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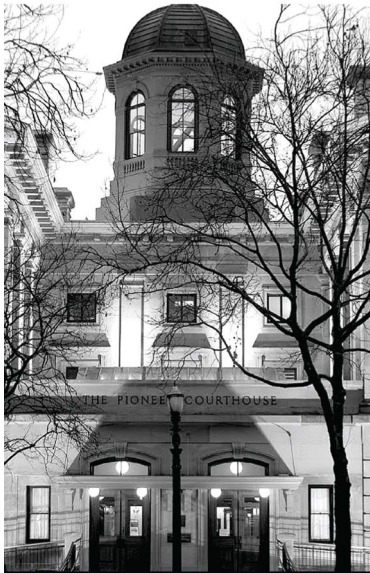
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**STATE OF HAWAII**

**LAND USE COMMISSION**

**STATE OF HAWAII**

**LAND USE COMMISSION**

Hearing held on October 27, 2021  
Commencing at 9:01 a.m.

Held via Zoom by Interactive Conference Technology

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**

October 21, 2021 Minutes

**III. TENTATIVE MEETING SCHEDULE**

**IV. ACTION**

**A11-794 STATE OF HAWAII, DEPT. OF EDUCATION -  
(Kihei High School) (Maui)**

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

To Consider Petitioner's Request for the Issuance of Written Findings as to its Aug 20, 2020 Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order filed July 29, 2013.

**V. ADJOURNMENT**

**BEFORE :**

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**APPEARANCES BY VIDEOCONFERENCE :**

**COMMISSIONERS PRESENT :**

- Daniel Giovanni
- Nancy Cabral
- Gary Okuda
- Edmund Aczon
- Dawn N.S. Chang
- Lee Ohigashi
- Arnold Wong

**COMMISSIONERS EXCUSED :**

- Jonathan Scheuer

**STAFF PRESENT :**

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

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**LAND USE COMMISSION**

**Hearing held on October 27, 2021**

**Commencing at 9:01 a.m.**

**COMMISSIONER GIOVANNI:** Thank you all. I'm going to call the meeting to order. Aloha mai kakou. Good morning. This is the October 27th, 2021, Land Use Commission meeting and is being held using interactive conference technology linking videoconference participants and other interested individuals of the public via the Zoom internet conferencing program to comply with state and county official operating directives during the COVID-19 pandemic.

Members of the public are viewing the meeting via Zoom webinar platform. For all meeting participants, I would like to stress to everyone the importance of speaking slowly, clearly, and directly into your microphone. Before speaking, please state your name and identify yourself for the record.

Also, please be aware that all meeting participants are being recorded on the digital record of this Zoom meeting. Your continued participation is your implied consent to be part of the public record of this event. If you do not wish

1 to be part of the public record, you should exit the  
2 meeting now.

3 This Zoom conferencing technology allows  
4 the parties and each participating commissioner  
5 individual remote access to the meeting proceedings  
6 with their personal digital devices.

7 Also, please note that due to matters  
8 entirely outside of the control of ourselves,  
9 occasional disruptions to the connectivity may occur  
10 for one or more members of the meeting at any given  
11 time. If such disruption occurs, please let us know,  
12 and be patient as we try to restore the audiovisual  
13 signals to effectively conduct business during the  
14 pandemic.

15 For members of the public wishing to  
16 testify during the public witness portion of this  
17 meeting and who are accessing this meeting by  
18 telephone rather than by smartphone desktop  
19 software, use the \*9 function to virtually raise  
20 your hand and the \*9 to virtually lower your hand.  
21 You should also use the \*6 function to mute and \*6  
22 to unmute. I will also share with all participants  
23 that we will take breaks from time to time.

24 My name is Dan Giovanni, and currently  
25 serve as the Land Use Commission vice chairman.

1 Chair Jonathan Scheuer has recused himself from  
2 today's proceedings.

3 We currently have eight seated  
4 commissioners of a possible nine commissioners.  
5 Commissioner Aczon, Commissioner Chang, Commissioner  
6 Wong, Commissioner Okuda, the LUC Executive Officer  
7 Daniel Orodener, LUC Chief Planner Scott  
8 Derrickson, LUC Staff Planner Riley Hakoda, LUC  
9 Chief Clerk Natasha Quinones, and LUC AG Julie China  
10 are on O'ahu. Commissioner Cabral is on Hawai'i  
11 island. Commissioner Ohigashi is on Maui. And I am  
12 on Kaua'i.

13 Court reporting transcriptions are being  
14 done from this Zoom recording. Our next two agenda  
15 items, the adoption of the minutes and the LUC  
16 tentative meeting schedule will be moved to the  
17 latter portion of our meeting today due to time  
18 constraints with one of the -- or two of the key  
19 witnesses for the main docket of our meeting.

20 With that, we are moving on to our main  
21 agenda item directly. This is Docket No. A11-794  
22 SOH, Department of Education - Kihei High School,  
23 Maui, to consider Petitioner's Motion to Amend the  
24 LUC's Findings of Fact, Conclusions of Law and  
25 Decision and Order filed July 29th, 2013, and to

1 consider the petitioner's request for the issuance  
2 of written findings as to its August 20, 2020,  
3 Motion to Amend the Land Use Commission's Findings  
4 of Fact, Conclusions of Law and Decision and Order  
5 dated Jul6 29th, 2013.

6 And note that the commissioners last heard  
7 this matter on September 8th, 2021, and we will  
8 resume our proceedings today.

9 Let's start with the identification of the  
10 parties and their representatives at today's  
11 meeting. So I ask that the parties please identify  
12 themselves, starting with the petitioner.

13 **MR. FUJIOKA:** So good morning. Deputy  
14 Attorney General Stuart Fujioka for the petitioner.

15 **MR. SNIFFEN:** Ed Sniffen with Hawai'i DOT.

16 **MR. TANAKA:** Randall Tanaka, Department of  
17 Education.

18 **COMMISSIONER GIOVANNI:** Mr. Tanaka, are  
19 you able to activate your video?

20 **MR. TANAKA:** I just have. I've got some  
21 limitation with my bandwidth here. I'm out in  
22 Haleiwa in Honolulu, so I will try to keep the  
23 camera. If it interferes with the audio, I'll  
24 probably drop off the visual part.

25 **COMMISSIONER GIOVANNI:** Okay. That will be

1 fine. Thank you for trying.

2 **MR. TANAKA:** Thank you very much.

3 **COMMISSIONER GIOVANNI:** County of Maui?

4 **MR. HOPPER:** Thank you, chair. Michael  
5 Hopper, Deputy Corporation Counsel, representing  
6 Maui County Department of Planning. I believe with  
7 me are Deputy Planning Director Jordan Hart and  
8 Planner Tara Furukawa.

9 **COMMISSIONER GIOVANNI:** Thank you. OP?

10 **MS. KATO:** Good morning. Alison Kato,  
11 Deputy Attorney General for the Office of Planning  
12 and Sustainable Development. Also here are Rodney  
13 Funakoshi and Lorene Maki from OPSD. Thank you.

14 **COMMISSIONER GIOVANNI:** Thank you. I want  
15 to note for the record that on October 14th, 2021,  
16 the commission received Supplement No. 2 for County  
17 of Maui's position statement, Exhibits 1 through 7,  
18 and the COS. On October 19th, 2021, the commission  
19 mailed out the meeting agenda for today's meeting to  
20 parties' statewide and county lists.

21 And from September 8th, which was our last  
22 meeting on this docket, through today -- pardon me,  
23 through October 25th, the commission has received an  
24 additional 23 written testimonies, all of which have  
25 been posted to our website.

1 And I believe we've -- Mr. Hakoda, can you  
2 confirm that we've received additional written  
3 testimony from the parties since October 25th?

4 **MR. HAKODA:** Mr. Chair, in addition to the  
5 previously received testimonies, nine additional  
6 email testimonies were received. We haven't had time  
7 to post them to the website yet.

8 **COMMISSIONER GIOVANNI:** Thank you. Has  
9 there been also additional testimony, written  
10 testimony from the petitioner?

11 **MR. HAKODA:** Yes. The Department of  
12 Education submitted two additional pieces of  
13 submittals. One was the DOE's written testimony of  
14 Ed Sniffen, a witness today, and petitioner DOE's  
15 response to the Department of Planning County of  
16 Maui Supplement No. 2 to its position statement on  
17 DOE's request for the issuance of written findings.  
18 Both were received on the 26th.

19 **COMMISSIONER GIOVANNI:** Have those been  
20 posted?

21 **MR. HAKODA:** Yes. Those are posted on the  
22 website. The total amount of public testimony is  
23 approximately 354 submittals.

24 **COMMISSIONER GIOVANNI:** Thank you for that  
25 clarification, Mr. Hakoda. So let me briefly run



1 over our procedure for this docket today, since it  
2 will be a little bit different than our normal  
3 sequence.

4 First, we will continue with the  
5 petitioner's presentation of two witnesses, who each  
6 of which have time constraints, followed by  
7 questions and comments directly from the  
8 commissioners.

9 Next, I will recognize any written public  
10 testimony that has been submitted in this matter.  
11 Then we will take virtual public testimony on this  
12 matter. So that will be reopened to take public  
13 testimony.

14 The petitioner will then be allowed to  
15 complete its presentation of its case, followed by  
16 questions and comments from the commissioners.  
17 Next, the County of Maui Planning Department will  
18 make its presentation and receive questions and  
19 comments from the commissioners.

20 And then finally, the chair will call on  
21 the state Office of Planning and Sustainable  
22 Development to make its presentation and receive  
23 questions and comments from the commissioners. The  
24 petitioner will then be given an opportunity to  
25 provide any rebuttal.

1 Finally, after all parties have presented  
2 their arguments on Petitioner's Motion to Amend the  
3 Request for the Issuance of Written Findings, the  
4 commission will conduct deliberations and issue a  
5 decision on the motion.

6 I will also note for the parties and the  
7 public that from time to time, the chair will be  
8 calling for short breaks, approximately 10 minutes  
9 each hour, and a longer break for lunch.

10 Are there any questions from the parties  
11 with our procedures on this matter today?  
12 Petitioner?

13 **MR. FUJIOKA:** Thank you. I first wanted to  
14 thank the chair and commission for accommodating the  
15 time constraints of witnesses Mr. Sniffen and Mr.  
16 Tanaka. First, if Mr. Sniffen -- if I could present  
17 his testimony at this time?

18 **COMMISSIONER GIOVANNI:** Just a second. We  
19 just wanted to see if anybody else -- any other  
20 parties have questions on the procedures today. So  
21 you're good with the procedure?

22 **MR. FUJIOKA:** Yes. Thank you.

23 **COMMISSIONER GIOVANNI:** Thank you. County?

24 **MR. HOPPER:** No questions.

25 **COMMISSIONER GIOVANNI:** OPSD?

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

2 **COMMISSIONER GIOVANNI:** Okay. So, Mr.  
3 Fujioka, you may continue with your presentation and  
4 your introduction of Mr. Sniffen.

5 **MR. FUJIOKA:** Thank you.

6 **COMMISSIONER OHIGASHI:** Mr. Chairman?  
7 It's Lee Ohigashi.

8 **COMMISSIONER GIOVANNI:** Mr. Ohigashi?

9 **COMMISSIONER OHIGASHI:** I just have one  
10 thing. I have to declare that on September 9th,  
11 2021, I had a short outage, and I had an opportunity  
12 to review the transcript of that, the transcript and  
13 tapes of that outage, and I'm able to discuss this  
14 matter.

15 **COMMISSIONER GIOVANNI:** If I understand  
16 what you said, you said you missed a little bit  
17 directly, but you reviewed it, and you're fully up  
18 to speed.

19 **COMMISSIONER OHIGASHI:** That's correct. I  
20 need to drink my coffee. Thank you.

21 **COMMISSIONER GIOVANNI:** Very good. Mr.  
22 Fujioka, it's up to you.

23 **MR. FUJIOKA:** Mr. Chair, thank you. Good  
24 morning, Mr. Sniffen.

25 **COMMISSIONER WONG:** Just a minute, Chair.

1 **COMMISSIONER GIOVANNI:** Yes.

2 **COMMISSIONER WONG:** I just wanted to ask a  
3 question to the chair and Mr. Fujioka.

4 **COMMISSIONER CABRAL:** Who is this?

5 **COMMISSIONER WONG:** Oh. This is  
6 Commissioner Wong, Mr. Chair.

7 **COMMISSIONER GIOVANNI:** Okay. Commissioner  
8 Wong, go ahead.

9 **COMMISSIONER WONG:** I just want to  
10 reconfirm the reason we're having Mr. Sniffen first  
11 is that we received an email from Mr. Fujioka that  
12 he will be out of town and only be available to day  
13 from 9 to 10; is that correct? And so after 10:00,  
14 we got to cut him off.

15 **MR. FUJIOKA:** Yes. He's in a conference on  
16 the continent right now, and he was able to open up  
17 just this one window of time.

18 **COMMISSIONER WONG:** So he will only have  
19 that time period, but he's on the continent right  
20 now.

21 **MR. FUJIOKA:** Yes.

22 **COMMISSIONER WONG:** Not in state.

23 **MR. FUJIOKA:** I'm sorry?

24 **COMMISSIONER WONG:** He's not in state,  
25 then.

1           **MR. FUJIOKA:** Right. He's out of state.

2           **COMMISSIONER WONG:** I just wanted to make  
3 sure, because the question I have before we start  
4 with Mr. Sniffen is he -- I thought from another  
5 email I received from someone else, he's presenting  
6 an 11:30 session for the Hawai'i Boat and Music  
7 Festival, so that's why he can only do a one-hour  
8 presentation with us?

9           **MR. FUJIOKA:** I didn't -- I don't think  
10 that's what it was.

11           **COMMISSIONER WONG:** I just would like to  
12 know that just because I want to know what is more  
13 important? Is it kids' lives or a boat festival that  
14 can be done later? So I just wanted to know why, you  
15 know, what is -- that's what I heard, Mr. Fujioka.

16           **MR. FUJIOKA:** Ed, did you -- are you able  
17 to hear what Commissioner Wong was saying?

18           **MR. SNIFFEN:** Yes. I heard. Should I  
19 answer?

20           **COMMISSIONER GIOVANNI:** Mr. Sniffen, go  
21 ahead and clear it up.

22           **MR. SNIFFEN:** Okay. So I have several  
23 presentations today. I'm in San Diego right now,  
24 meeting with the other 49 states to make sure we  
25 push forward on our transportation, surface

1 transportation bills to get more money for the  
2 state. That's what I'm here for.

3 And while I'm here, I'm carving out time  
4 to make sure I can make time for this, because it's  
5 extremely important, and also for presentations that  
6 were made for resiliency, which is a big piece of  
7 our surface transportation bill. Does that answer  
8 your question?

9 **COMMISSIONER WONG:** Yes. Thank you. That's  
10 all I have. Thank you, chair. Thank you, Mr.  
11 Fujioka.

12 **COMMISSIONER GIOVANNI:** And just so you  
13 know, Mr. Tanaka also has constraints today, and I  
14 believe those are from 10 to 11 a.m. Is that  
15 correct, Mr. Fujioka?

16 **MR. FUJIOKA:** Yes. Thank you.

17 **COMMISSIONER GIOVANNI:** So let's proceed  
18 with Mr. Sniffen.

19 Mr. Sniffen, let me remind you that you're  
20 still under oath.

21 **MR. SNIFFEN:** Thank you.

22 **MR. FUJIOKA:** So you submitted written  
23 testimony; correct?

24 **MR. SNIFFEN:** Yes.

25 **MR. FUJIOKA:** Is that current as of today?

1           **MR. SNIFFEN:** Yes.

2           **MR. FUJIOKA:** There's just a couple of  
3 things I wanted to clarify in addition to your  
4 written statement. Do you recall September 9, when  
5 Representative Wildberger was testifying, she had  
6 mentioned a conversation that occurred at a summit  
7 in 2019? It was between yourself and John Chung,  
8 formerly of DOE?

9           **MR. SNIFFEN:** Oh, yes.

10          **MR. FUJIOKA:** Okay. What's your  
11 recollection of how that happened?

12          **MR. SNIFFEN:** I think she was talking  
13 about the meeting that we had in her office with the  
14 Kihei Community Association with the DOE and with  
15 the Land Use Commission ED. During those  
16 discussions, I made my opinion very clear to  
17 everybody, not just to John Chung on the side, but  
18 to everybody, that the roundabout was the right  
19 solution in the area, and if a roundabout is built  
20 in that area, I don't believe a grade-separated  
21 crossing is necessary.

22                 That's what I said in the room. To that,  
23 the Kihei Community Association said, we're taking  
24 the -- grade-separation is not on the -- off the  
25 table. That's not on the table.

1 I told them I'm just giving my opinion,  
2 that the roundabout is the right solution. It takes  
3 care of all the movements in that area for all  
4 vehicles, bicyclists, pedestrians, and transit, and  
5 it creates a safe crossing. So there were no side  
6 discussions. I said it to everybody at the table.

7 **MR. FUJIOKA:** Okay. Was this 2019 the  
8 correct timeframe, though?

9 **MR. SNIFFEN:** Round about there.

10 **MR. FUJIOKA:** Okay. And the other thing I  
11 wanted to ask you in addition to what you've already  
12 put in writing is have you been able to come up with  
13 any figures for building, I guess, an underpass  
14 through Waipuilani Gulch?

15 **MR. SNIFFEN:** So we looked at the -- we  
16 looked at the potentials of an underpass in that  
17 area. As I said before, it's not safe to put  
18 pedestrians in areas where the wetted perimeter of a  
19 storm is going to be.

20 So in order to put in a grade separation  
21 or undercrossing in that area, we'd have to extend  
22 the bridges, which widens that drainage area, to  
23 ensure that we can put people in it.

24 So if we extend it and we don't widen the  
25 freeway itself on the top deck, it's about 25



1 million. If we extend it and we widen it to ensure  
2 that we have shoulders that are four to five feet  
3 minimum in that area, it will be around 50.

4 **MR. FUJIOKA:** Okay. So let's talk about  
5 lengthening the bridge. That's widening the gulch so  
6 that there's more bridge to span the waterway. Is  
7 that what you ?

8 **MR. SNIFFEN:** Yes. That's correct.

9 **MR. FUJIOKA:** And widening means it is  
10 broadening the highway itself.

11 **MR. SNIFFEN:** That's correct.

12 **MR. FUJIOKA:** Those are the things that I  
13 wanted to clarify. Oh. And your -- what's the status  
14 of the roundabout construction or planning?

15 **MR. SNIFFEN:** So the plans are done. We've  
16 gotten the bids from the contractors. It's going to  
17 be about 16 million. The contractor is waiting on  
18 permits to finalize so they can move forward, and  
19 they're looking at the first week of December to  
20 start adjusting the lanes to make sure they can  
21 start building the roundabout. The roundabout will  
22 be done in July of next year.

23 **MR. FUJIOKA:** Okay. Thank you. Aside from  
24 the written testimony, that was all I wanted to  
25 clarify, and so if we can open, I guess, if the

1 commissioners or the other parties have questions,  
2 then now might be a good time to address that.

3 **COMMISSIONER GIOVANNI:** Thank you. County  
4 of Maui, do you have any questions for Mr. Sniffen?

5 **MR. HOPPER:** No, sir. I think it would be  
6 best to have the commission have the full time to  
7 question him, now that we have only 40 minutes left.  
8 Thank you.

9 **COMMISSIONER GIOVANNI:** Thank you. OP, do  
10 you have any questions for Mr. Sniffen?

11 **MS. KATO:** No questions, sir.

12 **COMMISSIONER GIOVANNI:** Thank you.  
13 Commissioners, anybody have questions for Mr.  
14 Sniffen? Mr. Ohigashi, we'll start with you.

15 **COMMISSIONER OHIGASHI:** Oh, I had no  
16 questions. I'm sorry. I didn't know lower down my  
17 hand.

18 **COMMISSIONER GIOVANNI:** Okay.  
19 Commissioner Okuda?

20 **COMMISSIONER OKUDA:** Thank you very much,  
21 Mr. Chair. Thank you for appearing, Mr. Sniffen.  
22 I'm glad the U.S. Marshal hasn't arrested you for  
23 closing down H3 to test for COVID.

24 I just want to make sure we're all on the  
25 same page about your testimony. This is from hour 4,

1 41 minutes, 23 seconds of the video transcript or  
2 the video of the prior proceeding. Let me read what  
3 the question was from Acting Chair Giovanni and your  
4 answer. And my question after I read is whether you  
5 still stand behind the sworn testimony.

6 The question from Acting Chair Giovanni,  
7 "DOT does not have funding for a grade-separated  
8 pedestrian crossing, but if that -- if a client  
9 comes forward like DOE and made these funds  
10 available, the DOT, whatever these funds need to be,  
11 the DOT could do it. Did I characterize your  
12 statement correctly?" And your answer was yes. Do  
13 you still stand behind the sworn testimony?

14 **MR. SNIFFEN:** Yes.

15 **COMMISSIONER OHIGASHI:** Thank you very  
16 much, Mr. Sniffen. And thank you very much for  
17 taking time from your schedule to testify here  
18 today. Thank you, Mr. Chair. No further questions.

19 **MR. SNIFFEN:** Thank you, Commissioner  
20 Okuda. Apologize for the short timeframe.

21 **COMMISSIONER GIOVANNI:** No problem. And  
22 let me just commend you, Mr. Sniffen, for answering  
23 a yes or no question with a yes or no. And let me  
24 encourage all other participants to do the same in  
25 this

1 hearing. Commissioner Aczon, do you have questions?

2 **COMMISSIONER ACZON:** Thank you, Mr. Chair.

3 My question is kind of similar to Commissioner  
4 Okuda. I just want to confirm, because as you know,  
5 the community wanted both the roundabout and the  
6 GSPC. And you were saying that, you know, GSPC is  
7 not recommended. Is that your testimony?

8 **MR. SNIFFEN:** Yes. At this time, if we  
9 look at the pedestrian traffic that's being  
10 considered in this area, it was considered to be 300  
11 students before.

12 Now they're looking at 160 to start off at  
13 this campus with their Phase I. With that -- with  
14 that volume of pedestrians, from my perspective, the  
15 grade-separated crossing is not necessary. The  
16 roundabout will be a safe crossing for them.

17 **COMMISSIONER ACZON:** My next question is  
18 who is the main decision maker to build or not to  
19 build a GSPC?

20 **MR. SNIFFEN:** So we're going to make the  
21 recommendations to the DOE. We're helping them with  
22 their analyses. In the end, the DOE makes the  
23 decision. It's their project. But we're the ones  
24 that's helping them from our perspective.

25 **COMMISSIONER ACZON:** Okay. Now, if the LUC

1 instructed the DOE to build it, so the DOT is going  
2 to build it regardless of, you know, your  
3 recommendation?

4 **MR. SNIFFEN:** So the Land Use Commission  
5 has the force of law. So if they -- if the Land Use  
6 Commission says you must build it before the school  
7 opens, then the DOE has a decision to make, whether  
8 they'll build it now and delay the school -- delay  
9 the school opening, or build the school later.

10 I mean, so overall, the answer to your  
11 question is yes. If the Land Use Commission requires  
12 it, that grade-separated crossing must be built, or  
13 the school can't be opened.

14 **COMMISSIONER ACZON:** So regardless of  
15 transportation liability that you mentioned in your  
16 testimony?

17 **MR. SNIFFEN:** The liability?

18 **COMMISSIONER ACZON:** Like either the  
19 flooding and stuff like that?

20 **MR. SNIFFEN:** Oh, no. So what I'm saying  
21 is it must be built to be safe. So if you're saying  
22 that they're just going to put a path under the  
23 bridge, they can't do that. In order to build that  
24 grade-separated crossing, it's going to be an  
25 underpass.

1 They'd have to extend that bridge out to  
2 make sure we don't put people in that wetted  
3 perimeter of a storm. So it would be that 25 to 50  
4 million or whatever it would be.

5 **COMMISSIONER ACZON:** So it doesn't matter  
6 of getting the funding, then.

7 **MR. SNIFFEN:** Yes.

8 **COMMISSIONER ACZON:** Okay. Thank you very  
9 much. That answered my question, Mr. Chair. Thank  
10 you, Mr. Sniffen.

11 **COMMISSIONER GIOVANNI:** Thank you,  
12 Commissioner Aczon. Commissioner Chang?

13 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
14 Good morning, Ed. Thank you for being -- well, for  
15 joining us today.

16 **MR. SNIFFEN:** Okay.

17 **COMMISSIONER CHANG:** I just -- did you  
18 read the County of Maui's -- it was dated received  
19 October 14, 2021, Department of Maui Planning of --  
20 County of Maui Supplemental No. 2 to its position  
21 statement? Have you an opportunity to read it?

22 **MR. SNIFFEN:** I have not.

23 **COMMISSIONER CHANG:** Okay. I'm going to  
24 read you a section of that. I'm going to ask you if  
25 you agree. This is from the County of Maui.

1 They said, "There is a viable option which  
2 would have come to light if the dialogue documented  
3 in Exhibit 7 had become true. Waipuilani Gulch,  
4 utilizing county and state property, is a practical  
5 and feasible option for the underpass.

6 DOE should request rights of entry and  
7 easement agreements from the county for the use of  
8 the land containing portions of Waipuilani Gulch  
9 makai of Piilani Highway and from DOT for the use of  
10 the right-of-way beneath Piilani Highway." Do you  
11 agree that that's a viable option?

12 **MR. SNIFFEN:** So the question is is it an  
13 option, is it a viable option to just put a path  
14 under the bridge? I will say no, because we're  
15 putting people in a storm drain area.

16 If you're saying that it should -- that's  
17 a viable option. Should that drainage be widened to  
18 provide a path that's safe outside of the storm  
19 area, then I would say yes.

20 **COMMISSIONER CHANG:** Okay. Very good. So  
21 if it's a viable option on the condition that it be  
22 built in a safe manner, and that would cost either  
23 between \$25-50 million; is that correct?

24 **MR. SNIFFEN:** That's correct.

25 **COMMISSIONER CHANG:** Okay. Now, could you

1 tell me what would be the estimated time to design,  
2 to bid, and construct the underpass?

3 **MR. SNIFFEN:** So typically, the  
4 environmental clearances, especially when we start  
5 touching a wide perimeter, is about two years, in  
6 that general timeframe. Provided we don't hit any  
7 historic or religious artifacts in those areas,  
8 about two years, I would say.

9 The design process, to get to that, we'd  
10 be limited to 30 percent during that planning  
11 process, a 30 percent design. The final design  
12 coming out of that would probably take another year.  
13 So three years to develop environmental permitting  
14 and designs.

15 Then the construction of that would be  
16 about two years, mainly because you'd have to shut  
17 down portions of the highway at a time while you  
18 build out or extend out the decks. So I would say  
19 overall, just an estimate, about five years.

20 **COMMISSIONER CHANG:** Okay. So five years.  
21 And that is -- and that doesn't include getting the  
22 funding source.

23 **MR. SNIFFEN:** Correct.

24 **COMMISSIONER CHANG:** So that could -- if  
25 it's to go through the legislature, that could take



1 maybe another year added to this?

2 **MR. SNIFFEN:** I would say that's  
3 conservative.

4 **COMMISSIONER CHANG:** Okay. So we're  
5 looking at between 25 and 50 million dollars to  
6 safely build an underpass, and about six years to  
7 fund, to seek appropriation, to design, to permit,  
8 bid, and construct.

9 **MR. SNIFFEN:** That's correct.

10 **COMMISSIONER CHANG:** Okay. And if -- in  
11 that case, then, DOT would feel comfortable with  
12 that outcome, if all of that was done.

13 **MR. SNIFFEN:** Yes.

14 **COMMISSIONER CHANG:** If there is just  
15 going to be people walking underneath the bridge,  
16 DOT would not -- would object to that use of the  
17 bridge as a pedestrian underpass; is that correct?

18 **MR. SNIFFEN:** Yes.

19 **COMMISSIONER CHANG:** If you see people  
20 walking under the bridge, would DOT take action to  
21 fence it?

22 **MR. SNIFFEN:** So we take out the fence,  
23 that wetted perimeter area, because it's a floodway.  
24 If we fence it and debris gets caught, it could  
25 block that whole area and flood that -- that mauka

1 side. So we wouldn't fence it off.

2 **COMMISSIONER CHANG:** Okay. So if people  
3 are walking under the bridge, there's nothing that  
4 you really would do about enforcing or prohibiting  
5 people from going under there.

6 **MR. SNIFFEN:** Correct. If we -- if our  
7 staff see people walking in those areas while  
8 they're out there, their duty is to stop them from  
9 going under. But we're not putting up any controls  
10 to stop people from using that area.

11 **COMMISSIONER CHANG:** Would you put up  
12 signs saying unsafe?

13 **MR. SNIFFEN:** Yes. We would.

14 **COMMISSIONER CHANG:** And when you say it  
15 is ultimately DOE's decision, and DOT provides  
16 advice, have you ever been in a situation where DOT  
17 -- where the -- where DOE has gone contrary to DOT's  
18 recommendation?

19 And I'm assuming your recommendation would  
20 be based upon safety. Have you ever seen a situation  
21 where DOE has gone contrary to your advice?

22 **MR. SNIFFEN:** No.

23 **COMMISSIONER CHANG:** Okay. All right.  
24 Thank you very much. I appreciate the answers. Thank  
25 you.

1 **MR. SNIFFEN:** Thank you.

2 **COMMISSIONER GIOVANNI:** Thank you.

3 Commissioner Cabral?

4 **COMMISSIONER CABRAL:** Thank you, chair.

5 Questions -- and we keep going around and around the  
6 same options here. There's only three.

7 The overpass. I remember being on a site  
8 visit on that property, and if my memory serves me  
9 correct, the school is uphill on quite of a bit of a  
10 slope, quite a bit uphill, and then everybody lives  
11 on the downhill side of that freeway. I'm in Hilo.  
12 That's called a freeway here.

13 But so the underpass, because of the  
14 flooding, et cetera -- and I'm in Hilo; I understand  
15 flooding also. So the overpass idea, if we were to  
16 have an overpass on the uphill side, you probably  
17 would not have to have any stairs or any ramp to get  
18 to it, because the natural grade of the land would  
19 take you right to that overpass; correct?

20 **MR. SNIFFEN:** Correct.

21 **COMMISSIONER CABRAL:** Okay. So on the  
22 downhill side of that, are there overpasses like  
23 that that are done in such a manner that they have  
24 both a ramp for bicycles or wheelchairs for ADA  
25 accessibility and stairs?

1 **MR. SNIFFEN:** Yes.

2 **COMMISSIONER CABRAL:** Okay. Okay. And then  
3 approximately what is the cost, you know, since  
4 you've got numbers, are really like between 30 and  
5 50 million. That's kind of a broad range here. Give  
6 me a broad range of what the overpass would cost.

7 **MR. SNIFFEN:** So let me clarify the range  
8 of the 30 to 50.

9 That range was by extending the bridge, we  
10 would provide the area on the underpass side. But  
11 once we touch the bridge, we could consider -- so  
12 that's just extending the footprint that we have  
13 built right now with the two-foot shoulders on each  
14 side.

15 But if we extend the bridge, we may as  
16 well widen it at the same time. That's the 50  
17 million. So it wasn't a range of just one option. I  
18 wanted to clarify that.

19 **COMMISSIONER CABRAL:** Okay. Okay.

20 **MR. SNIFFEN:** On the overpass, once we  
21 start looking at the overpass number, in general for  
22 that area, it's about 20 million.

23 **COMMISSIONER CABRAL:** Okay. So if we were  
24 to do just do basically a pedestrian/bicycle/  
25 wheelchair-type overpass, it would be approximately

1 \$20 million. And what would be the timeframe for  
2 permitting?

3 Because I would assume that you have  
4 potentially concerns over running into artifacts, et  
5 cetera, in that area. And what would be the  
6 potential timeframe on having that permitted and  
7 then having that built?

8 **MR. SNIFFEN:** I would say it's about the  
9 same, mainly because when we go through the  
10 environmental permitting process, there's people who  
11 are absolutely against going aboveground in that  
12 area. So the environmental process may take a little  
13 bit longer to get through. The design process would  
14 be a lot faster. But that's my feel when I look at  
15 the project in that area.

16 **COMMISSIONER CABRAL:** Okay. And then the  
17 other question is -- I think you've answered it  
18 somewhat -- on our last hearing, someone from -- I  
19 think it was Department of Education said that there  
20 had been studies, and people don't use these ramps  
21 because they don't want to -- they don't -- the  
22 overpass because they don't want to walk up and down  
23 the ramp, and so therefore, people don't use it, and  
24 they'll jaywalk or do something else.

25 But you indicated -- do you know if that

1 might be if you only had the long ramp. But if  
2 people have stairs, and that's more the restricted  
3 to use, do you know of any studies of how popular or  
4 unpopular doing that type of a walk might be,  
5 especially if you only have to go up or down on one  
6 side of it? Do you have any idea on that  
7 feasibility?

8 **MR. SNIFFEN:** Typically, when we start  
9 looking at grade separations, if it takes a person  
10 one-and-a-half to two times longer to use that grade  
11 separation than just going across that grade, then  
12 93 percent of them don't use it. So that's the  
13 numbers that we based it on.

14 And now, there is -- there was no  
15 differential between whether it's steps or whether  
16 it's ramps. It's just the length. It's just based on  
17 the length.

18 **COMMISSIONER CABRAL:** Okay. And then what  
19 about any possibility -- my vision of this, yes,  
20 year one there's what, only 160-something students  
21 going to be geared to be there, but when you get up  
22 to 800 students and family and community activity,  
23 my vision is that's going to become a very busy  
24 intersection, period. And certainly, during certain  
25 times of the day, morning and afternoon, but even at

1 other times.

2           What about the potential feasibility of  
3 having, one, both the roundabout and then ultimately  
4 the overpass for the pedestrian overpass. What would  
5 you -- what do you think of that as in a perfect  
6 world?

7           **MR. SNIFFEN:** In a perfect world, a  
8 support -- opening the school with the roundabout,  
9 because we know that the stage one portion is going  
10 to be limited in numbers -- and then studying to  
11 ensure that we look at those options for when we  
12 have 800 students on that campus.

13           So having both in that area may be  
14 necessary in the long term, but right now, I'm just  
15 not seeing it, just based on the numbers that they  
16 have. So to answer your question, yes, I support  
17 that. If the studies show that one is necessary to  
18 ensure efficiency and safety of the system, then one  
19 should do that.

20           **COMMISSIONER CABRAL:** Okay. Thank you very  
21 much for your answers.

22           **MR. SNIFFEN:** Thank you,

23           **COMMISSIONER GIOVANNI:** Thank you,  
24 Commissioner Cabral. Any other commissioners have  
25 any questions? Commissioner Ohigashi?

1           **COMMISSIONER OHIGASHI:** Yeah. I'm just  
2 going to sorry. Regarding your estimate of 20  
3 million, I seem to recall previous testimony from  
4 the DOT indicating that it would be about 8 million  
5 for the overpass. What has changed since that time?

6           **MR. SNIFFEN:** What has changed is we  
7 thought the roundabout was going to be 7, and it's  
8 16. So looking at the costs, the issues that came  
9 up, looking at the supply chains that came through,  
10 and looking at construction labor at this time,  
11 that's what changed.

12           **COMMISSIONER OHIGASHI:** In order to make a  
13 determination of what would be the actual cost of  
14 it, would it go through a design phase, and that's  
15 where the determination would be made?

16           **MR. SNIFFEN:** Yes. Exactly. Exactly.

17           **COMMISSIONER OHIGASHI:** So in order for it  
18 to be -- for, let's say, an overpass to be completed  
19 by the time June --

20           **COMMISSIONER CABRAL:** Hello? Hang on. Hang  
21 on. Let me.

22           **COMMISSIONER GIOVANNI:** You have to be put  
23 on mute, Nancy.

24           **COMMISSIONER CABRAL:** Okay. Sorry. Sorry.  
25 Sorry.



1           **COMMISSIONER GIOVANNI:** No, don't be  
2 sorry. You're okay.

3           **COMMISSIONER OHIGASHI:** My question is is  
4 that so in order to start -- if the school is going  
5 to open in August 2022, when would you have to start  
6 the design for an overpass?

7           **MR. SNIFFEN:** To be built at the same time  
8 as the school opens, you mean?

9           **COMMISSIONER OHIGASHI:** Yes. Before the  
10 school opens. When would you have to start the  
11 design of an overpass?

12           **MR. SNIFFEN:** Well, you'd have to start  
13 the environmental permitting process about five  
14 years prior.

15           **COMMISSIONER OHIGASHI:** So all of these  
16 grade separation potential type of the requirements  
17 for the two different options, above or below, would  
18 have to have started five years ago. Wouldn't that  
19 be right?

20           **MR. SNIFFEN:** From my estimate, yes.

21           **COMMISSIONER OHIGASHI:** That's going to be  
22 a good question to ask the DOE, why they didn't  
23 start five years ago, when they had numbers. My  
24 second question is -- I don't know. That's all  
25 right. I'm won't ask it. No problem.

1           **COMMISSIONER GIOVANNI:** Thank you,  
2 commissioner. Any other questions, Commissioners?  
3 I just have -- thank you. You may put your hand  
4 down, Mr. Ohigashi. Mr. Sniffen, just a couple of  
5 questions from me for clarification purposes. Are  
6 there plans to widen the highway independent of the  
7 school considerations?

8           **MR. SNIFFEN:** No. There are no plans.

9           **COMMISSIONER GIOVANNI:** So the highway,  
10 the number of lanes in each direction is, for all  
11 intents and purposes, into the future will remain  
12 the same.

13          **MR. SNIFFEN:** Yes. That's correct.

14          **COMMISSIONER GIOVANNI:** Second question.  
15 Will this be -- will the roundabout be the first-  
16 ever multiple lane roundabout that the DOT has  
17 designed and constructed in the state of Hawai'i?

18          **MR. SNIFFEN:** Yes.

19          **COMMISSIONER GIOVANNI:** What is the actual  
20 and expected flow of traffic? At what speed do you  
21 envision them currently traveling on that highway,  
22 and what do you expect after the roundabout?

23          **MR. SNIFFEN:** So currently, it goes about  
24 45, 50 on that highway, even though we dropped -- we  
25 have it posted at 35 -- I'm sorry, posted at 40. We

1 dropped it to 35, and we put in speed counting out  
2 there. Now we've seen the speeds at around 40 to 45.

3 When the roundabout goes in, they will not  
4 be able to go faster than 15 to 20 miles per hour  
5 through that intersection. And that has a common  
6 effect through that corridor to get everybody back  
7 down to the speed limits in that area.

8 **COMMISSIONER GIOVANNI:** Do you know of any  
9 multiple lane roundabouts that use a flashing signal  
10 for pedestrians that stop traffic while pedestrians  
11 cross it, anywhere?

12 **MR. SNIFFEN:** No.

13 **COMMISSIONER GIOVANNI:** Pardon me?

14 **MR. SNIFFEN:** No.

15 **COMMISSIONER GIOVANNI:** No. So this would  
16 be the first to your experience.

17 **MR. SNIFFEN:** Yes.

18 **COMMISSIONER GIOVANNI:** Okay. Thank you. I  
19 have no further questions for Mr. Sniffen. Does any  
20 -- last chance. Anybody have any further questions  
21 for Mr. Sniffen?

22 **COMMISSIONER WONG:** Yes. I have. It's  
23 Commissioner Wong.

24 **COMMISSIONER GIOVANNI:** Thank you.  
25 Commissioner Wong? Sorry. I didn't see you.

1           **COMMISSIONER WONG:** No problem. Hi. My  
2 wife never sees me at all at home, so. Only when she  
3 needs something. But thank you, Chair.

4           Mr. Sniffen, I have a couple of questions.  
5 The first is this -- you know, if we put in that  
6 roundabout, would a crossing guard help also?

7           **MR. SNIFFEN:** Crossing guards always help,  
8 to make sure that it gives more comfort to the kids.  
9 Also, it makes sure that we can control the number  
10 of kids going at different times.

11           So that would also help with the traffic  
12 flow as well. But that being said -- well, I'll  
13 just answer your question. Yes. It would help.

14           **COMMISSIONER WONG:** Okay. And, you know,  
15 in Nanakuli and other places on O'ahu, just on  
16 O'ahu, if you have that hump, you know, to slow down  
17 traffic, would that also -- besides the roundabout,  
18 would the humps also help to slow down traffic?

19           **MR. SNIFFEN:** So with the roundabout  
20 itself, you'll see the way we built it, when you're  
21 going into the lanes that travel through the  
22 roundabout, there are no speed humps, because the  
23 geometry of the roundabout already slows you down.

24           But we do have two acceleration and  
25 deceleration lanes that go right off of the

1 roundabout, so you can go up to Kihei campus and  
2 come out of the double road.

3 In those areas, because the potential is  
4 people coming into those acceleration and  
5 deceleration lanes, they're looking left, because  
6 they want to see if there's other oncoming traffic  
7 from that area.

8 Sometimes they don't see the pedestrians  
9 that are in front of them because of it. So in those  
10 lanes, we put in raised pedestrian crosswalks to  
11 slow people down and to make sure people are paying  
12 attention where there's conflict points.

13 **COMMISSIONER WONG:** Thank you. The other  
14 question I have, and I guess from previous --  
15 there's two questions that I have.

16 The first question I have is when we did a  
17 walkthrough of the area -- that was four or five  
18 years ago -- we asked the DOE, hey, are you going to  
19 come back for a motion to amend? And they pretty  
20 much stayed silent on that. And, you know, I  
21 thought, hey, why don't you at least amend the stuff  
22 to say we're going to do a roundabout or something?  
23 At that time it was nothing.

24 And as you said, that was four or five  
25 years ago. They could have started a process for EIS

1 and everything else for, you know, what happens,  
2 underpass, overpass. And that would hit pretty much  
3 the same time as opening on the 2022. So that's just  
4 a statement I'm having.

5 The other statement that I really want to  
6 get to know on the record is who has the ultimate  
7 say on putting an overpass or underpass? Because DOE  
8 said it's the DOT has to give their full permission,  
9 not the DOE.

10 But you're saying, from what I gathered,  
11 DOE, of course, is the landlord who will tell us,  
12 and we will just construct it, you know, do the  
13 design and building on that. So who? Tell us who.

14 **MR. SNIFFEN:** So it's a good question. And  
15 I think Dawn had asked the same question, probably  
16 in a different way.

17 So we will always make the technical  
18 recommendations to DOE. And, of course, they're the  
19 landowner, so they can decide to follow it or not.  
20 But it would be very difficult for the DOE not to  
21 follow the DOT's determinations, because we have the  
22 data.

23 We're backing it up with our data and  
24 safety in the area, so it makes sense for them to  
25 accept our recommendations. So overall, if you're

1 looking at it from a technical perspective, DOE  
2 makes the final determination.

3 But because they're not going to question  
4 our technical recommendations, you could say that  
5 DOT makes the determination. I don't know if that  
6 answers your question.

7 **COMMISSIONER WONG:** Yeah. It's just like  
8 how regular construction, I'm the landlord, you  
9 know, you are the developer. I want you to do this.  
10 Build it. And, you know, pretty much that's it.

11 **MR. SNIFFEN:** Yeah.

12 **COMMISSIONER WONG:** It's a little bit more  
13 fluid, it sounds like.

14 **MR. SNIFFEN:** It is. It is. Mainly because  
15 we're both state agencies. We're both after the same  
16 thing; right? We're looking at making sure that we  
17 take care of the resources that we have, and we're  
18 making sure that we put in the solutions that make  
19 the best sense for that area.

20 **COMMISSIONER WONG:** Okay. That's it. Thank  
21 you, Mr. Sniffen. Thank you, chair.

22 **COMMISSIONER GIOVANNI:** Thank you. Last  
23 call, Commissioners, questions for Mr. Sniffen? I  
24 see none so, Mr. Sniffen, thank you very much for  
25 your time today.

1           **MR. SNIFFEN:** Thank you so much for having  
2 me.

3           **COMMISSIONER GIOVANNI:** Let me just ask.  
4 Mr. Fujioka, do you have any follow-up questions for  
5 your witness? You're on mute.

6           **MR. FUJIOKA:** I'm sorry. No. No further  
7 questions.

8           **COMMISSIONER GIOVANNI:** Okay. Thank you.  
9 We will excuse you, and you can go back to your  
10 other business. Thank you, Mr. Sniffen.

11          **MR. SNIFFEN:** Okay. Thank you, everyone.

12          **COMMISSIONER GIOVANNI:** So it's 9:46 by my  
13 clock. Mr. Fujioka, I see that Mr. Tanaka is  
14 available now. Would you like to commence your  
15 presentation with Mr. Tanaka?

16          **MR. FUJIOKA:** Yes. Let's do that.

17          **COMMISSIONER GIOVANNI:** Yeah. And just  
18 bear in mind that we'll take a -- we'll look for an  
19 opportunity to take a short break in about 15  
20 minutes.

21          **MR. FUJIOKA:** Fair enough.

22          **COMMISSIONER GIOVANNI:** Go ahead. Proceed,  
23 Mr. Fujioka.

24          **MR. FUJIOKA:** Okay. Good morning, Mr.  
25 Tanaka. Randy, can you hear me?



1           **MR. TANAKA:** Yes. I can hear you. Thank  
2 you.

3           **COMMISSIONER GIOVANNI:** Mr. Tanaka, can I  
4 ask you to raise your hand and to confirm that the  
5 testimony you're about to give will be the truth?

6           **MR. TANAKA:** Yes.

7           **COMMISSIONER GIOVANNI:** And state your  
8 name and affiliation for the record.

9           **MR. TANAKA:** Randall Tanaka, Department of  
10 Education, Office of Facilities and Operations. I'm  
11 the assistant superintendent.

12           **COMMISSIONER GIOVANNI:** Thank you very  
13 much. Mr. Fujioka, you may commence.

14           **MR. FUJIOKA:** Thank you. The last time,  
15 it seemed like there was an inference about school  
16 funding, so I wanted to go over a little bit about  
17 that process with you. So in any given year, am I  
18 right that your office, Office of Facilities and  
19 Operations, needs to come up with, I guess, some  
20 kind of budget for capital improvements and school  
21 campuses and so forth?

22           **MR. TANAKA:** That is correct. Our planning  
23 department looks forward at the areas of growth. We  
24 work with -- in the DOE, there's a department that's  
25 called Data Governance, and we look at growth in

1 different communities and set forth where we may  
2 need a school based on the growth of the  
3 communities.

4 We request -- we set forth a CIP budget to  
5 our board, and that is approved by the  
6 superintendent, sends to the board, goes to the  
7 governor, and the legislators appropriate funds.

8 **MR. FUJIOKA:** So before that budget goes  
9 out to the superintendent, are you the one who  
10 approves it?

11 **MR. TANAKA:** Yes. It's actually a team. I  
12 have people that look at all our needs, and they  
13 confer, and we say, okay, we'll go forward with this  
14 request.

15 **MR. FUJIOKA:** And then that's presented to  
16 the superintendent and then --

17 **MR. TANAKA:** Correct.

18 **MR. FUJIOKA:** And then on to the Board of  
19 Education?

20 **MR. TANAKA:** That is correct. The board  
21 approves the budget.

22 **MR. FUJIOKA:** Okay. And where does it go  
23 from there?

24 **MR. TANAKA:** Then it goes to Budget and  
25 Finance, and they look at it. And then it's

1 submitted to the governor, and the governor sets  
2 forth his budget for that year. And the legislators  
3 look at it, and then they appropriate the money.

4 **MR. FUJIOKA:** So if the governor does not  
5 approve the entire budget -- and that's happened in  
6 the past; hasn't it?

7 **MR. TANAKA:** Absolutely.

8 **MR. FUJIOKA:** Okay. In fact, last year  
9 wasn't there a substantial cut?

10 **MR. TANAKA:** Yes. Our budget in the  
11 biennium was about 700 million, 300 million for each  
12 year in round numbers. It was cut to 150 million for  
13 each year, so 300 million from the 700-800 million.

14 **MR. FUJIOKA:** And when you get that kind  
15 of message from the governor, what does your office  
16 do then?

17 **MR. TANAKA:** We go through the list and  
18 just restack to see what we can do and what was  
19 authorized. And we proceed.

20 **MR. FUJIOKA:** Does that sometimes involve  
21 reprioritization of the projects that you had set  
22 funding for?

23 **MR. TANAKA:** Absolutely. And not all the  
24 funds are -- we don't get the full fund. We may only  
25 get design money and not construction money. And we

1 go back again the next year, asking for construction  
2 money. So depends what gets approved.

3 You also should know that the legislators  
4 line item a number of projects, and they fund that  
5 accordingly. So all that we request is not  
6 necessarily funded. There's other line items that  
7 are added to it.

8 **MR. FUJIOKA:** That process is beginning  
9 around now for the 2022 legislature; correct?

10 **MR. TANAKA:** That is correct.

11 **MR. FUJIOKA:** So where is it now? Is the  
12 Planning Department still working on it?

13 **MR. TANAKA:** No. We submitted our budget  
14 to the superintendent, and there was a discussion at  
15 the last board meeting to move the request forward.  
16 So when B&F requests for that budget, we send it  
17 forward to them. We've established that budget  
18 already.

19 **MR. FUJIOKA:** And was funding for Kihei  
20 High School included with that?

21 **MR. TANAKA:** Yes. I think there's a  
22 request for about 50 million for Phase III.

23 **MR. FUJIOKA:** In terms of decision making,  
24 if we could take a look at -- back in 2017, there  
25 was a pedestrian route study, and at that time, I

1 believe the conclusion was that the GSPC was not  
2 warranted or not indicated.

3 But at that point, would there be a  
4 determination made by somebody that the grade-  
5 separated crossing would or would not be included in  
6 the plans?

7 **COMMISSIONER GIOVANNI:** Mr. Fujioka, could  
8 you -- for the record, could you clarify  
9 specifically what study you're referring to and  
10 whether it's an exhibit in these proceedings?

11 **MR. FUJIOKA:** Oh, I'm sorry. This is  
12 Exhibit 5, the traffic impact analysis report and  
13 pedestrian route study which was -- I'm sorry.  
14 That's the letter of the DOT approving the traffic  
15 impact analysis report and pedestrian route study.

16 When someone -- there's a recommendation  
17 that the grade-separated crossing is not recommended  
18 or not warranted or indicated, is there a decision  
19 made by OFO or is some kind of directive given to  
20 the architect or the person who's in charge of  
21 design of the project?

22 **MR. TANAKA:** So the process is -- so  
23 Planning gives us the framework and the need. Then  
24 they begin to write the scope of the project based  
25 on the information on needs, student population,

1 anticipated student population, its growth and long  
2 range.

3 And it's set forth in an RFP for design.  
4 The architects design the school. The bids come in.  
5 We look at them. There's a group that in our  
6 Planning Department, in our Project Management  
7 Department, and Procurement look at those items, and  
8 they select the best bidder. And pretty much the  
9 footprint is at that point established.

10 Then at that point, we have some funding  
11 at some point. Then once we accept the bid, if  
12 there's additional funding that's needed, and which  
13 most times there is, we go back to the legislature  
14 and say this is what it's going to look like.

15 So a lot of the design features and the  
16 decision process has been nearly completed. What we  
17 watch for, or my team watches for, is the change  
18 orders and things that may affect the design. Then  
19 it goes back to the architect and say here's the  
20 situation, gives us your recommendations.

21 **MR. FUJIOKA:** Okay. So when something --  
22 then when a finding comes out like the grade-  
23 separated crossing is not warranted, is there any --  
24 typically, would there be interaction between your  
25 office and the architect?

1           **MR. TANAKA:** Yes. In this situation,  
2 really, we defer to the subject matter experts --  
3 fundamentally, the Department of Transportation --  
4 on what their recommendation is for traffic managing  
5 that area, whether it be the roundabout, the grade-  
6 separated crossing. They come to us and say this is  
7 what we think.

8           I think at that point in time, originally  
9 the grade-separated crossing and the roundabout was  
10 not given the kind of consideration at that point in  
11 time.

12           And more studies came in, and they came  
13 back and said, you know, we have more expertise in  
14 roundabouts. We've studied it across the continent.  
15 We have a few roundabouts here in the state. And our  
16 recommendation going forward is to provide a  
17 roundabout and not a grade-separated crossing.

18           **COMMISSIONER GIOVANNI:** Excuse me for  
19 interrupting, but can you clarify specifically what  
20 exhibits you're referring to that said exactly what  
21 you're referring to?

22           **MR. TANAKA:** Stuart, if you have -- I  
23 don't have it in front of me. My apologies. But the  
24 original documents, well, after we reviewed the  
25 roundabout, initially, DOT said we don't have enough

1 expertise in that area. But since I've been with the  
2 DOE, that recommendation has changed to the two-lane  
3 roundabout.

4 **COMMISSIONER GIOVANNI:** So, Mr. Fujioka,  
5 does he happen to be referring to Exhibit 11, that  
6 2019 report?

7 **MR. FUJIOKA:** Well, I'm not --

8 **COMMISSIONER GIOVANNI:** If you're going to  
9 be referencing specific recommendations from  
10 specific studies, you need to identify the studies  
11 and whether they're in the record or not.

12 **MR. FUJIOKA:** Yeah. I'm not sure if it's  
13 the Exhibit 11 that we've been talking about.

14 **MR. TANAKA:** Well, Chair Giovanni, I'll  
15 ask my staff to get me that reference.

16 **COMMISSIONER GIOVANNI:** Thank you.

17 **MR. TANAKA:** Thank you.

18 **MR. FUJIOKA:** So there was a declaratory  
19 order that was issued in 2019. That was before your  
20 -- before your time; right?

21 **MR. TANAKA:** That is correct.

22 **MR. FUJIOKA:** And do you have an  
23 understanding of what done in response to that  
24 declaratory order?

25 **MR. TANAKA:** I don't -- I would once again



1 have to defer to my staff on what was done or what  
2 was not done.

3 **MR. FUJIOKA:** Do you recall any funds --  
4 that any funds were expended for design or anything  
5 like that in that timeframe?

6 **MR. TANAKA:** I don't believe so. I think  
7 as they were beginning to phase in the project based  
8 on the timeline given to us by the construction  
9 company, as you know, we're going for additional  
10 funds -- like, we're going this year for the  
11 supplemental budget for Phase III of the  
12 construction, that 50 million. So they don't give us  
13 all the money at once. We go in and make the request  
14 for the funds.

15 **COMMISSIONER WONG:** Chair?

16 **COMMISSIONER GIOVANNI:** Yes, Mr. Wong? Mr.  
17 Wong?

18 **COMMISSIONER WONG:** So, you know, I guess  
19 there's a -- sounds like there's a brain sharing now  
20 because there's more questions from Mr. Fujioka. At  
21 the same time, I would like to know what exhibit  
22 they are talking about, so if we could take a break  
23 so they can find the exhibit?

24 **COMMISSIONER GIOVANNI:** Yes. It's 10:00  
25 now, so I think that's an excellent suggestion,

1 Commissioner Wong. So let's take a break for 10  
2 minutes. In that 10 minutes, let's ask the  
3 petitioner to research and identify specifically  
4 what exhibits and studies are referred to in Mr.  
5 Tanaka's testimony.

6 **MR. FUJIOKA:** Thank you.

7 **COMMISSIONER GIOVANNI:** So we'll be back  
8 on the record at 10:10. We're taking a break. Thank  
9 you.

10 **MR. TANAKA:** Thank you.

11 **(WHEREUPON, recess was taken from 10:00**  
12 **a.m. to 10:11 a.m.)**

13 **COMMISSIONER GIOVANNI:** I'd like to resume  
14 the hearing. We're time sensitive, so, Mr. Fujioka,  
15 are you available?

16 **MR. FUJIOKA:** Yes.

17 **COMMISSIONER GIOVANNI:** Waiting for Mr.  
18 Hopper. Do we have anyone from the County of Maui  
19 online?

20 **MR. HART:** Jordan Hart is here.

21 **COMMISSIONER GIOVANNI:** Okay. Let's  
22 proceed. The County of Maui is represented. OP is  
23 represented. All the parties. So, Mr. Fujioka, you  
24 may resume. And, Commissioner Wong, could you  
25 restate your request prior to the recess?

1           **COMMISSIONER WONG:** Yes, Chair. So Mr.  
2 Tanaka, Mr. Fujioka, was talking about a study, and  
3 I just wanted to know what exhibit that is so I can  
4 also review it at the same time that they were  
5 talking about.

6           **COMMISSIONER GIOVANNI:** Thank you. Mr.  
7 Fujioka, it's all yours.

8           **MR. FUJIOKA:** Thank you. I believe that  
9 what Mr. Tanaka was addressing is Exhibit 5. It's a  
10 2017 letter from the Department of Transportation,  
11 and it makes reference to the Fehr & Peers study of  
12 2016, which is Exhibit 4. And the more recent study  
13 is Exhibit 11.

14           And, Mr. Chair, I believe you and I had a  
15 discussion about this last time. And I realize that  
16 you are right. They did not specifically analyze a  
17 roundabout with a grade-separated crossing, but the  
18 conclusion of that study was, I think, the grade  
19 separation becomes -- I don't recall the language  
20 they used, but it would apply more when you get to,  
21 like, 800 students or more.

22           So seeing we're not there yet, I think  
23 that's why it has some importance in terms of what  
24 needs to be in place when the school opens.

25           **COMMISSIONER GIOVANNI:** Let me offer, Mr.

1 Fujioka, if you refer -- since you refer to Exhibit  
2 11, it did say that a grade-separated crossing was  
3 not required only when there was a traffic signal.  
4 It did not say that it was not required due to the  
5 number of students. It did not say that it was not  
6 required if you had a -- only a roundabout with no  
7 signal light.

8 **MR. FUJIOKA:** Mm-hmm. I think --

9 **COMMISSIONER GIOVANNI:** That's my read of  
10 it. We can each read it, but I think it very clearly  
11 says that.

12 Anyway, the question we have at this time  
13 is what exhibits are you referring to when you made  
14 the statements -- either you or Mr. Tanaka -- that a  
15 grade-separated crossing is not warranted. And  
16 you've brought to light Exhibit 4, Exhibit 5, and  
17 Exhibit 11; is that correct?

18 **MR. FUJIOKA:** Yeah. And there are others  
19 that were from earlier, where the recommendations  
20 were that the

21 **COMMISSIONER GIOVANNI:** Here we go again.  
22 So if you're going to refer to others, you need to  
23 specify what those others are.

24 **MR. FUJIOKA:** Okay. Just a second. Pull it  
25 up. Okay. There was Exhibit 38, Exhibit 26, Exhibit

1 2 -- we've talked about Exhibit 4 -- and Exhibit 8.

2 **COMMISSIONER GIOVANNI:** Okay. Let's  
3 proceed with your interview of Mr. Tanaka.

4 **MR. FUJIOKA:** Randall, are you there? I  
5 see two incarnations in the --

6 **COMMISSIONER GIOVANNI:** Go ahead.

7 **MR. FUJIOKA:** So I guess where we left off  
8 was what is your recollection of how you learned  
9 that the Department of Transportation was  
10 recommending a multi-lane roundabout? Can you hear  
11 me?

12 **COMMISSIONER GIOVANNI:** Looks like he's  
13 walking with his phone.

14 **MR. FUJIOKA:** Yeah.

15 **MR. TANAKA:** Sorry about that. It was a  
16 discussion with my staff, who had had a discussion  
17 with DOT, and I confirmed, or I talked to Ed, that  
18 the information, the current information that we had  
19 recommended the roundabout versus the grade-  
20 separated crossing for the things that were  
21 mentioned about use. The tendency would be to cross  
22 at grade, and we -- that's when we brought it  
23 forward.

24 **MR. FUJIOKA:** Okay. That would be on --  
25 with reference to the time the current motion was

1 filed in August of 2020, would that be -- can you  
2 say how close it was to there?

3 **MR. TANAKA:** I think it was very close to  
4 that when we first brought it up to the commission.

5 **MR. FUJIOKA:** So was it a situation of DOE  
6 deferring to the Department of Transportation?

7 **MR. TANAKA:** Yes.

8 **MR. FUJIOKA:** And is that --

9 **MR. TANAKA:** We deferred to them, as they  
10 are the subject matter experts in this area.

11 **MR. FUJIOKA:** Whose decision is it? Who  
12 has the final say on whether DOE goes along with the  
13 DOT recommendation or not?

14 **MR. TANAKA:** Well, it's not so much a  
15 final decision. It's a consistency with what --  
16 taking input from DOT and the architects and confirm  
17 it with the team to say this is our recommendation  
18 going forward.

19 And they make the recommendation to me,  
20 and I say, okay, this makes sense. I talk to DOT and  
21 as, once again, the subject matter expert, and said,  
22 okay, let's proceed with the request.

23 **MR. FUJIOKA:** Okay. But this can be done  
24 at the assistant superintendent level?

25 **MR. TANAKA:** Yes.

1           **MR. FUJIOKA:** Okay. I believe that's all I  
2 have. And I'm assuming that others have questions  
3 for you.

4           **COMMISSIONER GIOVANNI:** Thank you, Mr.  
5 Fujioka. Mr. Tanaka, stand by. So, County of Maui,  
6 do you have any questions for Mr. Tanaka?

7           **MR. HART:** No, Chair. I think if he's only  
8 got 40 minutes, it's best for commissioners to have  
9 their questions. Thank you.

10           **COMMISSIONER GIOVANNI:** Thank you. OP, do  
11 you have any questions for Mr. Tanaka?

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

13           **COMMISSIONER GIOVANNI:** Thank you. So  
14 we'll now proceed to questions of Mr. Tanaka by the  
15 commissioners. And if I may indulge my fellow  
16 commissioners, I have one clarifying question I'd  
17 like to ask upfront, and then I'll refer to the  
18 other commissioners for their questions.

19           So, Mr. Tanaka, in your experience, to  
20 your knowledge -- and this refers to your testimony  
21 about the process by which funds get requested,  
22 approved, and allocated by state government.

23           To your knowledge and experience, has the  
24 Department of Education ever requested funds from  
25 the governor's budget for a grade-separated

1 overcrossing or undercrossing?

2 **MR. TANAKA:** Vice-Chair, not to my  
3 knowledge.

4 **COMMISSIONER GIOVANNI:** So in other words,  
5 it's never been refused by the governor because it's  
6 never been asked for by DOE.

7 **MR. TANAKA:** No. When the process we --  
8 it's called an allotment request. So we make the  
9 allotment request based on a number of different  
10 factors, what's important, what needs to come  
11 against a specific timeline.

12 That allotment request goes to Budget &  
13 Finance. Budget & Finance moves it to the governor's  
14 office. So there's two qualifying moments.

15 **COMMISSIONER GIOVANNI:** Got you.

16 **MR. TANAKA:** One with us, and one with  
17 B&F. Then it goes to the governor.

18 **COMMISSIONER GIOVANNI:** But from DOE, it's  
19 never been requested.

20 **MR. TANAKA:** Not to my knowledge. And I  
21 may be wrong, but I will recheck on that.

22 **COMMISSIONER GIOVANNI:** Thank you. So  
23 let's go to the commissioners' questions and start  
24 with Commissioner Chang.

25 **COMMISSIONER CHANG:** Thank you, Mr. Chair.



1 Thank you, Mr. Tanaka, for being here. I just some  
2 series of questions regarding both funding and then  
3 decision making.

4 With respect to funding, based upon the  
5 testimony that you heard from Mr. Ed Sniffen this  
6 morning, \$25-50 million to build an underpass, and  
7 if an underpass is built to standards, they would  
8 support it. Is the DOE committed to seek legislative  
9 appropriation to build the underpass?

10 **MR. TANAKA:** If that is the decision going  
11 forward, I believe we are obligated to ask for the  
12 money.

13 **COMMISSIONER CHANG:** Okay. And the 50  
14 million that you referenced for Phase III. Is it  
15 possible to reallocate or redefine that funds to be  
16 used to build the underpass?

17 **MR. TANAKA:** I just lost you.

18 **COMMISSIONER CHANG:** Okay. I'll rephrase  
19 that question. In your testimony, you referenced  
20 that there's \$50 million that DOE has requested for  
21 Phase III of Kihei High School. My question is is it  
22 possible to redefine or reallocate that \$50 million  
23 for Phase III and move it to building the underpass?

24 **MR. TANAKA:** Probably not, because those  
25 are for classrooms --

1           **COMMISSIONER CHANG:** I'm sorry. You're not  
2 -- Mr. Tanaka, I'm -- at least I am having audio  
3 problems with your responses. Are you there, Mr.  
4 Tanaka? Or did we lose him?

5           **COMMISSIONER GIOVANNI:** He's obviously  
6 having some difficulty. Let's just hold and see if  
7 he can fix it.

8           **COMMISSIONER CHANG:** Okay.

9           **COMMISSIONER GIOVANNI:** Mr. Tanaka, are  
10 you there?

11          **MR. TANAKA:** I can hear you now.

12          **COMMISSIONER CHANG:** Okay. Very good. So  
13 I'm sorry. You were breaking up during your  
14 response. Could you respond to my question about the  
15 reallocating for the 50 million to building the  
16 underpass?

17          **MR. TANAKA:** We probably -- the simple  
18 answer is no, because what we've asked for is for  
19 additional construction for the school. We would  
20 have to ask for another 50 million for the buildout.

21          **COMMISSIONER CHANG:** But in your mind, do  
22 you believe there is justification? If you cannot  
23 open the school in the absence of building an  
24 underpass, would it be more prudent use of that  
25 funds to use it towards the process of building the

1 underpass?

2 **MR. TANAKA:** I think what has been  
3 recommended to us is the roundabout, and after that  
4 gets installed, which allow us to open the school,  
5 and future studies would point out the additional  
6 needs, based as the enrollment increases.

7 **COMMISSIONER CHANG:** Okay. Did you get an  
8 opportunity to review the County of Maui's response  
9 to the DOE petition?

10 **MR. TANAKA:** Only briefly. I deferred a  
11 lot of that to DOT in terms of timing and what that  
12 meant and whether that obligation would be the  
13 obligation of the Department of Education for the  
14 underpass.

15 **COMMISSIONER CHANG:** Thank you.

16 **MR. TANAKA:** What I would be concerned  
17 about is if the study comes back and says you don't  
18 need, or your roundabout crossing accommodates the  
19 need for the school, would that mean that we  
20 wouldn't do the underpass or the overpass? I think  
21 the future studies will dictate that.

22 **COMMISSIONER CHANG:** But I think, Mr.  
23 Tanaka, at least based upon my assessment, listening  
24 to the community, and listening to the County of  
25 Maui, and the fact that your response to

1 Commissioner Giovanni was that DOT has never asked  
2 for funds for the grade-separated either overpass or  
3 underpass, I think there's a trust issue here, that  
4 if there is no commitment by DOT -- and I am  
5 assuming the \$50 million is to do some of those  
6 studies, and it is to, you know, to get that process  
7 going.

8 I think you've heard from several  
9 commissioners if this would have been done -- and I  
10 know it wasn't on your watch, but prior, at the time  
11 five years ago, we may not have -- we may not be  
12 here today. And I'm not here dwelling on what we  
13 didn't do. I'm trying to figure out a path forward  
14 to what we should do.

15 So I think my -- so while you would like,  
16 you know -- you believe that perhaps a study may  
17 conclude otherwise, but again, my point is it is  
18 more a commitment of trust to respond to both the  
19 County of Maui and the community's concerns.

20 So when you say it would probably not --  
21 you would probably not be able to reallocate, is  
22 there a willingness to at least pursue that question  
23 within DOE? Mr. Tanaka?

24 **MR. TANAKA:** But if -- whatever the study  
25 is going to prove out, we're obligated to satisfy.

1 And I understand the community's -- or I hope I can  
2 appreciate what the community's desires are. The  
3 obligation of the DOE is to provide a school and a  
4 safe crossing.

5           Once again, should we have done things in  
6 a different order? I would say yes. But we find  
7 ourselves in this place now trying to get the school  
8 open with an accommodation for safe crossing for the  
9 students.

10           And they're kind of -- we're kind of in a  
11 place where for us to open the school in time -- or  
12 it's still delayed, but closer to our plans -- we  
13 need some form of safe crossing.

14           I think Mr. Sniffen has expressed the  
15 options we have -- the overpass, the underpass, the  
16 roundabout. We feel the roundabout is the best  
17 option to get us to open the school as close to  
18 schedule as we would like. We think we're at least,  
19 you know, eight months behind schedule right now.

20           **COMMISSIONER CHANG:** Mr. Tanaka, I'm not  
21 going to disagree with you. However, there is a big  
22 disconnect between DOE and the community and the  
23 County of Maui. If you don't get a certificate from  
24 the County of Maui, you cannot open the school.

25           So I am urging you to consider -- and if

1 the studies come up otherwise, then that's good.  
2 Then you come back, and you visit us again. But if  
3 the Land Use Commission orders you to do what you  
4 were -- what you had previously agreed to do, then  
5 you may not have a choice.

6 So I am just -- you know, to me \$50  
7 million, you've already asked for that. That may be  
8 an option. So consider that. But let me move on to  
9 my questions, because time is running out.

10 Now, if -- am I correct that the  
11 legislator, an area legislator, could also request  
12 appropriation funding for the underpass independent  
13 from DOE; is that correct? Mr. Tanaka?

14 **MR. TANAKA:** (Inaudible).

15 **COMMISSIONER GIOVANNI:** Mr. Tanaka, you  
16 need to repeat your response. Your audio was not  
17 clear.

18 **COMMISSIONER WONG:** Mr. Chair, this is  
19 Commissioner Wong.

20 **COMMISSIONER GIOVANNI:** Yes, Commissioner  
21 Wong?

22 **COMMISSIONER WONG:** Could the testifier  
23 instead call in instead, and that might be easier?

24 **COMMISSIONER GIOVANNI:** I think he's doing  
25 that. He's got both his cellphone and his computer

1 on, to my understanding.

2 **COMMISSIONER WONG:** Okay. Because I don't  
3 even see him on our screen right now.

4 **MR. FUJIOKA:** I don't see him either. I  
5 think we might have lost him. Oh, there he is.

6 **COMMISSIONER CHANG:** Maybe what he has to  
7 do is turn off his computer and just speak on the  
8 telephone so we don't get the echo. Mr. Tanaka?

9 **COMMISSIONER GIOVANNI:** He's trying.

10 **COMMISSIONER CHANG:** Yeah. Appreciate it.

11 **COMMISSIONER CABRAL:** Hi. This is Nancy.

12 You know, I'm on a lot of these for other large  
13 groups, and sometimes if people -- other people get  
14 off, they'll, like, combine.

15 So people in a room together -- they're on  
16 their own, you know, computer, because that's easier  
17 -- are, you know, in the same area. They can join  
18 in. Sometimes when you have less people pulling on  
19 the bandwidth -- our system is big. I know that.

20 But it might be whatever on his side. So  
21 people can join in together, or if they're not part  
22 of this discussion, take off or something. It might  
23 help. Because I think Mr. Tanaka's testimony is  
24 really important to us.

25 So just maybe it might help. I don't know.

1 I'm not techy. I just live with these problems all  
2 the time these days. Thank you.

3 **COMMISSIONER GIOVANNI:** Thank you,  
4 Commissioner Cabral. Mr. Tanaka, can you hear us?

5 **MR. TANAKA:** Yes. I'm back on. I'm back  
6 on.

7 **COMMISSIONER GIOVANNI:** Okay. So let me  
8 ask Commissioner Chang to repeat her question to you  
9 about appropriation coming from a request from a  
10 legislator.

11 **COMMISSIONER CHANG:** Yes. So, Mr. Tanaka,  
12 do you recall that? Besides -- the DOE going in  
13 through your process to seek legislature funding,  
14 can an area legislator or any legislator also seek  
15 funding for an underpass independent of the  
16 Department of Education's request?

17 **MR. TANAKA:** Yes. That is correct. It's  
18 called a line-item appropriation. It's been done  
19 before. So the answer is yes.

20 **COMMISSIONER CHANG:** All right. Have you  
21 had any discussions with any legislators regarding a  
22 line-item appropriation for --

23 **MR. TANAKA:** Not --

24 **COMMISSIONER CHANG:** I'm sorry. Go ahead.

25 **MR. TANAKA:** I'm sorry. No. Not for an --



1 not for the underpass.

2 **COMMISSIONER CHANG:** Okay. All right. Let  
3 me just move on to just decision making, because I  
4 think I've made my point regarding the funding.

5 You've indicated that, you know, this  
6 whole question of who makes the final decision, and  
7 you said you refer to the subject matter experts. So  
8 for traffic or these kinds of highway-appropriate,  
9 like, grade-separated crossings or roundabouts, you  
10 refer to DOT. Is that what you -- is that what you  
11 meant?

12 **MR. TANAKA:** That is correct.

13 **COMMISSIONER CHANG:** And for purposes of  
14 historic properties and archaeological artifacts,  
15 you refer to the state historic preservation's  
16 recommendations; is that correct?

17 **MR. TANAKA:** That is correct.

18 **COMMISSIONER CHANG:** So you take all of  
19 those considerations as you ultimately make a  
20 decision on how to proceed.

21 **MR. TANAKA:** Yes.

22 **COMMISSIONER CHANG:** And are those  
23 deferenced to these subject matter experts because,  
24 one, DOE does not have the expertise?

25 **MR. TANAKA:** We have some expertise, but

1 not to the degree that these subject matter experts  
2 have. And the example I'll use is the roundabout.  
3 First, it was a single lane, and DOT said, no,  
4 that's not going to work; we don't have enough  
5 experience at it.

6 A couple of years later, they said, hey,  
7 this makes more sense now that we have more  
8 experience at this. So that's where we would drop  
9 back to them.

10 **COMMISSIONER CHANG:** Okay. And quite  
11 frankly, I've also heard Mr. Ed Sniffen kind of  
12 change from adamantly opposing an underpass to,  
13 well, if we do it with these conditions. And that  
14 might have been consistent with his testimony all  
15 along the way, but I do believe this is fluid.

16 My last question is is the deference to  
17 these subject matter experts also for purposes of  
18 liability?

19 **MR. TANAKA:** That is part of the package.  
20 Absolutely.

21 **COMMISSIONER CHANG:** All right. All right.  
22 I have no further questions. Thank you so much, Mr.  
23 Chair. And thank you, Mr. Tanaka.

24 **MR. TANAKA:** Thank you very much.

25 **COMMISSIONER GIOVANNI:** Commissioners?

1 Anybody? Do you have any questions for Mr. Tanaka?

2 Commissioner Okuda?

3 **COMMISSIONER OKUDA:** Thank you very much,  
4 Mr. Chair. Can I ask the Land Use Commission staff  
5 to put up on the share screen Exhibit 4 from the  
6 supplemental filing of the County of Maui? That is a  
7 letter dated April 14, 2020, from the Department of  
8 Education to Ms. McLean, M-c-L-e-a-n, from Tracy, T-  
9 r-a-c-y, Okumura, O-k-u-m-u-r-a, of the Department  
10 of Education.

11 Okay. Mr. Tanaka, in that letter, Ms.  
12 Okumura of the Department of Education wrote to the  
13 County of Maui, and I quote from the second  
14 paragraph of that letter.

15 "The HIDOE is committed to the design and  
16 construction of the pedestrian overpass and will  
17 ensure that it is ready for use when the high school  
18 opens for students. As indicated in our previous  
19 letter dated March 23, 2020, the design of the  
20 pedestrian overpass has already been started."

21 Are you aware of this letter dated April  
22 14, 2020, written by the Department of Education to  
23 Ms. Michele, M-i-c-h-e-l-e, McLean, the director of  
24 the Department of Planning of the County of Maui?

25 **COMMISSIONER GIOVANNI:** Mr. Tanaka, have

1 we lost you again? Mr. Tanaka, could you repeat your  
2 response to Mr. Okuda -- Commissioner Okuda?

3 **MR. TANAKA:** (Inaudible). Commissioner  
4 Okuda, yes, I am aware of that letter. At that point  
5 in time, we were proceeding along that track, and we  
6 had begun a design review. Hello? Hello?

7 **COMMISSIONER GIOVANNI:** Yes. We hear you.

8 **COMMISSIONER OKUDA:** Mr. Chair, this is  
9 Gary Okuda. May I make a statement? You know, Mr.  
10 Fujioka, a proponent of a witness has the  
11 responsibility to be sure that witness can  
12 adequately testify.

13 So I'd like to make that clear, that the  
14 responsibility to ensure that we can hear a witness  
15 is the responsibility of the proponent. And if we  
16 can't hear the testimony of that witness, then it's  
17 going to be the proponent who bears any type of  
18 negative connotation or negative result from that  
19 fact. Do you agree that that is the responsibility  
20 of the proponent of the witness to make sure we can  
21 hear the witness?

22 **MR. FUJIOKA:** I don't know that to be the  
23 rule. And, you know, I don't know that. I don't  
24 think it's my responsibility to make sure that his  
25 connection is working at any given point in time. I

1 can make sure he's got the time slot and that he's  
2 near some technology that would enable him to  
3 participate.

4 But if there are issues with -- I don't  
5 know his carrier's name or what services he uses,  
6 but, you know, I usually don't get into that kind of  
7 stuff. I'm sorry.

8 **COMMISSIONER OKUDA:** Well, if we can't  
9 hear, or if I can't hear a response from him, I'll  
10 ask again.

11 Mr. Tanaka, can you give a response to my  
12 question? If you can't, then I'm just going to stop  
13 my questioning of this witness, because it would be  
14 a waste of time talking where -- or asking questions  
15 where the witness can't hear me or can't respond.

16 Mr. Tanaka, can you respond to my  
17 question?

18 **MR. TANAKA:** Yes, Commissioner Okuda. We -  
19 - I am aware of the letter. At that point in time,  
20 that's the position that the DOE was going to move  
21 forward with the grade-separated crossing.

22 New evidence was brought to us from the  
23 subject matter expert, the DOT, saying a revisit of  
24 the roundabout is appropriate, because their  
25 information was saying the utilization of the grade-

1 separated, i.e., bridge would be less than  
2 forecasted, and folks would cross at grade. So let's  
3 provide a safe crossing.

4 **COMMISSIONER OKUDA:** Okay. Mr. Tanaka, are  
5 you aware or do you know how -- what testimony Ms.  
6 Lowery gave at the last hearing to a question raised  
7 by Commissioner Ohigashi about when the decision was  
8 made not to proceed with the grade-separated  
9 pedestrian crossing?

10 **MR. TANAKA:** I'm sorry, Commissioner  
11 Okuda. I did not get a chance to review that  
12 testimony.

13 **COMMISSIONER OKUDA:** Okay. Let me read the  
14 question that Commissioner Ohigashi asked. This is  
15 at hour 3 --

16 **COMMISSIONER GIOVANNI:** Commissioner  
17 Okuda, could we take down the shared screen of this  
18 letter?

19 **COMMISSIONER OKUDA:** Yes. Yes. Thank you,  
20 Mr. Chair. Thank you, LUC staff. Please take down  
21 the shared screen. Let me read from a question that  
22 Commissioner Ohigashi asked at hour 3, 28 minutes,  
23 49 seconds of the meeting.

24 Question by Commissioner Ohigashi, and I  
25 quote: "The question that I have, then, is who made

1 the decision to go with the roundabout and to put  
2 off the grade separation?" And there was a bunch of  
3 interchange between Commissioner Ohigashi and Ms.  
4 Lowery.

5 And then Ms. Lowery answered, and I quote:  
6 "I think our facilities, our public works  
7 administrator who no longer works here, his name was  
8 John Chung, and he left in November 2019," close  
9 quote.

10 So if Ms. Lowery was testifying  
11 truthfully, Mr. Tanaka, that means that by the time  
12 he left the employment of the Department of  
13 Education November 2019, there was already a  
14 decision made not to proceed with the grade-  
15 separated pedestrian crossing; correct?

16 **MR. TANAKA:** You know, I don't know the  
17 sequence of that decision-making process back then.  
18 It was -- and not to cop out of this discussion, but  
19 that's what the situation was. And understand that  
20 when we go through this process of design and build  
21 --

22 **COMMISSIONER OKUDA:** Yeah, Mr. Tanaka, Mr.  
23 Tanaka, I don't mean to cut you off, but all of that  
24 is not responsive to my question. I'm just trying to  
25 -- well, let me move on to my next question.

1 If Ms. Lowery's testimony is correct, that  
2 by November of 2019, when Mr. Chung retired, there  
3 was already a decision not to move forward with the  
4 grade-separated pedestrian crossing. One conclusion  
5 we can draw, then, is this statement that is made in  
6 Exhibit 4, the letter dated April 14, 2020, to the  
7 director of the County of Maui's Department of  
8 Planning.

9 That contains a misleading statement, or a  
10 statement which is misleading, about the intentions  
11 of the Department of Education. That's something we  
12 could conclude from this -- these exhibits and Ms.  
13 Lowery's testimony. Do you agree?

14 **MR. TANAKA:** I would agree to that. Yeah.  
15 Mm-hmm.

16 **COMMISSIONER OKUDA:** Okay.

17 **MR. TANAKA:** Might be mislead by some of  
18 those.

19 **COMMISSIONER OKUDA:** Okay. And isn't it  
20 true that in response to the letter of April 14,  
21 2020, the County of Maui supplemental Exhibit 4, the  
22 County of Maui relied on that letter and issued four  
23 building permits to the Department of Education;  
24 correct?

25 **MR. FUJIOKA:** I don't think we can



1 speculate on the county's level of reliance.

2 **COMMISSIONER OKUDA:** Well, Mr. Fujioka,  
3 I'm just asking a question whether or not Mr. Tanaka  
4 agrees or not that the county -- it's either yes, he  
5 agrees, no, he doesn't agree, or he doesn't know.

6 So using those three options, Mr. Tanaka,  
7 can you answer or -- answer my question? Would you  
8 agree that in reliance on Exhibit 4, this letter  
9 dated April 14, 2020, from the Department of  
10 Education to the County of Maui, the County of Maui  
11 in reliance on the letter issued the Department of  
12 Education four building permits?

13 **MR. TANAKA:** I don't know.

14 **COMMISSIONER OKUDA:** Okay. Thank you.

15 **MR. TANAKA:** I would have to look to my  
16 staff.

17 **COMMISSIONER OKUDA:** Okay. Thank you very  
18 much, Mr. Tanaka. Thank you, Mr. Chair. No further  
19 questions.

20 **COMMISSIONER GIOVANNI:** Thank you, Mr.  
21 Okuda. We have approximately 15 minutes left of  
22 availability with this witness. Commissioners, do  
23 you have any further questions for Mr. Tanaka?

24 **COMMISSIONER WONG:** Chair, this is  
25 Commissioner Wong.

1 **COMMISSIONER GIOVANNI:** Commissioner Wong?

2 **COMMISSIONER WONG:** Thank you, Mr. Chair.

3 Mr. Tanaka, a couple of questions. The first one is,  
4 you know, you said in a statement that you usually  
5 follow the recommendations of your architect and  
6 staff and then pass it on to the board and whomever.

7 Have you ever once gone against the  
8 architect and their staffs, and, no, you guys are  
9 wrong; this is what we should do?

10 **MR. TANAKA:** During my tenure here, no, I  
11 have not seen that in that regard. We accept --  
12 based on the bids that come in, we accept the design  
13 and the construction schedule or whatever comprises  
14 the scope, and we go forward.

15 Where at times we have questions is when a  
16 change order comes in or there's a discovery of  
17 something that was not in the scope. But to my  
18 knowledge, we have not contradicted the initial  
19 designs.

20 **COMMISSIONER WONG:** This is just the  
21 street designs, but what about ideas or, you know,  
22 something? You have to have a think tank that says,  
23 hey, I have an idea. Let's say we -- your goal,  
24 Phase II or Phase III, and do this instead. Have you  
25 ever just talked about it?

1           **MR. TANAKA:** Not at my level. They may  
2 have -- it may be discussed with project management  
3 and construction management, the team that is  
4 actually boots on the ground, so to speak.

5           **COMMISSIONER WONG:** And do they ever come  
6 to you and say, hey, this is our idea that we talked  
7 about?

8           **MR. TANAKA:** Yes. We're working on one now  
9 with the Hawai'i School for Deaf and Blind. They had  
10 some different ideas. We sat down and talked to  
11 them. We talked about the budget and timeline and  
12 this is what we're going to do. So, yes, that has --  
13 they have brought that to me before, and most  
14 recently, yes.

15           **COMMISSIONER WONG:** Okay. So I want to go  
16 back to what were the Phase I, Phase II, and Phase  
17 III. So can you please go back for my recollection?  
18 What is Phase I for DOE? What is Phase II, and what  
19 is Phase III?

20           **MR. TANAKA:** I'm sorry. Commissioner Wong  
21 broke up a little bit. But what --

22           **COMMISSIONER WONG:** So --

23           **MR. TANAKA:** Go ahead.

24           **COMMISSIONER WONG:** Oh, so what is Phase I  
25 and how much it will cost? What is Phase II, how

1 much it costs? And what is Phase and how much it  
2 costs?

3 **MR. TANAKA:** To the best of my  
4 recollection, Phase I -- and there's different  
5 phases, construction phase and school opening phase.  
6 So construction Phase I is really the excavation,  
7 the groundwork, which has been completed. And I  
8 believe that was a little above 100 million.

9 Phase II, which is in construction now,  
10 which are the classrooms, the core classrooms, I  
11 think that -- and don't hold me to this, but I think  
12 it was in the neighborhood of a little north of 50  
13 million. I may be wrong on that, but.

14 And then now Phase III, parts of Phase II  
15 we've advanced the allotment request, and that's 50  
16 million.

17 **COMMISSIONER WONG:** And that's for --?

18 **MR. TANAKA:** Some additional classrooms,  
19 some specialty classrooms, those items.

20 **MR. FUJIOKA:** I'm sorry. If I could  
21 interject, the numbers you're referring to, are they  
22 roman numerals or are they Arabic? Because there's  
23 two different types of phases in this project.

24 **COMMISSIONER WONG:** Yeah. So I guess we  
25 went on the construction phase. Now, in terms of the

1 DOE phases, can you explain that one, sir?

2 **MR. TANAKA:** I'm sorry. Commissioner Wong

3 --

4 **COMMISSIONER WONG:** Yes.

5 **MR. TANAKA:** So you're correct. There's a  
6 construction phase, and there's a school phase.

7 **COMMISSIONER WONG:** Yes.

8 **MR. TANAKA:** So you want me to answer what  
9 portion?

10 **COMMISSIONER WONG:** Now the school phase,  
11 because you just did the construction phase.

12 **MR. TANAKA:** Yeah. I'm not up on that side  
13 of it. That we leave to the complex area  
14 superintendent, the new principal, which getting the  
15 school ready for occupancy based upon what will be  
16 available.

17 **COMMISSIONER WONG:** Okay. So my last  
18 question, sir. Hypothetically again, I asked Mr.  
19 Sniffen about the roundabout and if you put crossing  
20 guards with police officers, you know, that's off  
21 duty. Does the DOE have money for that?

22 **MR. TANAKA:** You now, that's going to come  
23 out of the school budget, what is called weighted  
24 school formula. And the principal has the latitude  
25 to do that.

1 Sometimes you get volunteers, but because  
2 of the nature of what they have to do, we -- my  
3 recommendation would be to have someone trained and  
4 understand their duties in that area versus, you  
5 know, in the old days, you could have some parent,  
6 you know, there.

7 But, you know, given the liabilities that  
8 we deal with, I would recommend a professional, or  
9 someone trained.

10 **COMMISSIONER WONG:** Thank you, Mr. Tanaka.  
11 Thank you, Mr. Chair. No further questions.

12 **COMMISSIONER GIOVANNI:** Thank you.  
13 Commissioner Ohigashi?

14 **COMMISSIONER OHIGASHI:** Yeah. I just have  
15 some -- a few questions. Mr. Tanaka, I'm not sure.  
16 When did you become assistant superintendent of  
17 facilities?

18 **MR. TANAKA:** In late -- January 24th,  
19 2020.

20 **COMMISSIONER OHIGASHI:** 2020. And I'm  
21 going to refer to that Exhibit 4 again that we had  
22 up on the screen, but you may not be able to see.

23 That there that -- "As indicated in our  
24 previous letter dated March 23, 2020, the design of  
25 the pedestrian overpass has already been started."

1 How much of the design did you folks complete?

2 **MR. TANAKA:** I've got to go research that,  
3 to what degree.

4 **COMMISSIONER OHIGASHI:** What does it mean  
5 by already started? When did it start?

6 **MR. TANAKA:** I've got to go back and talk  
7 to my planner on that. I'm not exactly sure when it  
8 started.

9 **COMMISSIONER OHIGASHI:** Because we had  
10 testimony indicating that there was no design  
11 started. Is that true?

12 **MR. TANAKA:** I don't know. I need to go  
13 back to my planners.

14 **COMMISSIONER OHIGASHI:** And to be clear,  
15 this letter was written April of 2020 while you were  
16 assistant superintendent of facilities; is that  
17 correct?

18 **MR. TANAKA:** Tracy Okumura is what is  
19 called an EA. He's called an executive assistant.  
20 And he has some of the authority that I have from a  
21 communication standpoint and works with our Planning  
22 Department.

23 **COMMISSIONER OHIGASHI:** No. That's not my  
24 question. My question is you were the assistant  
25 superintendent at the time that this letter was

1 written; isn't that true?

2 **MR. TANAKA:** Yes. That is correct. That is  
3 correct.

4 **COMMISSIONER OHIGASHI:** Yes. I don't have  
5 any further questions.

6 **COMMISSIONER GIOVANNI:** Commissioner  
7 Cabral? So just let me do a quick time check. Mr.  
8 Tanaka, what is the outside limit of your  
9 availability today?

10 **MR. TANAKA:** I am actually on my way to  
11 the airport to catch a flight to out of state, so  
12 I'm going to get to the airport in about 10 minutes.

13 **COMMISSIONER GIOVANNI:** Okay.  
14 Commissioner Cabral, please proceed expeditiously.

15 **COMMISSIONER CABRAL:** Thank you. I want  
16 to reference, just to ask you a question in  
17 reference. I have a study that was done by G70 in  
18 August of 2019, and it references at the bottom that  
19 "A roundabout would have to include at least a two-  
20 lane circulation roadway would likely not  
21 accommodate long-term traffic volumes and would also  
22 include operational and safety issues associated  
23 with at-grade pedestrian crossing of the multi-lane  
24 approach and departure lanes of the south  
25 intersection lane."



1 So my -- and then earlier, Mr. Sniffen  
2 from Transportation referenced that they're going to  
3 put bumps in their or something, because even though  
4 people are going 20 miles an hour, people are not  
5 paying attention to pedestrians because they're too  
6 worried about all the cars circling around.

7 And I've done traffic circles. I can  
8 appreciate that concern. I've done double ones on  
9 the mainland like they're talking about.

10 So I'm getting more concerned now about  
11 the safety of our children in a roundabout setting  
12 that seems to become the operational choice for  
13 traffic flow, not for pedestrian safety. Are you  
14 aware of this August report that G70 did at all?

15 **MR. TANAKA:** Yes. I am aware of that  
16 report. And I think Department of Transportation  
17 addressed some of those with the design of the  
18 roundabout and what they call humps to reduce the  
19 speed prior to getting to the roundabout. Once  
20 again, I defer to the expertise of DOT in managing  
21 that chore.

22 **COMMISSIONER CABRAL:** Okay. And now, my  
23 second question is back to that exhibit that  
24 Commissioner Okuda had up there of the August --  
25 April 14th letter that Tracy Okumura put out there.

1 In this letter, in another paragraph of  
2 it, it says as a result, they have already -- are  
3 requesting approval of permit application. And they  
4 have permit numbers. So I don't know if those are --  
5 if that's a separate -- if that's just the building  
6 or if that's anything to do with the roadways, so.

7 But again, I think that that's a key point  
8 that just over a year ago, if not the reality, then  
9 the smokescreen is that we're moving ahead with an  
10 overpass. And I have to tell you, or make a  
11 statement that I'm hearing elsewhere, that it's very  
12 disconcerting that somehow we're getting such mixed  
13 information. So thank you very much, though.

14 **COMMISSIONER GIOVANNI:** Thank you,  
15 Commissioner Cabral. Commissioner Okuda?

16 **COMMISSIONER OKUDA:** I'm sorry, Mr. Chair.  
17 I didn't take my hand down. Sorry. No questions.  
18 Thank you.

19 **COMMISSIONER GIOVANNI:** Thank you very  
20 much. So, Commissioners, any further questions for  
21 this witness on his way to the airport? In  
22 consideration of time, I'll just leave my questions  
23 to one brief one. I've listened to you, Mr. Tanaka,  
24 speak to the different expert advice that you've  
25 gotten from architects, from the transportation

1 department, and from staff before you make  
2 decisions.

3 I've yet to hear anything about  
4 recommendations in which you specifically address  
5 safety or the risk of safety of our children. Can  
6 you tell me how you accommodate or how you factor in  
7 safety into your analysis and your decisions on  
8 whether or not to spend money?

9 **MR. TANAKA:** The first step for my  
10 evaluation is what DOT is telling me, that the  
11 design of these roundabouts provide for the safety.  
12 The design of the inclusion of the humps will slow  
13 the speed. And I go forward based on the information  
14 provided to us.

15 In addition, I think it was Commissioner  
16 Wong that talked about crossing guards, for lack of  
17 a better term. And we will definitely, you know,  
18 take that into consideration.

19 My greatest concern is how many kids are  
20 crossing, when they're crossing, what the traffic  
21 looks like at that time. And I've observed a couple  
22 of different schools here on O'ahu -- Waipahu High  
23 School with 2700 kids that cross the road to get the  
24 bus. I've observed that, the volume.

25 So all those things -- safety is of utmost

1 importance to us. So once again, I go back to what  
2 DOT says. We supplement with crossing guards, and go  
3 from there.

4 **COMMISSIONER GIOVANNI:** I don't have any  
5 further questions. Commissioners, one last chance to  
6 this witness before we lose him.

7 Thank you, Mr. Tanaka. Appreciate you  
8 squeezing us in today.

9 **MR. TANAKA:** Thank you. Thank you very  
10 much for everyone's patience and time. We would just  
11 like to get this school open.

12 **MR. FUJIOKA:** Yes. Thank you.

13 **MR. TANAKA:** Thank you. Aloha.

14 **COMMISSIONER GIOVANNI:** Thank you. Aloha.  
15 Mr. Fujioka, we're going to suspend the further  
16 presentation of your testimony and refer now back to  
17 the -- now that we've accommodated the time  
18 allocations for your two witnesses --

19 **MR. FUJIOKA:** If I could just clarify one  
20 -- make one clarification before you move on? When  
21 Mr. Tanaka was talking about the DOE's position,  
22 there is an Exhibit 9. It's dated August 5th, 2020.

23 It's the -- DOT had reduced its advice to  
24 -- had put in writing its recommendation of the  
25 roundabout. And I believe Mr. Tanaka referred to

1 that, so I just wanted to identify the exhibit under  
2 that point. Thank you.

3 **COMMISSIONER GIOVANNI:** Okay. We'll take  
4 another look at Exhibit 9. Thank you. You know,  
5 since our last meeting, we have received additional  
6 written testimony from the public, and we're going  
7 to reopen virtual testimony from the public. So I'm  
8 going to call on members of the public.

9 Is there anyone in the public who wishes  
10 to provide virtual testimony on the agenda item?  
11 Please used your Raised Hand webinar function to be  
12 recognized, or if you're on a cellphone, the \*9 key.

13 And just so everyone is aware, I do not  
14 have the visibility at my location to that, the  
15 virtual room, so I'll be calling on the assistance  
16 of Mr. Derrickson to assist me in recognize members  
17 of the public who may want to testify.

18 So, Mr. Derrickson, do you see anyone in  
19 the -- that wishes to testify?

20 **MR. DERRICKSON:** Yes. There is one, Andrew  
21 Beerer. We can promote him to the panel.

22 **COMMISSIONER GIOVANNI:** Thank you. Please  
23 promote Andrew Beerer to the panel for testimony.

24 **MR. DERRICKSON:** Mr. Beerer, you can turn  
25 on your microphone, please.

1           **MR. BEERER:** Yes. Thank you. Are you ready  
2 for my testimony? I can be sworn in.

3           **COMMISSIONER GIOVANNI:** Do you swear or  
4 affirm that the testimony that you're about to give  
5 is the truth?

6           **MR. BEERER:** Yes. I do.

7           **COMMISSIONER GIOVANNI:** Please proceed.

8           **MR. BEERER:** Yes. Thank you. I am most  
9 concerned with the --

10           **COMMISSIONER GIOVANNI:** State your name  
11 and affiliation first.

12           **MR. BEERER:** Oh, I'm sorry. My name is  
13 Andrew Beerer. I am the Education and Recreation  
14 Committee chair for the Kihei Community Association  
15 as well as the founder of the Kihei High School  
16 Action Team and a primary community advocate for the  
17 Kihei High School for the last 12 years.

18           **COMMISSIONER GIOVANNI:** Thank you.

19           **MR. BEERER:** My biggest concern in hearing  
20 today's testimony from Director Sniffen is what I  
21 consider a somewhat outlandish estimate of \$25-50  
22 million to build an underpass.

23           I would certainly want to see what that  
24 would entail. I have a feeling that that price tag,  
25 that must be a full rebuild of the whole bridge, et

1 cetera, which we don't feel is necessary.

2 In speaking to many expert consultants, we  
3 have never heard anything close to this. We have  
4 testimony from many expert consultants who feel that  
5 a reasonable underpass could be done for a very  
6 small fraction of that price tag. So I would just  
7 hope that that kind of an estimate would be vetted  
8 more thoroughly before it's accepted at face value.

9 Thank you.

10 **COMMISSIONER GIOVANNI:** Thank you.  
11 Petitioner, do you have any questions for Mr.  
12 Beerer?

13 **MR. FUJIOKA:** No questions.

14 **COMMISSIONER GIOVANNI:** County, do you  
15 have any questions for Mr. Beerer?

16 **MR. HART:** No, Chair.

17 **COMMISSIONER GIOVANNI:** OP, do you have  
18 any questions for Mr. Beerer?

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

20 **COMMISSIONER GIOVANNI:** Commissioners?  
21 Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Yeah. Thank you for  
23 coming forward and providing this information. Since  
24 you've investigated this or looked into this, in  
25 addition to a lower price tag, have you gotten any

1 kind of estimates or all that on what the timeframe  
2 might be to have that type of a project completed  
3 or, you know, completed?

4 **MR. BEERER:** Yeah. Generally, the  
5 engineers and construction folks feel that the  
6 actual construction would be fairly short, much less  
7 than a year. From what I understand, the bigger  
8 challenge is -- would be in getting all the  
9 permitting in line, especially anything that comes  
10 from the Army Corps of Engineers.

11 So again, just as we've always previously  
12 stated, time is of the essence, and that's why we  
13 wish that more diligence would have been done prior  
14 to this point. We could be much further along than  
15 where we are today. Thank you.

16 **COMMISSIONER CABRAL:** Yes. Thank you very  
17 much.

18 **COMMISSIONER GIOVANNI:** Commissioners, any  
19 further questions for Mr. Beerer? Thank you, Mr.  
20 Beerer.

21 **MR. BEERER:** You're welcome.

22 **COMMISSIONER GIOVANNI:** Appreciate you  
23 coming forward. Mr. Derrickson, anybody else  
24 wishing to testify?

25 **MR. DERRICKSON:** No, not at this time.



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

2 So at this point, we will close public testimony,  
3 and we will continue with the petitioner's  
4 presentation.

5 **COMMISSIONER WONG:** Mr. Chair?

6 **COMMISSIONER GIOVANNI:** Mr. Fujioka, do  
7 you have anything further to present in support of  
8 your motion?

9 **MR. FUJIOKA:** No. I do not have anything  
10 further. Thank you.

11 **COMMISSIONER WONG:** Mr. Chair?

12 **COMMISSIONER GIOVANNI:** Who's that  
13 speaking?

14 **COMMISSIONER WONG:** Commissioner Wong.

15 **COMMISSIONER GIOVANNI:** Commissioner Wong,  
16 you are recognized.

17 **COMMISSIONER WONG:** Thank you, chair. I  
18 think Scott here had said that someone else raised  
19 their hand.

20 **MR. DERRICKSON:** Yes. Chair, there is  
21 another. Representative Tina Wildberger has -- has  
22 raised her hand now.

23 **COMMISSIONER GIOVANNI:** So you did not --  
24 let me just confirm you did not see her hand raised  
25 when I asked you before, but now you see it?

1           **MR. DERRICKSON:** Correct.

2           **COMMISSIONER GIOVANNI:** Okay. I will -- I  
3 will admit that, her testimony. Would you -- would  
4 you move her forward to the panel?

5           **MR. DERRICKSON:** Yes. In process.

6           **REPRESENTATIVE WILDBERGER:** Good  
7 afternoon, Chair and Commissioners. I apologize. It  
8 took me just a moment technologically to get  
9 connected with you, or my hand would have been up a  
10 little sooner. Very quickly, I would just like to  
11 reiterate --

12           **COMMISSIONER GIOVANNI:** One second.

13           **REPRESENTATIVE WILDBERGER:** Oh, my name is  
14 Tina Wildberger. I'm state house rep, District 11,  
15 and I promise to be truthful.

16           **COMMISSIONER GIOVANNI:** Okay. Proceed.

17           **REPRESENTATIVE WILDBERGER:** Thank you. I  
18 just want to reiterate quickly that indeed my  
19 district was awarded \$250,000 in capital improvement  
20 project funding for, in quotes, due diligence study  
21 for safe pedestrian crossing in 2020 in Bill No. HB-  
22 2725.

23           And so, you know, I'm not sure what  
24 happened to that funding, what the DOE might have  
25 done with that money, but this requirement has been

1 reaffirmed and in place since 2009, which is an  
2 awful long period of time.

3 And so we've had 11 years to do the  
4 planning for this. So I just wanted to reiterate  
5 that that funding was in place and offered to the  
6 DOE for that purpose. Thank you.

7 **COMMISSIONER GIOVANNI:** Thank you.  
8 Petitioner, do you have any questions for this  
9 witness?

10 **MR. FUJIOKA:** No questions.

11 **COMMISSIONER GIOVANNI:** County, any  
12 questions for this witness?

13 **MR. HART:** No, Chair.

14 **COMMISSIONER GIOVANNI:** OP, any questions?

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

16 **COMMISSIONER GIOVANNI:** Commissioners, any  
17 questions? Commissioner Chang?

18 **COMMISSIONER CHANG:** Thank you. Good  
19 morning, Representative Wildberger. Thank you for  
20 being here.

21 **REPRESENTATIVE WILDBERGER:** Good morning.

22 **COMMISSIONER CHANG:** You obviously are  
23 very committed and passionate. I appreciate you  
24 being at these hearings. I'm not too sure if you  
25 had an opportunity to hear Mr. Ed Sniffen's

1 testimony that it would cost 25-50 million to build  
2 the underpass and that Mr. Tanaka said that DOT --  
3 oh, a legislator could also introduce legislation.

4 If the DOE doesn't introduce legislation  
5 for this underpass, would you be willing to  
6 introduce legislation?

7 **REPRESENTATIVE WILDBERGER:** Sure. I'm  
8 prepared to help the community with their goals  
9 however I can support that as their representative.

10 **COMMISSIONER CABRAL:** Very good. No  
11 further questions. Thank you so much.

12 **REPRESENTATIVE WILDBERGER:** Thank you.

13 **COMMISSIONER GIOVANNI:** Thank you,  
14 Commissioner Chang. Commissioners, any further  
15 questions for this witness? Okay. Thank you, Ms.  
16 Wildberger. You're free to go.

17 **REPRESENTATIVE WILDBERGER:** Thank you all.

18 **COMMISSIONER GIOVANNI:** Okay. One more  
19 time, Mr. Derrickson. Anybody else have their hands  
20 up?

21 **MR. DERRICKSON:** I'm looking. I don't see  
22 any.

23 **COMMISSIONER GIOVANNI:** Going once, going  
24 twice, three times. Okay. Public testimony is  
25 closed. Thank you.

1 Now, Mr. Fujioka, I'll give you one more  
2 chance to continue your presentation in support of  
3 your motion.

4 **COMMISSIONER OHIGASHI:** Mr. Chairman, Lee  
5 Ohigashi.

6 **COMMISSIONER GIOVANNI:** Ah, Commissioner  
7 Ohigashi, you are recognized.

8 **COMMISSIONER OHIGASHI:** I just wanted to  
9 know if we can take a short break, if there's no  
10 other

11 **COMMISSIONER GIOVANNI:** You know, time has  
12 gotten away from me. I think that's an excellent  
13 suggestion for a short break. It's now 11:10. We  
14 will resume in 10 minutes at 11:20. Thank you,  
15 Commissioner Ohigashi.

16 **(WHEREUPON, a recess was taken from 11:10**  
17 **a.m. to 11:20 a.m.)**

18 **COMMISSIONER GIOVANNI:** Okay. It's 11:20.  
19 I see that we have a full quorum -- County,  
20 petitioner, OP, and the commissioners are back.

21 So, Mr. Fujioka, would you like to  
22 continue with any presentation in support of your  
23 motion?

24 **MR. FUJIOKA:** I believe that's -- our  
25 presentation is complete. We've submitted our

1 position already and have presented our witness  
2 testimony, so that concludes the petitioner's  
3 presentation.

4 **COMMISSIONER GIOVANNI:** Thank you.

5 Commissioners, are there any further questions for  
6 the petitioner? Seeing none, we'll assume that the -  
7 - we'll close the -- oh, Commissioner Okuda?

8 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
9 If I can just have a few minutes to ask Mr. Fujioka  
10 basically a number of summary questions, so at least  
11 I know exactly what is being requested and the basis  
12 for the request by the Department of Education.

13 So first of all, Mr. Fujioka, at page 4 of  
14 your memorandum, it summarizes the basis of the  
15 Department of Education's request. And when I say  
16 the memorandum, the memorandum in support of your  
17 motion. And let me read these two sentences that are  
18 at the summary portion on page 4.

19 And I quote, "It is HIDOE's understanding  
20 that the county expected HIDOE to design and  
21 construct or make available an above or below ground  
22 grade-separated pedestrian crossing (GSPC) before  
23 opening Phase I of the project. However, at the  
24 present, state of Hawai'i Department of  
25 Transportation (HDOT) rejects the building of an

1 overpass or underpass and instead recommends a  
2 roundabout be developed to address pedestrian  
3 safety."

4 Mr. Fujioka, that is the summary of the  
5 basis of the Department of Education's motion;  
6 correct?

7 **MR. FUJIOKA:** Yeah. I believe that's a  
8 fair statement.

9 **COMMISSIONER OKUDA:** Okay. But you do  
10 agree that in response to the question that Acting  
11 Chair Giovanni asked -- and which I went over, and  
12 I'm not going to repeat his question -- and Mr.  
13 Sniffen's response, in fact, the Department of  
14 Transportation, in fact, has not rejected an  
15 overpass or underpass; correct?

16 **MR. FUJIOKA:** "Reject" might be a strong  
17 word. It was -- but they are definitely recommending  
18 against this.

19 **COMMISSIONER OKUDA:** I know. But using  
20 your term, or your understanding of the word you  
21 used in your motion, "reject", isn't it true  
22 according to the testimony that was given by Mr.  
23 Sniffen in response to Acting Chair Giovanni's  
24 question, the Department of Transportation, in fact,  
25 has not rejected the overpass or underpass; correct?

1           **MR. FUJIOKA:** Yeah. Yeah, I don't know if  
2 we could say rejected or not rejected, but  
3 definitely, they're recommending against it.

4           **COMMISSIONER OKUDA:** Okay. And in fact,  
5 your witness, Ms. Lowery, in response to  
6 Commissioner Chang's question at hour 3, 15 minutes,  
7 5 seconds, said this.

8           And let me quote. Question by  
9 Commissioner Chang: "Has DOT made a decision not to  
10 build a grade-separated crossing? For example, an  
11 underpass? Has DOT made that decision?"

12           And the response from Ms. Lowery was, "I  
13 don't think so." Did I accurately recount Ms.  
14 Lowery's response to the question asked by  
15 Commissioner Chang?

16           **MR. FUJIOKA:** Are you -- if you're  
17 referring to the transcript, I would think so.

18           **COMMISSIONER OKUDA:** I'm misstating it, or  
19 stating it accurately?

20           **MR. FUJIOKA:** I don't know. I haven't  
21 reviewed the audio.

22           **COMMISSIONER OKUDA:** Okay. And we don't  
23 have to go over all the questions that Commissioner  
24 Ohigashi asked of Ms. Lowery, but you do agree that  
25 Ms. Lowery could not produce a letter indicating



1 that she had authority to nix the grade-separated  
2 pedestrian crossing; correct?

3 **MR. FUJIOKA:** That's correct.

4 **COMMISSIONER OKUDA:** And we -- I already  
5 went over the questioning between -- or the issue  
6 about Ms. Lowery's testimony that the decision not  
7 to build the grade-separated crossing was made at  
8 least by November 2019 by then administrator John  
9 Chung, but in 2020, specifically the letter, Exhibit  
10 4, dated April 14, 2020, from the Department of  
11 Education to the County of Maui, a different  
12 assurance is given. So we don't have to -- we don't  
13 have to go over that.

14 **MR. FUJIOKA:** Well, except I did -- I was  
15 able to pull up that transcript, and what Ms. Lowery  
16 is saying is, I think our facilities, our public  
17 works administrator, who no longer works here, his  
18 name was John Chung, and he left in November 2019.

19 So it wasn't an absolutely definite  
20 pronouncement. I think she was asked a question and  
21 just did her best to answer it.

22 **COMMISSIONER OKUDA:** Yeah. Correct. Her  
23 answer was in question 2, Commissioner Ohigashi's  
24 question, and that's at hour 3, 28 minutes, 49  
25 seconds.

1 The question that Commissioner Ohigashi  
2 asked was, and I quote, "The question that I have,  
3 then, is who made the decision to go with the  
4 roundabout and to put off the grade separation?"

5 And her answer was, and I quote, "I think  
6 our facilities, our public works administrator, who  
7 no longer works here. His name was John Chung, and  
8 he left in November 2019." That was her testimony;  
9 correct?

10 **MR. FUJIOKA:** That is. That was her  
11 response. And just to be clear, I'm referring to  
12 page 160 of the transcript, and you, I think, are  
13 using a video or audio recording, so you say --  
14 you're giving timestamps but, yeah, that's what  
15 we're talking about. Yeah, that was her testimony.

16 **COMMISSIONER OKUDA:** Okay. And -- and you  
17 have, in support of your -- in support of the  
18 Department of Education's position, has referred to  
19 the Fehr, F-e-h-r & Peers, P-e-e-r-s, technical  
20 memorandum, which is Exhibit 11; correct?

21 **MR. FUJIOKA:** Yes.

22 **COMMISSIONER OKUDA:** If I can ask the Land  
23 Use Commission staff to put up on the screen the  
24 first page of the Fehr & Peers technical memorandum?  
25 Okay. And if I may ask the Land Use Commission to go

1 to the next PDF of that memorandum, which is a  
2 chart?

3 And, Mr. Fujioka, you do agree that this  
4 chart which comes from the memorandum lists the  
5 different scenarios that were evaluated by the  
6 technical memorandum; correct?

7 **MR. FUJIOKA:** Looks like it.

8 **COMMISSIONER OKUDA:** And there's colors  
9 that indicate basically what would be situations  
10 where there would be least benefit that's shown in  
11 red, moderate benefit, and most benefit shown in  
12 green; correct?

13 **MR. FUJIOKA:** Appears that way.

14 **COMMISSIONER OKUDA:** And in fact, when you  
15 look at this summary chart, the alternative that  
16 receives the most green is in fact a grade-separated  
17 pedestrian crossing; correct?

18 **MR. FUJIOKA:** With traffic signal.

19 **COMMISSIONER OKUDA:** Yeah. Correct. You do  
20 agree with that; correct?

21 **MR. FUJIOKA:** That's what it appears to  
22 say.

23 **COMMISSIONER OKUDA:** Okay. And I asked you  
24 at the last hearing whether or not you had reviewed  
25 the written testimony submitted by Representative

1 Wildberger, and you said you hadn't gone through it  
2 line by line, or words to that effect. Since the  
3 last hearing, did you have a chance to go through  
4 her testimony, her written testimony?

5 **MR. FUJIOKA:** No. I haven't.

6 **COMMISSIONER OKUDA:** Okay. Well, let me  
7 just assist you by asking two questions regarding  
8 it.

9 I'll ask the Land Use Commission to move  
10 to the next PDF page.

11 And if we can look at the bottom of that  
12 first page, Representative Wildberger references the  
13 provision that's stated in the 2012 environmental  
14 impact statement with respect to Kihei High School,  
15 and that's the final environmental impact statement.  
16 And she has a quotation from page 104 of the PDF.

17 I will represent to you that I actually  
18 read that final environmental impact statement and  
19 confirmed that this is an accurate statement. But  
20 this is the quotation that she took from that final  
21 environmental impact statement, and I quote.

22 "A more appropriate grade-separation  
23 treatment may be the development of a greenbelt  
24 bikeway and recreational trail that would follow the  
25 watercourse that passes under Piilani Highway south

1 of the intersection.

2 This would be a facility appropriate for  
3 consideration in evaluating plans for a bikeway  
4 network west of Piilani Highway for the entire  
5 community and is a community-wide planning issue."  
6 Is that what the environmental impact statement  
7 actually said?

8 **MR. FUJIOKA:** If you represent that it is,  
9 I would think so.

10 **COMMISSIONER OKUDA:** Okay. And  
11 Representative Wildberger also cited to the 2014  
12 walking audit titled "Safe Routes to Kihei High  
13 School Pedestrian Route Study". I'll represent to  
14 you that I actually even read that.

15 And if I can ask the Land Use Commission  
16 staff to go to the next -- you can stop right there,  
17 staff, because we can see what it says.

18 And the quotation from pages 7 and 8 of  
19 the PDF of that study said, "Due to the local  
20 topography and community input, this report also  
21 recommends an underpass."

22 Is that in fact what the 2014 study titled  
23 "Safe Routes to Kihei High School Pedestrian Route  
24 Study" actually recommended?

25 **MR. FUJIOKA:** I think that's language from

1 the study. I'm trying to remember which exhibit it  
2 was, because we have so many pages of it. But I  
3 think elsewhere in that report, the grade-separated  
4 crossings were characterized as a last resort.

5 **COMMISSIONER OKUDA:** Okay. My only  
6 question is whether that's a recommendation that was  
7 stated in the study.

8 **MR. FUJIOKA:** It is one.

9 **COMMISSIONER OKUDA:** Okay. You know --  
10 And, staff, you can take down the shared screen now.  
11 Thank you very much.

12 Mr. Fujioka, you -- this goes back to the  
13 letter that was written to the County of Maui where  
14 they -- where they state in their supplemental file  
15 that in reliance on the letter which we had spoken  
16 about from Mr. Okumura to Ms. McLean, in reliance on  
17 that letter, the County of Maui issued building  
18 permits.

19 Do you have any evidence in the record  
20 that indicates that that assertion by the County of  
21 Maui is false, misleading, or not true?

22 **MR. FUJIOKA:** Well, it's just that I don't  
23 know what they relied on in making their decision.

24 **COMMISSIONER OKUDA:** Okay. Are you aware  
25 of the doctrine called promissory estoppel?

1           **MR. FUJIOKA:** Yeah. I've heard of it in --  
2 I think in contractual context.

3           **COMMISSIONER OKUDA:** Well, yeah. And it  
4 comes out of this Hawai'i Supreme Court case that's  
5 called Ravelo vs. County of Hawai'i; correct?

6           **MR. FUJIOKA:** If I ever read it, it's been  
7 a while.

8           **COMMISSIONER OKUDA:** Yeah. 66 Haw. 194. It  
9 basically says the common sense rule, that if  
10 somebody causes somebody -- if somebody makes a  
11 representation that a situation is a certain way,  
12 and the other party relies on that representation,  
13 then the party that is making the initial  
14 representation about what the situation is cannot  
15 later on come back and say, hey, I told you  
16 something, you relied on it, but you know what? It's  
17 not really the case at all.

18           If you make a representation, you have to  
19 follow and be consistent with that representation.  
20 Do you believe the Department of Education should be  
21 consistent with its representations that have been  
22 made to the County of Maui's Planning Department?

23           **MR. FUJIOKA:** Generally, yes, but as  
24 circumstances change, representations need to be  
25 revised or adjusted.

1           **COMMISSIONER OKUDA:** Okay. And my finally  
2 questions deal with this concern about safety. And  
3 just so that we can frame this issue of safety, let  
4 me read you some rules. It's only, like, three  
5 sentences from this case called Estate of Klink, K-  
6 l-i-n-k, vs. State of Hawai'i, which is found at 113  
7 Haw. 332 at page 356, a 2007 Hawai'i Supreme Court  
8 case.

9           This is what the Hawai'i Supreme court has  
10 said in let's just say three sentences. Let me quote  
11 you the first sentence. "The duty of the state is to  
12 design and construct its highways in such a manner  
13 as to make them reasonably safe for their intended  
14 uses and thereafter to maintain them in a reasonably  
15 safe condition." That's the closing of my first  
16 quote.

17           Let me read you another sentence from that  
18 page in the Supreme Court decision. "This court has  
19 in a variety of contexts repeatedly recognized a  
20 duty owed to all persons to refrain from taking  
21 actions that might foreseeably cause harm to  
22 others."

23           And the final sentence -- or final  
24 sentence rule that the Supreme Court is saying in  
25 the Klink case is, "Under the prevailing rule, duty



1 is bounded by the foreseeable range of danger."

2 Mr. Fujioka, given the extensive testimony  
3 that has been presented in writing, orally, and  
4 otherwise, do you believe that the state of Hawai'i  
5 in fact has a foreseeable -- or can foresee a risk  
6 of harm if a grade-separated pedestrian crossing is  
7 not built?

8 In other words, at the trial of an injured  
9 pedestrian, what may very well happen is the  
10 plaintiff's lawyer is going to play back the video  
11 of this Land Use Commission proceeding to show that  
12 the state of Hawai'i had actual knowledge of  
13 widespread concerns about pedestrian safety,  
14 including documents signed off by Michele McLean,  
15 who has an AICP certification after her name.

16 Do you believe that in fact the record of  
17 this case now creates liability for the state if the  
18 state does not build this grade-separated crossing?

19 **MR. FUJIOKA:** I don't think so.

20 **COMMISSIONER OKUDA:** Okay. Then my final  
21 question basically goes to kind of like the heart of  
22 this. The Department of Education is telling not  
23 only the community, but telling us, the Land Use  
24 Commission, to basically trust it. What in the  
25 record shows that we as a Land Use Commission should

1 trust the representations and the promises of the  
2 Department of Education?

3 What in the record shows that the  
4 Department of Education has demonstrated a basis  
5 that the Land Use Commission can trust the  
6 representations made of the Department of Education?

7 **MR. FUJIOKA:** You mean trust as going  
8 forward?

9 **COMMISSIONER OKUDA:** Yeah. Especially when  
10 --

11 **MR. FUJIOKA:** What is it that you have  
12 been reading?

13 **COMMISSIONER OKUDA:** Well, no, I'm -- my  
14 only -- my question is a simple question. What in  
15 the record demonstrates evidence that we at the Land  
16 Use Commission -- I'm not even talking about the  
17 community; I'm just talking about the Land Use  
18 Commission -- should trust the representations that  
19 the Department of Education is making?

20 **MR. FUJIOKA:** Yeah, and I'm trying to get  
21 some clarifications as to what you're having  
22 difficulty believing or accepting at this point.

23 **COMMISSIONER OKUDA:** No. That is not my  
24 question, Mr. Fujioka. I'm going to ask you once  
25 last time. If there's no response, then I'm just

1 going to essentially do the hearing version of  
2 ending my questions.

3 What evidence in the record demonstrates  
4 that the Land Use Commission should trust the  
5 representations, trust the promises being made of  
6 the Department of Education?

7 **MR. FUJIOKA:** I think you need to move on.  
8 That's not something I can or should answer.

9 **COMMISSIONER OKUDA:** Okay. Thank you very  
10 much, Mr. Fujioka.

11 Thank you, Mr. Chair. No further  
12 questions.

13 **COMMISSIONER GIOVANNI:** Thank you,  
14 Commissioner Okuda. Commissioner Chang?

15 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
16 Mr. Fujioka, you would agree that your statements  
17 are really argument and that we should rely upon the  
18 statements from the witnesses; is that correct?

19 **MR. FUJIOKA:** Of course. I'm just an  
20 advocate. My arguments are not evidence.

21 **COMMISSIONER CHANG:** Okay. Very good. So  
22 I'm reading through when Commissioner Okuda was  
23 asking you about, well, you don't know what the  
24 County of Maui relied upon? I'm looking at their  
25 supplemental filing, supplement number 2. And I

1 would ask -- urge you to look at that as well.

2 But on page 2 of 5, that second paragraph  
3 lists quite extensively all of the things that the  
4 County of Maui relied upon in making its  
5 determination to trust the Department of  
6 Transportation's representation in giving it the  
7 approval and the certificate on the permits.

8 Have you read their motion? I mean, have  
9 you read their supplement?

10 **MR. FUJIOKA:** I read the supplement in  
11 terms of preparing a response. But in terms of what  
12 they -- what exactly the reliances they made, I  
13 didn't go into that in detail. And I'm sorry, I'm  
14 trying to pull up my copy of it.

15 **COMMISSIONER CHANG:** Yeah. I mean, I'm  
16 looking at -- and I don't want to go through and  
17 read through all of that, but I think, contrary to  
18 your comments about we don't know what the county  
19 relied upon, I think the county's brief was very  
20 specific, you know.

21 Yup. With the department agreed to sign  
22 the building permits if DOE would commit in writing  
23 to building the grade -- GSPC. This compromise would  
24 allow construction of the school to proceed by  
25 letter dated March 23rd, 2020.

1 So I'm not going to go through all of  
2 that, but I think it was their reliance. I think the  
3 county clearly articulated the basis of their  
4 determination to what they relied upon and why  
5 they're opposing this.

6 So let me move on. Let me move on. I'm  
7 looking at your response, DOE's response to the  
8 county's supplement number 2. Petitioner seeks  
9 resolution.

10 And your response is, "Petitioner has  
11 reservations about the feasibility of the GSPC  
12 option suggested at page 4 of the county filing. The  
13 suggestion requires involvement of HDOT, which  
14 steadfastly opposes construction of the GSPC in the  
15 flood zone of Waipuilani Gulch."

16 I'm not too sure if you were listening to  
17 Mr. Ed Sniffen's testimony this morning. I do not  
18 believe he steadfastly opposed the construction of  
19 the GSPC in the flood zone of Waipuilani Gulch.

20 **COMMISSIONER OKUDA:** Well, look at -- I'm  
21 sorry, that may have been inartfully drafted, but  
22 the objection I was referring to is without widening  
23 the gulch or taking other precautions to allay that  
24 concern about flooding.

25 **COMMISSIONER CHANG:** That's correct.

1 That's what I heard Mr. Sniffen say as well. So  
2 there is -- and I also heard from Mr. Tanaka that  
3 there is deference given to subject matter agencies,  
4 being HDOT. And HDOT, I clearly heard from Mr.  
5 Sniffen this morning saying if they widen the  
6 bridge, if they widen the road, \$25-50 million, DOT  
7 would have no objection.

8 So I -- I don't -- I disagree with your  
9 characterization of DOT's response. I don't believe  
10 that is consistent with what Mr. Sniffen said. And  
11 when you say petitioner has reservations about  
12 feasibility, is that -- is that DOE has independent  
13 reservations? Or are you relying upon DOT?

14 **MR. FUJIOKA:** I would say it's in reliance  
15 on DOT. And if there's an effort to -- well, I don't  
16 think that DOT would approve or cooperate with  
17 building an underpass through the gulch without, you  
18 know, some really serious modifications.

19 **COMMISSIONER CHANG:** I don't disagree with  
20 that conclusion, but I -- but I believe what I heard  
21 Mr. Sniffen say is DOT would have no objections if  
22 these things, these change modifications were made,  
23 and it would take maybe from one to six years to do  
24 that.

25 **MR. FUJIOKA:** Yes. So there's -- there may

1 be -- there's obviously a lot of time and money  
2 involved, and it might not be attainable.

3 **COMMISSIONER CHANG:** And what is the basis  
4 of that -- it might not be attainable? What is the  
5 basis for your conclusion?

6 **MR. FUJIOKA:** Well, just looking at the  
7 number, that's just the only question I have.

8 **COMMISSIONER CHANG:** And your impression,  
9 I mean, I think you -- let me move on. Because I  
10 think, Mr. Fujioka, you made statements. You made  
11 bald statements that, you know, it's really not  
12 based upon anything. I mean, what I heard is there's  
13 \$50 million for Phase III.

14 Why can't that money be reallocated to  
15 doing this underpass upon which DOE committed to  
16 doing it. It was represented to the community that  
17 you were going to do it. You were ordered to do  
18 that. So I don't understand why you cannot do that.

19 **MR. FUJIOKA:** Well, I'm not involved in  
20 the prioritization process, but, you know, just  
21 looking at the number, if they had \$50 million and  
22 spent it all on the underpass, then there's nothing  
23 left to do anything else with the school, so.

24 Again, I'm not involved in the  
25 prioritization, but mathematically, that could be an

1 issue.

2 **COMMISSIONER CHANG:** Okay. So your  
3 statements are just speculation. It's really not  
4 based upon any foundation in speaking to DOT or --  
5 excuse me, in speaking to DOE. Is that correct?

6 **MR. FUJIOKA:** In terms of what they --  
7 what they're going to do with the \$50 million, I  
8 don't -- I can't say exactly.

9 **COMMISSIONER CHANG:** Well, no, he said it  
10 was for Phase III. But your comment about, you know,  
11 it's unlikely or it's, you know, it's not  
12 attainable. That's just your own comments. That's  
13 really not based upon anything.

14 **MR. FUJIOKA:** They're my comments.

15 **COMMISSIONER CHANG:** Okay. Fair enough.  
16 Fair enough. I do not believe I have any further  
17 questions, Mr. Chair. Thank you.

18 **COMMISSIONER GIOVANNI:** Thank you,  
19 Commissioner Chang. Commissioner Ohigashi?

20 **COMMISSIONER OHIGASHI:** Thank you. I'll  
21 lower my hand before. I was looking at March 23,  
22 2020, letter from Tracy Okumura attached as Exhibit  
23 2. On that, it had G70 document attached to it,  
24 updated June 4, '20. It says Kihei School project  
25 timeline. Right under that, it says under Phase I



1 there's a little comment regarding mass rating of  
2 infrastructure.

3 Has there been a design or an attempt to  
4 design the -- I guess it would be the above grade,  
5 or it would be an overpass or over -- or bridge over  
6 the -- going to the school? Has there been -- has  
7 there been planning?

8 **MR. FUJIOKA:** To my understanding, after  
9 the declaratory order -- I think it's 2019 -- there  
10 was some design work that was initiated. Again, I  
11 don't know --

12 **COMMISSIONER OHIGASHI:** Do you have in  
13 your records --

14 **MR. FUJIOKA:** I'm sorry?

15 **COMMISSIONER OHIGASHI:** Do you have in any  
16 part of the record showing that this design work was  
17 done?

18 **MR. FUJIOKA:** I don't have any  
19 documentation of that right now. I do not know if I  
20 could get a hold of anything, but I --

21 **COMMISSIONER OHIGASHI:** When I look at  
22 this timeline, I don't see any design work they  
23 identified. Preconstruction would be identifying for  
24 any type of grade separation. I'm not sure what this  
25 was for. That's why -- that's why I'm asking you.

1 What was it for?

2 **MR. FUJIOKA:** I believe it was to get  
3 started designing an overpass in compliance with the  
4 declaratory order.

5 **COMMISSIONER OHIGASHI:** Well, the letter  
6 says that. The letter says specifically that it's  
7 already been started. And so I'm just wondering if  
8 there's any part of the record that confirms this,  
9 because getting back to Commissioner Okuda's  
10 statement, it would appear an admission by Mr.  
11 Tanaka that this letter is misleading.

12 We tend to question -- is that -- might --  
13 might say if this is misleading, then it's a fair  
14 inference that the entire letter may be misleading.  
15 What would you say to that?

16 **MR. FUJIOKA:** Well, I don't know that --  
17 that the letter itself was misleading based on --

18 **COMMISSIONER OHIGASHI:** I think it was  
19 conceded by your -- by Mr. Tanaka that it was  
20 misleading.

21 **MR. FUJIOKA:** In that scenario he was  
22 given. But, yeah, I do not -- we did not present any  
23 documentation that the design work for that overpass  
24 had commenced other than that letter, which confirms  
25 that it is. It's just something -- it's just nothing

1 that I had looked for. Perhaps I should have.

2 **COMMISSIONER OHIGASHI:** I'm just trying to  
3 give you an opportunity to support why we should --  
4 Mr. Okuda's question as to why we should give the  
5 DOE credibility by you having to say that, yeah,  
6 this letter is not misleading. But if there is no  
7 evidence to that effect, that's all the questions I  
8 have.

9 **COMMISSIONER GIOVANNI:** Thank you,  
10 commissioner. Other commissioners? Any further  
11 questions for petitioner?

12 **COMMISSIONER WONG:** Chair? It's  
13 Commissioner Wong.

14 **COMMISSIONER GIOVANNI:** Ah, Commissioner  
15 Wong. There you are.

16 **COMMISSIONER WONG:** Thank you, Mr. Chair.  
17 Mr. Fujioka, I have a couple of questions. First  
18 off, you're the attorney general for the DOE; is  
19 that correct?

20 **MR. FUJIOKA:** In this matter, yes.

21 **COMMISSIONER WONG:** So in this matter, you  
22 are the legal counsel for the DOE, and you advise  
23 them on what they should do; is that correct?

24 **MR. FUJIOKA:** Legally.

25 **COMMISSIONER WONG:** Okay. So --

1           **MR. FUJIOKA:** I don't have the lead on any  
2 knowledge, expertise, or authority with respect to  
3 construction, school maintenance, school project  
4 design, or anything like that.

5           **COMMISSIONER WONG:** Okay. But you have --  
6 you can say that you legally represent the  
7 Department of Education on this matter, and you have  
8 -- legally, you review all the documents and state --  
9 - and state, you know, for the DOE, what is their  
10 position and how they should follow, you know, how  
11 to make sure they present their position in a fair  
12 manner that -- is that correct?

13           **MR. FUJIOKA:** Yeah. I guess that's  
14 generally correct.

15           **COMMISSIONER WONG:** Yeah. So for this  
16 docket, you have to make sure that there's good  
17 enough evidence to present, you know, your client's  
18 statements and their position.

19           **MR. FUJIOKA:** Yeah. I guess that's a fair  
20 statement.

21           **COMMISSIONER WONG:** So then the other  
22 issue I would have is so you -- I guess I'm trying  
23 to say is that as a legal person, you'll try and get  
24 all the documentations to support your client's  
25 position.

1           **MR. FUJIOKA:** Yeah. Although I don't have  
2 total control over what's available.

3           **COMMISSIONER WONG:** Try and clear that  
4 one, please, sir, because, you know, there's a lot  
5 of stuff, documents, on our books for this docket  
6 from, you know, day one to now. So you can also  
7 review those; right?

8           **MR. FUJIOKA:** Yes.

9           **COMMISSIONER WONG:** Okay. So you have --  
10 don't you have to support your client's position?

11           **MR. FUJIOKA:** Yes. I do. I need to present  
12 evidence -- law, fact, to support the client's  
13 position.

14           **COMMISSIONER WONG:** Okay. So you have  
15 enough -- in your estimation, you have enough  
16 evidence and resources to support your client's  
17 position.

18           **MR. FUJIOKA:** In this case, yes.

19           **COMMISSIONER WONG:** But you do not have --  
20 do you have the authority to say yes or no, or do  
21 you have to check with someone at the DOE?

22           **MR. FUJIOKA:** In terms of what's filed?

23           **COMMISSIONER WONG:** Or not even what's  
24 filed, but let's see. Let's say hypothetically we  
25 say, hey, can the DOE do this instead of this? Do

1 you have the authority to say yes or no at that  
2 point in time?

3 **MR. FUJIOKA:** If it's a legal question,  
4 yes.

5 **COMMISSIONER WONG:** So let's say we want  
6 to -- legally, we want to do something that is  
7 within the means and bounds of this docket, you can  
8 say yes or no.

9 **MR. FUJIOKA:** Well, if I could give an  
10 example, where the DOE is considering taking the  
11 DOT's recommendation that a roundabout will address  
12 safety issues and a grade-separated crossing is not  
13 necessary, then the order says that it is, so, say,  
14 in order to do that, you go to get the Land Use  
15 Commission to amend or change its order.

16 We don't say that's the only thing that  
17 has to happen, but it is the first and foremost that  
18 needs to be done. So then the question is how do we  
19 go about doing that. And so that -- so then we make  
20 an attempt to amend the order.

21 **COMMISSIONER WONG:** Okay. So the question  
22 I have is let's say hypothetically we deny the  
23 order, deny this motion. Do you go back to the DOE  
24 and say, hey, they denied it, but let's do something  
25 else to try and -- can you do that?

1           **MR. FUJIOKA:** Well, depending on what the  
2 ruling is and if it -- if the motion is denied, then  
3 a decision has to be made on whether to just go  
4 ahead and do a grade-separated crossing now? Do we  
5 ask the court? Do we hear the ruling? Does nothing  
6 happen and does construction stop? There are number  
7 of alternatives that would need to be discussed.

8           **COMMISSIONER WONG:** Okay. It's just for my  
9 own information, sir. Thank you, Mr. Fujioka. Thank  
10 you, chair.

11           **COMMISSIONER GIOVANNI:** Thank you.  
12 Commissioner Ohigashi, did you have additional  
13 questions?

14           **COMMISSIONER OHIGASHI:** Yes. I have to  
15 apologize to Mr. Fujioka. I read it more carefully  
16 by expanding it, because I have a hard time seeing.

17                   And it does say that there's a pedestrian  
18 crossing on this timelines that was attached.

19 Between March 20th and sometimes in December of  
20 2020, between March 2020 and December of 2020, there  
21 would be -- there would be the EDA phase or -- I'm  
22 guessing it's environmental assessment phase.

23                   Do you have documents, orders, or anything  
24 in the record to establish that the environmental  
25 assessment was being done?

1           **MR. FUJIOKA:** It's not in the record. And  
2 honestly, I haven't actually asked Facilities to try  
3 and pull up that material.

4           **COMMISSIONER OHIGASHI:** Now, was this  
5 design work or the ETA stopped, terminated?

6           **MR. FUJIOKA:** I don't know if terminate or  
7 pause is the right word, but when it was determined  
8 that this effort to amend the findings was -- would  
9 be made, then, yeah, whatever stage that overpass  
10 planning was in, that stopped.

11           **COMMISSIONER OHIGASHI:** Was their  
12 correspondence to the County of Maui indicating that  
13 they are pausing or stopping or stopping this design  
14 stage communicated --

15           **MR. FUJIOKA:** I'm sorry. That is one thing  
16 that should have been --

17           **COMMISSIONER OHIGASHI:** Can I finish? Can  
18 I finish, Mr. Fujioka?

19           **COMMISSIONER GIOVANNI:** Excuse me. Mr.  
20 Fujioka, let the commissioner complete his question  
21 before you interrupt and --

22           **MR. FUJIOKA:** Sorry.

23           **COMMISSIONER OHIGASHI:** I just wanted to  
24 know if there was any communication or any kind of  
25 letter to indicate to them that they stopped doing



1 the design phase and that the basis for the building  
2 permits no longer exist; therefore, they would have  
3 to stop work on the building permits, since the  
4 basis of the building permits does not exist?

5 **MR. FUJIOKA:** No. There is no such  
6 communication. Perhaps there should have been.

7 **COMMISSIONER OHIGASHI:** I don't have any  
8 more questions.

9 **COMMISSIONER GIOVANNI:** Thank you.  
10 Commissioners, any further questions for Mr.  
11 Fujioka? Okay. We'll consider this portion of the  
12 hearing complete.

13 So let's do a little bit of a time check.  
14 If at all possible, the commission would like to  
15 complete this matter at today's hearing. Mr.  
16 Hopper, what is the -- how much time do you need for  
17 your presentation, you expect?

18 **HOPPER:** I should be quick. I do not plan  
19 to call witnesses. Questions may take a while. I can  
20 probably get through mine in under 10 minutes, I  
21 think, especially considering you've already gone  
22 through a lot of the issues that I would be raising.

23 **COMMISSIONER GIOVANNI:** Thank you. OP,  
24 what is the -- I'm just doing a time check -- your  
25 presentation, how much time do you think you need?

1 **MS. KATO:** I expect it to be short also.

2 And it says five minutes.

3 **COMMISSIONER GIOVANNI:** Okay. It's 12:03

4 right now. Commissioners, are any --

5 **COMMISSIONER OHIGASHI:** Mr. Chairman? Mr.

6 Chair?

7 **COMMISSIONER GIOVANNI:** Yes?

8 **COMMISSIONER OHIGASHI:** If you're going to

9 take if you're going to take a lunch break, I have

10 to relocate to my home because of some other things

11 that are going on, so if you can give me 45 minutes

12 to relocate.

13 **COMMISSIONER GIOVANNI:** Let's do that. But

14 I have a question. Are we going to lose any

15 commissioners today at any appointed time? Ms.

16 Cabral?

17 **COMMISSIONER CABRAL:** I have another

18 meeting at 4:00 that I would very much like to be

19 able to attend.

20 **COMMISSIONER GIOVANNI:** Okay. 4:00.

21 Anybody else?

22 **COMMISSIONER WONG:** I'll be about 3:00.

23 **COMMISSIONER GIOVANNI:** 3:00.

24 Commissioner Aczon? 4:00? Is that a 4? You're

25 holding up four fingers or three? I can't tell.

1           **COMMISSIONER ACZON:** Four.

2           **COMMISSIONER GIOVANNI:** Mr. Aczon. Four?

3 Okay. I'm going to take a lunch break at this time,  
4 and we'll reconvene at 12:50, 12:50, which should  
5 give Commissioner Ohigashi time to relocate. And  
6 then we'll proceed with the county's presentation.  
7 Thank you.

8           **(WHEREUPON, a recess was taken from 12:05**  
9 **p.m. to 12:50 p.m.)**

10          **COMMISSIONER GIOVANNI:** Ready to go.

11          **MR. HOPPER:** Okay. Great. Thank you,  
12 chair. The County of Maui Department of Planning  
13 has filed a position statement in this docket and  
14 several supplemental position states to, one, to  
15 address questions from the commission and one to  
16 sort of update the record to the commission on some  
17 of the discussions that had happened prior to the  
18 current situation.

19                 The County of Maui, unfortunately, cannot  
20 support the request and the motion and the release  
21 of the mandatory condition to provide a grade-  
22 separated pedestrian crossing prior to the opening  
23 of the school.

24                 The request condition, while it would  
25 allow for additional study, puts the compliance --

1 or rather, the requirement of whether a grade-  
2 separated pedestrian crossing needs to be built  
3 entirely within the hands of the petitioner and the  
4 landowner rather than making it a mandatory  
5 condition at some point in time.

6 So the way the county reads the condition  
7 is that if there could be further study done, but  
8 it's really entirely up to the landowner whether or  
9 not they would build it and when they would build  
10 it, if at all, which is obviously substantially  
11 different than this condition, than the current  
12 condition, which was placed on the project from its  
13 inception.

14 And the County of Maui, in fact, went  
15 through a declaratory ruling procedure, affirm the  
16 requirement of that condition, and in looking back  
17 at that condition, the county did believe it was  
18 clear that that was a mandatory condition from the  
19 inception of the project.

20 And that was provided with the declaratory  
21 ruling, which we do believe is part of the record in  
22 this overall docket. The crossing would provide a  
23 physical separation between pedestrians and traffic,  
24 which we believe would be critical in this case.

25 And the county has attempted to discuss

1 potential amended conditions with the Department of  
2 Education and the Department of Transportation,  
3 which were not successful. And I think some of those  
4 references were provided to you in the county's most  
5 recent filing.

6           The county bases its position in large  
7 part of the community input, which to date has been  
8 pretty substantial in favor of requiring the grade-  
9 separated pedestrian crossing. And I think you've  
10 heard a substantial amount of oral and written  
11 testimony about that from Kihei residents, who will  
12 be affected by this decision.

13           We did look a bit over the studies and the  
14 warrants that were performed on behalf of the state.  
15 We would -- well, first off, grants for this type of  
16 improvement are not a particularly established  
17 science, if you will. A lot of them were based on  
18 what we saw as reference to the Federal Highway  
19 Administration warrants, and we went over the study  
20 that was referenced to that effect.

21           It's the warrants for pedestrian over and  
22 underpasses. It's dated July 1984, and it's  
23 referenced in the studies done by the petitioner's  
24 counsel. The study, though, says this report does  
25 not constitute a standard specification or

1 regulation.

2           So I don't think there are any Federal  
3 Highways CFRs or anything like that or federal codes  
4 that would establish what these warrants are. And  
5 indeed, the studies that were performed in large  
6 part establish warrants themselves. So the study  
7 that was performed establishes the warrant.

8           The Fehr & Peers study which has been  
9 referenced, Exhibit 11, does state -- and again,  
10 this is the applicant's own study, that at some  
11 point, a grade-separated pedestrian crossing would  
12 be warranted as the number of students increases.

13           And so what's stated in the study, page 2,  
14 based on the traffic simulation modeling and multi-  
15 modal circulation metrics evaluated in this report,  
16 the recommended intersection configuration option  
17 for buildout conditions of the high school 2013,  
18 1650 enrollment, is alternative 2. traffic signal  
19 with a grade-separated pedestrian crossing.

20           So though there is some disagreement over  
21 timing of a crossing, I think, based on this --  
22 based on their own study, it's clear that at some  
23 point, this is something that would be warranted and  
24 recommended for student safety.

25           Now, this commission put the condition on

1 from the inception that it's required prior to Phase  
2 I. And so that's the condition that, you know, the  
3 county has to enforce right now. Obviously, there's  
4 a request to amend it that you're looking at, but at  
5 this time for the reasons stated, the county can't  
6 support that amendment at this stage.

7           And we've provided -- oh, and another  
8 thing to point out, I think, that may be significant  
9 is in the county's first supplement to its position  
10 statement, Commissioner Okuda had asked for some  
11 studies, specific studies, and the county provided  
12 those as part of the record. One of them was  
13 entitled "Pedestrian Crossing Guidelines for Texas".

14           The county pointed out a couple of places  
15 where it does believe that that study shows that a  
16 crossing could be warranted. It states that where  
17 there -- it says the grade-separated pedestrian  
18 crossings are said to be most beneficial -- this is  
19 reading from the county's supplement to position  
20 statement.

21           GSPCs are said to be most beneficial given  
22 the following circumstances. "Where is moderate to  
23 high pedestrian demand to cross a freeway or  
24 expressway, where there is a large number of young  
25 children, i.e., particularly near schools, who must

1 regularly cross a high-speed, high-volume roadway,  
2 having high vehicle volumes and high pedestrian  
3 crossing volumes, and where there is an extreme  
4 hazard for pedestrians, e.g., on wide streets with  
5 high-speed traffic and poor sight distance, and  
6 where one or more of the conditions stated above  
7 exist in conjunction with a well-defined pedestrian  
8 origin and destination, e.g., residential  
9 neighborhood across a busy street from a school, a  
10 parking structure associated with a university, or  
11 apartment complex near a shopping mall."

12           And the county's supplement went on in a  
13 bit more detail to show that certainly, at least for  
14 some of the warrants in that study, there could be a  
15 -- there could be support for a grade-separated  
16 pedestrian crossing.

17           Now, of course, there's discussion over  
18 how many students there would be for that to be  
19 warranted, but again, the applicant's own studies  
20 show that at some point they believe it would be  
21 warranted.

22           And so the county's position at this time  
23 is that -- to not support releasing the condition  
24 for the reasons stated. And the county has discussed  
25 with DOE and DOT in an attempt to try to resolve



1 this and hasn't been able to come up with a  
2 solution. So the county does support the commission  
3 going forward with the decision to get better  
4 clarity here to issue written findings and  
5 conclusions. But, you know, at this point, the  
6 county cannot support the release of the condition.

7 I can be available for questions. Deputy  
8 Director Jordan Hart is here, if there's anything  
9 he'd like to add or if there are any questions. I  
10 wasn't planning on calling him as a witness, but if  
11 there are questions that he would be better  
12 qualified to answer, he can be available. And that's  
13 all I would have now, Chair.

14 **COMMISSIONER GIOVANNI:** Thank you, Mr.  
15 Hopper. Commissioners, any questions for the  
16 county, either Mr. Hopper or Mr. Hart? Commissioner  
17 Okuda?

18 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
19 Mr. Hopper, can I ask this question? Okay. We're  
20 left in a situation where you've got this high  
21 school, which the evidence on the record indicates  
22 is needed, and I think the legal term is things are  
23 screwed up. What is the county's recommended way  
24 forward so that we can make things less screwed up?

25 **MR. HOPPER:** Thank you, Commissioner

1 Okuda. It's -- it's not an easy -- I don't think  
2 there's necessarily an easy answer. Some of the  
3 things the county did offer in its most recent  
4 supplemental statement was that if it would assist,  
5 the county would be willing to grant easements or  
6 potentially in fee transfer some land in the area  
7 that could potentially be used to build a -- build  
8 an overpass or underpass -- I'm sorry, build an  
9 underpass.

10           Again, it's difficult if the state  
11 department is not willing to go forward with it. But  
12 again, we did make, you know, we did enter into sort  
13 of, you know, negotiations on the wording of the  
14 condition that, you know, the county may be able to  
15 consider.

16           But, you know, at this point, we're kind  
17 of forced to just take the position -- in this  
18 proceeding anyway. We were asked for a position, and  
19 our position at this time is not to release the  
20 conditions.

21           It's a difficult one to have a solution  
22 to, if the state's saying they're not going to build  
23 it, and it's a difficult position, because it's been  
24 on the record for over a decade, and not a whole lot  
25 has been done to go forward with it.

1 I think the county would note -- I don't  
2 know of anywhere in the record where there's a real  
3 detailed study into actually doing, you know,  
4 building this. I know that Mr. Sniffen had testified  
5 on some concerns, but we haven't really seen a  
6 detailed study of the design and construction and  
7 how much it would cost, issuance of the federal  
8 agencies regarding the issue of widening the bridge  
9 underpass, things like that.

10 I don't know how much has been done in  
11 those areas, but I think the county has provided a  
12 record of attempting to maybe negotiate wording on  
13 the condition. But, you know, at this point, it's  
14 something where I don't think we can, you know,  
15 support the release of the condition.

16 The county would respect whatever decision  
17 the LUC makes, but it's sort of been a tough  
18 position of, you know, certificate of occupancy  
19 coming up. A request is coming up soon, and the  
20 county is going to be having, you know, a difficult  
21 time granting that, if there's no overpass or  
22 underpass based on the condition that's required.

23 So I wish I could have a better solution  
24 in mind for you that was more specific, but I can't.  
25 I don't think we can offer a specific solution right

1 now.

2 **COMMISSIONER OKUDA:** Do you agree that  
3 because of the Hawai'i Supreme Court Case of DW Aina  
4 Le'a vs. Bridge Aina Le'a, the Land Use Commission  
5 really has no power to prevent the opening of the  
6 school if the County of Maui issues a certificate of  
7 occupancy or whatever approvals the Department of  
8 Education has to get from the county?

9 In other words, because of the fact that  
10 one substantial commencement of the use of the  
11 property by the applicant takes place, the Land Use  
12 Commission really loses jurisdiction to revert the  
13 property. So really, the Land Use Condition has no  
14 power to prevent the opening of the school. Would  
15 you agree that's a fair statement of the law?

16 **MR. HOPPER:** I think I would agree,  
17 assuming there has been substantial commencement,  
18 that the commission could not revert the property.  
19 However, I don't want to say the commission could do  
20 nothing.

21 I mean, I think if the commission were to  
22 do a declaratory -- it already has done a  
23 declaratory ruling, but were it to take a position  
24 that the issuance of CO was in violation of one of  
25 its conditions and sent that to the Planning

1 Department, they would very much consider that an  
2 issue. And the Planning Department has written about  
3 this on that issue.

4 I think I would agree as far as reversion.  
5 If there's been substantial commencement, I think  
6 that's what that case law says. That's correct.

7 **COMMISSIONER OKUDA:** Okay. And maybe if I  
8 can ask this final question, which is kind of like  
9 the reverse question. If the County of Maui -- well,  
10 let me back up a bit.

11 Let's say the Land Use Commission does not  
12 change the condition. And let's say after that,  
13 assuming the Land Use Commission makes that decision  
14 not to change or eliminate the condition of a grade-  
15 separated pedestrian crossing, and if the County of  
16 Maui decides to allow the school to open because,  
17 for example, you know, better minds prevail, and the  
18 County of Maui works things out with the Department  
19 of Education, and to the extent necessary, the  
20 approval of the Department of Transportation, under  
21 the Bridge Aina Le'a case, it's possible to open the  
22 school and then come back to the Land Use Commission  
23 later with, for example, a joint petition or joint  
24 motion jointly filed between the Department of  
25 Education and the County of Maui, to then release

1 the condition; correct?

2 **MR. HOPPER:** I have a difficult time with  
3 the condition being on there stating that the county  
4 could issue the CO. If there were some, you know,  
5 different wording of the condition absent releasing,  
6 and that was adopted before the CO was requested,  
7 then I think that's the thing the county could  
8 consider.

9 But it would be difficult if there's a  
10 clear condition for the county to issue -- you know,  
11 I understand where you're going, I think, but I  
12 don't want to, you know, state on the record that  
13 the county could just ignore a Land Use Commission  
14 condition if it believes that there was a, you know,  
15 there was a timing requirement.

16 Now, if that timing requirement were to be  
17 amended and changed without the GSPC, you know,  
18 overall requirement, we believe that could change  
19 the potential timing versus the phasing, you know,  
20 of the project. Because right now I believe it's  
21 just looking at the school.

22 But, you know, that's a -- and I think the  
23 county has in its recent position statement has  
24 essentially, you know, has talked about that issue.

25 **COMMISSIONER OKUDA:** Okay. Well, let me

1 ask this follow-up question. If the county believes  
2 that it has reached an agreement with the Department  
3 of Education, whatever that agreement might be,  
4 which satisfies the county's concern, it is possible  
5 to, in an expedited fashion, prepare and file with  
6 the Land Use Commission some type of motion to then  
7 eliminate the condition before, for example, the  
8 County of Maui issues a certificate of occupancy.

9 In other words, there's nothing that  
10 prevents the parties, assuming an agreement is  
11 reached between the County of Maui and the  
12 Department of Education, to file a motion, then, to  
13 eliminate the condition, if that's something that  
14 should be done. Would you agree with that?

15 **MR. HOPPER:** I think that sounds correct.

16 **COMMISSIONER OKUDA:** Thank you very much,  
17 Mr. Chair. I have no further questions.

18 **COMMISSIONER GIOVANNI:** Thank you,  
19 commissioner. Commissioner Chang?

20 **COMMISSIONER CHANG:** Thank you very much,  
21 Mr. Chair. Thank you, Mr. Hopper. You know, in the  
22 years that I've sat on the Land Use Commission, the  
23 County of Maui has always been very -- how would I  
24 say it -- flexible, and you've been very reasonable  
25 and rationale.

1           However, in this particular case, I find  
2 your position to be -- I mean, you guys are taking a  
3 very hardline position. And is that based upon  
4 representations and your reliance and that things --  
5 well, let me ask you, rather than we trying to put  
6 words into your mouth.

7           I mean, why is the county taking such a  
8 hard position?

9           **MR. HOPPER:** I think at this point, County  
10 didn't necessarily try -- set out to do that. There  
11 was, I think, in the record a lot of time spent  
12 trying to work out, you know, the thing of an  
13 amended condition.

14           But it's just that this particular amended  
15 condition says there's no guarantee at all that an  
16 overpass or underpass would ever be required. And  
17 that was, you know, apparently something that was --  
18 when you look back on the record, Commissioner Biga,  
19 you know, made that condition back when the project  
20 originally happened and obviously felt that that was  
21 important. So I think that's the history there.

22           And so there were attempts to discuss  
23 with, you know, Department of Education alternative  
24 wording, but the last letter we got on that was that  
25 sorry, we're going to go with our original proposal,



1 which was to just say, you know, we'll do a study  
2 and may or may not do a crossing based on our own  
3 discretion.

4 I'm not saying there's not other language  
5 or something else we could agree to. It's just that  
6 that's where the negotiations were at that time. I  
7 think that was DOE's position. And so we were kind  
8 of forced to respond to that position.

9 And again, the county's offered, you know,  
10 that if -- it could be easements or even fee  
11 interests in property the county currently owns that  
12 could potentially assist with constructing with that  
13 underpass, you know.

14 And so I think the county -- and I could  
15 let Deputy Director Hart discuss more, if he's got  
16 anything to add, but I think those discussions have  
17 gone on.

18 The county didn't necessarily just say  
19 we're just going to respond this request and file a  
20 position statement. The county has spent a fair  
21 amount of time, you know, with the planning  
22 director, discussing this issue and trying to find  
23 some ways to, you know, maybe look at a middle  
24 ground on the timing. But we didn't really --  
25 weren't able to come to an agreement.

1           **COMMISSIONER CHANG:** And that is -- that's  
2 sort of the conclusion that I've drawn, based upon  
3 your filings. I thought your, you know, your  
4 response to the petitioners -- your supplemental  
5 number 2 articulated in a clear fashion all of the  
6 steps that you've taken.

7           Wouldn't you agree that if the school  
8 doesn't open, that is not an action by the Land Use  
9 Commission or the County of Maui? That's really  
10 action -- or failure to act by the petitioner.

11           **MR. HOPPER:** Obviously, you know, not  
12 having the school opened would be terrible, and we  
13 want to avoid that. But I think I would agree with  
14 you that, based on the record, you know, we went  
15 back for the declaratory order and, you know,  
16 researched the history of the condition. And, you  
17 know, we did think that it was clear that the  
18 condition was a requirement from the outset.

19           I can reference from our petition. Here  
20 was the verbal wording of Commissioner Biga on the  
21 actual addition of the grade-separated pedestrian  
22 crossing. It was added just before the vote on the  
23 overall motion.

24           It was "I move to grant A11-794 State of  
25 Hawai'i DOE's Kihei High School Maui the petition

1 with the conditions in the general format of the  
2 agreed-to decision and order submitted by petitioner  
3 with the added condition that an above or  
4 belowground pedestrian crossing be constructed prior  
5 to opening of Phase I."

6 And so I don't -- I know the way the  
7 condition got eventually worded was perhaps a bit  
8 different than that, but that's what the  
9 commissioner asked for, which was voted on.

10 So this has been there. I believe a motion  
11 to amend could have been, you know, that could have  
12 been filed within a year or two of that, if there  
13 was a real problem, and we would have been  
14 discussing that a while ago. But, you know,  
15 hindsight's 20-20, obviously, at this point. I don't  
16 necessarily want to dwell on all that.

17 **COMMISSIONER CHANG:** And I appreciate you  
18 reading that into the record, but it just does seem  
19 that while this is an extremely drastic outcome,  
20 that the school may not be able to open, I'm also  
21 hearing from the community that they are willing to  
22 keep the school closed, that they are willing until  
23 that condition is met.

24 So, you know, I guess I want to be very  
25 clear on the responsibility of fulfilling this

1 condition or -- and its impact to the school opening  
2 or being closed is not necessarily, you know, the  
3 community, the county, or Land Use Commission.

4 But there were numerous opportunities  
5 placed upon the petitioner, and the county,  
6 apparently, based upon the record you presented, has  
7 tried on numerous occasions to try to come to some  
8 middle ground with the petitioner.

9 So that's all that I want to confirm with  
10 you, that again, the county's always been reasonable  
11 in my mind, and this, in this particular case, you  
12 guys are taking a very hardline position. Okay.  
13 Thank you. That's just a statement. No further  
14 questions, Mr. Chair.

15 **COMMISSIONER GIOVANNI:** Thank you,  
16 Commissioner Chang. Commissioner Ohigashi?

17 **COMMISSIONER OHIGASHI:** Thank you. I have  
18 a little bit of questions that perhaps Mr. Hopper  
19 can clear up. Who issues the CO? Is it the -- what  
20 department issues the CO?

21 **MR. HOPPER:** Deputy Director Hart can  
22 correct me if I'm wrong. I believe the Public Works  
23 Department would be issuing the certificate of  
24 occupancy.

25 But as part of doing that, they need to

1 check with other state and county agencies for  
2 compliance with other codes that the Public Works  
3 Department doesn't necessarily administer. One of  
4 them would be any outstanding land use or zoning  
5 conditions with the Planning Department.

6 So I believe what would happen is there'd  
7 be a certificate of occupancy requested. It would be  
8 routed to the Planning Department to see if the  
9 project was in compliance with any Land Use  
10 Commission or zoning conditions that were  
11 outstanding.

12 **COMMISSIONER OHIGASHI:** Yeah. What I'm  
13 asking -- the reason why I'm asking that is that --  
14 look at page 3 of your memorandum where you explain  
15 that you may be in a no-win situation in the future  
16 and that you may get pressure to allow the opening  
17 of the school.

18 Is that something that we should be  
19 concerned about as -- I'm a resident here on Maui, I  
20 guess. Shouldn't that be something I should be  
21 worried about, if you place it in writing that you  
22 may be pressured to issue a CO?

23 **MR. HOPPER:** I think the director was just  
24 referring to, you know, reality where, you know --  
25 and that happens with projects from time to time.

1 If, you know, the CO is routed to the Planning  
2 Department, and the condition, you know -- and I  
3 think there would be pressure. There could be  
4 potential pressure to approve that CO.

5 Now, hopefully, that wouldn't happen, and  
6 we could come to, you know, some type of resolution  
7 or, you know, go forward with the construction, but  
8 that's a concern that I think the director had and  
9 noted that in the statement.

10 **COMMISSIONER OHIGASHI:** So my  
11 understanding, then, is that there may be politics  
12 involved, pressuring to issue a CO, and there is a  
13 clear statement or clear condition in the record  
14 that would prevent that CO from issuing. Is that  
15 right?

16 **MR. HOPPER:** Yeah. At this stage, if the  
17 crossing's not built, I think it would be difficult  
18 for the Department to say that that condition's been  
19 fulfilled. Which is why, I think, there's the motion  
20 to amend that has been filed.

21 **COMMISSIONER OHIGASHI:** I read in the  
22 charter that these decisions may be appealed to the  
23 Board of Variances and Appeals. Is that an option  
24 when you deny a CO?

25 **MR. HOPPER:** I think that's generally an

1 option, yes, if Public Works were to deny a CO,  
2 although that would be an odd situation for the  
3 County Board of Variances and Appeals to be looking  
4 into whether a Land Use Commission condition was  
5 complied with.

6 There's also, I would note, a zoning  
7 condition, too, so.

8 **COMMISSIONER OHIGASHI:** So what I'm asking  
9 is simply this, is that whether or not that zoning  
10 condition because it does talk about -- I don't  
11 recall the provision just off the of my head. I had  
12 it written down, but I think it calls for relief  
13 from onerous or -- what is it -- very clear laws.

14 So my question is does the Variance and  
15 Appeals have jurisdiction over denial of a CO?

16 **MR. HOPPER:** I think generally, it does;  
17 however, in this case, you're looking at a Land Use  
18 Commission condition that's the basis for the  
19 denial, and I don't want to say that a county board  
20 could issue a decision and order on a State Land Use  
21 Commission condition.

22 I think that would be more properly  
23 addressed in the manner that the county already did,  
24 which was to send a declaratory petition to the  
25 commission to ask the commission to interpret its

1 own condition.

2           So while I think you're technically  
3 correct that you can appeal the denial of a CO, in  
4 this case, the basis of the denial would be a State  
5 Land Use Commission condition, so I'm a bit wary of  
6 saying that a county board or commission could make  
7 a final decision on whether a Land Use Commission  
8 condition was complied with.

9           I think that's either the commission or a  
10 circuit court would be the better place to go for  
11 that type of challenge, and I think that would be  
12 our position on that.

13           **COMMISSIONER OHIGASHI:** And I just want to  
14 -- I'm just trying to flesh out this whole argument  
15 about whether or not -- what enforcement mechanisms  
16 are available and what is the scenario that we would  
17 be in if a CO is denied, and what is available to  
18 Mr. Stuart's clients for that purpose.

19           So, you know, those are the questions that  
20 I wanted to ask.

21           The last set of questions is really a  
22 commentary. I think that county's position is not  
23 severe. It's not onerous. But I think it's  
24 reasonable, given the fact that I think the DOE  
25 lacks credibility.



1 First is I don't believe that they  
2 intended to even build any above grade or below  
3 grade. I think that the evidence or the letters that  
4 the county has provided, Exhibit 4, clearly show  
5 that they appear to be trying to skirt the issue and  
6 say, you know, trying to be able to build a school  
7 and place everybody in this particular position that  
8 they are in.

9 And I find that the county, I think, is  
10 wholly reasonable in its position, given evidence  
11 that we have seen so far. I want to thank the county  
12 for filings its second supplemental and bring to  
13 light the evidence that you attached as exhibit  
14 number. That's all.

15 **COMMISSIONER GIOVANNI:** Thank you,  
16 Commissioner Ohigashi. Commissioners, any other  
17 commissioners wishing to ask questions of Mr.  
18 Hopper? I don't see any.

19 The chair would just like to concur with  
20 the final comments made by Commissioner Ohigashi,  
21 that I find the position being taken by the county  
22 to be reasonable and not onerous and in compliance  
23 with the intent of this commission. So thank you.

24 At this time, we'll release the county and  
25 move to the Office of Planning and Sustainable

1 Development. Ms. Kato?

2 **MS. KATO:** Thank you, chair. The Office  
3 of Planning and Sustainable Development continues to  
4 support the DOE's request to amend condition 1(b) of  
5 the decision order to remove the requirement to  
6 construct a grade-separated pedestrian crossing  
7 before opening Kihei High School.

8 In 2013, condition 1(b) referred only to a  
9 grade-separated pedestrian crossing, but at that  
10 time, a roundabout was not considered. As Ed Sniffen  
11 mentioned, it was relatively new and unproven at  
12 that time. But this is no longer true.

13 Roundabouts are now recognized as  
14 effective and tested, and there does not appear to  
15 be any disagreement that a roundabout should be  
16 built on Piilani Highway, and it's already being  
17 built soon.

18 The community's preference, however, is to  
19 have an underpass in addition to the roundabout,  
20 based on the belief that this combination will  
21 provide the safest pedestrian crossing.

22 OPSD feels, however, that the DOT has  
23 provided sufficient information and justification as  
24 to why an underpass utilizing the nearby gulch  
25 without substantial improvements is not safe, nor is

1 it necessary at this time, given the construction of  
2 the roundabout and the projected attendance at the  
3 high school upon opening.

4 The DOT's opinion is based on considerable  
5 expertise and experience and the balancing of  
6 various factors, considerations, and studies.

7 According to the DOT, the roundabout provides a safe  
8 pedestrian route to the school, based on projected  
9 attendance, and because there's a direct at-grade  
10 crossing, pedestrians are significantly more likely  
11 to choose to cross at the roundabout rather than at  
12 the more distant gulch.

13 The DOT has explained that use of the  
14 gulch as an underpass, again, without significant  
15 improvements would pose a threat to the life and  
16 safety of pedestrians. Specifically, the gulch is  
17 intended to pass hydraulic flows, and there's tiny  
18 insufficient clearance between maximum water level  
19 and the bottom of the highway for a safe pedestrian  
20 crossing in the event of flooding.

21 According to the DOT, to achieve the  
22 necessary safe clearance, either the highway will  
23 need to be raised or the gulch would need to be  
24 widened. As previously discussed, either of these  
25 options would be both very costly and time

1 consuming. And Ed Sniffen provided estimates for  
2 these earlier, which was a high cost and a  
3 significantly long time delay.

4           Additionally, Phase I is not the end of  
5 the discussion or evaluation of what is safe and  
6 necessary for a pedestrian crossing at the high  
7 school. Condition 1(b) currently requires three  
8 updated pedestrian route studies at different points  
9 in time.

10           The proposed amendments would also require  
11 an assessment and re-evaluation of the necessity and  
12 appropriateness of a grade-separated pedestrian  
13 crossing before the start of construction of Phase  
14 II of the project.

15           So in other words, the DOE and DOT would  
16 be required at different stages to evaluate safe  
17 pedestrian routes that will include consideration of  
18 expanded high school capacity, traffic conditions at  
19 the time, and also effectiveness of the roundabout  
20 after it's already been in place for some time.

21           An issue appears to be that the revised  
22 language specific to a GSPC is not mandatory, but  
23 condition 1(b) currently requires the DOE to  
24 implement any necessary mitigation or improvements  
25 identified by the DOT in its further studies to the

1 satisfaction of DOT.

2 We believe that any such mitigation or  
3 improvements could include a GSPC. And the DOT has  
4 already represented that it will support the design  
5 and construction of the GSPC if future studies  
6 determine that it's necessary, which was in Ed  
7 Sniffen's testimony.

8 For these reasons, and in reliance on the  
9 expert testimony provided by and representations  
10 made by the DOT and DOE, OSPD recommends approval of  
11 the DOE's motion to amend. Thank you.

12 **COMMISSIONER GIOVANNI:** Thank you, Ms.  
13 Kato. Commissioners, any questions for Ms. Kato?  
14 Commissioner Okuda?

15 **COMMISSIONER OKUDA:** Thank you very much,  
16 Mr. Chair. Let me lower my hand. Ms. Kato, the  
17 bottom line that the DOT stated in its motion was  
18 basically this -- and again, I'm quoting from page 4  
19 of the memorandum in support of the motion.

20 And it said here that "The state of  
21 Hawai'i Department of Transportation (HDOT) rejects  
22 the building of an overpass or underpass." That's  
23 the basis stated by the DOE of its motion; isn't  
24 that true?

25 **MS. KATO:** I understand that that is what

1 the DOE had in its motion. But as you've heard from  
2 Ed Sniffen today and in his written testimony  
3 submitted at a later time, they have -- they've said  
4 otherwise, that with substantial improvements, they  
5 would accept it, if the studies warrant it.

6 **COMMISSIONER OKUDA:** Yeah. But the  
7 representation and the basis, because you were --  
8 you stated that the recommendation or the position  
9 of the Office of Planning and Sustainable  
10 Development is based on the representations of the  
11 parties, so it's true the Land Use Commission has to  
12 make a finding regarding credibility of the  
13 witnesses of the parties; correct?

14 **MS. KATO:** That is correct.

15 **COMMISSIONER OKUDA:** And to make a finding  
16 of credibility, we have to, we're duty bound to look  
17 at the record, look at the statements, and determine  
18 whether anybody has made statements which turn out  
19 not to be true; correct?

20 **MS. KATO:** Yes. That's correct.

21 **COMMISSIONER OKUDA:** Now, this statement  
22 made by the Department of Education that the state  
23 of Hawai'i Department of Transportation, HDOT,  
24 rejects the building of an overpass or underpass --  
25 would you agree that that statement is not true?

1           **MS. KATO:** I believe that currently, based  
2 on what Ed Sniffen said, it is not entirely  
3 accurate. I think Ed Sniffen clarified that he would  
4 reject it if it had just been a path under the gulch  
5 without the additional improvements.

6           **COMMISSIONER OKUDA:** Okay. And you heard  
7 my questions to the DOT -- excuse me, to the  
8 Department of Education regarding the April 2020  
9 letter, which I believe was Exhibit 4, that was sent  
10 to the County of Maui about representations being  
11 made that -- with respect to the grade-separated  
12 pedestrian crossing. Would you agree that would you  
13 agree with the assistant superintendent that that  
14 letter actually is misleading?

15           **MS. KATO:** I believe -- I'm assuming that  
16 at that time, that is what the DOE's position was,  
17 that they would be building an overpass. And I  
18 think, based on further studies or opinions from  
19 HDOT regarding the roundabout, that the situation  
20 had changed and that they changed their mind.

21           **COMMISSIONER OKUDA:** No, but Ms. Lowery  
22 testified that by November of 2019, the Department  
23 of Education had decided not to build the grade-  
24 separated pedestrian crossing. Do you recall that  
25 testimony?

1           **MS. KATO:** I do not recall all the  
2 statements made by Ms. Lowery, but I'm not sure  
3 whether they're accurate or not, so I can't say for  
4 sure regarding that.

5           **COMMISSIONER OKUDA:** Okay. Well, you know  
6 we all can disagree with what the evidence says, and  
7 I'm not going to go over the entire record here, but  
8 let me ask you this. Would the Land Use Commission  
9 be clearly erroneous, meaning we would be reversed  
10 by a court at some level?

11           Would be clearly erroneous if we made a  
12 finding that we simply cannot find credibility in  
13 certain witnesses or certain documents being  
14 presented to us in this docket by the Department of  
15 Education? Would we be clearly erroneous on that,  
16 that we simply cannot believe the Department of  
17 Education?

18           **MS. KATO:** I'm not sure on that. I think  
19 it is within the LUC's discretion to decide whether  
20 you believe certain statements or not, based on the  
21 whole record.

22           **COMMISSIONER OKUDA:** Okay. And just so  
23 that it doesn't look I'm taking sides here, because  
24 I assure you I haven't made a decision yet, but what  
25 evidence in the record can you point to which



1 indicates that we should believe what the Department  
2 of Education has presented to us in this case?  
3 What's the evidence in the record that shows that  
4 they are in fact credible?

5 **MS. KATO:** I can't --

6 **MR. FUJIOKA:** I think I'm going to make an  
7 objection. This asks the counsel to comment on the  
8 evidence, and I don't think that's her role here.

9 **COMMISSIONER OKUDA:** Well, Mr. Fujioka, if  
10 I may respond. I think you were commenting on the  
11 evidence. I'm just -- I'm giving the Office of  
12 Planning the ability to answer a question about  
13 credibility.

14 But I tell you what, since you object to  
15 my question, I'm going to withdraw my question. The  
16 Office of Planning doesn't have to answer that  
17 question. Mr. Chair, I have no further questions.  
18 Thank you very much.

19 **COMMISSIONER GIOVANNI:** Thank you,  
20 Commissioner Okuda? Other commissioners, any  
21 questions for Ms. Kato? Commissioner Wong?

22 **COMMISSIONER WONG:** Oh, thank you, Chair.

23 Ms. Kato, I got a question. You know, in  
24 the 2013 D&O, was a grade-separated pedestrian  
25 crossing required in the 2013 D&O?

1           **MS. KATO:** I believe so. That's what the  
2 condition is as it currently stands.

3           **COMMISSIONER WONG:** And recently in a DR,  
4 didn't the LUC reaffirm this position?

5           **MS. KATO:** That's correct.

6           **COMMISSIONER WONG:** And so the DOE was  
7 there both times, the petitioner; right?

8           **MS. KATO:** I was not present, but I assume  
9 that they were.

10          **COMMISSIONER WONG:** Okay. So someone from  
11 the DOE. But they were because they are the  
12 petitioner; correct?

13          **MS. KATO:** Again, I haven't looked at  
14 that, so I don't know for sure, but I would think  
15 that because they have an interest in it, they would  
16 have been there.

17          **COMMISSIONER WONG:** Okay. Yeah. So I  
18 guess, you know, I'm going to go on this logic train  
19 that I just started and say where in the record in  
20 any way DOE has attempted to meet this requirement,  
21 that you know of.

22          **MS. KATO:** Well, I personally don't know,  
23 but -- and I don't think my client specifically  
24 knows either, but based on the various exhibits, it  
25 sounds like they were already in the planning stages

1 for the overpass and that the DOE intended to do the  
2 overpass at some time -- at some point in time, and  
3 later changed to recognizing that a roundabout was a  
4 better option, based on DOT's opinion.

5 **COMMISSIONER WONG:** Okay. Sounds good.

6 Thank you, Ms. Kato. Thank you, chair.

7 **COMMISSIONER GIOVANNI:** Thank you,  
8 commissioner. Commissioner Cabral?

9 **COMMISSIONER CABRAL:** Thank you, chair.  
10 Thank you, Ms. Kato, for being before us. A couple  
11 of things that have been said and then some to which  
12 you just reiterated. So your opinion. You're not  
13 sure what was really done in the past, but yet you  
14 or your office have come up with an opinion to  
15 endorse what the Department of Education and the  
16 Department of Transportation are saying.

17 Can you tell me, since you're all state  
18 agencies, have you folks as a variety of state  
19 agencies met together to discuss this matter to --  
20 that -- is it -- have you formed that opinion based  
21 on that group meeting, or did you form that opinion  
22 on the research of yourself and your office in the  
23 Planning Department there to determine what you  
24 recommended was the best thing under the  
25 circumstances?

1           **MS. KATO:** The Office of Planning and  
2 Sustainable Development's positions are largely  
3 based on reliance on state agencies and their  
4 expertise in their areas. And frequently, we do  
5 solicit comments from state agencies and also meet  
6 with state agencies just by, you know, divisions.  
7 And in this case, we did meet with the DOE and DOT  
8 before to have discussions.

9           **COMMISSIONER CABRAL:** Okay.

10          **MS. KATO:** I'm not sure if necessarily  
11 there was any -- we don't -- mainly, it's just  
12 discussion.

13          **COMMISSIONER CABRAL:** Okay. Well, I mean,  
14 I have an office clearly smaller than the state, but  
15 I have five divisions, and my different divisions,  
16 we meet together periodically, and we base an  
17 opinion or some kind of basis on a decision, and we  
18 try and have the whole office go in the same  
19 direction.

20               I'm just curious as to how clearly defined  
21 the state is in those decisions, because one of my  
22 concerns about it is that some peers have -- I don't  
23 know who made that decision. Where and who really  
24 made the decision to not read the requirements or to  
25 ignore the requirements of what the Land Use

1 Commission said way back when.

2 I mean, I'm assuming that everybody went  
3 to at least Hawai'i schools, and they know how to  
4 read, so I'm concerned that -- it seems like nobody  
5 paid attention to it, and then in the last moments,  
6 they decided to ignore it. So anyway, just wondering  
7 how well organized we are in these decisions. Thank  
8 you for your input.

9 **COMMISSIONER GIOVANNI:** Thank you,  
10 commissioner.

11 Commissioners, any further questions for  
12 this witness? Seeing none, Ms. Kato, thank you very  
13 much. You're excused.

14 **MS. KATO:** Thank you.

15 **COMMISSIONER GIOVANNI:** So, Mr. Fujioka,  
16 do you have any rebuttal or final comments?

17 **MR. FUJIOKA:** There's one thing I wanted  
18 to add. During lunch, Facilities were able to pull  
19 up some preliminary sketches of grade-separated  
20 pedestrian crossings which were generated, looks  
21 like, in 2019, that March timeframe. So I would like  
22 to at least show them on the screen briefly and then  
23 submit them as Exhibit 46 and Exhibit 47.

24 **COMMISSIONER GIOVANNI:** So this was the  
25 study work that was asked about earlier that was

1 terminated or interrupted or suspended?

2 **MR. FUJIOKA:** Well, it's not study work.  
3 It's drawings, preliminary drawings of possibilities  
4 for grade-separated pedestrian crossings.

5 **COMMISSIONER GIOVANNI:** So I will admit  
6 that. Go ahead and show it, and then we'll admit  
7 those as exhibits.

8 **MR. FUJIOKA:** Okay. Is this up on the  
9 screen?

10 **COMMISSIONER GIOVANNI:** No.

11 **MR. FUJIOKA:** Okay. This would be what we  
12 want to submit as Exhibit 46. These are four pages  
13 of an overpass, and down at the corner, it says it's  
14 dated March 4, 2019. So if you could look at Exhibit  
15 47, this is two pages, overhead and side view of a  
16 rendering for underground pedestrian crossing.

17 So those are -- I just wanted to show that  
18 for now just to confirm that something was done in  
19 that timeframe when those letters said it was. And  
20 we'll submit them with a supplemental exhibit list.

21 Other than that, I think the position has  
22 been submitted in writing, and we've been -- we've  
23 had testimony, public testimony, witness testimony,  
24 and the commissioners have asked, I think, very  
25 important questions, some of which were not easy to

1 answer. But I think there is sufficient record for  
2 the commission to make a decision, and we  
3 respectfully ask that the GSPC -- the school be  
4 allowed to open without the GSPC condition.

5 They're looking at the opening school year  
6 '22-'23, and they're projecting 167 students. So I  
7 think the roundabout will be sufficient to protect  
8 everyone at this point. Thank you.

9 **COMMISSIONER GIOVANNI:** Commissioners, any  
10 comments or questions? Commissioner Chang?

11 **COMMISSIONER CHANG:** Yes, Mr. Chair. I  
12 know that you permitted this exhibit to be entered.  
13 I will lodge an objection.

14 You know, I think the petitioner had a  
15 full opportunity to put on their case. They should  
16 have -- this to me was a very critical document that  
17 should have been shared with both the public and the  
18 county as well as OP. And I find this, you know, not  
19 even -- this is far past the 11th hour.

20 So I have -- it does concern me that we're  
21 taking this after both all -- the evidence has been  
22 closed, and we're at the closing arguments, and the  
23 petitioner is now bringing this to our attention. So  
24 I do have an objection.

25 I mean, it is on the record, but I wanted

1 to make -- I wanted to put that on the record, my  
2 objection to this very last minute. It's sort of  
3 this cavalier -- kind of cavalier attitude by the  
4 petitioner. You should have made your case, and it  
5 disappoints me that we are now taking this evidence.  
6 Thank you, Mr. Chair.

7 **COMMISSIONER GIOVANNI:** Thank you,  
8 Commissioner Chang. Commissioner Cabral?

9 **COMMISSIONER CABRAL:** Thank you. And I  
10 appreciate Commissioner Chang knowing all the legal  
11 standings, how things should be, but what this  
12 information, if I understood what was just shown on  
13 the screen by Mr. Fujioka, is that that work was  
14 done by G70.

15 And so if that work was done by G70 in the  
16 same timeframe of August 1st, 2019, we have a  
17 technical memorandum, where I said it earlier, they  
18 indicate that a two-lane circular roadway, which is  
19 what you folks want to do, would, one, likely not  
20 accommodate long-term traffic volumes going forward,  
21 and would include occupational and safety issues  
22 associated with the pedestrian crossings.

23 So I'm concerned that they're -- that  
24 you're, you know, touting one part of something, but  
25 yet the conclusion is that this roundabout is not a



1 safe thing for the pedestrians.

2 And that also is what DOT Sniffen said  
3 earlier, that that's a concern. Yeah, they have  
4 these raised areas. That's supposed to save people's  
5 life, because you're busy looking where you're going  
6 instead of at pedestrians.

7 So I'm gravely concerned that the  
8 information we're getting is partial or not a big  
9 picture, as Commissioner Chang indicated. Thank you  
10 very much.

11 **COMMISSIONER GIOVANNI:** Yeah.  
12 Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** I would object,  
14 too, but if I heard correctly, it was March 19th.  
15 And the representation was one year later that they  
16 have begun design, and according to the exhibit  
17 number -- I think it's Exhibit 2 -- that March 23rd  
18 letter, they were supposed to have started March  
19 20th for the EA.

20 So I don't even know how it's relevant. I  
21 mean, I don't even think it answered my question. If  
22 they had done what they said they were going to do.

23 **COMMISSIONER GIOVANNI:** Yeah.

24 **COMMISSIONER OHIGASHI:** So great. We have  
25 nice drawings now.

1           **COMMISSIONER GIOVANNI:** Yeah. So first of  
2 all, let me apologize to my commissioners and  
3 participants for opening this Pandora's box at the  
4 11th hour. But I agree that it really doesn't add  
5 anything except more concern on my personal part  
6 about the representations and presentations that  
7 have been made by the petitioner in this case.

8           So with that, are there any further  
9 questions from commissioners to the petitioner?  
10 Commissioner Cabral, your hand's still up. Is that -  
11 - do you have additional questions, Commissioner  
12 Cabral? Commissioner Cabral, lower your hand. There  
13 you go.

14           So I'm going to call for a short recess,  
15 and when we return, we will commence deliberations.  
16 So we're adjourned until 1:55.

17           **(WHEREUPON, a recess was taken from 1:44**  
18 **p.m. to 1:51 p.m.)**

19           **COMMISSIONER GIOVANNI:** Okay. We're back  
20 on the record. Start the recording, please. We're  
21 waiting for Maui County. There he is. Okay. We're  
22 back on the record in this docket.

23           The commission will now conduct formal  
24 deliberations on the Motion to Amend the LUC  
25 Findings of Fact, Conclusions of Law, and Decisions

1 and Order that were filed on July 29th, 2013,  
2 regarding Kihei High School.

3 I would note for the parties and the  
4 public that during the commissioners' deliberations,  
5 we will not entertain additional input from the  
6 parties or the public unless those individuals or  
7 entities are specifically requested to do so by the  
8 chair. If called upon, I would ask that any comments  
9 be limited to the question at hand.

10 Commissioners, let me confirm that each of  
11 you have reviewed the record and are prepared to  
12 deliberate on the subject docket. After I call your  
13 name, signify with either an aye or any that you are  
14 prepared to deliberate on this matter. Commissioner  
15 Aczon?

16 **COMMISSIONER ACZON:** Aye.

17 **COMMISSIONER GIOVANNI:** Commissioner  
18 Chang?

19 **COMMISSIONER CHANG:** Aye.

20 **COMMISSIONER GIOVANNI:** Commissioner  
21 Cabral?

22 **COMMISSIONER CABRAL:** Aye.

23 **COMMISSIONER GIOVANNI:** Commissioner

24 Ohigashi?

25 **COMMISSIONER OHIGASHI:** Aye.

1           **COMMISSIONER GIOVANNI:** Commissioner

2 Okuda?

3           **COMMISSIONER OKUDA:** Aye.

4           **COMMISSIONER GIOVANNI:** Commissioner Wong?

5           **COMMISSIONER WONG:** Aye.

6           **COMMISSIONER GIOVANNI:** I am also prepared  
7 to deliberate on this matter. I see two  
8 commissioners still have their hands raised. Do you  
9 wish to have comments now? Commissioner Ohigashi and  
10 Commissioner Cabral, do you have questions?

11           **COMMISSIONER OHIGASHI:** I was going to  
12 make a motion.

13           **COMMISSIONER GIOVANNI:** I'm just about  
14 there. Commissioner, what's your pleasure?  
15 Commissioner Ohigashi?

16           **COMMISSIONER OHIGASHI:** I move that we  
17 deny petitioner's motion, and I will state my  
18 reasons.

19           **COMMISSIONER GIOVANNI:** Do I have a second  
20 to the motion? Commissioner Cabral?

21           **COMMISSIONER CABRAL:** I second that  
22 motion.

23           **COMMISSIONER GIOVANNI:** A motion has been  
24 made by Commissioner Ohigashi, and it's seconded by  
25 Commissioner Cabral. Any discussion in furtherance

1 of this motion? Commissioner Ohigashi first.

2 **COMMISSIONER OHIGASHI:** My main concern in  
3 this matter was that it appeared that -- well, it's  
4 not appeared. To me the petitioner had failed to  
5 meet its burden.

6 It's required to show that there was some  
7 necessary or some need for this change to occur. And  
8 it cited two main things, I think. It cited the  
9 various studies and the position of the Department  
10 of Transportation.

11 Both cases in my mind, both studies  
12 contraindicated what the DOE seems to have argued.  
13 And the DOT did not outright deny the possibility of  
14 approving a grade separation.

15 And the third thing is that they -- the  
16 roundabout, in my mind, they did not meet the burden  
17 to show that the roundabout was a proper substitute  
18 for the grade separation process.

19 I would like to note that I don't believe  
20 that the DOE -- well, I'll put it this way. I tend  
21 not to have believed what the DOE had testified to,  
22 and it was clear on the record that they made no  
23 attempt to even try to meet these conditions.

24 I support the County of Maui's position in  
25 this case, because I believe that they are correct,

1 that there is nothing that requires the DOE to build  
2 this grade-separated pedestrian crossing even if it  
3 is required.

4 And I'm glad that the County of Maui  
5 brought up the issue of political influence and how  
6 it might affect the issuance of the CO in this  
7 matter, because once you bring it to light, I think  
8 that the government, or the county, would have  
9 difficult time testifying issuing a CO violation of  
10 any kind of commission order.

11 I think if we deny this, it would be  
12 incumbent upon the DOE. Work on a solution with the  
13 County of Maui. Collectively bring forth something  
14 that protects the public as well as satisfies the  
15 goal of opening up. Thank you.

16 **COMMISSIONER GIOVANNI:** Thank you,  
17 commissioner. Commissioner Cabral?

18 **COMMISSIONER CABRAL:** I will once again  
19 second the elegant words of my fellow Commissioner  
20 Ohigashi. And, of course, he is from Maui.

21 But I am gravely concerned about the  
22 process, or the lack of process or the lack of  
23 effort on the part of DOE and then what appears to  
24 be efforts to just figure out how to do what they  
25 want to do and not do what they had known since the

1 beginning they were supposed to do.

2 And in no case would we let a developer do  
3 this type of thing and ignore public safety. Public  
4 safety in general is paramount, and our children's  
5 is even greater.

6 So I really cannot support this decision  
7 to just move forward without any type of effort. As  
8 far as I'm concerned, they should have all three  
9 methods of crossing that street. And then everybody  
10 can do it in the safest, best way they want to do  
11 it. So that's -- I'm going to definitely support  
12 the motion. Thank you.

13 **COMMISSIONER GIOVANNI:** Thank you,  
14 Commissioner Cabral. Commissioner Chang?

15 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
16 I am going to support the denial of the petitioner  
17 DOE's motion to amend condition 1(b).

18 First, I want to be clear that if Kihei  
19 High School is not able to open, it is not because  
20 of an action by LUC, but rather inaction by the  
21 Department of Education to comply with the LUC  
22 conditions.

23 Two, based upon the records, exhibits, and  
24 testimony, petitioner has failed to show good cause  
25 why the GSPC, specifically the underpass through

1 Waipuilani Gulch, cannot be safely constructed to  
2 ensure safe access for the students and public.

3 Three, petitioner has represented on  
4 numerous occasions that they defer to the subject  
5 matter agencies -- in this case, HDOT -- regarding  
6 traffic and safety measures.

7 And HDOT Ed Sniffen, who testified this  
8 morning and on other occasions, stated in his  
9 testimony that they would have no objection to an  
10 underpass on the condition that either the bridge be  
11 extended and the roadway be widened for an estimated  
12 cost for \$25-50 million.

13 Four, Petitioner Tanaka stated that DOE  
14 has requested 50 million for Phase III but has not -  
15 - but he has not considered reallocating those funds  
16 for the GSPC. But he also testified that a  
17 legislator could request line-item appropriation for  
18 the GSPC.

19 Five, Representative Wildberger testified  
20 that she is willing to seek funding, if that is  
21 supported by the community.

22 Six, I find that petitioner has not  
23 engaged in good faith with the community and that  
24 the community, you know, as -- the LUC specifically  
25 delayed the proceeding to give the petitioner an



1 opportunity to generally engage with the community.

2 Well, petitioner has set up a website with  
3 current updates and that monthly meetings with the  
4 principal will be held. That means that they haven't  
5 been held -- or they "may held", but at least their  
6 representation is "will be held".

7 That effort is inadequate to generally  
8 engage this community, who have consistently  
9 attended the LUC numerous hearings, and they have  
10 stayed throughout the entire proceedings, that is  
11 very clear in my mind, there has not been genuine  
12 engagement.

13 Seven, Maui County has relied upon  
14 representations by petitioner to grant certain  
15 permits to the Department of Education, but they  
16 have not shown good faith or due diligence in  
17 bringing a resolution to the GSPC.

18 And I hope that my comments were not  
19 misunderstood. I believe that the County of Maui has  
20 been extremely reasonable, and I believe that  
21 they've been responsible in their responses, that  
22 they have looked out for the -- that they have  
23 looked out for the best interests of the community,  
24 and specifically the children of Kihei, and that I  
25 think the County of Maui is just exasperating. But

1 they have tried unsuccessfully to seek a resolution  
2 with the Department of Transportation.

3 So I, too, applaud the strong position  
4 taken by the County of Maui. I think that was  
5 extremely reasonable on their part. My comment was  
6 only that generally the County of Maui doesn't take  
7 really strong positions, but in this case, I think  
8 they have fully exhausted and are exhausted, like  
9 many people. So I applaud the county.

10 So eighth, in weighing the credibility of  
11 the witnesses, I find the county and the public's  
12 testimony more credible than the petitioner.  
13 Therefore, I support -- I will be supporting the  
14 denial of the motion -- of DOE's motion to amend the  
15 condition. Thank you, Mr. Chair.

16 **COMMISSIONER GIOVANNI:** Thank you,  
17 Commissioner Chang. Other commissioners? Any  
18 comments before we move forward? Commissioner  
19 Aczon?

20 **COMMISSIONER ACZON:** Thank you, Mr. Chair.  
21 I will be supporting the motion without  
22 reservations. I'm just going to proceed. I agree  
23 with Commissioner Okuda's statement that this  
24 petition, this case is really screwed up.

25 Having said that, I don't know what else

1 this commission can do if this motion passed and the  
2 motion was denied. LUC is going to be a spectator on  
3 this one, because we don't really have any  
4 enforcement power after this. It all belongs to the  
5 county and also cooperation of the DOT.

6           So I was hoping that, you know, all  
7 parties can come up with some kind of resolution  
8 that permit us -- permit the community to open the  
9 Kihei High School. So we're looking at, you know,  
10 probably seven years before this grade-separated  
11 pedestrian crossing can be built. In the meantime,  
12 we have this high school ready to go. It's going to  
13 be sitting idle for that, you know, seven years.

14           So I really, you know, kind of sorry for  
15 the community, for all the kids that is waiting for  
16 this high school. So it just so happened that  
17 everybody did dig their heels in, and nobody wants  
18 to give in.

19           You know, funding for this bridge is not a  
20 guarantee, you know. So it's going to be -- it's got  
21 to be apparent to the county and DOE, Department of  
22 Transportation, to come up with a solution to be  
23 able to open this high school.

24           You know, so again, you know, I will be  
25 voting in favor, but, you know, I just have

1 difficulty accepting that there's no resolution and  
2 response. It just so happened like when we say we  
3 don't really have enforcement power after this -- we  
4 make this decision. So thank you, Mr. Chair, for  
5 the opportunity to say my piece.

6 **COMMISSIONER GIOVANNI:** Thank you,  
7 Commissioner Aczon. Commissioner Ohigashi, did you  
8 have further comments?

9 **COMMISSIONER OHIGASHI:** I just wanted to  
10 end my comments with further comments from  
11 Commissioner Biga. He says -- and thank you, chair.  
12 I want to reiterate on my motion.

13 Living on Maui, traveling on that highway  
14 on numerous occasions, I've seen the speed that goes  
15 through that highway. Again, my concern is for the  
16 safety of the pedestrians and the children that will  
17 be going to that school.

18 Throughout this hearing, I've brought my  
19 concerns of that nature. That's why I believe this  
20 motion I brought up, for that's my concern. Safety  
21 of public, safety of the children that will be going  
22 to school. That's where I'm at.

23 **COMMISSIONER GIOVANNI:** Thank you.  
24 Commissioner Okuda?

25 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

1 I join in the comments of all my fellow  
2 commissioners.

3 I was about to say that one thing we in  
4 Honolulu have to be careful of is thinking that the  
5 name of the state is the state of O'ahu and not the  
6 state of Hawai'i. But that's not the basis for why I  
7 support the motion as brought by Maui Commissioner  
8 Ohigashi.

9 I do agree with the statements of all my  
10 commissioners that the burden of proof has not been  
11 met by the petitioner for the reasons stated. I  
12 won't go over all of what everybody already said,  
13 because it's already stated in the record.

14 I think the bottom line, however, is this.  
15 We're a quasi-judicial body. But getting away from  
16 just the legal words, in our system of democracy,  
17 evidence matters, truth matters, and those of us in  
18 government, we owe it to the community that we live  
19 up to our words.

20 When we say something, we got to stand  
21 behind what we say, and if we're going to change  
22 what we have told people or told other agencies,  
23 then we have to make it clear with admissible  
24 evidence why there's a change.

25 We have a duty to basically keep and

1 encourage trust in government, and if we don't  
2 respect the fact that we have to be straight and  
3 honest to the community and to others, that faith  
4 just erodes away.

5 And so for all the reasons stated and the  
6 other good reasons in the record, I will be voting  
7 in favor of the motion brought by Maui Commissioner  
8 Ohigashi. Thank you.

9 **COMMISSIONER GIOVANNI:** Thank you.  
10 Commissioner Wong?

11 **COMMISSIONER WONG:** Thank you, chair.  
12 Rule 15-15-4 Section B says, "For good cause shown,  
13 the commission may act to modify or delete any of  
14 the conditions imposed or modify the commission's  
15 orders." I believe that DOE hasn't shown good cause.  
16 They haven't -- to me. And so for that fact, I'll be  
17 supporting Commissioner Ohigashi's motion. Thank  
18 you.

19 **COMMISSIONER GIOVANNI:** Thank you,  
20 commissioner. Let me share my perspective on this  
21 matter. The condition in question, which is the  
22 requirement for a grade-separated passenger crossing  
23 was put forth and adopted by this commission in 2013  
24 in response primarily to the will of the public and  
25 the people and residents of Kihei for the safety of

1 their children.

2 That was true in 2013, and I think it's  
3 true today. That has not changed. What has prompted  
4 the DOE to not move forward? In my humble opinion,  
5 it's dollars and cents. They don't want to spend the  
6 money for the safety of these children. They're  
7 looking for an alternative to save money.

8 We heard from Mr. Tanaka today that they  
9 have not even ever put forth in a budget a request  
10 for the money to build this thing. If they had done  
11 so in 2014, it would have been built already at a  
12 much lower cost with no delays.

13 The third point I just can't get past is  
14 that the DOE is now coming forth and say trust us;  
15 we'll do a study, and based on those results, if it  
16 says to build it, we'll build it. Well, a study  
17 already exists that says build it. And they want to  
18 convert and advert and manipulate the findings of  
19 those studies to say something different than they  
20 actually say to me as an engineer.

21 So I have no trust in what the DOE is  
22 recommending, that we trust them to follow the study  
23 in the future. I do trust the Department of  
24 Transportation. They have been clear and consistent,  
25 starting with DOE's our client; show me the money,

1 and we'll build it for you. And in addition, DOT has  
2 come forth and built a roundabout with their own  
3 money.

4 So to me, it's always been about the money  
5 for DOE. So it's a shame that this high school,  
6 which is almost built, will not be open on time with  
7 the grade-separated passenger crossing. But to me,  
8 the fault for that is DOE. It's not DOT. It's not  
9 the County of Maui, who have tried to find  
10 resolution. And it's not the LUC, who clarified  
11 their positions on numerous occasions in the last  
12 eight years.

13 Therefore, I will be supporting this  
14 motion for denial. Thank you.

15 Are there any further last-minute comments  
16 before we take a vote on this motion? Seeing none,  
17 Mr. Orodener, will you poll the commission on the  
18 motion?

19 **MR. ORODENKER:** Thank you, Mr. Chair. The  
20 motion is to deny petitioner's motion to amend  
21 condition 1(b) of the Decision and Order.

22 Commissioner Ohigashi?

23 **COMMISSIONER OHIGASHI:** Aye.

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

25 **COMMISSIONER CABRAL:** Aye.



1 MR. ORODENKER: Commissioner Aczon?

2 COMMISSIONER ACZON: Yes.

3 MR. ORODENKER: Commissioner Chang?

4 COMMISSIONER CHANG: Did you get that?

5 Aye.

6 MR. ORODENKER: Commissioner Okuda?

7 COMMISSIONER OKUDA: Yes.

8 MR. ORODENKER: Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 MR. ORODENKER: Chair Giovanni?

11 COMMISSIONER GIOVANNI: Aye.

12 MR. ORODENKER: Thank you, Mr. Chair. The  
13 motion passes unanimously with seven affirmative  
14 votes.

15 COMMISSIONER GIOVANNI: So thanks to the  
16 parties for preparing the cases. The motion is  
17 denied as voted on. I mean, the motion is approved  
18 to deny the motion for elimination of the condition.

19 I want to take a five-minute recess, and  
20 we'll reconvene with the remaining agenda items  
21 before the commission today, with every expectation  
22 that we will adjourn prior to 3:00. So let's  
23 reconvene at 2:25.

24 (WHEREUPON, a recess was taken from 2:17  
25 p.m. to 2:25 p.m.)

1           **COMMISSIONER GIOVANNI:** Okay. We're back  
2 on the record. I didn't adequately do so. I wanted  
3 to thank the parties in the prior agenda item for  
4 their participation in the case and thank you for  
5 your indulgence in allowing me to sit in for  
6 Commissioner Scheuer, who would normally adjudicate  
7 and be the chair. So thanks for your indulgence as I  
8 made my way through.

9           Our next order of business is what was set  
10 on the agenda as the first agenda item, which is the  
11 adoption of minutes from our meeting of October 21,  
12 2021.

13           **MR. ORODENKER:** Excuse me, Mr. Chair.

14           **COMMISSIONER GIOVANNI:** Yes?

15           **MR. ORODENKER:** I don't want to interrupt,  
16 but I think that also on the agenda was the motion  
17 by Department of Education to consider -- to issue  
18 written findings as to its motion. And I believe  
19 that we need to properly notice that that motion has  
20 been rendered moot.

21           **COMMISSIONER GIOVANNI:** Yeah. My  
22 understanding is that the decision to deny the  
23 petitioner's motion rendered their second motion  
24 moot. Is that -- is my understanding correct?

25           **MR. ORODENKER:** That's my understanding as

1 well.

2 **COMMISSIONER GIOVANNI:** So then we can  
3 proceed without taking any formal action on that  
4 second motion because it's moot; is that correct?

5 **MR. ORODENKER:** I believe so, although I  
6 would defer it to our deputy attorney general, Ms.  
7 China, if she has anything.

8 **COMMISSIONER GIOVANNI:** Ms. China, can you  
9 provide clarity for me on this matter?

10 **MS. CHINA:** Deputy AG China. I think in  
11 order to absolutely clear, you can just, you know,  
12 state it on the record that it has been rendered  
13 moot and what you've done and your plan now.

14 **COMMISSIONER GIOVANNI:** Which I've already  
15 done; correct?

16 **MS. CHINA:** Correct.

17 **COMMISSIONER GIOVANNI:** Okay. Thank you.  
18 So then we'll move forward with that understanding  
19 that the second motion that was before us, which was  
20 by the petitioner Department of Education requesting  
21 written findings is moot by virtue of the fact that  
22 we denied their motion for modification of the  
23 condition.

24 And now we can move on to the next agenda  
25 item. Ms. Quinones, has there been any written

1 testimony submitted on the matter of the minutes of  
2 the October 21st, 2021, meeting of the LUC?

3 **MS. QUINONES:** Chair, there has not been  
4 any testimony submitted. There is none.

5 **COMMISSIONER GIOVANNI:** Thank you. Mr.  
6 Derrickson, are there any members of the public that  
7 I cannot see, and perhaps you can see, who wish to  
8 testify on the adoption of the minutes?

9 If so, would they please raise their --  
10 use the Raise Hand function of the Zoom software or  
11 \*9 if they are accessing by a cellphone? And then  
12 you'll be promoted to the meeting.

13 Mr. Derrickson, can you scan on my behalf  
14 to see if there's any member of the public that  
15 wishes to testify on the minutes from the October 21  
16 meeting?

17 **MR. DERRICKSON:** Yes, chair. At this time,  
18 there are no hands raised in the audience.

19 **COMMISSIONER GIOVANNI:** Thank you for that  
20 clarification.

21 Commissioners, are there any corrections  
22 or comments on these minutes? If not, is there a  
23 motion to adopt the minutes as presented for October  
24 21? Commissioner Cabral?

25 **COMMISSIONER CABRAL:** I make a motion to

1 adopt the minutes for October 21. Thank you.

2 **COMMISSIONER GIOVANNI:** Thank you. Do I  
3 have a second? Commissioner Wong?

4 **COMMISSIONER WONG:** Chair, I second.

5 **COMMISSIONER GIOVANNI:** Is there any  
6 further discussion by the commissioners or  
7 questions? Commissioner Okuda?

8 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
9 I will be recusing myself from the vote only as to  
10 that portion of the executive session which I had  
11 recused myself, just to make that clarification. So  
12 any yes vote by me does not include the portion  
13 which I recused myself. Thank you, Mr. Chair.

14 **COMMISSIONER GIOVANNI:** Thank you,  
15 Commissioner Okuda. That's an interesting  
16 clarification. Thank you.

17 A motion has been made by Commissioner  
18 Cabral and seconded by Commissioner Wong to adopt  
19 the minutes. Mr. Orodenger, please poll the  
20 commissioners.

21 **MR. ORODENKER:** Thank you, Mr. Chair. The  
22 motion is to adopt the minutes. Commissioner  
23 Cabral?

24 **COMMISSIONER CABRAL:** Aye.

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

1           **COMMISSIONER WONG:** Aye.

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

3           **COMMISSIONER OKUDA:** Yes, as to the  
4 portions that I did not recuse myself.

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

6           **COMMISSIONER OHIGASHI:** Aye.

7           **MR. ORODENKER:** Commissioner Chang

8           **COMMISSIONER CHANG:** Aye.

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

10          **COMMISSIONER ACZON:** Yes.

11          **MR. ORODENKER:** Chair Giovanni?

12          **COMMISSIONER GIOVANNI:** Aye.

13          **MR. ORODENKER:** Thank you, Mr. Chair. The  
14 motion passes unanimously.

15                 **COMMISSIONER GIOVANNI:** Thank you. We'll  
16 now move on to the last agenda item, which was  
17 originally item 2, and that's the tentative meeting  
18 schedule.

19                 Mr. Orodenker, could you please elucidate  
20 for members of this commission?

21                 **MR. ORODENKER:** Thank you, Mr. Chair. On  
22 November 10th -- and once again, unless otherwise  
23 noted, we will be meeting by Zoom -- we will be  
24 taking A21-810, which is the Hokuao 201H Project.

25                 On November 23rd, we will be taking up the

1 adoption of the adoption of the order, if necessary,  
2 on that project. We will also be getting a  
3 presentation from the Office of Planning and  
4 Sustainable Development on a boundary review  
5 project.

6 On December 8th, we will be taking up the  
7 A03-739 Windward Airport Hotel matter. That is also  
8 scheduled for December 9th. On December 22nd, we  
9 will take up the Honoipu Hideaway matter, as also on  
10 December 23rd we're taking up the same matter.

11 And I would note for the commissioners  
12 that our January schedule has meetings on January  
13 5th and 6th, which is Wednesday and Thursday, and  
14 January 19th and 20th, also Wednesday and Thursday.

15 And our February schedule has meetings on  
16 Wednesday and Thursday, the 2nd and 3rd of February,  
17 and the 16th and 17th of February.

18 **COMMISSIONER GIOVANNI:** Thank you, Mr.  
19 Orodanker. When will hear about the continuation of  
20 the use of Zoom into the next calendar year, or do  
21 we know?

22 **MR. ORODENKER:** At this point, it is going  
23 to be at the discretion of the commission. I believe  
24 the governor's executive order will cover us until  
25 January, and then after that, the legislature passed

1 a measure which will -- starting January 1 -- which  
2 will allow us to continue to hold meetings by Zoom.  
3 So it will be at the discretion of the commission as  
4 to whether or not we continue to hold meetings by  
5 Zoom or meet in person.

6 **COMMISSIONER GIOVANNI:** Very good.  
7 Commissioners, any questions for Mr. Orodener  
8 regarding the schedule of meetings? Commission  
9 Cabral?

10 **COMMISSIONER CABRAL:** Not really the  
11 schedule, but in response to your question about  
12 meeting in person or by Zoom, I do want to say that  
13 in the past, I've found our site visits to be  
14 extremely valuable, and in particular with this  
15 Department of Education.

16 I am really happy that a couple of years  
17 ago we were there on site. We were there on the side  
18 of that roadway. We were able to really visualize  
19 what was going on, and I think it would have been  
20 much more difficult to have understood the dynamics  
21 of the petition if I hadn't physically and visually  
22 visualized the entire situation and knowing what was  
23 being talked about.

24 So I don't know how it can be done, and I  
25 know it costs money, but I think I would encourage



1 to try and have us be able to have site visits,  
2 obviously followed by a meeting, but, you know,  
3 maybe we could get a whole quarter of site visits  
4 into one day or something. I don't know. But just  
5 that I find them very, very useful. Thank you.

6 **COMMISSIONER GIOVANNI:** So I will echo  
7 that comment. And the case that comes to mind for me  
8 was the Hawai'i Cemetery site visit we did, which  
9 was instrumental in our deliberations and decision  
10 making, so.

11 Commissioners, any further questions for  
12 Mr. Orodener? If not, no further business, I  
13 declare this meeting adjourned with a smile.

14 **COMMISSIONER CABRAL:** Good. You did a good  
15 job, Dan, really good job.

16 **(WHEREUPON, the meeting was adjourned at**  
17 **2:34 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 November 2021.

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19 Davilyn Payne

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