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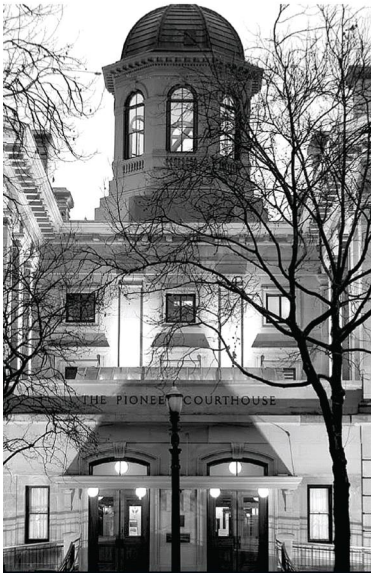
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STATE OF HAWAII  
LAND USE COMMISSION

Hearing held on September 9, 2021  
Commencing at 9:02 a.m.

Held via Zoom by Interactive Conference Technology

- VII. Call to Order
- VIII. ACTION-SP21-412 Mahi Solar (Oahu)  
To Consider Special Permit Application No. SP21-412 Mahi Solar Project, for an approximately 120 Megawatt alternating current (Mwac) solar and energy storage facility located in Kunia, Oahu. TMK No. (1)9-2-001:020 (por.) and (1)9-2-004:003(por.), 006(por.), 010(por.), and 012(por.)
- IX. CONTINUED HEARING AND ACTION (IF NECESSARY)  
A11-794 State of Hawaii, Dept. of Education - (Kihei High School) (Maui)
- X. EXECUTIVE SESSION  
Pursuant to HRS Section 92-5(a)(2) to consider personnel matters where considerations of matters affecting privacy will be involved.
- XI. ADJOURNMENT



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BEFORE:

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**APPEARANCES BY VIDEOCONFERENCE:**

- Jonathan Scheuer, Chair (Oahu)
- Nancy Cabral, Vice Chair (Big Island)
- Edmund Aczon (Oahu)
- Gary Okuda (Oahu)
- Lee Ohigashi (Maui)
- Arnold Wong (Oahu)
- Dawn N.S. Chang (Oahu)
- Daniel Giovanni (Kauai)

**STAFF PRESENT BY VIDEOCONFERENCE:**

- Julie China, Esq.
- Deputy Attorney General
- Daniel Orodener, Executive Officer
- Riley Hakoda, Chief Clerk/Staff Planner
- Scott Derrickson, Chief Planner
- Natasha Quinones, Program Specialist

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**STATE OF HAWAII**

**LAND USE COMMISSION**

**Hearing held on September 9, 2021**

**Commencing at 9:02 a.m.**

**COMMISSIONER SCHEUER:** It is 9:02 a.m.

Aloha mai kakou. Good morning. This is the September 9th, 2021, Land Use Commission meeting which is being held using interactive conference technology linking videoconference participants and other interested individuals of the public via the Zoom Internet conferencing platform in order to comply with ongoing state and county official operational directives during the ongoing COVID-19 pandemic.

Members of the public are able to view this meeting via the Zoom webinar platform. All meeting participants -- and this is especially true since we have switched to recording-based court transcription -- I want to stress the importance of speaking slowly, clearly, and directly into your microphone. Before speaking, it is helpful if you identify yourself for the record.

Also, please be aware that all meeting participants at this meeting are being recorded on the digital record of this recording. Your continued

1 participation is your implied consent to be part of  
2 the public record of this event. If you do not wish  
3 to be part of the public record, you should exit the  
4 meeting now.

5           This technology allows the parties and  
6 each participating commissioner individual remote  
7 access to the meeting proceedings via our own  
8 individual digital devices. Because of that and  
9 other matters due to -- that are entirely outside  
10 our control, occasional disruptions to connectivity  
11 may occur at any given time.

12           If these disruptions occur, please let one  
13 of us know. If you are in the audience and you think  
14 this is happening, it could be done through the Q&A  
15 function. If you are a panelist, it can be done  
16 through the chat. Let us know and please be patient  
17 as we try to restore audiovisual signals and  
18 effectively conduct business during the pandemic.

19           For any matter in which public testimony  
20 may be allowed, you can indicate your desire to  
21 provide public testimony by using your raise hand  
22 function in the software, or if you are accessing  
23 this meeting by phone, pressing \*9 on your phone.  
24 From time to time, approximately after every 50  
25 minutes of meeting, we will take a break.

1 My name is Jonathan Likeke Scheuer. I  
2 currently have the pleasure and honor of serving as  
3 the Land Use Commission Chair. Along with me,  
4 Commissioner Ed Aczon, Commissioner Dawn Chang,  
5 Commissioner Gary Okuda, Commissioner Arnold Wong,  
6 who is at LUC's offices, our LUC Executive Officer  
7 Daniel Orodener, our Chief Planner Scott  
8 Derrickson, our Chief Clerk Riley Hakoda, our  
9 Program Specialist Natasha Quinones, and our Deputy  
10 Attorney General Julie China are all on the island  
11 of O'ahu.

12 Commissioner Nancy Cabral is -- represents  
13 Hawai'i island, but I'm not saying is on Hawai'i  
14 island, because I do not think that she is actually  
15 on Hawai'i island. Commissioner Lee Ohigashi is on  
16 Maui. Commissioner and First Vice Chair Dan Giovanni  
17 is on the island of Kaua'i. We currently have eight  
18 seated commissioners of a possible nine. Court  
19 reporting transcriptions, as I indicated before, are  
20 being done from the Zoom recording itself.

21 With all that said, our first agenda item  
22 for today is an action docket for Special Permit 21-  
23 412 to consider a Special Permit application, SP 21-  
24 412 Mahi Solar Project, for an approximately 120-  
25 megawatt alternating current solar and energy

1 storage facility located at Kunia, O'ahu, TMK No.  
2 19-2001, a portion of Lot 2, and 92-004, a portion  
3 of Lot 3, a portion of Lot 6, a portion of Lot 10,  
4 and a portion of Lot 12.

5 Will the parties on this matter please  
6 identify yourselves for the record, beginning with  
7 the applicant?

8 **MR. SAKUMOTO:** Thank you, Chair. Aloha,  
9 everyone. Randall Sakumoto and Brett Tobin here on  
10 behalf of the petitioner, Mahi Solar LLC.

11 **MR. PANG:** Good morning, Mr. Chair. Duane  
12 Pang, deputy corporation counsel on behalf of the  
13 Department of Planning and Permitting. Also with me  
14 in my room is DPP representative Franz Kraintz.  
15 Thank you. It's very nice to see all of you.

16 **COMMISSIONER SCHEUER:** Would you spell Mr.  
17 Kraintz's name for the record?

18 **MR. PANG:** First name is -- first name is  
19 F-r-a-n-z. Last name is K-r-a-i-n-t-z.

20 **COMMISSIONER SCHEUER:** Thank you very  
21 much, Mr. Pang. Office of Planning and Sustainable  
22 Development?

23 **MS. KATO:** Good morning. Alison Kato,  
24 deputy attorney general for the Office of Planning  
25 and Sustainable Development. Also here is Rodney

1 Funakoshi from OPSD, and Earl Yamamoto for the  
2 Department of Agriculture is also here and would  
3 like to give comments later. Thank you.

4 **COMMISSIONER SCHEUER:** Thank you very  
5 much. Before we continue further, let me update the  
6 record. On April 9th, 2021, the commission received  
7 the Department of Planning and Permitting's  
8 memorandum for request for comments regarding a  
9 Special Use Permit application. On May 17th, the LUC  
10 provided the DPP a letter with comments.

11 On August 2nd, the commission received the  
12 preliminary record list. On August 6th, the  
13 commission received a Special Use Permit application  
14 for Mahi Solar and the Planning Commission's index  
15 of records.

16 On September 1st, the commission mailed  
17 and emailed the agenda for the September 8th and  
18 9th, 2021, meeting to the parties in this docket and  
19 the statewide and county mail and email lists.

20 On September 3rd, the commission received  
21 the Hawai'i State Energy Office, or HSEO's, comments  
22 on the Mahi Solar Project. On the same day, the  
23 commission also received the Department of  
24 Agriculture's testimony and comments and  
25 recommendations.

1 On September 7th, 2021, the commission  
2 received the Office of Planning and Sustainable  
3 Development's recommendation letter to the Land Use  
4 Commission.

5 There's other matters, documents that have  
6 been received since then. We will deal with these  
7 later, Mr. Hakoda, or right now?

8 **MR. HAKODA:** I want to take care of it  
9 right now, if it's okay, Mr. Chair.

10 **COMMISSIONER SCHEUER:** Please.

11 **MR. HAKODA:** Because of the Kihei High  
12 School matter, we were flooded with public testimony  
13 and just couldn't keep up with the intake. After two  
14 days' count, it's like we've had five pieces of  
15 public testimony, one from the Department of  
16 Agriculture, one from the Hawai'i State Energy  
17 Office, one from the Ulupono Initiative Group,  
18 Pacific Resources Partnership, and Hawaiian  
19 Electric. And the Ulupono Initiative has indicated  
20 that it would like to give public testimony and have  
21 comments.

22 **COMMISSIONER SCHEUER:** Okay. Thank you.  
23 And I believe we were transmitted something from the  
24 petitioner today, Mr. Sakumoto?

25 **MR. SAKUMOTO:** That's correct. In the very



1 early morning, we received a letter from SHPD that  
2 was submitted by the petitioner in regards to the  
3 Maui Solar Project.

4 **COMMISSIONER SCHEUER:** Okay. I will go  
5 over our procedures in a moment, but I want to see  
6 if there's any disclosures that any of the  
7 commissioners need to make.

8 As is often the case, I realize my wife is  
9 a planner with the Hawai'i planning firm G70  
10 International. Only until I receive these dockets  
11 and am ready to review them do I find out that her  
12 firm was involved in the permitting at the county  
13 level on it.

14 She's had no involvement on it. We have no  
15 financial benefit from her firm's involvement on it.  
16 Nevertheless, I wish to disclose this matter and see  
17 if any of the parties have any objections to my  
18 continued participation in this. If any of the  
19 parties raise an objection, I will hand over the  
20 gavel to the vice chair to handle the consideration  
21 of such an objection.

22 Does any of the parties, starting with the  
23 petitioner, have an objection to my continued  
24 participation in these proceedings?

25 **MR. SAKUMOTO:** No objection, Chair.

1           **MR. PANG:** No objections from the city.

2           **COMMISSIONER SCHEUER:** OSPD?

3           **MS. KATO:** No objections. Thank you.

4           **COMMISSIONER SCHEUER:** Thank you very  
5 much. Anything else from any of the other  
6 commissioners? Okay.

7           I'll now go over our proceedings for  
8 today. First, I'll take any public testimony on this  
9 matter. We've heard that a couple of individuals, at  
10 least, plan to give public testimony. I will ask  
11 people to use the Raise Your Hand function in the  
12 attendee room. You will be admitted to be a panelist  
13 one by one.

14           When you are admitted, I will swear you  
15 in, ask you to state your name and address for the  
16 record, and then offer testimony. After the  
17 conclusion of your oral testimony, which I may limit  
18 the time on, you will be available for questioning  
19 by all the parties who have done appearances here as  
20 well as by the commissioners.

21           We'll go through all the public testimony.  
22 Following the presentation of oral public testimony,  
23 we'll close public testimony on this matter.

24           I'll call for the applicant to make their  
25 presentation, followed by questions of the

1 commissioners.

2 After that, the State Office of Planning  
3 and Sustainable Development will be given the  
4 opportunity to provide comment, including, as noted  
5 by Ms. Kato, comments from Earl Yamamoto with the  
6 Department of Agriculture. The commissioners will be  
7 allowed to ask questions at that time, and after  
8 that, we will enter deliberations.

9 And as I noted before, we will take breaks  
10 approximately after every 50 minutes of meeting  
11 time. Do the individuals involved have any  
12 questions with our proceedings today, starting with  
13 the applicant?

14 **MR. SAKUMOTO:** No questions, Chair.

15 **MR. PANG:** No questions from the city.

16 **MS. KATO:** No questions. Thank you.

17 **COMMISSIONER SCHEUER:** Thank you very  
18 much. Okay. I'll now call for any witnesses who  
19 wish to provide public testimony. Please use the  
20 Raise Your Hand function as an attendee. I will  
21 admit you one by one. Let's first start with Dr.  
22 Stephanie Whalen.

23 So I will promote you to be a panelist,  
24 and when you are promoted to be a panelist, you then  
25 have the ability to enable your audio and video. So

1 you're admitted, Dr. Whalen. If you would enable  
2 your audio and video? This should be visible to you  
3 at the bottom of your screen.

4 **MS. WHALEN:** Can you hear me now?

5 **COMMISSIONER SCHEUER:** I can hear you now.  
6 Any chance of getting video?

7 **MS. WHALEN:** Yes. Right there.

8 **COMMISSIONER SCHEUER:** There we go.

9 **MS. WHALEN:** Okay.

10 **COMMISSIONER SCHEUER:** And I had the  
11 pleasure of often testifying in front of Dr. Whalen  
12 when she was on the Water Commission, so it's nice  
13 to provide this opportunity, though you never had to  
14 swear me in. Do you swear or affirm the testimony  
15 you're about to give is the truth?

16 **MS. WHALEN:** I do.

17 **COMMISSIONER SCHEUER:** Thank you. So if  
18 you'd state your name and address for the record,  
19 and please proceed.

20 **MS. WHALEN:** My name is Stephanie Whalen.  
21 I'm the executive director of the Hawai'i Ag Culture  
22 Research Center, and we are located at 94-340 Kunia  
23 Road and P.O. Box 100, Kunia, Hawai'i.

24 **COMMISSIONER SCHEUER:** Please proceed.

25 **MS. WHALEN:** Thank you very much. And just

1 for the record, I'm not a doctor. Just a regular  
2 person.

3 I'm going to say right up front that HARC  
4 is receiving research funds from Mahi Solar, and  
5 more recently from HEI Charitable Foundation. But  
6 don't let that make you think that my testimony is  
7 biased or inconsequential.

8 It is based on 40 years of experience and  
9 a strong passion for agriculture, and I'm excited  
10 about the potential for ag-solar partnerships.

11 Hawai'i has been trying to diversify  
12 agriculture since the '70s. That's 50 years -- 50  
13 years. Since then, there have been four or five  
14 state ag plans all reporting the same needs, all on  
15 the shelf with little or no action.

16 As you well know, the state's 1975 mandate  
17 for Important Agricultural Lands is not moving in  
18 the counties, and Hawai'i's -- or, sorry, O'ahu's  
19 effort is on hold here in this commission for legal  
20 review.

21 I can only hope it's time for finding real  
22 solutions -- win, win, win solutions. The agenda  
23 item is one, and it isn't new or groundbreaking.  
24 Photovoltaics is happening around the world, and our  
25 goal is to transfer that technology here to Hawai'i.

1 Agrivoltaics was conceived in the early  
2 1980s. Two pioneer European scientists recognized  
3 that both agriculture systems and solar arrays  
4 harvest energy from the sun.

5 Since then, many studies have validated  
6 their assumptions around the world. This agenda item  
7 is about the solar sector and the agriculture sector  
8 working together to transfer this technology to  
9 Hawai'i to help its two goals of food and energy  
10 self-sufficiency.

11 It is clear that the best lands for food  
12 production and solar production are the same, and  
13 both use the energy of the sun. Historically in  
14 these permit processes, many promises are made, only  
15 later to be forgotten, and often without  
16 consequences.

17 HARC is seeking additional funding from  
18 both the private and public sectors. It has reached  
19 out to the University of Hawai'i, who is  
20 collaborating with us in this effort. It is applying  
21 to the National Energy and Agriculture Research  
22 Funding sources, all to ensure the expansion and  
23 continuation of the program already initiated by  
24 Mahi Solar.

25 I do want to be clear that as folks often

1 equate the word "research" to projects that do not  
2 produce near-term results, this collaboration is  
3 about technology transfer, not basic research.  
4 Technology transfer is the culture part. You comb  
5 the globe for the latest and most efficient ideas,  
6 and you bring them to Hawai'i to modify for its  
7 unique situations.

8 We did that with drip irrigation for the  
9 sugar industry. Drip irrigation is now the standard  
10 irrigation practice here for all field crops. It was  
11 Hawai'i's agriculture first huge step for water  
12 conservation. Agrivoltaics will be another step for  
13 water conservation.

14 It's time for finding solutions, win-win  
15 situations. A win for agriculture -- cheap land,  
16 water, and infrastructure. A win for the consumer --  
17 more local produce. A win for solar guys -- cooler  
18 panels, and less weed control. A win for the  
19 landowner -- higher lease rents. We all have to win,  
20 not just one stakeholder, in order to advance.

21 In conclusion, I see this as a promising  
22 new technology to a tiring parade of controversies  
23 regarding the sustainability of agriculture. Please  
24 recognize this as a solution to help advance  
25 agriculture sustainability.

1 I'll answer any questions anybody might  
2 have about agriculture.

3 **COMMISSIONER SCHEUER:** Thank you very much  
4 for your testimony. Sorry for disparaging you by  
5 suggesting you had a Ph.D. And we'll see if there's  
6 any questions for you, starting with the  
7 application. Any questions from the applicant for  
8 Ms. Whalen?

9 **MR. SAKUMOTO:** No questions.

10 **MR. PANG:** No questions from the city.

11 **MS. KATO:** No questions. Thank you.

12 **COMMISSIONER SCHEUER:** Commissioners?  
13 Commissioner Cabral?

14 **COMMISSIONER CABRAL:** Yes. Ms. non-doctor  
15 Whalen, thank you very much for your passion and  
16 your testimony. I absolutely appreciate the passion.  
17 Yes.

18 So I'm -- I'm really glad to hear your --  
19 your thoughts, because one of my only reservations  
20 is is there a fear that by having a massive amount  
21 of land put into photovoltaic, that we really do  
22 take away from agriculture, when it appears some of  
23 that land would appear to be pretty good prime  
24 agricultural land?

25 So -- so you're -- you're on the ground



1 there; I'm in Hilo most of the time. And so, but  
2 what you're saying is that you absolutely understand  
3 the agriculture portion of it and the solar portion  
4 of it, and you're supporting it, and there's no  
5 negatives that you're aware of?

6 **MS. WHALEN:** That's correct.

7 **COMMISSIONER CABRAL:** Okay. Thank you very  
8 much. Appreciate your input completely.

9 **COMMISSIONER SCHEUER:** Thank you,  
10 Commissioner Cabral. Commissioner Giovanni?

11 **COMMISSIONER GIOVANNI:** Yeah. Just a  
12 question on term -- term. You know, there's a finite  
13 life to the solar plant. It could be 20 years. It  
14 could be extended. In the event that the solar is  
15 decommissioned, is your view that the agriculture  
16 will continue?

17 **MS. WHALEN:** Yes. I believe definitely the  
18 agriculture will continue, because why would it not?  
19 And I also believe, frankly, that solar will  
20 continue unless we come up with some new technology  
21 for Hawai'i, because, you know, that's the energy  
22 we're going to be relying on.

23 So that and wind and whatever comes up --  
24 better batteries. But I believe there's still going  
25 to be a need for solar panels. They're just going to

1 be more efficient and maybe take up less space.

2 **COMMISSIONER GIOVANNI:** Thank you.

3 **COMMISSIONER SCHEUER:** Any further  
4 questions for the witness, commissioners? If not,  
5 thank you very much for your testimony.

6 I will move you back into being a member  
7 of the audience. And I will be admitting Murray  
8 Clay, followed by Cameron Black.

9 **COMMISSIONER SCHEUER:** Good morning.

10 **MR. CLAY:** Aloha. My name is Murray Clay.  
11 I'm the president of Ulupono Initiative.

12 **COMMISSIONER SCHEUER:** Do you swear or  
13 affirm the testimony you're about to give is the  
14 truth?

15 **MR. CLAY:** I do.

16 **COMMISSIONER SCHEUER:** Okay. Please state  
17 also your address for the record, and then proceed.

18 **MR. CLAY:** Yes. Ulupono Initiative's  
19 address is 999 Bishop Street, Suite 1202, Honolulu,  
20 Hawai'i.

21 **COMMISSIONER SCHEUER:** Thank you. Please  
22 proceed.

23 **MR. CLAY:** And just briefly before  
24 proceeding, I wanted to explain that Ulupono did  
25 submit our testimony to the website on September

1 3rd; however, it was not posted online, but it  
2 sounds like from what I heard earlier that you folks  
3 have now, hopefully, received a copy of it.

4 **COMMISSIONER SCHEUER:** That's correct.

5 **MR. CLAY:** Okay. Thank you. So Ulupono  
6 works to improve the quality of life for the people  
7 of Hawai'i by supporting and promoting locally  
8 produced food, renewable energy, clean  
9 transportation, and better management of water and  
10 waste.

11 Ulupono is in a unique position in that we  
12 strongly support expanding both renewable energy and  
13 local food production. We want to help the state  
14 achieve both of its goals of 100 percent renewable  
15 energy by 2045 and its goal to double local food  
16 production by 2030.

17 We've been involved for many years in  
18 regulatory proceedings to help the utility and the  
19 PUC plan out the path to 100 percent renewable  
20 energy, including the ongoing integrated grid  
21 planning docket.

22 To better understand the issue of land  
23 availability and the potential trade-offs for adding  
24 more renewable energy onto the system, we work with  
25 Dr. Matthias Fripp, who's the associate professor of

1 electrical engineering at the University of Hawai'i,  
2 to model the potential impact on available ag lands  
3 from future utility-scale solar development.

4 The modeling revealed that Class B and C  
5 lands are not protected beyond existing measures.  
6 Roughly 50 percent -- half -- of Class B lands, more  
7 than 12,000 acres, and almost 20 percent of Class C  
8 ag lands will likely be used for future solar  
9 development.

10 As utility-scale solar is usually under  
11 contract for at least 20 years, it's unlikely that  
12 affected ag lands would be able to be returned to  
13 its original intent without solar developers making  
14 concessions and commitments to support food  
15 producers.

16 At Ulupono, we want to see both renewable  
17 energy and local food production grow, so in our  
18 testimony, we proposed a framework to ensure that  
19 solar developers using Class B ag lands provide real  
20 value to enable local food producers to be  
21 successful.

22 We believe that only what is given, not  
23 what is offered, should be valued in this framework.  
24 For example, offering land at half the ordinary  
25 rates has no value if the solar project is built in

1 such a way that farmers or ranchers can't use it,  
2 such as panels being very close to the ground or  
3 narrow rows between the clusters of panels.

4           So discounted land, water, electricity,  
5 and other value should be determined on an annual  
6 basis, based again on what is given to farmers and  
7 ranchers, not what is just offered. Preliminary  
8 calculations indicate that a modest level of support  
9 to local food producers is not overly burdensome to  
10 the solar project financially. We do believe both  
11 can prosper.

12           The Mahi Solar Project does seem to be  
13 going above and beyond what other solar developers  
14 have done in funding research to study solar paired  
15 with agriculture and taking other supportive  
16 measures. So we're very, you know, very much in  
17 favor of that.

18           Our main point, though, is that all solar  
19 developers should be held to the same standard in  
20 obtaining a Special Use Permit for Class B ag lands,  
21 which is real value to farmers and ranchers on an  
22 annual basis, to ensure these lands are not  
23 permanently lost to agriculture and to ensure that  
24 both food and renewable energy can expand in  
25 Hawai'i.

1 We will likely continue to refine and  
2 improve our solar ag framework for future  
3 consideration. We also appreciate the opportunity to  
4 present this framework and are open to discussing it  
5 in the future with the commission at any time. Thank  
6 you.

7 **COMMISSIONER SCHEUER:** Thank you very much  
8 for your testimony, Mr. Clay. Questions for the  
9 witness?

10 **MR. SAKUMOTO:** No questions.

11 **MR. PANG:** No questions.

12 **MS. KATO:** No questions. Thank you.

13 **COMMISSIONER SCHEUER:** Commissioners?  
14 Commissioner Giovanni, followed by Commissioner  
15 Okuda.

16 **COMMISSIONER GIOVANNI:** Aloha, Murray.  
17 Good to see you.

18 **MR. CLAY:** Aloha. Good to see you, too.

19 **COMMISSIONER GIOVANNI:** I just want to  
20 make a comment that we would welcome at a future  
21 time your presenting and working with you all in  
22 terms of that perspective to the commission. I think  
23 it would be valuable. Thank you.

24 **MR. CLAY:** Long to do that. Thank you.

25 **COMMISSIONER SCHEUER:** Commissioner Okuda?

1           **COMMISSIONER OKUDA:** Yes. Thank you, Mr.  
2 Chair. Thank you, Mr. Clay. Vice Chair Giovanni  
3 kind of took those words out of my mouth, but if I  
4 can just follow up a bit on that.

5           The framework that you're proposing, is  
6 that something that you view in addition to the  
7 statutory and administrative rules requirements that  
8 we are now bound by? In other words, are you -- are  
9 you proposing a framework that's in addition to what  
10 I would describe as the minimum requirements under  
11 the statute?

12           **MR. CLAY:** Whether it is added as an  
13 additional legal requirement or it's just something  
14 that the Land Use Commission considers and applies  
15 in their own deliberations, I think either could  
16 work.

17           Obviously, it's a stronger mechanism if  
18 it's -- if it's additional to the statutory  
19 requirements, but I think it's something the  
20 commission could consider under its own authority  
21 without a statutory change. At least, that's my  
22 understanding. I'm not a lawyer.

23           **COMMISSIONER OKUDA:** Okay. And I kind of  
24 agree with what you say, because a lot of our  
25 decisions are based on the good cause standard.

1 Final question is if -- if in my boring  
2 life, I wanted to look up the research or the  
3 materials that have resulted from your -- the work  
4 of your group, is it found online? Or where -- where  
5 can these materials be found, if I wanted to further  
6 educate myself on the issue?

7 **MR. CLAY:** Sure. The -- the presentation,  
8 the PowerPoint presentation that references that 50  
9 percent of Class B lands, 20 percent of Class C  
10 lands being likely to be used by solar, that was in  
11 the integrated grid planning docket.

12 It is publicly available, but I'm happy to  
13 email, if there's a link I can -- an email I could  
14 send it to the commission. If you want to review  
15 that PowerPoint, I'd be happy to send it along.

16 **COMMISSIONER OKUDA:** Yeah. I would request  
17 that you send it to the Land Use Commission staff  
18 because, you know, more knowledge is always usually  
19 better than less knowledge, and we can evaluate and  
20 take that into our life experience. Thank you very  
21 much. I appreciate your time and efforts.

22 **MR. CLAY:** Thank you. Happy to do it.

23 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
24 Thank you. No further questions, Mr. Chair.

25 **COMMISSIONER SCHEUER:** Thank you,



1 Commissioner Okuda. Further questions for Mr. Clay?  
2 Recognizing that we do have a full record in front  
3 of us already, Mr. Clay, can you clarify, however,  
4 for this meeting whether or not you testified on  
5 these matters before the County Planning Commission  
6 when they considered this Special Permit?

7 **MR. CLAY:** We considered doing so, but  
8 that study I referenced was still in progress. It  
9 was not yet complete so, no, we did not, to be  
10 clear.

11 **COMMISSIONER SCHEUER:** Okay. So I guess --

12 **MR. CLAY:** In the future, we would do  
13 that, yeah.

14 **COMMISSIONER SCHEUER:** So on these  
15 dockets, we are significantly limited to the record  
16 presented to us by the county.

17 **MR. CLAY:** Understood. Even if it's just  
18 for future consideration, that would still be  
19 beneficial.

20 **COMMISSIONER SCHEUER:** Thank you very  
21 much. Anything further? Seeing none, I'm going to  
22 move you back to being an attendee and admit Cameron  
23 Black.

24 If there's anybody else who wishes to  
25 testify, you should use the Raise Your Hand

1 function, indicating you wish to testify in this  
2 matter.

3 **MR. HAKODA:** Chair, this is Riley. We have  
4 one member of the public that is in transit,  
5 Sharlette Poe.

6 **COMMISSIONER SCHEUER:** Sharlette Poe I saw  
7 in the Q&A.

8 **MR. HAKODA:** Yes. She's requesting to  
9 testify as well, so she probably would be next up  
10 after Mr. Black.

11 **COMMISSIONER SCHEUER:** Okay. Good  
12 morning, Mr. Black. Do you swear or affirm the  
13 testimony you're about to give is the truth?

14 **MR. BLACK:** I do. Thank you.

15 **COMMISSIONER SCHEUER:** Okay. Hi. Name and  
16 address for the record, and then please proceed.

17 **MR. BLACK:** Sure. My name is Cameron  
18 Black, renewable energy program manager, Hawai'i  
19 State Energy Office. Our office address is 235 South  
20 Beretania Street, Honolulu 96815. I'm also not a  
21 doctor. Good morning, Chair Scheuer, commissioners,  
22 and everyone else out there.

23 Thank you for the opportunity to add to  
24 our written testimony. We also submitted testimony  
25 to the County Planning Commission.

1           There are many aspects to this project  
2 that must be considered under this SUP, but my  
3 testimony today is focused on the energy aspects of  
4 the project. I'll try not to sound too robotic as I  
5 read this.

6           Mr. Clay just mentioned the state's  
7 renewable energy mandate that requires Hawai'i's  
8 electric utilities, Hawaiian Electric and KIUC on  
9 Kaua'i, to sell 100 percent renewable energy to  
10 their customers by the year 2045.

11           In 2020, the state's utilities  
12 collectively achieved just over 36 percent renewable  
13 energy across the state, which is palatable. In  
14 2020, Hawaiian Electric here on O'ahu achieved  
15 almost 31 percent renewable energy generation. This  
16 is great progress, but this means we have to replace  
17 over 60 percent of O'ahu's fossil-fueled electricity  
18 in the next 23 years for O'ahu to reach 100 percent  
19 renewable energy by 2045.

20           Hawai'i is fortunate to have many  
21 renewable energy sources but, of course, no fossil  
22 fuel sources. Hawai'i's crude oil is offloaded to  
23 storage tanks in the O'ahu refinery area through  
24 floating offshore mooring systems about a mile off  
25 Barber's Point.

1           Once the crude oil is refined by the Par  
2 refinery at Campbell Industrial Park, products are  
3 loaded onto barges at Honolulu Harbor terminals and  
4 distributed to the other islands.

5           According to the U.S. Department of  
6 Energy, in 2019, over 90 percent of Hawai'i's crude  
7 oil came from Libya and Russia. Hawai'i has also  
8 gotten its crude oil form South Sudan, Argentina,  
9 Southeast Asia, and the Middle East.

10           In addition to the crude oil refined in  
11 Hawai'i, Hawai'i imports refined petroleum products  
12 such as jet fuel, propane, low sulfur diesel fuel  
13 from Asia, the Caribbean, and South America.

14           The constant importation of large volumes  
15 of fossil fuels poses a low risk of potentially  
16 devastating impact to Hawai'i's environment and  
17 ecologies.

18           Hawai'i's reliance on foreign countries  
19 also poses supply chain risks and subjects Hawai'i  
20 residents to global oil crises which fluctuate  
21 unpredictably and are forecasted to increase in the  
22 coming years.

23           O'ahu's only coal plant, the 180-megawatt  
24 facility at Campbell Industrial Park, provides about  
25 12 to 16 percent of O'ahu's electricity annually.

1 Much of the coal for this power plant comes from  
2 Indonesia. Coal mining operations in this country  
3 also cause rainforest destruction, water pollution,  
4 and air pollution.

5 I know I'm getting close to my two minutes  
6 here, so I'm going to get to the gist of my  
7 testimony.

8 The coal plant is scheduled to be retired  
9 on September 1st, 2022, and is prohibited by law  
10 from operating beyond December 2022. In addition, in  
11 2024, Hawaiian Electric is planning to retire two of  
12 its Waiiau fossil fuel generating units, totaling  
13 over 90 megawatts.

14 This means a considerable amount of  
15 O'ahu's fossil fuel generation must be replaced by  
16 renewable energy in the next four to five years to  
17 keep us on pace to meet our goals and maintain  
18 electrical grid reliability.

19 We believe the Mahi Solar Project is the  
20 critical project for energy transformation, given  
21 its role related to any of the coal use and  
22 petroleum for electricity in Hawai'i. Of the nine  
23 new utility solar projects being developed on O'ahu,  
24 the Mahi Project is the largest in capacity. The  
25 next biggest one on the Big Island and Maui is 60

1 megawatts.

2           If built, the project could provide about  
3 3.5 to 4 percent of O'ahu's annual energy needs at a  
4 fixed price for 25 years. Longroad and Hawaiian  
5 Electric recently notified or filed an amended PPA  
6 with the Public Utilities Commission, proposing to  
7 move up the project's development timeline to as  
8 early as July 2023 to help mitigate any potential  
9 grid reliability risk caused by the retirement of  
10 the coal plant, which also --

11           **COMMISSIONER SCHEUER:** Can I -- can I ask  
12 you to start to summarize?

13           **MR. BLACK:** Yeah. We hope this project  
14 receives your approval, and we ask that the LUC at  
15 least make a timely decision so that all involved  
16 can integrate your decision into all as we move  
17 forward as an island and a state. Thank you, Chair.

18           **COMMISSIONER SCHEUER:** Thank you very  
19 much. Questions for Mr. Black? Mr. Sakumoto?

20           **MR. SAKUMOTO:** No questions, Chair.

21           **MR. PANG:** No questions.

22           **MS. KATO:** No questions. Thank you.

23           **COMMISSIONER SCHEUER:** Commissioners? I  
24 have a quick one. Can you share with us any  
25 discussions that are made between your office and

1 the Department of Agriculture informally to talk  
2 about these sort of structural issues between  
3 renewable energy on ag lands and ag -- diversified  
4 agriculture?

5 Not specific to this project, but in  
6 general, what kind of coordination, cooperation, or  
7 discussions go on?

8 **MR. BLACK:** And Earl can supplement this,  
9 too, if he wants to.

10 You know, we've been talking about this --  
11 I've been at the energy office for 10 years, and  
12 there's been legislation introduced over the years  
13 that has, you know, increasingly sought to put solar  
14 on ag lands. So we've been talking for years.

15 I would say more recently, it's -- it's --  
16 we've tried to increase our communications with  
17 other agencies, too, that are involved. You know,  
18 Office of Planning has been involved. I think we all  
19 recognize the need for plotter planning.

20 You know, looking ahead, if we're going to  
21 meet our food and energy goals with the limited land  
22 space, especially on O'ahu, which has the most  
23 people, as we're all aware, thoughtful planning is  
24 going to be needed.

25 We also have other land use needs. The

1 commission is more aware than I am. So we are  
2 talking. We need to talk a lot more.

3 **COMMISSIONER SCHEUER:** Okay. Thank you  
4 very much. Anything further, commissioners? If  
5 not, thank you very much for your testimony. We  
6 appreciate it, and it assists us.

7 **MR. BLACK:** Thank you.

8 **COMMISSIONER SCHEUER:** I'm going to move  
9 you to be an attendee. Based on the indications she  
10 has given in the Q&A, I'm going to promote Shar Poe  
11 to be a panelist, hoping that this might be possible  
12 for her to give any testimony that she desired to  
13 give. Oh, great.

14 She has her hand up. Did I promote  
15 somebody else to panelist or --? No? Okay. There we  
16 go. You are admitted as a panelist, Ms. Poe. Aloha.  
17 You're muted, however.

18 **MS. POE:** Kala mai. I was on the road, so  
19 I just pulled over. I appreciate the accommodating  
20 my last-minute tasks.

21 **COMMISSIONER SCHEUER:** Thank you.

22 **MS. POE:** So good morning, Chair Scheuer.

23 **COMMISSIONER SCHEUER:** Hi. Do you swear or  
24 affirm the testimony you're about to give is the  
25 truth?



1 MS. POE: I do.

2 COMMISSIONER SCHEUER: Okay. Name and  
3 address for the record, and then proceed. Thank you  
4 so much.

5 MS. POE: My name is Sharlette Poe. I  
6 actually live in Wai'anae Moku, 85-1191 Kaneaki  
7 Street 96792.

8 Okay. All right. So mahalo. Although this  
9 project is not in our moku, right, I wanted to just  
10 really quickly testify just overall in the whole  
11 conversation about agriculture versus renewable  
12 energy versus even housing, the history for land  
13 use.

14 As you may or may not know, so in West  
15 O'ahu in Kalaeloa, the leaders submitted a letter to  
16 the Public Utilities Commission asking for a pause  
17 in the release of their CBRE RFP process. And the  
18 reason that was done was to include and incorporate  
19 much more engagement of community around what should  
20 and shouldn't be or could or should be considered in  
21 the entire RFP process when projects or, you know,  
22 the proposals, the request for proposals, go out to  
23 developers.

24 Very much touching upon what others have  
25 spoken to as far as making sure we retain good

1 quality agriculture lands even when it may be used  
2 for renewable energy, incorporating better design  
3 perhaps, right?

4 So some that have already been released  
5 don't incorporate those, but we're hoping that even  
6 with this Mahi Solar Project, right, that good  
7 considerations on integrating agriculture along with  
8 creating energy for our island is strongly  
9 considered.

10 So right now, in the letter we did some  
11 calculations -- actually, Cynthia Rezentes did --  
12 and from Central O'ahu to Ewa to Kaena right now, we  
13 produce or carry a 74 percent burden of renewable  
14 energy production. Okay. And that's also where  
15 majority of our good agriculture lands exist.

16 So we cannot have fighting between the  
17 uses of what we need; right? We have a state plan  
18 for 2045, 100 percent renewable energy, but we also  
19 import 80 percent or more of our food. So we need to  
20 look at -- we cannot eat energy; right?

21 We need to find good ways to incorporate  
22 all things. We want affordable housing for our  
23 people. We need land to build. We need to feed those  
24 people who want to get housed. We need land to grow.  
25 We need to keep essential functions running. We need

1 energy for that, but we need land.

2 The other thing, too, is looking at better  
3 ways that urban Honolulu can also participate and  
4 not only rely on agriculture lands for large-scale  
5 projects.

6 So in regards to this specific project, I  
7 do not have a -- I'm speaking as myself, not as  
8 neighborhood board; right? But good consideration  
9 goes to looking at how projects that come before  
10 Land Use Commission better integrate the use of  
11 agriculture with the energy so that there is a win-  
12 win situation. Win-win-win.

13 Okay. And that's all I have to say right  
14 now for this morning. I appreciate the time. Aloha  
15 aina malama pono.

16 **COMMISSIONER SCHEUER:** Mahalo.

17 **MS. POE:** I'm here if you have any  
18 questions.

19 **COMMISSIONER SCHEUER:** Mahalo nui.

20 Questions for Ms. Poe?

21 **MR. SAKUMOTO:** No questions, Chair.

22 **MR. PANG:** No questions.

23 **MS. KATO:** No questions. Thank you.

24 **COMMISSIONER SCHEUER:** Commissioners?

25 Commissioner Okuda, followed by Commissioner Chang.

1                   **COMMISSIONER OKUDA:** Thank you very much,  
2 Mr. Chair. And thank you, Ms. Poe, for giving your  
3 testimony. I just wanted to assure you that this  
4 commission takes very, very seriously community  
5 input.

6                   And as you probably are aware, one of the  
7 last major issues that have come before this  
8 commission involving our neighbors on the Wai'anae  
9 coast was the city's request to extend open-ended  
10 the Special Permit regarding the Waimanalo Gulch  
11 landfill.

12                   And without going over all of that, I  
13 think you might agree, and others might agree also,  
14 that many of us on the commission have serious  
15 concerns when, number one, community input is not  
16 considered or even listened to and, number two,  
17 negative public facilities seem to be foisted on  
18 only certain communities.

19                   So again, let me assure you that we take  
20 very seriously our duties under the law, and we do  
21 listen to the community. Thank you, Mr. Chair.

22 Thank you, Ms. Poe.

23                   **MS. POE:** Mahalo.

24                   **COMMISSIONER SCHEUER:** Thank you very  
25 much, Commissioner Okuda. Commissioner Chang?

1           **COMMISSIONER CHANG:** Hi. Aloha, Shar. Nice  
2 to see you.

3           **MS. POE:** Aloha, Dawn. Nice to see you,  
4 too.

5           **COMMISSIONER CHANG:** Thank you for being  
6 here this morning. I always appreciate your  
7 testimony.

8           Do you know whether Mahi Pono has  
9 completed their presentations to the neighborhood  
10 boards both in Mililani and Waipahu?

11           **MS. POE:** I don't know if they have done  
12 presentations to both boards out there, but I would  
13 hope they have; right?

14           **COMMISSIONER CHANG:** Yes.

15           **MS. POE:** Engaging the -- especially the  
16 immediate communities is imperative. And even  
17 sometimes the neighboring ones, when we share  
18 similar wants and needs for our communities. That  
19 does show a willingness to engage and really listen  
20 to communities when you go beyond what is, quote-  
21 unquote, expected and only written in black and  
22 white, so.

23           **COMMISSIONER CHANG:** Pololei. Mahalo,  
24 Shar. Thank you so much. I will ask the applicant  
25 that.

1 MS. POE: Mahalo.

2 COMMISSIONER CHANG: Take care, now.

3 Aloha.

4 MS. POE: Aloha.

5 COMMISSIONER SCHEUER: Anything further,  
6 commissioners?

7 If not, thank you very much. Thank you  
8 also for pulling to the side of the road. Just a  
9 relief.

10 MS. POE: Yes.

11 COMMISSIONER SCHEUER: Be safe and well.  
12 Thank you very much for your testimony. I'll move  
13 you back to being an attendee.

14 MS. POE: You all, too. Mahalo for all you  
15 folks, too.

16 COMMISSIONER SCHEUER: Are there any other  
17 members of the public who are attending this meeting  
18 who wish to testify at this time? If so, please  
19 raise your hand using the Raise Your Hand function  
20 of \*9. Going once, going twice.

21 Seeing no further testimony, I'm closing  
22 public testimony on this matter. And we have eight  
23 minutes to go before we take our next break. Are you  
24 able to begin your presentation, Mr. Sakumoto?

25 MR. SAKUMOTO: Yes, Chair.

1           **COMMISSIONER SCHEUER:** Please proceed.

2           **MR. SAKUMOTO:** Thank you. Good morning,  
3 commissioners. Randall Sakumoto, and with me today  
4 is my colleague, Brett Tobin. Thank you for -- for  
5 allowing us to make our presentation today.

6           We represent Mahi Solar LLC, an affiliate  
7 of Longroad Development Company in this Special Use  
8 Permit application.

9           Also in attendance online today are Mr.  
10 Darren Lawrence (phonetic) and Wren Wescoatt of Mahi  
11 Solar LLC, as well as Ms. Tracy Camuso and Kawika  
12 McKeague of G70.

13           Chair, if I may, I have a short slide  
14 presentation I would like to use, if that's  
15 acceptable.

16           **COMMISSIONER SCHEUER:** Yes. It is.

17           **MR. SAKUMOTO:** Okay. Thank you. I'm going  
18 to use the shared screen function now.

19           **COMMISSIONER SCHEUER:** Okay. Give it your  
20 best shot.

21           **MR. SAKUMOTO:** Okay. Thank you. Let's see.

22           **COMMISSIONER SCHEUER:** There we go.

23           **MR. SAKUMOTO:** I'm sorry. Just one second.  
24 Okay. All right.

25           The Mahi Solar Project requires approval

1 of a Special Use Permit to allow development of  
2 solar energy facilities on state-designated  
3 agriculture lands.

4 Since the project will be built on lands  
5 designated as agricultural and have a Land Study  
6 Bureau or OSB rating of B and C soils, approval of a  
7 Special Use Permit is required to be reviewed by the  
8 city Department of Planning and Permitting and by  
9 the County Planning Commission.

10 On July 29, 2021, the Planning Commission  
11 issued a decision and order approving Mahi Solar's  
12 application. Because the project is greater than 15  
13 acres, we are here before you today to respectfully  
14 request the approval of the State Land Use  
15 Commission to our application.

16 **MR. TOBIN:** Good morning, commissioners.  
17 This is Brad Tobin. The purpose of the project is to  
18 provide low-cost renewable energy in the form of  
19 solar electric power to Hawaiian Electric Company's  
20 existing power grid.

21 This 620-acre project is projected to  
22 generate a total of 120 megawatts of energy, which  
23 is enough to power approximately 37,000 O'ahu homes,  
24 or roughly 4 percent of the island's electricity  
25 annually, and the project is estimated to avert the



1 consumption of over 11 million barrels of oil at the  
2 same time.

3 As such, development of the project is a  
4 key component in moving the state forward toward  
5 achieving its Hawai'i Clean Energy Initiative goal  
6 of being 100 percent renewable to 2045. As Mr. Black  
7 testified earlier, timing is critical as the AES  
8 coal-fired plant, which currently provides 12 to 16  
9 percent of O'ahu's power, will be going offline in  
10 September of next year.

11 **MR. SAKUMOTO:** The project currently  
12 consists of actively farmed areas, undeveloped and  
13 fallow agricultural land, overgrown natural  
14 vegetation, and structures associated with farming  
15 and business operations.

16 After construction of the solar farm is  
17 completed, Mahi Solar will work with local farmers  
18 and ranchers to implement multiple different  
19 agriculture activities that will be co-located on  
20 the project.

21 A portion of the project is also  
22 designated as agricultural lands, Important  
23 Agricultural Lands, or IAL. Approximately 69.5 acres  
24 of the 620-acre project site is IAL. However, while  
25 these areas are not being actively farmed today,

1 Mahi Solar is looking to farm this area with new  
2 agricultural uses and food production, thereby  
3 increasing the use of IAL on the project site.

4 **MR. TOBIN:** Mahi Solar has conducted a  
5 considerable amount of community outreach in  
6 building this project, including holding well-  
7 attended virtual public meetings in July and October  
8 of 2020.

9 A designated webpage was created to  
10 provide public information about the project, and  
11 Mahi Solar also shared information to be  
12 communicated on the websites of Hawaiian Electric  
13 and the State Energy Office.

14 And to directly address the issues raised  
15 by Ms. Poe, presentations were made to the  
16 Mililani/Waipio/Melemanu Community Board -- or  
17 Neighborhood Board, rather the Kapolei/Makakilo  
18 Neighborhood Board, and the Waipahu Neighborhood  
19 Board, as well as to the Royal Kunia Community  
20 Association and to landowners in the Kunia Loa Ridge  
21 Farmlands.

22 Mahi Solar has also conducted extensive  
23 outreach with local residents, government officials,  
24 and key community stakeholders through presentations  
25 to individuals and groups, as well as one-on-one

1 interviews with cultural practitioners from the  
2 region.

3 **MR. SAKUMOTO:** With respect to state and  
4 county agencies, Mahi Solar has held online meetings  
5 with the Office of Hawaiian Affairs, the State  
6 Historic Preservation Division, the State Energy  
7 Office, the Department of -- State Department of  
8 Agriculture, and the City and County of Honolulu  
9 Department of Planning and Permitting.

10 Mahi Solar has also met more than once  
11 with the State Office of Planning and Sustainable  
12 Development, including our most recent meeting just  
13 last week on August 31st.

14 On that note, we received a copy of OPSD's  
15 position statement wherein they recommended three  
16 additional conditions should this commission be  
17 inclined to approve our application, and I'm pleased  
18 to say that we are in agreement with OPSD's  
19 recommended conditions.

20 **MR. TOBIN:** Mahi Solar is requesting that  
21 the Special Use Permit have a term of 39 years,  
22 which is based upon a term of three years of  
23 construction, 25 years of operation, 10 years for a  
24 possible extension, and then an additional 12 months  
25 of decommissioning.

1 With respect to decommissioning, a plan is  
2 attached to the Special Use Permit application as  
3 Appendix 1. The plan outlines Mahi Solar's  
4 obligation and commitment to complete the  
5 decommissioning by removing all of the PV panels,  
6 racks, foundational piles, and underground collector  
7 lines following the useful life of those components.

8 The decommissioning is expected to cost  
9 approximately \$5 million, and Mahi Solar will post  
10 financial security in the form of a bond, a letter  
11 of credit or similar instrument in favor of the  
12 landowners to ensure that sufficient funds will be  
13 available in the unlikely event Mahi Solar is unable  
14 to complete the decommissioning on its own.

15 **MR. SAKUMOTO:** That concludes our  
16 presentation this morning. We would be happy to  
17 answer any questions that the commission may have.

18 In addition to our team members from Mahi  
19 Solar and G70, we also have with us online today  
20 several of our expert consultants in the areas of  
21 archaeology, culture, glare, and construction. We  
22 also have, I believe, several of the landowners who  
23 are -- whose properties we will be leasing as part  
24 of this project. That's -- that's all I have today.  
25 Mahalo, Chair.

1           **COMMISSIONER SCHEUER:** Thank you. And it's  
2 9:50 a.m., so I'm going to call for a 10-minute  
3 recess. We will resume at 10:00 on the button for  
4 questions for you, Mr. Sakumoto. Thank you very  
5 much. Go ahead and recess.

6           **(Recess taken from 9:50-10:00 a.m.)**

7           **COMMISSIONER SCHEUER:** 10 a.m. Let's  
8 resume. We've received the presentation from the  
9 applicant. Questions from the commission. Questions  
10 from the commissioners for the applicant.

11           **COMMISSIONER GIOVANNI:** Commissioners  
12 first for the applicant?

13           **COMMISSIONER SCHEUER:** Sorry. That's what  
14 I said.

15           **COMMISSIONER GIOVANNI:** Yeah. Okay.

16           **COMMISSIONER SCHEUER:** Do you have  
17 questions? Any questions? Commissioner Giovanni?

18           **COMMISSIONER GIOVANNI:** Yeah. Thank you.  
19 Thank you, Mr. Sakumoto, for your presentation. And  
20 I especially appreciate the brevity of it and on  
21 point. I have a couple of questions starting with  
22 the power purchase agreement.

23           Can you confirm the status of that power  
24 purchase agreement? Has it been -- it's been  
25 approved and it's unappealable by the PUC?

1           **MR. SAKUMOTO:** Yes. It has been approved,  
2 as far as I know. Oh, I'm sorry. Okay. Yes. It has  
3 been approved.

4           **COMMISSIONER GIOVANNI:** Is it --

5           **MR. SAKUMOTO:** I do not know off the top  
6 of my head what the appeal period is, but my client  
7 is telling me now that it -- that the appeal period  
8 has passed.

9           **COMMISSIONER GIOVANNI:** That's my  
10 expectation as well. Can you confirm if the term of  
11 the project that's approved per the term of the  
12 power purchase agreement? I think you said 25 years.

13           **MR. SAKUMOTO:** Yes. So I believe it's 25  
14 years.

15           **COMMISSIONER GIOVANNI:** So this power  
16 purchase -- this project was selected through a  
17 competitive process for utility-scale projects by  
18 the Hawaiian Electric Company, and that competitive  
19 process required projects of a term of 20 to 25  
20 years. Is that your understanding?

21           **MR. SAKUMOTO:** Yes.

22           **COMMISSIONER GIOVANNI:** And does this  
23 power purchase agreement have an evergreen clause  
24 for extension or renewable, or is your expectation  
25 that you would have to participate in a future

1 competitive process to get an extension?

2 **MR. SAKUMOTO:** My understanding is it's  
3 extendable by mutual agreement.

4 **COMMISSIONER GIOVANNI:** It is? That would  
5 be unusual. Can you confirm that?

6 **MR. SAKUMOTO:** I would be happy to confirm  
7 it. Yes.

8 **COMMISSIONER GIOVANNI:** Is it your  
9 intention if you do seek an extension, to only limit  
10 that to 10 years?

11 **MR. SAKUMOTO:** The permit that we're  
12 seeking is for 39 years, which would only allow a  
13 10-year extension of the 25 years.

14 **COMMISSIONER GIOVANNI:** Yeah. My concern  
15 is the following. Let me give you a little  
16 perspective. Using these Important Agricultural  
17 Lands, or any agricultural lands, for solar projects  
18 that have a limited term, we're very interested --  
19 the commission is very interested that the land be  
20 returned to active agriculture should the solar  
21 project terminate.

22 And having an open-ended 10-year period  
23 with uncertainty about whether it's going to be  
24 extended or not and will that agriculture come --  
25 what we don't want is a dinosaur sitting on the

1 property for 10 years where there's no solar and  
2 there's no agriculture.

3 So the way the commission has addressed  
4 these for other projects is that it's conditioned an  
5 extension based off the project developer securing  
6 an extension to the PPA. And typically, that's  
7 through another competitive process. And what we've  
8 heard from other developers is that it all works  
9 best if it's another 20 to 25 years.

10 So I don't want to get into a situation  
11 where this whole matter has to come back to the LUC  
12 because you want an extension of 20 years and you  
13 only have for 10, or vice versa. You don't get an  
14 extension, and yet the land's not tied up.

15 So we're trying to facilitate termination  
16 conditions on the end of these permits that is  
17 consistent with how we expect the projects to  
18 unfold. Do you have a comment on that?

19 **MR. SAKUMOTO:** My initial reaction to that  
20 is is that the permit that was approved -- that was  
21 applied for and approved by the City and County of  
22 Honolulu Planning Commission was for 25 years, but  
23 with only the possibility of a 10-year extension.

24 So it contemplated 39 years total when you  
25 added in the construction period at the front end



1 and the decommissioning process at the back end. So  
2 the approval that we have right now wouldn't allow  
3 us to go beyond the 10-year extension, if that was  
4 what you're asking.

5 **COMMISSIONER GIOVANNI:** Yeah. I'm trying  
6 to figure out where this 10-year came from, because  
7 I've never heard of it before. Sounds like it's  
8 coming from the County Planning permit; is that  
9 right?

10 **MR. SAKUMOTO:** We had requested a 10-year  
11 extension possibility, and the County Planning  
12 Commission approved it. My assumption is that that  
13 is probably based on the useful life of these  
14 projects, you know, beyond the 25 years.

15 And as you say, the technology that is  
16 being utilized, you know, at that point, the project  
17 -- I don't know that it would perform at the same  
18 level beyond 35 years that it's expected to.

19 **COMMISSIONER GIOVANNI:** What typically  
20 happens is that the panels or the batteries are  
21 augmented. That's the conventional term by which the  
22 underperforming portions are replaced with new and  
23 better.

24 So they basically can be designed and  
25 operated for an indefinite life. So is your project

1 developer there as part of your team today? Can they  
2 address this from their perspective?

3 **MR. SAKUMOTO:** Yes. they are -- they are  
4 with us, and if you wish, they would be more than  
5 happy to respond to this question directly.

6 **COMMISSIONER GIOVANNI:** Yeah. I'd like  
7 them to respond directly to their view and their  
8 plans for extension, because at the pricing -- we've  
9 heard from other developers that without extensions,  
10 the overall financial aspects of the project are in  
11 question, so extensions are often sought.

12 So we'd like to understand their project  
13 philosophy and their vision for this project beyond  
14 the 25-year term.

15 **MR. SAKUMOTO:** Understood.

16 **COMMISSIONER SCHEUER:** Who should be  
17 responding to that question, Mr. Sakumoto?

18 **MR. SAKUMOTO:** Mr. Wren Wescoatt, Chair.

19 **COMMISSIONER SCHEUER:** Okay. He has his  
20 hand raised. Thanks. Raised, thank you. You've been  
21 promoted to be a panelist. When you are in, if you  
22 would enable your audio and video, I will swear you  
23 in.

24 **MR. WESCOATT:** Aloha, Chair. Aloha.

25 **COMMISSIONER SCHEUER:** Do you swear or

1 affirm the testimony you're about to give is the  
2 truth?

3 **MR. WESCOATT:** I do.

4 **COMMISSIONER SCHEUER:** Okay. Did you hear  
5 the question from Commissioner Giovanni?

6 **COMMISSIONER GIOVANNI:** Yeah. Aloha, Wren.  
7 Good to see you again.

8 **MR. WESCOATT:** Hello again.

9 **COMMISSIONER GIOVANNI:** Can you -- can you  
10 share with us, Wren, kind of your long-term vision  
11 for this project beyond the -- beyond the guaranteed  
12 term of the existing PPA?

13 **MR. WESCOATT:** Absolutely. As you're  
14 aware, Hawaiian Electric provides contracts for a  
15 25-year term. That's really the longest term.  
16 Typically, the solar equipment PV, the solar panels  
17 themselves, are designed to have about a 35-year  
18 lifetime, some more, some less. But that's sort of  
19 the design life.

20 So projects are usually financed over a  
21 term of 35 years. And the way that goes back to the  
22 PPA is -- well, there's not an evergreen clause or,  
23 like, a clause in there that says we can optionally  
24 have a 10-year extension.

25 The thinking, the sort of a consensus

1 thinking in the industry, is that the projects -- we  
2 can seek an extension assuming the project is still  
3 productive. So what we would do is go back to  
4 Hawaiian Electric and work on a mutual agreement to  
5 seek an extension of the project. This -- it's not --  
6 - you know, we're still -- all these contracts are  
7 really early, so they haven't really come up to  
8 that.

9           Some of the older wind projects are going  
10 to be facing this soon, where they can still go for  
11 another five years, so they're going to, you know,  
12 seek extensions. We would plan to do the same thing.

13           Again, it's -- you know, this is really  
14 just sort of that -- that is the plan for the  
15 project. There's not a specific term in the PPA, but  
16 as soon as the power purchase agreement ends, the  
17 project's no longer productive, and the contract is  
18 over, we have only 12 months to decommission  
19 everything. So we have to remove everything in the  
20 project required by the power purchase agreement as  
21 soon as it's done.

22           So no -- you know, the plan would be --  
23 and our leases do the same thing. So as soon as  
24 we're done, the project is no longer productive, we  
25 have to remove everything.

1                   **COMMISSIONER GIOVANNI:** So a couple of  
2 points there I just want to confirm. And what you  
3 said is consistent with my understanding and  
4 perspective, so thank you for that.

5                   So if the PPA is not extended, but yet you  
6 have 12 to 15 years left on the permit, what you  
7 described was you are obligated to do the  
8 decommissioning within 12 months or so of the PPA  
9 ending, and you could not have -- you cannot wait  
10 until the end of the latter part of the permit that  
11 we might grant. Is that correct?

12                   **MR. WESCOATT:** That's correct. That's  
13 correct.

14                   **COMMISSIONER GIOVANNI:** And Mr. Sakumoto  
15 said that the -- his understanding was the PPA had  
16 an explicit provision for mutual consideration or  
17 negotiation of an extension. Is that -- sounds a  
18 little different than what you said.

19                   **MR. WESCOATT:** Yeah. You know, I -- and --  
20 and, you know, this is my quick text to him while  
21 trying to answer your questions. So, no, the PPA  
22 doesn't have a specific provision that specifies  
23 this is how an extension would be done.

24                   We would just seek an extension and -- and  
25 seek a mutual agreement and propose an extension

1 that would have to be approved by the commission.

2 **COMMISSIONER GIOVANNI:** Correct. And that  
3 would be you should be seeking a bilateral  
4 negotiation as opposed to --

5 **MR. WESCOATT:** That's correct. A  
6 competitive process; right. Yeah, we would -- we  
7 would be a -- proposing a bilateral extension as  
8 opposed to another competitive process.

9 **COMMISSIONER GIOVANNI:** So if the  
10 bilateral negotiation is declined -- and I've seen  
11 many of them declined because they want to still  
12 subject it to a competitive process, and you're  
13 obligated to go again for another 20-years-plus  
14 competitive process -- do you envision that this  
15 project could be configured to extend 20 years,  
16 possibly?

17 **MR. WESCOATT:** I don't know the life of  
18 the panels. My -- my gut instinct would say probably  
19 not. But, yeah, I would think probably not.

20 **COMMISSIONER GIOVANNI:** Okay. Fair enough.  
21 Thank you, Wren. Good to see you. I have no further  
22 questions on this -- on that part of it.

23 **MR. WESCOATT:** Thank you, Dan.

24 **COMMISSIONER GIOVANNI:** Yeah. Thank you.

25 **COMMISSIONER SCHEUER:** Thank you,

1 Commissioner Giovanni. Any further questions at  
2 this time for the applicant?

3 **COMMISSIONER GIOVANNI:** No. I'm good.

4 Thank you.

5 **COMMISSIONER SCHEUER:** Okay. Commissioner  
6 Chang, followed by Commissioner Cabral.

7 **COMMISSIONER CHANG:** Thank you very much,  
8 Mr. Chair. Good morning, Mr. Sakumoto. I just have  
9 a couple of questions. And thank you for clarifying  
10 that you -- presentations were actually made by Mahi  
11 Solar. I apologize. I think I might have referred to  
12 it as Mahi Pono, but Mahi Solar.

13 So could you -- so you confirm that  
14 presentations were made. Were any actions taken by  
15 the neighborhood boards to either support, oppose,  
16 or no actions were taken?

17 **MR. SAKUMOTO:** Commissioner Chang, if you  
18 are okay with this, I would like to ask Mr. Wescoatt  
19 to answer that question. He actually made the  
20 presentations to the neighborhood boards. He was  
21 personally present, so I think he can answer that  
22 directly, if that's all right.

23 **COMMISSIONER CHANG:** Yes. That's fine.

24 **MR. WESCOATT:** Aloha, Commissioner Chang.

25 **COMMISSIONER CHANG:** Nice to see you, too,

1 Wren. Aloha.

2 **MR. WESCOATT:** Nice to see you. I did make  
3 presentations a couple of times to the Mililani  
4 Neighborhood Board, also the Waipahu Neighborhood  
5 Board, and the Kapolei/Makakilo Neighborhood Board.

6 None of the boards took action. There were  
7 some questions that I responded to about just --  
8 just in general, impacts of the project, but no  
9 actions were taken.

10 **COMMISSIONER CHANG:** Okay. And the  
11 questions that were raised, you were able to either  
12 address them or you -- to their satisfaction?

13 **MR. WESCOATT:** I believe so. They were all  
14 answered during the meetings.

15 **COMMISSIONER CHANG:** All right. I  
16 appreciate that. Thank you. And I will leave this,  
17 whether it's you, Wren, or Mr. Sakumoto.

18 You know, we heard testimony from Shar  
19 Poe, who talked about, disproportionately, these  
20 communities are being impacted by these large  
21 projects.

22 Has there been -- were the considerations  
23 or are there any other kind of community benefits  
24 that are being provided to this community or the  
25 surrounding area, given the size and the nature of



1 this project?

2 **MR. WESCOATT:** Yes. We have extensive  
3 conversations with folks in the community. With each  
4 project that we do, our approach is there's not one  
5 solution that fits everybody. Each community has  
6 their own concerns.

7 So in the community by and large, and I'm  
8 speaking very broadly, in the Kunia corridor, most  
9 of the concerns were about agriculture. This is an  
10 agricultural area. Lot of farmers and their families  
11 live here, and they wanted to ensure that  
12 agricultural work was going to continue.

13 And so what we have -- so the -- the  
14 community benefits from this project include support  
15 for agriculture to continue, much of what we're  
16 talking about today in different ways on the solar  
17 project so that different types of farming can be  
18 pursued that are compatible with solar, and -- and  
19 that was most -- most people's concerns were whether  
20 that could still continue on the land.

21 And then we've -- we also provide support  
22 to -- I guess we're contracting with HARC to do  
23 research on our -- on the agriculture program, and  
24 then also supporting the Hawaii Ag Foundation.

25 **COMMISSIONER CHANG:** Very good. Thank you.

1 And I appreciate that Mahi Solar customizes the  
2 community benefits for that particular community, as  
3 you're absolutely correct, not one size fits all.

4 Let me ask you with respect to continuing  
5 the agriculture so that it can co-exist with the  
6 solar project, what kind of -- well, have you  
7 entered into any kind of an agreement with potential  
8 farmers to -- to continue to farm on this land with  
9 the solar?

10 **MR. WESCOATT:** So far, we have not entered  
11 into any agreements. We have four or five farmers  
12 that have already expressed interest in different  
13 types of projects on the property, but we're --  
14 we're waiting.

15 Before we start those agreements, we -- a  
16 few things need to happen. We need to, you know,  
17 receive permits like this. We need to ensure the  
18 project's going to get built.

19 We want to also -- we're very --  
20 everyone's very interested in the research that HARC  
21 is doing at an existing solar farm to find out what  
22 works well in Hawai'i, including -- and they're  
23 going to be testing hydroponic lettuce. They're  
24 going to be testing several different crops that  
25 grow under existing solar panels to -- to find out,

1 as Stevie Whalen said, what works. What works here?

2 And so all of those components are going  
3 to precede so that everyone's sort of educated  
4 before we get have agreements signed. But that's the  
5 intention, is eventually to sign agreements with  
6 farmers for the sections of the solar project.

7 **COMMISSIONER CHANG:** Can you -- can you  
8 briefly describe some of -- you said no agreements,  
9 but you've had some conversations. What kinds of  
10 proposed agricultural use have you had conversations  
11 on?

12 **MR. WESCOATT:** Farmers are interested in  
13 doing several different types of agricultural  
14 projects, including sweet potato. And envision the  
15 solar panels, right, just sort of practically. You  
16 want something that's going to grow well in partial  
17 sun, not full -- doesn't need full sun, and then  
18 also things that aren't going to grow too tall that  
19 would shade the panels, like corn or something like  
20 that.

21 So these include -- farmers are interested  
22 in trying -- growing sweet potatoes, lettuce, mint,  
23 basil, alfalfa, and legumes as a -- as a high-  
24 nutritious cattle feed or livestock feed, as well as  
25 some livestock. Our goal is to, with this whole

1 project, is to move beyond the previous projects,  
2 where sheep were planned. And those are doing very  
3 well, but we want to move further on this project  
4 and -- and do more types of agriculture, including  
5 farming.

6 Also, in the photo I've not too subtly put  
7 up behind me, we're also looking at sections of  
8 flowering plants to really pollinate -- for  
9 pollinator-friendly plants, so that we can have  
10 honey production. So that's another interest.

11 **COMMISSIONER CHANG:** I appreciate that.  
12 You got my attention with the flowers in the  
13 background. I was hoping you were continuing to  
14 explore that.

15 Now, what is -- when you design the  
16 panels, did you take into consideration the co-  
17 existent use so that it is -- it is feasible for  
18 agricultural production to occur underneath the  
19 panels?

20 **MR. WESCOATT:** We did. The panels are  
21 spaced so that small farm equipment can be used  
22 between the panels -- not the really big stuff, but  
23 small equipment. And then we also are talking with  
24 farmers, brought them out to existing solar farms to  
25 look at what happens.

1           These panels are tracking, so they move  
2 throughout the day. So if you imagine a long table  
3 that sort of turns at an angle, say 45 degrees in  
4 the morning facing east, so the farmers can work on  
5 one side of the panels, and then in the evening be  
6 it facing west, so they can work on the other side.

7           So those are things we've talked with  
8 farmers about to make sure that -- that it's -- it's  
9 workable. And again, it's not for everything. This  
10 is not like a wide-open field; right? There has to  
11 be some considerations. But, you know, several  
12 farmers already have indicated an interest, and we  
13 think with the incentive of the sort of the cheap  
14 land and the cheap water, that we're going to get --  
15 incentivize farmers to -- more farmers to -- to work  
16 on this project.

17           **COMMISSIONER CHANG:** I appreciate the  
18 thoughtful considerations and the outreach that  
19 you've done. With respect to the infrastructure, are  
20 you providing sufficient -- will you have sufficient  
21 water for -- for the farmers?

22           **MR. WESCOATT:** Yes. We'll be providing  
23 water, both the water and land, at a very nominal  
24 cost, so that there will be adequate water for  
25 farmers, depending on what they want to farm.

1           **COMMISSIONER CHANG:** That's the one. And I  
2 know for a lot of farmers, having, you know, storage  
3 facilities, refrigerated storage facilities,  
4 cleaning facilities -- will you guys consider  
5 working with them on providing those kinds of  
6 infrastructures on the property, if requested?

7           **MR. WESCOATT:** So far, we've only talked  
8 about water, fencing, you know, for security. That's  
9 also a big concern. Farmers lose a lot of equipment  
10 that walks off, so that's a big concern. So all  
11 these areas will be fenced. They'll have -- the  
12 roads will all be improved, so we use existing farm  
13 roads and plus some additional roads to access  
14 within the fenced areas.

15           We haven't discussed yet refrigeration  
16 facilities or other types of things, but we're --  
17 we're planning to provide some startup funding for  
18 farmers so that they can purchase equipment.

19           **COMMISSIONER CHANG:** I'm -- I'm very  
20 confident that Mahi Solar, you've invested a lot of  
21 time to work with these farmers, that you'll make  
22 the right decisions on that.

23           And I appreciate the decommissioning and  
24 that you guys are proactively -- you have accepted  
25 that, and you are providing a source of funding for

1 that, or are committing to providing funding. Let  
2 me -- final question. On this project, are you  
3 displacing any existing farmers?

4 **MR. WESCOATT:** On some of the property --  
5 so the answer is yes. Some of the property will be  
6 converted from -- so about approximately, as you may  
7 have seen in the slides, about 50 percent of the  
8 land is being farmed, and about 50 percent is not.

9 So on the 50 percent that is, most of that  
10 is seed corn. So there won't be any more seed corn.  
11 On the remaining section, which is sort of  
12 diversified agriculture, we will be installing PV in  
13 -- in areas where there's diversified agriculture,  
14 so those -- but those same farmers have asked if  
15 they can continue to do some of the sweet potato and  
16 the mint and the basil under the solar project, so  
17 temporarily during construction.

18 But then the whole area that's used for  
19 the solar farm will be eventually be used for  
20 farming of one kind or another.

21 **COMMISSIONER CHANG:** Okay. So basically,  
22 what you're saying is the farmers that are -- that  
23 are diversified ag currently on the property, you  
24 are trying to accommodate them both during the  
25 construction as well as long term, once the solar

1 panels are up.

2 All right. That's excellent. Thank you so  
3 much, Wren. I greatly appreciate your responses, as  
4 that's been very helpful. Mahalo.

5 **MR. WESCOATT:** Mahalo.

6 **COMMISSIONER SCHEUER:** Thank you very  
7 much. Commissioners, further questions for the  
8 applicant at this time? Commissioner Wong --  
9 Cabral, followed by Wong.

10 **COMMISSIONER CABRAL:** Yes. Thank you. This  
11 would be for Mr. Wescoatt.

12 Since so much of the success of this  
13 entire project -- really, the greater success of it  
14 is going to be hinged on the number of years that  
15 you can maximize in productivity, which also, of  
16 course, has to do a lot with the less amount of  
17 maintenance or problems that you might have along  
18 the way allows for more years of even marginal  
19 productivity towards the later years.

20 In your design and the way that you  
21 construct these, especially since I'm -- I'm not --  
22 don't manage any that have -- that pivot like you're  
23 discussing, when you're wiring all your under the  
24 panel wiring in that, is that all going to be in  
25 place in conduits?



1 Is it set up to do that? Or is that just  
2 all, like, a direct burying kind of lines that the  
3 wiring goes from panel to panel? Or is it all going  
4 to be protected in a conduit in the construction  
5 design?

6 **MR. WESCOATT:** I believe most of it will  
7 be direct bury, but some will be in conduit.

8 **COMMISSIONER CABRAL:** Okay. I really -- I  
9 have several panels, large buildings in Hilo, some  
10 of which are oceanfront. I'm going to tell you  
11 identical situations. Everything's identical except  
12 those that are -- are direct wiring without the  
13 conduits are already, at age 12 years, having  
14 problems, where the other ones are not.

15 And that's the only thing, that its -- its  
16 differential is that wiring. And so it's impacting,  
17 obviously, production, because one panel never goes  
18 out -- it's a whole bank of them when something goes  
19 wrong.

20 So you might want to really look at that,  
21 because doing that after the fact is a whole lot  
22 harder. Anyway, just question -- advice. Thank you.  
23 Good luck.

24 **MR. WESCOATT:** Thank you. Thank you very  
25 much. I'm writing that down right now.

1           **COMMISSIONER CABRAL:** Okay. Thank you.

2           **COMMISSIONER SCHEUER:** Thank you very  
3 much, Commissioner Cabral. Commissioner Wong?

4           **COMMISSIONER WONG:** Thank you, Chair. Mr.  
5 Wescoatt, I'll ask a question about the battery that  
6 you're also going to put up, the BESS. Will it also  
7 have a fencing around the BESS itself as a separate  
8 venting system, or will it have, you know, just as a  
9 whole? How will it be set up?

10           **MR. WESCOATT:** Yes. The BESS, the battery  
11 energy storage system nicknamed the BESS, will be --  
12 will have its own fence around the BESS facility. It  
13 will also include the -- I believe the one fence  
14 goes around the BESS facility and the substation. So  
15 I believe those two will be contained in one trans.  
16 And because that's high voltage, I believe there's  
17 going to be -- yeah, I believe that fence is maybe  
18 eight feet tall.

19           **COMMISSIONER WONG:** Yeah. I just worried,  
20 you know, because if I was a kid, I would jump over  
21 or something and try to play rocks. But thank you  
22 for your answer. Thank you, Chair.

23           **COMMISSIONER SCHEUER:** Commissioners,  
24 further questions for the applicant at this time? I  
25 apologize. I have five questions for you, some of

1 which have some questions.

2 So I'll address these to Mr. Sakumoto,  
3 and you can decide who should respond to these. The  
4 first of my questions has to do with my awareness  
5 that some of the water provided to this property  
6 comes from the Waiahole Ditch.

7 And the original Waiahole Ditch case  
8 which, you know, I'm one of those people with that  
9 Ph.D., and I wrote my dissertation about the  
10 Waiahole Ditch case.

11 You know, the landowners at the time were  
12 arguing that they absolutely needed as much water as  
13 possible to continue to be able to farm this land,  
14 but now we're seeing this land converted to some  
15 other uses, albeit with what is proposed to have  
16 complementary agricultural uses.

17 Is there anything in your information that  
18 you've provided to the Planning Commission that  
19 looks at whether the water allocation needs have  
20 changed and, if so, whether there is a reduced need  
21 for water because of the change in use, and how that  
22 would be then communicated to the State Water  
23 Commission in its need to balance off-stream and  
24 downstream uses?

25 **MR. SAKUMOTO:** Thank you, Chair. I think

1 Mr. Wescoatt of our team probably could answer that  
2 question best. To you.

3 **MR. WESCOATT:** Aloha, Chair. Thank you for  
4 the question. We are planning to use -- so -- so  
5 we're planning to use water from the -- primarily  
6 water from the Kunia Water Association. So we  
7 haven't done any further research of using Waiahole  
8 Ditch water.

9 We are -- regarding the -- we have not  
10 done any further calculations based on planned uses,  
11 because we still aren't exactly sure which areas or  
12 how many acres are going to be in which type of  
13 production. So we have not done that.

14 **COMMISSIONER SCHEUER:** Okay. So my concern  
15 is that, you know, at one point, 20 now years ago,  
16 Planning said, no, we need all this water, and  
17 indeed most of the water was unrewarded. And now  
18 it's, like, oh, we're changing it, but we're not  
19 sure exactly what we're going to use.

20 You know, commitments were made at the  
21 time the water allocations were made to secure that  
22 water, that this was necessary for long-term  
23 successful agriculture on these lands. So I just --  
24 I'll leave that, but I have these concerns.

25 My next question, two of the five, has to

1 do with Important Agricultural Lands. And again,  
2 I'll turn to you, Mr. Sakumoto.

3 And I have three parts to this. The first  
4 part is certain of these panels, according to your  
5 application, are going to be located on lands that  
6 this commission has previously designated by  
7 landowner petition as Important Agricultural Lands.

8 When landowners come to us for the  
9 designation of IAL, they often come in with a  
10 request to designate 51 percent of their lands so  
11 that they are then ineligible to have further lands  
12 put into IAL by the counties.

13 With the fact that now for a very long  
14 period of time, albeit temporary, these lands will  
15 not be under the uses which IAL envisions, is this  
16 going to affect any calculation of what percentage  
17 of lands each landowner has under IAL and whether or  
18 not the counties would be therefore able to  
19 designate or propose further designation of IAL  
20 lands on these landowners' lands?

21 **MR. SAKUMOTO:** I think the answer --

22 **COMMISSIONER SCHEUER:** Long question. Long  
23 question.

24 **MR. SAKUMOTO:** Yeah. That's a long  
25 question. I think your question, Chair, is it sounds

1 like it's premised upon the assumption that the use  
2 of these lands for a solar facility would preclude  
3 the co-use of the lands for agriculture, because you  
4 said that it would not be consistent with IAL  
5 contemplated uses. Did I misunderstand you?

6 **COMMISSIONER SCHEUER:** No, no. That's  
7 correct. And at least in my now going on eight and  
8 final year of the commission, I've never heard an  
9 IAL application come to us saying, by the way, what  
10 we're actually planning to do on these IAL lands is  
11 a solar farm. You know, we never get pictures of  
12 solar farms. We get pictures of crops, not panels.  
13 So it's not always envisioned.

14 **MR. SAKUMOTO:** I think that the answer to  
15 that -- the first Special Use Permit that I worked  
16 on with Mr. Wescoatt was about six years ago. It was  
17 in -- on the North Shore. And actually, most of that  
18 land was IAL already, you know, from the very start.

19 And the approval was given for the permit  
20 based upon the fact that there was going to be  
21 legitimate agricultural use of the property. So the  
22 existence or the fact that it was IAL did not  
23 preclude the Planning Commission from approving it  
24 or then the State Land Use Commission.

25 And they did it based upon the bona fides

1 of an agricultural plan that at that time, six years  
2 ago, involved the grazing of sheep. And there was a  
3 backup plan that we were required to have in case  
4 that plan didn't work, where we would -- we would  
5 have a bee -- it was a honeybee production  
6 operation.

7 But I guess my point is I -- I don't think  
8 that the solar panels -- I mean, that basically is  
9 the, to me, one of the big benefits of this Mahi  
10 Solar Project, is that we think that we can find a  
11 way for the agricultural use of the land, including  
12 food production, to coexist with the panels.

13 So I don't think that our uses are going  
14 to be inconsistent. And quite the contrary, I think  
15 they will be exactly consistent with the IAL intent.

16 **COMMISSIONER SCHEUER:** So you would agree  
17 that nobody's ever come to us with an IAL proposal,  
18 to your knowledge, that said, by the way, what we're  
19 going to do here is PV farm.

20 **MR. SAKUMOTO:** Well, we -- we did that, I  
21 mean, six years ago, and it was -- it was a solar  
22 energy facility of about 300 acres, and --

23 **COMMISSIONER SCHEUER:** At the point of  
24 seeking IAL designation.

25 **MR. SAKUMOTO:** I'm sorry? At the point --?

1                   **COMMISSIONER SCHEUER:** When -- when  
2 landowners have come to us seeking IAL designation,  
3 have they said, by the way, what we're really doing  
4 on this IAL is a photovoltaic farm?

5                   **MR. SAKUMOTO:** In that case, it was  
6 already IAL designated.

7                   **COMMISSIONER SCHEUER:** That's -- that's  
8 what I'm -- but I'm saying at the point of seeking  
9 designation as IAL.

10                  **MR. SAKUMOTO:** Yes. And so my  
11 understanding is on this property, the 69.5 acres  
12 that is in IAL was pursuant to separate IAL  
13 petitions that were, you know, voluntarily filed by  
14 the landowners, and there are also additional lands  
15 that are being considered by the city at this point  
16 in their IAL process to, you know, also add on as  
17 IAL lands. But those are not under, you know, any  
18 voluntary application.

19                  **COMMISSIONER SCHEUER:** Right. So part of  
20 my question, and I'll just leave it out there for  
21 now, is that, at least in some of these cases, if I  
22 recall correctly, the amount of land each landowner  
23 set aside as IAL precluded the city from further  
24 designating. And so my question is if this land is  
25 now under PVs, should that change the designation?



1 You mentioned the pending county docket.  
2 This is a question, but it, perhaps, is more of a  
3 comment. But we had at least one full day of  
4 testimony, eight hours, from individual small  
5 landowners concerned about the impact on their  
6 proposed uses.

7 And they were feeling that their proposed  
8 uses, if designated as IAL, would preclude them from  
9 using their lands, yet here we're going to  
10 potentially allow a PV project to be used on their  
11 lands.

12 Do you believe that this raises any issues  
13 of at least perceptions of equity for small  
14 landowners on O'ahu, the equity of the IAL process?

15 **MR. SAKUMOTO:** Well, I guess two things.  
16 First of all, I can't speak for the landowners  
17 themselves, because I represent just the lessee of  
18 the land, who has a temporary use of this property.  
19 But I think that our commitment to the agricultural  
20 use of the property is, I think, a fundamental part  
21 of the LUC's approval.

22 In other words, you are going -- you know,  
23 if you do choose to approve it, it would be based on  
24 the fact that we have made this commitment to the  
25 commission to pursue this agricultural plan. So it

1 isn't as if you're approving it with no agricultural  
2 component at all, and just solely as a solar farm.

3 **COMMISSIONER SCHEUER:** Thank you. That  
4 transitions perfectly to the third part -- third and  
5 final part of my second question on IAL. Would you  
6 respond to the testimony from Mr. Clay suggesting,  
7 if I understood him correctly, that we should  
8 condition our approval on actual success rather than  
9 promises to move toward success, to paraphrase him?

10 **MR. SAKUMOTO:** I'm not sure I understood  
11 what -- what was being proposed. Actual success --

12 **COMMISSIONER SCHEUER:** I mean, if I -- if  
13 I understood what Mr. Clay was testifying to -- and  
14 there is a distinct possibility I did not -- but I  
15 believe he was suggesting that the LUC should not  
16 just say, hey, we want to do these things, but  
17 actually should condition our approval somehow on  
18 demonstrated success on a year-to-year basis.

19 So we can start with did I misunderstand  
20 Mr. Clay, according to your understanding?

21 **MR. SAKUMOTO:** I think I -- that probably  
22 is consistent with what I heard him say. My reaction  
23 to that is, you know, the commission, as do all of  
24 us, need to -- need to follow the law. And I think  
25 that the proposal that -- the project that we are

1 putting forth comprised of the law.

2           You know, it -- it -- the law requires us  
3 to make available the land for farmers to lease at  
4 no more than 50 percent of the market lease rent,  
5 which we are doing. We are going beyond that to  
6 offer, as -- as Mr. Wescoatt said, water at a  
7 discounted rate.

8           We're providing security for the farmers,  
9 which they would not otherwise have, because this  
10 property would be entirely fenced in. The roadway  
11 network will be also something that the farmers can  
12 benefit from.

13           So I feel like, you know, the project is  
14 doing what is required by the law. And then we're  
15 doing more on top of that. So that's -- that's all I  
16 can say.

17           **COMMISSIONER SCHEUER:** Okay. It's not a  
18 direct response, I suppose, to Mr. Clay's  
19 suggestions, but thank you. So third question has  
20 to do with cultural resources and the cultural  
21 resources report appended to your application.  
22 Specifically, there was an interview with Mr. McD  
23 Philpotts.

24           And in his interview, he discussed the  
25 significance of sight lines from Mauna Kapu used in

1 navigation, among other matters. Was there  
2 somewhere in the application an analysis of the  
3 visual impact related to sight lines or glare on  
4 these cultural uses of viewing from Mauna Kapu?

5 **MR. SAKUMOTO:** We have two people that I  
6 think are in attendance, and I'm going to look for  
7 some guidance from my client. One is we have Ms.  
8 Lokelani Brandt, who prepared the cultural impact  
9 analysis. Is that what you're referring to, Chair?

10 **COMMISSIONER SCHEUER:** Correct. It is.

11 **MR. SAKUMOTO:** Okay. She may be able to  
12 address that. Also, Mr. Kawika McKeague from G70 is  
13 available. I'm not sure which of the two had the  
14 direct communication with the --

15 **COMMISSIONER SCHEUER:** Let me make sure  
16 you understand my question.

17 **MR. SAKUMOTO:** Yes.

18 **COMMISSIONER SCHEUER:** In your -- in the  
19 cultural impact analysis, which I consider to be a  
20 very good report, there's an interview with McD  
21 Philpotts, who discussed the cultural significance  
22 of sight lines to the east from Mauna Kapu for  
23 navigational purposes. There is also a glare  
24 analysis.

25 **MR. SAKUMOTO:** Yes.

1           **COMMISSIONER SCHEUER:** Is there anywhere  
2 in the report that interlaces these two things?

3           **MR. SAKUMOTO:** Not that I'm aware of.

4           **COMMISSIONER SCHEUER:** In the materials  
5 that you provided to us.

6           **MR. SAKUMOTO:** Yes. I would -- I would  
7 like -- we have a view analysis. We have a glare  
8 analysis. We have a cultural impact analysis. But  
9 I'm not aware of one that intersects the view  
10 analysis with the cultural impact analysis.

11           **COMMISSIONER SCHEUER:** So are we able to  
12 know whether or not the stated concerns of Mr.  
13 Philpotts of the significance of the views from  
14 Mauna Kapu will be impacted by the project?

15           **MR. SAKUMOTO:** I don't know. I would ask  
16 if you could perhaps call up Mr. McKeague.

17           **COMMISSIONER SCHEUER:** If Mr. McKeague  
18 would raise his hand.

19           **MR. MCKEAGUE:** Aloha mai kakou.

20           **COMMISSIONER SCHEUER:** Aloha e Kawika. Do  
21 you swear or affirm the testimony you're about to  
22 give is the truth?

23           **MR. MCKEAGUE:** Hoohiki paa. Ae.

24           **COMMISSIONER SCHEUER:** Okay. Did you hear  
25 the dialogue between myself and Mr. Sakumoto that I

1 phrased?

2 **MR. MCKEAGUE:** Yes. So I'll answer in two  
3 parts, one to -- one to the emphatic. The emphatic  
4 to your question, did we interlace the two specific  
5 items, I believe the correct answer is no.

6 The second point, though, is early on in  
7 our design process, as part of our early concept and  
8 understanding of our site to this body, very early  
9 on, we did integrate not just views that are  
10 required from the community development plans, but  
11 as you're aware with my testimony as a cultural  
12 practitioner as well as a planner, understanding  
13 those perspectives and special perspectives from  
14 certain key viewpoints was part of our early  
15 analysis.

16 So to be very specific, we did consider  
17 early on what the project would look like or feel  
18 like when taken into consideration from, example,  
19 Pu'u Kanehoa, Pu'u Kaua, Mauna Kapu, Pohakea Pass,  
20 so on and so forth, basically running the various  
21 Pu'u points along the Wai'anae Range and wherein we  
22 could actually see the project and try and make some  
23 early determinations, is there a concern?

24 **COMMISSIONER SCHEUER:** So do you believe  
25 that there could be or the project is designed in a

1 manner to not impact the views that Mr. Philpotts  
2 raised?

3 **MR. MCKEAGUE:** I was part of that  
4 conversation with Mr. Philpotts. I understand his  
5 concern. My answer as a practitioner and as a  
6 planner is I believe our design tried to incorporate  
7 that concern, and as far as I can understand it,  
8 does not create an impact on those views.

9 **COMMISSIONER SCHEUER:** Thank you very  
10 much. I appreciate that.

11 Down to two of the fourth one. Might also  
12 be for Mr. McKeague, but could you just briefly  
13 describe any consultation done with the National  
14 Parks Service regarding the pending Honouliuli  
15 Memorial?

16 I'm not -- I'm not going to -- anyway, but  
17 the internment site that's under -- going to  
18 National Parks Service status.

19 **MR. MCKEAGUE:** I'll actually pass that  
20 back to -- to Mr. Wescoatt as the other direct  
21 contact, I believe.

22 **MR. WESCOATT:** Yes, Chair. I did -- Wren  
23 Wescoatt -- I did have discussions with staff from  
24 the National Parks Service. They were interested in  
25 learning about the solar project, and their only

1 concern was that they just be kept in the loop.

2 And they said, you know, potentially, if  
3 they can see the solar project from where they're  
4 located, that, you know, if that became a concern in  
5 the future, I offered to -- they said they didn't  
6 know if it was a concern, you know, but I shared  
7 maps of the project, and we offered to install some  
8 vegetative screening around the fences just to make  
9 the project look less like a fence.

10 So they were appreciative of that, but  
11 they didn't have any particular additional concerns.  
12 Just asked for if we wouldn't mind sharing reports  
13 and other information as we developed it for the  
14 project.

15 **COMMISSIONER SCHEUER:** Okay. So there was  
16 a request to potentially mitigate visual impacts in  
17 the future, if those arose?

18 **MR. WESCOATT:** Correct.

19 **COMMISSIONER SCHEUER:** Is that commitment  
20 to do so part of your official record on this, or is  
21 that commitment essentially being made now?

22 **MR. WESCOATT:** I believe we are  
23 incorporating that in our design for the -- I know  
24 we are incorporating it in our design. I don't know  
25 if it's one of the conditions that was listed in the



1 approval by the Planning Commission. It may have  
2 been.

3 **COMMISSIONER SCHEUER:** I just finished the  
4 --. Mr. Sakumoto, anything further to add?

5 **MR. SAKUMOTO:** No. But we did submit a --  
6 like I said, a view study. There's also a  
7 landscaping plan that is part of the record, Chair,  
8 and I think that the landscaping plan was very  
9 carefully thought out in order to mitigate the  
10 visual impacts.

11 This is a very low-profile project. This  
12 is not, you know, a tower of any kind. These panels  
13 are, you know, 10 feet high. They're very low to the  
14 ground. The land is relatively, you know, flat, and  
15 in areas where it might be visible, you know, there  
16 are berms.

17 We're putting landscaping on top of the  
18 berms to further mitigate any kind of visual impact  
19 that you won't so you won't see them as you're  
20 driving by.

21 And so I think a lot of thought has gone  
22 into trying to be sensitive to -- to visual impacts  
23 of this project.

24 **COMMISSIONER SCHEUER:** Okay. But I was  
25 just specifically -- I think just because it's not

1 fully established yet, many of us bring to mind the  
2 National Parks Site at Honouliuli. The landowner  
3 here has been very cooperative -- one of the  
4 landowners -- to help establish, address that  
5 chapter of our country's history.

6 My last and fifth and final question, and  
7 it's a bad question, but I'd like you to give it a  
8 really full answer, if possible, Mr. Sakamoto. Who  
9 will profit from this project? I know that  
10 ratepayers are going to get some things, but who in  
11 the end is making the money from this project over  
12 its lifetime?

13 **MR. SAKUMOTO:** Well, I mean, obviously,  
14 the -- the benefits are many, and I think there's  
15 many people involved that will -- will be very happy  
16 that this project goes forward. Of course, Mahi  
17 Solar as the applicant, you know, would not be doing  
18 this but for the fact that it would be profitable.

19 But, you know, the landowners involved are  
20 going to get the lease rent from Mahi Solar. The  
21 farming community will have opportunities that they  
22 do not now have. The people that are in the --

23 **COMMISSIONER SCHEUER:** And so I'm really  
24 talking about financial profit. So I realize there  
25 are many benefits for this. Can you just describe

1 the ownership of Mahi Solar, the ultimate ownership  
2 of Mahi Solar?

3 **MR. SAKUMOTO:** I would like to defer to  
4 Mr. Wescoatt, who is part of Longroad Development,  
5 to -- to answer that question.

6 **MR. WESCOATT:** Aloha. Wren Wescoatt.  
7 Longroad -- so Mahi Solar LLC is the project  
8 applicant, and that Mahi Solar LLC is owned by  
9 Longroad Energy Management, ultimately. There's a  
10 few LLCs in between, but ultimately owned by  
11 Longroad Energy Management.

12 **COMMISSIONER SCHEUER:** Okay. And who owns  
13 Longroad Energy Management?

14 **MR. WESCOATT:** There are -- I believe it  
15 is owned by -- there are two -- the majority of  
16 ownership is by two funds. New Zealand  
17 Superannuation Fund is one of the owners of Longroad  
18 Energy, as well as another fund. I think it's called  
19 Infratil.

20 And then another portion is owned by --  
21 New Zealand Infratil -- and then another portion is  
22 the founders of Longroad Energy, which are the  
23 previous executives of First Wind.

24 **COMMISSIONER SCHEUER:** Thank you. I think  
25 it's just important for the people of Hawai'i to

1 understand who's -- where the money's going from our  
2 pockets, ultimately. So I have nothing further.

3           Commissioners, do you have anything  
4 further for the applicants? If not, we are 10:50 on  
5 the button, so we could take another 10-minute  
6 break. Reconvene at 11 a.m. to hear comments from  
7 Office of Planning and Sustainable Development.  
8 We're going to recess for 10 minutes. Mahalo.

9           **(Recess taken from 10:50-11:00 a.m.)**

10           **COMMISSIONER SCHEUER:** Mr. Yamamoto, if  
11 you would -- oh, I can see you. Do you swear or  
12 affirm the testimony you're about to give is the  
13 truth?

14           **MR. YAMAMOTO:** I do.

15           **COMMISSIONER SCHEUER:** Okay. Please  
16 proceed, Mr. Yamamoto.

17           **MR. YAMAMOTO:** I'm Earl Yamamoto,  
18 Department of Agriculture planner, presenting the  
19 testimony, as soon as I can call it up, for the  
20 Department of Agriculture. We sent this last week.  
21 I'm sure you all have a copy of it. I'll quickly go  
22 over it, starting with our concluding statement.

23           The Department of Agriculture strongly  
24 supports Mahi Solar to fulfill its commitments and  
25 assertions and go beyond the minimal statutory

1 requirement of making the project site available for  
2 agricultural activities at a lease rate that is at  
3 least 50 percent below the fair market value for  
4 comparable properties.

5           The Department believes that research  
6 alone is not a satisfactory outcome, nor is sheep  
7 used for weed control. The majority of the land area  
8 under the project site contains some of the state's  
9 most potentially productive soils for intensive  
10 agricultural production.

11           The Department expects the research to be  
12 done by the Hawai'i Agriculture Research Center  
13 along with the field trials with interested farmers  
14 to result in intensive agricultural activity on the  
15 project site.

16           That's our conclusion. And then I -- we  
17 went through -- highlighted a number of things that  
18 were presented in our letter to the Department of  
19 Planning, to the City Planning Commission.

20           With respect to irrigation water, the  
21 Department strongly recommends that data and  
22 information on maximum water demand, sources,  
23 storage, pumping, delivery, and year-round  
24 availability to all five project areas be developed  
25 prior to Phase II of the agricultural plan described

1 in Appendix C.

2 Further, this data and information should  
3 be provided to agricultural operators interested in  
4 the project site or specific project areas for  
5 agricultural production, including livestock,  
6 hydroponic, and aquaponic uses.

7 The next item. Solar panel coverage by  
8 project area. There will be a net area of 147 acres  
9 of solar panel coverage at a project site of 620  
10 acres, if I'm not mistaken. The agricultural plan  
11 research and field testing should include the soft  
12 hose irrigation system.

13 That is something that you can wind up on  
14 a -- on a reel versus something that's hard, like  
15 PVC, so the soft hose irrigation system being  
16 proposed for future agricultural activities that may  
17 concern under and adjacent to the solar panel  
18 arrays.

19 Fencing. Fencing is important to  
20 discourage trespassing and/or -- and crop or animal  
21 theft, and to keep livestock from dislocation. The  
22 extent and type of fencing and gating to be in place  
23 prior to full operation of the solar energy facility  
24 should reflect the needs of the anticipated  
25 agricultural activities, and not just providing

1 security for the solar energy facility.

2           The next item is Mahi Solar agricultural  
3 plan. The proposed agricultural plan would utilize  
4 620 of the -- I'm sorry, 610 acres of the 620-acre  
5 project site. Of the 610 acres, about 489 acres will  
6 be cultivated in crops and used for livestock  
7 grazing and beekeeping.

8           We note that livestock grazing and crop  
9 cultivation are not compatible in the same area if  
10 they are not effectively separated. The  
11 aforementioned proposed fencing can contain  
12 livestock under the solar panels to do weed control,  
13 but that would likely preclude the cultivation of  
14 in-ground crops within the same area.

15           As noted earlier, irrigation water in  
16 sufficient quantity and availability on demand is  
17 fundamental to any crop or livestock operations.  
18 There is scant mention of irrigation water and no  
19 mention of water for livestock in the application  
20 and Appendix C, otherwise known as the agricultural  
21 plan, although water infrastructure is planned for  
22 all project areas.

23           The agricultural plan has three phases.  
24 Phase I is two years of research to be done by the  
25 Hawai'i Ag Research Center that will include field

1 trials of identified crops at the Clearway Solar  
2 Facility that's located -- built and located just  
3 south of Mililani Town.

4 Conventional and hydroponic cultivation  
5 will be used for crops such as lettuce, basil, and  
6 alfalfa and other legumes and grasses for livestock  
7 forage. The field trials are to determine what crops  
8 can be productively grown with what practices under  
9 and between solar panels.

10 Phase II occurs after Mahi Solar is in  
11 operation. Mahi Solar will make available 610 of the  
12 620-acre project site to local farmers to grow  
13 agricultural products at commercial scale.

14 Department staff finds this phase  
15 confusing, as the application further states that  
16 Mahi Solar will coordinate with local farmers and  
17 ranchers along with HARC and local experts to  
18 propose agrivoltaic projects that they believe will  
19 be successful. This differs considerably from the  
20 description of Phase II further on in the  
21 application, the difference being as follows.

22 As each agricultural -- as each new  
23 agricultural use is tested at the project site in  
24 research trials or grown in the solar fields by  
25 farmers, HARC and Mahi Solar will gather data and



1 evaluate the results. This will help farmers and  
2 ranchers learn and modify their work in an iterative  
3 process.

4 Similarly, the linkage between Phases I  
5 and II is made in the agricultural plan, where land  
6 and water will be provided to farmers and ranchers  
7 to grow these crops identified in Phase I at  
8 commercial scale.

9 This is more in line with the description  
10 of Phase II in the agricultural plan. Mahi Solar  
11 needs to make consistent its intention to link the  
12 research in Phase I and this application by farmers  
13 and ranchers in Phase II.

14 Phase III is the sharing of data on  
15 agrivoltaic farming. The Department of Agriculture  
16 supports twofold concept as the best way to  
17 determine the suitability of the to-be-determined  
18 agricultural activities to be researched and field  
19 trialed by HARC and interested farming operations at  
20 the Clearway Mililani Solar Facility.

21 Next item. Proposed agricultural  
22 activities. The about 41 percent, or 250 acres of  
23 the 610 acres, available for agricultural uses may  
24 be in direct edible commodities such as honey,  
25 vegetables, sweet potatoes, and hydroponic lettuce.

1 About 121 acres will be in livestock,  
2 grazing -- presumably sheep, as cattle and goats are  
3 not mentioned. O'ahu Grazers has expressed interest  
4 in using a few hundred acres of the project site as  
5 additional pasture land for their sheep and maybe  
6 calves. This operation already runs the sheep on the  
7 properties of existing solar energy facilities on  
8 O'ahu.

9 With respect to the market for sheep and  
10 lambs, the Department understands that O'ahu's  
11 primary livestock slaughter facility has expressed  
12 reluctance to offer services to hogs. The Department  
13 is not aware that this reluctance also applies to  
14 sheep and lands. The Department recommends O'ahu  
15 Grazers to confirm their agreement or agreements  
16 with their -- with their slaughter facilities.

17 State law does not require the sale of  
18 sheep and lambs or the products of any compatible  
19 agricultural activity. However, it is the generation  
20 of revenue by agricultural operators selling their  
21 agricultural products such as vegetables, melons,  
22 fruits, honey, and so forth, that will ensure  
23 continued agricultural activity under and adjacent  
24 to solar arrays.

25 This is why the Department focuses on the

1 application's references and commitments to  
2 infrastructure, research, and field trials that  
3 affect agricultural operators and the establishment  
4 and continuation of the agricultural activities.

5 The Department has read the HARC solar  
6 white paper and has every confidence that this  
7 venerable Hawai'i agricultural institution will  
8 follow through on their commitments to the best of  
9 their ability and produce data and information that  
10 will help those agricultural operators who are  
11 committed to the project site to become economically  
12 viable. That concludes my presentation.

13 **COMMISSIONER SCHEUER:** Okay. Ms. Kato, how  
14 do you wish to proceed?

15 **MS. KATO:** I can go ahead with my  
16 presentation unless you have any questions for Earl.

17 **COMMISSIONER SCHEUER:** I'll offer the  
18 commissioners opportunity to ask questions for Mr.  
19 Yamamoto before Ms. Kato continues.

20 Mr. Okuda, Commissioner Okuda?

21 **COMMISSIONER OKUDA:** Thank you very much,  
22 Mr. Chair.

23 Thank you, Mr. Yamato.

24 As an administrative agency, we must  
25 determine or judge the credibility of witnesses and

1 the credibility of people that appear before us. In  
2 other words, as an administrative agency acting in  
3 our quasi-judicial capacity, in plain English, we  
4 basically have to determine can we trust the people  
5 who are making promises and representations to us,  
6 or is this is something that we shouldn't trust or  
7 we shouldn't have confidence.

8 Have you dealt with the Mahi Solar people?  
9 I mean, are you in a position to give us testimony  
10 about the issue of credibility of the Mahi Solar  
11 people?

12 **MR. YAMAMOTO:** On the credibility of the  
13 Mahi Solar people, well.

14 **COMMISSIONER OKUDA:** Let me put it more in  
15 plain English. Is there anything in your experience  
16 -- and I know you have years of experience in this  
17 area as a trusted government official -- is there  
18 anything in your experience which leads you to  
19 believe that the representations or that the people  
20 that are giving this testimony today on behalf of  
21 Mahi Solar, that if we found they were credible  
22 witnesses, that we could believe them -- with the  
23 understanding life has no guarantees about anything  
24 in the future, but, you know, if we made a finding  
25 that they are credible people, is there anything in

1 your experience which indicate that finding would be  
2 wrong or clearly erroneous?

3 **MR. YAMAMOTO:** No. I have nothing that  
4 would indicate that as such.

5 **COMMISSIONER OKUDA:** Okay. I'm sorry. I  
6 didn't mean to cut you off.

7 **MR. YAMAMOTO:** Yeah. We did meet with  
8 them, I believe, during the days before -- maybe  
9 just after the pandemic was declared. This was back,  
10 I think, in March -- correct me if I'm wrong --  
11 March 2020, so a time ago. And the presentation back  
12 then, generally speaking, the content and direction  
13 they were going, especially with the research  
14 aspects, continue to this date.

15 Our -- our review, I guess, or my review  
16 of the application, of course, is -- is rather  
17 complete. I go over the entire documentation, and it  
18 showed that all the statements that I have are -- in  
19 fact, reflect, or their quotes from the materials  
20 that are in our possession and do not -- are not  
21 meant to question the credibility of the -- of the  
22 presentation or the -- or the people that put  
23 together the documentation.

24 **COMMISSIONER OKUDA:** Yeah.

25 **MR. YAMAMOTO:** However, we are -- I'm

1 sorry -- we are very careful, because this -- this  
2 is a big project, the most -- in this Kunia  
3 corridor, which is extraordinarily important to --  
4 to O'ahu's contribution, I guess, to -- to  
5 increasing local food self-sufficiency. So that  
6 would explain our kind of nitpicking approach to  
7 this thing.

8 **COMMISSIONER OKUDA:** Yeah. And I'm not  
9 criticizing what you describe as nitpicky. In fact,  
10 I believe that indicates that you're a true,  
11 dedicated public servant to carefully evaluate the  
12 evidence.

13 And that's why I was just asking, you  
14 know, in addition to the words we hear, you know, if  
15 there was anything that you came across which  
16 indicated that maybe Mahi Solar is telling us good  
17 words, but it's going to be like promises that are  
18 not going to be kept.

19 And not to put words in your mouth, but  
20 you have no evidence of them not being credible;  
21 correct?

22 **MR. YAMAMOTO:** Correct.

23 **COMMISSIONER OKUDA:** Okay. Would you,  
24 taking away the double negatives, if you had to make  
25 a judgment based on all the years of public service

1 you've had and the wide experience you have with the  
2 Department of Agriculture, would you find them as  
3 some of the more credible people you've ever dealt  
4 with in your career?

5 **MR. YAMAMOTO:** No. Complete. Their work is  
6 complete, so if that could be construed to be  
7 credible, yes.

8 **COMMISSIONER OKUDA:** Okay. Thank you very  
9 much for your testimony and for your public service.  
10 Thank you, Mr. Chair. No further  
11 questions.

12 **COMMISSIONER SCHEUER:** Thank you,  
13 Commissioner Okuda. Commissioner Chang?

14 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
15 And thank you, Mr. Yamamoto. I greatly appreciate  
16 the thoroughness of your review of this application  
17 and all of the documents. I find your  
18 recommendations to be very sound and consistent with  
19 a lot of the concerns that have been raised.

20 Would it raise your level of comfort and  
21 confidence -- because I, too, I think, you know,  
22 this Mahi Solar has said a lot of the right things.  
23 They've done a lot of good work. I mean, I think  
24 their outreach, their cultural things that I'm  
25 concerned about, they've -- I've been very pleased

1 with the documentation.

2 But would it raise your level of comfort  
3 and confidence if Department of Ag also received the  
4 annual progress report of Mahi Solar's compliance  
5 with LUC's conditions?

6 **MR. YAMAMOTO:** Yes. It would be -- it  
7 would be useful --

8 **COMMISSIONER CHANG:** Okay.

9 **MR. YAMAMOTO:** -- in terms of birddogging  
10 this project going forward. Again, as explained  
11 to Commissioner Okuda, this is a very important  
12 project with respect to its location is the way that  
13 it's kind of spread out, which gives us concern as  
14 to whether or not this is -- you know, will lead to  
15 more solar energy facility expansion adjacent to  
16 each one of these, these five -- five areas.

17 **COMMISSIONER CHANG:** And I appreciate  
18 that. I, too, share the concern that this is some of  
19 our most Important Agricultural Lands, productive  
20 lands, that we are now going to be putting in this  
21 very large solar project.

22 I am also encouraged by the creativity of  
23 Mahi Solar to explore greater collaboration with  
24 both the current farmers and other farmers, as well  
25 as their relationship with HARC.



1 But the devil is always in the details. I  
2 mean, it's always in the follow-up. So it's, you  
3 know, normally, the annual reports go to LUC and to  
4 the Office of Planning.

5 But I think it is important that  
6 Department of Ag also receive these annual reports,  
7 so that you can ensure -- the Department of Ag can  
8 ensure that the agricultural mission is also being  
9 implemented consistent with the conditions.

10 So you have no objections to also be  
11 included as a recipient of the annual report.

12 **MR. YAMAMOTO:** No objection.

13 **COMMISSIONER CHANG:** All right. Thank you  
14 very much, Mr. Yamamoto. I appreciate your  
15 testimony. I have no further questions.

16 **COMMISSIONER SCHEUER:** Thank you,  
17 Commissioner Chang.

18 Any further questions for Mr. Yamamoto  
19 from the commissioners at this time? Seeing none,  
20 Ms. Kato, please continue.

21 **MS. KATO:** Thank you, Chair. I'll begin.  
22 The Office of Planning and Sustainable Development  
23 recommends approval of this Special Permit subject  
24 to conditions that we'll address with the state's  
25 concern with respect to the project's possible

1 impacts to archaeological and cultural resources.

2           OPSD agrees that the proposed project  
3 meets the criteria for an unusual and reasonable use  
4 within the agricultural land use district. Solar  
5 facilities are allowed outright on approximately a  
6 sixth of the project site and allowed with a Special  
7 Permit on the remainder, subject to certain  
8 requirements related to decommissioning and use in  
9 conjunction with compatible agricultural uses at  
10 reduced rates. The proposed project appears to meet  
11 those requirements.

12           Additionally, OPSD recommends it's the  
13 state interests in reducing dependence on fossil  
14 fuels and encouraging locally produced renewable  
15 energy.

16           Regarding petitioner's archaeological  
17 inventory survey, SHPD's letter approving the AIS is  
18 not part of the official record received from the  
19 Planning Commission. As such, OPSD believes that  
20 under the Supreme Court's decision in Ka Pa'akai O  
21 Ka'aina v. Land Use Commission, the LUC should make  
22 a significance determination as to identified  
23 archaeological sites and needed mitigation measures  
24 prior to approving the Special Permit.

25           And I understand that Ka Pa'akai involved

1 a DBA and a statutory and constitutional obligations  
2 for the protection of cultural resources. Here, the  
3 process is a Special Permit and involves  
4 archaeological sites, but there's arguably a similar  
5 interest in archaeological sites such that the Ka  
6 Pa'akai analysis is relevant.

7 So we feel that the LUC cannot defer or  
8 condition away the obligation to make such a  
9 determination as to whether the Ka Pa'akai  
10 requirements have been met.

11 OPSD believes that the AIS and its  
12 recommendations provide a sufficient basis for the  
13 LUC to make that determination and to identify the  
14 needed mitigation for this project.

15 The AIS identifies two major sites that  
16 may be affected by the proposed development,  
17 portions of the Waiahole Ditch and O'ahu Sugar  
18 Company irrigation infrastructure features. OPSD  
19 recommends that the LUC make a finding comparing  
20 with the assessment and recommendations of the AIS  
21 and impose conditions requiring petitioner to comply  
22 with those recommendations.

23 And we sent our written submission, but  
24 specifically for the Waiahole Ditch, avoidance and  
25 protection during development activities and for the

1 irrigation infrastructure, petitioner must conduct  
2 archaeological monitoring during development  
3 activities and prepare an archaeological monitoring  
4 plan subject to acceptance by SHPD prior to ground-  
5 disturbing activities.

6 In addition, OPSD recommends a further  
7 condition with respect to the Waiahole Ditch in the  
8 following form. Petitioner and its successor shall  
9 maintain the surface and aboveground areas of the  
10 easement of the Waiahole Ditch where it traverses  
11 the petition area and shall have nonexclusive access  
12 to such areas and not interrupt or impair delivery  
13 of Waiahole Ditch water during construction and  
14 operation of the project.

15 Regarding the petitioner's Cultural Impact  
16 Assessment, petitioner's consultant has identified  
17 the Pohakea Trail and native plant habitats located  
18 in or near the petition area as resources that may  
19 be affected by the project. The Pohakea Trail was  
20 mentioned as a valued cultural resource in several  
21 interviews that were conducted, and it was noted  
22 that access to the trail had been obstructed.

23 OPSD recommends that the LUC impose a  
24 condition requiring the petitioner to comply with  
25 the recommendations of the CIA in the following

1 form. As required by petitioner's Ka Pa'akai O  
2 Ka'aina analysis to mitigate impacts to traditional  
3 and customary practices, petitioner shall consult  
4 with appropriate agencies and persons who have  
5 knowledge of the Pohakea Trail's historical location  
6 and possible status and incorporate consultation  
7 recommendations in its development plans.

8           Petitioner shall also identify and avoid  
9 all native plant communities and their associated  
10 habitats. And as Mr. Sakumoto mentioned earlier, the  
11 petitioner is okay with these conditions,  
12 recommended conditions.

13           Again, the Office of Planning and  
14 Sustainable Development recommends approval of the  
15 Special Permit for this project provided the LUC  
16 make appropriate findings and conditions addressing  
17 the archaeological sites and cultural resources as  
18 part of its approval. Thank you.

19           **COMMISSIONER SCHEUER:** Thank you, Ms.  
20 Kato. Commissioners, questions for OPSD?  
21 Commissioner Cabral? No? I wasn't sure if you were -  
22 - you're in motion. Commissioner Chang? You are on  
23 mute.

24           **COMMISSIONER CHANG:** It's more of a  
25 comment. Ms. Kato, I greatly appreciate Office of

1 Planning fully recognizing the application of Ka  
2 Pa'akai.

3 In my view, it applies to all actions by  
4 the Land Use Commission so long as we are permitting  
5 anybody's potential use of property. So, yes, I  
6 believe this is applicable whether it's a DBA or  
7 Special Use Permit. But I appreciate you taking the  
8 time to also look at that.

9 So did you have any specific language that  
10 you would recommend?

11 **MS. KATO:** For the first condition, not  
12 necessarily, but something similar to what we  
13 proposed in our written submission.

14 **COMMISSIONER CHANG:** Okay. All right.  
15 Thank you very much. I have no further questions.

16 **COMMISSIONER SCHEUER:** Thank you,  
17 Commissioner Chang. Commissioners, other questions  
18 for Ms. Kato? Seeing none, Ms. Kato, did the Office  
19 of Planning and Sustainable Development's  
20 consultation include consultation with the  
21 Commission of Water Resources Management?

22 **MS. KATO:** I'm not sure, and I'd have to  
23 defer to my client as to whether they may have done  
24 that at another stage.

25 **COMMISSIONER SCHEUER:** This is regarding

1 the question I posed to the applicant regarding  
2 whether there will be an impact or reduction  
3 specifically on demand by the Waiahole Ditch and  
4 diversions from Windward O'ahu. Which of your  
5 clients will respond?

6 **MS. KATO:** If possible, is Rodney there?

7 **COMMISSIONER SCHEUER:** It's on screen.

8 Could you enable your video? Thank you, Mr.  
9 Funakoshi. Do you swear or affirm the testimony  
10 you're about to give is the truth?

11 **MR. FUNAKOSHI:** Yes. Thank you. Oka y.

12 **COMMISSIONER SCHEUER:** Did you hear the  
13 question?

14 **MR. FUNAKOSHI:** Yes, Chair. Did we consult  
15 with the Commission of Water Resource Management?

16 No. Typically, we don't do that in Special Permits.

17 What we do is simply respond directly to  
18 the city's Department of Planning and Permitting as  
19 one of the referral agencies to their Special Permit  
20 process.

21 So that is -- that is really our only, you  
22 know, review direction, so we didn't specifically  
23 consult with them.

24 So to Waiahole Ditch, you know, we simply  
25 acknowledge its being overseen and administered and

1 owned by the Agribusiness Development Corporation  
2 and therefore wanted to assure that that was -- that  
3 they have free and clear access for maintenance and  
4 whatever other improvements they make to the ditch  
5 and to assure, of course, its continued viable use  
6 for water delivery.

7 **COMMISSIONER SCHEUER:** Okay. But I guess,  
8 Mr. Funakoshi, do -- do you recall the Waiahole  
9 Ditch case, the longstanding dispute between  
10 windward and leeward interests over allocation of  
11 windward water?

12 **MR. FUNAKOSHI:** Vaguely.

13 **COMMISSIONER SCHEUER:** Do you think that  
14 the diversion of water from streams for public  
15 commercial uses is a public trust concern as state  
16 commissions and bodies?

17 **MR. FUNAKOSHI:** Yes. Absolutely, it is.

18 **COMMISSIONER SCHEUER:** So if --

19 **MR. FUNAKOSHI:** Specifically, we did not  
20 specifically even look at that or address it in  
21 this. I'm not sure that the application itself  
22 included any specific mention of either diversion or  
23 of use of the Waiahole Ditch water.

24 **COMMISSIONER SCHEUER:** In fact, it was --  
25 it was notably absent from the application, but that



1 doesn't mean that it's not a concern. So I guess I'm  
2 just -- I'm curious.

3 I think we look to the Office of Planning  
4 and Sustainable Development for that large and long-  
5 term view, not application by application and issue  
6 by issue, but a sort of larger view of how all this  
7 history of various permits and government actions  
8 work together.

9 **MR. FUNAKOSHI:** Okay. A good point. But,  
10 yes, relative to this project, we did not delve into  
11 the water water resource issue.

12 **COMMISSIONER SCHEUER:** Because the state's  
13 obligation is to not sort of allow for the diversion  
14 of waters if they're not to be productively used,  
15 and if this action is going to result in a decrease  
16 in the amount of water that is going to be used,  
17 which we don't have information either way, then  
18 that's an interest of compelling statement, sir.

19 I don't have anything further. Anything  
20 further for Ms. Kato or Office of Planning and  
21 Sustainable Development at this time? No? Okay.

22 There being none, we will --

23 Mr. Sakumoto, you're raising your hand.

24 **MR. SAKUMOTO:** Yes, Chair. I apologize. I  
25 realize I'm speaking somewhat out of turn, but I

1 believe when the discussion came up earlier about  
2 the Waiahole Ditch and Mr. Wescoatt was trying to  
3 respond to your questioning, I don't think -- I  
4 think he was clear that there would not be diversion  
5 of water from the Waiahole Ditch. So if that wasn't,  
6 I think we would like to try to make that clear at  
7 this point.

8 **COMMISSIONER SCHEUER:** Is that clear in  
9 the record?

10 **MR. SAKUMOTO:** I don't know that we  
11 addressed this issue at the Planning Commission. I  
12 guess what I'm saying is it was brought up during  
13 your questioning earlier today.

14 **COMMISSIONER SCHEUER:** Right. And the  
15 questioning in response to my questions, Mr.  
16 Wescoatt said that the water was coming from the  
17 Kunia -- I will not get the name exactly right, but  
18 the Kunia Water -- what was it, Mr. Wescoatt?

19 **MR. WESCOATT:** Water would be from the  
20 Kunia Water Association, not from the Waiahole  
21 Ditch.

22 **COMMISSIONER SCHEUER:** Right. And so --  
23 and whether the -- okay. So what are the sources of  
24 water for the Kunia Water Association?

25 **MR. WESCOATT:** I would have to ask Stevie

1 Whalen to weigh in on that. She's the -- I believe  
2 she's the president, current president of the Kunia  
3 Water Association.

4 **COMMISSIONER SCHEUER:** We don't have  
5 information on the printed record submitted to us  
6 through the Planning Commission on either way, even  
7 though these waters have been -- I mean, certainly,  
8 they're traversed by the land. Certainly, they have  
9 at least historically been served by the Waiahole  
10 Ditch.

11 So but I was going to say, Mr. Sakumoto, I  
12 was going to offer an opportunity for you to make  
13 any final statements and for the commissioners to  
14 ask any questions of you or of any of the other  
15 parties before we entered into deliberations, so in  
16 one sense, you weren't really out of turn. You just  
17 didn't give me a chance to give you that  
18 opportunity.

19 Do you have any further things that you  
20 would like to raise at this time?

21 **MR. SAKUMOTO:** Nothing further, Chair. And  
22 I apologize again for cutting you off. I -- I think  
23 that, as I mentioned earlier, we are in concurrence  
24 with the recommendations by the Office of Planning  
25 and Sustainable Development as it relates to their

1 recommended conditions to be added to those that  
2 were established by the Honolulu Planning  
3 Commission. And otherwise, I think we have nothing  
4 further. Thank you very much.

5 **COMMISSIONER SCHEUER:** Okay.

6 Commissioners, before we enter into deliberations,  
7 are there any questions of any of the parties that  
8 have appeared in front of us?

9 Sorry, yeah, for any of the parties.

10 Commissioners? Sorry, and just to clarify, since  
11 you are here, Mr. Pang, was there anything from the  
12 county?

13 **MR. PANG:** Nothing from the county, Mr.  
14 Chair. The county does support the recommendations  
15 from the Office of State Planning and  
16 Sustainability.

17 **COMMISSIONER SCHEUER:** Okay. Okay.

18 Commissioner Chang?

19 **COMMISSIONER CHANG:** I'm sorry. Just one -  
20 - just one question to the petitioner. I asked Mr.  
21 Yamamoto if it would raise his level of comfort if  
22 the annual report was also provided to the  
23 Department of Ag. Do you have any objections to  
24 that?

25 **MR. SAKUMOTO:** We have no objections to

1 adding them to the list of circulation.

2 **COMMISSIONER CHANG:** All right. Perfect.

3 Thank you.

4 **MR. SAKUMOTO:** Thank you.

5 **COMMISSIONER SCHEUER:** Okay. Thank you,

6 Commissioner Chang. Anything further,

7 commissioners? Okay. Seeing none, commissioners,

8 everybody has been here for the entirety of this

9 meeting.

10 I don't need to affirm that anybody is

11 ready to -- is ready to deliberate, because you're

12 all here, and you're all familiar with the record.

13 What is your pleasure, commissioners? Commissioner

14 Giovanni?

15 **COMMISSIONER GIOVANNI:** Thank you, Mr.

16 Chair. I'd like to make a motion, please.

17 **COMMISSIONER SCHEUER:** Please proceed.

18 **COMMISSIONER GIOVANNI:** I'd like to make a

19 motion to approve the petition for Special Use

20 Permit as amended to include the conditions -- I

21 think there's three conditions offered by the Office

22 of Planning and Sustainable Development, and also

23 including that the annual report would be copied to

24 the Department of Agriculture.

25 **COMMISSIONER SCHEUER:** Okay. Is there a

1 second? Commissioner Wong?

2 **COMMISSIONER WONG:** Chair, I'll second the  
3 motion.

4 **COMMISSIONER SCHEUER:** Okay. Do you wish  
5 to speak to your motion, Commissioner Giovanni?

6 **COMMISSIONER GIOVANNI:** Thank you, Chair.  
7 Yeah. This is a very important project in terms of  
8 size, timing, impact for our community, particularly  
9 on O'ahu and to the achievement of the state energy  
10 goals that has been clarified on the record in this  
11 -- in this hearing.

12 It's a project that is competitive, as  
13 evidenced by having gone through a very competitive  
14 process with the Hawaiian Electric Company for its  
15 selection. It has undergone detailed review by the  
16 city and county. It's undergone detailed review by  
17 the State Public Utilities Commission, and it's  
18 approved.

19 At the same time, I have familiarity with  
20 the particular entities and developers that are  
21 involved in this project. I personally believe  
22 they're a very credible team and will deliver on  
23 their proposals and projections. And I think that's,  
24 again, very important that they deliver.

25 I also feel that of all the projects that

1 have come before this commission offering solar  
2 projects on Important Agricultural Land and on  
3 agricultural districts, this is the first one that  
4 really took to heart the commission's interest to  
5 look after agriculture both during and after the  
6 term of the power purchase agreement.

7           So for all those reasons, I think this is  
8 the type of project that makes good use of our lands  
9 in the interim, good use of our agricultural lands  
10 in the interim, and an important project for our  
11 community. So I support it.

12           **COMMISSIONER SCHEUER:** Thank you.  
13 Commissioner Wong, did you wish to speak to your  
14 second?

15           **COMMISSIONER WONG:** Yeah. Thank you,  
16 Chair. Just wanted to -- I concur with Commissioner  
17 Giovanni's statement, and I think that this project  
18 is doing two parts on sustainability of not only the  
19 electrical portion or the energy portion, but also  
20 the agricultural portion. That's why I'm supporting  
21 this project. Thank you.

22           **COMMISSIONER SCHEUER:** Commissioners,  
23 we're in deliberation. Commissioner Okuda?

24           **COMMISSIONER OKUDA:** Thank you very much,  
25 Mr. Chair. Not only do I echo what Commissioner

1 Giovanni and Commissioner Wong have stated. An  
2 important factor is having listened to the  
3 testimony, reviewed the documents carefully, and  
4 taken into account the Department of Agriculture's  
5 testimony, I would make a finding that the witnesses  
6 that presented evidence are credible. They are  
7 believable.

8           And so in addition to the written record,  
9 the evidentiary record as far as oral testimony,  
10 because these parties are credible, it seems like we  
11 can rely on what they say, that they will carry out  
12 their promises, I will be also supporting the motion  
13 with that additional reason. Thank you.

14           **COMMISSIONER SCHEUER:** Thank you,  
15 Comissoner Okuda. Commissioners? Commissioner  
16 Chang, followed by Cabral. We have two Commissioner  
17 Cabrals onscreen, so it's slightly -- one was more  
18 than sufficient, let me assure you. Commissioner  
19 Chang, followed by Commissioners Cabrals.

20           **COMMISSIONER CHANG:** Thank you very much,  
21 Mr. Chair. I, too, am going to support this -- the  
22 motion. I believe that the petitioner and their team  
23 has demonstrated good faith and good intentions. I  
24 think we've seen the -- now, they've done in my view  
25 -- the cultural analysis was well written. I think



1 they did a lot of due diligence.

2 And so I'd like to make a specific -- in  
3 addition to some of the standard findings that we  
4 make, I take to heart Deputy Attorney General Alison  
5 Kato, that we have an affirmative obligation as the  
6 LUC to make specific findings with respect to Ka  
7 Pa'akai.

8 So I would like to add this -- or to  
9 ensure that as the -- and I'm hoping this is the  
10 right time -- to ensure that as the findings of  
11 facts and conclusions of law and the decision on  
12 this is made, that this Ka Pa'akai analysis is also  
13 included.

14 One, that the identification of valued  
15 cultural, historic, and natural resources include  
16 the identification of the Pohakea Trail, the ali'i  
17 battle sites, a he'iau atop Puukua, traditional  
18 Hawaiian agricultural practices, and there is a  
19 visual corridor. And, Chair, I'm going to ask you if  
20 -- I'm sorry -- if you could remind me of what that  
21 visual corridor was from that -- during the CIA?

22 **COMMISSIONER SCHEUER:** Mauna Kapu.

23 **COMMISSIONER CHANG:** Mauna Kapu.

24 **COMMISSIONER SCHEUER:** The visual corridor  
25 from Mauna Kapu.

1           **COMMISSIONER CHANG:** Okay. So the visual  
2 corridor from Mauna Kapu. Two, the potential  
3 impacts of the project to these valued cultural  
4 resources include impact of access to Pohakea Trail,  
5 access of native tenants to gather plant resources  
6 for cultural purposes, and the potential impact to  
7 this visual corridor at Mauna Kapu.

8           Three, the mitigation measures shall  
9 include, one, since there is no abandonment,  
10 traditional customary practices. So notwithstanding  
11 what the current use of this land is or the fact  
12 that there's been an absence of any finding of  
13 traditional customary practices, there is -- the  
14 Supreme Court has been very clear -- there is no  
15 abandonment.

16           So in the future, should someone, a native  
17 tenant, come forward, want to continue access to  
18 gather from mauka to up mauka or access the trail,  
19 that a mitigation is that those rights will continue  
20 to -- to be respected and honored.

21           And, two, a mitigation with respect to the  
22 visual corridor, Mauna Kapu, that there is -- you  
23 know, that -- that, one, he be consulted, the  
24 particular individual who provided that testimony --  
25 I think Philpotts -- that he be consulted on an

1 appropriate mitigation measure.

2           And I realize, I think, Mr. Wescoatt  
3 presented some vegetation. You know, there's been  
4 very creative ways I recall down at Kahe Point, the  
5 fence for the -- the predator-proof fencing to  
6 ensure that the visual corridor for the leina is  
7 open. There's a puka in the fence.

8           So I look to -- I anticipate that there  
9 will be appropriate mitigation, but in consultation  
10 with a cultural practitioner, and that there be, you  
11 know, so Waiahole Ditch is not adversely impacted  
12 and there be continued consultation with cultural  
13 practitioners and cultural descendants on the -- on  
14 their continued -- if there is appropriate use  
15 through this property.

16           So that's my recommendation for the Ka  
17 Pa'akai analysis, that it be included as part of  
18 LUC's findings. And based upon that, I believe there  
19 is. I think LUC can make a determination that the Ka  
20 Pa'akai analysis and our duty to preserve and  
21 protect traditional customary practices, we've  
22 addressed that in this -- in this petition  
23 satisfactorily. Thank you very much. I have nothing  
24 else to add.

25           **COMMISSIONER SCHEUER:** Thank you,

1 Commissioner Chang. Commissioners, we're in  
2 deliberation. Commissioner Cabral?

3 **COMMISSIONER CABRAL:** Yes. Thank you. I  
4 got rid of that other Nancy. I'm not sure if that's  
5 the sassy mauka one or not. I won't guarantee that.

6 **COMMISSIONER SCHEUER:** I thank you if that  
7 one can be got ridden of.

8 **COMMISSIONER CABRAL:** Probably not. But I  
9 am definitely in support of the -- the motion and  
10 wanted to express that I am certain it will not ever  
11 be perfect, because again, this is so much into this  
12 future that we have got to go into.

13 And I'm sure we will all learn things  
14 better of agriculture that works, that doesn't work,  
15 or the height that you need to be or what have you.

16 And I want to particularly thank fellow  
17 Commissioner Giovanni for his endorsement, because  
18 he is clearly superior in knowledge of electricity  
19 and photovoltaic panels in terms of our commission,  
20 at least, and I appreciate his more in-depth  
21 investigation and his opinion on it.

22 So for all of those reasons and everyone's  
23 good efforts, because whatever we do to get rid of  
24 being victims or slaves to oil is a plus, so I will  
25 support the motion. Thank you.

1           **COMMISSIONER SCHEUER:** Thank you,  
2 Commissioner Cabral. Commissioner Ohigashi?

3           **COMMISSIONER OHIGASHI:** I'm going to  
4 support the motion again, and I take umbrage to  
5 Commissioner Cabral's statement that I googled about  
6 panels so, obviously, I know as much as anyone.

7           But in any event, what I'm struck with was  
8 Department of Agriculture's comments specifically  
9 about that we have an important state goal not only  
10 to be energy self-sufficient, but we also have the  
11 important goal of food sustainability.

12           And my hope is that as I look through the  
13 agricultural plan, and this was expressed by the  
14 Department of Agriculture, is that this would be a  
15 project that would assist both areas, and not one  
16 take precedence over the others. So I'm going to try  
17 and -- I'm going to support this for that.

18           **COMMISSIONER SCHEUER:** Thank you,  
19 Commissioner Ohigashi. Commissioners, further  
20 considerations? I will note that I will be voting  
21 in favor of the project, in part due to the quality  
22 of the -- the team that is presenting it to us and  
23 my belief in their long-term commitment to Hawai'i,  
24 the statements from Stevie Whalen on the record, and  
25 other materials that have been presented.

1 I think my largest misgivings on the  
2 project really are not to deal with the project per  
3 se, but with some of the inherent absurdities that  
4 the state's Important Agricultural law leads to. But  
5 those are not the project's fault. Those are the  
6 fault of the law and the legislature.

7 I count on the project to continue to seek  
8 to go beyond legal requirements, particularly when  
9 it comes to addressing issues of potential cultural  
10 impacts, potential impacts to the Honouliuli  
11 internment site, and in general, impacts to the  
12 island on this very large and significant project,  
13 which if folks are not aware of it now, they will  
14 soon be aware as they commute from town to west when  
15 it starts to go up.

16 So I -- I rely on the good faith of the  
17 project proponents to continue to address anything  
18 that might arise that we have not seen discussed  
19 thoroughly in the documents.

20 Anything further, commissioners? Seeing  
21 none, Mr. Orodener, will you please poll the  
22 commission?

23 **MR. ORODENKER:** Thank you, Mr. Chair. The  
24 motion is to approve the petition for Special Use  
25 Permit with the conditions proposed by the Office of

1 Planning and that the annual reports be sent to the  
2 Department of Agriculture. Commissioner Giovanni?

3 **COMMISSIONER GIOVANNI:** Aye.

4 **MR. ORODENKER:** Commissioner Wong?

5 **COMMISSIONER WONG:** Aye.

6 **MR. ORODENKER:** Commissioner Okuda?

7 **COMMISSIONER OKUDA:** Yes.

8 **MR. ORODENKER:** Commissioner Ohigashi?

9 **COMMISSIONER OHIGASHI:** Yes.

10 **MR. ORODENKER:** Commissioner Chang?

11 **COMMISSIONER CHANG:** Aye.

12 **MR. ORODENKER:** Commissioner Cabral?

13 **COMMISSIONER CABRAL:** Aye.

14 **MR. ORODENKER:** Commissioner Aczon?

15 **COMMISSIONER ACZON:** Yes.

16 **MR. ORODENKER:** Chair Scheuer?

17 **COMMISSIONER SCHEUER:** Aye.

18 **MR. ORODENKER:** Thank you, Mr. Chair. The  
19 motion passes with eight affirmative votes.

20 **COMMISSIONER SCHEUER:** Thank you very  
21 much. Thank you to the applicants, the Office of  
22 Sustain Development, and the county. I will note  
23 that we have two remaining items on our agenda  
24 today. The agenda item for executive session will  
25 not occur.

1 We're not prepared to go into executive  
2 session regarding those matters, and that will be  
3 deferred to a later September agenda. Therefore,  
4 the only thing remaining on the agenda is going to  
5 be the Kihei High School matter, which I have  
6 previously recused from.

7 So with that, I will excuse myself from  
8 the meeting, hand the gavel over to our First Vice  
9 Chair, Dan Giovanni, to discuss how the rest of the  
10 day will proceed. Thank you very much.

11 **COMMISSIONER GIOVANNI:** Thank you, Chair  
12 Scheuer. Again, you will be missed as always, when  
13 you're not with us. So have a good afternoon.

14 What is the pleasure here? I'd like to --  
15 we have a lot -- I have every intent to try and  
16 complete the deliberation on the matter of the Kihei  
17 High School today. It looks like we're going to be  
18 losing some -- we'll lose commissioners in the late  
19 afternoon.

20 So I'd like to move forward with this on  
21 an expeditious basis and minimize -- and just have a  
22 moderate amount of time for -- for lunch. I have  
23 11:57. I'd like to adjourn for lunch and reconvene  
24 at 12:30. Does that work for everybody?

25 **COMMISSIONER CHANG:** Yes.



1           **COMMISSIONER OKUDA:** Yes, Chair.

2           **COMMISSIONER GIOVANNI:** See you at 12:30  
3 for resumption of the declaratory petition for Kihei  
4 High School. Thank you.

5           **(Recess taken from 11:57 a.m. - 12:34**  
6 **p.m.)**

7           **COMMISSIONER GIOVANNI:** And the recording  
8 has started. Just want to take a step back before we  
9 go forward.

10           Yesterday at the end of our session,  
11 approximately five minutes before we adjourned, we  
12 lost Commissioner Aczon. I think he --

13           Commissioner Aczon, can you affirm or  
14 confirm that you were able to review the portion of  
15 the meeting, which I think was only five minutes or  
16 so, that you may have missed?

17           **COMMISSIONER ACZON:** Yes. Yes, Mr. Chair.  
18 I was able to -- the last five -- five minutes of  
19 the hearing yesterday.

20           **COMMISSIONER GIOVANNI:** Great. Thank you  
21 for that. And then, secondly, we did receive some  
22 clarifying testimony from Representative Wildberger.

23           Mr. Derrickson, can you affirm or deny or  
24 whatever that she might be available to provide this  
25 clarification firsthand? Is she available in the

1 audience?

2 **MR. DERRICKSON:** Yes, Chair, she is. Would  
3 you like to --

4 **COMMISSIONER GIOVANNI:** Yes. I'd like to  
5 have you admit her just for purposes of  
6 clarification on the record.

7 **MR. DERRICKSON:** Representative Wildberger  
8 should be joining us. I'm going to try to promote  
9 her with the main account.

10 **COMMISSIONER GIOVANNI:** Who does that?

11 **MR. DERRICKSON:** I'm doing it right -- I'm  
12 trying to do it right now.

13 **COMMISSIONER GIOVANNI:** Okay. Appreciate  
14 everybody's patience. I don't have the same  
15 functionality on this Zoom from Kaua'i that we do on  
16 O'ahu.

17 **REPRESENTATIVE WILDBERGER:** My apologies  
18 for the delay in joining you all this afternoon.  
19 Aloha. Good afternoon.

20 **COMMISSIONER GIOVANNI:** Aloha,  
21 Representative. And thank you for your submittal  
22 earlier today to clarify some of your testimony from  
23 yesterday. I would appreciate it if you could put  
24 this -- if you would mind sharing that for the  
25 broader audience, put it on the record.

1                   **REPRESENTATIVE WILDBERGER:** Oh, certainly.  
2 My pleasure. I wanted to follow up with Commissioner  
3 Ohigashi's inquiries regarding funding and attempts  
4 to get funding, and as a member of the Finance  
5 Committee, what my activities might have been over  
6 the last couple of sessions regarding the Kihei High  
7 School.

8                   And I did put together a synopsis of my  
9 efforts, which I was not prepared to discuss  
10 yesterday because I was really focused on, you know,  
11 the DOE and their petition, so.

12                   In January 2020, I did submit CIP, which  
13 is capital improvement project funding for the  
14 underpass, and was awarded \$250,000 with HB 2725.  
15 The text of that line item in the budget bill says  
16 Kihei High School Maui plans to design for due  
17 diligence effort for pedestrian safety solution.  
18 Project may include related plans, studies, reports.

19                   And the total funding was 250,000 in C  
20 funds. In April 2020, the governor notified me that  
21 he had released \$7.25 million for what was  
22 categorized as additional construction and design  
23 for Kihei High School.

24                   And just a last point that as the South  
25 Maui rep, I am able to advocate for funding and ask

1 for funding, but it is ultimately the Department of  
2 Education's responsibility to request and extend  
3 funds on the projects that they're in charge of  
4 executing.

5 We all know that this item has been an  
6 item since 2013. I came into office in early 2019,  
7 but this issue has gone on well prior to my arrival,  
8 and the DOE has not included any of these  
9 considerations in their annual budget requests.  
10 Thank you very much.

11 **COMMISSIONER GIOVANNI:** Thank you. And I  
12 presume you're available for questioning, so,  
13 petitioner, do you have any questions for the  
14 witness?

15 **MR. FUJIOKA:** No, I don't. Thank you

16 **COMMISSIONER GIOVANNI:** Thank you.  
17 County?

18 **MR. HOPPER:** No, Chair.

19 **COMMISSIONER GIOVANNI:** And, state?

20 **MS. KATO:** I have no questions.

21 **COMMISSIONER GIOVANNI:** Commissioners, any  
22 follow-up questions? Mr. Ohigashi, Commissioner  
23 Ohigashi?

24 **COMMISSIONER OHIGASHI:** Yeah. I just -- I  
25 just wanted to clarify one thing. I think my

1 questions the other day dealt with whether or not  
2 DOE had come in for any kind of funding the last  
3 fiscal year.

4 And, number 3, where you say that they  
5 haven't had -- included any of the annual budget  
6 requests for funding for GSP, that would include the  
7 time -- that would include the school year 2020-21;  
8 right?

9 **REPRESENTATIVE WILDBERGER:** I believe so.  
10 Yes.

11 **COMMISSIONER OHIGASHI:** I just wanted to  
12 be sure. 2020. And in 2021-2022, was there any  
13 additional?

14 **REPRESENTATIVE WILDBERGER:** No. I don't  
15 think so.

16 **COMMISSIONER OHIGASHI:** Okay. That's what  
17 my request -- my questions were.

18 **COMMISSIONER GIOVANNI:** Thank you.

19 **COMMISSIONER OHIGASHI:** Thank you very  
20 much for the information, by the way.

21 **REPRESENTATIVE WILDBERGER:** My pleasure.

22 **COMMISSIONER GIOVANNI:** Commissioner  
23 Aczon?

24 **COMMISSIONER ACZON:** I just want to  
25 clarify. Those 7.2 million appropriated, that was

1 released by the governor, any specific purpose for  
2 that to the high school of extra classroom or -- or  
3 is there anything on the -- for the GSPC?

4 **REPRESENTATIVE WILDBERGER:** I don't have  
5 any detail on that, just that it was for additional  
6 construction and design of Kihei High School. Maybe  
7 the DOE could better ask that question.

8 **COMMISSIONER ACZON:** Okay. I will ask  
9 them. Thank you.

10 **REPRESENTATIVE WILDBERGER:** And hopefully,  
11 those funds have not lapsed. Hopefully, those funds  
12 are being put to good use.

13 **COMMISSIONER ACZON:** That was really  
14 another concern about the funding, because funding  
15 doesn't last forever, so if you don't use it, you  
16 lose it.

17 **COMMISSIONER GIOVANNI:** Thank you. Any  
18 other questions from the commissioners? Seeing none  
19 -- Oh, yes, Mr. Derrickson?

20 **COMMISSIONER WONG:** No. It's Commissioner  
21 Wong.

22 **COMMISSIONER GIOVANNI:** Oh, Mr. Wong. I  
23 didn't you recognize you in -- in the distance.

24 **COMMISSIONER WONG:** No problem, Chair. If  
25 I may ask the representative a question, or a couple

1 of questions?

2 **COMMISSIONER GIOVANNI:** Sure.

3 **COMMISSIONER WONG:** Thank you. Good  
4 afternoon, representative. I just wanted to ask. So  
5 this, the funding was to the DOE, not to the DOT;  
6 correct?

7 **REPRESENTATIVE WILDBERGER:** That's  
8 correct.

9 **COMMISSIONER WONG:** It was a line item  
10 specifically for an overpass or underpass or, you  
11 know, planning and engineering for that project;  
12 correct?

13 **REPRESENTATIVE WILDBERGER:** The capital  
14 improvement allocation of 250,000 was specified for  
15 underpass.

16 **COMMISSIONER WONG:** Okay. So we don't know  
17 if they have expended that or not.

18 **REPRESENTATIVE WILDBERGER:** Neither  
19 amount. I don't have any detail on DOE's  
20 expenditures.

21 **COMMISSIONER WONG:** Okay. Yeah. I just  
22 wanted to know also. You know, sometimes it can get  
23 funky in terms of if it just sits. DOE, you have  
24 money for Kihei School, and you can use it for  
25 whatever.

1 But if it specifically said for a planning  
2 and engineering for an underpass, then it's  
3 specific. Thank you, representative.

4 **REPRESENTATIVE WILDBERGER:** Thank you.

5 **COMMISSIONER GIOVANNI:** Okay. Now I think,  
6 if there's no more questions, and I see nobody's  
7 hands up, I can excuse the representative. Thank  
8 you for coming back today.

9 **REPRESENTATIVE WILDBERGER:** My pleasure.  
10 Appreciate your work.

11 **COMMISSIONER GIOVANNI:** Thank you. So  
12 back to the petitioner's presentation. Mr. Fujioka,  
13 I believe yesterday you were sharing a PowerPoint  
14 with us, and at the end of that, you flashed up  
15 three slides, but mentioned that the appropriate  
16 person from your team to present those slides was  
17 not available. And my understanding was you may want  
18 to revisit that today and re-present that; is that  
19 correct?

20 **MR. FUJIOKA:** That's correct. And if I --

21 **COMMISSIONER GIOVANNI:** Let me -- let me  
22 turn it over to you for continuation of the  
23 presentation of your -- from the petitioner.

24 **MR. FUJIOKA:** And if I could backtrack a  
25 little bit, yesterday I had difficulty showing a



1 couple of exhibits when I was talking to Mr. Mike  
2 Moran, so I wanted to see if I could display them  
3 now.

4 **COMMISSIONER GIOVANNI:** Certainly. You can  
5 display them as part of your presentation. But I  
6 don't think we're going to have Mr. Moran come back,  
7 so it will be part of your presentation.

8 **MR. FUJIOKA:** No, I don't think we need  
9 him back. This is a slide. It's a screenshot from  
10 the Kihei Community Association website, so August  
11 15 of this year, inviting people to participate in a  
12 sign waving in support of the underpass.

13 And then the other thing I was wanting to  
14 share was this photo, these photos from the sign  
15 waving which did actually occur on the 19th of  
16 August of this year. I think that the -- the 300-  
17 some odd emails in support of the underpass began  
18 about right after that August 19 event, so I think  
19 that the implication is that that event did -- kind  
20 of stimulated the emails.

21 So, you know, that -- I think there's a  
22 lot of support in the Kihei community for the --  
23 especially the underpass, and I think that  
24 underscores that there's a -- there's a pretty wide  
25 divide here, so there really needs to be a decision

1 one way or another by the commission.

2 So we, of course, hope that the motion is  
3 granted, but the activity and the emails, you know,  
4 just go to show that there is a significant  
5 disagreement, and it's ripe for decision.

6 In terms of the DOT slides that were  
7 presented in the meeting, the community meeting in  
8 January of this year, actually, Brenda Lowrey is a  
9 facilities planner for the DOE and has had to  
10 discuss it with the DOT, so I think if she's moved  
11 into the -- from the audience into the panel, she  
12 can -- I was hoping she could go through the slides  
13 with us.

14 **COMMISSIONER GIOVANNI:** That would be  
15 fine. What was her name again?

16 **MR. FUJIOKA:** Brenda Lowrey, L-o-w-r-e-y.

17 **COMMISSIONER GIOVANNI:** Mr. Derrickson,  
18 could you admit her?

19 **MR. DERRICKSON:** Yeah. Looking for her  
20 right now. She's coming on now.

21 **COMMISSIONER GIOVANNI:** Thank you. Ms.  
22 Lowrey, I need to swear you in first. Can you put  
23 your slides down for a second? Ms. Lowrey, can you  
24 enable your audio and visual?

25 **MS. LOWREY:** Thank you. Sorry.

1           **COMMISSIONER GIOVANNI:** Do you swear that  
2 the testimony you're about to give is the truth?

3           **MS. LOWREY:** I swear the testimony I give  
4 -- about to give is the truth.

5           **COMMISSIONER GIOVANNI:** Please --

6           **MS. LOWREY:** My name is Brenda Lowrey, and  
7 I work for the Department of Education.

8           **COMMISSIONER GIOVANNI:** Okay. Thank you.  
9 Please proceed.

10           **MS. LOWREY:** Okay. I'd like to share my  
11 screen because the DOT isn't available right now,  
12 and so I'll be presenting the slides that they  
13 shared on January 12th with the community. And these  
14 relate to the reason that we'll be constructing a  
15 roundabout as part of the Kihei High School project.

16           And this did change over the years. You  
17 know, pre-2006, HI-DOT, Hawai'i DOT, that considered  
18 that roundabouts weren't appropriate, but in that --  
19 in the time since then, things have changed, and by  
20 2016, they were starting to construct roundabouts.

21           And the reason they thought this was  
22 appropriate for this location, they referred to the  
23 Texas Transportation Institute study, which is also  
24 -- was included -- this chart was included as  
25 Exhibit 9, and the whole report was the one that

1 Commissioner Okuda had asked for. Also, Maui County,  
2 I think, included this as an exhibit.

3 But this is Exhibit 39, where this  
4 information came from, and it shows that if you use  
5 an overpass, it will take 1.8 times longer with the  
6 stairs, and because we have to make it ADA  
7 accessible, it will take 5.8 times as long to get  
8 across with ramps rather than using safe access at a  
9 roundabout. And using underpasses at either of the  
10 gulches takes longer, depending on where you're  
11 coming from.

12 So then they shared information about the  
13 gulches. And both the bridge at Kulanihakoi Gulch  
14 and at Waipuילani Gulch, they were built to carry  
15 floodwaters.

16 So there is a study that was done by FEMA,  
17 this map of the Kulanihakoi Gulch, showing that a  
18 100-year event would actually flood wider than just  
19 the gulch area. And so the Kulanihakoi Gulch was  
20 built in 1978, and it only has a seven-foot  
21 clearance between the streambed and the underside of  
22 the bridge.

23 And then there's no FEMA analysis for the  
24 Waipuילani Gulch bridge, but that's the section down  
25 below that shows that if you were to put a

1 pedestrian underpass, you're still going to be  
2 within what the gulch was meant to carry. The blue  
3 water -- or blue line shows that there would only be  
4 a three-foot clearance below that bridge. So that's  
5 why they were against trying to do an underpass in  
6 either of those bridges.

7           The safety considerations. This slide just  
8 refers back to, again, Fed Highway Administration  
9 studies that show that roundabouts, they give you a  
10 better field of vision because it slows the traffic  
11 down.

12           And there was a testimony, I think, that  
13 mentioned a 40-mile per hour speed limit along the  
14 highway, but in June, I think of this year, 2021,  
15 they've reduced the speed limit to 35 already along  
16 that section of Piilani Highway.

17           And the roundabout will bring it down to  
18 30 miles an hour and 20 miles an hour during school  
19 period. So it's a school zone.

20           So this is the proposed roundabout, kind  
21 of a construction drawing on top of an area, so it's  
22 a little confusing. But basically, it would be a  
23 two-lane roundabout, and then they go through some  
24 slides just showing the flow.

25           So if you're coming from the south and

1 you're heading northbound, there'll be two through  
2 lanes and a lane to turn up into the high school,  
3 and if you wanted to go west on Kulanihakoi, you  
4 would circle around and go makai.

5           And then here's if you're heading  
6 southbound, two lanes through, and then you would  
7 turn left up to the high school. And then if you're  
8 coming from the west side and going up to the high  
9 school, you would go around the roundabout that way,  
10 and then this one shows how if you're coming down  
11 from the high school, you would continue makai in  
12 that direction.

13           The bicycle path for roundabouts, the  
14 studies that have been done that have also -- it was  
15 that 2136, I think, study. And it shows that  
16 bicyclists in a roundabout have two choices. They  
17 either go with the traffic, or they walk their bike  
18 as a pedestrian.

19           And that's because you don't want to have  
20 a bike path merging with the traffic of the  
21 roundabout where a bike path ends. So you go with  
22 the traffic because of the way people merge into the  
23 roundabout with their car. So that's the bike path.

24           And then the pedestrian route would be a  
25 safe crossing on the south side, and there would be

1 raised pedestrian tables, and there would be  
2 pedestrian-activated rapid flashing beacons to alert  
3 drivers that there are people in the crosswalk, or  
4 pedestrians in the crosswalk. And then you would  
5 continue mauka up to the high school.

6 And this is the reason that they weren't  
7 promoting overpass is because of the additional  
8 distance. And they had this example of a high school  
9 situation. Here's the Enochs High School in Modesto,  
10 California.

11 And they put in a roundabout at the  
12 entrance of the school, but they didn't include any  
13 crosswalks over the east-west, or the horizontal  
14 roads, because they had put in this grade-separated  
15 crossing.

16 But in green, you can see to take the  
17 grade-separated crossing, it takes 675 feet to  
18 complete that route, whereas if you crossed at  
19 grade, it's 215 feet. So they were saying that  
20 students were observed crossing without the benefit  
21 of a crosswalk or markings.

22 And so this is what we don't to happen is  
23 to invest in a path that won't be used when there is  
24 a safe route across the roundabout.

25 So this was their final slide that just

1 said will be temporary construction impacts. They're  
2 planning on that. They'll finish the mauka side  
3 first, and then the makai side. The construction, if  
4 we can start in October, it will be completed by  
5 August 1st, 2020 -- or 2022, sorry.

6 The roundabout will result in much  
7 smoother and safer operation patterns. The project  
8 would create this bicycle route, meaning that you go  
9 with the traffic or you walk your bike. And the  
10 roundabout will create a safe pedestrian crossing to  
11 get to the new high school.

12 So the two main points is that it'll slow  
13 the traffic down, and when drivers are in  
14 roundabouts or approaching roundabouts, they're much  
15 more aware of pedestrians. And we'll have those  
16 rapid flashing beacons.

17 So that's it. And I apologize I'm not the  
18 Department of Transportation to answer questions.  
19 Thank you.

20 **COMMISSIONER GIOVANNI:** Will be available  
21 to answer questions in any event, I hope.

22 **MS. LOWREY:** Yes.

23 **COMMISSIONER GIOVANNI:** Okay. So you can  
24 -- Mr. Fujioka, what's your pleasure here? Do you  
25 want to continue, or do you want us to stop at this



1 point to have questions for Ms. Lowrey?

2 **MR. FUJIOKA:** Yeah. We could stop to --  
3 stop for questions at this point.

4 **COMMISSIONER GIOVANNI:** Then you will  
5 continue after?

6 **MR. FUJIOKA:** Yes.

7 **COMMISSIONER GIOVANNI:** Okay. So let's see  
8 if any of the parties have questions. Let's try to  
9 confine those questions to Ms. Lowrey at this time.  
10 We'll have opportunity to question Mr. Fujioka  
11 later. So to the county?

12 **MR. HOPPER:** No questions, Chair.

13 **COMMISSIONER GIOVANNI:** Ms. Kato for OPSD?

14 **MS. KATO:** No questions. Thank you.

15 **COMMISSIONER GIOVANNI:** Thank you.

16 Commissioners, questions for Ms. Lowrey?

17 Commissioner Okuda?

18 **COMMISSIONER OKUDA:** Thank you very much,  
19 Mr. Chair. And I'll confine it to the scope of the  
20 testimony that Ms. Lowrey gave.

21 Ms. Lowrey, did you -- you testified that  
22 the DOT's recommendations were based on that study  
23 from Texas, and it's report FHWA/TX-0162136-2  
24 Pedestrian Crossing Guidelines for Texas, December  
25 2000; correct?

1           **MS. LOWREY:** In part, on that. They've  
2 also referenced other studies. Yes.

3           **COMMISSIONER OKUDA:** But Exhibit 9 that  
4 the DOT has submitted in support of its petition  
5 specifically is HI-DOT's letter, which refers to  
6 that study; correct?

7           **MS. LOWREY:** Yes, but there's a later  
8 letter from -- from the DOT.

9           **COMMISSIONER OKUDA:** Okay. Well --

10          **MS. LOWREY:** There's Exhibit 13 or --

11          **COMMISSIONER OKUDA:** Okay. Yeah. And later  
12 on, we may get to that. But since you referenced  
13 this Texas study, that's why I'm -- I'm going to ask  
14 you questions with respect to the Texas study.

15                 Now, first of all, what is your position  
16 with the Department of Education, very briefly? What  
17 do you do at the Department?

18          **MS. LOWREY:** I'm a facilities planner.  
19 I've been in the facilities development branch for  
20 17 years. I work on planning of new schools and new  
21 facilities on existing campuses.

22          **COMMISSIONER OKUDA:** Okay. Since you  
23 referenced this Texas report, did you actually read  
24 the report?

25          **MS. LOWREY:** I haven't read the whole,

1 thick report. I have read the parts that were  
2 referenced in Exhibit 9, which is this table, the  
3 three pages that they included in Exhibit 9. Yes.

4 **COMMISSIONER OKUDA:** Okay. But this report  
5 is how many pages? Is it, like, I don't say 100  
6 pages, but it's a lot of pages; right?

7 **MS. LOWREY:** It is. And it covers things  
8 that aren't pertinent to the roundabout.

9 **COMMISSIONER OKUDA:** Okay.

10 **MS. LOWREY:** You know, it covers all kinds  
11 of things.

12 **COMMISSIONER OKUDA:** Okay. And your  
13 lawyers can object if I'm misstating something, but  
14 when I look at page 5 of the report, the report  
15 specifically says it is, and I quote, not intended  
16 for construction, bidding, or permit purposes. Were  
17 you aware that that's what the report says, it's not  
18 intended for permit purposes?

19 **MS. LOWREY:** That would make sense,  
20 because permitting is very site-specific, just like  
21 architecture, so you, you know, have a general  
22 thing.

23 **COMMISSIONER OKUDA:** Yeah. And just like a  
24 Land Use Commission decision which we're doing here,  
25 which is site-specific to the Kihei High School;

1 correct?

2 **MS. LOWREY:** Correct.

3 **COMMISSIONER OKUDA:** Okay. But  
4 notwithstanding that, isn't it true that the report  
5 contained a checklist of things which are factors  
6 which support the building of a grade-separated  
7 pedestrian crossing, which we will abbreviate as  
8 GSPC, that there's a checklist in that report of  
9 things that are to be looked at?

10 **MS. LOWREY:** That I'm not familiar with. I  
11 can't answer, so.

12 **COMMISSIONER OKUDA:** Okay. I understand  
13 that, but would you dispute that at page 44, one of  
14 the things that says, and I quote, grade separation  
15 of pedestrian and motor vehicle traffic is typically  
16 considered at crossings where the number of  
17 pedestrian-motor vehicle conflicts is high and/or  
18 the risk to crossing pedestrians is great?

19 Would you dispute that that's at page 44  
20 of the report?

21 **MS. LOWREY:** Actually, I'm not going to  
22 dispute it, but I'm not going to answer it. I don't  
23 have the report in front of me. And like I said, I  
24 haven't read the full report. Sorry.

25 **COMMISSIONER OKUDA:** Well, if you're not

1 going to dispute that statement, let me ask you  
2 this. Isn't it true that's the situation we have  
3 right here at Kihei High School with the highway,  
4 with the residences on the other side of the  
5 highway?

6 **MS. LOWREY:** I don't think we know that  
7 yet. I mean, we want to put -- we want to build the  
8 roundabout so that we can do a study of what the --  
9 what the actual situation is at that point.

10 **COMMISSIONER OKUDA:** Yeah. I'm trying to  
11 save time here. I'm just asking whether or not we  
12 have that situation which I stated. It's either yes,  
13 no, or I don't know.

14 **MS. LOWREY:** I don't know.

15 **COMMISSIONER OKUDA:** Do we have that --  
16 oh, don't know. Okay. Okay.

17 At page 46, it says a 1988 synthesis by  
18 Zegeer, Z-e-g-e-e-r, and Zegeer suggested that  
19 grade-separated pedestrian crossings are most  
20 beneficial under the following conditions. And the  
21 first point, where there is moderate to high  
22 pedestrian demand to cross a freeway or expressway.  
23 Isn't that what we have here?

24 **MS. LOWREY:** It's not a freeway.

25 **COMMISSIONER OKUDA:** Yes, no, or don't

1 know.

2 **MR. FUJIOKA:** I think I need to make an  
3 objection. She said that she hasn't read this report  
4 in its entirety.

5 **COMMISSIONER OKUDA:** Okay. Well, my  
6 comment is if there's going to be a reference to a  
7 report, and a witness is going to present the  
8 report, then I think the witness is subject to being  
9 asked if there's reliance on the report to determine  
10 how much we as a Land Use Commission can rely on the  
11 testimony of that witness.

12 Now, if you want to withdraw her as -- as  
13 the person competent or qualified to present these  
14 slides, then I'll stop asking the questions. Or if  
15 you will stipulate that -- that there's a -- there's  
16 a whole list of factors which would indicate that a  
17 grade-separated pedestrian crossing is justified  
18 here, but the witness can't tell us one way or the  
19 other, I'm willing to stop my questions to save  
20 time.

21 **MR. FUJIOKA:** Yeah, so this particular  
22 inquiry, yeah, I think I can stipulate that the  
23 report contains a list of factors, but whether she's  
24 able to answer specific questions about them, you  
25 know, I don't think she can do that.

1                   **COMMISSIONER OKUDA:** Okay. I'll -- I'll  
2 stop there because, you know, I don't want to beat a  
3 dead horse, as they say.

4                   The report contains references to two  
5 other underlying reports dealing with analysis of  
6 cost benefits of having a grade-separated pedestrian  
7 crossing or not having a grade-separated pedestrian  
8 crossing, which takes into account things like  
9 distances and things like that. Did you read those  
10 reports?

11                  **MS. LOWREY:** Not completely. I looked  
12 through both of them.

13                  **COMMISSIONER OKUDA:** Don't you think that  
14 that -- those reports are relevant to our decision  
15 here, if we're dealing with cost benefits of a  
16 grade-separated crossing?

17                  **MS. LOWREY:** I think what we're dealing  
18 with, my understanding is the motion is if we could  
19 open the school without a grade-separated crossing  
20 and do studies to then further determine the  
21 appropriate grade-separated crossing.

22                  **COMMISSIONER OKUDA:** No. The motion here  
23 is for the Land Use Commission to basically modify a  
24 condition which has been on the record. And in my  
25 own personal view, which is not gospel, a lot of

1 people have relied on, including the county counsel.

2 Let me ask a final question. Where in the  
3 record, what document shows that a grade-separated  
4 crossing will not be used at the Waipuilani, spelled  
5 W-a-i-p-u-i-l-a-n-i, Gulch? What document shows that  
6 it is not going to be used at that gulch?

7 **MS. LOWREY:** The document that talks about  
8 the distance that -- that if people, you know, take  
9 this one, in the sense that it would only be used by  
10 people where that's the direct route.

11 But we're trying to build a high school  
12 for a community that's very spread out. So if we  
13 provide our safe on-grade crossing at the roundabout  
14 intersection of Kulanihakoi and Piilani Highway,  
15 that's a safe crossing. But we have to take care of  
16 everyone right throughout the whole Kihei community.

17 **COMMISSIONER OKUDA:** I agree with that.

18 **MS. LOWREY:** And so I think this one,  
19 where it says that it takes longer to get there,  
20 it's only going to be used by the people where it  
21 doesn't take longer to get there. So I'm not sure if  
22 that's a document or if it's, you know, it's a  
23 statistic about going out of your way to use a path.

24 **COMMISSIONER OKUDA:** Did you hear the  
25 testimony that was given in the public testimony



1 that people already go through that -- or go under  
2 that bridge at Waipuilani Gulch?

3 **MS. LOWREY:** I did hear that testimony.

4 **COMMISSIONER OKUDA:** Do you dispute that  
5 testimony?

6 **MS. LOWREY:** I do think I work for --  
7 well, I work for the Department of Education, and we  
8 have huge liability issues and concerns.

9 **COMMISSIONER OKUDA:** I'm sorry, but my  
10 question wait. My question is simply did you hear  
11 the testimony.

12 **MS. LOWREY:** Yes. I did.

13 **COMMISSIONER OKUDA:** It's yes, no, or I  
14 don't know. Did you hear that testimony?

15 **MS. LOWREY:** Yes.

16 **COMMISSIONER OKUDA:** Do you have any facts  
17 which dispute the accuracy of that testimony?

18 **MS. LOWREY:** No. I'm not disputing the  
19 accuracy, or I don't have facts to.

20 **COMMISSIONER OKUDA:** So we as a Land Use  
21 Commission, based on that testimony, can conclude  
22 that people already go under the bridge at  
23 Waipuilani Gulch; correct?

24 **MS. LOWREY:** Yes.

25 **COMMISSIONER OKUDA:** Where has the

1 Department of Transportation stated in writing that  
2 it absolutely and under all circumstances reject the  
3 building of some type of improvement under the  
4 bridge at Waipuilani Gulch?

5 Where have they stated that in the record,  
6 in a letter, a document, that they absolutely refuse  
7 to consider any or all pedestrian crossings under  
8 that bridge at the Waipuilani Gulch?

9 **MS. LOWREY:** That Exhibit 9, where they --  
10 right here where they -- I'm not sure if I'm sharing  
11 my screen, but number 4. HI-DOT does not recommend  
12 the use of Kulanihakoi Gulch bridge or Waipuilani  
13 Gulch bridge as an underpass.

14 **COMMISSIONER OKUDA:** They -- they stated -  
15 -

16 **MS. LOWREY:** And this was in a letter on  
17 July 17th, 2020.

18 **COMMISSIONER OKUDA:** That's correct, what  
19 it says. It says they do not recommend. But where do  
20 they state they will reject it under all  
21 circumstances?

22 **MS. LOWREY:** I do not have that  
23 information.

24 **COMMISSIONER OKUDA:** Yeah. They don't  
25 state that. Okay. Thank you very much, Mr. Vice

1 Chair. I have no further questions of this witness.

2 **COMMISSIONER GIOVANNI:** Thank you,  
3 Commissioner Okuda. Commissioner Chang?

4 **COMMISSIONER CHANG:** Thank you very much,  
5 Mr. Chair. Good afternoon, Ms. Lowrey. I just want  
6 to do some follow-up questions. One, could you --  
7 what was the date of this presentation by DOT?

8 **MS. LOWREY:** January 12th of 2021.

9 **COMMISSIONER CHANG:** Okay. Were you  
10 present at that presentation?

11 **MS. LOWREY:** Yeah. It was a virtual  
12 meeting.

13 **COMMISSIONER CHANG:** Okay. Was it well  
14 attended by the community?

15 **MS. LOWREY:** We had 80-something  
16 participants, but of the 80, some of them were our,  
17 you know, team. So I think there were closer to 50  
18 of Kihei community.

19 **COMMISSIONER CHANG:** Okay. And did -- was  
20 the Department of Transportation present to answer  
21 questions?

22 **MS. LOWREY:** Yes. Actually, Deputy  
23 Director Ed Sniffen gave the presentation, and he  
24 and Robin Shishido, who's the head engineer on Maui,  
25 and also a planning engineer was also present at the

1 meeting.

2 **COMMISSIONER CHANG:** Okay. And could you  
3 briefly describe? We heard -- you know, we heard  
4 testimony, and it appears that you also heard  
5 testimony, public testimony, on this matter  
6 yesterday.

7 Were the questions that were asked by --  
8 to Department of Transportation consistent with the  
9 questions that were asked or comments that were made  
10 yesterday by the community -- essentially, wanting  
11 an underpass or an overpass?

12 **MS. LOWREY:** Yes. The community for the  
13 most part wanted a grade-separated crossing, but --  
14 and the presentation was an opportunity to share the  
15 roundabout with them, which there was some positive  
16 feedback on that.

17 **COMMISSIONER CHANG:** Okay. Was there any  
18 discussion regarding the grade-separating pedestrian  
19 pass?

20 **MS. LOWREY:** There was. And it focused --  
21 it did focus on the distances and also the -- the  
22 concerns that the bridges across the two gulches  
23 were not engineered, you know, to handle pedestrian  
24 traffic beneath them.

25 **COMMISSIONER CHANG:** And did the DOT

1 answer those questions or comments that were made by  
2 the community?

3 **MS. LOWREY:** I felt like they did. Yes.  
4 They were all.

5 **COMMISSIONER CHANG:** And I'm not -- I'm  
6 not asking you, you know, to -- to sit in DOT's  
7 shoes, but do you feel that the community was  
8 satisfied with the comments, with the responses  
9 provided by DOT?

10 **MS. LOWREY:** I think that's a hard thing.  
11 I think, yeah, we haven't been able -- ideally,  
12 that's what we wanted to do between the time that  
13 the DOE before came to -- so the November LUC  
14 hearing. The goal would have been to get consensus  
15 with the community and the DOE and DOT. But that  
16 didn't happen.

17 **COMMISSIONER CHANG:** Okay. Thank you. Can  
18 I ask you this question? Is DOT's decision -- well,  
19 has DOT made a decision not to build a grade-  
20 separating pedestrian crossing -- for example, an  
21 underpass? Has DOT made that decision?

22 **MS. LOWREY:** I don't think so. I think our  
23 -- the decision is to build the roundabout and to  
24 study, then, once that's in place, what the traffic  
25 is like and what the pedestrian movement is like.

1 And that's according to the 1(b) and 1(c)  
2 conditions that we owe the LUC additional not only  
3 TIAR, the traffic impact analysis report, which is  
4 more vehicle, but another part of the condition says  
5 we owe you pedestrian route studies.

6 So we're not trying to get out of doing  
7 those future studies. We know we need to do them at  
8 the appropriate time. So a year after the roundabout  
9 is in place, let's -- let's study it then and see  
10 what can be done.

11 And then as the population of the school  
12 grows, we study it again. And if it's been more than  
13 three years, we owe you an updated report after  
14 three years.

15 **COMMISSIONER CHANG:** And that's -- that is  
16 what I understood to be the position, is that you  
17 wanted to do this in phases.

18 The first phase is build the roundabout,  
19 open Phase I with the ninth graders, and then after  
20 that, there would be additional, these updated  
21 studies, and they would explore, I guess, different  
22 options, and one of the options could be an  
23 underpass by using one of the gulches.

24 And you would do further studies to  
25 determine an appropriate GSPC. Is that correct?

1           **MS. LOWREY:** That's my understanding, too,  
2 of the direction we're headed. Yes.

3           **COMMISSIONER CHANG:** And is -- is DOE's  
4 decision, you know, at this point in time, to do the  
5 roundabout and then to do additional studies -- is  
6 that based upon DOT's recommendations?

7           **MS. LOWREY:** Yes. Because we build  
8 schools, but we -- we consult with the DOT just like  
9 any developer, and then we follow their  
10 recommendation.

11           So that's why things changed over time.  
12 And I know the community is frustrated with that,  
13 how the reports say different things and, yes, we  
14 recommended a roundabout in the 2014 walkable  
15 report, but then, you know, we were building an  
16 intersection, or whatever. But that's because we  
17 were responding to DOT's recommendations.

18           So as it is now, in order to provide our  
19 safe access, we're putting in a roundabout with the  
20 pedestrian crossing with the flashing blinkers or,  
21 you know, pedestrian-activated rapid beacon system.

22           And then we'll do the studies and, you  
23 know, if traffic changes, the amount of pedestrians  
24 change, that's going to show up.

25           And then there's the -- and then we need

1 to study for this long community what makes sense,  
2 where the grade-separated crossing should be so that  
3 they're not doing six times as long a route to get  
4 there. But, yes, long answer. Sorry.

5 **COMMISSIONER CHANG:** No, I understand. I  
6 mean, and that is -- and that's because, I mean, as  
7 you started off your presentation, a lot of this is  
8 about liability. So DOE -- you don't have the  
9 traffic expertise, and you are referring to DOT; is  
10 that correct?

11 **MS. LOWREY:** That's correct.

12 **COMMISSIONER CHANG:** And DOT -- and I  
13 think you appreciate as much as anybody else here  
14 the lack of trust that the community has for exactly  
15 the same reasons that you just listed, that DOT has  
16 -- has changed their positions over time. So you  
17 understand and appreciate that mistrust.

18 **MS. LOWREY:** Yes. Things do change.

19 **COMMISSIONER CHANG:** Okay. So what I'm  
20 hearing from you, who is helping DOE design this  
21 school, is that with those updated studies, if those  
22 updated studies support the use of, you know, the  
23 underpass through one of the gulches with  
24 appropriate mitigation measures to address DOT's  
25 concerns about, you know, the flooding, DOT would



1 consider that.

2 **MS. LOWREY:** Yes. And could I make a  
3 clarification maybe on it's subject to funding? So.

4 **COMMISSIONER CHANG:** Okay. Yes.

5 **MS. LOWREY:** Is my screen being shared  
6 right now or not?

7 **COMMISSIONER CHANG:** Yes. I can --

8 **MS. LOWREY:** So I have the wording on the  
9 screen here of the \$250,000 that was appropriated  
10 and released for -- I'm sorry, scrolling down. So  
11 plans and design for due diligence effort for a  
12 pedestrian safety solution.

13 So we did contract with our consultant,  
14 G70, the architects and civil engineers for the  
15 project, and got them started looking at due  
16 diligence for an overpass after this money was  
17 released.

18 But then we put them on hold because in --  
19 I want to say June of 2019 is when DOT came back and  
20 said, no, we're going to go with a roundabout.  
21 That's, you know, going to handle the traffic best.  
22 It's going to slow the traffic down, and it'll  
23 provide a safe on-grade crossing.

24 So as of now, we haven't used the rest of  
25 this money, that we could then in the future put it

1 towards -- and I know one of the commissioners  
2 mentioned that money does lapse, but this money is  
3 encumbered into the contract, so we can use it  
4 towards the study of an appropriate grade-separated  
5 crossing at the correct time. Sorry for --

6 **COMMISSIONER CHANG:** No, because that was  
7 going to be my next question to you. It was going to  
8 be about funding.

9 But I do want to clarify what you just  
10 said, is that you said that DOT -- you put this  
11 money on hold because you were going to use the  
12 roundabout instead.

13 **MS. LOWREY:** Correct.

14 **COMMISSIONER CHANG:** Is that what you just  
15 said?

16 **MS. LOWREY:** Correct.

17 **COMMISSIONER CHANG:** So that seems to be  
18 an either/or. So are you telling me that -- because  
19 you previously said roundabout in Phase I so that we  
20 can do these additional studies to determine an  
21 appropriate grade-separating pedestrian crossing.  
22 Isn't that what you previously told me?

23 **MS. LOWREY:** Yes. And the -- the reason  
24 that -- because when we build the roundabout, the  
25 location of the grade-separated crossing could

1 change, right, based on what would make the most  
2 sense.

3 So that's why we didn't go farther with it  
4 once the direction was to change. So we have a  
5 change order from a signalized intersection to a  
6 roundabout.

7 **COMMISSIONER CHANG:** Okay. So I want to be  
8 very clear, because everybody else is listening to  
9 this in the audience, that you're not saying it's  
10 either/or, that with this appropriation, DOE still  
11 intends to complete those studies, which include an  
12 appropriate grade-separating pedestrian crossing,  
13 that you would do those additional studies. Is that  
14 correct?

15 **MS. LOWREY:** Do the additional studies.  
16 And they have to be -- the way, I think, even the  
17 condition, it's approved by DOT; right?

18 **COMMISSIONER CHANG:** Right, right, right.

19 **MS. LOWREY:** And so again, we build  
20 schools. DOT handles traffic, you know, so.

21 **COMMISSIONER CHANG:** Yeah. No, I get it. I  
22 just don't want -- because I seem to have gotten a  
23 little confused or maybe I misunderstood your  
24 statement when you said DOT -- DOE put that contract  
25 on hold, because you decided to do the roundabout

1 instead.

2 **MS. LOWREY:** Oh. Correct. For the -- for  
3 this initial phase of the buildings of the school.  
4 Yes.

5 **COMMISSIONER CHANG:** Okay. But for Phase  
6 II, these moneys are still available for DOE to  
7 continue to do those updated studies; is that  
8 correct?

9 **MS. LOWREY:** Some of the money. I think  
10 they, you know, they did some work. I don't have the  
11 exact numbers. But, yes, some of the money is  
12 available.

13 **COMMISSIONER CHANG:** But as the DOE  
14 representative today, you are committing -- or is it  
15 my -- I want to make sure that DOE is committing to  
16 doing those additional studies, which may -- to look  
17 at ground-separating pedestrian crossing.

18 **MS. LOWREY:** Yes. Yes. And that's part of  
19 the conditions, the LUC conditions. Yes. We are  
20 committed.

21 **COMMISSIONER CHANG:** Okay. All right. Very  
22 good. You've answered my questions. Thank you, Mr.  
23 Chair. I've no further questions.

24 **COMMISSIONER GIOVANNI:** Thank you,  
25 Commissioner Chang. Can you take down the shared

1 screen, please?

2 **MS. LOWREY:** Yes.

3 **COMMISSIONER GIOVANNI:** Any other  
4 questions by commissioners? Commissioner Ohigashi?

5 **COMMISSIONER OHIGASHI:** I lost the signal  
6 during Dawn Chang's questioning, so I didn't hear  
7 any of it. In addition to that, my screen went  
8 blank, and I couldn't see anyone on it, so I'm just  
9 -- and I was only able to reconnect, so I'm just  
10 shooting in the dark here as to what questions I  
11 want to ask.

12 **COMMISSIONER GIOVANNI:** Okay. Go ahead and  
13 shoot. Even if it's redundant, go ahead and shoot.

14 **COMMISSIONER OHIGASHI:** My question -- my  
15 question is is that who is making the final decision  
16 with regard to whether or not that grade-separated  
17 crossing or grade-separated crossing would be? Who  
18 would make the final decision?

19 **MS. LOWREY:** My understanding is that the  
20 DOE -- we do the reports, but the way the decision  
21 and order -- and Stuart maybe should correct me if  
22 I'm wrong on this, but that the reports, the  
23 recommendation of the reports have to be approved by  
24 DOT.

25 **COMMISSIONER OHIGASHI:** And if they're not

1 approved by DOT, who is going to?

2 **MS. LOWREY:** I think that's the way it  
3 works. You know, we're the Department of Education,  
4 and we build schools, and we rely on the DOT, their  
5 expertise, and I think that's the way the decision  
6 is --

7 **COMMISSIONER OHIGASHI:** I understand.  
8 You're the petitioner in this case. The DOE is the  
9 petitioner. They're the ones that came here. This is  
10 an -- this is a condition for an offsite improvement  
11 requirement.

12 In other words, like any other developer,  
13 the developer, the petitioner, would be required to  
14 do it. I'm asking you within the DOE, is it your  
15 final say of whether or not you're going to do this  
16 type of work?

17 **MS. LOWREY:** So my understanding -- so  
18 it's not me. I have, you know, at least three bosses  
19 above me; right? My facilities director, the  
20 assistant superintendent of the Office of Facilities  
21 and Operations, and the superintendent of education.

22 But my understanding is -- and then we  
23 have the legislature. We have to get funding before  
24 we can commit to doing anything. It's all subject to  
25 funding.

1 And then we have the Board of Education,  
2 which also prioritizes the IP project. So even  
3 though we would say this is a priority, it still has  
4 to get approved. So there are many bosses, many  
5 hats, but --

6 **COMMISSIONER OHIGASHI:** So let me ask --  
7 let me ask you. Who do we -- who do I ask? Who can  
8 you recommend that we ask who has the final say?

9 **MS. LOWREY:** I think because the studies  
10 have to be approved by DOT, so I think it's DOT in  
11 conjunction with our assistant superintendent of the  
12 Office of Facilities and Operations.

13 **COMMISSIONER OHIGASHI:** Is there a -- is  
14 there a specific law or regulation that controls  
15 that?

16 **MS. LOWREY:** My understanding is that from  
17 the superintendent level, there's delegated to the  
18 assistant superintendents in different offices, and  
19 so --

20 **COMMISSIONER OHIGASHI:** So, Brenda, then  
21 let's go back to the -- to the question that I  
22 asked. Who can I ask? Who can appear in front of us?  
23 Who can tell me? Who makes the final decision? Does  
24 the governor make the final decision? Does the  
25 superintendent of schools make the final decision?

1 Does the director of transportation make the final  
2 decision? Who makes that final decision?

3 **MS. LOWREY:** I wish that I could --

4 **COMMISSIONER OHIGASHI:** Rather than asking  
5 you what you are intending to do, maybe we should  
6 get from the person who makes the final decision,  
7 the answer to our question.

8 **MS. LOWREY:** And I think, ultimately, it  
9 goes back to funding. So all those people or levels  
10 have a say in, you know, up to the governor. He  
11 approves the release of funds for CIP projects. So  
12 things -- you know, there's definitely a ladder.

13 **COMMISSIONER OHIGASHI:** So the question  
14 that I have, then, is who made the decision to go  
15 with the roundabout and to put off the grade  
16 separation pedestrian crossing?

17 **MS. LOWREY:** So that I'm -- people are  
18 buzzing me. That happened in --

19 **COMMISSIONER OHIGASHI:** I don't know. I  
20 don't care when it happened. I said who made it? Who  
21 made that decision?

22 **MS. LOWREY:** I think our facilities, our  
23 public works administrator, who no longer works  
24 here. His name was John Chung. And he left in  
25 November of 2019.



1           **COMMISSIONER OHIGASHI:** If that was -- if  
2 it was made today, that decision was made today, who  
3 would have made it?

4           **MS. LOWREY:** I think it could have been  
5 Edward Ige, who's now our facilities director. And  
6 he falls right under Randall Tanaka, the assistant  
7 superintendent of the Office of Facilities.

8           **COMMISSIONER OHIGASHI:** So this decision  
9 was made by Mr. Ige.

10          **MS. LOWREY:** This decision was made by his  
11 predecessor.

12          **COMMISSIONER OHIGASHI:** His predecessor.  
13 And has that decision been reviewed by the director  
14 of transportation?

15          **MS. LOWREY:** Yes. They're the ones who  
16 wanted it.

17          **COMMISSIONER OHIGASHI:** Has that decision  
18 been reviewed by the superintendent of schools?

19          **MS. LOWREY:** Sorry. I -- I do not know  
20 that.

21          **COMMISSIONER OHIGASHI:** You do not know  
22 that.

23          **MS. LOWREY:** Whether it's been -- you just  
24 asked -- I -- I misinterpreted.

25          **COMMISSIONER OHIGASHI:** I asked two. You

1 said yes to the DOT, and you don't know to the --

2 **MS. LOWREY:** And I misinterpreted. It's  
3 been -- it was requested from the deputy director of  
4 the DOT Highways Division, and it was, you know,  
5 approved at our level.

6 We didn't have an assistant superintendent  
7 at the time, so it was, you know, our public works  
8 administrator at the time. I do not know if it went  
9 up to the level of the director of the DOT or the  
10 superintendent of education. I apologize. I do not  
11 know that.

12 **COMMISSIONER OHIGASHI:** So if the Land Use  
13 Commission will say that this is such an important  
14 decision to be made we want to know whether the  
15 director of transportation and the director of --  
16 and the superintendent of schools made that  
17 decision, would that be unreasonable -- wouldn't  
18 that be a not unreasonable request to know?

19 **MS. LOWREY:** I would like to think that  
20 they have -- that they support us as their staff to  
21 make the right decision.

22 **COMMISSIONER OHIGASHI:** Do you have a  
23 letter? Do you have a letter or anything in writing  
24 from that?

25 **MS. LOWREY:** I do not have a letter in

1 writing. No.

2 **COMMISSIONER OHIGASHI:** Because -- and  
3 maybe I'm -- maybe I'm totally off, but I just seem  
4 to say that somebody has to make a final decision  
5 and what position that the DOE is going to take.

6 And if you're telling me that all these  
7 mid-level managers are making the decision, well,  
8 then I want to make sure that the DOE superintendent  
9 knows and the DOT transportation director knows, and  
10 that they're fine with if we continue with this  
11 course that we are on and we keep the conditions as  
12 it is, they may wind up delaying the opening of the  
13 school.

14 Well, I'm just questioning. My question is  
15 -- my question is simple. Who made that decision?  
16 And was it made from the highest levels? Was it made  
17 from the DOT director? Was it made in conjunction  
18 with the superintendent?

19 **MR. FUJIOKA:** Mr. Chair, so I was going to  
20 ask if we could take a moment to break out and  
21 clarify.

22 **COMMISSIONER GIOVANNI:** You want to take a  
23 recess to clarify?

24 **MR. FUJIOKA:** Yes, Chair.

25 **COMMISSIONER OHIGASHI:** You know. That's -

1 - I don't have a problem with that, if you want to  
2 explain to her how to answer the question, and if --  
3 so long as I get an opportunity to find out what was  
4 discussed between you and her. Is that okay?

5 Because I'm getting frustrated, just like  
6 I'm showing Commissioner Cabral, and I'm saying that  
7 we're sitting in this thing saying, gee, who do we  
8 ask that are going to make the final decision? Do we  
9 have to ask the governor to say, hey, you got to  
10 settle this?

11 **MR. FUJIOKA:** I don't know that this is  
12 within the purview of this witness' knowledge, so I  
13 would like to talk to her about it, if we could.

14 **COMMISSIONER GIOVANNI:** So, Commissioner  
15 Ohigashi, what -- could you explain what you just  
16 said in terms of your recommendation for them to  
17 confer?

18 **COMMISSIONER OHIGASHI:** You know, if he's  
19 going if he's objecting and saying she doesn't know,  
20 then she should have said I don't know. And I -- and  
21 I wouldn't have asked her all these questions, but  
22 she kept telling me that, yeah, maybe it's this guy,  
23 this guy, so I -- Is that what you're telling her to  
24 say, Mr. Fujioka? Or you're saying that -- is that  
25 you're putting forth that she doesn't know?

1           **MR. FUJIOKA:** Yeah. I think this is beyond  
2 the purview of what she is --

3           **COMMISSIONER OHIGASHI:** Do we need -- do  
4 we need to take a break, if you're -- if you're  
5 telling me she doesn't know?

6           **MR. FUJIOKA:** What's that?

7           **COMMISSIONER OHIGASHI:** Do we need to take  
8 a break if --

9           **MR. FUJIOKA:** Well, if you're going to  
10 move on, I guess not.

11           **COMMISSIONER OHIGASHI:** She doesn't know,  
12 then. I'm venting my frustrations to the wrong  
13 person, I guess.

14           **MR. FUJIOKA:** Well, that could very well  
15 be.

16           **COMMISSIONER GIOVANNI:** So -- so before we  
17 release this witness, so my intent is let's take a  
18 short break.

19           In that break, Mr. Fujioka, I would like  
20 you to try to ascertain the answers to the questions  
21 about who is the decision -- who has made the  
22 decisions to not proceed with a grade-level --  
23 pardon me, a GSPC, as was the condition that you're  
24 trying to remove. Who made that decision?

25           Secondly, who made the decision not to use

1 budget for purposes of that design and build of that  
2 GSPC? Get answers to those questions.

3 We want to -- this commission wants to  
4 know who are making these decisions. Are they being  
5 made at mid-level and ignored above that? Are they  
6 being made at high level? Are they being made by  
7 employees who have left the DOE and no longer are  
8 there?

9 Please find answers to those questions. We  
10 will ask them to you or whatever witness you bring  
11 forward that has those answers.

12 So let's take -- and then when we resume,  
13 Commissioner Ohigashi, you may resume with this  
14 witness. So let's take a break. It's now 1:32.  
15 We'll return at 1:40.

16 **MR. FUJIOKA:** Thank you.

17 **(Recess taken from 1:32-1:40 p.m.)**

18 **COMMISSIONER GIOVANNI:** Okay. Let me  
19 return to Commissioner Ohigashi to restate your  
20 questions. You can direct them to the petitioner or  
21 its representative attorney or Ms. Lowrey and let  
22 them decide who and how to answer it.

23 **COMMISSIONER OHIGASHI:** My question was  
24 really simple. It's, like, who's making the final  
25 decision on this matter, previous matter?

1           **MR. FUJIOKA:** If the question is in terms  
2 of whether to build a grade-separated crossing or  
3 not, it came down to when the Department of  
4 Transportation was not going to recommend it or not  
5 approve it, then the DOE found itself unable to  
6 proceed at that point.

7           And going to the chair's question about  
8 the funding, it's the same thing. Once the DOE is  
9 not going to get approval from the DOT for the  
10 grade-separated crossing, that consultant was called  
11 off such that the funds are available, but not being  
12 used right now.

13           **COMMISSIONER OHIGASHI:** Well, the decision  
14 was made by the DOT.

15           **MR. FUJIOKA:** I don't know if you'd call  
16 it a decision, but when they weren't going to --  
17 when they wouldn't approve the grade-separated  
18 crossing, there was no point in proceeding with it.

19           **COMMISSIONER OHIGASHI:** So it was decided  
20 by the DOE not to proceed.

21           **MR. FUJIOKA:** Yeah. I don't know if you'd  
22 call that a decision. But, you know, because of  
23 that, once that was the recommendation or it was not  
24 possible to get approval, then the matter was  
25 closed.

1           **COMMISSIONER OHIGASHI:** Mr. Fujioka. Mr.  
2 Fujioka, is there a requirement in the DNO that you  
3 obtain permission from the DOT?

4           **MR. FUJIOKA:** Yeah. I believe there is.  
5 It's --

6           **COMMISSIONER OHIGASHI:** Is that  
7 requirement the requirement that's holding you back?

8           **MR. FUJIOKA:** In terms of being able to  
9 build the GSPC, I would say it's an important  
10 factor. Yes.

11           **COMMISSIONER OHIGASHI:** So if we were to  
12 get rid of that, make it entirely your decision, and  
13 we keep the present requirement, will the Department  
14 -- will the DOE build a grade-separated pedestrian  
15 crossing?

16           **MR. FUJIOKA:** I don't know.

17           **COMMISSIONER OHIGASHI:** Prior to Phase I?

18           **MR. FUJIOKA:** I cannot say, because the  
19 DOE is not in the business of building underpasses  
20 and overpasses. And it's tied to the DOT's roadway,  
21 so I would think that consultants need to be  
22 engaged. And then again, I don't know the interplay.  
23 It might still impact DOT's property, so just simply  
24 eliminating the DOT from the equation, you know,  
25 they can't get it done either.



1           **COMMISSIONER OHIGASHI:** I am following  
2 your line, your answers. Your answer was that, yes,  
3 the fact that we have a decision and order that the  
4 DOT must agree, I guess, and if they don't agree,  
5 then you are -- you cannot proceed. If we take that  
6 out and say only that you consult, what's stopping  
7 the DOE from implementing that?

8           **MR. FUJIOKA:** Well, the DOE doesn't have  
9 the expertise, so they'd have to consult. And if the  
10 consultant also --

11           **COMMISSIONER OHIGASHI:** Wouldn't --  
12 wouldn't you have gotten -- wouldn't you have  
13 gotten, according to Tina Wildberger, moneys in the  
14 amount of \$250,000 for the purposes of design,  
15 getting a consultant for that purposes? Didn't you -  
16 - don't you have moneys available from the \$7.25  
17 million that was released by the governor?

18           And by the way, there has been no  
19 financial statement showing that any of the  
20 appropriations that was given for this particular  
21 pool has been lapsed or has gone or has been used  
22 up. We haven't seen any of the financials, so  
23 there's no -- isn't it correct to say that money is  
24 not the problem?

25           Question is, well, there's nothing

1 directly to show that money is the problem. The only  
2 impediment that I can see that you have said is that  
3 we are requiring you to get DOT's permission. And if  
4 we take that out and put in a consultant, what's to  
5 stop you from doing a grade separation, proceeding  
6 with it?

7 **MR. FUJIOKA:** Well, I don't -- I don't  
8 know that we can just -- the DOT -- DOE can just  
9 build something on DOT property. And, you know,  
10 there's funding for the study, which was partially  
11 used, and then that this, as we were talking about  
12 before, it got put off when the grade-separated  
13 crossing was not -- was not going to be approved.

14 But other than that, there's -- the  
15 funding for that particular grade-separated crossing  
16 needs to be obtained.

17 **COMMISSIONER OHIGASHI:** And has any effort  
18 been from the DOE to obtain it or repurpose funding?

19 **MR. FUJIOKA:** Not while it was not  
20 recommended by the DOT.

21 **COMMISSIONER OHIGASHI:** Well, let's get  
22 rid of the DOT's requirement that we get their  
23 recommendation.

24 **MR. FUJIOKA:** But there's still -- there's  
25 still question whether it's necessary or indicated

1 and so forth, so --

2 **COMMISSIONER OHIGASHI:** Is that something  
3 your client has agreed -- has stated? Or is that  
4 your opinion, Mr. Fujioka?

5 **MS. LOWREY:** Stuart, can I chime in for a  
6 second?

7 **MR. FUJIOKA:** Sure.

8 **MS. LOWREY:** I mean, I think what he's  
9 saying is true. We're the DOE. We understand school  
10 facilities, and we do need the DOT. We're not -- you  
11 know, our expertise, even prior to 2005, DAGs did  
12 all our projects, and I was in facilities in DOE,  
13 and we were the user agency.

14 And now, you know, in 2005, there was 55  
15 or whatever, we became -- we have our own architects  
16 and engineers now. But we -- we repair and maintain  
17 and we build school facilities, and we're not -- we  
18 don't have the expertise to go offsite or to do all  
19 those challenges.

20 I understand that this is a condition, but  
21 the reason it's a condition with the DOT's  
22 requirement is because we look to their expertise.  
23 Just like any developer, you would want DOT to  
24 approve what their plans were, not to just build  
25 something because we think it's what is the best.

1 So we do, I think --

2 **COMMISSIONER OHIGASHI:** Ms. Lowrey. Ms.

3 Lowrey, no developer builds their offsite building.

4 I know. No developer. What they do is they hire a

5 consultant, come up with engineering plans, and then

6 they go to -- whatever is necessary.

7 **MS. LOWREY:** Correct. But -- but --

8 **COMMISSIONER OHIGASHI:** So what I am --

9 what I am pointing out to you is this. It's that we

10 haven't got engineering plans. We haven't moved one

11 iota towards the requirement that has been in there

12 since 2013. And there's been no showing, no showing

13 to this date that you don't have the money or the

14 ability to try and do it.

15 The only impediment I see is Mr. Fujioka

16 saying that within the decision and order, there's a

17 requirement, a requirement that DOE gets the

18 permission of the DOT. Which I'm not sure it's quite

19 that -- that strength.

20 Assuming that he's correct, if we say that

21 you would consult with the DOT, but it is your final

22 decision to move forward, what is the impediment

23 that you are trying to do that changes a condition

24 that's been there since 2013, that no one seems to

25 have been trying to move on, that only when, I

1 guess, in 2020, when this matter headed towards the  
2 -- that moneys were provided to even start on this?  
3 I'm just trying to get a hold of that.

4 And by the way, I'm really serious about  
5 who makes the final decision in this case. If it's  
6 DOT, fine. They make the final decision. They nix  
7 the project. They delay the school. If it's DOE, you  
8 nix the project. You delay the school.

9 We put in the conditions, and I hate when  
10 people tell me it's going to delay this, it's going  
11 to delay that. We put in the conditions a long time  
12 ago. It doesn't make sense to me that without moving  
13 towards it, without even making a determination, and  
14 not being -- and relying upon studies that seem to  
15 point both ways, that -- that nobody's taking  
16 affirmative to try and do something about this  
17 matter.

18 That's my -- that's my ranting for the  
19 day, but go back to my question, is that if we, Mr.  
20 Fujioka, if we keep the conditions as they are now,  
21 is it the position of the DOE they will not build  
22 (inaudible).

23 **MR. FUJIOKA:** I'm sorry. Much of that  
24 broke up.

25 **COMMISSIONER OHIGASHI:** I go back to my

1 original question. Is it the position of the DOE  
2 that if we keep the condition as it is now, that it  
3 will not build a grade-separation pedestrian  
4 crossing prior to Phase I?

5 **MR. FUJIOKA:** Prior to opening the school?

6 **COMMISSIONER OHIGASHI:** To opening the  
7 school.

8 **MR. FUJIOKA:** Yes, I believe it is. But if  
9 -- at the same time, they do want to open the  
10 school, and if it is open, the studies will keep  
11 going, will keep being conducted.

12 **COMMISSIONER GIOVANNI:** So I think --

13 **COMMISSIONER OHIGASHI:** So the answer is  
14 yes, maybe.

15 **COMMISSIONER GIOVANNI:** Yeah. We're  
16 starting to go into circles, so, Lee, unless you  
17 want to go to a different line of --

18 **COMMISSIONER OHIGASHI:** Oh, no, no.

19 **COMMISSIONER GIOVANNI:** You good?

20 **COMMISSIONER OHIGASHI:** I'm over.

21 **COMMISSIONER GIOVANNI:** Okay.

22 Commissioner Chang?

23 **COMMISSIONER CHANG:** I'm sorry. I just --  
24 I understand the frustration, and maybe it's because  
25 I was formerly with the attorney general's office.

1 In all due respect, this is about liability. This is  
2 -- DOT is the one that has the expertise, not DOE.  
3 And the condition specifically says to the  
4 satisfaction of DOT.

5 So no agency is going to move without that  
6 expertise from that -- I mean, this is the state of  
7 Hawai'i. And ultimately, they're looking out for the  
8 taxpayers' money, whether we like it or not.

9 So that's, you know, that's -- I  
10 understand it's frustrating, because who makes the  
11 decision? But they are all representing the state of  
12 Hawai'i, and for me, that's like -- what is that?  
13 Sacred Falls. We could have the community wanting  
14 that to be open, but because of liability, it won't  
15 be open. So to me, likewise.

16 And I know that's not a satisfactory  
17 answer. And I'm not trying to answer on behalf of  
18 DOE, but I'm just trying to see if there's a path  
19 forward that we can agree on on this specific one. I  
20 apologize, but I just wanted to say that, express  
21 that.

22 **COMMISSIONER GIOVANNI:** Okay. So you don't  
23 have a question. So since we're making comments, let  
24 me insert a bit of my own recall from our November  
25 2019, where we had an opportunity to directly hear

1 from Mr. Sniffen from DOT and cross-examined him.

2 And my recall -- and we can check the  
3 transcript -- was that he was recommending the --  
4 not only recommending the roundabout, but was  
5 willing to fund it out of his own DOT budget and not  
6 encumber the CIP funds that were allocated for the  
7 school.

8 However, if DOE was the client and  
9 provided the funding, Mr. Sniffen said that they  
10 could look at design and build a ground -- a GSPC.  
11 But it wouldn't come out of DOT's budget. That's my  
12 recall. Somebody can check the record, if they want  
13 to. Okay. Any other questions for Ms. Lowrey?

14 **COMMISSIONER GIOVANNI:** Okay. I'll return  
15 to you, Mr. Fujioka, for the continuation of the  
16 presentation of your -- for your petition.

17 **MR. FUJIOKA:** I just thought -- I thought  
18 I should respond to some of the testimony that was  
19 presented in terms of the community association. The  
20 numerous emails just show that there's -- a decision  
21 needs to be made.

22 And as far as Representative Wildberger's  
23 testimony, I think it cites a number of publications  
24 that just encourage some sort of underpass. But  
25 those -- I believe those same publications also



1 characterize it as a last resort.

2 And so if there's going to be a roundabout  
3 in place, and the DOT recommendation and the studies  
4 that support that recommendation don't advise a  
5 grade-separated crossing, we need to -- the DOE  
6 needs to defer to that.

7 And I think the county supports having a  
8 decision made. And the one comment I would have to  
9 that one is in terms of the future studies and the  
10 possibility of reaching maximum enrollment in five  
11 years, I think the current DOE projections that we  
12 went over by way of slide are somewhat below that.  
13 Instead of 800 within five years, we'll get 500-some  
14 odd.

15 So the studies will go on, but the  
16 enrollment is not projected to increase as fast as  
17 originally projected.

18 I think the quandary has been discussed  
19 over and over, that the GSPC requirement is in  
20 there. It's subject to DOT's satisfaction and  
21 approval. And there has -- there was difficulty  
22 getting a report, a study approved back in 2013 to  
23 2017. And then further studies were done, and then  
24 the roundabout became the recommended solution.

25 So at this point, you know, with no DOT

1 approval, DOE wants to open the school. I think  
2 everybody wants the school to open. But there hasn't  
3 been approval for the grade-separated crossing, so  
4 we're kind of stuck here unless the condition is  
5 modified.

6           And even if it is, there are still those  
7 requirements of future studies which, of course,  
8 need to be taken seriously when they're done. And if  
9 -- whatever they recommend, whether there'll be a  
10 grade-separated crossing of kind of crosswalks or  
11 signs or whatever it is, you know, that needs to be  
12 complied with.

13           So what if, you know -- we would at this  
14 point, you know -- the motion has been pending for  
15 about a year, and DOE wants to open the school.

16           We've got a principal who's committed to  
17 meeting with the community at least once a month,  
18 and they're projected to open with a lot fewer  
19 students than originally thought.

20           So DOE respectfully requests as a  
21 petitioner that the requirement of a grade-separated  
22 crossing be either eliminated or modified, mindful  
23 that the studies will continue, definitely the first  
24 year after the opening, and then there's at least  
25 two more. Then if three years go by, then there

1 would need to be another.

2 So the community, the commission, and  
3 county and everyone involved can be assured that if  
4 a GSPC is ever indicated, there will be -- steps  
5 will be taken to make sure that it's built. Thank  
6 you.

7 **COMMISSIONER GIOVANNI:** Thank you. So,  
8 commissioners, do you have questions for Mr.  
9 Fujioka? Commissioner Okuda?

10 **COMMISSIONER OKUDA:** Thank you very much,  
11 Mr. Chair. Mr. Fujioka, first question is what is  
12 the standards of review that the Land Use Commission  
13 has to follow to modify this condition, or to grant  
14 your request? What is the standard of review that  
15 we're supposed to follow? What do you have to show?

16 **MR. FUJIOKA:** I don't know off the top of  
17 my head. It's --

18 **COMMISSIONER OKUDA:** Okay. Well, would you  
19 disagree that it's a -- it's a good cause standard,  
20 that you have to show good cause?

21 **MR. FUJIOKA:** That would make sense.

22 **COMMISSIONER OKUDA:** Yeah. And I just want  
23 to make sure we're clear on the standard because,  
24 you know, we are quasi-judicial, and we have to --  
25 we have to follow it. I think that's -- and tell me,

1 because this is kind of basic, tell me whether you  
2 disagree that HAR Section 15-15-94(b), which says,  
3 "For good cause shown, the commission may act to  
4 modify or delete any of the conditions imposed or  
5 modify the commission's order."

6 So do you agree that that's an accurate  
7 reading of the administrative rule that I just read,  
8 and it provides for a good cause standard?

9 **MR. FUJIOKA:** I have no reason to dispute  
10 that.

11 **COMMISSIONER OKUDA:** Okay. And what is  
12 your understanding of what good cause means?

13 **MR. FUJIOKA:** Good cause, I guess, is  
14 substantial reason.

15 **COMMISSIONER OKUDA:** Yeah. Okay. Well,  
16 just so that -- I want to make sure at least you and  
17 I are on the same page. Let me read you from this  
18 case, Chen, C-h-e-n, v. Mah, M-a-h. That's 146 Haw.  
19 157 at 178. That's a 2020 Hawai'i Supreme Court  
20 case, and I'm going to read this one sentence. You  
21 tell me whether it's an accurate statement of the  
22 legal definition of good cause.

23 And I quote. "'Good cause' [...] depends  
24 upon the circumstances of the individual case and a  
25 finding of its existence lies largely in the

1 discretion of the officer or court to which [the]  
2 decision is committed."

3 Do you agree that that is an accurate  
4 description of good cause?

5 **MR. FUJIOKA:** I don't know the case, but  
6 it sounds plausible.

7 **COMMISSIONER OKUDA:** Okay. Well, would you  
8 disagree with that definition as a definition of  
9 good cause?

10 **MR. FUJIOKA:** Well, not having familiarity  
11 with that case, I can't disagree.

12 **COMMISSIONER OKUDA:** Okay. And do you  
13 agree that we as an agency have to apply the  
14 preponderance of the evidence burden of proof in  
15 contested cases?

16 Or let me be more specific. In this case,  
17 is the burden of proof that we have to apply the  
18 preponderance of evidence? And if you want a  
19 citation where I'm getting that from, it's Kilakila  
20 'O Haleakala v. Board of Land and Natural Resources,  
21 138 Haw. 383, a 2016 Hawai'i Supreme Court case.

22 Do you agree that it's a preponderance of  
23 the evidence standard?

24 **MR. FUJIOKA:** I don't have the case in  
25 front of me, so.

1           **COMMISSIONER OKUDA:** But do you disagree  
2 with that statement? Or is there a different  
3 standard we have to apply?

4           **MR. FUJIOKA:** Not having anything as a  
5 reference, I can't disagree.

6           **COMMISSIONER OKUDA:** Okay. Okay. And  
7 preponderance of the evidence standard means the  
8 factfinder, meaning us, we got to decide whether the  
9 existence of a contested fact is more probable than  
10 its nonexistence.

11           I'm citing the case of Masaki v. General  
12 Motors, but what means in plain English is if it's  
13 just a little bit higher than 50 percent,  
14 preponderance of the evidence is met. Do you agree  
15 with that?

16           **MR. FUJIOKA:** Well, I believe in that.  
17 Just tip the scales, yeah.

18           **COMMISSIONER OKUDA:** Yeah. But you as the  
19 movant -- or not you, personally, but the Department  
20 of Education as the party that is bringing this  
21 request, the Department of Education has the burden  
22 of proof and the burden of persuasion and the burden  
23 of coming forward with the evidence; correct?

24           **MR. FUJIOKA:** I would think so.

25           **COMMISSIONER OKUDA:** And so if you don't

1 meet that burden, just on that basis we can deny  
2 your petition; correct?

3 **MR. FUJIOKA:** You know, but it may go back  
4 -- I would think so but, you know, it may go back  
5 also to the discretion of the commission, so.

6 **COMMISSIONER OKUDA:** Yeah. But it's your  
7 burden of proof under -- under Chapter 91. It's your  
8 burden to prove the case, to bring the evidence  
9 forward. It's within our discretion to make the  
10 decision, but it's your burden to prove your case.

11 And if you don't prove your case, it's not  
12 the burden, for example, of the Kihei Community  
13 Association to disprove your case. The Department of  
14 Education has to prove its case; correct?

15 **MR. FUJIOKA:** Yeah.

16 **COMMISSIONER OKUDA:** Okay. Let me ask  
17 about a late filing by the Department of Planning,  
18 County of Maui. And that was filed September 8,  
19 2021. The file stamp shows 6:59 a.m. with the State  
20 of Hawai'i Land Use Commission. Did you review that  
21 filing?

22 **MR. FUJIOKA:** I believe I did.

23 **COMMISSIONER OKUDA:** Can you point any --  
24 any statement in that filing, any statement that is  
25 made by the county of Maui which is erroneous,

1 misleading, or simply wrong?

2 Or if you're not in a position to answer  
3 my question right now, you can just tell me you're  
4 not in a position to answer my question right now,  
5 and we'll just deal with the record.

6 **MR. FUJIOKA:** That is correct.

7 **COMMISSIONER OKUDA:** I'm sorry?

8 **MR. FUJIOKA:** Yeah. I'm not -- I'm not in  
9 a position to line by line and tell you what is and  
10 is not.

11 **COMMISSIONER OKUDA:** Oh, okay. Okay. No,  
12 that's fine. Having reviewed -- have you reviewed  
13 the written testimony that Tina Wildberger  
14 submitted, which is part of the record and also  
15 posted -- just like the County of Maui's most recent  
16 filing, posted on the Land Use Commission's website?

17 **MR. FUJIOKA:** Yeah. During the sign-up.

18 **COMMISSIONER OKUDA:** Can you point to any  
19 specific statement she made in her written testimony  
20 which was erroneous, false, misleading, wrong, or  
21 any words to that effect?

22 **MR. FUJIOKA:** I can't say -- I'm not  
23 prepared to say that any particular fact is wrong,  
24 erroneous, or misleading, but I think I made  
25 reference to some of the quotations perhaps have --



1           **COMMISSIONER OKUDA:** Let me just say this.

2           **MR. FUJIOKA:** One proposition when they  
3 were being made may also support the other.

4           **COMMISSIONER OKUDA:** Okay. You know, I'm  
5 not asking you to comment on, you know, arguments,  
6 because I understand that the Department of  
7 Education's decision may be different from the  
8 representative's position on certain issues.

9           I'm looking to the factual statements or  
10 the statements which she alleges to be facts,  
11 whether any facts she presented to us in that  
12 testimony were wrong, erroneous, misleading, shibai,  
13 or whatever.

14           **MR. FUJIOKA:** To do that, I would have to  
15 go line by line.

16           **COMMISSIONER OKUDA:** Okay. Well, you know,  
17 we're going to take the record the way it is. Let me  
18 ask you this. I'm trying to wrap this -- wrap this  
19 up. The statutes require agencies such as ours,  
20 even though we are quasi-judicial, to take public  
21 testimony. Do you consider the public testimony that  
22 was given part of the record that we must consider?

23           **COMMISSIONER GIOVANNI:** That's a yes/no  
24 question.

25           **MR. FUJIOKA:** I believe it is.

1           **COMMISSIONER OKUDA:** What amount of weight  
2 should we give to public testimony for testifiers  
3 who have demonstrated actual residence in the Kihei  
4 community avenue? What kind of weight do we give  
5 that public testimony?

6           **MR. FUJIOKA:** I don't know. That's not a  
7 call for me. I don't think that's a call for me to  
8 make. I don't think that that can be the only factor  
9 when you --

10           **COMMISSIONER OKUDA:** I'm just -- okay. Let  
11 me ask it this way. Is it true that the Land Use  
12 Commission has to make the decision on how much  
13 weight to give each piece of public testimony, but  
14 whatever weight we give it, we consider it in making  
15 our decision?

16           **MR. FUJIOKA:** I believe that's up to the  
17 commission.

18           **COMMISSIONER OKUDA:** Okay. And last few  
19 questions, I promise you, Mr. Fujioka.

20           In looking at testimony that has been  
21 submitted in this case, is there any testimony from  
22 anyone residing within the County of Maui -- it  
23 doesn't even have to be somebody residing in the  
24 Kihei area.

25           Is there testimony from anyone residing in

1 the County of Maui -- and you can include Moloka'i  
2 and Lana'i also -- that support the elimination of  
3 the condition for grade-separated pedestrian  
4 crossing?

5 **MR. FUJIOKA:** Of the public testimony?

6 **COMMISSIONER OKUDA:** Or is there anybody  
7 who resides in the County of Maui, whether it's  
8 public testimony or not, who has stepped up and  
9 stated they support the elimination of the grade-  
10 separated pedestrian crossing?

11 **MR. FUJIOKA:** Okay.

12 **COMMISSIONER OKUDA:** Somebody from Maui.

13 **MR. FUJIOKA:** Before I answer that, I  
14 think Brenda Lowrey's got a finger up.

15 **MS. LOWREY:** Sorry. If I'm allowed to  
16 chime in, Commissioner Okuda, I did go through the  
17 324 testimonies, and I did read them, unlike the  
18 traffic reports that I didn't get all the way  
19 through. And you're correct that, sorry, you're  
20 correct that none of them supported the motion.

21 But there was one person who, when he  
22 wrote about the need for a grade-separated crossing,  
23 he mentioned that there are safety issues with both  
24 an underpass and an overpass, and he recommended a  
25 third option that was in place at Lipoa Street for

1 the charter school, where there's police-coordinated  
2 crossings at the start and end of school.

3 So I just want to clarify that that was  
4 one person who lives in the community who said both  
5 the overpass and underpass have issues.

6 **COMMISSIONER OKUDA:** Yeah.

7 **MS. LOWREY:** But he wasn't -- I do want to  
8 -- he wasn't in favor of our motion.

9 But I also wanted to say when you were  
10 talking about giving weight to all the testimony,  
11 that there were 12 percent of the 324 emails that  
12 came in mentioned either an overpass and underpass,  
13 or they talked about we want a grade-separated  
14 crossing.

15 Two hundred eighty-five of them, or 88  
16 percent, said we want an underpass, or they said we  
17 want underpasses under Piilani bridges. And of those  
18 88 percent, 62 percent of those were cut and pasted  
19 one-line emails. So I would just -- some of them  
20 were longer.

21 **COMMISSIONER GIOVANNI:** Fair enough.

22 **COMMISSIONER OKUDA:** Yeah. Let me -- yeah,  
23 let me make it --

24 **COMMISSIONER GIOVANNI:** Mr. Okuda? Mr.  
25 Okuda?

1                   **COMMISSIONER OKUDA:** Yes.

2                   **COMMISSIONER GIOVANNI:** Yeah. We've all  
3 had an opportunity individually to read all of the  
4 written testimony and to draw our own conclusions.  
5 The question on the table, and I'll reiterate it, is  
6 are you aware of any resident of Maui that is in  
7 favor of removing this condition?

8                   **MR. FUJIOKA:** I can't name anyone, but  
9 there were people at the -- at least one public  
10 meeting who were in favor of it.

11                   **COMMISSIONER OKUDA:** Okay. And my final  
12 question, Mr. Fujioka, is -- and this goes again to  
13 the good cause standard. In one of your filings, it  
14 stated that one of the reasons for not moving  
15 forward with the grade-separated pedestrian crossing  
16 was that there was confusion.

17                   Please identify and name the person or  
18 persons that were confused, which led to the fact  
19 that there was no forward movement regarding the  
20 grade-separated pedestrian crossing. Who was  
21 confused? Can you give me a name?

22                   **MR. FUJIOKA:** No, I can't give you a name.

23                   **COMMISSIONER OKUDA:** Okay. Thank you very  
24 much, Mr. Chair. No further questions.

25                   **COMMISSIONER GIOVANNI:** Okay.

1 Commissioner Aczon, do you have questions?

2 **COMMISSIONER ACZON:** Thank you, Mr. Chair.

3 Just two questions. One is to just clarify Ms.  
4 Lowrey's testimony about DOE is committed to  
5 pursuing the study towards building the GSPC  
6 regardless of, you know, the liability that, you  
7 know, comes with it.

8 I just want to kind of confirm that, and  
9 I'll ask my second question.

10 **MS. LOWREY:** Can I respond to that, that  
11 I'm confirming that the DOE's committed to pursuing  
12 what comes out of future studies about a grade-  
13 separated crossing. Does that answer your question?

14 **COMMISSIONER ACZON:** Okay. Fair enough.  
15 Second question is what is DOE's position on the  
16 county of Maui Department of Planning proposed  
17 compromise language that would allow for the timely  
18 opening of the school while retaining the  
19 requirement for a GSPC?

20 **MS. LOWREY:** Is that for me or Stuart?

21 **COMMISSIONER ACZON:** Whoever, you know.  
22 Directing it to the counsel, Mr. Fujioka.

23 **MR. FUJIOKA:** I think the response is  
24 definitely open the school and do the -- conduct the  
25 studies as required in the order, and install and

1 implement any traffic and pedestrian safety measures  
2 that are indicated.

3 **COMMISSIONER ACZON:** What is the DOE's  
4 position?

5 **MR. FUJIOKA:** I'm sorry. I interrupted  
6 you.

7 **COMMISSIONER ACZON:** I'm just trying to,  
8 you know, because we're trying to see if we can open  
9 the school earlier. But, you know, on the other  
10 side, you know, we want to make sure that DOE  
11 conform to the conditions provided by the Land Use  
12 Commission.

13 So a compromise language was brought  
14 forward. I just want to kind of see what's the DOE's  
15 position on that. Yes or no or, you know.

16 **MS. LOWREY:** I'd like to say that the DOE  
17 would like to work with the county.

18 So, Stuart, didn't we -- in the  
19 conversation this morning, we said that we would  
20 support their language that didn't remove the GSPC  
21 from the condition, but would allow the school to  
22 open without the GSPC in place?

23 **MR. FUJIOKA:** Yeah. And I do think that  
24 the position is also that the GSPC will, you know,  
25 will be constructed if it's required or if it's

1 recommended by the studies.

2 **COMMISSIONER ACZON:** Even if we retain  
3 that condition, you know, just thinking, you know,  
4 how long it's going to take for all the studies. And  
5 if it, you know, comes out that, okay, you know,  
6 GSPC or whatever is appropriate, then we're talking  
7 about funding. And it's going to take years, you  
8 know. So what happens now to the school?

9 That's what I'm kind of trying to -- you  
10 know, I'm trying to kind of come out with some kind  
11 of solution to satisfy the two sides, you know. If -  
12 - my worries is if the two sides going to dig into  
13 their positions and what's going to happen is we're  
14 just going to be promising those people that we're  
15 trying to protect, which are the youth that we have.

16 So I'm just, you know, concerned about  
17 that, you know. If everybody going to dig into their  
18 positions without compromise, then, you know, four  
19 or five years, 10 years from now, you know, the  
20 school is not going to open. So I'm just trying to,  
21 you know, come up with --

22 **COMMISSIONER GIOVANNI:** Edmund, do you  
23 have a question? Do you have another question,  
24 Edmund?

25 **COMMISSIONER ACZON:** No. That's -- that's



1 all. I still didn't get the complete answer, so.

2 **COMMISSIONER GIOVANNI:** Understand.

3 Commissioner Ohigashi, and then Commissioner Chang.

4 **COMMISSIONER OHIGASHI:** I'm just trying to  
5 understand, Mr. Fujioka, your position. Your  
6 position is to make sure that we take out the GSPC,  
7 but only require it if the studies show. Is that  
8 your position?

9 **MR. FUJIOKA:** You know, when we're talking  
10 about trying to reach a solution --

11 **COMMISSIONER OHIGASHI:** Wait, wait, wait,  
12 wait, wait. Besides that. I'm trying to get your  
13 position. So why don't you tell me if I'm correct in  
14 your position or not?

15 **MR. FUJIOKA:** Okay.

16 **COMMISSIONER OHIGASHI:** Rather than go  
17 through your whole spiel. Not enough time. I'm just  
18 trying to get my question. So my question was  
19 simple.

20 **MR. FUJIOKA:** I'm sorry. Is --

21 **COMMISSIONER OHIGASHI:** Your position is  
22 we get rid of the GSPC requirement and we -- but if  
23 it is recommended in those studies, that it would be  
24 built. Is that you're saying?

25 **MR. FUJIOKA:** Actually, the main priority

1 right now is to eliminate that prior to opening the  
2 school.

3 **COMMISSIONER OHIGASHI:** No. I'm -- I'm --  
4 that's why -- I understand that.

5 **MR. FUJIOKA:** Yeah.

6 **COMMISSIONER OHIGASHI:** I'm just trying to  
7 get your position clear. If it's required by a  
8 study, you will build it.

9 **MR. FUJIOKA:** Yes.

10 **COMMISSIONER OHIGASHI:** Is that what  
11 you're saying?

12 **MR. FUJIOKA:** Yes.

13 **COMMISSIONER OHIGASHI:** Irrespective of  
14 whether or not DOT says no or not.

15 **MR. FUJIOKA:** Well, if it's -- if it's  
16 called for by the study, I don't think --

17 **COMMISSIONER OHIGASHI:** Listen. Listen.  
18 Irrespective of whether or not DOT says no. I want  
19 something set to say if you're going to build it  
20 whether or not DOT says yes or no. It doesn't  
21 matter.

22 **MR. FUJIOKA:** Yeah. I don't know that  
23 anything can be built in that area without any --  
24 traffic safety kind of thing can be put in without  
25 the DOT's --

1                   **COMMISSIONER OHIGASHI:** No. So I  
2 understand your position. Whether or not, even if a  
3 study recommends it, if DOT says no, then you're not  
4 going to build it anyway. Is that right?

5                   **MR. FUJIOKA:** That's a -- I don't think we  
6 can say that, because the DOT is not going to be --

7                   **COMMISSIONER OHIGASHI:** No, listen. That's  
8 my -- that's my hypothetical. It's very simple. It's  
9 very simple. It says, hey, if the study recommends  
10 it and says, yeah, it'll help save lives, you know,  
11 and it will reduce the potential for death, and DOT  
12 says no or bean counters say, eh, it's not -- it's  
13 not high enough a warrant. And -- and that means  
14 that the DOE is going to go ahead and build it?

15                   **MR. FUJIOKA:** Well, we come back to the  
16 same thing where we can't -- you can't defy the DOT  
17 outright. But then again, the DOT cannot --

18                   **COMMISSIONER OHIGASHI:** That's exactly --  
19 that's exactly my -- my exact point is this. My  
20 exact point is this. So long as the DOT says no,  
21 whether or not it's recommended, whether or not it's  
22 required, it will never be built. That is the DOE's  
23 -- that is the net result of what you're asking for.

24                   **MR. FUJIOKA:** Well, I --

25                   **COMMISSIONER OHIGASHI:** No. So that's what

1 I -- that's my example.

2 **MR. FUJIOKA:** Well, I don't believe that  
3 that can be said, because we can't speak for the  
4 DOT.

5 **COMMISSIONER GIOVANNI:** Okay. Let's stop  
6 the argument. I think you're both -- your positions  
7 are clear. Dawn Chang, Commissioner Chang, you have  
8 a --

9 **COMMISSIONER CHANG:** Yeah. Thank you, Mr.  
10 Chair. Mr. Fujioka, I'm -- I, too, am trying to  
11 understand it. And, you know, I think you have to be  
12 -- you have to be willing to be definitive.

13 But let me ask you. So my understanding  
14 from DOE is your motion is -- I'm looking at  
15 condition 1(b). And you're wanting to delete the  
16 provision that says, "Petitioner shall cause to be  
17 constructed or ensure that there is available above  
18 or below ground pedestrian crossing."

19 You want that stricken. You want to have -  
20 - you want to have replaced, "Petitioner shall cause  
21 to be constructed a roundabout with an at-grade  
22 pedestrian crossing and raised crosswalks as  
23 appropriate at the intersection of Piilani Highway  
24 and Kulanihako'i Street." Is that correct? You want  
25 that language inserted; right? Yes or no.

1           **MR. FUJIOKA:** Is that what it said in the  
2 motion?

3           **COMMISSIONER CHANG:** That's what it said  
4 in the motion. So I'm reading your motion.

5           **MR. FUJIOKA:** In terms of --

6           **COMMISSIONER CHANG:** I'm reading a portion  
7 of it.

8           **MR. FUJIOKA:** Yes.

9           **COMMISSIONER CHANG:** Because what --  
10 because my understanding is so you're asking -- take  
11 out the grade-separating pedestrian crossing so that  
12 you can open the school with the -- with the  
13 roundabout.

14           However, you've -- all you've done is  
15 you've now moved that requirement to Phase II.  
16 "Petitioner shall conduct an assessment and re-  
17 evaluation of the necessity and appropriateness and  
18 utility of a grade-separated crossing."

19           I mean, what I understand is that you're  
20 just moving it to now Phase II rather than Phase I.  
21 But I think you need -- so is that correct? Is that  
22 what you're asking? Yes or no. Your motion.

23           **MR. FUJIOKA:** Yeah.

24           **COMMISSIONER CHANG:** Yes.

25           **MR. FUJIOKA:** That's correct.

1           **COMMISSIONER CHANG:** Okay. Okay. So but  
2 what you don't -- in my mind, you're not going far  
3 enough. You just said appropriateness of a -- you're  
4 not making a commitment to constructing it.

5           You know, I am not as troubled with the  
6 DOT -- the DOT approval process as many of my other  
7 commissioners are. So I understand DOT needs to  
8 approve this. But you also need to make some  
9 commitment that if these studies and DOT approves  
10 it, that you're going to construct it. You're going  
11 to get the funds, and you're going to construct it.  
12 Do you understand my point?

13           **MR. FUJIOKA:** Yeah.

14           **COMMISSIONER CHANG:** Are you okay with  
15 that?

16           **MR. FUJIOKA:** Yes.

17           **COMMISSIONER CHANG:** All right. So that's  
18 my -- so that's what my understanding what your  
19 motion is. You're not necessarily saying we're going  
20 to eliminate totally the grade-separating pedestrian  
21 crossing.

22           We're just going to move that, subject to  
23 studies, before we open Phase II. But we want to  
24 open Phase I with the roundabout, because there is  
25 consensus that the roundabout is safe. Is that

1 correct?

2 **MR. FUJIOKA:** Yes. And it could actually  
3 be earlier, because I think a study is required even  
4 before Phase II.

5 **COMMISSIONER CHANG:** What could be  
6 required before Phase II?

7 **MR. FUJIOKA:** Well, depending what the --  
8 I think the order currently calls for a study on one  
9 year after the school opens. That may not even be  
10 Phase II yet, but it has to be done.

11 **COMMISSIONER CHANG:** Well, the condition  
12 I'm looking at, it doesn't say one year. It just  
13 says prior to.

14 **MR. FUJIOKA:** I think it's in the previous  
15 condition.

16 **COMMISSIONER CHANG:** Okay. All right. I  
17 don't want to tweak the nuances. I just want to be  
18 very clear that I understand DOE's position.

19 **COMMISSIONER GIOVANNI:** Okay. Thank you.

20 **COMMISSIONER CHANG:** Let's open the school  
21 with the roundabout; right?

22 **MR. FUJIOKA:** Yeah.

23 **COMMISSIONER CHANG:** Okay. That's -- and I  
24 have one final question. You made a comment that  
25 says everyone wants the school to open. What is the

1 basis for your conclusion that everyone wants the  
2 school to open?

3 Because the testimony that I've heard from  
4 some members of the public was as much as they want  
5 it to open, they don't want it to be opened without  
6 the grade-separating pedestrian crossing. So what's  
7 the basis of your statement that everyone wants it  
8 to open?

9 **MR. FUJIOKA:** I just meant that everyone  
10 wants the school to open in the way that, you know,  
11 they want. I didn't mean to say that everybody  
12 agreed that it should be opened on the same terms.

13 **COMMISSIONER CHANG:** Okay. All right.  
14 Okay. That would --

15 **MR. FUJIOKA:** It's nobody doesn't think a  
16 school is necessary.

17 **COMMISSIONER CHANG:** All right. All right.  
18 Okay. I'm just clarifying your point. I have no  
19 further questions.

20 **COMMISSIONER GIOVANNI:** Okay. So it's  
21 looking more and more as if this case is going to  
22 have to be continued beyond, because we're going to  
23 be losing a quorum lately, but I do want to  
24 continue. Let's take a bio break first. I've had a  
25 request for that. So it's 2:30. Let's resume at



1 2:35.

2 **MR. FUJIOKA:** I'm sorry. Mr. Chair, what  
3 is the do we have a hard stop time?

4 **COMMISSIONER GIOVANNI:** Looks like we have  
5 a hard stop at 3:00. I'm confirming that during the  
6 break.

7 **MR. FUJIOKA:** Thank you.

8 **(Recess taken from 2:30-2:35 p.m.)**

9 **COMMISSIONER GIOVANNI:** So we're going to  
10 lose quorum due to more than one commissioner having  
11 to leave at 3:00, so.

12 And there's no way we're going to get  
13 through the remainder of this case today. It'll be  
14 noticed and rescheduled at a later date for  
15 continuation. Tentatively, it looks like October 13.  
16 So that'll be the next time.

17 But again, we'll do that officially. But  
18 that's only tentative. So I want to return to the  
19 questions from commissioners to the petitioner.  
20 So, Commissioner Wong, would you like to proceed?

21 **COMMISSIONER WONG:** Thank you, Chair. Mr.  
22 Fujioka, a couple of questions. First off, I'm just  
23 following up on Commissioner Okuda's question and  
24 your statement, that it just kind of bothered me  
25 when you said something about is that what the

1 motion said -- or Commissioner Chang. So did you  
2 make the motion, or was it someone else for this  
3 proceeding?

4 **MR. FUJIOKA:** Oh, I did. It's just that --

5 **COMMISSIONER WONG:** Okay. So -- yeah.

6 **MR. FUJIOKA:** I wasn't sure what part she  
7 was referring to or --

8 **COMMISSIONER WONG:** Okay. Yeah, it just  
9 kind of blew me away a little, so I just wanted to  
10 make sure if you -- And now, second thing is I guess  
11 Ms. Lowrey was raising her hand several times during  
12 the questioning, and I was wondering, first off,  
13 does she have the capability of doing the decision?

14 Because it seems like the way she's  
15 answering certain things and jumping in, it looks  
16 like she was a decision-maker. So who -- is she the  
17 decision-maker, then, because she was jumping in all  
18 the time?

19 **MR. FUJIOKA:** No. She's not a decision-  
20 maker, but I think when there's something about  
21 which she has knowledge, she was wanting to step  
22 forward.

23 **COMMISSIONER WONG:** Yeah. It's just that  
24 when there were certain other questions like, you  
25 know, reviewing the witnesses, all the testimonies

1 that was coming in and all that, here's, like, you  
2 know, she was doing more of the job than, let's say,  
3 you as the AG.

4 I mean, it just -- I don't know who was  
5 answering -- supposed to be answering the questions,  
6 so as a point of contact for DOE. So you're the  
7 point of contact; correct?

8 **MR. FUJIOKA:** Yes. But she was -- well,  
9 yeah, I am representing the interests of the DOE in  
10 this hearing, but there are certain aspects -- like,  
11 Ms. Lowrey was much more familiar with the public  
12 testimony.

13 **COMMISSIONER WONG:** Okay. Yeah. So I would  
14 suggest that instead, if you know that she has more  
15 information, that you should say to the chair, Mr.  
16 Chair, I would like to bring back Ms. Lowrey,  
17 instead of her just raising her hand, jumping in.  
18 Because it just to me looked like she was a  
19 decision-maker.

20 And if she's not the decision-maker, then  
21 she should, you know. So that's just a statement  
22 under that part. The second part I have a question  
23 is right now the way the conditions, whatever it  
24 says, it says underpass or overpass, approximately.  
25 I'm just speaking in general, right, that has to be

1 built. I mean, is that how the conditions state?

2 **MR. FUJIOKA:** I think it's grade-separated  
3 pedestrian crossing.

4 **COMMISSIONER WONG:** Okay.

5 **MR. FUJIOKA:** Which could be either. Yes.

6 **COMMISSIONER WONG:** Okay. So the question  
7 is we're talking about a roundabout. And there was  
8 no statement in any of the condition order to say  
9 you cannot build a roundabout at the same time of  
10 building an overpass or underpass; is that correct?

11 **MR. FUJIOKA:** It's not prohibited by the  
12 conditions, but as it turned out, you know, the  
13 grade-separated crossing was not indicated by the  
14 studies that were available and was not recommended  
15 by the Department of Transportation, whereas the  
16 roundabout was.

17 **COMMISSIONER WONG:** Yeah. It's just that -  
18 - just the statement I wanted to state is it doesn't  
19 preclude you from doing this; correct? So you could,  
20 let's say, build this, the roundabout, and do the  
21 other part.

22 **MR. FUJIOKA:** Yeah. It's not prohibited.  
23 But again, you know, the DOE needs to defer to the  
24 Department of Transportation, and DOT has  
25 responsibility to do what it deems doing the things

1 that are safe and within its expert judgment.

2 **COMMISSIONER GIOVANNI:** I think that was a  
3 yes or no question, Mr. Fujioka. It's not  
4 prohibited. Thank you.

5 **COMMISSIONER WONG:** So I see Mr. Sniffen  
6 is on, but I'll stop here to give us some time. But  
7 again, you know, I guess, there is a hard stop at 3,  
8 so I just want to inform Mr. Sniffen that he may be  
9 asked to come back in the future, because I think  
10 there'll be a lot of questions coming up. So that's  
11 all I have to say. Thank you, Mr. Fujioka.

12 **MR. FUJIOKA:** Thank you.

13 **COMMISSIONER WONG:** Thank you, Mr. Chair.

14 **COMMISSIONER GIOVANNI:** Thank you,  
15 Commissioner Wong. Any other commissioners have  
16 questions for Mr. Fujioka? Commissioner Cabral?

17 **COMMISSIONER CABRAL:** Yeah, thank you,  
18 Chair. Actually, it's for Mrs. Brenda Lowery I want  
19 to -- while we have her on at this time. Earlier,  
20 she had some very nice visual aids there, and she  
21 showed where they have the roundabout, and then they  
22 would have the overhead passing and said I think it  
23 was going to be either 671 or 617 feet to cross with  
24 that model.

25 And I'm concerned that that -- that the

1 decision or even that the design was made. So that -  
2 - that overhead passage, that type of design was  
3 made. Was that made that way for both ADA and  
4 bicyclists?

5 **MS. LOWREY:** So -- so, yes, the longer  
6 length would be for ADA and bicycles, because if we  
7 put an elevator, we can't maintain it and, you know,  
8 it would create a safety hazard.

9 **COMMISSIONER CABRAL:** Okay. I have a  
10 question is has anybody ever thought of the idea,  
11 you know, the old-fashioned -- I'm old -- the old-  
12 fashioned overpasses. You walked up 15 feet, walked  
13 down the steps, walked down 15 steps. There could be  
14 a combination of a step going up as well as the  
15 combination for wheelchair and bicycle.

16 And I believe we were standing on that  
17 ground at one point, and I think on the school  
18 undeveloped side, that's an uphill -- that was, as I  
19 recall, standing there hoping I didn't get killed on  
20 the side of the highway, that that was a high area  
21 on that -- on the school side area, so you'd have --  
22 you'd only probably be coming up to that.

23 **COMMISSIONER GIOVANNI:** Any additional  
24 questions? Good.

25 **COMMISSIONER CABRAL:** Yeah. So that was

1 just the idea that they could try and think outside  
2 the box instead of creating more barriers to the  
3 decision.

4 **COMMISSIONER GIOVANNI:** Okay. Thank you.

5 **COMMISSIONER CABRAL:** Thank you.

6 **COMMISSIONER GIOVANNI:** Any other  
7 questions for Mr. Fujioka?

8 I have a couple of questions. First one to  
9 Ms. Lowrey. In the pedestrian crossing that is  
10 designed into the rotary, is the expectation that  
11 that would come -- that the vehicular traffic would  
12 come to a full stop on the highway whenever those  
13 lights are flashing to allow pedestrians to cross?

14 **MR. FUJIOKA:** I think maybe we could defer  
15 this one to Mr. Sniffen?

16 **COMMISSIONER GIOVANNI:** Sure.

17 **MS. LOWREY:** Yes. That would be  
18 appropriate for Mr. Sniffen.

19 **COMMISSIONER GIOVANNI:** Mr. Sniffen, thank  
20 you for showing up today. Can I ask you to affirm  
21 that your testimony will be the truth?

22 **MR. SNIFFEN:** Yes.

23 **COMMISSIONER GIOVANNI:** And just for the  
24 record, identify by name and your title who you  
25 represent.

1           **MR. SNIFFEN:** Thank you, Chair. This is Ed  
2 Sniffen, Hawai'i Department of Transportation,  
3 Deputy Director for Highways.

4           **COMMISSIONER GIOVANNI:** Thank you. Did you  
5 hear the question I have?

6           **MR. SNIFFEN:** I did. And the answer is  
7 yes. When the -- when the signal lights are  
8 flashing, they're triggered by a pedestrian. The  
9 intent is for vehicles to see those signal lights  
10 and stop.

11           **COMMISSIONER GIOVANNI:** So if we have a  
12 stream of pedestrians approaching the thing, how  
13 would this -- how do you envision this signal  
14 working? Would it work and flash for a minute and  
15 then the students would pile up, or as long as  
16 students are pressing this signal, does the flashing  
17 continue?

18           **MR. SNIFFEN:** So the timing -- the timing  
19 is preset. In general, it ranges -- it's based on  
20 the number of steps you need to cross the highway.  
21 So in this case, it would be a 20 to 30-second flash  
22 in this portion. When it's flashing and there is a  
23 pedestrian present, vehicles are expected to stop.

24           When there's no pedestrians present, if  
25 it's still flashing but they're gone, then the



1 vehicles can proceed. When there's additional, when  
2 pedestrians keep coming through, it's going to be  
3 preset to make sure that there's time between each  
4 flash to make sure that the traffic can be flushed.

5 **COMMISSIONER GIOVANNI:** So, for example,  
6 and I don't want to belabor it here, but let's say a  
7 pedestrian presses it. It starts flashing. I don't  
8 know what assurance we have that cars will actually  
9 stop, but let's assume they stop, and the  
10 pedestrians start progressing across. The light, it  
11 will go. It will -- as you said, it will assume to  
12 go for so many seconds, whatever it takes to cross  
13 the highway.

14 But what if in the last 10 seconds, more  
15 pedestrians show up, and the light's still flashing.  
16 What's to prevent them from stepping out, attempting  
17 to cross when there's not enough time left?

18 **MR. SNIFFEN:** Nothing. Nothing prevents  
19 them. They go. And when they go, we expect the cars  
20 to stop.

21 **COMMISSIONER GIOVANNI:** Okay. I'll leave  
22 it at that.

23 A related question. Is it the intent, if  
24 this is built as you describe, that the current  
25 access to the under crossing of the highway, which

1 is through the gulch, and people have testified that  
2 they do use it, that that will be somehow closed and  
3 all students will be forced -- I use the word  
4 "forced" -- to use the crosswalks through the  
5 rotary?

6 **MR. SNIFFEN:** I testified last time there  
7 is no way for us to put up fencing across that area.  
8 That area is for drainage. When -- when floodwaters  
9 come through, it brings debris down. If we put  
10 fencing through that area, block it off, all of that  
11 accumulates and blocks off that drainage area. So we  
12 wouldn't do something like that.

13 **COMMISSIONER GIOVANNI:** So how would you  
14 keep people from using that as an undercrossing?

15 **MR. SNIFFEN:** We never said we would take  
16 positive measures to stop anybody from using it.

17 **COMMISSIONER GIOVANNI:** Okay.

18 **MR. SNIFFEN:** The biggest thing I told  
19 everybody is we cannot -- we cannot put a formalized  
20 crossing in that area. It's unsafe. So we would  
21 rather make sure that we have a safe crossing for  
22 everybody on the highway.

23 **COMMISSIONER GIOVANNI:** I understand what  
24 your preference is, but my takeaway is that what  
25 this commission is hearing is we cannot make it safe

1 for pedestrians to go under the highway through the  
2 gulch, but at the same time we as -- Department of  
3 Transportation knows or it assumes that it's going  
4 to happen anyway.

5 **MR. SNIFFEN:** So what I'm saying is we're  
6 making safe crossings on the highway. It's not what  
7 I assume. It's going to be safe on the highway.

8 We hear that people are using that path  
9 under the -- under the -- that undercrossing. But we  
10 cannot put a formalized path under there unless we  
11 can get people out of the stormwater.

12 We would definitely ask people not to use  
13 it. We would definitely sign it to ensure that  
14 everybody understands the risk that they take to use  
15 a drainageway for a crossing. But we're going to be  
16 providing that safe access on the highway.

17 **COMMISSIONER GIOVANNI:** Okay. In your  
18 absence earlier today, I attempted some recall from  
19 your -- personal recall from your prior testimony  
20 without checking the transcript, so I want to give  
21 you an opportunity to set me straight.

22 My recall was that your preference was to  
23 build the rotary and, in fact, you said that you --  
24 that you testified that you might be able to  
25 allocate DOT funding to get that work done.

1           However, the DOT does not have funding for  
2 a grade-separated pedestrian crossing. But if that -  
3 - if a client came forward like DOE and made those  
4 funds available, the DOT -- whatever those funds  
5 would need to be -- that the DOT could do it. Did I  
6 characterize your statement correctly?

7           **MR. SNIFFEN:** Yes.

8           **COMMISSIONER GIOVANNI:** Thank you. I have  
9 a question for Mr. Fujioka. In your presentation of  
10 your first PowerPoint yesterday, not the DOT  
11 PowerPoint but your own Powerpoint, you enumerated  
12 various exhibits and studies.

13           And one of them you put forward was  
14 Exhibit 11, which was the Fehr & Peers technical  
15 memorandum in terms of their updated study that was  
16 done in August of 2019 to consider alternatives for  
17 crossing the highway. Are you familiar with that  
18 exhibit?

19           **MR. FUJIOKA:** Insofar as I made reference  
20 to it, but I haven't actually read it recently.

21           **COMMISSIONER GIOVANNI:** Well, it's your  
22 reference to it that you represented to this  
23 commission that I'm really questioning. Your  
24 representation to this commission was that this  
25 report, this study, this technical memorandum, this

1 exhibit, concluded that a crossing is not warranted.

2 Do you stand by those comments?

3 **MR. FUJIOKA:** I need to take a look at it  
4 again, if -- if I have misspoken.

5 **COMMISSIONER GIOVANNI:** Well, I'm going to  
6 argue that you may have misspoken, but let me read  
7 from the first page, which is the summary of the --  
8 of the thing, of the exhibit.

9 It says a GSPC would not be warranted when  
10 the school opens with 800 students and that, quote,  
11 a traffic signal would be provided, acceptable  
12 traffic operations.

13 So there was no case done that I can read.  
14 They evaluated three cases, but none with a GSPC and  
15 -- with no GSPC and a rotary only. It indicated that  
16 there would be traffic signals.

17 So the question is if you're not -- if  
18 you're not familiar with this study, it seems to me  
19 -- and you can correct me. That's my question to  
20 you. Correct me if I interpret this wrong. But the  
21 only time that a GSPC is not warranted is when there  
22 would be a traffic signal to stop traffic.

23 **MR. FUJIOKA:** If that's what the -- that's  
24 what the Fehr & Peers report said. However,  
25 generally, if there -- yeah, I think usually the

1 GSPC has been either alternative or in conjunction  
2 with a traffic signal. But when there's a  
3 roundabout, then these studies don't require or -- I  
4 don't believe that it's usually recommended. So I  
5 guess I got my signals crossed there.

6 **COMMISSIONER GIOVANNI:** That's a pretty  
7 big signal to get crossed, in my mind. There were  
8 three alternatives: a roundabout that included a  
9 GSPC, a traffic signal that included a GSPC, and a  
10 traffic signal -- which I'm interpreting to be a  
11 stoplight, not the flashing little things that  
12 expect the traffic to stop -- at a grade pedestrian  
13 crosswalk.

14 Those are the only three cases that they  
15 studied, so again, your representation to this  
16 commission that it's not warranted based on this  
17 study, are you retracting that statement, or do you  
18 stand by it?

19 **MR. FUJIOKA:** In terms of whether the  
20 grade-separated crossing is indicated by this study,  
21 I would have to stand by that.

22 **COMMISSIONER GIOVANNI:** Then restate your  
23 -- what your takeaway is from this study. Because  
24 you just confused me again with what that last  
25 statement was.

1           **MR. FUJIOKA:** Well, I guess the takeaway  
2 is with a roundabout, the grade-separated crossing  
3 is not indicated.

4           **COMMISSIONER GIOVANNI:** There was no --  
5 this study did not evaluate a roundabout without a  
6 grade-separated pedestrian crossing. In fact, they  
7 didn't even look at it. The only case it looked at  
8 with a roundabout included a grade-separated  
9 pedestrian crossing, so how can you conclude or  
10 represent to this commission that this study says  
11 it's not warranted? I don't think it does.

12           **MR. FUJIOKA:** That was what I took away  
13 from it, and if that's not what the commission or  
14 the chair sees, I apologize, and I just --

15           **COMMISSIONER GIOVANNI:** Fair enough.

16           **MR. FUJIOKA:** Different. I saw it  
17 differently.

18           **COMMISSIONER GIOVANNI:** Yeah. So I  
19 understand that I have some questions that might --  
20 we had a lot of questions about Commissioner  
21 Ohigashi that -- about who made the decisions on  
22 using or not using the funding, and we didn't get a  
23 clear answer on that.

24           And I'd like, if you don't mind, Mr.  
25 Fujioka, you'll get plenty of opportunity when we

1 resume the hearing. But this time, would you mind if  
2 I take a few minutes, if Representative Wildberger  
3 is available, if she could shed some light on the --  
4 how the decisions were made to use or not use the  
5 funding at this time? Is that acceptable to you?

6 **MR. FUJIOKA:** Yes.

7 **COMMISSIONER GIOVANNI:** Okay. Mr.  
8 Derrickson, can you call back into the room, if  
9 she's available, Representative Wildberger?

10 **MR. DERRICKSON:** Yeah. Just promoted  
11 Representative Wildberger up to the panel. Here she  
12 is.

13 **COMMISSIONER GIOVANNI:** Representative  
14 Wildberger, thank you for coming back a third time  
15 to this hearing. And we don't have much -- we only  
16 have a few minutes, but we had some unanswered  
17 questions about how decisions were made to use or  
18 not use funds that were allocated by the governor.  
19 Do you have any further clarification on that  
20 available to us?

21 **REPRESENTATIVE WILDBERGER:** So pertaining  
22 to -- thank you very much. Pertaining to  
23 Commissioner Ohigashi's inquiry about, you know, how  
24 or who made the decision, I anecdotally happened to  
25 be present when Deputy Director Sniffen and



1 Department of Education representative Chung  
2 attended a summit that I hosted at a conference room  
3 at the capitol in August of 2019.

4 I invited DOE principals, the CAS, anybody  
5 I could think of that would be part of the decision-  
6 making on this, and brought over the KCA folks. And  
7 they made a lovely map and showed them everywhere  
8 we'd like to see roundabouts instead of signalized  
9 intersections the length of the north-south traverse  
10 of South Maui, so that we can keep our traffic  
11 moving.

12 We broke for lunch, and then Deputy  
13 Director Sniffen and Department of Education -- I  
14 guess he must have been the Assistant Superintendent  
15 Chung -- had a side conversation, and Deputy  
16 Director Sniffen said, look, these guys are asking  
17 for two things. They're asking for a roundabout, and  
18 they're asking for an underpass. We're going to give  
19 them roundabout. We're not going to give them the  
20 underpass. And they kind of did their side deal and  
21 said, okay, good.

22 And I thought to myself, well, okay, we've  
23 -- there's half our battle. We're going to get our  
24 roundabout. But we're still faced with the idea that  
25 traffic fatalities are acceptable. Hawai'i averages

1 28 traffic pedestrian fatalities every year, and for  
2 South Maui, that's unacceptable. We don't -- we want  
3 to achieve Vision Zero. We want to have zero traffic  
4 fatalities.

5 **COMMISSIONER GIOVANNI:** Okay. If we could  
6 go on.

7 **REPRESENTATIVE WILDBERGER:** And that's the  
8 information that I know about how the decision was  
9 made.

10 **COMMISSIONER GIOVANNI:** Okay. Let's leave  
11 it there.

12 Mr. Fujioka, do you have any questions for  
13 the additional testimony from REPRESENTATIVE  
14 WILDBERGER? You shook your head, but do you have any  
15 questions?

16 **MR. FUJIOKA:** No.

17 **COMMISSIONER GIOVANNI:** Thank you.

18 Mr. Hopper?

19 **MR. HOPPER:** No, Chair.

20 **COMMISSIONER GIOVANNI:** Thank you.

21 Ms. Kato?

22 **MS. KATO:** No.

23 **COMMISSIONER GIOVANNI:** Commissioners?

24 Okay. Thank you very much for that additional  
25 insight. Appreciate it.

1 Mr. Fujioka, we're going to have to  
2 adjourn now, but I'm going to consider the case  
3 still to be your case to present when we resume. If  
4 you want to bring additional witnesses forward or  
5 information forward to further make your case, as  
6 Commissioner Okuda has said, you know, the burden is  
7 on you. I want to give you every opportunity to make  
8 your case before this commission.

9 Unfortunately, because we're losing quorum  
10 or have already lost it, or about to lose it, we're  
11 going to have to adjourn for today. And the  
12 tentative date for resuming is October 13th, but  
13 that will be noticed to all parties. Does anybody  
14 have a question on that? Commissioner Okuda?

15 **COMMISSIONER OKUDA:** August 13th? You said  
16 August, I think.

17 **COMMISSIONER GIOVANNI:** No. I meant  
18 October.

19 **COMMISSIONER OKUDA:** October 13th. The  
20 other question is can Mr. Fujioka, I guess, or Mr.  
21 Sniffen inform us as to what -- at the next hearing,  
22 as to what the status is on the funding and when  
23 they're going to start with the roundabout?

24 **COMMISSIONER GIOVANNI:** That would be  
25 appreciated. Ms. Lowrey, you have your hand up. I

1 don't know if Mr. Fujioka wants to call on you for  
2 something or you need to say something. Okay. It's  
3 down.

4 **MS. LOWREY:** I apologize.

5 **COMMISSIONER GIOVANNI:** Just checking. No,  
6 we're fine. Mr. Fujioka, any additional comment  
7 before we adjourn?

8 **MR. FUJIOKA:** No. Not until next time.  
9 Thanks.

10 **COMMISSIONER GIOVANNI:** Okay. Thank you,  
11 everybody, for your patience and hanging with us. We  
12 know this is an emotional topic for many folks that  
13 are very passionate about it.

14 Again, thank you, Mr. Sniffen. Hopefully,  
15 you can join us when we reconvene on this matter.

16 **MR. SNIFFEN:** Thank you.

17 **COMMISSIONER GIOVANNI:** Thank you all. The  
18 meeting is adjourned.

19 **(The meeting adjourned at 3:02 p.m.)**  
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1 CERTIFICATE

2

3 I, Davilyn Payne, do hereby certify that the

4 proceeding named herein was professionally transcribed on

5 the date set forth in the certificate herein; that I

6 transcribed all testimony adduced and other oral

7 proceedings had in the foregoing matter; and that the

8 foregoing transcript pages constitute a full, true, and

9 correct record of such testimony adduced and oral

10 proceeding had and of the whole thereof.

11

12 IN WITNESS HEREOF, I have hereunto set my hand this

13 24th day of September, 2021.

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19 Davilyn Payne

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