

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on September 10, 2020
Commencing at 9:51 a.m.

Held via ZOOM by Interactive Conference Technology

VI. Call to Order

VII. ACTION

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

VIII. Adjournment

BEFORE: Jean Marie McManus, CSR #156

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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)
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1 CHAIRPERSON SCHEUER: Good morning,
2 everyone, it is 9:51 a.m.

3 This is the September 10, 2020 Land Use
4 Commission Meeting, and it's being held using, not
5 flawless, interactive videoconference linking
6 conference participants and other interested
7 individuals of the public via the ZOOM internet
8 conferencing program.

9 We're doing this in order to comply with
10 State and County official operational directives
11 during the pandemic. Members of the public are
12 viewing the meeting via the ZOOM webinar platform.

13 Again, to the attendees, thank you for your
14 patience as we work through multiple technical
15 challenges this morning.

16 To all meeting participants, I would like
17 to stress to everyone the importance of speaking
18 slowly, clearly and directly into your microphone,
19 and also that before speaking, please state your name
20 and identify yourselves for the record.

21 Please also be aware that all meeting
22 participants are being recorded on the digital record
23 of the ZOOM meeting. Your continued participation is
24 your implied consent to be part of the public record
25 of this event. If you do not wish to be part of the

1 public record, please exit this meeting now.

2 The ZOOM conferencing technology allows the
3 Parties and each participating Commissioner
4 individual remote access to the meeting proceedings
5 via their personal digital devices.

6 Also please note that due to matters
7 entirely outside our control, occasional disruptions
8 to connectivity may occur for one or more members of
9 the meeting at any given time. If this is happening
10 to you or somebody else, please let us know and we
11 will do our best to correct it as soon as we can.

12 My name is Jonathan Likeke Scheuer, I'm
13 currently serve as the LUC Chair. Along with me is
14 Commissioners Aczon, Chang, Okuda and Wong, our LUC
15 Executive Officer, Daniel Orodener, our LUC Chief
16 Planner, Scott Derrickson, Chief Clerk, Riley Hakoda,
17 the LUC's Deputy Attorney General, who today we
18 have -- what did I do wrong -- Bill Wynhoff, and the
19 court reporter, Jean McManus, are on Oahu.
20 Commissioner Cabral is on the Hawaii Island,
21 Commissioner Ohigashi has joined us from Maui, and
22 Commissioner Giovanni is on Kauai. We currently have
23 eight seated Commissioners of a possible nine.

24 Our next Agenda item is Docket No. A11-794
25 State of Hawaii, Department of Education (Kihei High

1 School) (Maui).

2 Our next agenda item is an action meeting
3 on Docket No. A11-794 State of Hawaii Department of
4 Education (Kihei High School) (Maui) to consider
5 Petitioner, State of Hawaii, Department of
6 Education's motion to Amend the Land Use Commission's
7 Findings of Fact, Conclusions of Law and Decision and
8 Order filed July 29, 2013.

9 Will the Petitioner Parties for Docket No.
10 A11-794 please identify themselves for the record?
11 You may need to enable your audio.

12 MR. FUJIOKA: Aloha, Stuart Fujioka,
13 Department of Education for Facilities and
14 Operations.

15 MR. TANAKA: Randall Tanaka --

16 CHAIRPERSON SCHEUER: If you can enable
17 your video, Mr. Tanaka.

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

20 CHAIRPERSON SCHEUER: County.

21 MR. HOPPER: Deputy Corporation Counsel,
22 Michael Hopper for County of Maui Planning
23 Department, here with me is Michele McLean, Planning
24 Director.

25 CHAIRPERSON SCHEUER: Ms. Takeuchi.

1 MS. APUNA: Good morning, Deputy Attorney
2 General Dawn Apuna, here with me today is Rodney
3 Funakoshi.

4 CHAIRPERSON SCHEUER: We also have a
5 representative from the State Department of
6 Transportation Highways Division.

7 MR. SNIFFEN: Ed Sniffen, thanks for having
8 me.

9 CHAIRPERSON SCHEUER: Thank you.
10 Are there any Commissioners who have any
11 disclosures to make? Commissioner Okuda.

12 COMMISSIONER OKUDA: Thank you very much,
13 Mr. Chair. I would like to disclose, as I did at the
14 prior hearing, that I represent a party in litigation
15 against the Department of Education. The party is
16 Susan, S-u-s-a-n, Kitsu, K-i-t-s-u. The case is now
17 on appeal with the Hawaii Intermediate Court of
18 Appeals.

19 I do not have a financial interest in the
20 outcome of the case, and the fact that I represent
21 Ms. Kitsu in the appeal will not affect my ability to
22 be fair and impartial in this matter

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Okuda, for repeating your earlier
25 declaration. I will note for the record after your

1 earlier declaration on these matters, none of the
2 parties objected.

3 Any there any further comments on Mr.
4 Okuda's continued participation in this proceeding?

5 DOE?

6 MR. FUJIOKA: We have no comment.

7 CHAIRPERSON SCHEUER: Do you have any
8 objection?

9 MR. FUJIOKA: No.

10 MR. HOPPER: No objection.

11 MS. APUNA: No objection.

12 CHAIRPERSON SCHEUER: Any other
13 disclosures? Seeing none.

14 Let me update the record.

15 On July 29th, 2013, the LUC issued its
16 decision and order for Docket No. A11-794.

17 On February 22, 2019, the Department of
18 Planning, County of Maui, filed for a Declaratory
19 Order from the State of Hawaii Land Use Commission to
20 reiterate and reaffirm that Condition 1(b) to the
21 Commission's July 29, 2013, Findings of Fact,
22 Conclusions of Law, Decision and Order required an
23 above-or-below-ground pedestrian crossing to allow
24 pedestrians to safely cross the Pi'ilani Highway,
25 prior to the opening of Phase I. The LUC assigned it

1 Docket No. DR19-65 and scheduled it for hearing.

2 At its meeting on April 3, 2019, the
3 Commission took public testimony and heard arguments
4 on DR19-65 and issued an order in favor of the County
5 of Maui on April 25, 2019.

6 On August 20, 2020, the Commission received
7 Petitioner Department of Education, State of Hawaii's
8 Motion to Amend the Land Use Commission's Findings of
9 Facts, Conclusions of Law and Decision and Order
10 filed July 29, 2013, and Exhibits 1 through 9.

11 On August 28, the Commission mailed the
12 September 9th and 10th Agenda Notice of meeting
13 Statewide, Maui regular and email mailing lists.

14 On August 31, 2020, the Commission received
15 Maui County Planning Department's Position Statement
16 on this docket.

17 On September 1, 2020, the Commission
18 received OP's response to Petitioner's Motion.

19 Let me briefly run over our hearing
20 procedure for the day.

21 First, I will recognize the written public
22 testimony that has been submitted in this matter,
23 identifying the person or organization who has
24 submitted the testimony

25 Next, I will call for those individuals who

1 have pre-registered to provide public testimony for
2 this docket. All such individuals will be called in
3 turn by the Chair, who will enable their audio and
4 video to our virtual witness box where they will be
5 sworn in. These individuals will have two minutes to
6 provide their testimony and should standby after
7 their testimony to respond to any questions the
8 Parties or Commissioners may have. When all the
9 questions have been completed, the Chair will excuse
10 the witness, put them back into the viewing audience,
11 and call for the next witness to enter the virtual
12 witness box.

13 After all registered testifiers complete
14 their testimonies, I will call for those individuals
15 in the general audience who wish to provide public
16 testimony for this docket to identify themselves by
17 using the "raised hand" webinar function on their
18 device screens. The Chair will recognize all such
19 individuals and will call them in turn to our virtual
20 witness box where they will be sworn in. These
21 individuals will also have three minutes to provide
22 their testimony and should standby after their
23 testimony to respond to any questions by the Parties
24 or Commissioners may have. When all questions have
25 been completed, the Chair will excuse the witness,

1 return them to the audience, and call for the next
2 witness to enter the virtual witness box, until all
3 testifiers have been heard.

4 After completion of the public testimony
5 portion of the proceedings, I will give an
6 opportunity for the parties to admit their exhibits
7 into the record.

8 Five, after the admission of exhibits to
9 the record, the Petitioner will present its case.
10 Once the Petitioner is completed with its
11 presentation, it will be followed in turn by County
12 of Maui and the State Office of Planning.

13 In addition, we have received written
14 comments from the Kihei Community association, Dr.
15 Mary Trotto, Andrew Beerer, Therese Klaty, Randy
16 Wagner, Patrice and Jefferson Stillwell, Natalie
17 Hussey-Burdock, and State Representative Tina
18 Wildberger.

19 In addition, we received written testimony
20 from September 1st to September 8th from Adele Rugg,
21 Mark Hyde and Richard Moss.

22 The Chair would also note for the parties
23 and the public that from time to time I will be
24 calling for short breaks. Are there any questions on
25 our procedures for today?

1 MR. FUJIOKA: No.

2 CHAIRPERSON SCHEUER: County?

3 MR. HOPPER: No.

4 CHAIRPERSON SCHEUER: Ms. Takeuchi?

5 MS. APUNA: No questions.

6 CHAIRPERSON SCHEUER: We are ready to
7 proceed with public testimony. I'm going to start
8 with Kihei Community Association. Is that Mr. Mike
9 Moran?

10 Would you raise your hand using "raise
11 hand" function. Mr. Moran, if you would turn on your
12 video and audio, please.

13 THE WITNESS: Aloha.

14 CHAIRPERSON SCHEUER: Aloha, Mr. Moran. Do
15 you swear or affirm the testimony you're about to
16 give is the truth?

17 THE WITNESS: I do.

18 CHAIRPERSON SCHEUER: Thank you. Please,
19 you know the drill well.

20 MIKE MORAN

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: Yes, sir.

1 Aloha, Chair and Commissioners, my name is
2 Mike Moran. I am speaking for Kihei Community
3 Association. KCA submitted written testimony, so I
4 will just offer this for our organization.

5 As you make your decision to keep the
6 condition in place, we ask you to recall your site
7 visit over two years ago on June 16th of 2018 so that
8 you have firsthand experience what and why prior
9 Commissioners decided to impose this condition made
10 five years before that.

11 We joined you standing along the edge mauka
12 side of Pi'ilani Highway, imagining children trying
13 to cross the swirling undivided speedway.

14 We ask you to also recall our community
15 convened an evening meeting at the RV Park in Kihei,
16 just south of the new school site last year. There
17 you heard from the DOE, who I believe is present this
18 morning, as well as local elected officials and the
19 parents of potential school students. The mom's and
20 dad's expressed that as desperate as they were for
21 the school to open, they would rather wait until a
22 safe upgrade passage was finalized for the kids to
23 get to the other side of the speedway.

24 Last, I will -- we started a petition last
25 Friday restricted to local residents by the zip code

1 96753 which is south Maui zip code for guys who
2 support the condition and an underpass along the
3 upper edge of the Kulanihakoi Gulch, so asking more
4 than you're charged today of just simple support of
5 the condition. As of a while ago, it was 388
6 signatures from local residents.

7 Once again, our community asks you to stand
8 strong with us and please keep this condition in
9 place. Mahalo.

10 CHAIRPERSON SCHEUER: Mahalo, Mr. Moran.

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

13 You're muted, Mr. Fujioka.

14 CROSS-EXAMINATION

15 BY MR. FUJIOKA:

16 Q Good morning, Mr. Moran. Is it your
17 position, or the association's position that you are
18 saying above-grade/below-grade or either?

19 A Well, we understand that the condition,
20 which our understanding is that's what the Commission
21 is voting on. I don't believe they have a choice on
22 it.

23 Our community's choice is strongly for the
24 underpass along the upper edge of the Kulanihakoi
25 Gulch, but we don't believe that that's part of what

1 the Commission is deciding today by our
2 understanding.

3 Q And this is because you believe it's going
4 to be safer for the pedestrian crossing, correct?

5 A That's one of the many reasons why, yes.
6 We believe it would be safer. It would be much
7 greater use by students and staff as well as the
8 general community, and certainly a lot less expensive
9 from all the reports we have, and everything we have
10 seen going back to the original EA called for an
11 underpass rather than an overpass.

12 So there's multiple reasons why, but that's
13 the strong consensus support from the community.

14 Q What do you base your belief that an
15 underpass would have greater use than perhaps some
16 other alternative?

17 A Well, we're only speaking of over or under,
18 we're not speaking of the upgrade crossing. And
19 every bit of information we could get from experts on
20 the matter was that the underpass would have greater
21 use.

22 Again, as laymen, our understanding, an
23 overpass would be extremely lengthy because of ADA.
24 You have to keep it at a certain gradual grade, so it
25 would be extremely long. And picture it, most folks

1 are trying to hurry across one way or another. An
2 underpass would be much shorter, and much quicker
3 than the very lengthy overpass.

4 That's -- it's certainly one of the
5 reasons. And, again, all the input we got from
6 listening to experts on it, that was the general
7 consensus, that underpass is preferable to overpass,
8 and it would have greater use.

9 Q Who are the experts that you consulted?

10 A I don't have a list of them in front of me
11 this morning that could I offer. We can certainly
12 get them to you. We have been in communication with
13 departments for several years, met in person last
14 year, and we have expressed much of the information,
15 but I couldn't give you -- begin to give you a list
16 of the sources that we have.

17 Q Have you shared any of the findings with
18 the Commission?

19 A Well, we've been talking to the Commission
20 for seven years, and we're all volunteers. I don't
21 recall if we ever gave them a list of such experts,
22 again, because each time we were addressing the
23 Commission, it was our understanding they were not
24 considering over or under, they were just considering
25 an off-grade.

1 So I don't know that we would have had
2 reason to express why we were preferring the under
3 rather than the over.

4 CHAIRPERSON SCHEUER: May I interject here.

5 Mr. Fujioka, were you the representative
6 for this hearing during the original Petition?

7 MR. FUJIOKA: No, I was not.

8 CHAIRPERSON SCHEUER: Are you familiar with
9 the administrative record in this matter? Because a
10 lot of the expertise that you're asking Mr. Moran
11 about, it actually is in the administrative record of
12 them beyond this matter.

13 MR. FUJIOKA: I think there's more experts
14 that were consulted by the association.

15 CHAIRPERSON SCHEUER: At least in my
16 involvement in these proceedings, the extensive
17 testimony submitted by Kihei Community association
18 has included references to expert reports and other
19 materials.

20 So if you're going to ask a witness about
21 what they provided in the record, it would be
22 reasonable to expect that you would familiarize
23 yourself with the record.

24 MR. FUJIOKA: I didn't see anything from
25 any expert information from the association.

1 Q On what do you base your belief that an
2 underpass would be used greater than perhaps an
3 upgrade crossing?

4 A Well, I think I just answered that in part
5 by saying that the overpass would be extremely
6 lengthy, and therefore, would take much more time for
7 a pedestrian or a cyclist to get to the other side.

8 So you kind of expect that most people are
9 looking for the quickest way. And if you give them a
10 long cumbersome way, they would probably prefer to
11 crossing the road at grade level, and maybe
12 stereotyping high school students, but we have seen
13 high school students, or uses, at least some adults,
14 run across this road to get to the other side where
15 there is no crossing at all just because they're in a
16 hurry.

17 For several years the Kihei Charter School
18 was located in the industrial park, which is just
19 north of the site of the DOE high school, and there's
20 a concrete culvert, one of those, you know, big
21 concrete pipes that probably has a four-foot
22 circumference running under the road.

23 There was a path from pedestrian use
24 running to that culvert, and we asked the charter
25 school, are your kids going through there? And we

1 were told absolutely, yes, they're going through it.

2 It's a quick underpass. It's a quick way
3 to get to the road, safety be damn, so that they used
4 it. The DOT put up an additional chain-link fence to
5 prevent this happening.

6 I happen to live very close to it and walk
7 by it, so I was well aware of what was going on. One
8 day after the new chain-link fence was put up,
9 someone had cut a hole in it so they could continue
10 to access this.

11 So I think that gives a pretty good example
12 of what not only kids, but residents will do to get a
13 quick way across the highway, and feeling that it's
14 safer to go through a drainage culvert rather than to
15 cross at grade level.

16 So I think that gives a pretty good
17 indication of community preference for going on the
18 shortest, quickest way across the road.

19 Q Are you thinking that an underpass would
20 have more use than at-grade crossing?

21 A I didn't say that, sir. And I don't think
22 that's the issue here unless you're saying you don't
23 want either. If you just want at-grade crossing and
24 no off-grade crossing, then I think that's why the
25 DOE is challenging, again, this condition that was

1 imposed several years ago.

2 Q Am I right that the association is not
3 opposed to the roundabout?

4 A The association is not opposed to it. We
5 are not only supportive of it, we supported it. We
6 diligently supported it, and the State DOT has agreed
7 that it is the preferable way instead of a cross
8 road, which is subject to very severe accidents that
9 when cars run a red light, they can T-bone another
10 car which is generally the most deadly type of
11 accident.

12 And obviously vehicles have to go slow in a
13 roundabout as opposed to going on a straight road.
14 And, therefore, even if a vehicle were to strike a
15 pedestrian, at least it would be at a slower speed.
16 And statistics have shown, which I think is a
17 practical matter, that the slower the vehicle is
18 traveling, the less potential damage there is to
19 another vehicle as well as to a human being.

20 Q Thank you.

21 A You're welcome.

22 CHAIRPERSON SCHEUER: County, questions for
23 the witness?

24 Mr. Hopper, your video and audio is off.

25 MR. HOPPER: Sorry. No questions, Chair.

1 CHAIRPERSON SCHEUER: Ms. Takeuchi.

2 MS. APUNA: No questions.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Commissioner Okuda.

5 COMMISSIONER OKUDA: Thank you very much,
6 Mr. Chair.

7 Mr. Moran, this question really just goes
8 to the issue of community engagement and community
9 involvement.

10 Since the last time the Land Use Commission
11 had a hearing on this matter on Maui, during that
12 period of time, has the Department of Education
13 engaged -- or let me use a more plain English term --
14 talked to or communicated with your community
15 organization about its now pending request to modify
16 or eliminate certain conditions about the at-grade,
17 or not having an at-grade crossing?

18 THE WITNESS: I will answer that in two
19 parts, Commissioner, and thank you for your service.

20 I don't believe that they did. I'm quite
21 sure they did not, but to get complete assurance, one
22 of our board members who will be testifying shortly,
23 Andrew Beerer, for an extensive, at least a decade,
24 he has been the prime mover for KCA, and I would say
25 for our community, in communication with the

1 Department of Education.

2 So I think if that question would be
3 addressed to him, he would probably be more assured
4 whether they did or not. But as far as I know, no, I
5 don't believe so.

6 COMMISSIONER OKUDA: And your position with
7 the community association was what, again?

8 THE WITNESS: President, elected president.

9 COMMISSIONER OKUDA: And you've been the
10 president how long, if I may ask?

11 THE WITNESS: It's gotten to the point,
12 Commissioner, where I stopped counting. I was asked
13 to do it for one year, I agreed for two, and as I
14 tell folks now, I unfortunately learned it's like the
15 mafia, you can get in, but the only way out is death.
16 I think it's been eight or nine years, but it's kind
17 of a guess.

18 COMMISSIONER OKUDA: So it's not a secret
19 that you're the long-time president of the
20 association, correct?

21 THE WITNESS: I would say it's certainly
22 not a secret, sir.

23 COMMISSIONER OKUDA: And you, since the
24 last time the Land Use Commission was on Maui voting
25 on this meeting, no one from the Department of

1 Education communicated with you, or to use the modern
2 term, reached out to you to try to get your input on
3 this motion that the Land Use Commission is now faced
4 with dealing with. Is that a fair statement?

5 THE WITNESS: That is a fair statement,
6 sir. And honestly, we were flabbergasted when we
7 heard that this was coming up again. We felt at that
8 last meeting where our understanding was the DOE
9 didn't show up for the meeting, but they had
10 communicated yielding to the condition, we really
11 felt it was a closed issue.

12 So we were astounded when it came up again
13 last week or whenever. So that makes me feel pretty
14 comfortable that we had no inkling that they were
15 going to pursue this once again.

16 COMMISSIONER OKUDA: Thank you very much
17 for your testimony and thank you for answering my
18 questions. No further questions.

19 CHAIRPERSON SCHEUER: Commissioners, are
20 there further questions for the witness?

21 Mr. Moran, just for the record, are you
22 paid to do any of this work?

23 THE WITNESS: No, sir. We're completely
24 non-funded organization, and no one is paid anything
25 to participate. That's pretty much standard.

1 CHAIRPERSON SCHEUER: To the degree that
2 you have engaged with experts, obtained studies,
3 obtained examples from elsewhere, have you been paid
4 or has somebody paid to have that work done?

5 THE WITNESS: Again, I'll yield. We have
6 more expert testimony coming up. We have another
7 member of our board, Randy Wagner, who has done a lot
8 of the communications. I note we were not paid
9 anything. I would have to be careful to say, did we
10 have to pay someone to give --

11 CHAIRPERSON SCHEUER: If you paid somebody,
12 it was done through fundraising, it wasn't --

13 THE WITNESS: Yes, we've been around for
14 60 years, so we have a little bit of an accumulated
15 funding that we very carefully spend on real
16 pertinent issues.

17 CHAIRPERSON SCHEUER: Sorry to state the
18 obvious. You've not been paid to give testimony
19 today or to be in this meeting today?

20 THE WITNESS: No, absolutely not. Just
21 like you Commissioners.

22 CHAIRPERSON SCHEUER: We are being paid
23 double what you're being paid.

24 THE WITNESS: 00, good job.

25 CHAIRPERSON SCHEUER: Thank you very much,

1 Mr. Moran.

2 Is there anything further, Commissioners?
3 If not, I'm going to move you back to being an
4 attendee, and I'm going to bring up the next listed
5 registered testifier Ms. Mary Trotto. Thank you for
6 raising your hand. That's helpful in the long list
7 to identify you readily.

8 When you come in, if you can turn on your
9 audio and video so we can hear you.

10 THE WITNESS: That I can't see.

11 CHAIRPERSON SCHEUER: There should be a
12 little camera icon on your software that shows up
13 when you move the cursor, usually next to the audio
14 function.

15 There you go.

16 Do you swear or affirm the testimony you're
17 about to give is the truth?

18 THE WITNESS: Yes.

19 DR. MARY TROTTO

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 Dr. Mary Trotto.
25 I'm a resident of Kihei. I'm a retired faculty,

1 University faculty member Ameritas. Professor
2 Ameritas, and I'm also on the Board of KCA.

3 CHAIRPERSON SCHEUER: Please proceed with
4 your testimony. You have three minutes.

5 THE WITNESS: I would like to talk a little
6 bit about what the high school means to our community
7 to remind people it's not just students crossing the
8 road, but it's the entire community using a high
9 school, which we never had here, as a community
10 center. A place where we can go to the arts, for
11 concerts, for plays and entertainment by the
12 students, a place where we can go to see the sporting
13 events and be participants of sporting events as well
14 as spectators, and a place to use a facility like
15 high school for adult education and a variety of
16 things that the community now will come together to
17 meet at the high school.

18 In that circumstance where we have a
19 community building that is on the opposite side of a
20 major highway to most of the people who live on the
21 makai side of the highway, it would be to our
22 advantage now to put in an underpass that would not
23 only be accessible for the students to use to go back
24 and forth to school, but a real greenway through the
25 gulch. A real greenway that would provide bike paths

1 and walk paths and a beautiful landscape where people
2 could go biking back and forth, take their children.
3 There would be facilities at the high school for
4 recreation. There would be facilities at the high
5 school for education for the community.

6 I think we can't just look at students
7 passing through this major highway, but it's the
8 entire community going to the high school, and the
9 high school being a vital part of our community.

10 We are a long community in Kihei. We have
11 the second largest population right now according to
12 the census, so I think you need to consider that an
13 underpass would really be an ideal way for everyone
14 to cross safely under Pi'ilani Highway, get to the
15 high school and participate in all the activities
16 that a high school would offer the community.

17 Thank very much, and thank you for all for
18 your efforts in this regard for Kihei and the high
19 school.

20 CHAIRPERSON SCHEUER: Thank you,
21 Dr. Trotto.

22 Are there questions, starting with DOE?

23 MR. FUJIOKA: No questions.

24 CHAIRPERSON SCHEUER: County?

25 MR. HOPPER: No questions, Chair.

1 CHAIRPERSON SCHEUER: Ms. Takeuchi?

2 Since this has lasted so long, you've moved
3 to the beach from the Uplands.

4 MS. APUNA: No questions, Chair.

5 Commissioners? Commissioner Okuda,
6 followed by Commissioner Chang.

7 COMMISSIONER OKUDA: Thank you very much,
8 Mr. Chair.

9 Dr. Trotto, can I ask what campus or where
10 were you affiliated with the university?

11 THE WITNESS: I was a tenured professor at
12 Long Island University for over 20 years and Chairman
13 of the department.

14 COMMISSIONER OKUDA: Thank you. Same
15 question that I asked Mr. Moran.

16 Did anyone from the Department of Education
17 reach out to you or any members of the community, to
18 your knowledge, since the last time the Land Use
19 Commission was on Maui dealing with this issue?

20 THE WITNESS: No, I have not been addressed
21 by anyone. In fact, like Mike, I was very surprised
22 that this was coming up again. And I said I thought
23 this was a resolved issue. And really surprised.

24 I don't understand why the Department of
25 Education is so against working with the community in

1 trying to develop a real way, safe way to get to the
2 high school, which is going to be a really important
3 part of our community.

4 COMMISSIONER OKUDA: And I don't mean to
5 ask a question which might be an obvious question,
6 but since we are required to make decisions based on
7 the record that's adduced here, let me ask this
8 question anyway.

9 Would you personally have any objection to
10 trying to work something out with the Department of
11 Education? I mean, maybe the parties wouldn't be
12 able to come to an agreement, but at least -- did you
13 ever have any objection to sitting down with
14 representatives of the Department of Education with
15 respect to this issue?

16 THE WITNESS: Absolutely not. In fact, I
17 would love to be able to sit down with the Department
18 of Education and listen to what their thinking is,
19 because I understand what the community's thinking
20 is, and hopefully in that way, we would come to a
21 real understanding of what is needed to access a high
22 school in this area.

23 COMMISSIONER OKUDA: Thank you very much,
24 Doctor, and thank you, Mr. Chair. No further
25 questions.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Okuda.

3 Commissioner Chang.

4 COMMISSIONER CHANG: Good morning,
5 Dr. Trotto. Thank you so much for being here and
6 your testimony.

7 The only question I have is do you have any
8 opposition to the Department of Education's proposal
9 before the Land Use Commission to allow the
10 construction of a roundabout instead of the
11 grade-separated pedestrian crossing?

12 THE WITNESS: Very much in favor of the
13 roundabout. I have experienced the roundabout on
14 Maui now. I have driven all over Europe and I know
15 roundabouts are very effective, especially for those
16 coming into the Pi'ilani Highway, they would much
17 easier get onto Pi'ilani Highway if there was a
18 roundabout.

19 COMMISSIONER CHANG: Thank you very much,
20 Dr. Trotto. Appreciate your testimony. I have no
21 questions, Mr. Chair.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Chang.

24 Any further questions for the witness?
25 Thank you. If not, I'm going to move you to be an

1 attendee again.

2 THE WITNESS: Thank you. Thank you for
3 your time.

4 CHAIRPERSON SCHEUER: And I will bring in
5 Andrew Beerer, if Andrew Beerer is there. Yes, I'm
6 going to promote you to be a panelist.

7 When you come in, please turn on your audio
8 and video. Your audio is on. Are you able to enable
9 your video?

10 THE WITNESS: There we go. Aloha.

11 CHAIRPERSON SCHEUER: Do you swear or
12 affirm the testimony you're about to give is the
13 truth?

14 THE WITNESS: Yes, I do.

15 CHAIRPERSON SCHEUER: I know you know the
16 drill as well. Please state your name and address
17 for the record and you have three minutes.

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

22 DIRECT EXAMINATION

23 THE WITNESS: My name is Andrew Beerer,
24 living at 56 Koloa Place, Kihei, Hawaii 96753.

25 I'm the president of Kihei High School

1 Action Team, as well as longstanding member of Kihei
2 Association for 11 years, and the head of the
3 Education and Recreation Committee largely seen as
4 one of the primary community advocates for this high
5 school over the last 15 years.

6 We thank the volunteer Commissioners for
7 letting us testify again today and listening to the
8 Kihei community once again.

9 The Kihei School Action Team testifies in
10 opposition to the DOE request to amend the existing
11 order requiring that a pedestrian overpass or
12 underpass be constructed before the opening of the
13 first phase of Kihei High School. This ruling was
14 reaffirmed in 2019 and should be reaffirmed again
15 today.

16 Just to clarify, the roundabout does not
17 replace the need for a grade-separated crossing. We
18 absolutely appreciate the DOT moving forward to
19 implement a roundabout. Although this roundabout
20 will be much safer than a traditional intersection,
21 it still requires everyone to cross at-grade.

22 The roundabout does not replace the
23 requirement for a grade-separated crossing.

24 Our first priority is safety for all
25 students, faculty, and families who will be accessing

1 the high school. We need to minimize and fatalities.
2 We must provide and encourage pedestrians to use the
3 option of not crossing the highway.

4 A second priority is to maintain an
5 efficient flow of traffic. The less people crossing
6 the highway, the less we stop traffic. The
7 roundabout and underpass together are the two best
8 ways to accomplish these goals.

9 A roundabout slows vehicle speeds to a
10 nonlethal level, while keeping traffic flowing. A
11 safe pedestrian bypass at the adjacent Waipu'ilani
12 Gulch underpass will encourage people not to pass at
13 the highway, and will help connect our community to
14 future bike paths and the adjacent north-south
15 connector road.

16 The already existing Waipu'ilani Gulch
17 underpass was recommended in the original EIS for
18 this school and every study referenced in the
19 exhibits attached to this DOE Petition.

20 Furthermore, in its Petition, the DOE
21 claims to the flimsiest of data. An outdated traffic
22 study from 2015 estimating a school opening in 2018,
23 across from low density neighborhoods. The data is
24 obsolete and ignores nearby developments of the past
25 five years, including a 200-unit affordable complex

1 that is being finished right across the highway from
2 the school. Traffic study is riddled by bad data --

3 CHAIRPERSON SCHEUER: Three minutes, if you
4 can start to summarize.

5 THE WITNESS: And seriously underestimates
6 the number of students. The traffic study only
7 measures pedestrian students coming from within half
8 mile radius, whereas the current official DOE busing
9 policy reads, quote:

10 Students in grade 6 through 12 must reside
11 one-and-a-half miles or more from the school within
12 their attendance area to qualify for regular school
13 bus service, unquote.

14 So obviously there will be exponentially
15 more pedestrians coming from one-and-a half miles
16 radius, instead of just a half mile. This is sloppy
17 work citing incorrect information, done by
18 consultants who are not familiar with our community
19 and its needs.

20 Here we are again, seven years since the
21 original petition, the DOE has now realized that when
22 looking at grade-separated crossings, all of the
23 studies cited in their 50 page of attached exhibits
24 disfavor and discredit expensive overpass --

25 CHAIRPERSON SCHEUER: Summarize your

1 testimony, please.

2 THE WITNESS: All of these same studies and
3 community representatives recommending looking at the
4 existing underpass at Waipu'ilani, the roundabout
5 does not negate the need for a grade-separated
6 crossing.

7 The Kihei High School Action Team is
8 respectfully asking the LUC to once again reaffirm
9 its ruling requiring an inclusion of a
10 grade-separated crossing before the school will open.

11 Thank you for your consideration, and
12 mahalo for your civic duty.

13 CHAIRPERSON SCHEUER: Mahalo, Mr. Beerer,
14 and thank you for your understanding our need to
15 limit testimony.

16 Questions for the witness?

17 CROSS-EXAMINATION

18 BY MR. FUJIOKA:

19 Q Can you hear me?

20 A Yes.

21 Q So you've had a chance to review the DOE's
22 motion and exhibits, correct?

23 A Yes.

24 Q And is it your understanding and position
25 that the reports attached to that motion all favor an

1 underpass?

2 A When it looked at the options of an
3 overpass or an underpass, it does appear to me that
4 every report I've seen unanimously points favorably
5 towards an underpass, and that includes the original
6 EA, EIS pointing to the Waipu'ilani Gulch; that
7 includes the safe route to Kihei High School
8 pedestrian route study, commissioned by the DOE.
9 That was done by Dan Burton. Also includes the
10 traffic study done by Fehr & Peers commissioned by
11 Department of Education.

12 Q Between that underpass and other
13 alternatives such as roundabout, you're not saying
14 then that those reports were in favor of an
15 underpass?

16 A No, I think you're changing the issue. The
17 issue here is talking about at-grade --

18 Q Well --

19 CHAIRPERSON SCHEUER: Excuse me. Sorry,
20 Mr. Fujioka. And I haven't stated it here, but our
21 court reporter cannot transcribe two individuals
22 speaking over each other at the same time. So if you
23 allow the witness to answer the question before
24 interjecting, that would be helpful to the court
25 reporter.

1 THE WITNESS: So the condition at hand that
2 you're petitioning is to eliminate the requirement
3 for an at-grade crossing, that is very narrowly
4 defined in the legal world. It is not to replace an
5 at-grade crossing with a roundabout. It is not an in
6 lieu of. It is narrowly defined as condition to
7 provide grade-separated cross. Thank you.

8 Q (By Mr. Fujioka): What I'm trying to get
9 at is the reports don't say that an underpass is
10 favorable or preferable over a grade -- at grade or
11 roundabout crossing, does it?

12 A The reports do not delineate between --
13 well, let me just reiterate. We're talking about a
14 preference in grade-separated crossing. This isn't a
15 case of does the roundabout absolve the condition for
16 grade-separated crossing. Roundabouts are great. We
17 absolutely support those, and the KCA did the initial
18 reports and studies that helped prompt the DOT to
19 look at those.

20 We traveled over to the State capital last
21 year to meet with DOT and DOE to start looking at
22 roundabouts. It is proven that the roundabouts slow
23 down traffic and prevent fatalities, but that does
24 not negate the need to try to get as many people to
25 cross under the highway as possible to make it even

1 safer as well as to make it more efficient for the
2 traffic flow. If we still have people crossing at
3 grade, there still has to be a modified HAWK signal,
4 we have studied it extensively, but you still have to
5 have a signal to stop traffic.

6 By building this underpass you'll connect
7 the whole community, not just the school, but as
8 referenced, also connect the charter school. It will
9 connect the tech parks, our bike paths, connect our
10 future access points, and if you look at the attached
11 documentation to the KCA testimony, there are
12 extensive examples of -- there's tens of thousands of
13 communities that have working bikeable underpasses,
14 and this underpass already exists and people are
15 using it.

16 It's just a matter of stubbornness of the
17 DOE not working with DOT. To further answer, the DOT
18 has not reached out to us about the underpass. We
19 have had lots of difficulty communicating with the
20 DOE in the last couple years.

21 There's been a revolving door of project
22 leaders on this project, and we are not getting
23 information in a timely manner and certainly were
24 never appraised of this situation.

25 Q Going back to my original questions, the

1 question, the report says they don't seem to support
2 an underpass, do they?

3 A The report seems to support a roundabout as
4 the safest at-grade crossing. They look to -- if you
5 do a grade-separated crossing, they do recommend
6 looking at the underpass as opposed to the overpass,
7 but they're separate issues.

8 Q Thank you. No further questions.

9 CHAIRPERSON SCHEUER: Thank you, Mr.
10 Fujioka. Mr. Hopper.

11 MR. HOPPER: No questions, Chair.

12 CHAIRPERSON SCHEUER: Thank you. Ms.
13 Apuna.

14 MS. APUNA: No questions.

15 CHAIRPERSON SCHEUER: Commissioners,
16 beginning with Commissioner Okuda.

17 COMMISSIONER OKUDA: Thank you very much,
18 Mr. Chair.

19 Mr. Beerer, you might be the last witness
20 I'm going to ask these somewhat repetitive questions
21 I've been asking, unless some other witness says that
22 the Department of Education has actually reached out
23 to them regarding this current request to eliminate
24 or modify the Land Use Commission condition about
25 having a non-grade separated crossing, I'm going to

1 assume no one has been reaching out to community
2 members or to witnesses.

3 Let me ask you this so that the record is
4 clear. Did anyone at the Department of Education
5 contact you about the fact that the Department of
6 Education intended to file this motion or petition
7 which the Land Use Commission has to deal with today?

8 THE WITNESS: No, absolutely not. We found
9 out about this petition through a secondhand source.
10 We were never contacted directly by the Department of
11 Education.

12 COMMISSIONER OKUDA: Now, some prior
13 witness used the word "flabbergasted" about finding
14 out about this. Can you tell me what your reaction
15 was when you found out about this and why you had
16 that reaction?

17 THE WITNESS: Well, I was shocked because
18 legally they reaffirmed this position just last year,
19 but I wasn't surprised because I've known through the
20 history of this project, it's been seven years now
21 that the DOE has been trying to get out of this
22 condition.

23 So once they saw that the DOT had adopted a
24 roundabout, we got word of that maybe a month ago
25 from the DOT, then it became clear to me that they

1 were going to do this and cling to it as their last
2 straw to try to get out of this requirement for a
3 grade-separated crossing.

4 And historically, the DOT and the DOE have
5 not worked together well on this project starting
6 with the original EIS as the DOT, you know, spoke
7 against the location of the high school at that time.

8 And I know that they have procedures for
9 which they must report, but there seems to be a lack
10 of collaboration between the DOE and the DOT, and
11 certainly a lack of collaboration between the DOE and
12 the community who has been pushing the school very
13 hard for 15 years.

14 COMMISSIONER OKUDA: If the Department of
15 Education were to have invited you to sit down and
16 talk about matters with respect to the Kihei High
17 School, would you be willing, or would you have been
18 willing to sit down and participate with discussion
19 if they invited you, whatever the topic is?

20 THE WITNESS: Absolutely. I think this
21 could be a public-private collaboration. We can show
22 them many examples and studies that support what we
23 believe is the right thing to do.

24 And just opening the lines of
25 communication. I used to work very closely with the

1 DOE up until about three years ago when one of the
2 project leads left the project. And since then, as I
3 say, it's been a revolving door. I ping them
4 probably once every couple months, if not monthly,
5 for communication. And I very rarely get anything
6 back. And certainly within the last year it has been
7 nothing. But I would certainly welcome it,
8 absolutely, that's what we need.

9 COMMISSIONER OKUDA: Thank you, Mr. Chair.
10 And I don't intend to keep repeating these questions
11 I've asked to the prior witnesses. Thank you very
12 much for your testimony.

13 Thank you, Mr. Chair, no further questions.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Okuda.

16 Are there further questions for the witness
17 from our Commissioners?

18 Mr. Beerer, I'll ask you. Are you paid to
19 be here today?

20 THE WITNESS: Absolutely not.

21 CHAIRPERSON SCHEUER: Have you been paid
22 for any of your role in commenting on and being -- I
23 think your words are a booster for the establishment
24 of Kihei High School?

25 THE WITNESS: No, sir.

1 CHAIRPERSON SCHEUER: Is there a cost to
2 you?

3 THE WITNESS: Yes, the thousands and
4 thousands of hours that I've put into this, the cost
5 of preparing for this meeting was probably 12 to
6 20 hours. Certainly you guys experience those same
7 costs.

8 Yeah, it takes a toll, takes me away from
9 my family, from my business, takes me away from other
10 things that I could be advocating for in my
11 community. But is it going to be worth it in the end
12 to have a high school and see kids graduate? I did
13 it for my kids when they were in first grade, they're
14 now juniors and seniors in high school.

15 But I'll be looking forward to a generation
16 that will graduate from that high school and watching
17 them safely get from our community and neighborhood
18 to that high school and back.

19 CHAIRPERSON SCHEUER: Thank you very much,
20 Mr. Beerer, for your testimony and for your work.
21 I'm going to put you back to being an attendee.

22 THE WITNESS: Thank you.

23 CHAIRPERSON SCHEUER: Our next -- I would
24 like to do one more before we take a break in terms
25 of written testimony, Therese Klaty, who I don't see.

1 Followed by Randy Wagner.

2 Mr. Wagner, I believe you are here. Moving
3 you to be a panelist. You can turn on your audio and
4 video.

5 THE WITNESS: Aloha, can you see me? I
6 know I'm not a man.

7 CHAIRPERSON SCHEUER: I apologize for that.
8 I've known both male and female. I apologize for
9 making that mistake.

10 THE WITNESS: That's quite all right.

11 CHAIRPERSON SCHEUER: Do you swear or
12 affirm the testimony you're about to give is the
13 truth?

14 THE WITNESS: Yes, I do.

15 CHAIRPERSON SCHEUER: Welcome, with family.

16 THE WITNESS: I'm currently home schooling
17 my granddaughter.

18 CHAIRPERSON SCHEUER: Name and address for
19 the record and then I'll give you three minutes.

20 RANDY WAGNER

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: My name is Randy Wagner,

1 1178 Hurunui Road, Kihei, Hawaii 986753.

2 My position, as member of the Board of the
3 Kihei Community Association, and as the Chair of the
4 Design Review Committee, and I'm an architect.

5 Children are entering, sorry.

6 I'm an architect and I have been very
7 involved with the community for a long time. I've
8 raised my children here, and now my grandchildren are
9 here and they will probably attend this school, so I
10 have a personal interest in the safety of all the
11 people involved in our community.

12 What my point is simply that this underpass
13 is already in use. And when I did my written
14 testimony, I submitted this photograph which shows
15 the path going through the middle of the gulch. My
16 husband and I walked up there and took that picture
17 together, and it is only a few 100 feet off the
18 collector road path, which is a future collector
19 road, but is currently the path that runs the entire
20 length of Kihei.

21 So many people have access on foot to this
22 underpass. And the very first day that school
23 starts, the underpass will be used by students,
24 there's no doubt about it. So why not make it
25 passable? Why not make improvements?

1 I don't see, as an architect, that it would
2 be that difficult in this context to -- or expensive,
3 to raise the grade on the north side of the underpass
4 four or five feet. It would still allow ample head
5 room. You could use riprap as a structure under it,
6 so if for some unbelievable rare occurrence water
7 spreads across, it could still use that area to flow
8 through.

9 It needs a railing. It needs lighting and
10 it needs a sidewalk that continues past the underpass
11 directly to the high school. It's not that hard.

12 There could be bowers (phonetic) in the
13 event that there's high water which I don't think
14 anyone in the memory of Kihei has ever seen high
15 water on the side of this underpass. I've seen
16 underpasses that go by rivers, and people just don't
17 go when there's flooding, people just don't go there.

18 There could be supervision if there is
19 flash-flood warnings. The risk of passing under the
20 underpass in the event of high water is so much less
21 than the risk of getting hit by a car, even at a
22 roundabout.

23 And I really want to thank the DOT for
24 understanding the need to have a roundabout as the
25 only safe option at the intersection.

1 CHAIRPERSON SCHEUER: Three minutes. If
2 you can summarize your testimony, please.

3 THE WITNESS: I just want to say that it's
4 going to be used, so let's make it more user
5 friendly. And I want to keep the condition in place
6 that the LUC put there originally and reaffirmed.

7 CHAIRPERSON SCHEUER: Thank you very much.

8 THE WITNESS: Thank you.

9 CHAIRPERSON SCHEUER: Questions for the
10 witness?

11 CROSS-EXAMINATION

12 BY MR. FUJIOKA:

13 Q Good morning.

14 What gulch were you referring to in the
15 photo?

16 A Waipu'ilani Gulch.

17 Q Okay, thank you.

18 A Thank you.

19 CHAIRPERSON SCHEUER: Maui County.

20 MR. HOPPER: No questions, Chair.

21 CHAIRPERSON SCHEUER: Ms. Takeuchi?

22 MS. APUNA: No questions.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Can we confirm if

1 that photograph is part of the record or can be made
2 part of the record?

3 CHAIRPERSON SCHEUER: Would the witness be
4 willing to transmit that photograph --

5 THE WITNESS: It is part of the record. I
6 submitted it with my written testimony.

7 CHAIRPERSON SCHEUER: Sorry, I don't have
8 immediate and full recall of all written materials.

9 THE WITNESS: That's okay.

10 CHAIRPERSON SCHEUER: It's part of the
11 written record.

12 COMMISSIONER GIOVANNI: Thank you. No
13 further questions.

14 CHAIRPERSON SCHEUER: Commissioner Wong.

15 COMMISSIONER WONG: I just wanted to
16 reaffirm that it is testimony. I see her testimony
17 with it.

18 CHAIRPERSON SCHEUER: Commissioner,
19 anything further?

20 It is 10:50 a.m. We have been going for
21 over an hour from our late start, and I would like to
22 take a ten-minute break and resume.

23 Ms. Wagner, I'm removing you to be an
24 attendee.

25 THE WITNESS: Thank you.

1 CHAIRPERSON SCHEUER: Lee, did you have a
2 question?

3 COMMISSIONER OHIGASHI: Would it be
4 difficult to leave the meeting and try reboot on my
5 other computer, or should I just stay here?

6 CHAIRPERSON SCHEUER: I understand what
7 you're saying. I think there would be no fault in
8 leaving the meeting, trying to reboot on your other
9 computer, but then being ready to come back to this
10 one if possible, if needed.

11 COMMISSIONER OHIGASHI: Okay, thank you.

12 CHAIRPERSON SCHEUER: I don't know if you
13 heard what went wrong before. I know technically
14 what the error was, it was mine.

15 COMMISSIONER OHIGASHI: All right, no
16 chicken for you.

17 CHAIRPERSON SCHEUER: Okay, thank you.

18 (Recess taken.)

19 CHAIRPERSON SCHEUER: We're back on the
20 record.

21 Our next written testifiers were Patrice
22 and Jefferson Stillwell. If you are an attendee and
23 desiring to give public testimony, raise your hand.
24 I see Patrice. If you wish to give public testimony,
25 please raise your hand. Do you see the raise-hand

1 function on ZOOM? I'm promoting you to be a
2 panelist.

3 When you come in, Ms. Stillwell, if you can
4 enable your audio and video.

5 CHAIRPERSON SCHEUER: Last chance. Ms.
6 Stillwell, I've admitted you to the meeting.
7 Perhaps, you stepped away from your computer. I'm
8 going to change you back to being attendee.

9 Our next testifier would be Representative
10 Tina Wildberger. Ms. Wildberger if you -- yeah,
11 thank you.

12 I have admitted you to be a panelist. If
13 you can enable your audio and video. Good morning.

14 THE WITNESS: Good morning, everyone.
15 Thank you all very much for your time and attention
16 to our concerns here in South Maui. My name --

17 CHAIRPERSON SCHEUER: Sorry,
18 Representative, if I can swear you in first.

19 Do you swear or affirm that the testimony
20 you're about to give is the truth.

21 THE WITNESS: I do.

22 CHAIRPERSON SCHEUER: Please continue.

23 REPRESENTATIVE TINA WILDBERGER

24 Was called as a witness by and on behalf of the
25 Public, was sworn to tell the truth, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: Tina Wildberger, South Maui
4 State House Representative, and I'm testifying today
5 in support of the Kihei Community Association's
6 position and on their agenda regarding the Kihei High
7 School that they have worked on for over 11 years.

8 I would like to thank the Department of
9 Education and the Department of Transportation for
10 getting South Maui bikeable, walkable, safe community
11 50 percent of the way to their goal by approving the
12 first multi-lane roundabout in our State. We're very
13 excited about that.

14 The final stretch is our underpass. And as
15 a rookie to this work of government, I find it
16 frankly surprising to have taxpayer-funded
17 bureaucrats subvert the desires and the needs of
18 communities for which they are supposed to represent
19 and help.

20 So I would appreciate the Department of
21 Education's engagement on this issue, and look
22 forward to their collaborating with our community in
23 a more robust manner.

24 Our goal is safe pedestrian crossing under
25 our highway separate from vehicles. The gulch that

1 we are talking about is very wide, it rarely runs.
2 Can't remember the last time it ran. I took -- the
3 photo that I presented was taken on the day that
4 Douglas, Hurricane Douglas was dumping rain Up
5 Country and it did not run.

6 So a raised crossing that Randy Wagner
7 described would be sufficient for the safety of our
8 community.

9 We currently have children intermingling
10 with traffic at Lipoa, when the charter school is in
11 session. And I did offer a photograph that I hope
12 all the Commissioners have had a chance to review,
13 and I can share that photograph on screen if you've
14 not had a chance to do that.

15 We can't have kids spilling out into
16 highways, roundabout or no roundabout. The underpass
17 solution concerns both schools with minimal cost.
18 The reallocation of funding for the project would be
19 minimal regarding the underpass. All parties agree
20 that an overpass would not be used, and it's too
21 costly, so we don't want to take resources away from
22 facilities at the school.

23 And so I thank the DOE in advance for
24 cooperating with our desires and our work and
25 allowing us to plan our own community. Thank you

1 very much.

2 CHAIRPERSON SCHEUER: Thank you very much,
3 Representative.

4 Questions for the witness, starting with
5 Mr. Fujioka.

6 CROSS-EXAMINATION

7 BY MR. FUJIOKA:

8 Q Would you mind putting up that photograph
9 you have submitted?

10 A No, I would be pleased. One moment.

11 Mr. Scheuer, is it possible for me to share
12 my screen?

13 CHAIRPERSON SCHEUER: Yes, if you're able
14 to.

15 THE WITNESS: I'm sharing my screen. I'm
16 going to -- no, I'm not doing it right. You guys,
17 I'm going to try -- let's see, can you see this?

18 CHAIRPERSON SCHEUER: We can not see
19 your --

20 THE WITNESS: You just see my picture.
21 Okay, I'm not doing it right.

22 Can anybody walk me through share screen --

23 CHAIRPERSON SCHEUER: Well, so there's --
24 this is testimony that was sent in, correct?

25 THE WITNESS: Yes.

1 CHAIRPERSON SCHEUER: I can actually do it.
2 So if you bear with me, while I pull that up.

3 THE WITNESS: Forgive me. I'm not quite as
4 tech savvy as I would like to be.

5 CHAIRPERSON SCHEUER: I would say the LUC
6 is ahead of the legislature in allowing live
7 testimony.

8 THE WITNESS: Amen. I'm with on you that.
9 It's time. We've proven it can be done.

10 CHAIRPERSON SCHEUER: I believe this will
11 work. You're now looking at testimony as posted, a
12 photo from Ms. Wagner that was posted earlier, and I
13 believe at the bottom of this there is your testimony
14 and this is the photograph.

15 THE WITNESS: There it is.

16 So this is a school day when the Kihei
17 Charter School, which is also mauka of the highway,
18 lets out, and those are kids just spilling off of the
19 curb into the bike lane and entirely too intimate
20 with moving vehicles. This is what we have now.

21 CHAIRPERSON SCHEUER: Mr. Fujioka, is that
22 the photo you wanted?

23 MR. FUJIOKA: No, I wanted to look at the
24 gulch photo.

25 CHAIRPERSON SCHEUER: This photo?

1 MR. FUJIOKA: Yes.

2 Q You're saying this was during the --

3 A That was KCA's photo. I included a photo
4 that I took myself. This is Hurricane Douglas day.

5 Q This is Waipu'ilani Gulch?

6 A That's correct. You might notice that the
7 Department of Transportation was talking about
8 Kulanihakoi Gulch, which is not as wide and as
9 spacious. So we are talking about the southern-most
10 gulch, we're relating to that property of
11 Waipu'ilani, not Kulanihakoi.

12 Q Okay. Thank you. That was my only
13 question.

14 CHAIRPERSON SCHEUER: I'm going to stop
15 screen share.

16 Questions from Maui County?

17 MR. HOPPER: No questions, Chair.

18 CHAIRPERSON SCHEUER: Office of Planning?

19 MS. APUNA: No questions.

20 CHAIRPERSON SCHEUER: Commissioners,
21 starting with Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you very much,
23 Mr. Chair. And I guess I'm going to violate my
24 representation and promise I made earlier, but since
25 I'm a lawyer, I guess you really can't rely on my

1 representations and promises.

2 Representative, I ask you a similar
3 question.

4 Did anyone at the Department of Education
5 reach out to you as the elected representative from
6 the Kihei area regarding this Petition, which the
7 Department of Education has submitted to the Land Use
8 Commission for decision today?

9 THE WITNESS: No. No, in fact. And I'm
10 glad you decided to ask me, because I -- just
11 yesterday I received an email from the South Maui
12 liaison staff from the Mayor's office inquiring about
13 why there hasn't been any work on that parcel since
14 early spring.

15 And my office sent him a timeline of our
16 actual attempts to engage with the Department of
17 Education on a variety of subjects about this
18 project.

19 And we have been, as Andrew Beerer
20 described, unsuccessful in being able to reach anyone
21 to talk to us about the project with reasons giving
22 of new people coming in and out of the managerial
23 position for the projects.

24 So all summer I have been unable to get a
25 meeting with anyone in the Department of Education.

1 COMMISSIONER OKUDA: So in other words,
2 even though you are the duly elected representative
3 representing the area, the Department of Education
4 has not communicated to you with respect to this
5 matter to your satisfaction; would that be a fair
6 statement?

7 THE WITNESS: That is a very fair
8 statement.

9 COMMISSIONER OKUDA: Not to get too far off
10 topic here, but as the elected representative for the
11 Kihei area, does this lack of communication or lack
12 of engagement concern you in any way?

13 THE WITNESS: It does. And, you know, and
14 I admit I'm still a rookie at government business,
15 not a lawyer, new to law making and new to
16 governance, but my idea of coming into office is to
17 try to bring accountability and responsiveness and
18 transparency to all of our governments, to all of our
19 State departments.

20 So in my limited experience, I have had
21 similar challenges with Department of Health and with
22 Department of Agriculture over a variety of different
23 reasons, but it is high time that we start seeing a
24 level of customer services, if you will, coming out
25 of our departments and serving, as you Commissioners

1 do, to help our communities develop and become
2 reasonable places to live and thrive.

3 COMMISSIONER OKUDA: Thank you very much,
4 Representative. I too am a rookie to government
5 service, and so I appreciate what you're saying too.

6 Thank you very much, Mr. Chair. No further
7 questions.

8 THE WITNESS: Thank you.

9 CHAIRPERSON SCHEUER: Thank you,
10 Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: My question to you,
12 is there any additional legislative requirement that
13 needs to be done in order to fund the proposed
14 roundabout?

15 THE WITNESS: I don't believe so.

16 COMMISSIONER OHIGASHI: Is there -- then
17 the appropriation is there for the roundabout, do you
18 know?

19 THE WITNESS: They had funding for the
20 traffic signal that was going to be put in there, and
21 so that funding that would have been used for a
22 conventional intersection with signal can then be
23 used for the roundabout which should be less costly.

24 COMMISSIONER OHIGASHI: So that inquiry,
25 would that go to the question -- be more accurate to

1 go, I guess, to the DOT or DOE, because I understand
2 that you just put it in the budget, or you have it in
3 the budget, the application of those funds or the
4 repurposing of those funds are really an
5 administrative function. Is that right?

6 THE WITNESS: I will admit that I haven't
7 an expert grasp on who's kuleana between the DOT and
8 DOE and which pots of money that may be coming from,
9 to be honest. I'm not an expert.

10 COMMISSIONER OHIGASHI: The only reason I
11 ask, if the funds are not available and require
12 legislative action to be available to do the
13 roundabout, that may delay the opening of the school
14 further; isn't that right?

15 THE WITNESS: We hope that these amendments
16 will not be used as an excuse to delay the school,
17 and it should not.

18 COMMISSIONER OHIGASHI: I'm just saying
19 that if the roundabout is not funded and requires
20 legislative action, is it correct to say that may
21 push back the opening of the school?

22 THE WITNESS: I don't believe that's the
23 case.

24 COMMISSIONER OHIGASHI: And that -- has
25 there been -- you mention repurposing funds. Have

1 there been money available in the budget for the
2 purposes that there be repurposes for this underpass?

3 THE WITNESS: Well, it was -- project of a
4 minimal percentage that the DOE has been funded a
5 whole lot of money to get this project rolling, and
6 we don't want to take \$10 million away from the
7 project for an expensive overpass that is not going
8 to be used, but we would like to see a small amount
9 of funding reallocated to do the underpass which is
10 much less costly as the LUC has mandated already, and
11 you know, the KCA had two goals, we want a
12 roundabout.

13 We don't want any more signalized
14 intersections along Pi'ilani Highway that stops
15 traffic and prevents people from moving and idling in
16 carbon emitting vehicles. We want traffic to keep
17 moving at a slower pace, and we want our community to
18 have safe crossing separate from the traffic. That's
19 what our community wants, and however the DOT and the
20 DOE can make that happen, would be absolutely
21 wonderful.

22 COMMISSIONER OHIGASHI: If we are not
23 able -- the DOE is not able to repurpose the funding
24 that you say that may be available or may not be
25 available, if they are not able to repurpose the

1 funding, would that delay the opening?

2 THE WITNESS: That would be a willful
3 decision by the DOE, and I don't accept the premise
4 that these requests need to delay the opening of the
5 school.

6 COMMISSIONER OHIGASHI: Has any of the
7 legislatures discussed, put in the form of
8 appropriation, a bill to fund the underpass?

9 THE WITNESS: We have not discussed that at
10 legislature.

11 COMMISSIONER OHIGASHI: Would that be
12 something that would be helpful in terms of having
13 monies available to the underpass?

14 THE WITNESS: I think in this climate,
15 trying to get anything funded that isn't already part
16 of a budget would be very difficult since we have no
17 tax revenue coming into the State right now, and
18 probably won't see much for the next three to five
19 years. So the DOE will need to find the funding with
20 their already budgeted and allocated funds to do this
21 State crossing as has been mandated by the LUC.

22 That's what we are asking for. I don't
23 want to delay this project. I don't want to ask for
24 separate additional funding. I shouldn't have to, in
25 my opinion.

1 COMMISSIONER OHIGASHI: No further
2 questions.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Ohigashi.

5 Commissioner Giovanni, followed by
6 Commissioners Wong and Aczon.

7 COMMISSIONER GIOVANNI: Thank you, Chair.

8 Representative Wildberger, just to confirm
9 your response to a question from Commissioner Okuda
10 who asked you if the DOE had recently reached out to
11 you as it pertains to this perspective project or to
12 the Petition before the LUC.

13 What I heard your response was -- I just
14 ask you to confirm it or to change it -- is that not
15 only have they not reached out to you, but they have
16 not responded to your reach out to them. Is that
17 correct?

18 THE WITNESS: Sadly, that is correct.

19 COMMISSIONER GIOVANNI: Thank you.

20 CHAIRPERSON SCHEUER: Anything further,
21 Commissioner Giovanni?

22 COMMISSIONER GIOVANNI: No, Chair, that's
23 good.

24 CHAIRPERSON SCHEUER: Commissioner Wong.

25 COMMISSIONER WONG: Good morning,

1 Representative.

2 THE WITNESS: Good morning.

3 COMMISSIONER WONG: I wanted to ask what
4 you stated, because of the economy now, there may be
5 no money for at least five to seven years for an
6 underpass or overpass; is that correct?

7 THE WITNESS: No, I did not -- I said that
8 budgetary, finding money to fund anything in the
9 State, for State projects, is going to be very
10 difficult for the next three to five years, that we
11 are in obviously revenue abyss right now where we do
12 not have any State revenue coming in.

13 So the idea that somebody wants to try to
14 find funding for somethings is going to make it very
15 difficult, be it CIP or GIA or any other allocation
16 of funding, you know, it's going to be very
17 difficult.

18 And I hope that the DOE does not use this
19 as an excuse to delay the opening of the school, and
20 that they can repurpose some very small percentage of
21 their existing funding to take care of this, what our
22 community is calling a requirement.

23 COMMISSIONER WONG: The question I have.
24 This is my mind, and I just got to ask you.

25 What if they did the roundabout first, and

1 hopefully soon, do a study about an underpass or
2 overpass before they do, you know, P and E money is
3 what I'm saying?

4 THE WITNESS: "Study" is like code word for
5 we don't want to do it. This has been studied to
6 death. Studies been done, gone. We've already
7 studied this.

8 COMMISSIONER WONG: So the question is,
9 because it's a DOT highway, what if no P and E money
10 for the underpass or overpass, while we do a
11 roundabout?

12 THE WITNESS: You'll have to forgive me. I
13 do not know what P and E is.

14 COMMISSIONER WONG: Planning and
15 engineering, sorry.

16 THE WITNESS: Hoping -- it seems like it
17 could be done concurrently with the roundabout
18 planning. It's kind of like how they look to come in
19 and put a road in and not go ahead and do the
20 sidewalks under some excuse that the sidewalks
21 haven't been paid for because the development hasn't
22 been done yet. So we end up with a new road with
23 intermittent pieces of sidewalk broken up.

24 Let's just be smart and economical about
25 this, when they come into do the roundabout, let's go

1 ahead and do the underpass as well. It's what this
2 community is asking for. It's a lesser costly
3 option. The LUC has already said that it needs to be
4 done, and the DOE is trying to subvert the desires
5 and wishes of the community.

6 We're asking for the least expensive
7 option, and so we would like to see some engagement
8 on this.

9 COMMISSIONER WONG: Right.

10 What I'm just saying is because of the
11 economical times that they do the roundabout, which
12 is a less expensive alternative at this point, and at
13 the same time ask DOT to do P and E on an underpass
14 or overpass, and will they get funds either through
15 the highway funds or a geo bond or something through
16 the legislature?

17 THE WITNESS: That's not -- I would not
18 advocate for that.

19 COMMISSIONER WONG: It's just that, you
20 know, I'm just trying to figure out a way to get
21 something done for the kids.

22 THE WITNESS: I'm afraid that it wouldn't
23 happen. If we go ahead and do the roundabout and
24 just have the kids crossing at the street anyway, the
25 underpass will never happen.

1 COMMISSIONER WONG: Thank you,
2 representative. Thank you, Chair.

3 CHAIRPERSON SCHEUER: Commissioner Aczon
4 followed by Commissioner Cabral.

5 VICE CHAIR ACZON: Thank you, Chair.
6 Good morning, Representative Wildberger.

7 The funding-wise is basically your guys
8 kuleana not more of our concern.

9 My question is, just want to try qualify
10 your position or the community's position.

11 You would like to see the roundabout and
12 also the underpass if that would be possible?

13 THE WITNESS: That's correct.

14 VICE CHAIR ACZON: But you would be willing
15 to just take the underpass without the roundabout,
16 willing to take a roundabout in lieu of the
17 underpass?

18 THE WITNESS: We would like both. This is
19 not --

20 VICE CHAIR ACZON: If it is not possible
21 that two, which one you would like?

22 THE WITNESS: I don't think we should be
23 asked to make a choice. I don't think, like I said,
24 these departments work for our community, and our
25 community has spoken about what we want.

1 The LUC has mandated that they need to do a
2 grade-separated crossing. And so we are in agreement
3 that the overpass would be too expensive and wouldn't
4 get used, but an underpass would get used. Would be
5 safe. Will be an added asset to our community.
6 Would benefit not just the high school but Kihei
7 Charter schools as well.

8 VICE CHAIR ACZON: I understand, everybody,
9 including me, I want everything, but sometimes they
10 cannot, depending on the funding or the resources
11 going to come from. I'm just going to try to figure
12 out what is a compromise.

13 THE WITNESS: In the sense --

14 VICE CHAIR ACZON: If lack of funding,
15 maybe little later on we have the full funding for
16 everything, but at this point, especially with these
17 economic times, I just want to kind of see if there
18 is a compromise there.

19 THE WITNESS: I would suggest, and I'm not
20 an expert or contractor or someone who does projects,
21 but since as I understand it that the cost for doing
22 a signalized intersection is more expensive than
23 doing a roundabout, I would perhaps suggest that the
24 savings between those two options be used to fund the
25 underpass.

1 VICE CHAIR ACZON: So if I'm hearing you
2 correctly, your position is you want to see the
3 roundabout and the underpass together, period,
4 because if you don't approve this amendment, you're
5 stuck with an underpass.

6 THE WITNESS: The community would like to
7 see both. That's correct, thank you.

8 VICE CHAIR ACZON: I just wanted to clarify
9 that. Thank you, Mr. Chair.

10 CHAIRPERSON SCHEUER: Commissioner Cabral.

11 VICE CHAIR CABRAL: I'm okay. My fellow
12 Commissioners have asked all the questions I could
13 think of. Thank you very much.

14 CHAIRPERSON SCHEUER: Commissioners,
15 anything further for Representative Wildberger? If
16 not.

17 Representative, you understand, I believe,
18 based on your testimony that the requirement of an
19 above-ground or below-ground pedestrian crossing was
20 an original requirement of the LUC; is that correct?

21 THE WITNESS: That's my understanding. I'm
22 late to this game, but just joining and trying to get
23 up to speed with KCA's advocacy.

24 CHAIRPERSON SCHEUER: So presumably in my
25 mind when the good work of Maui representatives and

1 senators and the DOE, when the original allocation of
2 funds was given by the legislature for the building
3 of the Kihei High School, presumably the DOE
4 requested funds sufficient to actually build the
5 signaled intersection as well as the required
6 underpass or overpass per LUC entitlements.

7 THE WITNESS: I would assume so. I don't
8 have the funding spreadsheet in front of me, so I
9 can't speak to those numbers with you right now.

10 I would be happy to look for that data and
11 share about it some more at a later time.

12 CHAIRPERSON SCHEUER: What I'm trying to
13 understand, either they asked for a sufficient amount
14 and it turned out to not be enough, or they didn't
15 ask for sufficient amount, assuming they might ask
16 for it later, or they didn't asking for sufficient
17 amount not intended to do it in the first place. I
18 don't know which one it is.

19 THE WITNESS: I don't pretend to have a
20 great grasp on our State procurement process with
21 only two sessions under my belt. It's something that
22 I would love a better understanding of.

23 CHAIRPERSON SCHEUER: Is the specifics of
24 this, what happened, something that would be
25 uncoverable by a legislative audit?

1 THE WITNESS: Perhaps.

2 Can I ask you, is that Swinging Bridges
3 behind you?

4 CHAIRPERSON SCHEUER: It is Swinging
5 Bridges.

6 THE WITNESS: Cheaper infrastructure.

7 CHAIRPERSON SCHEUER: I have nothing
8 further.

9 Anything further, Commissioners? If not,
10 thank you very much.

11 THE WITNESS: Thank you all very much for
12 your service and your time today. Mahalo.

13 CHAIRPERSON SCHEUER: I will make you an
14 attendee.

15 Natalie Hussey-Burdock, were you intending
16 to testify? So use the raise-your-hand function. I
17 see you're an attendee. If not, Adele Rugg. Use the
18 raise-your-hand function in ZOOM. I see you're in
19 the room. If you're intending to give oral testimony
20 in addition to your written, please use the
21 raise-your-hand function.

22 Mark Hyde. Richard Moss. Daniel Kanahale.
23 I'm going to admit you to be a panelist, Mr.
24 Kanahale. And then as I addressed in the Q and A
25 function, you should now see the ability to turn on

1 your audio and video. We can hear you.

2 THE WITNESS: I am trying to enable my
3 video. I keep pressing the button and it's not
4 allowing me to do so. Don't know why.

5 CHAIRPERSON SCHEUER: So you see the start
6 video button?

7 THE WITNESS: Yeah, I see the start video,
8 and I'm pressing on it, and it says unable to access
9 camera.

10 CHAIRPERSON SCHEUER: There might be a
11 software setting that you have that disabled that
12 ability.

13 THE WITNESS: Can I proceed with this oral?

14 CHAIRPERSON SCHEUER: You can proceed
15 without the audio.

16 Do you swear or affirm the testimony you're
17 about to give is the truth?

18 THE WITNESS: Yes, I do.

19 CHAIRPERSON SCHEUER: Please state your
20 name and address for record. I will give you three
21 minutes to testify followed by questioning.

22 DANIEL KANAHELE

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

DIRECT EXAMINATION

1
2 THE WITNESS: My name is Daniel Kanahale.
3 I live at 1100 Kupulau Drive, Kihei. I'm testifying
4 as an individual, long time resident of Kihei. And I
5 support the above- and below-grade condition that
6 currently exists.

7 In fact, I was at the meeting in 2013, LUC
8 meeting when that was approved as part of the
9 District Boundary Amendment.

10 I've been a -- I was a youth leader in
11 Kihei for ten years working with scouts. Many of my
12 scouts attend elementary school, intermediate and
13 high school in Kihei and in town. And so I have an
14 interest in their safety.

15 Pi'ilani was designed for the movement of
16 vehicles and not pedestrians. So a decision was made
17 to build the high school mauka of Pi'ilani. That
18 creates a pedestrian hazard for those who want to
19 move from makai to mauka of the highway.

20 The average risk for death for a pedestrian
21 reaches 50 percent at an impact speed of 40 miles per
22 hour, which is the current speed limit of Pi'ilani
23 Highway, and 75 percent at 50 miles per hour, which
24 is what most people tend to drive Pi'ilani Highway,
25 especially in that area.

1 So the mitigation by the LUC to require an
2 above- and below-grade crossing at the Pi'ilani was
3 very good, and I was happy to hear that H-DOT has
4 also approved the roundabout, because that will slow
5 people's speeds down in the area which tends to be
6 about 50 miles per hour to a much safety speed,
7 especially for kids.

8 So I do support the idea of crossing going
9 under the bridges down there. I'm very familiar with
10 both gulches down there. I myself have crossed the
11 highway using both gulches in the area of Waipu'ilani
12 and Kulanihakoi.

13 So I think the idea is safety first, and
14 the kids have waited a long time for a high school.
15 Many of them have grown up and have kids of their own
16 waiting for this high school.

17 So I would like to see it done right, and I
18 think the underpass, combined with the roundabout, is
19 like a good marriage, hand in glove. So I would
20 support that. I would oppose the Motion to Amend the
21 Decision and Order from 2013. Thank you.

22 CHAIRPERSON SCHEUER: Thank you, Mr.
23 Kanahale.

24 Are there questions for the witness?

25 MR. FUJIOKA: No questions.

1 MR. HOPPER: No questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON SCHEUER: Commissioners? If
4 there is no question from any of the other
5 Commissioner.

6 Mr. Kanahale, because you've testified on
7 other dockets in this area about your exercise of
8 traditional and customary practices in the area, can
9 you give to the Commission any insights for the name
10 Kulanihakoi or Waipu'ilani?

11 THE WITNESS: Kulanihakoi refers to a lake,
12 heavenly lake or a heavenly body of water; and
13 Kulanihakoi is probably one of the largest gulches in
14 the area. So, you know, it drains about 10,000 acres
15 mauka. And that water all comes through Kulanihakoi,
16 and some of it comes through Waipu'ilani.

17 So for the kanaka it was looked at as a
18 source of heavenly water, because all water starts in
19 heaven mauka to makai, and then flows down to the
20 ocean.

21 So the importance of "wai" in both the
22 words, Kulanihakoi and Waipu'ilani is that it is a
23 very important cultural resources, and that water is
24 the most important of all water resources because
25 it's considered sacred, because water is life.

1 So that area of South Kihei/North Kihei,
2 has been used for hundreds and hundreds of years as
3 fishing settlements. So there are many cultural and
4 historic properties in that area, and the largest
5 probably being Ko'ie'ie Fishpond which has --

6 CHAIRPERSON SCHEUER: If I may, Mr.
7 Kanahele, if I may, what I'm really interested in,
8 was there anything embedded in those names that would
9 give us any insight or things to keep in mind while
10 designing an underpass that come to mind immediately?

11 THE WITNESS: Well, would an underpass have
12 any impacts on cultural use or things that are
13 cultural importance in the area? And I think that
14 would be answered most effectively by an
15 archeological inventory survey to assure that
16 anything built there would not impact any cultural
17 sites.

18 And the likelihood that there may be
19 cultural sites in gulches or along the sides of
20 gulches are always there, because they were
21 considered important highway mauka and makai, a
22 natural trail. So that's something you would look
23 for.

24 But in the immediate area of the bridge, in
25 and around the bridge, which has already been

1 impacted by the building of the bridge and supporting
2 structures, the chances of it impacting anything
3 there within a reasonable distance is fairly low, in
4 my opinion.

5 CHAIRPERSON SCHEUER: Thank you, Mr.
6 Kanahale. I appreciate it.

7 Anything further, Commissioners? If not,
8 Mr. Kanahale, I'm going to move you to be an attendee
9 again.

10 I will now ask anybody who is an attendee
11 who has not given testimony, but wishes to use the
12 raise-hand function.

13 Mr. Rob Weltman followed by Ms. Laura
14 Dunham. I'm going to promote -- and if you can keep
15 your hands raised, it's helpful to me. I am bringing
16 in Mr. Weltman. Please enable your audio and video,
17 please.

18 Good morning.

19 Do you swear or affirm the testimony you're
20 about to give is the truth?

21 THE WITNESS: I do.

22 CHAIRPERSON SCHEUER: State your name and
23 address, and three minutes to testify followed by
24 questions.

25 -o0o-

1 ROB WELTMAN

2 Was called as a witness by and on behalf of the
3 Public, was sworn to tell the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Rob Weltman. I
7 live at 188 Walua Place, Kihei. I'm speaking today
8 for the Kihei Community Association on A11-794.

9 CHAIRPERSON SCHEUER: Mr. Weltman, I'm
10 sorry, for some reason the audio was radically sped
11 up. I have no idea why. If you can deliberately
12 speak slowly.

13 THE WITNESS: Okay. My name is Rob
14 Weltman, and I live at 188 Walua Place, Kihei 96753.
15 I'm speaking today for the Kihei Association on item
16 A11-794. (Hawaiian spoken.)

17 My understanding of the reasoning behind
18 the 2013 Commission condition requiring
19 grade-separated crossing before opening Kihei High
20 School, the community does not want its children
21 killed or injured in traffic on the way to school.
22 That has not changed. The community still does not
23 want its children injured or killed in traffic on
24 their way to school.

25 Replacing the planned intersection at the

1 highway with a roundabout is a good decision, and
2 that's one that the Kihei Association has worked long
3 and hard for. It will slow traffic while keeping it
4 flowing, and reducing the frequency of accidents.
5 And those are three objectives which would be hard to
6 combine without a roundabout.

7 It's also safer for pedestrians in a
8 signalized intersection, but nowhere near as safe as
9 a grade-separated crossing where kids do not face
10 traffic at all.

11 Again, the community is not asking for a
12 lower number of children killed or injured on their
13 way to school, it still wants no children to run the
14 risk of being hit by a car at the highway.

15 The Commission acted in the interest of the
16 children and the community of South Maui in opposing
17 the condition in 2013. Nothing has changed since
18 then to justify adapting the condition.

19 That's all I was going to say. I just want
20 to add after this lengthy discussion that I'm a
21 little surprised that there is debate now about
22 building a roundabout or timing of the roundabout,
23 because I believe that the item on the agenda is
24 whether or not to rescind the condition for a
25 grade-separated crossing.

1 LAURA DUNHAM

2 Was called as a witness by and on behalf of the
3 Public, was sworn to tell the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: Aloha kakou. My name is
7 Laura Dunham. I am a 33-year resident of Kihei,
8 Maui. I'm a parent and I'm a community networker.

9 My testimony today is in support of the
10 Kihei South Maui High School underpass. United
11 Nations has published 17 world-sustainability goals
12 to decrease the effects of climate change on earth.

13 Our State of Hawaii has embraced six of the
14 UN goals. One of them, smart sustainable
15 communities, increases the liveability and resilience
16 in the built environment through planning and
17 implementation at State and County levels.

18 Hawaii Green Growth monitors Hawaii's
19 progress towards the UN goals. This organization
20 also monitors Hawaii's progress on 100 percent
21 renewable portfolio standards by the year 2045.

22 The aloha-plus challenge goals are the most
23 aggressive in the country. Hawaii is making steady,
24 on target progress displayed by the Hawaii Green
25 Growth's website dashboard.

1 And this is how our Island State connects
2 to the world sustainability program. Hawaii has a
3 continued opportunity to grow smart, clean and
4 livable community through planning and
5 implementation.

6 The addition of a walkable underpass to the
7 new Kihei South Maui High School allows all of us to
8 partner together on a small yet very important step,
9 build more resilient communities, which produce less
10 greenhouse gas emission and noise.

11 Rather than counterintuitive thinking,
12 together we can continue our progress. Together in
13 our small way we work to decrease the effects of
14 climate change. Together we can take another step to
15 promote, approve all of Hawaii.

16 Let us continue to increase liveability and
17 resilience in the built environment through planning
18 and implementation. I support the underpass walkway
19 to the Kihei South Maui High School.

20 Thank you for your time.

21 CHAIRPERSON SCHEUER: Thank you very much
22 for your testimony. The witness is available for
23 questioning starting with DOE.

24 MR. FUJIOKA: No questions. Thank you.

25 CHAIRPERSON SCHEUER: Thank you, Mr.

1 Fujioka. Mr. Hopper?

2 MR. HOPPER: No questions, Chair.

3 CHAIRPERSON SCHEUER: Ms. Apuna?

4 MS. APUNA: No questions.

5 CHAIRPERSON SCHEUER: Commissioners?

6 Seeing none. Thank you very much, Ms. Dunham, for
7 your patience with us and for offering your testimony
8 to us today. We appreciate it.

9 Are there any further attendees wishing to
10 offer testimony on this matter? If so, please use
11 the raise-your-hand function in the attendee box on
12 the ZOOM platform.

13 If there's none, I'm going to close public
14 testimony on this matter. And I see none. So we're
15 done with public testimony on this matter.

16 Do the parties have any exhibits to enter
17 into the record other than what's already been filed
18 with the Commission?

19 Mr. Fujioka?

20 MR. FUJIOKA: Yes. We may have -- I think
21 we have some exhibits to enter through the Department
22 of Transportation.

23 CHAIRPERSON SCHEUER: Can you clarify
24 the -- DOT is not -- well, obviously they're
25 certainly deeply involved in this, they're not

1 technically part of the proceedings before us today.

2 So is it information from DOT that you wish
3 to enter as DOE exhibit?

4 MR. FUJIOKA: Yes.

5 CHAIRPERSON SCHEUER: What are those
6 materials?

7 MR. FUJIOKA: I think there are a couple
8 studies and reports. I need to confer with Mr.
9 Sniffen.

10 CHAIRPERSON SCHEUER: So after this we're
11 going to do a lunch break, so if you can get those,
12 and the procedure will be you offer those up, and
13 I'll ask if there is any objections.

14 Maui County, do you have anything?

15 MR. HOPPER: Nothing more, Chair. Thank
16 you.

17 CHAIRPERSON SCHEUER: OP?

18 MS. APUNA: No, we have nothing additional.

19 Mr. Fujioka, how long do you anticipate
20 needing for your main presentation?

21 MR. FUJIOKA: I'm thinking an hour.

22 CHAIRPERSON SCHEUER: Maui County?

23 MR. HOPPER: We should be brief, maybe
24 probably five minutes, depending on questions.

25 CHAIRPERSON SCHEUER: And OP?

1 MS. APUNA: Probably about five minutes.

2 CHAIRPERSON SCHEUER: It's 11:49 right now.
3 My inclination is that this is a good stopping point
4 for a lunch break. We could reconvene -- well, it's
5 11:50 now. We could reconvene at either 12:30 or
6 12:45, depending on preferences of Commission, then
7 we would start off with the admission of those
8 exhibits that you've had ready and made available
9 through the Commissioners to Mr. Riley Hakoda, Mr.
10 Fujioka, and to the other parties. We will admit
11 those as exhibits and give you an hour for your main
12 presentation.

13 Following that we will take a break, go
14 onto OP and County and go into deliberation by the
15 Commission. Is this acceptable to the parties?

16 MR. FUJIOKA: Yes.

17 MR. HOPPER: Can you reconfirm the
18 reconvene time?

19 CHAIRPERSON SCHEUER: I prefer to take a
20 40-minute break, reconvene at 12:30.

21 COMMISSIONER WONG: Chair?

22 CHAIRPERSON SCHEUER: Commissioner Wong.

23 COMMISSIONER WONG: Is that enough time for
24 Mr. Fujioka to work with Mr. Sniffen on their
25 exhibits?

1 CHAIRPERSON SCHEUER: And to deliver them
2 to the Commission. Mr. Fujioka?

3 MR. FUJIOKA: If we could get a little bit
4 more time.

5 CHAIRPERSON SCHEUER: We will reconvene at
6 12:45. Thank you very much.

7 (Noon recess.)

8 CHAIRPERSON SCHEUER: We're back on the
9 record.

10 We left off with taking a longer than usual
11 break because DOE stated they have some exhibits.

12 MR. FUJIOKA: I apologize, Mr. Chair. I
13 had misunderstood. The material that I was referring
14 to had already been submitted. I thought there was
15 additional documentation, but it's already in the
16 record.

17 CHAIRPERSON SCHEUER: So no further
18 exhibits?

19 MR. FUJIOKA: No.

20 CHAIRPERSON SCHEUER: Then you may begin
21 with your presentation.

22 MR. FUJIOKA: Although I do note there is a
23 hand up in the list of attendees.

24 CHAIRPERSON SCHEUER: I see there's an
25 attendee who was listed as a written testifier. I

1 closed testimony on this matter prior to lunch.

2 MR. FUJIOKA: Thank you.

3 Mr. Chair, members of the Commission, DOE
4 is well aware that back in 2013, even up to the last
5 Declaratory Order, there was an order that
6 grade-separated pedestrian crossing be put in the
7 area of the future Kihei School.

8 If I may, I would like to refer to the GSPC
9 when talking about underpasses and overpasses
10 collectively, and if I could use the word "underpass"
11 when we refer to such, and overpass when referring to
12 aboveground.

13 CHAIRPERSON SCHEUER: GSPC, grade-separated
14 pedestrian crossing?

15 MR. FUJIOKA: Yes.

16 Going back to the 2013 order, I think there
17 may have been an unintended latent inconsistency in
18 that original Petition, because it called for both
19 GSPC and pedestrian route study, but unfortunately
20 what had happened is the route study indicated that
21 the GSPC is usually a last resort or a long-range
22 solution.

23 That part, we because it's fairly lengthy,
24 that part of the walkable and livable communities
25 report we submitted as Exhibit 2 to the motion, but

1 from that initial pedestrian route study, there were
2 other studies commissioned by both DOE and Department
3 of Transportation, such as Faris & Peers, which is
4 our Exhibit 4, and WSP, which is our Exhibit 8, that
5 the DOT has also done a tremendous amount of
6 analysis, and the more everybody looked into it, the
7 roundabout became more attractive, and we couldn't
8 find a justification for the GSCP.

9 So even after the Declaratory Order of last
10 year, Department of Transportation continued to find
11 ways to bring that GSPC to life, but they kept
12 getting negative results. In the earliest analysis
13 there was concerns about distance, human factors,
14 security, some likelihood of use and so forth.

15 But the more recent analysis that also
16 emphasized that there is not enough clearance to
17 create an underpass where it's being suggested at
18 Waipu'ilani Gulch, and there is a concern about
19 flooding, because it is a gulch, it's basically a
20 riverbed.

21 So it's got to a point now where the most
22 sensible approach is to put in a roundabout first,
23 because there's no dispute that everybody wants it,
24 and it's going to mitigate traffic.

25 If I may, I would like to present a couple

1 of witnesses to flesh out the factual support for the
2 motion.

3 CHAIRPERSON SCHEUER: Who are you going to
4 call?

5 MR. FUJIOKA: Randall Tanaka and Mr.
6 Sniffen. Mr. Tanaka, Deputy Superintendent in charge
7 of the DOE's Office of Facilities and Operations, and
8 Mr. Sniffen represents the Department of
9 Transportation.

10 CHAIRPERSON SCHEUER: So normally you would
11 file a written direct testimony prior, and give the
12 parties a chance to review them. That said, if there
13 is not an objection from County or OP, I'm inclined
14 to say this will aid our proceedings.

15 Any concern, Mr. Hopper?

16 MR. HOPPER: No, objection.

17 CHAIRPERSON SCHEUER: Ms. Apuna?

18 MS. APUNA: No objection.

19 CHAIRPERSON SCHEUER: Once again, you were
20 a little soft.

21 MS. APUNA: No objections.

22 CHAIRPERSON SCHEUER: Thank you. Okay.
23 Who did you want to call first?

24 MR. FUJIOKA: Mr. Tanaka.

25 CHAIRPERSON SCHEUER: And I'll have you

1 enable your video and audio, Mr. Tanaka, and I'll
2 swear you in.

3 You understand also, just to be clear, Mr.
4 Fujioka, we need to make the witness available for
5 questions by the Parties and Commissioners?

6 MR. FUJIOKA: Yes.

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

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON SCHEUER: Please proceed.

12 RANDALL TANAKA

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

16 DIRECT EXAMINATION

17 BY MR. FUJIOKA:

18 Q Please state your name.

19 A My name is Randall Tanaka.

20 Q What is your position currently?

21 A I am the Assistant Superintendent of the
22 Office of Facilities and Operations for the DOE.

23 Q When did you assume that position?

24 A January 24th of 2020, this year.

25 Q Are you familiar with the order requiring

1 the construction a GSCP in the area, or the
2 anticipated area of Kihei High School?

3 A I have become familiar, as much as I can in
4 the last month and a half.

5 Clearly, my on-boarding with the DOE has
6 been an interesting journey up to this point. A lot
7 of things that we're doing. A lot of things that we
8 need to adjust and correct for.

9 So we've been in that process for the last
10 six, seven months, and I've become more familiar with
11 the Kihei High School project.

12 Q Now, since becoming the Assistant
13 Superintendent, what have you done in terms of
14 complying with the GSCP requirement?

15 A So the first step I took was to look from
16 our Project Management and our Planning Department on
17 what our commitments are to getting this school. I
18 looked a little bit from a historic standpoint, and
19 how we got in this place. And tried to understand
20 the grade separation options to cross from the makai
21 side to the mauka side to where the school will be.

22 I've taken a trip to Maui to look at the
23 particular location.

24 I also, on that trip, looked at
25 Lahainaluna, Maui Waiena, and we spent some time with

1 the Mayor's Office and Chief of Staff to get an
2 appreciation of not only the County of Maui and some
3 other concerns.

4 Also I am in ongoing discussions with the
5 two CAS that take care of the school on Maui, Lanai
6 and Molokai.

7 CHAIRPERSON SCHEUER: For the record, CAS.

8 THE WITNESS: Complex Area Superintendents.
9 They really are the mid-level management over the
10 schools in their grouping. The principals report to
11 them, and they're kind of the part of the management
12 team.

13 CHAIRPERSON SCHEUER: I apologize for the
14 interruption of your witness. I wanted to make sure
15 our court reporter could capture what the witness was
16 stating.

17 Q (By Mr. Fujioka): Can you describe for us
18 your interaction with Department of Transportation on
19 this pedestrian crossing matter?

20 A So -- and I'm sure Mr. Sniffen can attest
21 to our relationship with the DOT -- is much more
22 robust than in past situations. I think we fully
23 realize we're part of the community and not just the
24 DOE, so relationships with traffic management, with
25 road access, rights of entry play an important role

1 in how we work in our communities as a statewide
2 Department of Education.

3 Q Besides from recent -- what if anything are
4 the issues with constructing GSPC in that area?

5 A From the evaluation I've made, there were
6 three considerations, but initially only two. The
7 lack of a better description, the overpass and the
8 underpass, and more recently the roundabout.

9 In considering those three options, and the
10 timing of which we want to open the school or need to
11 open the school, the option that I looked at that
12 seems to be most favorable in two primary ways, one
13 is to get crossing safely across the highway; and
14 traffic, modulating the traffic so we can kind of
15 reduce the speed on that highway, and so the
16 roundabout seems to be a very good solution.

17 When we looked at the other two options,
18 the overpass, which is a little problematic for DOE.
19 What we do is we manage the schools, the four corners
20 of the real estate that schools are on. But to
21 manage that kind of crossing, we, from what I
22 understand, are going to be required to lock it and
23 maintain it. That's not what we do well, and not our
24 core business.

25 And then the underpass, which is

1 problematic in different areas, and Mr. Sniffen will
2 explain that.

3 And then for me it's the ability to open
4 the school on time, and what's the option that is
5 most favorable to that. Any delays cost us more
6 money; any delays are not the will of the community.
7 So we're trying to get that accomplished.

8 I will also tell you that an underpass
9 situation that we are evaluating actually now in
10 Honolulu, which is Mililani High School, there's a
11 pathway that bisects the school, and there's a tunnel
12 that goes under the road, is problematic from a
13 safety standpoint. So we have some experience in
14 things that can happen with underpasses.

15 Q You've heard the testimony earlier today
16 that there has been no recent communication or
17 interaction between the DOE and the Kihei Community
18 Association. Correct?

19 A Yes, I've heard that loud and clear, and
20 I've heard Commissioner Okuda's repeated questions to
21 validate our lack of robust engagement with the
22 community. And I will tell you, I will not take
23 credit for my predecessors, but we need to do a much
24 better job of that, and that's my promise to this
25 community, that we will do that. And that's why my

1 trip to Maui and that engagement.

2 Like I said, we're a State agency, so I
3 have to balance everything, and we need to balance
4 those discussions in all our communities that we are
5 part of. We have 290 schools which include charter
6 schools, so we are part of the community.

7 Q And would you be able to clarify the
8 testimony we heard about the funding of the various
9 pedestrian safety or traffic options that have been
10 considered today?

11 A Well, I'm going to leave the traffic issues
12 to the experts at DOT, but I will speak of the cost
13 which could delay the opening of the school, whether
14 it be change orders or value engineering, anything
15 that disrupts that process could cause us to go back
16 for permitting, could have change orders, and it does
17 get expensive.

18 I spent a lot of time with the Senate Chair
19 on Education, and the representative, the House
20 Representative Chair on Education. Those are my
21 primary contacts.

22 And we have a number of projects going on,
23 I will tell you, they have forewarned me that the
24 chances of us going back to ask for money is a
25 nonstarter in these times.

1 It's just the economic reality that we're
2 dealing with, and Tina mentioned that, absolutely, to
3 go back it's going to be a tough road.

4 So we're trying to get this project in the
5 budget, and trying to not get value engineering,
6 which would cost us to change some things that the
7 school -- it's a beautifully designed school, so our
8 goal is to get it open.

9 We're, I think, a year behind schedule
10 right now for a number of different things.

11 This school is unusual, because we went
12 from raw land to building this school.

13 So I would tell you that it's not three
14 options or two options, it is one option. We have to
15 make choices, and it would seem to me that the
16 evidence that's presented to me at this time is that
17 the on-grade roundabout is the way to go.

18 Q Thank you. That's the end of my direct
19 examination.

20 CHAIRPERSON SCHEUER: Thank you very much.
21 County, do you have any questions for the
22 witness?

23 MR. HOPPER: No questions for this witness,
24 Chair.

25 CHAIRPERSON SCHEUER: Ms. Takeuchi?

1 MS. APUNA: No questions.

2 CHAIRPERSON SCHEUER: Commissioners,
3 starting with Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much,
5 Mr. Chair.

6 Mr. Tanaka, you mentioned in your testimony
7 that the Department of Education is trying to do
8 things based on -- and I use the quote -- "will of
9 the community". Is that a fair statement of what you
10 just told us?

11 THE WITNESS: It is part of the
12 considerations we give, and it is a big part. I
13 don't live in that community, so I have to take the
14 input from the community to serve the interest of the
15 community.

16 Students come from that community so they
17 play a major role, but we also have, I also have a
18 fiduciary duty to the statewide system to give that
19 balance.

20 COMMISSIONER OKUDA: We will talk about the
21 fiduciary duty to the Statewide itself a little bit
22 later.

23 Focusing on your phrase, "the will of the
24 community", you heard the testimony that was given in
25 this hearing by members of the Kihei Community

1 Association; is that correct?

2 THE WITNESS: Correct.

3 COMMISSIONER OKUDA: Do you have any
4 evidence to indicate that the testimony that has been
5 given orally and in writing by the Kihei Community
6 somehow does not reflect the will of the Kihei
7 Community?

8 THE WITNESS: As it stands now, you're
9 correct.

10 COMMISSIONER OKUDA: What is the will of
11 the community regarding a grade-separated crossing?

12 THE WITNESS: I think it's -- that's a
13 difficult answer, because from I heard, they want
14 both. They want the roundabout and the underpass,
15 and that is an economic decision.

16 So when Commissioner Edmund asked the
17 question, if you had to pick one or the other, what
18 would you pick, and the response was both.
19 Unfortunately, that's not the economic reality.

20 COMMISSIONER OKUDA: I don't mean to cut
21 you off, go ahead.

22 THE WITNESS: No. So part of the will of
23 the community is that roundabout, and that I believe
24 we can fulfill. The other part of it is really a
25 funding question.

1 COMMISSIONER OKUDA: Because right now, you
2 do agree that the will of the law is basically the
3 Land Use Commission Boundary Amendment Decision and
4 Order that was entered in this case, correct?

5 THE WITNESS: Correct.

6 COMMISSIONER OKUDA: And, in fact, the
7 Department of Education, in fact, no one, including
8 individual Commissioners, have the unilateral power
9 to modify that order. It has to go through a process
10 of procedure, correct?

11 THE WITNESS: Correct.

12 COMMISSIONER OKUDA: And, in fact, for the
13 Department of Education to have obtained its original
14 boundary amendment to allow the building of the Kihei
15 High School in the location that it's being built
16 right now, that was based on a process or procedure
17 above your amendment process or procedures that the
18 Department of Education had to go through, correct?

19 THE WITNESS: That is my understanding,
20 yes.

21 COMMISSIONER OKUDA: In fact, Department of
22 Education hired outside attorneys to go through this
23 process, correct?

24 THE WITNESS: I'm not sure of that history,
25 but clearly you have an understanding of it, so I'm

1 going to assume you're correct.

2 COMMISSIONER OKUDA: In fact, that process
3 required community engagement to take into account
4 the will of the community. Do you agree?

5 THE WITNESS: That's my understanding.

6 COMMISSIONER OKUDA: Because that included
7 not only preparation of a Draft Environmental Impact
8 Statement or the Final EIS, and, in fact, a pretty
9 extensive boundary amendment process or procedure by
10 which the community testimony determined the will of
11 the community was invited so that the Commission
12 could take that into account, correct?

13 THE WITNESS: That is my understanding.

14 COMMISSIONER OKUDA: And in making the
15 decision, the Land Use Commission also relied on
16 exhibits and representations submitted by the
17 Department of Education. Is that a fair statement?

18 THE WITNESS: That is my understanding. So
19 I'm not sure where you want to go with this.

20 COMMISSIONER OKUDA: My next question is
21 where I want to go with it.

22 Did you look at exactly what exhibits and
23 representations the Department of Education submitted
24 to get its approval for the location of the Kihei
25 High School?

1 THE WITNESS: I took the advice of my team
2 project coordinators from what they have briefed me.
3 I have not reviewed page by page of the document, no.

4 COMMISSIONER OKUDA: Okay, because since --
5 and I don't think it requires review of every single
6 page involved because we're dealing with the
7 grade-separated crossing -- but isn't it true that
8 the Department of Education submitted what was
9 identified as Exhibit 30 to its Petition?

10 It was a document titled: A Policy on
11 Geometric Design of Highways and Streets, and, in
12 fact, it was an excerpt from that document.

13 And it specifically had Section 4.17.2,
14 grade-separated pedestrian crossings, and the part
15 that the Department of Education submitted to the
16 Land Use Commission to get its boundary amendment
17 stated, in part, and I quote:

18 "A grade-separated pedestrian facility
19 allows pedestrians and motor vehicles to cross at
20 different levels either over or under a roadway. It
21 provides pedestrians with a safe refuge for crossing
22 the roadway without vehicle interference."

23 Were you aware that that is what the
24 Department of Education submitted to the Land Use
25 Commission in an exhibit to obtain its boundary

1 amendment approval?

2 THE WITNESS: Verbatim I was not aware of
3 that, but I will take your word for it that's what it
4 states.

5 COMMISSIONER OKUDA: Does that sound like a
6 reasonable or fair statement of what a
7 grade-separated crossing accomplishes?

8 THE WITNESS: At the time that that was put
9 together, it was probably a very true statement.
10 Where we find ourselves today, or in the last couple
11 months that the Department of Transportation has had
12 a better implementation of roundabouts throughout the
13 state, they know it better.

14 Like I said, I'm not a transportation
15 expert, but what they have presented seems like a
16 reasonable and workable alternative to what has
17 previously been proposed.

18 So based on that information we have today,
19 that's the option we're presenting.

20 COMMISSIONER OKUDA: Well, will the absence
21 of a grade-separated crossing make it more safe or
22 less safe for pedestrian safety?

23 THE WITNESS: As I am not a transportation
24 expert, I will defer to the Department of
25 Transportation, but generally what I have read, it is

1 more safe.

2 COMMISSIONER OKUDA: So in other words, the
3 Department of Education here is advocating a position
4 which in fact makes the crossing of students or
5 students crossing the highway less safe.

6 THE WITNESS: No, I wouldn't say it's less
7 safe, based upon the information that we've worked
8 and understood from the Department of Transportation,
9 it is not less safe.

10 COMMISSIONER OKUDA: Well, if it's not less
11 safe, then will the Department of Education agree to
12 be responsible for any death or serious bodily injury
13 incurred by a student crossing the highway?

14 I don't think this is a funny questions,
15 Mr. Tanaka.

16 THE WITNESS: I'm not trying to make or --
17 sorry, go ahead.

18 COMMISSIONER OKUDA: My question is a
19 serious question.

20 Will the Department of Education, since
21 it's advocating this position, agree to be
22 responsible for any injuries or deaths, including
23 serious bodily injury of any student injured crossing
24 the highway because there is a lack of a
25 grade-separated crossing?

1 MR. WYNHOFF: Mr. Chair, this witness --
2 I'm sorry, Commissioner Okuda, this witness doesn't
3 have authority to make that representation on behalf
4 of the State, and I have to make an objection on
5 behalf of Attorney Generals, this witness can give --
6 he's not bound by, and not entitled to accept
7 liability on behalf of the State.

8 CHAIRPERSON SCHEUER: Commissioner, would
9 you like to phrase the question in a manner in which
10 the witness is able to respond to it?

11 It could be, for instance, are you aware of
12 any promises or manner in which the state could so
13 indemnify, or something like that.

14 COMMISSIONER OKUDA: Well, thank you, Mr.
15 Chair.

16 I disagree with the Department of Deputy
17 Attorney Generals' position, and if, even though the
18 Deputy Attorney General here is the one advising the
19 Land Use Commission, if he's going to instruct the
20 witness not to answer, then instruct the witness not
21 to answer and I can go on to my next question.

22 MR. WYNHOFF: I'm going to instruct him not
23 to answer, if that's the position.

24 CHAIRPERSON SCHEUER: Sorry, Mr. Wynhoff, I
25 am a bit confused, because you are our counsel, not

1 his counsel.

2 MR. WYNHOFF: I'm talking for State of
3 Hawaii, Mr. Chair. The State of Hawaii is not going
4 to admit that it's liable. It's not a proper
5 question, and we --

6 CHAIRPERSON SCHEUER: I'm going to call a
7 five-minute recess.

8 (Recess taken.)

9 CHAIRPERSON SCHEUER: I think we need to
10 move on.

11 COMMISSIONER OKUDA: Yes, Mr. Chair, I'll
12 move on to a final question to Mr. Tanaka.

13 MR. FUJIOKA: If I could just clarify the
14 record.

15 CHAIRPERSON SCHEUER: Mr. Fujioka.

16 MR. FUJIOKA: I attempted to, me, myself,
17 to object, but Mr. Wynhoff got to it before me so I
18 duly make a joinder, but if I could just make it
19 clear that on behalf of the DOE we also are objecting
20 to that line of questioning. Thank you.

21 CHAIRPERSON SCHEUER: Noted. Thank you,
22 Mr. Fujioka.

23 Are we ready to go, Commissioner Cabral?

24 COMMISSIONER OKUDA: Mr. Chair, can I --

25 CHAIRPERSON SCHEUER: I'm still actually

1 trying to get back into session. We're missing
2 Commissioner Cabral.

3 VICE CHAIR CABRAL: I'm here. I got to
4 find all the right buttons, sorry. Here I am. I'm
5 here.

6 CHAIRPERSON SCHEUER: As well as Mr.
7 Orodenker, and the Land Use Commission's Deputy
8 Attorney General.

9 Mr. Orodenker, if you're able to wrap it
10 up.

11 Mr. Deputy Attorney General, are you there?
12 Can you turn your video on? Thank you, Mr. Wynhoff.

13 Mr. Okuda, you're prepared to move onto a
14 final question?

15 COMMISSIONER OKUDA: Yes, Mr. Chair. Thank
16 you, Mr. Chair.

17 Mr. Tanaka, when the Department of
18 Education submitted its budget request or request to
19 build the Kihei High School, did it include a request
20 for funding of a grade-separated crossing as was
21 required by the Land Use Commission order?

22 THE WITNESS: I would need to get back to
23 you on that. I don't know the line item and what the
24 construction budget was.

25 COMMISSIONER OKUDA: Would there be any

1 reason that you are aware of why a request would not
2 have included budgeting or request for funds to build
3 the grade-separated crossing since it was required by
4 the Land Use Commission order?

5 THE WITNESS: I can't answer that, because
6 at the time the budget was put together, I'm not -- I
7 don't have that degree of detail on it. But I will
8 visit that.

9 COMMISSIONER OKUDA: Since you have been
10 giving testimony about certain cost benefits or
11 availability to fund or not, do you believe it would
12 have been prudent for you to check into whether or
13 not this item has already been budgeted for?

14 CHAIRPERSON SCHEUER: Commissioner Okuda,
15 you said you had one more.

16 COMMISSIONER OKUDA: Okay. Withdraw the
17 question. Thank you very much, Mr. Chair.

18 CHAIRPERSON SCHEUER: Commissioner
19 Ohigashi.

20 COMMISSIONER OHIGASHI: Thank you, Mr.
21 Chair.

22 Mr. Tanaka, I think you laid down three
23 different scenarios, one, overhead, two underground,
24 and three the roundabout with a pedestrian crossing.
25 Is that right?

1 THE WITNESS: That is correct.

2 COMMISSIONER OHIGASHI: And how is the
3 roundabout planned to be funded?

4 THE WITNESS: It's funded -- I'm sorry.

5 COMMISSIONER OHIGASHI: Is it funded, first
6 of all?

7 THE WITNESS: I've got to go back to that
8 budget consideration. I believe it is, but not with
9 a degree of certainty. But, yes, my first response
10 is yes, that crossing needs to be funded. I think
11 it's there.

12 COMMISSIONER OHIGASHI: If that roundabout
13 is funded, how long would it take to be built?

14 THE WITNESS: You know, it's still in
15 design phases, I understand, so I would defer to DOT
16 at this time.

17 COMMISSIONER OHIGASHI: Is your plan to
18 have it completed, if approved, have it completed
19 prior to the opening of school in 2021?

20 THE WITNESS: I think the school opening
21 has moved back to school year 2023. I need to get
22 back to you on that, but our intention is to have it
23 completed before that school opens, yes.

24 COMMISSIONER OHIGASHI: The last hearing I
25 recall that the school opening was planning for 2021,

1 is that right?

2 THE WITNESS: I need to get back to you.
3 My understanding is it's school year 2023.

4 COMMISSIONER OHIGASHI: Is there sufficient
5 funds to do the underground portion?

6 THE WITNESS: I don't believe so.

7 COMMISSIONER OHIGASHI: When you say you
8 don't believe so, is it because the total amount of
9 funding has been exhausted, earmarked, taken up?

10 THE WITNESS: I don't think that was one of
11 the options. I think the option was the overpass and
12 the roundabout. I don't think the underpass was
13 given that consideration at that point in time.

14 COMMISSIONER OHIGASHI: If it wasn't given
15 consideration, how would you know the cost and
16 whether or not there isn't sufficient funding to
17 complete the underground?

18 THE WITNESS: Well, I don't know the cost
19 of what the underpass is going to cost. We have a
20 budget, you know, but that's a DOT -- I would defer
21 to DOT on that.

22 COMMISSIONER OHIGASHI: Mr. Tanaka, you're
23 asking us to modify a condition in a Land Use
24 Commission D&O that requires you to either do an
25 overpass or underpass, it doesn't require you to do a

1 roundabout, but you want to change that to do a
2 roundabout because you feel that that's most
3 reasonable and the most, I guess, monetary, it's the
4 most best thing that you can do at this point in
5 time.

6 Shouldn't we have an idea of what the cost
7 would be for the underground and whether or not --
8 and if you don't know the cost, how can you say
9 there's no funds for it?

10 THE WITNESS: Mr. Ohigashi, I'm going to
11 defer to DOT. They would have a better idea because
12 they have done roundabouts, so if you don't mind, I'm
13 going to defer to DOT.

14 COMMISSIONER OHIGASHI: Who's in charge of
15 the construction budget for the school?

16 THE WITNESS: The DOE.

17 COMMISSIONER OHIGASHI: So my question --
18 you can respond to my question. If you're
19 responsible for the construction budget, you should
20 know how much an underground would cost, and whether
21 or not you have sufficient funds to complete it.

22 THE WITNESS: I will need to go back to
23 what the construction budget is. I don't want to
24 quote you a number and misquote.

25 COMMISSIONER OHIGASHI: How can we make a

1 decision if we don't have that information?

2 THE WITNESS: I'm going to ask that that be
3 deferred to DOT as they have a better understanding
4 of what a roundabout costs.

5 COMMISSIONER OHIGASHI: I'm just taking
6 your answer as nonresponsive and trying to figure out
7 a way for that actual question. I think -- let me
8 put it this way.

9 I think that an order to show good cause we
10 should have the actual cost of all of these three
11 options and availability of funding today, because
12 you're telling me you have funds today to do the
13 roundabout, and I'm assuming that's because the DOT
14 has the funds to do it.

15 CHAIRPERSON SCHEUER: Excuse me, excuse me.
16 I want to make sure that one person at a time -- Mr.
17 Tanaka, I'll make sure you get full-time to respond
18 to the Commissioners comments.

19 COMMISSIONER OHIGASHI: In order for me to
20 make an intelligent decision whether to allow this to
21 go forward or to allow the roundabout to be used in
22 exchange for the underground, we should have that
23 kind of information so that we know that it's a
24 cheaper and doable option. Don't you think so?

25 THE WITNESS: Right, and if you give me

1 15 minutes, I'll get the answer from our construction
2 people right now.

3 CHAIRPERSON SCHEUER: If I may, given the
4 way this hearing is going, there will probably be a
5 time when we are talking to Mr. Sniffen and the
6 expected question of Mr. Sniffen where you should
7 have that opportunity, Mr. Tanaka, and I'll allow Mr.
8 Fujioka to recall you at that point.

9 COMMISSIONER OHIGASHI: Fine with me. I
10 want some answers rather than pointing fingers at
11 somebody else.

12 When you say that if we don't take your
13 option and we decide, hey, because you're putting it
14 as either/or, we say no, no, no, let's keep the
15 things as they are now. Figure it out. Do the
16 underground. Would that delay the opening of the
17 school?

18 THE WITNESS: My guess is, yes, it will.

19 COMMISSIONER OHIGASHI: What do you base
20 that guess on?

21 THE WITNESS: Permitting requirements. We
22 probably have to do an environmental assessment
23 because it's a waterway. There's a number of things
24 that have to be accomplished.

25 I think there's mention of structural

1 things that may have to be accomplished for that
2 overpass, that roadway. Those are the things that
3 come to mind at this point, but until we put it to an
4 engineer, we're going have to see.

5 COMMISSIONER OHIGASHI: Wouldn't it be, to
6 make sense to obtain a cost estimate and a timeline
7 on that to determine whether or not that actually
8 would show that it would delay opening of the school
9 in order to support your request for roundabout?

10 THE WITNESS: Yes. I mean that's -- yes,
11 you should have that information on what it's going
12 to look like, cost like, and timing-wise, yes,
13 absolutely.

14 COMMISSIONER OHIGASHI: And so the last
15 thing -- wouldn't this motion technically be
16 premature until we have that type of information?

17 THE WITNESS: Well, Stuart may want to
18 correct me on this, but I think the motion was to
19 discuss and get the roundabout considered, not the
20 underpass.

21 COMMISSIONER OHIGASHI: I don't have any
22 more questions. I think you've answered it.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Ohigashi.

25 We have Commissioner Chang followed by

1 Commissioner Giovanni.

2 COMMISSIONER CHANG: Thank you, Mr. Chair.

3 Good afternoon, Mr. Tanaka. I'm going to
4 try to keep this very short. I appreciate your
5 testimony recognizing the lack of communication with
6 the community. And you said we need to do better.

7 I guess my question to you is, when do you
8 plan on meeting with the community, or how do you
9 plan on doing better?

10 THE WITNESS: You know, so my first call
11 will be to the gentleman that first spoke as he's the
12 head of the association, Kihei Community Association,
13 and have an opening conversation, get a little better
14 understanding of the history of the association's
15 position regarding the school.

16 I think I will also talk to Representative
17 Wineberger, because that's her constituency, so she
18 has a pretty good pulse of the community.

19 And then probably the Rep, House Rep
20 Woodson, who is the Chair of the Education Committee.
21 And then proceed that way. That would be my first
22 steps.

23 COMMISSIONER CHANG: Thank you, that's very
24 helpful.

25 And maybe this is speculating, but I'm

1 going to ask you this question nonetheless, because
2 we've heard from many of them this morning.

3 If there is -- in your opening comment with
4 these community groups who appeared today, is that
5 they want both the roundabout and an underpass. Are
6 you prepared -- what would be your response?

7 THE WITNESS: I think the issue for this is
8 funding, right? So I just got something back from
9 the team to answer Mr. Ohigashi's response. About 5
10 million for roundabout, and 6 to 8 million for the
11 overpass. They didn't give me numbers on the
12 underpass.

13 COMMISSIONER CHANG: I'll let all of this
14 go to Commissiosner Ohigashi, if he's got any
15 additional questions to ask you.

16 But just going back to my question, can you
17 answer if they want both, if the community, you
18 survey the community, and they said, no, we want
19 both. We want the roundabout, as well as we want the
20 underpass. Are you prepared to answer that?

21 THE WITNESS: I think we need more
22 information on the underpass.

23 COMMISSIONER CHANG: That's fair enough.
24 Thank you very much for your response.

25 THE WITNESS: Thank you.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Chang.

3 Commissioner Giovanni followed by
4 Commissioner Cabral.

5 COMMISSIONER GIOVANNI: First of all, I
6 yield my time to Commissioner Ohigashi if he had a
7 followup question for this witness.

8 CHAIRPERSON SCHEUER: Commissioner
9 Ohigashi.

10 COMMISSIONER OHIGASHI: I don't have a
11 followup question, because I'm still waiting for the
12 underpass dollars.

13 COMMISSIONER GIOVANNI: Very good. I was
14 waiting for that as well.

15 CHAIRPERSON SCHEUER: You have muted
16 yourself, Commissioner Giovanni.

17 COMMISSIONER GIOVANNI: I've corrected that
18 again. Thank you.

19 I was also taken, as my fellow
20 Commissioners were, by the comment, will of the
21 people, that was made by you Mr. Tanaka. And I
22 appreciate the follow up Q and A between you and the
23 Commission to help clarify that viewpoint.

24 But I share my concerns that my fellow
25 Commissioners have. I can imagine this is a very

1 busy period for you entering a new position at the
2 time you were greeted by the Covid crisis. So I do
3 appreciate that you are a very busy person with a lot
4 of unanticipated drama in your job.

5 At the same time, you took the occasion to
6 visit Maui in particular for coming up to speed on
7 this project, and you met with many government
8 officials and representatives, but what was the
9 reasoning that you have personally for not reaching
10 out to the community more directly?

11 THE WITNESS: We couldn't set up the time,
12 that's all it was. It was a scheduling issue, and I
13 wanted to see the location first and foremost to
14 understand what we were talking about, and proceed
15 that way.

16 And then we had a little bit of the
17 lockdown and those things. So my intention is to
18 engage that community again as soon as we possibly
19 can.

20 COMMISSIONER GIOVANNI: And I hope you're
21 able to follow through on that.

22 So I want to return to the underpass
23 concept. Are you familiar with the photographs that
24 were presented by shared screen today, and they're
25 part of the record?

1 THE WITNESS: Yes, I know where that bridge
2 is. We have had some discussion with DOT about it;
3 head clearance, what that location means in terms of
4 health and safety.

5 So we've had a discussion about it, but
6 cost estimates and whether we can actually do it,
7 considering that it's a waterway and any obstruction
8 to that stream, what does that mean. I don't have
9 those answers yet.

10 COMMISSIONER GIOVANNI: Are you cognizant
11 in looking at that photograph that there is a,
12 quote/unquote, a beaten path where pedestrians have
13 already chosen to use that approach to cross the
14 highway?

15 THE WITNESS: Yeah, I'm -- I don't know
16 where they're crossing under there, other than the
17 school. I don't think there's much on the other
18 side, but nevertheless, they're crossing.

19 I'm sure every of us have been youngsters
20 that took the shortest path, and that's what forms,
21 so where they're going to and why they're going under
22 there, I'm not sure.

23 COMMISSIONER GIOVANNI: Is it your vision
24 that if you built the roundabout and not build the
25 underground, that path will no longer be used as a

1 shortcut?

2 THE WITNESS: I don't know. I don't know
3 enough about the community. Clearly they're going
4 under there because it's an easy way to get to the
5 other side, but I'm not sure. I can't answer that.

6 COMMISSIONER GIOVANNI: Would you support a
7 DOT proposal to block off that entry point or vantage
8 point to the community in the event that you build
9 the roundabout, so that it prevents people from using
10 that on an undeveloped basis?

11 THE WITNESS: You know, I would defer once
12 to DOT. I have seen some of that happen in Honolulu
13 to restrict access.

14 But once again, I defer to a situation that
15 we're having in Mililani High School. There is this
16 pathway that bisects the school and there's a tunnel
17 that goes under, and we have illegal activity going
18 over there. We've got homeless people deciding to
19 reside there. And we're trying to address that in a
20 most civil manner.

21 So they close the gate now at night to
22 restrict any occupancy in that tunnel. So that's
23 part of the solution, but we'll see.

24 COMMISSIONER GIOVANNI: I have no further
25 questions. Thank you, Chair.

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

3 Commissioner Cabral?

4 VICE CHAIR CABRAL: Yes, thank you. Thank
5 you, Mr. Tanaka. And again, its unfortunate you're
6 the late comer to an on-going long history of
7 unhappiness, I think, in the community, and even for
8 our current Commission. I've been to the site. We
9 have had several hearings already.

10 I somewhat want to go back to the concerns
11 that my fellow Commissioner Okuda touched on and
12 hopefully not create a fire storm here.

13 In your knowledge in the Assistant
14 Superintendent position in the school system, when
15 there is a liability issue and there are lawsuits --
16 and I'm in private business, so I manage a lot of
17 properties, and I've had educational hard knock
18 degree of being sued numerous times for something
19 that happens on my property. So I kind of look at it
20 from that perspective.

21 So I'm thinking when you have a lawsuit and
22 it's against the school, does it come out of
23 Department of Education's budget, or does it come out
24 of some super fund in the State government? Do you
25 know where that money comes out of, if it is not

1 coming out of your DOE budget over the years, then
2 it's coming out of somewhere else.

3 Are you aware of that?

4 MR. FUJIOKA: I don't think that's within
5 the purview of his responsibility or testimony, and I
6 just don't know if there's a simple answer for that
7 question.

8 VICE CHAIR CABRAL: Okay. I'll try to make
9 my point. That was sort of the basis of my point.
10 But I want to make the point and the question is,
11 because then in the studies that you've seen, okay,
12 in the studies that you've seen was there any
13 consideration or factor mathematically, because you
14 have indicated a couple of times it's all about the
15 expense, expense is going to be too much, et cetera.
16 So we can't do both, we can't do this, we can't do
17 that, so it sort of all comes down to money.

18 I'm in private business, it's all about the
19 money. My whole life, you know, I'm in private
20 business, it's all about the money.

21 CHAIRPERSON SCHEUER: Commissioner Cabral,
22 do you have a question for the witness?

23 VICE CHAIR CABRAL: In the studies you've
24 seen, was there any type of expense put in there for
25 liability expenses for lawsuits, et cetera, for

1 unfortunately probably the death of a child or
2 something, if you don't have some kind of a safe
3 method for them to cross the street?

4 CHAIRPERSON SCHEUER: The witness may
5 answer, I don't know; it's outside my area of
6 expertise.

7 THE WITNESS: Thank you, Chair. That's
8 exactly right, I don't know.

9 VICE CHAIR CABRAL: Then I do want to also
10 kind of comment, and you referencing the concerns and
11 the liabilities of a tunnel. And I actually had that
12 same concern when we were talking underground, that
13 was always my vision because I manage properties, I
14 deal with lots of homeless people every day.

15 And so I was concerned about that too,
16 because that is clearly an attractive location for
17 all kinds of problems, all types.

18 But I was very happy to see the photo that
19 was brought up because that's a very open air
20 situation, and I understand it's a waterway and there
21 will have to be things done to it to make it
22 accessible, but you either go wide or deep with
23 water.

24 I'm in Waikeke Uka in Hilo, I live with
25 water. So I just kind of want to make sure you

1 realize there's not a direct correlation between the
2 tunnel and the photo of what we saw of that open air
3 under the roadway. So I'm just concerned.

4 It seems to be that this whole process has
5 gone on since the Land Use decision was made and no
6 one in DOE has ever given it any real consideration
7 that anybody was ever going to pay attention to Land
8 Use requirements, that you have a pathway over and
9 under, and therefore, it's just been one thing after
10 another to ignore it.

11 And I have a problem getting around that.
12 I'm sorry, you can't answer my questions, if there's
13 somebody else in the future witnesses who is going to
14 be able to have that information.

15 Sorry, you're catching all this heat, but
16 thank you very much for serving our school system.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Cabral.

19 I have questions for the witness as well,
20 but we are in need of a recess. I will mark, before
21 we go into a ten-minute recess reconvening at 2:00, I
22 don't want to prejudge where my Commissioners where
23 we're at, but I would observe that given the tenor of
24 the questioning, and number of questions that the
25 Commissioners have, and the number of Commissioners

1 asking these questions, that if I was predicting
2 where things would go, deferral would be a best case
3 option for a motion right now.

4 So I would invite the DOE to think about
5 that during our ten-minute recess. We will reconvene
6 at 2:00 o'clock.

7 (Recess taken.)

8 CHAIRPERSON SCHEUER: 2:00 o'clock. I
9 believe we're ready to go.

10 Commissioners, this was questioning of
11 Petitioner's witness, Mr. Randall Tanaka.

12 Are there further questions from the
13 Commissioners at this time? If not, I have a couple
14 of questions.

15 Mr. Tanaka, I understand that the
16 legislature has created a school facilities agency
17 that is going to be responsible for the construction
18 of school facilities. You are muted.

19 THE WITNESS: Yes.

20 CHAIRPERSON SCHEUER: So are they going to
21 take over? Is that new entity going to take over the
22 construction of the Kihei High School?

23 THE WITNESS: It's not clear. First, from
24 first indications it's all going to be new
25 construction, not things that are already in place

1 and in motion.

2 CHAIRPERSON SCHEUER: But that's not firm
3 yet?

4 THE WITNESS: The governor has to appoint
5 an executive director. There are rules that they
6 have to write, and then I think the governor has to
7 approve what project they select.

8 CHAIRPERSON SCHEUER: So I ask the question
9 because, there has been an expressed concern from
10 some of the public testimony about the constantly
11 changing points of contact, and so it raises a
12 concern with me that you've done a great job of
13 representing, you want to work with the community,
14 and you want to see this project through, but we're
15 hearing from you now, and then in a month it's not
16 actually you who's involved, it's some new employee
17 of a new entity.

18 How do we have any assurances about that?

19 THE WITNESS: I can't give you any
20 assurances about that. This is in the governor's
21 hand and the authority's hand. I have had
22 discussions with both senate and house chair on
23 education, and the bill becomes law September 15th,
24 and there's still more discussion.

25 They say they've got to refer back to the

1 community notes on what the intent of the law was as
2 they designed it, but there's still a lot of
3 questions about it.

4 I'm sorry, Chair. I can't give you an
5 answer on that. I don't know where they're going.
6 All I know is, it becomes law September 15th.

7 CHAIRPERSON SCHEUER: But you believe that
8 any representation you make here would be binding
9 upon that new entity? Or if you can't say that, you
10 don't know.

11 THE WITNESS: I don't know. I don't know.

12 CHAIRPERSON SCHEUER: That's fine.

13 I would like to look at the big picture on
14 things, and we're focused on traffic studies right
15 now, and manners of crossing, the manners of moving
16 cars, and facilities opening, but I'll look a little
17 bit wider.

18 What will make for a successful Kihei High
19 School? How will we know we have had a successful
20 Kihei High School built and operated?

21 THE WITNESS: I think opening, given the
22 amount of time that it's taken to do this, I think
23 opening is critical, because the community has been
24 waiting for a very long time for this. And whether
25 it's the bureaucracy, whatever it is, I think we need

1 to open this school. And everything we can do to get
2 and meet the schedule, we should do. And we're
3 trying like mad people to do that.

4 Part of the discussions we are having
5 today, which are good discussions, I don't mind the
6 cross-examination and the hard questions, and I'll
7 answer it to the best of my ability, but I think it
8 galvanizes the community.

9 I think there was a lady that spoke about
10 it's not only a place for education, but it's a
11 community center and athletic.

12 So I think that helps bind the community.
13 So opening that school on time is critical. And
14 these things we talk about overpass, underpass, grade
15 separation, this all contribute to the on-time
16 performance in opening. I think that's critical.

17 CHAIRPERSON SCHEUER: I guess I'll just
18 respond that I think that for me the relationship of
19 a community to its school is probably the best
20 predictor of its success. And that while I don't
21 think I heard anybody said, please, delay opening,
22 you know, everybody wants this open.

23 But how we get there, the foundation that
24 we lay, and the relationship that we lay between the
25 community, who have been astoundingly clear and

1 consistent over decades about their expectations
2 around this, sets the expectation for the school for
3 100 years to have a good relationship.

4 The physical school and the institution
5 that comes with the community that it's supposed to
6 be growing from, and that's what I'm looking for in
7 our small role in this.

8 I have nothing further. Is there anything
9 further from the Commissioners? If not, I'll offer
10 the opportunity for redirect to Mr. Fujioka.

11 Seeing none, Mr. Fujioka, do you have any
12 redirect?

13 MR. FUJIOKA: Before we took that recess,
14 the Chair alluded to the possibility, or to defer to
15 get to some of the information to answer the
16 questions that were put to Mr. Tanaka that we was
17 asked to comment on.

18 So if I were to make a request, it would be
19 the Commission wants me to finish my redirect before
20 making --

21 CHAIRPERSON SCHEUER: If DOE is ready to
22 make a request to defer consideration of its motion
23 or withdraw of its motion, it could be considered
24 immediately.

25 I will turn to both Mr. Orodener and Mr.

1 Wynhoff for any further direction in that regard.

2 Commissioner Ohigashi, you're waiving your
3 hand.

4 COMMISSIONER OHIGASHI: I just have some
5 concerns about -- that I would like to hear from DOT
6 before we determine there should be deferral, so that
7 we can hopefully get -- if there are any questions
8 that the DOT needs to answer, that we would could get
9 that information also.

10 CHAIRPERSON SCHEUER: Commissioner Chang,
11 you're nodding your head in agreement?

12 COMMISSIONER CHANG: Yes, I am. That was
13 going to be my request as well, if DOE does make the
14 request, since Mr. Sniffen has been here, I would
15 like to hear DOT'S testimony.

16 VICE CHAIR ACZON: I agree.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Aczon.

19 So to be really clear, I'm not trying to
20 cut off things. I think another option available to
21 the DOE would be to indicate that they would love to
22 have the consideration of Mr. Sniffen's testimony as
23 well as any redirect of Mr. Tanaka, but your
24 intention is not to have the Commission make a
25 decision today, but ask for deferral for further

1 proceedings?

2 If I understand our administrative rules
3 correctly, a party to a Commission proceeding can
4 make a motion at any point during the proceedings.
5 That was partially what I was trying to raise.

6 EXECUTIVE OFFICER: Mr. Chair, deferral is
7 a possibility; withdrawal is not. Once a proceedings
8 has been filed under our rules and the hearing has
9 begun, then we have to see it through. You can
10 withdraw prior to the hearing, but you can't withdraw
11 once the hearing gets started, but you can ask for a
12 deferral.

13 CHAIRPERSON SCHEUER: Thank you for that
14 clarification, Mr. Orodener.

15 Motion by the party for deferral would come
16 in what form, an oral request that said --

17 EXECUTIVE OFFICER: An oral request for the
18 Commission to defer. The Commission can either --
19 the Chair can grant that on his own, or Chair can ask
20 for a vote from the rest of the Commission with
21 regard to the question.

22 CHAIRPERSON SCHEUER: Mr. Wynhoff.

23 MR. WYNHOFF: I'm unmuted now?

24 CHAIRPERSON SCHEUER: Yes, you are.

25 MR. WYNHOFF: So I, of course, agree with

1 Mr. Orodener. My only concern would be from the
2 Sunshine perspective, if there's members of the
3 public who are wishing to testify, certainly now that
4 the matter has been opened, we would certainly want
5 to make sure that those folks have had the
6 opportunity to testify at some point.

7 Anyway, thank you.

8 CHAIRPERSON SCHEUER: At a rescheduled
9 hearing we could allow for public testimony again.

10 MR. WYNHOFF: I think that's true.

11 CHAIRPERSON SCHEUER: So, Mr. Fujioka,
12 would you like to continue with redirect?

13 MR. FUJIOKA: I think we could go ahead and
14 do that. If there are questions that might require
15 further information, we can make a motion to defer at
16 that time.

17 CHAIRPERSON SCHEUER: Thank you. Why don't
18 you proceed.

19 REDIRECT EXAMINATION

20 BY MR. FUJIOKA:

21 Q So in terms of going back to the community,
22 you had mentioned contacting the president of the
23 Kihei Community Association, correct?

24 A I think that's the starting point as he
25 represents the organization in his position. I think

1 that's a starting point.

2 Q And is that to say you're amenable to
3 discussing, even if we do proceed, you're allowed to
4 proceed with a roundabout at this point?

5 Are you willing to keep discussions open as
6 to any and all other pedestrian safety measures in
7 the area?

8 A Absolutely. I mean if we can't listen to
9 the community, and we need to take this opportunity.
10 I don't see it as negative, it's an opening to have
11 those kinds of discussions. That's what we should be
12 doing, in my view.

13 Q And your trip to Maui, you said you had
14 looked at the gulch?

15 A It was pointed out to me where that
16 adjacency to where we were, but we were really
17 focused on what the construction would occur.
18 There's something that's already in place that would
19 have to be moved. So I just wanted to get a feel of
20 that location.

21 Q Do you know if that was the Kulanihakoi
22 Gulch or Waipu'ilani Gulch?

23 A I don't know, but that was the closest
24 gulch we saw that was pointed out to me.

25 Q And if people are going under the highway

1 at that point, you said you don't know where they
2 were going?

3 A Well, I don't know where they're going to
4 come out. So, you know, we have to -- I mean, where
5 is that pathway relative to the pathway to the
6 school? It could be off a different mark, I mean, so
7 we would have to construct that way, sidewalks to the
8 general approach to the school.

9 Q Going back to your question about the will
10 of the people, or the will of the community, correct.
11 And at this point it's is your understanding that the
12 will of the community is that both a roundabout and
13 an underpass?

14 A Well, that's what Representative Tina
15 expressed when Commissioner Aczon asked the question,
16 if you had to pick, what would you pick? And I think
17 the response was they want both. But there's a
18 prioritization that has to happen relative to
19 funding.

20 Q So based on the information that you
21 gathered, is it advisable to do both at this point?

22 A Well, I would tell you that unless I can
23 fulfill the request that Commissioner Ohigashi asked,
24 what is the cost, I got to get that cost number. I
25 mean, to answer that question would be an incomplete

1 question, because I don't know what the cost is.

2 MR. FUJIOKA: Thank you. No further
3 redirect.

4 CHAIRPERSON SCHEUER: Thank you.

5 We can call Mr. Sniffen.

6 MR. SNIFFEN: Every once in awhile it kicks
7 me out and tells me to come back in again.

8 CHAIRPERSON SCHEUER: Thank you for your
9 patience today. We know you have a lot of duties.

10 Right now I can't see you.

11 THE WITNESS: I have my video on. I turned
12 it off and turned it back on again. Can you see.

13 CHAIRPERSON SCHEUER: I cannot.

14 THE WITNESS: Let me try and get out, this
15 is off, this is on again. Let me jump off and jump
16 back in again.

17 CHAIRPERSON SCHEUER: There you are.

18 THE WITNESS: Perfect.

19 CHAIRPERSON SCHEUER: Do you swear or
20 affirm the testimony you're about to give is the
21 truth?

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: Thank you. You may
24 proceed, Mr. Fujioka.

25 -o0o-

1 ED SNIFFEN

2 Was called as a witness by and on behalf of the DOE,
3 was sworn to tell the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FUJIOKA:

7 Q State your name for the record.

8 A Ed Sniffen.

9 Q What is your current position or
10 occupation?

11 A Deputy Director of Transportation for
12 Highways DOT.

13 Q How long have you held that position?

14 A January 2015 to the present.

15 Q You're familiar with the area in which
16 there's a plan to build Kihei High School?

17 A Yes.

18 Q Are you familiar with the order requiring
19 or calling for grade-separated pedestrian crossing in
20 that area?

21 A Yes.

22 Q And are you familiar with the order that
23 was entered by the Commission in 2019?

24 A Yes.

25 Q What has the Department of done since then

1 with respect to the design area, construction of a
2 grade-separated pedestrian crossing in that area?

3 A We have been working with DOE since two
4 years ago to talk about what this intersection and
5 this crossing is going to look like on our facility.
6 Because in the end we're going -- what DOE is going
7 to build, DOE is going to live it with the community
8 in its operations and its maintenance.

9 Part of the discussions in the past prior
10 to 2015, DOT was in general not supportive of
11 roundabouts. In general, roundabouts are an
12 unproven, quote/unquote, unproven technology in
13 Hawaii that needed more vetting.

14 Since that time, when I came in 2015 we
15 pushed roundabouts in the system on the Big Island in
16 that Kaupo area, Old Government Road. That was the
17 number one fatality site at intersections in the
18 State.

19 So we built a three-legged roundabout in
20 that area. And that is the first single-lane
21 roundabout we built in our system.

22 Prior to me coming onto DOT, the DOT policy
23 was there can be no multi-lane roundabouts until the
24 a single-lane roundabout was built on the highway.
25 So we built it out there, we studied it. We vetted

1 it. We made sure that it worked, and then we started
2 looking for other sites, that we could push other
3 roundabouts to. There are three others that are
4 going up on the Big Island now. There's one in Kauai
5 that's planned. There's a bunch on Oahu that the
6 city has already done. There's one that we're
7 considering. And on Maui we are looking at this as
8 being one multi-lane roundabout.

9 Q Is there a reason why you're considering
10 multi-lane in this area of Kihei High School as
11 opposed to single lane?

12 A There's no way that a single-lane
13 roundabout through this facility would take the
14 capacity that's necessary for the community in that
15 area.

16 Q You're aware that in earlier studies
17 roundabouts were mentioned as possible alternatives
18 to control pedestrian or traffic and pedestrian
19 safety in that area?

20 A Yes.

21 Q Do you have an understanding why it wasn't
22 advanced to either the Land Use Commission or County
23 Planning back then?

24 A At the time that DOT -- sorry.

25 Q -- 2013 report and I think there was one in

1 2015, 2016?

2 A At the time the DOT did not support
3 roundabouts as a proven technology.

4 Q And since then there's been a body of
5 knowledge and experience gained; is that a fair
6 statement?

7 A I think the fair statement is the DOT
8 accepted the body of knowledge already gained
9 throughout the rest of the nation. But the DOT also
10 had an opportunity to test it on its own system.

11 Q Would this be the first multi-lane
12 roundabout in Hawaii?

13 A Yes.

14 Q Based on your research and study on this
15 subject, can you talk a little bit about the -- in
16 fact, on pedestrian safety that this proposed
17 roundabout would have?

18 A Based on national studies and our
19 information for roundabouts that we have in the
20 system in Hawaii, both County and State, roundabouts
21 reduce pedestrian crashes by 95 percent. That's the
22 intent.

23 It also reduces high critical crashes by
24 98 percent, mainly because the roundabout geometrics
25 slow cars down sufficiently to make sure they're not

1 going through the intersection at more than 15 to 20
2 miles per hour. Currently on the system, if you look
3 at the speed at 85 percentile speed, or the speed
4 which 85 percent of the vehicles will travel on that
5 corridor, it's about 48 miles per hour. The posted
6 speed limit posted is 40.

7 So our intent with the roundabout in this
8 area is to slow traffic down significantly in the
9 area of the school.

10 Q And there would also be crosswalks, is that
11 correct?

12 A That's correct.

13 Q So once the vehicles slow down to 15-20
14 miles per hour, you think a greater likelihood that
15 they can stop for the pedestrian?

16 A Absolutely.

17 As part of the roundabout design, we are
18 looking at either our RFBs, or rectangular rapid
19 flashing beacons, to alert drivers of pedestrians
20 going across a pedestrian actuated signal.

21 If we wanted to go even further to make
22 sure that it can be enforced if somebody runs the
23 signal, we are looking at HAWK signals.

24 So that's still up in the air on which one
25 we would go with, but either way we are going to have

1 a signal system.

2 Q What does a HAWK system involve?

3 A So HAWK is pedestrian actuated stoplight,
4 for lack of better term.

5 For rectangular rapid flash beacon, it's a
6 warning, it's a yellow flash warning. A HAWK has
7 green, yellow, red. If you run the red, you get a
8 ticket. If you run the yellow on the RFB, it's an
9 advisory, so not necessarily a crime.

10 Q Comparison to a grade-separated crossing in
11 that area, let's talk about a possible underpass.

12 Have you -- which is safer or which is more
13 effective?

14 A So grade separations will take away the
15 conflict between pedestrian and motorist, if
16 utilized.

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

24 If you look at those two figures, you'll
25 see that the freeboard or the space between the top

1 of the 100-year storm, and the bottom of the bridge
2 ranges from two-and-a-half to three feet. That's not
3 in sufficient height for a pedestrian underpass. So
4 in general, that underpass has to go above the
5 100-year storm but below the deck.

6 That would require significant adjustment
7 to the structure itself or to the land itself to
8 increase the hydraulic opening. Either way, it's
9 going to be really expensive.

10 So I think when Randy was asked the
11 question about the cost, he doesn't have one because
12 we never gave one.

13 Again, the reason for those openings under
14 the highway are to pass hydraulic flow in event of
15 100-year storm. One might say, it's only 100-year
16 storm, so we've got to assume it's only once out of
17 every 100 years. That's not the case.

18 In the past five years we have had three
19 100-year storms come through. So overall, from an
20 engineering perspective, an underpass in those two
21 locations will not be supported.

22 Q Did you hear the testimony about recently
23 there was Hurricane Douglas, and there was not much
24 water coming through?

25 A I heard.

1 But one observation. If I put in one
2 observation to justify my report, it would be thrown
3 out as non-substantial. That one observation doesn't
4 do a hydraulic or hydrologic study. It informs, but
5 it's not a study.

6 Q What you told us earlier about as having
7 three 100-year storms in the past five years, that's
8 based on a study?

9 A That's based on observations.

10 I don't think anybody -- when you talk
11 about sea level rise or climate change, people may
12 not be able to see climate change sometimes, but I
13 don't think anybody can object to saying that we are
14 having more extreme events more often. So that
15 consideration of 100 years, storm coming every 100
16 years, was never the case in the past, was definitely
17 not the case now.

18 Q If we look at Waipu'ilani portion under the
19 highway in the Waipu'ilani Gulch, do you understand
20 what the clearance would be in the event of a
21 100-year storm?

22 A It's in our exhibit, page 9 of our exhibit.
23 It shows a freeboard clearance of about 2.8 feet or
24 so.

25 Q And so if an underpass was to be put there,

1 you're thinking it's going to require excavation?

2 A If you put an underpass there -- first if
3 you just build it at grade where it is right now,
4 then you would be putting people in a drainageway
5 that we are assuming is going to get filled up to
6 three feet below the bridge.

7 From my perceptive it's not safe. I would
8 never indicate a drainageway a safe crossing area.

9 Second, if we did consider that we are
10 going to build a pedestrian underpass in that area,
11 you would either have to raise the structure such
12 that we can get pedestrian underpass to be above the
13 100-year storm level with that three-foot freeboard,
14 or we would have to widen the structure of the
15 understructure to ensure that there's more hydraulic
16 opening flow, more flow area available to pass, so we
17 can drop that 100-year storm level. Either way it
18 would be significant cost.

19 Q In terms of significant cost, is there an
20 estimate on that?

21 A So if we look at a typical underpass in
22 that area --

23 CHAIRPERSON SCHEUER: One moment. Ms.
24 Apuna, you have your hand raise.

25 MS. APUNA: Sorry to interrupt.

1 I was just wondering if Mr. Sniffen, he's
2 referring to an exhibit, is it Exhibit 9 of Mr.
3 Sniffen --

4 THE WITNESS: I'm not sure.

5 CHAIRPERSON SCHEUER: It's helpful for the
6 record if we know --

7 MR. FUJIOKA: I can put it up on my screen.

8 CHAIRPERSON SCHEUER: Is it part of the
9 motion?

10 Q (By Mr. Fujioka): Is that Exhibit 9 or
11 Exhibit 8?

12 A I think it's Exhibit 9.

13 CHAIRPERSON SCHEUER: Mr. Fujioka, normally
14 when witnesses appear in front of the LUC and refer
15 to an exhibit, they refer to an exhibit number and
16 page number.

17 MR. FUJIOKA: My screen got minimized,
18 trying to get back to --

19 CHAIRPERSON SCHEUER: I'm going to lower
20 your hand, Ms. Apuna.

21 THE WITNESS: Got it.

22 CHAIRPERSON SCHEUER: Thank you. Mr.
23 Fujioka, you're pulling up your exhibit?

24 MR. FUJIOKA: I'm attempting to, but my
25 screen is minimized. Okay, here we go.

1 This should be Exhibit 9. Can everybody
2 see it?

3 CHAIRPERSON SCHEUER: No, it has not opened
4 yet. Or if it's opened on our computer we are simply
5 seeing your file structure.

6 CHAIRPERSON SCHEUER: How long do you think
7 you need, Mr. Fujioka?

8 MR. FUJIOKA: I think I need like five
9 minutes.

10 CHAIRPERSON SCHEUER: We're going to take a
11 five-minute recess to 2:37 P.M.

12 (Recess taken.)

13 CHAIRPERSON SCHEUER: We have 2:37. Let's
14 go back on the record. I'm going to stop screen
15 sharing.

16 Are you able to pull up the document that
17 you want to pull up, Mr. Sniffen?

18 THE WITNESS: I'm going to share right now.

19 CHAIRPERSON SCHEUER: I'm just noting right
20 now we appear to be missing Commissioners Giovanni
21 and Cabral.

22 THE WITNESS: I have to find this stuff
23 anyway, I'll just do it real fast.

24 All this does is show a cross-section that
25 shows that the 100-year storm, the level of flow at

1 the 100-year storm is three feet below the bridge
2 deck. I don't think you need this cross-section to
3 do --

4 CHAIRPERSON SCHEUER: If we can proceed,
5 and if it turns out that this is another piece of
6 information which is, in the determination of the
7 Commissioners, missing from the record that they we
8 would like to have on the record beforehand, it would
9 be part of our subsequent condition of your
10 testimony -- (indecipherable).

11 Let's proceed and be as efficient as
12 possible.

13 Please continue with your direct
14 examination, Mr. Fujioka.

15 Q (By Mr. Fujioka): I'm sorry, I think where
16 we left off we were talking about possibly adjusting
17 the flow of the water under the highway.

18 A So the only way to put a pedestrian
19 underpass in an area is to ensure that you have that
20 structure above the 100-year storm flow level. At
21 this time that level is three feet, two to three feet
22 below the deck, which means that we would either have
23 to raise the deck to provide the eight to ten foot of
24 head space necessary for the underpass beyond the
25 structure itself, or we widen that structure to

1 increase the activity below the highway to increase
2 the hydraulic area to reduce the height of the
3 100-year storm flow.

4 Q Care to venture a guess as to the cost of
5 either?

6 A No, not at all.

7 Again, if we did an underpass, a typical
8 underpass that would take down to an area that's ten
9 feet below the bridge deck, it would be
10 six-and-a-half million, but to modify the structure
11 either to increase its height or increase the
12 hydraulic opening would be significantly more
13 expensive.

14 Q As far as you know, is this a DOT expense
15 or DOE expense?

16 A This is DOE expense. However, this is a
17 DOT impact. So during the construction, if there is
18 an underpass that is going to be built to either
19 increase the height of the structure or widen the
20 hydraulic opening, there's going to be impact to the
21 highway.

22 Q So since that 2019 order, there has been,
23 for example, the information contained in Exhibit 8
24 of the -- I'm sorry, yeah.

25 Do you see Exhibit 8 on my screen?

1 A Yes.

2 Q Do you recognize this?

3 A Sorry, it's just showing your file screen
4 right now.

5 CHAIRPERSON SCHEUER: I'll pull up Exhibit
6 8 for you. Stop screen sharing, and I will start.

7 THE WITNESS: Okay, thank you.

8 CHAIRPERSON SCHEUER: Is this the document?

9 THE WITNESS: Yes, thank you.

10 CHAIRPERSON SCHEUER: Where do you want me
11 to go to?

12 Q (By Mr. Fujioka): Are you familiar with
13 this study traffic evaluation?

14 A Yes.

15 Q There is a date of June 20th, correct?

16 A Yes.

17 Q So this was done after the 2019 Declaratory
18 Order?

19 A Yes.

20 Q And Exhibit 9, if the Chair would be so
21 kind to display that document if it could be scrolled
22 down one more page. This is generated after the
23 Declaratory Order also, correct?

24 A Yes.

25 Q And you've been -- much of the conclusions

1 and information you've been providing in fact
2 continues in this report, doesn't it?

3 A Yes.

4 Q Would it be possible to scroll all the way
5 to the bottom of this document?

6 CHAIRPERSON SCHEUER: That is the bottom of
7 the document delivered to the LUC.

8 MR. FUJIOKA: I just wanted to make sure
9 that was the end. Thank you.

10 CHAIRPERSON SCHEUER: Are you done with the
11 document?

12 MR. FUJIOKA: Yes, thank you.

13 CHAIRPERSON SCHEUER: How much more do you
14 have, Mr. Fujioka, because I know some Commissioners
15 are eager to ask questions.

16 MR. FUJIOKA: I have -- that about
17 concludes what I wanted to get out, and I'm sure the
18 Commissioners have a lot of questions.

19 CHAIRPERSON SCHEUER: County, any questions
20 for the witness?

21 MR. HOPPER: Just a couple clarifying
22 questions.

23 CROSS-EXAMINATION

24 BY MR. HOPPER:

25 Q You said that there would be requirements

1 to either, I guess, widen the space between that goes
2 under the road, or I guess, raise the level. Those
3 requirements to be created, can you explain the basis
4 for those requirements? Are they federal FEMA
5 requirements, are they design requirements so that
6 the area continues to function for 100-year storm?
7 What were those requirements based on?

8 A They would be both, and include on top of
9 that the safety requirements. Otherwise we'd be
10 putting people walking down the pedestrian in a
11 hydraulic area.

12 So the requirement is to get them out of
13 that area, either elevate them above it or make sure
14 that we decrease the height of it.

15 Q Is there generally like national standards
16 or something to that effect or guidelines that say
17 you shouldn't be using areas like this as an
18 underpass, that you shouldn't use areas for flood
19 control for that, or are these generally used for
20 dual purpose areas where -- it would seem that it
21 could be possible if safe to use those areas, since
22 they would already exist for drainage purposes for
23 underpass use.

24 Is there a national standard that would
25 prohibit something like that along the lines you're

1 talking about? Or is that -- is that a commonly used
2 method of dealing with crossing under a highway?

3 A So all of our federal facilities have to be
4 designed for their purposes. This was not designed
5 for pedestrian purposes. It was designed to pass
6 flow. Because it's designed to pass flow, there is
7 no room for pedestrian facility in that area.

8 In order for us to put pedestrians facility
9 there, we have to design for it. So we'd have to
10 design that facility to take the flow and take the
11 pedestrian safely to separate the two.

12 So that's from the national federal
13 highways perspective. All of our designs must be
14 designed to take in that practicality.

15 Q So it would be assuming that people would
16 be crossing through this area while the area is
17 flooded, allow them to use that?

18 A It would be assuming that they'd be
19 crossing that area and there's a potential that a
20 flood could effect them, yes.

21 Q Would it -- in your opinion, would it be
22 possible, if there's flooding, to close the area and
23 not allow that access during that time?

24 A No, not possible.

25 Q To your knowledge, is the area in a FEMA

1 designated flood hazard area?

2 A Kulanihakoi on the makai side was studied
3 for a FEMA area. On the other gulch, I don't see the
4 flood study was done. Generally it's a FEMA study
5 that are done when there is residential or
6 development in that area. There is no development
7 that caused any need for studies above those areas.

8 To answer your question, on the makai side
9 of Kulanihakoi Gulch it shows the FEMA flood mapping,
10 it shows that area is inundated.

11 MR. HOPPER: Thank you. I have no other
12 questions.

13 CHAIRPERSON SCHEUER: OP?

14 CROSS-EXAMINATION

15 MS. APUNA: I did have a new questions.

16 Q What is your professional background? Are
17 you an engineer?

18 A Yes.

19 Q What type of engineer?

20 A Civil engineer.

21 Q The staff that works for you reviews the
22 different studies and analyses according to, as you
23 say, the condition, it requires DOT to review and to
24 approve certain studies.

25 Are these staff also trained as engineers

1 or what is their background?

2 A So engineers are the managers. There are
3 some planners that work for the engineers that help
4 through the guidance and documentation, but those in
5 response control are engineers.

6 Q So from what I read, or what I understand
7 that there is a distance from the access of the high
8 school to either of the gulches is quite extreme in a
9 sense.

10 Can you talk more about what that means as
11 far as students using the gulches or the underpasses?

12 A Yeah.

13 So in general, federal highways did a study
14 with Texas Institute to look at the potential for
15 safe pedestrian crossing. And then in that study, it
16 was shown that if it takes you more than 25 to
17 50 percent longer to use a structure versus a
18 straight route, in general, 95 percent of the people
19 will just use a straight route.

20 So what it was showing was throughout the
21 nation there were structures that we were building
22 that people weren't using. So part of it was the
23 inefficiency of expenditures, but the other part of
24 it was the additional dangers that it put into the
25 system, because there was not a proscribed crossing

1 area there, there was one up above, drivers didn't
2 expect a person to be crossing in that area.

3 So it increased the lack of safety, or
4 increased the safety risk in that area because of it.
5 The reason I put in the distance to those gulches is
6 from that intersection that we are trying to put in
7 that safe crossing at, the gulches are located about
8 1000 to 1200 feet away.

9 The crossing at that intersection from one
10 side, the mauka side to the makai, is 130 feet. So
11 if we add that 1000 feet plus the crossing necessary
12 to go up a graded structure, that's another 1000 feet
13 or so. That's 2000 feet now. Just based on the
14 study that the federal highways done, the use of that
15 facility would be minimal.

16 Q So you're saying that the underpasses for
17 either gulch would not be used generally, because
18 people would want to make the most direct crossing
19 over the highway?

20 A If we are looking at the driver being the
21 school, Kihei High School, or the destination, then
22 yes, that's exactly right. They would rather look at
23 a crossing that gets them directly to their
24 designation versus going a 1000 feet out of their
25 way.

1 Q And so will an underpass slow the traffic
2 on Pi'ilani Highway?

3 A No.

4 So during this operation though, during
5 construction, absolutely.

6 Q For the long term it will not?

7 A No, it will not.

8 Q And then as far as the roundabout, when --
9 once the roundabout is installed, will DOT provide
10 some type of education to the community as far as how
11 to use the roundabout, since I understand it to be a
12 new technology for the community?

13 A Yes. So when we rolled out our roundabout
14 on the Big Island, we put out instructional videos to
15 that community first. Then we sent it out on our DOT
16 website, and on a social media medium.

17 We would do the same, offer training at
18 different high schools, if necessary, as well.

19 Q I have no further questions. Thank you.

20 CHAIRPERSON SCHEUER: Thank you, OP.

21 Commissioners, do I have questions from
22 Commissioners? Commissioner Giovanni, Ohigashi and
23 Wong.

24 COMMISSIONER GIOVANNI: Thank you, Chair.
25 Thank you Mr. Sniffen. Appreciate the additional

1 insights, engineering perspective.

2 In the absence of an elevation drawing
3 showing the clearances on the record, do you recall
4 what the current clearance is under dry conditions?

5 THE WITNESS: I'm not sure, I can check,
6 though. Let me look at it real quick.

7 If I disappear from you guys, let me know.

8 CHAIRPERSON SCHEUER: How long do you
9 expect to take?

10 THE WITNESS: I'm going to pull it up right
11 now, right here.

12 So the elevation difference from the
13 bottom --

14 Robin, you're on. Text me the elevation
15 distances for both, please.

16 I'll get that to you in two minutes.

17 COMMISSIONER GIOVANNI: Okay. Maybe I can
18 go with a little different line of questioning for
19 two minutes.

20 We heard from the Department of Education
21 testimony this morning -- I think you were possibly
22 listening -- that routes such as this which were
23 direct underground routes, whether they be fully
24 developed or left undeveloped, do still provide an
25 accessway to schools. And that's, in the view of the

1 DOE, problematic. In fact, they cited where it was a
2 nuance and other problems over in Mililani is what
3 was cited.

4 So to mitigate those potential problems,
5 they said they would chain link or put some type of
6 barrier across the entranceway, probably both sides
7 of the tunnel or the theoretical tunnel.

8 Would it be DOT's position that those are
9 not allowed, or allowed to be installed by virtue of
10 the fact that this is a hydraulic built for a
11 100-year storm?

12 I think we lost Mr. Sniffen. His video is
13 out and he's muted.

14 THE WITNESS: Sorry, it keeps kicking me
15 back and pumping me back in. I apologize,
16 Commissioner.

17 Can you ask that question again?

18 COMMISSIONER GIOVANNI: Did you hear any
19 part of it?

20 THE WITNESS: I heard it's hydraulic
21 opening. It's an accessway and you're asking --

22 COMMISSIONER GIOVANNI: You suggested that
23 the mitigation nuance and other problems associated
24 with similar situations, they expected to put cyclone
25 fences and gateways at both ends of those tunnels.

1 Would you at DOT permit that to happen, or
2 prohibit it by virtue of the fact that there is a
3 hydraulic throughway for a 100-year storm?

4 THE WITNESS: This is the difficulty. Any
5 time we start putting any blockades in areas like
6 that, any debris that comes out will block that whole
7 area out, which will allow that flooding to go onto
8 the highway system. I would not block it off mainly
9 for that. But I would put a sign to say "this is not
10 a pedestrian walkway".

11 COMMISSIONER GIOVANNI: In the event that
12 it was required, at whatever cost and consequence to
13 install this walkway, and you still had concerns for
14 the 100-year storm, would it be conceivable that you
15 could put a warning signal similar to the one you've
16 put at the roundabout to put up detour signs that
17 once every 100-year storm, that people would use the
18 alternative walkway.

19 Is that feasible in your mind?

20 THE WITNESS: I'm not sure, and this is the
21 reason. When we start looking at instrumentation
22 like the light in floodways, that requires more
23 maintenance. So if that thing was out one day or
24 weak, say, when a flash flood came in and hit up
25 mauka, not raining in Kihei, but the flood is coming

1 down, if I didn't have warning system that worked
2 that day, now I just kill people. I don't feel
3 that's responsible from my perspective.

4 So if we are going to look at it as a
5 walkway, I would rather design this facility to take
6 what it is supposed to do, make sure we have the flow
7 capacity and the speed for the walkway. But again,
8 it's extremely expensive, and from my perspective,
9 infeasible.

10 COMMISSIONER GIOVANNI: I can understand
11 the extreme expense.

12 Were you able to obtain the information
13 about the clearances on a dry basis?

14 THE WITNESS: 10 to 11 feet at Waipu'ilani.

15 COMMISSIONER GIOVANNI: Let's assume it's
16 10 feet and you want -- you're testimony said that
17 under a 100-year storm it would close to within
18 two-and-a-half feet. So basically you're predicting
19 7-and-a-half feet of flood water to deal with under
20 these gulches; is that correct?

21 THE WITNESS: Yes, that's correct.

22 COMMISSIONER GIOVANNI: Is there any
23 evidence anywhere that you're aware of that that has
24 occurred, that we've had water -- you've cited three
25 100-year storms in the last five years.

1 Do you have any evidence that in particular
2 under this highway we've seen seven feet of water?

3 THE WITNESS: No, but I do have the
4 hydraulic and hydrologic studies that we used to
5 design it.

6 COMMISSIONER GIOVANNI: Appreciate that.

7 So your position in DOT is that you would
8 not recommend, not favor, maybe even refuse to do or
9 fight a requirement to install a dry underpass with
10 the existing clearance ways with appropriate warning
11 signals and detour methods that would direct traffic
12 to the roundabout in the event of 100-year storm?
13 I'm putting those words in your mouth, but you can
14 agree or disagree.

15 THE WITNESS: I agree with it.

16 COMMISSIONER GIOVANNI: Thank you for your
17 testimony and taking your time. I know you're busy.

18 That's all I have, Chair.

19 CHAIRPERSON SCHEUER: Thank you.

20 I think we're about to start the third hour
21 of the hour that Mr. Fujioka estimated he needed for
22 his case. So my inclination is, it's 3:00 o'clock,
23 and take a recess until 3:10 to continue with the
24 questioning of Mr. Sniffen.

25 THE WITNESS: Chair, real quick.

1 At Kulanihakoi the existing elevation
2 difference is 8 feet. So 11 on the other side at
3 Waipu'ilani, and at Kulanihakoi 8 feet.

4 CHAIRPERSON SCHEUER: Thank you. It's 3:00
5 o'clock. I would like to take a recess for ten
6 minutes to 3:10. We will continue with the
7 questioning of Mr. Sniffen and then consider if DOE
8 wishes to make a motion.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: 3:10, ready to
11 continue. Back on the record.

12 I have Commissioner Ohigashi, followed by
13 Wong followed by Chang.

14 COMMISSIONER OHIGASHI: Mr. Sniffen, do you
15 hear me?

16 THE WITNESS: I can hear you.

17 COMMISSIONER OHIGASHI: I feel like I know
18 you. I see you on TV all these years.

19 THE WITNESS: Only when things are broken.

20 COMMISSIONER OHIGASHI: Thank you, Mr.
21 Chairman. I want to thank you for letting me go
22 watch ten minutes of football.

23 But I have to ask you questions. The gist
24 of your testimony -- let me ask you this.

25 The highway and the -- I guess the gulches

1 and causeway are under DOT control; is that right?

2 THE WITNESS: Yes.

3 COMMISSIONER OHIGASHI: DOT has the
4 determination as to what can go on the highway, under
5 the highway, next to the highway; is that right?

6 THE WITNESS: We have the authority under
7 our jurisdiction to make sure that we protect the
8 health and safety of that facility and its users,
9 yes.

10 COMMISSIONER OHIGASHI: So I gather from
11 your testimony that DOT is not letting any kind of
12 underground underpass in this area; is that right?

13 THE WITNESS: That's correct. From my
14 perspective -- sorry, go ahead.

15 COMMISSIONER OHIGASHI: And that's even if
16 the DOE is paying for it, is that right?

17 THE WITNESS: So what I said was I wouldn't
18 allow any underpass in the area that would put people
19 at risk. So if they had come to us and said we want
20 to permit this underpass in the area, that would put
21 people at risk.

22 So if they had come to us and they want a
23 permit for an underpass to go in this area, don't
24 worry about the flood zone, don't worry about
25 heights, we just going to, I would say no.

1 But if DOE came in and said we have this
2 proposal for an underpass and this is how we're going
3 to address this safety issue, we would consider it.

4 COMMISSIONER OHIGASHI: And so it would be
5 a good idea to have the safety issues identified and
6 how it's going to be addressed to get a general cost
7 of what it's going take to have an underpass there;
8 is that right?

9 THE WITNESS: I would need that in order to
10 make the determination of whether or not I would
11 allow it to move forward definitely.

12 COMMISSIONER OHIGASHI: But you've already
13 agreed that the roundabout and the signaling and the
14 pedestrian crossing at that roundabout can be done
15 and can be permitted to be done, is that right?

16 THE WITNESS: Not only did we agree, we
17 designed it for them. So when we worked with DOE,
18 when we looked at what is best for that facility, DOT
19 came in and got involved. We designed that facility
20 for them to make sure that it could work looking at
21 both safely and operational perspective through that
22 corridor.

23 COMMISSIONER OHIGASHI: Do you make any
24 determination between what is more safer, the
25 roundabout or the underpass that is being proposed?

1 THE WITNESS: Roundabout by far is safer.
2 And this is coming from a different perspective. If
3 you're saying that 100 percent of the people will use
4 the underpass, of course, given that it's outside of
5 the flood zone, that we reduce 100 percent that
6 conflict between vehicles and pedestrians, then by
7 far that grade separation is safer. But that's not
8 what we are getting.

9 When we look at data nationally and we look
10 at it locally, 90 percent of the people are just not
11 using the overpasses. You look at Pearl City, get
12 those nice over passes or pedestrian bridges that go
13 over the facilities in those areas, nobody uses them.
14 People go up want to take pictures downwards.

15 So when we're looking at the facility to
16 the safety risk that comes in, because where drivers
17 are assuming that pedestrians are using the
18 structures, they're just driving across the road.

19 COMMISSIONER OHIGASHI: I try to forget my
20 time that I lived in Honolulu for a little while.
21 But I understand the culture aspect, because
22 sometimes I travel to Japan and I notice that the
23 overpasses are used quite frequently there because of
24 the culture.

25 THE WITNESS: Big time, huge cultural

1 adjustment.

2 COMMISSIONER OHIGASHI: And these remedial
3 or these measures, roundabouts that you're saying is
4 totally funded by the DOE?

5 THE WITNESS: Yes, that's correct.

6 COMMISSIONER OHIGASHI: No further
7 questions.

8 THE WITNESS: Just to add to that,
9 Commissioner, when we looked at the design, if the
10 DOE had built a signalized intersection in that area,
11 it would have been 2 million bucks. (Indecipherable)
12 put in the signals in that area, it's real easy. The
13 roundabout that we designed for them --

14 CHAIRPERSON SCHEUER: We lost Mr. Sniffen's
15 audio and video.

16 COMMISSIONER OHIGASHI: We can proceed. I
17 got most of what I wanted, but I'm not sure.

18 CHAIRPERSON SCHEUER: There are other
19 Commissioners who wanted a bite at this particular
20 apple.

21 COMMISSIONER OHIGASHI: If it is Arnold, I
22 don't care. I'm only kidding.

23 COMMISSIONER GIOVANNI: I would like to
24 hear the second half of his sentence.

25 COMMISSIONER OHIGASHI: Where is he then?

1 CHAIRPERSON SCHEUER: Maybe he's in the
2 underpass with bad reception.

3 Mr. Sniffen, when you manage to come back
4 on, it would be great.

5 Mr. Fujioka, are you able to contact your
6 witness?

7 COMMISSIONER WONG: Chair, I see
8 Commissioner Chang has her hand up, but I'll give up
9 my time for Commissioner Chang. I don't need to ask
10 my question.

11 CHAIRPERSON SCHEUER: Okay.

12 So Commissioner Chang followed by
13 Commissioner Okuda when we have the witness.

14 COMMISSIONER CHANG: And I'll try to be
15 very short. Thank you, Mr. Wong. Let's hope Ed
16 comes back.

17 CHAIRPERSON SCHEUER: There we are. We see
18 you.

19 THE WITNESS: It keeps kicking me.

20 CHAIRPERSON SCHEUER: Mr. Sniffen, can you
21 repeat your response?

22 THE WITNESS: To answer the question, I was
23 adding that intersection would have been 2 million
24 bucks for a signalized intersection. The design that
25 we gave them that is going to optimize capacity

1 through the area, plus increases safety, is going to
2 be 5-and-a-half million, and put another half a
3 million because they already put in utilities because
4 they designed that area for a signalized
5 intersection, they already put in utilities that
6 they're going to have to move. So it's going to be
7 about 6 million bucks for this intersection -- for
8 this roundabout.

9 COMMISSIONER CHANG: Okay.

10 CHAIRPERSON SCHEUER: Please proceed,
11 Commissioner Chang.

12 COMMISSIONER CHANG: Good afternoon, Ed. I
13 greatly appreciate your testimony. Quite frankly, I
14 wish we would have brought you on sooner.

15 Nonetheless, I want to just ask you a
16 couple of questions.

17 One, when in 2019 when LUC made its
18 determination about the overpass and underpass, DOT
19 had not rendered its -- let me put it this way.

20 DOT's present position was not known to LUC
21 or DOE in 2019 when LUC made its decision. Is that
22 correct?

23 THE WITNESS: That's correct.

24 COMMISSIONER CHANG: So now you have more
25 information and you are confident that this is now

1 your position that the underpass -- that the
2 roundabout is the most safe and efficient measure at
3 this time?

4 THE WITNESS: Absolutely.

5 COMMISSIONER CHANG: The other question I
6 had, you know, quite frankly, we heard a lot of
7 community people, and Mr. Tanaka even acknowledged
8 that DOE needs to do a better job of communication
9 with the community. And I think you might have even
10 heard some of the comments.

11 So what Mr. Tanaka was suggesting that he
12 was going to do was to have sort of these one-on-one
13 with people who have -- clearly in my mind, Ed, your
14 testimony or your explanation would be very critical.

15 Would you be adverse, or would you be
16 willing to meet with DOE and the community, perhaps
17 having a larger community meeting, where you can
18 explain what you just did to us, why the underpass is
19 not currently -- DOT is not in support of that? You
20 have given your own federal requirements, but provide
21 an opportunity for the community to hear what you
22 have to say, then you be available to answer any
23 questions?

24 I mean sort of this piecemeal DOE going
25 talk, then later on, LUC, not efficient. Creates a

1 lot of misunderstanding and misinformation.

2 So what I'm hearing is that you're willing
3 to do that?

4 THE WITNESS: Absolutely.

5 COMMISSIONER CHANG: So I really appreciate
6 that. I think that would be very helpful to clearing
7 a lot of this up.

8 So with that, Mr. Chair, I have no further
9 questions.

10 Thank you so much, Ed, greatly appreciate
11 your testimony.

12 THE WITNESS: Just wanted to add, if I
13 could. We have coordinated with the community in the
14 past. Representative Wildberger had set up a meeting
15 for DOT, LUC and DOE to meet with Kihei Community
16 Association. We met with them and I've shared my
17 position.

18 Since that timeframe, Mr. Moran had written
19 a letter to DOT asking for underpasses to be used in
20 the area, and we shared about our concerns, about the
21 need for those areas to be used for hydraulic flow.

22 So definitely we have coordinated in the
23 past, and we're happy to do so as we go forward.

24 COMMISSIONER CHANG: So, Mr. Sniffen, you
25 did talk to the Kihei Community Association about

1 DOT's specific concern?

2 THE WITNESS: Yes. And at that meeting, I
3 added that from my perceptive the roundabout is the
4 right solution, and I would not support a grade
5 separation because it's unnecessary because of the
6 improvements that the roundabout had that improved
7 that corridor way. It takes care of the safe issue
8 and it takes care of the operation issues that the
9 grade separation would have done.

10 COMMISSIONER CHANG: Did you also share
11 with them why your concerns, DOT's concerns about the
12 underpass?

13 THE WITNESS: I believe we sent them a
14 letter. Mr. Moran had sent us a letter and we sent
15 him one in return.

16 COMMISSIONER CHANG: Well, perhaps a larger
17 community meeting might be advisable.

18 THE WITNESS: Thank you.

19 CHAIRPERSON SCHEUER: If I may for the
20 record, prior to our handing the questioning over to
21 Commissioner Okuda, to immediately follow on
22 Commissioner Chang's question.

23 Mr. Sniffen, what is the timing of your
24 last conversation or contact with the Kihei Community
25 Association in relationship to DOE's filing of this

1 motion to change the condition?

2 THE WITNESS: I didn't speak to the Kihei
3 Community Association for this filing.

4 CHAIRPERSON SCHEUER: Prior to this filing,
5 they had not recently spoken to you?

6 THE WITNESS: Prior to this filing, we
7 spoke to them. After the filing was done, we did not
8 speak to them.

9 CHAIRPERSON SCHEUER: How far before this
10 filing --

11 THE WITNESS: I cannot remember when we had
12 the meeting with Representative Wildberger when she
13 set that up. And I can't remember we when sent out
14 the letter, I'm not sure, but it was a matter of like
15 a year versus a couple months.

16 CHAIRPERSON SCHEUER: Thank you. I was
17 trying to get the understanding the witness' surprise
18 that this motion was filed in relationship to
19 responses, your responses you just gave.

20 Commissioner Okuda, thank you for your
21 patience for my interjection.

22 COMMISSIONER OKUDA: Thank you.

23 Thank you, Mr. Sniffen, congratulations to
24 you on your H-3 Covid testing, and thanks from the
25 community.

1 It's actually related to a follow-up
2 comment or question that I have to Commissioner
3 Chang.

4 People who I do respect, who actually are
5 educators, have said that you're not only a very
6 responsive person, but you're an engineer who thinks
7 out of the box.

8 So just to echo what Commissioner Chang
9 said, I know you're very, very busy with a lot of
10 other things, but if you could find somebody who is
11 like an Ed Sniffen clone, who is somebody who thinks
12 out of the box, and if you could detail that someone
13 to maybe assist the DOE and engage with the
14 community, maybe something mutually acceptable can be
15 reached; or if there can be no agreement that can be
16 reached, maybe we all can work to minimize the areas
17 of difference but, you know, you've shown with H-3
18 that you are a thinker out of the box.

19 I would offer that if the U.S. Marshal
20 Service comes to rescue, I will --

21 Can I just ask one technical question.

22 What is the anticipated miles per hour of
23 vehicles entering into the roundabout?

24 THE WITNESS: In general, when we start
25 looking at what we have on Big Island at Old

1 Government Road, we have 15 to 17 miles per hour
2 entering the roundabout.

3 When we look at the design we have for the
4 roundabout at Kihei, looking at between 17 and 20.
5 That's the range that we are looking at right now.

6 So what we are go to do is make sure that
7 we keep it down below that 20 mile per hour range.
8 When we start looking at data and sort of Federal
9 Highway's data, that's the sweet spot.

10 Anything above 20 miles per hour, you start
11 increasing fatalities, increasing levels of damage to
12 people if they get hit.

13 So we're keeping it below 20. If we see
14 the speeds are above that, we'll start making
15 adjustments. And one of the adjustments that we are
16 already looking at is in our roundabout design, we
17 are putting in free right-lane turns to up Kihei, to
18 down Kulanihakoi, and to come out of Kulanihakoi. In
19 those free right areas, we don't want anybody just
20 taking off and zooming out. So we are going to be
21 putting in raised pedestrian crosswalks in that area
22 to ensure that they cannot go faster than 17 miles
23 per hour going over those portions.

24 COMMISSIONER OKUDA: So based on your
25 professional opinion, you believe you can get that

1 type of reduction on vehicle speed entering the
2 roundabout even though it seems like this is a
3 high-speed straightaway type of highway?

4 THE WITNESS: Yes. And you're going to see
5 it slow down tremendously.

6 Part of the discussions we had with Robin,
7 he's with the Maui District head on Maui, when we
8 start seeing our highway turning more into a
9 destination, places with large destinations, and
10 schools are the big ones.

11 Once we start having that, the land use
12 changes, the intent of the highway starts changing.
13 In the past we started looking at freight movements
14 and commerce and the like, getting people to goods
15 and services. Once you put a school there, that
16 whole corridor speed is going to be adjusted down to
17 35 immediately.

18 You may have already seen the signalization
19 along the corridor has already changed, all set up to
20 ensure when this high school is in, that we can slow
21 everybody down into that corridor.

22 COMMISSIONER OKUDA: Thank you, Mr.
23 Sniffen, and thank you for your service to the
24 community.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Okuda.

2 Commissioners, further questions for Mr.
3 Sniffen? Commissioner Cabral.

4 VICE CHAIR CABRAL: Thank you.

5 Mr. Sniffen, question on the roundabout.
6 What are you going to put in the center of the
7 roundabout, trees or plants, statute? What is your
8 schedule? What are you going to put in that visually
9 in the center?

10 THE WITNESS: That we want to raise it up a
11 bit to make sure that the wind is going to blow right
12 through it. But we work with the community to see
13 what they would like to see in it. In the Kaupo
14 community, they wanted like a sign or entry kind of
15 an entryway into their area.

16 So we had the grading kind of ramped up in
17 that portion to be elevated a little bit with some,
18 for example, vegetation. So we haven't set what the
19 middle is going to be yet. We'll work with the
20 community on that.

21 VICE CHAIR CABRAL: I had the privilege of
22 going on a trip with Land Use several years ago to
23 the mainland, and I was previously not a supporter of
24 roundabouts as a driver, but I became a massive
25 supporter of them after I learned on this mainland

1 trip. And one of the things that -- I'm on the Big
2 Island. The Pahoia one has hapu'us in it is all you
3 really see. You need to put larger trees in the
4 middle or something that people will see from a
5 further distance, because of part of it is, they call
6 it DUI checkers. The only people hitting them are
7 drunk people, because they're the only ones that far
8 away don't see that they're about ready to run into a
9 tree.

10 And so everybody's subconsciously starts
11 slowing down when, in their pathway, is a tree. So I
12 was going to tell you on the Pahoia one, you need more
13 vegetation up higher (indecipherable) about 20,
14 30 feet, because the further off you see it, the
15 slower you're going to start slowing down. So I was
16 just concerned if you don't -- that might help you if
17 you're not -- should have gone on that tour with us.
18 But seriously, it was fantastic.

19 I do want to say I appreciate the
20 information, and I'm not quite sure that -- I'm still
21 not -- partly I am concerned that people in general
22 are not always real bright and children in particular
23 may make bad decisions about trying to jaywalk or cut
24 across or something, and that very much concerns me.

25 And on top of drivers who are not always

1 very bright or careful.

2 So I'm still in favor of some kind of an
3 alternative higher or lower passageway for people on
4 bicycles, but I absolutely appreciate all the
5 detailed information you've given us.

6 THE WITNESS: Appreciate the comments.
7 Totally understand that separations, they always feel
8 better, again, if people use them. But that's not
9 data we have. The data we have is people are going
10 to avoid them, easier to cut across 130 feet versus
11 1000 feet. So that's the difficulty, that's the
12 conundrum.

13 For us, and you'll see this movement
14 nationally, the movement is to ensure that safe
15 at-grade crossing is provided, because that's where
16 people want to go.

17 So the roundabout decision wasn't made
18 lightly. It was the best decision to make sure
19 everybody is safe.

20 If we look at the signalized crosswalks
21 that we have throughout the State, the data suggests
22 that people are not getting killed there; they're not
23 getting hit there. They're not getting hit there.
24 They're getting hit when they start darting out into
25 the road in unprotected crosswalk or just running

1 across at different locations.

2 So I would be fine having, from a safety
3 perspective, having a signalized crosswalk there.

4 That being said, there's still a huge
5 opportunity for people, if people are not paying
6 attention, huge opportunity for a kid to just walk
7 off the curb and get hit by a speeding vehicle.

8 We're using this roundabout as the
9 opportunity to be a buffer on this whole corridor.
10 That's the intent. That's why the roundabout is
11 there to make sure we have a 15 to 20-mile start for
12 everybody along that corridor.

13 VICE CHAIR CABRAL: Thank you.

14 I recommend you get that information out to
15 the community in a much stronger way.

16 CHAIRPERSON SCHEUER: Commissioner
17 Giovanni, followed by Commissioner Ohigashi.

18 COMMISSIONER GIOVANNI: Thank you, Mr.
19 Chair.

20 Very quick, Mr. Sniffen, under the scenario
21 that the roundabout is the only way to cross to the
22 high school is in full operation, what is the
23 estimate of the number of pedestrians that would be
24 crossing per day?

25 THE WITNESS: You know, I think Randy has

1 those numbers, and I think they ran them through our
2 scenarios. I apologize, I don't have them. When we
3 did that, we made sure we could run the capacity of
4 pedestrians crossing at school times and out of
5 school times with the peak flows that come through
6 those areas.

7 So to answer your question, we looked at
8 the modeling to ensure that we had capacity
9 sufficient for both the drivers and the pedestrians.
10 But, again, even if we didn't, I would tell the
11 drivers, too bad, because once you put a school in
12 that area, once you put a school off the mauka side
13 of my highway, then moving freight and goods and
14 services is no longer my priority. Once you do that,
15 it's done, it's pedestrian.

16 So if I've got to put in HAWK signals to
17 make sure that everybody stops and can be ticketed if
18 they run it, that's what we're going to do. We want
19 to make sure that we keep those people safe. And I
20 know that at-grade crossing is what people will want
21 to use. It's the safest way to do it.

22 COMMISSIONER GIOVANNI: So in this scenario
23 that results in a significant adverse impact to
24 commerce on that highway because you're taking the
25 priority of the children's safety first, you're not

1 worried about having to come back before this LUC and
2 getting approval to put in an underground later to
3 accommodate that problem?

4 THE WITNESS: Absolutely not.

5 COMMISSIONER GIOVANNI: In other words,
6 you're prepared to take the heat?

7 THE WITNESS: Always.

8 COMMISSIONER GIOVANNI: Thank you. That's
9 all.

10 CHAIRPERSON SCHEUER: Commissioner
11 Ohigashi.

12 COMMISSIONER OHIGASHI: Mr. Sniffen, did
13 you run the scenario that Mr. Giovanni indicated
14 where it would be 800 students for the first phase,
15 and 1600 students for the second phase?

16 THE WITNESS: Yes.

17 COMMISSIONER OHIGASHI: Would it be good
18 then to indicate that the second phase that we should
19 have a study, or have it reviewed before the second
20 phase is entered into in order to determine how well
21 this roundabout is working and whether or not
22 additional remedial measures are necessary?

23 THE WITNESS: I think that's excellent.
24 Just from our perspective, I would hate for any of my
25 highway projects to be built, ready to be used, but

1 have to be delayed for usage because of some other
2 purpose.

3 When I talked to the project staff at DOE,
4 they're looking at a 2022-2023 time period that they
5 could finish the school, but they have to delay it
6 until 2023-2024 if the pedestrian overpass has to be
7 built prior to school opening.

8 From my perspective, we know that our
9 studies show that from a safety side, and from an
10 operational perspective, we know that the roundabout
11 will work. So I would love to see us able to put the
12 roundabout in, because we're going to finish it by
13 next year, that's the intent, we're going to finish
14 up the design and construct it by next year, be ready
15 for 2021-2022 if DOE is.

16 From there, we can study it from there. We
17 can start operating from there and see how it works
18 before school even starts.

19 When school starts, I would love to be able
20 to see what it looks like. And I know, I'm very
21 confident that it will work, and during that time we
22 can always look at the potential or need for
23 pedestrian overpass in the future.

24 COMMISSIONER OHIGASHI: Are you in this
25 project with the DOE as to whether or not you're

1 doing it in front of Baldwin High School? Because
2 it's a major highway, and we only have signalized
3 because two-lane highway. That's the only thing I
4 can think of.

5 THE WITNESS: No. But you know, we are
6 looking at Baldwin seriously. When you start looking
7 up there and the uses, because the kids, they don't
8 walk in one place, right, they kind of spread
9 throughout. So we were looking at -- and we did this
10 in Kalihi, that's why, we put in five raised
11 pedestrian crosswalks along Kalihi Street corridor to
12 make sure that wherever kids walked they would be
13 protected.

14 What it also did was slow the traffic down
15 significantly, so all the kupuna that walking across
16 the street, they don't worry about running, even in
17 the late night hours. So it had a significant effect
18 on the corridor to make sure that everybody slows
19 down.

20 For us we try to do things making sure we
21 try not to change the culture, right? We talked
22 about the culture. If you see one signal light
23 flashing when somebody is crossing, your culture is
24 going to be, they going to look for the signal not
25 flashing, going to go whatever speed. I put a raised

1 pedestrian crosswalk there and you hit it at 35 miles
2 per hour the first time, you will never do that
3 again. So you change the culture. So we can start
4 looking at that at Baldwin.

5 COMMISSIONER OHIGASHI: Thank you.

6 COMMISSIONER GIOVANNI: As soon as you're
7 finished with Baldwin High, come over to Kauai with
8 the Kawaihae High School, we need a roundabout.

9 THE WITNESS: We're putting one in very
10 soon at one of the bridges.

11 CHAIRPERSON SCHEUER: Commissioner Chang.

12 Oh, boy -- hold on. We lost the witness.

13 COMMISSIONER CHANG: Mr. Sniffen, this is
14 my last question.

15 We were looking at considering delaying
16 this. Is there any -- in your opinion, is there any
17 additional information that could be provided to us
18 that would shed any further light on, one, that a
19 roundabout is the best option; and that an underpass
20 at this point in time, given the current facts being
21 it's for hydraulic pathway, is there any additional
22 information like cost?

23 What I'm hearing you say is that the cost
24 to meet your safety standards to design that to both
25 the hydraulic pass through, as well as an underpass,

1 would be exponentially, would be very expensive.

2 THE WITNESS: So just as an order of
3 magnitude, it's easily six times more expensive than
4 a normal underpass. So looking at 30 to 35 million
5 dollar range already.

6 Because now you're starting to look at
7 adjustments to a physical structure that's already in
8 place. Once you start modifying a structure and
9 adding new supports at different points, now you got
10 to modify the structure itself, and that's major
11 surgery when you start looking at a facility that's
12 already in place.

13 COMMISSIONER CHANG: And I'm assuming that
14 would also trigger additional regulatory
15 requirements?

16 THE WITNESS: Absolutely. Any time you go
17 into a waterway, you already start taking in FEMA
18 requirements. And you potentially kick in the 4144
19 requirements.

20 COMMISSIONER CHANG: And ultimately that
21 would delay potentially the opening of the high
22 school?

23 THE WITNESS: Absolutely.

24 COMMISSIONER CHANG: Thank you. That's
25 really helpful for me to understand other than having

1 an opportunity for the community to meet with DOT and
2 DOE for them to hear this information and answer any
3 questions. At least for me that seems like useful
4 information, so thank you.

5 THE WITNESS: I appreciate the questions
6 and I really appreciate the thought process on this
7 for us. And the reason that DOT is getting involved
8 with DOE, we know where the community is right now,
9 not the Kihei Community but State of Hawaii, during
10 the time when we have 33 percent that are unemployed,
11 during the time struggling with classroom space
12 because we just don't have enough space to social
13 distance everybody else.

14 We know this type of campus is at a
15 premium. We are trying to help expedite these
16 projects at Kihei, Lahainaluna High School for
17 another eight classroom buildings. We are trying to
18 help them as much as possible because I want to put
19 people to work immediately. And I also want to make
20 sure that there is space available because we know we
21 are going to need it.

22 I'm not DOE, so I cannot say on their
23 behalf, I would love to be able to get this campus
24 open as soon as we know it's safe, and we know from
25 an engineering perspective that the roundabout will

1 make it safe, pedestrian access, vehicle movement, it
2 will be safe.

3 If we want to look at another potential
4 grade separation for Phase II, let's look at it after
5 we can open this campus. But I know for a fact, that
6 once we put this roundabout in, it will take care of
7 all of our operational and pedestrian safety needs
8 for this community.

9 COMMISSIONER CHANG: Thank you very much.
10 Mr. Chair, no further questions.

11 CHAIRPERSON SCHEUER: Commissioners,
12 anything further for Mr. Sniffen?

13 Commissioner Aczon.

14 VICE CHAIR ACZON: Thank you, Mr. Sniffen.
15 Your testimony is very enlightening and full of
16 information. Really you should have come in first,
17 would have saved us a lot of time.

18 So including myself, if I'm from Kihei on
19 Maui, I would also want to have both systems, you
20 know, but you're talking about safety of the
21 community. I would defer to experts like you.

22 So, again, my question is, the roundabout
23 you say is ready to go. It's designed, it's all
24 ready to go, which you cannot say that, you know, for
25 the underpass or overpass. Correct?

1 THE WITNESS: Correct.

2 VICE CHAIR ACZON: So if we go with
3 underpass or overpass, how long do you think before
4 we can say it's ready to go?

5 THE WITNESS: From what I understand from
6 the project development perspective, we are looking
7 at this roundabout being done by next year, ready for
8 the 2021-2022 school year.

9 The school is supposed to be open by the
10 2022-2023 school year. If they are waiting for the
11 pedestrian overpass to go in, it's going to be the
12 2023-2024 school year. So potentially that school
13 could be built, ready to proceed, but not allowed to
14 open if the condition is you must have a grade
15 separation prior to opening that school.

16 From my perspective, and just looking at
17 the project itself, it's 200 million bucks that the
18 state is putting in for improvements for a community.
19 For me, if I put that kind of money into a roadway
20 facility, keep that facility closed for a year, just
21 cannot. Try to expedite everything to ensure that
22 all the conditions are met so I could open it.

23 But that already being said, I still got to
24 look at my fiduciary responsibility. If I know my
25 improvement, my roundabout takes care of all the

1 operational and safety needs, but this other good to
2 have that's going to cost another 6-and-a-half to 7
3 million dollars has to be built before, I got to do
4 my duty to make sure I understand, do I really need
5 to spend this money, because that 7 million is going
6 to come out of something on campus. It's going to
7 come out of a playing field or a building or another
8 operation. I don't know what it is.

9 But you must consider every year you got to
10 spend about 50 grand to maintain that facility. And
11 DOE, if it's an underpass, will have to spend another
12 amount of money to secure it. So just looking at it
13 from an opportunity cost perspective, looking at the
14 operational perspective, when I know that the
15 roundabout improvement will take care of the
16 concerns -- and we did listen to the community, when
17 they said we want a roundabout and we want a
18 pedestrian overpass.

19 In reality they're saying we want our kids
20 to be safe. That's what we are giving them. I would
21 love to give everybody everything they want. Some
22 might think, hey, it's like a 200 billion project,
23 what's another 7 million? But if we look at the
24 additional 7 million at the 40 different campus areas
25 that we have, that's 210 million now. That's a big

1 amount of money if we're looking at how we need to
2 take care of the rest of the State.

3 So I don't disagree with Randy looking at
4 this opportunity to see what's really needed. From
5 my perspective, I think the roundabout is the
6 solution.

7 VICE CHAIR ACZON: It comes down again to
8 priorities, whether it's funding or timing.

9 When you talk about this project 200
10 million dollars, is that the full development high
11 school and including this underpass and overpass?

12 THE WITNESS: Yes.

13 VICE CHAIR ACZON: It's included in the 200
14 million?

15 THE WITNESS: The roundabout is. I'm not
16 sure that the overpass is.

17 VICE CHAIR ACZON: So the 200 million is
18 not including the overpass and underpass?

19 THE WITNESS: That's correct.

20 VICE CHAIR ACZON: So and additional money,
21 additional time --

22 THE WITNESS: That's the biggest piece, the
23 time is the biggest piece.

24 VICE CHAIR ACZON: Which budget is going to
25 come from, DOE or DOT?

1 THE WITNESS: I made sure in the beginning
2 going to come from the DOE.

3 VICE CHAIR ACZON: The reason why I'm
4 asking is, DOE is going to commit to build this one
5 and it's going to depend on DOT to fund it and how
6 DOT say we don't have money for that.

7 THE WITNESS: You're right. So if DOT has
8 to fund it, so that's a fully different conversation
9 now -- if DOT has got to fund it, it's got to get in
10 line with all the other priorities, because when you
11 talk to Maui, what do you want first? Bypass,
12 instead of go to the north, Lahaina bypass one, after
13 that, got to go Paia bypass, and after that Pu'unene
14 widening. Already three projects ahead of this one
15 from the priority perspective, and that's coming from
16 the MPO.

17 If you put this under DOT, it will not get
18 built by 2023-2024. It just won't. It just doesn't
19 hit the priority.

20 VICE CHAIR ACZON: Again, the community is
21 going to make that decision, and that's on the
22 community, you know, the powers to be, you know, who
23 hold the purse strings. So like it's always going to
24 be looking to have food versus nothing. So if DOE or
25 DOT is going to be helpless, now, there is a

1 possibility that half full is going to go full rather
2 than nothing. That's what I'm trying go -- so if DOE
3 or DOT can tell me now, no problem, we are going to
4 get the money, you know, with the help of the
5 community, with the help of elected individuals,
6 build them all, as a matter fact, add some work.

7 CHAIRPERSON SCHEUER: Are you done,
8 Commissioner Aczon, with your questions?

9 VICE CHAIR ACZON: Yeah.

10 CHAIRPERSON SCHEUER: Other questions,
11 Commissioners?

12 Mr. Sniffen, how many times do you know of
13 off the top of your head DOT was requested to create
14 roundabouts in communities and DOT said they weren't
15 going to?

16 THE WITNESS: That I know of, at least six.

17 CHAIRPERSON SCHEUER: But then you came
18 around.

19 THE WITNESS: Yes. Well, then I came in.

20 CHAIRPERSON SCHEUER: So how is -- one of
21 the many questions I have is, how is the
22 impossibility of doing an underpass different than
23 the former impossibility of doing a roundabout?

24 THE WITNESS: So I cannot speak for the
25 next administration, but I will tell you this. While

1 I'm here, it's an impossibility. Two years from now
2 check in.

3 CHAIRPERSON SCHEUER: By your choice?

4 THE WITNESS: Definitely by my choice,
5 because it's not a responsible action to put people
6 in a floodway.

7 CHAIRPERSON SCHEUER: I believe your
8 earlier testimony said that you would be open to DOE
9 coming in with management --

10 THE WITNESS: I didn't say management team.
11 I said changes to the infrastructure to take those
12 people out of the floodway. If they made adjustments
13 to the system, either raised up the structure to make
14 sure they can raise up that pedestrian underpass
15 above the floodway, or widen that flood structure to
16 assure the 100-year flood level came down, I would
17 consider it.

18 CHAIRPERSON SCHEUER: Are you familiar with
19 any examples, including the visual example, the
20 testimony from the Kihei Community Association
21 showing pedestrian underpasses under other roadways
22 in different places across the U.S.? Are you aware
23 of any of those?

24 THE WITNESS: Yes, I'm aware of them and
25 I'm still not going to allow it.

1 CHAIRPERSON SCHEUER: Were any of those
2 examples in areas of the bike path locationally?

3 THE WITNESS: You need to ask those
4 provinces there, you ask their jurisdiction.

5 CHAIRPERSON SCHEUER: You haven't looked at
6 it?

7 THE WITNESS: I'm going to answer your
8 question, and say regardless of what their
9 policies --

10 CHAIRPERSON SCHEUER: My question is
11 whether you looked into it.

12 THE WITNESS: My answer is no, because my
13 policy is, I'm not going to allow it.

14 CHAIRPERSON SCHEUER: But your policy is
15 also that you are not going to look into it?

16 THE WITNESS: Yes.

17 CHAIRPERSON SCHEUER: Did you, at any time
18 prior to the DOE filing this Petition, suggest to the
19 DOE that they needed to do additional
20 (indecipherable) to the Kihei Association Community
21 rather than -- (indecipherable)?

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: Do you know why that
24 didn't occur?

25 THE WITNESS: No.

1 CHAIRPERSON SCHEUER: Do you know, and I
2 don't know how familiar you are with LUC docket, one
3 thing that is unclear to me is that I'm not sure that
4 there's anything in the conditions as they stand now
5 that prohibits the DOT from building a roundabout.

6 Do you need this change to build a
7 roundabout?

8 THE WITNESS: No.

9 (Speakers talking over each other.

10 CHAIRPERSON SCHEUER: So what is being
11 sought, in actuality it is not permission from LUC to
12 do a roundabout, that's your intention anyway, but is
13 simply the removal of the condition?

14 THE WITNESS: Right.

15 CHAIRPERSON SCHEUER: So a failure of LUC
16 to act right now, will not change DOT's commitment
17 for the roundabout?

18 THE WITNESS: Not DOT'S commitment, because
19 I'm not funding it. So I'm going to be designing
20 this for DOE. I'm not going to speak for Randy, like
21 I said before, 2 million bucks to build a signalized
22 intersection, five-and-a-half for the roundabout, and
23 another half a million to move the facilities that
24 are already there, if we build that intersection
25 that's signalized, that saves three-and-a-half

1 million right there.

2 If you say -- if I were told, now you going
3 to build another six-and-a-half-million dollars
4 facility at least, I don't know if I would go towards
5 the roundabout any more.

6 So you have DOT'S commitment to design the
7 roundabout and get it ready. But I'm not funding it.
8 So if I was Randy, I would be making that
9 fiduciary -- taking that fiduciary responsibility to
10 see DOT already said that a signalized intersection
11 is safe. If I'm going to build a pedestrian overpass
12 too, do I really need this roundabout any more?
13 That's what I would consider, from my perspective.

14 CHAIRPERSON SCHEUER: My question simply
15 was, do you need this condition changed in order to
16 build a roundabout?

17 THE WITNESS: And I answered the question,
18 no, and added additional information to let you know
19 my logic.

20 CHAIRPERSON SCHEUER: I have nothing
21 further.

22 Is there anything further, Commissioners?
23 If not, do you have any redirect, Mr. Fujioka?

24 MR. FUJIOKA: No redirect.

25 CHAIRPERSON SCHEUER: Thank you, Mr.

1 Sniffen, for your testimony.

2 THE WITNESS: Take care.

3 CHAIRPERSON SCHEUER: We're at 3:53. We
4 earlier heard representations from other counsel that
5 they only needed five minutes each, so I'm inclined
6 to let the County and the Office of Planning proceed.

7 MR. HOPPER: Thank you, Mr. Chair.

8 CHAIRPERSON SCHEUER: You're done, Mr.
9 Fujioka, correct?

10 MR. FUJIOKA: Yes.

11 CHAIRPERSON SCHEUER: Proceed, Mr. Hopper.

12 MR. HOPPER: I will try to be brief.

13 The County of Maui has filed a Position
14 Statement in this docket. The County is supportive
15 of the construction of a roundabout, but at this time
16 the County takes no position on the -- well, not
17 release of condition, we will note that the
18 grade-separated pedestrian crossing item has been
19 moved to a consideration for Phase II, and would
20 allow the Petitioner to determine whether or not
21 they're going to build it.

22 So it could in effect eliminate underpass
23 or overpass, but it's not totally eliminated, but not
24 a requirement any more. County at this time does not
25 take a position on that, and the reason is the County

1 oftentimes relies upon DOT's expertise in these
2 matters, particularly when dealing with State
3 Highways, and recognizes that the State Department of
4 Transportation, we normally would not be in a
5 position to contradict the position of the State
6 Department of Transportation with respect to their
7 own highways.

8 In this case, however, based on past
9 experience, the issue of potentially eliminating the
10 crossing has been a controversial one for the
11 community, and as of the filing, and I think still,
12 we felt that there needs to be more information
13 provided by the community on their position on this
14 change and how it will effect, potentially effect the
15 area.

16 And so at this time we don't take a
17 position on that. I think the extra information that
18 could potentially be provided and extra discussion
19 with the community would be very beneficial, even if
20 the DOT and DOE end up not coming to an agreement.

21 So we think -- in addition, I think we
22 would want and maybe the Commission would want, to
23 the extent it's not in the record, an additional
24 written confirmation of challenges that would be in
25 designing an underpass in these areas; evidence of

1 the fact that these are floodways as discussed by
2 DOT, and what challenges those would pose.

3 We maybe want to see in the record
4 supplemented with that information to show that
5 feasibility issue.

6 We would note that the motion filed does
7 not contain Motion to Amend, does not contain
8 information related to cost, meaning how prohibitive
9 cost would be, and does not contain that cost
10 information, and it only relies on the fact that the
11 DOT has stated that this is not warranted and would
12 not be approved.

13 So issues such as cost, issues such as
14 delaying the opening weren't really raised, so to the
15 extent those are ongoing issues, I don't know if
16 there would be supplemental information provided to
17 communicate that.

18 I think with respect to delaying the
19 opening -- this overpass/underpass condition was in
20 there from the beginning, so I know there was some
21 discussion of reading the conditions not require that
22 in Phase I, but that's been in there from the
23 beginning, so hopefully we're not sure why there
24 wouldn't have been planning for that and studies done
25 in a timely manner that would allow those to be built

1 and designed prior to opening without a delay based
2 on funding, and that address to the Commission in a
3 proper form is a Motion to Amend prior to today.

4 And the County did file an Order to Show
5 Cause on this matter -- not an order to show cause,
6 Petition for Declaratory Ruling to clarify the
7 condition does require the crossing prior to Phase I.
8 That's a separate issue from whether or not the
9 Commission believes a crossing should be provided
10 still in light of DOT's testimony. So we would leave
11 that up to the Commission.

12 And we would also note this is in our
13 filing, that the County, Maui County Council has
14 imposed zoning conditions on this project, and
15 incorporated by reference multiple conditions from
16 the Land Use Commission directly. One of them being
17 the overpass/underpass condition, but we would
18 believe that this amendment would have to go to Maui
19 County Council to change the requirements of
20 providing this type of crossing as was required by
21 the original condition, because that condition was
22 incorporated into the Maui County Council zoning
23 conditions.

24 That's all we have. Hopefully close to
25 five minutes there, but we can be available for

1 questions if you like.

2 CHAIRPERSON SCHEUER: Thank you, Mr.
3 Hopper.

4 Commissioners, questions for Maui County?

5 Just to clarify, your request seems to be
6 that there is insufficient -- to summarize your
7 detailed explanation -- there seems to be certain
8 parts of the record that are missing, and that
9 decision-making would be premature.

10 MR. HOPPER: That wasn't in our filing, but
11 I think after hearing today some of the discussion
12 that it would be worthwhile -- well, our filing was
13 we take no position, and I suppose you could say,
14 yes, part of that is to the additional consultation
15 that would be beneficial with the public, but also
16 based on testimony today that I think it would be
17 helpful to confirm some of the statements made by DOT
18 with respect to the difficulty of designing in those
19 gulches with the existing crossing based on flood
20 concerns.

21 CHAIRPERSON SCHEUER: Thank you.
22 Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: Mr. Hopper,
24 assuming that we were able to supplement the record,
25 would the County be -- and you had an opportunity to

1 take a look at it -- would the County be then having
2 a formal change of position or formal position in
3 regard to this matter?

4 MR. HOPPER: I can't commit to that. I
5 need to discuss it with the director after that
6 information is provided. Sorry not to give a clear
7 answer, but we would need to review that.

8 COMMISSIONER OHIGASHI: I do like your
9 explanation that you believe it has to go to the Maui
10 County Council for determination as to whether or not
11 this condition stays in their zoning ordinance or
12 not. And I think it's up to them to decide whether
13 they want to delay the opening of the school. I like
14 that. Thank you.

15 CHAIRPERSON SCHEUER: Anything further for
16 the County, Commissioners? Seeing none.

17 Ms. Takeuchi-Apuna.

18 MS. APUNA: Thank you, Chair.

19 So DOE is requesting the Commission to
20 amend Condition 1(b) of the Decision and Order to
21 allow it to install the roundabout prior to the
22 opening of Phase I, and to reassess and re-evaluate
23 the necessity for overpass or underpass prior to the
24 start of construction of Phase II.

25 OP is supportive of DOE's request for the

1 following reasons:

2 First, as the community and Commission have
3 emphatically and repeatedly stated at last year's
4 hearing and today, this is an issue of safety, safety
5 of young students crossing Pi'ilani Highway. DOE,
6 DOT and OP agree safety is of the utmost importance.

7 The community believes that the safest
8 pedestrian route is an underpass. However, DOT tells
9 us that an underpass is not as safe as the community
10 believes for two reasons:

11 (1) Potential flooding in the underpass
12 that threatens life and safety, and;

13 (2) Human behavior dictates that a
14 pedestrian will choose to cross Pi'ilani Highway
15 at-grade over walking an inconvenient distance to an
16 underpass entrance at either Waipu'ilani or
17 Kulanihakoi Gulch, and consequently, students will
18 not utilize the underpass as envisioned.

19 DOT believes a roundabout is safe and a
20 better pedestrian route, not only because it avoids
21 the problem of potential flooding, and would provide
22 a more direct and utilized crossing over the highway,
23 but importantly, it incorporates traffic calling to
24 significantly slow the speeding on Pi'ilani Highway,
25 which is the main source of anxiety of students

1 crossing the highway. The roundabout helps to reduce
2 the speeding hazard rather than just finding a way
3 over or under the speeding hazard.

4 Secondly, proposed amendments to Condition
5 1(b) do not foreclose the possibility of an
6 underpass/overpass could be constructed prior to
7 Phase II if it is warranted, following the
8 installation of the roundabout. This is a sensible
9 order of the construction of the roundabout and
10 potential underpass/overpass because it would allow
11 the demonstration of the roundabout's effectiveness
12 prior to the potential installation of an underpass,
13 which DOT believes would not be utilized.

14 Thirdly, we understand that Commissioners
15 want community involvement in the decision of the
16 type of pedestrian route should be constructed, but
17 to what degree does community opinion outweigh or
18 subvert the expertise of DOT in these types of
19 decisions?

20 Neither the DOT, DOE, OP, the Commission,
21 or the community can guarantee that an underpass or a
22 roundabout will be 100 percent safe. But we depend
23 on DOT's expertise as traffic engineers, not their
24 opinion, to determine the most appropriate pedestrian
25 route. The mission of the DOT Highways Division is

1 to maximize available resources to provide a safe,
2 efficient, accessible and sustainable State Highway
3 System that ensures the mobility of people and goods
4 and supports economic vitality and livability.

5 Within Condition 1(b) the pedestrian route
6 study for Phase I of the Project was to be developed
7 and analyzed to the satisfaction of DOT. And under
8 the 2019 declaratory ruling, the DOE is required to
9 get approval from DOT of its Pedestrian and Traffic
10 Plans. Unless there is some identifiable flaw or
11 error in the data or analysis presented by DOT, we
12 should give weight to the experts' conclusions.

13 Based on the foregoing, OP supports DOE's
14 request to install a roundabout prior to the opening
15 of Phase I, with an assessment for an underpass prior
16 to construction of Phase II.

17 CHAIRPERSON SCHEUER: Commissioners,
18 questions for Ms. Apuna?

19 Commissioner Giovanni.

20 COMMISSIONER GIOVANNI: Thank you, Ms.
21 Apuna. I'm a little hung up on this second part of
22 the motion which has to do with the assessment of the
23 need, or assessment of no need, for an off-way
24 passage as a condition for Phase II.

25 What is your view of how that would move

1 forward? In other words, is it at the sole
2 discretion of DOE in consultation with DOT, or would
3 they have to come back to LUC and get approval not to
4 build the underpass or overpass after doing that
5 study as showing cause to the LUC?

6 MS. APUNA: As written as proposed, I think
7 that there isn't a requirement for DOE to come back
8 to the Commission, but certainly that's within the
9 Commission's discretion of how that should work.

10 COMMISSIONER GIOVANNI: I read it the way
11 you just interpreted for me.

12 Is it your position that you support it as
13 written, or how would you feel about a condition that
14 requires them to come back and demonstrate to the LUC
15 that it's not needed before that requirement is
16 removed?

17 MS. APUNA: Well, so you're asking whether
18 the proposal right now to remove the under or
19 overpass requirement should remain in the --

20 COMMISSIONER GIOVANNI: No. I'm -- do you
21 support the motion as written, is what I understood
22 your testimony.

23 MS. APUNA: Yes.

24 COMMISSIONER GIOVANNI: And as written, you
25 clarified that it's at the sole discretion of DOE to

1 determine if it's ultimately needed for Phase II.

2 MS. APUNA: Yeah, I think we support the
3 idea that there's a roundabout and that DOT and DOE
4 determine or, you know, analyze whether the
5 roundabout is effective, and whether there is a need
6 to put in something further such as an underpass or
7 overpass.

8 COMMISSIONER GIOVANNI: And my question is,
9 at their sole discretion or not?

10 MS. APUNA: I think that they would have
11 some duty, they have a duty to do that, whether they
12 need to go further and come back to the Commission
13 and report findings, that is not part of the
14 condition. I don't think we would necessarily object
15 to further requirement for them to provide findings
16 or, you know, to somehow demonstrate that the
17 roundabout does work or that it doesn't.

18 COMMISSIONER GIOVANNI: But as written,
19 they're not required -- as written in the motion,
20 they're not required to come back to LUC and show
21 that?

22 MS. APUNA: It could be tighter language.

23 COMMISSIONER GIOVANNI: Thank you, Ms.
24 Apuna. Nothing further.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Giovanni.

2 Commissioners, further questions for Office
3 of Planning.

4 If not, I have a question for Ms. Apuna.

5 I would like to understand your oral
6 comments just now. I believe that you stated that
7 the issue seems to be that there was a substitution
8 of the community expertise for the expertise to the
9 Department of Transportation and Department of
10 Education. You used the word "substitution".

11 THE WITNESS: I don't think I used the word
12 "substitution". The word I did use was the same word
13 used by representative today, that there was a --
14 that the DOE is trying to subvert the will of the
15 community.

16 CHAIRPERSON SCHEUER: I mean, I guess what
17 I gathered from what you had said, which was slightly
18 different from what your written Statement of
19 Position was, was that basically we have these
20 experts saying these things and community people
21 saying something else, but we need to go with the
22 experts.

23 Isn't the case here that it's not
24 either/or, it's not that bifurcation that really, one
25 of the biggest things that happened here, is that DOE

1 and DOT did some work and didn't talk to the
2 stakeholders who have been really clear for like the
3 last decade, but that they were interested and
4 involved in this project.

5 I mean, have you seen the KCA or any other
6 testifiers to be completely unreasonable and
7 unwilling to listen to other opinions on this?

8 MS. APUNA: No.

9 CHAIRPERSON SCHEUER: Doesn't the
10 possibility exist that some amount of edification,
11 like, look, here's Ed Sniffen, he's an expert. He's
12 done these analysis. Here's what he thinks. Here's
13 why he thinks it.

14 Reasonable folks in Kihei might go, oh,
15 yeah, this is better than what we thought. We are
16 going to come forward and we're going to support you.
17 Isn't that a possibility?

18 THE WITNESS: Yes, sure.

19 CHAIRPERSON SCHEUER: Wouldn't that be a
20 better way for us to get to where we are going?

21 MS. APUNA: I think Mr. Sniffen said he did
22 talk to KCA and certain community members at some
23 point or another.

24 CHAIRPERSON SCHEUER: I think over a year
25 ago, and certainly before this motion was brought

1 forward, is the testimony, if I recall it correctly.

2 My question for you is, wouldn't it be more
3 consistent with Office of Planning goals and
4 methodologies to have more robust and recent
5 communication among the community prior to changing a
6 condition which has been a hot button issue?

7 MS. APUNA: Yes, sure, absolutely. Any
8 communication with the community is certainly a good
9 thing.

10 CHAIRPERSON SCHEUER: And it's possible to
11 reach this conclusion without questioning the
12 expertise of DOT or DOE or for the validity of the
13 conclusions that, in their extensive professional
14 experience, they have reached?

15 MS. APUNA: Yes.

16 CHAIRPERSON SCHEUER: Anything further,
17 Commissioners? We have been going about an hour and
18 15 minutes. So I'm cognizant of the time of
19 everybody's schedule, but I'm cognizant for the need
20 for at least a quick bio break.

21 Commissioners, do you think that we could
22 take a five-minute break and then proceed to
23 deliberation?

24 COMMISSIONER CHANG: Mr. Chair, I have a
25 hard close at 4:30.

1 CHAIRPERSON SCHEUER: Then the other option
2 is to plow on through.

3 COMMISSIONER WONG: Chair, the only other
4 question I have is the DOE deciding to pass or defer
5 at this point, or are we going to go straight into
6 deliberation?

7 CHAIRPERSON SCHEUER: I'll offer the
8 opportunity. If the -- Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: Mr. Chair, I think
10 I would like to move for a deferral, and the reason
11 why I wanted to move for deferral is that there are
12 some requests for specific information that we want
13 to get.

14 The second thing is to give the opportunity
15 for DOE and DOT to actually talk to the stakeholders
16 and try to see if they can reach an agreement in this
17 case, because Mr. Hopper indicated to us that this is
18 apparently in the zoning ordinance, and he feels that
19 it may result in the County Council having to be
20 involved.

21 So it makes sense that if all the parties
22 can get together and they can agree upon a procedure
23 that would ensure the opening of the school in a
24 timely manner, so I think a deferral would be -- and
25 I so move.

1 CHAIRPERSON SCHEUER: Commissioners, we
2 have a motion to us to defer action on this matter
3 subject to further information being provided by the
4 parties and consultation with the community.

5 Is there a second?

6 COMMISSIONER WONG: I'll second for
7 discussion.

8 CHAIRPERSON SCHEUER: Commissioner Wong has
9 seconded. Do you want to say anything further
10 towards your motion, Commissioner?

11 COMMISSIONER OHIGASHI: No, I stated my
12 reasons why I'm asking.

13 CHAIRPERSON SCHEUER: Commissioners, we are
14 in discussion on motion to defer.

15 Commissioner Giovanni.

16 COMMISSIONER GIOVANNI: I'm in favor of
17 this motion. I wish to add a few comments.

18 At this point in time, if I could make a
19 decision, I am 100 percent with the community, in
20 large part because I think it's consistent in voicing
21 requirements and expressions of what they would like
22 to see happen. They have gone through the arduous
23 past process over the last several years. They were
24 caught on this motion. I think that we would much
25 benefit from a deferral in which community gets back

1 involved in dealing with face to face with DOE and
2 DOT, and I'm hopeful that they might actually come to
3 a conclusion that is satisfactory.

4 No guarantees, but hopeful, but they've got
5 to at least try. I think a deferral gives us that
6 opportunity.

7 I also would encourage that, if they go
8 into that deferral process, that I think it's really
9 important that they remain focused on the need for
10 this school to open on a timely basis, and as such,
11 things proceed with the roundabout at least in Phase
12 I to get things operational.

13 But I would not, at this point in time, I
14 just can only encourage them to consider a practical
15 review of not only policy by DOT, but even more
16 specific designs, cost estimates and schedules for
17 the alternatives that are non-grade, because to make
18 a big decision like this, based purely on high level
19 policy, which Mr. Sniffen articulated very well, and
20 I compliment him on having clear and firm policy
21 positions. This is a project, and the details of the
22 project are not well enough known to make a clear
23 determination.

24 So at this time I favor the motion for e
25 deferral and I encourage the parties to get together

1 and work collaboratively.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Giovanni.

4 Commissioner Cabral.

5 VICE CHAIR CABRAL: I'm in favor of this
6 motion also because I want to have more time and give
7 the community some time to get this information, and
8 I would very much like to get a copy before we meet
9 on this again, as soon as possible, so we really have
10 time to look at it, copy of the traffic information
11 that Mr. Smitten put on the screen for us. He showed
12 us a few pages of that. I would like to get a copy
13 of that, if possible, or the pertinent origins of it.
14 It's 500 pages. At least the pertinent sections that
15 he was referring to that are very, very
16 informational.

17 And I do not recall if we got that
18 information in that printed format when we had the
19 other hearing, so I would like to have that and go
20 ahead and defer so we can really make a more balanced
21 decision on it. Thank you.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Cabral.

24 While many are smitten with him, I believe
25 his name is Sniffen.

1 Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you, Mr. Chair.

3 As someone married to a retired special
4 education teacher, and a public school graduate, I
5 have nothing but aloha for the Department of
6 Education. But perception is really important in
7 government, and I think when the community has a
8 perception that we in government are not listening,
9 the community rightly comes to the conclusion that we
10 don't care.

11 And I really think and believe that for a
12 democracy to function, there not only has to be
13 reality of the belief that its citizens have input in
14 the process, but also that there is a perception that
15 citizens' opinions are considered.

16 That's the reason this addition to the
17 other good reasons raised by my fellow Commissioners,
18 that I'm in support of this motion for deferral.
19 Thank you.

20 CHAIRPERSON SCHEUER: Thank you.

21 Commissioner Chang.

22 COMMISSIONER CHANG: Thank you, Mr. Chair.

23 While I was not originally inclined to
24 support the motion, because I thought we had enough
25 to move forward, in light of what I'm hearing, I

1 am -- I will support the motion for deferral.

2 However, I also want to caution that we
3 need to be very clear about managing community
4 expectations. I totally agree there needs to be
5 greater communication. I think even Mr. Tanaka
6 agreed they need to do better. Mr. Sniffen agreed
7 and offered that he would come, and I think with
8 Covid perhaps it would have to be a ZOOM meeting.

9 Nonetheless, I think it is important that
10 the community hear the rationale behind why DOT's
11 position is as it is.

12 In my view they are the experts, but I
13 believe out of respect to this community that has
14 dedicated obviously a decade both spearheading this
15 school, that they are due that respect to bring this
16 critical information back to them.

17 Because a year ago this was not DOT's
18 position. Now, it is DOT's position that the
19 roundabout is the preferred, and an overpass or
20 underpass is not safer than a roundabout.

21 So I agree that the deferral would give the
22 opportunity. And I'm hoping that Mr. Tanaka and Mr.
23 Sniffen can timely meet with them in virtual
24 technology, but at least to give this information to
25 the community and an opportunity for them to

1 provide -- to answer any questions.

2 So I am inclined to vote in favor of the
3 motion. Thank you very much.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Chang. Commissioners, further
6 deliberation.

7 Commissioners Aczon or Wong.

8 COMMISSIONER WONG: Chair -- sorry, Ed,
9 Commissioner.

10 VICE CHAIR ACZON: I'm good with it, Chair.
11 Always good to have given the community a chance to
12 weigh in, but sooner or later they're going to have
13 to make that a decision. I'm in favor of the motion.

14 CHAIRPERSON SCHEUER: Thank you.
15 Commissioner Wong.

16 COMMISSIONER WONG: So the only thing I
17 just want to say, I'm going to be voting in favor of
18 this motion, but I just wanted to say that there is a
19 timeline in terms of building the high school, and I
20 want to make sure that we still have a high school
21 built before we either lose the money or the kids
22 will get hurt for not having a high school. So I
23 would put out the fact that DOE and DOT should move
24 as fast as possible to meet with the community,
25 because we have to get both the traffic issue and the

1 school up to speed as soon as possible. That's all.

2 CHAIRPERSON SCHEUER: Anything further,
3 Commissioners?

4 I will vote in favor of the motion. I am
5 of, I think, the same orientation as Commissioner
6 Giovanni that if the choices were to accept or reject
7 the motion, I would reject it today, not because I
8 distrust the expertise of DOE or DOT, but because
9 frankly some of the discussion and representations
10 made today were not backed up by written evidence and
11 material.

12 I'm also very concerned with the lack of
13 consultation with the community. And I want to see
14 that there's meaningful consultation. I'm not saying
15 that the community has to agree to this for me to be
16 comfortable in passing a motion. It is possible for
17 the community to not be in full agreement, while be
18 in partial agreement and still I will feel
19 comfortable with making some change to this, but
20 there has to be some engagement.

21 Commissioner Wong.

22 COMMISSIONER WONG: One other thing, Chair.
23 Do we need to make a timeline when we're going to
24 hear this motion again?

25 CHAIRPERSON SCHEUER: Mr. Orodanker.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.

2 We do have a number of dates where we could
3 possibly fit this in November or December. I'm
4 hesitant to preschedule a date because I know from
5 experience that DOT and DOE are correct, because
6 there are so many community members involved,
7 sometimes it takes some time and some planning to get
8 everybody together.

9 I will stay in touch with the parties, and
10 we will try and get this back on as quickly as
11 possible.

12 And in the past, I actually have been part
13 of the discussion myself, so I will have a handle on
14 how it's going.

15 CHAIRPERSON SCHEUER: If I may, I wasn't
16 quite done with my comments, Commissioner Wong.

17 I just wanted to add that I think that part
18 of my perception of the community not being taken
19 seriously did have to do with the tenor of the
20 questioning of certain witnesses by Mr. Fujioka at
21 our hearing today.

22 When community members come here as
23 witnesses, it's great to advocate strong for our
24 client, but we should treat people here on their own
25 dime caring about the community with a really great

1 level of respect. And I was finding that slightly
2 lacking during our proceedings. And I look for a
3 better kind of proceeding when we next come forward.

4 With that, Mr. Orodenker, will you please
5 poll the Commission.

6 EXECUTIVE OFFICER: Thank you, Mr. Chair.

7 The motion is to defer action on this
8 matter to allow additional information to be
9 provided, and to allow additional discussion with the
10 community.

11 Commissioner Ohigashi?

12 COMMISSIONER OHIGASHI: Aye.

13 EXECUTIVE OFFICER: Commissioner Wong?

14 COMMISSIONER WONG: Aye.

15 EXECUTIVE OFFICER: Commissioner Cabral?

16 VICE CHAIR CABRAL: Aye.

17 EXECUTIVE OFFICER: Commissioner Aczon?

18 VICE CHAIR ACZON: Aye.

19 EXECUTIVE OFFICER: Commissioner Okuda?

20 COMMISSIONER OKUDA: Yes.

21 EXECUTIVE OFFICER: Commissioner Chang.

22 COMMISSIONER CHANG: Aye.

23 EXECUTIVE OFFICER: Commissioner Giovanni?

24 COMMISSIONER GIOVANNI: Aye.

25 EXECUTIVE OFFICER: Chair Scheuer?

1 CHAIRPERSON SCHEUER: Aye.

2 EXECUTIVE OFFICER: Thank you. Mr. Chair,
3 the motion passes with eight affirmative votes.

4 CHAIRPERSON SCHEUER: Thank you very much.

5 With that, with four minutes to spare
6 before we have a hard stop, I declare no further
7 business, and this meeting is adjourned.

8 (The proceedings adjourned at 4:26 p.m.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on at 9:51 a.m., the proceedings
6 contained herein was taken down by me in machine
7 shorthand and was thereafter reduced to typewriting
8 under my supervision; that the foregoing represents,
9 to the best of my ability, a true and correct copy of
10 the proceedings had in the foregoing matter.

11 I further certify that I am not of counsel for
12 any of the parties hereto, nor in any way interested
13 in the outcome of the cause named in this caption.

14 Dated this 10th day of September, 2020, in
15 Honolulu, Hawaii.

16
17
18 /s/ Jean Marie McManus
19 JEAN MARIE McMANUS, CSR #156
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