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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on February 9, 2023

Commencing at 9:17 a.m.

Held at

Kihei Community Center

303 East Lipoa Street

Kihei, Hawaii 96753

VII. **CALL TO RECONVENE**

VIII. **STATUS REPORT AND ACTION (IF NECESSARY)**

**A11-794 STATE OF HAWAII, DEPARTMENT OF
EDUCATION**

Kulanihakoi (formerly Kihei) High School (Maui)
Approximately 77.2 acres of land at Kihei,
Maui, Hawaii, Maui Tax Map Key Nos.
2-2-02:81 and 83.

IX. **LEGISLATURE REPORT AND UPDATE**

X. **ADJOURNMENT**

BEFORE :

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PARTICIPANTS

LUC COMMISSIONERS :

Dan Giovanni, Chair

Gary Okuda

George Atta

Lee Ohigashi

Mel Kahele

Michael Yamane

Nancy Cabral

LUC STAFF :

Daniel Orodener, Executive Officer (via Zoom)

Scott Derrickson, LUC Chief Planner

Martina Segura, LUC Planner

Riley Hakoda, LUC Planner

Ariana Kwan, LUC Chief Clerk

Daniel Morris, LUC AG (via Zoom)

OPSD :

Alison Kato, OPSD AG

Lorene Maki, OPSD Planner

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PARTICIPANTS (CONTINUED)

COUNTY OF MAUI:

Michael Hopper, Esquire, Deputy Corporation Counsel

Kathleen Aoki, Acting Director, Maui Planning

PETITIONERS:

Keith Hayashi, Superintendent, Department of Education

Curt Otaguro, Deputy Superintendent,

Department of Education

Carter Siu, DOE AG

Ryan Roylo, DOE AG

PETITIONER'S WITNESSES:

Robin Shishido, Deputy Director Highways,

Department of Transportation

Desiree Sides, Complex Area Superintendent, Maui

Department of Education

Halle Maxwell, Principal at Kulanihakoi High School

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PARTICIPANTS (CONTINUED)

PUBLIC TESTIMONY (ROUND 1) :

- Buck Joiner
- Mike Moran
- Cheri Nakamura
- Andrew Beerer
- Tina Wildberger
- Vernon Kalanikau

PUBLIC TESTIMONY (ROUND 2) :

- Andrew Beerer
- Matthew Thayer
- Cheri Nakamura
- Buck Joiner
- Vernon Kalanikau

1 **CHAIRMAN GIOVANNI:** Aloha mai kakou. Good
2 morning, everyone. I would like to start off by
3 asking members of the public and those in attendance
4 today to not use the Maui County Wi-Fi during this
5 meeting. It's just a precaution against overloading
6 the Wi-Fi and causing us to lose connectivity to the
7 Zoom meeting.

8 You can see the Zoom meeting up on the
9 screen there. Since this meeting is being recorded
10 by Zoom as a means for preparing transcripts of this
11 meeting, it's critical that we do not lose this Wi-
12 Fi connection.

13 If we do lose it during the course of the
14 meeting, I just want to warn everyone we'll take a
15 recess and pause to restore the meeting. So again,
16 the ask is that you please not use the Maui County
17 Wi-Fi on your personal devices. We would appreciate
18 that.

19 This is the February 9, 2023 Land Use
20 Commission Meeting. This is an in-person meeting,
21 which we are being held at the Kihei Community
22 Center at 303 East Lipoa Street, in Kihei, Hawaii
23 96753. And this meeting is open to the public.

24 As I mentioned a moment ago, the court
25 reporting transcriptions are being done from this

1 Zoom recording. For all meeting participants, I'd
2 like to stress the importance of speaking slowly,
3 clearly, and directly into your microphone. Before
4 speaking, please say your name and identify yourself
5 for the record.

6 Even though this is an in-person meeting,
7 please be aware that all meeting participants are
8 being recorded on the digital Zoom record of this
9 meeting. This is for court reporting purposes.

10 Your continued participation is your
11 implied consent to be part of the public record of
12 this event. If you do not wish to be part of the
13 public record, you should exit the meeting now.
14 I'll also share with the participants that we will
15 be taking breaks from time to time today.
16 Typically, on an hourly basis we'll take a break
17 from five to ten minutes.

18 I also want to alert you that at 11
19 o'clock today we may have to take a change in our
20 schedule briefly because we'll be losing a couple of
21 key people from Hawaii that have to attend to
22 another matter. So from 11 to approximately 11:30,
23 we may shift the agenda around.

24 We'll keep the meeting going, but we may
25 take a diversion from the primary matter, which is

1 the Kihei High School matter, and then we'll return
2 to that as immediately thereafter, so I just wanted
3 to give you an alert to that.

4 My name is Dan Giovanni, and I have the
5 pleasure to serve as the LUC Chair. We currently
6 have eight seated commissioners. Along with me is
7 Commissioner Nancy Cabral from Hawaii Island,
8 Commissioner Lee Ohigashi from Maui, Commissioner
9 Gary Okuda, Commissioner George Atta, Commissioner
10 Mel Kahele are from Oahu, and Commissioner Michael
11 Yamane is from Hawaii. I'd like to note that
12 Commissioner Kamakea-Ohelo is excused from today's
13 meeting.

14 Joining us from the Zoom, and you can see
15 them on the screen, is LUC Executive Officer Daniel
16 Orodener. Here with us in the room is LUC Chief
17 Planner Scott Derrickson, LUC Planner Riley Hakoda,
18 LUC Planner Martina Segura, and LUC Chief Clerk
19 Ariana Kwan. Also joining us via Zoom from Oahu is
20 LUC Attorney General Dan Morris.

21 Again, court reporting transcriptions are
22 being done from Zoom.

23 Our first order of business is the status
24 report and action, if necessary, on A11-794 State of
25 Hawaii, Department of Education for the Kulanihako

1 High School (Maui), approximately 77.2 acres of land
2 at Kihei, Maui, Hawaii, Maui Tax Map Key Number 2-2-
3 02:81 and 83. This was formerly referred to in this
4 petition as Kihei High School.

5 Let me briefly explain our procedure.
6 First, I will update the record. Next, I will ask
7 the parties to identify themselves. Then I will
8 recognize the written public testimony that has been
9 received in this matter. Identifying the person or
10 organizations who have submitted that testimony
11 would normally be done -- we have -- I'll give you a
12 heads-up, we've received numerous testimony. It
13 would take a long time to do that. So instead of
14 reading each testimony, I'm going to refer people to
15 our website where it's all published.

16 Next, I will call for members of the
17 public who wish to testify on All-794 State of
18 Hawaii, Department of Education. Each member of the
19 public will have two minutes to provide their
20 testimony and shall stand by after their testimony
21 to respond to any questions the parties may have.
22 Before you provide your testimony, I will swear you
23 in to assure that your testimony is the truth. When
24 all questions have been completed, the Chair will
25 excuse the witness and call for the next witness.

1 After completion of the public testimony
2 portion of the proceedings, Chair would like the
3 petitioner to provide its status report. The Chair
4 will then call upon Maui County Planning Department,
5 the Office of Planning and Sustainable Development
6 for comments regarding the status report. The
7 petitioner will then be allowed to respond to
8 comments made by the county and OPSD.

9 The commissioners will ask questions of
10 the party at the conclusion of each presentation.
11 At the conclusion of the parties' testimonies and
12 the commissioners' questions, the public will give -
13 - will be given a second opportunity to provide
14 public testimony in the same manner set forth
15 previously.

16 Once public testimony concludes, the
17 commission will enter into deliberations regarding
18 the status report and decide if any action is
19 necessary. The Chair would also note for the
20 parties and the public that, from time to time, we
21 will be taking breaks, and we will be taking a lunch
22 break, and there may be that diversion that I
23 mentioned in the scheduling of our business for
24 today.

25 Does anybody have any questions or

1 comments or objections to what I have said?

2 Mr. Hopper?

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

4 **CHAIRMAN GIOVANNI:** Thank you.

5 And Office of Planning, any comments or
6 objections? OPSD? Ms. Kato?

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

8 **CHAIRMAN GIOVANNI:** Okay.

9 Petitioner? Can I ask that at this time -
10 - I'd like the parties to identify themselves for
11 the record. So from the petitioner.

12 **MR. HAYASHI:** Aloha and good morning.

13 Aloha and good morning, Chair Giovanni, Vice-Chairs
14 Cabral and Ohigashi, and Commissioners. Keith
15 Hayashi, Superintendent for the Department of
16 Education.

17 **CHAIRMAN GIOVANNI:** Thank you, Mr.
18 Hayashi.

19 County of Maui?

20 **MR. HOPPER:** Good morning, Chair and
21 Members of the Commission. Michael Hopper, Deputy
22 Corporation Counsel, representing the Maui County
23 Department of Planning. With me are Acting Planning
24 Director, Kathleen Aoki, and Deputy Planning
25 Director Garrett Smith.

1 **CHAIRMAN GIOVANNI:** Thank you. OPSD?

2 **MS. KATO:** Good morning, Chair and
3 Commissioners. Allison Kato, Deputy Attorney General
4 for the Office of Planning and Sustainable
5 Development. Also here with me is Lorene Maki from
6 OPSD. Thank you.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 Let me update the record at this time. On
9 July -- I'm not going all the way back in history.
10 I'm only going back to 2013.

11 On July 29, 2013, the commission issued
12 its finding of fact, conclusions of law, decisions
13 of order, and granted the petition subject to 25
14 conditions.

15 On February 6, 2019, the commission
16 received Maui County resolution 19-20 Re: A94-706,
17 asking for declaratory order that asks for condition
18 1(b) of the 2013 DNO that requires an above- or
19 below-ground pedestrian crossing.

20 On April 2nd, 2019, the commission issued
21 its order granting petitioner, the Department of
22 Planning, County of Maui petition of the clarity or
23 -- for a declaratory order and certificate of
24 service to the parties.

25 On August 20, 2020, the commission

1 received petitioner's motion to amend the findings
2 of fact, conclusions of law, and decision and order.
3 On October 2, 2021, the LUC received the most recent
4 annual report from the petitioner.

5 On September 28, 2022, the LUC issued its
6 finding of fact, conclusions of law, decision and
7 order denying the petitioner's motion to amend the
8 Land Use Commission's 2013 decision and order.

9 On January 13, 2023, LUC received a letter
10 from the Kihei Community Association, known as KCA,
11 to the Mayor regarding high school opening. On
12 January 23, 2023, the LUC received public testimony
13 from Mr. Buck Joiner and Mark Hyde.

14 On January 26, 2023, the LUC emailed an
15 agenda for February 8 and 9 meeting, to all parties
16 to statewide and the Maui list for LUC. Between
17 February 1 and February 8, the LUC has received 77
18 written public testimonies in this matter. And, as
19 I said earlier, we're not going to read the names of
20 all those into the record today, but they're all on
21 our website, and you can access them if you --
22 anybody would like to read any of the individual
23 written public testimony, you can find it at
24 LUC.Hawaii.gov. LUC.Hawaii.gov.

25 We identified the parties already. I just

1 want to say that anybody who wants to -- excuse me.

2 Commissioner Atta?

3 **COMMISSIONER ATTA:** I just wanted to
4 mention that the architect for the high school is
5 Group 70, and that I used to work for Group 70, but
6 I haven't worked with them for over ten years now,
7 so I don't think I have anything that's there for me
8 to have a conflict of interest. I think that I'm
9 okay. Yeah.

10 **CHAIRMAN GIOVANNI:** So thank you,
11 Commissioner Atta, for that disclosure. So just to
12 clarify, previously, over ten years ago, he was --
13 had worked -- was engaged with Group 70 who is --
14 has done work on this project for the petitioner.

15 So we'd like to affirm whether or not any
16 of the parties have any objection to Commissioner
17 Atta continuing as a commissioner in this matter.
18 So we'll go to the petitioner. Any objection?

19 **MR. HAYASHI:** No objections.

20 **CHAIRMAN GIOVANNI:** Thank you.

21 County of Maui?

22 **MR. HOPPER:** No objections, Chair.

23 **CHAIRMAN GIOVANNI:** And OPSD?

24 **MS. KATO:** No objections, thank you.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 Commissioner Atta, thank you.

2 So any other disclosures by the
3 commissioners regarding this matter at this time?

4 Seeing none, we'll proceed to public testimony.

5 So for members of the public, again,
6 please be reminded that the commission will not be
7 considering the merits of this petition. Rather,
8 the commission is interested in learning about the
9 current state of activities related to this docket,
10 including compliance with conditions, and we'll
11 consider whether action is necessary or not.

12 I will now recognize the written public
13 testimony submitted in this matter, identifying
14 person and organization submitting the testimony.
15 As I said, you can find that written testimony on
16 the website.

17 Ms. Kwan, has there been any additional
18 written testimony in this matter?

19 **MS. KWAN:** Yes, Mr. Chair. We received
20 three this morning that will be processed and posted
21 to the website tomorrow.

22 **CHAIRMAN GIOVANNI:** My update was before
23 this morning we had 81, is that correct? And so we
24 now have three more, so we're up to a total of 84.
25 And those are on the website.

1 **MS. KWAN:** The three received this morning
2 are not on the website. I will post them tomorrow
3 since we are here.

4 **CHAIRMAN GIOVANNI:** Okay. We have 81
5 posted, and three more will be posted tomorrow.

6 Okay. Members of the public wishing to
7 testify, if you've not already signed in, you can
8 sign in with our clerk.

9 So Ariana, raise your hand again.

10 That's where you sign in. I currently
11 have six -- so I'd like to ask the petitioner, if
12 you don't mind, to identify all the parties that are
13 here today with you and what their role is in this
14 matter.

15 **MR. HAYASHI:** Thank you, Chair. Joining
16 me today is Deputy Superintendent Curt Otaguro, who
17 is the Deputy Superintendent for Operations for the
18 Department of Education. Also joining us today are
19 Deputy Attorney Generals for Education, Carter Siu
20 and Ryan Roylo.

21 **CHAIRMAN GIOVANNI:** So just as a matter of
22 procedure, the Attorney General represents -- the
23 Assistant Attorney General representing will not
24 need to be sworn in, but the rest of you will, so
25 let me do that now, if that's convenient for you.

1 **MR. HAYASHI:** Thank you, Chair.

2 **CHAIRMAN GIOVANNI:** So do the three of you
3 -- we can do this one by one, but I will ask will
4 the three of you -- two attorney generals?

5 **MR. HAYASHI:** Yes.

6 **CHAIRMAN GIOVANNI:** Okay. So the two of
7 you -- yeah. Please raise your hand and testify, if
8 you will, on the matter today the testimony you give
9 will be the truth. Indicate by saying "yes" or "no."

10 **MR. HAYASHI:** Yes.

11 **MR. OTAGURO:** Yes.

12 **CHAIRMAN GIOVANNI:** Thank you. Are we
13 good? We're good. Okay.

14 Okay. Now, I'd like to call members of
15 the public to provide testimony on this agenda item,
16 and I have a list of five -- six people who have
17 signed up for public testimony. Each will be given
18 two minutes for their testimony, and then I will ask
19 you to stay, to address questions that might come
20 your way.

21 So I'm calling first Mr. Buck Joiner. Mr.
22 Joiner, are you in the witness box? Where's our
23 witness box? There you go. Mr. Joiner, may I swear
24 you in. Mr. Joiner --

25 **MR. JOINER:** Thank you, commissioners. My

1 name is --

2 **CHAIRMAN GIOVANNI:** Mr. Joiner. Mr.
3 Joiner.

4 **MR. JOINER:** I'm a 40-year resident --

5 **MS. KWAN:** We have to swear you in, sir.

6 **CHAIRMAN GIOVANNI:** Raise your hand,
7 please.

8 **MR. JOINER:** Oh. My microphones are --
9 no, no, no, no. The microphones are over there.
10 Matt should be able to handle this. Go ahead.

11 I am -- yeah.

12 **CHAIRMAN GIOVANNI:** What I'm holding, this
13 green thing, is a microphone that goes directly to
14 his phone so that he can hear what we're saying.
15 Just provide that for clarity.

16 So Mr. Joiner, may I swear you in now?
17 Please raise your hand. Do you swear or affirm that
18 the testimony that you are about to give is the
19 truth?

20 **MR. JOINER:** Absolutely, yes, sir.

21 **CHAIRMAN GIOVANNI:** Please proceed, Mr.
22 Joiner.

23 **MR. JOINER:** Thank you. Okay. I am Buck
24 Joiner, 40-year resident of Maui. I represent a
25 contingent of Maui people who firmly believe that we

1 need an underpass walkway in addition to an overpass
2 for access to the new high school.

3 I have here 389 messages to the Governor
4 of the State of Hawaii in support of either an
5 overpass or an underpass. DOT and DOE have
6 repeatedly stated that the six-laned crosswalk is
7 safe at the roundabout. It is not, particularly for
8 young teenagers who lack experience, awareness,
9 maturity, and judgment, but instead have raging
10 hormones, energy, and cell phones.

11 We support the underpass crossway because
12 we can do it now. An overpass ultimately will serve
13 more people, but it's going to take millions of
14 dollars and five to eight years to fund and design,
15 permit, and build. We cannot wait that long for a
16 school to open.

17 I hope you have watched the video that I
18 made about how easy it is to build an underpass
19 walkway quickly and cheaply using an existing
20 footbridge or a cargo bridge from a shipyard, the
21 military, a sugar mill, or some other source. I
22 have models over here, which I hope you will take a
23 look at. You have seen them on the video.

24 The Waipuilani Gulch has 13 feet of glass
25 between the bottom of the girders and the concrete

1 channel widening. The primary (audio disruption)
2 the underpass walkway (audio disruption) is that it
3 will fulfill the LUC requirements and allow the
4 Kulanihako'i High School to open.

5 It could be considered a temporary eight-
6 year solution to our current predicament, assuming
7 DOE could actually build an overpass in time.
8 (Audio disruption) ten years of (audio disruption)
9 nothing.

10 Another advantage is that the over -- the
11 underpass walkway is that the elevation difference
12 would normally be about seven feet versus twenty
13 feet for an overpass. The three primary questions
14 we have for DOT today are how much will it cost, how
15 long will it take, and do you have absolute concrete
16 commitment from DOT to use the highway right of way
17 for the overpass. Thank you. Any questions?

18 **CHAIRMAN GIOVANNI:** Thank you, Mr. Joiner.
19 Appreciate it.

20 Petitioner, do you have any questions for
21 Mr. Joiner?

22 **MR. HAYASHI:** No, Chair.

23 **CHAIRMAN GIOVANNI:** Thank you.

24 County of Maui?

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

1 **CHAIRMAN GIOVANNI:** Office of Planning and
2 Sustainable Development?

3 **MS. KATO:** No questions.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 Commissioners, do you have any questions?

6 The Chair has one question, Mr. Joiner.

7 So, in previous hearings where that underpass that
8 you describe was identified, there was testimony on
9 the record that it occasionally is at risk because
10 of flash flood. Have you thought about what would
11 be the remedy during a flash -- a flood episode such
12 as that if we use that for a primary underpass in
13 the near term?

14 **MR. JOINER:** Thank you very much. Yes,
15 indeed I have quite a bit. Let me explain the --
16 there's 13 feet of clearance between the bottom --
17 the underside of the girders and the concrete
18 channel lining. There's also quite a bit of silt
19 that has been built up since 1978 when the bridges
20 were originally constructed.

21 When we had the flood of -- the big one in
22 December 2021, that was really cataclysmic for that
23 area. After that flood last summer, the county came
24 -- owns three acres in front of -- downstream of the
25 bridge, and the county removed four feet of silt

1 over that three acres, which is approximately 20,000
2 cubic yards of dirt.

3 When they did that, it lowered the whole
4 streambed, so to speak. Subsequently, we had a
5 rain, and the rains came down and it washed a
6 section of the center portion away that was under
7 the bridge. The county did not remove this state
8 land. That's state. But now you have this kind of
9 a situation.

10 At this present moment, I measured it on
11 Sunday, it's 15 and a half inches deep. I have
12 designed, built, and installed what I hope is a
13 floodgate to measure it. The water that comes
14 through during any storm is somewhere from zero up
15 to a matter, perhaps, of 15 inches in a major, major
16 flash flood.

17 Remember, that this is very, very broad,
18 almost 100 feet wide, so all with the water --
19 excuse me, with the dirt moved by the county, that
20 allowed the dirt under the bridge to move out. All
21 we have to do is take all of that out. 13 feet of
22 clearance, actual water level is somewhere around
23 12, 18, or less during a flash flood.

24 I envision this walkway as being seven
25 feet below the girders, an actual six feet of

1 clearance for that much water to flow through. It
2 will require ongoing maintenance by both the state
3 and the county to keep that area out in front clear
4 of silt, nominally so, every two, three years.

5 Does that answer your question, sir?

6 **CHAIRMAN GIOVANNI:** It helped -- very
7 helpful. I'm going to ask you a yes or no question
8 now, so the answer is yes or no. So in your
9 opinion, is what you describe as a solution during a
10 flash flood event, if that solution was implemented
11 and we had a flash flood episode, are you saying
12 that the students would still be able to pass
13 through during this flash flood or would it be
14 closed during that flash flood, yes or no? Students
15 pass through, yes or no?

16 **MR. JOINER:** The students could still do
17 that. In addition, if I may, the public would be
18 needing to go to high ground and school will open as
19 a public shelter, so yes, that's still accessible
20 and totally safe.

21 **CHAIRMAN GIOVANNI:** Thank you for your
22 testimony today -- oh, one second. Commissioner
23 Cabral has a follow- up question.

24 **COMMISSIONER CABRAL:** Actually, thank you.
25 I want to thank you for your public testimony today

1 and your written testimony and presenting that to us
2 ahead of time. Since I live on the big island, I do
3 understand rain. I'm in the Hilo area.

4 Now, I've seen some floods, so I
5 appreciate this great explanation about what could
6 occur, and I appreciate all of the testifiers for
7 giving us better insight on what's going on in the
8 community. So I want to thank you and everyone else
9 in the future for your willingness to come out and
10 participate in this process. Thank you.

11 **CHAIRMAN GIOVANNI:** So no question?

12 **COMMISSIONER CABRAL:** No question. Thank
13 you.

14 **CHAIRMAN GIOVANNI:** Thank you,
15 Commissioner Cabral.

16 Commissioner Ohigashi?

17 **COMMISSIONER OHIGASHI:** I just have one
18 comment. My wife says hello to you. She'd know
19 you'd probably be testifying.

20 **CHAIRMAN GIOVANNI:** Thank you.

21 Commissioners, anything further?

22 Commissioner Kahele?

23 **COMMISSIONER KAHELE:** I have a question.

24 Thank you for -- oh, thank you for being here. The
25 three request issues that you had put in your

1 testimony, have you requested it in writing to the
2 Department of Education regarding the cost, how long
3 would it take, and of course, whether they have
4 already made a decision regarding the right of way
5 for the overpass? Those three questions on the
6 bottom of your testimony?

7 **MR. JOINER:** I did not submit those
8 questions, but let me explain the -- trying to find
9 somebody in the DOE that will actually respond is a
10 needle in a haystack. I have also asked the
11 Department of Transportation. The current Deputy
12 Director for Highways I have known for ten years or
13 so and have very good relations -- I asked --
14 relationship with them.

15 I have asked them the questions, and I
16 can't -- they won't answer. The -- the -- you know,
17 this footprint that -- where this is going to go,
18 this overpass, is actually in the -- belongs to the
19 Department of Transportation (audio disruption)
20 permission.

21 Piilani Highway has four lanes right now.
22 And if (audio disruption) operating at level D, and
23 it needs to go to six lanes. We've only got four-
24 lane bridges, but there's no other solution, so I
25 think that the DOT is going to need that,

1 ultimately. And I can't get an answer to my
2 question, sir.

3 **COMMISSIONER KAHELE:** Thank you.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 Commissioner Okuda.

6 **COMMISSIONER OKUDA:** Mr. Joiner, thank you
7 again for your testimony. You prepared a model of
8 the roundabout which is on the table in the rear of
9 the -- this meeting hall, correct?

10 **MR. JOINER:** Yes, sir.

11 **COMMISSIONER OKUDA:** Can you please tell
12 the commission and everyone in the room what that
13 model is intended to show?

14 **MR. JOINER:** Yes. I started building this
15 while the roundabout was under construction, and to
16 model it I received an engineering drawing from the
17 Department of Transportation, and 8 by 11, and then
18 I scaled it up because we didn't know what this was
19 going to look like at best, and so I made this to be
20 able to take to the public to demonstrate this is
21 what we have.

22 The fact that there's actually six lanes
23 to cross instead of four lanes was quite a surprise
24 to many, many people. It is a very scary thing.
25 You have to get across it in sections. I have done

1 it.

2 **COMMISSIONER OKUDA:** Does that model
3 accurately depict the conditions that now exist at
4 that site?

5 **MR. JOINER:** Yes, sir. So the best of my
6 knowledge, it is an exact duplicate. The colors are
7 not the same. Some of the elevations are different,
8 but everything is proportionally correct. And it's
9 -- yeah.

10 **COMMISSIONER OKUDA:** Okay. Thank you very
11 much, Mr. Joiner.

12 **CHAIRMAN GIOVANNI:** Commissioners,
13 anything further for this witness?

14 Thank you, Mr. Joiner. You are excused.
15 Thank you for your testimony today.

16 I'd like to call to testimony now, public
17 testimony, Mr. Mike Moran, from the Kihei Community
18 Association. Good morning, Mr. Moran. Do you swear
19 that the testimony you will provide today is the
20 truth?

21 **MR. MORAN:** I do.

22 **CHAIRMAN GIOVANNI:** Please proceed. You
23 have two minutes.

24 **MR. MORAN:** Good morning, Chair and
25 Commissioners --

1 **CHAIRMAN GIOVANNI:** A little bit closer to
2 the mic, please. You don't speak quite as loudly as
3 Mr. Joiner.

4 **MR. MORAN:** Good morning, Chair and
5 Commissioners. Thank you for your volunteer service
6 to the community and thank you for coming to Kihei
7 this morning on this decade-long matter. My name is
8 Mike Moran, and I'm currently the President of the
9 Kihei Community Association.

10 We'll try to hit a few pertinent points.
11 First is the location. While a few commissioners
12 did a site visit back in June of 2018, many of you
13 were not on the commission then, so you may not have
14 had the opportunity to closely observe the location.

15 Additionally, major construction has
16 occurred since 2018. We expect that you've traveled
17 through the area at the roundabout of Piilani
18 Highway to this morning's meeting. If you can
19 recall that location, imagine taking -- trying to
20 cross and stopping four lanes of commuter traffic,
21 totaling six lanes. Does this seem safe to you?

22 On the status update, while we are here to
23 hear what the DOE has come to Kihei to share, KCA is
24 here to provide you our perspective on the school's
25 status. In the decade since the commission granted

1 the land use change with conditions, most
2 importantly the required grade- separated pedestrian
3 crossing, before the school opens, we have not seen
4 the DOE take any true action to meet this mandate.

5 No construction has commenced as of today.
6 The result is the DOE is trying to open this school
7 by hosting some high school students at our middle
8 school while others continue to commute to schools
9 20 miles away. On the certificate of occupancy you
10 have seen at our county government administration in
11 support of KCA's decade-long effort will not violate
12 your condition.

13 Insufficient provisions, the State
14 Department of Transportation has constructed
15 crosswalks across this highway as the only way for
16 children walking, skateboarding, scootering, or even
17 cycling, who access the school with a mere yellow,
18 not even red, flashing beacon to shield them from
19 moving vehicles in commuter traffic. Do you think
20 this is safe?

21 And then on safety, most everyone says the
22 number one concern is safety. When the commission
23 granted the land use change, they included
24 conditions to promote safety. When the DOE refuses
25 to abide by them, they are jeopardizing the safety

1 of their charges, our children.

2 And, in conclusion is the topic of trust.

3 And we ask, do you trust the DOE? Our community
4 does not. The actions of this agency clearly show
5 safety of our community is neither a concern nor a
6 model. Thanks for the opportunity to testify.

7 **CHAIRMAN GIOVANNI:** Thank you, Mr. Moran.
8 Petitioner, any questions for the witness?

9 **MR. HAYASHI:** No questions, Chair.

10 **CHAIRMAN GIOVANNI:** Thank you.
11 County of Maui?

12 **MR. HOPPER:** No, thank you, Chair.

13 **CHAIRMAN GIOVANNI:** And OPSD?

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

15 **CHAIRMAN GIOVANNI:** Commissioners, any
16 questions?

17 Commissioner Okuda?

18 **COMMISSIONER OKUDA:** For the record, this
19 is Gary Okuda. Thank you, Mr. Moran, for your
20 testimony. The controlling order or the order that
21 controls this case, which hasn't been appealed from
22 by the Department of Education or anyone else, is a
23 document titled, Order Denying Petitioner Department
24 of Education's Motion to Amend the Land Use
25 Commission's Findings of Fact, Conclusions of Law,

1 and Decision and Order filed on July 29, 2013, and
2 certificate of service.

3 That document was filed September 28,
4 2022, and if somebody had a beef with that order, a
5 notice of appeal should have been filed, I believe,
6 within 30 days. So that's a controlling order.

7 Now, one of the findings that was made in
8 that order, and I quote, is "Petitioner," meaning
9 the Department of Education, "has not made a good
10 faith effort to work with the county or community on
11 the issue," close quote.

12 Since the time we had the hearing, which
13 resulted in this order, can you tell this commission
14 what type of contact the Department of Education has
15 made with either you or directors or officers of the
16 Kihei Community Association or any of the agents of
17 the KCA with respect to the grade-separated
18 pedestrian crossing?

19 **MR. MORAN:** No contact with anyone in our
20 association. And as far as we know, no contact with
21 anyone in our community.

22 **COMMISSIONER OKUDA:** And I mean,
23 basically, you're an easy guy to find in the
24 community, correct?

25 **MR. MORAN:** Yes, sir, too easy.

1 **COMMISSIONER OKUDA:** Yeah. Anyone contact
2 you about the grade-separated pedestrian crossing
3 since the time that we had the Land Use Commission
4 hearings and meetings which resulted in that final
5 order which no one has appealed from?

6 **MR. MORAN:** No, sir.

7 **COMMISSIONER OKUDA:** Thank you very much,
8 Mr. Chair. I have no further questions.

9 **CHAIRMAN GIOVANNI:** Commissioner Cabral.

10 **COMMISSIONER CABRAL:** Thank you once again
11 for coming forward, and I was on the commission in
12 2018, and I did that site visit, and I remember that
13 roadway, standing there, in fact.

14 And I think I'm a pretty brave person, but
15 I literally said, let's go stand down into this
16 ditch swell there because, as we stood there 10, 15
17 feet from the roadway, traffic, I mean, every car
18 that went by, I felt the, you know, that I could get
19 knocked over from the wind current, so I -- it's a
20 very memorable trip to me about how extremely fast
21 and powerful and numerous the cars were.

22 So, I do thank you for bringing that out,
23 and all of our commissioners did, in fact, at least
24 see the intersection while construction was going on
25 this morning, so thank you for enlightening us and

1 reminding us of that visit. Thank you.

2 **MR. MORAN:** Mahalo.

3 **CHAIRMAN GIOVANNI:** Thank you. I see no
4 other questions. Thank you for your testimony.

5 **MR. MORAN:** Mahalo, Commissioners.

6 **CHAIRMAN GIOVANNI:** The next is Cheri
7 Nakamura. Ms. Nakamura, please state your name and
8 affiliation, but let me swear you in as well.

9 **MS. NAKAMURA:** Aloha. My name is Cheri
10 Nakamura, and I'm Director of HE'E Coalition. We're
11 a public education advocacy group.

12 **CHAIRMAN GIOVANNI:** Do you swear that the
13 testimony you're about to give today is the truth?

14 **MS. NAKAMURA:** Yes, I do.

15 **CHAIRMAN GIOVANNI:** Please proceed. You
16 have two minutes.

17 **MS. NAKAMURA:** Aloha, Chair Giovanni,
18 Members of the Commission. Once again, my name is
19 Cheri Nakamura, and I'm Director of the Hui for
20 Excellence in Education or HE'E Coalition, a public
21 education community advocacy group.

22 We would like to stand on our written
23 testimony which supports the 2013 LUC order docket
24 number A11-794 and the 2014 Maui County Ordinance
25 4135, requiring that the DOE build a grade-separated

1 pedestrian crossing as a condition before opening
2 Kulanihakoi High.

3 We're not sure why the DOT justified to
4 the DOE that a roundabout would be a legitimate
5 alternative to a GSPC, why the DOE agreed to pay 16
6 million for that roundabout, and why, after close to
7 300 million in legislative appropriations and over
8 200 million in construction contracts for the
9 school, we still do not have a GSPC and, therefore,
10 cannot open the school.

11 We are disappointed in both the actions of
12 the DOE and the DOT to not comply with the law, the
13 lack of transparency and communication to this body
14 and the community, and an apparent focus on the
15 agendas of agencies versus student and citizen
16 safety.

17 We urge the LUC to maintain its stance and
18 encourage the DOE and DOT to work with the community
19 to find an acceptable solution to open the school.
20 Thank you for this opportunity to testify.

21 **CHAIRMAN GIOVANNI:** Thank you, Ms.
22 Nakamura.

23 Petitioner, any questions for this
24 witness?

25 **MR. HAYASHI:** No questions, Chair. Thank

1 you.

2 **CHAIRMAN GIOVANNI:** Thank you.

3 County of Maui, any questions?

4 **MR. HOPPER:** No, thank you, Chair.

5 **CHAIRMAN GIOVANNI:** OPSD?

6 **MS. KATO:** No questions.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 Commissioners, any questions for Ms.

9 Nakamura?

10 Seeing none. Thank you very much for your
11 testimony today.

12 Next person on the list is Mr. Andrew
13 Beerer. I've probably mispronounced your last name.
14 I apologize. Please state your name for yourself and
15 your affiliation and then I'll swear you in.

16 **MR. BEERER:** My name is Andrew Beerer,
17 longstanding Kihei Community Association board
18 member and Education Committee Chair.

19 **CHAIRMAN GIOVANNI:** Do you swear that the
20 testimony you are about to give today will be the
21 truth?

22 **MR. BEERER:** Yes, I do.

23 **CHAIRMAN GIOVANNI:** Please proceed.

24 **MR. BEERER:** Dear Commissioners, thank you
25 for your time and volunteer service. I'm Andrew

1 Beerer, longstanding Kihei Community Association
2 board member and Education Committee Chair.

3 For 13 years, I have been one of the
4 leading community advocates for Kihei High School.
5 I'm asking the Land Use Commission to once again
6 reaffirm its previous rulings requiring inclusion of
7 an underpass or overpass before the school will
8 open.

9 This condition has been mandated for ten
10 years, and we see it as nonnegotiable. The current
11 roundabout is the vehicular solution. The overpass
12 or underpass is the pedestrian solution. We need
13 both.

14 Our primary goal is to provide our
15 students and community safe pedestrian access to
16 Kulanihakoi High School. The DOE bussing policy
17 states that bussing is not provided to students
18 within a one-and-a-half-mile radius of school. We
19 estimate this to include approximately 75 percent of
20 the student body.

21 Without bussing, these students deserve
22 safe destiny access to the school via an underpass
23 or overpass. Parents in our community are scared to
24 death of the thought of their children crossing the
25 roundabout six lanes of highway traffic twice a day.

1 A longstanding goal of our community is to
2 make it a walkable, bikeable community. If there's
3 not safe access for pedestrians, then we inherently
4 encourage everyone to drive to school. This is
5 counterproductive to our smart growth goals and will
6 further increase traffic and potential for vehicle
7 and pedestrian accidents.

8 This was a tough meeting to prepare
9 testimony for as we were blind to what updates were
10 going to be presented; however, yesterday we saw a
11 preview of the DOE's upcoming slideshow, so I'm
12 going to veer from my presubmitted testimony to
13 address the atrocious design of the overpass they
14 are presenting.

15 I can only hope this is a schematic
16 because it looks like a 1930s Soviet Union military
17 cage bridge. After ten years of stalling, this is
18 what the DOE presents to us? We certainly deserve
19 better.

20 As the entryway to our community, it will
21 be the welcome to Kihei icon that will be the first
22 thing people notice when people traveling into Kihei
23 and Waialea. It needs to be aesthetically pleasing,
24 or it will fail to be accepted or permitted as an
25 eyesore.

1 We want to encourage more discussion
2 regarding the design. The DOE needs to collaborate
3 with the community, KCA Design Review Board, and
4 County Planners in the design and implementation
5 over the -- of the overpass.

6 This is a simple example of a fairly good-
7 looking overpass. You'll go over passes --
8 pedestrian overpasses, and you'll see great examples
9 that can still be done at fair value.

10 Our committee -- other Land Use Commission
11 conditions that we would like addressed at this
12 meeting: Is DOE in compliance with lot condition 1D,
13 that the petitioner shall install paved shoulders,
14 providing accommodations for bicycles to the mutual
15 agreement of the petitioner and DOE?

16 KCA would like to know what that solution
17 looks like. We have removed bike path shoulders, or
18 is it simply three feet of depth shoulder on the
19 highway next to the guardrail?

20 Our community has other concerns. We
21 would like the DOE to give us an update on these
22 other topics. Is there any renewable energy or
23 solar power being generated? The EIS clearly states
24 that the school will be lead certified silver and
25 the first net zero school, producing as much energy

1 as it uses.

2 Our first question, where is the renewable
3 energy solar power? What does that look like? And
4 then our second question, are all the classrooms and
5 facilities air- conditioned?

6 We are also seeking an update on other key
7 elements of the campus that are still missing,
8 including a gym, track, and athletic fields of any
9 kind. And again, the all-important use of renewable
10 energy, as represented in the EIS.

11 We believe this school will always be
12 hamstrung to get full enrollment if it is only half
13 of a campus and is missing key elements such as gym
14 and athletic fields, because parents don't want to
15 send their kids to incomplete schools. They will
16 continue to bus them to Maui High School.

17 So we need to get a better idea of where
18 your priorities and funding stages are for those
19 essential elements and amenities for this campus.
20 Thank you.

21 **CHAIRMAN GIOVANNI:** Thank you, Mr. Beerer.
22 Parties, you will have an opportunity to
23 ask questions. For petitioner, any questions?

24 **MR. HAYASHI:** No questions, Chair.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 County of Maui?

2 **MR. HOPPER:** No, thank you, Chair.

3 **CHAIRMAN GIOVANNI:** Office of Planning?

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

5 **CHAIRMAN GIOVANNI:** Commissioners, any
6 questions?

7 Commissioner Okuda?

8 **COMMISSIONER OKUDA:** For the record, this
9 is Gary Okuda. Thank you, Mr. Chair.

10 Mr. Beerer, just so that it's clear, you
11 and I aren't conspiring about anything -- except for
12 you appearing before the Land Use Commission, you
13 and I have never spoken with each other, is that
14 correct?

15 **MR. BEERER:** That is correct.

16 **COMMISSIONER OKUDA:** And frankly, you and
17 I have never exchanged any type of communication
18 whether it's text messages, emails, documents,
19 secret text messages, or anything like that,
20 correct?

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

22 **COMMISSIONER OKUDA:** Okay. I'm going to
23 read your testimony that you gave at the February
24 20, 2019 hearing. I have to go back and look at
25 these transcripts to see what everybody said.

1 And if you look at the transcript of the
2 hearing on page 128, lines 5 through 11, I'm going
3 to read what the transcript showed as your
4 testimony. I'm going to ask you whether you recall
5 -- and I know it's been a while -- whether that
6 seems to be or you recall that being your testimony,
7 and then I'm going to ask you whether, as of today,
8 you still stand by that testimony.

9 So let me read your testimony as reflected
10 in the transcript, page 128, lines 5 through 11.

11 Quote, "If there is a delay in opening due to
12 noncompliance, then it is clearly because the DOE
13 ignored the community's condition for necessary
14 pedestrian infrastructure. At that point, the
15 community must hold them accountable. A condition
16 is a condition. It's all we have," close quote.

17 Do you recall that being your testimony
18 back in 2019?

19 **MR. BEERER:** Yes, I do, because that's a
20 sacred mantra to me as these conditions are all that
21 we as a community have for leverage. We are not
22 attorneys. We are not stakeholders. We are not
23 petitioners, and we certainly just absolutely hold
24 dear any condition we have to improve this facility
25 or this project.

1 **COMMISSIONER OKUDA:** And speaking both as
2 an individual and in your capacity with the Kihei
3 Community Association, do you still stand by that
4 testimony and statement as of today?

5 **MR. BEERER:** Yes, I sure do.

6 **COMMISSIONER OKUDA:** Thank you very much,
7 Mr. Chair. No further questions.

8 **CHAIRMAN GIOVANNI:** Thank you.

9 Commissioners, anything further?

10 So this is a point of clarification, Mr.
11 Beerer. The exhibit that you held up, is that part
12 of your written testimony?

13 **MR. BEERER:** It is part of -- it's not
14 part of my submitted testimony because this came
15 after I had submitted testimony. But this was an
16 example I had taken a photograph of in Denver,
17 Colorado. And if you Google "good-looking
18 overpasses," you'll find hundreds and hundreds of
19 good examples.

20 It would -- it would show the same basic
21 infrastructure of a rectangular bridge that is
22 protected on all sides. But by simply adding some
23 arching accoutrements, we can make this a much more
24 aesthetically pleasing for our community. And I
25 would really encourage the DOE to go that extra mile

1 because you're going to be much more well accepted
2 by the community and the county planners than
3 proposing something that looks awful, for lack of a
4 better word.

5 **CHAIRMAN GIOVANNI:** Mr. Beerer, would you
6 be willing to submit that exhibit as part of your --
7 part of the record on this matter today?

8 **MR. BEERER:** Yes, absolutely.

9 **CHAIRMAN GIOVANNI:** Let me ask the parties
10 if they have any objection.

11 Petitioner, any objection to submittal of
12 this?

13 **MR. HAYASHI:** No objection, Chair.

14 **CHAIRMAN GIOVANNI:** Mr. Hopper?

15 **MR. HOPPER:** It's a photograph from the
16 internet, essentially, or --

17 **MR. BEERER:** It's a personal photograph.
18 If you let me know how I could personally --

19 **CHAIRMAN GIOVANNI:** He personally took the
20 photograph when he was in Denver was what I heard.

21 **MR. HOPPER:** Oh, okay. So -- yeah, that's
22 fine.

23 **CHAIRMAN GIOVANNI:** Thank you.

24 OPSD, any objection?

25 **MS. KATO:** No objection.

1 **CHAIRMAN GIOVANNI:** Thank you.

2 So if you would, please, provide a copy of
3 that photograph to the staff, the LUC, for the
4 record, I'd appreciate it.

5 **MR. BEERER:** Absolutely. Thank you.

6 **CHAIRMAN GIOVANNI:** Thank you. That
7 concludes your testimony and thank you for coming
8 forward again on this matter.

9 **MR. BEERER:** Thank you.

10 **CHAIRMAN GIOVANNI:** Next on the list is
11 Ms. Tina Wildberger. Ms. Wildberger, please state
12 your name and affiliation and then I'll swear you
13 in.

14 **MS. WILDBERGER:** Good morning. My name is
15 Tina Wildberger. I'm here as a member of the Board
16 of Directors for Kihei Community Association.

17 **CHAIRMAN GIOVANNI:** Do you swear your
18 testimony today is -- will be the truth?

19 **MS. WILDBERGER:** Yes, sir.

20 **CHAIRMAN GIOVANNI:** Please proceed.

21 **MS. WILDBERGER:** Thank you. Aloha, Chair
22 Giovanni and Members of the Land Use Commission.
23 Thank you very much for coming to Kihei today. It
24 is a pleasure to see you all in 3D after several
25 years of Zooming.

1 This very important topic, appreciate the
2 contributions by the Department of Education here in
3 Kihei. We appreciate you coming to our community.

4 I mentioned I'm here as a board member for
5 KCA, but for four years previous, I was the elected
6 official for South Maui in the State House, and I
7 worked very closely with KCA helping them advocate
8 for Kihei's vision of a walkable, bikeable
9 community.

10 **CHAIRMAN GIOVANNI:** Pardon. Start over
11 where you said for four years.

12 **MS. WILDBERGER:** Okay. For four years, I
13 was Kihei's elected Representative in the State
14 House, and I worked very closely with KCA principals
15 on this issue, trying to help bring the message of
16 our desires for a walkable, bikeable community to
17 the various state departments that are responsible
18 for implementing our infrastructure.

19 What the DOE and the DOT have delivered is
20 neither walkable nor bikeable. What we have is an
21 expensive travesty, which is safely accessible only
22 by passenger vehicle. The most expensive facility
23 ever built by the department and not a single
24 renewable energy component. By the way, just
25 another broken promise.

1 I'm left wondering who exactly is the DOE
2 accountable to. Certainly not the community.
3 Clearly not the LUC, based on your decade-long
4 defiance of the conditions.

5 But I'd like to thank the DOE for the
6 PowerPoint that I think you're going to present here
7 after testimony is taken. There are two pictures in
8 your presentation that shows the Waipuilani Gulch
9 running in the most recent hundred-year storm that
10 we're now having annually.

11 And you can see in those two photos
12 clearly that the gulch, even while actively running,
13 is very wide, and there is more than enough room for
14 a pedestrian and bike path along the north side of
15 that gulch. An underpass, which is what the
16 community wants, would best serve our community
17 plan.

18 This leaves the kids in North Kihei.
19 There's still no plan for them to get to the school
20 safely. That's the part of our community that's
21 most economically disadvantaged. Their parents will
22 be working and won't be able to drive them to
23 school. They don't qualify for bus because they're
24 so close. Are they supposed to cross the highway
25 twice to get to school?

1 I would like to thank Mayor Bissen's
2 administration for supporting our community and
3 withholding the certificate of occupancy until the
4 DOE fulfills its promises and obligations to the
5 Kihei community. I appreciate your time. Thanks
6 for sticking up for Kihei all of these years.

7 Kids crossing highway traffic is how Oahu
8 does it. It's not what we want for Maui. Thank
9 you.

10 **CHAIRMAN GIOVANNI:** Thank you, Ms.
11 Wildberger.

12 Petitioner, any questions for the witness?

13 **MR. HAYASHI:** No questions, Chair.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 County of Maui?

16 **MR. HOPPER:** No questions, Chair.

17 **CHAIRMAN GIOVANNI:** OPSD?

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

19 **CHAIRMAN GIOVANNI:** Commissioners?

20 Commissioner Ohigashi.

21 **COMMISSIONER OHIGASHI:** Ms. Wildberger, I
22 think Mike Moran's testified that the DOE attributed
23 \$16 million to the development of the roundabout.
24 Are you familiar or do you have any knowledge of
25 that statement or whether that is true or not?

1 **MS. WILDBERGER:** I believe that is true.
2 I worked -- I had a summit at the capitol. I
3 invited DOT personnel and DOE personnel and KCA
4 personnel to meet together so that the community
5 could present their idea, their vision for both a
6 roundabout and pedestrian-separated crossing.

7 And it was in that meeting that I watched
8 DOT tell DOE kind of an aside convo that we're going
9 to give them their roundabout, but we're not going
10 to do the underpass.

11 **COMMISSIONER OHIGASHI:** Well, Ms.
12 Wildberger, specifically, I'm asking you about the
13 \$16 million. Do you have any knowledge that DOE
14 contributed \$16 million to the roundabout?

15 **MS. WILDBERGER:** I think that's correct,
16 yes.

17 **COMMISSIONER OHIGASHI:** And where -- what
18 do you base that knowledge on? I'm just trying to
19 get a --

20 **MS. WILDBERGER:** Just history.

21 **COMMISSIONER OHIGASHI:** And the reason why
22 I'm asking is that the -- as I recall, the
23 representations from the DOE, and I may be wrong
24 about it, was that they would -- that this
25 roundabout would be funded by the DOT and --

1 **MS. WILDBERGER:** I think there was some
2 back and forth about that.

3 **COMMISSIONER OHIGASHI:** -- whether or not
4 \$16 million, which could have been used to develop
5 an overpass, was spent on a roundabout instead of
6 meeting the conditions of the permit. That's the
7 gist of my question.

8 **MS. WILDBERGER:** Well, I guess we're
9 coming to the table asking for --

10 **COMMISSIONER OHIGASHI:** I don't think that
11 requires an answer really. Probably, I think the
12 DOE will answer.

13 **CHAIRMAN GIOVANNI:** Thank you.
14 Commissioners?
15 Commissioner Okuda?

16 **COMMISSIONER OKUDA:** Thank you for coming
17 today, Ms. Wildberger. I recall when you were State
18 Representative, you testified that you would be
19 willing to submit a request for funding to build a
20 grade-separated pedestrian crossing. Is my
21 recollection of your testimony to the Land Use
22 Commission accurate?

23 **MS. WILDBERGER:** I believe so.

24 **COMMISSIONER OKUDA:** Did the Department of
25 Education, at any time from the time that you gave

1 that testimony before the Land Use Commission to the
2 time that you left public service as a State
3 Representative, ever request that you submit a
4 request for funding of a grade- separated pedestrian
5 crossing, whether that grade-separated pedestrian
6 crossing is an underpass or an overpass?

7 **MS. WILDBERGER:** I have found it very
8 difficult to communicate with anyone at the
9 Department of Education as a State Representative
10 representing Kihei.

11 **COMMISSIONER OKUDA:** Okay. So nobody from
12 --

13 **MS. WILDBERGER:** No communication.

14 **COMMISSIONER OKUDA:** Okay. And no
15 communication includes any communication of
16 requesting funding for the grade-separated
17 pedestrian crossing?

18 **MS. WILDBERGER:** Correct.

19 **COMMISSIONER OKUDA:** And let me repeat the
20 question I asked earlier to one of the previous
21 witnesses with respect to the specific finding that
22 the Land Use Commission issued in its order, which
23 hasn't been appealed from, so I think the DOE, under
24 the doctrine of res judicata is kind of stuck with
25 this, but the finding is again, quote, "Petitioner

1 has not made a good faith effort to work with the
2 county or community on the issue," close quote.

3 From the time that you left government
4 service as a State Representative to present, do you
5 know of any effort in good faith or otherwise, even
6 bad faith, by the Department of Education to work
7 with the community on this issue regarding a grade-
8 separated pedestrian crossing?

9 **MS. WILDBERGER:** I do not.

10 **COMMISSIONER OKUDA:** Thank you very much,
11 Ms. Wildberger.

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

14 **CHAIRMAN GIOVANNI:** Thank you,
15 Commissioner.

16 Commissioners, anything further for this
17 witness? Seeing none.

18 Thank you very much for your testimony
19 today.

20 **MS. WILDBERGER:** Thank you, Chair.

21 **CHAIRMAN GIOVANNI:** So it's 10:18. We've
22 been going an hour, but I see only one more person
23 on the list, is that correct, Mr. Vernon Kalanikau
24 (sic) -- excuse me - - Kalanikau. So let's take
25 that testimony, and then we'll take a break after

1 that.

2 Mr. Kalanikau, my apologies for
3 mispronouncing your last name. Will you please
4 state your name and your --

5 **MR. KALANIKAU:** Yeah. So my name is
6 Vernon Kalanikau, resident of Kula.

7 **CHAIRMAN GIOVANNI:** Do you swear the
8 testimony you're going to give us will be the truth?

9 **MR. KALANIKAU:** Of course. Yes.

10 **CHAIRMAN GIOVANNI:** Please.

11 **MR. KALANIKAU:** So Vernon Kalanikau,
12 resident of Kula Kai, not Kihei. Remember those
13 times we met at other properties.

14 But -- so at this moment, I want to ask
15 the ninth graders for Kulanihakoi High School to
16 stand up and remain standing until I'm done with my
17 testimony. So this is the ninth-grade students for
18 Kulanihakoi, about 30 students. We house them at
19 Lokelani Intermediate right now where I'm employed
20 there. I've been there 32 years. And we hosting
21 them temporarily until we figure out when we're
22 going to open the high school, right?

23 So I also want to mention that, you know,
24 KCA been here a long time, but they're not the only
25 ones that represent this community here, myself, and

1 many others. And we do not share everything what KCA
2 may present in this community. And what they say
3 not the entire community, yet the schools.
4 (Inaudible), for the record. So here we are, the
5 overpass/underpass. The underpass, we need to
6 address that. I get what Mr. Joiner is saying, but
7 there's more to it. G70 was hired to do studies on
8 that. The Kona low storm, the water hit the top of
9 the bridge. It just needs to be redesigned, and we
10 just want to let you guys know that.

11 The overpass, to me right now, it doesn't
12 matter which way we go. It's going to take time.
13 It's going to take years to decide which option is
14 going to work. I think we're all in agreement that
15 for the kids or any pedestrians who cross that
16 roundabout is kind of weird and unsafe. We agree on
17 that.

18 But in the meantime, and that's a high-
19 ticket item sitting on that hill, are we going to
20 let that school just sit, look pretty up on the
21 hill? When the principal for that high school came
22 over to shuttle -- and then KCA members knew this.
23 They're not talking about it, but they knew this.

24 So the principal, Ms. Maxwell purchased
25 two shuttle bus, and the plan was shuttle her kids

1 to school. They'll get picked up right outside here,
2 possible location, and then get picked up at school
3 and bring them back over here. Just like what
4 Kamehameha School do.

5 You know, it's only a temporary Band-Aid
6 fix, but nobody in this community will oppose or
7 prevent that school from -- from not being
8 completed, and it's still being work being done.
9 Nobody's stopping the school from being completed.

10 So here we have kids, yeah, waiting to
11 occupy that campus, but we got to figure out a safer
12 way, which we all agree we're here upon, and we just
13 have to figure that out.

14 At the meantime, I think the shuttle bus
15 service would be a good option temporary because
16 it's a gradual growth for enrollment. You know, we
17 start with nine. Next year, maybe nine/ten. So
18 it's going to take time -- the school going to take
19 time for -- with their landscaping and whatever else
20 need to be fulfilled up there.

21 So it's kind of -- it's not going to look
22 good the school stay closed. High ticket item is
23 just not looking well right now, so -- so let's
24 think about that, you know.

25 And then I'd like to ask the DOE and the

1 county, you know, keep you in the loop because I get
2 ideas. Other people get ideas. It's not just one
3 way, yeah. So that's all I have.

4 **CHAIRMAN GIOVANNI:** Thank you very much.
5 Stand by for questions.

6 Could I ask the students to sit down at
7 this time?

8 **MR. KALANIKAU:** Yeah, thank you.

9 **CHAIRMAN GIOVANNI:** Thank you.
10 So petitioner, any questions?

11 **MR. HAYASHI:** No questions, Chair.

12 **CHAIRMAN GIOVANNI:** Thank you.
13 County of Maui?

14 **MR. HOPPER:** No, thank you, Chair.

15 **CHAIRMAN GIOVANNI:** Office of Planning?

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

17 **CHAIRMAN GIOVANNI:** Commissioners?
18 Commissioner Okuda.

19 **COMMISSIONER OKUDA:** Thank you very much
20 for coming to testify. Are you a schoolteacher?

21 **MR. KALANIKAU:** No. Head custodian now 32
22 years. Kind of getting tired clean up the
23 classrooms, yeah. Yeah, I've been there a long
24 time.

25 **COMMISSIONER OKUDA:** You know, my wife is

1 a retired schoolteacher, and we know the school
2 takes everybody. I mean, Senator Kurt Fevella was
3 the custodian at Campbell High School.

4 And as -- you know, every -- we all know
5 the staff who do all different jobs, not only
6 teaching, but all also contribute to public
7 education. I'm a public high school guy, and I
8 think I'm just as good as the private school guys
9 who work in my law office.

10 **MR. KALANIKAU:** Yeah.

11 **COMMISSIONER OKUDA:** But let me tell you
12 what -- what's at least facing me the problem I
13 have. And I'll be kind of blunt about it because my
14 wife says I'm not polite, yeah.

15 We feel -- or I feel like I'm being held
16 hostage, okay. And what -- what a hostage is that
17 are being kept or used against us -- or against me,
18 people like you who really care about education,
19 people like the students who attend the school. You
20 know, we had testimony on the record, and -- and if
21 -- you know, petitioners -- and we'll go over this
22 when the petitioners give their presentation.

23 But this is from the transcript of October
24 27, 2021, on page 72, lines 1 to 18. And I asked
25 the deputy -- or Assistant Superintendent, Mr.

1 Tanaka, who testified at that point, about the facts
2 that led to the granting of the building permits
3 which allowed the Department of Education to build a
4 new high school.

5 What happened was the Department of
6 Education went into the County of Maui and applied
7 for the building permits, and the County of Maui
8 said, hey, where's the plans for the grade-separated
9 pedestrian crossing. And Mr. Tanaka testified under
10 oath that at that time, when they went in for the
11 permits in 2020, in 2019, the Department of
12 Education already made a decision they weren't going
13 to build a grade-separated pedestrian crossing.

14 Doesn't matter what the Land Use
15 Commission ordered; they're just not going to build
16 it. But you know what, instead of telling the truth
17 the County of Maui, they told the County of Maui in
18 a letter, which was Exhibit 4 submitted by the
19 county in that hearing, oh, we promise you there'll
20 be a grade-separated pedestrian crossing, it's in
21 designing, and we promise you it's going to be in
22 operation before the high school opens.

23 And Mr. Tanaka testified that that letter
24 -- and these are his words -- were either misleading
25 or contained a misleading statement. So the problem

1 I personally have is we're supposed to show an
2 example to our students, to our kids, that truth
3 matters, especially in American Democracy. We in
4 government, we have a duty to tell the truth.

5 But now the DOE is presenting to us like,
6 hey, you know what? Maybe we misrepresented. We
7 admit we misrepresented things to get our building
8 permit, but you know what, if you don't cave in on
9 this and look the other way, we're going to leave
10 this multi-million-dollar school empty, and so make
11 the hard choice.

12 And I don't know, we're here just to
13 listen. We listen to all the evidence. But that's
14 -- do you have any solution for that? I mean, how
15 can we trust people who admit under oath that they
16 misrepresent something?

17 **MR. KALANIKAU:** So, yeah, so you hit it.
18 I mean, I'm not turning away --- I get what you're
19 saying and that's accurate. But whether it's DOT,
20 DOE, you guys in the middle of all of this, and you
21 know, all the bureaucracy and -- and whatever
22 happened happened, accountability, still, you know -
23 - so -- so it's temporary solution, yeah.

24 You know, and I'm not doing it because I
25 work DOE or we host them on our campus. We got

1 figure out how to occupy. So -- so I have ideas,
2 and I'll just be really quick, you know.

3 So let's take advantage of that. It's
4 just a temporary -- it's just 30 kids. And then --
5 but with -- with the help of KCA and others, you
6 know, and some of their stuff they're talking about
7 is valid, say, with Buck Joiner. But we're going to
8 figure it out, you know. We just need more time.

9 Yeah, and whatever DOE or Mr. Tanaka did,
10 it's there, you know, so what we going to do, you
11 know. So I stuck. Everybody's stuck. You guys
12 stuck. I think it's common, you know, in this
13 community. It's common elsewhere, like, the
14 politics, bureaucracy, designations, conditions, so
15 yeah, it's all there what you talking about, but I -
16 - we have no problem housing the kids at Lokelani
17 School for the next four years.

18 But kind of don't look good, huh, that the
19 school sit up on that hill, the highest ticket item
20 in the DOE, probably. So we can blame you. We can
21 blame whoever. We can blame -- we got to figure it
22 out. And then the overpass or underpass is going to
23 happen. It's got to happen.

24 **COMMISSIONER OKUDA:** Well, thank you very
25 much. It's people like you who I think --

1 **MR. KALANIKAU:** We stuck.

2 **COMMISSIONER OKUDA:** Yeah. No, but thank
3 you very much for your service to the community,
4 because I think your concern -- if your concern,
5 what's in your heart was shared by more people of
6 what's in government, maybe we can avoid this kind
7 of fiasco.

8 Thank you, Mr. Chair.

9 **MR. KALANIKAU:** Yeah.

10 **CHAIRMAN GIOVANNI:** Thank you.

11 Commissioners, any further questions for
12 this witness?

13 Mr. Kalanikau, thank you very much for
14 coming forward and speaking from your heart. Thank
15 you.

16 **MR. KALANIKAU:** Mahalo.

17 **CHAIRMAN GIOVANNI:** Thank you.

18 So it is now 10:30. We'll resume at
19 10:40. Make it a ten-minute recess.

20 **(Recess taken from 10:30 - 10:42 a.m.)**

21 **MR. MORRIS:** I just want to touch base and
22 let you know I can't hear.

23 **CHAIRMAN GIOVANNI:** Thank you, Mr. Morris.

24 **MR. MORRIS:** Much better. Thank you.

25 **CHAIRMAN GIOVANNI:** Testing. Can you hear

1 us now, Mr. Morris?

2 **MR. MORRIS:** Yes, I can. Thank you.

3 **CHAIRMAN GIOVANNI:** Thank you for

4 interrupting me.

5 Petitioner, will you please present your
6 status report, and can you give us an idea what
7 you're -- about how much time you need and whether
8 there will be visuals and whatever, and who will do
9 it.

10 **MR. HAYASHI:** Thank you, Chair. We will
11 be requesting (audio disruption) perhaps around 20
12 minutes. We do have a slideshow that will be
13 controlled up on the screen.

14 Thank you very much, Chair, Vice-Chairs
15 and Commission Members for allowing us to be here on
16 behalf --

17 **CHAIRMAN GIOVANNI:** Excuse me. I just
18 want to remind you of two things. One, you -- you
19 are still under oath.

20 **MR. HAYASHI:** Yes.

21 **CHAIRMAN GIOVANNI:** And if anybody that's
22 not under oath is going to be testifying, I will
23 need to put them under oath.

24 **MR. HAYASHI:** Okay.

25 **CHAIRMAN GIOVANNI:** And secondly, has this

1 slide been provided to our staff for part of the
2 record?

3 **MR. HAYASHI:** Yes, it has.

4 **CHAIRMAN GIOVANNI:** Okay. Please proceed.

5 **MR. HAYASHI:** Thank you, Chair. (Audio
6 disruption) the department. We appreciate the
7 opportunity to be here to provide the commission
8 with an update on Kulanihakoi High School.

9 The school opened last fall in a temporary
10 location at Lokelani Intermediate School. Opening
11 the long-awaited physical campus is a priority for
12 the department, so that we can serve our families in
13 South Maui with a state-of-the-art high school.

14 We recognize the outstanding issue is a
15 requirement -- that an outstanding issue is a
16 requirement set by this body in 2013, that a grade-
17 separated pedestrian crossing be built across
18 Piilani Highway to safely access the new campus.

19 We are committed -- I am fully committed
20 to working through all the necessary requirements to
21 open the school in a safe and timely and will work
22 closely with the LUC and Mayor Bissen's
23 administration to accomplish this. I'm fully
24 committed to open communication and transparency and
25 working together with the Kihei community to ensure

1 that this can happen.

2 Deputy Superintendent Curt Otaguro was
3 introduced earlier. He joins me today and is
4 specifically responsible for dealing with
5 operational issues in the department. That's why the
6 Deputy Superintendent is joining me here today and
7 will be the point person moving forward in matters
8 related -- both he and I, in matters related to
9 Kulanihako'i High School.

10 Also with me today are Kulanihako'i
11 Principal Halle Maxwell, Complex Area Superintendent
12 Desiree Sides, and, as I shared earlier, Deputy
13 Attorney Generals for Education Carter Siu and Ryan
14 Roylo. We also introduced earlier, we have
15 Kulanihako'i students and teachers from this
16 community.

17 Also through -- during the presentation,
18 we'll also call on the Department of Transportation,
19 Robin Shishido, to provide some insights. So I will
20 turn things over now to Deputy Curt Otaguro. Thank
21 you very much, Chair.

22 **CHAIRMAN GIOVANNI:** Thank you.

23 **MR. OTAGURO:** Good morning, Chair, Vice-
24 Chair, and Commissioners. Curt Otaguro, Deputy
25 Superintendent for the Department of Education.

1 Thank you.

2 You know, it's always -- the process is
3 difficult, and it's always good to hear from the
4 community. It's been a long journey, as we all know.

5 But as Superintendent said, we're
6 committed to do -- make good on -- on maybe what
7 I've heard from our community representatives and
8 individuals that there's been poor communication,
9 first of all, clearly. There have been probably
10 misstatements or misunderstandings, and clearly,
11 this is not here to hold anyone hostage,
12 Commissioner Okuda. I heard that loud and clear.

13 Nobody should ever use any student or any
14 cause to force any decisions. So I just want to
15 make that clear, that at the (inaudible) with all of
16 the different individuals, but that struck me as
17 we're not here to hold anyone hostage.

18 And there's a lot of testimony, and we can
19 clarify some of the questions that I think the
20 testimony -- people who testified clearly have. And
21 again, that was eye-opening for me, and I appreciate
22 their thoughts but -- and their comments because
23 we're going to address those.

24 But what we did provide is, just going
25 through really quick, are some of the slides of the

1 progression of the development. And I had the
2 opportunity to see some of this as it was being
3 graded in my former capacity as State Comptroller in
4 2019. So you can see that pages 2 through 7
5 addressed just the development.

6 And from 7, page 7, and -- in the packet
7 that we had starts the vertical construction, which
8 started in 2021, about April. And the next slides
9 from that provide that development and the
10 construction. We don't need to debate all the
11 different things.

12 But starting with page 16, if we go to
13 that, it starts -- you start to see the culmination
14 of the school and how it looks. And so this is
15 Building D, and on page 16 and 17, we provide more
16 of a finished product of what the library and the --
17 I guess you would call it the dining hall looks
18 like.

19 And we encourage anyone, if we ever have
20 an opportunity of open house, to see that particular
21 facility because I think probably with principal and
22 cast, it really could be a community asset, for
23 sure.

24 Then as you scroll along, we have more
25 development on the different structures. Page 6 --

1 page 20 starts -- our neighbors with the gulch and
2 water passages and rainfalls that have occurred, and
3 clearly, the gulch is -- and through pages 20 to 26
4 really just show how -- how extensive the water can
5 come from Haleakala and the mountains down through
6 the streams through the school area and into the
7 ocean.

8 These -- these drainages are working. And
9 so I just wanted to share some of that picture --
10 pictures because pictures speak a thousand words as
11 to what the DOE and the Department of Transportation
12 have been debating over the years with what would be
13 the safest solution for the students.

14 Page 27 is what we've had a lot of
15 discussion about today, and it is a roundabout. And
16 Superintendent, if I may ask our partner at DOT
17 Highways --

18 Chair, is that allowable?

19 **CHAIRMAN GIOVANNI:** Yeah, I'll have to
20 swear him in.

21 **MR. OTAGURO:** Okay. So Robin Shishido, if
22 you could just share a little bit about the
23 roundabout.

24 **CHAIRMAN GIOVANNI:** Will you state your
25 name and your affiliation and position, and then

1 I'll swear you in.

2 **MR. SHISHIDO:** Hi. Robin Shishido, Deputy
3 Director for State DOT Highways Division.

4 **CHAIRMAN GIOVANNI:** Do you swear that the
5 testimony you're about to give will be the truth?

6 **MR. SHISHIDO:** Yes.

7 **CHAIRMAN GIOVANNI:** Please proceed.

8 **MR. SHISHIDO:** Okay. This shows the
9 roundabout. You know, I think since the last time we
10 met, the roundabout construction started in March of
11 2020.

12 **COMMISSIONER OHIGASHI:** Can you speak
13 directly into the microphone?

14 **MR. SHISHIDO:** Yeah. So this picture
15 right here is what the roundabout construction looks
16 like today. I think this is probably within the
17 last few weeks. The roundabout construction started
18 in March of 2022, and we're right now in the last
19 stage. So I think when you guys came here, you
20 probably drove through it.

21 You know, you see in the roundabout there
22 is the right turn lanes and the -- that goes in and
23 out of Kulanihakoi and up into the school, so that's
24 just explain the thing everyone talked about in
25 addition to the four lanes across Piilani Highway.

1 The crosswalks within the right turn
2 lanes, they have raised crosswalks to slow cars down
3 --

4 **CHAIRMAN GIOVANNI:** Just to clarify, which
5 direction is the high school itself, just so we're
6 all properly oriented?

7 **MR. SHISHIDO:** The top of the page.

8 **CHAIRMAN GIOVANNI:** So above?

9 **MR. SHISHIDO:** Yes.

10 **CHAIRMAN GIOVANNI:** Okay. So the -- okay.
11 Please proceed.

12 **MR. SHISHIDO:** And for the crossing going
13 across Piilani Highway we have overhead rapid --
14 rectangular rapid flashing beacons, which is
15 pedestrian activated when people want to cross the
16 street.

17 So I think one of the things that came up
18 in concerns was the speed on the highway. So as
19 Commissioner Cabral mentioned, you know, I think
20 when you folks came out, at that time this
21 intersection was just a stop and go, and there were
22 a lot of cars that were zooming by, you know, going
23 really fast.

24 And since then, you know, when we met the
25 last time we had lowered the speed limit along this

1 stretch of the highway from 40 to 35 miles an hour.
2 And when we took speed data, you know, the speeds
3 had dropped down to about 40 to 45 miles an hour.
4 And since then, you know, with the roundabout
5 construction, we also pulled speed data about two
6 weeks ago or a week ago to look at what the speeds
7 were.

8 And so now when we look at the speeds
9 coming into the roundabout, the approach, it's about
10 30 miles an hour. And through the roundabout it's 20
11 miles an hour. So you know, when we were looking at
12 the roundabout, that was one of the concerns is the
13 speed. And the roundabout has clearly showed, you
14 know, that it reduces the speed to allow this safe
15 at-grade crossing. That was the update for the
16 roundabout.

17 **CHAIRMAN GIOVANNI:** When will it be
18 complete?

19 **MR. SHISHIDO:** The roundabout will be
20 completed - - we're looking at about February 24.

21 **CHAIRMAN GIOVANNI:** February 2024?

22 **MR. SHISHIDO:** February 24 of this year.
23 So about two weeks.

24 **CHAIRMAN GIOVANNI:** Thank you. I just
25 wanted to clarify that. Go ahead back to your

1 testimony.

2 **MR. OTAGURO:** Thank -- thank you, Robin.

3 Thank you, Chair.

4 So as you can see, a lot of --

5 **CHAIRMAN GIOVANNI:** I just want to be sure

6 you'll stay for -- you'll stay for follow-up

7 questions.

8 **MR. SHISHIDO:** Oh, yes, yes. Thank you.

9 **MR. OTAGURO:** And so as you can see, the

10 roundabout is nearly completed. And -- and

11 obviously, it's -- I anticipate some adjustment in

12 the community to this new roundabout, absolutely.

13 But we'll work closely with the community and, of

14 course, DOT Highways, as they're -- they're the

15 experts in the highway safety business.

16 And so -- okay. So we're back to the

17 slide presentation. That's another rendition of

18 what could be, followed by the picture that we had

19 of a bridge. And then let me assure the community

20 and Mr. Beerer that, clearly, the bridge that we

21 showed on the next slide is just conceptual, by all

22 stretch of means.

23 It was -- it was designed -- and my

24 apologies for not stamping conceptual. I should

25 have done that to make it very clear. So this is

1 not the final design. This is not what we are
2 recommending by any stretch of means.

3 But what we are doing is just showing A,
4 an example, and so what the Department of Education
5 is doing with -- in concert with the Department of
6 Transportation is going out to secure an award to do
7 the actual design. And when we do that, we will
8 certainly get solicitation of comments from
9 different individuals, the community, and what-have-
10 you, so that we can get that proper feedback.

11 And based on that, we would then determine
12 what the actual cost will be. It's projected
13 anywhere from prior estimates years ago of 13
14 million. It could be as much as 20 million, 25
15 million depending on how exotic and what we want to
16 do.

17 There are 88 compliance issues that we
18 absolutely want to address in that process, so I
19 just wanted to assure the community and the Land Use
20 Commission that we are committed to proceed with the
21 award, with G70, to come up with an actual design.

22 So after that slide is really just, again,
23 conceptual ideas that we -- aesthetically we have to
24 make improvements, that's for sure. But this is one
25 concept to go over the highway. And so the

1 recommendation that we will be proceeding with is an
2 overpass.

3 And so the DOE commissioned a study done,
4 and I believe it was based on an order or discussion
5 with your commission in prior years that we need to
6 do a study to get different alternatives. And so
7 that study did vet the different options available
8 that were being discussed.

9 And that was an overpass, and there were
10 four areas that -- overpass and underpass at
11 Kalanihakoi, and overpass and underpass further down
12 the street by the gulch. And so each was vetted.
13 The community was engaged. Again, poor communication
14 on our part to share that with different individuals
15 here.

16 But there were a lot of community groups.
17 I believe it was ten, or at least five groups, and
18 then breaking out from them, more, including
19 students, to solicit the different options and what
20 would be -- what would make sense to them.

21 And by far, it was an overpass, and it was
22 an overpass by Kulanihakoi that had the favor. And
23 so based on that study, which we can produce to the
24 commission, we determined what the different
25 alternatives we're going to be and the different

1 costs.

2 And just as an example, they did pretty
3 extensive analysis of how many students would do the
4 crossings. It's 205 students at Kalanihakoi, maybe
5 a little less if it's further down the street by the
6 Waipuilani Gulch, maybe 155 students. Different
7 miles to get there and the different alternatives
8 would be different costs and different timeframes to
9 get it done.

10 And so from an overpass, which we're
11 proposing, could be anywhere from 10, 11 million to
12 15 million. An underpass, there would maybe be 18
13 to 24 million. And so there's a lot of different
14 statistics. If you went further down the street, it
15 would be -- highway would be a little bit more, and
16 so we can certainly provide that to the community if
17 need be.

18 **CHAIRMAN GIOVANNI:** So just to -- just to
19 -- this is the Chair. So to clarify, what you're
20 currently doing is reading excerpts from a study
21 that was commissioned by the Department of
22 Education, performed by G70, and studied four
23 different options, is that correct?

24 **MR. OTAGURO:** Yes, that's correct.
25 Actually, there's five options. There's a further

1 east by Puilani (sic) Road, and --

2 **CHAIRMAN GIOVANNI:** And so you've
3 represented in your testimony that that study will
4 be provided to the commission?

5 **MR. OTAGURO:** Sure.

6 **CHAIRMAN GIOVANNI:** Has it been completed
7 and you have a document on it?

8 **MR. OTAGURO:** Yes. We received it in
9 December of last year, and so yes, it is an active
10 study that was being done as the commission issued
11 its ruling, and so we just received it, and then we
12 evaluated --

13 **CHAIRMAN GIOVANNI:** And you will make it
14 available for the record?

15 **MR. OTAGURO:** Yes.

16 **CHAIRMAN GIOVANNI:** Thank you.

17 **MR. OTAGURO:** And so again, like I said, a
18 lot of outreach has gone through. There have been
19 online surveys in addition to that. If somebody
20 couldn't come in person, G70, which is -- Rasmussen
21 was the company that actually did the surveys, went
22 out and got the -- asked the same questions and got
23 the results.

24 And so the -- and the product of it is
25 what we were -- what they submitted to the -- the

1 state or the Department of Education a couple months
2 ago.

3 So with that, I guess the other -- I think
4 it was said by one of the testimonies that the
5 department has been addressing the different avenues
6 in the interim. Clearly, as one individual said,
7 unfortunately, we're at a point where hard decisions
8 need to be made.

9 We've evaluated all the different options.
10 There's a fiscal aspect, but you should (audio
11 disruption) on the safety of our children, our
12 students, or anybody for that matter. But we've
13 been working collaboratively with the Department of
14 Transportation to make good on past
15 miscommunications, past misrepresentations.

16 I'm not here to say whether it was defiant
17 or not, our actions as a department, but you know,
18 we have done the roundabout. We are working with
19 the county.

20 I'm very encouraged, as I join the
21 department, working with the prior administration
22 down the home stretch to see their position, and
23 then having the opportunity to work with the current
24 administration and meeting personally with Mayor
25 Bissen and his team, and we pleaded our -- or stated

1 our position and our case, and obviously, everyone
2 knows what has occurred.

3 We support Mayor Bissen's decision not to
4 issue the temporary certificate of occupancy
5 because, frankly, there's some more work to be done.
6 There is still unfinished items and -- and -- and
7 things that we still need to get done. So if we
8 even open it, we're -- we're hoping that we could
9 open by the next -- this coming school year.

10 The next school year would be our hope for
11 a number of different reasons. You know, the vans
12 that were purchased, the flashing lights, getting
13 continued data. One of the partners -- partnerships
14 with DOT is they have data on the traffic, and it's
15 -- it's very impressive. Every month, they have a
16 statistic on the average speeds down Piilani
17 Highway.

18 And, clearly, as a result of the
19 roundabout -- the data doesn't lie. It -- it
20 specifies that traffic has slowed. Now, is it slow
21 enough? That remains to be seen, and so once it's
22 open officially, we will continue to monitor that
23 with the DOT, with Robin and his staff, to ensure
24 that we get the result that we're expecting. And so
25 that's the goodness of having this roundabout now.

1 You have my personal commitment. Prior to
2 joining the state almost five years ago now, I -- I
3 was a former banker. And being a banker, you have
4 pretty simple principles. You don't lie. You
5 absolutely don't cheat. And you don't steal.
6 Integrity is of the utmost, and I applaud the
7 commission for upholding that.

8 All we have is our word, and obviously
9 we've lost your trust, and we've lost the community
10 trust. And it's unfortunate. These things are
11 never pleasant, but we are here today to ask the
12 commission to drill us with the questions. All we
13 can do is -- the past has been uncovered. We can't
14 go back to the past, but we can absolutely make a
15 difference going forward.

16 The Superintendent is personally committed
17 and has held me personally accountable to ensure
18 that we make good on our promises. And promises are
19 only as good as words, and words are only as good as
20 you trust. And so we'll continue to -- to address
21 any questions or answers -- and answer as best we
22 can at this point.

23 We're not here to make excuses. We did
24 speak to our board, our Chair of Board of Education,
25 and obviously, we're all coming into this at

1 different parts of the project. We're all
2 disappointed. I would say we're not appalled.
3 Understanding different aspects and different issues
4 and some of it, frankly, got political, which is --
5 which is never good when you have public trust and
6 public monies that we're expending, so we're
7 responsible as government officials.

8 And so the board chair just basically
9 said, in retrospect, and this is where I come from,
10 we made mistakes. Absolutely. Why we didn't uphold
11 your -- your original orders, I don't know. And I
12 honestly don't know. Nobody is here to -- the law is
13 the law. It's not to be negotiated, period.

14 But we're here. We're at -- and we just
15 hope that you'll be open-minded to listen to our
16 testimony, our commitment, and our actions as to how
17 we're going to appease this and resolve it.
18 Unfortunately, the final resolution of a grade-
19 separation pedestrian crossing is going to take some
20 time.

21 And as a facilities guy, I just know that
22 the community can benefit from what we've built.
23 There's absolutely no question that the education of
24 our students are going to be enhanced. We do have a
25 small amount of students now.

1 But opening the school and showing the
2 community what this is about and what Superintendent
3 has been doing in education -- it's not the DOE of
4 yesterday, and that's my -- why I joined. It -- it
5 is clearly a vision that the Superintendent has to
6 make students successful, whatever it's going to be.
7 Some are going to be academic. Others are more
8 skilled in their academies that they developed.

9 The fact of the matter is that this
10 Kulanihakoi provides this opportunity for this
11 community for decades to come. And yes, we're at an
12 impasse if we wait -- we wait four years, but I know
13 from facilities you let somebody sit for too long,
14 then there's more cost to it. And again, we're not
15 holding anybody hostage. This is on us. This is
16 the department's responsibility to move forward in
17 whichever way the LUC ultimately decides.

18 But suffice it to say, we appreciate this
19 opportunity, and thank you for calling this hearing
20 because it is -- it is time to make a decision, hold
21 us accountable, and benefit, obviously, the students
22 and the community.

23 I don't know if it's appropriate now, but
24 you know, we do have our Principal and our Complex
25 Area Superintendent, just because they've been

1 working passionately about the safety concerns.

2 **CHAIRMAN GIOVANNI:** So this is the
3 petitioner's opportunity to present its case. And
4 if you want to include them as part of your
5 presentation, now is the time.

6 **MR. OTAGURO:** So yeah, I'd like to call on
7 our Complex Area Superintendent Desiree Sides and --

8 **CHAIRMAN GIOVANNI:** So take this
9 microphone right here. Yeah.

10 **MR. OTAGURO:** -- and our Principal that's
11 anxiously awaiting to have her facility open.
12 Because, you know, they've been on the ground.
13 Honestly, they're here. They feel it. They hear the
14 community results, but they're also working for our
15 students. So Ms. Sides.

16 **CHAIRMAN GIOVANNI:** Please state your name
17 and your title or role, affiliation, and then I'll
18 swear you in.

19 **MS. SIDES:** Good morning. Desiree Sides,
20 Complex Area Superintendent for Baldwin-Kekaulike-
21 Kulanihakoi-Maui, here on Maui.

22 **CHAIRMAN GIOVANNI:** Thank you, Ms. Sides.
23 Ms. Sides, do you swear that the testimony you're
24 about to give will be the truth?

25 **MS. SIDES:** Yes.

1 **CHAIRMAN GIOVANNI:** Please proceed.

2 **MS. SIDES:** Do you want to swear her in?

3 **CHAIRMAN GIOVANNI:** Yeah, let's do that,
4 and then you can go back and forth.

5 So state your name, title, affiliation,
6 and I'll swear you in.

7 **MS. MAXWELL:** Halle Maxwell, I'm the
8 Principal of Kulanihakoi High School.

9 **CHAIRMAN GIOVANNI:** Ms. Maxwell, do you
10 swear the testimony that you'll present today will
11 be the truth?

12 **MS. MAXWELL:** Yes, I do.

13 **CHAIRMAN GIOVANNI:** Okay. Thank you.

14 **MS. SIDES:** Good morning, Chair Giovanni,
15 Vice- Chair Cabral, Second Vice-Chair Ohigashi, and
16 Members of the Commission. My name is Desiree
17 Sides, Complex Area Superintendent for the Baldwin-
18 Kekaulike-Kulanihakoi-Maui Complex area.

19 Aside from supporting our students to be
20 successful academically, emotionally, and socially
21 in attaining a quality education to further their
22 lives as positive contributing citizens, safety is
23 and always will be our priority when it comes to our
24 students.

25 In my role, I've been supporting the

1 school and participating in planning and discussions
2 to work through the barriers of opening the
3 Kulanihakoi High School campus for secondary
4 students here in Kihei.

5 Knowing that the Department of Education
6 has not followed through in what they said
7 previously to the LUC, my goal since I started has
8 been to strengthen communication between the DOE,
9 whether it be state level, complex level, and school
10 level, Maui County agencies, the Department of
11 Transportation, the contractors, and the school, by
12 participating in meetings and having ongoing
13 communication via email.

14 After working in this position for the
15 last eight months, I am confident that the
16 department will follow through with securing the
17 funds and plans to work with the Department of
18 Transportation to build the grade-separated
19 pedestrian crossing that I -- than I was before.

20 Previous to leaving the office as Mayor,
21 Mike Victorino assured that we would have the
22 community's support of the Maui Police Department to
23 have police officers and/or cross guards at the
24 intersection during drop-off and pickup times.

25 I've had the opportunity to meet with Maui

1 Police Department School Resource Officer,
2 Lieutenant Brandon -- at the time, excuse me,
3 Lieutenant -- he's sergeant -- back to Sergeant --
4 we play different roles -- Brandon Phillips monthly
5 with CAS Rebecca Winkie to discuss safety concerns
6 for all of our schools. This partnership has
7 allowed us to review recommended safety procedures
8 and offer additional feedback not only to the
9 schools but also educating our students.

10 I've also had the opportunity to meet with
11 new Mayor Richard Bissen and some of his cabinet
12 members last month to build collaborative working
13 relationships to support our communities.

14 The students of Kulanihakoi High School
15 started their freshman school year at Lokelani
16 Intermediate School under Principal Halle Maxwell
17 back in August of 2022. Her primary goal in this
18 matter has and remains to be safety for her
19 students.

20 I'd like to ask Principal Maxwell to speak
21 to the measures taken by her and her staff.

22 **MS. MAXWELL:** Thank you.

23 Thank you all very much for the
24 opportunity for a few things. One, thank you for
25 coming in person to Kihei to allow us to be here,

1 and also thank you for the opportunity to allow some
2 of our students and our staff to participate as part
3 of their participation in Democracy classroom that
4 they're actually taking this semester in some real-
5 life and meaningful and relevant activities to show
6 how government works and how this process works.

7 I think this is something our students
8 will remember for a very long time, regardless of
9 the outcome, just to see how systems work and how
10 people come together to solve problems. So I do
11 want to thank you for that.

12 I didn't prepare a formal statement. I
13 just wanted to speak to you from the heart around
14 this community and how we feel about our students.
15 I have lived in the Kihei community for 23 years. I
16 raised my children in this community. I know the
17 fears that families have regarding this street and
18 having students cross the street.

19 I've shared this with anyone who ever asks
20 me. As a mother raising children in this community,
21 I would have never let my children cross Piilani
22 Highway, even in a marked crosswalk. The traffic,
23 the way drivers are, we have a lot of tourists that
24 come through here, and safety will always be the
25 most important thing. Getting children to and from

1 school safely, there's nothing more important.

2 Our goal of creating an educational
3 environment that provides engaging, relevant,
4 meaningful educational opportunity, bringing in the
5 best teachers we have to offer, just creating a
6 place where we bring our community together, and
7 it's not just about the students and our staff but
8 also how we can grow our community and create a
9 sense of belonging for everybody in the South Maui
10 community. None of that happens if we don't make
11 sure people are safe, especially our students.

12 I started the job as the principal of this
13 amazing high school in August of 2021, and I
14 immediately started working on this issue. Even
15 before I had attended my first Land Use Commission
16 hearing in October of 2021, the end of October, I
17 knew that this was going to be something that we had
18 to figure out while we were getting other solutions
19 in place.

20 So I immediately started working with the
21 State Transportation Office to see what kind of
22 resources and access to support we could get from
23 that. I will say this, the State Transportation
24 Office has been nothing but supportive of helping
25 our community in any way possible, but they've also

1 been faced with some real challenges with our bus
2 driver shortage, but they've never stopped trying to
3 figure out ways to help us.

4 So moving forward, some of the
5 conversations we're having right now revolve around
6 looking at how the shift in student numbers from the
7 traditional Maui High transportation issue into
8 Kalanihakoi High School, how that will change the
9 use of buses and possibly using some of those buses
10 to transport students who are traditionally in the
11 1.5 walk zone.

12 So the 1.5 mile walk zone takes up most of
13 our densely populated areas in North Kihei, central
14 to North Kihei, and a lot of our students live in
15 those areas. However, there is a process within
16 student transportation where you can request
17 exemptions, because of safety issues or other issues
18 as well, to -- to ask for bussing for those students
19 even though they're in the walk zone. So we
20 continue to have those conversations and work
21 through those process -- that process.

22 I've also already purchased two 15-
23 passenger shuttle buses. I don't know if you know
24 this, but Kalanihakoi, we are the home of the Manta
25 Rays, and a group of manta rays is called a squad.

1 So we're calling it the "Squad Shuttle."

2 And we'll be finding different points
3 where we can pick up students on both sides of the
4 highway, so makai and mauka of the highway, so that
5 kids are able to get to school in a safe way. And
6 that way, we can start to offer things like after-
7 school clubs and will still be able to take them
8 home at the end of the day as opposed to only having
9 one time where they come and go.

10 We're working with student transportation
11 also around our school schedule. If being able to
12 shift our school hours, what we call the "bell
13 schedule," would help to empty up other buses so
14 that they can come and transport our students so no
15 one is crossing the highway, then we're willing to
16 do that as well.

17 I think it's also important to know that
18 it's just not the students who live makai of the
19 highway that have the issue. Students who are mauka
20 of the highway also right now have a situation where
21 they have to walk down the hill, walk along the
22 shoulder of the highway down to the high school,
23 still not very safe, and then walk back up to the
24 high school. We are also looking at making sure
25 that's not happening.

1 I've met with Pacific Landrum, which is a
2 Goodfellow Brother company, to talk about land that
3 they have on the south side of our high school,
4 trying to create some pedestrian access that way so
5 that not everybody has to just enter from the
6 highway. And I have a meeting that I'm trying to
7 schedule with the person who owns the land on the
8 other side, the north side of our high school, to
9 see if we can create access that way as well, so
10 that those students who live mauka of the highway
11 can just come in from the top part of the area. We
12 have a lot of students who live in that
13 neighborhood.

14 So I just want to share with you that
15 we're anxious and eager to be up at our new campus.
16 There are a lot of things that we are excited to be
17 able to do like start our athletics programs, have
18 clubs, do all these things that make high schools a
19 really fun place to be in and engaging place to be.

20 Space is definitely an issue for us right
21 now. I know Mr. Kalanikau was very sweet to say
22 that Lokelani would be happy to house us for the
23 next four years; however, I'm not sure if they have
24 the space for us. Currently, we just have a few
25 portables. We're working out of three student

1 portables, and we have teachers sharing those. And
2 everybody's making the best of it.

3 Every day people come to work and just do
4 the greatest job they can, and our students come to
5 school, and they're amazing young people, but we do
6 hope that we'll be able to get up to this wonderful
7 campus sooner rather than later. But I want to
8 assure you that with that hope, I also dedicate
9 resources and my own expertise and my own care of
10 the children in this community to make sure that
11 everybody is safe. Thank you. Thank you for your
12 time and your consideration.

13 **CHAIRMAN GIOVANNI:** Thank you.

14 **MR. OTAGURO:** Thank you, Chair, for
15 allowing us to have additional testifiers. With
16 that, any closing remarks from Superintendent.

17 **MR. HAYASHI:** Thank you, Chair, Vice-
18 Chairs, and Commission Members. As Deputy Otaguro
19 shared, we thank Complex Area Superintendent Sides
20 and Principal Maxwell. We would also like to thank
21 the Department of Transportation for their
22 partnership.

23 We are very much committed to open
24 communication, transparency, and working together
25 with the community to ensure that students are safe.

1 As Principal Maxwell shared, you -- there is -- the
2 community has an outstanding high school in
3 Kulanihakoi.

4 I was very -- I was fortunate to attend
5 one of -- I believe there were several community
6 meetings. I did come and hear from community
7 members and teachers and students in, I believe, the
8 last community meeting that was held. And it -- I
9 learned a lot from that meeting, speaking to
10 community members and students and faculty and
11 staff.

12 I think what struck me is the commitment
13 and the passion that the educators have to support
14 the students in the community. It was -- I know
15 some of the teachers personally that are staff in
16 Kulanihakoi, and the community can be very proud of
17 the educators at their high school.

18 Again, I want to thank you very much for
19 the opportunity to share where we are, and again, I
20 cannot emphasize enough our commitment and my
21 commitment to open communication moving forward,
22 open communication and transparency. Thank you very
23 much for the opportunity.

24 **CHAIRMAN GIOVANNI:** Thank you very much.

25 So we'll proceed with opportunity to have

1 some Q and A, starting with the County of Maui for
2 the -- do you have any questions for the petitioners
3 or any of their witnesses?

4 **MR. HOPPER:** Not questions right now. And
5 then were you going to have us give a statement
6 later or now?

7 **CHAIRMAN GIOVANNI:** Later.

8 **MR. HOPPER:** No, I don't have questions
9 right now. Thank you.

10 **CHAIRMAN GIOVANNI:** Okay. Office of
11 Planning?

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

13 **CHAIRMAN GIOVANNI:** Okay.
14 Commissioners?

15 Commissioner Cabral?

16 **COMMISSIONER CABRAL:** I want to thank all
17 of you for speaking this morning. I remember the
18 prior hearings, and my blood was boiling even to
19 hear this and then almost to tears, so I want to
20 thank you for admitting that mistakes were made.

21 Because previously, I think I'm quoted in
22 the testimony or the writeup of saying that it was
23 double talk that we were hearing. And that is
24 really upsetting when I think that children's lives
25 are on the line.

1 And whatever -- and we have, who made
2 these decisions? Oh, that person retired, so no
3 one's responsible. Excuse me, I'm in private
4 business, too. I'm responsible forever, so I'm very
5 chicken skin now just the emotion. So I want to
6 thank you.

7 And specifically, to the principal, you
8 brought up something I'm looking at. I think it's
9 common sense. One of the things we were told before
10 was, no sense you have an overpass because people
11 don't use it, they'll run across the road anyway.
12 Well, I'm thinking, well, you're higher up, so
13 you're always coming down, so you're not really --
14 it's not a matter of going up, over, and coming back
15 down. It's really a matter of going up and over,
16 going across and then down.

17 But you're saying that that's private land
18 that you don't own on the uphill side between the
19 highway on the school side and the school itself?

20 **MS. MAXWELL:** Thank you. So I'm talking
21 about -- so from the highway up until where those
22 main buildings are that you saw pictures of, that's
23 about a half mile up, so that whole part of the --
24 the side of the mountain, there are plans -- the
25 county can speak to it more than I can. I just know

1 there are plans for future development of those
2 areas.

3 And on the north side, there's a private
4 owner that I don't know that we're trying to get in
5 contact with. And what I'm trying to do is up the
6 hill a bit, Ohukai Street is the name of the street,
7 there are areas where eventually when that area is
8 developed years down the road, there will be
9 infrastructure there like roads and sidewalks and
10 passageways. And just trying to get something like
11 that in earlier just so that my students have a
12 pedestrian access that way.

13 Of course, it's down the road. It's not a
14 quick fix, right. I'm just -- these are just ideas.
15 I think I want you to know that we're trying to
16 think out of the box. We're trying to be as creative
17 as possible and look at all the options that we
18 have. And that was just one of the things that I've
19 started doing more recently.

20 **COMMISSIONER CABRAL:** Okay. Well, thank
21 you very much.

22 And I also want to thank all of you
23 because I now have a better feeling that perhaps the
24 Department of Education is on the side of finding a
25 solution as opposed to providing us an excuse,

1 because it -- the excuses were unacceptable. Okay.

2 I think I've said enough. Thank you.

3 **CHAIRMAN GIOVANNI:** Thank you,

4 Commissioner.

5 Mr. Ohigashi.

6 **COMMISSIONER OHIGASHI:** I want to thank --

7 **CHAIRMAN GIOVANNI:** Are you turned on?

8 **COMMISSIONER OHIGASHI:** Yeah, I think so.

9 I want to thank Superintendent Hayashi for
10 attending today. It shows, I guess, the gravity of
11 the situation and the seriousness that the DOE has
12 in this matter.

13 I have a few questions. And it goes along
14 with what Mr. Okuda has said. I remember that you
15 were Assistant or a Deputy Superintendent, is that
16 correct, with the -- with the DOE, is that right?

17 **MR. HAYASHI:** Beginning in August of 2021,
18 I was the Interim Superintendent for a year. Prior
19 to that, I was the Principal at Waipahu High School
20 for 12 years.

21 **COMMISSIONER OHIGASHI:** Okay. My question
22 to you, since you were interim in 2021, who made the
23 decision to open up the high school?

24 **MR. HAYASHI:** I --

25 **COMMISSIONER OHIGASHI:** I'm just trying to

1 figure out who made the decision to open up the high
2 school in 2022?

3 **MR. HAYASHI:** One second, please, sir.

4 Thank you very much for the question. In 2022, I
5 was the -- let's see, in October of -- I guess, of
6 2022, I became the permanent Superintendent for the
7 department, so in -- either as an Interim
8 Superintendent or as a Superintendent, any decision
9 that is made by the department would -- would rest
10 with me and my responsibility.

11 **COMMISSIONER OHIGASHI:** Thank you for
12 that. I just was saying that because part of the
13 problem that I had is what Commissioner Okuda has.
14 And part of the reason why I was astounded when this
15 -- that the school was going to be open, because
16 none of these issues were taken care of.

17 I -- let me finish my question.

18 **MR. HAYASHI:** Yes.

19 **COMMISSIONER OHIGASHI:** Unlike court, I
20 get to do a (audio disruption) before the actual
21 question that I ask. But -- so my question to you
22 is, how did the school open without these issues
23 being resolved? And -- and what made the DOE
24 believe that they could essentially bully its way
25 into having the school open?

1 **MR. HAYASHI:** Thank you very much for the
2 question. I'll hand the microphone over to Deputy
3 Otaguro.

4 **COMMISSIONER OHIGASHI:** But Deputy Otaguro
5 wasn't there until just recently.

6 **MR. OTAGURO:** Yes, I started October --

7 **COMMISSIONER OHIGASHI:** Right.

8 **MR. OTAGURO:** -- 21.

9 **COMMISSIONER OHIGASHI:** Yeah. So my
10 question to you is, as Superintendent, where did
11 this decision come from and why did this decision
12 come from? That's what everybody wants to know.

13 **MR. OTAGURO:** Yeah, I -- thank you,
14 Commissioner. If you're referencing a media
15 announcement that was made that came out locally, so
16 that was the aspirational goal -- that was always a
17 target goal to open in January of 2023.

18 **COMMISSIONER OHIGASHI:** The problem that I
19 have with that was that it was also mentioned -- a
20 principal has been chosen. The principal is looking
21 forward to this opening.

22 **MR. OTAGURO:** Yes.

23 **COMMISSIONER OHIGASHI:** I'm --

24 **MR. OTAGURO:** Yes.

25 **COMMISSIONER OHIGASHI:** -- question --

1 **MR. OTAGURO:** Yes, sir.

2 **COMMISSIONER OHIGASHI:** -- my question is
3 how -- you mention transparency and -- we want to
4 know why was this done without meeting the
5 conditions?

6 **MR. OTAGURO:** Yes. We take full ownership
7 for that. That was clearly a misunderstanding --
8 miscommunication, and I'm not -- we didn't
9 communicate through Principal Maxwell either.

10 So as this project got heated up towards
11 the end, we were working with our consultants and
12 the contractor and the county --

13 **COMMISSIONER OHIGASHI:** You're not
14 answering my question, sir. My question is, why did
15 you make that decision to go ahead without resolving
16 this issue?

17 **MR. HAYASHI:** Thank you. Mr. Ohigashi, is
18 the question -- if I can ask for clarity on the
19 question. Is it who made the decision to post the
20 principalship position?

21 **COMMISSIONER OHIGASHI:** No. My question
22 is, why did you decide to open the school, add kids
23 over here, open it up without meeting the issue of
24 prior orders? The prior orders were clear. You
25 don't open the school or that portion of the school

1 until you meet those conditions, right?

2 I'm sure that an ex-mayor who has been a
3 judge before can read a law and say, hey, you didn't
4 do that. And I'm sure you have lawyers there who
5 represented you from the -- saying, hey, you have
6 this condition. You're not supposed to open it up.

7 Was this -- was this a matter of creating
8 an opposite situation or creating a situation?

9 Because as I look at it, your decision to decide to
10 open it resulted in these children being denied the
11 opportunity to attend the school. And I'm hearing
12 everybody saying, oh, we have to be reasonable. We
13 have to try to figure out a reason. Well, let's
14 first find out if your tactic was to violate the law
15 and to force us to open up the school.

16 **MR. HAYASHI:** Definitely, it was not any
17 tactic to violate and to force anyone to open.

18 **COMMISSIONER OHIGASHI:** Then why did you
19 open it?

20 **MR. HAYASHI:** The -- the decision to open
21 I take full responsibility for, as I was the
22 Superintendent. Looking back, I should have
23 consulted, perhaps, with other individuals, and I
24 apologize for that. I do. And I -- in moving
25 forward, and I apologize to the Kihei -- to the

1 Kulanihakoi school and to the community.

2 It was never my -- never my nor the
3 department's intention to violate or hold anyone
4 hostage. I believe it was an opportunity to -- at
5 that time, to perhaps provide the students that
6 opportunity for Kulanihakoi.

7 I understand, Vice-Chair, your questions.
8 Again, my -- I apologize for that, and I just hope
9 moving forward the decisions that we make in the
10 department and the decisions that I'm accountable
11 to, we can -- we can continue so we can move forward
12 and continue to keep communications open and make
13 decision --

14 **COMMISSIONER OHIGASHI:** -- apprised of the
15 opening of this school and the problems that it
16 would result -- that may result from it?

17 **MR. HAYASHI:** I don't recall the lawyer
18 being -- at that time being apprised of it, and I do
19 take responsibility for that.

20 Now, Ms. Sides, she would like to add
21 something, if appropriate.

22 **COMMISSIONER OHIGASHI:** Go ahead.

23 **MS. SIDES:** Can I just add a little bit
24 more? And to that effect, you know, whenever there's
25 a school -- who's in charge of the school? It is

1 the principal's decision, right? They oversee that.

2 For the 21 schools that I oversee, I work
3 with my principals to make these decisions. One of
4 the things that I appreciate is that I don't --
5 Deputy Otaguro and Deputy Chun were added positions
6 to help with our system. We have a --

7 What I've learned in education and being
8 in this leadership umbrella is that we have a very
9 large system that crosses across the state, and
10 sometimes communication does not go thoroughly, and
11 it -- that's why I really impress -- and I know I
12 read from my speech -- from my notes.

13 I impress that communication is monumental
14 and it is -- it's really -- it takes a lot of time
15 and effort to connect the right people, and so it is
16 with -- it's been a lot of coordination, and I --
17 appreciation that I do have the ear of
18 Superintendent Hayashi, I do have the ear of Deputy
19 Otaguro to address the issues that are here on Maui,
20 not just Kulanihako'i, but definitely this has taken
21 a lot of my time and -- and plate.

22 So seriously understanding that situation,
23 I'm going to add that there has not been strong
24 communication, and I have the assurance of both of
25 them to have that. And when I have these concerns

1 regarding that, sitting at the table, I am not a
2 contractor, but knowing what's going on is something
3 that I've asked the school to let me know what's
4 going on, so that I can communicate and apprise the
5 higher-ups, who do make these decisions, to support
6 these decisions to let them know what's going on,
7 having communication to understand what's going --
8 how Maui County works.

9 That's why the intent of reaching out to
10 Mayor Bissen and his cabinet to understand how
11 things work, so that, again, we move forward in --
12 in this -- in this difficult situation that we have
13 put everyone in, especially the students and the
14 community of Kihei. So for that, I do appreciate
15 that communication needs to be key. And that's all I
16 wanted to add to that.

17 **COMMISSIONER OHIGASHI:** Thank you for the
18 statement, but that's not what I'm trying to get at.
19 I'm not sure about communication. I just wanted to
20 find out who made the decision to put us into this
21 way.

22 The second thing I wanted to ask you is
23 this, is that through the \$16 million contribution
24 by the DOE to the roundabout --

25 **CHAIRMAN GIOVANNI:** DOE?

1 **COMMISSIONER OHIGASHI:** Yeah, from the DOE
2 to -- to -- for the -- for the construction of the
3 roundabout, is that right?

4 And where did that 16 million come from?

5 **MR. OTAGURO:** That was part of the overall
6 appropriation granted to the DOE to build the
7 school.

8 **COMMISSIONER OHIGASHI:** And would that 16
9 million would have been used for an overpass?

10 **MR. OTAGURO:** Not necessarily.

11 **COMMISSIONER OHIGASHI:** Why not?

12 **MR. OTAGURO:** Well, in a CIP, right, an
13 appropriation that the governor approves through the
14 legislature, there are specific line items for
15 design planning and then construction. Construction
16 is a lump sum type of an amount, and so we have --
17 and then we have contingency for -- for whatever it
18 may be to complete the project.

19 And so the discretion was made at the time
20 when a roundabout was needed, to use that
21 appropriation, clearly, to expedite the building,
22 right. Otherwise, the DOT would have to wait for
23 the next legislative session to request for that
24 funding. So clearly, it was just a -- a decision
25 made --

1 **COMMISSIONER OHIGASHI:** So we fast track
2 the roundabout by using monies that could have been
3 used to build an overpass?

4 **MR. OTAGURO:** Yes.

5 **COMMISSIONER OHIGASHI:** And that's why
6 we're delaying in the school.

7 **MR. OTAGURO:** Yes.

8 **COMMISSIONER OHIGASHI:** Is that right?

9 **MR. OTAGURO:** Yes. We did not comply --

10 **COMMISSIONER OHIGASHI:** Just wanted to be
11 clear on that.

12 **MR. OTAGURO:** We did not comply.

13 **COMMISSIONER OHIGASHI:** All right. Now,
14 what stage are you at in terms of are you just in
15 the -- because from what I've heard you say is that
16 you intend to hire Group 70 to do the actual design,
17 so we're not even at that stage right now. We're at
18 this stage where you're gathering community input
19 and figure out what you want to do. Is that right?

20 **MR. OTAGURO:** Right. Last year, the
21 Department Commission, based on the LUC directives
22 to complete a study, that was done in the summer. I
23 believe it was four months for the study --

24 **COMMISSIONER OHIGASHI:** But according to
25 your letter in 2020 to the department, you've

1 already started that procedure.

2 **MR. OTAGURO:** The design of an overpass,
3 yeah. And that was an incorrect statement.

4 **COMMISSIONER OHIGASHI:** That was -- that
5 was a lie, right?

6 **MR. OTAGURO:** Yes. It was an incorrect
7 statement, unfortunate.

8 **COMMISSIONER OHIGASHI:** So everything
9 started when?

10 **MR. OTAGURO:** To actually --

11 **COMMISSIONER OHIGASHI:** Give me -- when
12 did this start, you know? Prior to Group 70, let's
13 go all this and do all of this stuff.

14 **MR. OTAGURO:** From what I see, it started
15 in 2022. I don't know if in the beginning --

16 **COMMISSIONER OHIGASHI:** What -- do you
17 know?

18 **MR. OTAGURO:** I don't know exactly when
19 they started discussing how to engage with the
20 community surveys, but --

21 **COMMISSIONER OHIGASHI:** -- from -- for
22 eight months now.

23 **MR. OTAGURO:** October 2021.

24 **COMMISSIONER OHIGASHI:** Did it happen
25 before you started?

1 **MR. OTAGURO:** It happened before, and so
2 we got - - we had --

3 **COMMISSIONER OHIGASHI:** It started before
4 October 21?

5 **MR. OTAGURO:** Yes, because the survey was
6 already in progress, and the results were being
7 compiled with the data and presented to the state
8 in December.

9 **COMMISSIONER OHIGASHI:** And --

10 **MR. OTAGURO:** So yes, we're --

11 **COMMISSIONER OHIGASHI:** -- that is
12 completed when? Right now? Has it been just
13 completed?

14 **MR. OTAGURO:** Yes, I -- yes. It was
15 completed in December, and it was submitted to the
16 state --

17 **COMMISSIONER OHIGASHI:** What monies have
18 you requested, design monies have you requested from
19 the legislature for this particular project?

20 **MR. OTAGURO:** Okay. So, again, with CIP
21 and construction, we are -- we're reallocating some
22 of the construction monies in the current
23 appropriation for the design. The actual
24 construction, once we get a design with a specific
25 cost estimate, we will be working with the

1 Department of Transportation to actually put in a
2 request to -- to build that amount.

3 **COMMISSIONER OHIGASHI:** Have you in the
4 past sought any additional funding for the overpass
5 or underpass and grade separation?

6 **MR. OTAGURO:** Not to my knowledge.

7 **COMMISSIONER OHIGASHI:** Would the previous
8 holder of your position have that knowledge?

9 **MR. OTAGURO:** There was no deputy, but I
10 believe, yeah, if you're talking about Assistant
11 Superintendent Tanaka, he would probably know. But
12 again, it is --

13 **CHAIRMAN GIOVANNI:** Let -- let me
14 interject on this point because I have first-hand
15 knowledge, and it's all on the record.

16 So Mr. Tanaka had a prior hearing before this
17 commission and was explicitly asked to explain the
18 requisition process, and he did. And he confirmed -
19 - when he was specifically asked, "Has the
20 Department of Education ever requested in its
21 request to the governor to include in the budget an
22 appropriation for the grade-separated overpass or
23 underpass," he gave us a one-answer word: Never. It
24 had never been done.

25 So despite it being a requirement for over

1 ten years, it had never been taken seriously enough
2 to even ask for the appropriations to do the front-
3 end work for this. That's on the record, so --

4 **MR. OTAGURO:** And that is correct, for the
5 record.

6 **COMMISSIONER OHIGASHI:** Let me then turn
7 to Mr. Shishido. Mr. Shishido, why was a study done
8 to try and determine whether we should do an
9 overpass or underpass? Why was that done?

10 **MR. SHISHIDO:** So I believe, like you say,
11 it was part of the Land Use condition requirements
12 and based on the last hearing that we had, you know,
13 it was brought to the DOE's attention to do the
14 community outreach, so that's --

15 **COMMISSIONER OHIGASHI:** -- and there was
16 never a requirement that we do a study. In fact,
17 Director Snippen (phonetic) testified many times at
18 this hearing, saying that he would never approve an
19 underpass. He would never approve anything that
20 goes under that bridge. And if it does, it would
21 run enormously expensive because it had to meet
22 federal guidelines to be built in a gulch.

23 **MR. SHISHIDO:** Yeah, that --

24 **COMMISSIONER OHIGASHI:** Therefore,
25 wouldn't it make sense that the only available

1 grade-separation crossing that is available to the
2 DOE that has a DOT's concurrence would be an
3 overpass?

4 **MR. SHISHIDO:** So the statements that were
5 being director -- or Deputy Director at the time
6 made was he wouldn't build an underpass in the
7 current bridge stream crossings, because you know,
8 flooding shows that, you know, when you have flash
9 floods or big rains, it gets filled up. So that was
10 the statement he made.

11 And if you wanted to build an underpass at
12 those current locations, you would need to do
13 improvements, whether it's lengthening the bridge,
14 raising it up, or just improvements within the
15 stream itself that --

16 **COMMISSIONER OHIGASHI:** And then would
17 that be enormously expensive?

18 **MR. SHISHIDO:** Yeah. So that was the
19 statements that he made, that he would not approve
20 an underpass going through the current figuration --

21 **COMMISSIONER OHIGASHI:** Right. Right. So
22 wouldn't it make sense that an overpass be requested
23 or designed for given that fact that the DOT would
24 not build or authorize to build under that bridge?

25 **MR. SHISHIDO:** If you look at different

1 options, I think when it was brought up whether it
2 would be an overpass or underpass, and the study
3 they did or looked at the different alternatives,
4 and --

5 **COMMISSIONER OHIGASHI:** I don't think it
6 was a -- I don't think it (audio disruption). I
7 think, again, it wasn't meant to delay -- delay to
8 show that there was good faith effort on the
9 Department of Education or they didn't have one, but
10 that's just my interpretation, okay. That's just my
11 interpretation, you know.

12 And forgive me if I'm kind of mad because
13 I -- I recall in 2019, when the Department of
14 Education was there sitting there, that we brought
15 this whole scenario up. We said, hey, we're not --
16 it doesn't look like we're going to change this --
17 this provision. It's going to happen. It's going
18 to stay that way, and it's -- we're going to
19 interpret -- the indications were that we're going
20 to interpret it this way, so start planning.

21 Otherwise, you're going to (inaudible)
22 this time when you have this condition and you're
23 not going to get (audio disruption), and you're not
24 going to be open, and you're going to have a -- an
25 empty school.

1 So if a humble person like me who has no -
2 - went to public school, a graduate of Baldwin High
3 School, can figure that out, I would expect that the
4 DOE, who has so much experience in this matter,
5 could figure that out, too.

6 At this point, I have very difficult time
7 changing my position about an overpass and any other
8 means of satisfying it. The reason why is I'm a
9 lawyer, too. And I realize that all it takes is one
10 accident. And the record before us will result in a
11 massive lawsuit to the school, to the state, to the
12 people of Hawaii.

13 You can make all the provisions you can,
14 but if it happens, it happens. And the record
15 before us is clear. And you can all make all the
16 mitigating circumstances you can, but the record is
17 clear. You're going to subject the State of Hawaii
18 and the people of Hawaii to a -- to something that
19 you cannot defend.

20 And I'm not going to do that, and I'm not
21 going to create a situation where I'm going to have
22 one person get killed. So if there's any way of
23 short-circuiting the circumstances to try and build
24 the necessary items, I'm of the hope that you will
25 try, because all the years of everybody wanting it,

1 it's very difficult for you to come to us and say,
2 oh, they have all these safety measures and, you
3 know, it's like 99 percent sure, and we're going to
4 -- we always think of the safety of the children.

5 My God, how are you going to do that with
6 the record that you've established before? I mean
7 that as an open question if you want to try to
8 answer.

9 **MR. HAYASHI:** Thank you very much.
10 (Inaudible) Commissioner, but all I can say is that,
11 as we stated earlier, we are here now before the
12 commission, and the school has put many strategies
13 and mitigating measures in place. Principal Maxwell
14 has.

15 We -- we are here before the commission
16 sharing with you that although what has happened in
17 the past, moving forward, you do have our commitment
18 for communication, for collaboration, and
19 transparency. And we will do what -- all that we
20 can to work together with you and with the Kihei
21 community, so that we can get, hopefully,
22 Kulanihako'i High School for the students.

23 **COMMISSIONER OHIGASHI:** Thank you.

24 **MR. HAYASHI:** Thank you.

25 **CHAIRMAN GIOVANNI:** Thank you,

1 Commissioner Ohigashi.

2 I think, Commissioner Cabral, you had a
3 quick follow-up?

4 **COMMISSIONER CABRAL:** Yeah.

5 In support of what my fellow commissioner
6 said, and also in support of your admission that
7 there's been problems, and what I -- it appears
8 everyone who is present is willing to work together
9 to move this forward, so being that I'm in private
10 business, I can assure you that this -- you are a
11 private company, and you couldn't open your business
12 and you had a multi-million-dollar building sitting
13 there and you were probably paying taxes and rent
14 and lease and maintenance on, which you guys don't
15 have to pay the taxes on, but you know, it's still
16 there, that company would come up with a way to have
17 that happen faster than eight years before you can
18 have, quote, customers, okay?

19 So what I want to look at is with the
20 power of this community, which has been very solid,
21 and we have got to make this happen, right, with
22 that, with the obstinance of our commission here as
23 the Land Use Commission who will probably not ever
24 say, it's okay to take -- to open that school and
25 take eight more years, because I'm not putting that

1 blood on my hands of what could happen, so with all
2 of that, the question is -- and now DOE joining the
3 team of, let's make it happen, the question is, how
4 can this happen?

5 I know you've got to go somewhere and get
6 the money, blah-blah-blah, and I'm sorry, but
7 there's -- there's all these little deals are done
8 somewhere in Honolulu. I'm in Hilo, and no one lets
9 me in on anything, but I know money happens when
10 it's got to happen.

11 So we got to know -- open all the magic
12 boxes and make up all the little deals and make this
13 happen faster than eight years. So how can that
14 happen ASAP, money, construction? What does it
15 take? Roll it out. That's what I want to see.
16 Let's go forward with action to get that school open
17 in a safe manner, okay? Thank you.

18 **CHAIRMAN GIOVANNI:** Just a clarification
19 to the gentleman for the DOT. Do you know offhand
20 the time that was required from when the Assistant
21 Superintendent said that CIP funds were taken to do
22 the roundabout? From that decision point, which is
23 what Commissioner Cabral is talking about, we're at
24 that decision point right now.

25 From that time that that decision was

1 made, let's go take that money that's been
2 appropriated and use it, from February 24, when it
3 will be done, what was -- how long was that?

4 **MR. SHISHIDO:** I don't recall specifically
5 when the decision was done. So the DOT had our
6 consultant do the design, so we're doing the design
7 while they were working out that portion of it.

8 **CHAIRMAN GIOVANNI:** So (audio disruption)
9 design?

10 **MR. SHISHIDO:** I believe we started in
11 construction in 2022. I believe we started in -- it
12 was either early 2021 or late 2020. I'd have to go
13 back and confirm and check. I think it was soon
14 after the meeting that was held with -- at the time,
15 Representative Wildberger, the DOT and DOT folks, it
16 was soon after that.

17 **CHAIRMAN GIOVANNI:** I'll have to check the
18 record, but I think when we met in late 2022 -- no.
19 Was it? No. 2021. So it was about 14 months ago.
20 There was almost nothing done in terms of a project,
21 but that commitment was made at that time before
22 this commission that the decision had been made to
23 build the roundabout. So basically, in less than two
24 years, basically, you got it done. I just wanted to
25 clarify that.

1 **COMMISSIONER CABRAL:** And another clarity,
2 we were told, and it was on a Zoom meeting, I
3 remember, that we're not -- we're going to build a
4 roundabout, and if later on we determine that we
5 need an overpass or underpass, then we'll look into
6 it.

7 Because what I wanted to ask was, what is
8 the body count that you make that decision and
9 determination on? I -- it was -- I was off the
10 chart upset at that time because that just --
11 continuing to push us away, saying, you know, it's
12 going to happen, we're just going to do the
13 roundabout, and some of that, DOT, I think, made
14 that decision to try and appease us, and then that
15 got moved forward.

16 If -- when we first brought this up and
17 DOE put some sweet little lady in front of us who
18 was not prepared for anything, we could have -- that
19 was five years ago. We could have had that overpass
20 done by now. So again, we've got to move forward,
21 but it could have been done, should have been done
22 ten years ago, or at least started five years ago.

23 So, again, I know it's people that weren't
24 in our positions at that time, but again, how do we
25 move forward? Sorry, we're just -- we're angry about

1 the past. Thank you.

2 **CHAIRMAN GIOVANNI:** Yes, sir, you wanted
3 to make a comment?

4 **MR. OTAGURO:** To address Vice-Chair's
5 comments about how to make this thing happen, there
6 are tools within the state government not used all
7 the time, and that's why we appreciate -- we truly
8 appreciate this hearing today because we needed to
9 understand your positions, the comments from the
10 community, and that gives Superintendent and I the
11 urgency.

12 And we -- not that we didn't have it
13 before, but we're here today on the record so that
14 we can go back to our administration and say this is
15 the, I want to say, the position, but this is the
16 feeling that we came out of the Land Use Commission
17 meeting, and we need to make things happen now.

18 There's a request that we can put in for
19 an emergency appropriation. That's the first thing.
20 We need to expedite, obviously, this design with
21 Group 70, which can be done. That's within our
22 control.

23 I've been encouraged by Mayor Bissen and
24 his administration to find that path forward, and
25 Mayor Bissen was very clear, he ain't going to make

1 no decision to move forward unless the LUC says
2 okay, period, end of story.

3 And -- and we respect that, so that's why
4 this meeting today and you stating your case or your
5 positions and comments are extremely important,
6 because it builds what we need to do going back to
7 our administration to put forth the request, and
8 that will be the first tool.

9 Second, is to work with our county
10 officials here to see what can we do to expedite
11 permitting. That's obviously a long process, and
12 I'm not sure if there's a resolution to that, but
13 that would certainly help us to engage a lot sooner
14 to get that going. So money and approval to
15 proceed.

16 And whoever we pick, probably -- I don't
17 know how it works in government, although I've been
18 doing it for a while, but in the private sector you
19 put a timeframe, and you want the bid -- you got to
20 get it done by the state kind of an approach.

21 And so we'll need to work out those
22 details, Vice-Chair, but in my mind, those are the
23 actionable things that we will take out of this
24 meeting to put forth a plan back to you, the LUC, to
25 say this is our action plan.

1 **CHAIRMAN GIOVANNI:** Thank you.

2 Commissioners, further questions?

3 Commissioner Kahele.

4 **COMMISSIONER KAHELE:** Yeah, I got a
5 question for the Superintendent. Did the city
6 actually sign off on the TCO?

7 **MR. OTAGURO:** The temporary order (audio
8 disruption) yes, we were hopeful, again,
9 aspirational, dreaming, under the prior
10 administration, that we could achieve such a --

11 **COMMISSIONER KAHELE:** A design?

12 **MR. OTAGURO:** Right, no. So the answer is
13 no.

14 **CHAIRMAN GIOVANNI:** You just said
15 something that confuses me. You said you were
16 hopeful that he would have signed it, and then
17 allowed you to open the school as is?

18 **MR. OTAGURO:** Right, so that was when I
19 first started, and that's on me, right? So not
20 engaging in all the different details of what this
21 project required, and I'm appalled that I
22 misunderstood myself all the different -- not the
23 grade separation, no.

24 **COMMISSIONER KAHELE:** We're talking about
25 a transparency, about honesty. We talk about

1 politics, right? That's the reason why this is so
2 political. That's the reason why we've got so many
3 people in the community all upset. And then no, you
4 want to leave the problem on the Land Use -- on the
5 commissioners?

6 **MR. OTAGURO:** No, no.

7 **COMMISSIONER KAHELE:** You know, well, I'm
8 kind of upset. The letter that was signed by
9 Michele McFian (phonetic), I believe, the Planning
10 Director, you would be in violation of a state and
11 county entitlements. So you know, I'm not sure what
12 entitlements you would be in violation of, right, if
13 you was to open or occupy the school without the
14 TCO.

15 **MR. OTAGURO:** It -- it was never intent of
16 the department to open any school without that
17 temporary certificate --

18 **COMMISSIONER KAHELE:** But it's open.

19 **MR. OTAGURO:** No, no --

20 **COMMISSIONER KAHELE:** Not yet, but you're
21 planning on doing it.

22 **MR. OTAGURO:** No. The physical school up
23 the hill is not open.

24 **COMMISSIONER KAHELE:** We're all -- well, I
25 believe both parties are in agreement of building an

1 overpass. I believe in 2020, you -- the department
2 requested for appropriation from the legislatures or
3 from, I believe, the House and Senate.

4 I believe on March 23 you sent a letter to
5 Michele McFian that request going to be made to
6 approve the funds alleged. That would include the
7 overpass.

8 **MR. OTAGURO:** I can't answer that
9 question.

10 **COMMISSIONER KAHELE:** The -- actually, the
11 letter was stated March 23, 2020.

12 **MR. OTAGURO:** Yeah --

13 **COMMISSIONER KAHELE:** Is committed in
14 moving forward with the design of the pedestrian
15 overpass.

16 **CHAIRMAN GIOVANNI:** Commissioner Kahele, I
17 think that the petitioner has clarified today that
18 those were misleading and incorrect statements, and
19 they apologized for them. You are correct, that
20 letter does exist.

21 **MR. OTAGURO:** Right, and what has
22 transpired, Commissioner Kahele, during that time,
23 because I was part of state government, request come
24 in, but during the pandemic there was a lot of
25 fiscal restrictions that were placed, so a lot of I

1 wants and a lot of noes because the state had to
2 prioritize its not only operating budget but its CIP
3 request to go forward.

4 And so I'm not sure where that was if it
5 was made or if it was denied. I know that my former
6 boss had to withhold a lot of the appropriation and
7 did not release a lot of funds during that time, so
8 it may have been approved and -- but the allotment
9 request, which is that last part of we have the
10 money but now we can spend it, those requests to
11 actually -- is what the governor to say, I will
12 release it, you can spend it. I know for a fact
13 that those were withheld.

14 **COMMISSIONER KAHELE:** So with your
15 drawings here on page 29, you have a drawing of an
16 overpass. I guess -- I guess you haven't gone out
17 there to talk to the committee about maybe their
18 design?

19 **MR. OTAGURO:** Yeah, and again, my
20 apologies, Commissioner. That was clearly just
21 conceptual drawing to start the discussion. It's
22 not a final design. Thank you.

23 **COMMISSIONER KAHELE:** Thank you.

24 **CHAIRMAN GIOVANNI:** So I want to follow up
25 on your aspirations regarding this certificate of

1 occupancy. So you said that going back a few months,
2 in the prior administration, mayoral administration
3 in Maui, that you were hopeful or that you would get
4 a certificate of occupancy. And then you just said
5 today that you were -- could you restate the
6 statement?

7 What are you appalled at today that you --
8 that you weren't appalled at before?

9 **MR. OTAGURO:** It was a -- my mistake is a
10 tactic in which we approached it. It was never our
11 intent to not comply with the LUC.

12 **CHAIRMAN GIOVANNI:** Okay.

13 **MR. OTAGURO:** So under the prior
14 administration, it was a request to say, would you
15 be willing to open a school, but knowing that we had
16 the compliance -- so it -- it was the which comes
17 first. Do we ask you first, which we didn't have
18 that opportunity until today, and maybe we should
19 have requested that first.

20 And so the way that the current
21 administration has clearly corrected us, it is you,
22 the body, that we need to approach and get your
23 opinions and guidance, and then go to the county.

24 **CHAIRMAN GIOVANNI:** So this body was
25 approached and then denied the request to remove

1 that condition.

2 **MR. OTAGURO:** Yes.

3 **CHAIRMAN GIOVANNI:** And you can approach
4 it again if you want, but right now, this commission
5 has spoken affirmatively, and these two occasions
6 that I've sat on this body, to reinforce that
7 condition that that school shall not be open until
8 that condition is fulfilled, which means the
9 overpass or underpass is operational.

10 **MR. OTAGURO:** And so that's' the position
11 of the LUC, then that is what we will comply with.
12 Again, it was -- it was -- is there any room to have
13 a temporary statement of occupancy issued as we --
14 so the -- if -- if - - if we've lost our favor and
15 we don't have any more trust or credibility, then we
16 will go back and still do our action plan --

17 **CHAIRMAN GIOVANNI:** I'll take your
18 question as a rhetorical one and not respond to it
19 directly.

20 **MR. OTAGURO:** Yes, sir.

21 **COMMISSIONER OHIGASHI:** May I ask a few
22 questions --

23 **CHAIRMAN GIOVANNI:** Wait a minute. I'm
24 going to go -- you -- yeah.

25 Commissioner Okuda?

1 **COMMISSIONER OKUDA:** I --

2 **CHAIRMAN GIOVANNI:** Commissioner, just for
3 planning purposes, we're going to continue to 12:30,
4 and then we'll take a lunch break. My comments
5 earlier this morning that we might have to shift the
6 agenda, well, we're not going to do that. We're
7 going to continue on this matter up until 12:30, and
8 then we'll continue after lunch on this matter.

9 Commissioner Okuda?

10 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

11 For the record, this is Gary Okuda. A
12 clarification question, Mr. Otaguro. Is it your
13 testimony that there was money available to build
14 the grade-separated pedestrian crossing, which
15 includes an overpass, but then Governor David Ige
16 would not release that money?

17 Because the testimony up until now was the
18 Department of Education never requested any money to
19 build a grade-separated pedestrian crossing.

20 **MR. OTAGURO:** Thank you for the
21 clarification, Commissioner. That is not what I
22 said. That is not true. There was never any funding
23 for a grade-separation request within the budget, so
24 -- we -- we have to ask for it, specifically.

25 **COMMISSIONER OKUDA:** And by the way, I do

1 appreciate Principal Maxwell here. As one married
2 to a long-time retired special education teacher,
3 I've seen first-hand that the principals make a
4 difference whether education is delivered or not. I
5 think Superintendent Hayashi demonstrated that very
6 clearly at Waipahu High School. I mean, you know,
7 he was the star. Maybe that's why he was
8 Superintendent. So the principals really make a
9 difference.

10 And please don't take any of our questions
11 to be in any way denigrating the work that you folks
12 do as -- as principals. But let me ask a question
13 that I asked to the prior Deputy Attorney General
14 who wouldn't answer the question. In fact, his
15 words, and I can quote the transcript if you want,
16 was, Commissioner Okuda, you should just move on.

17 My question to him was: After all the
18 testimony that came out in our hearing, I said, the
19 bottom-line question is what evidence in the record
20 shows we should trust the representations of the
21 Department of Education. So let me be blunt about
22 it. Why should we trust what you're telling us
23 today, after the history of what the record shows in
24 this docket? Why should we trust you?

25 **MR. OTAGURO:** I'll go first, and then I'll

1 let the Superintendent follow, if I may. You don't
2 have to trust me. You really don't. And frankly,
3 from what you've shared, we don't deserve to be
4 trusted for all the actions and misrepresentations
5 and misstatements taken.

6 So yeah, we're not here today to say that
7 we're the best thing. Why we're here today is, one,
8 we care. Two, I believe, and I know in my heart both
9 Superintendent and I are committed, and we are on a
10 -- we are credible. And if there's one thing that I
11 live by it's I'm going to do what I say. I can't
12 look anybody in the eye any other way.

13 And yes, like other testimony said, we're
14 -- it's bad. This is an unfortunate situation that
15 should have never happened. State projects
16 sometimes get like that. This is probably one of the
17 worst. And I've seen others take years to develop,
18 but in this case it involved -- those were more
19 private sector -- I mean, a private within a
20 facility. This is very public.

21 And so all I can assure you is the word.
22 And somebody said it earlier, why should you trust
23 us. You have no reason to, and we're not going to
24 hold anybody to say you should. We're just here
25 because we want to be here. We appreciate this

1 opportunity to just tell you that we mean what we
2 say, and we're going to get this thing done.

3 Superintendent?

4 **MR. HAYASHI:** Thank you for the question,
5 Commissioner Okuda. I am a firm believer in
6 community engagement. I'm a firm believer in
7 communication.

8 You had mentioned my experiences at
9 Waipahu High School, and if I may for a brief
10 moment, that didn't happen by chance. That happened
11 because we had a school community that was
12 transparent, that was very focused on working
13 together for the best interest of our students, as
14 well as our community.

15 And it's -- I -- I bring that, hopefully,
16 to the department. So that's why I'm here today. I
17 say to both of the commissioners that I will do my
18 best to open communication with the -- with the
19 community and do what we need to do to get this
20 project going, so that we can satisfy your
21 requirements so that we can open Kulanihakoi High
22 School. And that's what I bring to you today.

23 As the deputy shared, you don't know me.
24 And I -- and that's okay, but I'm hoping that
25 whatever I tell you, will you give me a chance to

1 demonstrate my commitment to Kulanihakoi, to the
2 students, and for this community. Thank you.

3 **COMMISSIONER OKUDA:** Yeah, well, since
4 you're like the third cast of characters in this
5 case.

6 **MR. HAYASHI:** Yes.

7 **COMMISSIONER OKUDA:** When this petition
8 first arose, we actually continued the hearing to
9 allow the Department of Education to engage with the
10 local community. And I'm not saying that we on the
11 commission are going to rubber stamp whatever the
12 department works out with the community, but I think
13 those of us from Oahu, we kind of recognize that the
14 name of this state is not the State of Oahu, but
15 it's the State of Hawaii.

16 And -- and you know, it's really something
17 that we on Oahu have to be careful about, which is
18 imposing our Oahu views on -- in ways which may not
19 be appropriate in Kihei or a local community, and so
20 we gave time for this engagement. That apparently
21 didn't happen.

22 I -- I don't mean to waste anyone's time,
23 but I'd like to make it just so that it's clear the
24 context of what you've been told at a prior
25 representative, it was Ms. Nakatsuka, I believe, was

1 told in 2019, when a petition was brought in front
2 of us, about what does this -- does this grade-
3 separated pedestrian crossing condition really mean
4 something.

5 And if you look at the transcript on page
6 167 from the 2019 hearing, it's line 15 to page 169,
7 line 5, this is what Commissioner Chang was telling
8 your representative, Dawn Chang, who is now Governor
9 Green's designee to head the Department of Land and
10 Natural Resources.

11 She says, "I don't only speak on my
12 behalf." And she also told your representative,
13 "but I think you heard the message from the Land Use
14 Commission." And she also said, "There is no doubt
15 the intention of the Land Use Commission when that
16 condition was adopted, I think you really heard it
17 clearly."

18 And what Commissioner Chang then said was,
19 "so I think you can either voluntarily choose to do
20 the right thing or the county, I think, is going to
21 take appropriate actions to ensure that that
22 occurs."

23 And Ms. Nakatsuka, spelled N-a-k-a-t-s-u-
24 k-a, said, "Thank you for clarifying the LUC, the
25 commissioner's intentions, understanding of the

1 statement. Now that" -- and I skipped a few things
2 she said, but she also said, "Now that's clearly
3 stated, I can definitely go back and work with our
4 department to make sure that's understood and
5 expressed."

6 So you can see these repeated assurances
7 to us. We're going to take care of it. We're going
8 to take care of it. We're going to take care of it.
9 And if there's exasperation, it's exasperation
10 because we, as government officials, owe our fellow
11 citizens in the community to stand behind our word.
12 That's why people, frankly, started hating us in
13 government because they don't trust us.

14 We have a duty to -- to restore and keep
15 the trust of our fellow citizens. And so I don't
16 know what else we can do here, you know, to try to
17 make that clear, especially education where we
18 should be, you know, the role model for our young
19 citizens, that their word -- our word means
20 something.

21 Thank you, Mr. Chair. I have nothing
22 further to say.

23 **CHAIRMAN GIOVANNI:** Thank you,
24 Commissioner.

25 Commissioners, anything further?

1 I've got a couple of questions. I want to
2 start by picking on a message -- a couple of
3 messages that you've already heard, just to add
4 emphasis.

5 Yes, this commission has had many hearings
6 on this topic over the last ten years, and at every
7 one, there was representation from the Department of
8 Education. And their representations were made to
9 this body that, we'll get it right, we'll follow
10 through, et cetera, and that's part of what
11 Commissioner Okuda has just read into the record
12 again.

13 Personally, I -- I am sensing a little bit
14 of seriousness of your part to do the right thing
15 for the first time. I've always felt -- and I've
16 only been on the commission a couple of years, but
17 this is my third or -- I think my third hearing on
18 this subject. The two prior ones were your efforts
19 to remove the condition, and it was denied in both
20 cases.

21 But I am sensing some seriousness on your
22 behalf, and I am willing to give you a chance to
23 show us that you're serious, that you will follow
24 through, not in an eight-year bureaucratic manner,
25 which would be, in my view, inexcusable, but in an

1 emergency manner, where there are ways to get things
2 done when it's urgent and emergent, and it's a
3 crisis. Damn, if we don't have a crisis on our
4 hands right here, right now. So I strongly
5 encourage you to do that.

6 It does sound like you -- I just want to
7 affirm that you have made, I think you said, the
8 decision, so I want to get that clear, to do an
9 overpass not an underpass, is that true?

10 **MR. HAYASHI:** That's correct, Chair.

11 **CHAIRMAN GIOVANNI:** So there's no more
12 study. Let's get the damn thing designed. Right?
13 And you've got a clear message that you don't have -
14 - from the county the rights occupy -- I forget what
15 they call that thing -- what's it called?

16 **COMMISSIONER OHIGASHI:** Certificate of
17 occupancy.

18 **CHAIRMAN GIOVANNI:** A certificate of
19 occupancy. We'll hear from the county shortly.

20 So I'm an engineer. I'm a project guy. I
21 used to be responsible for half a billion dollars a
22 year in projects on Oahu and in the state. I can
23 tell you, if you want to get that damn thing done,
24 you get it done. But you got to go to work, and I'm
25 not talking about bureaucracy meetings and budget

1 meetings and those sorts of things. You got to go to
2 work, get it done.

3 The community deserves it. The principal
4 wants to go to work. The teachers want it. The
5 students deserve it. This community deserves it.
6 So hopefully, it gets done in an expedited manner.

7 I think I'm just going to leave it with my
8 speech.

9 Commissioner Cabral?

10 **COMMISSIONER CABRAL:** I don't know what
11 the schedule is, and I want to -- we have students
12 here that have made their presence known and those
13 that brought them, and I want to thank them for
14 coming. I'm assuming they're missing school today
15 by being here.

16 **CHAIRMAN GIOVANNI:** No, I think it was
17 clarified that they're studying how government
18 works.

19 **COMMISSIONER CABRAL:** Okay, studying.
20 Well, one, you can -- to the students, isn't this
21 boring, first off? You know, you're sitting here
22 listening to all these people, hopefully, in a civil
23 manner, argue.

24 But at the same time, I thank you for
25 coming and the schools for bringing you because it -

1 - so this is what sometimes adults have to go
2 through, and the process is boring and difficult
3 sometimes, but hopefully, in the long run, it is
4 successful, and the fact that we have this ability
5 to have differences of opinion and come together for
6 the best solution for everybody.

7 So I wanted to make sure before the
8 students have to -- because they'll probably get out
9 of school and go home before we get to leave here,
10 but thank you very much to all of you students for
11 coming. I really appreciate it and hope this has
12 been helpful.

13 And thank you for the school
14 administration for organizing this. Thank you.

15 **CHAIRMAN GIOVANNI:** Okay. I'd like to
16 proceed to the county for their statement.

17 **MR. HOPPER:** Thank you, Chair. Given the
18 history in this case, I want to be respectful of the
19 commission's time because we've had multiple
20 hearings on this, obviously.

21 The county did provide for the record the
22 December 1 letter from former Planning Director
23 McLean to the Department of Education to be part of
24 the record. It actually was copied to the Land Use
25 Commission at the time it was sent. That included

1 some attachments that are also part of the record
2 already from previous proceedings with the
3 commission.

4 I know some of the commissioners, it looks
5 like four of you, have been here at least for
6 portions of these proceedings, perhaps, for the
7 order to show cause to the present. Some have not
8 been.

9 The LUC staff, I think, does a great job
10 of compiling the record on your website, so there's
11 a few different places you can go: the order to show
12 cause proceeding in 2019, the motion to amend
13 proceeding in 2020, which was -- which is actually
14 archived under the Bishop boundary amendment as a
15 closed proceeding, and then the current proceeding.
16 So for anybody who hasn't had an opportunity, I
17 think reviewing that record is -- is critical.

18 The county's here, essentially, as you
19 are, to hear an update from the Department of
20 Education, and -- and hear what they have to say.
21 And that -- I don't have much to add. We can be
22 available for questions. But that's -- we wanted to
23 make sure you had that letter in the record. And
24 with that, we can open for questions. But at this
25 time, we were essentially here to listen and hear

1 what the Department of Education had to say, as you
2 are.

3 **CHAIRMAN GIOVANNI:** Thank you, Mr. Hopper.
4 Commissioners, any questions for the
5 county? Hearing none.

6 Thank you. OPSD?

7 **MS. KATO:** Thank you, Chair. OPSD doesn't
8 have any comments at this stage, but we expect to
9 discuss with and work with the DOE on what their
10 plans are going forward to address the LUC's
11 condition. Thank you.

12 **CHAIRMAN GIOVANNI:** Thank you.
13 Petitioner, would you like to make any
14 statement -- you have an opportunity to make
15 additional statements at this time, if you would
16 like.

17 **MR. OTAGURO:** My apologies, the
18 Superintendent had to take a quick call, but on
19 behalf of Superintendent, we just appreciate LUC's
20 time. We understand the frustration.

21 I want to acknowledge the students here,
22 and some can be construed that as plus or minus, but
23 I think that we're at a point where the community,
24 which includes our students and our principals and
25 teachers, need to hear where we're at.

1 I want to apologize to our students for
2 putting them through this and disappointing them.
3 It was something that I believe was quoted on in a
4 news release, but it is, it's -- you know, because
5 we don't do our job, people get hurt. Because we
6 don't follow through, we're wasting time and our
7 money, and it's all our money.

8 The losers at this stage are really the
9 individuals sitting here, that we don't have a
10 beautiful school ready to open. And as I said
11 earlier, we appreciate this opportunity. I can't go
12 back to the past. I cannot. It is good to
13 understand the past because those that don't
14 remember the past will repeat it. They're condemned
15 to repeat prior mistakes.

16 All I would ask this commission is that
17 somehow in ensuing weeks, days, months, that I have
18 an opportunity to prove to you that I can earn your
19 respect and your trust. And that's all I have is my
20 word -- words that have come and gone in this
21 commission.

22 I think our staff that have worked on this
23 project have been very passionate, and so I don't
24 fault them at all. This is not to say that -- to
25 throw anyone under the bus -- that decisions were

1 made in the past for whatever the reasons that
2 occurred.

3 But here we are today with Superintendent
4 Hayashi and myself and CAS Sides and Principal
5 Maxwell to just ask for the LUC's consideration as
6 we move forward, in whatever capacity you decide, so
7 we appreciate that. Thank you.

8 **CHAIRMAN GIOVANNI:** Fair enough. Thank
9 you.

10 At this point, I would like to give an
11 opportunity for a second time for the public, if
12 they wish, to provide public testimony. So let me
13 thank the petitioner and the witnesses for what
14 you've brought forth.

15 So this could include even witnesses that
16 have already testified earlier today if you wanted
17 to make a follow-up testimony. Is there anybody
18 that wants to do that?

19 Mr. Beerer, would you come forward? And
20 let me remind you you're still under oath, so please
21 proceed.

22 **MR. BEERER:** Thank you. I just wanted to
23 follow up on other issues outside of the GSPC
24 condition. There is condition 1D. I will read it.
25 "The petitioner shall install paved shoulders along

1 Piilani Highway fronting the high school and provide
2 accommodations for bicycles to the mutual agreement
3 of petitioner and DOT."

4 Has that been done? What type of
5 compliance? And what -- we would like to know what
6 that solution looks like.

7 **CHAIRMAN GIOVANNI:** So is the petitioner
8 willing to answer that question? You're not
9 obligated to, but are you willing to address it?

10 **MR. SHISHIDO:** Yeah, I'll answer.

11 **CHAIRMAN GIOVANNI:** Please proceed.

12 **MR. SHISHIDO:** Yes. With the roundabout,
13 I mean, it does accommodate bicycle both, and their
14 sidewalk going in front of the school, I believe, on
15 the mauka side and makai side of Piilani Highway. A
16 bicycle movements can go through the roundabout to
17 the school lane.

18 **MR. BEERER:** Okay. So that is just part
19 of the shoulder that is attached to the vehicular
20 lanes. It's between the vehicular lanes and the
21 guardrail as part of the paved shoulder within the
22 guardrail?

23 **CHAIRMAN GIOVANNI:** This is not really a
24 back- and-forth dialogue.

25 **MR. BEERER:** Okay.

1 **CHAIRMAN GIOVANNI:** Yeah. You've raised
2 your point about the commission, not to them, about
3 -- you're asking about the status of the -- a
4 different condition than we've been talking about
5 today.

6 **MR. BEERER:** Okay. Help me understand,
7 clarify. The -- one of the conditions to -- the
8 original conditions to this project is that there
9 was an annual update to be submitted by the
10 Department of Education on their compliance with the
11 conditions and the update of the school.

12 So I don't want to be out of line, but I
13 do want to follow up on what our concerns are. And
14 if you can help me -- direct me how to do that
15 appropriately. Would it be appropriate to ask if
16 there is any renewable energy or solar power being
17 generated --

18 **CHAIRMAN GIOVANNI:** So -- so your question
19 is how do you get what you're looking for?

20 **MR. BEERER:** Yes.

21 **CHAIRMAN GIOVANNI:** And the answer -- the
22 simple answer is you can go to our LUC staff. You
23 don't have to wait for a hearing such as this. It's
24 not an opportunity for you to follow up
25 individually.

1 What your opportunity is now is to go on
2 the record with your concerns or any testimony you
3 have. So for example only, if you haven't seen any
4 evidence of such, you would like to see more
5 transparency or more meetings or what -- you go on
6 record making your personal position clear. But if
7 you want to ascertain specifically what the status
8 of something might be, my guidance to you is to,
9 independent of this hearing, just make a direct
10 contact with our staff, and they'll try to help you
11 get that.

12 **MR. BEERER:** Okay. That sounds good.

13 Yes, I am looking to ascertain the status
14 of whether renewable energy or solar power is being
15 generated as represented in the EIS.

16 **CHAIRMAN GIOVANNI:** Fair enough.

17 **MR. BEERER:** I'll leave it at that. Thank
18 you for your guidance.

19 Thank you.

20 **CHAIRMAN GIOVANNI:** Okay.

21 Yes, sir, you want to give public
22 testimony? Please state your name and affiliation,
23 and I will swear you in.

24 **MR. THAYER:** It's Matt Thayer.

25 (Inaudible.) My name is Matthew Thayer. I'm a

1 photographer for the Maui News, but I've lived in
2 Kihei for 42 years. I'm speaking as a citizen of
3 Kihei.

4 **CHAIRMAN GIOVANNI:** Do you testify (sic)
5 that your testimony you're about to give today will
6 be the truth?

7 **MR. THAYER:** I do.

8 **CHAIRMAN GIOVANNI:** Please proceed.

9 **MR. THAYER:** Thank you. I appreciate your
10 attention to this matter. At the newspaper, we had
11 a -- we had to stop using the same descriptive term
12 for the Kihei school. It was always "the long
13 awaited Kihei High School." People have been
14 waiting a long time for this school.

15 I am worried about the -- the narrow
16 bridges, that Piilani Highway is not safe for
17 pedestrians, even with the overpass. I -- it's not
18 safe to be on that road for pedestrians or
19 bicyclists. We need to think more in terms of long-
20 term, not just meeting the criteria of having an
21 overpass.

22 It's hard as this works with the whole
23 community, it's not just for the school. And it's
24 my understanding from the last meeting that we --
25 the information meeting, was that the overpass would

1 not be available for the community as a whole, just
2 for the school. And this, to me, seems like a lost
3 chance to make Kihei a more bikeable, walkable
4 community.

5 There is a vacant lot on the Kihei -- or
6 the Kahului side of the roundabout that is already
7 grade- separated, and I would like -- I suggest that
8 the DOE look at this as a possibility. It could be
9 used to build an overpass that does not have the
10 stairs and the ramps, which make them oftentimes
11 unused by people. They take the -- kids, in
12 particular, they take the short route, which is
13 going to be across.

14 If you were driving in today, you saw that
15 they already have the crosswalk signs and the
16 crosswalks in, so it's already there. And as you
17 say, one life is too many to lose. And it scares me
18 as a parent and as a community member. It's not
19 safe. I've walked up there.

20 This -- this vacant lot on the other side
21 of the roundabout is -- would be an opportunity for
22 the county and the state to work together on this
23 and not just have the state telling the county how
24 it's going to be. Thank you very much.

25 **CHAIRMAN GIOVANNI:** Please stay for

1 questions.

2 Petitioner, do you have any questions for
3 this witness?

4 **MR. HAYASHI:** No, Chair. Thank you.

5 **CHAIRMAN GIOVANNI:** County?

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

7 **CHAIRMAN GIOVANNI:** OPSD?

8 **MR. KATO:** No, sir.

9 **MR. THAYER:** Thank you --

10 **CHAIRMAN GIOVANNI:** Wait a minute.
11 Commissioners?

12 Okay. You can go now. Thank you.

13 **MR. THAYER:** Appreciate it.

14 **CHAIRMAN GIOVANNI:** Anybody else?

15 Ms. Nakamura, please restate your name and
16 remember you're still under oath.

17 **MS. NAKAMURA:** Cheri Nakamura, Director of
18 HE'E Coalition. I thank the commission today and
19 the Department of Education and all the parties here
20 for having this very productive discussion.

21 I do want to mention to the students,
22 though, that while the department made comments
23 about ensuring safety, it's also about following
24 rules and the law. And I think we want to set an
25 example for our students and our community that laws

1 are made for a purpose, and I think this law and
2 this rule was made with a lot of thought behind it,
3 and, once again, I appreciate the commission for
4 standing firm.

5 Regarding the next steps and the execution
6 of getting the GSPC done, we know it takes time
7 often in government, and I heard the urgency today
8 that the department committed and also that the
9 commission encouraged, but for us in the community,
10 it's hard for us to know what the status is, so we
11 would appreciate timely updates, progress as to how
12 it's going, and if there was a mechanism that the
13 department can utilize to inform the community, it
14 would be greatly appreciated. So thank you.

15 **CHAIRMAN GIOVANNI:** Thank you. Please
16 stand by for questions.

17 Petitioner, any questions?

18 **MR. HAYASHI:** No questions, Chair. Thank
19 you.

20 **CHAIRMAN GIOVANNI:** County?

21 **MR. HOPPER:** No, thank you, Chair.

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

23 **CHAIRMAN GIOVANNI:** Thank you.

24 Commissioners?

25 Okay. Thank you.

1 Okay. Anybody else wishing to testify at
2 this time?

3 Mr. Joiner, one second. Mr. Joiner, I'd
4 like to remind you that you're still under oath, and
5 please state your name and then proceed.

6 **MR. JOINER:** Thank you. Buck Joiner.
7 Thank you for the opportunity to speak again. I
8 would like to make it very, very clear that the
9 conditions under the Waipuilani Bridge and that
10 gulch have changed, okay. The county removed 50
11 years' of silt accumulation. That changes the
12 amount of space available.

13 The underpass that I am proposing and my
14 backers' support is not the final solution. It is a
15 Band-Aid. It is something that can be done quickly
16 and cheaply if you (audio disruption) goes with all
17 of this. Take a look at the model. It can be done.
18 It's just a Band-Aid.

19 Okay. I want to point out also that
20 nothing is 100 percent safe. Overpass, underpass,
21 it doesn't make any difference, as long as the
22 crosswalk is there at the roundabout, there's going
23 to be an accident. It's just going to happen.
24 There's no way that we can avoid that.

25 Okay. And another thing that is very

1 critical not for you guys but for these guys,
2 there's an additional problem. Walking across the
3 bridge, there's only three feet between a concrete
4 barrier and the vehicles. That must be addressed.
5 It's not a part of their decision. It's a part of
6 these students' lives. It's critical. Take a look
7 at the model. Thank you.

8 **CHAIRMAN GIOVANNI:** Thank you, Mr. Joiner.
9 Stand by for questions.

10 **MR. HAYASHI:** No questions, Chair. Thank
11 you.

12 **CHAIRMAN GIOVANNI:** Thank you.
13 County?

14 **MR. HOPPER:** No, thank you, Chair.

15 **CHAIRMAN GIOVANNI:** State? OPSD, any
16 questions?

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

18 **CHAIRMAN GIOVANNI:** Thank you, Ms. Kato.
19 Commissioners?

20 No more questions. Thank you, sir, for
21 coming back a second time.

22 Mr. Kulanikau, (audio disruption) a second
23 time. Just let me remind you you're still under
24 oath.

25 **MR. KULANIKAU:** Red is good.

1 **CHAIRMAN GIOVANNI:** You're still under
2 oath.

3 **MR. KULANIKAU:** Yeah. So following up Mr.
4 Buck Joiner, so --

5 **CHAIRMAN GIOVANNI:** Please state your
6 name.

7 **MR. KULANIKAU:** Oh, Vernon Kulanikau,
8 resident of Kula Kai.

9 **CHAIRMAN GIOVANNI:** Proceed.

10 **MR. KULANIKAU:** So Kulanihakoi (sic)
11 bridge, yeah, very tight for anyone to go across to
12 go to school or wherever you want to go, so I -- in
13 consultation with the Piilani Promenade about the
14 megamall site north of Kulanihakoi -- so the
15 representative for the landowner, he would consider
16 giving easement access, even put in a sidewalk so
17 that the mauka side of the students, like Ohukai and
18 above, can get access. They don't have to go on the
19 highway.

20 That's this part. You got to figure out
21 how you extend the Kalanihakoi bridge just for
22 pedestrians, not making another bridge, but just
23 want to say that, for the record, that's an option,
24 that the adjacent property over the north side of
25 Kulanihakoi knows the situation, and he would

1 consider giving easement access for students.

2 We just got to figure out how we're going
3 to get the students across Kulanihako'i bridge safer.
4 And the proposal is extend the bridge separately
5 just for pedestrian crossing only, and that would
6 help mitigate mauka students above Piilani Highway.

7 **CHAIRMAN GIOVANNI:** Very good. Stand by
8 for questions.

9 Any questions from the petitioner?

10 **MR. HAYASHI:** No questions, Chair.

11 **CHAIRMAN GIOVANNI:** Thank you.

12 County?

13 **MR. HOPPER:** No, thank you, Chair.

14 **CHAIRMAN GIOVANNI:** OPSD, any questions?

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

16 **CHAIRMAN GIOVANNI:** Commissioners?

17 Commissioner Ohigashi?

18 **COMMISSIONER OHIGASHI:** Mr. Kulanikau, I
19 hope you realize the Land Use Commission is --
20 places a condition, and the condition says you got
21 to do a grade separation crossing for that area.
22 And our condition, we haven't modified it or
23 anything.

24 How to reach the conclusion or how to
25 satisfy that condition remains up to the petitioner,

1 and, essentially, County of Maui will have to
2 determine whether or not it is met. So I think that
3 your suggestions may be better directed directly
4 through the system that they've touted today of full
5 communications between the local school -- school
6 officials and the Superintendent.

7 So those suggestions, I think, would be
8 more fruitful made before them. We cannot act on
9 those suggestions.

10 The other thing, too, is I want to commend
11 you. I've seen some of your videos on -- concerning
12 the flood and I just --

13 **MR. KALANIKAU:** And you like them, yeah?

14 **COMMISSIONER OHIGASHI:** -- I liked them.

15 **MR. KALANIKAU:** Yeah, you like them.

16 **COMMISSIONER OHIGASHI:** I liked them.

17 **MR. KALANIKAU:** Because the number went
18 up. Okay.

19 **CHAIRMAN GIOVANNI:** Thank you.

20 **MR. KALANIKAU:** So yeah, absolutely
21 correct, and it's not -- I just want to let
22 everybody know we're going to figure this thing out.
23 But there's that option. I'm not taking away from
24 what LUC had. You got to talk to them, you guys.
25 Okay. Mahalo.

1 **CHAIRMAN GIOVANNI:** Thank you.

2 So commissioners, this is a status report.
3 We're not required to take any action at this time
4 today. But the condition for continued status
5 reports will remain in effect.

6 If the commission feels the concerns have
7 not been addressed in comments and responses
8 provided by the petitioner, the Chair that will
9 entertain a report -- pardon me -- the Chair will
10 entertain a motion that the petitioner's report
11 today has not sufficiently addressed the
12 commission's concerns and that further meetings or
13 status updates are necessary to provide the
14 opportunity to show at future dates, dates that will
15 be determined by the LUC staff.

16 Any further discussion? I'm just going to
17 power through the lunch. I think we're pretty close
18 to an end here.

19 So commissioners, any further comments or
20 -- on what we've heard today?

21 So hearing none, I'm going to -- I'm going
22 to speak for myself, and I think I represent a sense
23 and the feelings of my fellow commissioners, some of
24 which has been put on the record or are new to this
25 matter, some of which have been here for a few

1 years, some of which have been here for several
2 years.

3 We have a crisis, a crisis of our own
4 doing. And I heard today a willingness to follow
5 through transparently, hopefully, on an emergent
6 situation, to get this thing done. I think you
7 heard today the sense of this commission that it has
8 no interest in removing that condition. In fact, it
9 reaffirms in my mind that that school should not
10 physically open until that grade- separated
11 pedestrian crossing has been put into effect.

12 So I urge you to move forward
13 expeditiously. This commission, I'm sure, would give
14 you whatever support in terms of sentiment that it
15 can and, as you move through the new administration,
16 to get their attention that the only workable
17 solution here is a permanent solution, and it's time
18 to go to work and get it done on an emergent basis.
19 Otherwise, this school stays closed.

20 Anybody want to add to that?
21 Commissioners?

22 So thank you and on this particular item,
23 I will call the meeting -- this matter is closed,
24 and we will continue with our agenda after lunch
25 break.

1 So it's currently 12:40. We'll reconvene
2 at 1:15.

3 **(Recess taken from 12:40 - 1:20 p.m.)**

4 **CHAIRMAN GIOVANNI:** Okay. So it's 1:20,
5 and we're back on the record. So I'd like to go to
6 -- for legislative update.

7 Mr. Orodenger, will that be presented by
8 you or Mr. Derrickson?

9 **MR. ORODENKER:** I will make that
10 presentation with Scott. Scott, perhaps, will join
11 in if I miss something.

12 As usual, there are a number of bills of
13 concern for the Land Use Commission this year. Some
14 of them less so, some of them are just peripheral.
15 The bills of concern are those that seek to raise
16 the county's minimum acreage. There's one bill,
17 House Bill 673 -- actually, it's two bills -- and
18 Senate Bill 469, which are identical bills.

19 They would allow the county to do DBAs up
20 to a hundred acres if 50 percent of the homes were
21 for affordable housing, defined as 140 percent of
22 median. We opposed HB 673 successfully in the
23 House; however, it's up for hearing in the Senate.

24 Our position is that if the committee
25 feels -- that they're not going to kill it. If the

1 committee feels that it should pass out, that it
2 should be amended to say that 75 percent of the
3 homes built should be at 100 percent of median,
4 which would, in our opinion, provide housing -- and
5 it's consistent with the Governor's message --
6 provide housing for nursing, nurses, firemen, all
7 those folks who are currently -- teachers who are
8 currently out of the housing market.

9 And we're also saying that if you're going
10 to do this, we should -- you should require a
11 process similar to special permits whereby the Land
12 Use Commission has to make -- after the transmittal
13 of the docket to the Land Use Commission, we have to
14 make a decision within 60 days and to approve, deny,
15 approve with amendments, or send it back.

16 And we've listed a number of things that
17 would be grounds for denial such as failure to
18 adhere to due process requirements, failure to take
19 into account the public trust doctrine, or that it
20 would cause an impact to cultural resources.

21 We're very concerned about these bills
22 because the counties don't adhere to the contested
23 case hearing process, and they can be easily
24 influenced. One of our real concerns is that it
25 jeopardizes ag land for small farmers, and it --

1 because these are the size lots that small farmers
2 are usually looking at, and it could cause
3 speculation and a significant increase in rents that
4 they would have to pay, which would make farming
5 become that much more difficult.

6 We're also concerned with public trust
7 doctrine issues as well as cultural issues, which
8 the counties generally don't look at, and they don't
9 feel they have to look at.

10 So SB 469 is up in front of the Waterland
11 Committee and the Senate on Friday at 1 o'clock.
12 That is Senator Inouye's committee. Nancy, Nancy,
13 Nancy. And any pressures that you can bring or
14 testimony you want to give would be greatly
15 appreciated. And we thank you for that.

16 The second bill of concern but that we
17 really don't have much of a problem with is HB 676
18 and SB 6769. And those two bills allow for any
19 acreage over 15 acres can be approved by the
20 counties if they draft rules and the county or the
21 state retains ownership of the land. So basically,
22 you're talking about county projects.

23 Testimony in this is we really don't need
24 this because of the 201H project exists, but our
25 testimony was also if they're going to pass it out

1 to add some language making clear that the counties
2 had to adhere to due process and take into account
3 public trust doctrine issues.

4 It -- in the House, it passed with our
5 amendments, our recommended amendments, and the
6 Senate has not scheduled it for hearing, so we'll
7 have to see how far that goes.

8 HB 670 and Senate Bill 769, it was heard
9 in the House already. It lowers the requirements
10 for a district boundary amendment approval by this
11 commission to five votes. The bill also called for
12 a time for rendering a decision to be cut in half.

13 When it was heard in the House, we
14 succeeded in getting the time reductions taken out,
15 so now all it does is reduce the number of votes
16 that are necessary from the district boundary
17 amendment down from six to five. I don't think this
18 is a big cause for concern for us because 90 percent
19 of our DBAs are unanimous or pretty close to
20 unanimous, so I don't think this is a big problem
21 for us.

22 There are other -- several other bills out
23 there. HB -- no, SB 1498 requires us to do a taro
24 lands inventory. We're not testifying on that one in
25 the moment. We're just -- at the moment, we're just

1 monitoring it. If it looks like it's going to pass,
2 we intend to testify that if they're going to make
3 us do this, they've got to give us some money for it
4 because right now we don't have any staff to do
5 that.

6 SB 580 -- let me talk about SB 1521. That
7 bill is to do the study that we've been talking
8 about for many years, have OPSD do a study on how
9 much land is needed for the various competing uses.
10 It appropriates money to OPSD and puts us on a
11 commission to help guide that study.

12 We're just testifying in support of that.
13 OPSD and DOA are getting caught -- tied up in the
14 weeds on that one. I don't know what their concerns
15 are, but you know, we're just testifying that this
16 is a good idea, and it should move forward.

17 The last bill that is -- we're not really
18 getting involved with, but just that the commission
19 is aware of it, SB 580. It started out as a short
20 form bill, and the Ways and Means Committee in the
21 Senate side filled it in, and basically what it does
22 is it moves OPSD, which includes the LUC, to the
23 Board of Land and Natural Resources instead of the
24 Department of Business and Economic Development.

25 I don't think this is going to pass. I

1 actually think that this is a leverage move on the
2 part of Senate Ways and Means. If it were to pass,
3 however, it would be kind of interesting because
4 then we would be dealing with Dawn as our Chair
5 rather than the head of (inaudible), so that would
6 make life interesting again.

7 And that is really it. I mean, there are
8 a bunch of other things out there that changed the
9 uses that are required -- or that are allowed on
10 agricultural land, some of them to allow educational
11 or medical institutions to build housing on any
12 lands they own, which we really don't have a problem
13 with.

14 They require Land Use District studies and
15 there's some attempts to address the issues with
16 IAL, and if those bills get heard, we will be
17 testifying that it's premature, that we should wait
18 until the Supreme Court renders a decision on the
19 county's appeal.

20 There's another one to change rural
21 district policies and, you know, to do a bunch of
22 studies and things. I just lost my feed, and I
23 don't know if something happened at your end.

24 **CHAIRMAN GIOVANNI:** We hear you.

25 **MR. ORODENKER:** Okay. And that is pretty

1 much it. As I said, the bills that are of most
2 concern to us are HB 673, which died, but SB 469,
3 which raises the acreage, this is -- as I testified
4 yesterday, this is deja vu all over again. The
5 realtors introduce this bill year in, year out, and
6 it's died year in, year out. The only reason it's
7 getting any traction this year is because of this
8 perceived crisis for affordable housing, which has
9 actually been a crisis for the past ten years.

10 We don't feel that raising the acreage
11 will do anything but make the realtors rich, to be
12 honest with you. I just don't see how this is going
13 to resolve the -- any affordable housing.

14 We are -- we are one small portion of the
15 process and our process is usually three to four
16 months. It's not a stumbling block. As I've said
17 to some of the people proposing this is that if it's
18 a good project, it's going to sail right through.
19 If it's a bad project, it's not going to go.

20 If you're talking about a ten-year
21 process, we're only three to four months out of that
22 ten-year process. It doesn't make any sense. It's
23 not going to do anything to stimulate affordable
24 housing.

25 So anyway, that is my report. If there

1 are any questions, please let me know.

2 **CHAIRMAN GIOVANNI:** Thank you. Can you
3 hear me?

4 **MR. ORODENKER:** Yeah.

5 **CHAIRMAN GIOVANNI:** Can you give us -- or
6 me -- I may be the only one who needs it -- your
7 speech describing 201H? Very simplistically, what
8 is it?

9 **MR. ORODENKER:** Well, 201H projects are
10 affordable housing projects that are approved by
11 HHFDC and usually have some state contribution.
12 Sometimes the state makes an entire state-
13 constructed project. Those have to be affordable
14 housing, and each county defines affordable housing
15 differently, but under HHFDC's rules, it can be up
16 to 140 percent median.

17 It can be a component of a larger project.
18 But when -- with the 201H project, if it qualifies
19 as a 201H project, the county can waive any of its
20 rules with regard to the construction of those
21 homes, so it can waive water requirements. It can
22 waive infrastructure requirements of any kind. It
23 can waive its own rules with regard to the community
24 plans and things like that.

25 It cannot waive a district boundary

1 amendment proceeding. It can't waive state
2 requirements. So once the county is -- has
3 completed its process and issued a decision and
4 order, it transmits that including all of this --
5 the records from its proceedings to the Land Use
6 Commission, and we have 45 days to issue a district
7 boundary amendment or to hear the district boundary
8 amendment and, if we're going to grant it, adopt an
9 order.

10 **CHAIRMAN GIOVANNI:** Thank you.

11 Commissioners, any questions or
12 suggestions? I think we're good.

13 Thank you for hearing our banter.

14 **MR. ORODENKER:** Thank you, Chair.

15 **CHAIRMAN GIOVANNI:** This concludes our
16 February 8 and 9 hearing. Is there any further
17 business to discuss by anyone? If not, I declare
18 this meeting adjourned. Thank you.

19 **(Meeting adjourned at 1:34 p.m.)**

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1 CERTIFICATE

2
3 I, Jodi Dean, 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
13 hand this 23rd day of February, 2023.

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19 _____
20 Jodi Dean
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