

LAND USE COMMISSION

STATE OF HAWAII

Hearing held on April 3, 2019

Commencing at 9:30 a.m.

Maui Arts & Cultural Center, Higashi Meeting Room

One Cameron Way, Kahului, Maui, Hawaii 96732

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

DR19-65 County of Maui - Re: All-794 Department
of Education (Kihei High School)

Petition for Declaratory Ruling

* Consider State of Hawaii'i, Department of
Education's Petition to Intervene* Consider State of Hawaii'i, Department of
Education's Motion to Continue Hearing and
Deferral of Ruling on Petitioner Department of
Planning, County of Maui's Petition to Issue a
Declaratory Order filed February 22, 2019* Consider Petitioner Department of Planning,
County of Maui's Petition to Issue a
Declaratory Order filed February 22, 2019

V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

APPEARANCES:

JONATHAN SCHEUER, Chair
NANCY CABRAL, Vice Chair
AARON MAHI, Vice Chair
LEE OHIGASHI
ARNOLD WONG
EDMUND ACZON

STAFF:

PATRICIA OHARA, ESQ.
Deputy Attorney General

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Planner/Chief Clerk
SCOTT DERRICKSON, AICP

DAWN APUNA, ESQ.
Deputy Attorney General
For State Office of Planning

THOMAS KOLBE, ESQ.
MICHAEL HOPPER, ESQ., Deputy Corporation Counsel
MICHELE McLEAN, Planning Director
For Maui County Department of Planning

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning.

3 This is the April 3rd, 2019 Land Use
4 Commission meeting.

5 The first order of business is the adoption
6 of the March 27-28, 2019 minutes. Are there any
7 corrections or comments on the minutes?

8 Hearing none, is there a motion to adopt
9 the minutes?

10 COMMISSIONER WONG: So moved.

11 VICE CHAIR CABRAL: Second.

12 CHAIRPERSON SCHEUER: A motion has been
13 made by Commissioner Wong and seconded by
14 Commissioner Cabral.

15 Is there any discussion on the motion? If
16 not, all in favor say "aye". Any opposed? The
17 minutes are unanimously adopted.

18 Our next agenda item is the tentative
19 meeting schedule. Mr. Orodener.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 On April 23rd and 24th we will be on Oahu
22 for the Hawaii Memorial FEIS at Kaneohe Bayview Golf
23 Club.

24 And then on May 7th and 8th, we will be at
25 NELHA for the Order to Show Cause Bencorp and

1 Shopoff.

2 May 8th we will be on Maui once again for
3 Ka'ono'ulu Ranch evidentiary hearing and Emmanuel
4 Lutheran.

5 May 22nd is set aside for adoption of
6 orders of Shopoff. We will have to talk about the
7 agenda on May 22nd. We will be on the Big Island
8 again for Order to Show Cause on the Shopoff matter,
9 and Bencorp matter.

10 June 5th, Poma'ikai Partners site visit on
11 Oahu.

12 June 26 to 27th Poma'ikai Partners hearing
13 on North Shore of Oahu.

14 July 10th and 11th is set aside for Waiawa
15 matter, Honolulu. And that takes us through July.

16 CHAIRPERSON SCHEUER: Thank you, Mr.
17 Orodenker.

18 Commissioners, any questions?

19 For members of the public who have not
20 appeared in front of us before, just so you know,
21 we're nine possible members of the Land Use
22 Commission, of which eight are confirmed. We're all
23 volunteers. We're appointed by the governor and
24 confirmed by the state senate. So that's the time
25 that we take going forward to work on various matters

1 across the islands.

2 Today's meeting is an action meeting,
3 DR19-65 Petitioner Department of Planning, County of
4 Maui's Petition for Declaratory Order reiterating and
5 reaffirming that condition 1(b) to the Commission's
6 July 29, 2013 Findings of Fact, Conclusions of Law
7 and Decision and Order requiring an
8 above-or-below-ground pedestrian crossing to allow
9 pedestrians to safely cross the Pi'ilani Highway
10 prior to the opening of Phase I.

11 Will the Petitioner please identify itself
12 for the record?

13 MR. KOLBE: Good morning. My name is Tom
14 Kolbe, and with me is Michael Hopper, and Director
15 Michele McLean, Department of Planning.

16 CHAIRPERSON SCHEUER: Let me first update
17 the record.

18 On February 22nd, 2019, the Commission
19 received the County of Maui's Petition for
20 Declaratory Order.

21 On March 4, 2019, the Commission mailed
22 correspondence to the County of Maui advising of the
23 filing deadlines imposed on DR19-65.

24 On March 15, 2019, the Commission received
25 Notice of Appearance of Counsel from the Department

1 of Education.

2 On March 20, 2019, the Commission received:
3 DOE's Petition to Intervene
4 DOE'S Motion to Continue Hearing and
5 Deferral of Ruling on Petitioner Department of
6 Planning.

7 On March 25, 2019, the Commission mailed an
8 Agenda Notice for the April 3, 2019 LUC meeting to
9 Parties and Statewide, and Oahu mailing lists. On
10 the same day, the Commission received OP's Comments
11 on DOE's Petition to Intervene and DOE's Motion to
12 Continue Hearing and Deferral of Ruling on Petitioner
13 Department of Planning filed on February 22, 2019 -
14 both filed on March 20, 2019.

15 On March 29, 2019, the Commission received
16 DOE's withdrawals of its Petition to Intervene and
17 its Motion to Continue Hearing and Deferral of Ruling
18 on Petitioner Department of Planning.

19 So here is our procedures for today.

20 First, I will call on those individuals
21 desiring to provide public testimony on DR19-65 to
22 identify themselves. All such individuals will be
23 called in turn to our witness box where they will be
24 sworn in prior to their testimony.

25 After receipt of public testimony, LUC, the

1 Commission will hear the presentation of the County
2 of Maui.

3 At the conclusion of County's presentation,
4 I will give an opportunity for the Department of
5 Education and the State Office of Planning to provide
6 comments.

7 I would like to remind the audience that
8 this is a hearing on a request for a Declaratory
9 Ruling. As such, the decision of the Commission will
10 be made on the written briefs on file and posted to
11 our website. This is not an evidentiary hearing.
12 Any oral presentation made today and any public
13 testimony will be taken into account in the
14 Commission's decision-making process.

15 At conclusion of that, the Commission can
16 deliberate on the matter.

17 I will also note that from time to time
18 I'll be calling for short breaks.

19 Any questions on our procedure for today?

20 MR. KOLBE: No questions.

21 CHAIRPERSON SCHEUER: Mr. Orodanker, are
22 there individuals desiring to give public testimony?

23 EXECUTIVE OFFICER: Yes, thank you, Mr.
24 Chair. We have Andrew Beerer and Patricia Stillwell.

25 CHAIRPERSON SCHEUER: So will the first

1 person come up, and the second person be prepared to
2 follow.

3 In the interest of time, I will ask you to
4 summarize your testimony if possible. If you can
5 press the button so that it is lit on the bottom, and
6 then speak about as close as I am to the microphone.

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

9 THE WITNESS: Yes, I do.

10 CHAIRPERSON SCHEUER: State your name and
11 address for the record.

12 THE WITNESS: My name is Andrew Beerer. My
13 address 56 Kalola Place in Kihei 96753.

14 ANDREW BEERER

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

18 DIRECT EXAMINATION

19 THE WITNESS: I am the Chair of the Kihei
20 High School Action Team, which is a community
21 advocacy group which has been pushing for this high
22 school for more than 12 years.

23 I have been working closely with Department
24 of Education, as well as our legislatures and many
25 other stakeholders, the contractors, et cetera, to

1 get this school moving along for all these years.

2 And I am here to go on the record -- well,
3 first, I want to thank you as a volunteer Commission.
4 We are all volunteers, and I understand how valuable
5 your time is especially to come to Maui, so very much
6 appreciate that you are here to hear our community,
7 not only once, but now twice.

8 I would like to be on the record as
9 endorsing the safe route to Kihei High School
10 Pedestrian Route Study by Dan Burden as commissioned
11 by our own Department of Education. At this point I
12 think you're all very familiar with this. It is an
13 extensive study of pedestrian infrastructure that is
14 needed before we open this high school.

15 A condition of land use is the only
16 recourse the community has to get necessary
17 infrastructure and community needs. You can attend
18 developer meetings where they'll promise you anything
19 from privacy fences to crosswalks to anything else,
20 but unless you have a condition, the rest of it is
21 hyperbole.

22 Working for ten-plus years with Senator Roz
23 Baker on this project, we have had our successes and
24 defeats. And it's been arduous and completely
25 deflating at times, but we have had our successes.

1 Without reiterating all the testimony I've
2 given before, I would just also like to take this
3 time to say that the Department of Education has had
4 four to five years to work on this condition, and
5 they haven't done anything for it.

6 And they've buried this report, and instead
7 seemed to get another report that they preferred the
8 findings of that said we don't need any of this
9 infrastructure. That is wrong. They are also
10 putting out misinformation that the school will open
11 in 2021. That's absolutely impossible.

12 I met with Goodfellow Bros. yesterday.
13 Their grading will not be done until the spring of
14 2020. There's no way that someone is going to put a
15 school there in a year and a half that's going to be
16 ready for the school year 2021. I think -- and
17 there's so much site work to be done after this
18 phase. And then the current Phase II building
19 contract are still under protest.

20 So I think realistically at best you're
21 looking at 2023-24 opening. So this idle threat that
22 putting in this infrastructure is going to slow down
23 opening of the school, which would be the last thing
24 I would ever want is just that, it's an idle threat.

25 They have many years, as many years as it's

1 going to take to build that school to simply put in
2 an underpass as we prefer.

3 CHAIRPERSON SCHEUER: It's been about three
4 minutes. Can I ask you to summarize?

5 THE WITNESS: Thank you, yes.

6 In summary, I would just like too say I
7 absolutely support this condition, and will hope you
8 will enforce this condition on the Department of
9 Education.

10 CHAIRPERSON SCHEUER: Thank you. Wait for
11 one moment after each witness. I'll ask whether the
12 county or Commissioners have questions.

13 MR. KOLBE: I don't have any questions.

14 CHAIRPERSON SCHEUER: Commissioners? Thank
15 you very much.

16 I think you know the drill.

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

19 THE WITNESS: I do.

20 CHAIRPERSON SCHEUER: State your name and
21 address for the record and proceed.

22 THE WITNESS: Patricia Stillwell, 227
23 Kamakoi Loop in Kihei 96753.

24 PATRICIA STILLWELL

25 Was called as a public witness, was sworn to tell the

1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: You have heard hours and
4 hours of public testimony from the community in
5 regard to this matter, and I'm sure by now that most
6 of us can agree that nothing is more important to
7 Kihei than safety of our students, pets, teachers and
8 everyone attempting to crowd a four-lane highway to
9 get to and from school.

10 I totally concur that an underpass is the
11 most favorable option, and the conditions should be
12 enforced. However, I would like to focus my
13 testimony on another important point that I think is
14 also critical to our community and our entire state,
15 and that is the role of the Land Use Commission. It
16 is my understanding that the LUC was adopted in 1961
17 after the state legislature recognized that rampant
18 development was compromising the public good
19 resulting in long-term loss to the income and growth
20 potential for the state's economy for the gain of the
21 few.

22 Infrastructure and public services were
23 being compromised, and prime agricultural land was
24 converted to residential use for developer's profit.

25 This Commission is the body that hears the

1 voices of our community, and rules thoughtfully with
2 consideration for the environment, cultural heritage,
3 and our quality of life. Without this body, public
4 participation would be severely reduced, and the
5 balance between the good of the community and the
6 riches of the few would be compromised.

7 When the LUC imposes a condition, it's
8 after hours of listening to the public and making
9 thoughtful and reasonable decisions that must be
10 respected for communities to thrive.

11 More than five years ago the LUC was made
12 up of a different group of nine individuals who saw
13 fit to impose the safe access condition after
14 listening to the community. Now you, a different
15 group of individuals with fresh ears, are hearing the
16 community speak again with the same concerns. Our
17 concerns have not waivered.

18 The condition imposed on the DOE in 2013
19 regarding the over/underpass access to the high
20 school was not ambiguous. The DOE chose to spin it
21 and blatantly disregard it, even after spending tax
22 payer dollars on a report that supported this
23 condition. Shame on them for disrespecting the work
24 you do. Ironically, further noticed by their absence
25 at this meeting.

1 Your service to our community is voluntary
2 and unpaid. You spend time away from your jobs and
3 families to meet and listen to us. Your dedication
4 to doing what's right is commendable and deserves the
5 utmost respect. The integrity of the LUC must be
6 maintained by enforcement of the conditions it
7 imposes, otherwise it's all pointless.

8 The timely opening of this high school is
9 extremely important to our community. Please enforce
10 this condition placed upon the DOE over five years
11 ago, and do not back down over threats of delays or
12 other excuses. I thank you all for your dedication
13 and public service.

14 CHAIRPERSON SCHEUER: Maui County?

15 MR. KOLBE: I don't have any questions.

16 CHAIRPERSON SCHEUER: Commissioners?
17 Commissioner Cabral.

18 VICE CHAIR CABRAL: I would just like to
19 thank you for your research and your mahalo to us,
20 and thank all of you from this community, the
21 gentleman before you, the work you do, because I've
22 got to tell you, having sat in this seat a few years,
23 it really truly matters when we get to hear different
24 opinions, and that only happens when members of the
25 community come out, and spend your time and this work

1 to put it together to be here. So I absolutely
2 appreciate everyone's perspective. Thank you.

3 CHAIRPERSON SCHEUER: Any other questions?
4 Mr. Orodenger.

5 EXECUTIVE OFFICER: John Laney, followed by
6 Diane Laney.

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

10 THE WITNESS: I do. My name is John Laney,
11 283 Aukahi Street, Kihei 96753.

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

16 DIRECT EXAMINATION

17 THE WITNESS: I just, you know, ditto to
18 what they said really. I'm so proud that there are
19 people in our community that spend so much time
20 trying to have things function smoothly. And the
21 traffic in Kihei is a continuing ongoing issue that
22 we're concerned with.

23 You know, I talked to about ten neighbors
24 about what's happening with the condition, and almost
25 all of them are like, they're stunned. Like why is

1 this even an issue? Why -- it's like it's so
2 obvious. And I would just like to go on record as
3 saying, you know, it seems very clear. It's needed.
4 And when you live here, and you drive on the Pi'ilani
5 Highway, you do not want one person walking along
6 that highway or around it, because it's just a major
7 artery and it already slows down enough.

8 And then besides the common sense safety
9 issue, in the opinion of many of us, Kihei is growing
10 it seems like by 500 to 1000 condos or homes a year,
11 and infrastructure does not seem to be getting added
12 to support the growth that we are having. And to
13 open a high school, and not consider the impact on
14 the children, and the traffic, and all of the people
15 that need to move back and forth smoothly on that
16 highway just seems like a terrible oversight. And I
17 definitely want to be on the record as supporting the
18 condition.

19 CHAIRPERSON SCHEUER: Thank you very much.
20 County, questions?

21 MR. KOLBE: No questions.

22 CHAIRPERSON SCHEUER: Commissioners? Thank
23 you very much. Mr. Orodener.

24 EXECUTIVE OFFICER: Diane Laney, followed
25 by Julie Williams.

1 CHAIRPERSON SCHEUER: Do you swear or
2 affirm that the testimony you're about to give is the
3 truth?

4 THE WITNESS: Yes. Diane Laney, 283 Aukahi
5 Street, Kihei 96753.

6 DIANE LANEY
7 Was called as a witness by and on behalf of the
8 public, was sworn to tell the truth, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 THE WITNESS: Along with everybody else,
12 and what their testimony has been today, I support
13 this condition completely 100 percent.

14 One of the reasons I'm here to talk, we
15 have so much safety that we need to be looking at our
16 children, all of our children. It's amazing to me
17 every time I look at the newspaper or the TV or read
18 something on-line and hear about a death because
19 somebody was crossing the street.

20 The Pi'ilani Highway is amazingly busy. I
21 get nervous driving down this highway these days.
22 This is Maui. This is Hawai'i. There's not supposed
23 to be that much traffic. It's crazy how busy that
24 street is.

25 And to think that people are talking about

1 having the children cross the street like that, blows
2 my mind. We had three pedestrian deaths in a matter
3 of two weeks. It may not have been on the Pi'ilani,
4 but that is one of the most dangerous streets we
5 have. What's going to happen if children are running
6 and playing, and decide that they want to go --
7 somebody just jumps out of line a little bit from the
8 crosswalk. Or they cross a little bit too soon.

9 What's going to happen the first time a
10 child is hit by a car? What's going to happen if we
11 end up having a death because they don't have a safe
12 passage to go over the highway or under the highway?
13 Its ridiculous, beyond ridiculous that this is even
14 an issue.

15 The safety again comes first, but then as
16 everybody else has said, my husband said right before
17 I was speaking of the traffic. One traffic light
18 going in and out of that high school, is that going
19 to be enough to make these kids be protected? Is
20 that going to help the traffic flow going back and
21 forth? We are in South Kihei. We have to pass
22 through that school every day just to get on the
23 other side of town.

24 There are so many issues beyond the
25 children being safe, but that's the number one thing.

1 Thank you.

2 CHAIRPERSON SCHEUER: Thank you very much.
3 County?

4 MR. KOLBE: No questions.

5 CHAIRPERSON SCHEUER: Commissioners? Thank
6 you very much. Mr. Orodenker.

7 EXECUTIVE OFFICER: Julie Williams,
8 followed by Mike Moran.

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

12 THE WITNESS: Yes.

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

17 DIRECT EXAMINATION

18 THE WITNESS: Thank you very much everyone
19 for being here and doing the voluntary work that you
20 do. Julie Williams, 2721 Ohina Street, Kihei.

21 I'm not really much of a public speaker,
22 but I do think that this is such an important issue
23 that I did want to say that I really support the
24 overpass or the underpass.

25 I too am concerned for the children's

1 safety, but also for the impact of what this is going
2 to do to this highway, which is already very, very
3 congested. I've lived here six years, and I've seen
4 a huge change in how much traffic is on that road.
5 With all the new development and everything that's
6 going on, I think it's just going to continue to get
7 worse.

8 And where is the -- the highway has got to
9 be built bigger at some point in time, going to have
10 to consider alternatives because of all the new
11 people that are coming.

12 I know that the industry is tourism. It's
13 becoming more and more. I personally own a vacation
14 rental home, and I've seen great growth in the last
15 four years.

16 Again, I feel that we need an overpass or
17 an underpass and consider making room for future
18 growth. Thank you very much for your time.

19 CHAIRPERSON SCHEUER: You're welcome

20 MR. KOLBE: No questions.

21 CHAIRPERSON SCHEUER: Commissioners,
22 questions?

23 EXECUTIVE OFFICER: Mike Moran.

24 CHAIRPERSON SCHEUER: Do you swear or
25 affirm that the testimony you're about to give is the

1 truth?

2 THE WITNESS: I do.

3 MIKE MORAN

4 Was called as a witness by and on behalf of the
5 public, was sworn to tell the truth, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 THE WITNESS: Aloha, Chair and
9 Commissioners. My name is Mike Moran, and I'm
10 testifying for the Kihei Community Association.

11 First we would sincerely like to thank the
12 Commission for again taking up this matter, and for
13 holding another hearing on Maui.

14 While it may not be germane, we do wish to
15 set the record straight. At the prior hearing in
16 Kihei on February 20 we stated that the Department of
17 Education offered three location choices, two makai
18 of the highway, and this one. Ms. Nakatsuda stated
19 that was not correct. As we could not locate
20 definitive information on that, we will stand
21 corrected and accept her statement.

22 But moving on to this matter before you
23 this morning, we ask you to accept the Department of
24 Planning, County of Maui's Petition to issue a
25 Declaratory Order as filed February 22 of this year.

1 After that meeting in Kihei a few months
2 ago, we fully expected the Department of Education
3 heard the collective voices of this Commission, the
4 South Maui Community and the County government to
5 accept the condition imposed by the Commission over
6 five years ago.

7 We expected they now realized the welfare
8 and safety of our school children trumped everything
9 else. We expected they would accept the study
10 related to the school from professionals, Group 70
11 and Munekiyo Hiraga, and included Dan Burden,
12 entitled Kihei High School, Active Transportation
13 Connections, that moved beyond a pedestrian route
14 study for the high school, to include all of North
15 Kihei and much beyond into the South side as well.

16 We expected they read the conclusion that a
17 pedestrian underpass was the most favorable action
18 and the logical decision. But if we understand this,
19 they still are refusing to do so, which we find
20 baffling.

21 Last June you traveled to the site as we
22 gathered on the shoulder of the highway near
23 Kulanihakoi, as after over five-plus years, it was an
24 entire new group of Commissioners since the condition
25 was approved.

1 While there was no public input, we all
2 looked across the four undivided lanes of speeding
3 cars and trucks to picture students and teachers
4 walking or cycling from their homes to and from the
5 school. Auwe.

6 Just south of this proposed intersection at
7 Kulanihakoi, we see the result of poor planning and
8 transportation management at Lipoa, as a new school
9 opened. Just makai of the highway we have an
10 elementary and middle school which always had some
11 impact on that intersection, but as vast majority of
12 homes are also makai, many avoid it.

13 However, last fall the Kihei Charter High
14 School opened mauka, and we are hit with community
15 complaints about the chaotic situation created twice
16 each day with an overwhelmed intersection.

17 Right here we see proof on how that
18 situation would be improved by a safe walking path
19 under the highway. Not only would it be safer, it
20 could greatly reduce vehicle traffic, as parents
21 would be willing to have the kids walk and bike to
22 school if they did not have to cross the undivided
23 four-lane highway.

24 It would promote safer driver behavior as
25 traffic conditions would be improved reducing driver

1 stress and impatience in the area.

2 If our community can see this, and our
3 county government can see this, and this Commission
4 can as well, why does the DOE refuse to? Please
5 stand strong by your condition for the safety of our
6 children. Mahalo.

7 CHAIRPERSON SCHEUER: Thank you, Mr. Moran.

8 MR. KOLBE: No questions for the witness.

9 CHAIRPERSON SCHEUER: Commissioners? Thank
10 you very much.

11 EXECUTIVE OFFICER: James Williams,
12 followed by Brenda Brown.

13 CHAIRPERSON SCHEUER: Good morning, Mr.
14 Williams. Do you swear or affirm that the testimony
15 you're about to give is the truth?

16 THE WITNESS: Yes.

17 JAMES WILLIAMS
18 Was called by and on behalf of the public, was sworn
19 to tell the truth, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 James Williams, 2721 Ohina Street, Kihei.
23 I was employee for the County of King, Seattle,
24 Washington, dispatcher for heavy trucks. We sent
25 upwards of five to 700 trucks a day through the

1 neighborhoods. In Seattle it is quite common to see
2 overpasses spanning eight-lane highways and freeways.
3 They work fantastically.

4 They can be built in such a way that the
5 children are completely safe. Traffic does not
6 become an issue. Safety of the children is not an
7 issue. So whether it's an overpass or underpass, it
8 works.

9 I would just ask you to consider -- I know
10 the cost is horrendous and additional. What will the
11 cost be the first time a child's life is lost? Think
12 of not only the horrific to the families, but what
13 the monetary cost could be.

14 It's just -- sitting in front of many
15 council meetings, talked several times, I kind of
16 said when I moved to Maui I would never sit in
17 another council meeting, because I saw the results of
18 what we would ask for and see. It always went to the
19 back rooms, where few people had long ago made up
20 their minds. We were just there as a show.

21 It seems that you people do things
22 differently on this island, and I herald you for
23 that.

24 Thank you for your time, your efforts, and
25 I do hope that you are listening to the voices of the

1 people. Mahalo.

2 CHAIRPERSON SCHEUER: County?

3 MR. KOLBE: No questions.

4 CHAIRPERSON SCHEUER: Thank you very much.

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

7 THE WITNESS: Yes, I do. Brenda Brown,
8 1801 Elima place, Kihei, Hawai'i.

9 BRENDA BROWN

10 Was called by and on behalf of the public, was sworn
11 to tell the truth, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 THE WITNESS: I just had them, so --
15 sorry, they disappeared so I'm just going to go
16 without my notes and remember everything.

17 First off, I'm in support of the safe route
18 to school. My son is in seventh grade at Lokelani.
19 Before this meeting I was under the assumption that
20 it was going to be open in 2021. Apparently that is
21 false.

22 Knowing that though, I wanted that school
23 to open so badly, but once I heard there was not
24 going to be a safe route, I was willing again to
25 sacrifice my son going to high school in Kihei, to

1 have the safe route there.

2 I feel like again that the highway, I'm not
3 comfortable driving on it in a van with a seatbelt.
4 So imagining children crossing that road at high
5 school age, they're absentminded. They make silly
6 mistakes, and anything could happen. So I don't
7 think we should risk that.

8 And I think it's going to also create
9 families to have to drive their children to school
10 versus walking or riding their bikes, which I prefer,
11 but not if they have to cross that highway.

12 My daughter is 21. We thought there would
13 be a high school for her. Obviously, there wasn't.
14 And one of our rules when she first started driving
15 was not to make a left on Walakahau (phonetic) on
16 Pi'ilani Highway, and try to avoid the Pi'ilani
17 Highway because there is just no room for mistakes.

18 So having people walking across that is not
19 safe for the charter school, and I don't think it's
20 safe for the Kihei High School either. So that's it.

21 MR. KOLBE: No questions.

22 CHAIRPERSON SCHEUER: Commissioners?

23 I just want to clarify. You have a son in
24 seventh grade. If the school opened on time, he
25 would go there. You are personally willing to see

1 the school open later with this condition, rather
2 than open on time so that your son can attend?

3 THE WITNESS: Absolutely.

4 CHAIRPERSON SCHEUER: Mr. Orodenger.

5 EXECUTIVE OFFICER: Cindy Dellefave.

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

9 THE WITNESS: Yes. Cindy Dellefave, 179
10 Oluea Circle, Kihei 96753.

11 CINDY DELLEFAVE

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

15 DIRECT EXAMINATION

16 I'm a parent as well. I have two potential
17 children to go to Kihei High School. We've been
18 looking forward to this since ten years ago when we
19 purchased right off Kulanihakoi, so I'm a Kulanihakoi
20 resident and a parent as well.

21 Definitely without a doubt support this
22 condition for safe passage. I believe also, as well
23 as foot traffic, supporting bicycle traffic across
24 there. One of my children right now is at Kihei
25 Charter and I do believe that part of the problem

1 with the traffic there is that parents are not
2 comfortable with their children crossing that road.

3 I'm the same way. My child road a bike for
4 the last four years, and once the school moved up
5 above the highway, I'm deathly afraid of them
6 crossing that, even though they have, for the most
7 part, given a police officer/crossing guard, they
8 have improved the conditions at that intersection,
9 but it's still a scary situation. And I do think
10 that that contributes to the traffic because parents
11 don't want their children crossing that road.

12 Same situation. If we didn't have safe
13 passage for the children at Kulanihakoi, it would
14 just increase the traffic all over.

15 That's all I've got to say. Just as a
16 parent, I definitely would be thrilled for my
17 children to attend that school any timeline that it's
18 open with safe passage.

19 CHAIRPERSON SCHEUER: Thank you.

20 MR. KOLBE: No questions.

21 CHAIRPERSON SCHEUER: Commissioners? Thank
22 you.

23 EXECUTIVE OFFICER: There are no other
24 persons signed up to testify.

25 CHAIRPERSON SCHEUER: Are there any other

1 individuals wishing to provide public testimony on
2 this matter?

3 Please step forward to the witness box and
4 I will swear you in.

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

7 THE WITNESS: I do.

8 CHAIRPERSON SCHEUER: Please state your
9 name and address for the record and proceed.

10 COLIN NORMAN

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

14 DIRECT EXAMINATION

15 My name is Colin Norman, 255 Hoohale Place,
16 Kihei 96753.

17 I'm a grandparent, and like some here, I
18 expected my grandchildren to go to the school which,
19 since we have been here 25 years, we figured that was
20 going to happen. Talked about long ago. And of
21 course they're now going to college. But I totally
22 support either overpass or an underpass -- actually I
23 prefer the overpass, but I don't care just so there
24 is safe passage.

25 That highway is already -- it's supposed to

1 be 40 miles an hour, and that's a joke, because
2 nobody goes less than 55, I don't think, on that
3 highway, and many people faster than that.

4 All it takes is one mistake. Somebody
5 missing a light, something like that. Kids running
6 late across the highway when it turns, and somebody
7 is going to get hurt. Enough people already have
8 gotten hurt on that highway.

9 I think it's foolish, and obviously I think
10 DOE thinks so too, because they haven't even showed
11 up for this meeting. But I totally back the move
12 that you're trying to do. So thank you very much.

13 CHAIRPERSON SCHEUER: Thank you very much.
14 County, questions?

15 MR. KOLBE: No questions.

16 CHAIRPERSON SCHEUER: Any other individuals
17 wishing to provide public testimony? Please step
18 forward.

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

21 THE WITNESS: I do.

22 My name is William T. Sams, 2635 Umeke
23 Circle, Kihei 96753.

24 WILLIAM T. SAMS

25 Was called as a witness by and on behalf of the

1 public, was sworn to tell the truth, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: You can see the gray hair,
5 the craggy face. I've got no skin in the game as far
6 as my own children or grandchildren attending the
7 school. I do speak to you with 30-years experience
8 in law enforcement, and having dealt with these kinds
9 of scenarios, I can't imagine that the DOT or the DOE
10 would proceed without providing safe passage.

11 Vehicle count on Pi'ilani Highway each day
12 is 44,200 vehicles. That's average. So you put that
13 into the business week, five days a week, when
14 children will be traversing the highway, that's a
15 very busy highway. It's the busiest section of
16 highway on Maui, with the exception of the area that
17 proceeds from Lahaina up to Kapalua, and a section
18 around the Maui Mall.

19 This is the major highway. The number of
20 vehicles is comparable to many of the highways on
21 Oahu other than the freeways. This section of
22 highway is busy, and having children crossing that
23 highway in two locations of what will be the high
24 school and the charter school is unconscionable.

25 I strongly endorse that condition be

1 imposed and that safe passage is provided to these
2 children. Thank you.

3 CHAIRPERSON SCHEUER: Thank you very much.
4 County?

5 MR. KOLBE: No questions.

6 CHAIRPERSON SCHEUER: Commissioners, if we
7 can catch him --

8 THE WITNESS: Oh, I'm sorry.

9 CHAIRPERSON SCHEUER: I think you're good.
10 Thank you. Any other individuals wishing to provide
11 public testimony?

12 If not, I'm going to declare the public
13 testimony ended.

14 County, how long do you want for your
15 presentation?

16 MR. KOLBE: County is going to rest on its
17 pleadings. I think we spelled out what will be the
18 reason why we should issue a Declaratory Order. So
19 I'll ask for about five minutes to go ahead and sum
20 up a few things, and then if you have questions, I'll
21 try to answer them.

22 CHAIRPERSON SCHEUER: Maui County, if you
23 would proceed with your presentation.

24 MR. KOLBE: May I clarify first whether or
25 not the Petition to Intervene and the Motion for

1 Continuance are going to be addressed at this point
2 prior to this Petition?

3 CHAIRPERSON SCHEUER: They have been
4 withdrawn by the DOE as of last Friday.

5 MR. KOLBE: Thank you.

6 So we're here today to clarify and to
7 reaffirm what your condition says related to whether
8 or not it's mandatory to have an overpass or an
9 underpass prior to the opening of Phase I of the
10 Kihei High School.

11 And I thought there were a couple comments
12 from the folks speaking this morning that were great
13 questions, one of them was: Why is this even an
14 issue? And I'd first like to address that one.

15 In our pleading we went ahead on Exhibit 3,
16 attached a communication from the Public Works
17 Administrator to the Director of Transportation in
18 which it's apparent that they were proceeding to go
19 forward with construction of this project without
20 doing, what was on its face, a mandatory requirement.

21 What they say is the GSPC study was
22 supplemented by a review of Fehr & Peers with respect
23 to whether the GSPC pedestrian traffic and road
24 conditions would meet various applicable warrants to
25 a GSPC. That's a grade separated pedestrian

1 crossing.

2 The result of the F&P review was that a
3 GSPC would not meet applicable warrants during Phase
4 I of the KHS, though the F&P review suggested that a
5 GSPC may meet applicable warrants during Phase II of
6 the KHS.

7 No pedestrian crossing measures for Phase I
8 were proposed by F&P. The HDOT assumes F&P
9 recommends the traffic signal will accommodate an
10 at-grade crossing, and that a medium pedestrian
11 refuge will be installed for Phase I.

12 So that's why we felt it was incumbent upon
13 us to get a clarification from you in terms of what
14 the plain language of your own statute says.

15 As we've identified for you, Hawai'i case
16 law has a method for determining what the statutory
17 language says. And in this case we first looked at
18 the plain reading of your term and condition.

19 And you've heard the collective voices in
20 terms of how they read this and, of course, the
21 surprise by a number of people that there's really
22 any other way to read it, but the language is:

23 Petitioner shall cause to be constructed or
24 ensure that there is an available above or below
25 ground pedestrian crossing, and implement such

1 mitigation and improvement as may be required or
2 recommended by the study and analysis to the
3 satisfaction of DOT prior to the opening of Phase I
4 of the project.

5 As I've discussed in my briefing, that's
6 really two things. One is to have an above or below
7 grade crossing, and the other is to do whatever
8 amendments need to be added to implement that and
9 make it happen before you open the school. Pretty
10 clear.

11 So as the starting point, there's really
12 not any debate about what your term and condition
13 says, and that's why we are going to ask that you
14 issue a Declaratory Order, you go ahead and say, once
15 again, that it is a requirement. It is mandatory.

16 If you needed any further ammunition or
17 evidence to kind of support whether or not that's
18 actually what you meant when you first adopted that,
19 as we have discussed, when this was brought up before
20 the Commission, there was a movement by one of the
21 Commissioners to add in the language making it
22 mandatory. And then there was discussion. Somebody
23 said, well, we're not engineers. Why don't we allow
24 the consultants to make that determination. And they
25 talked about it. Then they came back and said: No,

1 we want to make this a mandatory condition. And then
2 they voted on it. And it's apparent, and it's
3 absolutely clear what they voted on.

4 Mr. Orodenger clarified the motion that was
5 properly before them at the time it was taken. He
6 said:

7 Thank you, Chair, quote, the motion is to
8 grant the Petition with the added condition of
9 requiring the construction of a pedestrian overpass
10 or underpass prior to the opening of Phase I.

11 Can't get any clearer than that.

12 So whether the State or the Department of
13 Education at some point in the future moves to amend,
14 for whatever reason that they have to amend your
15 decision and order, what the County is asking for you
16 to do today is to affirm that what you said is what
17 you meant, and that the language, plain language of
18 your decision and order is that it's mandatory, above
19 or below grade prior to Phase I.

20 And then people who have higher pay grades
21 than I can go ahead and decide whether or not you
22 guys want to amend anything, but we just need this
23 clarification.

24 And I would just add one more thing. It
25 doesn't even appear at this point that the State is

1 even disputing this. And I would just point you to
2 Exhibit A, which was attached to the Department of
3 Education's Motion to Continue. And in that he
4 attaches the letter that he sent to me regarding
5 whether I would oppose the continuance. It says:

6 Based upon our discussion and my
7 representation that my client, the Department of
8 Education, State of Hawai'i, HIDOE, accepts the State
9 of Hawai'i Land Use Commission's Findings of Fact,
10 Conclusions of Law, Decision and Order adopted on
11 July 29, 2013 required that the construction of an
12 overpass or underpass be completed prior to the
13 opening of Phase I of Kihei High School.

14 And then, therefore, it was his
15 understanding that we weren't going to oppose
16 continuance based on this understanding that they are
17 no longer disputing that the language says what it
18 says.

19 That is all I have to add, other than the
20 arguments that I've placed in the Petition for
21 Declaratory Order. I can answer whatever questions
22 you have.

23 CHAIRPERSON SCHEUER: Thank you very much.

24 Commissioners, are there questions for Maui
25 County?

1 Department of Education, do you care to
2 comment? No one is here from the Department of
3 Education. Office of Planning?

4 MS. APUNA: Office of Planning doesn't have
5 any comment.

6 CHAIRPERSON SCHEUER: Well, Commissioners,
7 according to the Commission's Administrative Rule
8 15-15-100, within 90 days after receipt of a Petition
9 for Declaratory Order, this Commission shall either
10 deny the Petition in writing, stating the reasons for
11 the denial; issue a Declaratory Order; or set the
12 matter for hearing as provided in Section 15-15-103
13 of the Commission rules.

14 And in addition, Section 15-15-102 of the
15 Commission rules provides that the Commission for
16 good cause may refuse to issue Declaratory Order by
17 giving one of four specific reasons.

18 The Commission can refuse to issue a
19 Declaratory Order where:

20 (1) the question is speculative or purely
21 hypothetical and does not involve existing facts, or
22 facts that can be expected to exist in the near
23 future;

24 (2) the petitioner's interest is not of the
25 type that would give the petitioner standing to

1 maintain an action if the petitioner were to seek
2 judicial relief;

3 (3) the issuance of the declaratory order
4 may affect the interests of the Commission in a
5 litigation that is pending or may be reasonably
6 expected to arise; or

7 (4) the matter is not within our
8 jurisdiction.

9 Commissioners, what is your pleasure on
10 this matter? Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: Mr. Chair, I move
12 to find that Condition 1(b) of the Decision and Order
13 of July 29, 2013, Docket No. A11-794 DOE Kihei High
14 School requires that a pedestrian overpass or
15 underpass be constructed before the opening of first
16 phase of the new high school in Kihei, and that
17 construction of the overpass or underpass was a
18 mandatory requirement and not an option.

19 In addition, the DOE is required to get
20 approval from the DOT of the pedestrian and traffic
21 plan.

22 COMMISSIONER MAHI: I second.

23 CHAIRPERSON SCHEUER: A motion was made by
24 Commissioner Ohigashi and seconded by Commissioner
25 Mahi.

1 COMMISSIONER OHIGASHI: Mr. Chair, I'm
2 going to say some things first. We're not here to
3 enforce any condition. We're not here to say -- to
4 go out there and make them do things. We cannot add
5 additional funds to the project. We don't have the
6 power, according to the supreme court, to take away
7 their land use designation, or to initiate any kind
8 of court action that may result in us getting a
9 restraining order or things like that.

10 What we are here today is to make sure that
11 what was written in the D&O in 2013, what it actually
12 says and what it actually means.

13 The question of whether or not it will be
14 built on time, or whether or not it will be an
15 underground or overpass or anything like that is not
16 going to be decided by us; it's going to be decided
17 by the DOE, along with the County, and probably the
18 legislature will have a say in it.

19 I note -- I made the motion because there
20 is no objection from the DOE. I think we should note
21 that in our findings.

22 And one final comment. This is just a
23 lawyer's comment, and not meant to -- the condition
24 read, not above and below grade. It read above and
25 below ground. So there is, in my mind, an argument

1 for confusion of what that actually meant. But
2 that's just a lawyer talking. As we've learned,
3 never listen to what lawyers says because they tell
4 you five minutes, and it'll take -- so in any event,
5 those are my comments that I wanted to make.

6 CHAIRPERSON SCHEUER: Just to clarify,
7 Commissioner, you're speaking in favor of the motion?

8 COMMISSIONER OHIGASHI: Yes.

9 CHAIRPERSON SCHEUER: Let me clarify
10 something. Thanks to our Deputy Attorney General, I
11 miscited one of the administrative rules when I
12 talked about the four reasons by which the Commission
13 could choose to decline to rule on the declaratory
14 order.

15 The proper citation is Hawai'i
16 Administrative Rules 15-15-100, part (a)(1).

17 Commissioners, are there other members who
18 wish to deliberate or speak to the motion.

19 Commissioner Cabral.

20 VICE CHAIR CABRAL: I would like to third
21 that motion. And I also --

22 CHAIRPERSON SCHEUER: I'm note sure that's
23 possible.

24 VICE CHAIR CABRAL: I also absolutely want
25 to encourage the members of this community to get

1 hold of your state legislatures, because, of course,
2 it's important for all of them to have the school
3 also. And so they need to really understand, and
4 they need to hear what we are hearing from the
5 community, and to realize that the safety of the
6 children is more important than a calendar date.

7 So I really encourage everyone here to
8 absolutely get those letters going so that your
9 representatives realize the importance of this
10 action.

11 Thank you. I too will support it.

12 CHAIRPERSON SCHEUER: Commissioner Mahi.

13 COMMISSIONER MAHI: I just wanted to speak
14 forward in terms of why I seconded the motion, even
15 if I would have let Edmund take it.

16 I was deeply moved by all of your presence.
17 The fact that you care so much about the community.
18 And more importantly you care about the lives of your
19 children. And I just hope that this thing moves
20 quickly. I'm not a lawyer. I just get to the point
21 and get it done.

22 So that's why I'm supporting this fully in
23 terms of what we can do from our side in terms of
24 making the declaration, and making sure that
25 everything is tight in terms of -- I want to thank

1 counsel for giving us firmer clarity in terms of what
2 we are doing here today. Mahalo nui.

3 CHAIRPERSON SCHEUER: Is there further
4 deliberations?

5 I'll also speak in favor of the motion. I
6 want to first thank everybody who came to testify in
7 this meeting and last meeting, it does help us
8 tremendously in our deliberations.

9 I want to thank Maui County, not only for
10 their excellent briefs on the matter, but also to the
11 Planning Director and Planning Department. Sometimes
12 historically the relationship between the State Land
13 Use Commission and the County Planning Offices have
14 been difficult, but I think this case illustrates
15 what is possible where we each bring our strengths
16 and our powers to a situation to effect something
17 good.

18 The last thing I'll just say is that what
19 the olelo no'eau, or traditional saying that kept
20 coming to mind during the testimony, is one -- well,
21 in English it says:

22 In words there is life; in words there is
23 death. It means a lot of things. It's an admonition
24 of always being very careful with what you say,
25 right? But here I just thought it's very

1 appropriate. There is a very clear and unambiguous
2 meaning, I believe, that we put on this condition,
3 and it had to do with the life and death of the most
4 precious members of our community, kids.

5 Mr. Orodenger, please poll the Commission.

6 EXECUTIVE OFFICER: Thank you, Mr. Chair.

7 The motion is to find that a pedestrian
8 overpass or underpass is required prior to the
9 opening of the first phase of the Kihei High School.

10 Commissioner Ohigashi?

11 COMMISSIONER OHIGASHI: Aye.

12 EXECUTIVE OFFICER: Commissioner Mahi?

13 COMMISSIONER MAHI: Aye.

14 EXECUTIVE OFFICER: Commissioner Wong?

15 COMMISSIONER WONG: Aye.

16 EXECUTIVE OFFICER: Commissioner Aczon?

17 COMMISSIONER ACZON: Yes.

18 EXECUTIVE OFFICER: Commissioner Cabral?

19 VICE CHAIR CABRAL: Yes.

20 EXECUTIVE OFFICER: Chair Scheuer?

21 CHAIRPERSON SCHEUER: Aye.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 The motion passes with six affirmative votes.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 Maui County; and if there is no further business on

1 our agenda, we are adjourned.

2 (The proceedings adjourned at 10:38 a.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on April 3, 2019, at 9:30 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 3rd day of April, 2019, in Honolulu,
Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156