

## MINUTES

### **PUBLIC WORKS COMMITTEE**

**November 28, 2007**

A meeting of the Public Works Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, November 28, 2007, at 11:52 a.m., after which the following members answered the call of the roll:

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

Minutes of the November 14, 2007 Public Works Committee Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Minutes of the November 14, 2007 Public Works Committee Meeting 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: Glenn?

There being no objections, the rules were suspended.

GLENN MICKENS: Thanks again Mel for keeping this item on the agenda. We have been here for a year with this same item on the agenda and, you know, I can't see the complexity of this thing to be able to answer some answers, but obviously, there are some things that I don't understand. Let me read my testimony for the viewing public as much as for you guys because you have heard this before. Along with my written testimony, I submit to you a copy of an article in *The Garden Island* written by Walter Lewis on March 24, 2007. Ironically, his words of wisdom and the questions he asked about this bikepath are as relevant today as they were eight (8) months ago. I highly recommend that every member of

this Council who failed to read this article do so. It offers a realistic refreshing view on this total project and echoes so much of what Councilmembers Rapozo and Iseri-Carvalho have said as well as the great points that Joe Rosa has presented.

Let me just read you that one little quick thing from Walter's thing. "Don't our County officials understand that they have a duty to keep the public informed about the actions of our government and expenditures of taxpayer's funds. Kaua'i citizens should demand that our government make disclosure of the financial and operational facts about the bikepath project and conduct a public hearing on the viability of the project." That is just one of his statements. I have reviewed pages of my past testimonies about this path going back several years along with the 25 questions that Mel has asked in his memo to Donald and Doug on June 1 and many have not been answered yet. I and others have asked many more with no answers forthcoming. It is discouraging to research and testify on a subject for so long and never get verbal or written replies. I have always tried to be objective and respectful in my testimonies and I believe that I am not asking too much for the Administration to at least address my questions. The proponents of this path keeps saying that it will offer alternate means of transportation and alleviate traffic congestion. A quote *The Garden Island* of 10/18 addressing the coming audit. Critics say an audit could derail the alternate transportation project with added cost and delays. Realistically, how can any rational person make the case that this path segmented at best will ever offer alternate means of transportation or alleviate traffic congestion. The bikepath that has circled this island for 40 years was (inaudible). As Joe Rosa who has got as much expertise as anybody about this and never lessen traffic, so how will a multi-million dollar segmented walking path... call it what it actually is and not use terminology that makes its eligible for Federal funds ever accomplish this goal. There are many issues that this path that need answers. Had it not been for Mel and Shaylene in keeping this project on the front burner, it would have proceeded a greater mess than it is now and we taxpayers would, again, be wasting more money on legal fees. So, anyway, that is my testimony. I try not to be repetitive, but when you are going on something like this for over a year, then, obviously, you are going to be repetitive, but you are guys are the ones asking for answers. I just respectfully request to my friend Donald comes up with answers to these questions or to Doug whoever is supposed to answer them.

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

Mr. Mickens: Thank you Mel.

Mr. Rapozo: Anybody else wishing to testify? Mr. Rosa?

JOE ROSA: Well, good morning again members of the Council. Joe Rosa for the record. While I am hearing with my comments about these bikeways. You know, in the early 70's when we put... the State started to put the bikeways all over the island. Up until today, I don't see cyclists using those bikeways and the

State isn't doing anything to upkeep it because there is not use for it, so they are not spending money on it. The grass is intruding on these bikeways, the State is taking part of the bikeways to widen up their lanes to 12 feet wide. I am going to get back to the Waipouli bikeways that we put in from Leonard's Service Station along Fujii Beach all the way to ex-Councilman's Smoky Louie Gonsalves house. During 30 years that the County was supposed to have been taking care of that, for nothing because it is all covered with sand, grass, pine needles. The (inaudible) County going buy themselves a sweeper that they could use to sweep those bikeways out. Each addition to the highway fronting Fujii Beach, so how are they going to maintain all this thing here? Also, you guys talking about hardening of the shoreline, what are those bikeways doing? You are putting concrete and, you know, I will say that I have seen those bikeways that we are putting was between the swimming pool and Mr. Fred(sp.?) Victorino's home over there and where are you going now, we are going on makai side near the shoreline and sure you are going to cause an erosion problem. Secondly, you are going to cause hardening of the shoreline. Things are happening that is going to be coming out on the investigation that Mel Rapozo asked with Marion Higa. I'd like to hear and see some of the things that are going to come out of it. You are going to shake a lot of skeletons in that closet.

Another thing, they go ahead and do all these kinds of things like I mentioned previously in my last statement up here, the speed limits. What is the speed limit going to be over there? As I said, I ask (inaudible) how fast does he travel and he said, from 15 to 25 miles, you know. Crime has already started in the Keālia makai area. August 24, it hasn't been solved. The Policemen are asking that (inaudible) to help them locate a (inaudible) or whatever vehicle that they are looking for. Also, if I want to get off to those bikeways, do I have to go to Keālia or do I have to go to (inaudible). Is there going to be laterals that they can come out from other points? All those things have to be questioned. Also, we are going to put signs telling the people that there is a bikeway like they had the State Highway... Waipouli service station and by the Kapa'a Neighborhood Centers, same bikeway (inaudible). Apparently, I don't see it. Apparently, they took it away because nobody uses it.

Mr. Rapozo: Mr. Rosa, okay, that was your first three (3) minutes.

Mr. Rosa: Okay.

Mr. Rapozo: Do you have some more to add?

Mr. Rosa: No, that is about it. Like I said, I don't want to see something be another white elephant at the taxpayers. Like you people have a lot of bills to be paid and you got a surplus, so I would like to see the money be spent wisely. That is what I am asking you.

Mr. Rapozo: Thank you very much. Any questions for Mr. Rosa? If not, thank you. Anybody else? Mr. Taylor?

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. As you know in the past, I have been very supportive of the bikepath and I am still very supportive of the bikepath and every time I am down that way and see young families and older folks, people in wheelchairs seeing part of the shoreline that they could never see and enjoy before... makes me feel very good about being supportive of this, but what was a little bit of a surprise to me recently as Councilman Furfaro made available to me some information that this bikepath process is a statewide project. I hadn't realized that before and the whole document that you are all familiar with I am sure, but some of us in the public (inaudible) familiar with the fact that this was a statewide function going on on each of the islands and I thought that was a wonderful thing that comes from the State and that activity and that foresight because it does not only benefit the local people, but it also is a very important part of the tourist industry activity. So I do realize that there has been some difficulties and problems and some cases getting answers and that is unfortunate, but it is a major project. Hopefully, as we move forward with it and get it completed, more and more of the community will be enjoying and I think and hope that staff will be more forthcoming and responding to questions and answers and getting the technical parts dealt with so that we can complete it in and enjoy it. I know once it is completed, it will be enjoyed more and more by all walks of the local community, so I am looking forward to that and I appreciate your efforts of trying to get to technical issues resolved and moved forward. Thank you.

Mr. Rapozo: Any questions for Mr. Taylor? If not, anybody else in the public wishing to testify? If not, Donald? I know that we are very close with receiving this item. There are still some questions that are outstanding that we had hoped to complete today. Donald, any update aside from what was submitted? I know that we are still waiting for some responses from the contractor.

DONALD FUJIMOTO, COUNTY ENGINEER: I think we answered the outstanding question from the contractors with this latest correspondence.

Mr. Rapozo: Okay, anyone have any questions? Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, the extended question was with respect to the Mo'ikeha Bridge. What was the reason for raising the floor height of the bridge and this question came from the oama fishermen because they no longer could use... because of this height, that, the fishing spot that they have been using for many years. The answer from the contractor was the floor height of the bridge was raised to provide adequate depth of the structural concrete beam that is supporting the new bridge. There is no indication as to whether it had to be of that height specifically or whether... I know we had in prior testimony by Doug Haigh that there was absolutely no discussions that took place with the oama fishermen prior

to this as he was no aware that this was a concern or did not care to find out. So the other question was about, please consult with the County Attorney's Office as to whether the posting of safety signage, like no jumping off the bridge. I've said and you've seen it because we have been out there at the same time when we see people on the bridge railing jumping off the bridge. It says that we are coordinating with the Parks & Recreation Department and the County Attorney concerning the best safety signage for the bridge. When did that conservation take place? When do we expect to get a response and when would safety signs be installed?

Mr. Fujimoto: I don't have the specifics on that. The response, I can get back to you.

Ms. Iseri-Carvalho: Okay, the other question Donald was number 12 with respect to the Iwi. It is the understanding that more human bones were uncovered while laying the path. What steps were taken after this... what I will do is, Donald, at this time, I will read the report because it is... I have been getting a lot of calls from people who have served on the burial council, people of the Hawaiian community and I think it is important that everyone knows because, right now, I don't think people know that the places that have been coned off or put orange tape know what the reason for that is. In the Hawaiian community, these human bones that are very important and that they be preserved and they not have children jump on them or jump on top of them or things be taken away from those sites. So it needs to have more signage there to indicate, you know, what were the reason for these sites to be cornered off and we don't have that and that was the concern from many, many people in the Hawaiian community. So just so that the public knows the significance of these and please stay away from these sites because they are in the process of some... at least one of them being transferred. Others, they are, you know, being, I think, laid to rest outside of the comfort station, but, again, there is no signage and I think we need to put that up immediately especially now with the rain. I mean I can imagine what that Keālia site looks like because it is in a total flood zone and I just passed there and its got like three (3) or four (4) inches of rain that floods that whole area outside... adjacent to the bikepath.

It says, during various construction activities for the Keālia to Kapa'a pathway, human remains were found three (3) separate times in two (2) locations. Once at Keālia Beach comfort station and twice at Kapa'a Town Park. Upon each incidence an inadvertent discovery of human skeletal remains form was filed with the State Historic Preservation Department. These forms describe the remains and the situation in which they were discovered. The form also recommends an action on how to appropriately deal with the remains and the approximate age of the remains. I don't have that attached Donald and maybe you can get that. But the first discovery came during grading for the Keālia Beach comfort station, the grading took place along the toe of the mauka side railroad berm, three (3) burials were discovered during grading. This was not a surprise as the swells in the area are beach sand typical for a Hawaiian burial site. Because of the location near the

comfort station, SCS and who is SCS Donald?

Mr. Fujimoto: I am not sure.

Ms. Iseri-Carvalho: Okay, I don't know and maybe somebody knows what that acronym is.

TIM BYNUM: I think that is the consultant, Cultural Surveys, the consultant hired.

Ms. Iseri-Carvalho: I don't know, but I would think that we should know as the County because these are the people that are giving us recommendations. It just says, SCS recommended that the burials be removed to more appropriate location... SHPD which is the State Historic Preservation Department who needs to be consulted regarding removal disagreed. They asked that they be left in place as long as there was a 12 foot buffer from the proposed septic system. SCS determined that there was a significant space and had the contractor build a protective boulder and sand structure to protect the burials. However, you know, it shows a photo Donald, and I don't know if that is... I don't know if they expect to just leave it like that or not because it looks terrible. It just has an orange thing around it and, you know, I don't think the Hawaiian community will be very pleased with the way that we handled these human bones. So we need to have a plan. I mean, do you know what the plan is? I mean are we just expected to leave this orange tape and have the bones just exposed near the septic tank?

Mr. Fujimoto: No, I do not.

Ms. Iseri-Carvalho: So, you know, that would be... and these questions were the same questions that we had asked three (3) months ago and we are finally getting a report from the contractor. The second discovery occurred at Kapa'a Town Park during the realignment of the fence along the makai side of the park. Iwi were observed in five (5) of the new post holes done. Further investigation determined five (5) complete or partial burials and numerous disturbed iwi scattered below the surface. Now I don't know who caused the disturbance of the iwi. It doesn't state, but, again, it is one of those things where kind of just have it on the side. They have I guess a make shift fence surrounding it and that is it. They need to do something with that side and especially identified. I mean there are kids playing all over there and I can tell you that the Hawaiian community are quite appalled that the way that this is being handled.

Mr. Fujimoto: If we can get these questions... you know, if you can submit these questions, I can forward these to our consultant for the answers.

Ms. Iseri-Carvalho: And we will document that, but I think because the... they have been... I have been receiving a lot of questions regarding this and it

really isn't only from the Hawaiian community. People are wondering what those things are because they are just cornered off and there is no explanation for them. There were some people who were aware of them because they belong to the SHPD or had knowledge or were on the list as to what kinds of things come through. Again, it says, SCS recommended removing the remains found in and around the five (5) post holes, SHPD agreed and the remains were removed and (inaudible) site at Kapa'a Lookout. The third discovery was at Kapa'a Town Park. This was during the planting of trees along the makai fence. This time disturbed... iwi turned up in a single planting hole. Because of the pending Veteran's Parade activities, SCS recommended that the iwi remain in place until a future time when they should probably be removed to the Kapa'a reinturnment site. The site is marked by a single (inaudible) boulder and, again, it is just exposed and there is no explanation as to why that is there. I think with a boulder standing right there, it actually has some liability with, again, kids playing and jumping on that boulder. So I am not sure if they already relocated those bones or not, but there needs to be some consistency in how these are handled and we need to be updated on that. We will have staff... if staff can follow up with the questions regarding the iwi.

And then the other questions which I had would be about the rockfall study. What we had was that it was... the draft was received on October 16, 2007, but we do not have an indication of when the final report was going to be completed. All it says is that once a final study is issued and this was from the October answer. It says that once a final study is issued, Public Works will be coordinating with DOT, FHWA, DLNR, Parks and Recreation, Planning and the County Attorney's Office and possibly other agencies on solutions and responsibilities to minimize rockfall hazards. So we need to have some kind of deadline for that and also the questions have to do with legal opinions about who is going to be responsible for the cost. Is it Keālia Kai? Is it the County? Is it the contractor? So... and I will have, if we could, these are the same questions for six (6) months that we have asked for the County Attorney's Office. There has been... I want to know how much discussion... I personally, Donald, don't think that it is the County Council's job to do an investigation to ask the County Attorney, is this legal or not legal? I think those issues have to be decided by the Project Manager, the Project Coordinator in concurrence with the County Attorney's Office. So I would like to know what kinds of efforts have been made towards that because it says that you guys will be coordinating with them. Has there been any effort with the County Attorney's Office?

Mr. Fujimoto: I am not sure. I need to get back to you on that. The staff that is working on it was not available to answer that.

Ms. Iseri-Carvalho: And I think we will get... I'd like to clear this up before the end of the year. We really would have, I think, one more meeting Committee Chair.

Mr. Rapozo: Uh huh.

Ms. Iseri-Carvalho: So I think at this point what I would like to do is have the County Attorney present to assure that these questions will be answered. We have been here at least six (6) months on the same questions.

Mr. Rapozo: Any other questions for Donald? Go ahead Councilmember Yukimura.

JOANN A. YUKIMURA: Regarding the iwi found and the handling of the human bones and remains, I thought the burial council was to be involved in this and I don't see any reference to consultation with them. Do you know?

Mr. Fujimoto: I trust that they are working with SHPD. I mean, you know...

Ms. Yukimura: Is SHPD the burial council?

Mr. Fujimoto: Yes, State Historic Preservation.

Ms. Iseri-Carvalho: (Inaudible).

Mr. Fujimoto: I am not sure what the actual protocol is as far as the process, but I believe that Nancy McMahan who is the State Historic Archaeologist normally gets involved and she is the person that determines what needs to be done.

Ms. Yukimura: I mean I was aware when LaFrance Kapaka was alive and involved as she always is. She was part of the burial council and they always had substantial input and I believe mandatory input. I mean and that would be representatives from the Hawaiian community who presume the role on how they handle this.

Mr. Fujimoto: I can get back to you on that.

Ms. Yukimura: But I too feel that it is important to handle them in a respectful and proper way. So... and it seems like the handling is still yet... at least what has been reported on temporary.

Mr. Fujimoto: And, actually, I am at a disadvantage because I am not intimately involved in this, so I will have to get back with you.

Ms. Yukimura: It is understandable given that you are the head of the largest department in the County, but then we should have somebody here who does know.

Mr. Fujimoto: Yes, and I will get you the answers to these.

Ms. Yukimura: Okay, thank you.

Mr. Rapozo: I had one question Donald before you leave. This report, this draft report, who did the draft report on the iwi?

Mr. Fujimoto: I am at a disadvantage. It just says that the consultant... I trust that our consultant did this draft report.

Mr. Rapozo: I don't know because it references that SCS which I am assuming it is the consultant. So it seems like it was written by somebody other than SCS or SHPD. Okay, we will just submit that and I appreciate you trying. But, again, we are trying to get this resolved. We are trying to get this matter off the agenda and it is difficult when we cannot get the answers. I know you are the Department Head for the biggest department, but we need to have the people here that can answer. Any other questions for Donald? If not, if we could get the County Attorney please. Gary, you mind coming up? I have a few questions that are not related to the SHPD report. I asked for you or Bernard and I guess they got you, so hopefully you can answer the question.

GARY HEU, ADMINISTRATIVE ASSISTANT: Gary Heu for the record.

Mr. Rapozo: Thank you Gary. My question is regarding the bikepath as far as... has it been officially opened or not or has some segments been officially opened? I know that Lydgate is open.

Mr. Heu: Well, if we are talking about the portion under contract and construction now. I don't believe that any portion has been officially accepted by the County at this point in time.

Mr. Rapozo: Are we... and the reason I asked this question is because I received a call about someone that got bit by a dog on the bikepath and my question is, are we enforcing the dog ordinance along the path or on the parks? I have to tell you that I spoke with one of the enforcement officers and basically was told that until the path gets dedicated or turned over to the County, we are not going to be enforcing anything on the path and we already have one dog bite which actually turned out to be a dangerous dog case from the Police Department. If we are going to allow the dogs to continue... dogs are not allowed and that is what the law says today. I own a dog and I am a dog lover, but I also love pedestrians and people on bicycles and dogs do not mix with humans on a path. So I guess my question is real simple. Why are we not enforcing the laws along the path? And if we aren't, are we willing to accept the liability should someone get bit and get hurt.

Mr. Heu: Yea, I will try to address the question as best I can. I think part of that would be...

Mr. Rapozo: The first question is yes or no. Are we enforcing the laws along the path, the dog laws? Yes or no and that is real simple.

Mr. Heu: Well, officially, the path is not open and in terms of the use... the actual use of the path, I know that is something that Parks & Recreation is currently working on in terms of the various guidelines for the path. So my short and quick answer would be, no, I don't believe that there is any enforcement going on along the path at this point in time. The official path is not open.

Mr. Rapozo: Well, I am not talking about the path, I am talking about the park. If the path sits in a park, the law currently states that you cannot have a dog in a park.

Mr. Heu: Oh, I am sorry, you are talking about... this is an area that is open for the public?

Mr. Rapozo: Well, anyway that park... that bikepath is on is a park. I mean, you cannot... are you saying that it is the Administration's position that it is legal to have a dog on the bikepath, is that what you are saying today?

Mr. Heu: No, I am not saying that.

Mr. Rapozo: Then the question is, if you are not enforcing it, why not?

Mr. Heu: Well, at this point in time, my take at it would be that the bikepath is not officially opened for public use at this point in time. We have not...

Mr. Rapozo: But we are allowing it to be open. We are allowing it to be used. We are not enforcing. If it is not open, then the Park Ranger should be telling those guys to get off the path and I don't think that is what we want. But the more important issue today is the dogs because we have been reading in the papers, we have been getting the e-mails about the dog gar... the dodo and all of that on the path and we don't need that. It is not healthy, it is not clean. We were assured that we were going to have some kind of clean ups and the bottom line is now we have a dog bite, dangerous dog bite on the path. Why are we not enforcing that and that is the question.

Mr. Heu: Maybe if I can ask you to do this for me. If you could pass along those written complaints that you have or other references that...

Mr. Rapozo: I already passed on the information to Bernard as far as the police report.

Mr. Heu: Okay.

Mr. Rapozo: But I am not talking about the police report... that is now

we basically got one, but I am talking about all the other... trust me that I get the e-mails. I don't have to send you the e-mails Gary. I am telling you and forget it if it is coming from the public, it is coming from me. I want the laws on dogs to be enforced because it is not fair to the pedestrian who is in the park enjoying a day at the beach to get bit.

Mr. Heu: And I agree.

Mr. Rapozo: So forget about the public... I don't... it doesn't matter. It is coming from me, enforce the law is what I am saying.

Mr. Heu: Okay, we will take a look at that.

Mr. Rapozo: Any other questions or comments for Mr. Heu?

Mr. Heu: Go ahead Councilmember Yukimura.

Ms. Yukimura: You know what, I think the issue just raised and that recurring issue has been about the management of the bikepath when it opens and it is fully functioning and it sounds like Parks is working on a management arrangement policy and plan both in terms of laws and enforcement. It is... it would be good at some point that we would be briefed on it because it is... we are moving into that phase where it is just going to be a prime concern I think whether it is avoiding collisions between pedestrians and bikers or dealing with animals on the path or non-motorized vehicles. You know, this whole slew of issues are going to come up and we can see from the pre-opening use of the path that it is something the public really wants to use, but its success will depend on the management of the path. So I believe the Administration is aware of that and working on it, but it would give us some framework or some assurance if we could at some point when you are ready soon, we could be briefed about how that will be...

Mr. Heu: My understanding is that you folks are looking for that level of comfort.

Ms. Yukimura: I think the community too wants to know. It is really important for the proper functioning of that path.

Mr. Heu: Right, and like I said, Parks & Recreation is working on that and as you identify, there are many, many issues that we have to deal with in terms of the management ultimately of the path (change to tape 3A).

Mr. Rapozo: And I agree. I mean I think that is important, but I am not talking about what the use of the plan... the path will be. I am talking about now as we live and breathe today, we have existing laws in place that is protect the public. We have ignored that because the excuse is, they haven't turned over the path. I hope we are not telling the Police Officers as well, eh, if you see anything

illegal on the path, don't enforce it because we haven't turned it over yet. That is pathetic, that is ridiculous. Let me just read this real quick because I think you guys need to get an idea of what happened out there.

I was walking on the bikepath and this is straight from the police report. I was walking on the bikepath when I see this local guy riding a skateboard being pulled by his leashed dog. Totally illegal. While walking past this guy and his dog, the dog ran towards me running me off the path. Later while I was walking about towards the bathroom area near the lifeguard stand, I see his dog almost attack several other people. So this lady approaches the guy and says, you know, there is no dogs allowed in the park and he said that he was sorry and as we were both preparing to shake hands because of the local style, his dog rushed me again and bit me on the leg. I am very upset and want this matter pursued, so it is illegal. I don't care how you cut it, sugar coat it, do what you want, the bottom line is that it is illegal to have a dog in a park today. If we are going to wait for the bikepath to be dedicated, we can expect more of these. I see more dogs on that path today.

Ms. Yukimura: Mr. Chair, my question to Mr. Heu was not to disregard or negate anything about your point about present enforcement. It was just to add to and anticipate that the issues will be, you know, even more alive as we come to an official opening. But I did not mean to say, don't enforce today or don't deal with the question you have raised. That was not my intention at all. It was just to anticipate into the future as well and ask for a comprehensive plan to manage these issues.

Mr. Rapozo: Thank you and we will make that note. Thank you very much. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, I guess, Gary, the question that I would have is, whose responsibility do you think it is to protect the County from liability? You know, whose responsibility...

Mr. Heu: Interesting question. I think it is all of our responsibility.

Ms. Iseri-Carvalho: Okay, so why is it then when we are trying to get an opinion from the County Attorney's Office with respect to what is legal and what is not legal. You know, is the County going to be responsible... if a dog bite occurs on a bikepath that is not open or is it open? I mean have you guys flushed out all of these questions because it is happening, we have raised this numerous times about liability and we haven't gotten... basically, a single thing from the County Attorney's Office. We have asked... for me, I believe that it is your department. It is the Administration and it is not the Council that needs to have to go through their investigation process. But we are forced to because we care about the amount of lawsuits that come through this because we are the ones who has to approve these lawsuits and approve the settlement on these cases and we have approved millions even though we haven't wanted to. But we have been caught in this

dilemma because on one side, we are not taking that risk management seriously, so we constantly pay out for special counsel, we constantly pay out for all of these litigations and now we have opened up this whole new Pandora's box of new litigation of dog bites that occur on the bikepath of a guy that gets hurt as an employee working on the bikepath that sues the County even though the contractor is what we have been told is the one who should be responsible. There are all of these cases now that are coming up and, yet, these are the same questions that we have been asking or I have been asking for the last two (2) years. And now we have, you know, the County Engineer come up and say, well, basically, you guys should forward those questions to the County Attorney. I don't think so, I mean, I think these discussions should have taken place way before the bikepath was even open, so that we would have been aware of what exposure we were putting ourselves up to. But, yet, we are still here, you know, rockfall studies and we still haven't determined who is responsible for the cost of that rockfall study? Is the contractor responsible? Are we the responsible, the County? Is Keālia Kai responsible because it is their wall that is falling there? Um, we already have contracts that we have awarded for people to build that portion of the bikepath and yet we have these unresolved issues. Are we going to be liable because the contract date now has moved further back because we haven't completed this rockfall study? I mean these are the same questions that we have asked for the last two (2) years. Zero responses and already now before our bikepath is even opened, we are looking at litigation.

Mr. Heu: Do you want me to respond to that?

Ms. Iseri-Carvalho: I do.

Mr. Heu: Okay, first of all, we do take liability issues seriously and I don't think it is fair to characterize, you know, the Administration as not taking the liability issue seriously. Perhaps we have not done as good a job as the Council may believe that we should be doing and, you know, I would say that that would be fair. We can always do a better job. What I would say is, you know, it has probably been as painful for you folks as it has been for us (the Administration) to be talking about many of these issues for this extended period of time over a year or so. I acknowledge that. I think the pain goes both ways. I believe about a month or so, maybe a little more ago, you folks made a decision to go ahead and ask the State auditor to perform an audit on the bikepath (a comprehensive audit) and we understand that. There is a communication and I am not sure if we can go ahead and talk about that at this point in time.

Ms. Iseri-Carvalho: It is on the next agenda item.

Mr. Heu: So I won't talk about the communication itself, but I will say that to address the many concerns both within the Administration and with the Council regarding the bikepath that we have formed that task force. It involves high level representation...

Mr. Rapozo: We are going to get that on the next item.

Mr. Heu: Well, you know, I am just trying to address the issue of whether or not we take this thing seriously, if we take the liability issue seriously and we do and I think that us convening this task force to provide high level oversight over the bikepath is a representative of that concern, so I just want to make sure that you folks understand that.

Mr. Rapozo: Thank you.

Ms. Iseri-Carvalho: Well, I think it is now 12:30 Committee Chair and we promised the staff lunch at 12:30 and it is actually past 12:30, so I was hoping that we could finish this. I guess we won't be and...

Mr. Rapozo: Yea, any other... it is 12:30, so, you know, I will recess the Committee for lunch and we will be back at 1:30.

Mr. Heu: Can I ask a question?

Mr. Rapozo: Sure.

Mr. Heu: When you reconvene at 1:30, which agenda item are you guys going to be taking up?

Mr. Rapozo: We are going to finish up this one and I am anticipating that the next two (2) items on the rock walls would be deferred and then we will move right into your task force items.

Mr. Heu: Okay, I will plan on being back here at 1:30 then.

Mr. Rapozo: Thank you. The Committee is at recess.

There being no objections, the Committee recessed at 12:32 p.m.

The meeting was called back to order at 1:40 p.m., and proceeded as follows:

Mr. Rapozo: Okay, Mr. Heu.

Mr. Heu: Good afternoon, Gary Heu for the record.

Mr. Rapozo: I apologize for having to cut you off because of the lunch break, so you can...

Mr. Heu: We all need our lunch.

Mr. Rapozo: Yea, you can pick up where you left off if you wanted to talk about your efforts. I know that we will talk in detail about the task force on the next agenda item. Is there anything else you wanted to add?

Mr. Heu: No, but I think if you guys had any... I mean I think you folks had questions and hopefully I addressed them. So unless you have any other questions, I don't have anything else.

Mr. Rapozo: Any questions for Mr. Heu? Councilmember Iseri-Carvalho, do you had anymore questions for Mr. Heu?

Ms. Iseri-Carvalho: We were going to have the County Attorney up aren't we?

Mr. Rapozo: Yes.

Ms. Iseri-Carvalho: I will wait for the County Attorney.

Mr. Rapozo: Okay, thank you Gary.

Mr. Heu: Okay.

Mr. Rapozo: Staff, can we have the County Attorney? Just a short recess.

There being no objections, the Committee recessed at 1:42 p.m.

The meeting was called back to order at 1:46 p.m., and proceeded as follows:

Mr. Rapozo: Thank you for your patience. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: With respect to your iwi and the bones that were found and there was an acronym SCS that the County Engineer was not familiar with. We have received information from our staff that SCS stands for Scientific Consultant Service and basically it is an archaeological company that does archaeological studies throughout the Hawaiian (inaudible) for engineering and planning firms. So I guess they were retained probably by the consultant. It indicates a list of projects that they were doing and they do list the bikepath where they have monitoring and reviewing that they were hired by Kaua'i Builders and another one by Kimura International. So they are not part of the Burial Council as Councilmember Yukimura had discussed, so they must be an independent agency and we need to find out how that relationship co-exist with the Burial Council and the SHPD. So those questions would need to be forwarded.

Mr. Rapozo: Staff, if you could please note that, that we would want clarification on that. Okay, what I would like to do is... while we are waiting for the arrival of the County Attorney, we have two (2) other items. PW 2007-11 and PW 2007-12.

**PW 2007-11** Communication (9/19/2007) from Shaylene Iseri-Carvalho, Public Works Committee Vice Chair, requesting that the Administration be present to discuss an action plan, timeline and cost proposal for the repair, removal, and/or maintenance of Kapa'a Beach Revetment; and

**PW 2007-12** Communication (9/19/2007) from Shaylene Iseri-Carvalho, Public Works Committee Vice Chair, requesting that the Administration be present to discuss an action plan, timeline and cost proposal for the repair and/or maintenance of Moanakai Road alignment/Fujii Beach Revetment.  
[These items were deferred.]

Mr. Rapozo: Unless there is an objection from the Committee, I would ask that we have those items deferred. I did speak to the County Engineer yesterday and they are not prepared to answer that today. We are still working with the consultant, so if there are no objections, I would ask that PW 2007-11 which is the communication from Public Works Vice Chair Iseri-Carvalho requesting that the Administration be present to discuss the action plan for the Kapa'a Beach Revetment and PW 2007-12 which is the communication from Councilmember Iseri-Carvalho regarding the action plan for the Moanakai Road alignment/Fujii Beach Revetment area. So if there are no objections, I would ask for a motion to defer.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Iseri-Carvalho, and unanimously carried, PW 2007-11 and PW 2007-12 were deferred.

**NOTE: WE ARE NOW BACK ON PW 2007-3.**

Mr. Rapozo: We are still awaiting the... Oh, Mr. Kawate.

There being no objections, the rules were suspended.

HARRISON KAWATE, FIRST DEPUTY COUNTY ATTORNEY: Mr. Chair, Councilmembers, excuse me, I had to do some lawyering, so sorry I am late.

Mr. Rapozo: No, no problem. Councilmember Iseri-Carvalho had a question. Go ahead.

Ms. Iseri-Carvalho: Yea, and several of these question I guess had dated back to July and even prior to that with respect to the bikepath about the consultation between the County Attorney's Office and the... I guess the County Engineer about liability issues for: 1) the path that is open, and 2) the path that is not open, as well as some other issues. So I guess what I am trying to find out is has there really been any discussions because these questions have been going back and forth and they said that they are waiting for a response from the County Attorney. You know, today, we actually... well, last week we hear a response that, oh, please ask them directly. I believe it is not the Council's job to determine what the legal issues are. It is the administrative agency because they are the ones that issues the contract. We approve settlements when we get sued and basically that is our responsibility. So I am trying to find out or trying to be assured that these legal issues are being discussed at the Administration level, so we are not here everyday asking for these questions to be answered. Has there been discussions, I guess, on an ongoing basis between your department and the Public Works Department regarding the legality of the bikepath?

Mr. Kawate: I am not aware of any of the discussions because I have not been privy to any requests directly. So if they have been between our office and Public Works, I am not aware of any, but I will check on it and get back to you.

Ms. Iseri-Carvalho: Okay, and we have sent over more than several questions regarding the construction cost of the roofs on the rest stops. We have sent over questions about liability on the bikepath portion that belongs to the County and we heard testimony today from Mr. Heu (the Administrative Assistant) saying that they really aren't enforcing these County ordinances that prohibit dogs on the bikepath. You know, what... I mean I cannot believe that that would be something that the County Attorney has advised the Administration of, but those will also be questions that we would be sending over. And the other question most importantly is that with respect to the bikepath that has not been open yet and maybe you can answer this today. What is our liability? The County? We have issued a contract. We are sometimes the applicant though for the projects, so it is really... it is a dilemma as to what kind of relationship we actually have with that bikepath because we apply for permits for the contractors which appears to be something that we would be liable for as we are the applicants for the permits.

Mr. Kawate: Without knowing the specifics, I cannot respond.

Ms. Iseri-Carvalho: Okay, but to your knowledge and you guys have been... you have been here since March?

Mr. Kawate: June.

Ms. Iseri-Carvalho: June, so that was prior to these questions going over. You yourself have not had discussions regarding legal issues of the bikepath?

Mr. Kawate: They have not been assigned to me, no.

Ms. Iseri-Carvalho: Alright, so we will... if we could Committee Chair, send over all of the legal questions to the County Attorney's Office... all the ones that were previously sent because it appears there has been probably no discussions between the administrative Public Works Department and the County Attorney's Office.

Mr. Rapozo: So noted. Staff, if you could please take note of that request. Thank you. Alrighty, I will call the meeting back to order.

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

Mr. Rapozo: I know the Chair had a question of Mr. Fujimoto. Is he around? I know he is not in here, but is he like in the building? The question that the Chair had was regarding the construction of the bikepath itself regarding the concrete work and the fact that the bikepath is not used... the wire inside of the concrete and I know we brought that up in the past and I know the Council Chair had a question on that and I am hoping that Donald could be here. Any other discussion while we are waiting? The question really was (from the Chair) have we got validation that that is appropriate... that, in fact, it is an industry standard to not use the wire. We've already... they answered the question as far as the wire. The Chair has a question if, in fact, is that what we would call best practice to construct a path without the wire inside (concrete). Any other discussions or questions pertaining to the response submitted on November 27? We will be forwarding a communication to the County Attorney's Office with all the legal questions. Any other questions as far as the non-legal questions.

Ms. Iseri-Carvalho: I guess the question that I would have is when is the expected date for transfer to the County and when is the expected date for the last walk through of acceptance of the bikepath and if they expect to do a portion of the bikepath dedication, up until what portion is that and what kinds of signs will be in place to assure, again, liability issues whether we open it up partially. Are we responsible only for that portion that we open? If you know, we have not had a completed rockfall study even though we have not received a copy of what the cost are going to be. What are the risk issues that we are facing with respect to at least that portion? There is just a whole bunch of questions, but clearly I would hope as you had asked I believe the last time that they would not accept the bikepath without us knowing about it.

Mr. Rapozo: So noted. Councilmember Yukimura?

Ms. Yukimura: I think those are good questions to ask in terms of what is the timetable. Is Mr. Heu still here or...

Mr. Rapozo: I am not sure. Well, he is here because I know he is here for the next item, so I am sure he is around.

Ms. Yukimura: I mean does he possibly have the answer to that?

Mr. Rapozo: Well, somebody should. Let's do another short recess because I don't want to waste tape. We will have a short recess.

There being no objections, the Committee recessed at 1:56 p.m.

The meeting was called back to order at 2:02 p.m., and proceeded as follows:

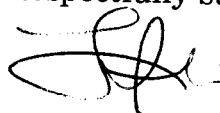
Mr. Rapozo: I have been informed by staff that Donald has said that he cannot answer those questions. He is asking that we send it over in writing again. What can I say? I don't know where Doug Haigh is and that is why it stays on the agenda ladies and gentlemen. That is why it can never get off the agenda because we ask the simple questions (what seems to be simple questions) and we just can't get the answers. So this will be deferred again and again and I was hoping to get this off before the end of the year and it doesn't look like it is going to happen. Any other questions or concerns? I guess there is no question, nobody is here. If not, discussion? Councilmember Iseri-Carvalho?

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

**CR-PW 2007-29:** on PW 2007-14 Communication (10/26/2007) from the Mayor, transmitting for Council information, the formation of a new task force regarding the Ke Alahele Makalae, Kaua'i's Coastal and Heritage Trail, headed by Bernard Carvalho, which includes representation from the Departments of Public Works, Planning, Finance, and Parks & Recreation to improve communication and oversight, and to provide quarterly status briefings to the Council regarding this project.  
**[Received for the record.]**


There being no further business, the meeting was adjourned at 3:06 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on January 23, 2008:



---

MEL RAPOZO  
Chair, Public Works Committee