

BEFORE HEARINGS OFFICER SANDRA SONG

COUNTY OF HAWAII

In the Matter of Connection New)	SPP-12-000138
Century Public Charter School and)	
Community Based Education Support)	
Services)	
)	
Special Permit Application No.)	VOLUME III
12-000138)	
_____)	

T R A N S C R I P T

of the Public Hearing had in the above-entitled matter before Hearings Officer Sandra Song at 75 Aupuni Street, Conference Rooms, Hilo Hawaii 96720 commencing at 8:32 a.m. on November 12, 2013.

HEARINGS OFFICER: SANDRA SONG, ESQ.
10 Kamehameha Avenue
Hilo, Hawaii 96820

REPORTED BY: M. Sharon Souza, CSR No. 184

1	For the Applicant	TED H.S. HONG, ESQ.
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5		and
6		CARTER K. SIU, ESQ.
7	For the Planning	Deputy Attorney General
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1 THE HEARINGS OFFICER: All right. It's a
2 little after 8:30.

3 Is this on? I'm going to begin the continued
4 hearing of this matter, which is Connections New
5 Century Public Charter School and community-based
6 service education support application for special
7 permit, application number 12-000138.

8 This is a continuation of the contested case
9 hearing in this matter. I'm Sandra Song, the hearing
10 officer.

11 Can we just have the parties identify
12 themselves?

13 MR. HONG: Good morning, Madam Hearings
14 Officer, my name is Ted Hong. I represent the
15 community-based education support services also known
16 as CBESS. And also with me is -- from my office this
17 morning is Christine Periot.

18 MR. SIU: Good morning, Deputy Attorney
19 General Carter Siu on behalf of the Applicant
20 Connections.

21 MS. SELF: Good morning, Amy Self, Deputy
22 Corporation Counsel representing the Planning
23 Director.

24 MR. GOMES: Jeff Gomes.

25 THE HEARINGS OFFICER: Good morning,

1 Mr. Gomes.

2 Good morning, Mr. Hong. Asleep at the wheel,
3 I didn't respond.

4 And I just want the parties to know this is
5 all being transcribed. The court reporter is here and
6 there will be a transcript of the proceeding.

7 The first order of business in any contested
8 case hearing is to take public testimony. So at this
9 point I will take public testimony. Right now I have
10 a list of seven witnesses who I will call in order.
11 And I'll just read off their names right now. Melvin
12 Yokota, Terence Yoshioka, Dr. Henry Lee Loy, Keala Lee
13 Loy, June Sakamoto, Clayton Kua, and Larry Kimura.

14 If some of these parties are just submitting
15 written testimony, I will accept the written
16 testimony. But you are entitled to testify before me
17 and in this proceeding. We are limiting public
18 testimony to three minutes.

19 So Mr. Yokota, would you like to step forward
20 for testimony? You can be sworn in, so would you
21 please raise your right hand?

22 (Melvin Yokota was duly sworn in.)

23 THE HEARINGS OFFICER: Thank you. You can sit
24 down. Go ahead.

25 MELVIN YOKOTA: Okay. My name Mel Yokota.

1 I'm a resident of Mele Manu Street. From the time I
2 found out about this project, I thought it was kind of
3 odd the way the project was organized and how the site
4 was selected. I'm in the engineering business, and
5 the projects that I've been involved in, it's usual
6 practice for the client to bring planners and
7 consultants onboard prior to site selection and
8 development in order to obtain the best solution for
9 its needs.

10 In his questioning, Mr. Hong elicited
11 testimony from his planner to acknowledge that for
12 whatever reasons this site was pre-selected so the
13 planners and engineers were tasked to make this site
14 work. We can only guess why this was done. Perhaps,
15 someone had prior intuition that if the team had been
16 involved from the start that this would not end up
17 being the selected site.

18 Mr. Hong also got other witnesses to say that
19 they will do this project in a phase approach. As a
20 result, they don't know at this time if full build-out
21 can be achieved. What it will take to achieve full
22 build-out, the impacts of full build-out are unknown,
23 and mitigation measures have not yet been worked out.

24 This has been shown by Mr. Hong's asking some
25 of us whether we'll be help develop mitigation

1 measures. And by the way, when I said that I would be
2 willing to give input, that does not imply approval of
3 the permit application. Thank you.

4 THE HEARINGS OFFICER: Thank you.

5 And Mr. Yokota, you did submit a written
6 testimony, is that right?

7 MELVIN YOKOTA: Yes, I did.

8 THE HEARINGS OFFICER: Do the parties all have
9 Mr. Yokota's written testimony?

10 MR. HONG: Yes, thank you.

11 MR. SIU: Yes.

12 MS. SELF: Yes.

13 MR. GOMES: Yes.

14 MS. SONG Thank you, Mr. Yokota.

15 Next is Mr. Terence Yoshioka.

16 (Terence Yoshioka was duly sworn in.)

17 THE WITNESS: Yes, I do.

18 THE HEARINGS OFFICER: Thank you,
19 Mr. Yoshioka.

20 Please proceed.

21 TERENCE YOSHIOKA: Thank you.

22 The Hawaii Supreme Court decision in
23 Neighborhood Board versus State Land Use Commission,
24 64 Hawaii, 265, 1982 ruled that the district boundary
25 amendment is required when the proposed use will

1 change the essential character of the agricultural
2 district. The \$30,000,00 worth of improvements to be
3 constructed on the property, together with the
4 infusion of hundreds of cars and buses, and five
5 hundred students, faculty, and staff constitute a
6 major urban use of the property that will change its
7 essential agricultural character. As such, petition
8 for this project could only be allowed through
9 district boundary amendment and not through the
10 special permit process.

11 This is consistent with Rule 6-3(b)(5) which
12 requires that, quote, "The proposed use shall not
13 substantially alter or change the essential character
14 of the land, and present use," unquote. Although the
15 Planning Department has acknowledged that the project
16 will, quote, "alter or change the essential character
17 of the land and present use," unquote, it yet found
18 the project to be an unusual and reasonable use of the
19 property because it mistakenly disregarded the seven
20 criteria of Rule 6-3(b)(5), and found the school to be
21 unusual simply because schools are not usually
22 considered agricultural in nature, and reasonable
23 because schools are required to support the
24 agriculture community in which they are located.

25 Applying the Department's reasoning, every

1 special permit would automatically qualify as an
2 unusual use because every special permit seeks to
3 introduce a non-agricultural use into an agricultural
4 district. It is inconceivable to believe that this
5 was the intended result.

6 Furthermore, despite the absence of any
7 evidence to establish that this school is required for
8 this or any other agricultural district, the Planning
9 Department yet found the proposed school to be a
10 reasonable use of the property. This conclusion is
11 totally unsupported.

12 Due to time constraints, I refer you to my
13 written testimony, which I hereby offer into evidence.

14 THE HEARINGS OFFICER: Thank you,
15 Mr. Yoshioka. And I have do have written testimony.

16 Mr. Hong, do you have the written testimony?

17 MR. HONG: Yes.

18 THE HEARINGS OFFICER: Mr. Siu?

19 MR. SIU: Yes.

20 THE HEARINGS OFFICER: Ms. Self?

21 MS. SELF: Yes.

22 THE HEARINGS OFFICER: And Mr. Gomes?

23 MR. GOMES: Yes.

24 THE HEARINGS OFFICER: Thank you very much.

25 Next in order is Dr. Henry Lee Loy.

1 Dr. Lee Loy, raise your right hand.

2 (Henry Lee Loy is duly sworn in.)

3 HENRY LEE LOY: Yes.

4 THE HEARINGS OFFICER: Thank you. You may be
5 seated.

6 Please proceed.

7 HENRY LEE LOY: Good morning, Madam Hearings
8 Officer, my name is Dr. Henry Lee Loy. I live at
9 1579 Mele Manu Street.

10 The traffic impact analysis report by
11 Mr. Philip Rowell states that the purpose and
12 objective of the study was to identify potential
13 deficiencies adjacent to the study project that will
14 impact traffic operation in the vicinity of the
15 proposed project. I will present you evidence that
16 the study failed to meet its purpose and objective.

17 And the report states future traffic growth
18 consists of two components. The first being ambient
19 background growth, and the second component is the
20 estimated traffic that will be generated by other
21 development projects in the vicinity of the proposed
22 project. Related projects are defined as those
23 projects that are to be constructed adjacent to the
24 study project, and would significantly impact traffic
25 in the study area. His report states, quote, "No

1 related projects were identified," quote. The report
2 also presumed, quote, "That there would be no traffic
3 along Edita Street," quote.

4 Contrary to Mr. Rowell's report, I'm
5 submitting evidence that Mr. William Brilhante's
6 45-lot subdivision adjacent to the proposed school was
7 tentatively approved by the Planning Department in
8 1998 and resubmitted as recently as August 12, 2012.
9 Traffic from this subdivision is to unload into
10 Kaumana Drive via Edita Street.

11 And also submitting evidence that another
12 83-lot subdivision called Kumulani Gardens has
13 received tentative approval as of July 24, 2012. The
14 entrance to this 83-lot subdivision would be
15 approximately half-a-mile from the intersection of
16 Kaumana Drive and Edita Street. Mr. Rowell again
17 failed to identify this project in his report.

18 His report also fails to identify other
19 projects in the vicinity including Department of
20 Hawaiian Homes residential subdivision, the 39-lot
21 Hokulani Street subdivision, the 23-lot residential
22 subdivision at the intersection of Kaumana and Mohouli
23 Street, the 100-bed skilled nursing facility on
24 Kaumana Drive, and the Mohouli Senior Phase 1 housing
25 project.

1 Madam Hearings Officer, today as you approach
2 Kaumana Drive for a site visit, please drive
3 carefully, you will see the road is narrow and
4 winding. On your left you will note construction of
5 the 100-bed skilled nursing facility, the shark teeth
6 striping on the sharp curve just above Terrace Drive,
7 the numerous side-streets and driveways that feed
8 onto Kaumana Drive, the location of the 83-lot
9 subdivision on your left near Alahelenui, to your
10 right is Hokulani Street which will soon open to
11 traffic from the Akolea Plantation subdivision and a
12 new 39-lot subdivision.

13 Please refer to the colored map I have
14 provided you. Imagine the roadway slick with rain and
15 think of the safety of the Kaumana community.

16 Thank you for your time. Respectfully
17 submitted, Henry Lee Loy.

18 THE HEARINGS OFFICER: Thank you, Dr. Lee Loy,
19 I didn't see a copy of your written testimony. Would
20 you submit it?

21 MR. HONG: Just for the record --

22 THE HEARINGS OFFICER: Oh, I do have it. I'm
23 sorry. Thank you very much.

24 And Mr. Hong, you have the written testimony?

25 MR. HONG: Yes, thank you.

1 THE HEARINGS OFFICER: Mr. Siu?

2 MR. SIU: Yes.

3 THE HEARINGS OFFICER: Ms. Self?

4 MS. SELF: Yes.

5 THE HEARINGS OFFICER: And Mr. Gomes?

6 MR. GOMES: Yes.

7 THE HEARINGS OFFICER: Thank you, next in
8 order is Keala Lee Loy.

9 (Keala Lee Loy was duly sworn in.)

10 KEALA LEE LOY: Yes, thank you.

11 THE HEARINGS OFFICER: Thank you. Please be
12 seated. And proceed when ready.

13 KEALA LEE LOY: Aloha, I'm

14 Pauline Keala Lee Loy, a resident of Mele Manu Street
15 in Kaumana.

16 I offer this testimony for my own clarity as
17 well as clarity for those who have newly joined the
18 opposition of the development of Connections Public
19 Charter School on Edita Street in Kaumana.

20 Today's hearing will ultimately determine the
21 recommendation or denial of the special use permit
22 request for the development of Connections Public
23 Charter School on the Department of Land and Natural
24 Resources property on Edita Street. Connections
25 Public Charter School has also already been granted

1 the lease for the property and is currently waiting
2 the green light to proceed with development. They
3 plan to build a school to accommodate more than four
4 hundred students along with faculty and staff over a
5 sixteen to twenty-five-year period.

6 In opposition of this development is a Kaumana
7 community unaware of the proposed project until long
8 after the release of the environmental assessment. A
9 full environmental impact study was not done,
10 Connections Public Charter School implies that the
11 community was included in the planning process. It
12 was not, however, clearly established as to which
13 community was included, but it was certainly not the
14 neighboring community of the desired location of its
15 school.

16 Mr. Hong has also implied offense to the No
17 Connections signage and alleged website. It simply
18 represents the fact that no connections were made
19 between Connections Public Charter School and the
20 neighboring community at the proposed location. You
21 will notice that Connections School posted keep-out
22 signs on the hogwire fence fronting a well-manicured
23 parcel at our site visit today.

24 As a community member, I interpreted the sign
25 as an act of intimidation and bullying and a counter

1 reaction to the community who had erected No
2 Connections signs to publicly declare the lack of
3 inclusivity.

4 A year ago former Planning Director,
5 Ms. Bobby Jean Leithead implored Connections Public
6 Charter School to meet with the community. Since then
7 the school held only one meeting back in December 2012
8 in the middle of work day in the Kress Store building,
9 led by vice-principal and paralegal Susan Lee Loy.
10 The questions posed by the community members present
11 were not adequately addressed in the absence of both,
12 Mr. Thatcher and Mr. Hong. And there was no follow-up
13 attempt to communicate with meeting attendees
14 thereafter. The Project Manager Celia Shen indicated
15 in the last hearing that this project is an ongoing
16 process and plans change, yet she has never approached
17 anyone from the neighboring community to provide input
18 as the company she represents, Wil Chee and
19 Associates, proudly advertises.

20 In previous hearings, we have been
21 consistently reminded that Connections Public Charter
22 School is not required to implement, follow, or adhere
23 to the same State guidelines enforced on schools that
24 receive State and Federal funds. It is certainly our
25 hope that any school would voluntarily abide by all

1 requirements and guidelines involving the health and
2 safety of its constituents. There is no compromise.

3 THE HEARINGS OFFICER: Thank you,
4 Mrs. Lee Loy. And you did submit written testimony?

5 KEALA LEE LOY: Yes, I did.

6 THE HEARINGS OFFICER: Mr. Hong you have that?

7 MR. HONG: Yes, thank you.

8 THE HEARINGS OFFICER: Mr. Siu?

9 MR. SIU: Yes, thank you.

10 THE HEARINGS OFFICER: Ms. Self?

11 MS. SELF: Yes.

12 THE HEARINGS OFFICER: And Mr. Gomes?

13 MR. GOMES: Yes.

14 THE HEARINGS OFFICER: Okay, thank you very
15 much.

16 KEALA LEE LOY: Thank you.

17 THE HEARINGS OFFICER: Next in order is June
18 Sakamoto.

19 I have written testimony from Ms. Sakamoto,
20 but I don't think she's planning to testify.

21 JUNE SAKAMOTO: No.

22 THE HEARINGS OFFICER: Thank you,
23 Ms. Sakamoto.

24 I do have the written testimony.

25 Mr. Hong, do you have the written testimony?

1 MR. HONG: Yes, thank you.

2 THE HEARINGS OFFICER: Mr. Siu?

3 MR. SIU: Yes.

4 THE HEARINGS OFFICER: And Ms. Self?

5 MS. SELF: Yes.

6 THE HEARINGS OFFICER: And Mr. Gomes?

7 MR. GOMES: Yes.

8 THE HEARINGS OFFICER: Okay, thank you. All
9 right.

10 We'll move on.

11 Clayton Kua is next in order.

12 HENRY LEE LOY: He's not present, but I'll
13 submit his written testimony.

14 THE HEARINGS OFFICER: Okay. I do have
15 written testimony from Mr. Clayton Kua.

16 Mr. Hong, you have that?

17 MR. HONG: Yes, I do.

18 THE HEARINGS OFFICER: Mr. Siu?

19 MR. SIU: Yes.

20 THE HEARINGS OFFICER: Ms. Self?

21 MS. SELF: Yes.

22 THE HEARINGS OFFICER: And Mr. Gomes?

23 MR. GOMES: Yes.

24 THE HEARINGS OFFICER: Larry Kimura is next in
25 order.

1 HENRY LEE LOY: Dr. Larry Kimura is not
2 present, but I did submit his written testimony.

3 THE HEARINGS OFFICER: I do have written
4 testimony from Larry Kimura.

5 Mr. Hong, do you have that?

6 MR. HONG: Yes.

7 THE HEARINGS OFFICER: Mr. Siu?

8 MR. SIU: Yes.

9 THE HEARINGS OFFICER: Ms. Self?

10 MS. SELF: Yes.

11 THE HEARINGS OFFICER: And Mr. Gomes?

12 MR. GOMES: Yes.

13 THE HEARINGS OFFICER: Finally, the last one
14 on my list is Wayne Kanemoto. Is Mr. Kanemoto
15 present?

16 WAYNE KANEMOTO: Yes.

17 (Wayne Kanemoto is duly sworn in.)

18 Yes, I do.

19 THE HEARINGS OFFICER: Thank you. You may be
20 seated.

21 WAYNE KANEMOTO: Good morning.

22 THE HEARINGS OFFICER: Good morning.

23 WAYNE KANEMOTO: I'd like to start off -- I
24 don't have copies of the testimony. I oppose the
25 building of Connections Charter School in Kaumana. I

1 realize that they have the flexibility with
2 curriculum, direct management of energy and resources,
3 thus, allowing them to be innovative, but they must
4 also follow Federal laws and regulations and State
5 standards as other public schools.

6 I believe the location and building of the
7 facilities should have been done with due diligence,
8 in other words, doing their homework. Flexibility
9 does not mean they can disregard nor take lightly the
10 critical task of earning our community's trust and
11 respect. They started with their ineffective
12 communication to make us aware of their plans and
13 their outreach to engage us to accept them in our
14 community. They continue to push back to lend to
15 hearings and the legal proceedings for over a year,
16 not working on meeting the wants and needs of our
17 local community.

18 From a financial view, they have not spent
19 their money well. Charter schools have historically
20 had financial shortfalls, received funds in addition
21 to the State allocations. The priority for money
22 spent should be instructions, not the acquisition of
23 lands and resources. The decision to continue this
24 confrontational approach leads me to believe that they
25 will spend their funds foolishly.

1 Often safety has not been adequately
2 addressed. Water is a critical factor because a
3 supply restricts the student and faculty population.
4 Management and operations factors in my opinion are
5 another critical factor that impact construction and
6 finance. They have chosen to phase the campus
7 construction, which creates additional management and
8 operations cost, one campus site, mix management, and
9 operational sets. Then can maximize their staff
10 resources by team teaching, curriculum articulation,
11 staff education and training, management supervision,
12 student transition through grade levels are the best
13 practices. Transportation has always been an issue
14 and can be more effectively handled with one campus.

15 I have not had -- I have not heard compelling
16 reasons for the campus to be constructed in our
17 community. In summary, as a good neighbor,
18 Connections has not earned the trust and respect of
19 the community. They have not done their homework and
20 made poor management and operations decisions. Thank
21 you.

22 THE HEARINGS OFFICER: Thank you.

23 MR. HONG: Madam Chair, the witness was
24 reading from a document. May I suggest that the
25 Planning Department make copies of the document to

1 distribute to all of us?

2 THE HEARINGS OFFICER: Mr. Kanemoto, do you
3 want to submit copies of what you read from? If you
4 do not, you do not have to submit it, but it is your
5 choice.

6 WAYNE KANEMOTO: No, it's a waste of money.

7 THE HEARINGS OFFICER: Mr. Hong,
8 Mr. Kanemoto's testimony was taken down by the court
9 reporter, so it is on the record.

10 MR. HONG: Thank you.

11 THE HEARINGS OFFICER: I have also have
12 written testimony from Dana Kenny -- I'm sorry, is
13 Dana Kenny present?

14 DANA KENNY: Yes.

15 THE HEARINGS OFFICER: Do you want to testify
16 or do you want to just submit your written testimony?

17 DANA KENNY: I'll just leave the written
18 testimony.

19 THE HEARINGS OFFICER: Okay. Mr. Hong, do you
20 have the written testimony?

21 MR. HONG: Yes, I do.

22 THE HEARINGS OFFICER: Mr. Siu?

23 MR. SIU: I do.

24 THE HEARINGS OFFICER: Ms. Self?

25 MS. SELF: Yes.

1 THE HEARINGS OFFICER: And Mr. Gomes?

2 MR. GOMES: Yes.

3 THE HEARINGS OFFICER: And I'm accepting Dana
4 Kenny's written testimony. Is there any other person
5 in the audience that wishes to give public testimony
6 this morning in this proceeding?

7 NORINE OKUHARA: Yes.

8 THE HEARINGS OFFICER: Can I have your name?

9 NORINE OKUHARA: Norine Okuhara. I have
10 written testimony, but somehow or other, it didn't
11 come in.

12 THE HEARINGS OFFICER: Ms. Okuhara, I don't
13 have your written testimony. Did you give it to the
14 Planning Department?

15 NORINE OKUHARA: No. It's supposed to come in
16 through Mr. Gomes, but Mr. Gomes didn't receive it.

17 THE HEARINGS OFFICER: Do you want to testify
18 this morning?

19 NORINE OKUHARA: Yes -- yes, and can I, you
20 know, submit the testimony afterwards?

21 THE HEARINGS OFFICER: Yes, you can submit it
22 afterwards, but if you want to testify this morning, I
23 have to swear you in.

24 NORINE OKUHARA: Yes.

25 (Norine Okuhara was duly sworn in.)

1 Yes.

2 THE HEARINGS OFFICER: Please take a seat.

3 Thank you. Ms. Okuhara, how do you spell your
4 last name?

5 NORINE OKUHARA: O-K-U-H-A-R-A.

6 THE HEARINGS OFFICER: And your first name?

7 NORINE OKUHARA: N-O-R-I-N-E.

8 THE HEARINGS OFFICER: And what is your
9 address?

10 NORINE OKUHARA: My address is 1209B
11 Kaumana Drive.

12 THE HEARINGS OFFICER: Thank you. Would you
13 please proceed?

14 NORINE OKUHARA: Okay. I live right below
15 where they're planning on building Connections, and my
16 main concern has always been the water, because at
17 this point in time -- in the December's meeting with
18 Connections, Eric White stated that -- that the
19 student population will go according to the amount of
20 water they have, the water rights that they have. And
21 my question is who is to stop them from admitting more
22 students? Who is going to monitor this? Okay. That
23 to me is a major concern, because I'm thinking about
24 our community. And our community is not that big.
25 But we're -- a lot of us are senior citizens and

1 should anything happen to our home, should a fire
2 occur, and we don't have enough water to put it out, I
3 can't start all over again. I don't have the finances
4 to start all over again.

5 Okay. And when we suspended the meeting with
6 the Windward Planning Commission, we did -- we, the
7 community did not know about the two additional
8 subdivisions, the Kumalani, and the Hilo side --
9 Hillside subdivisions, plus the senior care center.
10 I did not know until I came back from my vacation, and
11 driving home I said, "What is that?" okay. Then I
12 understand it's going to occupy a hundred patients.

13 And as it is, when you travel up to Kaumana,
14 the roads aren't that great, okay. We need
15 resurfacing of the roads. With the additional traffic
16 at the school, the two subdivisions, plus the care
17 home, I can just imagine how bad our roads will
18 become.

19 So you know, just speaking from my heart, you
20 know, I'm not against Connections. I'm not against
21 the students, you know. It's just the process,
22 because I lived in Kaumana over forty years.

23 JEFF DARROW: Thirty seconds left.

24 NORINE OKUHARA: And you know, I didn't know
25 anything about the prior meetings, so when I was

1 contacted, you know, I was in shock. Thank you.

2 THE HEARINGS OFFICER: Thank you very much,
3 Mrs. Okuhara.

4 Is there anybody else in attendance that
5 wishes to testify as a public witness in this
6 proceeding? So the record would reflect no response.
7 We're done with the public hearing portion of this
8 proceeding.

9 We are scheduled to go on a site visit, and
10 since it's not raining -- and this is Hilo, I see no
11 reason why we can't do the site visit. Before we go I
12 want to take up one matter -- or two matters -- the
13 first is, there was an application filed by
14 Terence Yoshioka to be admitted as a party in this
15 proceeding. I received comments from all of the
16 parties. Is there anything further? And I have read
17 the comments, so please, if you want to add anything,
18 you can add, but don't repeat what you've done in
19 writing.

20 Mr. Hong, do you have anything more?

21 MR. HONG: No, thank you. We rest on or
22 the written submission that was filed on November 8,
23 2013.

24 MR. SIU: I also rest on my submissions.

25 THE HEARINGS OFFICER: Ms. Self?

1 MS. SELF: I have nothing further.

2 MR. GOMES: No comments.

3 THE HEARINGS OFFICER: Okay. The Planning
4 Commission rules are really clear on this issue, Rule
5 4.4-6 of the Planning Commission rules provides that
6 any person seeking to intervene as a party shall file
7 a written request on a form approved by the Planning
8 Director, and accompanied by a filing fee of two
9 hundred dollars no later than seven calendar days
10 prior to the Commission's first meeting on the matter.

11 In this case, Mr. Yoshioka, and it also says
12 if any -- the grant or denial of -- according to
13 Corporation Counsel, as Hearings Officer, I am
14 authorized to rule on this motion. It does not have
15 to go back to the Commission, itself. It's clear that
16 the first hearing in this matter happened long before
17 this contested case hearing. And even if the
18 contested case hearing would have been considered a
19 first hearing on this matter, the application should
20 have been filed seven days before that.

21 And I find that there is no exceptions in the
22 rule unless all of the parties stipulate to an
23 exception, and the parties have not stipulated to an
24 exception. So consequently, Mr. Yoshioka, I have to
25 deny your request. I will advise you, though, that

1 the rules also provide that any applicant who has been
2 denied standing may appeal the decision to Circuit
3 Court pursuant to HRS Section 91- 14.

4 So you are free to appeal the decision. But
5 I'm sorry, I can't allow you to participate as a
6 party.

7 The other thing I wanted to take up now --

8 JEFF DARROW: Ms. Hearings Officer --

9 THE HEARINGS OFFICER: Yes.

10 JEFF DARROW: We do have a late public
11 testifier.

12 THE HEARINGS OFFICER: Was the person in the
13 audience before?

14 JEFF DARROW: No, they just arrived.

15 THE HEARINGS OFFICER: The public testimony
16 portion has been completed. If the parties do not
17 object, then I will allow it, but if there is an
18 objection, it's rather late.

19 MR. HONG: On behalf of CBESS, I object.

20 THE HEARINGS OFFICER: Mr. Siu?

21 MR. SIU: I would join in the objection.

22 THE HEARINGS OFFICER: Ms. Self?

23 MS. SELF: I have no objection.

24 MR. GOMES: No objection.

25 THE HEARINGS OFFICER: Since there is

1 objections, I'm not going to allow the testimony now.
2 However, if the person wants to submit written
3 testimony, I will accept the written testimony before
4 the close of the hearing.

5 And the issue of public testimony -- there may
6 be additional time for the public testimony, depending
7 on what is decided today.

8 I contacted the parties on Friday to see if --
9 for the parties to explore an alternative dispute
10 resolution option, which is -- I don't know if you
11 call it mediation or facilitation, or some alternative
12 means of resolving this matter, because it's been
13 obvious to me that this matter is very contentious,
14 and in fact, that's why we're here for a contested
15 case hearing. And I asked the parties to go back and
16 think about it. I didn't want a decision right away.

17 And my suggestion is if the parties will
18 agree, do agree to do that, the hearing would be
19 postponed to -- probably four to six weeks to allow
20 the parties time to participate in mediation, or
21 whatever you want to call it, because some people are
22 a little scared of mediation -- dispute resolution,
23 let's put it that way.

24 But I would proceed with the site visit today,
25 and I will proceed with taking the additional

1 witnesses today, but I will defer closing arguments
2 until after mediation -- and proposed findings of fact
3 until after mediation. If nothing -- and I would not
4 have any knowledge of the mediation, that is
5 confidential and anything discussed in the mediation
6 stays confidential, because that's part of the
7 process.

8 If the parties have, somehow through all this
9 dispute, reach a consensus, that is more power to all
10 of you. And if you don't, and we'll come back, and no
11 harm, no foul, proceed as we have been doing. So I'm
12 going to go through and ask the parties if they will
13 -- and I might I also point out if this matter does go
14 to dispute resolution, there will likely -- and must
15 be other people and stakeholders involved in the
16 process that are not parties, because to resolve
17 things you need all the stakeholders present, and
18 Mr. Gomes I can tell you're not the only stakeholder.
19 It's obvious from the public testimony there are
20 others involved, and the person handling the mediation
21 or the dispute resolution will want to want to bring
22 in all stakeholders, if possible.

23 So it's a method of resolution that is amazing
24 in my opinion, and I strongly recommend it. And I do
25 recognize that any permits are subject to the approval

1 of the Planning Commission, and I have to write a
2 report, but if there is a consensus, there is nothing
3 wrong with the parties submitting something to the
4 Commission saying that this is the consensus of what
5 they have done.

6 So Mr. Hong, do you want to proceed with
7 mediation, or alternate dispute resolution?

8 MR. HONG: As we have indicated on Friday, my
9 client is more than willing to participate in
10 alternate dispute resolution in terms of community
11 outreach, as the record is clear, that we've always
12 been doing, thank you.

13 THE HEARINGS OFFICER: Mr. Siu?

14 MR. SIU: Same, we agree.

15 THE HEARINGS OFFICER: Ms. Self?

16 MS. SELF: The Planning Director has agreed to
17 be a part of the mediation.

18 THE HEARINGS OFFICER: Mr. Gomes?

19 MR. GOMES: I agree.

20 THE HEARINGS OFFICER: Well, you know, I'm
21 very, very pleased. I can't tell you how the process
22 will come out, but I can tell you I have seen some
23 really strange things happen, but I've seen
24 resolutions. It can work, and if doesn't work, it
25 may, at least, narrow the issues for you.

1 So Mr. Hong?

2 MR. HONG: Not on this matter, not on this
3 issue.

4 THE HEARINGS OFFICER: All right. Well, at
5 this point, I think we can recess to have a site
6 visit. Our court reporter is not coming with us,
7 because she's worried about her machine, so we will
8 tape-record the proceeding.

9 MR. HONG: Well, I just wanted to clarify what
10 the ground rules are before we go out there so
11 everybody knows what the ground rules are. We're not
12 taking testimony from anybody?

13 THE HEARINGS OFFICER: We're not taking
14 testimony from anybody, if there are comments,
15 Mr. Hong, since your client -- it's your client's
16 property, if you can show -- what I will allow, if
17 there are certain things that you want to be shown,
18 you can show those, but don't give arguments.

19 Same thing, Mr. Gomes, if there are certain
20 things on the property that you know about that you
21 want to see -- you can show those -- mention those.
22 Is that okay?

23 MR. GOMES: And may I describe to you --

24 THE HEARINGS OFFICER: I don't want any
25 argument. Just if there is an area that you want us

1 to see, what it is.

2 MR. GOMES: Okay.

3 THE HEARINGS OFFICER: I also want to drive to
4 the end of the cul-de-sac, at least, so I can
5 understand -- I want to do that with the Planning
6 Department, so I can see where the property is in
7 relation to the community.

8 MR. SIU: And before anybody goes on to the
9 property, we have these release and indemnification
10 forms for people to fill out.

11 THE HEARINGS OFFICER: Mr. Siu, I have done
12 land use work for over thirty-five years, and I have
13 never heard of a Commission having a release form
14 signed for a site visit. Nor -- and I've talked to
15 the planning department, and they're not -- the staff
16 is not familiar with this type of thing.

17 Now, if you don't want me to go on the site I
18 won't go on the site. But if you're insisting that we
19 sign a release form now, when this has never been done
20 in land use proceedings that I know of, from the Land
21 Use Commission, from the Land Board, or the Planning
22 Commission, that's your choice.

23 MR. HONG: Well, I will note that in terms of
24 the lease, my client is responsible if anybody gets
25 injured on the property. And you know, it is wet. It

1 has been raining, the area is muddy. There are some
2 slick areas. God forbid that somebody gets hurt --
3 but my client will be responsible for that. So I'm --
4 I'm very concerned about that. And that's why we had
5 suggested at the last hearing about this
6 indemnification.

7 So that's where I'm coming from on all this.

8 THE HEARINGS OFFICER: Ms. Self, have you ever
9 had to have sign a release of indemnity? You've been
10 involved with the Planning Commission for many years.

11 MS. SELF: I'm thinking we had to for Hoonua.

12 THE HEARINGS OFFICER: You don't remember?

13 MS. SELF: I can't say for sure, but I know
14 there were ground rules, because there was -- was a
15 mill there, or a factory type building there that was
16 in operation. I think we had to wear hard hats. So
17 there were some procedural things that had to be
18 complied with because of the landowner's concern for
19 liability.

20 THE HEARINGS OFFICER: I understand hard hats
21 in an industrial area. But again, I don't recall any
22 -- unless you can verify that there was a release.

23 MS. SELF: I can't say for sure -- but is
24 Jeffrey around -- do you recall? There was no
25 release?

1 MR. DARROW: No.

2 THE HEARINGS OFFICER: And I'm not inclined to
3 start changing this policy, because this has been the
4 policy for land use cases for as long as I know.

5 MR. SIU: Well, I'm not -- see, this is my
6 first case in this area, and I'm not sure if there is
7 a policy as a practice, but you know, I think I did
8 voice the concerns of the latter, which is the
9 Connections --

10 THE HEARINGS OFFICER: Mr. Siu, if the Land
11 Use Commission asks to visit the property, and they're
12 going to tell you they're not going to sign an
13 indemnity, are you going to say they can't go onto the
14 property?

15 MR. SIU: Well, this is so that the person
16 taking it down on the record understands where I'm
17 coming from so it's preserved for record purposes.

18 THE HEARINGS OFFICER: That's fine.

19 MR. SIU: And you know, this is undeveloped
20 land, and anything can happen. Just so you
21 understand, we wanted to do it, but if this -- you do
22 not require it, then that's something we have to
23 consider going forward. But I'll consult with Ted
24 afterward, and then we'll talk to you after that about
25 the decision.

1 MS. SELF: I'd also like to add that if it's
2 the Planning Commission members who are going out to
3 the site visit, we're covered under the County, it's a
4 County entity. I think their concern was with the
5 members of the public.

6 THE HEARINGS OFFICER: Well, so I'm covered as
7 a County contractor --

8 MS. SELF: Yes.

9 MR. HONG: Workmen's comp.

10 THE HEARINGS OFFICER: I don't think there is
11 workers' comp for me even though you do employment law
12 more than I do.

13 If you want Mr. Gomes to sign because he's not
14 covered, I have no objections to that. But the
15 government employees, I think don't need any.

16 MR. HONG: I agree, again, and it's just a lot
17 of people who are not familiar with the area -- well,
18 our concern is they just get into the property and
19 then they start wandering around. I mean, as Mr. Siu
20 pointed out, that is undeveloped land, a lot of
21 overgrowth. There is some rock outcroppings that are
22 covered by brush, that kind of stuff, so that's what
23 we're worried --

24 THE HEARINGS OFFICER: No illegal plants?

25 MR. HONG: No. Well, I think we got rid of

1 those from some of the other surrounding property
2 owners.

3 THE HEARINGS OFFICER: Okay. Thank you. All
4 right. We will be standing in recess to go to the
5 site visit then.

6 MR. HONG: Thank you.

7 (Recess.)

8 THE HEARINGS OFFICER: We're back on the
9 record, and I will note the presence of all the
10 parties.

11 During the recess Mr. Gomes just informed me
12 that his mother is in the emergency room, and he wants
13 to be excused. I cannot in good conscience go ahead
14 with this hearing if he's not present.

15 So my suggestion and recommendation, and I put
16 it out to the parties, is it's unfortunate that we
17 can't go ahead with the testimony, but I recommend
18 that we recess this hearing. We're going to continue
19 this anyway for mediation. And I'm proposing a
20 six-week period for mediation because of the holidays.

21 So -- and then we can -- if there is not a
22 consensus, we can finish up the testimony then. If
23 any party is subpoenaed and present today, that
24 subpoena is still in effect, and they will have to
25 appear at a continued hearing. But they will be --

1 Mr. Hong, it's your witnesses that you subpoenaed, you
2 can provide them with a time. But the subpoena still
3 is a continuing subpoena, so I am going to order the
4 witnesses that have been subpoenaed to re-appear at
5 the next hearing.

6 Darryn -- Mr. Hong, is that acceptable to you?

7 MR. HONG: Absolutely. I sympathize, and I'm
8 so sorry to hear about his mom.

9 THE HEARINGS OFFICER: So Mr. Siu?

10 MR. SIU: I agree.

11 THE HEARINGS OFFICER: Ms. Self?

12 MS. SELF: Yes.

13 THE HEARINGS OFFICER: Darryn, do we have a
14 calendar? Can we try to look at a date? Because of
15 the schedule in the department -- because there are
16 Commission hearings the first full week of January,
17 we're looking at January 13, is that open right now?

18 Mr. Gomes is okay with that.

19 MR. HONG: I start a trial that week with
20 Judge Hara, we have a settlement conference this
21 Friday. And I'm --

22 THE HEARINGS OFFICER: That's a jury trial?

23 MR. HONG: Yes, that's a jury trial.

24 THE HEARINGS OFFICER: You're going to be tied
25 up in trial for weeks.

1 MR. HONG: Yes, if it goes. Again, we have a
2 settlement conference on Friday. May I suggest that
3 we have a status conference on the phone?

4 THE HEARINGS OFFICER: To set a date?

5 MR. HONG: If we can make it late in the
6 afternoon, about 4:00 because our settlement
7 conference starts at 2:00, and Judge Hara gave us two
8 hours.

9 THE HEARINGS OFFICER: On Friday -- why don't
10 we have a phone conference at four o'clock on Friday
11 to set the date?

12 MS. SELF: This Friday?

13 THE HEARINGS OFFICER: Yes. I can do that at
14 4:00 p.m.

15 MR. HONG: Or 4:30?

16 THE HEARINGS OFFICER: Or -- 4:30 would be
17 better for me.

18 And then I'll have the Planning Department
19 look at what date early in January is available.

20 MR. HONG: Additionally, in the interest of
21 expediting proceedings, I'd be willing to waive
22 closing argument, and just basically, submit a
23 proposed finding of fact and conclusions of law.

24 THE HEARINGS OFFICER: I understand that,
25 Mr. Hong. However, I still think there are witnesses

1 that we have to deal with.

2 MR. HONG: Right, right. I mean I'm looking
3 farther ahead.

4 THE HEARINGS OFFICER: All right, so we'll
5 have a status conference by phone -- a pre-hearing
6 conference at 4:30 on Friday.

7 Darryn, are there witnesses outside that were
8 subpoenaed? Should we have them come in so I can
9 order them to come back?

10 MR. HONG: Ms. Leithead-Todd and Mr. Fuke have
11 been subpoenaed to testify.

12 THE HEARINGS OFFICER: Mr. Fuke, we're having
13 to continue the hearing because of an emergency of
14 Mr. Gomes. So since you were subpoenaed, we're
15 looking at continuing this hearing for six weeks. We
16 don't know the date, but I am going to order that you
17 do appear on the next date without having been served
18 again, but we will contact you. Thank you for
19 appearing today.

20 MR. FUKU: Sure.

21 MR. HONG: And I think Ms. Leithead-Todd is
22 outside.

23 THE HEARINGS OFFICER: Good morning.

24 MS. LEITHEAD-TODD: Good morning.

25 THE HEARINGS OFFICER: Ms. Leithead-Todd, we

1 have to recess this hearing because of a family
2 emergency with one of the parties, but since you were
3 served with the subpoena, I'm going to order that the
4 hearing will be continued for approximately six weeks.

5 MS. LEITHEAD-TODD: Okay.

6 THE HEARINGS OFFICER: But I'm going to order
7 that you appear for this hearing --

8 MS. LEITHEAD-TODD: Okay.

9 THE HEARINGS OFFICER: -- without having to be
10 served with a subpoena, but we will be in contact with
11 you as to the date and time.

12 MS. LEITHEAD-TODD: All right.

13 THE HEARINGS OFFICER: Thank you so much for
14 coming.

15 So with that note -- Ms. Self?

16 MS. SELF: I have a question, if we have a
17 phone conference this Friday at 4:30 to discuss dates,
18 so the Planning Department will be closed --

19 THE HEARINGS OFFICER: Can we do it at 4:15?

20 MR. HONG: I can also offer our conference
21 number where you just punch in the phone number, and a
22 conference code, that be fine.

23 THE HEARINGS OFFICER: I just want to make
24 sure that somebody from the staff is available, so
25 we'll do it at 4:15.

1 MS. SELF: We still have time to do the
2 calendar --

3 THE HEARINGS OFFICER: We'll do it at 4:15
4 Friday. With that, if there is nothing further, we're
5 going to recess the hearing, and thank you.

6 Mr. Gomes I hope your family situation is
7 better.

8 MR. GOMES: Thank you.

9 (The hearing adjourned at 11:11 a.m.)

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1 STATE OF HAWAII)
2) ss.
3 COUNTY OF HAWAII)
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5 I, MERCEDES SHARON SOUZA, a certified court
6 reporter in the State of Hawaii, do hereby certify
7 that the foregoing pages are a true and correct
8 transcription of the proceedings in the above matter.

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10 Dated this 16th day of November, 2013.

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Mercedes Sharon Souza, CSR No. 184