Imai about what was the rationale for allowing this to go through without a valid shoreline certification, I think that is appropriate and he may not be able to answer that because I don't know if he was even here. But to discuss about, you know, whether or not substantial... that is not for today's discussion. I think that is for another one. I think that is a discussion that we need to address and it is all part of redoing our rules and...

Ms. Yukimura: Well, I was just asking that question because I wanted to understand what the current policy is with respect to beginning and end of a project and I wanted to point out how crazy it can get to just use that one year policy and try to just say anything that... where one year is expired, you have to come back

and get another shoreline certification. I was trying to point out that it is really important to show the interface between the permitting process and the certification process, so that is all that I will say. I have to say that with respect to the horse path and the alignment, that is more relevant to me these (inaudible) of the shoreline certification than roofs are because the foundation is already there and that is not being... the location of the foundation is not the question, so I don't think a shoreline certification is really relevant, but it could be relevant regarding the trail alignment.

Mr. Rapozo: I think it is and I guess my... what they should have done was split the application amendment... application into two (2) parts. One that affects abutting lands, coastal lands and one that don't. I don't know.

Ms. Yukimura: Or the Planning Department in it discretion could have required a shoreline recertification of that portion of the path that dealt with the realignment.

Mr. Rapozo: Right, and that is what I am saying. Mr. Kouchi, then Mr. Bynum.

Mr. Kouchi: I have a similar view as Councilmember Yukimura on the application of that shoreline certification because you come to an absurd conclusion because you would never be able to build in time and go back and recertify. I guess my first question, Imai, is that had the Commission not approve the roofs to go onto the structure and I believe that two (2) of the pavilions were not properly placed based on the shoreline certification, what would have been the alternative remedy?

Mr. Aiu: Most obvious is that you tear them down.

Mr. Kouchi: And I think that somehow, you know, this issue has gotten everybody so involved in the minutia that to answer JoAnn's question about what was the intent from the beginning. I wasn't on the prior Council, but the prior Council passed a zero tolerance resolution and what the resolution asked is, for any violator, our normal process is as described by Councilmember Yukimura... you have your foundation, you've got all of these things built, somebody tells you that you have a violation, you go to the Planning Commission, you ask for an amendment and they say, wow, you've done all of this work... we are not going to make you tear it down, so we will give you an after-the-fact permit which is exactly what Public Works asked of the Commission and the Council said, this is crazy. You know, no more giving them these after-the-fact permits just because the structure is built... make them tear it down. So the resolution went to the Commission and the Department, but, you know, they have the right to make their own decisions clearly by adding roofs that weren't even in the application contrary to the department's recommendation. The Commission felt that they have an opinion different from the Councils and that is where this need to be and I think the only thing that comes out of this is... I believe Mel has certainly pointed out a

serious concern for constitutional, equal protection issues from anyone now following the County to the Commission to ask for an after-the-fact permit. You know, they have ruled that it is their domain and until we change rules if we are even permitted in the SMA, they can continue to do that and we need to be better about their posted meetings, so we can attend their meetings and testify.

Mr. Rapozo: Thank you Mr. Kouchi. Mr. Bynum?

Mr. Bynum: I will just stick to the... at the moment, for the shoreline certification issue because as I mentioned earlier, this was first discussed at a Council meeting in January when Ian, the Planning Director and Jim was sitting up there and said, Mr. Tagupa, and said, basically that the shoreline certification was valid and it had been done according to the current practice. What the newspaper article stated yesterday and what the department report said, was the department said that there is no State or County requirement to maintain a current certified shoreline throughout the construction period of a project. Okay, that question was first asked in January and we have spent hours and hours discussing that in both public and private sessions and the conclusion was that there is no State or County requiring maintaining a current certified shoreline. The department didn't say that lightly. They said that after researching it and getting opinions from their attorney, is that correct?

Mr. Aiu: Yes.

Mr. Bynum: So I just, you know, as I said earlier, we may look at that and say, is that the standard that we want to live with going into the future and the Commission may look and say, is that the standard that we want to live with. But it is the current standard for this particular project and, you know, and so I am feeling a little impatient with having this discussion over a six (6) month period when the question has been asked and answered.

Mr. Rapozo: Was that a question?

Mr. Bynum: I asked him a question.

Mr. Rapozo: I mean, but are you done?

Mr. Bynum: So the question in your mind has been asked and answered?

Mr. Aiu: Yes.

Mr. Bynum: Thank you.

Mr. Rapozo: Okay, thank you Tim. Any other questions? So, Imai, it is your... it is the position of the Administration and the Planning Department

today that based on what was just discussed that as long as you have a valid shoreline certification at the time of the SMA, the original SMA permit... even after seeing what I just posted on that screen, that if you want to come up after the one year validity, the State law... I cannot believe the Commissioners says that there is no St... well, they are right. It was actually right because it said, there is no requirement to get a new shoreline certification during the construction process. I agree with that 100%. It is not what the issue is. We are talking about an amendment to an SMA application and not construction. It is an amendment. In other words, let's take the County out of this. Let's say that it was John Q. Billionaire that owns 100 acres out in beautiful Hā'ena... close your eyes and think. Five (5) years ago, six (6) years ago, he got an SMA permit, he got a shoreline certification, erosion two (2) feet, two and a half (2 ½) feet per year. It has been five (5) years, erosion rate... erosion has taken maybe 10 feet, 15 feet of his setback, now I am going to build, but I am going to build in the same location... I want to redesign my house, I want to make it bigger, now I am going to build and I want to... now is a good time because, guess what, the beach now is... instead of 40 feet is only 20 feet away from my deck. Is that the position that this County is going to take that regardless of the SMA rule that says, six (6) months prior to permit or use application... regardless of the SMA amendment rule that says that you are required to do all of these at the time of an amendment, the position of the County today, your department, is that a new shoreline certification is not required. Is that your position today because I see... I know I saw Lorna in here and she is an attorney for some developers out on the northshore. I think it is critical because you are making a statement that is going to affect the coastline of this island. If that is the position of the Planning Department, then I want to hear it.

Mr. Aiu: Would that fellow had a building permit already and have sat on the building permit for that long...

Mr. Rapozo: I am saying, if he wanted to go in and amend the SMA.

Mr. Aiu: Amend his SMA...

Mr. Rapozo: Would you require him to get a new shoreline certification?

Mr. Aiu: Shoreline certification...

Mr. Rapozo: Attached to this applic... basically, would you have accepted this from John Q. Billionaire for a construction of a house or an amendment to the construction plans of a house? If you wanted to move that house either closer or whatever...

Mr. Aiu: If you wanted to move it...

Mr. Rapozo: That is what we try to do here. Yes, if he wanted to move

it?

Mr. Aiu: If he wanted to move it, can't say.

Mr. Rapozo: Well, it is yes or no.

Mr. Aiu: Because, I mean, there is a discretionary line in there...

Mr. Rapozo: Where is the discretion I think in the question in the SMA rule? Where is the discretion because that says...

Mr. Aiu: And when required by the Planning Department, that line.

Mr. Rapozo: So you are using that as... if you guys feel that it is?

Mr. Aiu: You can.

Mr. Rapozo: Okay, and that is your position?

Mr. Aiu: Yes.

Mr. Rapozo: Okay, and that is what I wanted to hear. Thank you very much. Any other questions for Mr. Aiu? Mr. Furfaro?

Mr. Furfaro: Thank you. As an ex-officio and the fact that we are going to be working on a shoreline bill later, so I ask this question really just to have an understanding of, you know, where we are at today as we look forward to revisit our shoreline bill. So within a particular time for a Class IV permit, someone does their certified shoreline, it is no more than six (6) months old at the time of application, it may take more than six (6) months to go through the process and then at one particular time when the project is approved, there is a condition that is sometime laid over that indicates that the building permit has to be pulled within three (3), four (4), five (5) years, but that condition is laid on there. That is how you are explaining to us we currently do business?

Mr. Aiu: Yes.

Mr. Furfaro: That is how you understand how we currently do business and the reason I wanted to revisit that Imai is, like I said, we will be working on the shoreline bill here. We clearly have a lack of clarity on the 12 month piece with the State and we need to get a little more clarity, but that is how we do business today?

Mr. Aiu: Yes.

Mr. Furfaro: Thank you Mr. Chair.

Mr. Rapozo: Anyone else? Mr. Chair?

Chair Asing: Yes, maybe I will wait for the evaluation and recommendations from your staff. You don't have a copy with you?

Mr. Aiu: Evaluation for this latest amendment?

Chair Asing: Yes, this application.

Mr. Furfaro: Earlier, you said that you didn't review the file nor did you have the file with you?

Mr. Aiu: No, I did. I brought this. I brought the evaluation. I didn't review the whole back to... back even to the original permits, I didn't do that?

Chair Asing: Okay, I am going to be reviewing the evaluation, but in the meantime, let me just ask a question regarding... is it normal for the Commission, you know, you being a former member of the Commission to take an evaluation from the staff and make your own changes to the application even though the applicant did not ask for those changes?

Mr. Aiu: I think in the question you are asking where you've told...

Chair Asing: Let me try to make it as plain as possible. I come in as an applicant and I request for two (2) houses, one with roof, one without roof... I better use rest stop rather than houses. Okay, so I come in with that request, approval for one rest stop with roof and one without a roof, so that is my application. Is it normal for you to take that application and although all I am asking for is this one with roof, this one without roof and all of a sudden, you change it to tell me I have a roof for both. Is that normal?

Mr. Aiu: This case was unique.

Chair Asing: You mean I ask for something and you put something that I didn't ask for?

Mr. Rapozo: That is because they know better than you Kaipō.

Chair Asing: I ask for no roof and you put the roof on that I am not asking for and that is normal?

Mr. Aiu: No.

Chair Asing: Oh, that is not normal?

Mr. Aiu: This was unique.

Chair Asing: Oh, okay, so then would you say that the Commission took a condition or stand that was abnormal and not the way it is normally handled?

Mr. Aiu: I have a hard time saying that they actually did because the case was unique.

Chair Asing: Pardon me?

Mr. Aiu: I have a hard time saying that they actually did take a stand that was abnormal because the case is not a normal case we deal with meaning that normal operation is somebody comes in who is not building a public facility and the normal operation then is... and you will do this, this and this. When it is a public facility, it is a little different and that is what I think is unique about this case. So I can't say that the Commission took an abnormal stand on a normal case.

Chair Asing: Wow, okay, I will just accept that. I will accept that very weird answer and very unusual. I guess I will read the evaluation and maybe I have some questions at a later point, but not at this point.

Mr. Rapozo: Thank you Mr. Chair. Mr. Furfaro?

Mr. Furfaro: So Mr. Aiu, I remember you being on the Planning Commission and I remember you asking for things that are not so unusual with personal applications like native Hawaiian plants. Certain colors for the house, certain roof tiles, you know, these types of aesthetics that are not real objective. They are not covered in a rule. They are actually pretty subjective, but we depend on Commissioners to look at the general area, to look at, you know, the plantings, the native species and so forth. So in that particular case, it would not be unusual in a private application for the Commissioners to have some leeway on things like building materials, plants and so forth.

Mr. Aiu: No, that is the normal course.

Mr. Furfaro: But you are saying that because this is a public project, that they perhaps... their enthusiasm went beyond plants, roof tiles, paint and is that what you are saying?

Mr. Aiu: Yes, basically, it is... you know, it was, you know, not the normal negotiation between a private interest and a public interest. It was...

Mr. Furfaro: I just wanted to point out that there are...

Mr. Aiu: There is discretion in there.

Mr. Furfaro: The Commissioners used on items for esthetics that are really not objective in many ways. They are subjected to individual taste and so forth.

Mr. Aiu: Yes.

Mr. Furfaro: I just wanted to visit that.

Chair Asing: Let me comment on that and I agree with you Councilmember Furfaro that those kinds of things are different in my mind as to roof... I can see those plants and things of that nature, but, you know, and I think maybe Councilmember Rapozo said it best. Apparently, you or the Commission knows better than the applicant?

Mr. Aiu: A...

Chair Asing: The Commission choose to put a roof and the applicant was not asking for the roof, so in this, the applicant is the...

Mr. Rapozo: County of Kaua'i.

Chair Asing: Building Division, Public Works Department.

Mr. Furfaro: And that is why I used the term subjective. I mean, individual taste.

Chair Asing: Okay, thank you.

Mr. Rapozo: Anymore questions?

Mr. Bynum: Yes, I guess. Imai, I was present at the Planning Commission when they had their public hearing in discussion regarding this and the public... they received testimony from the public, is that right?

Mr. Aiu: Yes.

Mr. Bynum: And can you tell me what was the nature of that testimony?

Mr. Aiu: It was all very supportive of the project.

Mr. Bynum: So there were members of the public who were encouraging the Planning Commission to leave the roofs on?

Mr. Aiu: You know, honestly, I would have to recheck the record on what they said and we want the roofs on. I think it was said by at least one person out there. How many of them actually said that, I think... but I do recall that there was general support for the project.

Mr. Bynum: And the Commission asked questions about what was the consequences of the roofs remaining or the roofs being removed. Can you characterize what those... generally, what those questions were?

Mr. Aiu: There were questions about the function of the rest stop area, how it will function as a shelter and exposure, how it could be visually softened with plantings, landscaping, and aesthetic treatments.

Mr. Bynum: Councilmember Rapozo, I will save my questions or comments for later.

Mr. Rapozo: Thank you. Anything else for Mr. Aiu? Okay, thank you. Please remain because I am not sure if there will be more questions. Thank you. Anybody here that did not testify that wants to testify?

Chair Asing: Before you do that, do you have any... I have some questions for Doug. Shall we take that later?

Mr. Rapozo: No, let's bring Doug up now because it may spark some questions for the public. Mr. Haigh, please, thank you.

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

Chair Asing: Doug, do you remember the discussion that we had at the last meeting regarding the horse path?

Mr. Haigh: Yes, and I want to reiterate that at this point in time, the Administration has not made any definitive decisions on moving forward with the equestrian trail beyond the discussions that we had at the workshop many, many months ago. What the Administration is doing is waiting for a rock fall hazard study to be completed in the area where the equestrian use is planned and once we have that study completed and know the ramifications of potential rock fall hazards, then we will be able to move forward with at least one more public workshop to work on the equestrian issue.

Chair Asing: But you are asking in this application for the site plan modification. Isn't this moving forward? You are asking for modification of the horse path. Is that moving forward on the horse path?

Mr. Haigh: I believe and I believe Donald Fujimoto, the County

Engineer, answered this last session that we were here stating that it is one little step in the process and since we were there for an amendment for many other things... well, it became many other things, five (5) things instead of just one... it was decided, just go ahead and include that and move forward through that process and be done with that section of it, but we have not... the Administration has not made any further commitment to move forward with the equestrian.

Chair Asing: Wow, okay. I mean, you come in with an amendment asking for modification of the horse path plan and you tell me that, oh, but we are not moving forward with the horse plan. But at the same time, you come in and ask the Commission for a modification. So you ask for a modification on one hand and you tell me on the other hand, oh, we are not moving forward with this. So I get the same kind of answer as I got prior, so, anyway, you just puzzled the hell out of me. Thank you Doug.

Mr. Rapozo: One question Doug and I don't know if you are the one to answer, but if, in fact, this approved now... the SMA permit now showed this new alignment. If, in fact, that alignment doesn't work or for whatever reason changes, we need to amend the SMA one more time?

Mr. Haigh: We will do what we did before. We will go back to the Planning Department, notify them of the final configuration and we will rely on the Planning Department to determine whether or not an SMA amendment is appropriate.

Mr. Rapozo: Okay, but that may be the case.

Mr. Haigh: It is possible.

Mr. Rapozo: Alright. Thank you. Anything else for Doug? If not, thank you. Go ahead.

Mr. Bynum: So we received this, this morning, a written response to 25 or whatever, how many new questions and some of them you are responding to and others you are requesting more time, is that correct?

Mr. Haigh: That is correct.

Mr. Bynum: So Council Chair, we are going to wait on to go through this to another...

Mr. Rapozo: I told Doug that I would not burden him with going through 1, 2, and 3, but we will just get it when it is done. We will get all the answers at one time and we can take care of that at that time. But if anybody has any questions that they want to ask regarding what has occurred, they are free to ask right now. Thanks Doug.

Mr. Haigh: You're welcome.

Mr. Rapozo: The rules are still suspended. I don't normally take public testimony after we call the meeting to order, but I know that we have new people here that did not testify. So Barbara if you would want to come up.

BARBARA ROBESON: Thank you Mr. Rapozo. Barbara Robeson for the record. I didn't have a copy of the SMA rules with me when I came today. I just got them... here it is. I just wanted to mention that the validity of any SMA permit is two (2) years unless otherwise specified. You were talking about the conditions that may extend the SMA permit that has been issued for a period longer or some other timeframe in the conditions, but based on just some of the conversation that you had, it wasn't mentioned that an SMA permit is valid only for two (2) years, so you might want to consider that. That is in Section 10.

Mr. Furfaro: What page are you on? I have my document here.

Ms. Robeson: Oh, thank you, page 17, Section 10. It is the third paragraph there under action.

Mr. Rapozo: Thank you and part of that Barbara is... that is why I am really, really focusing on the amendment and that is why I think the intent of the law when you amend an SMA, it requires the same process. I mean, it just makes so much sense. Anyway, Bruce?

Mr. Pleas: Bruce Pleas for the record. I still would like the dates that I asked at the beginning. If you could ask that of the applicant of the date of the 2002 shoreline certification and the date of the building permit application submittal. That is just two (2) dates. I am not talking about what has happened afterwards. This is the initial start of this project and those are the dates I feel are extremely important and we need to have them put on the record once again. Thank you.

Mr. Rapozo: Bruce...

Mr. Bynum: Those two (2) dates, so I can get it in my notes. The SMA permit application...

Mr. Pleas: You can have the SMA permit application and approval by the Planning Commission, but I believe the important one is the building permit application and when that...

Mr. Rapozo: In 2006.

Mr. Pleas: But I think there was one in 2004, but whatever it is, just those dates and the date of the shoreline certification because the certification is

only good for one year and something had to have been done within one year or you needed to go back and get it again. This is at the beginning of the project. After a project is done, when you start a project, you don't need a shoreline certification, so those are the dates and I could be corrected later on.

Mr. Furfaro: Or (inaudible) correct you later on.

Mr. Pleas: Thank you Jay.

Mr. Rapozo: Thank you. If no one else in the public, we will call the meeting back to order.

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

Chair Asing: Before you do that, can I have Imai up again?

Mr. Rapozo: Okay, Mr. Aiu, the rules are suspended.

There being no objections, the rules were suspended.

Chair Asing: Imai, I am looking at the evaluation and the conclusion and recommendation, I assume that after the Commission's decision yesterday, there will be another report that will be generated on actually was approved. Am I correct?

Mr. Aiu: Yes.

Chair Asing: And that report is forthcoming then?

Mr. Aiu: Yes. It will be written up and the new condition will be given to the applicant.

Chair Asing: And it should show the differences between the recommendation and the final approval.

Mr. Aiu: And the final action by the Commission, yes.

Chair Asing: Good, thank you. When do you expect to get that copy done?

Mr. Aiu: Since my planner is out today, tomorrow he is going to be informed of basically what went down and he is going to take care of that correspondence, so...

Chair Asing: Maybe a week or so?

Mr. Aiu: Yes, I would guess. I mean, he will be given the task tomorrow and I kind of leave it up to him to sort out his work.

Chair Asing: Okay, thank you.

Mr. Rapozo: Imai, I asked the question earlier of Doug and about the... if, in fact, that horse trail would be... had to be relocated again, do you think that would require another SMA amendment?

Mr. Aiu: Off the top without going through a formal assessment, yes.

Mr. Rapozo: Okay, thank you.

Mr. Aiu: But a formal assessment would be needed.

Mr. Rapozo: Right. It is just basically what we know. Obviously, abuts the shoreline and, okay, thank you.

Mr. Aiu: Okay.

Mr. Rapozo: Anyone else? If not, I will call the meeting back to order.

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

Mr. Rapozo: Discussion? Mr. Bynum?

Mr. Bynum: I said that I would save my comments, so if I could have...

Mr. Rapozo: You have the floor.

Mr. Bynum: Thank you very much. We have been discussing these roofs also for many months and there has been lots and lots of discussion and tons of testimony. When I read the Planning Commission's staff report, you know, it put things in a somewhat different perspective for me, so I just want to go through some of this. I was going to ask Imai what is an after-the-fact permit because there are different interpretations of what that means. So I just want to say that the SMA that I am looking at was approved in January 2004 and there was a process for the design... there was a selection of a design/build team and we have seen from previous testimony that there was... that decision was made by a team of people who reviewed the applications and went through a process of deciding who would be the applicant. They had a request for qualifications that got narrowed down to three (3) people, then the team decided... did a formal evaluation process was scoring and awarded the contract to Glover. And then their design team had to go through the process of design and then eventually construction. So in January 2004, the thing ironically, the same month that the SMA permit was approved, the design team proposed that the rest areas be covered shelters. So in April 2004, the design

team, the people designing this, submitted the design proposal to the County and it included the rest area pavilions with covers. In March of 2004, the contract was awarded and the design was accepted with these covers in place. On May of 2005, the design team held a public information meeting with 24 members of the public attending the meeting and they showed the diagrams of these pavilions with covers on them as their proposal and there wasn't any public comment concerning those shelters. In October 2005, they held a second meeting of design, public meeting with 25 members of the public and the location and design of all six (6) rest pavilions were shown including the covered pavilions.

In September 2005, the team, as required by law, submitted the design to the Planning Department for review and they... with the cover letter that showed all of the pavilions with the covers on them. The Department reviewed that and approved the design as it was. In January 2006, a third public meeting was held with 50 members of the public that showed the rest areas as covered shelters and there was no comments or concerns about the design or location of the rest areas. In April 2006, the team submitted the request for building permits, so for all of the structures including the six (6) rest pavilions and the Department of... the Planning Department reviewed that request and issued building permits, so all of these structures have building permits. They have had building permits since April 2006. When the construction actually began, questions were raised about whether it was wise to have these structures in the locations they had even though they had been through a long period of planning and processing and they had building permits. And in review of all of those permits, one of which is the SMA permit... in the SMA permit, the rest areas were described, but they were not described as having permit. So at that time, the County asked the contractor to halt construction on those six (6) areas immediately and to prepare... begin to prepare to do an SMA amendment because the Planning Commission said, yes, we should have... I mean, the Planning Department said, we should have the Planning Commission review this.

So then started a lot of discussions here at Council and we have heard these roofs characterized as being illegal or unpermitted. You know, when I read this review, it was clear to me that they have building permits. The question was really about whether they were properly permitted or not and that was a question because it is the Planning Commission's kuleana and that is where the question needed to go and Councilmember Furfaro pointed that out here months ago that the proper way to deal with this was at the Planning Commission. So the Planning Commission eventually, you know, got the amendment and in the process the contractor asked them to... what that should be included in that amendment and they ended up having the five (5) things that we have discussed at length in the last couple of Council meetings. And then, yesterday, the Planning Commission made their ruling which basically approved the amendment (change tape)... remain for four (4) pavilions to keep their roofs and two (2) to come down. However, the Planning Commission received public testimony including 80 signed signatures from Kaua'i residents saying, we like these pavilions and we would like them to remain. The Planning Commission received testimony from three (3) people who

said, in public that they supported it and one written testimony saying that they supported it. They received one written testimony from a landowner near Otsuka's who was objecting to having any structure placed on the coastline on public land in front of what would be their land. So they had 80 or 90 people saying, we support you... continuing with these roofs and they had one landowner who was adjacent to one of these structures who was objecting. They asked questions during the Planning Commission about what was the impact of keeping the roofs or removing the roofs. In keeping the roofs, they were told was that if the roofs were completed, it would be fully paid for by the Federal project because they would have already been approved. There were many permits for this project and one of them did not describe the roofs, but others, the CDUA permit for instance described all of these roofs... the building permits described the roof, the building permits were issued, you know, these roofs weren't a secret. They were out there for a couple of years, so if the County were to remove roofs, the answer the Planning Commission heard was that they would have to pay the contractor to remove the roofs. In addition to that, they would have to reimburse Federal Highways for the roofs that they paid for in the first place because they are not going to pay for something that isn't actually constructed. So what the Planning Commission... what I witnessed was they were faced with 80 to 90 members of the public supporting the completion of the roofs and testimony that said, if we completed them, there is no additional cost to the County and if we remove them, there would be significant additional cost to the County to remove the roofs. I believe... I don't want to speak out of turn, but, you know, their testimony was, that is why they supported the roofs and the report that we were just handed, you know, it says... the staff report says clearly that the Commission... the Commission preferred the roofs on rest areas on 1 and 3 should remain, so they apparently went beyond what the applicants said and the condition that the roof stay on.

The reason why I go through this whole thing is because I have different view of whether this was an after-the-fact permit. In my mind, an after-the-fact permit is when John Q. Billionaire goes out and builds something, never goes through any public process, never discusses it at all and puts out, say, gazebo on the shoreline and then comes and says, hey, I already built this, will you permit it? To me, that is the definition of an after-the-fact permit and I don't know that that analogy fits here when I went through this chronology that these roofs were presented, they were reviewed by the Planning Commission, there were three (3) public meeting that citizens attended and then (inaudible).

Mr. Rapozo: We have to take a caption break, so if you want to just wrap it up.

Mr. Bynum: I am almost done. So I just think that there is a different perspective if you look at that and I assume that is what the Planning Commission was acting on when they made their determination letter. Where that puts us is, now that the... these are no longer improper permits, they are permits permitted by the Planning Commission and I assume that construction would move forward on

these structures. I just wanted to lay out my perspective on... that I think some of the language you use is open to interpretation as well and I don't see this as being the same analogy as an after-the-fact permit for someone who acts without any public disclosure at all.

Mr. Rapozo: And I guess that is where we disagree. We have to take a caption break and I just want to say that the Planning Commission's job is not to appease the community or the public or save the County money, it is uphold the law and that wasn't done. We will take a 10 minute caption break.

There being no objections, the Committee recessed at 11:30 a.m.

The meeting was called back to order at 11:41 a.m., and proceeded as follows:

Mr. Rapozo: We have about seven (7) minutes left before we need to break for lunch. Any other discussion on this matter? If not, let me just say this. This will be deferred until the next meeting. In fact, I am not sure when these answers will be... the responses will be submitted, so we will definitely defer this matter. I just did want to make a few comments because I know that this has been on the agenda for quite a while. This has been on the agenda, I believe, since probably inside of two (2) years and maybe even longer. You know, I guess what is disturbing is, you know, I've been in the law enforcement, legal industry, for quite a while and have worked as a Police Officer and I have also worked as an investigator working with criminal defense attorneys and it is amazing how you can actually justify or try to justify violations of the law. I mean, there is always that argument. We did this because or this is a unique situation and I guess when I look at the law, I look at the law as black and white. As the lawmakers, we are in different level, we are in a different class. In fact, we are subject to following that laws that we write or that we swear to uphold. So I respect the disagreements and I respect the arguments that have been made, but it still doesn't change the fact that the State law is one year, twelve (12) months. It still doesn't change the fact that an amendment to an SMA permit requires several things that, in fact, was not done. So, you know, I guess we will find out in the months to come what really happens. What we did see yesterday at the Planning Commission meeting was really quite disturbing, I think, in my mind because it really does set a terrible precedent. I think it sets... even with the description given by the Chair as far as the additional roofs, I mean, that, again, I will say it again. It is not the Planning Commission's job to determine what the community wants. It is really their job to make sure that the laws are obeyed and I think that is what is troubling. Again, you could argue both sides.

I just want to state this for the record that this whole... in my mind, as the Chair of the Committee, this whole problem was not so much about the roofs per say. It was about the process and about the application process. Regardless of how you look at it, whether you call it unpermitted, illegal, it doesn't matter what you call it, the fact of the matter is those structures were not permitted under the SMA

permit. They were not, so you could stretch I guess, call it illegal or whatever you want, but the reality is, in fact, they were not permitted. My whole feeling all along was that the permitting process was the flaw. It wasn't the path. It wasn't the fact that part of the path was a foot away from the shoreline setback, that really... although was a concern wasn't really the big argument. The argument was that we didn't follow the proper process when we went through this thing. We did not. We said that we were going to do one thing, we did another, the contractor did some things that he wasn't supposed to do, but the whole purpose of these laws and the process is so that we can make the right decisions and, in fact, we have not done that. It has to be close to a year ago when I met with the Mayor and I met with the Administration. I asked for one simple thing and this did not occur here on the floor. I just met with the Mayor, we discussed some issues and I said, all I want to see is a new shoreline certification done. Just go get another shoreline certification and once you get the new shoreline established and you set your setback of 40 feet or whatever the case was. If there was a portion of this project that sat inside the setback, then we would have to apply for a variance. That is the process. The Mayor felt that it would take too long to get a new shoreline certification. I guess someone told him that it would take two (2) years or longer and, you know, in talking with the State and some surveyors... you know, we can get a survey done in four (4) years and maybe with some opposition, maybe a year. It doesn't matter the time, that was the right thing to do. Had we had done that a year ago, we would be in a much better place today. This would not, probably not be on the agenda. We would have been working on a project that was legal. Instead, we are here talking about how can we justify what we have done and Mr. Bynum is correct. After yesterday's ruling of the Planning Commission, it is done, it is permitted. I do not agree that the permit application was done in the right way and I will challenge that at another level and it won't be here, obviously, but it will be done at a higher level. Somebody that can independently review the facts and determine if, in fact, the shoreline... the intent of the law because you can, again, you can interpret what you want, but the intent... the legislative intent of the law was to protect the coastline, to preserve our coast and that is what the intent of the law is. It was not there to inconvenience a developer. It wasn't there because they want the developer to go out and spend extra money to get a survey done, it was there for one reason and one reason only. In fact, I think our Charter and constitution basically states that we will do whatever we can to protect the coast and that is just not being done. When we start closing our eyes and saying, in this case, we can let it go because it is for the greater good of the community, that is not how it works. You go do it right, get the variance and make it legal. So, again, this will be deferred and we will anticipate the questions being answered by Public Works and I am sure we will be awaiting the response from Planning regarding the final report of the Commission. So with that, Mr. Kouchi?

Mr. Kouchi: I just briefly wanted to say, again, that while we've got caught up in all of the particulars of the details of the application or the project itself, at least, again, when I first came onto the Council in December of last year and this issue appeared, it was discussed about the process because the previous

Council had adopted a zero tolerance resolution for any violations and no issuance of after-the-fact permits. I think this illustrates the difficulty of holding yourself to that kind of standard because sometimes there may be in an individual's judgment a worthy project, but then we now start to unequally apply the law. And then what is a worthy project is the subjective point of view and an individual decision and there isn't any kind of law or process that is in place that tells you which one is, in fact, permissible to get this after-the-fact permit and which ones aren't. And then to hear people actually publicly say, if you were the billionaire, then you are going to get it and blatantly flaunt an unequal application of the law, is it any wonder that we have attorneys sitting in our audience every week because we are (inaudible). We have been looking at our code of ethics section because the people have changed the Charter to have a higher code of standard of ethics applied to Councilmembers. I would read you on page 24 of the Charter, Section 20.02. No officer or employee of the County shall and then under "E," use his official position to secure a special benefit privilege or exemption for himself or others. So if there were an individual applicant from the County and you applied that standard, then we violated the Charter's code of ethics, but the applicant is a department which is Public Works, so by admission because it is the County and because it is going to be for the greater good, then we can use this bending of the law, but we are not going to apply that same standard to somebody else's is what I heard. I am just amazed that, you know, we would be speaking out of both sides of our mouth when I thought the resolution was intended to espouse a clear policy to go forward. I still believe that is the issue and, you know, again, I respect the Commission's authority, so obviously, they disagree with the Council, so one of the other things is, do we have to look at amending some of our laws.

Mr. Rapozo: Thank you Mr. Kouchi. I can assure you that we will be looking at that and thank you for bringing up that zero tolerance resolution as well. Again, as most resolutions, you know, or as all resolutions do not hold any power other than the combined voice of the Council at the time. Aside from Mr. Kouchi and Mr. Bynum who were not here, the rest of us were and I believe we unanimously approved that resolution strongly encouraging the Administration to enforce a zero tolerance policy. What we have just seen was obviously a deviation from that and a loud and clear message that went out to everybody here and I am purposely reiterating that because I want the public to understand what we did and I am terribly disappointed. With that, I would entertain a motion to defer?

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

Mr. Rapozo: I will break the Committee for lunch at this time and we will return at 1:00 p.m. and resume the Public Works Committee. Thank you.

There being no objections, the Committee recessed at 11:52 a.m.

The meeting was called back to order at 1:19 p.m., and proceeded as follows:

PW 2007-8 Communication (6/21/2007) from Mel Rapozo, Public Works Committee Chair, requesting that the Administration be present to discuss the Seawall fronting the Pono Kai Condominium Project.
[This item was deferred.]

Mr. Rapozo: At this time, is there anyone in the public that would like to speak on this matter? If not, thank you. Mr. Dela Cruz, is Bernard here? Can we have someone call Bernard? I know he was in the building. I understand Bernard has a presentation and I would like to start off with that presentation before we open up the questions for you Kylan as well as Bernard. Let me just... B.C., let's just recess until Bernard can come back in the building.

There being no objections, the Committee recessed at 1:20 p.m.

The meeting was called back to order at 1:25 p.m., and proceeded as follows:

Mr. Rapozo: I apologize for that delay. With that, the rules are suspended.

There being no objections, the rules were suspended.

Mr. Rapozo: Mr. Carvalho, I understand you have a presentation and this is in response to the questions that we sent over on June 21 regarding the Pono Kai seawall. At this time, I will ask that you do your presentation first and then we can proceed with the questions.

BERNARD CARVALHO, JR., DIRECTOR OF PARKS & RECREATION:
Okay, thank you Councilmember Rapozo. As you stated, we are here to follow up on the questions that we received on June 21 and what we did is we put together a packet for you as we go through each question. We have some attachments that will coincide with each of the questions as we go through the 15 questions. We wanted to start off an overall slide show. Some of the pictures... it is just a pictorial thing here in response to question 1. It is a three (3) fold question and I wanted to read the question, so it kind of ties in. A chronological history of the construction of the seawall and any maintenance done to the seawall and adjacent areas affected by the erosion caused by the seawall up to the present date. We wanted to start off with this first slide which gives you an overview and some of the pictures, you may have seen in past presentations. I hope that we kind of sifted through the pictures to assure that we are not duplicating, but hopefully, we will go with that. So the reason why we start with this part is because it ties in after we go through the presentation to that entire area. In my research with some of our kupuna, first of all, and some of our fishermen and maybe my Dad himself to kind of see what happened way back then.

So in talking story, this area and this came from a study that was done in November... we had a communication November 3, 2006... anyway, we will go over that. So right here, this entire area, this is where the Kapa'a Beach Park is. This is the Mo'ikeha Canal and I wanted to pay attention right here because... this is per some of the research that we did. In 1955 or so, there is a major dredging here of the coral that was located behind the Kapa'a Swimming Pool. So the reason why we focused on that not only from the talk story sessions that we had, you also have a communication dated November 7 with you that we provided for you. In this particular communication which came from Mr. Sam Leemo who is from the administrative office of Conservation and Coastal Lands to Doug Haigh and it is not a signed copy, it is an e-mail copy, but they did get it. In that particular communication, it states in here that in 1959, a burial pit was excavated in the infringing reef just north of Mo'ikeha Canal at Kapa'a Beach Park and 180 cubic yards of material were removed causing severe erosion. The burial pit was 1,200 feet long and only 100 feet offshore. The pit may be acting, this area right here, as a local sink for sand and could be one of the source of (inaudible) erosion for the entire region. So I just wanted to point that out as we begin to unfold the history in the research that we did. This, again, came on a communication that Councilmembers have with them and from talk story sessions with some of our people who live along that area. They remember that. It is on page number 2, number 5.

You know what, Councilmember Rapozo, I gave you guys a separate submittal. I just got this fresh off the press, so it is on your desk area and you can... so I wanted to just go through this entire presentation and we can answer questions as we go along. Okay, this particular slide shows that here and then all of these pictures right now... figure 1, figure 2, ties into this communication. It does state in here, okay. The next slide here shows the erosion that took place and what happened... we are not going to go into that. You guys can see it for yourselves as one of the points which took many, many years to happen. The next slide.

This is just another two (2) pictures again, which ties into this communication that came from the State Director/Administrator. Again, it just shows what took place fronting Kapa'a Beach Park and, again, over there. I just wanted to start off with that piece. Next slide. Now as we move along these pictures... I don't know if you folks seen it before... in working closely with Pono Kai management team over there... with conservation with them, we were able to get some of these pictures. Now this particular picture and Councilmembers, you have each picture in your packet and you can follow along. This particular picture is pre-Iwa which is 1979/1981 or so. Pono Kai opens in 1980 from what research we have, so this is pre-Iwa. This is the canal back there and Waiakea Canal, and then fronting over there. So I just wanted to show pre-Iwa. Next slide. This is what happened after... go to the next one, sorry. This is after Iwa and this asphalt bikepath was built sometime in 1993 or 83 or 84. Sorry, 83/84. There was an asphalt bikepath which we did walk and it was a really nice path back there. It is fairly small, but that was the bikepath back there.

Ms. Yukimura: I think it was built around 78/80.

Mr. Carvalho: Whatever. I mean, there was a bikepath there, asphalt bikepath and this is after Iwa.

Ms. Yukimura: Well, Iwa is 82 and you are building it in...

Mr. Carvalho: I made a mistake, it is not 1993, it is 1982 was Iwa.

Ms. Yukimura: That is more like it.

Mr. Carvalho: And the asphalt (inaudible) built in 83 and 84, sorry.

Ms. Yukimura: Okay, that is closer.

Mr. Carvalho: This shows how it looked like. Now, as you can see in the previous slide and this slide, there is no seawall, okay, and that is what the picture shows. Next. Now this next slide, we are up after Iniki now and this slide, again, in talking with Pono Kai management staff, this is where I got these pictures by the way in talking story with them and these are the pictures that they supported us with. This after Iniki now, so we are now in 1992 and this is the devastation that took place fronting that area. The next slide. Again, the same thing. A danger to building and structure area... how close, you can see the erosion area and what it looked like after Iniki. The next slide. Again, just as we continue to move on after Iniki and these are the left over pieces of the asphalt bikepath if you can recall (the previous, previous picture). So this is where it is at right now. You can see the beach here... remember now, pre-Iniki, pre-Iwa, we had this whole entire beach area, a beautiful beach area and now we are here after Iniki and you see the devastation, again, from what took place in this particular slide. Now we come to clean up after Iniki is this particular slide and this is kind of like what it... I guess this is where the path was before, but this is the clean up that took place and, again, pictures being provided by Pono Kai management staff.

Now we kind of move forward and now here we are present. Now this existing seawall... this is what it looks like. I think you folks had this slide in previous meetings. As you can see, these were the sink holes here, the sink hole there... we, as our County Administration were managing this up until this point by just filling in the holes with sand. There is a 10 foot... again, talking story with our management team at Pono Kai, there is a 10 foot drop right here and I just wanted to point that out. And then depending on the season, there is beach that comes back here, so there is obviously a safety issue, there is obviously issues right along this entire area. You are going to see as we continue to move forward, what we are doing. This picture was taken on June 11, 2007 and, again, this back portion is sinking and this is kind of like on the front portion of the wall, so that is where we are at with that. And then this is kind of a picture, a most recent picture on how the wall looked like. This actually came off Pono Kai's website actually, but just to

give you an idea of how it looked. The next slide. This is the current sign that is there. It just says, danger, do not pass this point. In talking to Pono Kai management team, nobody knows who posted the sign, who did the sign, the sign is there and the saga continues, so we need to look at that. However, we do have a short term plan and I will explain that very shortly, but I just wanted to point out... this is a lady sitting there, the seawall is kind of like right here, so that is as we speak. So, obviously, there is a signage is sitting right there and people are still going beyond that point, so that is an issue. Now, the next slide, this is what we are currently doing right now. We moved forward to actually do a signage piece there from the County. This is the verbiage that we are using and how do we get to that... we did talk to OSHA, we did talk to... I even talked to Marriott just to get ideas from them because they had a major sink hole problem there. We talked to DLNR, of course, our attorneys are involved to see what is the proper verbiage. Really, similar to the signage you folks previously saw, we took it upon ourselves to duty to warn and this is what we came up with. Danger, sink holes, do not go beyond this point, Department of Parks & Recreation, County of Kaua'i. For more information, call our main office and that is what the verbiage we have. The signs have been constructed. It will be posted, Larry Saito and his team, on Friday and I will explain the whole... the next slide. This is another one. Danger, do not walk, stand or lay next to the rock wall revetment. Department of Parks & Recreation... again, this is to avoid our visitors from going down that rock wall area, so not only will they be secured away from that top portion of the wall, there also would be signage posted to have them not go down towards the rock wall area because when there is beach that comes back, there is a possibility, obviously, that the rocks could fall and stuff, so we want to assure... I want to also say that Pono Kai maintenance team is also working closely with our Parks maintenance team to help monitor this particular area and I will share with you what our short term/long term suggestions and process will be. I think this is the last slide. So that kind of goes to only question number 1. Brief history: went from Iwa to Iniki and you saw the current slide which shows you the current rock wall. Now we move into the next questions which would kind of share with you what the proposed plan or process we want to look at. Hopefully, it is not a repetition piece, but we will go from there.

Mr. Rapozo: Thank you Bernard. Let's do that. Let us... are there any questions pertaining to question number 1? Go ahead Mr. Bynum.

Mr. Bynum: Mr. Chairman, this is slightly off point and it may result in another communication, but in the document you provided us on November 7, 2006 and you showed us an example of the rock wall at Kapa'a Beach Park which is no longer protecting anything. In this communication from November 7, it says, since the following revetment... this is at Kapa'a Beach Park where the pavilion went away... since the following revetment is no longer protecting any structures and it appears to be having an adverse environmental effect on the beach, it is the OCCI's recommendation for removal of the revetment simultaneously with demolition of the pavilion and this may be the most cost effective, so I know it is slightly off point, but I really want us to follow up on... obviously, didn't happen...

the pavilion was demolished, but the revetment is still there. Right now, you could get equipment up to it and get rid of it fairly easily, but as the ocean comes around behind, it is going to get more and more difficult.

Mr. Rapozo: That would be more appropriate for Public Works and we can send that over as an additional question only because it wasn't on this... thank you and that is a good point. Staff, if you could make note of that and we will definitely send that across as far as what is the plans for that revetment as well. Any other questions pertaining to item number 1 regarding the chronological history as it... item 2 will cover the permit, so if you could just limit it to what the presentation was, the PowerPoint, I would appreciate it. Thank you. Mr. Furfaro?

Mr. Furfaro: Thank you. I just want to know if the County Attorney looked at the verbiage that was put up displaying the County phone numbers and by displaying the phone numbers, are we now implying that we accept liability?

Mr. Rapozo: That is a good question.

Mr. Carvalho: And like I stated, we are in communication with the Attorney's Office and I did say that we spoke with all the other entities and we are finalizing that piece as we speak.

Mr. Furfaro: I just want to point out... I was on the Board of Directors or the AAO of Pono Kai and I would be very glad to let the County put the signs up and I would even pay for the sign. I want to just raise that concern Bernard. I want to thank you for your initiative, but, clearly, the verbiage should be reviewed by the County Attorney's Office. Thank you.

Mr. Rapozo: Bernard, I think it was the last time Donald was here, I made reference to the statute that governs the warning signs as I think DLNR regulates that and, if in fact, we want to enjoy the protection, we need to comply with that signage requirements. I know that it is... my memory tells me that it is really regarding high surf, currents, and so forth and I am not sure if it addresses unsafe hazards like this, but I asked Donald to look into that because I think that was a concern making sure that we comply with the State requirement for signage. Regardless, I think we are going to inherit the liability one way or the other, but to protect the County taxpayers. If there is a process to go through to get these signs accepted, then I think we need to do that and I am not sure if Donald...

Mr. Carvalho: No, Donald did and so did Gary Heu. He did tell me to check... I forget on that issue. (Inaudible) and Ken was to come forward and address it now and see how well we can secure that area which we did already with orange fencing and I will explain that shortly. The other thing that I wanted to mention Councilmember Rapozo before we go onto the next is: in this communication that you have before you, I know that we always talk about different studies that we need to look at. Was there a study done and if you look at

the bottom of page 3, we did a follow up on this between Mel Nishihara and myself. Aerial photographic analysis of coastal erosion on the island of Kaua'i, Moloka'i, Lāna'i and Maui...

Mr. Rapozo: And when you say page 3 of what?

Mr. Carvalho: You were standing up here and we handed out this...

Mr. Rapozo: I got it.

Mr. Carvalho: It is separate from the booklet.

Mr. Rapozo: Yes.

Mr. Carvalho: So if you look at that at the bottom, what we did, we followed up and you have before you Makai Ocean Engineering and Sea Engineering Business and that was just for your information, so that you know that we did make contact just to follow up with them and those are the guys that actually prepared this particular analysis. If you look in this communication on page... it is all stapled together. I am sorry that it is not in your packet because I just got it off the...

Mr. Rapozo: I still don't have that.

Mr. Carvalho: I just gave it to Peter.

Mr. Furfaro: Is it dated November 7?

Mr. Carvalho: Yes. Does everybody have it?

Mr. Rapozo: It is hiding somewhere. I don't know where... okay, November 7, right?

Mr. Carvalho: Okay, November 7 and if you go to page number 2, item number 3, it states that this area is listed in a coastal erosion report that was done. The coastal erosion report is right here. We printed out the report and in this report which I have a copy for Council... your own copy... it is like 200 pages, but we marked off the areas and I wanted to be clear and it states in here all the... hold on. We took from Wailua Beach area and it lists all the beach description, backshore, shoreline history, the summary of the report for this particular region. The next item and it gives you a breakdown of the land area... we also have Kapa'a Beach Park in here and then the next item we have is Keālia Beach, so it kind of covered that area which also covers Pono Kai of course which is why we are here. But this particular part also gives you the history of that entire area. I have this book for you folks and we have our own.

Mr. Rapozo: But this report dated November 7 specifically addresses the erosion at Kapa'a Beach Park alone, right? Not Pono Kai... this is not...

Mr. Carvalho: I am saying in here, it gives you an overview of that area as well.

Mr. Rapozo: Okay, but this is specific to Kapa'a Beach Park where it talks about...

Mr. Carvalho: But I wanted to look at how to get as much information to show that a study was done.

Mr. Rapozo: Okay, thank you. Any other questions? If not, number 2? I am sorry, pertaining to Pono Kai.

Ms. Yukimura: To the slide presentation. What is the status of the signs that you showed? Are they up or they are being processed?

Mr. Carvalho: Well, I said that we are going to post it on Friday, but we did do the verbiage and I did say who we spoke with and we are communication with attorneys, so I will confirm that and then make sure that we have the right verbiage or the phone number or whatever.

Ms. Yukimura: Alright, thank you.

Mr. Carvalho: Okay, number 2, it states that copies...

Mr. Furfaro: Mr. Carvalho, I want to compliment you on finding this material and there are several pieces here that reference three (3) of the main questions that I submitted thanks to Councilwoman Iseri-Carvalho and Mr. Rapozo's question is, as we get to a position that we have to discuss this repair, I want to point out and note that it talks about the 1959 dredging. The dredging caused severe erosion... it talks about in Section 8, the dredging of Waiakea Canal that perhaps changed some of the currents on the south passage. You know, this is a very good documents when we need to raise the question about sharing the responsibilities for the repair. It clearly indicates that some of this dredging that was done may have actually initiated some of the shoreline (inaudible), so this is a very good document.

Mr. Carvalho: (Inaudible) number 1 did say to (inaudible)... I am sticking to the questions as best as we can.

Mr. Rapozo: And I appreciate that. That is good information and I just wanted to...

Mr. Carvalho: Number 2, copies of all permits obtained to construct the seawall. No permits are available and the entire project was processed through an emergency disaster declaration that exempt these types of projects from the normal permitting requirement. Number 3...

Mr. Rapozo: Hang on. I am not sure if... I guess we should have had Planning here too, but I guess, Bernard, in this case, in the event this... the permits were not obtained, I am not sure if the law says that you don't ever have to get a permit. The question is, when that structure was built, was there a necessity or a requirement to come back later to get permit and is your answer that there are no... that no permits were ever obtained?

Mr. Carvalho: No.

Mr. Rapozo: No, that is your answer, no?

Mr. Carvalho: Yes.

Mr. Rapozo: That there are no... that...

Mr. Carvalho: We followed up, we checked (inaudible).

Mr. Rapozo: It is an unpermitted structure?

Mr. Carvalho: (Inaudible)... it was based... (change tape)...

Mr. Furfaro: ... is an emergency process to respond to these emergencies that kind of accelerate the repair for public safety and health and well being. So I think it is quite possible that this thing was done through an emergency application and, therefore, the choice was to do the work or I am just framing this or go back and revisit it and document it after the work was done. I mean, that is what happens with emergency projects and I think although I wasn't active at the Council, I have to point out that many of the individuals involved with emergency response and I think most of this probably occurred under Councilwoman Yukimura's Administration. The fact that it was an emergency response for public safety and, therefore, there must be some piece that later says, the work had to be documented. So I wouldn't say that it wasn't permitted, it may have been permitted under the emergency response act and that would be something that I could say that may have then required after the work was done, some documentation. So I just want to be very careful that we don't label the emergency response as being something that just wasn't permitted... under the emergency act, there were provisions and parameters for public safety and health and loss of property. I think we need to look in some of the FEMA records.

Mr. Rapozo: Okay, as you sit there today, you are not aware of any... I am not familiar and maybe some of these veteran Councilmembers can help as far a

the process. Once the emergency contract was awarded, I don't believe they were exempt from any permits at all. In fact, one of the letters that are in here that I just read was from our... at that time, our...

Mr. Carvalho: If I may, if I can go through the entire presentation because everything ties in.

Mr. Rapozo: Okay.

Mr. Furfaro: I would appreciate, but I just want to clarify in the statement. I was not saying that they were exempt from a permit, I am saying that it is possible they met with requirements of an emergency response and that is what I want to say.

Mr. Carvalho: And just for your information, I did look at (inaudible) instruction ordinance, post disaster development... there are forms and processes that we have to show that this is the process that you would do when you go through disaster situation. We have that documentation available.

Mr. Rapozo: Bernard, why don't you go through it and we will hold the questions until afterwards because all the questions tied into each other.

Mr. Carvalho: Thank you. So not permits, however, it was processed through an emergency disaster (inaudible). Number 3, the name of the contractor and copy of the contract for the construction of the seawall. The contractor was Okada Trucking and as for a copy of the contract, it is our understanding that Okada Trucking did not have a contract to perform the work that needed to be done. He proceeded under the auspice again, the emergency declaration which allows for emergency work to proceed without a formal contract in place. If I read through some of these documentations, it does allow for, if you will, expedited type process because of the situation at hand, so that is question number 3.

Question number 4: The cost of the seawall, who paid for it and when it was paid? The total cost of the seawall is \$580,000. Who paid for the seawall? If you refer to your booklet, you have a communication from the Director of Finance dated July 11, 1994 to the then County Engineer and it states that the Department of Public Works is transmitting to the Pono Kai bikepath reconstruction project. That is what the name of the project was at that time. That is what it is listed as. For the first and final payment along with required project clearances, attached you will find our County Attorney's ruling and I will go into that part which comes in the next question. This is what the cost was which I explained to you and how they got paid per this communication.

Question number 5: Please provide records of any and all correspondence, minutes of meetings and notes of discussions held with State and/or Federal personnel including, but not limited to the Department of Land & Natural

Resources and the U.S. Army Corp of Engineers dealing with the permitting construction or maintenance of seawall (very lengthy question). But at the same time, our response to that is that we continue to seek information as requested above, however, to date, we have been unable to attain any records. Please note that according to our Finance Department, it is the County policy to purge all County documents after a six (6) year period. Hurricane Iniki happened in 1992 and any correspondences, minutes and notes of discussions were purged. Now, we do have information as we go through on financial documentation that you are going to see shortly, but if you are asking for minutes and correspondences such as that, we have tried and we still continue to try, but at the present time, we do not have anything such as that.

Mr. Furfaro: But you have an audit trail on the financial...

Mr. Carvalho: The financial side now, they have a... I am going to show you in this piece. That is for question number 5. Question number 6: Who is responsible for the maintenance of the seawall and the adjacent areas affected by the erosion caused by the seawall? How was this determination made? Well, I mean, from back then, the maintenance part under the Department of Public Works, they were just pretty much refilling sand and replacing rocks as needed and that is from our follow up information. So bottom line, who is responsible? Department of Public Works-Roads Division along with our new Department now, Planning & Development Division and we are now looking at the entire picture and figuring out how we are going to address this short term/long term, who needs to be involved, who needs to be pulled to the table to address this particular seawall and that is what we have right now. What happened in the past, happened as far as maintenance... I know Pono Kai have been part of it... whether it would be just monitoring... I know that we have had a replacement of rocks as we go along. I know there is a replacement of sand as the sink holes came about, but that is it.

Question number 7: A copy of the Attorney's opinion that the seawall was constructed legally and funds were required to be paid to the contractor. See the communication in your packet dated June 22, 1994 to County Engineer Mr. Eldon Franklin from First Deputy County Attorney Jonathan Chun. So at that time, you look at that communication and it gives you the information there.

Question number 8: The course of action that the County will take either to remove the... the three (3) R's (remove, repair, replace). Actually, it will take either to remove or repair the seawall, whether it intends to rebuild it and the maintenance plan, it would implement to assure safety to the community. The immediate course of action will be to secure and maintain the seawall as follows: secure sink hole area with plastic barricade fencing. That has been done. Larry Saito and his team along with working with our management team from Pono Kai erected an orange fencing around that entire area. Now, that doesn't mean anybody can just... it doesn't mean that people just cannot cross over the fence, but it is something that is identified and it is safety and it is there as we speak. As I stated,

the signage part is forthcoming. They already have signage there as we speak as you saw in the previous slides that until today, we don't know who put it up and that is just what it is. But we are attempting to put signs around that recently erected barricade, so it is identified and Pono Kai management team, again, is helping us to monitor that closely, so we can continue to look at that entire area. We will continue to backfill sand as needed. Just recently, another issue came up with another sink hole... it is not as big as the other ones, but it doesn't matter, we need to address it and our plan is to fill as needed until we can come up and I will share with you shortly the long term plan. From the adjacent riverbed in the partnership with the Division of Boating and Ocean Recreation (Nagamine, Ogawa Engineers), so we do have an agreement there. Mel Nishihara is working with them closely for the sand replenishment. Number 3: Implement and install appropriate signage, we already went over that. Number 4: Implement strict monitoring plan, so that is how we are going to address the short term for that particular area.

Question number 9: The barriers, if any, the County intends to set up to protect the public from venturing into the vicinity of the sink holes, please refer to question number 8/1. We went over that. Number 8, of course, you have your attachment from... TO: Donald Fujimoto regarding the Waiakea Boat Ramp. It gives you the information. We are okay to dredge sand from there because we have a communication as you have in your packet that shows that to support that piece.

Number 10: The type and wording of signs and we went over that, so we will definitely look at that and come up with whatever is the final/final verbiage and we will get the signs posted in addition to the fencing that is currently there.

Number 11: The course of action the County will take to obtain funding for the repair/removal of the wall, the seawall. The course of action will be to request Capital Improvement Project funding as follows: Fiscal Year 2008-2009, estimated cost of \$100,000 to hire a consultant, secure permits, include determination of existing concrete slab and include assessment of Fuji Beach seawall as well. Fiscal 2009-2010, the estimated cost \$2.5 million for the construction of the entire project (estimate). And how do we get to those numbers in working closely with Donald and I have some information on how the formulas work, but that is kind of like short term, long term and we are working on that. That is question number 11.

Chair Asing: (Inaudible-mike off).

Mr. Carvalho: What did I say over there, 2?

Mr. Bynum: It says (inaudible).

Mr. Carvalho: That is one because I have my other notes here. Sorry. So, again, bottom line, as we begin to discuss, talk story with Mel and Kylan and all of us to see what best fits. Again, as recommendations, we just trying to get this out

and I have some other information. Question number 12: Documentation from experts that the repair or removal of the seawall is not of an emergency nature. We spoke with C.H. Fletcher, Chip, Department of Geology & Geophysics of the University of Hawai'i-Manoa on Tuesday, June 19. He stated that the current status of Pono Kai seawall is not of an emergency nature. He suggested that we proceed with our short term plan of securing and maintaining the location and proceed with the long term plan and replacement of the seawall as soon as possible. We also asked Mr. Fletcher what would warrant an emergency. He stated that before the wall deteriorates and actually falls, we should make every effort to move forward with our plans as stated above. That was that piece. Now, we did have additional questions from that first piece as we move on into question number 13. What will be the comparative total cost of the seawall if we were to be replaced, removed or repaired? In comparison to the \$580,000 spent on the wall, the removal of the wall will be done internally if we had to remove it and would be the most cost effective. As for replacement of the wall, please refer to question number 11 for the estimated cost breakdown which we did in the \$580,000. For the repair of the wall, please refer to question number 14 which we will go into right now.

What short term solutions are to be employed to address the sink hole issues (repair and maintenance components)? In addition to the response in question number 8 which we gave you folks the breakdown, we spoke or I spoke to Mr. Dayan Vithanage. You have his bio in front of you so you know who he is with and how to say his name. Don't call him brother Dayan. He is Ph.D. of Oceanit. Now, Oceanit is a company in Honolulu and he suggested that we consider repair versus replacement of the wall. And interesting enough, if the repair of the wall is done correctly, then we can focus on building a beach in front of the wall. Now you stated that the existing condition allows sand to sift between crevices that create an unstable ground above which results in sink hole situations as ours. So we go back and do it the correct way, there is a possibility that the repair would be the better way to go, but we will see how that goes. Now the repair would include the installation of a filter fabric blanket and I did provide that information for you guys on what the breakdown of the fabric is which includes a geotech style material... you have that attachment that would secure the sand from sifting away. He stated that this will be similar to the work done on the Brennecke seawall. Again, after Iniki which he worked on with Public Works staff following Hurricane Iniki, so he shared some information on his experience in working on the Brennecke seawall and how it kind of is almost similar to this particular piece. So as far the repair, there is a good possibility there. He suggested that we conduct a survey of the wall first followed by a complete repair based on the following cost breakdown. Survey assessment of approximately \$5,000, then a \$400 per foot for materials to repair the wall added by an additional 200. So if you will do materials and complete repair of the wall will be \$600 per foot, square foot, linear foot... I am not into all that... whatever it is, but bottom line is \$600 and that is what he relayed to us.

Ms. Yukimura: Bottom line is 600 what?

Mr. Carvalho: If you do the \$400 per foot, it is just for materials and if you add 200 more if you want to do the complete repair, that was his breakdown. He said per foot, so Mel told me that it is 600 linear feet of wall as we speak, so however that calculations unfold. So that is in communication, so now we have communication from Honolulu, we have communication from Oceanit which was very reputable engineering firm... that is what they do, coastal walls and stuff like that and he is experienced in working with Brennekes is another positive piece as well as we move forward.

And then the last question, question number 15: What is the estimated longevity of the seawall if the County did nothing measured against area erosion rates. The only thing we could really say based upon all of the information flowing back and forth from the experts, we recommend the hiring of a consultant to assist in determining the erosion rate of this area. So that is the information... we also included in here a glossary of all the different terminologies of what a seawall is, revetment is and over wash and scraps and whatever, so it is in there for your information as you continue to move forward.

Mr. Rapozo: Thank you Bernard. What I would like to do right now is go back to the beginning of the questions. We already talked about number 1. We sort of talked about number 2 and I have asked staff to call Imai back because I wanted to have some questions as far as Planning is concerned pertaining to the permits. Question number 3: Is there any questions on the contractor and the copy of the contract? I guess I have a question as this... I guess it is almost... it ties into your answer for number 5. We don't have the contract. I mean, what you provided is a list of projects which is tab number 3 and then it looks like a voucher edit... well, I don't even know what that is, but, apparently, on July 13, 1994... it is an expenditure of \$580,000 which would... I guess appears that is what we paid the vendor. I am not sure if that money came from FEMA or from the County.

Mr. Carvalho: I was told that it came from FEMA.

Mr. Rapozo: It came from FEMA, okay, and... any other questions on the contract amount? So there is no contract that we can find?

Mr. Carvalho: No.

Mr. Rapozo: Unbelievable, okay. \$580,000, are there any contracts, you know... well, that is a different... we will ask that of Finance. Okay, no other questions, we will go to number 4, the cost of the seawall. Obviously... Oh, I am sorry.

Mr. Bynum: What the public can't see is this document that you provided for number 3 which looks to me... it is interesting because there is a number of emergency projects... looks like caused by Hurricane Iniki and the County did secure bids from several (inaudible)... from four (4) different companies,

so on the seawall, there were two (2) other bids other than the successful bid, right? You know, one for \$714,000 from Koga Engineering and one for \$675,000, so it looks like... I am getting a lesson from Councilmember Kouchi and from this experience of, what do you do when a hurricane comes and you wake up the next morning and, you know, a whole bunch of beach is gone, the bikepath is gone and it is within feet of a building... you move expeditiously apparently. So there was bids made for these projects and it looks like Okada was chosen because they were the low bidder.

Mr. Rapozo: But, Tim, and not to be sarcastic, but read what that proposal is.

Mr. Bynum: Which one?

Mr. Rapozo: The one that you just referenced.

Mr. Bynum: Pono Kai bikepath.

Mr. Rapozo: Where does it say seawall?

Mr. Furfaro: I think I heard Bernard reference that the seawall repair was wrapped into a project called, the bikepath replacement.

Mr. Rapozo: And the reason I bring that up Mr. Furfaro is that we were told by the County Engineer that this was a seawall reconstruction project and it qualified for FEMA funds because it was a reconstruction project. The reality, it is not a reconstruction project, it is a construction project. This wall was built and without a contract, I cannot tell what it is. What I read here, Pono Kai bikepath, \$580,000. There is nothing in here, no contract, no communication, no documentation, nothing to express any kind of authority for this County to build a seawall without any kind of permits. I was told by... I don't remember if it was Councilmember Yukimura at the last meeting that I was here that, if, in fact... if it is reconstruction project, we don't need to go through permits, we can reconstruct it and come back later, but if it is an initial construction, we need to go through the permits. That is what I was told and I am only going off what I am told by the experts. I read this here and it says that it was a bikepath project and I don't think it would have cost \$580,000 to fix the asphalt bikepath that had been destroyed by the hurricane. Somehow, we were able to fit in a seawall in this project and I am not convinced that FEMA paid because if you look at number... if you look at tab number 8 which is a letter from, I don't know, W.Y. Thompson. I am sorry, not tab 8. If you look at tab number 7, it is a letter from our County Attorney at the time, Jonathan Chun to Eldon Franklin, County Engineer... it says that we are returning the proposed contract for the reconstruction of the Pono Kai... reconstruction of the Pono Kai bikepath project. It is our understanding that this project was placed on hold by FEMA due to the requirement for an Army Corp of Engineers permit. While this project was on hold, Okada Trucking started and completed work on the project. No formal contract was ever executed prior to the completion of this work,

nor was a written notice to proceed issued by the Department of Public Works. Hello, I cannot sit here and accept that, oh, no, there was a contract, we just didn't... we cannot find it. I read this and FEMA put it on hold because we didn't have a Corp of Engineer permit. Bernard, I am not shooting the messenger because I know you tried your best to get the information. This information is not sufficient to satisfy my request that, what happened back in this day? Was, in fact, that permit from the Board of... I mean, Army Corp of Engineers ever get granted and in your response for number 5 that according to our Finance Department, it is the County policy to purge "County documents" after a six (6) year period. I cannot believe that is what we are doing today. If that is the case, we are in a world of hurt if, in fact, after six (6) years, we are throwing away all County documents, permits, and I know that is not true because we have requested permit applications from projects that go back 10, 15, 20 years and we have it. So I just think that is... anyway, Mr. Furfaro?

Mr. Furfaro: Again, I don't have the same history here, but it looks like there is a couple clues here Bernard and like I said earlier, one of the pieces that are there regardless of destroying project release permits and so forth, there is an audit trail. Obviously, at some point, if we got reimbursed from FEMA, there would have been an audit trail to the emergency fund account and the other particular piece that I want to explain. It says, they may have been holding the money, the payment, because there was no documents for contract executed prior to the completion. It didn't say before the start. Usually get permits approved and so forth through bid specs prior to the start, but in a particular reimbursable situation, the FEMA rules might have been, you know, as I said earlier, when you have completed the project, when you go to ask for reimbursement, you then need to document the completed project. That is when they are looking for the completion, so I just wanted to point that out that no formal contract was ever executed prior to the completion, not prior to the start and that might have been an emergency response piece.

Mr. Carvalho: I wanted to clarify that my question number 5 stated that any records of correspondences, minutes of meetings and notes of discussions held. That was the question that was posed and I did say that, financially, we do keep the audit pieces, but these types of materials are not kept.

Mr. Furfaro: So there is an audit trail on the moneys?

Mr. Carvalho: I am told that financially, physically here, yes.

Mr. Rapozo: Okay, then I would ask the staff make note as well because as the June 22, 1994 memo which is well over six (6) years and this is the same County Attorney memo that was sent to the County Engineer at the time and I read the first paragraph. Let me read the second. Based on the above, it is this office recommendation not to execute a formal contract with Okada Trucking for the Pono Kai bikepath project. Instead, this office recommends that if the Department

of Public Works determines that Okada Trucking, Ltd. Claim Against the County represents a fair amount for the work performed, then Okada Trucking, Ltd. be processed through a requisition rather than an after-the-fact contract. Due to our recommendation, we are returning the contract documents to your department and recommend that a requisition be processed as soon as possible to cover Okada Trucking's reasonable claim, so I guess what I am asking is if we could get a copy of that file... of the entire file, contract file, requisition file that is tied into this project because you will see my point as we move through this discussion. Go ahead Councilmember Yukimura.

Ms. Yukimura: Yes, I guess that is what I want to ask what the point of this is. I mean, you know, and I am in an awkward position. I am not opposed to this kind of an investigation if there is a point, but it is just that to try to second guess what happened during this really crazy time, maybe you couldn't fix the bikepath without making sure that there was a shoring up of the shoreline. I know how hard it was to control Okada Trucking. Believe me, you can... you know, we were trying to get them to pick up the solid waste in segregated piles and they were like throwing it altogether and putting it into the truck. So in those times, it was hard to control and I don't know exactly what happened here, but I am just wondering if we need to do this kind of research through a Committee process or if there is a, you know, and maybe you can explain the point of it and there is something really valid and valuable, so that we need to find out exactly what happened.

Mr. Rapozo: Well, for me, I do. I think for me and as you look at the long term suggestion where we are talking about 08-09, 09-10 budget to fix this wall, there is a serious concern of mine. One of the biggest concerns that I have is, in fact, that specific wall if it is not legal, we need to take care of that and that is all that I am trying to figure out.

Ms. Yukimura: How are we going... assume we find out that it is illegal, then what do we do?

Mr. Rapozo: Exactly.

Ms. Yukimura: No, I mean what do we do?

Mr. Rapozo: We make it legal which is normally what we would do. What do you think? We should just not do this discussion and that is okay, you can go now and we will just pretend that it never happened? I don't think that is the right thing to do. I mean, I don't think...

Ms. Yukimura: If this wall is in our jurisdiction if it is a County wall or...

Mr. Rapozo: We built the wall.

Ms. Yukimura: It is in a County park, it is showing up in the County park. The main question is, what do we do for public, health and safety into the future with this wall? It is a given, so, I mean, you know, I think that is our responsibility. Is the wise thing for public, health and safety to replace it, remove it, you know, I don't know if... at this point, the legality is going to change our decision making about what to do into the future, so that is why I am asking because this is taking a lot of people's time and all this and if there is a point that is going to affect our responsibility and our decision making, then it makes sense, but I am not clear how all this...

Mr. Rapozo: And I apologize. What we are doing is we are going through the questions that were submitted and we are going through it and we are addressing the concerns.

Ms. Yukimura: Yes, but it is still these questions and these answers should all have an end in mind and I am just asking what that is.

Mr. Furfaro: Well, my point is... looking back at these particulars, you know, it is what it is right now and under the circumstances from what I am seeing here Mr. Rapozo, I mean, we got the community back in order in a reasonably quick time. The flip side of this is the City of New Orleans that is still struggling with, you know, responses to issues three (3) or four (4) years ago, but if you would like me to take a look in the Finance Committee the kind of audit trail that we had with FEMA, you know, I will be glad to do that. But the reality, I think, you know, what history we have left on what records that we have, Bernard, you folks have done a very good job in answering our questions and getting us to the point that, you know, how do we answer for the current condition of the wall and the liability that it exposes us to and what is the right answer and how can we get some other political subdivisions like the Feds and the State to help us and just move on.

Mr. Kouchi: Mr. Chair, I was here this morning. I think the answer is easy. You get Public Works to get us an after-the-fact permit.

Mr. Rapozo: That is what I am trying to establish, but Ron, when I ask... today is the first day that we've actually heard that there is no permit. I mean, you know, to cure an addiction, you have to admit the problem. We cannot get that and that is my concern and we asked the questions and, JoAnn, I appreciate your comments, but I have sat here until 5:00 in the morning listening to everybody else's Committee because somebody else had questions that they wanted answered and I ask that you folks be as flexible with me. These are questions that were submitted and we are going through the questions and that is all that I want. I want you guys... because I am going to tell you, if this wasn't on the floor, I would not have gotten the call from the person that said, Mel, I know we built the wall. So when I speak to the person that built the wall, I am informed that the wall was never reconstructed, it was constructed which is totally against what we were told by the Planning Director. So if we don't do this in the public, the public doesn't

have an opportunity to understand what we are trying to do, so I am terribly distressed with that comment that, end in mind. An end in mind is making this stinken thing right. The end in mind in the morning session with the bikepath was making it right. I should not be punished or chastised because I am trying to do it right, that is my job and if you folks disagree, I apologize, but this is my Committee and I am going to go through these questions one by one and at the end of the day, if you guys want to kill it, receive it, you got the votes, do it. But, if not, it is going to sit in this Committee until I am satisfied, period. Now let's move on.

Mr. Furfaro: Mr. Rapozo, I am not on your Committee, but I would offer that assistance again if you want me to look at those particulars.

Mr. Rapozo: And I appreciate that.

Mr. Furfaro: It is a very challenging task when they know that many of these records other than the audit trail may have actually been discarded.

Mr. Rapozo: And maybe it is the cop in me, the private investigator in me that is being so suspicious right now that it is driving me nuts because you cannot tell me when we spent \$580,000 on a project back in... that long ago, that we have no files today. Did the hurricane blow up the records building? I mean, what happened and I don't want to be negative, but I am really feeling like we are being... the information is being withheld from us because nobody wants to say what happened and that is not what this is all about.

Ms. Yukimura: Mr. Chair, may I just say. I didn't ask my question to chastise, I just asked to ask what was our goal in doing all of this and what our end was because I wanted to know.

Mr. Rapozo: And the answer is, we submitted over a bunch of questions for a response and we are going through the response right now. At the end of the day, if you look at what the question was, what is the department's plan and we are going to get there, but until we get there, I think we all and the public need to know the chronology of what happened because many of us don't. When this thing was built, I didn't know what was going on. I wasn't here... JoAnn, Kaipo, Ron, you guys have been here and I haven't. This is the first opportunity that I have to actually ask the question, so please bear with me and bear with the rest of us that are new on the Council. So we are now on number 6... because we don't have any records, so that just does away with quite a few of these questions. I will be asking for the complete contract file as well as where this money came from and I think that is important. Okay, and the other important part is, in fact, if this is not a legal project... If this is, in fact, an illegal, unpermitted structure, then there is some other ramifications that go along with that such as the existing shoreline certification and I will read that in Mr. Dolan Eversole's testimony that he said in the past.

Number 6: Who is responsible for the maintenance and Bernard, you mentioned that, currently, what is happening is, Pono Kai calls, there is a sink hole, Public Works mobilizes, Mel Nishihara, they send out the crew and they fill up the sink hole and that is it. Any questions on that? Thank you. Copy of the County Attorney's opinion that the seawall was constructed legally and funds were required to be paid for the contractor and that is the communication that I read verbatim and it really doesn't say anything other than Okada filed a claim. They built a structure without a permit, they built a structure while the project was placed on hold, they did the project, they came back and they filed a claim and forgive me, I just read this for the first time today, so I have no history on this. They build the wall, they come in... in fact, FEMA stops the project because there is a concern that there is no permits with the Corp of Engineers... they go ahead and complete the project, then they come in and ask for money, apparently we don't pay them, they file a claim and now the County Attorney says, hey, listen, you know, based on their claim, if the Department of Public Works feels that they are owed the money, then we need to go out through a requisition process. There is nowhere in here that says that was done. All I have is the opinion to Public Works, but no response, nothing that was done. The next thing we see is the payout of \$580,000 and I don't even know where that came from. My question is and we will send that for Purchasing or Finance (I don't know who takes care of that), but it was the attorney's opinion at the time to go through requisition as opposed to an after-the-fact contract. I don't know what we did, so any other questions on that? If not, thank you.

Number 8 is the course of action that the County will take either to remove the seawall whether it intends to build it and the maintenance plan it will implement to assure safety to the community. Again, secure the sink hole, continue to backfill, implement and install appropriate signage and implement strict monitoring plan. Any questions on that? Okay, moving on. Number 9: The barriers, if any, that the County intends to set up and you talked about that orange fence?

Mr. Carvalho: Yes.

Mr. Rapozo: And that is... is it there already?

Mr. Carvalho: It is there already.

Mr. Rapozo: Okay, and the signs pending attorneys...

Mr. Carvalho: Yes.

Mr. Rapozo: Okay, thank you. Any questions on the barricades? If not, thank you. Number 10: The minimum... the type and wording of signs, we talked about that and you are going to be checking on the language?

Mr. Carvalho: Yes.

Mr. Rapozo: And all I am asking is that DLNR requirement that will give us the umbrella of protection under State law for liability. Again, I am not sure if that would cover this event, but I think we need to be... at least if we are going to go put up signage, let it be at least as close to DLNR as can unless there is a specific requirement. Number 11: The course of action that the County will take to obtain funding for the repair or removal of the seawall. The course of action will be to request CIP. Again, fiscal '08-'09 for \$100,000, we are going to hire a consultant and secure permits and so forth. 2009-2010... \$2 million estimated cost to determine the project. Now, we don't even know whether we are going to repair, remove or replace, the three (3) R's. We have a workshop coming up too you know, but it is not about the seawall.

Any questions on that and I actually have a question, but it will tie into the next which is the documentation from the experts regarding Chip Fletcher and this baffles me what he said. Let me just read it. It said, we spoke with Mr. C.H. Fletcher which is Chip, Department Chair of Geology and Geophysics and the University of Hawai'i-Manoa and he stated that the current status of the Pono Kai seawall is not of an emergency nature. He suggested that we proceed with our short term plan of securing and maintaining the location and proceed with the long term plan on replacement of the wall as soon as possible. We also asked Mr. Fletcher what would warrant an emergency and he stated that before the wall deteriorates and actually falls, we should make every effort to move forward with our plans as stated above. Well, duh, I mean, before it falls, we should. My question is really for Kylan and I don't know if you are prepared to answer that today. I know I spoke to Donald a little bit about this, but I just want to read Mr. Fletcher's comments. This is from Decem... this is from our May 16 Committee meeting when Mr. Fletcher... when they were here... him and Dolan were here and they were talking about the seawall, Pono Kai seawall and he introduced himself as a Professor of Geology and Geophysics at the University with Dolan and Tom Smith from the Army Corp of Engineers, blah, blah, blah. I don't recall exactly when they... they were invited to go take a look at this seawall. He didn't remember the date, but through our research and through Mr. Eversole's records, it was December of 2003. December 2003... Dr. Fletcher, and with regard to an earlier question of where was the expertise... this is, again, to the wall. Where this advice came from to fill the sink holes with sand, we all sort of stood around the seawall and talked about the sink holes being a hazard and that people can fall in them. They were dangerous and we thought that a quick fix could be to just fill them with sand and in not in anyway was that intended to be a long term measure to fix the seawall, but simply to solve a pedestrian problem associated with the seawall (December 2003). Mr. Eversole, right after that said, just to reiterate on what Chip had mentioned, Chip and myself and Tom Smith with the Army Corp did come over and take a look at the Pono Kai seawall in December 2003. This was in an informal visit and we were actually on island to look at Po'ipū Beach and the potential for beach nourishment there on behalf of the Mayor's Office... obviously, we had total knowledge they were here and as a side note, they asked, can you come take a look

at the seawall and see what you think. These are experts. Two (2) of the top experts in the State. At the time, the coastal engineer with the Army Corp had made the... I don't know if I should say determination, but he had assessed the seawall and thought that it was irreparable and it was too far gone to do any major structural repair to that probably needs to be investigated more to really know for sure if that was the case. The other thing he talked about is back in... he just reiterates the fact that that wall was not there prior, so if was, in fact, a reconstruction. So for Mr. Fletcher today, to tell me that it is not an emergency, that we proceed with our short term plan. The short term plan was recommended in 2003, four (4) years ago. Now this is almost like the landfill. You know, Kaipo, your five (5) years left, five (5) years left four (4) years ago. Fill up the holes until we can get somebody to come look at it and do it.

Now, today, we are being told that in 2008-2009 budget which is not until the next fiscal year, we are going to hire a consultant, \$100,000. We can't do it this year, maybe we are broke. I don't think so. I think we have a \$100,000 this year. I mean, I understand that a money bill is coming over now for that kind of money for Ka Leo O Kaua'i. Hire a consultant, secure permits, include determination of existing concrete slab, include assessment of Fuji Beach seawall. Why, Kylan, are we waiting for 2008-2009 budget to do this when, in fact, we have been told that it is a dangerous situation. When, in fact, we are here wondering what kinds of signs you are going to put, so nobody fall in and, yet, we can wait here and this goes back to, I think, Jay's question about the liability. We put up a sign and we just inherited liability and, yet, if somebody falls and gets hurt, it is not that important to wait another year, fiscal year, we didn't even start 2007-2008... that starts July, but we are not even looking at this until 2008-2009, in fact, to even fix it, 2009-2010. So I guess, Kylan, the question is, can we consider... well, first of all, has the Department acknowledged that this is a non-emergency situation?

KYLAN DELA CRUZ, DEPUTY COUNTY ENGINEER: I understand it was under discussion, but I don't have an answer to that right now.

Mr. Rapozo: And I know Donald is not here and we will definitely get a better clarification when all the discussions are done. But as of this writing, the plan is to wait for the 2008-2009 budget to do the analysis and 2009-2010 to do the reconstruction or the fixing or whatever.

Mr. Dela Cruz: There is a... well, we are doing the short term maintenance plan establishing the barricade and potential signage that we are going to place (change side of tape)... there is a... we can also provide an assessment done by Mr. Dayan Vithanage of Oceanit. The estimated cost to do an assessment is approximately \$5,000.

Mr. Rapozo: Okay, I saw that in the response, but I didn't see it as something that we were going to be doing. I am just wondering, is that something that we are going to be looking at to have somebody to come take a look at that...

Mr. Carvalho: In our discussion, you know, we kind of laid out the overall piece with... it depends now, are we going to replace, that is the question. Remove... if we are just going to remove the whole wall, we can... from my understanding and I am a lay person here trying to learn this whole thing, would be pretty much do it in house, excavator and just do that. It sounds simple, but I know there are other issues involved. If you replace the entire wall... if you remove the wall, we have to understand that you cannot, obviously, put it back. Now, there are other conditions that may occur later on down the road to the property itself, the hotel itself if you will, so that is one thing. The repair part, the recommendation for that seems to be more of a win/win under repair and the reason for that would be because working with Mister... whatever his name was, he suggested that by repairing it and doing it the right way, we are going to also repair the beach as well, so that would be a win/win. The assessment would be done very soon by some company like that and we could get something back in a timely manner.

Mr. Rapozo: Is that something the corp could do? I would feel more comfortable if the Army Corp comes and does it, than some contractor that has a stake in maybe winning a contract to do it. In fact, what concerns me is back in 2003, when the Corp of Engineers... the coastal engineer with the Corp made the assessment and it was a cursory assessment, but he made one. His comments was that it was irreparable. I mean, that was the Corp of Engineers which I think... I pull a little bit more weight than some private contractor, so is that something that... I am asking because I don't know the answer. Is that something that the Army Corp could provide, the service that they could provide to come to us because, Bernard, you are right, we are here and you cannot make the determination whether it is to remove, replace, repair... we don't have that expertise. Another thing that was noted in the Dolan Eversole testimony was that, that fabric that you talked about was never used in this wall.

Mr. Carvalho: He did say.

Mr. Rapozo: Yes, he did and he mentioned that it was not built to standard. In fact, if they had used that fiber mesh, it would have retained most of that sand and prevented this from happening. He also said in discussions that I had with him off line was that he didn't think there was enough sand around to replenish that sand forever in that wall because as the erosion continues to happen and that wall is undermined, you are going to start losing sand from... as it encroaches upon the Pono Kai property including the bikepath. So, I mean, I don't think the options are for us to determine, I think we need somebody with some expertise and no financial stake to come down and make an assessment of this project because that is my concern. It has always been my concern and when you see how close on that photo, how close that bikepath is to that wall... if we remove the wall without any kind of shoring up or I am not sure. Some experts will say, if we remove the wall, mother nature will take care of itself and put that beach back where it used to be, I don't know that, we don't know and that is what I am asking.

I am kind of disturbed that we would wait until 2008-2009 before we even do that and just continue to put signs and sand because that is not the answer. You've seen the pictures how that has changed over the years and I am just saying, let's get us some experts in here because I think that is where we need to go.

Mr. Dela Cruz: We will follow up with the Army Corp of Engineers.

Mr. Rapozo: Thank you very much. Any other questions pertaining to that number regarding the (inaudible) plan going forward. No questions, okay. Go ahead Mr. Furfaro.

Mr. Furfaro: Bernard, I would make sure that when engineering is working with the State on this temporary dredging process and so forth, I didn't see anything in there that indicated that they had the clearance from the Army Corp of Engineer at present, so please put that on your...

Mr. Rapozo: Your mike.

Mr. Furfaro: I didn't see anything that said they currently had a clearance from the Army Corp of Engineers, so please put that on your engineering requirement.

Mr. Rapozo: Thank you. Any other questions regarding the forward plans going forward? If not, number 12: Documentation from experts that the repair or the removal of the seawall is not of an emergency nature, I think we have already covered that. I know that Chip Fletcher said it is not an emergency, but he also says that, you know, when the wall deteriorates and actually falls, then it will be an emergency. That is kind of too late. I think the emergency is now. I think that was reiterated by Mr. Eversole and Mr. Fletcher in their 2003 testimony in their records, in their document, so I think for them to come back now and say that it is not an emergency, it is just totally ludicrous. I think... the reality is it is an emergency, I think, just from my total common sense standpoint. When I went over there and I walked and, Bernard, I told you, please do not walk on that area because you would go deep. It is a good thing that you are tall, so you could probably survive, but that wall is very, very fragile. I mean, that wall is... as you can see the water get underneath, it is incredible. It is like a... if it was a natural thing, it would be an eighth wonder of the world how that thing was built because you got the water coming under now, the wall, and actually eating away the sand behind the wall, so the wall really serves no purpose. What it is doing is, it is affecting the erosion rates along the coast that goes on both sides of that wall. It is just totally disrupting the sand flow that mother nature has done and that is my concern. In fact, if we have to remove that wall, let's remove the wall. Anymore questions? If not, short term solutions, we talked about that and we talked about the assessments. I would assume that the recommendation of hiring a consultant will be coming soon. I guess that is in your discussions with engineering and so forth and the experts. Any other questions for the two (2) gentlemen? Go ahead

Mr. Bynum.

Mr. Bynum: I just have a couple comments and, you know, first of all, thank you for this whole report and I think you responded relatively quickly. This went out on June 21 and I am getting a better picture and I like the clear straight answers, you know. We are clear now that the wall was built after Iniki and I think that the pictures are dramatic. It is like, we had a beach, we had beach front, a bikepath and overnight, the bikepath was gone and the erosion was within feet... it looks to me to be 40, 50 feet of the building. It certainly was an emergency then and I have also gotten a window to any... the County was moving quickly getting bids, trying to do due diligence as much as they could, but they were sending out people to address these issues. If you look at that picture, you would say, oh, in a week, one more big wave and this is at the building, so they had to move quickly. I really thank Councilmember Rapozo and Iseri-Carvalho for bringing this onto the agenda because, clearly, in 2003, it got looked at and interim things have happened in between. So this is great that this public process is happening because now we are going to address it properly one way or another. These are very... you are giving us what documents you can get your hands on and it looks to me as if the County Attorney at the time said, hey, look, let's not mess with this contract and stuff. The work is done, you know, let's pay this guy and the work happened... it was an emergency. I, too, question about whether FEMA reimbursed or not. I think they may not have because it was just like, okay, this one didn't make their criteria for reimbursement, but the... I agree with Councilmember Rapozo that we should move expeditiously. I applaud the things that you have done in the meantime, but it looks like either we have to go through hiring a consultant because you said that part of the scope of work would be securing the permits, getting the right permits to rebuild the wall or it looks like you have a window or a possibility that could be repaired and did the math and rebuilding looks like it is a two (2) year process and cost \$2.5 to \$3 million maybe and repair possibly might be \$360,000 to \$370,000. But either way, I would concur with Councilmember Rapozo that... let's begin the assessment, you know, not until next fiscal year, but at least deciding from experts how to proceed, you know, as soon as we can. If that requires asking for funds this year, then let's ask for funds this year at least to determine, is it repairable, can we go with what Oceanit is saying and use the existing structure and do it properly with the fiber and the geotech fiber and all that. You know, if Councilmember Rapozo had not brought this issue up on, we would just be backfilling sink holes as it had become the status quo. So I am encouraged that the process is working and now we are looking at dealing with this issue in a way that is appropriate for the long run at least for the next 15 or 20 years. Boy, those pictures are dramatic, like overnight, the hurricane whacked us. Thanks for your work and that is my comment.

Mr. Rapozo: Thanks Tim. Thanks for the kind words although this wasn't something I brought up because I thought of it. It is something I brought up because somebody from the community called and that is all that we are trying to do is follow up. I will say that the hurricane was a terrible thing and unfortunately,

we just didn't give mother nature a chance to fix herself. We didn't give mother nature an opportunity to heal our island. What we did, we went out there and built a wall when I don't know if we did the due diligence and had some experts come in and say, you know, that was not a normal event. Hurricane Iniki doesn't occur every time, so was that wall, in fact, necessary and that is why the permitting process I think is there and that is why you go and go through the process because somebody needs to make that determination. If, in fact, that was a catastrophic event that occurs every 10, 15, 20 years, whatever it is, maybe mother nature could have fixed the beach if we had just let it go. Yes, I fully support the bikepath, that asphalt bikepath being fixed. I don't have a problem with that, but did we have to go and put up a wall at the same time and every document that I have seen which is very little only references the path, not a wall. When we deal with the wall now, we are talking about a whole different set of permits and a whole different process. I am just not convinced today that we went through that process, so that is all my concern is and we will submit the additional questions going forward in a communication Bernard. Probably more for you and Planning and I don't know if Imai came back. We will definitely submit the questions and have this brought back at the next Committee meeting. Councilmember Yukimura?

Ms. Yukimura: Yes, I do want to thank you for this report. You know, the pictures were very helpful, the documents were as well and they do give us a framework for thinking about what we need to do with this, so thank you both.

Mr. Carvalho: I have one more thing. This is an aerial study and I have the Kaua'i Shoreline Erosion Management Study too as well for your review. We have our own copies of this.

Mr. Furfaro: You gave us the two (2) front pages of that.

Mr. Carvalho: But this is the whole document.

Mr. Rapozo: Thank you. Councilmember Furfaro?

Mr. Furfaro: Yes, Mr. Rapozo and Bernard and everyone. Thank you for the report, but I want to sum this up real quick. I think there is a project released somewhere referencing the reconstruction of the bikepath which triggered the breakwater or the shoreline barrier. I also see a number of dates here with various people, Deputy Finance Director, the people associated with the control department in Public Works after Jonathan's letter. It looks like they made some corrections and so forth, so I think there is a pretty clear audit trail here for you to look at. But before we go too far down the path with a number of \$2 million and repair and this and so forth, I just put this up on the wall here briefly and I want to express to you with the report that you have shoreline erosion referencing that was done in 1959 and clear statements that this contributed to the erosion along that coastline. That work was done by the State of Hawai'i. This work on the Waimea Small Boat Harbor is another example. This is Dr. Fletcher's early work that he is

doing for us right now and the deeper the blue piece is, it indicates where the shoreline is growing at one point. It also contributes to the fact that a lot of the sand is actually filling the small boat harbor there which requires ongoing dredging. It is triggered by the fact that these jetties and breakwaters were built not knowing back in the 50's, the full impact to the currents and so forth. So I am just asking you to... and I will give this to you and if you can get it back to Planning, I would appreciate it, but here is an example of one side of the jetty, the shoreline shrinking, the other side of the jetty, the shoreline growing.

Mr. Dela Cruz: Is that in reference to Kikīaola Small Boat Harbor?

Mr. Furfaro: Yes, this is in reference to Kikīaola Small Boat Harbor, but I think on the Waipouli/Waiakea Canal side, clearly as you pointed out in your presentation, we have the same type of developments happening here and I think we need to look to some partners here about solving the problem. I would encourage you if you are talking to Oceanit as the consultant and so forth, get the State involved too because if we keep going with a sand replenishment program, they should be part of that, so thank you.

Mr. Rapozo: Thank you very much. Any other questions/comments?

Chair Asing: I don't have a question except, Bernard, thank you very much, excellent report and we appreciate that.

Mr. Rapozo: Bernard, thank you very much. That was a... I know how tough it is getting information, so I appreciate what you have done Kylan and I look forward to our next meeting. Thanks. Rules are still suspended. Barbara?

BARBARA ELMORE: This is Barbara Elmore. Since Wednesday and they say that the signs are going up by Friday, I have a problem with the signs they showed. The word danger is the same size text as everything else and it is several lines of... if it is a real danger, it seems to me it should be big letters across the top and then there is another thing. They say, do not walk, stand or lay next to rock wall revetment. Most people don't know what revetment means and the word lay is incorrect. It would be do not walk, stand or lie, so I think there is a better way to word the signs. Thank you.

Mr. Bynum: Thank you Barbara.

Mr. Rapozo: Thank you Barbara and they are going to be relooking at the sign and the verbiage and the font. Anyone else, if not, we will call the meeting back to order.

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

Mr. Rapozo: Go ahead Councilmember Yukimura?

Ms. Yukimura: Yes, I want to echo Councilmember Bynum's acknowledgment of you and Councilmember Iseri-Carvalho for putting this item in the forefront. I think it does need to be addressed and I appreciate that, you know, we are focusing on the attention on what we need to do to deal with this wall and insure safety and public health basically. I just want to make that clear and it is not that I don't think that the subject should be on the agenda or on the table. In some of the questions, I was trying to ask, you know, where the line of questioning was going because in my preference, we are looking forward rather than backward. I think there are times when we have to look backward in order to know how to go forward, but I just wanted to make that clear.

Mr. Rapozo: Thank you Councilmember Yukimura. Anyone else? If not, I appreciate that JoAnn and I just have to say that the reason for going backwards is because we have to determine if, in fact, backward tells us that this wall is illegal and need to be removed and our options are pretty limited. So in order to understand how we are going to go forward, we need to understand where we came from. Again, for some of us, we just don't have that knowledge or that information. Obviously, I probably was in high school at that time, but... Mr. Bynum?

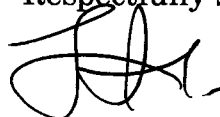
Mr. Bynum: And I really appreciate what you are saying Councilmember Rapozo but I am a lay person also, but from previous things that I have looked at, it may be easier for us to repair in terms of the legal process and it may be good that it happened during a FEMA emergency because there is some kind of latitude with that. So I hope that we move forward with an assessment to determine what is the best way to move forward and move quickly. If it can be repaired, that may be simpler in terms of the permitting process than building a whole new one, but either way, we should move forward.

Mr. Rapozo: Thank you and that is the whole...if there is no more discussion, I will entertain a motion to defer.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Yukimura, and unanimously carried, PW 2007-8 was deferred.

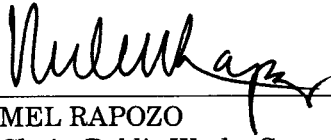
There being no further business, the meeting was adjourned at 2:56 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

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

A handwritten signature in black ink, appearing to read "Mel Rapozo", written over a horizontal line.

MEL RAPOZO
Chair, Public Works Committee