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Attorneys for Petitioner  
DEPARTMENT OF EDUCATION,  
STATE OF HAWAI'I

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of

DEPARTMENT OF EDUCATION,  
STATE OF HAWAI'I,

To Amend the Agricultural Land Use  
District Boundaries into the Urban Land  
Use District for Approximately 77.2 acres  
of land at Kihei, Maui, Hawai'i, Maui Tax  
Map Key Nos. 2-2-02: 81 and 83.

DOCKET NO. A11-794

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I'S REQUEST FOR THE  
ISSUANCE OF WRITTEN FINDINGS AS TO  
ITS AUGUST 20, 2020 MOTION TO AMEND  
THE LAND USE COMMISSION'S  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION AND ORDER FILED  
JULY 29, 2013; DECLARATION OF  
STUART N. FUJIOKA; EXHIBITS 31-37;  
CERTIFICATE OF SERVICE



**DEPARTMENT OF EDUCATION, STATE OF HAWAII'S REQUEST FOR THE  
ISSUANCE OF WRITTEN FINDINGS AS TO ITS AUGUST 20, 2020 MOTION  
TO AMEND THE LAND USE COMMISSION'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013**

Department of Education, State of Hawai'i (Petitioner) respectfully requests the issuance of Written Findings as to its August 20, 2020 "Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013" (Motion).<sup>1</sup> The Motion, filed over 11 months ago, remains with the Land Use Commission (Commission) because the Executive Officer, Daniel Orodener is "not disposed to put this matter back on calendar until we have some kind of stipulation or agreement from the various groups as to a solution." Despite community outreach and discussion, the Petitioner and the community have not reached a consensus.

The Petitioner is seeking a ruling on its Motion in order to better understand what next steps need to occur to occupy and use Kihei High School (School) as a functioning school. It would also provide Petitioner the ability to exercise, if necessary, its due process rights that are currently being constrained by the absence of the Commission's decision on the Motion.

**I. PROCEDURAL AND BACKGROUND HISTORY**

On August 20, 2020, Petitioners filed the Motion seeking to eliminate the grade separated pedestrian crossing (GSPC) requirement from the following provision of

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<sup>1</sup> The Motion seeks to amend the Land Use Commission's (Commission) "Findings of Fact, Conclusions of Law and Decision and Order" filed July 29, 2013 (FOF/COL) (excerpts were submitted as Exh. 1 to the Motion) which had granted a boundary amendment to allow the development and construction Kihei High School (School) on the island of Maui, subject to certain conditions. Specifically the Motion seeks the removal from condition 1(b) of the FOF/COL, which is the requirement that a Grade-Separated Pedestrian Crossing (GSPC) be constructed or made available prior to the opening of the School.

condition 1(b) of the Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 (2013 Order).

The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.

On September 10, 2020, the Commission held a hearing on the Motion. The Commission encouraged the Petitioner to engage the community in discussions about the GSPC and other School-related issues.

On October 27, 2020, the Petitioner and Hawaii Department of Transportation (HDOT) met with members of the Kihei Community Association (KCA) to discuss concerns over the issue of pedestrian crossing. However, no consensus was achieved at that time.

At a subsequent hearing on November 4, 2020, the Commission stated that it would provide Petitioner with a written request for additional information and responses to questions. The Commission also encouraged Petitioner to have discussions with the County of Maui Planning Department (County) with respect to possibly resolving the GSPC issue. To that end, the County proposed the compromise language attached as Exhibit 31.

The Commission provided Petitioners with a written request dated November 10, 2020, which contained questions and requested documents.

On January 12, 2021, the Petitioner and HDOT again met with members of the Kihei Community Association. However, the parties were unable to reach a consensus.

On February 1, 2021, Petitioner filed its response to the Commission's November 10, 2020 inquiries. These responses are accessible through the Commission's database.

On February 23, 2021, Petitioner responded to the County's subject compromise language (See Exhibit 32). Subsequently, on May 4, 2021, the Director of Planning the County response essentially disagreed with Petitioner's position. See Exhibit 33.

On April 6, 2021, a representative of Petitioner sent an email to the Commission requesting that this matter be placed back on the agenda. See Exhibit 34. The Commission, through its Executive Director, responded later that day as follows, in pertinent part:

Unfortunately getting Kihei High School on the agenda before the end of May is highly unlikely. Our calendar is quite full for the next two months and we are short staffed.

Regardless, I am not disposed to put this matter back on calendar until we have some kind of stipulation or agreement from the various groups as to a solution. The past two times the matter was placed on the calendar it was clear that the community and the DOE were still at odds. I do not wish to waste the commissioner's time or further cause undue concern unless there has been significant progress.

See Exhibit 35. This request was followed by a reminder from the Executive Director to respond to the written questions which were earlier issued. See Exhibit 35. Petitioner's representative responded that the parties continue working towards a solution, and stated that the response to the Commission's November 10, 2020 written request was filed on February 1, 2021. See Exhibit 36.

On April 27, 2021, Petitioner reported to the Commission that no agreement had been reached between Petitioner, the Kihei community and the County, and requested that the matter be placed on the agenda and/or a decision be rendered. See Exhibit 37.



To date, Petitioner has not received a response to its April 27<sup>th</sup> request to be placed on the Commission's agenda and/or rendering a decision on this matter.

## **II. DISCUSSION**

In determining when an adjudicative body should issue a decision, it is generally accepted that it be done within a reasonable time:

Just as trial court judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission, the obligation to act in a timely fashion is similarly imposed upon administrative bodies.

*2 Am. Jur. 2d Administrative Law § 356; Frantz v. Palmer*, 211 W.Va. 188, 192, 564 S.E.2d 398, 402 (2001) (the obligation to act in a timely fashion is similarly imposed upon administrative bodies, as we recognized in syllabus point seven of *Allen v. State Human Rights Commission*, 174 W.Va. 139, 324 S.E.2d 99 (1984): “[A]dministrative agencies performing quasi-judicial functions have an affirmative duty to dispose promptly of matters properly submitted”).

In this case, the Motion was filed nearly a year ago. Since that time, Petitioner has presented a clear and cogent case for removal of the GSPC requirement and the Commission has been provided with sufficient information upon which to render a decision.

Moreover, and as argued extensively throughout this proceeding, Petitioner is unable to meet the GSPC requirement because the Hawaii Department of Transportation (HDOT or DOT) will not support a pedestrian walkway under Pi'ilani Highway.

First let me address an underpass. The consideration for underpass at either of the two gulches will never be supported by DOT. In general, and if you look at our exhibits that we submitted on page 8 and 9, those facilities were built to provide hydraulic flow freeboard in the event of 100-year storm.

See testimony of Edwin Sniffen, HDOT Deputy Director for Highways, Transcript of September 10, 2020 proceedings, at p. 139. Furthermore, as set forth in: WALC Report dated 2014, submitted as Exh. 2 to the Motion; Fehr & Peers report dated October 25, 2016, submitted as Exh. 4 to the Motion; and the HDOT's letter dated August 5, 2020, submitted as Exh. 9 to the Motion, neither underpass nor overpass is recommended by any available study.<sup>2</sup>

Because resolving the GSPC solution with HDOT is a current impossibility and there being no consensus with the KCA of how to solve this issue, Petitioners have no possible pathway to satisfy the Executive Officer's condition precedent to having a decision on this matter. Petitioners request that this artificial obstacle be removed and that the Commission fulfill its obligations to issue a decision in a reasonable time.<sup>3</sup>

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<sup>2</sup> It must be noted that Petitioner did not seek to change the portion of the 2013 Order, paragraph 1(a), that calls for a further Traffic Impact Analysis Report (TIAR).

Petitioner shall submit three updated TIARs for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the project. Should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated TIAR at DOT's request.

Even if the Motion is granted, at any time subsequent to the opening of the School, if any updated TIARs indicate the need for a GSPC, the issue will be revisited by the Petitioner and HDOT.

<sup>3</sup> Whether the Commission is inclined to grant or deny the Motion, a written decision must be rendered in order to complete the legal process, which could include the resort, by any party, to judicial review.

Under HRS §91-12, every decision adverse to a party to the proceeding in a contested case is required to be in writing, accompanied by separate

To re-state Petitioner's position, Petitioner maintains that paragraph 1(b) of the 2013 Order should be revised as suggested in its Motion:

The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ~~Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing~~ **Petitioner shall cause to be constructed a roundabout with at-grade pedestrian crossings and raised crosswalks as appropriate at the intersection of Pi'ilani and Kulānihāko'i Street**, and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. **Petitioner shall conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a grade-separated pedestrian crossing prior to the start of the construction of Phase II of the Project.**

It must also be noted that Petitioner has never opposed the requirement of further traffic studies, including the need for a GSPC which are set forth in paragraph 1(a) of the 2013 Order, and requests that those provisions remain in place. It must also be noted that it is Petitioner's understanding that regardless of whether the Commission revises the 2013 Order, HDOT will construct the roundabout with at-grade pedestrian crossings and raised crosswalks, as appropriate, at the intersection of Pi'ilani and Kulānihāko'i Street.

### **III. CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that the Commission issue findings of fact and conclusions of law as to the Motion in favor of the Petitioner. As this

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findings of fact and conclusions of law, and if any party has filed proposed findings of fact, the agency is required to incorporate in its decision a ruling upon each proposed finding. The writ of mandamus prayed for in the petition will be issued upon presentation. In this case, findings of fact and conclusions of law are not only required by the statute, but are necessary, or at least proper, to the complete exercise of our appellate jurisdiction.

*Horner v. Criminal Injuries Compensation Commission*, 54 Haw. 294, 295, 506 P.2d 444, 445 (1973).

matter has been pending for almost a year, Petitioner respectfully requests the issuance of findings of fact and conclusions of law by August 31, 2021.

DATED: Honolulu, Hawai‘i, July 29, 2021.

/s/ Stuart N. Fujioka  
STUART N. FUJIOKA  
RYAN W. ROYLO  
MELISSA J. KOLONIE  
CARTER K. SIU  
Deputy Attorneys General

Attorneys for Petitioner  
DEPARTMENT OF EDUCATION,  
STATE OF HAWAI‘I

BEFORE THE LAND USE COMMISSION  
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In the Matter of the Petition of

DEPARTMENT OF EDUCATION,  
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To Amend the Agricultural Land Use  
District Boundaries into the Urban Land  
Use District for Approximately 77.2 acres  
of land at Kihei, Maui, Hawai'i, Maui Tax  
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DOCKET NO. A11-794

DECLARATION OF STUART N. FUJIOKA

**DECLARATION OF STUART N. FUJIOKA**

Stuart N. Fujioka, an attorney duly licensed before all courts in the State of  
Hawai'i, hereby declares that the following is true and based on personal knowledge.

1. I am the Deputy Attorney General assigned to represent the petitioner in  
this matter, and am authorized to make this declaration.
2. The document attached as Exhibit 31 hereto is a true and correct copy of  
email correspondence dated February 4, 2021 from Maui County Planning  
Director Michele McLean to Edwin Sniffen, Deputy Director of the  
Department of Transportation, which was also forwarded to the attention  
of Petitioner.
3. The document attached as Exhibit 32 is a true and correct copy of the  
letter dated February 23, 2021 from Petitioner to Ms. McLean in response  
to Exhibit 31.

4. The document attached as Exhibit 33 is a true and correct copy of email correspondence from Ms. McLean to Department of Education Assistant Superintendent Randall Tanaka and Mr. Sniffen.
5. The document attached as Exhibit 34 is a true and correct copy of email correspondence from Brenda Lowrey, a representative of Petitioner, to Daniel Orodener, Executive Director of the Land Use Commission.
6. The document attached as Exhibit 35 is a true and correct copy of two emails dated April 6, 2021 from Mr. Orodener to Ms. Lowrey.
7. The document attached as Exhibit 36 is a true and correct copy of Ms. Lowrey's April 7, 2021 email response to Mr. Orodener.
8. The document attached as Exhibit 37 is a true and correct copy of Petitioner's letter to Mr. Orodener dated April 27, 2021.

DATED: Honolulu, Hawai'i, July 29, 2021.

/s/ Stuart N. Fujioka  
STUART N. FUJIOKA

**From:** Michele McLean <Michele.McLean@co.maui.hi.us>

**Sent:** Thursday, February 4, 2021 4:15 PM

**To:** Sniffen, Edwin H <edwin.h.sniffen@hawaii.gov>

**Subject:** RE: [EXTERNAL] FYI - statement

Aloha Ed,

Remember this discussion?

Now that DOE has filed its responses to the LUC's questions, at some point the LUC will hear their motion again. The idea is for that to go smoothly, by revising the condition to call on us to work together "in good faith" to see if an underpass at Waipuilani Gulch is feasible. That narrows it down quite a bit.

Here is a clean version of the latest iteration:

1. Highway and Road Improvements. Petitioner will work cooperatively with DOT to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:

b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined locations(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ~~Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing. Petitioner shall cause to be constructed a roundabout with at-grade pedestrian crossings and raised crosswalks as appropriate at the intersection of Piilani Highway and Kulanihakoi Street.~~ and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. While Phase I, as depicted in the Phasing Plan dated October 6, 2020 and attached as Petitioner's Exhibit 10, and the roundabout at the intersection of Piilani Highway and Kulanihakoi Street are being designed and constructed, Petitioner shall work in good faith with DOT, the Kihei Community Association and the County, to cause to be constructed or ensure that there is an available grade-separated pedestrian crossing, specifically an underpass at Waipuilani Gulch. Petitioner shall report the results of this good faith effort to the Commission on a bi-annual basis. If Petitioner, the Kihei Community Association and the County concur and so inform the Commission, prior to the opening of Phase I, that the construction of a grade-separated pedestrian crossing is not technically or financially feasible, then Petitioner shall conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a grade-separated pedestrian crossing prior to the start of the construction of Phase II of the project.

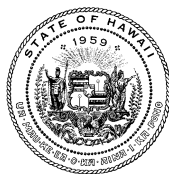
If this still works for you, can you see if DOE will concur? Then we can work on a stipulated amended motion. I don't know how OP will feel about, but I'll check in with them if/after DOE agrees.

Mahalo,  
Michele.

>>> "Sniffen, Edwin H" <edwin.h.sniffen@hawaii.gov> 11/12/2020 9:30 AM >>>  
Thanks Michele,

Aloha,

Ed



**STATE OF HAWAII**  
**DEPARTMENT OF EDUCATION**  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF FACILITIES AND OPERATIONS

February 23, 2021

Ms. Michele Chouteau McLean  
Director, County of Maui Planning Department  
250 South High Street  
Wailuku, Hawaii 96793-7109

Re: Grade Separated Crossing Requirement for LUC Docket No. A11-794  
Kihei High School, Hawai'i State Department of Education  
Kihei, Maui, Hawai'i, Maui Tax Map Key (2) 2-2-002:081

Dear Ms. McLean:

This letter is a follow up to the State Land Use Commission's (LUC) request that the Hawaii State Department of Education (HIDOE) communicate with the Kihei community and the County of Maui (County) regarding vehicular traffic and pedestrian access to the new Kihei High School (School), as it pertains to HIDOE's pending Motion to Amend the Findings of Fact, Conclusions of Law and Order (Motion) regarding the Grade Separated Pedestrian Crossing (GSPC) requirement.

HIDOE is aware of a proposed revision to the GSPC requirement which was conveyed to Mr. Ed Sniffen of Hawaii Department of Transportation (HDOT), for him to discuss with HIDOE. It is our understanding that your office has suggested the following revision to the requirement.

1. Highway and Road Improvements. Petitioner will work cooperatively with DOT to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:
  - b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined locations(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project.

~~Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing.~~ **Petitioner shall cause to be constructed a roundabout with at-grade pedestrian crossings and**

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

**EXHIBIT 32**



**raised crosswalks as appropriate at the intersection of Piilani Highway and Kulanihakoi Street**, and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. While Phase I, as depicted in the Phasing Plan dated October 6, 2020 and attached as Petitioner's Exhibit 10, and the roundabout at the intersection of Piilani Highway and Kulanihakoi Street are being designed and constructed, Petitioner shall work in good faith with DOT, the Kihei Community Association and the County, to cause to be constructed or ensure that there is an available grade-separated pedestrian crossing, specifically an underpass at Waipuilani Gulch.

Petitioner shall report the results of this good faith effort to the Commission on a bi-annual basis. If Petitioner, the Kihei Community Association and the County concur and so inform the Commission, prior to the opening of Phase I, that the construction of a grade-separated pedestrian crossing is not technically or financially feasible, then **Petitioner shall conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a grade-separated pedestrian crossing prior to the start of the construction of Phase II of the project.**

In response, for the following reasons, HIDEOE must respectfully maintain the position set forth in its Motion, which requests the following revision.

- b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ~~Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing~~ **Petitioner shall construct a roundabout with at-grade pedestrian crossings and raised crosswalks as appropriate at the intersection of Piilani Highway and Kulanihakoi Road**, and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.

The HIDEOE has worked diligently with the HDOT to meet the conditions of the Findings of Fact, Conclusions of Law and Order (Order), but is unable to comply with Condition 1.(b) in its entirety. The HIDEOE can comply with the traffic control and pedestrian safety study aspect of the Order, but is unable to fulfill the GSPC requirement. The HDOT, the state agency with the expertise on traffic, pedestrian safety, and the one that would typically build and maintain GSPCs, has informed the HIDEOE and has stated publicly that it cannot support an underpass or overpass for pedestrians to cross Pi'ilani Highway (Highway) to access the School campus.

The HIDEOE understands that an underpass at Waipuilani Gulch (the Gulch) is preferred by the Kihei Community Association (KCA) and the County. However, the GSPC is not warranted by the traffic and pedestrian studies, is prohibited by Federal requirements with which the HDOT must comply, and does not have funding.

The GSPC cannot be justified by traffic and pedestrian studies

As set forth in the materials submitted in support of HIDEOE's motion, the GSPC is not warranted by the anticipated volume of pedestrian traffic at the time the School opens. Nor is the GSPC likely to be used in light of the distance by which it lengthens the path from the street to the School campus; the HDOT has recommended to the HIDEOE to not construct a GSPC at this location because reports show that where the length of the path of travel exceeds the at-grade crossing length by more than 25%, pedestrians will avoid the overpass or underpass and find a more direct route, even if that route is unsafe. An overpass with ramps is about 5.1 times longer than the at-grade crossing route. Any underpass route is much longer due to the change in elevation of the campus from the Gulch.

Furthermore, the GSPC is not supported by the list of recent traffic deaths along the Highway which was provided by the KCA. See Exhibit A.

Clifford Spencer, age 63 was killed in a motorcycle accident on 4/4/14 at 1:56 a.m. The accident occurred North of Kaiwahine St. approximately 3.8 mi. North of the School location. See Attachment A.

Karl Hagen, age 61, was riding a bicycle when he was hit by a truck on 4/12/14 at 1:12 p.m. The collision occurred near Kanani Rd., about 3.2 mi. South of the School location. See Attachment B.

Viki Deardorff, age 51 was a pedestrian who suffered fatal injuries from being hit by a truck on 4/15/14 while running from the mauka side of the highway, not in a marked crosswalk. The incident occurred South of the intersection with North Kihei Rd. after 11:00 p.m., about 5 mi. North of the School location. See Attachment C.

Terrance Kyle Morgan, age 25, died in a single car crash on 5/12/14 at around 3:00 a.m. His northbound vehicle went off the highway near mile post 6, South of Lipoa St., or approximately 1.5 mi. South of the School location. See Attachment D.

Hannah Simmons, age 16 was a pedestrian who was struck by a vehicle on 11/27/16 at about 8:50 p.m., as she crossed the Highway in a crosswalk at Uwapo Rd. The fatality occurred approximately 3.6 mi. North of the School location. See Attachment E.

William Kerr Chapman, age 42, Tina Louise Hanback, age 48 and Monique Tong, age 25, all died in a collision between a van and a motorcycle on 7/20/18 at about 1:15 p.m. The accident occurred at the intersection of the Highway and East Welakahao Rd., approximately 4.4 mi. South of the School location. See Attachment F.

Stacy Jackson, age 45, was a passenger who fell off a motorcycle and suffered fatal injuries when he was hit by a car near Kaonoulu St. on 12/25/18 at about 6:25 p.m. The accident occurred approximately .7 mi. Northwest of the School location. See Attachment G.

Jordan Lawrence, age 35, died in a single car collision at 3:53 a.m. on 1/19/19. The accident occurred South of the intersection between the highway and N. Kihei Rd., about 1.9 mi. North of the School location. See Attachment H.

Mildred Jouvenat, age 49 and Jacob Jouvenat, age 14, were killed when their car was struck by another vehicle on 7/21/19 at about 7:24 p.m. The collision occurred 210 feet North of Welakahao Rd., approximately 4.4 mi. South of the School location. See Attachment I.

Victor Roob, age 72, was not on KCA's list, but appears to be the most recent death on the Highway. He died after colliding with a car while was riding a moped at about 6:01 p.m. on 12/10/20. The accident occurred at the intersection with Mikioi Place, approximately 5 mi. from the School location. See Attachment J.

Of the preceding, two of the deaths were pedestrians and occurred at night. One was crossing and the other was walking along the Highway, three and five miles respectively, north of the projected School location. The other deaths involved motor vehicle operators and/or passengers. While the addition of hundreds of high school students crossing twice a day will present additional traffic control issues, the best available information indicates that they can cross safely using a roundabout and crossing signals. There is no study or data which even suggests that an underpass through the Gulch is necessary.

#### The GSPC would not meet Federal requirements

The Gulch is designed as a drainage waterway and is not suitable for pedestrian use. HDOT Deputy Director of the Highways Division, Ed Sniffen, stated that there is insufficient clearance between the Gulch and Highway to meet Federal safety requirements. The Gulch must provide "hydraulic flow freeboard" between the maximum water level in the event of a 100-year flood (maximum water level) and the bottom of the Highway. The underpass would need to fit between that maximum water level and the bottom of the Highway, which is currently only 2.5 to 3 feet.

Mr. Sniffen estimates that it would cost at least \$30 million to either raise the Highway or widen the Gulch to allow for sufficient hydraulic flow freeboard between a GSPC sitting at the top of the maximum water level, and the bottom of the Highway. This figure is only for the underpass and walkways at the Highway, and does not include the cost of a continued walkway within or along the Gulch beyond the Highway right-of-way. HDOT will not approve an underpass that is not designed to keep pedestrians safe from flood waters, and would not support a project that would cost more than \$30 million to create an underpass walkway above the flood level which, according to studies done, will not be used by the students.

In addition to the safety risks, underpasses can also present problems with debris associated with flooding. For example, the pedestrian walkways and bikeways created by the city of Boulder, Colorado, provide service and convenience to the county, but they are prone to flooding, as shown by the attached photos on the bottom of Exhibit B. In addition to the security and management issues which could arise between the county and transportation authorities, the responsibility for cleanup presents ongoing challenges after a GSPC is built.

#### There is no funding for the GSPC

As explained in the HIDEOE's response to the questions recently posed by the LUC, there is currently no funding available for the School. The biennium budget for fiscal year 2022 that was sent up to the Governor after being approved by the Board of Education (BOE) in December of 2020, did not include funds for the School.

The budget barely included any Capital Improvement funding due to the Governor's restriction of the HIDEOE budget to \$300M for the upcoming biennium, \$150M per fiscal year. The FY20 request similarly did not get additional design and construction funding for the School, except for \$750,000 for due diligence for a pedestrian safety solution.

#### Concluding remarks

As recommended by the LUC, an online community meeting was hosted by the HIDEOE on January 12, 2021, to present a design recommended by the HDOT and to respond to questions about the traffic and the School by the Kihei community, including KCA, and the County. An earlier online community meeting was also held on October 27, 2020. It does not appear that HIDEOE, HDOT and the KCA will ever come to agreement regarding the need for and feasibility of the GSPC, and this is a matter which needs to be decided by the LUC.

Pursuant to Condition 1(c) of the FOF/COL, the HIDEOE must still provide future traffic reports related to growth in enrollment and traffic changes, and if one of those reports determines that a grade separated crossing is warranted based on federal highway standards, the HIDEOE must then provide an underpass or overpass. However, at present if the GSPC remains a requirement of the Order, the School opening will be delayed, and

Ms. Michele Chouteau McLean  
February 23, 2021  
Page 6

delaying the School opening in the current economic crisis may possibly halt construction.

Thank you for your concern and efforts in this matter.

If you have any questions or comments, please call me at (808) 784-5000, or contact me via email at [randall.tanaka@k12.hi.us](mailto:randall.tanaka@k12.hi.us).

Sincerely,



Randall M. Tanaka  
Assistant Superintendent

By signature of the Deputy Director of the Highways Division, the Hawaii Department of Transportation concurs with the Hawaii Department of Education's position.

  
Edwin Sniffen (Feb 23, 2021 16:44 HST)

Edwin H. Sniffen  
Deputy Director, Highways Division

RMT:gn  
Attachments

c: Holly T. Shikada Supervising Deputy Attorney General, Education Division  
Mary Alice Evans., Director, Office of Planning, Department of Business Economic  
Development and Tourism  
Facilities Development Branch

By Wendy Osher

*\*\*\*Update: Clifford Spencer, 63, of Kahului succumbed to the injuries he sustained related to this crash and died while at Maui Memorial Medical Center. This is Maui County's fourth fatality this year, as compared to four at the same time last year.*

A motorcyclist was transported to the hospital with life-threatening injuries after crashing into a guardrail on the Pi'ilani Highway overnight.

The incident was reported at 1:56 a.m. on Friday, April 4, 2014, on the Pi'ilani Highway, just north of the Kaiwahine Street intersection in Kihei.

According to police reports, a 63-year-old man operating a black 1997 Harley Davidson motorcycle was traveling north on the Pi'ilani Highway when he lost control of the motorcycle, and collided into a guardrail on the western shoulder of the highway.

As a result of the collision, police say the motorcyclist sustained life-threatening injuries and was transported by medics to Maui Memorial Medical Center for further treatment.

April 4, 2014

# The Maui News

December 5, 2015

## Man gets 15 years for crash, drugs

WAILUKU – Before his pickup truck went into a bike lane to cause a collision that killed a bicyclist last year, a Kula man's Facebook post described how he had celebrated by drinking and driving when he got his license back after a drunken-driving conviction.

Nine months after the crash that killed 61-year-old Wailea resident Karl Hagen, defendant Michael Cattaneo was arrested again when he was found with a methamphetamine pipe and drugs in his system, a deputy prosecutor said.

On Friday, Cattaneo, 29, was sentenced to prison terms totaling 15 years for the fatal crash and for drug possession.

"Your rule-breaking attitude has cost a man his life," 2nd Circuit Judge Richard Bissen told Cattaneo, after Hagen's family and friends described how the husband, father, son, brother and friend was taken too soon. "And as you can hear, it's devastated pretty much a small community."

**ATTACHMENT B**

Nearly 30 bicyclists rode from Kihei to the courthouse to join Hagen's wife, daughters, other family members and friends – including some who traveled from the Mainland – for the sentencing. They wore T-shirts and buttons saying "I Am Here For Karl."

"Whether it was Mr. Hagen or someone who didn't have the friends and family he has, the loss would be the same," Bissen said. "There's nothing the court can do that would change the circumstances."

"I guess the focus is on how would we change you or people who think like you or people who act like you," the judge told Cattaneo. "How do I stop them and you from doing this again? What I can do is separate you from society long enough for you to gain this insight and also prevent this from happening to others."

Cattaneo had pleaded no contest to first-degree negligent homicide for the crash at 1:12 p.m. April 12, 2014, on Piilani Highway north of Kanani Road. Police said Cattaneo was driving a black 1992 Ford Ranger pickup truck that was heading north on the highway when the truck drifted into the bicycle lane and struck Hagen, who was also traveling north.

"He mowed down someone on a bicycle who was riding in a dedicated bike lane," said Deputy Prosecutor Kerry Glen. "He was riding in the middle of the day. He was quite visible. But in the defendant's words, he just 'wasn't paying attention, something happened.'"

"What he won't say is it was the methamphetamine or amphetamine or marijuana that was found in his system that caused that. He does not believe drugs had anything to do with killing Karl Hagen."

Deputy Public Defender Wendy Hudson said there were trace amounts of methamphetamine and marijuana in Cattaneo's system. "That's not the reason for this accident," she said. "This happened because he was a distracted driver on a busy road that day."

Robin Hagen said her husband was "my best friend and the love of my life." He was killed just short of their 26th wedding anniversary, also leaving their daughters, Ariel and Michaela.

"It breaks my heart knowing that they have lost such a significant part of their lives," Robin Hagen said. "He will miss so many milestones."



Ariel Hagen said that her father was “my best friend, my hero and my inspiration.”

“I hope he can see I live each day in a way that can make him proud,” she said.

“Karl was decent, honest, smart, hardworking and he had a beautiful family,” said his longtime friend Bill Ford. “Over the years, some of us joked about living in Karl’s world.”

Hagen also was an avid bicyclist who advocated for designated riding areas and the use of safety gear including lights and helmets, daughter Michaela said.

“He was alive, so healthy, so happy,” Robin Hagen said. “He enjoyed his friends, loved his family. And he was looking forward to many more years of happiness.

“His death was so senseless.”

Cattaneo also had pleaded no contest to third-degree promotion of a dangerous drug and possessing drug paraphernalia for his arrest Dec. 27.

He was riding his dirt bike when police found him with a methamphetamine pipe, as well as methamphetamine, marijuana and oxycodone in his system, Glen said.

“Even after killing a man, he did not believe he had a problem,” she said. “He did not go seek help. He did not try to do anything except live the life that he was living – and that was choosing to do drugs, choosing to drive while intoxicated and choosing not to respect the laws of our state and the human life that was on the road with him.”

Hudson said Cattaneo had been “self-medicating” to avoid coping with what happened in the crash. While he may have been in denial about his substance abuse issues then, now “he’s been actively seeking treatment,” she said.

Cattaneo’s mother, Janice McCormick, said she talks to him every week. Turning to Hagen’s family and friends in the courtroom gallery, she said, “You need to know how terrible he feels.”

Cattaneo also addressed the gallery, saying, “There’s nothing I can say that’ll ever bring your friend and dad and husband back.”

“I’m so sorry,” he said. “Sorry can never bring anything back, but I know what it’s like to lose your father and it really sucks, I know it does.”

While he asked to be sentenced to probation and an 18-month jail term with early release into a residential drug treatment program, the prosecution sought the maximum 10-year prison term it could request under the plea agreement.

Glen said Cattaneo was convicted of DUI in 2007 for a 2006 arrest.

“He satisfied the sentence, but his attitude about it was something that was alarming to the state,” she said. “The police, the laws are all inconveniences to the defendant.”

Glen read posts on Cattaneo’s Facebook page, including one from April 2, 2012.

“Would’nt u have a beer on ur drive home from working hard? I just got my lisencc back after DUI!!! I have to celebrate!!!” the post said.

Four days later, Cattaneo posted: “Heart Attack-(hart -a-tak)verb-deff: Getting off working construction @ 6:30pm Fri. night. Equipt with my Pau Hana Corona, whie riding “dusty”(not enough action for the full ridin dirty!), and two bench warrants... Only to get blinded by those o’ so familliar blue flashing lights. Combined with cones, portable light posts, Maui’s “Finest,” and a sign reading “SOBRIETY CHECK POINT!!!” Lucky me, they were still setting up!!!”

He described another encounter with police in a Dec. 26, 2013, post: “what did you get for xmas Mike?” “arrested! But no matter how hard officer Jack Mehadah tried to ruin xmas cause he cant catch my dirtbike. He lost to my amazing gf, and my good friend. Thank you two.”

In sentencing the defendant to consecutive prison terms totaling 15 years in the two cases, Bissen said Cattaneo didn’t wake up the morning of the crash intending to hurt or kill someone.

“But you also woke up with the same attitude that you have long held that the rules do not apply to you, that somehow you are able to push and test the limits and even cross the limits,” Bissen told Cattaneo. “You clearly have no respect for the law. You have no respect for other people. And you probably don’t even respect yourself. If you did, you wouldn’t post the kind of things you posted.”

After being cited for leash-law violations, Cattaneo talked about what he wanted to do to neighbors who had called police, Bissen said.

He said that if Cattaneo wants, he could seek drug treatment in prison or after he is paroled.

In both the negligent homicide and drug cases, charges of driving under the influence of an intoxicant and not having insurance were dismissed in exchange for Cattaneo's pleas.

He was ordered to pay \$11,557 in restitution.

"We think it was a fair sentence," Robin Hagen said after the hearing. "We do feel strongly prison time was warranted. We hope he is rehabilitated."

She thanked the judge, prosecutor's office and those who showed up in court Friday. "We have awesome support from our family and friends and the cycling community," she said.

Cattaneo was convicted of operating a vehicle negligently to cause the death of a vulnerable user, which includes bicyclists and pedestrians.

"When tragedy like this happens, we want to support the victim," said Dan Rezac of the nonprofit Maui Bicycling League, which organized the ride Friday. "We want safer streets, safer places to ride. We have a place out on the streets. We also are not going to be silent."

\* Lila Fujimoto can be reached at lfujimoto@mauinews.com.

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# The Maui News

July 12, 2016

## Man gets jail time for leaving fatal crash

WAILUKU – While an investigation found a pickup truck driver wasn't at fault in a collision that killed a pedestrian, he was sentenced July 5 to a 60-day jail term for leaving the scene of the crash on Piilani Highway.

Domingo Tabisula, 43, of Wailuku also was ordered to perform 100 hours of community service as part of four years' probation.

He had pleaded no contest to the felony charge of leaving the scene of a fatal collision.

The crash occurred after 11 p.m. April 15, 2014, on Piilani Highway south of its intersection with North Kihei Road. Police said 51-year-old Viki Deardorff wasn't in a crosswalk when she ran from an area of brush on the mauka side of the highway and was struck by a northbound Toyota truck.

The truck fled without stopping to help Deardorff, who was pronounced dead at the scene, police said.

**ATTACHMENT C**

Deputy Prosecutor Justine Hura said that the state acknowledged that “the defendant wasn’t operating the vehicle in a way that he could be found at fault in the collision.”

“The charge was entirely limited to the fact that he left the scene,” she said.

Hura said debris on the roadway helped police traffic investigators identify the vehicle that hit Deardorff as the 2012 Toyota pickup truck that Tabisula had been driving that night.

During his sentencing Tuesday, the defense argued that Tabisula didn’t know he had hit someone.

“But the state followed the evidence,” Hura said. “The evidence, in the state’s view, showed that the defendant would have known that he hit a person.”

Second Circuit Judge Joseph Cardoza followed a plea agreement between the defense and prosecution in sentencing Tabisula.

He was allowed to turn himself in on consecutive weekends to serve the jail term.

Tabisula was ordered to pay \$1,426 in restitution. His driver’s license was revoked for six months.

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# Deadly Pi'ilani Accident Claims Life of Kīhei Man

May 12, 2014, 10:23 AM HST

*\* Updated May 12, 12:19 PM*

Pi'ilani Highway fatality. Maui Now graphic.

By Wendy Osher

Maui police say the involvement of speed and driving while using a mobile electronic device is suspected as a factor in a deadly crash that claimed the life of a Maui man overnight.

Maui police have since identified the victim as Terrance Kyle Morgan, 25, of Kīhei.

According to police reports, Morgan was operating a 2004 Nissan and was traveling northbound on the Pi'ilani Highway when he lost control of the vehicle, crossed left of center, and ran off the western shoulder of the roadway before rolling over.

The incident was reported at around 3 a.m. on Monday, May 12, 2014, near mile post 6 of the Pi'ilani Highway, south of Līpoa Street in Kīhei.

Police say Morgan was pronounced dead at the scene.

# The Maui News

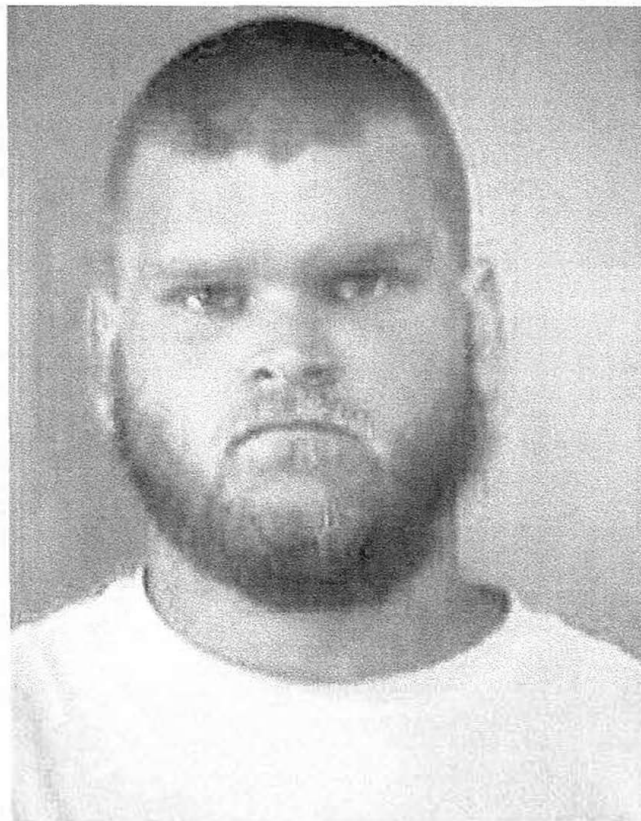
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May 3, 2019

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## Charges filed in 2016 hit-and-run fatality

Hannah Simmons, 16, was struck down in crosswalk



CHARLES HARDY – Negligent homicide charge

The Maui News

WAILUKU — A 23-year-old Kihei man has been charged with negligent homicide in connection with a hit-and-run collision that killed a 16-year-old girl as she was crossing Piilani Highway.

**ATTACHMENT E**

Police traffic investigators arrested Charles Tyler Hardy at about 3 p.m. Wednesday.

At his arraignment Thursday in 2nd Circuit Court, Hardy pleaded not guilty to charges of first-degree negligent homicide and leaving the scene of a fatal crash.

He was being held in lieu of \$250,000 bail pending a bail hearing Tuesday.

The collision occurred at about 8:50 p.m. Nov. 27, 2016, when Hannah Simmons was in a crosswalk while walking across the highway at Uwapo Road in Kihei. Police said she was hit by a vehicle that made a left turn from Kaiwahine Street onto the highway.

The driver fled, police said.

The girl, who had been crossing the street with her boyfriend and a friend, was rushed to Maui Memorial Medical Center, where she died.

The complaint against Hardy alleges that he was under the influence of drugs or alcohol at the time of the collision.

Lt. William Hankins, commander of the police Traffic Section, said the arrest is a culmination of hundreds of man-hours spent by the Vehicle Homicide Unit reconstructing the crash.

*“It is the goal of the Maui Police Department to conduct thorough investigations of these crashes and work with the prosecutor’s office to hold those responsible for their actions,” he said. “We owe it to the victims and their family members to help bring closure to these avoidable crashes. Families of crash victims who are killed or seriously injured deserve justice.”*

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# The Maui News

July 29, 2018

## Kihei woman, 25, dies of crash injuries

Death toll from Piilani Highway crash rises to three



Monique Tong, Died Saturday morning

A 25-year-old Kihei woman thrown from a motorcycle in a July 20 crash that claimed two lives at the scene has lost her battle to stay alive in a Honolulu hospital, family members reported. ✓

Monique Tong died early Saturday morning at The Queen's Medical Center, a relative said.

**ATTACHMENT F**

A “*Go Fund Me*” web page set up to support Tong and her family reported that “our beautiful mermaid spirit Monique left us tonight to go dance into the next world.

*“Our hearts are breaking, but it was time to release her from her dying shell.”*

The family said any further donations would go toward funding Tong’s cremation, a celebration of life “*and spreading her artwork to the world.*”

*“Our family thanks everyone for their love, prayers and support.”*

About 1:15 p.m. July 20, Tong was a passenger on a black 2003 Independence motorcycle driven by William Kerr Chapman and traveling south on Piilani Highway when it crashed into a gold 2003 Chrysler Caravan. Its driver, Tina Louise Hanback, failed to yield while making a left turn onto the highway from East Welakahao Road, police said.

Chapman, 42, and Hanback, 48, both of Kihei, died at the scene, police said. A front-seat passenger in the van suffered a broken arm. The 35-year-old man with no local address was taken to Maui Memorial Medical Center in stable condition.

Chapman and Tong were not wearing motorcycle helmets, police reported.

Tong was rushed to Maui Memorial with critical, life-threatening injuries. Later, she was transferred to an intensive care unit at the Queen’s Medical Center.

Her family reported she suffered fractures to her pelvis in four places and a fractured ankle and arm. She also sustained a punctured lung, perforated bowels, a liver laceration, a head injury that caused brain swelling, internal bleeding and other injuries.

To see the “*Go Fund Me*” page, visit [www.gofundme.com/v8v23-momos-recovery](http://www.gofundme.com/v8v23-momos-recovery).

Family members said Tong, also known as “*Momo*,” was riding the motorcycle with her boyfriend.

She was described as having a “*happy artistic spirit*” and being someone who “*loves life and people.*”

Last week, the state Department of Transportation announced it would close the left-hand turn from Welakahao onto Piilani Highway, following the crash that has now claimed three lives. Work to re-stripe and remove the left-hand turn begins Monday.

The decision to close the left-hand turn was based on a history of major accidents and requests from the community, officials said.

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# The Maui News

December 29, 2018

## Suspect in fatal crash turns self in

**Wailuku woman, 55, was arrested and then released pending inquiry**

The owner of a green Geo Tracker, suspected of hitting a rider who had fallen off a motorcycle on Piilani Highway on Christmas Day and not stopping, was arrested and released pending further investigation on Thursday, police said.

The Geo Tracker's owner, a 55-year-old Wailuku woman, turned herself into police. The vehicle was seized, police said in a news release Friday.

Stacy Jackson, 45 of Kihei, was killed in the crash on Piilani Highway near Kaonoulou Street in Kihei at 6:25 p.m. Tuesday, police said.

Police said a preliminary investigation showed a Harley Davidson motorcycle was traveling south on the highway when it hit a rock on the road and Jackson, who was a passenger on the motorcycle, fell off the motorcycle and onto the road. A vehicle hit Jackson, police said, and the driver didn't stop.

Jackson was pronounced dead at the scene of the collision. The motorcycle was operated by a 50-year-old Kihei man, who wasn't injured in the collision.

**ATTACHMENT G**

Neither the motorcycle operator nor his passenger were wearing helmets, police said. The roadway was closed for about four hours while police investigated.

Jackson was Maui County's 18th traffic fatality, one more than at this time last year.

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Maui News

# Pukalani Man Dies in Traffic Accident on Pi'ilani Hwy, Maui

January 19, 2019, 4:21 PM HST

*\* Updated January 19, 4:24 PM*

Pi'ilani Hwy traffic accident, 1.19.19. PC: Marianne Borreta Viernes

A Maui man suffered fatal injuries in a motor vehicle collision on the Pi'ilani Highway, south of the intersection with North Kihei Road overnight.

The incident was reported at 3:53 a.m. on Saturday, Jan. 19, 2019.

Maui police say the collision occurred as a silver 2015 Toyota four-door sedan was traveling northbound on Pi'ilani Highway when the operator lost control of the vehicle and traveled into the southbound lanes.

The vehicle then collided with a fence on the grass median and went into a ditch, causing the vehicle to go airborne and to roll over several times before coming to a stop in the southbound lanes, police said.

The operator and a passenger of the sedan suffered life-threatening injuries and were transported to the hospital for treatment. Attempts by first responders to resuscitate a second passenger were futile and the passenger was pronounced dead at the scene.

Maui police have since identified the deceased passenger as Jordan Lawrence, 35, of Pukalani.

ARTICLE CONTINUES BELOW AD

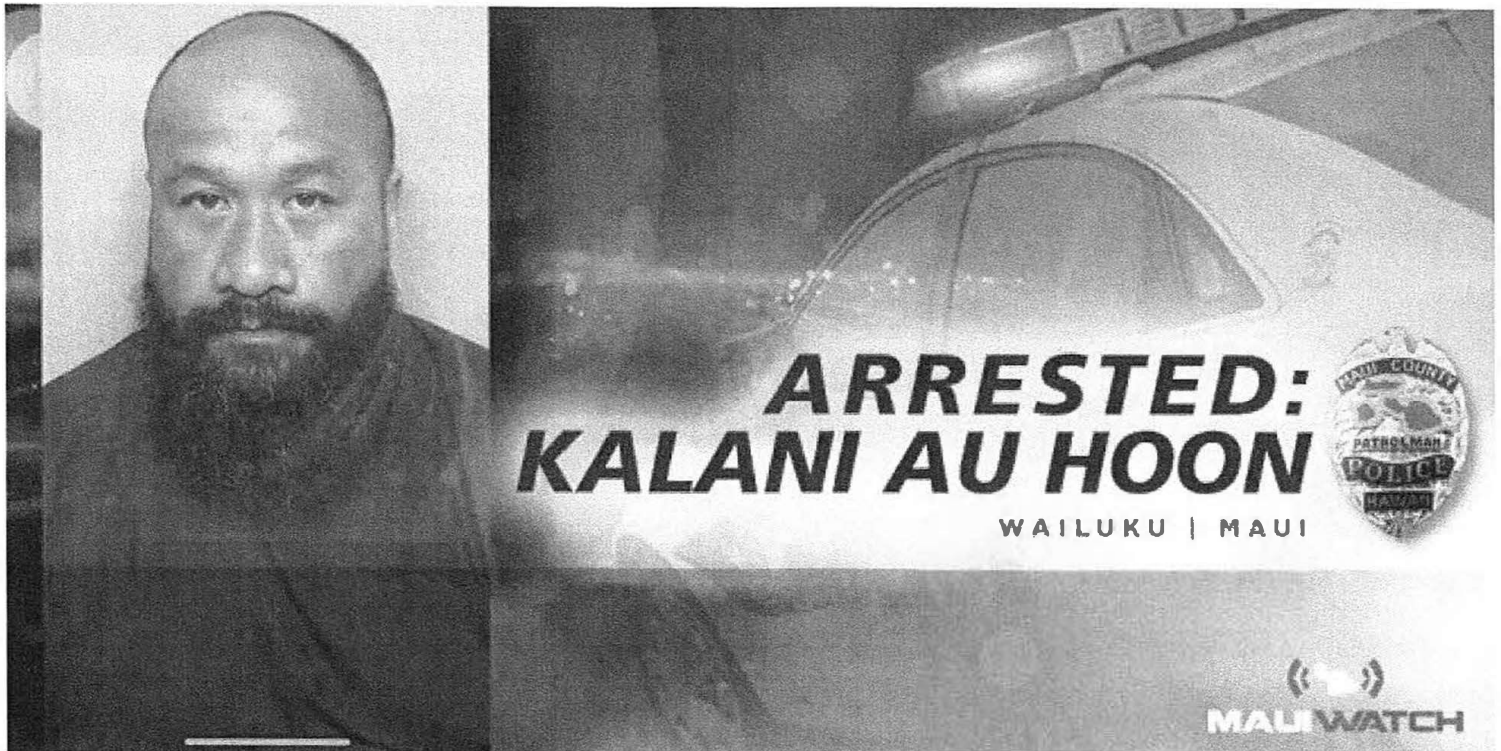
**ATTACHMENT H**



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## GRAND JURY INDICTS WAILUKU MAN AFTER FATAL 2019 CRASH IN KIHAI

MAUIWatch Staff July 20, 2020 News

On Monday July 20, 2020 at 1:37 p.m., Officers from the Maui Police Department Traffic Division, Vehicular Homicide Unit arrested Kalani K. AU HOON (44) of Wailuku. Mr. AU HOON was arrested following a grand jury indictment related to the Motor Vehicle Crash that killed Mildred JOUVENAT (49), and her son Jacob JOUVENAT (14) on July 21, 2019 on Piilani Highway in Kihei.

On Sunday July 21<sup>st</sup>, 2019 at about 7:24 p.m., a Motor Vehicle Collision occurred on Piilani Highway, 210 feet North of Welakahao Road (.9 miles North of MM 8) in Kihei. The collision occurred when a 2008 Ford F150 pickup truck traveling North on Piilani Highway, crossed left of center and collided into a 2016 Nissan Versa traveling South on Piilani Highway. The Nissan then collided into a 2016 Ford Focus also traveling southbound on Piilani Highway.

The operator of the Ford F150, Kalani AU HOON, sustained serious injuries and was transported to Maui Memorial Medical Center.

The operator of the Nissan Versa has been identified as Mildred JOUVENAT (49) from Kihei. As a result of this crash, Mrs. JOUVENAT sustained fatal injuries and died at the scene. The passenger in the Nissan Versa, Jacob JOUVENAT (14) died on July 22, 2019 while at Maui Memorial Medical Center.

### ATTACHMENT I



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injuries and was transported to Maui Memorial Medical Center.

Kalani K. AU HOON was arrested and charged with the following offenses:

1. Manslaughter (2 counts)
2. Operating a Vehicle Under The Influence of an Intoxicant
3. Reckless Driving of a Vehicle
4. Inattention to Driving

Total Bail set at \$203,000.00

Lt. William Hankins, Commander of the Traffic Division stated, "Motor vehicle crashes that involve a fatality are very complex and time consuming investigations. Our team of investigators spent countless hours to conduct a complete and detailed reconstruction of this crash to determine the speed of the vehicles involved, as well all factors that contributed to this preventable crash and untimely death of Mildred and Jacob JOUVENAT."

## Comments

4 comments



Maui News

# Thursday Night Moped Crash on Pi'ilani Highway Claims Life of Maui Man

December 11, 2020, 1:45 PM HST

Maui Now graphic.

A 72 year old Kīhei man suffered fatal injuries in a moped crash reported Thursday night on the Pi'ilani Highway in South Maui.

Police identified the man as Victor Roob, and say he was initially transported to the Maui Memorial Medical Center with non-life threatening injuries; however, once at the hospital, his condition deteriorated and he passed.

The incident was reported at approximately 6:01 p.m. on Thursday Dec. 10, 2020, on the Pi'ilani Highway at Mikioi Place in Kīhei.

Police say a 2015 Mercedes Benz traveling south on Pi'ilani Highway attempted to execute a left turn onto Mikioi Place when the vehicle collided with a Geniune brand moped operated by Roob. The moped was traveling north on Pi'ilani Highway within the marked bicycle lane when the collision occurred, police said.

Police say the Roob was not wearing a helmet at the time of the crash.

The operator of the Mercedes Benz, a 47-year-old Kīhei woman, was reportedly wearing a seatbelt and did not report any injuries.

5

## EXHIBIT A

Messrs. Butay and Sniffen  
December 2, 2019

## EXHIBIT A

11 Deaths on Pi'ilani Highway since April 2014, 6 in the past 17 months.

- April 3, 2014 – Clifford Spenser, age 63
- April 12, 2014 - Karl Hagan, age 61
- April 14, 2014 – Viki Dearforff, age 51
- May 12, 2014 – Terrance Kyle Morgan, age 25
- November 27, 2016 – Hannah Simmons, age 16
- July 20, 2018 – Walter Chapman, age 42
- July 20, 2018 – Tina Louise Hanbeck, age 49
- December 25, 2018 – Stacy Jackson, age 45
- January 19, 2019 – Jordan Lawrence, age 35
- July 24, 2019 Mildred Jouvenat, age 49
- July 27, 2019 – Jacob Jouvenat, age 14

## EXHIBIT B

Envision: From this...



Above (Left): Existing conditions at Waipuilani Gulch.



Above (Right): The Tunnel Underpass in Boulder, CO

Envision: From this...



Above (Left): Existing conditions at Waipuilani Gulch.



Above (Right): An underpass trail in Davis, CA



## EXHIBIT B



To: Edwin H Sniffen <[edwin.h.sniffen@hawaii.gov](mailto:edwin.h.sniffen@hawaii.gov)> Tanaka Randall <[randall.tanaka@k12.hi.us](mailto:randall.tanaka@k12.hi.us)>  
Cc: Jordan Hart <[Jordan.Hart@co.maui.hi.us](mailto:Jordan.Hart@co.maui.hi.us)> Lowrey Brenda <[brenda.lowrey@k12.hi.us](mailto:brenda.lowrey@k12.hi.us)>

5/4/21

Aloha Randy and Ed,

I received your February 23 letter on April 30, when Brenda Lowrey emailed it to me, hence this late, and purposefully informal, response.

While I understand your position, I don't think it will be a successful strategy with the LUC. It's certainly your prerogative to go in this direction, and blame the LUC for project delays if they turn you down, but I don't think that strategy is in the public's best interest.

I am sincerely trying to help and am still open to a dialog about the wording of the condition, if you can be open to it. I spoke to Brenda yesterday so she may reach out to you, too.

Hope we can discuss, if you are willing.

Mahalo,  
Michele.

P.S. Ed -- our telecon later this week is about the SMA process, not the LUC.

Michele Chouteau McLean, AICP, Planning Director  
County of Maui  
One Main Plaza, Suite 315  
2200 Main Street  
Wailuku, Hawaii 96793  
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**From:** Brenda Lowrey <[brenda.lowrev@k12.hi.us](mailto:brenda.lowrev@k12.hi.us)>  
**Sent:** Tuesday, April 6, 2021 5:38 PM  
**To:** Orodener, Daniel E  
**Cc:** Randall Tanaka; Hakoda, Riley K  
**Subject:** [EXTERNAL] LUC Docket A11-794 Kihei HS, request to be on agenda

Good afternoon Mr. Orodener,  
I am writing on behalf of the Department of Education to request consideration to be placed on an upcoming agenda for LUC Docket No. A11-794 regarding our request to amend condition 1.b of the Decision and Order as it relates to the pedestrian crossing for the new Kihei High School.

We realize that your agendas are filling up, but in order to keep on a schedule with the construction and planned opening of the school (if the LUC were to rule favorably), or make contingency plans (if the ruling is not in our favor) we are hoping to be scheduled for a meeting before the end of May.

We look forward to the opportunity to present a summary of progress since the last meeting on November 4, 2020 and answer any questions from the Commission.

Please let me know if you have any questions or need additional information.

Thank you for your consideration,

Brenda Lowrey

--  
Brenda Lowrey, Facilities Planner

Hawaii Department of Education, Office of Facilities & Operations, Facilities Development Branch

Ph. (808) 784-5091, Fax (808) 733-2103, 3633 Waiialae Ave., Bldg. E, 2nd Flr., Honolulu, HI 96816

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Brenda Lowrey, Facilities Planner

Hawaii Department of Education, Office of Facilities & Operations, Facilities Development Branch

Ph. (808) 784-5091, Fax (808) 733-2103, 3633 Waiialae Ave., Bldg. E, 2nd Flr., Honolulu, HI 96816

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Dear Ms. Lowrey;

To follow-up, I would also like to remind you that the Commission is still waiting for a response in writing to the questions we addressed to you. I do not believe it is appropriate to place this matter on the calendar until we receive your answers.

Daniel E. Orodenker  
Executive Officer, Land Use Commission

---

**From:** Orodenker, Daniel E <[daniel.e.orozenker@hawaii.gov](mailto:daniel.e.orozenker@hawaii.gov)>  
**Sent:** Tuesday, April 6, 2021 6:13 PM  
**To:** Brenda Lowrey  
**Cc:** Randall Tanaka; Hakoda, Riley K  
**Subject:** Re: [EXTERNAL] LUC Docket A11-794 Kihei HS, request to be on agenda

Dear Ms Lowrey;

Unfortunately getting Kihei High School on the agenda before the end of May is highly unlikely. Our calendar is quite full for the next two months and we are short staffed.

Regardless, I am not disposed to put this matter back on the calendar until we have some kind of stipulation or agreement from the various groups as to a solution. The past two times the matter was placed on the calendar it was clear that the community and the DOE were still at odds. I do not wish to waste the commissioner's time or further cause undue concern unless there has been significant progress.

Thank you for your inquiry.

Daniel E. Orodenker  
Executive Officer, Land Use Commission



**From:** Brenda Lowrey <brenda.lowrey@k12.hi.us>  
**Sent:** Wednesday, April 7, 2021 8:31 AM  
**To:** Orodenker, Daniel E <daniel.e.oro~~den~~ker@hawaii.gov>  
**Cc:** Randall Tanaka <Randall.Tanaka@k12.hi.us>; Hakoda, Riley K <riley.k.hakoda@hawaii.gov>  
**Subject:** Re: [EXTERNAL] LUC Docket A11-794 Kihei HS, request to be on agenda

Good morning Mr. Orodenker,  
Thank you for your prompt responses. We are working with the various groups towards a solution. In regards to answering the LUC's questions for the DOE from the November meeting, a response was sent from Stuart Fujioka on February 2, 2021. I will get back to you when we have something in writing.  
Thank you,  
Brenda

On Tue, Apr 6, 2021 at 6:44 PM Orodenker, Daniel E <daniel.e.oro~~den~~ker@hawaii.gov> wrote:




**STATE OF HAWAII**  
**DEPARTMENT OF EDUCATION**  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF FACILITIES AND OPERATIONS

April 27, 2021

TO: Mr. Daniel E. Orodener  
Executive Officer, Land Use Commission  
Department of Business, Economic Development and Tourism

FROM: Randall M. Tanaka   
Assistant Superintendent

SUBJECT: **Petitioner Motion to Amend LUC Findings of Fact, Conclusions of Law and Decision and Order for LUC Docket No. A11-794**  
**State of Hawaii, Department of Education**  
**Kihei, Maui, Hawaii, Maui Tax Map Key No.: 2-2-02:81**

The Hawaii State Department of Education (HIDOE) requests to be placed on the agenda of an upcoming State Land Use Commission (LUC) meeting to consider Petitioner's Motion to Amend the LUC's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 (FOF/COL).

Since its last appearance before the LUC and pursuant to the LUC's request that HIDOE communicate with the Kihei community, the HIDOE conducted an online meeting with the Kihei community that included residents, area school representatives, local and state agency representatives, Kihei Community Association members, and others in the community. The HIDOE responded to voiced and chat questions and noted comments and concerns during the meeting. The HIDOE has posted a website that provides project updates as construction progresses.

The HIDOE has also corresponded with the Maui County Planning Department (MPD) and is continuing efforts to provide project information and interact with the MPD.

On February 2, 2021 the HIDOE provided a response letter to the LUC's questions from November 10, 2020.

In coordination with, and based on the strong recommendations of, the Hawaii Department of Transportation (HDOT), the HIDOE is proceeding with finalizing the design of a roundabout with at-grade pedestrian crossing for it to be in place before the school can open. This is possible because the roundabout replaces the signalized traffic intersection that was part of the construction bid and will be processed as a project change order. HIDOE is not legally obligated to substitute the roundabout for a signalized intersection, but it is deemed safer by HDOT and all available studies, and is not precluded by the terms of the FOF/COL.

Mr. Daniel E. Orodenker  
April 27, 2021  
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The Grade Separated Pedestrian Crossing (GSPC), which the HIDEOE seeks to eliminate by way of Amendment to the FOF/COL, is not warranted by any traffic study. Furthermore, at this time HDOT does not support the underpass at Waipuilani Gulch or any other GSPC. HDOT, through its Deputy Director Edwin Sniffen, has repeatedly expressed concern that Waipuilani Gulch is a waterway and it is unsafe to use as a GSPC. This is a potential hazard and liability, and HDOT's position must be taken most seriously.

Nevertheless, as set forth elsewhere in the FOF/COL, HIDEOE remains obligated and committed to submit an updated Traffic Impact Analysis Reports (TIAR) for the Project: one full year after opening of Phase I of the Project; another upon HDOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project; and yet another with DOT approval one full year after full build out of Phase II of the Project. Also, should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner is required to submit an additional updated TIAR at HDOT's request. HIDEOE is required to mitigate all project generated traffic shall be mitigated at its expense.

Accordingly, in spite of their best efforts, the parties have not reached a stipulation or agreement and the HIDEOE respectfully requests that the Commission place this matter on its Calendar and/or otherwise render a decision in this matter.

Should you have any questions, please call Brenda Lowrey, Facilities Planner of the Facilities Development Branch, at (808) 784-5091 or contact via email at [brenda.lowrey@k12.hi.us](mailto:brenda.lowrey@k12.hi.us).

RMT:bl

c: Stuart N. Fujioka, Deputy Attorney General, Education Division  
Ryan W. Roylo, Deputy Attorney General, Education Division  
Facilities Development Branch

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of

DEPARTMENT OF EDUCATION,  
STATE OF HAWAI'I,

To Amend the Agricultural Land Use  
District Boundaries into the Urban Land  
Use District for Approximately 77.2 acres  
of land at Kihei, Maui, Hawai'i, Maui Tax  
Map Key Nos. 2-2-02: 81 and 83.

DOCKET NO. A11-794

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT a copy of Department Of Education, State of Hawaii's  
Request for the Issuance of Written Findings as to its August 20, 2020 Motion to Amend the  
Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order filed  
July 29, 2013 was duly served via Electronic Mail upon the following at:

MOANA LUTEY (Moana.Lutey@co.maui.hi.us)  
Corporation Counsel  
THOMAS KOLBE (Thomas.Kolbe@co.maui.hi.us)  
MICHAEL K. HOPPER (Michael.Hopper@co.maui.hi.us)  
Deputies Corporation Counsel  
County of Maui  
200 South High Street  
Kalana O Maui Building, 3<sup>rd</sup> Floor  
Wailuku, Maui, Hawai'i 96793

Attorneys for Respondent  
DEPARTMENT OF PLANNING,  
COUNTY OF MAUI

Bryan Yee (Bryan.C.Yee@hawaii.gov)  
Deputy Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813

Attorney for State Office of Planning and Sustainable Development

DATED: Honolulu, Hawai'i, July 29, 2021.

/s/ Stuart N. Fujioka  
STUART N. FUJIOKA  
RYAN W. ROYLO  
MELISSA J. KOLONIE  
CARTER K. SIU  
Deputy Attorneys General

Attorneys for Petitioner  
DEPARTMENT OF EDUCATION,  
STATE OF HAWAII

Docket No. A11-794; In the Matter of the Petition of Department of Education, State of Hawai'i, before the Land Use Commission of the State of Hawai'i; DEPARTMENT OF EDUCATION, STATE OF HAWAII'S REQUEST FOR THE ISSUANCE OF WRITTEN FINDINGS AS TO ITS AUGUST 20, 2020 MOTION TO AMEND THE LAND USE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013; DECLARATION OF STUART N. FUJIOKA; EXHIBITS 31-37; CERTIFICATE OF SERVICE