SPECIAL COUNCIL MEETING

JANUARY 4, 2012

The Special Meeting of the Council of the County of Kaua'i, was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Friday, January 4, 2012 at 8:46 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Gary L. Hooser
Honorable Ross Kagawa *(excused at 1:30 p.m.)*
Honorable Nadine K. Nakamura
Honorable Mel Rapozo *(excused at 3:00 p.m.)*
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro, Council Chair

Chair Furfaro: Also, a note, prior to today's scheduled Special Meeting, I will be leaving at ten o'clock (10:00) as we have our first Friday that we scheduled during the duration of introducing the community to the renovated building. So, I will be turning over the meeting to you for about forty-five (45) minutes.

There being no objections, the rules were suspended to take public testimony.

THEODORE K. BLAKE: Aloha mai kākou and Hau'oli Makahiki Hou, Mr. Chair, members of the Council.

Mr. Blake: I understand the purpose of this meeting...I would feel remised it I did not express my *mana'o* on this. You talked about if we had any violations...if we knew of any violations of State Agencies or Federal Agencies. This goes back beyond that. It is a matter of respect. It is a matter of keeping the dignity of our *kupuna* and for the future of our *'ōpio*. The area that we are talking about is mistakenly called Wailua Beach. It is actually Mahunapu'uone. It is in the *ahupua'a* of Wailua and the *ili* of Wailua-Nui-A-Ho'āno. I feel a strong... I know a lot has been done to mitigate this. I think the initial plan to go over Mahunapu'uone was flawed in the sense that it is such...it is the most sacred of *ali'i* spots in the entire Hawai'i Nei and this would be taint amount to doing a bike path in Arlington Cemetery, National Cemetery of the Pacific of any other cemetery that we have. I think if you were to build a bike path over on marked graves in the Kōloa Cemetery you would get tremendous pushback. This goes further because this is Hawai'i. It has been the normal...the norm for developers to ask for forgiveness rather than permission when they go through our *wai pana*. This is not just a normal *wai pana*, this is *wai kapu* and I just wanted to make my sentiments clear to you today, as a native Hawaiian.

Chair Furfaro: Any questions of Mr. Blake? Go right ahead.

Ms. Nakamura: What we are learning is that the entire Kūhiō Highway is built on a sand dune. I am not sure when that was built but, that is the major arterial on the eastside. It seems like the bike path is an extension of that. So, it is...when they built the road that was really the first step in all of this that disturbed that area. Would you agree with me?

Mr. Blake: When we go that far back Council Vice Chair, you know I...a classmate of mine once told me about the oppressed Hawaiians. She was Haunani-Kay Trask. I said Haunani, you live in Foster Towers, all your friends are at Punahou, you are not hurting for anything, what are you talking about being oppressed? She says, you know when you get to a meeting late or when you get to an appointment late, your first excuse is to say Hawaiian time, even if you are not Hawaiian. She says that that is a form of oppression because it is engrained in you already. Prior in the days when Kūhiō Highway was built, if you were to go to do a construction project on the beach and you exhumed some skeletal remains, the first thing that you would do is call an archeologist takes those *iwi* and study it. If I go to a grave yard, dig up your ancestors' head and take it home and study it, I go to jail. So back in the '50s we were not as aware of it. Being a Hawaiian was something that was still suppressed and now it is a different day. I was not a problem to smoke in restaurants ten (10) years ago. It is a problem today. We recognize it, we stop it. This applies the same me as the situation at Mahunapuone. We know what we got now, the process had started before, we know what we have, we know what the section that it is in, it is a special place and we should give it the respect and dignity that it deserves.

Chair Furfaro: Any further questions for Mr. Blake? If not, Ted, thank you very much.

Mr. Blake: Thank you for the opportunity.

Chair Furfaro: Again, for those of you that have recently arrived. I want to make sure that I explain again to you that this Special Council Meeting has been posted for in fact to clarify anything that might appear vague and unclear. I have asked for many representatives from the Administration to be present today. We will take your testimony first. But again, if anyone believes in the fact that anything associated with these permits has been a violation of the permits that were issued and so forth, I want to make sure everyone understands that this Council does not have authority to override the agencies that have been involved with the permitting authority. Federal Department of Transportation, State Department of Transportation, the State Burial Council, the State Historic Preservation Agency and the Division of Planning. Some of them will be making presentations today. I have passed out for the members reconciliation of the permitting process which was approved by those agencies and those are public records in the process.

THOMAS NOYES: Good morning, Chair Furfaro. I am here this morning representing Kaua'i Path Incorporated, non-profit 501 C3 organization. I would like to wish you a Happy New Year. I have some documents that I would like to convey to you. This is a Rails To Trails 2013 calendar profiling multi-use trails around the Country. I would just like to point out for the Chair, that the centerfold feature Ke Ala Hele Makalae and let you know that we are receiving national attention among the people that track this sort of thing. The second thing that I would like to share with you this morning for Chair Furfaro, is a petition signed by one hundred sixty (160) Kaua'i residents with the indication of their voter registration status and contact information. I am giving you the originals Chair Furfaro. The text of the petition is, "I am a Kaua'i resident and I urge you to endorse aligning the Coastal Pedestrian and Bike Path, Phase III of Ke Ala Hele Makalae along the *mauka* edge of Wailua Beach Park as specified in the project's final environmental assessment." So, in case there is any confusion there, the *makua* edge of the Beach Park is analogous to the *makai* edge of Kūhiō Highway's

transit corridor. So again, this is for the Council. A copy with attachments will be going to the Mayor Carvalho, the transmittal only to the Chair pro term of the Planning Commission, Director Rapozo Parks & Recreations, Larry Dill County Engineer, Ray McCormick and Douglas Haigh.

Chair Furfaro: Thank you. Aida would you collect that document for the members. Thank you.

Mr. Noyes: So, I just wanted to bring to your attention that there is wide spread support for this construction that is now underway, putting the path along the edge of the highway as was recommended you may recall by Senator Inouye's Office, 2009 when we did the alignment of a meandering path to a path that closely paralleled the existing travel way. So, that is my testimony for this morning and I thank you for your attention.

Ms. Yukimura: There has been discussion in the discussion of this particular path alignment that an alternative would be better and that is the alternative. I guess of turning inland and then going along the *mauka* boundary if you will, or the *mauka* side of the Coco Palms property. Can you tell me whether in the EIS process this alternative route was considered and why it was not chosen?

Mr. Noyes: My recollection of the course of events is that that route was considered, it was one (1) of the alternative alignments. It was not selected for two (2) primary reasons that I recall. The first of which was consultation with Pōhaku Nishimitsu and LaFrance Lapaka, both of whom who have sadly since decreased. Their recommendation was to keep the path on the *makai* alignment that we are working with now due to the high incidents of burials in the more inland portions and the alignment under consideration. So, avoiding burial sites known to be in that area was a concern. The secondary concern that comes to my mind is the inherent danger of crossing the highway at grade, meaning mixing a large flow of pedestrians and a high speed vehicular traffic. How many children would we consider acceptable to name or kill? How many adults? How many seniors who cannot get across the roadway in sufficient time to be same from passing motorists. Hawai'i has the highest incidents of senior traffic fatalities of pedestrians in the nation. That is not a statistic that we should be proud of, that is something that we should work hard to avoid. I think those two (2) reasons are sufficient to keep the pathway in the transit corridor existing today.

Ms. Yukimura: Thank you for that information.

Mr. Rapozo: I guess my only question is, in the petition that was submitted and I know what it was circulated via E-mail. But the verbiage I think is confusing because it states the *mauka* edge of the Wailua Beach Park.

Mr. Noyes: Right.

Mr. Rapozo: Where if I read that, and I do not know the make-up of the Wailua Beach Park, when I am...the *mauka* edge would be the mountain side.

Mr. Noyes: Right.

Mr. Rapozo: But in essence, as you described in your testimony, your *mauka* edge is actually *makai* of the wall.

Mr. Noyes: Sure.

Mr. Rapozo: But that is not what this is saying. I mean to the average person who is out there who is not familiar, why would the petition not have stated the *makai* side of the wall. I do not believe that you would have received as many signatures. In my opinion because if I read this, like I stated it is worded in a way that the people are supporting or endorsing aligning it on the *mauka* edge, mountain side. But in essence it is being built on the *makai* side. Why would that not have been put in the verbiage of the petition language so that it would be clear?

Mr. Noyes: As recalled, this has been a lengthy...this has been a lengthy process...

Chair Furfaro: Excuse me, for just a second. Please let us have full benefit of hearing the testimony. Thank you very much.

Mr. Noyes: This has been a lengthy process and one (1) of the original concepts was a meandering path that was outside of the transit corridor. It was within Wailua Beach Park. Do you recall that proposal?

Mr. Rapozo: I recall. But again, also, and I think to most of the residents here Wailua Beach Park for my – for me anyway Wailua Beach Park is the beach itself, the entire complex. I am not sure how many residents that signed your petition is aware and I guess that is my concern. I will do the exercise, I think we will probably send letters or contact these people and find out if they even know what they signed. But, my question is a simple one (1). Why was the petition language not clear in that endorsing the path on the *makai* side of the wall? I do not believe you would have had as many signatures.

Mr. Noyes: The wall I would consider at this stage to be a part of the path itself. I think that the level of confusion was minimal if non-existent. People knew what they were signing. They were signing a statement indicating their support for putting the path along the beach without further ado.

Mr. Rapozo: That is not what this says though. I will read it. I know you read it. But for the benefit of the public that is viewing and that had never seen this petition. It says, "I am a Kaua'i resident and I urge you, and this is of course to the County Council and the Planning and everybody, and I urge you to endorse aligning the Coastal Pedestrian Path and Bike Path, Phase III of Ke Ala Hele Makalae along the *mauka* edge of Wailua Beach Park as specified in the project's final Environmental Assessment. That is what they signed.

Mr. Noyes: Right.

Mr. Rapozo: They did not sign anything saying that they endorse the path on the *makai* side.

Mr. Noyes: As specified in the final Environmental Assessment.

Mr. Rapozo: Okay. I do not have anything else. I just do not know how many people actually know or read the final Environmental Assessment in the public.

Chair Furfaro: Any more questions of Thomas? Thank you very much, Thomas. BC may I ask a favor of you so the gentleman in the back does not have to stand up with his sign the entire time. Could you just ask him to stand with his sign and take a shot of him in the audience with his sign and then...please.

GLENN MICKENS: Good morning, Jay. Happy New Year to all you Councilmembers. Hope you are keeping your number down, Jay for the new year.

Chair Furfaro: Yes, well put a little more insulin in the needle and that is *pau*.

Mr. Mickens: You have a copy of my testimony. I hope you guys all had a chance to read this article in the weekly section of the magazine by this geologist, Chuck Blair, he was quite interesting. He is talking about that same area there through the path. His one (1) quote was, "with ocean levels rising geologist Chuck Blair urges Kaua'i residents to be prepared for erosion and possibly the nation." A matter of fact it goes on to say that although the beach is starting to come back, the shoreline position is still highly variable according to a report by Ruby Pap, University of Hawai'i Sea Grant College Program Coastal Land Use (inaudible). So I think that this article is quite interesting. You have a copy of my testimony. Let it read for the viewing public as my dear friend Ray Chuan used to say it is for the people who want to see, hear about what is going on. The Council is now being asked to fund an extension of the multi-use path along a section of Wailua Beach. An estimated cost of 1.9 million dollars or at a rate of fifteen million dollars ($15,000,000.00) per mile. Unbelievable. This extension is to consist of removable slabs of eight (8) feet by ten (10) feet, up to 1.5 feet deep. Each slab will weigh about fifteen thousand (15,000) pounds. The plan contemplates removing the slabs in the event of emergencies such a tsunamis or high surfs. How is it expected the necessary equipment and crews will be obtained to carried out the removals during such emergencies? That is going to entail a tremendous amount. I do not know whether the County has cranes to lift this thing. But the we are going to have to rent those so we are talking about more expense. The obsession of those who would want to pursue this ill considered project with reckless disregard cost is appalling. All of this exorbitant and expense for a few bikers and walkers who use it. We are also asked incident to pursuing this fully schemed to disrupt traffic indefinitely. To narrow...this is my understanding now, that we are going to narrow Kūhi'ō Highway to accommodate the path. Thus, decreasing the space between vehicles increasing accident possibilities. I heard that from a reliable source. The only way that they are going to fit that path in is to narrow the driving lanes for the public. The bike and walking lane has been there for thirty-five (35) years, so why spend millions of dollars to expand a project that is not needed? Does the Kīlauea Gym debacle come to mind? Chip Fletcher with Hawai'i Sea Grant said at a Council Meeting on December 9, 2010 that, "with the ocean rising and it is right now, with lots of erosion going on with global warming it makes no sense to build close to the ocean." As island (inaudible) so widely said, "our governments should be more concerned about shoreline dynamics and erosion as well as sea levels." How will it affect Kūhi'ō Highway, used by thousands of motorists a day in the near future rather than proposing...

Chair Furfaro: Glenn, that is your first three (3) minutes.

Mr. Mickens: ...a new multi-million dollar path. Another fine statement by Lonnie Sykos said, "this project needs to stop. It is inconceivable that this County would choose to proceed with an obscurely expensive plan just to continue to spend Federal tax dollars that provide a few jobs and less political will...good will. The County needs to quit wasting money. Twenty percent (20%) local and eighty percent (80%) FED all adding up to our...adding to our $16 trillion debt until the Mayor presents a rational and functional detail strategic plan." We desperately need an audit of this total project as Mel proposed years ago. Why are the FEDs spending over four million dollars ($4,000,000.00) per mile and we are spending over a million dollars ($1,000,000.00) a mile on a path with extremely limited use for all members of our public? I urge you to bring this dimension to an end. I ask you to have the good judgment to disregard those who would further burden our taxpayers and add to the national debt, declare victory and celebrate the path as it has been built to date and stop all further construction. The monies that will be saved can be further better...utilized in ways that would be much more appreciated by our citizens. So, I know you have heard me say this over and over but the emergency of this path, I do not understand where it is coming from. What is the desperation when we have homeless people out there, when we need low income housing, when our landfill is Mount Trashmore down there? It has not been addressed. Each and every one (1) of these things. So many more important issues and we are sitting here with our time and millions of dollars being spent to push this path. For what plan was every showing? How many people would ever use it or are using it? On the eastside of the island, is the whole island going to benefit from this thing? I just do not really understand it. But the powers would be are pushing this thing hard. It just makes no sense to me.

Chair Furfaro: Glenn, before you leave I will share a few things with you. But Councilwoman Yukimura has a question for you.

Ms. Yukimura: Are you saying that the existing "pass" so to speak is an adequate biking and walking path, right now? That narrow margin of passageway alongside that highway is an adequate bike and walking lane?

Mr. Mickens: Well, for thirty-five (35) year it has been, JoAnn. For thirty-five (35) years the path has been there. Is has been adequate for the people that use it. In other words, we are not talking about thousands of people using this thing. It is not that type of thing. As a well informed person said, "because we are narrowing the highway to make it dangerous for a few to widen that path for maybe fifty (50) people a month that are going to use it."

Ms. Yukimura: Well, I want to remind you that several of the advocates or those opposing this suggested it as an alternative narrowing the highway lanes. I do not believe that is what the current plan will do. But we will wait for someone from the County to explain that. But whether or not it narrows that highway area, I cannot imagine that you would think that the existing shoulder is adequate and safe for biking and walking.

Mr. Mickens: But is has never been brought up in thirty-five (35) years JoAnn. Why?

Ms. Yukimura: Are you going to wait until an accident happens before you say that it is not safe? I do not think it qualifies under any standard for walking and biking lanes.

Mr. Mickens: Well you know how wide the path used to be along Kūhi'ō Highway and it has gotten narrower and narrower because they extend it. Why, JoAnn, because people we not using it period.

Ms. Yukimura: But then as you know because you have been the one (1) advocating us following proper highway standards, we need to follow proper bike and pedestrian standards if we are going to call it a bike lane or a walking lane.

Mr. Mickens: Which is the more important though? JoAnn tell me, for the hundreds and thousands of people in their vehicles or the few people that are going to bike?

Ms. Yukimura: Well, I know that for you...

Chair Furfaro: Excuse me, JoAnn for a second. Sir, I just want to remind you. You cannot repose a question to JoAnn. Please I have given you your entire time.

Ms. Yukimura: Well, I guess I hope that in all our planning we consider bicyclists and pedestrians equal in terms of safety and adequacy of their facilities. I think that is very important.

Mr. Mickens: Consider equal, I agree with that. But not the unequal amount of people using their vehicles to bikes.

Chair Furfaro: Glenn, one (1) more thing for you. I just you know, if you would like to review some of this material that I have gathered it is all public record. But I just want to clarify what we have here. In the pieces that I have done, I have the State Department of Transportation's cover letter here. But I want to correct something. There is no County funds involved in this phase. This is Federal and State money for this phase as it related to the permits for the Bryan J. Baptiste bridge. So just to clarify that portion and I have that through the State Office. We also have a document here, this is all public record, it has been available, on the cultural survey done by a third party. We also have the Wailua Beach Technical Assessment on record here because you will see photos from 1954 that...of 1956 I am sorry, that shows the boulders that were put in under the highway there as well as on the *mauka* side of the highway, the old train tracks that existed there. We also have from Dolly Kekuchi who is the wife of Dr. Kekuchi who did the architectural surveys dealing with the fishponds in the area and so forth. His survey from 1963. We also have notes from the Burial Council on their survey and we also have the...from the Hawaiian electronic library a reference to the family place names of that area that was referenced by Mr. Blake earlier. We also have the survey documents from one hundred (100) years ago referencing both the train and the highway. Those *kuleanas* as well as the *ili* that existed in both places and I would be glad to share that with you earlier.

Mr. Mickens: Can I ask you one (1) question, Jay?

Chair Furfaro: Yes.

Mr. Mickens: The way I understood it, the purpose of putting that boardwalk of whatever you want to call it with those fifteen thousand (15,000) pound things was because of the concern for the beach erosion? Is that what that was put there for? So that it can be removed?

Chair Furfaro: If you see the beach erosion's photos from 1956 the beach has been re-photofied with a whole series of boulders. It is that same in Kamile. It is the same in Makaha. You will find a lot of State work that was done with those boulders. But I just want to make sure that you understood that we have had those documents to look at and we have some of the historic documents of the *kuleanas* there. For me, having a family one sixteenth (1/16) Hawaiian I do not like to talk in terms of *iwi*. That to me that is very private.

Mr. Mickens: The point is, the thing that they are putting along there temporarily then, that is in case of higher surf in that area washing away so they can...the path can be removed? Is that what it is for?

Chair Furfaro: I can tell you that is something that I am summarizing. But you know, I did not go to engineering school. I do not know other than what I have tried to do with evaluating from old photos and documents what is there. It is the best that I can say at this point. But at a later time, you know, I would be glad to share some of this. Now, I am going to make an announcement for the audience and I want to make sure you understand my plans because I have to leave for about forty-five (45) minutes at ten o'clock (10:00). Then we are going to have the meeting turned over to Vice Chair Nakamura and start with County Official testimony. But if there is anyone that is here that wishes to speak, please sign up. This is my third request. Please sign up because I will not go back and forth. This is the time for public testimony. So, do we have a sign-up sheet over here? Please just follow through on that.

JAMES ALALEM: I am from Wailua, Waipouli area, born and raised. So this morning I just want to talk about the Oath of Office. The Oath of Office that all of you guys took is to protect the Constitution of the United States, the State of Hawai'i and also the Charter. Dealing with all of this, our historical sites and things like that, it is that your responsibility to protect because government was created to protect the weak against the strong. Of course, our people now is being oppressed by we are trying to say something. Illegally everything in Hawai'i right now has been taken away from the people and with that I would also like to say that our people have been oppressed. We have been told what to do, how to live in Hawai'i right now. To protect our *iwis* and to protects our sites, our sacred sites in Wailua and no matter what we say or do we are not going to be heard. They are going to do whatever they want to do because of money. This bike path that this is going to build, they are already doing it. As we speak right now they already have lined up everything and there is no way that we can stop it. The only way that we can stop it is that we are going to get arrested again. Because that I am talking for Uncle Joe Manini because he made me his caretaker, for all his properties. I have an affidavit from Uncle Joe Manini which is right here. If you guys want a copy you guys can make a copy for yourselves. I also have also a letter that came from the archives. We got it from 5-16-2006 and then this was the Queen's letter to the United States government saying that she still owns all of the lands from 1893. When she wrote this document, it was written in June the year 1897. So this and our Treaty is still in effect. Everything overthrow was just thrown on the side. Today, the kingdom law, still exists whether if anybody believe it or not. It is. It is not paper. It is in black and white. With that, she also says

that it is thereby in violations of International Law that this whole government is doing from 1893. Everything is no good. So all of the bike paths and all the lands and things like that need to go through Uncle Joe first because Uncle Joe has the legal documents of all the properties and it is stated here. It shows the map and everything. It is black and white. Like I said you guys can have one (1) copy. The law, everybody says the law, the law. The law...here to me, the law is the law. Which is laid down to be ordained and established. Like is said in this County Charter that I have. County of Kaua'i, State of Hawai'i it is an audience establishing the new Article for the Shoreline Setback. It says here, "be it ordained by the Council." So, you know, the law is the law and in a generic sense it is the body of rules of actions or conduct describes by the controlling authority and having binding legal forces. So I think that you know, by saying that and that we need to protect our cultural rights. It says over here, also they talk about the beaches and coastal areas are part of a public Trust. Actually, the Trust is just a Trust, it was not...in the document is says, it does not say public Trust. All is said was Trust to the United States government. When the overthrow had happened, the Queen wrote the letter and all the lands that they stole was only in Trust. It was not in a public Trust. Where the public Trust be can also put in charitable Trust and public Trust, so that can be used either way. But actually the Trust is only a Trust under the United States government when they stole the properties from Hawai'i. Nothing else can be done with this land. That is why they created OHA because they had to give money to that one (1) entity. So that is why they created OHA. So that land is only in Trust, it is not in the public Trust. The State is obligated to protect all the historical sites, all the public interests. So that means if the public says no for building something, they cannot. But for some reason, I do not know why the United States is not even here to back us up on that. But anyway, you know, the ignorance is not the excuse for the law. But that is what they always tell me when I go court. When I just got arrested. They tell me ignorance is no excuse for the law. They said the law is the law. But nobody here nowadays even practice the law. They make laws but the break it. So, and with that I would also like to say that you know when the excavate...

Chair Furfaro: Excuse me, Mr. Alalem. That was your second six (6) minutes but I will let you summarize real quick.

Mr. Alalem: So, for closing I would just like to say you know, when they excavate or digging around for looking for *iwis*, and right here I have the *iwis*, some of them. When they find *iwis* it is already in tact but when they got with the back hoe and scrape, it breaks all the bodies. That is called desecration. Today, you look at what they are doing. They are desecrating, they are not actually digging with the shovels and finding them. They are illegally doing what they are not supposed to do. But again, if you steal something from somebody and you get caught, you go to jail right? But when the United States stole our kingdom, the do not go to jail. So where is the law? With that, thank you.

Chair Furfaro: Mr. Alalem, could I ask that we get a copy of Uncle Joe Manini's testimony? We will make a copy right now and give it back to you. Any questions members?

Ms. Yukimura: I can hear those sincere passion that motivates you. Do you not think that or do you think that the Queen if she were living today would want to have a safe passageway for people who are walking?

Mr. Alalem: Well, you know, when the Queen took over her legacy, she never expected to be what we have today.

Ms. Yukimura: I know.

Mr. Alalem: She would just let it you know be the way it is. If I can say this. If you take your slipper off and you walk on the grass, it feels wonderful, you can feel right? But if you take off your slipper and you walk on cement, what would you feel? Nothing. Emptiness. I do not think so the Queen would like to have...

Ms. Yukimura: It is true. But you know that a lot of our *kupuna* cannot walk anymore. So they are in wheelchairs and I see them on the path. It is...you know, somebody is pushing them. It enables them to get the fresh air and be out there close to the ocean without having to walk because some of them cannot walk. So there is that aspect too, that you know, sand on cane...I mean cane on sand does not work. It does on a pavement so we shift and evolve as society changes. I am just thinking that if anything safe passageway for pedestrians, safe and workable or walkable would be something that the Queen would want to see. Now, you know, I mean there are issues of where and all of that. But to me passageway...pedestrian passageway, that is like preserving an ancient right. The question is how.

Mr. Alalem: That is why we had *'ohana*. *'Ohana* took care of the old people whether if they had to carry them to the beach to enjoy the beach. But I do not think so that they would want to push their *kupuna* all the way down for hours just to go look at one certain area. The people, the *kupunas* tell them where they wanted to go. That is why you have the access to them to have. Today you are not going to have that access. You have to push them on the wheelchair. Going to headed down the road, and try to excuse me, excuse me.

Ms. Yukimura: It is true it does not get you everywhere.

Mr. Alalem: But to answer your question, that is why we have the *'ohana*. But today, the western way of living we forget. They took us away from our spirituality, our way of raising. Now they are dictating to us how to live, what for do and how to do it. So, all these people that come and live here tell us...that is why they are making laws to take away all of our things of our life. Now why do you think our children do not even care anymore? You are asking a question that they will not be able to answer you what you want to know about their culture.

Chair Furfaro: This will be my last call for anyone that wishes to speak. It has been an hour since our posted time. Those of you who have not signed up, if you want to sign up, now is the time to do that. If not, I am going to ask to get the rest of the list. It is up here already? Our next speakers is questionable. Uncle, are you going to testify? The last speaker that I have here put a question on her sign up. Katherine Muzik. It says here, she may want to speak, not sure. Do you want to speak because this would be the time?

KATHERINE MUZIK: I am dismayed and dishearten by this plan. I bring my experience as a marine biologist. I have traveled all around the world and I have seen destruction of land and sea everywhere. I make a complete

correlation between cement and death. So I think that this plan is wrong. I think it is a mistake. I think it will fail. I get a lot of joy coming down from Wailua and seeing the ocean there and I can envision a cement path. Then I can see that after a huge storm there will be pieces of path and I am not sure where you are going to put them if you get the cranes down to move them, where they are going to be put, how they will ever come back. So, I know that illegal does not cover it. I think that wrong and it being a mistake should and I am very respectful of what you said today so I will perhaps *paha* because I am not adding anything you do not already know. But I felt I should ask you to really consider the future because I can see it and it is very upsetting.

KEN TAYLOR: First of all Happy New Year's to all of you. I was beginning to wonder where you all have been. I have not seen you all year. Chair, you said earlier that you have no authority over any of these issues at this time and I would agree with you. But back in October, November when you had a Money Bill before you in relation to a part of this path, you did have some discretion to hold accountable the decisions that were being considered for this area. You elected to give the money and not hold them accountable for what was about to take place. When we tried to talk about the issue at that time, you said that was not the issue on the agenda. Now, it is on the agenda and we have no authority to stop it. So I am very disappointed that you did not take...

Chair Furfaro: Excuse me, let me answer your question. Not to impose on your time. The path is done in several phases. The particular agenda item that was on there was for a different phase that we voted for County money on. Okay. That in itself is a separate issue. This phase as I explained is the permitting process for the new Wailua Bridge and the public easement in front of Wailua, is not attached to any Money Bill at this time.

Mr. Taylor: The Money Bill could have been used to...

Chair Furfaro: I understood your point, sir. I understood your point. The Money Bill could have been held hostage, is the term, for the whole bike path.

Mr. Taylor: That is right.

Chair Furfaro: I do not agree with that. You got my answer in the audience and now on tape. We funded...

Mr. Taylor: I am making my presentation at this point in time, sir. May I finish?

Chair Furfaro: I did not shut off your clock. I just wanted to respond to you. Now your clock will run again.

Mr. Taylor: I am very disappointed in the Mayor. I am disappointed in you folks. My comments go back to October, November so a couple of you were not here at that time. So, my comments do not relate to you individually. There is an old saying that if you are not of the solution, then you are part of the problem. I feel that you folks are part of the problem. This issue should have been stopped a long time ago. We have a situation this past year where a number of trees along this area have abruptly died. I have to believe with my

thirty-five (35) years of horticultural experience that somebody was down there poisoning individual trees. As we see over here on the corner, one (1) of the trees that needs to removed because of the roundabout is abruptly died. I am very disappointed in the County's activities in this manner. I really feel strongly that there is an option to this being on the beach. It could be back in the coconut grove on an existing road bed where no digging has to be done. We heard earlier that while it would be dangerous to walk across the shipway. But is it not strange that we have no problem walking across the highway at Kawaihau and the highway, at Safeway and the highway where we have just spent a lot more money building a new ramp and walk down to the sidewalk in front of Safeway. We seem to try to justify what we do. It is okay over here but it is not okay over here. I think this is terribly wrong and in this very culturally sensitive area. Whether there is people buried there or not, it is a cultural...that whole area is a cultural area. I do not think that it makes any sense to put pedestrians and bicyclists alongside the highway where they are sucking up all of those exhaust fumes when they could be enjoying a very unique situation meandering through a coconut grove. It would be the only spot on this whole path that this opportunity would exist. So if the Mayor and you folks all decide to continue to move forward with this, I would simply say that the Mayor, his team and you folks should all be tarred and feathered.

Chair Furfaro: Ken, I am going to share something with you. If you would give me a moment. Are you familiar with the Charter of Kaua'i County?

Mr. Taylor: I have read it a few times.

Chair Furfaro: Okay. I think then under 3.18 you realize that the Council whether we are tarred and feathered or not, cannot give directions to the Mayor's Departments. Thank you.

Mr. Taylor: Can I just make one (1) comment to that?

Chair Furfaro: I just was giving you some information about tar and feathering. Okay? So JoAnn, you have the floor.

Ms. Yukimura: I just wanted to understand what you were saying because you said you thought that there were options and you thought that going *mauka* was the option. But going *mauka* involves going over burials. So you feel that that would be alright.

Mr. Taylor: My feeling is that there is an existing road bed back there. There is no digging that has to be done. All you have to do...

Ms. Yukimura: No. But getting to the road bed is over burials as I understand it. So do you feel that that is really a viable option?

Mr. Taylor: I do not think that is a necessary option. I think that they can get to the road bed without going over burials.

Ms. Yukimura: How do you do that?

Mr. Taylor: Well, I would have to be there on the site to show. But I believe that it can be done.

Ms. Yukimura: Well, I mean we are not just going by belief. We are going by real alternatives. I think everybody wants an alternative that will work and that does not go over burials. So if you say there is an option, I am just trying to understand. My hearing is that you are saying go over the burials to get to that path, which I think go over burials too. But whether or not that path that asphalt path that you are talking about goes over burials, the information that I have says that you will go over burials to get to that path. So you know, I do not think that anybody is saying this situation that we are all trying to problem solve is an easy one (1). We have very limited options if we want to you know, honor the *iwi* and be within the limits of the wash of the waves and all of that. But it is easy to say tar and feather somebody who disagrees with me. But we need to really come on real options if we want to solve this problem.

Mr. Taylor: I do not know that the investigative work was done back there to know whether or not there was...along the highway they did some investigations. I saw a number of times where they were digging and looking. I do not know that that was done in the back. Looking at the option, it should have been done as an alternative to the...

Ms. Yukimura: Have you read all of the archeological studies?

Mr. Taylor: I am sorry.

Ms. Yukimura: Have you read the archeological studies that have been done on the different options?

Mr. Taylor: Parts of it.

Ms. Yukimura: Okay. Alright because I am thinking that that shows the *iwi*. But anyway, thank you very much.

Chair Furfaro: Mr. Bynum you have the floor. Excuse me, just a second. I have announced four (4) times about signing up. Now you want to come up and sign up. Okay. We are trying to get to many experts that had done reports that have traveled over at our request. No. You may sign up now and I am going to say it to the audience again. We are taking testimony upfront. Not afterwards. We will allow you. Please give her a sign up slip.

Mr. Bynum: So have you read the 2007 Environmental Assessment on this path?

Mr. Taylor: No.

Mr. Bynum: And you have not read the OHA letters from 2007 about their opinion about going *mauka*?

Mr. Taylor: No.

Mr. Bynum: And you have not read the recent...so, that is all.

Chair Furfaro: KipuKai, good to see you. You have the floor.

KIPUKAI KŪALI'I: Aloha Kakahiaka and Hau'oli Makahiki Hou, Councilmembers, Chair and Vice Chair. As a native Hawaiian born and raised on Kaua'i. I am concerned about any further desecration of the sacred sites along Wailua Beach or Wailua-Nui-A-Ho'āno. I object to the current path alignment *makai* of the highway encroaching, even in a small way on the beach and feel strongly that the alignment needs to move *mauka* onto the highway pavement. I appreciate written statements from OHA describing Wailua-Nui-A-Ho'āno as extremely historically native Hawaiian landscape. The shoreline and the sacred sands of aleo, where the first male Kumu-Honua and first female Lalo-Honua in the Kaua'i royal genealogies were created. To the sands of Mahunapu'uone were the beloved *iwi* of our beloved *ali'i* were carefully, ceremoniously, and mournfully wrapped in the finely scented *kapa* reserved only for them. To the highest reaches of the *wao akua*, where the Mauankapu raises as a *kia'i* for preserving all things Hawaiian...for preserving all things Hawaiian, let me repeat. The importance of the Wailua area cannot be emphasized enough. To that end OHA recommended that any proposed path stay off of and away from the sacred sands of Wailua and that any such project occur in the more *mauka* alignment towards an existing cane haul road. While an archeological assessment and subsurface testing were completed, due to concerns over burials and *iwi kupuna*, our Cultural Impact Assessment, CIA, was not. Instead, the County's consultant utilized the previous CIA from the nearby Kapa'a relief route area. The State Historic Preservation Division, SHPD, role in this has been questionable as they have down played OHA's concerns and recommendation. They have also given the County's consultant the okay to overt doing a Cultural Impact Assessment specific to Wailua-Nui-A-Ho'āno. Perhaps this had to do with their understaffing and other problems which lead to essentially them being on probation currently and may even cause SHPD to lose their Federal certification next month. With regards to the Kaua'i Federal 106 Consultation process, it does not appear enough consideration was given to all appropriate native Hawaiians and of the names that I have seen in minutes and on participation lists like Sharon Palroy, Waldine Palmeria, Liko Martin, Willma Holly, Nani Rodgers and Joe Manini, I do not see who the appropriate native Hawaiians are that agreed to this alignment in the first place. I believe that even the deceased LaFrance Lapaka and Pōhaku Nishimitsu who were mentioned obviously cannot be here to give their current input on this faulty alignment and a possible win-win solution going onto the already disturbed highway pavement. I have also heard from others who participated in the 106 process, that it was flawed and frustrating and that information gathered were nearly put in the minutes and not used for decision making or changing the outcome. Councilmembers and other County Officials should be sure to take into consideration the County's lawsuits from native Hawaiian individuals and organizations like the Native Hawaiian Legal Corporation. As an environmentalist and a resident supporting sustainability, *aloha 'āina* and *malama 'āina*, I am concerned about the further deterioration of the beach and its natural surroundings including any disturbances to the sand, the rocks and the plants including the eight (8) trees that are slated to be removed. Additionally a path that runs up against the beach means that many will trample the few plants and grasses in place protecting the dunes such as the rare native *'aki 'aki* grass, the *lauhala* trees and the *naupaka*. Keep in mind too, that this alignment is perhaps all but a legal violation of the County's Coastal Setback Laws by grandfathering permits that were approved years ago that could not be approved today ignoring the obviously higher wash of the waves and ultimately failing to protect our beach and the surrounding natural environments. Councilmembers and other County Officials should also be sure to take into consideration the County's exposure to lawsuits from environmentalists and environmental organizations like the Sierra Club. Also of the precedence that the

County may be setting for other developers wishing to develop along the coast. As a fiscally minded citizen who understands that hardships by many County tax payers especially seniors, the unemployed and underemployed, I am concerned about the disregard of fiscal common sense and the waste of public funds of nearly two million dollars ($2,000,000.00) to cover the cost of removing plants, eight (8) trees are being replaced with nine (9), demolishing the perfectly fine existing rock wall, constructing a concrete path that will immediately upon completion be at risk of damage or loss by high tides during winter storms, other storm events of disasters. The fact that this megaton structure is temporary and movable, will inevitably add to the cost of maintenance and operation and how about liability insurance? When this turns out to be a huge loss of taxpayers monies County leaders will not be able to shrug it off to mother nature or an act of God. The citizens will know it was avoidable and solely a result of bad planning and irresponsible decision making. I heard a bell, so...

Chair Furfaro: Yes. Go ahead and summarize.

Mr. Kūali'i: Finally as a community organizer, I have to concur to the point that Councilmember alluded to that the petition is misleading and it should have clearly stated the path being on the beach or the path being on the paved highway. I believe that we could get at least half of the people that signed that petition, once to be made clear, to switch their support. So the win-win solution to me, is move the path onto the already paved highway only utilizing the shoulders on both sides of the highway and if necessary extending the pavement slightly on the *mauka* side of the highway, narrow the width of the path from eight (8) feet to possibly seven (7) or six (6) feet and narrow the highway lanes from eleven (11) feet to possibly ten and a half (10 ½) or ten (10) feet. I know that some of the individuals involved are frustrated and tired because it has been over ten (10) years since the Papaloa Coastal walkway meetings. However, I think that we are very close to a real win-win solution and taking just a few months more will be well worth it. We collectively have a responsibility native Hawaiian or not, to work together to protect Wailua-Nui-A-Ho'āno. We should start by working to designate the entire Wailua region to the National Register for Historic Preservation. Mahalo nui loa.

Ms. Yukimura: Just...did you just say to narrow...the option you see is to narrow the lanes of the highway?

Mr. Kūali'i: Correct, and narrow the path.

Ms. Yukimura: Do you think that would be safe?

Mr. Kūali'i: I think that there are probably places in the world where the road is not optimally as wide and maybe the traffic would have to slow down. But I think for sure, getting people to slow down in this historically significant, sacred area is doable. That the people of Kaua'i, once the learn and support the significance here and what we are talking about. Especially with the potential feature of what might become of Coco Palms as far as maybe...I mean we are talking about something incredible here like Teddy Blake was talking about. First premiere in the State of Hawai'i, probably in this Country, probably on this planet, I mean so why not? I mean that is such a minor thing to me. The idea to people having to drive slower. They should anyway. We should not have to put up a concrete wall to protect the bikers and the pedestrians on the path because it is going so close to people driving so fast.

Ms. Yukimura: I have no objections. I think it is a great idea for traffic to slow down. But you would have to incorporate some kind of traffic calming in order to force traffic to slow down.

Mr. Kūali'i: Sure.

Ms. Yukimura: There will be many, many lawsuits if there are accidents and we are not meeting Federal standards.

Mr. Kūali'i: I think that...

Ms. Yukimura: So I mean it is not a simple as telling people slow down, you know. You idea about avoiding lawsuits is important so it would have to...I guess there would have to be a lot of consultation as to how to do that.

Mr. Kūali'i: And I think the County is of course moving in that direction of complete streets and making that car and the biker and the pedestrian work together. Why not make this an example? So if it takes traffic calming measures...not that it is simple but I think we have excellent people in our Planning Departments and everybody is already thinking that way moving forward so why not make this area not only an example of historic preservation but an example of complete streets and melding the car, the bike and the pedestrian safely.

Ms. Yukimura: Well, the car drivers will have to also understand that because it will slow down the through put of cars through that area. So there are a lot of things.

Mr. Kūali'i: There is often so much traffic that I think people are going more slower anyway. When I drive through there from Anahola...

Chair Furfaro: Let us be very careful here. She...and I know you know the rules, she has to pose the question and I think you answered her.

Mr. Rapozo: You mentioned...well a couple things in you testimony. Number one (1) was OHA and I am trying to look for that. I remember reading that, I do not know if you have a copy of that OHA, and if you do could you provide us a copy. I am not sure where that is. But the other question was specific to the 106 process. You mentioned that you had spoken to people that participated and as a native Hawaiian yourself, what part of the 106 was flawed? I think we have heard it at the prior meeting that it was more of a formality and it was not really a sincere attempt. Is that what you have heard or...what is your knowledge of the 106 process?

Mr. Kūali'i: That is what I have heard. I think you heard yourself, I remember hearing that when I was on the Council as well, from one (1) of the testifiers who was a sister of mine from Anahola, Sherri Cummings-Yokotake with regards to the 106 process. You know, I do not pretend to be a native Hawaiian expert or the leader of any organization or cultural practitioner or somebody from the area who had *kuleana* for the area. But I think we all still have concern for the area and would like to see that everyone's mana'o and input was included. I think that perhaps the Administration because this was initiated from

so long ago, only had minimal input and maybe only considered the input that was somewhat positive to them moving forward. So, we have heard the mention of these two (2) names of Aunty LaFrance Lapaka and Pōhaku Nishimitsu. Now, when I was looking through all the records, I have not necessarily seen any statements from them. I knew Aunty LaFrance very well and I believe that if she was here today she would say that we are so close to really doing the right thing and what is *pono*. So close, you know. I mean clearly the alignment as it is going forward with today is better than being further *makai*. But it is still has in small ways, it is still encroaching on the beach and the sand and the trees and so. But I think obviously it could have been done better. I even saw another letter from the Federal Advisory Council on the Historic Preservation that stated that the new proposed path alignment may still cause effects to this place of traditional significance to native Hawaiians and thus require additional consideration under the Council Historic Preservation Advisory Regulations 36CFR800. I do not know what those regulations are specifically.

Mr. Rapozo: Well, thank you and I do not think you need to be an expert cultural practitioner. I think as a native Hawaiian from our Constitution to Chapter 205(A), I think it provides for some obligations and requirements from all levels of government to preserve and protect. I just...I do not believe that I have heard of have received testimony from a native Hawaiian and we got some more today that I have not had the chance to look through. But I do not believe that I received testimony from a native Hawaiian supporting the alignment on the beach as of this point. I could be wrong, but we will definitely pursue that.

Chair Furfaro: I think that cultural survey piece, you might want to brief it. KipuKai it is always good to see you. Before I recognize Mr. Bynum, I want to make a couple announcements and he has questions for you. First of all, we are talking about a lot of requests and mutual respect here. This is the fifth time I am asking for people I know who have been in the audience to sign up. The last person that came up to sign up in fact signed up for five (5) other people who I know have been in this audience since 8:45. We have two (2) Special Council Meetings today. This is the last request and please I know some of you would like to testify. But for us to space our time and having our visiting consultants here, we need to understand that we are accepting your testimony but we also want to hear from those that petitioned the group. So I am going to be turning the meeting over to Vice Chair Nakamura and we will start with Joe Rosa, Debra, Richard, Charlie, Sharon, Judy Dalton, Waldeen, Hope Kallai and Karen Diamond. So just in that last request, the list grew by nine (9) people. So need to take a break at 10:45 and then I am going to do a tour of the building at 10:45. Mr. Bynum you have the floor and Vice Chair Nakamura you have the Council.

Chair Furfaro, the presiding officer, relinquished Chairmanship to Ms. Nakamura.

Mr. Bynum: Do you know what the purpose of the Federal Highways 106 process is?

Mr. Kūali'i: I think that basic purpose is to engage the native Hawaiian...engage native Hawaiian organizations and seek their input on the impact of any development onto their areas. If you have it in front of you, it may better explain it.

Mr. Bynum: Well, it. Yes. It is part of the National Historic Preservation Act. The purpose of 106 is to...as I understand it is to identify historic properties that may by impacted by projects that are done by the government, Federal Highways in particular. To identify those and to determine if there are problems early to mitigate. So a lot of people have been talking about 106 and I do not know that people understand what the purpose of the 106 process is. It is not to consult with native Hawaiians specifically. It is to identify historic properties. Obviously in Hawai'i that has a lot to do with native Hawaiian historic properties. But it is not intended to be a root selection process. It is not intended to be a "yes" or "no" process. It is to identify historic properties and determine what if any impact there will be and is there need for mitigation. Did you read the 2007 Environmental Assessment for this project?

Mr. Kūali'i: No.

Mr. Bynum: Okay. So you are not aware then, that alternate routes were...

Mr. Kūali'i: Oh, I read enough correspondence to have a sense of it. Maybe I looked at it briefly.

Mr. Bynum: So do you know what the concerns are about going *mauka* that were expressed in that process?

Mr. Kūali'i: Absolutely. I think the...like it was being said by others and everybody knows that the entire area is potentially impacted by the cultural significance of burials and *iwi kupuna*. So, you know under the highway if you were to dig up the highway and want to restore it into a park area or beach area. Potentially you could come across *iwi kupuna*. In the Coco Palms grounds and what have you. But I think that the idea about and I think that is what OHA was saying too...that a *mauka* alignment back of Coco Palms along that canal because that whole swamp area was supposedly a battle ground too. So I would imagine there is a lot of...an ancient battle ground so there would be lots of *iwi* there. But there is ways to work along what already exists. The roads that already exists, the paths that already exists without digging.

JOE ROSA: Good morning members of the Council and Happy New Year. I hope that we have a better year for the County of Kaua'i in regards to do things that is in demand for the people of Kaua'i not for someone that comes in here out of nowhere and say that the pathways that we installed are not safe. That very person rises day in and day out and I still see him alive yet. How can you say that it is unsafe when bicycle groups come over from the mainland and they ride our pathways along the highway that we put in thirty-five (35) years ago are not safe. He for one (1) just goes ahead and says that they do not use it because it is unsafe. I do not think it is not unsafe. It is not that...I do not even see him doing shopping. He does not have a backpack in the back of his bicycle to do his shopping. When he goes shopping I guess he uses his car because I do not see no bike pack on his bicycle. See, some people of us are hypocrites. They come over here and try to induce things that money could be spent better. And better, I mean like our bus shelters. How can people use it on a rainy and windy day? To catch the bus. I seen the bus stop right outside here by the old Big Save market. On a rainy windy day, they cannot stay over there to catch the bus. Why do they not spend that money that has been used for this bike way which is not totally used. And that goes for one (1) of our Councilmembers who was a proponent of the bike

path in the early 1976-1977 and today she does not even use a bike. On top of the she rides with her car. A car is here to stay whether it be gasoline propelled or electric carts. The car will be here to stay. Get the in your mind and forget about that oh the automobile is on its way out. You know, those are the things that we have to be realistic. Not dreamers like how this thing originated. Was through a dream by three (3) people that came in front here not knowingly how it is going to do, where it is going or seventeen (17) miles proposed bike way from Nanini Point in Nāwiliwili to Anahola. Look how many changes have been done. That is money wasted. In anything like two (2) weeks ago when Doug Haigh came in front here and said that he is going to put those slabs on columns. Now, how are you going to put columns?

Ms. Nakamura: Mr. Rosa, that is your first three (3) minutes. You have an additional three (3) minutes.

Mr. Rosa: Yes, I understand. Nadine, I hope you get things straight too. You know, this is a public information thing that you people ask for the public so the Council at times are totally wrong in the sense that the public do not have their say. You will ask for public information, that is the preliminary procedure in the government. So I am aware of it but I think they should change in this County policy when you have people to testify. How are you going to know what they want? I have come in front here time and time again. Like Mr. John Hoff said, I bring valuable information to the County and yet we go unheard. I had two (2) letters in the Garden Island and nobody responds to what I had to say in the Garden Island. People tell me, I am glad that you wrote that in the Garden Island because you tell the people the truth and how it is. You know, they are going to start construction on the Manu Kai area and put the sea wall. Why does the County not go out there? All you seven (7) members take a ride, get a County blazer and just clear up that area where I put that bike path thirty-five (35) years ago. It is still there for Manu Kai. From Kehaka Road along Manu Kai Road to Lihi Park. It is still there. It was covered. The shadow where you look at it, Mr. Glenn Mickens got a shovel. He went and looked, it is still there. It is good as new as the day we put it in I was told. So why has that been wasted? It is not a heavy...I do not think Mr. Tommy knows that the thing I (inaudible) out there because I do not think he ever used that bike path because it is covered with glass and sand and the debris from the pine trees there. Before you guys do things, get the thing well planned. I am not against it. But Mr. Noyes comes here and he says he speaks for himself. But he speaks for the CCPW. You ask him what it is. It is for health prevention. But why should it be by way of our Kaua'i island tax payer. There are other things like I mentioned. JoAnn proposed of busses and stuff but where is the bus shelters. People do not use those bus shelters. The poor elderly people out here, they are in the rain and wind trying to catch the bus. On a rainy day I see the bus pulls up, I see...I follow a bus. Nobody is there. Why? Rain and wind. Nobody can stand in the shelter there. Those are the kind of things this money should be used first. Take care of our *kupunas* and our elderly here. This is for a select group of people that I do not see anybody using their bicyclist for shop. Mr. Doug Haigh and the late Baptiste, rest his soul, were here saying that this path was going to be used for transportation. But this has turned out to be something for recreation and they changed the title Multi-Use Path.

Ms. Nakamura: Okay. That is your additional three (3) minutes. Thank you very much for your testimony.

Mr. Rosa: Yes. But you know I hope that we do not have a limited time because what I have to say is they should not be spending anything and doing that bike path over there because let me update you...

Ms. Nakamura: I think we have...I think we have you. That is you six(6) minutes so you can wind up.

Mr. Rosa: Yes. I am going to wind up. As I was going to say. When I was working the Federal aid highway people told me on one (1) project when we were working, how come we have so many mile changes in here? I said, that is the way they wanted. I was told by that person that the State would be standing to lose Federal highways funding because they have too many fifty (50), thirty-five (35), twenty-five (25), twenty-five (25), thirty-five (35), fifty (50). That is not the State Federal highways standards.

Ms. Nakamura: Thank you, Mr. Rosa...

Mr. Rosa: What JoAnn is proposing is going to be saying. Let me ask her a question if you do not mind?

Ms. Nakamura: No.

Mr. Rosa: Just a few minutes.

Ms. Nakamura: No. I think...you have exceeded you time limit and we have many more speakers. So why do we not save that for the break?

Mr. Rosa: I know. But...get it straight. But we are here to testify too.

Ms. Nakamura: We appreciate your testimony.

Mr. Rosa: You know, you are getting paid the amount of money you get paid. You do not get paid for overtime, time and a half. So...you are public service...

Ms. Nakamura: But we do have some speakers who are from off island that we need to accommodate today...

Mr. Rosa: Off island? Who is off island?

Ms. Nakamura: Some speakers from University of Hawai'i. So thank you very much.

Mr. Rosa: Well, what they have to say...I think I can say more than them because I live here.

Ms. Nakamura: Thank you Mr. Rosa.

DEBRA KEKAULUA: Good morning everybody. Happy New Year. I was just wondering with regard to this bike path, I have yet to use it although in the past I have taken the one (1) all the way from Keālia to Anahola Beach Park and it is totally overgrown at that point. But again, that was years ago.

I wanted to ask with regard to the proposed Department of Transportation plan that fronts the main lobby of Coco Palms and the eminent take down of what was the shops and taxi stand. If I am correct in understanding that that is going to be a happening with the Department of Transportation, that the building is going to be removed and that the bypass road coming south would hookup past the gas station area or across from the gas station the *makai*...the *mauka* side, that the road would be realigned or the lines in the road would be moved more towards the front lobby of the existing Coco Palms. So if that was the case, it would move...that building being removed would create a lot of room for the *makai* side to be able to put that darn bike path in. Excuse me. I am thinking that if that is the case that D.O.T. has that plan to remove that building and to realign the lines so that it takes the cars and the traffic away from the beach, that that would create the room necessary to put the bike path on you know, some...or along the existing bike path. The one (1) that has been there forever. Just make it more over by where the trees...the trees would not have to even come down if my guestimations would be right. In widths of the current bike path ending at the bridge and then going across. I really believe that the *kupuni iwi* that is there already needs to rest. Rest in peace. Over the New Year holiday, from the Big Island, I had a family member who works for SHPD got called away from her vacation to go and check on three (3) inadvertents that they had found by Fuji Beach, or Baby Beach, Baby Pond whatever they call it. These bones were found behind on a private road, behind the first set of beach homes. There is probably ten (10) or fifteen (15) homes and there were three (3) sets found. So I am not sure what SHPD is going to be doing about reinterment or...

Ms. Nakamura: Debra, excuse me, that was your first three (3) minutes. You have an additional three (3) minutes.

Ms. Kekaulua: Oh, okay. Boy, that was fast. Anyhow, I am just wanting to make sure that the D.O.T. plan, if that is that case...if it is planned to move everything *mauka* then I think that there would be a place to put next to the existing bike path another four (4) or five (5) feet. You know, between the tree line and that...no do not even take down the rock wall. Leave it there and leave the trees there. And there would be enough room I think to do the path. It does seem to me also like Kipukai said that no one is really listening to us. It is like everybody just does their own thing even though we come up here and bang out with you folks. Nobody really listens to us. The thing with the bus shelters. Bring an umbrella. I mean it does not make any sense to make you know, make bus shelters when it rains so little bit on the outskirts of the roadways. And that is it.

RICHARD STILLMAN: In the front page of today's Garden Island newspaper entitled Wailua Multi-Use Path Rolls Out it states, "County Officials said that prior to coming up with final plans, the Administration has many discussions with native Hawaiian leaders, representatives of State and Federal Agencies, experts in coastal land use and cultural archeology as well as a broad section of the community." The Mayor is quoted saying, "I want to acknowledge everyone that met with us over the years and expressed their feelings and concerns about the path alignment along Wailua Beach. We took what was said and weighed is heavily into our decision making as we have always considered the preservation and protection of the Hawaiian host culture of utmost importance." My words now. In all of the multi-use path public meetings that I have attended in the last several years, the most heartfelt and compelling testimony came from native Hawaiians. Until this day these powerful words deserving more than lip service respect

continue to fall in deaf ears. The overwhelming public sentiment I witness at these meetings have been against the path on Wailua Beach due to mostly environmental and native Hawaiian cultural concerns. The same overwhelming public sentiment was evidence of the November 28th Council Meeting where by my count opponents outnumbered supporters by at least fifteen (15) to one (1). As I stated in previous testimony, I am not against multi-use paths. However, I side with the Hawaiians and continue to be against the proposed path that will excavate earth and sand, cut down trees and add concrete to Wailua Beach. I believe a safer than there is now multi-use pathway fronting Wailua Beach could be created my merely realigning and reallocating the existing paved roadway space. Protecting users of this new pathway could quickly and easily be accomplished by acquiring interlocking portable steel reinforced twenty-one (21) inch wide, thirty-two (32) inch high, six and a half (6 ½) feet long triton barriers. If not, identical to the orange and white ones which are being used in Kapaʻa on Kainaholo Road on the curve above the now empty reservoir. According to information on these...about these barriers I found on the internet this morning at Energyabsorption.com, in the Work Zone Safety System section, there are two (2) products. One (1) rated up to forty-three miles per hour (43 mph) and another rated up to sixty-two miles per hour (62 mph) which meet NCRHP standards and, "once assembled create positive crash worthy protection that will help to prevent penetration to work areas." Again, these are for work areas. The barriers are water filled light weight and require no cranes to assemble or transport. Three (3) workers can deploy up to six hundred (600) feet per hour. That is a projection. When they are dry, not water filled. They are one hundred forty (140) pounds. When they are filled they are thirteen hundred and fifty (1,350) pounds. Of course my testimony today like everyone else is against the proposed path on Wailua Beach will be again ignored. I do have quite a few questions that I believe are worthy of a public response. I can continue?

Ms. Nakamura: Yes. That is your first three (3) minutes. You have an additional three (3) minutes.

Mr. Stillman: Have there been any prototypes or practice builds of the fifteen thousand (1,500) pound removable concrete sections made to date or will the very first one (1) in the County be manufactured on site in the weeks ahead? How many County Officials have witnesses a relocation of one (1) of these slabs of concrete? Since I would assume that by now the engineering plans have been finalized and all measurement have been made, exactly how many full and partial sections are expected to be assembled in the Wailua Beach corridor? Some may recall the tsunami warning that was issued throughout the State last October. The next morning I observed several County vehicles parked overnight at higher ground along the roadside shoulder near Kapaʻa Middle School. Who makes the decision as to when one (1) or more of the concrete path section should be moved to safety or higher ground? How much time does it take to move each single concrete section to safety or higher ground? In case of an emergency, how much time would it take to move all of the applicable sections to a safe location? Since open space in the Wailua area is decreasing, how much acreage will be needed and where would they be stored? How many lanes of traffic along the roadway would be affected while relocating the slabs? Who would be paid to perform the work and what is the projected cost this year, at 2013 rates and who pays the bill? Should the need arise, what is the projected per unit replacement cost of a full concrete section this year at 2013 rates? If a passenger crashes into the multi-use path barrier, how much movement will occur at twenty-five (25), thirty-five(35) or forty-five (45) miles per hour? Has this particular barrier design been crash tested? How does crossing the highway at Kawaihau Road to get onto the path without a traffic signal any

safer than crossing the highway at the intersections at Kuamoʻo of Haleilio Road with a traffic light? Last meeting when I asked I was told the Council was powerless to stop this construction. But do you not have the authority to pass some sort of creative and binding local ordinance that could prohibit the construction of this path as designed? And would the super majority not override and potential Mayoral veto of such an ordinance? That is the end of my testimony.

Ms. Yukimura: May we have a copy of your testimony? I think you have raised a lot of questions about the operational aspects of those slabs.

Mr. Stillman: That I am sure that the Engineering Department has checked into.

Ms. Yukimura: So, I would like to have a copy of your testimony. Is that possible?

Mr. Stillman: Yes. I have to print it out or E-mail it to you. Just you?

Ms. Yukimura: Thank you very much.

Mr. Rapozo: All.

CHARLES PERRIERA: You know, we have this thing about a hearing. While we come out here and everybody does their talking and bring all of these paperwork over here. It seems to mean like it is going to be like almost a broken record. Going round and round and round. But let me say something. The County Engineer, I do not know what they did down at Hanalei, before you got to the bridge, that whole hill side. They did something and something else is happening today. I live by the beach in Moloaʻa and I watch that. I see the rocks today and then I see all sand over there. You would be surprised what happens in front of that ocean and we do not know when it is going to happen. All of these things are moving around. Now this bicycle path, what their plans are, what they are going to do? Well, we will see what happens after it is all done.

SHARON GOODWIN: Happy New Year. I sit before you just as I did on November 28th. I pretty much has the same message. I came into this doorway not intending to speak, but just to have a presence. But while I was sitting there, something made my blood boil. But to reiterate, I oppose the bike path as planned here on Wailua Beach. To me, it is sacred ground and the final resting place of countless *iwi kupuna*, bones of the ancestors. But something happened there while I was sitting that made my blood boil. Someone mentioned, "now what about the *kupuna*? How are they going to be able to negotiate the beach? They cannot put their cane in the sand, they cannot go with the wheelchair." Okay. For me looking at you, I think I am the *kupuna*. I think I...in hula I am referred to as the "gracious lady." My husband has called...referred to me as my "old lady" and in the stores, a lot of people say "aunty." At first I did not like it. But you know, you are that. So I think I rank here as the *kupuna*. Now for me, as I grew older, if I am going to be in a wheelchair, if I am going to need to have a cane, I hope that Kipp, my husband will drive me so I can look at Wailua. I do not have to be right on the sand. You know, if you do not believe in the sacredness of the Wailua site, it does not mean that it does not exist or that it is not ardently treasured, because it is. I plan to respect that. I do not have to be on Wailua Beach when I am old. That

should not be the reason for putting in a path. The whole fallacy of this path thing is that it has to be this continuous connecting path. Why does it? Wailua Beach is there. A sacred *ahupua'a*, let us keep it that way.

Oh, since I have not used my three (3) minutes, I am going to reiterate what I said November 28th. I have heard some bicyclists declare that it would be with pleasure that they ride the bike path at Wailua Beach. But as I weigh someone's pleasure with another person's feelings of deep loss in their belief system, I have to choose not that path.

Ms. Nakamura: Sharon, that was your first three (3) minutes. That was your first three (3) minutes, so you have an additional three (3) minutes.

Ms. Goodwin: No, I am finished.

Ms. Nakamura: And we have one (1) questions, Councilmember Yukimura has for you.

Ms. Goodwin: Good. I am happy you are responding.

Ms. Yukimura: Yes. All I want to do...it is not a question. I want to apologize for offending you because I did not mean to do that.

Ms. Goodwin: I know you did not. But that is a fallacy. That it has to be a continuous connecting path.

JUDY DALTON: Aloha. Happy 2013. I am hoping someone will ask me about pictures that I took just yesterday because the last time that I was here, you had asked for those. There may not be enough time, so hint hint. The County's concrete bike path project for eroding Wailua Beach, risks irreversible loss of a treasure, environmental and cultural asset. I hope that you got the E-mail that I sent you last night. It was after midnight. I am not too sure if you opened it yet. I had a picture of a fisherman that I had shown the last time that was sitting here on the side of the highway, exactly where the bike path would be. There is the ocean. Right there, high water. So it says that that fisherman had nowhere else to fish because the beach had been gone. The lower beach, except on the rim here where the path is projected it to be. A path that goes along the coast may sound like a really great idea. But is it really a good idea for Wailua Beach if it means that the County's concrete multi-use path along the upper portion of the beach will likely cause irreversible cultural and environmental damage? The highway along Wailua Beach as you know, is built on the sand dunes so everything *makai* of the highway is upper dune. That would place a concrete path directly on Wailua Beach considered by native Hawaiians to be one (1) of the most sacred, historical and culturally significant places in the Hawaiian islands as a National Historic landmark. High wave action over the past several years and most notably during this past year, has significantly narrowed and eroded Wailua Beach. It is along the upper part of the beach that the concrete path is to be built as close as twelve (12) feet away from the high water mark. Twelve (12) feet away from the *makai* edge of the path, the ocean will be right there. There is evidence that the ocean has come that close. The lava rock wall would be taken down as you know and it was built on the *makai* side. The very process of building the path, taking our trees, using heavy construction equipment, excavating through sand and boulders to install these so called removable eight (8) feet wide, ten (10) feet long,

eighteen (18) inch deep concrete slabs would compromise the integrity of the fragile beach. It would undermine the structural foundation of the already unstable beach risking collapse and accelerated erosion of the beach rim. Interfering with the natural processes of...

Ms. Nakamura: Judy, that was your first three (3) minutes. You have an additional three (3) minutes. Sorry to interrupt.

Ms. Dalton: So interfering with the process...the concrete path would essentially be a beach hardening device, can cause erosion to increase. Predicted sea level rise due to climate change magnifies the concern of placing development on beaches. It is crucial to the stability of the highway to leave the beach intact and undisturbed. Further destabilization of the beach would put not only the path, but the highway at risk creating the need to build a beach destroying sea wall to fortify the reminisce. At that point, there would be no choice. Wailua Beach would face the same faith as one quarter of the beaches of O'ahu, permanent loss. Our Army Corp of Engineers based their decision on photographs that were sent to them by the Department of Public Works depending on what sections of the beach that would make some difference. They mentioned that the proposed path will not significantly alter shoreline erosion trends of Wailua Beach. Well, I guess that is saying the beach will do what it is going to. The ocean is going to do what it is going to do. It does not really necessarily say, go ahead, build this. In the same report, the Army Corp report acknowledged the erosion at Wailua Beach and its consequences by stating, "using the January 2008 shoreline certification, the 1975 shoreline is eroded back as much as one hundred fifty (150) feet." So there has been one hundred fifty (150) feet of documented erosion there on that beach. They also said, "the concrete slabs could be threatened by undermining the shoreline erodes along the ocean side edge of the bike path." Well it has happened in the past, it will happen more in the future especially with sea level rises is another factor. Another quote from the Army Corp of Engineer report is, "as shoreline erosion approaches the seaward edge of the bike path, the sand below the concrete slabs would be allowed to erode from underneath." So they are acknowledging that there will be erosion, could be erosion from the slabs underneath if there is approaching erosion to that area. The Army Corp suggested that the County, this is really really important, that they County evaluate the cost effectiveness, and these are all quotes from them..."evaluate the cost effectiveness of the project considering the operating and maintenance cost involved in the path."

Ms. Nakamura: Okay, Judy, that is your additional three (3) minutes, so can you wind it up?

Ms. Dalton: I will try to go faster. "Though there currently appears to be a sufficient width of beach fronting the ocean's edge of the proposed bike path, that does not preclude future episodic events from severely eroding the shoreline. If this were to occur, the proposed course of action by Department of Public Works would be to remove the bike path until the beach recovers. There is historical evidence..."it is still quoting..."there is historical evidence and the shoreline could erode to the extent that this maintenance action may be required."

Ms. Nakamura: Judy, just to be consistent with our rules we are going to have to end it. So, you can say one (1) or two (2) words and we need to end it here.

Ms. Dalton: Okay. That is it.

Ms. Yukimura: Did you take pictures of the shoreline?

Ms. Dalton: Yes. Thank you for asking. Here is some...first of all...can you see that cameraman, because I want the audience to see it too. This picture, I took this in January 2010 and you can see the beach was really wide at the time. The volleyball court was there. Then this picture was taken also in January 2010. This picture was taken a couple weeks ago. It shows that that wide beach is gone. It is eroded away.

Ms. Yukimura: Is that the same spot though?

Ms. Dalton: Same spot. Not at the very, very same spot. But here is a picture of...right here you cannot see it very well. I tried to get to get the contrast a little better. But there is the volleyball court right there. Then I tried to get as close as possible to show that there is no volleyball court there. There is no place for a volleyball net...I should not say court. This picture was taken just this past fall, as this one (1) was taken yesterday. So, there...the beach is coming back just a little bit. It is pushing all the sand back. But as it is doing that, and it is pretty similar, that will change sometime from week to week. But in the mean time, as the new swells have come up, they have pushed up sand even further. So this is another section of the beach, mid section. So the sand is really really close to the side. And that has pushed the shoreline...

Ms. Yukimura: What is the time of that?

Ms. Dalton: This is done yesterday. Yes. Just yesterday. So the shoreline has crept up further *mauka*. So it is approaching *mauka* on a regular basis. That is considered the upper wash of the waves and that is where the shoreline is. In the mean time, Chip Fletcher of course, had suggested back in 2009 that a new shoreline certification should be done because of the amount of erosion that had been taken place just between 2007 and 2009.

Ms. Nakamura: Councilmember Yukimura, do you have another question?

Ms. Yukimura: Yes, I do.

Ms. Dalton: Oh, I...did you want me to finish the pictures?

Ms. Yukimura: Are you not finished?

Ms. Nakamura: Okay, let us show the pictures and move on the question.

Ms. Dalton: Okay. Here is a picture from the final Environmental Assessment that was done in 2007. This picture was done in 2009. It is starting to erode a little bit. This was done in October 2012 and then this was done...these two (2) were done just yesterday showing that it is eroding again.

Ms. Yukimura: My next question is, I think you said that the proposed slabs would be hardening.

Ms. Dalton: They would be like a hardening because if they come close to...they are going to be twelve (12) feet away. So as the beach continues to erode and if it hits upon the concrete slabs, the concrete slabs will be like a hardened device because they are going to be a foot and a half deep.

Ms. Yukimura: But the Corp of Engineers report says, "the minimal vertical extent and horizontal footprint of the concrete slabs proposed for the bike path do not present the same potential impacts to coastal processes as would be typical of shoreline protection structures that is hardening because they do not create the vertical barrier. Instead the concrete slabs will only rest on existing beach surface." So I just wondered how you would respond to that. According to the Corp of Engineer's study, it sounds like they do not consider the slabs as hardening because they do not have the really deep vertical walls that are required for like a stone wall.

Ms. Dalton: Yes. I read the report very carefully and they said that the slabs would not be lying on top the beach. They did not realize, I do not believe that they were going to be imbedded inside...because they said they would lie on top of the beach.

Ms. Yukimura: So you think the Corp of Engineers misunderstood how the slabs are or you are disagreeing whether they consider that it is hardening?

Ms. Dalton: No. I am just quoting...I am quoting what it said that...too bad I did not bring along the report.

Ms. Yukimura: I mean I am quoting it too. So to me, this says that it is not hardening. Of course we will have the experts come forward soon.

Ms. Dalton: Yes. Well, it is a vertical place where it will be...where the waves would be bouncing on. In the E-mail that I sent you, also had a connection to a book that shows that the waves on any hardened surface will create scowering affect in eroding the beach even further.

Ms. Nakamura: We are going to have to take a ten (10) minute caption break. We will come back and then hear from Hope Kalai and Karen Diamond if they are both here.

There being no objections, the Council recessed at 10:41 a.m.

There being no objections, the meeting was called back to order at 10:55 a.m., and proceeded as follows:

Ms. Nakamura: We have three (3) more names here to testify. We are going to start off with Hope Kalai.

Mr. Rapozo: Not here.

Ms. Nakamura: Is Hope here?

Ms. Rapozo: Nope.

Ms. Nakamura: The next speaker is Karen Diamond. The final speaker is Waldeen Palmeria.

KAREN DIAMOND: Where do I begin. You know, I guess it is perception and the Mayor feels like he has done a great service in moving the bike path. But I want to point that many of us are really pain in the butts. But I want to point out that if the bike path had not been moved, at this point it would be in the ocean. Over the period of time from 2009 until now when the planning has changed the path would be obsolete. So when I here Thomas Noyes and the Mayor say how much of in a rush they are I am really confused because what I should be hearing is a thank you to all the people who stood up for the beach and the culture and did not have the path be where it would be now, in the ocean. So I want to talk about the erosion and the accretion. I feel like we have gotten the short end of the stick in many ways. We did historical erosion rates for the County to help protect our coastal area and what we have from the County right now is they are saying that Wailua Beach historically accreting. So they say that it is accreting and they are skipping the present. Which when you look at the beach it is plainly eroding. Clearly eroding. It is eroded to the highway. So how can you say that it is accreting? You can do that with looking back to history. But if you fail to accept the present and you fail to accept the future which is sea level rise, then you are wasting the benefits of the path. So whether you want the path or do not want the path, you would not put it in harm's way. I really take acceptation when people that are asked, are we accreting are we eroding, is this going to hurt of help? Well, any structure that is put on the beach ruins the beach and everyone knows that. Every coastal scientist and every person who ever observes the coast knows that any structure placed on the beach leads to its demise. So, basically what you are saying here is that you want to replace the sand lay that is around island and the beautiful sandy beach that is at Wailua Beach with a concrete layer on the island and concrete beach. I think that it is really not where this County should be going. If you fail to look at the present circumstances and see the erosion that is occurring then you are going to be misplacing this bike path even further.

Ms. Nakamura: So, Karen, that is your first three (3) minutes. You have an additional three (3) minutes.

Ms. Diamond: There is not only erosion. There is overlapping hazards that exist on the coast. So I think in placing this bike path there nobody is looking at the overlapping hazards that exist. They are looking at one (1) hazard and even ignoring that and saying that it is opposite. So that you see erosion, you say accretion. Okay, I guess that is what it is. But I think as a County, we can do a lot better. This is a significantly historical...historically culturally significant does not even begin to address it. I really take acceptation and with great sadness to think that the County would even entertain the thought of putting this concrete lay on our sacred sands. I do not know what else there is to say.

WALDEEN PALMEIRA: Aloha. You do not have the full Council here right now, right? Okay. Just give me a minute. First of all, I wanted to thank you and Happy New Year to everyone. It is nice to be here. I wanted to thank everyone who came today as well as on the November 28th. Was it the 28th? I had a question first. And that is you know, this seems to be for communication purposes and I am thankful for Judy Dalton for raising it. However, I am just asking this is for communication purposes, is there any other process that you are considering at this point after today? Is the question that I have by this Council. Also...first of all before I say anything more, I just wanted to say that my comments

are given without prejudice under UCC1-308 and UCC1-103. I am not a native Hawaiian under the Federal recognition of native Hawaiians. That is not true. I am a sovereign and I just wanted to make that statement. We are not under...I am not under the Federal recognition category. We are sovereign of this land and so we are here speaking...I am here speaking on behalf of our land and our *kupuna*. We have worked with this actually since 2004. So, first of all I am not going be reading something that there has been a large background concerning this project over the years. One (1) of the things is that you really need to...if you are going to consider it just in terms of the bike path you really need to step back and look at the whole picture. The whole picture is that there are four (4) projects. Starting with the Kapa'a Relief Route prior to 2002 and the consultant of this project is the consultant of the Kapa'a Relief Route, Mr. Glen Kimura of Kimura International. So at that point, this route, Kūhi'ō Highway route is an alternative of that which should have been an EIS. There was not EIS...

Ms. Nakamura: Excuse me, Waldeen. But that is your first three (3) minutes. You have an additional three (3) minutes.

Ms. Palmeira: Alright. So one (1) of the points is that there was no EIS intentionally for this corridor, this sacred corridor. Why? I cannot answer that except speculation is that without doing an EIS you do not add together the accumulative adverse effects. So you are looking at the effects of a bike path. We are also concerned of the effects of a highway and a bridge and the Kapa'a Relief Route. So anyway, one (1) point is the Section 4(f) is flawed. There was a Section 4(f) done for this and it ties this project...the bike path is tied to the Kūhiō Highway short term improvement project. That is...in other words like Pat Fung of Federal Highway said they follow process law. He is not looking forward to should whatever happens to Wailua Beach happen. He is...in other words if they follow certain process whether they are right or wrong, it seems to be what this whole thing has taken place because if we go into details there are major flaws and disregard of law, disregard of consultation. One (1) thing that I wanted to say about...because I am not going to be able to get through all of this. If I can submit comments within a week I may. However, going back to 2009 when we had the first major erosion, if you had recall some of you were there. Is that in 2009 there was something called the *'aha hō'anu* held at Wailua Beach. It is a sacred vigil because Wailua is scared. It is spiritual. It is the actually the religious center, the spiritual center of not only this island Kaua'i, also of Polynesia. That spiritual nest has never gone away. It is here. I am telling...I am reminding you that at that sacred *'aha hō'anu* in 2009 which took out a lot of the shoreline, that was a large message. That was not a large message. That was a profound message and those of us there, you see trees and cows and things coming down the river. Hanalei and Wailua were flooded. You know, the sacred and the spiritual need to be...this path needs to be an alignment with what is *pono* for this area. Just because I am mentioned one (1) thing that Sharon motioned about the fallacy of the continuous path. Well, going back to the beginning...

Ms. Nakamura: Excuse me, Waldeen, that was your three (3) minutes, your six (6) minutes so you can wind up.

Ms. Palmeira: Going back to the beginning of how this whole project started. If somebody back then made some kind of agreement that they needed to have whatever how many miles of continuous shoreline path without going through the whole process at that time, well that is a violation of and EIS. Another EIS violation because you really need to look at the total

accumulative impact which is also...I will bring it on a...I always enter in something else.

Ms. Nakamura: Waldeen, that was your six (6) minutes, total.

Ms. Palmeira: Yes. I understand. Thank you.

Ms. Nakamura: Councilmember Yukimura has a question for you.

Ms. Yukimura: You mentioned that it has this issue of the multi-use path in front of Coco Palms needs to...requires us to look at the whole picture of four (4) projects. Can you tell us what the four (4) projects are?

Ms. Palmeira: Okay. The...well the Kapa'a Relief Route.

Ms. Yukimura: That was one (1).

Ms. Palmeira: That is one (1). And I guess, I would say in my view, they need to have certain substantial damages down here...down here at the *makai* level. I mean a Section 4(f) Programmatic Agreement, for example which is attached to the Kūhi'ō Highway short term improvement project. That is a problem in that they, the Federal Highways, and this County and the State decided to go through a historic area which is protected under Section 4(f). They did not have consultation with us. They did not evaluate the historic properties prior to doing this...I am getting to that point.

Ms. Yukimura: You are getting to the four (4)?

Ms. Palmeira: But to have...let me see. The Section 4(f) is for usage, right? The normal usage of the beach is in other words affected by a highway and a bike path. Well, that 4(f) needs to include some substantial damages to the 4(f) property if you look at the law.

Ms. Nakamura: I am going to have to interrupt you because the question was what were the four (4) projects.

Ms. Palmeira: Okay. The Kapa'a Relief Route.

Ms. Nakamura: Okay. We got the Relief Route.

Ms. Palmeira: The Kūhi'ō Highway short term Improvement Project – Kuamo'o to temporary bypass...

Ms. Nakamura: The bypass.

Ms. Palmeira: ...which is side-by-side with this bike path, right? It is literally and procedurally and everything segmented illegally. Okay, and the Cane Haul Bridge Project.

Ms. Yukimura: That is three (3). Then the fourth is the bike path...I mean the multi-use path itself.

Ms. Palmeira: Right.

Ms. Nakamura: Councilmember Yukimura do you have another question?

Ms. Yukimura: No.

Ms. Palmeira: Can I just wrap it up with one (1) statement about that?

Ms. Nakamura: If it takes one (1) minute of less.

Ms. Palmeira: Okay. There is a statement by this woman Patricia Sanderson Port of the Department of Interior Regional Environmental Officer, January 14, 2011. Where she says, this has to do with the Wailua Falls hydro electric usage. Okay, we are looking at all of Wailua, right? In other words, what she had said is that potential accumulative effects of project should also be addressed. Accumulative effects are defined as impact on the environmental that results from incremental impact of action when added other past, present and reasonably foreseeable future actions. Regardless of what agency, Federal or non-Federal. That is 40 CFR 1508. In other words, like she said, for Wailua River the accumulative effect should be analyzed and described for key interactions among this project and any other projects or factors not considered in this application that could have accumulative effect on water quality.

Ms. Nakamura: Thank you, Waldeen. I am sorry, but we are trying to be consistent with our rules. Everybody else had six (6) minutes and I gave you an additional minute.

Ms. Palmeira: And like I said, if you could answer the question that I had in the beginning about whether this Council...what is the purpose of this meeting and what will the Council...how will the Council be addressed in this?

Chair Furfaro was noted back in the meeting.

Chair Furfaro: In the very beginning you were not present but I did an evaluation of the Council here. Basically, indicating that if there are questions from the public on the people who handle the permits because the Council did not reconcile the permits. They are given to other agencies that we do not have jurisdiction. I encourage you to raise those questions with those agencies. Our purpose here is to try and get some clarity on what that process was from the agencies that we invited today. We are only going to be voting to receive this document and then individual Councilmembers could pursue something other than what has been approved by those agencies on their own initiative.

Ms. Palmeira: Okay. So nothing as a Council, then?

Chair Furfaro: Nothing here required Council action today. This was suggested to me by two (2) Councilmembers that wanted to have an opportunity to review the process that existed on the permits that were issued.

Ms. Palmeira: Okay. I would just like to state that as a witness who have been involved, I would have preferred to speak after

reviewing their presentations to you. However, that was not permitting. And as a last statement as I mentioned in the beginning as a sovereign, we do have plans for restoration of Wailua-Nui-A-Ho'āno. Mahalo nui loa.

Chair Furfaro: Just to answer your question. What you prefer and what we agree on as a Council is...

Ms. Palmeira: I know, I know. I appreciate it. I just wanted to state that.

Chair Furfaro: I understood your position.

Ms. Palmeira: Because then we would be able to raise...you know, to respond to their presentation.

Chair Furfaro: I appreciate you recognizing the fact that there was nothing necessary for us to have this Special Council Meeting. But we decided to do it as well just to give some clarity.

Ms. Palmeira: Right. And for myself to, I just came for providing whatever communication I could at this point. So thank you very much.

Chair Furfaro: You are quite welcome. No, we are not finished with you. We have questions from others. We were answering your question. I think JoAnn had a question for you and then Mel.

Ms. Yukimura: Just two (2) things. One (1) you said you have plans for restoration and I did not get of what you are. And then I wanted to ask if you could provide that quote about accumulative impacts for us.

Ms. Palmeira: Okay. Sure.

Ms. Yukimura: And I just did not hear you last word. We have plans for restoration of...

Ms. Palmeira: Of Wailua-Nui-A-Ho'āno.

Ms. Yukimura: Which is? Excuse my ignorance.

Ms. Palmeira: Well, that area is the area below A'ahowako and Mauna Kapu and Sleeping Giant. That is the sacred *kapu* areas. However it extends all the way up. So...

Ms. Yukimura: Oh, okay. So it is that whole watershed area?

Ms. Palmeira: Yes.

Ms. Yukimura: Known as Wailua Nui?

Ms. Palmeira: No. Wailua is the whole *ahupua'a*. But Wailua-Nui-A-Ho'āno is the lower portions.

Ms. Yukimura: Okay, thank you very much.

Ms. Palmeira: And this is an alignment with the sacred and the spiritual nature which we invite...that we invited the Federal Highways as well as the State to start taking steps towards working collaboratively on a better plan so that we are in alignment. Well rather so that you are in alignment...well the government.

Mr. Rapozo: It is just a request really. You motioned the 4(f) process and I think we may have addressed that in years past. I cannot remember that off hand. But if you could send us, I know you said you may submit something later. If you could send us. I am really interested in your arguments on the 4(f) that we could pursue because I believe that there were some concerns. I am not sure. There was an absence, I was absent for a couple of years. I was not...I am not aware of the...

Ms. Palmeira: Yes. We were told once by Ray McCormick as we went for a walk once that...anyway there is a huge tie between the bike path and the highway project.

Mr. Rapozo: And Waldeen, I do not want to get into that because really today was to hear from the public as well. But we have the experts from UH and Planning and I have some serious concerns on the permitting which I hope to bring up. I hope you are here. I hope you will hang out and listen to some of these answers because I do have some concerns. 4(f) just was not one (1) of them. But I do recall having a discussion with Gary Hooser.

Ms. Palmeira: I will submit...fax some letters to Federal Highways.

Mr. Rapozo: Yes. If you could do that.

Ms. Palmeira: For example, the national the NEPA was never done either. Just the last point is that at our last meeting with Federal Highways in August, they said that they would provide accumulative analysis including this bike path because we asked for a project which is costing over sixty million (60,000,000,000). How come we cannot have a picture of what the end result looks like? In other words, we do not want Redo Drive or something. We want Wailua, the cultural significance the be retained. Not only for the looks but actually for cultural...for our culture, our people.

Mr. Rapozo: Thank you. If you could send that to us, I would appreciate it.

Chair Furfaro: Excuse me, Waldeen, could you try and do that within six (6) days?

Ms. Palmeira: Yes. Six (6) days.

Ms. Yukimura: Yes. I just wanted to know what you were referring to in terms of *they* said they would do an accumulative analysis.

Ms. Palmeira: Federal Highways, because they did not do a National Environmental Policy Act for any one (1) of these projects. There

was no NEPA. The bridge was a key text...a categorical exclusion. This project, the bike path is a categorical exclusion. For three (3) projects in Wailua, there were no NEPA document and there was also segmentation in the Special Management Area. Three (3) separate SMAs.

Ms. Yukimura: So the sixty million (60 ,000,000) that is being spent on an EIS, is that?

Ms. Palmeira: No, on the project of the Kūhiʻō Highway. By the time it includes whatever it includes...

Ms. Yukimura: That is like the four (4) projects?

Ms. Palmeira: Yes. We asked for a picture. Give us a picture of what it would look like.

Ms. Yukimura: The end in mind.

Ms. Palmeira: The end result, right. Because we would like to be and we have asked to be a part of that design.

Ms. Yukimura: Okay. Thank you very much.

Ms. Palmeira: And that includes this project as well. As you can see Papaloa Road looks very different and that is not acceptable.

There being no further public testimony, the meeting was called back to order and proceeded as follows:

Chair Furfaro: Thank you Vice Chair for taking the testimony. As I explained earlier, once a month we do a...part of the restoration of the Historic Building, we make tours available. I am sorry that it landed on this day. But now we will go into the rest of you in the audience. I would like to hear from anybody that has a definite time table. I plan and I would like to first hear from Lenny Rapozo, the Director of Parks and Recreation followed by the SMA permit from the Planning Director. I believe at the same time. We have people here from Sea Grant that can help that process, followed by the Planning Director. Again, going over the highlights of the cultural survey letter that was done, the D.O.T. Engineering Report. Then we would like to end with Ruby, if she is available. As well as on the engineering portion I would like to hear from Doug Haigh. So let us start with that formal structured portion of the meeting that I had outlined. Lenny is Doug going to join you?

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

COMMUNICATION:

C 2013-25 Communication (12/17/2012) from the Council Chair, requesting the presence of the Director of Parks & Recreation, County Engineer, and the Director of Planning to discuss the portion of the Kaua'i Multi-Use Path, Phase A, specifically along Wailua Beach as follows:

a. Review of approved Federal, State, and County permits that are currently active;

b. Memorandum from Ruby Pap, Coastal Land Use Extension Agent, dated October 18, 2012, relating to "Redesign of Multi-Modal Path Along Wailua Beach"; and

c. Actual Scope of Work for construction of the Multi-Use Path along Wailua Beach.

Mr. Rapozo moved to receive C 2013-25 for the record, seconded by Ms. Yukimura.

There being no objections, the rules were suspended.

LEONARD A. RAPOZO, JR., Director, Parks & Recreation: For...today we are here to answer three (3) questions. One (1) of them as we are going to outline is a scope of work for the construction of the multi-use path along Wailua Beach. The active permits or the...and that is the permits that the Director of Planning will address and a memorandum from Ruby Pap, coastal land use extension agent dated October 18th. As well as her counterpart will also be here to explain and talk about the coastal land extension or the coastal erosion.

The path location again is along the Wailua Corridor on the Wailua Beach. Again, the scope of work basically is from the edge of the line of the Kūhi'ō Highway fronting Coco Palms or from Kuamo'o to Papaloa to the edge of this red line. This is the width of the path. As we go along, you will see the corridor or the total width of the path. As we move further north, this is the edge of the path on the *makai* side from the edge of the line. This is as far as the path will go. Further, as we move towards Papaloa or towards the Sea Shell. This line from red line to white line is approximately eight (8) feet. As we get towards the Sea Shell, the line as you can see will be...the path will be impacted by this wall and this is that wall that we talked about. There will be a removal of the wall and a new wall will be placed along this side edge of the roadway. But I should say it is more of a barrier and not a structured wall like we had...that we have currently. As we approach Sea Shell, this is the line of the path. As we get to the Sea Shell, in this area here is the only area where the path would need to be narrowed that would take about six (6) feet because there is not enough land from here to there. We got the full? Oh, okay I am sorry. We do now have full scope of eight (8) feet.

DOUGLAS HAIGH, Chief of Buildings: And actually we start widening.

Mr. L. Rapozo: We start widening. Right, and then we start going to Papaloa. When we get to here we have eight (8) feet now and as we get to Papaloa it expands to ten (10) feet. The scope of work. Temporary restriping of Kūhi'ō Highway and install safety barriers. This is taking place effective on Wednesday. To install the path, there will be some excavation, some form rebar, pouring concrete, finishing concrete with a stone stamp and color,

this a primarily for the barrier as well as the path itself, apply rock facing to the barrier, install sand and coral fill on the *makai* edge of the path and landscaping. Also the permanent restriping of Kūhiʻō Highway. I will let Doug explain these typical sections of this part of the path.

Mr. Haigh: What we provide here is a typical sections approximately every one hundred (100) feet starting at the Kuamoʻo intersection going toward the Sea Shell Restaurant. The purpose of this was to show you the impact existing soils. The dotted line is existing ground level. This solid line is the final ground level. As we go through these you will see that in most cases we are adding in fill because really our design challenge is, when we move the path within the highway right-of-way we started with a boardwalk along the beach. There were many, many meetings discussing that and the Mayor approved a compromise where we would move it within the highway right-of-way. But once we moved within the highway right-of-way, we now are...and to do that you have a very little space between moving vehicles and the users of the path. So, it was determined that we need a barrier wall to provide that safety so that it is a safe path. We also, and we have to go minimal width. So we designed this special barrier wall that was very thin. Thinner than...about a third of a normal thickness of barrier walls that are used, and designed it integral with the path because the other criteria was to minimize excavation into the soils because there was much concern about digging into the soils along the path. So we...the design was to keep it as sallow as possible. Then of course to keep the width. So typically ten (10) feet is the minimal width that we want to go with. But in this area we did take it all the way down to eight (8) feet which is the absolute minimum. Any narrower than that, it would not meet ay guidelines. Once you get below eight (8) feet you would go to six (6) feet for a single direction bicycle path so you cannot go narrower than the eight (8) feet and still be in compliance with the ASHTO guidelines. Like I said, eight (8) feet is the very minimum allowable...well recommended since they are guidelines. It is not actual rules. To minimize, well to improve esthetics, we put a rock face on it so that it is pleasing. We are also putting a stamped concrete stone type finish to take away from so it will not look like the paths that we have elsewhere, where we are using just regular concrete colored but a broom finish. This one (1) if you go look at the Kuamoʻo intersection from the Kūhiʻō Highway...from the Wailua River bridge to the Kuamoʻo intersection is representative of the type of finish at we are going to have. You will see that they have the stamped concrete finish there and the wall is the same. So that is what it is going to look like. But at that point I believe it is actually twelve (12) feet wide. So from there we are going to get much narrower. So as you can see in the vast majorities as we go through these, we have really, the Engineers have done well in satisfying the criteria at minimal depth because they are in a lot of places on the *makai* edge. They are sitting on the existing soil and then we are coming in with a sand or coral finish...fill. We are still looking at some landscaping alternatives. Currently we have various trees and we have sea shore paspallum grass along the edge. But we are in communication with our coastal grant people. They are researching and seeing if there are any other additional landscaping that might be better.

The active permits...you want me to cover this? Really the only Federal permit that is required it the National Pollutant Discharge Elimination System permits. We have two (2) of those. We have one (1) for storm water and one (1) for hydro testing water. The hydro testing water is for when you have to deal with new water lines. In several places not along Wailua Beach, but actually along Papaloa Road and on Kawaihau, we had to relocate water lines in order to allow drainage

line improvements and adjustments. So that is why we had to get the hydro testing permit. This permit has been extended pending State wide Resolution of the Notice of General Permit coverage between the Department of Health, Clean Water Branch, and Environmental Protection Agency. State wide, this occurred for every single MPDS permit in the State of Hawai'i that Department of Health is in working with the EPA to extend or to redo this NGP coverage, the Notice of General Permit coverage. So what they have done is they extended...we all had to resubmit for an extension. We resubmitted and we got our extension so it is extended while they are trying to resolve the issue with the Environmental Protection Agency. So we are covered by the permit and we have approval to move forward with the construction. State permits. The only State permit required is the Permit Perform Work Upon State Highways and we have permit No. 1646 with Hawai'i Department of Transportation to do that work. It is an active permit and the work done within the State highway right-of-way is done under that permit. Then we will defer to the Planning Department, Planning Director to discuss the SMA permits.

Mr. L. Rapozo: Is there any questions for us?

Ms. Yukimura: Chair?

Chair Furfaro: That is the end of the presentation?

Mr. L. Rapozo: For our section, yes.

Mr. Rapozo: I guess my first question would be on the photos with the red line, do we have any measurements? I think we all can appreciate the distance from the highway white line to the path. But do we have any measurements taken from the edge of the proposed path to the existing high water marks? All of your photos are from the highway side, but...

Mr. L. Rapozo: You are talking about from here?

Mr. Rapozo: Correct. Do we have an...measurements to the high water mark from the proposed edge of the path?

Mr. Haigh: I do not believe that there has been in this. We have the original shoreline survey.

Mr. Rapozo: I am not...I am talking about now.

Mr. Haigh: But there has been no documentation of the existing high water mark.

Mr. Rapozo: Well, you guys made the effort to show the public the distance of the path and how wide it will be and that it meets all of the requirements. But the practicality of this construction is really as we are all familiar is the erosion. Have we not taken measurements from the high water mark to the proposed edge of the path?

Mr. Haigh: We have not documented the actual high water mark location. We have definitely noticed that there was erosion in June and we noticed that there is wave run up on the beach that has already accreted since that. So we know that. But we have not taken measurements to

some specific line because we have not formalized and documented exactly where that specific line is.

Mr. Rapozo: Why would we have not done that though if we are going to go and build path? Why would we not...knowing that they erosion is creeping up. I think we have seen enough photos. Why would we not...just in planning and just in anticipation of...like I said you made the effort to draw line for us to see how wide this path would be but not on the other side.

Mr. Haigh: In response to your question, like everybody else...well most people, noticed that in June there was extensive erosion at the beach which for most of us were surprised that is was so extensive. But when you look at the study that was done, it is certainly not the only time in history that has been documented that there has been erosion that far. So what we did is in response to that, is we looked at redesigning the path so that it could be removable in the event that the erosion did continue. We submitted our design to the coastal experts to get their comments and they will be responding to you on that when we are done.

Mr. Rapozo: And I will also go over the coastal comments that unfortunately was left out of the County's press release because I think that there is some statements made in the Army Corp report that never made it in the County's press release as well. So I will address that as well. I guess for me the simple question is, at its highest point on the high water mark as we know Wailua Beach today how far are we from the proposed path?

Mr. Haigh: I do not have that specific dimension.

Mr. Rapozo: Okay. May I continue Mr. Chair?

Chair Furfaro: Yes. Go right ahead Mr. Rapozo.

Mr. M. Rapozo: I know that you heard one (1) of the testifiers talk about NEPA. Does NEAP apply with this project here? You do not have to go into detail. A simple yes or no.

Mr. Haigh: Yes.

Mr. L. Rapozo: Yes.

Mr. Rapozo: And did we do it?

Mr. Haigh: Yes.

Mr. L. Rapozo: Yes.

Mr. Rapozo: Okay. I just wanted to get that because I thought that we had done that. So I wanted to clarify that for the record as well. Then I am not sure, you did not go into the County permit. Did you cover that or is that going to come up later?

Mr. Haigh: Planning Department. The Planning Director will address that.

Mr. Rapozo: Okay. You talked about the priority of this route was to keep that minimum width because we needed to meet certain guidelines.

Mr. Haigh: Yes.

Mr. Rapozo: Now, what happens if we do not meet that minimal width? What is the ramifications to the County if we do not meet that minimum width?

Mr. Haigh: I think you greatly increase the County's liability for one (1) if there ever is an accident related to the narrow width. Knowingly...

Mr. Rapozo: Is there any fiscal ramifications?

Mr. Haigh: Fiscal?

Mr. Rapozo: Financial. Does it affect our funding if we go less than eight (8) feet?

Mr. Haigh: We... you know, we have not discussed that.

Mr. Rapozo: That is a "yes" or "no."

Mr. Haigh: In our discussion with Federal Highway we were compliant with ASHTO guidelines so we have not gone back to Federal Highway to discuss the ramifications if we did not meet the Federal...the ASHTO guidelines.

Mr. Rapozo: Well it is...well we can only do what we can do with the land that we have. I noticed that you put a lot of emphasis on keeping that path to a minimal amount. I just want to know what is the ramifications to this County. It seems like we put that guideline...that minimum width even to that point that I think you just said that we are going to reduce the size of the barrier wall a third.

Mr. Haigh: Well, it was designed. It is a custom design special and he designed it as thin as he could which is thinner than normal.

Mr. Rapozo: Right. And what does that stop? Is that going to provide...going less than what is recommended?

Mr. Haigh: What he designs to is to a standard. The standard and I am not an absolute expert in this. The standard for the highway there on the posted speed limit is a T1 design. He actually upgraded the design to meet a T2 design which is a higher speed limit. I do not know the specifics of the miles per hour required for the T2 design. This was a key issue for Hawai'i Department of Transportation because it is a traffic safety issue. So we needed to and our Engineer is very well versed in these requirements, so he had provided a design that actually meets a T2 requirement which is higher than what the actual T1 requirement based on the posted speed limit.

Mr. Rapozo: Okay. It just seems if you are talking about liability, reducing the size of the wall to a third of what we currently have would increase liability as well. But I guess my bigger...and this would be all for now Mr. Chair. But I definitely want to know and I am surprised that you do not have that answer right now, Doug, is what is the financial...I cannot believe that was not discussed. That if in fact we went below eight (8) feet, six (6) feet, four (4) feet dies that affect our funding? Because I am having a feeling that that is what is driving this issue is the funding. I hope that that is not the case.

Mr. Haigh: Well, it is the use.

Mr. Rapozo: Well...

Mr. Haigh: It is the use and the intended use of this infrastructure.

Mr. Rapozo: I understand. But I think that you have heard from many people that utilize the path. Many of the users and I think you get the testimonies as well, maybe not, we can make them available. A lot of the advocates of the path have all come out and said, let us stay off the beach and we can make due with a narrower path. That we just want a path. But I just hope that money is not driving this decisions to do what we are doing because that would be a real disservice to the community. And that is all that I have.

Mr. L. Rapozo: Can I just respond to that Council Chair?

Chair Furfaro: You have the floor.

Mr. L. Rapozo: Money has never been the driving factor in this project. It has always been trying to work out a win-win with everybody involved. As it was mentioned earlier with Doug, we are on the sands, on the beach with a portable boardwalk that was driven like an ogle down to hold it as a movable thing. In 2009, the project stopped because there is a lot of uproar in the native Hawaiian organizations and we met them. We met them head on. We had many meetings. Sometimes a little bit louder than we had hoped to be. To the point where they even, we left the room so that they could have their say with the...with Federal Highways for whatever reason they wanted us out of the room. That was fine. Then we came onto this here. Our Mayor made that call and our Mayor did a good job in talking to the State guys so we can still have this amenity. But yet try to make it so that everybody can enjoy it. Then we heard from Sierra Club. Sierra was part of the 2009 discussions and they came back again recently. We have entertained everybody. Money has never been the driven force. Sierra Club came...

Chair Furfaro: I am going to stop you there Lenny because that answers Mr. Rapozo question. But let me expand on that. To either of you gentlemen's knowledge, has the County Attorney's Office been appraised of any potential ramifications if we deviate from the standard width? Has that question...and if it is no, it is no. Has that question even been presented to the County Attorney's Office?

Mr. L. Rapozo: No.

Mr. Haigh: No.

Chair Furfaro: Okay.

Mr. L. Rapozo: And they are part of our Task Force.

Chair Furfaro: Understood. I just wanted to know the question...if we go from ten (10) to eight (8) and so forth are there any risks that Mr. Rapozo was referencing that...

Mr. L. Rapozo: No.

Chair Furfaro: Okay. Thank you.

Ms. Yukimura: First of all, there was some testimony from the public that this project will require the narrowing of Kūhiʻō Highway, the lanes on Kūhiʻō Highway. Is that part of this project?

Mr. L. Rapozo: Not currently.

Mr. Haigh: The one (1) area where we are doing some narrowing is close to the Kuamoʻo intersection. The is a painted island between the two (2) directions and we are narrowing that painted island a little bit. But we are maintaining the existing lane widths and we are maintaining the existing width between the *mauka* lane and the existing telephone poles...

Ms. Yukimura: Okay...

Mr. Haigh: ...because the key thing for us was to not compromise highway safety. So our Engineers worked within that framework.

Ms. Yukimura: So this project as currently proposed is not narrowing any of the highway lanes?

Mr. Haigh: The travel lanes.

Mr. L. Rapozo: The travel lanes.

Ms Yukimura: The travel lanes, okay. Now...

Mr. Haigh: We are narrowing the...of course the *makai* shoulder because now you have a wider shoulder. But once we get there, you only have a two (2) foot shoulder between the travel lane and the wall.

Ms. Yukimura: Right. And the wall you said is being built to standards for safety to separate the pedestrian and bicyclists on one(1) side and the automobiles on the other side.

Mr. Haigh: Correct.

Ms. Yukimura: Or vehicles on the other side. Okay. In the practices of traffic safety, does the wall contribute to traffic calming?

Mr. Haigh: Traffic calming is largely a psychological issue. I would think to some extent you could make that argument since the shoulder is narrower and people are going to tend to slow down a little bit. But we did not design it with that in mind. Our key criterias were to have it within the highway right-of-way and not impact the safety of the highway and not change the travel lanes. So, that is why the shoulder got narrower. You could make the argument that having a narrow shoulder will slow people down, but that was not the intent of the design.

Ms. Yukimura: And the eight (8) lane width of the multi-use path is based on Federal guidelines?

Mr. Haigh: ASHTO. American Association of Highway...

Ms. Yukimura: So, they are developed...well just so that you had this communication it is ASHTO. American Safety...

Mr. Haigh: I...should remember the acronym.

Ms. Yukimura: You should?

Mr. Haigh: I should. But sometimes when I get up here my mind goes blank.

Ms. Yukimura: ASHTO. A – S

Mr. Haigh: ASHT...

Ms. Yukimura: Oh, Thomas knows it and probably Glenn.

Chair Furfaro: Well, they are not the ones in discussion. If you do not know it, you do not know it.

Mr. Haigh: I do not know it. I can get back to you on that.

Ms. Yukimura: Well, maybe Thomas can give you a note.

Chair Furfaro: I will send you a messenger to Tom for his comments. How is that? Let us stay focused here.

Ms. Yukimura: Well, the reason...

Chair Furfaro: Staff get the answer...

Mr. Haigh: ASHTO is an association of State highway. An association of State highway officials...or something like that. It is State highway not National, not Federal. But they are involved...but Federal highway acknowledges the group.

Ms. Yukimura: Okay, fine.

Chair Furfaro: Ten (10) seconds. Look at the staff's notes.

Mr. Haigh: American Association of State Highway and Transportation Officials.

Chair Furfaro: Thank you Yvette, very much.

Mr. Haigh: Thank you, Yvette.

Ms. Yukimura: I am just trying to understand the origin of the eight (8) feet or any of the guidelines in terms of use and safety since to me those are the concerns. Now this eight (8) feet width is for two (2) way traffic, is it not?

Mr. Haigh: Correct.

Ms. Yukimura: So it essentially mean four (4) feet on either side although there will not be a line.

Mr. Haigh: Correct. And I you know, it is a mixed use width.

Ms. Yukimura: So you...I mean you even have times bicycles passing pedestrians or etcetera. There are a lot things going on in that eight (8) feet width. You say that you are going to based on your diagrams, you are going to be putting some fill...your typical sections pages 12 to 15. That you are going to be putting some sand or coral fill?

Mr. Haigh: That is correct.

Ms. Yukimura: And that is represented by the bold...

Mr. Haigh: The difference between the solid line and the dashed line.

Ms. Yukimura: Okay. So that there will be some fill but it could be washed away if the waves come up.

Mr. Haigh: Absolutely.

Ms. Yukimura: And you are looking at landscaping I take it...landscaping that will help to keep the sand in place.

Mr. Haigh: I do not think there is landscaping that would keep...that would resist the beach erosion. But it...my studies that I have done landscaping has been used to trap wind driven sand to help build up the dune and to have that reserve so that when we do have this erosion, the beach and actually what we are seeing at Wailua Beach is classic beach activity. I will let the experts talk about it. But you are pulling sand out and then the and builds back. You are pulling sand out, sand builds back. So if you can trap sand that might be blown out of the reserve and keep it there, it is better for the beach. Now we are...we have already been in discussions with our coastal resource and they are doing further research for us and to come back with further information on

potential improvements to our landscape plan. I will let them answer that question because they can do much better than I can.

Ms. Yukimura: Yes. We will ask them that question too. So where you have the wall and the slab, as part of the slab, what happens if the wall is damaged?

Mr. Haigh: If...okay...damage by vehicular?

Ms. Yukimura: Yes.

Mr. Haigh: Well then we fix it. I mean it is concrete. If concrete gets damaged, you chip back to where you have good concrete and then you reform it and pour it and fix it.

Ms. Yukimura: So you do not anticipate that it requires removal of the slab or anything like that? You would be fixing it on the spot?

Mr. Haigh: Most likely it would be in the wall itself that we could fix just in place.

Ms. Yukimura: So, there was some concern about these slabs would be made of concrete.

Mr. Haigh: That is correct.

Ms. Yukimura: So, there was some concern about the composition of the concrete. Someone said that it includes mercury and if it is busted up that it will be a form of loose pollutant. Is that...

Mr. Haigh: That is something that I am unaware of. I have never heard that concern before. Actually in a way, concrete is more sustainable than say a track system because we are using sand and rock from Kaua'i and concrete can be recycled if you want. The key component of concrete that is not so sustainable is the cement itself. The cement takes a high amount of energy to produce. But the actual sand and cement is local Kaua'i material...I mean sand and rock. The cement come from elsewhere.

Ms. Yukimura: Right. So then, all of these questions that Mr. Stillman posed about repair and maintenance of the slabs, removing them in case of...in case the is erosion that cannot be stopped, who is taking care of that?

Mr. L. Rapozo: We would request...

Mr. Haigh: Okay. We...some corrections to some of the statements made.

Ms. Yukimura: Okay.

Mr. Haigh: The actual weight of the ten (10) foot section is about ten (10) tons. That is twenty thousand (20,000) pounds.

Ms. Yukimura: Okay.

Mr. Haigh: We can manage that easily with County excavator. We have equipment that we can easily...and it is normal in construction to be lifting pieces of concrete. Drainage manholes that type of thing. There are heavy concrete things that are used in construction. There are also various contractors on island who have small cranes that are adequate for moving the...for lifting up the section up also. So we would be lifting up and possibly putting it on a trailer or the back of a flat bed and then temporarily storing it somewhere and then coming back and bringing it back when we are ready to reinstall it.

Ms. Yukimura: So, who would make the decision to remove it?

Mr. Haigh: I believe it would be the decision with the County Engineer and the Kaua'i District State Highway Engineer. They would be working together.

Ms. Yukimura: In consultation with probably some coastal resource expert?

Mr. Haigh: Yes. If we are at that stage there are concerns with the roads. So I would assume State highways would be bringing the Army Core in to evaluate potential impact of further erosion to the road.

Ms. Yukimura: And in the case of a tsunami of a major ocean disaster, has there been thought about what happens if things...if those slabs are moved out of position and if they cause damage or additional problems?

Mr. Haigh: There are no standards for designs for tsunami hazard because you never know...I mean there is no way to know what kind of energy you are going to get from a tsunami. It is so variable. It is not like there is a percent probability that you will get this size tsunami, percent probability you will get a bigger tsunami. So there...it is not designed...there is no design standards to design something to withstand tsunami forces because they cannot identify...

Ms. Yukimura: But...

Mr. Haigh: ...so it is foreseeable that there might be forces that would eat up this thing and possibly more it. But if the force is that strong, the asphalt pavement of the highway which is much weaker would be severely destroyed also. So we would be in a major disaster recovery. Fortunately since it is modular, if some sections of it get moved we should be able to cut them free and get them quickly out of the way and do what we need to do to restore the highway. But to predict exactly how a tsunami would affect this wall is unpredictable. There are no standards for us to use to predict that.

Ms. Yukimura: But I mean, we do mitigation with our hurricane straps, we do I guess maybe it is the major...the major cause...and this is my last questions...the major cause or the major purpose of requiring breakaway walls in tsunami areas for the first floor is to preserve the house, or not to cause more damage. We do try to plan...

Mr. Haigh: Okay, that is not for tsunami. That is for...that is for wave action, not tsunami action. The FEMA maps do not relate to tsunamis.

Ms. Yukimura: Well, the breakaway walls do.

Mr. Haigh: The break...no. The breakaway walls are for wave action, not for tsunami action, normal wave action. That...FEMA regulations regulate for normal storm...high storm surf type destruction. Not for tsunami. Like I mentioned before, we do not have standards. Now, there are engineers who are looking at trying to create some tsunami standards. Some local Hawai'i engineers are involved in those studies. But at this point there are no known...there are no standards to deal with that.

Ms. Yukimura: Well, I will talk...I will ask questions of the coastal zone people.

Mr. Bynum: For clarification, the wall that we have been discussing you designed it to be as narrow as possible for the overall purpose of keeping the footprint of this entire structure as narrow as possible.

Mr. Haigh: That is correct.

Mr. Bynum: So it still meets the safety guidelines. But if you were going to make a barrier wall and you were concerned about space, it would be the traditional ones that we see that are wider.

Mr. Haigh: Correct.

Mr. Bynum: But the purpose for designing it, you are still meeting the safety standards that are required for highway safety. But you are trying to keep this footprint as narrow as possible.

Mr. Haigh: Correct.

Mr. Bynum: Same reason you went to eight (8) feet as opposed to the recommended twelve (12) feet.

Mr. Haigh: Correct.

Ms. Nakamura: I had a question about...it seems like what I am hearing from people testifying this morning is the concern about how much this multi-use path actually goes into the sand. It seems like just in looking at the photographs and the cross sections, I do not get a real good sense. The photographs varies it seems along the route. But when I look at the cross sections, I cannot really tell where the pavement ends. Can you kind of give us a sense of how many feet into the sand you are going?

Mr. Haigh: Actually, in our last presentation where we reported on the subsurface archeological investigation, what it showed...that investigation showed is that this path is entirely on highway fill.

Ms. Nakamura: Highway fill?

Mr. Haigh: Highway fill. It is not on the virgin sand. Now there is sand way down below the highway fill. But the path itself is on the highway fill and the highway fill extends beyond the highway right-of-way which is evidenced in the photos that the Chair shared with you all of the 1955 or whatever photos where you seen those rock debris.

Ms. Nakamura: So you have the pavement and then you have the highway fill?

Mr. Haigh: Yes.

Ms. Nakamura: And you are saying that this bike path will be on that fill?

Mr. Haigh: Correct. If you looked at the...

Ms. Nakamura: You would not know though by looking at it if it is sand or fill?

Mr. Haigh: You would not just by...well once you dig it. If you remember we have those cross sections and they showed the different stratum of where they dug down, about six (6) eight (8) feet, and all of it was disturbed fill with various rubbish in it. Then also, if you look at the area that had the most extreme erosion in the June event. If you look at the *mauka* edge of that erosion, you are going to see a different type of material where it was actually starting to get in...that erosion was getting in a little bit to the highway fill.

Ms. Nakamura: So, are you saying that this project...this proposed multi-use path is not touching and of the virgin sand of Wailua Beach?

Mr. Haigh: I would make that...I would support that statement.

Ms. Nakamura: Okay, that is a very different perception that I...that what I have been hearing.

Mr. Haigh: That is one (1) of the reasons why we provided these photo...the photoshop showing you the edge of the path so it would clear exactly where the edge of the path is because there are various perceptions of where the path ends up. That is why we also provided the cross sections and all the trenching that was done to show you what the actual material is where the path is going.

Ms. Nakamura: And when you...I am sorry I did not read EA for this project. But I wanted to find out when you did that EA and you looked at alternative, was the road...the travel lane...that narrowing of the travel lanes along Kūhiʻō Highway fronting Coco Palms and option to find additional land?

Mr. Haigh: During the EA we did not look at that in detail because we were really looking at the alternative of a boardwalk along the beach.

Ms. Nakamura: One (1) of the...the reason that I am asking is because I talked to Ray McCormick to find out would the State Department of Transportation have a problem if that lane were less than the eleven (11) feet now? If it went down...is it eleven (11) now?

Mr. Haigh: It varies.

Ms. Nakamura: The travel way is about...

Mr. Haigh: It actually varies.

Ms. Nakamura: And he said that it does vary along entire Kūhiʻō Highway. But that he would not have a problem if it were ten (10) feet wide.

Mr. Haigh: That is different than our discussions with him.

Ms. Nakamura: Okay. But that they would be concerned about the liability.

Mr. Haigh: Our discussions with...he is concerned about safety. In our discussions with him, if reducing those travel lanes and moving them closer to the telephone pole reduces safety. You can do it. But it does compromise safety. If there is real benefit...but our criteria was not to compromise the highway safety.

Ms. Nakamura: That is why I was surprised when he told me that that you know, that he would not have a problem with that.

Mr. Haigh: My understating in the letter that was sent to the Council Chair on that issue, he did state that it was a safety issue.

Chair Furfaro: And that letter was distributed to all members.

Mr. Haigh: So in writing he stated that it was a safety issue. In our discussions with him, that is a concern.

Mr. Rapozo: Did we do an analysis or I guess an assessment of the operations and maintenance cost going forward. Like I know Councilmember Yukimura asked some specifics about what happens if we have a tsunami warning? What happens if we have a...once we get to hurricane warning...because it will take time to move these panels. Have we done a...like a cost assessment of what it would take. I know you said we have the in-house equipment. But when we have these events, there are many functions that the County has to address. Not just the bike path. So the equipment may not be available. We may have to contract out someone to go remove these panels. Have we done anything like that to determine that basically going forward, we envision *x* amount of events that would require us to move the bike path and at what cost per event? Have we done anything like that?

Mr. Haigh: We have analyzed what it would take to do the work. We have not done predictive analysis of how often such work would

have to be done because we do not have information that would allow us to make that predictive analysis on what the anticipated predictivity of tsunamis or the predictivity and of this beach erosion. If you look at the beach erosion maps which they will be talking about, it never came to the place where the path is going. It never came that high.

Mr. Rapozo: Okay. So what...what was the near...in your assessment what was the cost to remove?

Mr. Haigh: We analyzed what work it would take. We did not do a cost analysis. But of course you would have to know how many of the sections would have to be moved.

Mr. Rapozo: Well, if we are having a tsunami alert, I would assume that the whole path would have to be removed. Why would you not move all if you were having a tsunami?

Mr. Haigh: We...there is...we would not be removing the path...

Mr. L. Rapozo: If there is a tsunami.

Mr. Haigh: ...with a tsunami alert.

Mr. Rapozo: You would not?

Mr. Haigh: No. We would not.

Mr. M. Rapozo: Really?

Mr. Haigh: How many hours do we have?

Mr. Rapozo: That goes to my point, Doug. That is what I am saying and I am only reading what the...you know because again, and I will touch on this later. But you know, the Administration referenced the Core of Engineers' report and it said based on what we have read, we do not think that this path will have an impact on the erosion. I agree. I do not think that the path is going to have an effect on the erosion. But I think that the erosion is going to have an effect on the path. In the...in the...please do not do that. You are going to upset the Chair.

Chair Furfaro: Well, I am entitled to do that. Especially since I did a warning earlier.

Mr. Rapozo: I appreciate that, Mr. Chair.

Chair Furfaro: Let us have some decorum.

Mr. Rapozo: But what was not...this is straight out of their report. It says because of this...and they are talking about the significant erosion and episodic events that occur on that beach. It says because of this the operations and maintenance cost along with the project construction cost should be evaluated to determine the cost effectiveness of the current removable concrete bike path alternative. That is from the Corp of Engineers. So I know that press release

said, all fine and dandy. But yet, they say we should have done that and we have not. Correct?

Mr. Haigh: Correct.

Mr. Bynum: I am kind of reluctant to get into this discussion because I have read all of these reports for many years. But just to summarize in my own mind. The original plan was a boardwalk on Wailua Beach, right?

Mr. L. Rapozo: Correct.

Mr. Bynum: People were opposed to that. They were opposed to the anchoring using agars. A lot of what I heard at the time was put it in the highway. So the County went to the Highway Department and said, "would you accommodate some of the right-of-way for the path," correct?

Mr. L. Rapozo: Correct.

Mr. Bynum: And they agreed to narrow the shoulder on the *makai* side in order to allow for that right-of-way in the highway right-of-way, correct?

Mr. L. Rapozo: They allowed us to put the path in the shoulder area.

Mr. Bynum: Okay. Then you designed is as narrow as possible going to the minimum width that is allowed under ASHTO standards and even designing a special wall that has the safety things, but could narrow the footprint even further.

Mr. L. Rapozo: Yes.

Mr. Bynum: The path is in the highway right-of-way. So here is the part that I was reluctant to do. At some point that highway was constructed. They put fill in, right. Then built the road bed on top of that. Correct? Have I got this...

Mr. Haigh: We do not know the sequence of how they built that part.

Mr. Bynum: Well, we know from the archeological study...

Mr. Haigh: That there is fill.

Mr. Bynum: The path that you just mentioned a few minutes ago, what is underneath the path is roadwork, preparation for a road. So at some point, if we would have taken a picture that day we would seen the fill, the roadway and the beach would have been after that. But over the years some of the sand rolled over that fill. Right? That is what we are talking about, right? That you guys did it. You dug down. You dig down below that, there is fill. Right?

Mr. L. Rapozo: Yes.

Mr. Bynum: Okay. And so if you look at...we have a highway right-of-way, right? We have had it on maps for years. This path is all built in the right-of-way. Correct?

Mr. L. Rapozo: Correct.

Chair Furfaro: And please, for the record the visual sees the acknowledgement with a head shake. But I need a...I need for...

Mr. L. Rapozo: Verbal.

Chair Furfaro: ...answers to be verbal please.

Mr. Hooser: Just some brief follow-up questions. So, if the original boardwalk plan had been put forth and that would be washed away today, right? So the public objecting to it...what they can validly concert is that it would prove it right by mother nature.

Mr. L. Rapozo: Well, we would have saw if the technology was quicker because the anchors was to allow it to move and to be put back into place.

Mr. Haigh: So portions of it would have been disturbed.

Mr. Hooser: Or in the water.

Mr. Haigh: Well, we would...yes. They would be disturbed and we would have removed them. We would have them in storage awaiting for when the beach came back up. But that is only portions of it. It is quite a large extending of the beach is still there where the path would have gone.

Mr. Hooser: So, the temporary nature of this section, I want to get clear on for a second. So, they are poured and formed somewhere else and brought, put in place by cranes. Is that correct?

Mr. Haigh: Incorrect.

Mr. L. Rapozo: Incorrect.

Mr. Hooser: Okay, so they are poured in place? So they are poured...

Mr. L. Rapozo: Put in place.

Mr. Hooser: They are put in place?

Mr. L. Rapozo: Yes.

Mr. Hooser: And to remove them, you have what...places to hook up bolts or whatever to hook up lines to bring them out with cranes? Is that...they are designed like that?

Mr. L. Rapozo: Yes.

Mr. Hooser: So a crane would lift it out, as opposed to a forklift putting its fingers up.

Mr. L. Rapozo: Or an excavator.

Mr. Hooser: From the highway side?

Mr. L. Rapozo: Yes.

Mr. Hooser: In the criteria upon which these would be moved. It would not be for a tsunami. Would it be for a hurricane?

Mr. L. Rapozo: Probably not, no.

Mr. Hooser: So what...would it for episodic...what would be the criteria to remove these temporary things?

Mr. L. Rapozo: Threatened of erosion to the road. They would have to save that road. That is the only corridor road that links that section of the island.

Mr. Hooser: So if the waves are coming up repeatedly, repeatedly, it is threatening the road...

Mr. Haigh: Well, if the sand...if the highway fill under the path is eroded away that is the time you need to remove it.

Mr. Hooser: To take the path away.

Mr. Haigh: Yes.

Mr. L. Rapozo: So that they can save the road.

Mr. Haigh: And also, so that you allow the beach to build back up and then you can put it back in place.

Mr. Hooser: And then the fill that is adjacent to the pavement right now, that is grown over with grass and sand on top right now, I think. So, once this is poured in place the County will put additional crushed coral fill to the *makai* side of that?

Mr. Haigh: That is correct.

Mr. Hooser: That is correct? So the effective...the full area will just keep stretching out seaward.

Mr. Haigh: Well, actually we are using sand or crushed coral which is the natural material. So, we are adding back the natural beach material which is a more pure material than the actual existing fill in place.

Mr. Hooser: It is still fill on top of whatever is there though?

Mr. Haigh: That is correct.

Mr. Hooser: If there happened to be archeological things there it would be covered by this fill?

Mr. Haigh: And from the trenching, I saw the fill is not going to be beyond the existing highway fill.

Mr. Hooser: What is the range of distances from the edge of the existing pavement to the red line? Some of it looked like inches and some looked like feet.

Mr. Haigh: You know, that is a graphic line drawn.

Mr. Hooser: So, approximately what would be the distance?

Mr. Haigh: Okay. Two (2) feet...eleven (11) feet.

Mr. Hooser: No, from the edge of the existing pavement to the red line.

Mr. Haigh: It is from the edge of the white line. The white stripe...

Mr. Hooser: My question is from the edge of the pavement.

Mr. Haigh: The pavement varies and we do not know exactly where the edge of the pavement is everywhere because a lot of it covered up. The very edge is covered up. So we do not know exactly the end of that pavement. So what we did is, we went off the shoulder stripe line.

Mr. Hooser: You follow...I am trying to get an idea of how much additional hard surface is going to be added to the existing hard surface. Not how much fill is there. But how much...but we do not know that. What is the...this two (2) feet shoulder at the end of that day on the *makai* side which would be left. Is that correct? Between the wall and the road.

Mr. Haigh: The white line and the...yes. Between that wall and the shoulder stripe.

Mr. Hooser: Yes. And on the *mauka* side of the highway, what is the existing shoulder?

Mr. Haigh: It varies.

Mr. Hooser: From?

Mr. Haigh: From the...and I am going...we have recently done measurements from the telephone poles because that is the critical safety issue...are those telephone poles. I think it is like six (6) feet to twelve (12) feet maybe. I am not...I have not memorized that. But it varies and I believe...my memory is that the narrowest was around six (6) feet from the. I do not remember exactly. Do not hold me to that number.

Mr. Hooser: So, I guess that would be my question because the multi-use path envisioned to be a two (2) way path, you would not need as much shoulder on the *mauka* side in theory...

Mr. Haigh: Well, you do because you have the telephone poles.

Mr. Hooser: ...if you only have a two (2) foot shoulder. But those are slated to go underground, right?

Mr. Haigh: We do not know when.

Mr. L. Rapozo: We do not know.

Mr. Haigh: And that has not been finalized.

Mr. Hooser: But they will be going...I mean is that not part of the four (4) lane expansion?

Mr. Haigh: That still has not been finalized.

Mr. Hooser: Okay.

Mr. Haigh: There is not...in fact there is not currently there is not funding in place to do that. That funding was shifted to the Puhi bridge, not the Puhi bridge but the...

Mr. L. Rapozo: The Mill bridge.

Mr. Hooser: And what is the reality of...the work has started apparently, right? It was in the paper.

Mr. Haigh: Yes.

Mr. Hooser: So that work has stared and so what is the reality of the possibilities of stopping the work or what would the repercussions of stopping the work, or is it feasible at all to change plans?

Mr. L. Rapozo: There will be a lot of cost incurred to stop the work.

Mr. Hooser: So the contracts...the contractors have been engaged?

Mr. L. Rapozo: Yes.

Mr. Hooser: The permits have gotten the things are moving forward...

Mr. L. Rapozo: Yes.

Mr. Hooser: Regardless, otherwise it is going to cost a bunch of money, lawsuits...

Mr. L. Rapozo: Yes.

Mr. Hooser: When was that "go" or "no go" decision made? When was the last time that we could have said, "okay, let us put this on hold?" It has been weeks, months?

Mr. Haigh: The notice to proceed for this section my memory, was issued in June.

Mr. Hooser: So, from that point forward we could not change our minds without incurring significant costs or lawsuits? Is that what you are saying?

Mr. Haigh: I would defer the Attorneys on those type of legal issues. But once you issue a notice to proceed and the contractors started...because there is a lot of lead up work to be done to the actual construction and he is incurring cost.

Mr. Hooser: Right. So do you have an estimate around numbers of what it would cost?

Mr. L. Rapozo: I have none.

Mr. Hooser: Just trying to get a reality check on what we are doing here.

Mr. L. Rapozo: No. I do not have that.

Chair Furfaro: Gentlemen, let me try to have a better understanding of these barricades. So you know, we had a tsunami watch not six (6) months ago and I left the Hyatt at an event to get home to Hanalei. Once I got into the Wailua corridor, the traffic was horrific. Now I am trying to picture the fact that we are going to have this response team to move the barricades which is going to require a crane, which is going to require trucks to put the barricades on and we are all going to work within this sixty-five (65) foot width to salvage that.

Mr. L. Rapozo: No, Chair. The intent was not...we were not going to remove the path in that type of situation. It would only be in the beach erosion situation where the highway...

Chair Furfaro: That is why I asked the question because the task that I just described is impossible.

Mr. L. Rapozo: Yes, and we have other responsibilities with the public and our tourist that would prevent us from such an endeavor at that time under those situations.

Chair Furfaro: Well, I just want to pose it that way to get us back to reality.

Mr. L. Rapozo: Reality...yes.

Chair Furfaro: So let us not think that something magical is going to happen. Superman is going to fly in and we are going to move

the barricades on his pure strength and brutality of the wall and that traffic is going to flow through. That does not work.

Mr. L. Rapozo: No.

Chair Furfaro: So it is only the intent of that wall to be able to save the foundation of the road.

Mr. L. Rapozo: Also help with the traffic safety between those using the path and the pedestrians and the traffic in the lanes.

Chair Furfaro: And you know that I have some history at Coco Palms along with Uncle Charlie and we realized that that road sits on some boulders that I think I had exposed to the group and others in photographs. Then also, on the other side of the road there is railroad foundation that is up against Coco Palms as well. So I just wanted to make sure I posed it that way because a response like that in an evacuation scenario would only make the situation worse.

Mr. L. Rapozo: Oh, yes and that was not the intent.

Chair Furfaro: Okay, good.

Mr. Rapozo: I guess I misunderstood that it was going to be removed any time that there was a threat. But we are only going to remove these slabs in the event of erosion?

Mr. L. Rapozo: In the event that the road it threatened and D.O.T. needs to save the road, we would remove that from the erosion, yes.

Mr. Rapozo: So, I am trying to understand. I apologize I am not getting it.

Mr. L. Rapozo: So, if in 1954 when some of the pictures that you have seen. If the path was there we would have to remove it because the erosion was so great it would have threatened the road.

Mr. Rapozo: What relationship does this path have with the road? I mean, why would removing the path help the road?

Mr. L. Rapozo: So that they could work to save the road. Just like what they are doing out in Kekaha.

Mr. Rapozo: Okay. So we are putting in a structure...do we know that this structure...I mean I saw the report, it is not going affect the erosion patterns. But the structure will prevent the State from maintaining the road should the erosion get too close? And the State is okay with that?

Mr. L. Rapozo: It is not going to prevent them. But it allows them to work on it.

Mr. Rapozo: I understand. Okay...I, I guess I do not understand but I will try to understand. I just...I thought and I think that the public thought that these removable slabs were going to be removed to protect the asset. The actual asset which is the path. That in fact and I think I read it in I do not know which report I read. But that they recommended that so that we could preserve the asset itself and not to protect the road. So it is just additional cost for the County to assist the State in the event that erosion would be threatening the road.

Mr. L. Rapozo: Yes.

Mr. Rapozo: So if there is an event that is threatening our asset, we are just going to let it go?

Mr. L. Rapozo: In such like a hurricane...

Mr. Rapozo: Hurricane, tsunami...we are just going to say...

Mr. L. Rapozo: Yes.

Mr. Rapozo: We are just going to take our chances and hope that...

Mr. L. Rapozo: Because I do not think that the State is going to try to save their road too.

Mr. Rapozo: Yes. I am not really concerned about the State though. I mean that road is the road. It is there and it is something that we cannot un-ring that bell. But we can definitely do the right things going forward. I am just thinking that if...that is quite a big of an investment. Again, I misunderstood. I thought it was removable in the sense to preserve the asset and I was wrong. So it is only in the event that we have to move the path so the State would repair the road. I think I got that.

Chair Furfaro: Could I just interrupt you for a second. For a housekeeping item. This is a housekeeping item. We have a Special Council Meeting posted again for 1:30. Could you just read that item to the audience. Then could I see a show of hands who is here specifically for that agenda item.

C 2013-20 Communication (12/11/2012) from Councilmember Rapozo, requesting the presence of the County Engineer, to provide an update and report regarding the recent delay in construction of the Multi-Use Path along Papaloa Road, including the circumstances causing the delay, the corrective measures taken, and the costs associated with the delay and the corrective measures undertaken to correct any deficiencies. This briefing should also include the current timeline for completion of this portion of the Multi-Use Path.

JADE FOUNTAIN-TANIGAWA, Deputy County Clerk: There is also an Executive Session scheduled, ES-589.

Chair Furfaro: Now that next item would be a requirement that this Council based on a contract dispute, would go into Executive

Session first and then come out and have public discussion. Can I see by hands who is here for that item at 1:30. Gentlemen, there is no Dodger baseball, right? You guys are okay if this happens later? Okay. We are coming up on lunch hour, that is why I am asking. I want to ask Mr. Eversole, do you folks have a time that you need to...

DOLAN EVERSOLE, UH Sea Grant College Program: Yes. I have a two o'clock (2:00) flight.

Chair Furfaro: Okay. So we are going to ask these gentlemen to step down. We are going to go into your testimony for at least the next half an hour. We really appreciate you folks being here. Again, I did not expect so much and time consuming public testimony this morning. But we would like to go for that. Then for the staff, I want to indulge you to say that we will go to lunch at one o'clock (1:00) and start up again at two (2). I am going to suspend the rules and ask you to introduce yourself. As you have been following some of the dialogue this morning, we would like to get from your group through the University of Hawai'i, we would like to get some update on the potential or seasonal erosion and get some comments from you.

RUBY PAP, UH Sea Grant College Program: I am a Coastal Land-Use Extension Agent based here on Kaua'i. This is Dolan Eversole of the University of Hawai'i, a Costal Geologist and here to help answer questions. Dr. Charles Fletcher was going to be here but unfortunately there was a snafu with his fight. He is watching online and may text in with some responses.

Chair Furfaro: First of all, thank you again, both. Welcome back from your vacation and Happy New Year. Thank you for your ongoing work with the County of Kaua'i. Let me give you the floor. If you can give us an overview and then we can open up to questions for the members.

Ms. Pap: Just wanted to give a quick overview. I know this was agenized based on my October 18, 2012 memorandum to Public Works. I will go through that and give a couple of updates based on some of the testimony that I heard because I did watch the November hearing as well. I wrote a memo on October 18th to Public Works Department, Doug Haigh specifically, regarding shoreline processes at the site of Wailua Beach and specifically reviewing the redesign of the path. I want to be clear that I was not reviewing an alternative locations. We were looking at the redesign. I was not reviewing anything other than the hazards issue. Just want to be clear on the scope of my review. My analysis started off by summarizing the coastal processes at the site. This is a map showing the erosion rate data for Wailua Bay which is located here. These erosion maps have been created for the entire island be Dr. Charles Fletcher's coastal geology group at UH and are also the scientific basis for establishing shoreline setback distances in Kaua'i County. This is just a close up of the area. Just to give you a little bit of overview of these maps. The slide shows the historical shorelines that calculate the shoreline change rate or erosion rate for an area. The historical shorelines which are all these squiggly lines over time are based on...derived from aerial photographs that were taken over time. The shoreline change rates were calculated with mathematical models for specifically delineated transects along the shoreline. So the yellow lines are the transects that they derived the erosion rates each for. The erosion rate data is out here. So the date for Wailua Beach shows that over the past century the beach has been accreting or growing at an average

rate of 0.6 per year. So the blue means accretion and the red means erosion. That does not mean; however, that erosion over shorter time spans does not occur. As we have seen from the past summer there can be major episodic erosion events. That is what we have all been talking about and it is probably caused by a northeast trade winds and associated swells transporting sediment to the river mouth. The variable shoreline locations that you can see on the map, so all the squiggly lines, are evidence of this happening in the past. We see here in 1975 the shoreline eroded and came very close to the highway. That is here. So you just match up the color of the shoreline to the legend on the right. That was in April of 1975. But by 1987, the beach had actually recovered to its former width. So that is there. This does not mean that there were no other erosion or accretion events that occurred between '75 and 1987. The study is based on aerial photographs that were available or that are available at the time. As we have seen in this past summer there was a major episodic event, I will go over some photos that I took. Based on the histories and the spacing in between the photographs taken, it is unclear exactly how long the beach will take to recover and what the future shoreline processes will be. But I have observed the beginnings of perhaps a recovery there. So this is in June 2012. I think it probably started around June. This is when I first started noticing it. This is the...we have all seen these photographs. This is the parking lot where the boulders have fallen onto the beach. These next few photos show that the...I think that the beach has begun to recover but it is far from regaining a full recovery. This is August 31st at a plus one (+1) tide. Note the red arrow. This is just an indicator to show where you are...where ere are in the photos showing the same angle. This is December 14th at a plus one point five (+1.5) tide. A similar beach width. You can see that it is just...the beach is starting to return her but it is still pretty narrow on the north side. The beach is wet in this photo because it has been raining quite a bit during that week. December 19th I went out at high tide and low tide. This just shows the subtle differences there. Here is our bush there. Still a similar with. This was last week taken after full moon. So a major high tide of plus two (+2). You can start to see there is a little erosion scarp here that occurred from the high tide. But still a similar beach width there. Then I went out yesterday at a point four (0.4) tide. Still a similar width. So you do not see a major recovery. Although I have observed that the sand is being distributed further north. This just compares back to June 2012. So you can see that. June 2012 and January 3rd. This is just going...I wanted...I was curious a little bit further north in that area that was more narrow. Here is that tress that a lot of us has spoken about. This was on September 11th. You can see that it is very exposed, a narrower beach. This was at a point two (0.2) tide. This was yesterday at a point four (0.4) tide. So you can see a little difference there. Sorry about that. That is not Chip. I did...we have heard a lot of discussion about sea level rise and so I wanted to address it. This was not addressed in my memo. But it is important. Basically...well the shoreline change rate data that I just described to you, it does take into account historical sea level rise. It is historical data and so this is a plot of what has historically since about the 1950s has been the rise in sea level for Kaua'i at about one point five three millimeters (1.53 mm) per year. That is taking into account and you might think well that does not seem like a lot. Well, what everyone is talking about is the future accelerated sea level rise that is being predicted from global warming and from a long range planning stand point that is a very important consideration. Currently the erosion rate date does not reflect those future predictions. This just shows some of the various studies that have been conducted estimating global sea level rise. You can see that it is about an average...if you take the middle we are talking about an average of one (1) foot by 2050 year, a meter by 2100. This is just a general rule of thumb. But there is a lot of different data out there ranging from point three (0.3) meters to above two (2) meters by 2100 for global sea level rise. This just

shows approximately the rule of thumb that some of us use. This shows basically that two (2) major government agencies, the US Army Corps of Engineers and then most recently the National Oceanic and Atmospheric Administration did publish a report just last month doing a major synthesis of all the data that is out there and making their projections. So as you can see, quite a wide range. Just going into that report which because I think that it is very interesting. This estimates global mean sea level rise over the next century based on a comprehensive synthesis of existing literature and finds with very high confidence that the global means sea level will rise by 2100 at...the rates are based on, depending on uncertainties as to associated with ice sheet loss and ocean warming. So what they do it they take a range of different sea level rise scenarios based on whether you take into account just the historical sea level rise rates whether it is just ocean warming, whether you have ocean warming plus ice mount or whether you have the maximum ocean warming plus ice melt. So it goes from eight (8) inches to six point six (6.6) feet. From a long range planning perspective, this is interesting because they recommend taking...that planners or governments use the various rates based on their tolerance for risks. So if you have a very expensive infrastructure that would be very risky if damaged, you obviously want to use the most maximum, most conservative rate as possible when planning your design and your citing. But if you have something that is relatively...relatively low cost, perhaps you are not expecting it to last for a while, then maybe using the lower projections. This is just all to say this is what we are thinking about in terms of planning for sea level rise. I am actually undergoing a study with the rest of my colleagues at Sea Grant for Kaua'i County Planning Department in anticipation of the General Plan update where we will look more at the various...all the various data sets that are out there and gap analysis of what is needed and providing some preliminary recommendations. So that will be coming. In terms of what this means for Wailua, obviously future sea level rise could flood the Wailua Beach area, the shoreline change rates could change, and the overall behavior of the beach could change. For me, this is a question of...for this case how the planning in response to these future hazards are managed in this case. We can get into and maybe Dolan and help me answer some of your specific questions on that in a few moments. So just getting back to my assessment here. The path is as I understand it is going to be on the *makai* side of the highway, but as far *mauka* as possible. It is the County's intent to remove the path when it is threatened by the ocean. Obviously as we have heard, D.O.T. will also be heavily concerned about protecting the road. We will get there. Advantages of a removable design. That is what I was reviewing in the memo. Utilizing a removable design avoids having to install sea wall to protect the path. That was what...that is what my main concern was when I was reviewing this. As a Coastal Planner whenever I am reviewing anything on the shoreline I think well, is this...are they going to armor this in the future with a sea wall of with a revetment and is this going to then have all the impacts that a sea wall of a revetment have when you install those? In this case because it is removable and the plan is to remove it, then you are avoiding shoreline armoring. So that is an advantage to this design. Also, if a government of a municipality is considering costs and thinking about infrastructure and whether or not they can protect that infrastructure in the future it is important to be aware that it is very costly to build a sea wall and very difficult to permit. So from that aspect of it, the removable design I think is advantageous. Also you can adjust the path in individual sections, the way that it has been designed. At that point however, I think that D.O.T. is going to want to come in. The reality is that they are want to come in a protect the road. So that is a real reality here unfortunately. So then that begs the questions, will the path exacerbate erosion as a sea wall might? I do concur with the recent Army Corps of Engineers report that it will not in and of itself significantly alter the

trends, the erosion trends at Wailua Beach. Lastly, I just want to go over this alternative citing idea. I want to just reiterate that I was not asked to review the alternative. I was simply looking at the redesign when I wrote that memo. But it is a very important question. So I will address it. From a hazards perspective, building far away from the shoreline is frequently advised due to the hazards involved. So if the County chose to do another location, to put the path behind the hotel or put it *mauka* of the highway, this would definitely be supported by the science and the hazards that are out there. But I also believe that the current configuration with a removable design is also scientifically supportable given that it would be removed in the case of erosion. It is located very close to the highway based with some of it on the asphalt and some of it on the back beach area. I stress that this analysis is purely from a hazards perspective. I did not review the cultural impacts and I would not be able to be an expert in that area. But this is mainly a County and community decision that takes into account all of those factors. That concludes what I had to say and we are both available. I am sure that you have questions at this point.

Mr. Bynum: I just have one (1) question about your last slide. Just to clarify. You said this but I want to make sure that everybody understands that your comments here about what scientifically supportable is in relationship to coastal erosion. Correct?

Ms. Pap: Yes.

Mr. Bynum: It is not about historic sites or burials or other implications of moving *mauka*. Right? You are saying from a shoreline perspective...

Ms. Pap: It is from a hazards perspective and a management.

Mr. Bynum: ...having the path *mauka* is scientifically supported and it is scientifically supported the way that it is. But that alternative is not addressing...it is just shoreline, right?

Ms. Pap: It is not 106, historical properties, burials. You are not addressing those issues?

Mr. Bynum: From a hazards perspective. Yes. I am not. I would clarify that the current configuration with a removable design is scientifically supported.

Chair Furfaro: Did you want to add something?

Mr. Eversole: Just a quick clarification primarily for the audience who may not necessarily know the role of Sea Grant, if I could, just for a second.

Chair Furfaro: You have the floor.

Mr. Eversole: Just to clarify. The role of our extension group here at the University of Hawai'i Sea Grant Program is to help decision makers by providing scientific information to them as needed. It is not a Sea Grant role or position to advocate a position on an issue nor do we make

recommendations that you should or should not build or make a decision on something. We are here as you know, primarily to help support you in providing you the science for your decision making. So I just wanted to clarify that for people who may not really be familiar with our Sea Grant role. Some of our expertise goes well beyond coastal hazards. We have an extension network that we are working very closely in sustainable development smart growth type principles, watershed management, energy transportation. So we, as needed, you can look at us as resources that has happened to a much larger university based audience and information group. So I just wanted to clarify that. The second of which I did get a message from Chip Fletcher that apparently there were some testimony earlier this morning that had referenced an earlier testimony from 2010 that Chip Fletcher made here in front of you, some of you Councilmembers. He just wanted to clarify that there was a mention of his prior testimony suggesting that we should not develop along the coastline for hazard mitigation purposes. He wanted me to convey to you that that could be interpreted more widely for new development of major improvements like buildings and homes. He wanted to clarify that his prior testimony may not necessarily apply to a minor structure or temporary structures such as a bike path. So, wanted to clarify that because it was referenced earlier. He did not have a chance to respond to that. That was just my two (2) quick comments. I did want to leave time for you to ask any questions if you may have them.

Chair Furfaro: Let me do this. Let me, because you spoke and Mr. Bynum had the floor give it back to him. If he had any comments on what you said. Then we will go to Mr. Rapozo. Then we will go the Yukimura.

Mr. Bynum: Two (2) things. One (1) is thanks for clarifying UH role here on Kaua'i. So for the general public this path is an employee of the University of Hawai'i stationed on Kaua'i, right? She is not a County employee. She does not answer to any County Officials. She provides her opinions and expertise independently of...is that correct?

Ms. Pap: That is correct.

Mr. Bynum: I think that is important for you for people to understand. Can I ask a question...can we pull this Wailua Beach enlarged one (1), the second slide? That one (1). Of course this is part of our UH Coastal Map. We have maps for almost all of the sandy areas of Kaua'i that show this. But this one (1) is really interesting to me because the way you framed it and the way that I have understood this over the last few years about Wailua Beach being a beach that is like other beaches on Kaua'i, episodic. It is going to have changes. This documents those changes since 1927. If we could see this bigger because this enlargement, you see these red lines that are behind the beach. These red lines in here. You can see the highway right-of-way, right? You see that? And you show the most significant erosion that was from '75, that are on these maps? But if you look at all those dates, you can see that between 1927 and current it has moved back and forth a number of times, correct?

Ms. Pap: Correct.

Mr. Eversole: Yes.

Mr. Bynum: But the most significant erosion was probably in '87 and the one (1) we saw recently, right?

Ms. Pap: In '75, yes.

Mr. Bynum: In '75, I am sorry, and the one (1) we just saw was very significant. You drew that line on here, it would be pretty far *makai*. But it still would not reach the highway right-of-way. So if this path had been there since 1927, the ocean would have never under minded in that eight (8) year period. Is that fair to say based on this?

Mr. Eversole: That is difficult to say. I think that it is fair to say that is may have gotten close certainly at times. I do not have any evidence or I am not aware of any to suggest that the road has been threatened by erosion since we have been recording this, since 1927. The closest that I have seen it come to the highway is either the 1975 or the current erosion that just occurred this summer. Although I was just presented with a photograph from 1955 that does show what it appears to be boulders placed along the highway there. You may notice that we have a 1950 aerial photo but we do not have a 1955 photo which ideally would have captured that event. So we have a twenty-two (22) year gap between 1950 and '72 that does not capture some of these more episodic events that Ruby had mentioned. Certainly there is the possibility of episodic erosion occurring in between these photographs. But I do not have any evidence to suggest that it is anymore landward than what we have seen this last summer or 1975.

Mr. Bynum: Okay. I will follow-up later. Well, you are not going to be here. But I will let other people ask questions.

Chair Furfaro: The photo that you have is from my Coco Palms collection from 1954. We have Mr. Rapozo, then we have Councilmember Yukimura, then we have Vice Chair Nakamura.

Mr. Rapozo: Thank you, Ruby and Dolan, it is always a pleasure to have you here. Dolan, very instrumental in the Shoreline Setback Bill that we passed. I am reading from the Corp of Engineers Report and it says that it should be noted that the shoreline position shown in Figure 2, which is what is on the screen, only offer a limited number of snapshots in the shoreline history of the Wailua Beach and that there could be more periods in time beyond April 1975 for which erosion near the edge of Kūhiʻō Highway has occurred. Then it goes on with some examples. But, what does that mean? We did not have enough pictures? I think it is kind of what you just talked about. You mentioned the specific event. But is our assessment even accurate without the adequate number of snapshots to really display history for us to do an accurate analysis?

Mr. Eversole: Yes. If I could answer that. As you...I think you understand with these historical analysis we can only interpret what we have available to us. We obviously cannot go back in time to go and take more photos. So we have what we have. From a lot of the interest in this type of mapping is based on statistics. So from a statistical standpoint coming up with an annual average erosion rate, which is used for setback purposes among other things, it is statistically robust. There is enough data there to come up with a large confidence that you have in the data. Whether or not we are capturing every little erosion event or it could be large erosion event, in between those photographs we do not know. There is evidence that suggest that yes there of course was some type of erosion in between some of these photos. But that is not documented and we have no information on that at this point so we cannot use it. Does that mean that we do not use this data? Absolutely not. I think that you use what data you have

available to you. We are faced with this very same question with sea level rise. As more and more information comes in, we realize how much we did not know, just a couple years ago. It does not mean that we disregard its sea level rise. But instead, we go with the best available science. I think that is exactly the position that we are in with historical erosion data. I think what is more important for coastal management and coastal erosion type issue is, how does the change in water level, the sea level rise affect erosion rates? As Ruby has pointed out, all of this data that you have in front of you is based on historical patterns of erosion. Historical rates of sea level rise, and it does not take into account this accelerated change in sea level rise. That is of great concern to the scientific community. What is the impact of sea level rise on the erosion rate? That is an area of great active research right now in trying to understand the relationship between those two (2) factors. But as it is right now, our erosion rate data does not project into the future.

Mr. Rapozo: And I agree. As long as we all understand and accept that fact that the data that we have is the best available data. But there are some limiting factors that we have to address and that we have to acknowledge. I think that is what I got out of the Corp Report. These are two (2) areas in this debate. One (1) is of course the historical cultural significance of science, thank you for providing us that science. I mean no disrespect to your science, I am just saying that for Kaua'i I think the historical significance is much more important than the scientific significance. That is just my personal opinion. I really appreciate what you guys are doing because we need to know that for future development. But...and I was here when Dr. Fletcher made the comment. I know that he is watching this. I have heard Dr. Fletcher speak and numerous conferences, Planning conferences and so forth. But as a general rule...and this is what I have heard from Dr. Fletcher on numerous occasions that is it not better to not build any structure? And what is significant and not significant? What is the difference between a house...a structure of a house, let us say a fifteen hundred (1,500) square foot footprint versus a stretch of concrete along a beach? What determines what is significant or not? What I have heard the experts in your field say time and time again, whether it is here or on the mainland...different conferences, we should not develop any structures on coastal areas. Especially coastal areas that are experiencing some episodic erosion events. What is your position on that?

Ms. Pap: If I may. I can take a stab at that.

Chair Furfaro: Excuse me, before you answer that. I have to say, I got a signal again. We have to do a tape change. So everybody stay in your seat. I have two (2) more people that want to speak. So why do we not take the tape change and we will go on.

There being no objections, the Council recessed at 12:55 p.m.

There being no objections, the meeting was called back to order at 12:58 p.m., and proceeded as follows:

Chair Furfaro: Ruby, we are ready and you can respond to that question.

Ms. Pap: In regards to your question, what is the significance...the difference. I think you are right, as a general rule we should always be thinking about building as far away from the shoreline as possible. I

think the significant difference between something like a house, which is expected to last about seventy (70) years versus other minor structures such as a path is one (1) of management and what you are going to do with that. So in this case, the difference here is the commitment part of the County. In my mind when I was reviewing it that you were not going to armor the path. That the path was going to be removed and that you are going to retreat when that did occur. So that is where I was coming from with that. I think you...I came from working in California, from another state. You do see examples where you have very aggressive shoreline setback rules for major structures. You see also exceptions for minor public structures that are in the public good as long as they are not armored and there are several conditions attached. So I think there can be...from my opinion there can be a difference there from a hazards perspective, again. You have to look at all the constraints.

Mr. Rapozo: Right. But I guess my question is, if you had to come up with a recommendation and just take all of the issues aside on this specific matter and if it was just a new discussion and you had some alternative routes that would take you further away. You the industry not recommend staying away? I mean this path may seem like a small path. But I mean the cost to remove that wall in itself is almost six hundred thousand dollars ($600,000.00). It is almost six hundred thousand (600,000). That is more than a house in some cases. Then when you add on the cost of the actual path, the stretch...we are talking about multi-million dollars so it is a significant project. It is not a small minor path. It is...and I think sometimes we forget about that. The general public...oh it is just a bike path. But when you look at the County...it is an asset. I remember Chip Fletcher talking about that. We need to weigh the potential of the asset. If it is going to be washed away in seven (7) years but it had seven (7) years of great life, well good. But the life of this, when you look at the cost and if I apply the same standard to a home. A home will give us seventy (70) years based on what we know. And this path will be less simply because it is not a house and the way it is built. But we are going into this knowing that we are going to have to remove it one (1) day because the erosion is going to set in. Really, what option does the State have? What alternative...and I hate to say this because I do not like armoring of the shoreline, but what options will the State have when the erosion reaches the road? Guess what, a wall. That is foolish to think otherwise. When you look at what are we going to do? I think there is a lot of moving parts in this issue and it just makes so much more sense to have stayed away from that. Thank you very much and I appreciate. I think we will keep you busy here on Kaua'i.

Chair Furfaro: Councilmember Yukimura, then Nakamura. We have to take a break at 1:15.

Ms. Yukimura: Thank you both for being here, for a very clear presentation and for helping us understand the science behind this issue. So I have four (4) questions and I am going to read them all so you can pick what you think is the most important. I just want to make...get real clear, the proposed design is not hardening or armoring and will not incur the problems that hardening or armoring does. That is one (1) question. The question what role can vegetation play in mitigating erosion? And the composition of concrete, is there any concern about mercury poisoning or anything if the concrete should fall apart? Then, what is the global warming if...what is the potential global warming effect on the risk of erosion on Wailua Beach? So the first one (1) hopefully is a yes or no question. Is the proposed design hardening or armoring?

Mr. Eversole: I do not mind taking that. Yes. There has been a lot of discussion about whether or not this design would be considered armoring or not. I guess that depends on your interpretation of armoring. For me, personally, I would tend to agree with Army Corp Report in that I would not consider this a form of armoring for a variety of reasons. Primarily of which it is intended to either fail or be removed. Hopefully you remove it before it fails. But I think as you understand the idea behind this is that the material...the base material underneath the slabs would be eroded away during a sustained erosion event thus supplying a sand source back to the beach however minor that may be. But in doing that, it would eventually lead to the failure of a section of concrete is it is not removed. So because of that and because of the very shallow depth of constructing, a foot to a foot and a half deep, it does not have the same vertical integrity that a sea wall of a revetment would have in going to down to a basement material and creating a reflective wave that thus pushes sand back of shore. So for those reasons, I would not consider this a form of armoring. However, as been pointed out repeatedly this morning, there is the roadway armoring directly underneath this proposed design which if interacting with ocean waves on a sustained basis would then in turn be armoring which is the intended purpose to protect the highway. It is ironic that while I do not consider the bike path to be armoring, directly underneath it is in fact...hopefully some form of armoring already exists there in the event of a major unexpected erosion event.

Ms. Yukimura: So what I am hearing is, based on your opinion, is that this proposed structure is less risky than a wall or...and one (1) of the reasons that it is not armoring is that it is much more...it is manageable. But that if the road were to be...even without this structure if the waves come high enough it is going to affect the road.

Mr. Eversole: Yes.

Ms. Yukimura: So we would have to deal with that whether or not there was this proposed wall and slab.

Mr. Eversole: Yes. I think we heard that from Doug earlier, that in the event of a sustained erosion event other than a tsunami of a hurricane more chronic erosion, they would...the plan would be to remove the section that is threatened and then have D.O.T. work on the roadway to make sure it is stable so that the road integrity is maintained.

Ms. Yukimura: Which might involve hardening?

Mr. Eversole: Which might involve some type of hardening, yes.

Ms. Yukimura: Is it a possibility that the slab will be protective to some extent of the road?

Mr. Eversole: Yes, difficult to say. But I think in the case of sheet runoff from the road, I think a concrete slab like this may actually help prevent rain erosion that we have seen in other areas around the State where the runoff from the road actually creates a gully on the side. So this may actually help with some of that.

Ms. Yukimura: Okay, so what role can vegetation play in mitigating erosion?

Mr. Eversole: Yes. I have a lot of experience working with dune restoration State wide. As I think Doug Haigh mentioned earlier, in a sustained erosion event vegetation is only going to provide a very limited and partial protection from waves. But what vegetation can do when you have short term, meaning days to couple weeks, vegetation can very much help stabilize the dune from wind and waves both. We do a lot of dune restoration work around the State. We work with a variety of stakeholders on developing plans on how that might look and appropriate vegetation is the key to this. It does have a benefit for very short term erosion events or longer term wind erosion which is presumably maybe a problem in this Wailua area with onshore winds. I think that vegetation does serve an important purpose but you should not think of it as a form of protection against sustained waves.

Ms. Yukimura: A long term solution in anyway.

Mr. Eversole: Not at all.

Ms. Yukimura: But it still might be an opportunity to have better vegetation than presently.

Mr. Eversole: That is right. The other thing that people fail to recognize that vegetation does once established is it helps control foot traffic erosion which when people walk over the dune is probably one (1) of the most damaging things that you can do to a coastal dune. Driving and walking on it. So by having mature vegetation with kind of dedicated access points carved though it, it really does serve to help protect the dune.

Ms. Yukimura: Composition of concrete?

Mr. Eversole: Yes. That is the first that I have heard of any concern about that. To answer your question, I am not aware of any mercury issues related to concrete. The only thing...and I am stretching my expertise here, but I understand that on the mainland they use fly ash in asphalt. I have not heard it being used here locally.

Ms. Yukimura: But maybe in Japan where some of this has come from.

Mr. Eversole: Possibly. It could be a problem elsewhere. But I am not aware of the use of any recycled contaminated material in our concrete.

Ms. Yukimura: But fly ash is dangerous...

Mr. Eversole: Fly ash can be dangerous. But I do not...we do not have fly ash here so.

Ms. Yukimura: Okay. And my last question because I am very aware of your time. Global warming effects...how global warming might affect the risk of erosion at Wailua Beach?

Mr. Eversole: Yes. I think that I touched on this earlier. This is an area that we do not have a very good understanding of just yet, as far as specific to Hawai'i. There is a lot of interest in the scientific community in trying to understand that issue a little better specifically how does sea level rise affect erosion rates. As you might suspect and intuitively we know that an increase of sea level will often times lead to increased erosion. The relationship between the two (2) is unknown. However, there is some work that has been done on the east coast. A published scientific work that suggests it is roughly one hundred (100) times difference. For example, if you have one (1) foot of sea level rise, you might expect one hundred (100) feet in horizontal position of the shoreline erosion. That ratio is dependent on a lot of different things including the sand type, the sand grain size, the slope of the beach and of course wave energy. But this generic general rule of thumb is roughly two (2) orders of magnitude of whatever your vertical change is. So one hundred (100) times whatever your vertical change is. So if we were expecting a one (1) foot of sea level rise by the year 2050, we might generally expect one hundred (100) feet of position change.

Chair Furfaro: To the members of the body, I am going to exercise one (1) of our rights to let the staff know that we will only have a forty-five (45) minute break for lunch. We will, as I said, regroup at 2:00. We have someone who is available to take you back to the airport. If you can stay Ruby, we would appreciate it. When we come back, my last review is with the Planning Director and the SMA permit associated with this project. I would like to give Councilmember Kagawa a personal privilege because he had a pervious engagement that was arranged in this week for him to be at a family event. So I give you the floor because you may not be back in the afternoon.

Mr. Kagawa: It is ironic that on Christmas Eve I was talking to the person that passed away in my family, Eric Koga. We were talking about erosion, you know, beach erosion. He really believed that it comes and goes whereas I kind of fear that it may be partly global warming that is creating some of this. I grew up on the Westside. Kekaha has eroded tremendously over the past few years. I used to fish at Wailua Beach so I know that that has eroded. I used to take my bait and my cooler to walk out to the fishing shoreline and I used to be almost out of breath because it was such a long walk on the sand from the parking lot. Now, I probably would not even have to take my things out of the truck to fish there because the beach, the shoreline is right there. So to all of you that are here, the decision was made way before I came on board, way before there was even a thought about being on the Council. But if I had to vote on putting the path there where it is now, I would definitely vote against it. But being positive I hope that we can hopefully have a good result. I hope that our history holds true that the path will be safe.

Chair Furfaro: And Mr. Kagawa will probably not be joining us in the afternoon session. As I posed to everybody, there is no vote with this. These are applications, approvals that came from many other agencies. So thank you and thank you for being able to stay.

There being no objections, the Council recessed at 1:13 p.m.

There being no objections, the meeting was called back to order at 2:08 p.m., and proceeded as follows:

C 2013-25 Communication (12/17/2012) from the Council Chair, requesting the presence of the Director of Parks & Recreation, County Engineer, and the Director of Planning to discuss the portion of the Kaua'i Multi-Use Path, Phase A, specifically along Wailua Beach as follows:

a. Review of approved Federal, State, and County permits that are currently active;

b. Memorandum from Ruby Pap, Coastal Land Use Extension Agent, dated October 18, 2012, relating to "Redesign of Multi-Modal Path Along Wailua Beach"; and

c. Actual Scope of Work for construction of the Multi-Use Path along Wailua Beach.

Chair Furfaro: I had broken down this communication earlier in the day. I make reference to the fact that Ruby has stayed with us so that we can have her available to us. But it is not our opportunity to talk to the Planning Director specifically about the SMA Youth permit.

MICHAEL A. DAHILIG, Director of Planning: Good afternoon Council Chair, members of the Council. I believe I have been asked this afternoon to sit before the Council to answer questions relating to the enforcement of SMA permit U-2008-1, a Shoreline Setback variance Permit SSV-2008-1. Just as some background, it is a Commission permit that was approved back in 2007 and has been amended twice due to accommodations and changes of alignment on the project. As we can ascertain at this point in time, based on a consultation with my inspectors as well as the Head of my Regulatory Division, that this permit appears to be in compliance. I mean, the County appears to be in compliance with the terms of this permit as of January 3, 2013.

Chair Furfaro: May I ask Mike, before we go into questions from the Council.

Mr. Dahilig: Sure.

Chair Furfaro: There is a timeline for the permit. It was extended once. Am I correct?

Mr. Dahilig: No. That time I was actually was not extended. The original conditions that were passed back in 2013...and let me read it to you. I believe, Council Chair, that you are referring to Condition No. 10. Just for the members sake I will read it verbatim. Applicant shall commence construction of the proposed project within two (2) year from the date of Planning Commission approval of the Special Management Area Permit and complete construction within four (4) years. Applicant shall request a time extension of no less than two (2) months prior to the expiration date of the SMA permit if difficulties arise beyond the construction of the applicant that substantially delay the project. So that is the timeline...the one (1) condition that relates to a timeline as set forth by the Commission back in 2007.

Chair Furfaro: Thank you for that.

Mr. Rapozo: Can you expand on that? You are saying that no request for extension was made?

Mr. Dahilig: No. Request for extensions were made by the Division Head of the Building Division, Doug Haigh. Specifically he had asked for extensions initially on prompting by our staff. But after further review on the permits, what was ascertained was that the compulsory triggers to require the request for an extension were not up yet. It was advised to the Division Chief that no extension was necessary at that point.

Mr. Rapozo: How did you come to that conclusion?

Mr. Dahilig: Based on what I can tell from the record, that was based on the way that the language of the permit was interpreted. Certainly there is some grade with respects with how to interpret two (2) and four (4). What has been the message and it has been consistently since the permit has been approved back in 2007, the message to the Building Division Chief was that it was treated as a two (2) plus four (4) type of interpretation or to ascertain where the expiration date is.

Mr. Rapozo: Who made that interpretation?

Mr. Dahilig: I believe that is has gone back even prior that I came into the Department that we have consistently maintained that interpretation and I endorse it.

Mr. Rapozo: And that interpretation is standard for all SMA permits?

Mr. Dahilig: In terms of how we look at...the Commission normally does step time line in order to ensure progress on the project. Usually it benchmarks our outline. For instance like the Coco Palms project where there are certain permitting activities or certain vertical construction requirements or...it is a pretty standard thing that we look across the board when it comes to Commission permits. So usually the enforcement of the permit is interpreted as adding the steps to ascertain an expiration date.

Mr. Rapozo: Well, the expiration date for the permit that was dated September 28, 2007 as I reconditioned it was four (4) years which would be 2011.

Mr. Dahilig: It is certainly the way that the language is written, it could be interpreted that way. But our enforcement interpretation on this has been a two (2) plus four (4) interpretation?

Mr. Rapozo: Again, whose interpretation was two (2) plus four (4)? This does not say two (2) plus four (4). This says substantial...I mean commence construction within two (2) years from the date of the Planning Commission approval and complete construction within four (4) years.

Mr. Dahilig: And as I have said before, Councilmember, that that was done prior to my tenure as a Director. But I still endorse it so because I am the Head of the Department, I take ownership of the two (2) plus four (4).

Mr. Rapozo: So no extension request was made?

Mr. Dahilig: I cannot say that no extension request was made. All I can ascertain based on the documentation is that they were advised that no extension request was necessary at that point.

Mr. Rapozo: By who?

Mr. Dahilig: That is all that I can tell from the record.

Mr. Rapozo: Oh, come on Mike. Who...your record does not say? I mean there is no written...nothing there?

Mr. Dahilig: Well all I have is a reply with recommendation...a replied document from Doug Haigh that does say that based on a conversation. That is all that I have. So based on that that is all that I have.

Mr. Rapozo: Well, you know, and I guess this is the problem I am having. Is we apply different standards to different projects. This is an SMA permit. An SMA permit is very clear and the last time I had you up here you said you were not sure but you thought that in fact this permit may not have had a deadline...or an expiration. So we get a copy of the permit and I read it differently. I think that the public will read it differently. I think when you look at the spirit of the SMA Law...I mean you are going to set a precedent here today for developers that we are going to go two (2) plus.

Mr. Dahilig: No. The center of the SMA Law which is also copied verbatim in our Rules, is that the SMA permit should only last for two (2) years unless otherwise stated.

Mr. Rapozo: And in this case it is four (4)?

Mr. Dahilig: Well that is where the otherwise stated is certainly is beyond two (2) is what is entertained. But how that beyond two (2) is calculated and interpreted is not entirely clear from how the Commission has set their condition back in 2007. So going back to what has been that practice with this particular permit, before my tenure at the Department, everything has been interpreted as a two (2) plus four (4) enforcement timeline.

Mr. Rapozo: But you have no evidence of that other than an E-mail from Doug Haigh saying oh...

Mr. Dahilig: Well, I do have other staff in my Department that have been working on this permit. But certainly at the end of the day the responsibility for how this permit is enforced is my *kuleana*. I believe that a two (2) plus four (4) is an appropriate interpretation.

Mr. Rapozo: So you are...and again, this is just...we are stuck. There is no way. You are the enforcement authority. You are saying that it is valid.

Mr. Dahilig: I believe that it is valid.

Mr. Rapozo: And if we disagree, we disagree. We are just stuck with it?

Mr. Dahilig: And that is my position, Councilmember, respectively.

Mr. Rapozo: Well, I am glad that the public is watching. Unfortunately the newspaper guy left. But this is clear to me. I just...I am just going to tell you Mike this is how frustrated I am. Is anytime that is pertains to County projects, we bend it. I do not like that. When you have a private developer out there, we hold them to the line and in a case like this...I do not know, maybe I am wrong. Maybe I was reading differently. But this is obviously public record and it is quite clear to me that construction had to start in two (2) and be completed in four (4). There was an out basically saying that applicant shall... I am not going to get into the shall debate...applicant shall request a time extension no less than two (2) months prior to the expiration of the SMA permit if difficulties arise. Which we could have done. We did not do. And unfortunately you are the authority. You made the call. I believe we have an invalid permit. I do not know where I can go with that because you are the authority. But it is what it is. That is all that I have for now, Mr. Chair.

Ms. Yukimura: Did I...do I understand that this two (2) plus four (4) just applies to this situation or have you used that interpretation in other situations and other permits?

Mr. Dahilig: We have used it. A lot of it comes down to a simplification of enforcement. Everybody works from a static date in terms of timing. This is the common practice in the Department, that when you have a stepped time line in a permit, that we usually if an expiration is not prescribed in the Commission permits that the aggregate steps are considered as the end expiration date. So this is not inconsistent with our practice in our Department to ascertain an enforcement date specifically an expiration date when one (1) is not specifically prescribed in the Commission.

Ms. Yukimura: And this is applied to public and private projects wherever the is a step of timetable?

Mr. Dahilig: That is correct.

Ms. Yukimura: I agree that it could be interpreted two (2) different ways and perhaps in the future the language could be clarified or the rules could be clarified.

Mr. Dahilig: Yes.

Ms. Yukimura: To make that a clear process.

Mr. Dahilig: And we do hold facet that if no date is prescribed that the two (2) year expiration is a mandatory kick in and we enforce as defined by the law as well.

Ms. Yukimura: Well, I think you alluded to the purpose of these timetables as...and as I heard it the purpose was to make sure that people were not just sitting on permits and that they were actively proceeding on the project?

Mr. Dahilig: Yes. That...it seems to be the practice of the Commission as well as what our Department recommends when we are dealing with projects that we do not want to have stalled. A lot of the complaints in the past have been regarding...I guess what would be the phrase "entitlement squatting" where the developer would have an entitlement and at facial value it looks like it is being held in perpetuity. A lot of times, especially I know of recent, some of those questions have been raised by the Council as well as members of the public with respect to "entitlement squatting" and we wanted to ensure that know our Department's general practice is to put timelines as a recommendation before to Commission in order to ensure timely progress. So in this when I look at the language it certainly can be clarified better especially given it is a public document and there needs to be better interpretation of what it...I mean there needs to be better explanation of what the Commission's intent is in respect to this. The best we can do in order to provide clear enforcement is to add the steps and create that as the aggregate timeline.

Ms. Yukimura: And certainly in 2007 the proposal was for that temporary if you will, boardwalk.

Mr. Dahilig: Right.

Ms. Yukimura: So the delays have been no because of any desire to delay. But in fact o try to accommodate the public concerns.

Mr. Dahilig: That is correct. Again, when we look at the language of the permit, one (1) particular condition that we look for when changes in the design are made, is the phrase, "Applicant shall construct the improvement as represented." In which a notice from this particular permit is that that language in not set forth in the permit conditions. We read that as the Commission's intent that is some malleability with respect to things like public concern and subsequent an adjustment in the alignment to address those public concerns.

Ms. Yukimura: So the delay was not the lack of intention or motivation but to accommodate public concerns?

Mr. Dahilig: As far as we can ascertain. But again, we have not ascertained any delay in the timeline of the project to necessitate any type of enforcement action on our part.

Ms. Nakamura: So, Mike, you are just saying that you are no longer using this language?

Mr. Dahilig: We no long use this language, yes. I mean, we want to be very clear in terms of providing an applicant when your drop date is...drop dead date. I am sorry I did not mean for them to drop dead.

Chair Furfaro: Let me have a question. So, Mike, going forward since the Council has no jurisdiction over the SMA and there is this need for this clarified interpretation, in going forward are you saying to me that there will be for lack of any other term...there will be a memo to the file that references the Director or the person that could execute or administer this decision? There will be some kind of briefing for the Commissioners that reflect the timeline and it would be made part of the file? What do you do here to...

Mr. Dahilig: It is a good suggestion, Chair. That has not been done yet. I think maybe that suggestion I will take back to my Office after we are done with this meeting.

Chair Furfaro: I would certainly think...you used the term "entitlement squatting." For the Council to be in a position that they feel comfortable with the County having some, again for lack of another term, some kind of audit trail of what transpired. Then there should be an agenda item briefing for the Commissioners and a memo to the file.

Mr. Dahilig: Okay.

Chair Furfaro: I think...you know that would help me in future interpretation about the authority that lasted...which is in your Department and not with this Council.

Mr. Dahilig: I understand Chair.

Chair Furfaro: JoAnn, did you have a question. I am sorry. Follow Mr. Rapozo? Yes.

Mr. Rapozo: I guess my question was along the same as the Chair. Did you review the minutes of the Planning Commission's meetings that led to this?

Mr. Dahilig: I have not.

Mr. Rapozo: You have not?

Mr. Dahilig: I have not.

Mr. Rapozo: I guess, if we could get that. I want to see the discussion to say that it was a six (6) year permit versus a four (4) year. I am assuming that would be contained in the minutes.

Mr. Dahilig: We can get those for you.

Mr. Rapozo: When this permit was going through, were you even with the County?

Mr. Dahilig: No. I was actually still in school.

Mr. Rapozo: And at the time that you became the Deputy County Attorney, were you involved in this at all?

Mr. Dahilig: No, I was not.

Mr. Rapozo: Not at all?

Mr. Dahilig: No.

Mr. Rapozo: So your only involvement came when you became the Planning Director?

Mr. Dahilig: That is correct.

Mr. Rapozo: And your position today is that regardless of who or what interpreted it and advised...there is no written evidence other than an E-mail that you endorse this? That it is a two (2) plus four (4)?

Mr. Dahilig: That is correct.

Ms. Yukimura: I think I am following up on the Chair. In terms of a modificationof the alignment...so that is not in the record, or is it?

Mr. Dahilig: We do have a letter from Doug again upon which I have had to ascertain what was the response to Doug. It was an oral response to Doug. So that is the file that I am working with respect to...

Ms. Yukimura: There is a letter though?

Mr. Dahilig: There is a letter that Doug E-mailed it to me this morning so I do not actually have it in my master file here that I am working off of. But what I can...alluding to my earlier comment with respect to the realignment, when we...our standard of enforcement becomes stricter when we find that language again that says "shall be constructed as represented." What we can ascertain from the Commission's permits...Commission's permit additions, the only time that a modification in the alignment would be required is if another certified shoreline as needed. This has actually happened twice as far as we can ascertain on the record. So they followed through with the procedure of coming before the Commission and getting the certified shoreline and then coming in and getting the alignment endorsed by the Commission. So this has happened both in 2010 I believe and 2012.

Ms. Yukimura: So in the case of the modification from the boardwalk to the present proposed alignment because it is more *mauka* a certification is not necessary?

Mr. Dahilig: Yes. And specifically, Councilmember, I believe it is condition 4(E) of the Commission's permits that requires that particular type of modification by Commission action in the event that a certified shoreline is needed. Let me just double check.

Ms. Yukimura: C?

Mr. Dahilig: 4(C), I am sorry.

Chair Furfaro: Anymore question of Planning? I do want to say to you that I think there is a certain responsibility here, to make sure that your Office, who is the body that is giving the oversight to these permits and so forth, that I think it is important for you, it is important for the County to make sure that we have an audit trail on these types of decisions. I would like you to have that discussion with the Senior Managers in your Department so that we can have some kind of procedural understanding of the exceptions on anything that gets modified.

Mr. Dahilig: That advice is well taken, Chair.

Chair Furfaro: Okay. We have no more questions for you, Mike. I am going to ask you to stay there for a moment and I am going to ask Mr. Trask to come up. No, Mike, I would like you to stay here up front.

Mr. Dahilig: Oh, stay up front?

Chair Furfaro: Yes. And I just want to get some response from your group about the team players. I understand there is a Committee of Administrative people with Engineering, with Planning that focuses on this major CIP Project?

MAUNA KEA TRASK, Deputy County Attorney: That is correct, Chair. We meet monthly, once a month. It is representatives from Planning, Public Works, two (2) Deputy County Attorneys, Ms. Clark and I, Parks, and also Finance. Wally comes down every so often and he is usually there for those kind of situations.

Chair Furfaro: Are there minutes kept of these meetings?

Mr. Trask: No, these are informal. There are notes taken. The Director of Parks brings his personal secretary, his Clerk. She takes notes, etcetera. But it is not a...there is not verbatim minutes. It is not transcribed.

Chair Furfaro: Let us say that the group has something that is like a call to action. Is that documented in a memo form that there were certain agreements made?

Mr. Trask: What we do is that we have a running agenda that is prepared. Then the meetings are largely presided over by...Doug directs them and gives us the current updates of the project. I think we are currently working on Phase A, which is this part, Phase B, we are doing supplemental work, looking at Phase C and possibly Phase D. But it is unrelated to the discussion today. We also...so we look at the project and its different phases. We get updates of the work generally. If something comes up, we are directed by Lenny. You take care of this, you take care of that. Then we communicate with each other daily. I mean through email etcetera. Then hopefully by the next month, the next meeting, there has been movement and there usually is. That is what makes the informal structure of it makes it a lot more malleable and a lot more easier to work with.

Chair Furfaro: Let us say...let us reference this ADHOC Committee of the people that you just mentioned. I am sorry my voice is hoarse. So going forward, do we have a cultural representative in this advisory group? Do we have...is there someone who is the *po'o*?

Mr. Trask: Well, Lenny...we do not have a designated cultural person. I am native Hawaiian. Lenny is native Hawaiian. Dee, when he attends. I mean there are native Hawaiian people throughout the County. At Administrative levels, Department Heads levels, elected levels. So you can look at the County as that kind of organization.

Chair Furfaro: I am satisfied with that response. I just wanted to ask the question. We have the Planning Director and we have

representation from the ADHOC Committee. Is there anyone that has questions for these gentlemen?

Mr. Rapozo: I have just one (1) and it can be from either one (1). Do you folks feel that the native Hawaiian members of our community have been given full consideration? That, in fact...I mean I think you heard quite a bit and I think you have read the E-mails and testimonies. But do you believe today that we gave that segment of the community...I just heard on our Advisory Council we have nobody other than people from the Administration and from the County. Does that seem like we have given them the full consideration in this process?

Mr. Trask: Absolutely, one hundred percent (100%).

Mr. Rapozo: Fair enough.

Mr. Bynum: Just one (1) point of clarification. You were talking about the Administration's task force to deal with the bike path, right?

Mr. Trask: Correct.

Mr. Bynum: It is not an Advisory Group?

Mr. Trask: No, we are the people that do the work largely.

Mr. Bynum: It is the internal members.

Mr. Trask: Correct.

Chair Furfaro: ADHOC Committee I guess. The working group, yes.

Mr. Bynum: Well, I will just add this. That I have been on the Council for six (6) years now and before that working group, it was difficult to get straight answers. It is my observation since that working group, we get periodic updates and they make themselves available to answer any questions that any Councilmember has on an ongoing basis. So I applaud that internal working group was created. I think it has improved things. But it is not an Advisory Group. It is an internal...I mean I wanted to be on that group and they said no, no, no. These are the guys that do it, separation of powers, stay over there.

Mr. Trask: That is correct.

Chair Furfaro: Gentlemen, I think we are coming to the end of this briefing here today. I want to thank you for your cooperation and I hope from the testimony you have heard from today that you can see there is still concerns out there that need to be heard. They need to all be part of this process on the path wherever possible. We have no voting authority on this today other than to receive your briefing. So thank you very much. I am going to call meeting back to order and recognize Mr. Rapozo.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo: Let me just preface my comments by saying that I speak only on behalf of myself and no other Councilmembers or any other group. But obviously as you can tell by my tone that I am very disappointed. You know it all starts with the Constitution of our State, the Preamble where it says...and I heard this at Honolulu Inauguration. I was just there. It really brought it home to me. Is says, "we the people of Hawai'i, grate for divine guidance and mindful of our Hawaiian heritage and uniqueness as a island state dedicated our efforts to fulfill our philosophy decreed by the Hawai'i State model *ua mau ke 'āina ka pono*. I know a lot of us say that a lot of the time. I think we sometimes forget what that means. I just want to set that as the stage of my comments because I think today we had a lot of discussion from the experts about erosion. As I said in my testimony, I do appreciate the science. But yet, to me, the cultural impacts and the cultural significance and the fact that one (1) testifier said today that they knew coming up here that their comments were going to be ignored. Let me tell you, that I am not ignoring them. Unfortunately this body is not in a position it can do much right now. You heard it from the Planning Director that as I see it, and I do not know yet. I have to research what my report says. But I believe that the permit is invalid. I believe that. We are not going to get anywhere with the Administration because the enforcement authority just said he believes it is valid. So that is not an avenue I can take. Chapter 205(A), if you look at Chapter 205(A), in the case notes which it comes from a Supreme Court Case. But it says the Chapter requires County Planning Commission to give cultural interest asserted by the public interests group full consideration. That is why I asked that question, full consideration, and obligates the Commission to preserve and protect native Hawaiian rights that extend feasible when issuing SMA permits. That is in the law. I do not believe that has occurred. I think we have heard it from several people in the community that actually participated in the process that felt it was more of a check block process. They needed to get it done and it got done. I already went over the permitting process and this permit is available for the public. It is clear in my mind that the County should have applied for an extension. Obviously you heard that the opinion says that they did not need to. It is still a valid permit. That frustrates me. I do want to go over really quick some of the comments that were in letters that are part of this package that were not made public or were taken...were not taken out and printed in press releases. But the first one (1), and all have this in your packet, the Department of Transportation after a long dialogue basically saying that they really do not have a problem. But they acknowledge, and this is from Raymond McCormick dated December 26th. It said, since construction of this path is scheduled for early January 2013, the County might want to consider delaying the work until such a time that all the public issues and concerns have been fully discussed and mitigated. That is the Department of Transportation. They attached the Corps of Engineers study or I am sorry, the Corps of Engineers Report. Now, Mr. McCormick could not be here today. But if he was her that is what he would testify to. Say, "hey hang on, deal with the community concerns." The Corps of Engineers and I know I referenced some of this earlier. They addressed the fact that the remaining portion of this slab...they said this eight (8) foot wide slab approximately three (3) to five (5) feet of this slab will lie on asphalt. But the remaining will be on the beach. It will be on the beach. It is not on fill. Not on asphalt...it will be on the beach, on the dune. This is in the Corps of Engineer's Report. I am not making this up. The bigger concern I have is, no prior construction projects could be found to document the effects that concrete slabs installed in the upper portion of the beach would have unnatural sediment

transport processes. That is the Corps saying that we really do not know because it is never been done before that we can find. That was not in the press release. It says, though it is unlikely that the proposed bike path will alter the natural coastal processes, the structural stability of the concrete slabs could be threatened by undermining if the shoreline erodes along ocean side of the bike the path. Now we know that the beach is eroding. I already talked about the fact there were many years of missing...or no photographs of that area to actually determine what the real erosion or the patterns or erosion are. Does it make the report bad? No, it does not. But does it make it as good as we would like? No. So we know because we go there. We pass there every day. We see the erosion occurring before our eyes. I do not need a study from the University of Hawai'i to tell me that it is not eroding or it is eroding because I see it every day. I pass there every single day. The entire ocean side edge of bike path is located within one hundred fifty (150) feet of the shoreline and with as little as forty (40) feet setback near Station 16. That is just part of the chart that they submitted. We are recognizing that, in fact, the space between the water and the proposed edge of that path is unknown. And even the Administration had not made the measurements. I mean, I am baffled that if I go out and get a contractor to build a house and when you see the site plan..the measurements are everywhere to make sure your house is sited properly. That was not done. I do not get it. I talked about recommendation that a cost analysis be done to see that the removable concrete path alternative would be even feasible and that was not done. We do not even know what that would cost to remove the barrier should we have to. Ruby Pap and the Sea Grant people, I really appreciate their input and it is difficult. They are in a difficult position. They are asked to comment on a project that basically has to move forward because if not we are going lose money. I am not saying that you guys are creating this to take the Administration's side or not. But I think it is real clear that if somebody went to Sea Grant on a plan of this project, any geologist or marine biologist or scientist would say, if there is an alternative path go there. Do not construct on the coastal...especially a beach that is eroding. We know that beach is eroding. Yes, historical data says that it is accreting. Historical data tells us that the sand may come back. I used analogy of in Pop Warner Football there is a weight limit. For safety reasons we put a limit on the weight of our kids that play football. It is the weight of the kid at the time he sign up. Not the average rate of the last three (3) years of existence because the fluctuations are irrelevant to what he weighs today that. That is the same thing with this. What happened twenty-five (25), thirty (30), forty (40) years ago is irrelevant, in my opinion, to what is happening to that beach today. Knowing that the beach is eroding we are still going to put millions of dollars of construction on a beach. My biggest issue, by biggest concern like I said earlier, is not really the erosion. I think it was Sharon...was it Sharon? Sharon's testimony, as Ms. Cummings testimony. Rarely do I feel that warm feeling when I hear testimony. But on those two (2) occasions I can tell you, I actually felt the spirit from the native Hawaiians. That, in fact, for us to even consider going over there when there are viable options, I think we are going down the wrong road. Is it too late? I guess so. Again, it is outside of our purview now. But Kansas State lost the game last night and I know the coach is thinking today, darn we could have done something different. Adrian Peterson missed the record by nine (9) yards. I bet he is wishing he had the ball one (1) more time. But it is water under the bridge and it is frustrating because I believe we still can make a change. I still think that the Administration could and it will come at a price. But what price do you put on that land? What price do you put on that sacred ground that we heard loud and clear from the native Hawaiian community. We heard in a petition, I think that petition, the verbiage, I think it was deceitful. I think it was disingenuous and I plan on contacting every single one that signed up and asking them what that petition

really said? That in fact, was is going to be *makai* of the wall? I would bet there is a huge majority of that people that would say that is not what I thought. That thing said *mauka*. This whole project, I think, as you read the newspaper accounts and the press releases, they took all of the spots that the Corps of Engineers and the consultants said that would justify the path on this route. But what they did not put was the other statements made in these reports. That said maybe we should reconsider. Maybe you need to do other things, even the Department of Transportation is saying hey, maybe you should take a break and mitigate some of the community concerns because that is our job here on the Council and in the County is to speak for the people. I got to tell you I am frustrated. I am very disappointed with the response from the Planning Director regarding to the permit. Part of me is in shock and maybe it is time to revisit the audit of the project in permitting and construction. I do not know if I could get the support of my colleagues. But I can tell you that is what I intend to do in the next upcoming budget. Is to put some money in there for an audit of this project, a complete audit because I question some of things that have been done. I question the justification that have been stated on this floor and I do believe money those do a lot with it and I do not think that is how we should run our decisions. That is all, Mr. Chair.

Chair Furfaro: Anyone else wishing to speak on this item that we will receive today??

Mr. Bynum: I hardly know where to go with this other than to say that there is a public process in this County for everything we do. I have been engaged in this public process both as a Councilmember and a citizen for many years. I have been to many, many meetings. When these Environmental Assessments come out, and I have them, they are thick and a lot of work. But I read them. Every single one (1). When they start doing the planning. So you plan a phase of this project. You start with a concept. You go out for a whole bunch of public meetings. You have to do so much work it is amazing to do an Environmental Assessment. We have an Environmental Assessment on every phase of this path, including this one (1) that we are talking about. I asked several people today had they read the Environmental Assessment? It is on our County website. It is easy to find. I have heard testimony over the last few months, "you guys never explored this alternative." I think what about those seventy (70) pages that I read about exploring this alternative. What about that meeting that I attended. What about...so this is a long process. The other thing...so there is a public record. It would be audited. I would be fine with that. But the audit would have to be complete of everything that has happened with this path because it had been going on a long time. So what I want to say is on this particular segment, the EA was completed in 2007. You know, there were a number of people involved in that, including people in that public process, the County reaches out to various community groups and says please be part of our planning process. Some people respond and some people do not. But part of that County process had somebody that I learned a lot from in my life, and the time I have been on Kaua'i, LaFrance Lapaka who was part of this. Now people come up later and question whether she was an adequate participant. She got asked to participate and she responded. So you go through a process where you first look at environmental issues, you look at the cultural issues, you look at all of the legal and make you make the decisions, you do tons of projects and then you go through a route selection decision-making. The route is selected, it is announced to the public. This is what route is going to be. Then you go through a design phase and the public has input on that. Then project goes out to construction after years of planning. Then people stand up and say wait, wait we do not like what you are doing here...we do not like what you are

doing. In this instance, people really objected to the plan to put a boardwalk on Wailua Beach. Why was that a plan? Why was that ever a plan? Because the Coastal Engineering people recommended it. They said if you want to be as environmentally sensitive to this area as you can be, then you will do a soft touch kind of boardwalk that does not have footings. That plan was unacceptable to many people who said, "why are you guys putting anything on the beach? Get it onto the highway? Get it out of the beach." So our Mayor said okay, "let us relook at this." People now are saying go to Federal Highways...I mean go to State Highways, see what they are willing to do. That already happened. They went to Highways and said, "hey, this is your right-of-way, but would you be amenable to us working collaboratively to put this transportation corridor all in the highway right-of-way." And State Highway said, "okay let us talk." They came up with a plan that went through a review process. Then it went out to construction. Now we are in construction and people are saying, "no, I do not like that plan." Again, this is déjà vu to me. I went through this in my first term as a Councilmember where people were questioning the permits of that...of work that had already been done. And people demanded that the bike path be stopped and that we did not proceed with this. Guess what? It got stopped. It cost the County of Kaua'i three hundred seventy-five thousand dollars ($375,000.00) in damages because at that far into the planning process, we wanted to make another change. Well, it turned out that the permits were okay. That concerns about the permits were not valid. But we still had to pay that penalty as a County. Here we are now, and the last thing that amazes me is how...and I believe this is fully well intended and that two (2) people can look at the same set of information and come to different conclusions. In this instance, I come to a different conclusion. I believe that concerns of native Hawaiians that the County has bent over backwards to listen to those concerns. But who speaks for native Hawaiians? I lived in Kaua'i...I have lived in Hawai'i for only twenty-two (22) years. I dare anybody to tell me who speaks on behalf of Hawaiians? Is it OHA? Is it Hawaiian Homes? Is it the reinstated nation? Is it Kau Inoa? Is it Senator Akaka? Is it...anybody who lives here knows there is no monolithic Hawaiian thought, that Hawaiians are an important part of your community and they have differing opinions based on who you ask. So my conclusion is that the County has gone to extraordinary lengths and expense to be sensitive and concerned about concerns from the community. But there are competing concerns in our community. I am also concerned about the safety of people who use our roadways whether they are drivers or pedestrians. I am also concerned about people who have disabilities and have mobility impairments and their right and their legal right to access similar recreational amenities as able-bodied people. Governing is all about taking all of these competing interests and finding a reasonable balance. I believe we have struck that balance in this current plan. I support the Administration moving forward with the plan that they have. I could go on and on and we could debate every nuance of this. But the public record does speak for itself. If we want to go back and look at those records, which this Council has done for thousands of hours related to this project, which I think is fine, because citizen input has improved this project. There has been many changes made based on the thoughtfulness of Kaua'i citizens that have made this a better project. But I do not think not doing it is the right answer. I think in balancing those competing opinions we need to continue to do what we have been doing as a County, which is following the letter of the law, the spirit of the law, of doing outreach to people and asking them to be engaged in the planning process. But once we go through those stages and we come up with a legal determination, I do not want us to keep going backwards and revisiting everything because every time we do that it costs additional costs and additional expenses.

Chair Furfaro: Any other members who wish to speak at this time before I speak? I am going to hold my opportunity to speak last.

Mr. Hooser: I will just speak briefly, Chair. I just want to go on record that I did send the Mayor in writing a letter almost a month ago requesting the County not proceed with any path improvements that are *makai* of the existing pavement towards the beach. So I did put it in writing. I am a strong supporter of the bike path, the multi-use path. I have used it a lot and contrary to what other people have testified. I see hundreds of people out there sometimes. In fact, there are days when there are too many people. I do not want to go out on the path because that are too many people walking. The area I go to is out in Kapaʻa, Keālia. It is well used. I think it is a tremendous asset for our community and applaud those that started it and work hard to maintain it and keep it going. Having said that, I am not a blind supporter of the path. I do not believe we should have concrete everywhere around the entire island. I believe that concrete on the beach is development of the beach and at the end of the day, this decision I believe represents poor planning and bad judgment on the part of the County. I think it disregards the special nature of this area and sets a bad public policy precedent that others in the public sector or the private sector may try to follow in the future. Climate change, sea level rise is a given. I would doubt that this path will last ten (10) years. There will be storms and there will be damages and I think we should build public infrastructure to last much longer than that because we are spending public money, a lot of money. I believe there are options. It seems like there is only a couple of feet actually, maybe four (4) or five (5) feet at most that we are actually talking about on the sand. I believe there are options. It is unfortunate that apparently we do not have the opportunity to pursue those options. The decision has been made. It is moving forward. Essentially I believe we have to accept that and move on to other things. But I wanted to express my concern and my dissatisfaction with the decision that was made. Thank you for the time to do that.

Ms. Yukimura: I just want to thank everyone who came and has been coming to testify. I do think the project, even at this late date has become better or has the potential for becoming better because of the input. And so I really appreciate the testimony of those who opposed the present alignment. I also appreciate all of the work that has been done by the Administration to try to come to terms with a path that is respectful and yet meets the criteria for safety and for a viable bike path. I choose to believe that everyone involved has good intentions. Those who want a path...to continue this path which is the envy of many, many other places and islands because it is an incredible asset. It does give us opportunities for access to the coastline, fresh air, exercise and all kinds of things. But I also feel like those who are passionate about cultural protection rightly say that the path is good. But not if you cannot honor the sacredness of this incredible *wahipana*...this incredible place, this Hawaiian sacred place. I do believe it is *pono* to get the facts straight and that is why I have asked a lot of questions because I do believe the long range is not irrelevant in planning for a facility like this. I think we have heard clearly that the beach is not eroding on the long term. It is actually accreting. But there are these episodic incidents that do bring the beach or the waves way up, even onto the road at times. I have heard historically. So we have to accommodate that as well. It is easy to say there are other options. But I have not heard a lot of viable options. People who say go *mauka* also say protect and do not go over burials. I have heard that every option to go *mauka* will involve going over burials. So that is not a viable option. But I think we are actually very close. I think maybe there is a possibility of a change order

that might be in order. If all things can be put in place. There has been discussion both from the public and from Councilmembers about narrowing the lanes on the highway. I think it was Karen Diamond who said at the last session, not this session that we are about three (3) or four (4) feet difference. I think Kip and Sharon have said that actually in Honolulu on the freeway lanes have been narrowed to ten (10) feet. I have a letter from Ray McCormick that says it is not safe to narrow the lanes. So there is some disconnect there. I also talked to Ray after the last meeting and he told me he did not think it was safe. But maybe we need to explore what has happened on O'ahu because if that was done with Federal sanction, maybe there is a way to narrow the lane. I think Kip said that the lanes are only ten (10) feet across the bridge. But then the bridge is a traffic calming too. When you have a narrow space, people slow down. So what are the needs for traffic calming that would allow a safe narrowing of the lane and can you then move everything a little bit more inland is my question. I am thinking can you do this without a stop work order and instead a change order? If that is possible, we should then explore that. If not, it is important to me and apparently factual that the path as presently proposed still on highway fill. So it is actually not on the sands itself. Now there may be some sands that have blown onto the fill. So to me, that is a mitigating factor. This is not an easy problem to solve. I just want...I mean, I cringe when I hear really easy criticisms of how people should be tarred and feathered because I think we are all trying to solve a very difficult problem and honor all of the different aspects that have to be addressed. So I would like to ask the Administration to explore this one (1) last alternative, which seems to be the only alternative short of the other one (1) is just do not do this bike path in this segment. Just forget it. I guess, you know, I go back to the thought that pedestrian pathways is part of ancient Hawai'i. I am not talking about seniors. I am talking about people, just people passing safely. We also heard that going over the dunes is not the best way to preserve the dunes either. So a designated pathway like the boardwalk that I just walked over two (2) days on the Alakai, is a way to preserve the natural areas. So I think we really all have to try to give everybody some credit for each of our values and our concerns and our efforts. Let us try one more time and see if we can get even closer to a solution that will address everyone's concerns.

Chair Furfaro: I am going to be looking for a motion to receive. Before I do, I want to say a couple of items here. First of all, the statement about the not being caring from this body. I find that a bit awkward to hear after I gave a summary about what authority we have and where those controls lay. But I have to tell you, if I did not listen to the requests from Councilmember Rapozo, this item today would not even be on an agenda. We have been six and a half (6 1/2) hours. The controlling of the agenda is the authority left to the Chair. The request was made by Mr. Rapozo. I honored it. So that we could have this airing of concerns and hopefully we never stop communicating using vehicles like this to surface concerns from the community. But this is a Special Meeting for a special community concern. It certainly was not the Council ignoring the need to have this discussion. But then for the Council to be told that we should all be tarred and feathered and so forth, you know, that is not respectful. Especially when people are not *ma'a*. *Ma'a* to the values that we have here about the value of mutual respect. This Council is trying to model a way. Not be told we should all be tarred and feathered. It takes a special temperament to let that roll off our backs. But it is important for the community that we have this dialogue. I also want to say that we have money prepared in an audit. The Auditing Department that we have has money in their budgets. It is a matter of convincing the Auditor that we something structured and a scope written to review that. It is something that can be done. But maybe should be saved until budget time. To those in the audience

today that see that there are other options, other agencies to talk to pursue those revisit them. Clearly as we talked about the SMA, that authority lies with the Planning Department. That authority lays with the Planning Director. That authority lays with the Planning Commissioners, not with this body. But I was very pleased we could encourage dialogue by having this meeting. I too would like to thank those who came to participate. But our next step is really to receive this communication today for this Special Council Meeting. And we do have that motion and we do have a second.

The motion to receive C 2013-25 for the record, was then put, and carried by a 6:0 vote (Mr. Kagawa excused).

Chair Furfaro: Let the record show we have received the communication 6-0. We are going to take a little break as we go into our other session. The Sea Grant people who are here, thank you very much for staying and others associated with the various Department Heads under the Mayor's Administration. Let us take a ten (10) minute break and get back to the second special agenda item today.

There being no objections, the Council recessed at 3:08 p.m.

There being no objections, the meeting was called back to order at 3:22 p.m., and proceeded as follows:

Chair Furfaro: Members, I would like to first start by announcing the adjournment of first Special Council Meeting that we had. That meeting is now adjourned.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 3:22 p.m.

Respectfully submitted,

JADE FOUNTAIN-TANIGAWA
Deputy County Clerk

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