

LAND USE COMMISSION
MEETING MINUTES

September 8-9, 2021 – 9:00 a.m.

Pursuant to Exhibit C of the Governor’s Emergency Proclamation Related to the COVID-19 Response, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting
Meeting Link for Wednesday, September 8th, 2021

https://us02web.zoom.us/webinar/register/WN_Tjet0Jr4Q36oVHclhQsllQ

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Jonathan Scheuer
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Edmund Aczon
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni
Arnold Wong (joined at 9:36 a.m.)

COMMISSIONERS EXCUSED:

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Julie China, Deputy Attorney General (DAG)
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

COURT REPORTER: via Naegeli Deposition and Trial
(from recorded ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:01 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. Commissioner Wong was recognized as joining the meeting at 9:36 a.m., and Commissioner Giovanni stated that he needed to leave the meeting briefly between 11:00 to 11:30 a.m. (7 Commissioners present till Commissioner Wong joined the meeting)

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the August 25th, 2021 Minutes and asked if any public testimony had been submitted and if any corrections needed to be made. There was no public testimony and no corrections to be made. Commissioner Cabral moved to adopt the Minutes. Commissioner Ohigashi seconded the motion. There was no discussion.

By a roll call, the August 25th, 2021 Minutes were approved unanimously (7-0).

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from September 2021 to December 2021 for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

Chair Scheuer moved to the next agenda item.

DR21-72 CHURCH-HILDAL

To Consider Petitioner's Petition for a Declaratory Order requesting clarification and correction to the LUC, December 16th, 1992 boundary interpretation No. 92-48 and re-imburement of LUC and Court Reporter fees.

APPEARANCES:

Ken Church and Evelyn Hildal, Petitioners
Alison Kato, Esq., Deputy Attorney General, Office of Planning and Sustainable
Development (OPSD)
Rodney Funakoshi, Land Use Administrator, OPSD
Lorene Maki, Planner, OPSD
Aaron Setogawa, Planner OPSD
Mary Alice Evans, Director, OPSD

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Chair Scheuer asked Mr. Church if he had reviewed HAR 15-15-45.11 with regards to reimbursement of LUC expenses. Mr. Church acknowledged that he had, and that he would comply.

Mr. Church requested clarification of the procedures regarding the reimbursement of fees and the possibility of questioning the County.

Chair Scheuer directed Mr. Orodenker to clarify the hearing fees and procedures for the Petitioner.

Mr. Church acknowledged receipt of the information and that he would comply.

Chair Scheuer asked if there was any written testimony or if there were any members in the audience who wished to testify. There was none

PETITIONER'S PRESENTATION

Mr. Church explained his original intentions when he purchased the Petition Area, and argued why a correction of the maps and rezoning approval for the area was necessary based upon the Commission's decision in docket DR99-21, and why he requested reimbursement of his filling fees.

Ms. Hildal described the long process and difficulties they had encountered in obtaining an agricultural use designation and expressed her desire to have a property for retirement and grow food. Ms. Hildal quoted and referenced the "1969 Report" which documented the

Commission's process to establish Conservation District Boundaries in her argument to have the Commission grant their petition for Declaratory Ruling.

Commissioner Wong joined the meeting at 9:36 a.m.

Questions from the Commissioners

Commissioner Cabral requested clarification on Petitioners' awareness of conservation land use designation of the property and its market value at the time of purchase. Mr. Church and Ms. Hildal responded that they thought they could do agricultural use in the conservation land.

Commissioner Okuda asked petitioners about their understanding of the Commission's limitations and quasi-judicial duties to apply the law.

Chair Scheuer declared a recess at 9:50 a.m. and reconvened the meeting at 10:00 a.m.

Commissioner Wong stated for the record that he read Mr. Church's written testimony and heard Ms. Hildal's oral presentation.

Commissioner Okuda requested clarification on Petitioner's intended agricultural use for the property, the lack of an environmental impact analysis in the Environmental Assessment and if there was any proof of past farming income.

Commissioner Chang requested clarification on Mr. Church's statements and noted the insufficiency of evidence to make a declaratory ruling decision.

Chair Scheuer provided his understanding of the DR decision making process, then called the Office of Planning and Sustainable Development to make its presentation.

OPSD PRESENTATION

Ms. Kato stated that OPSD had no objection to the petitioner's request and argued how OPSD had arrived at its position on this matter

Chair Scheuer declared recess at 10:51 a.m. and resumed the meeting at 11:01 a.m.

Commissioner Giovanni stated for the record that he would be available for the duration of the hearing.

Questions from Commissioners

Commissioner Okuda requested clarification of what standard of review OPSD has applied to this case and expressed his concerns about the preservation of conservation land.

Commissioner Chang sought to find how many properties were impacted by where the line was at the top of the Pali as a boundary.

Commissioner Ohigashi shared his concerns about how approving this declaratory ruling would affect adjacent properties, and inquired whether considerations of 1) permits DLNR approved or denied in this area, 2) the 1992 boundary interpretation, or 3) meets and bounds survey of the property provided Mr. McCully factored in OPSD's position statement.

Mr. Funakoshi responded to Mr. Ohigashi's question and explained that OPSD did not review boundary interpretations and did not review any of the documents provided in 1992 to determine that the boundary was unclear.

Chair Scheuer provided his understanding of the reference to Hamakua and the location of Mr. Church's property in relation to Hamakua and sought how map H65 and LUC boundary interpretations was unclear to OPSD.

Lorene Maki, OPSD planner, referred to OPSD's Exhibit 4 to respond to Chair Scheuer's questions.

Ms. Kato stated that there was no previous case where the circumstances were the same and that the line appeared to be on the railway line.

Chair Scheuer requested clarification of Ms. Kato's understanding of the appeal process for boundary interpretations and what determined which mapping landmarks would be applied in different situations.

There were no further questions for OPSD. Chair Scheuer asked Mr. Church to provide his final comments.

PETITIONER'S FINAL COMMENTS

Mr. Church argued how the Commission's decision and order in the DR99-21 altered map H59 for the boundary to be at the top of the Pali and how a similar consideration should be applied to his Petition.

Ms. Hildal referred to Ms. Maki's testimony about the boundary between the Agricultural and Conservation uses and asked the Commission to consider the 1969 report and the actions taken by the LUC for determining Conservation boundaries.

Mr. Church concluded by referring to Exhibit 9 to demonstrate how much of the field was on each side of the railroad.

There were no more questions or comments.

FORMAL DELIBERATIONS

Chair Scheuer asked the Commission if they were prepared to deliberate.

Commissioner Cabral expressed her reluctance for the Commission to change boundary lines.

Chair Scheuer commented on the Petitioner's determination to put their land into Agricultural use.

Commissioner Okuda made a Motion to Deny the petition and was seconded by Commissioner Cabral.

Commissioner Okuda spoke to the motion and provided his perception of how HRS 91-1.5 applied to this matter and how granting the petition would bring uncertainty to the maps previously drawn.

Commissioner Ohigashi stated his support for the Motion to Deny and offered a friendly amendment to include the denial for the Petitioner's request for reimbursement of LUC Court reporter fees.

Commissioner Chang and Aczon shared their reasons for supporting the motion to deny.

Commissioner Okuda stated that he accepted the friendly amendment to his motion to deny the petition for declaratory ruling and Petitioner's request for a waiver of fees.

Commissioner Giovanni, Wong and Chair Scheuer expressed their concerns and reasons to also support the amended Motion to deny.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the Motion to Deny the petition was unanimously approved (8-0).

Chair Scheuer declared recess at 12:32 p.m., reconvened the meeting at 1:06 p.m. and moved on to the next agenda item.

ACTION - A11-794 State of Hawai'i, Dept. of Education – (Kihei High School) (Maui)

- To Consider Petitioner's Emergency Motion for Recusal or Disqualification of LUC's Chair from Participation in any Proceeding related to DOE's Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order filed July 29, 2013.
- To Consider Petitioner's Motion to Amend the LUC's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013.
- To Consider Petitioner's Request for the Issuance of Written Findings as to its Aug 20, 2020 Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order filed July 29, 2013.

Chair Scheuer notified the Commission that he planned to recuse himself from this Agenda item regarding Kihei High School and read his recusal letter for the record.

Chair Scheuer surrendered the chairmanship and exited the meeting. Vice Chair Giovanni assumed role of Presiding Officer of the meeting from this point on.

Vice Chair Giovanni declared the Emergency motion (first agenda bullet point) moot since Chair Scheuer had voluntarily recused himself and addressed the next agenda item -To Consider Petitioner's Motion to Amend the LUC's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29th, 2013 (second agenda bullet point).

APPEARANCES:

Stuart Fujioka, Esq., Deputy Attorney General, representing Petitioner Dept. of Education (DOE)

Alison Kato, Esq., Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)

Rodney Funakoshi, Land Use Administrator, OPSD

Lorene Maki, Planner, OPSD

Mary Alice Evans, OPSD

Michael Hopper, Deputy Corporation Counsel, County of Maui Dept. of Planning (County)

Jordan Hart, Deputy Planning Director, County

Acting Chair Giovanni updated the record, described the procedures for the hearing, and asked any questions on the procedures.

Mr. Fujioka and Mr. Hopper respectively noted that they had provided late filings that were not included in the record update.

Mr. Hakoda confirmed that the LUC had received the Petitioner and County late filings just prior to the start of the day's hearing.

PUBLIC TESTIMONY:

Acting Chair Giovanni, with the assistance of Mr. Derrickson, called and sworn in public witnesses from the audience.

For brevity, the minutes will provide a list of the witnesses in the order they testified. "Supports" notation indicates that testimony was in support of the Petitioner's Motion to Amend. "Opposes" notation indicates that testimony was against the Petitioner's Motion. "Other" notation indicates that the testimony was unclear. (Parentheses indicate organizational representation)

- 1) Kelly King- Maui Council member- Opposes

Commissioner Okuda requested clarification on Resolution 19-20 adopted by the County of Maui Council during the Land Use Committee meeting.

Commissioner Wong requested clarification on the Council's ability to refuse to issue certificates of occupancy to the DOE based on non-compliance with the LUC Decision and Order.

- 2) Mike Moran- Kihei Community Association- Opposes

Mr. Fujioka requested clarification on Petitioner's Exhibit 43, Kihei Community Association (KCA) Sign Waving Event on August 19th, 2021.

Commissioner Chang and Okuda requested additional information from the Mr. Moran about KCA's request for an updated study, community willingness to accept the roundabout, and the current pedestrian's crossing path in the Waipulani gulch area.

Vice-Chair Giovanni declared recess at 1:56 p.m. and reconvened the meeting at 2:04 p.m.

- 3) Buck Joiner- resident. Opposes. No questions
- 4) Madolin Wells- resident. Opposes. No questions
- 5) Louise Lambert-former teacher. Opposes. No questions

- 6) Nick Drance-resident. Opposes. No questions
- 7) Andrew Beerer- resident. Opposes.

Commissioner Chang reviewed her questions from a prior LUC meeting on this matter with Mr. Beerer and recollected if any progress had been made.

Commissioner Wong asked Mr. Beerer's opinion on whether the Council and Executive Branch of Maui might have an alternate solution for the over/underpass situation.

- 8) House Representative Tina Wildberger- Opposes.

Commissioner Okuda questioned whether Ms. Wildberger had been contacted by anyone in the Executive Branch, DOE or DOT about the specific data she used in her testimony. Ms. Wildberger responded that she had not been contacted.

Commissioner Chang, Ohigashi and Wong requested clarification on the funding provided towards the underpass and on the budget amounts in existing appropriations for the underpass.

There were no further questions. Mr. Vice Chair moved to Petitioner's Presentation.

PETITIONER'S PRESENTATION

Mr. Fujioka provided a power point presentation to cover the history of the Kihei High School project in the areas of Traffic/Pedestrian studies, Future Studies, Recap of Timeline, Phasing of Student Enrollment and DOT's presentation to the Community.

Commissioner Aczon left the meeting at 2:58 p.m.

Commissioner Cabral inquired about who Mr. Fujioka worked for and who the decision makers were that made the final request to remove/amend the Condition.

Commissioner Wong left the meeting at 3:03 p.m.

Vice Chair Giovanni declared recess at 3:04 p.m. until September 9th, 2021 at 9:00 a.m.

LAND USE COMMISSION
MEETING MINUTES

September 8-9, 2021 – 9:00 a.m.

Pursuant to Exhibit C of the Governor’s Emergency Proclamation Related to the COVID-19 Response, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting
Meeting Link for Thursday, September 9th, 2021

https://us02web.zoom.us/webinar/register/WN_kgDUX61yTOerNb1gnUr_Iw

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Jonathan Scheuer
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
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Dan Giovanni
Arnold Wong

COMMISSIONERS EXCUSED:

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Julie China, Deputy Attorney General (DAG)
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

COURT REPORTER: via Naegeli Deposition and Trial
(from recorded ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:02 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. (8 Commissioners present).

SP21-412 MAHI SOLAR

To Consider Special Permit Application No. SP21-412 Mahi Solar Project, for an approximately 120 Megawatt alternating current (Mwac) solar and energy storage facility located in Kunia, O'ahu. TMK No. (1) 9-2 001:020 (por.) and (1)9-2-004:003 (por.), 006 (por.), 010 (por.), and 012 (por.)

APPEARANCES:

Randall Sakumoto, Esq. Petitioner's Counsel

Brett Tobin, Petitioner Mahi Solar's Representative.

Duane Pang, Esq., Deputy Corporation Counsel, Department of Planning and Permitting (DPP)

Franz Krintz, Planner, Representative for DPP

Alison Kato, Esq., Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)

Rodney Funakoshi, Land Use Administrator, OPSD

Earl Yamamoto, Department of Agriculture (DOA)

Chair Scheuer updated the record and asked Mr. Hakoda if any late filings had been received. Mr. Hakoda responded that a late filing from Petitioner had been received .

Chair Scheuer disclosed that his wife works for the same firm that handled the permitting process for this project at the County level but felt that he could be fair and impartial in this matter. There were no objections to Chair Scheuer's continued participation.

Chair Scheuer asked the Commissioners if they had any other disclosures. There were none.

Chair Scheuer described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

PUBLIC TESTIMONY

Chair Scheuer called for public witnesses from the audience.

For brevity, the minutes will provide a list of the witnesses in the order they testified. "Supports" notation indicates that testimony was in support of the Mahi Solar Project. "Opposes" notation indicates that testimony was against the Mahi Solar Project. "Other" notation indicates that the testimony was unclear.

- 1) Stephani Whalen- Executive Director of the Hawaii Agriculture Research Center- Supports.

Commissioner Cabral sought confirmation from Ms. Whalen that this project did not take away land from agriculture.

Commissioner Giovanni shared his concerns about continuing agriculture after decommissioning the solar project.

- 2) Murray Clay – President of Ulupono Initiative- Supports

Commissioner Giovanni commented that the Commission would welcome a presentation from the Ulupono Initiative regarding its Solar-Ag framework at a future date.

Commissioner Okuda requested clarification on Ulupono's proposed statutory and administrative rule amendments to the Legislature that the Commission could consider.

- 3) Cameron Black- Program Manager Hawaii State Energy Office- Supports.

Mr. Black described the type of coordination and cooperation with the DOA that the Energy Office needed to address issues confronting the development of renewable energy on Agricultural lands; and shared the reasons why the Energy Office supported the Petition.

- 4) Sharlette Poe- resident- Other

Commissioner Okuda assured Ms. Poe that the Commission takes its duty very seriously under the law and listens to the community.

Commissioner Chang asked the Witness if she had knowledge of Mahi Solar providing informational presentations to the neighborhood boards in Mililani and Waipahu.

There were no other witnesses.

Chair Scheuer closed Public Testimony and moved to the Applicant's Presentation.

APPLICANT'S PRESENTATION

Mr. Sakumoto provided a historical background and used a PowerPoint presentation to support his argument of why the Commission should grant the Petition for Special Permit.

Questions from the Commissioners:

Commissioner Giovanni requested clarification on the terms and conditions of the proposed power purchase agreement and how the agricultural lands would be restored to full agricultural use after the project's decommissioning.

Mr. Sakumoto offered Mr. Wren Wescoatt, Project Manager for Mahi Solar, to provide the project details to address Commissioner Giovanni's questions.

Mr. Wescoatt described the estimated useful life of this project, its anticipated financing plan, how possible extension of the project's lifespan might occur, the project's decommissioning plan, and the source of funding for the decommissioning.

Commissioner Chang requested clarification on the Mahi Solar community outreach efforts and proposed agricultural use within the solar project.

Commissioner Cabral inquired on the type of wiring that would be used for this project.

Commissioner Wong requested clarification on the type of fencing to be used around the battery area.

Chair Scheuer sought clarification on:

- water allocation for the project (Kunia Water Association)
- consistency of the project with IAL uses
- perceptions of equity of the IAL process with other landowners
- conditioning approval on actual success (Mr. Clay's testimony)
- visual impact of the project related to the cultural uses.

Mr. Sakumoto offered Kawika McKeague to respond to Chair Scheuer's questions.

Mr. Wescoatt commented on project's efforts to mitigate the visual impact of the project and described the Mahi Solar LLC ownership structure.

There were no other questions.

Chair Scheuer declared recess at 10:50 a.m., reconvened the meeting at 11:06 a.m. and called for the County's presentation.

COUNTY TESTIMONY

Mr. Duane Pang described the Planning Commission's support for the Petition and deferred to the State Department of Agriculture to provide its testimony.

Earl Yamamoto, Planner, Department of Agriculture ("DOA")

Mr. Yamamoto, DOA Planner provided his organization's testimony and stated that DOA fully supported this project and recommended that the project site be made at least 50% available for intense agricultural activities and provided DOA's proposed conditions for the project and its development.

Questions from the Commissioners

Commissioner Okuda requested what DOA's perspective was on the credibility of Mahi Solar LLC. Mr. Yamamoto provided his department's perspective on the matter.

Commissioner Chang asked if DOA would like to receive copy of the project's annual report to monitor Petitioner's compliance with the LUC conditions. Mr. Yamamoto acknowledged that receiving the annual report would be helpful.

There were no further questions for Mr. Yamamoto.

Chair Scheuer called OPSD to provide their testimony

OPSD

Ms. Kato stated that OPSD recommended the approval of the Special Use Permit subject to conditions, and described how OPSD had assessed and evaluated the proposed project to develop its position statement.

Chair Scheuer asked if OPSD's review included consultation with Wildlife Resources Management.

Ms. Kato deferred the question to Mr. Rodney Funakoshi.

Mr. Funakoshi described how OPSD had performed its water resource review.

Chair Scheuer shared how the issue of water diversion from streams for private commercial use was a public trust concern for the LUC.

APPLICANT'S FINAL COMMENTS

Mr. Sakumoto stated that the proposed solar facility would not be diverting water from the Waiahole Ditch and that the Applicant concurred with the recommendations provided by OPSD.

Mr. Pang commented that the County also supported the recommendations from OPSD.

Commissioner Chang asked if the Applicant had any objections to providing annual reports to DOA. There was no objection.

There were no other comments or questions.

FORMAL DELIBERATIONS

Commissioner Giovanni moved to approve the Petition for Special Use Permit as amended to include the conditions by OPSD and that the annual report would also be forwarded to DOA. Commissioner Wong seconded the motion.

Commissioner Giovanni spoke to the motion and shared his reasons for initiating the Motion.

Commissioners Wong, Okuda, Chang, Cabral and Ohigashi voiced their respective reasons for supporting the motion.

Commissioner Chang requested that the **Kapa'a kai** analysis be included as part of the LUC's FOF, COL and D&O.

Chair Scheuer shared his supported the project and encouraged its proponents to continue to address cultural impacts that may arise.

Chair asked Mr. Orodener to poll the Commission.

By a roll call the motion passes unanimously (8-0).

Chair Scheuer directed Vice-Chair Giovanni to preside over the remaining agenda item Docket No. A11-794 that he had recused himself from and exited the meeting.

Presiding Officer Giovanni called recess at 11:57a.m. and reconvened the meeting at 12:33 p.m. (7 Commissioners in attendance)

A11-794 SOH, DEPT. OF EDUCATION- KIHEI H.S.

To Consider Petitioner’s Motion to Amend the LUC’s Findings of Fact, Conclusions of Law and Decision and Order Filed July 29th, 2013.

Presiding Chair Giovanni stated that this was a continuation of the meeting for Kihei High School Docket No. A11-794 and that the Public Testimony portion of the meeting had closed. He also described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Commissioner Aczon confirmed that he was able to review the recorded portion of the meeting that he missed.

Presiding Officer Giovanni acknowledged that LUC had received email from Representative Tina Wildberger and that he would recall Ms. Wildberger to clarify her testimony for the record.

Representative Tina Wildberger

Ms. Wildberger stated that she was responding to Commissioner Ohigashi’s question on the Legislature’s financing for the DOE project from the prior day. (Commissioner Ohigashi had asked specifically whether DOE had come in for any funding in 2020-2021 and 2021-2022.)

Commissioner Aczon and Wong requested additional clarification on the \$7.2 million appropriation released by the Governor to the DOE, and other DOE financing.

There were no further questions for the Witness.

CONTINUATION OF PETITIONER’S PRESENTATION

Presiding Officer Giovanni called for the continuation of the Petitioner’s Presentation.

Mr. Fujioka presented a PowerPoint slide of a Kihei sign-waving event and called Ms. Brenda Lowrey as a witness.

- 1) Brenda Lowrey, Facilities Planner for Department of Education.

Ms. Lowrey shared what information DOE had provided to the community about roundabout safety considerations and the construction progress of the Kihei Roundabout.

Questions for the Witness:

There were no questions from the Parties.

Commissioner Okuda requested clarification of Ms. Lowrey's knowledge about the full Texas transportation study Exhibit 9, Kulahihakoi and Waipuilani Gulch.

Commissioner Chang requested clarification on the DOT's Community Presentation, DOE's Phasing of student enrollment and grade separated pedestrian crossing ("GSPC") financing.

Commissioner Ohigashi requested clarification on who made the final decisions to implement the roundabout and disregard the GSPC.

Mr. Fujioka requested and was granted a recess to consult with the Witness. Presiding Officer Giovanni urged Mr. Fujioka to obtain answers to the specific questions during the recess and declared a recess at 1:32 p.m.

Presiding Chair Giovanni reconvened the meeting at 1:40 p.m.

Discussion on funding and GSPC resumed.

Commissioner Okuda requested clarification on the Standard of Review that should be used for this case and shared his understanding of the definition of "Good Cause" and what his expectations of DOE were in presenting its case, and asked Mr. Fujioka about the weight of the community testimony submitted in this case.

Discussion ensued to clarify DOE's position on the GSPC and on County of Maui's proposed language regarding a GSPC.

Presiding Officer Giovanni declared recess at 2:30 p.m. and reconvened the meeting at 2:37 p.m.

Commissioner Wong and Cabral provided their suggested alternatives for a GSPC.

Mr. Fujioka offered Mr. Edward Sniffen, DOT, to respond to Commissioner's questions.

2) Edward Sniffen, Deputy Director for Highways, DOT.

Mr. Sniffen responded to Commissioner questions regarding the DOT's plans for signal lights, blocking access to the gulch, reasons for building the roundabout and availability of DOT funding.

Presiding Officer Giovanni stated that he would like additional clarification on Petitioner's Exhibit 11 on highway crossing alternatives and recalled Rep. Wildberger to provide further clarification on the decision making for allocated funds.

3) Representative Tina Wildberger

Ms. Wildberger stated Mr. Sniffen and Mr. Chung from DOE had a side conversation at the Capitol in 2019 where they made the decision to make the roundabout.

There were no other questions.

Presiding Officer Giovanni stated that the meeting would continue with Mr. Fujioka's presentation on October 13th, 2021.

Commissioner Ohigashi requested that the Petitioner inform the Commission on the status of project funding and the timetable for the roundabout construction at the next hearing.

Presiding Officer Giovanni adjourned the meeting at 3:01 p.m.

