

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on November 4, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

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- I. Call to Order
- II. Adoption of Minutes
- III. Tentative Meeting Schedule
- IV. STATUS REPORT AND ACTION (IF NECESSARY)
A11-794 STATE OF HAWAII, DEPARTMENT OF
EDUCATION -(Kihei High School) (Maui)
Consider Petitioner State of Hawaii, Department
of Education's Motion to Amend the Land Use
Commission's Findings of Fact, Conclusions of
Law, Decision and Order filed July 29, 2013
- V. DISCUSSION ON LUC COMMISSIONER-CULTURAL
SPECIALIST DESIGNATION
Designation of Commission Cultural Specialist
- VIII. Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
3 EDMUND ACZON, Vice Chair (Oahu)
GARY OKUDA (Oahu)
4 LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
5 DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

6

7 STAFF:

WILLIAM WYNHOFF, ESQ.
8 LAUREN CHUN, ESQ.
MELISSA GOLDMAN, ESQ.
9 Deputy Attorney General

10 DAN ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk
11 SCOTT DERRICKSON, Chief Planner

12 DAWN T. APUNA, ESQ.
Deputy Attorney General
13 RODNEY FUNAKOSHI, Planning Program Administrator
State of Hawaii, Office of Planning
14 State of Hawaii

15 MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
16 MICHELE McLEAN, Planning Director
County of Maui, Planning Department
17 County of Maui

18 STUART FUJIOKA, ESQ.
Deputy Attorney General
19 For Department of Education
State of Hawaii

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1 CHAIRPERSON SCHEUER: It's 9:00 o'clock.

2 Aloha mai kakou; good morning.

3 This is the November 4, 2020, Land Use
4 Commission meeting, and it is being held using
5 interactive conference technology linking
6 videoconference participants and other interested
7 individuals of the public via the ZOOM internet
8 conferencing program to comply with State and County
9 official operational directives during the COVID-19
10 pandemic.

11 Members of the public are viewing the
12 meeting via the ZOOM webinar platform.

13 For all meeting participants, I would like
14 to stress to everyone the importance of speaking
15 slowly, clearly, and directly into your microphone.
16 Before speaking, please state your name and identify
17 yourself for the record.

18 Also, please be aware that all meeting
19 participants are being recorded on the digital record
20 of this ZOOM meeting. Your continued participation
21 is your implied consent to be part of the public
22 record of this event. If you do not wish to be part
23 of the public record, please exit this meeting now.

24 This ZOOM conferencing technology allows
25 the parties and each participating Commissioner

1 individual remote access to the meeting proceedings
2 via their personal digital devices.

3 Also please note that due to matters
4 entirely outside of our control, occasional
5 disruptions to connectivity may occur for one or more
6 members of the meeting at any given time. If such
7 disruptions occur, please let us know and be patient
8 as we try to restore the audio visual signals to
9 effectively conduct business during the pandemic.

10 My name is Jonathan Likeke Scheuer, and I
11 currently serve as the LUC Chair. Along with me,
12 Commissioners Aczon, Chang, Okuda, and Wong, the LUC
13 Executive Officer Daniel Orodener, LUC Chief Planner
14 Scott Derrickson, Chief Clerk Riley Hakoda, the LUC's
15 Deputy Attorney Generals Lauren Chun and Bill Wynhoff
16 and our Court Reporter, Jean McManus are on O'ahu.
17 Commissioner Cabral is on the Big Island,
18 Commissioner Ohigashi is on Maui and Commissioner
19 Giovanni is on Kaua'i. There are currently eight
20 seated Commissioners of a possible nine.

21 With that, I'm going to note that because
22 we are awaiting for Commissioner Giovanni's
23 attendance, we're going to have to recess. Is that
24 correct, Mr. Orodener?

25 EXECUTIVE OFFICER: That's correct, Mr.

1 Chair.

2 CHAIRPERSON SCHEUER: So I apologize to all
3 participants and members of the public, but we are
4 going to need to recess until we're joined by
5 Commissioner Giovanni, which is supposed to be at
6 9:30 a.m.

7 I will note for the record also that in the
8 Q and A section, I note that Mr. Mike Moran and
9 Representative Tina Wildberger have apparently
10 submitted testimony on our next agenda item, and I
11 will ask the Chief Clerk to use this opportunity to
12 see whether that can be provided to the parties.

13 With that we are going to go into recess.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: Good morning, we are
16 back in session.

17 Aloha again. This is the November 4th,
18 2020 Land Use Commission meeting. We just came out
19 of recess awaiting the arrival of Commissioner
20 Giovanni.

21 First order of business is the adoption of
22 the October 7 and 8, 2020 minutes.

23 Mr. Hakoda or Mr. Derrickson, has there
24 been any written testimony on the adoption of the
25 minutes?

1 CHIEF CLERK: Mr. Chair, this is Riley. No
2 written testimony on the minutes.

3 CHAIRPERSON SCHEUER: Is there any member
4 of the public who's attending in the attendee room of
5 the ZOOM meeting who wishes to testify solely
6 regarding the adoption of our last minutes. If so,
7 use the raise-hand communication on your ZOOM
8 meeting, and I will admit you, swear you in and allow
9 you to testify on the adoption of minutes. Seeing
10 none.

11 Are there any comments or corrections on
12 the minutes, members? If not, is there a motion to
13 adopt? Commissioner Cabral.

14 VICE CHAIR CABRAL: I will make a motion to
15 adopt the minutes of October 7th and 8th. Thank you.

16 CHAIRPERSON SCHEUER: A motion has been
17 made by Commissioner Cabral and seconded by
18 Commissioner Ohigashi.

19 I will comment for the record that it
20 brought up my PTSD to have to read through the
21 minutes of that meeting.

22 Any other comments? If not, Mr. Orodenker,
23 please roll call the Commission.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.
25 Commissioner Cabral?

1 VICE CHAIR CABRAL: Yes.

2 EXECUTIVE OFFICER: Commissioner Ohigashi?

3 COMMISSIONER OHIGASHI: Aye.

4 EXECUTIVE OFFICER: Commissioner Aczon?

5 VICE CHAIR ACZON: Aye.

6 EXECUTIVE OFFICER: Commissioner Wong?

7 COMMISSIONER WONG: Aye.

8 EXECUTIVE OFFICER: Commissioner Chang?

9 COMMISSIONER CHANG: Aye.

10 EXECUTIVE OFFICER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE OFFICER: Commissioner Giovanni?

13 COMMISSIONER GIOVANNI: Aye.

14 EXECUTIVE OFFICER: Chair Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.

17 The motion passes unanimously.

18 CHAIRPERSON SCHEUER: Up too late, watching
19 election returns, Mr. Orodener?

20 EXECUTIVE OFFICER: Yeah, you could say
21 that.

22 CHAIRPERSON SCHEUER: Nevertheless, I am
23 going to have you go over our meeting schedule as the
24 next agenda item.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1 The next meeting well be tomorrow, once
2 again by ZOOM on Hawaiian Islands Land Trust Motion
3 to Amend.

4 November 18th is somewhat up in the air,
5 but we have Pulama Lanai EA adoption and any further
6 matters with Kihei High School, if necessary.

7 On November 19th we have C. Brewer
8 bifurcation status hearing.

9 And then on December 2nd we have tons of
10 rescheduled, the University of Nations matter, and on
11 December 3rd as well.

12 December 16th and 17th is currently open.

13 January 6 we have Hokua Place and January 7
14 we also have Hokua Place.

15 On January 27th, we have the Kamalani
16 matter on Maui.

17 On the January 28th, we have the Barry
18 Trust matter on Big Island.

19 February 10th we also the Barry Trust
20 matter scheduled for adoption of order.

21 And that takes to the schedules of
22 uncertainty at this point.

23 CHAIRPERSON SCHEUER: Thank you very much,
24 Dan.

25 Commissioners, any questions for Dan about

1 our schedule? Seeing none.

2 I apologize if you're picking up some
3 construction noise in the background. At this
4 particular meeting location of LUC, a house is being
5 constructed nearby, but let me know if you're having
6 a hard time hearing my voice.

7 Our next agenda item Docket All-794, State
8 of Hawaii, Department of Education (Kihei High
9 School) (Maui) for a status report and action, if
10 necessary, on that docket to consider the
11 Petitioner's State of Hawaii, Department of
12 Education's Motion to Amend the Land Use Commission's
13 Findings of Facts, Conclusions of Law and Decision
14 and Order filed July 29, 2013.

15 Will the parties on All-794 please identify
16 yourself for the record. You may need to enable your
17 audio.

18 MR. FUJIOKA: Stuart Fujioka, Deputy
19 Attorney General for movant Department of Education.

20 CHAIRPERSON SCHEUER: Do you have any of
21 your clients with you?

22 MR. FUJIOKA: Randall Tanaka. I don't see
23 him appearing yet, although I just spoke with him.

24 CHAIRPERSON SCHEUER: I see he's indicated
25 as having logged into this morning's meeting.

1 MR. FUJIOKA: I see him now. Thanks.

2 CHAIRPERSON SCHEUER: Is that it?

3 MR. FUJIOKA: Yes. And there should be
4 someone from the Department of Transportation
5 attending. I know Ed Sniffen had a schedule overlap,
6 but either him or Robin Shishido should be on. I
7 don't see Robin or Ed.

8 CHAIRPERSON SCHEUER: Please let me know if
9 your clients appear.

10 MR. FUJIOKA: I'm sorry?

11 CHAIRPERSON SCHEUER: Please let me know if
12 your clients appear.

13 MR. DERRICKSON: Robin Shishito is in the
14 attendee side right now.

15 CHAIRPERSON SCHEUER: Maui County.

16 MR. HOPPER: Thank you, Mr. Chair and
17 members of the Commission, Michael Hopper, Deputy
18 Corporation Counsel representing Maui County,
19 Department of Planning. With me is Planning Director
20 Michele McLean.

21 CHAIRPERSON SCHEUER: Office of Planning.

22 MS. APUNA: Good morning, Chair, Deputy
23 Attorney General, Dawn Apuna on behalf of State
24 Office of Planning. Here with me today is Rodney
25 Funakoshi.

1 CHAIRPERSON SCHEUER: Thank you.

2 Now let me update our record.

3 At our meeting on September 10, 2020, the
4 Commission took public testimony and heard arguments
5 on A11-794 and deferred consideration of the DOE's
6 Motion to Amend. The Parties were directed to engage
7 in meetings with the community and each other to
8 attempt to solidify their positions on this matter.

9 New position Statements were to be filed by
10 November 5, 2020, and the Chair was authorized to
11 sign the deferral order.

12 On October 28th, the Commission emailed and
13 mailed our November 4th and 5th, 2020 agenda notice
14 of our meeting to our statewide, Maui and Hawaii
15 regular and email mailing lists.

16 Let me briefly run over our hearing
17 procedure for the day.

18 First, I will recognize the written public
19 testimony that has been submitted in this matter
20 identifying the person or organization who has
21 submitted the testimony.

22 Next, I will call for those individuals who
23 have pre-registered to provide public testimony for
24 this docket. All such individuals will be called in
25 turn by the Chair who will enable their audio and

1 video to our virtual witness box where they will be
2 sworn in. These individuals will have two minutes to
3 provide their testimony and should stand by after
4 their testimony to respond to any questions the
5 Parties or Commissioners may have. When all
6 questions have been completed, the Chair will excuse
7 the witness, put them back into the viewing audience,
8 and call for the next witness to enter the virtual
9 witness box.

10 After all registered testifiers complete
11 their testimonies, I will call for those individuals
12 in the general audience who wish to provide public
13 testimony for this docket to identify themselves by
14 using the "raised hand" webinar function on their
15 device screens. The Chair will recognize all such
16 individuals and will call them in turn to our virtual
17 witness box where they will be sworn in.

18 These individuals will also have two
19 minutes to provide their testimony and should stand
20 by after their testimony to respond to any questions
21 the Parties or Commissioners may have.

22 When all questions have been completed, the
23 Chair will excuse the witness, return them to the
24 audience, and call for the next witness to enter the
25 virtual witness box, until all testifiers have been

1 heard.

2 After completion of the public testimony
3 portion of the proceedings, the Petitioner will
4 present its status report. Once Petitioner has
5 completed its presentation, it will be followed in
6 turn by the County of Maui and the State Office of
7 Planning.

8 From time to time we will take short
9 breaks. I try to take a break of about ten minutes
10 every hour.

11 Are there any comments or questions on our
12 procedures for today?

13 MR. HOPPER: No, Mr. Chair.

14 CHAIRPERSON SCHEUER: Mr. Fujioka?

15 MR. FUJIOKA: No comments.

16 MS. APUNA: No Chair.

17 CHAIRPERSON SCHEUER: We have, in the half
18 hour recess that we ended up having this morning,
19 testimony was forwarded to us by Mr. Hakoda. In
20 addition, prior to testimony being forwarded to us,
21 one testimony had been timely received on this
22 matter.

23 Sorry, Mr. Hakoda, the name of that
24 testifier is Andrew Beerer?

25 CHIEF CLERK: That's correct.

1 CHAIRPERSON SCHEUER: I see Mr. Beerer is
2 here. If you wish to testify, please use the
3 "raise-hand" function.

4 I'm going to admit you in and enable your
5 video, if possible, Mr. Beerer. There you are.
6 Aloha.

7 You're frozen. How's your audio? Can you
8 say something? If you're having connectivity issues
9 -- excuse me.

10 Maybe just dis-enable your video and we
11 will just have you by audio. That might improve the
12 connectivity.

13 Mr. Beerer, do you swear or affirm the
14 testimony you're about to give is the truth?

15 THE WITNESS: I do.

16 CHAIRPERSON SCHEUER: State your name and
17 address for the record and please proceed.

18 Thank you for joining us.

19 ANDREW BEERER

20 Was called as a witness by and on behalf of the
21 Public, was sworn to tell the truth, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 THE WITNESS: My name is Andrew Beerer,
25 address 56 Kaloa Place, Kihei, Hawaii 9653 -- the

1 testimony today on public --

2 COURT REPORTER: Excuse me. Mr. Chair, I'm
3 having difficulty understanding the witness.

4 CHAIRPERSON SCHEUER: Yeah. Mr. Beerer, I
5 apologize, I think -- and I am somebody who also has
6 a co-worker at home as well as remote learner at
7 home, so I appreciate the limited bandwidth issue.

8 We have your written testimony. Since we
9 are having such a hard time hearing you, do a brief
10 as possible statement on your position.

11 You're opposed to the motion, and what do
12 you specifically need us to know this morning?

13 THE WITNESS: Although we --
14 (indecipherable) roundabout, there currently is no
15 roundabout, so we don't want to see any concession --
16 -- (indecipherable) there is funding for roundabout.

17 CHAIRPERSON SCHEUER: You're in favor of
18 the roundabout, but there is currently no funding for
19 the roundabout, and your unwilling to see any
20 exception on the conditions until there is such
21 funding.

22 Do I understand that correctly?

23 THE WITNESS: I don't know if you got any
24 of that.

25 CHAIRPERSON SCHEUER: Thanks for everyone's

1 patience. This is one of those moments.

2 What I heard you say is that you're in
3 favor of a roundabout, but there is no firm funding
4 for a roundabout, and you're unwilling to accept
5 concessions on the conditions until such firm funding
6 is available?

7 THE WITNESS: Correct. No need to make a
8 rush to judgment today. We need to get that
9 confirmed funding, otherwise we could end up with a
10 worst (indecipherable) -- intersection with no safe
11 crossing.

12 CHAIRPERSON SCHEUER: Thank you very much,
13 Mr. Beerer. Sorry for technical difficulties.

14 Sorry, go ahead.

15 THE WITNESS: If you could just go by my
16 written testimony, that would be great.

17 CHAIRPERSON SCHEUER: We will, thank you.

18 Are there any questions for the witness,
19 Department of Education?

20 MR. FUJIOKA: I don't have any questions
21 for him. Thank you.

22 CHAIRPERSON SCHEUER: Maui?

23 MR. HOPPER: No, Mr. Chair.

24 CHAIRPERSON SCHEUER: OP?

25 MS. APUNA: No questions.

1 Commissioners for all your help for the community.

2 Rather than repeating what was in our
3 testimony, and a lot of it reflects what Andrew said
4 or was trying to say this morning, so I think our
5 position is pretty clear.

6 I just wanted to -- I'm not sure when the
7 DOE had a meeting. I know Executive Officer was
8 there, but I don't know whether -- what happened at
9 those meetings is relayed to the Commissioners. So I
10 would just offer from our perspective as a volunteer
11 organization, we understood what the Chair said this
12 morning, that the intent was to have communication.

13 We waited several days and didn't receive
14 any communications, so we tried to be proactive and
15 wrote to the DOE and asked to have some communication
16 set up. And we did get a response, and they set a
17 meeting kind of not asking if we were available, but
18 I guess that's the way it is. This is when this
19 meeting will be, and you're welcome to participate.

20 So all our volunteers lined up and without
21 trying to beat a dead horse, some guys were taking
22 off from work, some are arranging child care, and 18
23 minutes before that meeting was scheduled to begin,
24 we got an email that said, sorry, meeting is
25 postponed.

1 And then a few days later we got a new
2 notice that a new meeting was scheduled.
3 Unfortunately, we lost a lot of our volunteers,
4 people said I already spent the money, I spent the
5 time. I can't keep doing this.

6 So we had limited participation in that
7 second meeting, but we did our best and did
8 participate. And we did receive some documents the
9 evening before the meeting had took place. A lot of
10 detail on the timeline for the school. And then when
11 the meeting started, we were expecting to hear from
12 the DOE, but we were told, no, they were expecting to
13 hear from us.

14 So we were limited in our manpower and
15 unprepared, but we tried. We went to their
16 documents, and Andrew started asking questions about
17 the timeline, and every question was deflected; we're
18 not prepared to answer that.

19 So just got me wondering, what is the
20 purpose of the meeting? They said the purpose of the
21 meeting is we want you to agree to get rid of this
22 condition. And we said, well, no, we're not. Pretty
23 much what's reflected in Andrew's written testimony
24 as ours, was how we felt about the situation.

25 No, there's nothing. There's nothing said

1 here. And my recollection is that DOT Deputy
2 Director Sniffen guaranteed that the roundabout was
3 coming in, just take my word for it, it's going to be
4 in, but nobody had information on funding.

5 So that seemed like an unacceptable way to
6 proceed, just take somebody's word that the
7 roundabout will be done, now go ahead and proceed.

8 So while there was communication, we felt
9 it was kind of disjointed rather ineffective
10 communication. So then we tried to reach out to --
11 we did reach out to the Executive Director a couple
12 of days before and said, we want it to be clear, this
13 is our position. We weren't sure if this item was
14 going to be on the agenda or not, but this was our
15 position.

16 And that brings us up to today. So I think
17 everything is pretty clear what Andrew was saying.

18 We're not prepared to say, yes, on this
19 condition, when nothing is assured. We could be
20 going back to 2013 before the condition was ever put
21 in by the Commission that they could just put a
22 traffic light and no off-grade crossing, no
23 roundabout, just the way it was before.

24 So we're not prepared to accept that this
25 morning. Thank you very much. I tried to be short,

1 but I was pretty long-winded.

2 CHAIRPERSON SCHEUER: It was a good
3 summary, Mr. Moran. Thank you very much.

4 Are there questions for Mr. Moran from the
5 Department of Education?

6 MR. FUJIOKA: No questions.

7 CHAIRPERSON SCHEUER: Maui County, Mr.
8 Hopper?

9 MR. HOPPER: No questions, Chair.

10 CHAIRPERSON SCHEUER: Office of Planning?

11 MS. APUNA: No questions.

12 CHAIRPERSON SCHEUER: Commissioners?

13 Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you very much,
15 Mr. Chair.

16 Thank you, Mr. Moran, for taking time to
17 participate in today's hearing. May I ask this first
18 question?

19 Who were you dealing with as far as setting
20 up this meeting and having the meeting postponed and
21 the transmittals of documents to you? I mean, was
22 there somebody with the State of Hawaii, an
23 individual that was the point of contact?

24 THE WITNESS: There was, Commissioner
25 Okuda, but unfortunately I don't recollect a name.

1 My best recollection it was a wahine, which I guess
2 reduces it to half the population, but I don't -- I'm
3 pretty challenging for me to try to zip back to
4 email. We'd probably get cut off here, but I don't
5 recall her name.

6 But I'm sure someone at DOE could tell us
7 who was doing the communication on the e-mails and
8 setting up the first meeting, cancelling that and
9 then setting up the second meeting.

10 Then once the meeting transpired, Randall
11 was the individual who was conducting the meeting,
12 but he was not the one who sent out the notices, and
13 there was no mention of why the meeting was
14 cancelled. I guess that's not an obligation, but
15 kind of in Hawaii we kind of expected somebody would
16 have said, gee, we're sorry, we had to cancel that
17 meeting but we had an emergency. But it wasn't
18 stated and we didn't ask for a reason for it.

19 So that's the best explanation I can give
20 at this time, Commissioner.

21 COMMISSIONER OKUDA: Mr. Moran, and my
22 question is not intended to put down or denigrate the
23 staff personnel at any agency or any department or
24 frankly any private company. I'm just trying to find
25 out whether somebody in authority used that word

1 generally, was the point of contact, or whether or
2 not this was just a person who appeared to be just a
3 low level staff person just making the arrangements?

4 And I'm not saying there's anything
5 necessarily wrong with that, but I'm trying to find
6 out what level of contact was being outreached by the
7 department.

8 Was it your impression it was just a
9 regular lower level staff person that was making
10 these arrangements?

11 THE WITNESS: Yes, sir, that was my
12 interpretation that it was somebody -- I was just
13 told, okay, here's the plan, the authority figures
14 made the plans for me, and then said, okay, send this
15 out to all the appropriate people, and somebody did.

16 And then likewise, somebody in authority
17 said, wait, we're not having a meeting today, just
18 send out another notice now.

19 You know, they were coming in e-mails, so
20 some of our group didn't even get it. I'm quickly
21 trying to send an email to everybody at work --

22 COMMISSIONER OKUDA: I don't mean to cut
23 you off, I'm just trying to find out what level of
24 participation or authority was involved in setting up
25 this meeting.

1 Can I ask you a broader question?

2 THE WITNESS: Certainly.

3 COMMISSIONER OKUDA: This is kind of
4 similar to the questions I asked at a contentious
5 Mauna Kea hearing which had come before the
6 Commission before the pandemic.

7 You know, trying to look for solutions
8 here, would it be fair to say that one of the
9 problems that we're facing on this issue -- and let
10 me be blunt because my wife always accuses me of not
11 having any tact -- but there is just no trust with
12 the Department of Education.

13 I mean, speaking very frankly and bluntly,
14 that the community does not trust the Department of
15 Education. Whether or not that belief is right or
16 wrong or what have you, that's a fundamental problem
17 we're having here.

18 THE WITNESS: Yes. I agree to that. And
19 again, just like you, I'm not casting aspersions at
20 individuals, because there has been so many different
21 individuals at the DOE. You're dealing with somebody
22 for a couple of years and then all at once you don't
23 get any response. And do some homework, and say that
24 guy retired six months ago. Well, gee, why didn't
25 somebody tell us? So, no.

1 But for the department, the department as a
2 whole, yes. Very little faith in it, because of so
3 many missteps and so many lack of communications, so
4 as an entity, as the department, yes, sir, very, very
5 little the faith with the community.

6 COMMISSIONER OKUDA: And you probably don't
7 know my background, I don't expect you to, but I do
8 trial work. And I believe litigation is an example
9 of failures of the human spirit and human beings
10 where we fight things out in court.

11 Let me ask you this question, so we try
12 avoid or minimize the normal failures of human
13 behavior.

14 If I were the tooth fairy and asked you to
15 tell me one thing, just name one thing the Department
16 of Education could do, as maybe just a small step of
17 building a bridge of trust with the community, what
18 would be that one thing?

19 And, you know, and I don't mean to sound
20 facetious or stupid here, but you know if you tell
21 me, hey, the thing to show trust is to dress up in an
22 Easter Bunny suit along the highway waving to cars,
23 I'll take that.

24 Because building bridges require -- or
25 relationships require little bricks here and there.

1 So what would be the one thing, maybe a
2 very small step, but the one thing which, if the
3 Department of Education did, the one concrete thing
4 in your mind would demonstrate that there is a real
5 effort being done to demonstrate trust and
6 relationship with the Kihei Community?

7 THE WITNESS: Okay. Commissioner, I would
8 -- I thought I heard at the last meeting was a
9 request for the department to communicate with the
10 community, and I don't feel that I'm the community, I
11 am one single voice that represents a group that's
12 trying to represent the community.

13 So to me, I thought one positive step, and
14 maybe this is a small step for DOE or not, but to me
15 it would be, is to arrange a meeting such as this, a
16 ZOOM meeting with the community, say anybody that
17 lives in South Maui, we would like to present to you
18 our position.

19 They have a public meeting -- of course,
20 that was in the days of before the virus when you
21 would have an in-person meeting, perhaps three years
22 ago, and we thought that was an excellent way. They
23 had several representatives came to Kihei, arranged a
24 public meeting, and we thought that was very positive
25 thing to do.

1 But then years go by and there's no more
2 communication, and we keep getting the questions from
3 the community. How come the construction has stopped
4 for six months? What's going on? We don't know and
5 we can't get an answer. So we tell them we're trying
6 to find out. Maybe if enough voices, if enough
7 individuals ask the department, maybe go to your
8 elected officials, but we can't get answers as much
9 as we're trying as volunteers. So we think that
10 might be one positive step. In our estimation that
11 would be a reasonable thing to say.

12 Allow time and probably pick a reasonable
13 time, you know, some social working, maybe on a
14 weekend, maybe on an evening or late time in the day
15 to say we're going to have a public meeting for one
16 hour or whatever time limit they want it to be,
17 anybody can participate, and we'll give a
18 presentation and we'll answer questions from the
19 community as a way to truly communicate with the
20 community.

21 COMMISSIONER OKUDA: So, Mr. Moran, if I
22 can just summarize, and this is my last question,
23 actually in two parts.

24 One of the steps which you believe would be
25 a demonstration of the willingness of the Department

1 of Education to truly communicate and work with the
2 community would be to have something like a community
3 ZOOM meeting at a convenient time. Correct?

4 THE WITNESS: Correct.

5 COMMISSIONER OKUDA: And secondly, would it
6 help in resolving or minimizing these communication
7 issues if somebody with authority, it doesn't have to
8 be at the assistant superintendent level, because we
9 understand at that level people are very busy, but
10 somebody with authority to be the designated point
11 person to not only receive communications from the
12 community, but actually respond?

13 And when I say respond, I mean a
14 substantive response, not a pass the buck response.

15 Would that be helpful?

16 THE WITNESS: That would be most helpful,
17 Commissioner, because, yes, we have all seen those
18 things: I can't answer that, have to check with my
19 boss and get back to you. That defeats the purpose
20 of bringing the community together.

21 So, yes, sir, that second part would be
22 extremely helpful.

23 COMMISSIONER OKUDA: In other words, a name
24 of the person, disclosure of the title of the person
25 so there is at least a feeling of confidence that

1 that person is not just some throw away low level
2 person put out as a sacrificial lamb, and a telephone
3 number and email to contact that person. Would that
4 be something that would be helpful, in your opinion?

5 THE WITNESS: Yes, sir, I completely agree
6 with that.

7 COMMISSIONER OKUDA: Thank you, Mr. Moran,
8 thank you, Mr. Chair. No further questions.

9 CHAIRPERSON SCHEUER: Commissioners, are
10 there further questions for Mr. Moran?

11 COMMISSIONER WONG: Chair.

12 CHAIRPERSON SCHEUER: Commissioner Wong.

13 COMMISSIONER WONG: Mr. Moran, I just have
14 a question. As you know, right now, we have some --
15 the State in general has some fiscal issues, and at
16 this point in time I can't see them building an
17 overpass or underpass, but could they maybe do a
18 roundabout? Could we put some sort of conditions or
19 change the condition to say let's do a roundabout
20 now, and in Phase II, when there is more funding, you
21 must do an overpass or underpass?

22 THE WITNESS: Well, the challenge,
23 Commissioner, goes back to what your fellow
24 Commissioner asked. Is there trust in the community?
25 We go back when this condition was put in in 2013

1 when all these challenges weren't -- you know, by
2 delaying and delaying to making comments that they
3 didn't understand that this was a condition. That to
4 say, okay, we believe you now, DOE, we will give up
5 on this, because you're giving us your word that you
6 will do this at some future time.

7 The community is unfortunately not going to
8 accept that, because they have been misled so many
9 times, and to say that, okay, we will do this now,
10 even though we have no assurance that they can do it,
11 they could do the roundabout.

12 That's the question. How do we know they
13 can do the roundabout if there is no funding? And as
14 you mentioned, this is very challenging times.

15 Had the DOE proceeded in some sort of a
16 proactive way, all this would have been achieved
17 beforehand. So when you ask now when there's no
18 assurance that anybody is -- you know, Mr. Sniffen's
19 word that he will get this done somehow, doesn't
20 instill a lot of confidence in anyone.

21 So to ask that, that's part of our
22 testimony to say this (indecipherable) -- we can't do
23 the roundabout, so now you gave us the okay to forget
24 the condition. So that we're left with nothing.

25 So that's the challenge we have with trying

1 to do something along those lines.

2 COMMISSIONER WONG: I totally agree with
3 you. I mean, they jerked around the Land Use
4 Commission too by promising certain stuff. So I
5 understand your point.

6 But what I'm saying is, let's put in two
7 conditions, or two parts to the condition, roundabout
8 now, plus the overpass or underpass in like five to
9 seven years.

10 THE WITNESS: Well, this is such a
11 complex -- but I will just relay what one of my
12 community members, when we were trying to discuss
13 this matter, and he said, what I'm understanding is
14 the roundabout is safer for pedestrians and
15 bicyclists than a signalized intersection. But an
16 off-grade crossing is the safest.

17 So are we willing to put our children's
18 life and limb on -- we have got to do it a little
19 better, so fewer kids will get killed and there will
20 be fewer accidents. Or do we want to say, no, that's
21 why we have this condition in here. We want what's
22 the safest.

23 Is it money, or is it life and limb, not
24 only of the school children, but the staff and the
25 whole community which was brought up at a prior LUC

1 meeting that once the school is opened, there will be
2 community events going there.

3 So to say just delay this, three, four,
4 five, six years down the line, and oh, okay. Now
5 there is an accident and a child gets killed, maybe
6 we will set it up now, that seems like a disingenuous
7 way to proceed after all this time.

8 COMMISSIONER WONG: I totally agree with
9 you. When we had a meeting in Maui I think all of
10 the Commissioners just said no life should be given
11 for this one thing. I mean, every life matters. It
12 doesn't matter even if it's a dog or a cat, every
13 life matters.

14 So we all agree on the Commission side that
15 no life should be given for anything. So, you know,
16 we are on the same page.

17 THE WITNESS: Great.

18 COMMISSIONER WONG: Find something to work
19 out that we can start the process now so they
20 don't say, oh, we cannot do it now and we're not
21 going to do it later. So we want to get at least
22 something from them, that's now. At least that's
23 what I'm trying to see.

24 THE WITNESS: And I understand that,
25 Commissioner, but I don't think we have to make that

1 decision today. We're willing to proceed.

2 CHAIRPERSON SCHEUER: If I may, as the
3 Chair, I think this colloquy is very important, but I
4 don't think that we're going to resolve --
5 Commissioner Wong has expressed his tendency toward
6 the thing and Mr. Moran has expressed it's not
7 possible to come to that conclusion today.

8 Is there anything further, Commissioner
9 Wong?

10 COMMISSIONER WONG: Just want to say thank
11 you, Mr. Moran; thank you, Mr. Chair.

12 CHAIRPERSON SCHEUER: Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Mr. Chair.

14 Good morning, Mr. Moran. Thank you again
15 for taking the time to join us at this hearing.

16 Have you read the Department of Education's
17 Motion and their proposed revisions to the condition?

18 THE WITNESS: I would have to honestly say
19 I personally have not. You know, as a figurehead
20 president of the association -- and this is not any
21 reflection on you, Chair, believe me -- but as a
22 figurehead leader, I'm only in the position because
23 nobody else wants to do it, but I rely on people who
24 are much smarter and are really laser focused on one
25 issue.

1 Unfortunately, we have such poor
2 communication with our Andrew Beerer. He has read
3 all these documents, believe me. So he's the one
4 that I refer to. So I can honestly say, I know he
5 has read everything. I have no doubt in my mind.
6 And if he were able to communicate, he would tell you
7 that. But honestly myself, no, I have not.

8 COMMISSIONER CHANG: Mr. Moran, you are
9 much too humble as you are much more akamai than you
10 give yourself credit for.

11 I probably should have asked Mr. Beerer
12 this question. I just wanted to confirm that the
13 position of at least your organization and those that
14 you have been speaking with, is that you oppose the
15 Department of Education's request to delete the
16 condition in the LUC approval that requires the above
17 or below ground pedestrian crossing. That is your
18 position. You don't want that deleted?

19 THE WITNESS: Not today, certainly not
20 today. It would be in the future, we will see. Our
21 feeling is that's what we are deciding is what is the
22 Commission going to decide today, and we are not
23 ready to ask to you do that today.

24 COMMISSIONER CHANG: But do you support the
25 roundabout if funding is provided?

1 THE WITNESS: Completely, totally. We
2 fought for this for many, many years. This came from
3 our community when the DOT was opposed to it.
4 Unfortunately, we kind of feel that they changed
5 their position, we didn't change ours.

6 So in general, we are totally in support of
7 a roundabout.

8 COMMISSIONER CHANG: And we also heard you
9 say in your discussions with Commissioner Wong is
10 that no decision needs to be made today regarding
11 whether the roundabout gets built in five or seven
12 years, but you would agree that doing a reassessment
13 within the next couple of years about the
14 effectiveness of signalized crosswalk as well as the
15 roundabout is reasonable as a way to keep -- to
16 assess whether you may need to go in Phase II to
17 building the underpass or the overpass, but you're
18 comfortable with coming back and doing an assessment
19 or reevaluation of any additional mitigation measures
20 to ensure safety. Are you comfortable with that?

21 THE WITNESS: Well, to be clear,
22 Commissioner, it's our understanding that there seems
23 to be total agreement that the roundabout is going,
24 there will not be a signalized intersection, and we
25 did get the feeling at this meeting with the DOE and

1 with DOE chiming in, that it was kind of being put to
2 us: Well, we're giving the roundabout, so you have
3 to give up on the condition.

4 And our response to that was, no. You're
5 not giving us anything. You're doing what the
6 engineers said is the best, safest way for this
7 intersection is to put in the roundabout.

8 So we're accepting that as a settled
9 decision. Now, once the roundabout is put in,
10 whether delaying the school for the underpass or
11 overpass in addition to the roundabout, we will have
12 to cross that bridge when we come to it. We sure
13 hope not. Because, again, we want the safest, not
14 safer, but we are all aware of financial
15 considerations. Who knows where this pandemic will
16 be in one year, in two years, but our understanding
17 is the roundabout itself, that's not going to be
18 going back.

19 Well, as you know, if you don't help us by
20 giving up on the condition for the off-grade, then
21 we're taking away the roundabout. I think we would
22 have a riot in our community if that was proposed.
23 We're now bargaining with children's lives.

24 COMMISSIONER CHANG: Thank you, Mr. Moran.
25 In all due respect to DOE, it's not going to be their

1 decision. That will be the LUC's decision.

2 I appreciate your testimony. Thank you so
3 much. I have no other questions.

4 CHAIRPERSON SCHEUER: Thank you, very much,
5 Commissioner Chang.

6 Commissioner Aczon.

7 VICE CHAIR ACZON: Mr. Moran, I guess I
8 want to confirm things. The last meeting we had, it
9 was overwhelmingly the community saying all or
10 nothing, we want the roundabout, and we also want the
11 underpass or overpass.

12 Has the position changed that roundabout is
13 okay if it is funded and done?

14 THE WITNESS: No, you're correct, sir, that
15 has been our position all along that we feel that the
16 condition for the off-grade crossing was put in years
17 ago by the Commission, and we applauded that. We
18 thought it was the right thing to do.

19 Once the DOE said they were putting a high
20 school mauka of the highway, when whatever it is,
21 95 percent of the population is makai, we felt that
22 was good. We kept asking for the roundabout, but we
23 understood that at that time the DOT was saying
24 absolutely not, we're not going to do it.

25 Once the DOT --

1 VICE CHAIR ACZON: My question is, the last
2 hearing you are saying all or nothing, we want a
3 roundabout, and we also want an underpass or
4 overpass.

5 Now you are saying, the community is
6 saying, give us the roundabout, and we talk about the
7 thing later.

8 THE WITNESS: We're still saying we want
9 both. We felt --

10 VICE CHAIR ACZON: Okay, thank you. I got
11 the answer. Thank you.

12 CHAIRPERSON SCHEUER: Commissioners, any
13 further questions for Mr. Moran?

14 Commissioner Giovanni.

15 COMMISSIONER GIOVANNI: Mr. Moran, thank
16 you again for your service to volunteer representing
17 your community.

18 We heard from the Department of
19 Transportation at the last hearing on this matter
20 that the existing underground route was unsafe,
21 despite the fact that there is a beaten path today
22 where people are taking the path.

23 So if the roundabout is built, we asked the
24 Department of Transportation, would they block --
25 temporarily block off, with like a chain-link fence,

1 access to the underground pathway in its undeveloped
2 state? And they said they couldn't do that either
3 because it would -- in the event of a flash flood, it
4 would accumulate debris and cause a real problem.

5 So from a safety perspective, what do you
6 see as the fate, or what is acceptable in the interim
7 for the underground pathway should the roundabout be
8 built, but the underground pathway not be addressed
9 yet?

10 THE WITNESS: Well, I think a few things to
11 consider, Commissioner, is that maybe I'm
12 stereotyping, but I was one of those a long, long
13 time ago, I was one of those high school kids. And I
14 think if they did try and block off access, they
15 would have to build a Trump-style wall along the
16 border. And I'll give you an example of that.

17 For years just north of where this school
18 site is, the Kihei Charter School had their school
19 located in that industrial park. And directly in
20 line with where that school was, there was a
21 concrete, like a big circular concrete drainage pipe,
22 you know, that it was dry.

23 I happen to live in the area and it was
24 perpetually dry. Not only did the school kids use
25 this in their own underpass, so did community

1 members, because they didn't want to walk blocks in
2 either direction to find a signalized intersection.
3 So they used that as their own way.

4 I assume it was DOT came and built a
5 chain-link fence. As I said, I used to walk my dog
6 by there every day, so I saw the fence go up. Next
7 day I walked by it, the kids had already cut a big
8 hole in the fence and were using it.

9 So it would be pretty challenging to get
10 the children, to get the community to not continue
11 using it. And unfortunately, if it is in that
12 condition, they're walking along the bottom, if there
13 were any flooding, they would be walking in the worst
14 place.

15 And one other consideration is that
16 presently when the construction is active, the
17 construction team or they're walking through this
18 gulch, they're running their equipment through this
19 gulch, they're going north and south not east and
20 west, but they're going right through this gulch. So
21 they don't seem to feel there's any dangers. If
22 there was a flood, well, they would just not be
23 there. They would clear out.

24 So it seems like to say this is a
25 tremendous hazard, well, the people that are on the

1 ground right now have been using that for months.
2 And I understand that Director Sniffen said he only
3 has this one study, somebody give him another study.

4 Well, we are not really equipped to do
5 that. We did pay a few 1000 dollars to get a
6 roundabout study, but that's a lot of \$25 memberships
7 to go in to say, okay, now, get us a counter study
8 that says this passageway could be used. We've
9 offered many, many examples of river walks all over
10 the county, all over the world, saying why can't you
11 do something like this.

12 But to put that on us and say get me an
13 alternative study, and then I'll consider that, I
14 think is really pressing for the community.

15 So that's the best way I can explain that
16 situation, Commissioner.

17 COMMISSIONER GIOVANNI: The next question,
18 Mr. Moran, Mr. Sniffen testified that based on
19 perhaps that same study you're referring to, that if
20 a roundabout is built, that more than 90 per cent of
21 the pedestrians would choose to use it as opposed to
22 many of the underground path.

23 Do you concur or do you challenge that
24 statement of interpretation by Mr. Sniffen?

25 THE WITNESS: Again, I don't have any

1 professional study, and I don't have any professional
2 standing, but just as a community member, I would
3 certainly challenge that.

4 I think a lot of -- not only the children,
5 but others, do they want to wait and have to --
6 assuming they're coming from those neighborhoods that
7 run right by that gulch, the County has been in plans
8 to build a road that crosses right over that gulch
9 that is just mauka of the highway. So we're
10 picturing that in the future.

11 These kids are walking along as not only a
12 road, but with adjoining greenways, so that's where
13 the kids are coming from, the adjoining
14 neighborhoods, and they're going to reach that gulch,
15 the ones coming from the south are going to reach it
16 before they would reach the grade crossing. And to
17 say, well, those kids are going to bypass that gulch
18 and go up the hill and then cross at this road, I
19 kind of doubt it. I don't think so.

20 And if I were walking there or riding my
21 bike there, that's what I would do, I would take the
22 path of least resistance.

23 And again, I don't have studies, but I
24 think the greater population is to the south rather
25 than the north. And so I think that's where more of

1 the kids are coming from.

2 And our understanding is that the DOE will
3 only provide bus transportation to a certain set, or
4 mile and a half or more away from the school. Well,
5 that's not going to be too many of the neighborhood
6 kids. They're all going to be within that mile and a
7 half, and not going to have the school bus.

8 So it's either going to be mom and dad
9 saying to the kids, it's good for you to walk to
10 school, it's safe now, or we are going to have to
11 take you, more traffic. All the things that we are
12 trying to go against.

13 So I have to a disagree with Mr. Sniffen.
14 I acknowledge his standing as an engineer and
15 studies, but as someone in the community I have to
16 disagree with his estimation.

17 COMMISSIONER GIOVANNI: Thank you.

18 Chair, no further questions for me.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Giovanni.

21 Commissioners, are there any further
22 questions for Mr. Moran at this time?

23 If not, Mr. Moran, you have my sincere
24 thanks for being available and for your testimony on
25 this matter.

1 THE WITNESS: And back at your whole team,
2 thank you very much. Aloha.

3 CHAIRPERSON SCHEUER: I'm going to move you
4 to become an attendee again.

5 I'm going to admit Representative Tina
6 Wildberger who has submitted written testimony and
7 who has her hand raised to speak.

8 Do you swear or affirm the testimony you're
9 about to give is the truth?

10 THE WITNESS: I do.

11 CHAIRPERSON SCHEUER: Please proceed.

12 REPRESENTATIVE TINA WILDBERGER

13 Was called as a witness by and on behalf of the
14 Public, was sworn to tell the truth, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 THE WITNESS: Thank you.

18 Chair and Commissioners, appreciate your
19 time this morning and revisiting this important
20 issue.

21 I am testifying again in my support of
22 Kihei Community Association's work and position on
23 this issue and ask you to defer this amendment to the
24 request -- excuse me -- for the mandate for safe
25 pedestrian crossing at the Kihei High School

1 location, mahalo.

2 CHAIRPERSON SCHEUER: Thank you,
3 Representative.

4 Are there any questions for Representative
5 Wildberger, Mr. Fujioka?

6 MR. FUJIOKA: No questions.

7 CHAIRPERSON SCHEUER: Maui County, Mr.
8 Hopper?

9 MR. HOPPER: No, Mr. Chair.

10 CHAIRPERSON SCHEUER: Ms. Takeuchi Apuna?

11 MS. APUNA: No questions.

12 CHAIRPERSON SCHEUER: Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, very much,
14 Mr. Chair. Thank you, Representative Wildberger.

15 May I ask you the same general question
16 that I asked Mr. Moran?

17 Can you think of one thing the Department
18 of Education might do or should do or could do to
19 start demonstrating good faith to the community?

20 THE WITNESS: Yes. I'm hopeful that
21 Randall Tanaka is going to be a faithful actor in
22 these endeavors.

23 I want to acknowledge that he has reached
24 out to me several times since our last meeting. I
25 was disappointed in not being offered an opportunity

1 to attend the rescheduled meeting after the abrupt
2 cancellation of the first community meeting that you
3 all mandated DOT to conduct. I was unable to attend
4 when most other people were, and administrator had
5 originally offered that they could reschedule, and
6 then decided that since I was the only one who
7 couldn't attend, that they would proceed without me.

8 He has reached out, provided documentation
9 before that meeting, and it is my hope that he will
10 help the other people that are charged with these
11 different portions of the project will be more
12 communicative, transparent, and cooperative with the
13 community on what's going on.

14 Sadly, DOE is not the only clandestine
15 department that we have. It seems to be a manner in
16 which all of our departments are operating, that they
17 just stonewall, ignore, pretend that no one is asking
18 questions, and simply refuse to offer information,
19 then maybe we will go away. But that's not the case
20 here.

21 So onward we work for cooperative
22 engagement, and we appreciate the LUC's particular
23 support in this area very much. Mahalo.

24 COMMISSIONER OKUDA: And what do you think
25 about Mr. Moran's suggestion of like a community ZOOM

1 meeting, you know, for the purpose or to cover the
2 item that Mr. Moran had suggested? Would that be
3 something that might be helpful?

4 THE WITNESS: I think that we should have
5 quarterly meetings with regular updates from each
6 facet of the different areas.

7 What I'm starting to understand is there is
8 one guy that's in charge of the architecture part and
9 another guy in charge of this part, and I'm uncertain
10 as to who the players are. I'm trying to learn who
11 they are.

12 These attempts at developing relationships
13 for communication purposes are made challenging
14 because of the regular turn over at DOE, which
15 doesn't reflect too positively on them, but we have
16 new people in both the positions. The people that we
17 were interacting with in the spring, now are
18 completely different individuals.

19 My office continues to reach out on behalf
20 of the community to ask for engagement, and that
21 seems to have helped a little. And quarterly
22 meetings would go a long way to help us understand
23 what's going on with the parcel.

24 We saw first signs of life after over six
25 months of no activity. They did finally start

1 putting up the construction fencing just Monday.

2 COMMISSIONER OKUDA: Maybe something that
3 would be helpful is that a regularly scheduled
4 meeting like a certain day of every three months, and
5 if there's something to discuss, then it's discussed
6 then, if there is nothing to discuss, there actually
7 might be a benefit for everybody just seeing each
8 other's face by ZOOM, even after this pandemic is
9 finished, just to say, okay, we are all here. Is
10 there any problems or any issues, nothing else?
11 Okay. Everybody be safe. Mahalo and aloha.

12 THE WITNESS: That's a very good idea

13 COMMISSIONER OKUDA: I think it's your
14 idea, a regular quarterly meeting and that would be
15 something that would be helpful, actually the Land
16 Use Commission, prior to the pandemic, mandated
17 something like that with respect to the Waimanalo
18 Gulch Landfill the City and County was to report to
19 the community every quarter about what they were
20 doing with the landfill.

21 So what you're suggesting is not something
22 unusual or something that, you know, no one else had
23 thought of before.

24 Thank you very much, Representative,
25 appreciate your testimony. Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Okuda.

3 Commissioners, are there further questions
4 for Representative Wildberger, Commissioners?

5 Commissioner Cabral.

6 VICE CHAIR CABRAL: Thank you for appearing
7 and working to represent your community. I was going
8 to -- someone asked this question of Moran, but you
9 brought up some of the same feelings I've had from
10 our hearings over there.

11 Am I getting the feeling that it's -- do
12 you have a feeling that there is an intentional
13 effort on the part of DOE to just completely not care
14 what the public's feelings are, because it takes too
15 much work to be -- do you think it's a planned
16 intention to do this, or is it just general
17 government ineptness due to don't worry that you'll
18 ever lose your job if you don't do a good job?

19 I'm concerned that this community has this
20 huge problem. I'm in the public, private business,
21 so I would be out of work, if I had this attitude, I
22 would be out of business.

23 So I'm concerned that no one seems to care.
24 What is your take on that, or can you even comment?

25 THE WITNESS: So benign neglect, maybe

1 intentional stonewalling, also maybe is this the
2 status quo in how these departments have operated
3 over decades? Possibly.

4 I'm new to this game, just two years under
5 my belt, so I still find myself blinking frequently
6 with raised eyebrows at a lot of things that I
7 witness.

8 So, yeah, I'm here to help change the
9 culture and the status quo, and develop transparency
10 and accountability by our government for our
11 communities.

12 VICE CHAIR CABRAL: Thank you. I'm gravely
13 concerned, because truly I don't want to think that
14 at any point that there would be a death on that
15 highway because of government. Everybody just passes
16 the buck to somebody else, and nobody is ultimately
17 responsible. So it's a huge concern to me.

18 THE WITNESS: And, frankly, I think that as
19 far as community culture is concerned, and
20 particularly on Oahu where all of these decisions are
21 being made on behalf of our Maui County Community,
22 there is an anti-pedestrian and anti-bicycle culture.
23 You are in somebody's way if you are walking or
24 biking, boy, no surprise you got killed on that road.
25 What were you doing trying to cross that street in a

1 crosswalk?

2 So I feel like this issue is even bigger
3 than just the DOE and DOT and the high school issue,
4 this is about changing anti-pedestrian
5 anti-non-motorized vehiclized culture that exists
6 obviously in the Department of Transportation and all
7 the way down to our departments that I would like to
8 try to change.

9 VICE CHAIR CABRAL: I totally appreciate
10 that. I'm from the Big Island and Hilo, and I would
11 have horse-riding paths if I had my way.

12 Thank you very much for your effort. Thank
13 you.

14 CHAIRPERSON SCHEUER: Are there further
15 questions, Commissioners, for Representative
16 Wildberger?

17 Thank you very much, Representative, for
18 your time.

19 THE WITNESS: Thank you all for your time
20 and your efforts. We appreciate you. Aloha.

21 CHAIRPERSON SCHEUER: Aloha.

22 Commissioners, we are at a full hour in,
23 but we do have one individual who provided written
24 testimony who has also raised their hand who has been
25 very patient. Is it possible to continue with them

1 before taking a break? Okay.

2 I'm changing the role of Representative
3 Wildberger to be an attendee, and I am admitting Ms.
4 Stillwell.

5 If you are able to enable your audio and
6 video now that you've been admitted.

7 THE WITNESS: Okay, here I am. Can you
8 hear me?

9 CHAIRPERSON SCHEUER: Yes.

10 Do you swear or affirm the testimony you're
11 about to give is the truth?

12 THE WITNESS: Absolutely.

13 CHAIRPERSON SCHEUER: Sorry, before you
14 start your testimony, I don't know why this has only
15 occurred to me. Are you connected in with the
16 Stillwells --

17 THE WITNESS: No.

18 CHAIRPERSON SCHEUER: Okay. Please
19 proceed.

20 PATRICIA STILLWELL

21 Was called as a witness by and on behalf of the
22 Public, was sworn to tell the truth, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: Patricia Stillwell, 227

1 Kamakoi Loop, Kihei, Hawaii.

2 I did submit written testimony, but you can
3 read that, but since the conversation has moved on to
4 more specific things, I would like to state for the
5 record that I am against removing this amendment.

6 I did read the Motion by the DOE when it
7 first came out, which was probably a couple months
8 ago. So it's not fresh in mind, but I remember at
9 the time my takeaway was they were proposing you get
10 your roundabout if you take out the amendment for the
11 under/overpass, or the condition for the
12 under/overpass.

13 And in my mind it should not be an
14 either/or situation. Roundabouts have been
15 determined by many federal safety studies to be the
16 safest choice for busy intersections, and they're
17 becoming the standard for highway safety.

18 In my opinion, it should have been a go-to
19 design from the beginning.

20 And also the roundabout is, as you know, is
21 serving the north end of the high school, which would
22 be the main entrance. The south end of the high
23 school could be served by the gulch that we have been
24 talking about and, you know, kids, if they're late
25 for school or even on an ordinary day, if they have

1 an easier exit, their classes are at the south end of
2 the school, they're not going to walk another quarter
3 of a mile to get to that intersection where the
4 roundabout is, they're going to dart across four
5 lanes of highway. That's what kids do. It's not
6 unusual.

7 It will also serve the students going to
8 Kihei Charter School and the growing community in the
9 R and T park. I don't think this condition should be
10 removed without further discussion between the DOE,
11 DOT and the community on how to resolve this
12 important safety requirement and open the school as
13 soon as possible.

14 And you've asked what the DOE needs to do,
15 and I think it's exactly that. Leave the amendment
16 in, then come to the community. It's not up to us.
17 How many are we? Four individuals testifying today.
18 I don't know, but it's not our decision, it's the
19 communities' decision as to how we proceed.

20 But if we take the condition out, then we
21 have got nothing. The roundabout to me is a nonissue
22 at this point. It is to be built. They need to get
23 funding. It is a federal safety standard that
24 roundabouts are the primary intersection controller.

25 So we need to hear from the community as to

1 how best to proceed if there is going to be a
2 concession made, or what that concession will be.

3 So I think the meetings with the DOE that
4 we've been talking about, quarterly meeting has to
5 happen in order to know how to proceed with the next
6 step.

7 Thank you, and I really appreciate all your
8 time and patience. You guys are rock stars.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Ms. Stillwell.

11 Are there questions for the witness, Mr.
12 Fujioka?

13 MR. FUJIOKA: No questions. Thank you.

14 CHAIRPERSON SCHEUER: Mr. Hopper?

15 MR. HOPPER: No questions, Chair.

16 CHAIRPERSON SCHEUER: Thank you. Ms.
17 Takeuchi Apuna?

18 MS. APUNA: No questions.

19 CHAIRPERSON SCHEUER: Commissioners? No.
20 Thank you for your written and your oral
21 testimony and your patience. We really appreciate
22 it.

23 THE WITNESS: Thank you.

24 CHAIRPERSON SCHEUER: I'm going to move you
25 to be an attendee again.

1 Is there anyone in the audience who has
2 also desired to provide testimony?

3 We're going take a ten-minute break, but I
4 want to get a sense of whether or not there's anyone,
5 anything in addition?

6 We did receive one other piece of email
7 testimony from Libby Fulton, but I have not seen them
8 appearing in the attendee box.

9 Is there anybody else who wishes to provide
10 public testimony on this matter? If so, raise your
11 hand. If not, then seeing none, it is 10:39 a.m. We
12 will reconvene at 10:50 a.m., 11 minutes with the
13 presentation of Department of Education.

14 We're in recess.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: We are back on the
17 record at 10:52. We will hear from Mr. Fujioka and
18 Department of Education on status update, assuming
19 Mr. Fujioka is with us.

20 MR. FUJIOKA: Is Mr. Tanaka here?

21 CHAIRPERSON SCHEUER: He was earlier, I
22 thought.

23 MR. FUJIOKA: On behalf of DOE, we
24 submitted a written update with some of the exhibits
25 that were discussed by the witnesses last time we

1 were together.

2 The position of the DOE is still that a
3 roundabout should ease the first, or the most -- the
4 best in the safest measures to put in at the outset.

5 The concern we have is the current order
6 requires that GSPC be put in place before the school
7 opened. In order to accomplish that, the legislature
8 needs to be convinced that there is justification and
9 funding for it.

10 So that we don't know if we can do, because
11 the report, the recommendations we have from the
12 independent studies that were contracted and the
13 Department of Transportation do not recommend or
14 advise GSPC at this point. So what we would suggest
15 is allow the DOE to build a roundabout, open the
16 school, and then the condition preceding the GSPC
17 requirement sets out specific times at which the
18 traffic area impact studies need to be updated.

19 I think one is a year after the school is
20 opened, and another is before Phase II is open. But
21 we've also proposed doing another one before Phase II
22 begins construction.

23 And there's another one in the Commission's
24 order that if more than three years goes by and Phase
25 II is not being built, another study should be done

1 anyway.

2 So I think there's enough safeguards to
3 continue reassessing the need for not only GSPC, but
4 any other measure in supplementation of the
5 roundabout.

6 So we think that our proposal is workable,
7 and we would request that the Commission grant the
8 motion at this time.

9 CHAIRPERSON SCHEUER: Is that the
10 conclusion of your oral?

11 MR. FUJIOKA: Yes.

12 CHAIRPERSON SCHEUER: Okay. Commissioners,
13 starting with Commissioner Chang, followed by
14 Commissioner Okuda.

15 COMMISSIONER CHANG: Thank you, Mr. Chair.
16 Thank you, Mr. Fujioka.

17 I just want to confirm, one, is the
18 responsibility to fund the roundabout Department of
19 Education or Department of Transportation?

20 MR. FUJIOKA: I believe it's the DOE's
21 responsibility.

22 COMMISSIONER CHANG: Is the roundabout
23 included -- let me ask it this way.

24 Does the DOE currently have funds to build
25 the roundabout?

1 MR. FUJIOKA: I would need to have Mr.
2 Tanaka speak to that, and I don't see him on the list
3 of participants. I tried to call him, but I couldn't
4 get through.

5 COMMISSIONER CHANG: Mr. Fujioka, for me as
6 a Commissioner, that's really important to know and
7 get a confirmation from DOE that you have funds for
8 this roundabout when you're asking for that in the
9 motion.

10 MR. FUJIOKA: I understand. So if we
11 could, when Mr. Tanaka becomes available, I would
12 like to confirm that with you. Thank you.

13 COMMISSIONER CHANG: I want to confirm what
14 I heard you say as next steps. This is what I
15 thought I heard you say.

16 One, you build the roundabout; two, open
17 the school; and three, re-evaluate the GSPC prior to
18 Phase II begins construction. Is that correct?

19 MR. FUJIOKA: The Commission's current
20 order also requires a supplementation of that TIAS
21 one year after the school is opened.

22 COMMISSIONER CHANG: So that would be open
23 the school, three, update the TIAR?

24 MR. FUJIOKA: I think it's coded TIAS.

25 COMMISSIONER CHANG: Update the TIAS after

1 one year? Is that what --

2 MR. FUJIOKA: Yes. And then there would be
3 another update, I guess, either before Phase II
4 begins construction, or if it takes more than three
5 years, whichever comes first.

6 COMMISSIONER CHANG: So it would be
7 re-evaluating GSPC prior to Phase II beginning
8 construction, or three years after opening of Phase
9 I, whichever occurs sooner?

10 MR. FUJIOKA: I believe so. And then there
11 is another one I think before Phase II opens.

12 CHAIRPERSON SCHEUER: Mr. Orodener, you're
13 not on mute.

14 COMMISSIONER WONG: Sorry, Chair.

15 COMMISSIONER CHANG: So whatever the
16 additional condition prior to number two, you're not
17 proposing to amend any other changes? You're not
18 proposing to amend any changes in the LUC condition
19 that would affect that additional requirement prior
20 to opening Phase II?

21 MR. FUJIOKA: In terms of the GSPC?

22 COMMISSIONER CHANG: Well, you said you
23 think there's something else that's required before
24 opening of Phase II.

25 MR. FUJIOKA: No, another update.

1 COMMISSIONER CHANG: So you are not
2 proposing to change that?

3 MR. FUJIOKA: No, no. We want to leave
4 that in place. I don't think this condition is
5 limited to GSPC. If there's something else that is
6 going to be updated.

7 COMMISSIONER GIOVANNI: Chair, can I ask
8 that you not use acronyms, or at least explain what
9 they are?

10 CHAIRPERSON SCHEUER: So noted.

11 COMMISSIONER CHANG: Mr. Giovanni, I had
12 the hardest time remembering GSPC.

13 SO that I understand, it's either -- it is
14 the --

15 MR. FUJIOKA: Grade separated pedestrian
16 crossing, underpass and overpass.

17 COMMISSIONER CHANG: But it could be other
18 mitigation measures as you indicated, right, Mr.
19 Fujioka?

20 MR. FUJIOKA: Whatever is indicated by the
21 studies.

22 COMMISSIONER WONG: Mr. Chair, I want to
23 interrupt real fast, point of order.

24 CHAIRPERSON SCHEUER: Go ahead,
25 Commissioner Wong.

1 COMMISSIONER WONG: Just wanted to reaffirm
2 that on the agenda, this is only a status report
3 right now, and we cannot make motions?

4 CHAIRPERSON SCHEUER: Commissioner Wong, it
5 is actually as listed on the agenda for status report
6 and action, if necessary.

7 It is my personal inclination to not see us
8 take any action on this matter today, but merely take
9 a status report, given, among other things, our
10 understanding of the incomplete responsiveness to the
11 Land Use Commission's earlier request for the parties
12 to have meaningful discussion.

13 That is my inclination. That said, it is
14 agendized sufficiently to take an action today. It
15 is my strong preference not to do so.

16 Does that address your point of order,
17 Commissioner Wong?

18 COMMISSIONER WONG: Yeah, I thought it was
19 -- yeah, I'm happy that you won't hear any motions
20 today. It's just that I'm very concerned about that
21 right now, because I wasn't prepared to do anything
22 as of today, just hear about it.

23 CHAIRPERSON SCHEUER: As far as it is now,
24 I believe Commissioner Chang's question goes to the
25 nature of the status report and what conditions the

1 Department of Education is willing to --

2 COMMISSIONER WONG: Yeah, thank you,
3 Commissioner Chang, for letting me interrupt.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Wong. Please proceed, Commissioner
6 Chang, followed by Commissioner Okuda and Ohigashi.

7 COMMISSIONER CHANG: I appreciate that
8 clarification, Commissioner Wong. I've got no
9 further questions for Mr. Fujioka. But I will hope
10 that you can provide me Mr. Tanaka's confirmation
11 about the DOE funding about the roundabout.

12 MR. FUJIOKA: Thank you.

13 CHAIRPERSON SCHEUER: Was that it,
14 Commissioner Chang? Okay.

15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you very much,
17 Mr. Chair. Thank you, Mr. Fujioka for being present.

18 I know we've known each other for almost
19 30 years from private practice, and good to see you
20 in service to the community.

21 Can I ask you this? Let me just state so
22 no hidden cards on my side. I believe with the
23 inclination of the Chair that this is a status
24 report, and even if anyone wanted to move forward, I
25 think the record is insufficient, especially with the

1 absence of certain information that Commissioner --
2 prior Commissioner Chang was asking.

3 In any event, if I can ask you these
4 questions in line with the matter being a status
5 report.

6 As far as using the term "opening of the
7 school", to open the school, what government
8 approvals are necessary at this point? Would it be
9 simply a certificate of occupancy from the County of
10 Maui? Is that really the major approval?

11 MR. FUJIOKA: I honestly don't know the
12 answer to that question.

13 COMMISSIONER OKUDA: But if it is a
14 certificate of occupancy, that's not something that
15 is within the jurisdiction of the Land Use
16 Commission, correct?

17 MR. FUJIOKA: I don't believe it is, no.

18 COMMISSIONER OKUDA: Yeah, okay, okay.

19 Commissioner Chang already asked the
20 question about funding of the roundabout. But can I
21 ask you this?

22 Was funding for the grade separated
23 crossing ever included in the budget submitted by the
24 Department of Education regarding the Kihei High
25 School, was it ever in the budget?

1 MR. FUJIOKA: I think there was some
2 funding for a study, but I don't believe there was
3 ever funding for the actual GSPC. I think the reason
4 is, DOE couldn't go to the legislature with just
5 saying that it's a requirement when they didn't have
6 DOT recommendation for it, and studies that were
7 contracted did not recommend it. So they were not in
8 a position to get funding for it.

9 COMMISSIONER OKUDA: Mr. Fujioka, and I
10 understand you weren't the deputy at the time, but
11 just like, you know, a number of us Commissioners, we
12 weren't on the Commission like 15, 20 years ago or
13 even ten years ago, but we as Commissioners, we
14 cannot simply disavow what prior Commissioners have
15 done.

16 If we take a position, you know, we got to
17 take ownership and responsibility for what the Land
18 Use Commission has taken place before.

19 So can I ask for your comment on this? At
20 least for me, and I expect maybe a few or many of my
21 fellow Commissioners, there may be a feeling that the
22 Department of Education, for whatever reason, just
23 simply has ignored this Land Use Commission
24 requirement or condition about the grade separated
25 crossing.

1 In other words, whatever the DOE's reasons
2 for doing so, you know, the last time or several
3 years ago when we had the question raised to us in a
4 motion or pleading filed by the County of Maui about
5 what did we mean, did we really mean to have this
6 condition stated, and the answer was yes.

7 You know, at least for me, I start getting
8 the feeling that the Department of Education, for
9 whatever reason, just ignored us; and it's almost
10 like to the level of frustration about what do we
11 have to do so that people understand that until
12 admissible evidence is submitted, what is ordered by
13 the Commission is what is ordered to the Commission,
14 and we don't want to be bad people or be too
15 aggressive, but it's almost like the Department of
16 Education is inviting -- I don't want to call it
17 sanctions -- but, you know, a real response by the
18 Land Use Commission, because it sometimes seems like
19 we are being ignored.

20 Do you care to comment on maybe my own
21 personal feeling that I feel like we're being
22 ignored?

23 MR. FUJIOKA: I've been in this position
24 for a little over two years, so I can say on my watch
25 we are not ignoring the Land Use Commission.

1 However, previously, in defense of the DOE,
2 I think there was some kind of disconnect, because
3 the order -- I forget what it says -- make available
4 or provide, but it called for grade separated
5 crossing. But it also required a study. And I think
6 Department of Transportation, I don't know if it was
7 concurrence or recommendation or approval, but it
8 took a long time to get that study done.

9 I think there was some deficiencies, DOT
10 said to correct it. And then when it was finally
11 said and done, I think it was like two years, if I'm
12 not mistaken, maybe more, the recommendation was
13 against the grade separated pedestrian crossing, be
14 it underpass or overpass.

15 So this has been communicated to the
16 Commission, and possibly some sort of amendment be
17 sought earlier. Yes, I would think so, but --

18 COMMISSIONER OKUDA: If I can ask you, and
19 this is really my final question.

20 You know, drawing on your decades of
21 private practice experience, and drawing on your
22 decades of what I viewed your practice to be, which
23 was also trying to resolve disputes short of
24 litigation.

25 Do you think that the suggestion of

1 scheduled quarterly meetings so that there is
2 transparency and communication with the community is
3 something that would be helpful?

4 In other words, even if there's nothing to
5 report, just the fact that you have this meeting set
6 by ZOOM, or whatever technology to make it easier,
7 that the fact that there is this regularly scheduled
8 quarterly communication with the community, it might
9 be helpful, and at minimum it's not going to be
10 detrimental?

11 Do you think that's something we could look
12 at?

13 MR. FUJIOKA: I honestly don't know if this
14 is typical of how the DOE communicates with the
15 interaction with the community, but given the
16 circumstances and the history of what has happened,
17 and the feeling I get from the people who at least
18 testify, you know, I do not think that's a bad idea.

19 COMMISSIONER OKUDA: And your, what you
20 call your feeling, which I consider almost like an
21 expert opinion, that would also be based our decades
22 in private practice just trying to do things outside
23 of government?

24 MR. FUJIOKA: In terms of problem solving
25 and bringing people together, yeah, I think that is a

1 fair statement.

2 COMMISSIONER OKUDA: My final, final
3 question, Mr. Fujioka, is there any real detriment or
4 negativity or bad things that would happen to the
5 Department of Education if we just defer this matter,
6 even assuming that anyone wanted to try to get
7 decisionmaking today, but we just defer this matter
8 for not forever, but for a reasonable period of time,
9 you know, people can discuss with our Executive
10 Officer what's a reasonable period of time, just to
11 see whether we can get -- or the Department of
12 Education can get communication and the transparency
13 discussion going with the community? I mean, is
14 there some deadline which the department has to meet
15 right away which would be detrimental if there was a
16 reasonable deferral or if we just schedule another
17 status conference down the road?

18 Can you think of anything right now that,
19 you know, like a lapse of federal funding or anything
20 like that, where you got to do something right now,
21 do we have some time to try to build a little bit
22 more communication with the community?

23 MR. FUJIOKA: I mean, if they're going to
24 go our way, of course, we would want a decision
25 today, but I do not think a delay would be fatal, no.

1 COMMISSIONER OKUDA: Thank you very much,
2 and thank you for being willing to leave your private
3 practice to help the State out.

4 Thank you, Mr. Chair. I've got no further
5 questions.

6 CHAIRPERSON SCHEUER: Thank you.

7 Commissioner Ohigashi.

8 COMMISSIONER OHIGASHI: I notice that Mr.
9 Tanaka has joined the meeting. Would you want to see
10 if he can answer Commissioner Chang's questions?

11 MR. FUJIOKA: If he could be unmuted.

12 CHAIRPERSON SCHEUER: He is in charge of
13 his own unmuting.

14 MR. FUJIOKA: Randy, can you hear me? Can
15 you unmute your --

16 Were you here earlier when Commissioner --

17 CHAIRPERSON SCHEUER: Excuse me, Mr.

18 Fujioka. I need to swear him in.

19 Mr. Tanaka, do you swear or affirm the
20 testimony you're about to give is the truth?

21 THE WITNESS: I do.

22 RANDALL TANAKA

23 Was called as a witness by and on behalf of DOE, was
24 sworn to tell the truth, was examined and testified
25 as follows:

DIRECT EXAMINATION

1
2 CHAIRPERSON SCHEUER: Please proceed, Mr.
3 Fujioka.

4 BY MR. FUJIOKA:

5 Q Were you here when Commissioner Chang was
6 asking about the funding of the roundabout?

7 A Sorry, I was not. I was in a -- I had a
8 productive -- when we stepped into the refrigerated
9 part, it cut me off.

10 Q The question has come up whether there is
11 funding available for the roundabout?

12 A Based on my discussion with the project
13 manager, the answer is no.

14 Q What would be the next step in funding
15 then?

16 A That we would have to go back to the money
17 committee, and to probably the chairs at the lower
18 end to get support. I think the DOT and us need to
19 be in lock step in what we're asking for. So that
20 would be the beginning of the process.

21 I think everyone should know that -- well,
22 everyone realizes the state of the State's -- our
23 economy, and that's just the situation.

24 CHAIRPERSON SCHEUER: We are getting a
25 bunch of feedback, Mr. Tanaka.

1 THE WITNESS: I am stepping out of the
2 traffic.

3 Q (By Mr. Fujioka): Turn off the video.

4 My next question would be, if you have the
5 Department of Transportation concurrence, does that
6 make it easier to ask for funding?

7 A I don't know if it will make it easier or
8 determine our success, because it certainly won't
9 hurt us.

10 Q You heard -- did you hear the questioning
11 about possibly meeting regularly with Kihei
12 community?

13 A What I would probably suggest, like with
14 the neighborhood boards -- (indecipherable) that at
15 their regular meeting participate.

16 COURT REPORTER: Excuse me, Chair. I'm
17 still having difficulty understanding him.

18 CHAIRPERSON SCHEUER: Yes. Can you repeat
19 your last statement, Mr. Tanaka?

20 THE WITNESS: I would probably suggest that
21 we could be part of their community meetings, not
22 sure if they have regular meetings like their
23 neighborhood board meetings, but I would think -- we
24 would ride on their calling of meetings with their
25 members. That's what I would suggest.

1 CHAIRPERSON SCHEUER: Are you reversing a
2 truck, Tanaka?

3 THE WITNESS: No. Finally got that taken
4 care of. Thank you.

5 CHAIRPERSON SCHEUER: Anything further, Mr.
6 Fujioka?

7 MR. FUJIOKA: No, those are my only
8 questions.

9 CHAIRPERSON SCHEUER: May I allow
10 Commissioner Chang to follow up since it was
11 originally her questions if she had any follow up,
12 and then back to Commissioner Ohigashi.

13 One moment, Mr. Tanaka. I'm seeing whether
14 Commissioner Chang has any further follow up for you
15 since it was originally her question.

16 COMMISSIONER CHANG: My only follow up to
17 Mr. Tanaka is, is it DOE's intention to go back to
18 the legislature in this coming session, 2021, to
19 request: One, to coordinate with DOT?

20 And then, two, to request the funding for
21 the roundabout?

22 THE WITNESS: Yes, that is our intention.

23 COMMISSIONER CHANG: No further questions,
24 Mr. Chair.

25 CHAIRPERSON SCHEUER: Thank you. If you'll

1 please hold and stay available but muted, Mr. Tanaka.

2 Commissioner Ohigashi, please continue.

3 COMMISSIONER OHIGASHI: I wanted to ask Mr.
4 Tanaka what would be the requested appropriation
5 amount?

6 THE WITNESS: From what the budget managers
7 and the planners, it's in the neighborhood of eight
8 to ten million.

9 COMMISSIONER OHIGASHI: If we do nothing
10 today, or defer this matter until the funding picture
11 is much more clear, would we be able to influence
12 that appropriation request monies for an underpass?

13 THE WITNESS: I would -- I'm sorry, go
14 ahead.

15 COMMISSIONER OHIGASHI: Yeah, underpass.

16 THE WITNESS: I would -- I need to consult
17 with DOT on that, because I think their position is
18 that an underpass in that riverbed, and based on the
19 100-year flood study, that they would not support
20 that position. So it would be unwise for us to go
21 in, one, asking for; and the other asking not. And
22 plus, it's a DOT function, it's not our function on
23 what that cost would look like.

24 COMMISSIONER OHIGASHI: My other question
25 is this.

1 Your proposal, Mr. Fujioka, is to allow for
2 the roundabout, but condition opening of the school,
3 at least Phase I, on the completion of the
4 roundabout; is that right?

5 He's muted, I think.

6 MR. FUJIOKA: Instead of the
7 grade-separated crossing?

8 COMMISSIONER OHIGASHI: So you would say
9 build the roundabout first, and only then you open
10 the school?

11 MR. FUJIOKA: Yes.

12 COMMISSIONER OHIGASHI: Now, given the fact
13 that you don't have money to build a roundabout,
14 would that decision be necessarily should be made now
15 or later?

16 MR. FUJIOKA: We would prefer that it be
17 made as soon as possible so that there's some sense
18 of direction, but I do hear the people who are
19 concerned that they want to make sure it's funded.

20 COMMISSIONER OHIGASHI: So your answer
21 is --

22 MR. FUJIOKA: Double talk, sorry.

23 COMMISSIONER OHIGASHI: Is it correct to
24 say that because there is no funding at this point in
25 time, that this issue may be premature to be brought

1 up?

2 MR. FUJIOKA: In that context, if the
3 Commission wants to be assured the funding is in
4 play, yes, probably immature.

5 COMMISSIONER OHIGASHI: Now, you indicated
6 that DOT would have to agree on the underpass. When
7 we spoke to Mr. Sniffen the other time, he indicated
8 that there are some designs which may run \$30 million
9 that would be acceptable to the DOT in order to build
10 an underpass.

11 And wouldn't it make sense that we would
12 give to the legislature that option that the DOT, Mr.
13 Sniffen, says, yes, that would be the kind of design.

14 Wouldn't it make sense to give to the
15 legislature that option to determine whether or not
16 they would fund that option?

17 MR. FUJIOKA: In terms of already trying to
18 get an 8 to \$10 million roundabout approved, to add
19 in the same breath \$30 million underpass is pretty
20 ambitious, I think. And I don't know, I don't think
21 that's a viable proposal.

22 COMMISSIONER OHIGASHI: I've listened to
23 some of the community members, and the representative
24 for the Kihei, indicating that they would abhor a
25 condition for a death to occur on that highway,

1 wouldn't the decision of whether or not funding be
2 made for that, the underpass, wouldn't that be
3 rightfully with the legislature?

4 MR. FUJIOKA: I don't know the answer to
5 that question. Sorry.

6 COMMISSIONER OHIGASHI: It would solve a
7 lot of problems, right? It would say we believe that
8 the roundabout is sufficient, so we're not going to
9 fund the 30 million underpass also; or they would
10 say, yeah, we got to fund both, because we want to
11 make sure that it's all safe; or they're going to
12 say, well, we're not going to fund either, and it's
13 up to you guys to delay opening the school on
14 whatever terms you can open it on.

15 Wouldn't that be a better, a more
16 democratic kind of solution to this problem rather
17 than placing the Land Use Commission, the County of
18 Maui, DOE and the Kihei Community all -- and try to
19 reach an agreement, isn't that what we elected
20 officials for? And I know you don't have to answer
21 that, I'm just maybe pontificating after a tiring
22 night of watching elections.

23 MR. FUJIOKA: And we still don't know, do
24 we?

25 COMMISSIONER OHIGASHI: And the last

1 question I had is, I asked Mr. Tanaka if they were
2 preparing at least some kind of budget or bill or
3 estimate as to what would it cost. We had a cost
4 from Mr. Sniffen as to 30 million for the underpass,
5 but I got the impression that that was off the top of
6 the head.

7 Is there anybody in DOT or DOE that's going
8 to provide us with the actual cost of the underpass
9 as well as more definitive ideas of how much it will
10 cost?

11 MR. FUJIOKA: I think they're going to
12 design it first. And I don't know if there's ever
13 been any justification to do that.

14 COMMISSIONER OHIGASHI: The answer -- the
15 request that I had probably won't be coming forward;
16 is that right?

17 In other words, the funding, I wanted some
18 kind of budget or some kind of statement of estimate
19 as to what the cost is, so at least if we have to
20 make a decision, we can make a decision as to what
21 the cost may be. And I think that -- I think I'm
22 offering you a reasonable out to make the legislature
23 decide and give them that kind of information to make
24 them decide whether or not the underpass should be
25 built or not.

1 MR. FUJIOKA: In terms of drafting
2 legislation with a view towards obtaining funds, I
3 don't know what the most viable strategy is.

4 COMMISSIONER OHIGASHI: I'm just looking
5 at -- right now, we don't have a viable strategy in
6 any case. We have committed opposition. We have no
7 particular study. We don't have cost estimates that
8 we can rely on.

9 So rather than make us, who is a voluntary
10 board appointed and not elected to office, maybe it
11 might be a best idea to place it in their hands.

12 And I guess that wouldn't call for an
13 answer also.

14 One last thing. I'm concerned about the
15 County's plans. In the County's filings they said
16 they have an ordinance adopting this position for the
17 over or underpass, because it's made part of the
18 zone.

19 My question to you, would that have to be
20 amended also if we grant your motion?

21 MR. FUJIOKA: Yes, I think it needs to be
22 addressed.

23 COMMISSIONER OHIGASHI: What does that
24 mean, addressed? Does it mean you have to go to
25 County Council and amend the zoning ordinance?

1 MR. FUJIOKA: That is my assumption,
2 although I would defer to the County attorneys for
3 the answer to that.

4 COMMISSIONER OHIGASHI: And the reason for
5 my asking that is that technically we have no real
6 enforcement power, and the Counties would be doing
7 that.

8 So irrespective of what we change here, it
9 would appear to me that the County can enforce its
10 own zoning ordinance and deny a certificate of
11 occupancy if you don't modify that zoning; is that
12 true?

13 MR. FUJIOKA: I honestly don't know off the
14 top of my head, but getting the Land Use Commission's
15 approval is probably not the last step, but it is
16 necessary.

17 COMMISSIONER OHIGASHI: So why aren't we
18 opening up the school?

19 MR. FUJIOKA: You could say it depends.
20 But I think there is -- they just got a notice to
21 proceed on Phase II, and I don't know the timetable
22 for construction. It might be in one of the exhibits
23 we submitted, but I don't know if that was with
24 timelines.

25 COMMISSIONER OHIGASHI: If we don't make a

1 decision on this particular item, how long will it
2 delay opening of the school?

3 MR. FUJIOKA: Yeah, if the GSPC requirement
4 remains in place, and it hasn't been funded or built,
5 yeah, it would delay.

6 COMMISSIONER OHIGASHI: I'm just going to
7 make a comment.

8 If that is the case, and if the legislature
9 wants to have this school open in time, then wouldn't
10 it be -- it seems to me that they should address
11 which way they want to go on this matter, because
12 irrespective of what we do here, still -- you still
13 face a task in trying attempt to change the County's
14 understanding, and that would cause -- and may cause
15 a delay in the school.

16 So I leave it up to the DOE to determine
17 how they want to proceed in this matter. And I guess
18 that if you force us to make a decision, you will
19 have to make a decision.

20 No further questions.

21 MR. FUJIOKA: Thank you.

22 CHAIRPERSON SCHEUER: Commissioner
23 Giovanni.

24 COMMISSIONER GIOVANNI: Thank you, Chair.

25 Let me preference my questions by a remark

1 that, from my personal experience, I am approaching
2 this from a major concern or interest in the safety
3 of the children that will be attending the school.

4 Let me also send my thanks and concurrence
5 with the lines of questions and comments of
6 Commissioner Chang and Commissioner Ohigashi.

7 I just want to get what you said correct,
8 Mr. Fujioka.

9 Commissioner Ohigashi asked you for a
10 design basis for an underpass option, and I believe
11 your response is you don't foresee any justification
12 for doing such a design effort in order to develop a
13 cost estimate. Is that correct?

14 MR. FUJIOKA: We start -- the information
15 we have been given, and the current understanding
16 that the actual gulch would need to be deepened or
17 widened, it does appear I said that the design would
18 be cost prohibited.

19 COMMISSIONER GIOVANNI: That wasn't my
20 question. My question was whether you could do a
21 justification to do a design to determine what the
22 cost might be, so then you could determine -- submit
23 it to legislature or some other party to determine
24 whether or not it's cost prohibitive.

25 I think you got the cart before the horse.

1 Let me go back to my question on your testimony.

2 I believe you said there is no
3 justification for doing the design in order to
4 develop a cost to support a presentation to the
5 legislature, as Commissioner Ohigashi had suggested.
6 Is that correct?

7 MR. FUJIOKA: Currently, yes, I believe
8 that's correct.

9 COMMISSIONER GIOVANNI: Is it your opinion
10 or position that the existing Land Use Commission
11 condition for an underpass or overpass, and the
12 inclusion of such in a zoning ordinance by the County
13 of Maui is not sufficient justification to do a
14 design?

15 MR. FUJIOKA: In terms of the additional
16 requirement that a study be done, and the confirm or
17 concurrence with Department of Transportation, given
18 that we weren't able to get any recommendation or
19 concurrence that the underpass is a viable -- I'm
20 sorry -- in that particular location, is a viable
21 alternative, yeah, I don't -- I didn't see the
22 justification.

23 COMMISSIONER GIOVANNI: There is testimony
24 on the record from the Department of Transportation
25 that it's feasible, but it would be expensive, yet we

1 don't know what that cost would be because you've
2 been reluctant do the study or the preliminary design
3 to estimate cost.

4 So it sounds like you're attempting to draw
5 a conclusion about its feasibility, not in technical
6 terms, but in financial terms prior to even doing the
7 up-front work to determine what the cost might be.

8 MR. FUJIOKA: I think that Mr. Sniffen has
9 joined the conference. I'm trying to recall his
10 testimony. I don't think he called it feasible. It
11 was like it's something that might be physically
12 possible, but it would -- there were major, major
13 excavations or deepening or widening of that gulch
14 which would make it cost prohibitive.

15 COMMISSIONER GIOVANNI: That may very well
16 be the case, and Mr. Sniffen, thank you for joining
17 us. I don't know if you heard or were on board
18 hearing the line of questioning from Commissioner
19 Ohigashi.

20 But basically what he was suggesting as
21 option for DOE and DOT is to do a design for the
22 gulch, for an underpass, recognizing it may be,
23 quote/unquote, very expensive.

24 And then to include that as an option to
25 the legislature so that they could make, at their

1 level, a policy decision, a financial decision of
2 whether they want to invest that amount of money or
3 not for the safety of the children regarding the
4 underpass.

5 MR. SNIFFEN: I apologize for not jumping
6 on earlier.

7 CHAIRPERSON SCHEUER: Excuse me, Mr.
8 Sniffen.

9 Do you swear or affirm that the testimony
10 you're about to give is the truth?

11 THE WITNESS: Yes.

12 ED SNIFFEN

13 Was called as a witness by and on behalf of DOE, was
14 sworn to tell the truth, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON SCHEUER: You may answer the
18 question from the Commissioner.

19 THE WITNESS: I apologize for being late.
20 I was on the call to U.S. DOT trying to get more
21 money for the State.

22 I didn't hear the line of questioning, so I
23 appreciate you restating it.

24 Overall, the cost estimate for grade
25 separation going over the highway overpass 6 to 8

1 million, around that level. Given that we have
2 hydraulic and hydrologic studies that say the
3 hydrologic opening is inundated up to three feet
4 below the deck of the current underpass option in
5 that existing gulch, widening the facility, and we
6 just a kind of the back of the envelope analysis,
7 widening that facility or raising it is going to be
8 upwards of 30 to 35 million.

9 Just from that perspective, we are looking
10 at it as a feasibility discussion on which we would
11 go. If a grade separation was necessary, it would
12 probably be going over because of the cost
13 prohibitiveness of going under.

14 In order to get to a better analysis, we
15 have to put in a hydraulic/hydrologic study to get
16 done in that gulch. It's about 600,000 or so to get
17 the study done in about a year. After that, we would
18 have a better understanding or better idea of what we
19 could or could not do in that area.

20 That's kind of where that discussion is.
21 Given the information that we have at the time, the
22 feasibility of going over is much more affordable
23 than going under.

24 COMMISSIONER GIOVANNI: Thank you, Mr.
25 Sniffen.

1 Would you agree with the notion or disagree
2 with the notion that the existence of the condition
3 in the Land Use Commission order requiring an
4 overpass or underpass, and the inclusion in the
5 zoning ordinance existing by the City and County may
6 very well provide the justification you need to do
7 the studies you just described?

8 THE WITNESS: I think it would give the
9 justification -- no, I think one thing I would say, I
10 wouldn't put this in the legislative court. From my
11 perspective, it's not up to them -- even if the 30
12 million is available, it still has to be prioritized
13 by the department. And I cannot speak for DOE,
14 right? I cannot speak for what their prioritization
15 and their priorities are.

16 But an additional 30 million on top of a
17 200 million dollars, I don't know. For me I would
18 have a difficult time if there are cheaper options to
19 provide or to fulfill the condition that's put on the
20 development.

21 COMMISSIONER GIOVANNI: When you refer to
22 cheaper options, it could be the overpass at 6 to 8
23 million?

24 THE WITNESS: That's correct.

25 COMMISSIONER GIOVANNI: Thank you very

1 much.

2 Can I have a question for Mr. Tanaka?

3 CHAIRPERSON SCHEUER: Please unmute
4 yourself. Go ahead.

5 THE WITNESS: Yes, Mr. Giovanni.

6 COMMISSIONER GIOVANNI: Mr. Tanaka, thank
7 you for making the time today to meet with us.

8 Is it the position of the Department of
9 Education that you would intend to open the school in
10 Phase I before the roundabout was built if funding
11 was not approved in a timely manner?

12 THE WITNESS: I've got to defer to Stuart a
13 little bit. I think the way it is now, we have to
14 provide a costing method prior to opening Phase I of
15 the school; is that correct?

16 MR. FUJIOKA: Yes.

17 THE WITNESS: So if we don't have those
18 means, yes, we cannot open the school. But right now
19 I think our hopes are that we fulfill that crossing
20 with the roundabout, and as we stand here now with
21 the information and data that's been given to us,
22 that that is a feasible option.

23 I think the community is more positive
24 about a roundabout, and then there's the funding
25 part. I mean, whether in these times we could ask

1 the legislators for an underpass budget when we would
2 have the roundabout option, they would ask us all the
3 questions, and one of the reasons that DOT has
4 recommended, and we concur, that the on-grade
5 roundabout is a viable option because studies have
6 shown that people are going to take, quote/unquote, a
7 shortcut, they're just going to go across at grade
8 and will not use the overpass.

9 So the question put to me, why would we
10 build something that nobody's going to use.

11 COMMISSIONER GIOVANNI: Let me comment on
12 the points you made.

13 So first of all, the good news is, as I
14 think all parties are in general agreement, that a
15 roundabout is a good thing and would make sense and
16 should be there prior to, and functional prior to the
17 opening of Phase I of the school. The bad news is
18 there's no money for it.

19 So the question: Is it going to be built
20 or not? And very clearly, if it's not, will you open
21 the school, yes or no?

22 THE WITNESS: I don't think we can, based
23 on the current rules.

24 COMMISSIONER GIOVANNI: Do you want to add
25 something to that?

1 MR. SNIFFEN: We would not support opening
2 the school prior to the roundabout being built,
3 bottom line. SO as I put out to the community, the
4 DOE is going to be pushing to get additional funds to
5 get this built. If they cannot, we will build it.

6 So I would really appreciate it if this
7 Commission puts in the requirement that this
8 roundabout be put in place prior to the opening of
9 the first phases of the school. I think it's the
10 right thing for the community and the right thing for
11 the school.

12 COMMISSIONER GIOVANNI: I agree with you.
13 Thank you for that position.

14 Mr. Stuart Fujioka, you also testified
15 before Mr. Sniffen got on-line in response to
16 Commissioner Chang's inquiry that there would be, if
17 the school opens, and under Phase I with a
18 roundabout, there would be studies to determine the
19 value and viability of an overhead or underground
20 crossing prior to Phase II. Is that correct?

21 MR. FUJIOKA: It would be, you know, I
22 think one year after the school is open, according to
23 the Commission's order as currently written, there
24 needs to be an amendment to that traffic area impact
25 study, and not -- I don't think it's limited to a

1 grade-separated crossing. If any other mitigation
2 measures are indicated, they'll need to be
3 considered. And then I think there's another
4 revision is required upon --

5 COMMISSIONER GIOVANNI: That's okay. My
6 point is a little different.

7 My point is that there's a lot of
8 conjecture in this record about if the roundabout is
9 actually built, what percentage of students would
10 actually use it.

11 And it ranges from high 90 percent to all
12 the kids that live on the south would still use the
13 pathway under the gulch.

14 So I think that there's value in actually
15 building the roundabout, opening the school, and see
16 where the kids are walking, and then we go from
17 there. That's my position, and thank you very much.
18 I have no further questions.

19 MR. FUJIOKA: Thank you.

20 CHAIRPERSON SCHEUER: Thank you,
21 Commissioner Giovanni.

22 Commissioners, it is 11:46 a.m. I see that
23 there are questions from Commissioners Cabral and
24 Okuda. I myself have seven questions for the
25 Department of Education, some with multiple parts,

1 which I'm actually willing to provide in writing for
2 a response at a future time, given the nature of our
3 proceedings and that this is merely a status update,
4 my inclination is to take no action today.

5 I would encourage my fellow Commissioners
6 to perhaps consider phrasing questions as a request
7 for future information rather than trying to make a
8 firm determination today.

9 Commissioner Okuda, followed by
10 Commissioner Cabral.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.
12 I agree and actually Commissioner Giovanni covered
13 all the questions I was going to ask.

14 So I was just going to say I've got nothing
15 further to ask. Thank you, Chair.

16 CHAIRPERSON SCHEUER: Thank you.
17 Commissioner Cabral.

18 COMMISSIONER CABRAL: I think this would be
19 to Mr. Representative Fujioka or Tanaka.

20 In light of the fact -- and I may be wrong,
21 I wasn't here ten years ago and all of this and the
22 Land Use Commission -- but my understanding in terms
23 of timing in such an event, the Land Use Commission
24 approved the changing of the use of this land, and
25 the Maui Department made a zoning regulation

1 requiring an alternative walking method pathway for
2 pedestrian and bicycles. That was day one.

3 But yet, that has been uniquely, whatever,
4 ignored repeatedly for year after year after year and
5 here we sit.

6 My question is, after that fact, and I'm
7 assuming you folks put it in -- is there going to be
8 plumbing to the building? Is asphalt, concrete and
9 roofing being included? I mean, I am angry.

10 So my question is, how can such an absolute
11 requirement be ignored, question one; and second one,
12 how much is the lawsuit going to cost the taxpayers
13 after the first child is killed because of this
14 decision? And can you enjoin all of the decision
15 employees along the way, and the Department of
16 Education and have them enjoined in that lawsuit so
17 their life could be ruined just like the parents of
18 the child who's been killed or grandchild who's been
19 killed?

20 If this was a private business, this would
21 be completely unacceptable.

22 So, Mr. Fujioka, how much is the settlement
23 going to be for the first child?

24 CHAIRPERSON SCHEUER: Commissioner Cabral,
25 I appreciate the anger. I think many of us have

1 anger on this. I think some of my written questions
2 might address some of what you're trying to comment
3 on.

4 I'm just going to ask for clarification.
5 Are you specifically asking Mr. Fujioka to respond to
6 the lawsuit questions, or did you more intend this as
7 a statement?

8 COMMISSIONER CABRAL: I am angry, but I
9 guess the question is, how in the structure, since
10 Mr. Fujioka and Tanaka are involved in the structure
11 of the DOE, how is the decision made to completely
12 ignore a requirement that was there day one, before
13 there was even a requirement to get building permit
14 or put a toilet in, how do you systematically ignore
15 such a requirement, and now say that it's
16 inappropriate to even have said it's done a study --
17 that would be my question, is how is that ignored
18 through the system?

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Cabral.

21 With your deference, I would like to
22 actually share screen. I've drafted some questions,
23 and I would like to see the Department of Education
24 respond to, which I believe goes to those and other
25 issues. Would you allow me that?

1 VICE CHAIR CABRAL: Absolutely, because I
2 know you would do a much nicer job.

3 CHAIRPERSON SCHEUER: To clarify for the
4 Parties, these are the Chair's questions that I would
5 be asking orally.

6 I think it would take a long time to ask
7 orally. So I'm going to try and share screen and
8 show you what I have drafted. I believe you see
9 these questions.

10 Are you the Parties able to see these
11 questions, Commissioners?

12 MR. TANAKA: I'm sorry, Chair. I'm driving
13 and I have you on my own phone, so I can't read it.

14 CHAIRPERSON SCHEUER: But your counsel can.
15 So my first question is:

16 Did the DOE object or otherwise comment on
17 the form of the order on this matter when the
18 condition was originally passed?

19 And I'll provide these in writing so the
20 staff can transmit them to the Department of
21 Education.

22 The second is: Why did the DOE seek an LUC
23 site visit in 2018 on this matter? Was it not the
24 intent at that time to seek a changed condition, and
25 why was the matter not pursued then?

1 I might have the year wrong on when we did
2 the site visit, though I remember the site visit
3 clearly.

4 Question three: Please provide information
5 to the LUC regarding the original budget request for
6 the Kihei High School to the legislature; and to
7 specify whether or not the funds for the grade
8 separated pedestrian crossing were requested. If
9 they were requested, how was that amount determined?
10 And if they were not requested, why not?

11 4. Please provide the scope of the
12 contract for all the studies that have concluded that
13 there's warrant for this crossing.

14 And I will add, because I'm very familiar
15 that if you give a scope of study a certain slant,
16 you're going to get the answers that you need.

17 5. Should the LUC issue subpoenas for
18 documents related to questions 2, 3 and 4?

19 I'm interested in your response.

20 6. Will the new school facilities
21 organization be in charge of the further construction
22 of this matter?

23 If so, can Mr. Tanaka bind that
24 organization to any representation?

25 Will Mr. Fujioka continue to represent on

1 this issue?

2 I raised this at our last hearing, and the
3 answer was, we do not know.

4 Finally, please specify who will be in
5 charge of community outreach; how such outreach will
6 be conducted; and agenda for the first meeting.

7 Those are the questions. I'm going to stop
8 sharing screen now. I assure you, I will provide
9 these in writing so that you can get ahold of them.

10 Those are the questions that for me to make
11 a considered request, a consideration of the request
12 on the motion from the DOE are things that I would
13 like to have answers to.

14 I would like to open up to any reactions
15 from my fellow Commissioners.

16 VICE CHAIR CABRAL: Let me speak.

17 Thank you very much for you, once again,
18 for being so much more eloquent than I can be blunt.
19 Thank you.

20 CHAIRPERSON SCHEUER: Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you, Mr. Chair.
22 I concur 100 percent with the request. I think
23 having the Department of Education and any other
24 related government agency respond to your written
25 questions and the response in writing will make this

1 entire process more efficient and more clear, so I
2 concur 100 percent. Thank you, Mr. Chair.

3 CHAIRPERSON SCHEUER: Commissioner
4 Giovanni.

5 COMMISSIONER GIOVANNI: Chair, I also
6 concur with the approach to develop the written
7 questions and submit them for written answers.
8 However, I think you may have -- I'm going to suggest
9 that you consider modifying one of your questions to
10 directly address the question raised by Commissioner
11 Cabral.

12 It is my sense somewhere in the process of
13 time following the day one, or day one that the LUC
14 issued its order requiring this condition, that the
15 Department of Education develop a budget for the high
16 school that did not include specifically addressing
17 or including an overpass or underpass for this
18 condition.

19 That's the point in time which we think
20 that they have been negligent. I think they have
21 been negligent. I would like more information about
22 how or why that decision was made not to include it.
23 Thank you.

24 CHAIRPERSON SCHEUER: Thank you.
25 Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: On a separate --
2 not that I disagree with you, I am not disagreeing.
3 I wanted to know when is the time when DOT and DOE
4 are submitting their request to the legislature for
5 CIP funds or additional funds for this matter?

6 CHAIRPERSON SCHEUER: My understanding is
7 that the governor has already been vetting requests
8 at this time, and has been for a number of weeks.
9 But I would -- Mr. Fujioka?

10 MR. FUJIOKA: I'm sorry, I don't know the
11 timeline on that. I need to confer with Mr. Tanaka,
12 if he has information on that.

13 COMMISSIONER OHIGASHI: And if it has
14 already been submitted, I would assume that such a
15 large request would be submitted.

16 Are we able to get a copy of that
17 submittal?

18 CHAIRPERSON SCHEUER: You know, do you care
19 to respond, Mr. Fujioka?

20 MR. FUJIOKA: I don't know if a submittal
21 was made.

22 CHAIRPERSON SCHEUER: If a submittal was
23 made, are you able to provide that information to the
24 LUC?

25 MR. FUJIOKA: I believe so.

1 COMMISSIONER OHIGASHI: And the other
2 question, the second part.

3 If a submittal is to be made, will we be
4 able to get a copy of that too?

5 CHAIRPERSON SCHEUER: Mr. Fujioka?

6 MR. FUJIOKA: I believe so.

7 COMMISSIONER OHIGASHI: When you say "I
8 believe so", I intend to think you're saying yes.

9 MR. FUJIOKA: It hadn't come up in my
10 discussion, so I don't have anybody's approval to say
11 that.

12 CHAIRPERSON SCHEUER: So subject to
13 conferring with your clients, you'll seek to do this;
14 and if you're unable to do this, you will relay that
15 your client has not agreed to do so?

16 MR. FUJIOKA: Yes.

17 CHAIRPERSON SCHEUER: Commissioner
18 Ohigashi, anything further right now?

19 COMMISSIONER OHIGASHI: Nothing.

20 CHAIRPERSON SCHEUER: Commissioner Chang.

21 COMMISSIONER CHANG: Thank you, Mr. Chair.
22 I do concur with your questions. I believe we need a
23 really good administrative record documenting what's
24 been done, what hasn't been done, because clearly
25 this matter will probably be elevated to the

1 legislature, so I would like to make sure that these
2 questions and the responses -- and I'm not too sure
3 what's the vehicle to do that -- but accompanies and
4 provides the legislature a very good understanding of
5 the history behind this request so that there is a
6 full picture of why this matter is coming before them
7 at this point in time.

8 Because I would suspect that there are
9 going to be many people in the community, including
10 the legislature, who ask why do we have an empty
11 school that we cannot open?

12 So there needs to be some kind of
13 documentation to explain that.

14 So I appreciate, Mr. Chair, your
15 articulation of a lot of questions that I think the
16 Commissioners have been trying to explore with the
17 DOE.

18 They're not intending to put Mr. Fujioka or
19 Mr. Tanaka in an awkward position, but this is
20 clearly a matter that needs to be timely resolved,
21 and if the legislature is already reviewing, or if
22 the administration has already provided their budget
23 request, then it is incumbent upon us to make sure
24 that they are addressing this matter.

25 So thank you very much, Mr. Chair. I do

1 support the questions you're presenting.

2 CHAIRPERSON SCHEUER: Commissioner
3 Ohigashi, then I would like to make some -- and
4 Commissioner Aczon.

5 We are overdue for a break, and I would
6 like to make some remarks about what --

7 COMMISSIONER OHIGASHI: I just wanted to
8 make a small remark.

9 It seems to me that the Kihei
10 representative would be helpful in determining any
11 kind of submittals to the legislature, given the fact
12 that she is on the finance committee that I just
13 looked up, I understand she's on the finance
14 committee house finance. So it would make sense that
15 the DOE would work through her and try to figure out
16 whether or not what type of submittal should and can
17 be made, unless this website is wrong.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Ohigashi.

20 Commissioner Aczon, and then I will assess
21 the proceedings.

22 VICE CHAIR ACZON: Can I ask a question to
23 Mr. Sniffen?

24 CHAIRPERSON SCHEUER: You may.

25 VICE CHAIR ACZON: Let me just -- Mr.

1 Sniffen, the last hearing we had, I had the
2 impression that, you know, the funding for the
3 roundabout, I wouldn't say secured, that you have a
4 path or way to get that funding?

5 MR. SNIFFEN: Yes, absolutely.

6 So our first hope is that DOE can fund it
7 as part of their project. They're going to go in for
8 additional funding to get it, whatever it may be.

9 If they cannot get it, I already have
10 operational funds that I can repurpose for that use.

11 VICE CHAIR ACZON: So you don't have to go
12 to the legislature to get this funding?

13 THE WITNESS: When I go to the legislature,
14 I get funding in bulk for my special maintenance
15 budget. My special maintenance budget can be used
16 and repurposed for this purpose.

17 VICE CHAIR ACZON: So you can go ahead --
18 let me just -- do you need any permission from us or
19 anybody to proceed with this one? Or you have the
20 authority to just proceed with this one, no matter
21 what the DOE says or the community says? So you can
22 just go ahead, regardless of what happens today, or
23 regardless of, you know, the motion of amendment is
24 passed or not?

25 So putting away all those, you have the

1 authority, or DOT has the funding, the ability to do
2 these as soon as you get those, so we can open this
3 school?

4 THE WITNESS: Yes.

5 VICE CHAIR ACZON: Thank you.

6 That's all, Mr. Chair.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Commissioner Aczon.

9 Commissioners, it is 12:02. I think it is
10 time for a lunch break. I am going to assume that we
11 have concluded, at least for now, our questioning of
12 Department of Education.

13 Commissioner Giovanni, would you like to
14 provide additional written language in terms of the
15 scope of the question regarding the DOE's budget?
16 That would be helpful to me, and I will bring that up
17 one more time before we conclude our agenda item on
18 this matter.

19 After lunch, we still have to hear from the
20 Maui County and Office of Planning on this matter.

21 Commissioner Chang.

22 COMMISSIONER CHANG: Sorry. So one
23 question.

24 So, Mr. Sniffen, in the line of questioning
25 by Commissioner Aczon, when you reference "this", is

1 this the roundabout, is that what you can build?

2 THE WITNESS: Yes, that's correct.

3 COMMISSIONER CHANG: Thank you.

4 THE WITNESS: Thank you.

5 CHAIRPERSON SCHEUER: So, Mr. Fujioka,
6 confirming you have nothing further on this right
7 now.

8 MR. FUJIOKA: Right.

9 CHAIRPERSON SCHEUER: So it is 12:04. I
10 think -- I suggest we reconvene to 12:50 for the
11 continued discussions on this matter.

12 First up will be any remarks from the
13 County of Maui, followed by any comments from the
14 Office of Planning, and questions from the
15 Commissioners to both of those parties.

16 People understanding our proceedings?
17 Great.

18 We are in recess until 12:50.

19 CHAIRPERSON SCHEUER: We are back on the
20 record. It is, at the bang of the gavel, 12:51.

21 We are now going to hear from Maui County.

22 Good afternoon, Mr. Hopper.

23 MR. HOPPER: Good afternoon. If it's okay
24 with the Commission, I would like to ask Michele
25 McLean to sort of give an update of the Planning

1 Department's position on the matter.

2 CHAIRPERSON SCHEUER: I thought I heard
3 somebody trying to say something.

4 MR. FUJIOKA: It was me, Mr. Chair.

5 I wanted to clarify a point, if I may.

6 I think in answering some questions I said
7 that I did not see the harm of deferring this matter.
8 We did want to present some clarification after I
9 conferred with Mr. Tanaka over the recess.

10 So I'm not sure, can we discuss it now, or
11 is there going to be some discussion about deferral
12 later?

13 CHAIRPERSON SCHEUER: The plan for today is
14 that -- I did confirm with you before the break
15 whether you were done, and you indicated in the
16 affirmative. The plan was to hear from Maui County
17 and from the Office of Planning, deliberation by the
18 Commission, if at all, but the nature of our
19 deliberations will probably be relating merely to the
20 status update and not actually taking action on the
21 substance of the motion.

22 However, I can certainly call on you at
23 that time if you wanted to add further comments.

24 MR. FUJIOKA: Thank you.

25 CHAIRPERSON SCHEUER: Sorry, Mr. Hopper,

1 please proceed.

2 MR. HOPPER: If it is okay with the
3 Commission, I would like to have Planning Director
4 Michele McLean summarize the department's position,
5 if that's all right with you.

6 CHAIRPERSON SCHEUER: Absolutely.

7 Aloha, Michele. Do you swear or affirm
8 that the testimony you're about to give is the truth?

9 THE WITNESS: I do.

10 MICHELE McLEAN

11 Was called as a witness by and on behalf of the
12 County of Maui, was sworn to tell the truth, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 CHAIRPERSON SCHEUER: Please proceed.

16 THE WITNESS: Thank, you Chair, and
17 Commissioners.

18 The position described in our statement has
19 not changed significantly, but I did want to provide
20 some further context, given the information that's
21 been presented today.

22 The department supports the roundabout.
23 Mr. Sniffen stated it plainly, the community wants it
24 and DOT will see that it gets built prior to the
25 school opening if DOE doesn't have the funds.

1 The mayor, and therefore, the department
2 does not want school's construction or opening to be
3 delayed. We do not oppose the spirit of the
4 Petitioner's request, but we are not ready to concede
5 that the need for a grade-separated pedestrian
6 crossing be left to a future warrant study or TIAR.

7 The Kihei Community knows the behavior of
8 its kids better than the traffic study.

9 We agree that an overpass would not see
10 sufficient use to justify its expense, but believe
11 that an underpass is a viable option to not be taken
12 off the table prior to the opening of the school.

13 It may not be feasible to build it to DOT
14 standards, even with a revised hydrologic study, but
15 it could nonetheless possibly be built safely.

16 DOT and DOE should be required to continue
17 to work with the community and the County to support
18 an underpass. If it ultimately proves unfeasible,
19 then the County and people would have to acknowledge
20 that reality and so inform the LUC.

21 While the DOE and DOT seem to take that
22 position now, we are not ready to do so yet.

23 Thank you, Chair.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 Director McLean.

1 Commissioners?

2 Commissioner Okuda followed by Commissioner
3 Wong, I believe.

4 COMMISSIONER OKUDA: Thank you, Mr. Chair.

5 Ms. McLean, if I can just get a very short
6 summary from you about your professional background
7 on which you base your testimony that you gave right
8 now. Just give us a very short summary of your
9 education and experience as a professional planner.

10 THE WITNESS: Thank you for the question.
11 I have a Bachelor's degree in political science from
12 Vassar College. I have been with the Planning
13 Department since January 2011, first as Deputy
14 Director, and I've been Director since July of 2018.

15 Prior to that in the private sector I was
16 planning consultant with my own practice, and then I
17 worked with a real estate developer, and I am AICP
18 certified by the American Planning Association.

19 COMMISSIONER OKUDA: Thank you very much
20 for that background.

21 CHAIRPERSON SCHEUER: Commissioner Wong.

22 COMMISSIONER WONG: Thank you, Chair.

23 Director, a question. In terms for the
24 County of Maui, do they have to do a certificate of
25 occupancy before the school can be opened to

1 students?

2 THE WITNESS: I would have to confirm that,
3 because the State does have the ability to exempt
4 itself from getting building permits, and I believe
5 that ability to exempt itself may also apply to
6 certificates of occupancy.

7 However, they have applied for County
8 building permits, so the County would be looking for
9 there to be COs before the buildings are occupied.

10 But I'm not certain, because they applied
11 for the County building permits, if they can exempt
12 themselves from this CO requirement. I'm not sure
13 about that. We would have to confirm that.

14 COMMISSIONER WONG: So another question I
15 have is, I remember City Council of Maui did a
16 resolution for the Kihei High School.

17 Can you refresh my memory of what it said,
18 please?

19 THE WITNESS: I wouldn't be able to speak
20 about the specific wording, but that was when the
21 County petitioned this Commission for Declaratory
22 Ruling on the wording of the original condition and
23 the Decision and Order. That was when the DOE
24 believed that there was some flexibility in the
25 condition related to the grade-separated pedestrian

1 crossing, that if a warrant study showed that it
2 wasn't needed at a certain phase, then they wouldn't
3 have to build it.

4 We disagreed with that, and I believe the
5 council resolution -- well, I know the council
6 resolution took that position, but I don't know the
7 specific wording of it.

8 COMMISSIONER WONG: So going back to my
9 first question.

10 Let's say hypothetically we amend the
11 condition to say you shall build a roundabout, and
12 when the second phase of the high school is being
13 enacted, you shall build an underpass or overpass,
14 and that condition was passed and all that, so would
15 the County of Maui then take over and follow through
16 to make sure it's done?

17 THE WITNESS: The County is responsible now
18 for enforcing your conditions. So if that is how the
19 condition would be revised, then, yes, we would be
20 responsible for enforcing it, just like we are now
21 for the existing language that we have sought to
22 enforce through the building permit process.

23 COMMISSIONER WONG: So I have a question.

24 Commissioner Ohigashi was talking to the
25 DOE and they said something about they have started

1 Phase II.

2 Do you know what that is about?

3 THE WITNESS: I did recently look at the
4 Petitioner's filing for today's proceedings with one
5 of the exhibits that shows the two different phases.

6 And Phase II, it appears, allows for
7 expanded facilities when the enrollment gets to a
8 certain point. But Phase II, as I believe they said
9 in their own filings, there is no particular start
10 date for it.

11 Theoretically, Phase II may never happen.
12 I think that's realistic, but theoretically.

13 COMMISSIONER WONG: Somehow I heard they
14 said they started Phase II, so I don't know what
15 Phase II --

16 CHAIRPERSON SCHEUER: Commissioner, I heard
17 the same thing. I think it's a question for when I
18 allow DOE to speak rather than for the County.

19 COMMISSIONER WONG: Thank you, Director.
20 Thank you, Chair. No further questions.

21 CHAIRPERSON SCHEUER: Thank you very much.
22 Commissioner Ohigashi, followed by
23 Commissioner Giovanni.

24 COMMISSIONER OHIGASHI: Michele, Ms.
25 McLean, I just want to be sure.

1 Is it the County's position then that we
2 have to ensure the building of a roundabout prior to
3 opening of Phase I, and an over and underpass may be
4 delayed until Phase II. Is that the position?

5 THE WITNESS: First, in part because of Mr.
6 Sniffen's statement today that requiring the
7 roundabout to be constructed prior to the opening of
8 Phase II, the County absolutely would support that
9 change.

10 In terms of pursuing an underpass, we're
11 concerned that postponing that consideration until
12 Phase II means that it's not going to be touched by
13 DOE, and possibly DOT, until then; whereas we believe
14 that it's -- there's a potential for it to be
15 constructed, and the County wants to be an active
16 participant in pursuing that working with the
17 community. But we need DOE and DOT to be involved in
18 that.

19 So if the requirement is put off
20 specifically to a later point, I don't know what they
21 would come to the table, and if they would assist to
22 the extent that they're able to.

23 So that's why we would like to see that
24 that requirement not be completely put off to a later
25 phase, because they still have a role to play, even

1 if it can't be built to DOT standards, the DOT still
2 has a role to play in that happening.

3 COMMISSIONER OHIGASHI: Does the County
4 intend to file proposed language on the amendment?

5 THE WITNESS: We could.

6 COMMISSIONER OHIGASHI: It seems kind of
7 nebulous to me, especially the second part, of how
8 that would work. So if we had something in writing
9 that we could see, perhaps that would clear
10 everything up. However, the others may feel
11 differently.

12 THE WITNESS: Thank you for that. Yeah, we
13 would be happy to work on that, and I would even
14 consult with DOT and DOE on that language.

15 I don't know if we will be able to get that
16 done today because the Petitioner's filing came in
17 just a few business days ago. But, yes, we would be
18 happy to put to that together.

19 COMMISSIONER OHIGASHI: Will you be
20 requiring an amendment to the ordinance, the zoning
21 ordinance that was granted in this matter by the
22 council?

23 THE WITNESS: Thank you for that question.

24 Yes, I do believe an amendment to the
25 existing zoning condition would be needed, because

1 the existing condition references the original D&O
2 condition. And so if those get amended, then I
3 believe the zoning condition would need to be amended
4 too.

5 COMMISSIONER OHIGASHI: Because it would
6 appear to me how they can require more stricter
7 standards. So would your proposed condition, giving
8 us in writing, would that be the amendment you would
9 be seeking through the Planning Commission,
10 essentially to the council?

11 THE WITNESS: Yes.

12 COMMISSIONER OHIGASHI: I don't have any
13 further questions.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 Commissioner Ohigashi.

16 Commissioner Giovanni.

17 COMMISSIONER GIOVANNI: Thank you, Chair.

18 I concur with Commissioner Ohigashi, and
19 welcome your willingness to draft some language
20 consistent with your position that takes it out of
21 the nebulas category, in the indefinite category
22 makes it more certain, so I appreciate that.

23 My question, Director McLean, is for
24 purposes of clarity, and has to do with a term that's
25 been used quite a bit in the record here, which is

1 "feasibility". And from my perspective, feasibility
2 there is both technical feasibility and financial
3 feasibility, those are two very different things.

4 One, first is it possible to do it at any
5 expense? And then the second is, can we afford it?
6 That's my general notion.

7 Would you agree with that general
8 definition of feasibility?

9 THE WITNESS: Yes.

10 COMMISSIONER GIOVANNI: So in your
11 statement earlier, I think you said that the overpass
12 was, in the County's view, was infeasible.

13 Could you further clarify that? Or maybe I
14 misunderstood it.

15 THE WITNESS: We agree with DOT'S
16 perspective that the overpass would not get much use,
17 and I don't think that its limited use would justify
18 its likely expense.

19 I didn't talk about feasibility of an
20 overpass. I do believe an underpass is feasible and
21 we can talk about what feasibility means in that
22 context.

23 COMMISSIONER GIOVANNI: I think I agree
24 with that. I think whether you're considering the
25 overpass or whether you're considering the underpass,

1 in both cases you have questions of technical
2 feasibility and financial feasibility. Ultimately
3 decision-makers will weigh in on those questions
4 about either.

5 But I just want to go for the -- to
6 understand the County's position, at least for this
7 point in time, on the matter of technical
8 feasibility, particularly in the cost of it out of
9 it.

10 Does the County preclude the possibility of
11 an overpass or underpass at this point?

12 THE WITNESS: I'm sorry, I lost the last
13 part of your question.

14 COMMISSIONER GIOVANNI: That was the
15 question, so let me rephrase it.

16 Mr. Sniffen testified this morning that an
17 overpass was feasible for about 6 to 8 million
18 dollars.

19 Setting aside whether there is financial
20 feasibility to find the money, that's pretty clear
21 that it is technically feasible. Would you agree
22 with that?

23 THE WITNESS: Yes.

24 COMMISSIONER GIOVANNI: Then similarly, the
25 underpass, which we have heard conflicting testimony,

1 but general notion that it's probably financially --
2 pardon me -- technically feasible at a much greater
3 expense to satisfy the criteria of the DOT.

4 But putting aside the financial part of it,
5 it's probably technically feasible at some price.
6 Would you agree with that?

7 THE WITNESS: Yes.

8 And the point I was hoping to make, and
9 apparently didn't, is that constructing the underpass
10 to DOT standards, I think is, as you're saying,
11 technically feasible, but probably financially
12 infeasible.

13 But I don't know that it has to be built to
14 DOT standards. And so, if looking at the technical
15 feasibility, if we brought in the possibilities for
16 the specs of it, I think it might become financially
17 feasible.

18 COMMISSIONER GIOVANNI: I concur with that
19 position personally, especially in the context that
20 even today with no improvements people are using the
21 pathway as an underpass, and if the school opens, it
22 can only be more people using it.

23 So any improvement at any cost would be
24 better than where we are today.

25 Thank you, Director. I appreciate it. No

1 further questions.

2 CHAIRPERSON SCHEUER: Thank you very much,
3 Commissioner Giovanni.

4 Commissioners, are there further questions
5 for Director McLean? Seeing none, thank you very
6 much.

7 THE WITNESS: Thank you.

8 CHAIRPERSON SCHEUER: Anything further, Mr.
9 Hopper?

10 MR. HOPPER: No. Thank you, Mr. Chair.

11 CHAIRPERSON SCHEUER: Ms. Takeuchi Apuna.

12 MS. APUNA: Thank you, Chair.

13 Office of Planning, we don't have any
14 further comments, but I think we're supportive of the
15 parties working together to come to some agreement.
16 Thank you.

17 CHAIRPERSON SCHEUER: Any questions for the
18 Office of Planning from the Commissioners? Seeing
19 none.

20 Mr. Fujioka, you wanted to make a brief
21 statement to follow up regarding what you feel the
22 impact might be of a deferral today.

23 I'll just remind you that I think there's
24 already been a great deal of sentiment expressed that
25 our sense is to defer today and not take action.

1 MR. FUJIOKA: I would like to have Mr.
2 Tanaka explain, first, the differences in numbers in
3 the phasing of this, because there were two sets of
4 numbers attached.

5 CHAIRPERSON SCHEUER: Commissioner Wong's
6 questions, and then --

7 MR. FUJIOKA: And then explain about what
8 the effect of deferral.

9 CHAIRPERSON SCHEUER: That is the entirety
10 of what you want your witness to describe?

11 MR. FUJIOKA: Yes.

12 CHAIRPERSON SCHEUER: Okay.

13 Mr. Tanaka, are you available via audio, at
14 least, if not also by video?

15 THE WITNESS: My video is --
16 (indecipherable).

17 CHAIRPERSON SCHEUER: Audio is fine, but
18 you're not very easy to hear right now.

19 THE WITNESS: Is this better?

20 CHAIRPERSON SCHEUER: Slightly better. It
21 could be even better if --

22 THE WITNESS: Is this better?

23 It's about the same. It's a bit soft.

24 How's our court reporter?

25 COURT REPORTER: It's a bit soft for me to

1 hear too. It's challenging.

2 THE WITNESS: Is this better?

3 CHAIRPERSON SCHEUER: Yes.

4 THE WITNESS: First of all, thank you very
5 much for everyone's time.

6 A couple things I want to clarify that,
7 with the effort of the DOT and the DOE, the
8 roundabout will be funded. The roundabout is
9 critical for us to get working on to prevent any
10 further delays of opening the school.

11 So we encourage that that part of this
12 discussion gets approved.

13 We also understand that -- and I think
14 Commissioner Giovanni put it well -- that it's not
15 that we're not going to study future opportunities
16 for the public crossing, we will; but that can come
17 after we get the roundabout completed, or started the
18 roundabout to be completed. So we can open the
19 school on time.

20 I think Michele McLean put it also well
21 echoing the sentiments that the County, DOT, DOE and
22 the Kihei Community Association is fine with the
23 roundabout.

24 So what we're asking today is to get
25 approval to proceed with the roundabout and put the

1 underpass and the overpass at a different time. We
2 want to start moving on this project, and that the
3 roundabout will provide for a safe transition of our
4 students across the highway. Safety is of the utmost
5 importance for us.

6 So that's all I would like to say and thank
7 you everyone for your time.

8 CHAIRPERSON SCHEUER: Before I offer any
9 Commissioners an opportunity to ask you questions,
10 Mr. Tanaka, I just want to clarify.

11 I don't have the transcript from our last
12 hearing on this matter in front of me, but if I
13 recall, Mr. Sniffen answered in the affirmative that
14 there is nothing that this Commission has to do to
15 cause the roundabout to be built. There's nothing in
16 our current order that prevents the DOT and DOE from
17 implementing a roundabout.

18 So I do not understand your second point
19 that somehow that needs to be tied to the pedestrian
20 crossing issue for you to proceed.

21 THE WITNESS: That is my understanding, but
22 the issue of will we --

23 CHAIRPERSON SCHEUER: What is your
24 understanding?

25 THE WITNESS: My understanding is that we

1 can proceed with the roundabout, but if the provision
2 for the overpass is still there, I'm not sure we're
3 going to get the friendly reception from the
4 legislators when we're requesting funds.

5 CHAIRPERSON SCHEUER: Commissioner Aczon,
6 followed by Commissioner Okuda.

7 VICE CHAIR ACZON: I think --

8 CHAIRPERSON SCHEUER: Commissioner Aczon,
9 something has happened with your audio.

10 VICE CHAIR ACZON: I agree with your
11 assessment, that based on Mr. Sniffen's testimony,
12 LUC doesn't have to do anything to get this
13 roundabout going. They can do it themselves. It's
14 going to be between DOT and DOE to make it happen,
15 and whatever delays that occurs on opening the high
16 school is, I believe, it's on DOT.

17 On the underpass financing there's nothing
18 really we can do, it's up to the legislature to make
19 those commitments and to make sure it happens. And
20 again, it's going to be up to DOT or DOE to go to the
21 legislature and ask for the money, and there's no
22 guarantee that we can get the money.

23 What I'm saying is we're, based on Mr.
24 Sniffen's testimony, there's no stopping DOT or DOE
25 to go have a roundabout, and don't delay the high

1 school opening, and let the other issues play by
2 itself between the DOT, DOE and the community.

3 If you get involved now, you know, for me,
4 as appointed and not elected member official, you
5 know, it's no win/win or it's a lose/lose situation
6 for us. You know, we going take -- but we don't have
7 the authority financially to make it happen.

8 So that's all I'm saying, is that we are
9 guaranteed based on the testimonies that roundabout
10 is going to happen. And, you know, I would go with
11 that, and let the other issues play by itself,
12 because there's a lot of unanswered questions on
13 disability, financing, all those come to play, you
14 know, later on, and but rest assured, the opening the
15 high school is not going to be delayed.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Aczon.

18 Commissioner Okuda followed by Commissioner
19 Chang, but I'm going to first note Mr. Fujioka has
20 raised his hand.

21 You had something to say, Mr. Fujioka?

22 MR. FUJIOKA: I wanted to interject,
23 because while it may be true that the roundabout is
24 going to be built anyway, as the order is currently
25 written, the school cannot open until grade-separated

1 pedestrian crossing is installed. So that would
2 still be a holdup if the roundabout is built and
3 there is no funds.

4 CHAIRPERSON SCHEUER: Thank you, Mr.
5 Fujioka. I think we understand that point. But the
6 question was, do we have to take action on the
7 roundabout for the roundabout to be built?

8 Commissioner Okuda, followed by
9 Commissioner Chang.

10 And I'll just clarify we're doing a very
11 small -- this is just involving Mr. Fujioka's
12 statement, and the two questions posed to Mr. Tanaka.

13 Commission Okuda.

14 COMMISSIONER OKUDA: Thank you, Mr. Chair.
15 Actually Commissioner Aczon asked all the questions
16 that I had intended to ask, and he also asked some
17 very good questions that I didn't even think of, so I
18 have nothing further to add. Thank you, Mr. Chair.

19 CHAIRPERSON SCHEUER: Thank you. Following
20 Commissioner Chang, if there are no further questions
21 I intend to -- well, Chang and then Ohigashi, I'll
22 assess where we are in the proceedings.

23 The Chair might later draft the questions
24 and suggest we move on.

25 So Commissioner Chang followed by

1 Commissioner Ohigashi.

2 COMMISSIONER CHANG: Thank you, Mr. Chair;
3 and thank you Mr. Tanaka for being available to
4 provide this clarification.

5 When is the projected date for the school
6 opening?

7 THE WITNESS: I believe it is school year
8 2023. We had two years of a protest, construction
9 protest that held us back on Phase II.

10 COMMISSIONER CHANG: So this is 2020 or is
11 this 2021?

12 THE WITNESS: 2021.

13 COMMISSIONER CHANG: So just working
14 backwards, and I appreciate DOT and DOE working
15 together, that both you and Mr. Sniffen commit to
16 build that roundabout no matter what, either it comes
17 out of DOE fund or DOT funds.

18 So working backwards, what needs to be done
19 to ensure that the roundabout gets built before the
20 2023 opening?

21 MR SNIFFEN: Well, there's a design
22 phase -- go ahead.

23 CHAIRPERSON SCHEUER: No, actually we're
24 just -- this proceeding is going on too long. It was
25 a question for Mr. Tanaka.

1 COMMISSIONER CHANG: Do the best you can.

2 THE WITNESS: Yes. I think it's designed
3 and construction. That's basically it.

4 COMMISSIONER CHANG: It sounds as if you
5 could go out to design and construction fairly soon
6 if you don't have to go to the legislature. So the
7 whole back and forth we had about the legislature is
8 really not relevant to the roundabout; is that what
9 you're saying?

10 THE WITNESS: Yes.

11 COMMISSIONER CHANG: Okay.

12 So you understand that you could proceed
13 timely with the design phase and construction of the
14 roundabout to ensure that the school is opened in
15 2023, is that correct?

16 THE WITNESS: That is correct. The
17 partnership that we have to have with DOT, because
18 they're the designers of the roundabout, that is
19 their expertise. So we take their expertise.

20 COMMISSIONER CHANG: And when you say
21 "opening", is that -- do you need to get a
22 certificate from the County of Maui?

23 THE WITNESS: I believe that is correct,
24 certificate of occupancy.

25 COMMISSIONER CHANG: Thank you, Mr. Tanaka,

1 you've answered by question.

2 Chairperson SCHEUER: Thank you,
3 Commissioner Chang.

4 Before I call on Commissioner Ohigashi, I
5 want to note that the attorney for the Department of
6 Education asserted Mr. Tanaka was going to speak to
7 two things, including the clarification on the use of
8 Phase I and Phase II, but Mr. Tanaka, you haven't
9 spoken to that.

10 THE WITNESS: Thank you very much, Chair.

11 There is a construction phase, and for the
12 construction phase, Phase I has been completed, the
13 groundwork, the grubbing, the road.

14 Phase II is actually the beginning of the
15 construction of classrooms. And I think in the
16 phasing plan it shows that.

17 And then there's the phasing of opening the
18 school. Phase I is the opening of, I think,
19 classrooms for 800 students, administrative building
20 and the cafeteria; and then Phase II is the rest of
21 the building and the other facilities, whether it be
22 the football field or the music room.

23 CHAIRPERSON SCHEUER: So to clarify, your
24 reference earlier to your notice to proceed on Phase
25 II was the construction Phase II of Phase I, as the

1 term was used in the LUC's Decision and Order?

2 THE WITNESS: Correct.

3 CHAIRPERSON SCHEUER: Thank you.

4 Commissioner Ohigashi.

5 COMMISSIONER OHIGASHI: That's the question
6 I was going ask. Thank you.

7 CHAIRPERSON SCHEUER: Thank you.

8 Anything further, Commissioners? If not,
9 I'm going to share screen again, and I'm going to --
10 I considered Commissioner Giovanni and Commissioner
11 Ohigashi's suggestions for additional questions. So
12 please affirm, at least somebody affirm that you're
13 seeing what I'm seeing, the questions listed. Can
14 somebody orally let me know?

15 COMMISSIONER GIOVANNI: Yes, I see them.

16 CHAIRPERSON SCHEUER: Okay, great.

17 Question one is: Did the DOE object to or
18 otherwise comment on the form of the order,
19 specifically this condition at issue when the order
20 was originally passed.

21 No. 2. Why did the DOE seek an LUC site
22 visit in June 2018 on this matter? Was it not the
23 intent at that time to seek a changed condition? Why
24 was that matter not pursued then?

25 Question 3. And this is incorporating the

1 comments from Commission Giovanni.

2 The LUC order of July 29, 2013, included
3 Condition 1.b that required what is now referred to
4 as a Grade Separated Pedestrian Crossing or (GSPC)
5 prior to the opening of Phase I. Subsequently, the
6 DOE developed a preliminary design and budget, and
7 requested funding for detailed design and
8 construction of the school.

9 a. Did the preliminary design and budget
10 include any consideration or funding for the GSPC?

11 b. Did the original budget request for the
12 Kihei High School to the legislature, by the DOE,
13 specify whether or not the funds for the GSPC were
14 requested?

15 c. If the answer to either 3a or 3b is
16 yes, how was the amount determined?

17 d. If the answer to either 3a or 3b is no,
18 how did this oversight or DOE decision making to
19 explicitly not include the GSPC in the design and
20 budget request occur? What was DOE's rationale to
21 proceed with the budget request that did not include
22 any funds for the GSPC?

23 4. Please provide the scope of contract
24 for all of the studies that concluded that there was
25 no warrant for the crossing.

1 5. Should the LUC issue one or more
2 subpoenas for documents related to Nos. 2, 3, and 4?

3 6. Will the new school facilities
4 organization be in charge of the construction? If
5 so, can Mr. Tanaka bind them? Will Mr. Fujioka
6 continue to represent on this issue?

7 7. Please specify who will be in charge of
8 community outreach, and how such outreach will be
9 conducted.

10 8. Please provide a copy of this year's
11 budget requests from DOE or DOT, if any, related to
12 funding for a roundabout.

13 Commissioners, do you have any further
14 suggestions or comments on this? And I would seek
15 your concurrence either through motion or otherwise
16 to transmit these questions to the Department of
17 Education.

18 COMMISSIONER WONG: Chair.

19 CHAIRPERSON SCHEUER: Commissioner Wong
20 followed by Commissioner Okuda.

21 COMMISSIONER WONG: I first want to say
22 thank you for writing those questions down. It makes
23 it much easier for us to see what the questions are.
24 So I want to thank you, Chair, and also Commissioner
25 Chang and all the other Commissioners for allowing us

1 to have this in writing, so we can go back and review
2 it once we get the answers.

3 And if the other Commissioners have other
4 statements before this, I would like to make a motion
5 to ask the Chair to transmit this document to the
6 proper channels.

7 CHAIRPERSON SCHEUER: Can I please
8 acknowledge Commissioner Okuda first before you make
9 your motion, Commissioner Wong?

10 COMMISSIONER WONG: Sure.

11 CHAIRPERSON SCHEUER: Commissioner Okuda.

12 COMMISSIONER OKUDA: I would second the
13 motion, Chair. That's all I had to say.

14 CHAIRPERSON SCHEUER: Commissioners, we
15 have a motion before us to transmit the questions as
16 displayed on your screens through screen sharing to
17 the Department of Education for a future status
18 briefing on this matter made by Commissioner Wong and
19 seconded by Commissioner Okuda.

20 I'm going to stop screen sharing so I can
21 see everybody. Any discussion on this matter,
22 Commissioners? Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 Clarification on my second. As part of
25 this, I am assuming that there will be no

1 decision-making on any pending request, and to the
2 extent necessary, although I don't think it's
3 necessary, but to the extent that it is believed to
4 be necessary, any such decision-making will be
5 deferred to a later date to be scheduled in the
6 discretion of the Chair or in the normal course.

7 CHAIRPERSON SCHEUER: That is certainly the
8 intent of the question. This is to aid us in getting
9 a decision-making which DOE seeks, but we feel we
10 need this information in order to make our decision.

11 Commissioner Ohigashi.

12 COMMISSIONER OHIGASHI: I agree. However,
13 I kind of like to make -- I want to give the signal
14 to the DOE that we probably will not be taking up
15 this matter until these questions are answered.

16 CHAIRPERSON SCHEUER: And I guess I'll also
17 clarify about my writing of the questions. I'm open
18 to your thoughts on issuing subpoenas, but don't need
19 permission from the person being subpoenaed or
20 entity.

21 Is there further discussion, Commissioners?
22 If not, there is a motion before us.

23 Mr. Orodener, will you please do a roll
24 call?

25 EXECUTIVE OFFICER: The motion is to

1 transmit the questions presented to the Department of
2 Education for further clarification and to continue
3 these proceedings until those questions are answered.

4 Commissioner Wong?

5 COMMISSIONER WONG: Aye.

6 EXECUTIVE OFFICER: Commissioner Okuda?

7 COMMISSIONER OKUDA: Yes.

8 EXECUTIVE OFFICER: Commissioner Aczon?

9 VICE CHAIR ACZON: Yes.

10 EXECUTIVE OFFICER: Commissioner Cabral?

11 VICE CHAIR CABRAL: Yes.

12 EXECUTIVE OFFICER: Commissioner Chang?

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Giovanni?

15 COMMISSIONER GIOVANNI: Aye.

16 EXECUTIVE OFFICER: Commissioner Ohigashi?

17 COMMISSIONER OHIGASHI: Yes.

18 EXECUTIVE OFFICER: Chair Scheuer?

19 CHAIRPERSON SCHEUER: Aye.

20 EXECUTIVE OFFICER: Thank you very much,

21 Mr. Chair. The motion passes unanimously with eight.

22 CHAIRPERSON SCHEUER: Thank you very much.

23 Thank you to the participants on this agenda item.

24 We appreciate the information you've provided today.

25 Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: I just wanted to
2 remind County of Maui, although they're not on the
3 part of the questions that they seem to want to --
4 well, they proposed to get together with DOT and DOE
5 and attempt to work out some kind of language that
6 will be their position in writing.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Ohigashi.

9 Anything further on this agenda item
10 Commissioners?

11 Commissioner Giovanni.

12 COMMISSIONER GIOVANNI: Just to clarify
13 what Commissioner Ohigashi was referring to, that's
14 language that was more specific about the GSPC
15 timing.

16 Is that correct, Commissioner Ohigashi?

17 COMMISSIONER OHIGASHI: (Nodding head up
18 and down.)

19 CHAIRPERSON SCHEUER: He is nodding in the
20 affirmative.

21 COMMISSIONER GIOVANNI: Thank you.

22 CHAIRPERSON SCHEUER: Commissioners, we now
23 are moving onto our next agenda item. So thank you
24 to Department of Education, Department of
25 Transportation, you may leave the meeting.

1 Our next discussion on the designation of a
2 cultural specialist pursuant to HRS 205-1.

3 Mr. Orodener, will you please brief the
4 Commission on this situation?

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.
6 Yes, as the Commissioners may be aware, 205-1
7 requires us to have sufficient Hawaiian cultural
8 practitioner representation on the Commission.

9 In the past it has been the practice to
10 designate someone as the cultural practitioner for
11 the purposes of meeting requirements of 205-1.

12 Whether or not we actually need a specific
13 person to be designated is a question that has never
14 really been answered. However, we are in a situation
15 where, regardless of whether or not we have to have a
16 specific cultural practitioner appointed, we have not
17 had one since Commissioner Mahi resigned over a year
18 ago.

19 The Commission has a couple of options. It
20 can designate someone else; it can choose not to do
21 anything and that may be sufficient for adherence to
22 the statute; or the Commission can take some kind of
23 action to try and see if we can convince the
24 administration that this is an urgent matter. But
25 it's at the discretion of the Commission.

1 CHAIRPERSON SCHEUER: Thank you. Mr.
2 Giovanni -- excuse me, Mr. Orodener.

3 Commissioners, this is just discussion.

4 Commissioner Cabral. I will note that we
5 do have three deputy attorney generals available to
6 us as well.

7 Commissioner Okuda followed by Commissioner
8 Cabral.

9 COMMISSIONER OKUDA: Thank you, Mr. Chair.
10 At some time, if there is no objection, I would like
11 to make a motion which would direct Executive Officer
12 and/or the Chair's discretion to take the actions
13 necessary to get, or to -- yeah, to get a
14 Commissioner appointed as the Cultural Commissioner.

15 And the reason for that -- if I can just
16 speak briefly on it -- is I don't believe this is --
17 if we can talk frankly -- just a Hawaiian thing.

18 So that the record is clear, I'm not Native
19 Hawaiian, but I did work on staff at the 1978
20 Constitutional Convention. These requirements which
21 are part of the statute were passed by a
22 Constitutional Convention that frankly had very, very
23 few native Hawaiians in there.

24 So it reflects that statement, community
25 values, community goals, community purposes which

1 frankly reflect diversity of the people that make up
2 the State. And so the failure to comply with the
3 statute, or where it might appear not to comply with
4 the statute, in my view is -- I don't want to say
5 flying in the face of -- but it's contrary to what
6 the delegates in the 1978 Constitutional Convention
7 intended, which was that these items which deal with
8 the recognition, protection of Hawaiian cultural
9 practices and history and resources are a statement
10 of broad community goals, broad community values,
11 what makes us different.

12 So I really believe that at some point in
13 time I would like to make a motion to direct the
14 Chair and authorize the Chair and Executive Officer
15 to do whatever they believe is necessary to get this
16 at the top of the administration's "to do" list so
17 that we carry out, you know, what everyone, I believe
18 in this community, makes us different in the world.

19 Thank you, Mr. Chair.

20 CHAIRPERSON SCHEUER: Thank you,
21 Commissioner Okuda.

22 Commissioner Cabral followed by
23 Commissioner Aczon and then Commissioner Wong.

24 VICE CHAIR CABRAL: Thank you for allowing
25 me to speak.

1 I do agree completely with Mr. Okuda that
2 this is really critically important, and I deeply
3 appreciated our former Commissioner Mahi's opinion on
4 things I am clearly the least qualified in that
5 regard.

6 But I would like to think that -- I think
7 Commissioner Dawn Chang is extremely qualified. I
8 find that her input on such matters is usually very
9 delightful and knowledgeable, and I don't know if we
10 can -- sounded like we could potentially appoint from
11 within, and I would make a vote in favor of
12 Commissioner Chang for that position, because I trust
13 and believe in her. Thank you.

14 CHAIRPERSON SCHEUER: Commissioner Aczon
15 followed by Commissioner Wong.

16 VICE CHAIR ACZON: Mr. Chair, I have some
17 question to our legal counsel. I don't know if it is
18 appropriate to call an executive session.

19 CHAIRPERSON SCHEUER: It would be
20 appropriate. Not knowing your question, is it okay
21 in the flow of conversation to continue with open
22 discussion before possibly moving into executive
23 session?

24 VICE CHAIR ACZON: I would prefer on my
25 question to be answered first before further

1 discussion.

2 CHAIRPERSON SCHEUER: So I understand you
3 are making a motion to move into executive session to
4 consult with the board's counsel regarding --

5 VICE CHAIR ACZON: Our legal rights.

6 CHAIRPERSON SCHEUER: Specifically in
7 regards to the designation or existence of one of our
8 members who is a cultural specialist. Is that
9 correct?

10 VICE CHAIR ACTON: Yes.

11 CHAIRPERSON SCHEUER: We have a motion to
12 go into executive session. Is there a second?

13 Commissioner Cabral has seconded.

14 Is there a discussion on the motion? If
15 not, Mr. Orodener, will you set up a separate ZOOM
16 meeting? This ZOOM meeting will remain open. The
17 Commissioners will log out and log into a separate
18 ZOOM meeting with counsel.

19 We obviously do not know the duration of
20 our consultation with counsel, if the motion is
21 successful. Is there any further discussion on the
22 motion? If not, is there any Commissioner who votes
23 "nay"? All Commissioners vote "aye".

24 The Commission will go into executive
25 session pursuant to the motion made by Commissioner

1 Aczon and seconded by Commissioner Cabral.

2 For attendees, there will a panel noting
3 that we are in executive session and we will
4 reconvene to this ZOOM meeting room when we are done
5 with executive session.

6 Commissioners, you should receive an email
7 from Daniel Orodener directing you to the proper
8 ZOOM meeting room along with our counsel.

9 (Executive session.)

10 CHAIRPERSON SCHEUER: We have one of our
11 deputies attorney general, but not actually the one
12 who is -- no, there is Lauren. We're ready to go.

13 Ready to go, Dan?

14 Okay, it's 2:04. We are back into regular
15 session.

16 Commissioners, we are on discussion of
17 designation of cultural specialist pursuant to HRS
18 205-1.

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Chair, just as a
21 qualification, because maybe a formal motion has not
22 been actually agendized, I would like to modify my
23 statement just to state that it's my very strong
24 request that the actions that I described be taken by
25 yourself and/or the Executive Officer.

1 I don't believe actually a motion is
2 necessary to authorize the Chair or the Executive
3 Officer to communicate to the Governor's office in
4 the most strongest terms possible what the collective
5 belief is or collective position is of the Land Use
6 Commission.

7 I'm not stating or saying that what I
8 talked about or described is the sentiment of the
9 Commissioners, that's my own personal sentiment. And
10 again, I believe that the Chair and/or the Executive
11 Officer are already authorized to take actions to so
12 communicate. Thank you.

13 CHAIRPERSON SCHEUER: Thank you very much.
14 Commissioner Aczon.

15 VICE CHAIR ACZON: I fully agree with
16 Commissioner Okuda.

17 CHAIRPERSON SCHEUER: Commissioners?
18 Commissioner Giovanni.

19 COMMISSIONER GIOVANNI: I fully agree with
20 Commissioners Okuda and Aczon.

21 CHAIRPERSON SCHEUER: Any further
22 discussion on this matter, Commissioners? If not,
23 this is not agendized for an action, but I think the
24 sentiment of the Commission is clear. We recognize
25 the deep value that that seat has brought to our

1 deliberation, and we desire the Governor to appoint
2 somebody to that seat, and we will urge the Governor
3 to do so. I will work with Dan on that matter.

4 Is there any other business that we have
5 before us today? If not, I'm going to declare a
6 recess, I will remind you on tomorrow's agenda action
7 related to Hawaiian Islands Land Trust, I serve on
8 that board, so I will be recusing myself from that
9 agenda item, and you'll be in the able hands of Vice
10 Chair Commissioner Cabral.

11 Is there anything further? If not, I
12 declare a recess until 9:00 a.m. November 5th, 2020.

13 (The proceedings were recessed at 2:08
14 p.m.)

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