

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) VOLUME IV
 Services) (Pages 448 - 590)
)
 Special Permit Application No.)
 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 25 Aupuni Street,
 Conference Room, Hilo, Hawaii 96720 commencing at 9:10
 a.m., on Wednesday, January 8, 2014.

HEARINGS OFFICER: SANDRA SONG, ESQUIRE
 10 Kamehameha Avenue
 Hilo, Hawaii 96720

TAKEN BEFORE: SUSAN R. NAKAMOTO, CSR NO. 237
 Notary Public, State of Hawaii

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1 WEDNESDAY, JANUARY 8, 2014 9:10 A.M.

2 THE HEARINGS OFFICER: Good morning. Good
3 morning. This is Special Permit Application
4 No. 12-000138. It's the application of Connections New
5 Century Public Charter School and Community-Based
6 Education Support Services for a special permit on
7 property located at 141 Kaumana, tax map key 3256, parcel
8 141.

9 I'm Sandy Song, and I'm the hearing officer. Can
10 each of the parties identify themselves.

11 MR. HONG: Good morning, Madam Hearings Officer.
12 My name is Ted Hong. With me this morning from my office
13 is Susan Lee Loy. We represent CBESS, one of the
14 applicants.

15 MR. SIU: Good morning. Deputy Attorney General
16 Carter Siu here on behalf of applicant, Connections
17 Public Charter School.

18 MS. SELF: Good morning. Deputy Corporation
19 Counsel Amy Self here on behalf of the Planning Director.

20 MR. GOMES: Jeff Gomes.

21 THE HEARINGS OFFICER: Good morning. Since this
22 is a contested case hearing, the rules require that we
23 take public testimony before any evidence in this case.
24 Is there anybody here to give any public testimony today?
25 The record will reflect no response.

1 I do have though a written letter from Paul
2 Scotty Paiva dated November 5, 2013. I'm going to accept
3 that as public testimony in this hearing. And I believe
4 all the parties were provided with copies of this
5 testimony.

6 Mr. Hong?

7 MR. HONG: Yes, thank you.

8 THE HEARINGS OFFICER: Mr. Siu.

9 MR. SIU: Yes.

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: The last time when we
15 recessed, Mr. Hong, you had additional witnesses that you
16 were planning to call. Would you like to call your first
17 witness.

18 MR. HONG: Thank you. Our first witness this
19 morning is Phillip Rowell.

20 THE HEARINGS OFFICER: Mr. Rowell, would you
21 please stand and raise your right hand.

22 PHILLIP ROWELL,

23 called as a witness on behalf of Applicant, having been
24 first duly sworn was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. HONG:

2 Q. Okay. Mr. Rowell, before we begin this morning,
3 there's a microphone in front of you and if you'll use
4 that while you're testifying, I would appreciate it.

5 A. I'm sorry?

6 Q. If you would use the microphone when you testify,
7 I would appreciate it.

8 A. Okay.

9 Q. If you could just state your name for the record
10 and spell your name for us, please?

11 A. My name is Phillip Rowell. That's R-O-W-E-L-L.
12 I live in Kaneohe, Oahu.

13 Q. I'd like to begin this morning by talking about
14 your educational and professional qualifications. Could
15 you tell us about your educational background, please.

16 A. I have a bachelors in civil engineering from
17 Clemson University. I have a masters in civil
18 engineering, specializing in traffic and transportation
19 from Clemson University, and that's in 1972.

20 Q. In terms of your professional licenses, could you
21 tell us about that, please.

22 A. I'm a licensed civil engineer in California and
23 Hawaii.

24 Q. When did you get your license in Hawaii?

25 A. 1989.

1 Q. And in terms of your professional experience as a
2 traffic engineer, could you tell us about that.

3 A. From 1972 to 1982, I was a senior associate with
4 Wilbur Smith Associates. I worked in South Carolina,
5 North Carolina, Nevada, California, Arizona, Hong Kong,
6 and Malaysia.

7 Q. And this is all as a traffic engineer?

8 A. Yes.

9 Q. Could you tell us about your professional
10 experience in Hawaii as a traffic engineer.

11 A. Actually, the traffic engineering really began in
12 1982 when I went to Kentucky. Also in 1982 -- from 1984,
13 I was a city traffic engineer for the City of Beverly
14 Hills. And then in 1984, I became a senior associate
15 with Barton-Aschment, and then in 1995 I started my own
16 business.

17 Q. And in terms of your professional experience in
18 Hawaii, would you talk about that.

19 A. I came to Hawaii in 1989, and since that time,
20 I've done over 200 traffic impact studies ranging in size
21 from a four-unit condominium complex to Pi'ilani
22 Promenade, which is a 700,000 square foot piece of retail
23 in Maui.

24 I have current projects in Oahu, Maui,
25 Big Island, and Kauai. And I'd like to point out, all

1 these projects done in the mainland and over here all
2 follow the same procedures, same methodology, and same
3 criteria.

4 Q. And same industry standards?

5 A. That's correct.

6 Q. In terms of any experience here in the County of
7 Hawaii in terms of projects, if you could just highlight
8 those for us, please.

9 A. The major projects have been the Hawaii Academy
10 of Arts and Sciences, Laloa Street extension, the
11 University of Hawaii West Hawaii Campus, the Captain Cook
12 Police Station, the Kaumana Business Park, Palamanui. I
13 worked on the Regency project on Kaumana Drive, and I'm
14 currently working on the Saddle Road extension.

15 Q. And have you received any commissions or awards
16 in your professional capacity?

17 A. I'm a life member of the ITE, and I also have a
18 Martin -- George --

19 THE COURT REPORTER: I'm sorry, could you repeat?

20 THE WITNESS: I'm sorry?

21 BY MR. HONG:

22 Q. Could you repeat that, please?

23 A. George W. Martin Award of Excellence.

24 Q. And ITE stands for what?

25 A. The Institute of Transportation Engineers.

1 Q. Okay. In terms of your professional experience,
2 what qualifications and experience are necessary to
3 conduct and produce a credible, reliable TIAR?

4 A. In Hawaii, the TIAR has to be signed and usually
5 sealed by a professional engineer. Usually a civil, but
6 sometimes done by other dissidents.

7 Q. All right. In terms of the Regency project that
8 you talked about, Mr. Sidney Fuke is involved in that
9 project as one of the planners; is that right?

10 A. Correct.

11 Q. During the course of performing the TIAR for
12 Regency, did Mr. Fuke express any dissatisfaction with
13 your work?

14 A. No.

15 Q. What industry guidelines that are part of the
16 industry standard must be used in preparing a TIAR?

17 A. Primarily, the Highway Capacity Manual, which is
18 published by the Institute of Transportation Engineers.
19 We also have the Transportation Impact Analysis
20 Procedures --

21 THE COURT REPORTER: I'm sorry, sir. Could you
22 put the mike right by your mouth, please?

23 THE WITNESS: Okay.

24 THE COURT REPORTER: Can we make this a little
25 louder?

1 MR. DARROW: Sure.

2 THE COURT REPORTER: Thank you.

3 THE WITNESS: Also used the manual, Uniform
4 Traffic Control Devices published by the Federal Highway
5 Administration. Trip Generation, and the Trip Generation
6 handled -- published by the Institute of Transportation
7 Engineers.

8 BY MR. HONG:

9 Q. Now, an individual name Melvin Yokota testified
10 before the Planning Commission and submitted reports
11 purportedly to be a traffic kind of a report. Have you
12 read the report submitted by Mr. Yokota to the Planning
13 Commission and the hearings officer?

14 A. Yes.

15 Q. What concerns do you have, if any, concerning the
16 credibility and reliability of Mr. Yokota's opinions?

17 A. First of all, he didn't follow any of the
18 standard procedures and criteria guidelines that I cited
19 before. There's no traffic counts. None of the
20 statements were established by any calculations or data.

21 Q. And did his reports follow or use any of the
22 accepted guidelines that you rely upon in drafting and
23 submitting a TIAR?

24 A. Not that I could tell.

25 Q. Let's talk about the Connections project. When

1 were you first retained for the Connections project?

2 A. February, 2009.

3 Q. And what did you do with respect to the project?

4 A. Prepare the TIAR.

5 Q. How did you define the study area and the related
6 projects for the TIAR?

7 A. I did a field reconnaissance of the area. I met
8 with the County Department of Public Works, traffic
9 engineer, to be specific, and I met with the State
10 Department of Transportation.

11 Q. Were any concerns expressed by any governmental
12 agency or were any concerns expressed by some of the
13 opponents of the school with respect to your TIAR report?

14 A. My discussions with the County was primarily on
15 what recommendations I would come up with. The State had
16 no interest because we were not having a connection to
17 any State highways. So that was the only input I had,
18 and there was no concerns.

19 Q. In terms of -- if any of the school opponents
20 expressed a concern about your TIAR report, what would
21 you have done?

22 A. We would have -- depending on the comment, of
23 course, we would have expanded the study area, primarily
24 as to the study intersections, and my real concern was
25 obtaining information on what I should use to determine

1 to come up with the background forecast. We got no input
2 at all.

3 Q. When you say you got no input at all, you mean
4 from the community.

5 A. I'm sorry?

6 Q. You mean from the community you got no input?

7 A. I had no direct contact with the community.

8 Q. Okay. Let's talk about your TIAR. Explain what
9 you did to gather data for the TIAR.

10 A. First of all, I went out and had -- well, first
11 of all, I do a recon and then collect traffic counts,
12 then make background traffic projections primarily from
13 the related projects that I'm told about. Then I do my
14 little service analysis and complete the report.

15 Q. And you were following the guidelines of
16 professional or industry guidelines that you talked to us
17 about earlier?

18 A. Yes.

19 Q. Do you recall in any of the documents you
20 reviewed from community members like Mel Yokota,
21 Dr. Henry Lee Loy, or June Sakamoto, could you tell,
22 based on those reports, whether they followed any of the
23 guidelines or professional standards that you used in
24 your TIAR?

25 A. Not that I could tell. There were no citations

1 in the reports.

2 Q. In terms of your report after studying the area,
3 what did you find?

4 A. That -- primarily, that all traffic control
5 movements at the intersection of Edita and Kaumana
6 operated at level service A or B, point out that the
7 minimum acceptable standard for an urban area is level
8 service D. So pretty good operating conditions upon
9 completion of the project.

10 Q. You made some recommendations in your TIAR,
11 right?

12 A. Right.

13 Q. And could you describe those recommendations for
14 us, please?

15 A. First -- well, there were a number of
16 recommendations, but the primary ones relating to traffic
17 were that new surveys, new traffic counts should be
18 conducted at the completion of the final phase of the
19 project to confirm the generation assumptions at the
20 conclusions of the report and to determine if additional
21 mitigation would be required.

22 Two, the school should develop and implement a
23 traffic management plan and even -- and a third
24 recommendation is that even if -- with the acceptable
25 levels of service, I recommended that they put in a

1 left-turn lane for traffic into the project to minimize
2 the impacts on through traffic along Edita.

3 Q. Let me interrupt for a second, and I apologize.
4 We're at the Planning Commission record at page 693
5 through 710.

6 One of the criticisms that was brought up in
7 terms of your TIAR was that you conducted the test, your
8 study, on a non-school day. Was that true?

9 A. According to the public school calendar, schools
10 were in session that week except for Monday, which was a
11 holiday. But the Thursday that the counts were
12 conducted, the schools -- the public schools were in
13 session.

14 Q. And you checked that yourself?

15 A. Yes, I did.

16 Q. Could you describe the mitigating measures that
17 Connections will implement to reduce loss of service?
18 Excuse me, L-O-S, and what does that stand for again?

19 A. Level of service.

20 Q. Level of service, excuse me.

21 A. Repeat the question?

22 Q. My question was, could you describe the
23 mitigating measures that Connections will implement to
24 reduce the level of service?

25 A. You mean improve the level.

1 Q. Improve the level of service.

2 A. We're already operating at level of service A or
3 B, which is the highest level of service there is. "A"
4 is the highest, "F" is the lowest. So we're well-above
5 the minimum acceptable level of service without getting
6 improvements. The left-turn pocket that I recommended
7 for Edita Street doesn't really change the level of
8 service. It just changes where it's at because the only
9 controlled movement would be the left turn into the
10 project. That will operate at level of service A or B,
11 whether we have a left-turn pocket or not.

12 So what we really did was to make a
13 recommendation that would minimize the impact of any
14 traffic at this intersection, only through traffic, which
15 would be to the residents of the community.

16 And I would like to add, we had a long-hard
17 discussion about that too, about reasons why we should do
18 that for the community.

19 Q. When you said you had a discussion, who were you
20 discussing it with?

21 A. With the client.

22 Q. In terms of some other criticism that has been
23 raised about the TIAR, one of the criticisms was that the
24 TIAR is outdated. How do you respond to that?

25 A. First of all, it's not outdated. Right now it is

1 the most current document we have. If we go -- move
2 forward with this project to the State Land Use
3 Commission, it's been my experience that the Land Use
4 Commission will require an updated traffic study because
5 one, it's been four years since we did the traffic
6 counts; and, two, the list of the related projects that
7 we would use and the background forecasts needs to be
8 updated.

9 Q. And you had talked about four years going by
10 since you did the traffic count. Based on your
11 experience, is the length of time, in terms of the
12 project from the submission of the final EA to the
13 present, taken unusually long?

14 A. Yes. Usually, we finalize the report within six
15 months and move on to the Planning Commission hearing.
16 That did not happen in this case for a number of reasons.

17 Q. And would you feel that the delay in this case is
18 unique or not unique and, why?

19 A. It's not unique. I've had some that's been
20 sitting in DOT for the last five or six years, but this
21 is unusually long. And it makes things difficult because
22 primarily, like I said, the list of related projects that
23 we use to develop background forecasts changes. And
24 that's why, typically, if the traffic counts and the data
25 collections are two-years old, the State Land Use

1 Commission will require us to update our traffic study.

2 Q. So you would agree that the TIAR should be
3 updated at some point.

4 A. Yes, and I recommended that.

5 MR. HONG: Thank you. I have nothing further.

6 THE HEARINGS OFFICER: Mr. Siu, any questions?

7 MR. SIU: I have none.

8 THE HEARINGS OFFICER: Ms. Self?

9 MS. SELF: No, thank you.

10 THE HEARINGS OFFICER: Mr. Gomes?

11 MR. GOMES: Yes, Ma'am.

12 THE HEARINGS OFFICER: Go ahead.

13 CROSS-EXAMINATION

14 BY MR. GOMES:

15 Q. Mr. Rowell, you are a traffic engineer, correct?

16 A. Correct.

17 Q. Can you explain what that is to me, please?

18 A. A traffic engineer is one who prepares traffic
19 impact studies, can design traffic signals, design
20 roadway striping. I happen to specialize in preparing
21 traffic impact studies.

22 Q. And you do have a degree in engineering.

23 A. I have two. I have a masters and I have a
24 bachelors.

25 Q. What kind of engineering is that?

1 A. Civil.

2 Q. And your company is called Phillip Rowell
3 and Associates?

4 A. Yes.

5 Q. And how many associates do you have?

6 A. Right now I have none. I'm a one-man operation,
7 but in the past I've had two employees.

8 Q. And were they -- those employees helping you when
9 you did --

10 A. I am the sole engineer for the company.

11 Q. Where do you live again?

12 A. Kaneohe.

13 Q. Can you please state the purpose and objective of
14 the traffic impact analysis study?

15 A. I'm going to cite you what I wrote in the report.
16 -- I guess I won't. Primarily to estimate traffic
17 characteristics of the project in terms of the peak hour
18 traffic, a.m. and p.m. In this particular case, we did a
19 midday also. To identify and discuss the traffic impacts
20 of the project in terms of changes in the volumes,
21 changes of levels of service at the study intersections,
22 and to identify and discuss the appropriate mitigation to
23 mitigate the impacts as a result of project-generated
24 traffic.

25 Q. And who hired you to do the traffic impact

1 analysis report?

2 A. Connections.

3 Q. So not Wil Chee Planning?

4 A. I worked with Wil Chee Planning, but, ultimately,
5 it was with Connections.

6 Q. As far as funding for the school goes, how much
7 do you charge for a project like this?

8 A. At the time this project was done, probably
9 anywhere -- anywhere from \$12 to \$16,000.

10 Q. And how long did it take for you to complete the
11 traffic impact analysis report?

12 A. We began in -- February was when my first --
13 excuse me, February was my first correspondence with Wil
14 Chee, and we completed the report in June of 2010.

15 Q. Did Wil Chee Planning pay you anything to do the
16 --

17 A. Initially, yeah.

18 Q. How much did they pay you?

19 A. I don't have that information.

20 Q. Roughly.

21 A. Give me a second. It looks like they paid me
22 around \$14,000 towards the \$16,000 for the project. The
23 remaining was paid by Connections.

24 Q. Okay, thank you. You were asked to do the study.
25 Was it six months before the traffic count was done or a

1 month before the traffic count was done?

2 A. As I recall, the traffic counts were done in May.
3 My first correspondence with Wil Chee what I got billed,
4 the site plan, you know, the site plan stuff, it seems
5 like I got those in February. So it would be three
6 months before I did the counts.

7 Q. And was that enough time for you to prepare and
8 plan?

9 A. Yes.

10 Q. Were you given a deadline to complete and turn in
11 the study?

12 A. I don't recall a deadline, no. Usually I work
13 with Wil Chee to fit into their schedule for doing the
14 EA.

15 Q. And you said earlier you've done over 200 other
16 traffic --

17 A. TIARs?

18 Q. Correct.

19 A. Since 1989, yeah.

20 Q. That's throughout the nation, right? Not just in
21 Hawaii.

22 A. Sorry?

23 Q. That's throughout the nation, not just in Hawaii?

24 A. No, I've only practiced in Hawaii since 1989.

25 Q. So those were all done in Hawaii?

1 A. Yeah.

2 Q. Okay. And how many other traffic TIARs have you
3 done for proposed schools?

4 A. On the Big Island I did Hawaii Academy of Arts
5 and Sciences, which is in Kona. I've done WHEA, which is
6 on the Kona side. That was done a couple years ago.
7 Those are the schools -- and the Connections, of course,
8 2010. Those are the major ones on the Big Island.

9 Q. So the traffic count was done in one day?

10 A. Yes, and that is standard.

11 Q. And that was Thursday, May 29, 2009?

12 A. I believe it was May 28th.

13 Q. And how was the day of the traffic count chosen?

14 A. The -- we don't have any standards for Hawaii
15 County, but the State requires the traffic -- it doesn't
16 require, but it suggests that we have all traffic counts
17 done either on a Tuesday or a Thursday.

18 Q. And why was that month selected?

19 A. Because we wanted to get the traffic counts
20 before school was -- took summer break.

21 Q. And are you familiar with the term,
22 back-to-school traffic?

23 A. Yeah.

24 Q. That implies that the traffic increases during
25 school time, right?

1 A. I'm not quite sure what you mean by increases.
2 We have pretty specific guidelines with DOT that they
3 consider a Tuesday or a Thursday typical. And this would
4 not be a back-to-school because I think schools let out a
5 week or two after this.

6 Q. So the traffic count was done on a Thursday,
7 2009, and a traffic -- the TIAR was submitted in June of
8 2010, over a year since the count was done. Why did the
9 report take over one year to complete?

10 A. We submit the report, it goes out to various
11 agencies for review and comment. It's incorporated in
12 the EA and then goes out. Then we get comments back and
13 we revise the report accordingly.

14 Q. And were you -- were you aware that the spring
15 2009 term for both University of Hawaii at Hilo and
16 Hawaii Community College ended May 15, 2009, two weeks
17 before your traffic count was done?

18 A. Yes, but I don't think that would have any
19 bearing on the conclusions of the report. If the levels
20 of service were D and it was critical, then, yes, maybe,
21 but levels of service were A and B.

22 Q. And were you aware that the spring 2009 term for
23 Kamehameha Schools Hawaii campus ended May 22nd, one week
24 before your traffic count was done?

25 A. Yes.

1 Q. Are you aware that represents over 7,000 students
2 who were not in school in Hilo on that day?

3 A. Yes, but doubt -- it would impact the traffic on
4 Kaumana Drive very slightly.

5 Q. You said earlier that you got no input from the
6 community. Why do you think that is?

7 MR. HONG: Objection. Calls for speculation on
8 the part of the witness.

9 THE HEARINGS OFFICER: I'm going to overrule it
10 and allow him to answer.

11 THE WITNESS: It's not in my purview to meet with
12 the County -- excuse me, with the community. So I had no
13 community input and it's typical. We usually prepare a
14 report and submit it. We didn't know -- my experience is
15 we had no input from the County or community to have a
16 report to look at.

17 BY MR. GOMES:

18 Q. But the TIAR that you did was part of the
19 environmental assessment.

20 A. Yes.

21 Q. And are you aware that Title 11, Chapter 200 of
22 the TIAR -- I mean of the Hawaii Advisement or
23 Administrative Rules, Subchapter 6, 11-200-9, Assessment
24 of Agency Actions and Applicant Actions, A(1), it says,
25 "Seek, at the earliest practicable time, the advice and

1 input of the county agency responsible for implementing
2 the county general plan for each county in which the
3 proposed action is to occur, and consult with other
4 agencies having jurisdiction or expertise as well as
5 other citizen groups and individuals which the proposing
6 agency reasonably believes to be affected." Have you
7 ever sought out?

8 A. I'm sorry?

9 Q. Have you ever sought out? Like it says "Seek, at
10 the earliest practical time."

11 MR. HONG: I'm going to object because, again, in
12 terms of -- well, in terms of Mr. Rowell's testimony, he
13 was coordinating with Wil Chee & Associates, who's
14 handling the EA and the submission of the EA. So it's
15 not his responsibility to go out and seek that kind of
16 community contacts.

17 THE HEARINGS OFFICER: I understand the
18 objection. Since this is cross-examination, I'm going to
19 overrule it. You can go ahead and answer it if you can.

20 THE WITNESS: What Mr. Hong said is correct. I
21 do not go out into the community and have community
22 meetings. It's not within my scope, but I do go to the
23 County and State to get their input.

24 BY MR. GOMES:

25 Q. So it's understandable that you did not receive

1 community input.

2 A. I personally did not, no.

3 Q. But were you ever aware that this administrative
4 rule exists?

5 A. Yes.

6 Q. On Oahu where you live when school is out
7 especially during the summer, is there more traffic in
8 the morning than on a regular school day?

9 A. I do not do traffic counts when public schools
10 are recessed so I couldn't answer that.

11 Q. Do you watch the traffic reports on the morning
12 news?

13 A. I'm sorry?

14 Q. Do you watch the traffic reports on the morning
15 news on TV?

16 A. Sometimes.

17 Q. And have you ever heard the newscasters say that
18 since school is out for the summer you can expect more or
19 heavier traffic this morning?

20 MR. HONG: Excuse me. I'm going to object to
21 this line of questioning as lack of foundation. It's not
22 relevant, and I think it's also duplicative because he's
23 already testified regarding what impact school being in
24 session in that Kaumana area had on his report.

25 THE HEARINGS OFFICER: I'm going to sustain the

1 objection. You have to be more specific and relate to
2 this project.

3 BY MR. GOMES:

4 Q. Okay. On page 7 of the TIAR, background traffic
5 projections, what are the background traffic projections?

6 MR. HONG: I'd just note for the record, that's
7 page 696 in the Planning Commission record.

8 THE WITNESS: There are three sets of traffic
9 numbers that I use in the report. They're existing which
10 I do -- which I analyze to establish a base condition.
11 And then there's the background traffic conditions which
12 I defined as future traffic projections at some point in
13 the future. And the background traffic projections are
14 calculated by taking the existing traffic volumes, adding
15 the background growth rate and then adding any additional
16 traffic from any related projects that are identified.

17 The next step is to generate traffic by the
18 proposed project. Then you add that to your
19 background, and that becomes your background-plus
20 project. And you compare the background in the
21 background-plus project, and that quantifies the impact
22 of your project.

23 Q. Thank you. In your report you state that the
24 background growth was based on reconnaissance of the
25 study area and information provided by Wil Chee Planning.

1 It was concluded that the future growth along Kaumana
2 Drive is expected to be minimal. Did you do the
3 reconnaissance of the study area or did Wil Chee Planning
4 do this reconnaissance?

5 A. I did it, and I looked at growth and traffic
6 along Kaumana Drive based on some historical traffic
7 counts like I noted earlier. I did the Kaumana Business
8 Park so I look at what the growth is along Kaumana. It
9 was actually minimal, zero, but that's hard to sell to
10 reviewers so I added a one percent growth rate.

11 Q. And how is the reconnaissance done? Where do you
12 get your information from?

13 A. A number of sources. Traffic counts that I've
14 done in the area, there's also traffic counts at that
15 time done by the State on Kaumana because at one time
16 they have historical data on that. If you look at that,
17 that also tells you what time to do your counts.

18 Q. What kind of information did Wil Chee Planning
19 provide to you about the background growth?

20 A. They didn't provide any of that. They provided
21 me with the site development plans.

22 Q. Did you or Wil Chee Planning come to the
23 conclusion that the future traffic growth along Kaumana
24 Drive is expected to be minimal?

25 A. I came to that conclusion.

1 Q. Did you or Wil Chee Planning know or have
2 information about the Hawaiian Homes Commission
3 subdivision in Kaumana?

4 A. No. Actually, that's for myself. I can't speak
5 for Wil Chee.

6 Q. Did you or Wil Chee -- oh, okay. So did you know
7 or have any information about William Brilhante's 12-lot
8 subdivision on Mele Manu Street?

9 A. Like I stated earlier, nobody told me anything
10 about any development projects in that area. And it's --
11 that's typical until they get a draft report.

12 Q. Who would have to tell you about a development
13 project? Are people supposed to seek you out and let you
14 know that they're doing a development?

15 A. Usually when I go into an area, I find out on my
16 own by asking a lot of questions to the County and/or
17 the State. And then in some cases I contact the
18 developers to see what's going on in the area. In this
19 particular case, I got zero.

20 Q. Do you believe if you had asked the residents
21 that they would have known about the development in the
22 area?

23 A. Probably, but even then, I would have to filter
24 those requests to see which developments are going to
25 happen before our design year. If they're going to

1 happen after our design year, they're not included in the
2 forecasts.

3 Q. And so did you know or have any information about
4 William Brilhante's planned 45-lot subdivision which is
5 adjacent to the proposed Connections Charter School at
6 the end of --

7 A. Nobody noted it.

8 Q. Did you know or have any information about the
9 39-lot Punahou Mauka Estates subdivision?

10 A. No.

11 Q. Did you know or have any information about the
12 83-lot Kumulani Gardens subdivision?

13 A. When was that proposed?

14 Q. That's part of the subdivision that's going up on
15 --

16 A. I'm asking when because if it was after two
17 thousand -- June 2010, obviously, I didn't know anything
18 about it.

19 Q. I don't know when it was.

20 A. I'm sorry?

21 Q. I don't know when it came up.

22 A. Well, that applies to all of those projects. If
23 they came or were proposed after 2010 or 2009 when we did
24 the data collection, they're obviously not included.

25 Q. And did you know about the proposed 26-lot

1 subdivision, Punahoa 1st and Ponahawaii, near the
2 intersection of Kaumana Drive and Mohouli?

3 A. Same question. When was that proposed?

4 Q. Fair enough. So your answer's "no."

5 A. No.

6 Q. And did you have any information about the 100
7 bed skilled-nursing facility called Regency Hilo Nursing
8 at 516 Kaumana?

9 A. I can answer that one. That one came up in 2012,
10 and that was three years after our data collection
11 because I did the traffic study.

12 Q. That's "no" also.

13 A. At the time the study was done, that is correct.

14 Q. And did you have any information about the
15 Mohouli Senior Housing project on Mohouli Street
16 extension?

17 A. When was that one proposed?

18 Q. I don't know. Just answer "yes" or "no."

19 A. I guess it was after 2009 or I would have heard
20 about it.

21 Q. So "no" then.

22 A. Yes.

23 Q. The police department recommended sidewalks on
24 Edita Street. Why didn't you recommend sidewalks in the
25 TIAR?

1 A. My understanding at the time of the report that
2 we wanted all pedestrians to enter the project. We
3 didn't want pedestrians walking along the roadway.
4 Sidewalks would only encourage that.

5 Q. Is it correct in order to determine that the
6 study area should include the intersection of Kaumana
7 Drive and Edita Street and the project driveway along
8 Edita Street, you reviewed the studies for other projects
9 in the area?

10 A. I don't understand that.

11 Q. Let me read it. Is it correct that in order to
12 determine that the study area should include the
13 intersection of Kaumana Drive and Edita Street and the
14 project driveway along Edita Street, you reviewed other
15 studies?

16 A. No. There were some criteria published by the
17 Institute of Transportation Engineers which I used to
18 define the study area.

19 Q. And what were the other projects in the area that
20 you studied?

21 A. Prior to this project, I did the Kaumana Business
22 Park. And since the study, I have done the Regency. In
23 the immediate area, that's the only two projects.

24 Q. And what area did you review? Kaumana area, Hilo
25 area, Puna area?

1 A. No, because of the amount of traffic this
2 generates, it is considered a small traffic impact study,
3 small development, and that defines the study area. The
4 previous traffic studies that I've done in the area went
5 up to Kaumana Drive and the access to the project, and
6 all those studies have been approved.

7 Q. Did your TIAR conclude that future traffic growth
8 along Kaumana Drive was expected to be minimal?

9 A. Yes.

10 Q. And how did you do your manual traffic count on
11 Thursday, May 28th?

12 A. I'm sorry?

13 Q. How did you do your manual traffic count?

14 A. A person sits in the car and counts the amount of
15 traffic making each movement, summarized in 15-minute
16 increments, and then you use that to define the peak
17 hour.

18 In this particular case, we did a two-hour period
19 in the morning, a two-hour period in the afternoon,
20 4:00 to 6:00, and we did another midday because we were
21 going to have midday pickups at this project. So we did
22 three periods, which is unusual. We normally do two.

23 Q. Did you do the count or did you hire someone to
24 do --

25 A. I have a subcontractor that does my counts.

1 Q. And what kind of qualifications do they need to
2 count cars?

3 A. You need traffic counters and some people.

4 Q. Okay. Was it raining or was it a sunny day in
5 Kaumana?

6 A. I don't know.

7 Q. Does your TIAR take into account slower traffic
8 times when it rains?

9 A. I'm sorry?

10 Q. Does your TIAR take into account slower traffic
11 times when it rains?

12 A. No. We try to make sure that it's clear so it
13 should be typical traffic conditions.

14 Q. Why did you do the manual traffic count only on
15 one day?

16 A. That is standard procedure.

17 Q. What is the difference between existing traffic
18 volumes and manual traffic counts?

19 A. They should be the same.

20 Q. What is the definition of existing traffic
21 volume?

22 A. Counts that we go out there and determine.
23 They're actual counts.

24 Q. But -- so existing -- when you count, existing
25 traffic volumes can be done in one day?

1 A. Yeah.

2 Q. And that would be the same for every day?

3 A. There may be some variation, and certainly over
4 time it would change, but that's just the way it's done.

5 Q. Were any of the projects that I mentioned earlier
6 too minimal to be mentioned in the TIAR?

7 A. It's not a matter of size, it's when. To the
8 best of my knowledge, all those projects have come
9 forward since we did our data collection.

10 Q. Did you estimate the future background traffic
11 growth between 2009 and 2022? Do you use an average
12 growth rate of one percent per year? Is that correct?

13 A. Actually, my counts show a slight decrease in
14 traffic. If I compare the 2009 counts with 2012 counts
15 that I did for Regency, there's about a 15 to 20 percent
16 decrease in peak hour traffic. And I added one percent
17 so I think I've been more conservative in my forecast
18 than need be.

19 Q. How did you arrive at that average growth rate?

20 A. Actually, because if I had used the data, it
21 would have been a negative. The one percent, at least,
22 would have a positive growth.

23 Q. And what is the growth factor? How is it
24 calculated?

25 A. Growth factor takes the future and compares it to

1 existing or say 2020, 2015 traffic compares it to an
2 earlier job and you calculate an average annual growth
3 rate using a compound interest formula.

4 Q. And when you do the traffic count, you're just
5 counting cars. You're not checking speed or the way
6 people drive.

7 A. Typically, we count cars and pedestrians.

8 Q. Since you did not mention any of the projects I
9 asked you about in the TIAR, could the average annual
10 growth rate have been higher than you calculated?

11 A. No. Because the traffic generated by those
12 projects is a separate number added on top of the growth
13 rate. In a lot of cases, the growth rate is simply to
14 consider in your calculation traffic generated by small
15 projects that don't do a traffic study. And if I follow
16 procedures published by the ITE, I'm supposed to use one
17 or the other. In this case I used both, which means my
18 numbers are very, very conservative.

19 Q. Is it correct that your report assumes that there
20 would be no traffic growth of traffic along Edita Street?

21 A. If you recon' the area, Edita Street is pretty
22 well-developed. There would not be any additional
23 traffic generated along Edita.

24 Q. Would Mr. Brilhante's adjacent 45-lot subdivision
25 increase traffic along Edita Street?

1 A. Probably.

2 Q. And so you did not apply the background growth
3 factor through traffic along Edita Street because you
4 didn't know about the project.

5 A. Like I said, it had to come on line after we did
6 our data collection and did our study. So no, it's not
7 in the projections.

8 Q. And you did not overlook Mr. Brilhante's 45-lot
9 subdivision.

10 A. As I've said several times, that project came on
11 line after we did our data collection.

12 Q. Is it correct that your TIAR stated the second
13 component in estimating future background traffic volume
14 is traffic resulting from other proposed projects in the
15 vicinity?

16 A. That's in the report, but no projects were
17 identified.

18 Q. Is it correct that related projects are defined
19 as projects that are likely to be constructed adjacent to
20 the study project; in this case, adjacent to the proposed
21 school?

22 A. Say that one more time?

23 Q. Is it correct that related projects are defined
24 as projects that are likely to be constructed adjacent to
25 the study project; in this case, adjacent to the proposed

1 school?

2 A. But no projects were identified as likely to be
3 constructed in 2009.

4 Q. But is it correct?

5 A. That is in the report, but no projects had been
6 identified.

7 Q. So your answer is "yes."

8 A. I'm sorry?

9 Q. Your answer is "yes"?

10 A. Yes.

11 Q. And is it correct that your TIAR reported no
12 related projects?

13 A. That is correct.

14 Q. Are you aware now of Mr. Brilhante's 45-lot
15 subdivision?

16 A. Yes.

17 Q. So you were not aware that Mr. Brilhante's
18 subdivision was tentatively approved by the Planning
19 Department in 1998?

20 A. No, but that does not mean it's likely to be
21 built within our design period.

22 Q. And were you aware that Mr. Brilhante's 12-lot
23 subdivision is already completed on Mele Manu Street and
24 lots have been on sale for over one year?

25 A. No. Again, I keep saying this. You got to go

1 back to 2009 when we did our data collection. And if
2 this information is not available then or is not
3 available, then, obviously, it's not in the report.

4 Q. Could these projects affect future traffic?

5 A. They would affect future background traffic. It
6 would probably, 90 percent sure, it would not change the
7 conclusions of the report because you're comparing
8 whatever the background is to what the increase is of
9 this project. So if the background increases, you add
10 more. You may get some deterioration and delays, but it
11 will not change the conclusions of the report.

12 Q. Okay. When you did the analysis to determine
13 project trip generation, you identified six phases.
14 Could you please identify these phases, the anticipated
15 impact dates and findings of impacts?

16 A. I didn't do an impact for each. I did not do an
17 impact analysis for each separate phase. The analysis
18 was designed to be able to do that. We'll start with a
19 completed project and then if the completed project
20 results in acceptable levels of service and no
21 mitigation, then there's no point to go back and find out
22 whether that mitigation is acquired.

23 So it would not change -- if I had done an impact
24 analysis as to each phase, it would not change the
25 conclusions of this report.

1 Q. So since we're not 2014, the phasing schedule has
2 understandably changed. Do you know whether the specific
3 phases have been changed; and if so, what are their
4 current timetables?

5 A. My understanding is that there's been some
6 changes in the phasing; but, again, I don't know what
7 those are.

8 Q. Are you aware that the applicant has represented
9 that at least 50 percent of the student population will
10 come from Puna district and did you take that into
11 account?

12 A. I am aware of that since I did the study, but it
13 would not -- again, affect the conclusion because we're
14 only looking at the main entrance at Edita.

15 Q. Your study included only the intersections of
16 Kaumana Drive and Edita Street and the proposed
17 intersection between the school's entrance and Edita
18 Street. Are you aware of other intersections along
19 Kaumana Drive that are approximate to this area such as
20 Chong Street, Hokulani Street and Kaumana Terrace. Given
21 the projected student population coming from the outside
22 area, why were these intersection not studied?

23 A. We limited our study area to Edita because that
24 was the information we got from input from the County and
25 from the State. There's also some guidelines in ITE

1 about the limits of your study area. And, typically, any
2 major intersection outside of a half mile would not be
3 included.

4 Q. Is one purpose of the TIAR to help decision
5 makers understand the traffic impact of a project?

6 A. Yes.

7 Q. Given the change in phasing that it has been more
8 than four years since the TIAR was done, the knowledge of
9 other planned subdivisions resulting in 50-plus more lots
10 using Edita Street, the source Puna district of student
11 population and the traffic impact to other intersections
12 along Kaumana Drive and the purpose of the TIAR which is
13 to help decision makers, that it would be prudent for
14 decision makers to have the most up-to-date analysis?

15 MR. HONG: Excuse me, I'm going to object as
16 lacking foundation, vague and ambiguous, and it's
17 argumentative.

18 THE HEARINGS OFFICER: I'm going to overrule it.
19 If you can answer the question, go ahead.

20 THE WITNESS: If I understand the question. Yes,
21 it would help the decision makers, but the decision
22 makers are supposed to be for a traffic study, familiar
23 with the methodology of a traffic impact study. Nothing
24 you've given me here would make me change the conclusions
25 of the study. It may change the data, it may change the

1 final numbers, it may change the delays, but it would not
2 change the conclusions. And I think a traffic engineer
3 transportation planner reviewing this report would
4 realize that the traffic study was done in 2009, would
5 realize that the conclusions are not going to change, and
6 that at some point, yes, the traffic study should be
7 updated. And I think the appropriate and most likely
8 place where that will occur is the State Land Use
9 Commission will require an updated traffic study because
10 of the time we did the study; and, thus, that simple.

11 BY MR. GOMES:

12 Q. In terms of traffic impact, the report used the
13 concept of levels of service as put forth by the
14 Institute of Transportation Engineers, and that there are
15 six levels of service ranging from A through F with "A"
16 being optimal and "F" being worse; is that correct?

17 A. Correct.

18 Q. Further, your report identified LOS as a
19 qualitative measure of effect of a number of factors
20 which includes space, speed, travel time, traffic
21 interruptions, freedom to maneuver, safety, driving
22 comfort and convenience. In other words, they deal with
23 safety and inconvenience.

24 A. Correct.

25 Q. For example, even if the LOS changes from A to B,

1 it does not measure quality of life factors such as
2 social or human effect of 100 percent -- 150 percent
3 increase in wait time from 5 seconds to 15 seconds;
4 correct?

5 A. It is my understanding that all of those things
6 that you noted are included in level of service. If I'm
7 operating at level service A, everything is good, very
8 little delay. And the increase in traffic, to me, is
9 secondary. A change in level of service is what I look
10 for. If I've got 15 cars and I increase to 30, that's a
11 100 percent increase, but 30 cars along a road is not a
12 very big increase.

13 If, by the same token, I can have 500 cars on
14 a roadway and I can add, you know, 50, that's only a
15 10 percent increase, but it may change the level of
16 service from C to D, in which I have a problem.

17 So, the real numbers don't mean anything --
18 they'll factor into the level of service, but I think you
19 have to put it in the context of what that beginning
20 number is.

21 Q. Are you familiar with the term, "quality of
22 life"?

23 A. Yes, I am.

24 Q. And what does that mean to you?

25 A. It means I'm not looking -- at this particular

1 case, I'm not looking at a long line of traffic trying to
2 turn left. I'm still not -- still do not have volumes
3 that provide a cue that are belching smoke and so forth.
4 It's just not happening here.

5 Q. Under the preferred alternative scenario, the
6 project's traffic generation on Kaumana Drive and Edita
7 Street intersection during a.m. peak, 7 a.m. to 8 a.m.
8 is projected at 187, correct?

9 A. Correct.

10 Q. Your Attachment G discusses the ambient or
11 existing traffic conditions, correct?

12 A. I'm sorry?

13 Q. Your Attachment G discusses the ambient or
14 existing traffic conditions, correct?

15 A. Yes.

16 Q. Along Kaumana Drive at the Edita Street
17 intersection, there were 102 mauka-bound and 219 makai-
18 bound traffic movements, for a total of 321, correct?

19 A. Where are you at? You're looking at Attachment
20 G, right?

21 MR. HONG: And I'd just note for the record,
22 that's page 703.

23 THE WITNESS: I can't see the small numbers.

24 THE HEARINGS OFFICER: Wait, excuse me.

25 Mr. Gomes, can you please start referring to the record

1 if you're going to ask the witness about certain
2 questions.

3 MR. GOMES: Okay.

4 THE WITNESS: Where are you now?

5 BY MR. GOMES:

6 Q. I did not write down the exact page I got those
7 numbers from.

8 A. Just repeat the comment about the volumes.

9 Q. Along Kaumana Drive, 102 mauka-bound and 219
10 makai-bound traffic movements for a total of 321
11 movements.

12 A. Okay.

13 Q. So with the projected 187 movements generated by
14 the project and if nothing ever happens, that would be a
15 total of 508 for a 50 percent increase over the year?

16 A. Well, keep in mind that your volumes that are
17 generated you have inbound and you have outbound. So
18 that brings that number down. Then you have -- you
19 distribute those trips, distribute the inbound and
20 outbound separately, so you're not going to see 800 trips
21 by an increase there.

22 Q. And at the Edita Street-Kaumana Drive
23 intersection, the same Attachment G notes that there are
24 13 inbound and 49 outbound movements for a total of 62
25 movements during the a.m. peak, correct?

1 A. Say that again?

2 Q. The Attachment G notes that there are 13 inbound
3 and 49 outbound movements for a total of 62 movements
4 during the a.m. peak, correct?

5 A. I don't see that. I don't see 13 trips anywhere
6 on here.

7 Q. What do you show for inbound and outbound
8 movements during the a.m. peak?

9 A. Inbound, a.m., total of 108 out of a total of 79.
10 Those assignments are shown on the Attachments I through
11 -- maybe I'm looking at the wrong attachment. If I
12 follow you, you're looking at Attachment G which is
13 existing, right?

14 Q. Yes.

15 A. Okay, that's not used in the impact analysis.
16 What is used is Attachment H, which is the 2022
17 background. And then if you go through Attachments I, J,
18 K, and L, you add that traffic and you come up to
19 Attachment M, which is background plus project. And
20 that's -- Attachment M is the one where you want to look
21 at the analysis and see what the impact is on completion
22 of the project.

23 MR. HONG: Just to interject, Attachment M as in
24 Mary, is at page 706.

25 THE HEARINGS OFFICER: Thank you, Mr. Hong.

1 Mr. Gomes, do you have more questions?

2 MR. GOMES: Yes, Ma'am.

3 BY MR. GOMES:

4 Q. What is the traffic management plan that you
5 recommended?

6 A. In this particular case, the school would
7 primarily do two or three things. First of all, they
8 would try to match up students, I guess is the right
9 word, for carpooling, vanpools, whatever, which would
10 reduce the amount of traffic the project would generate.
11 I didn't take a discount in that because you don't know
12 how effective that's going to be. But, obviously,
13 there's going to be some form of carpooling, even if it's
14 one family that have two students here. It's only going
15 to reduce the traffic.

16 Two, is to come up with a plan that would make
17 sure that traffic did not backup from the drop-off or
18 pick-up areas on to Edita Street. In some cases that may
19 mean you have one drop-off area you stage to -- drop-off
20 area if you've got too many students. You have someone
21 outside monitoring the traffic that will make sure that
22 doesn't happen, and if it does happen, it will take the
23 appropriate measures.

24 That plan would probably be developed -- school,
25 me, and probably a representative of the County, probably

1 Ron Theil. And they would put together this plan and it
2 would be a written document. And that's how you would
3 manage the traffic.

4 If problems are observed, then I would follow my
5 recommendation I noted earlier where we'd go out there
6 and do new counts and find out what other additional
7 mitigation we needed to do.

8 Q. This hasn't been done yet or suggested.

9 A. No. It is typically done af' -- you know, when
10 the school is getting ready to open and they have firm
11 numbers on the student population.

12 Q. And is there any guaranty that a traffic
13 management plan will be implemented?

14 A. It is my understanding that it is a
15 recommendation of the County, and it will probably be a
16 recommendation of the State Land Use Commission, so they
17 would have to do it.

18 Q. And it can be adjusted over time, right, to find
19 out --

20 A. It should be adjusted annually.

21 MR. GOMES: Okay, I'm done. No further
22 questions. Thank you very much.

23 THE HEARINGS OFFICER: Mr. Hong, do you have any
24 redirect?

25 MR. HONG: Yes, briefly.

1 REDIRECT EXAMINATION

2 BY MR. HONG:

3 Q. In terms of the statistics, the study area, your
4 constant -- you put, for example, on page 696 of the
5 record where you talked about -- I can barely see it
6 myself in terms of the print. The background -- yeah,
7 existing background and proposed -- those are all based
8 on the ITE guidelines and standards; is that correct?

9 A. Yes.

10 Q. And if you could turn to the other volume of
11 documents that you have, I'm looking at page 1229.
12 In terms of the Planning Commission -- excuse me, the
13 Planning Department conditions or revised conditions at
14 page 1229, if you look at paragraph 11, that's one of the
15 conditions that the County or the Planning Director has
16 set forth in terms of approving the permit.

17 A. That's right.

18 Q. And that includes that traffic management plan.

19 A. That's right, yes.

20 MR. HONG: Thank you, nothing further.

21 THE HEARINGS OFFICER: Mr. Siu.

22 MR. SIU: I have nothing.

23 THE HEARINGS OFFICER: Ms. Self.

24 MS. SELF: Nothing.

25 THE HEARINGS OFFICER: Thank you very much,

1 Mr. Rowell. You're excused as a witness.

2 What I'm going to do, we've been going for almost
3 an hour and a quarter. I'm going to give our court
4 reporter a break so we'll take a ten-minute recess and
5 then it's my understanding that Mr. Kanuha is available
6 to testify.

7 Mr. Hong, do you have any objection to Mr. Kanuha
8 testifying after the break?

9 MR. HONG: No, no objection. Thank you.

10 THE HEARINGS OFFICER: Mr. Gomes, do you have any
11 objection?

12 MR. GOMES: No objection.

13 THE HEARINGS OFFICER: Then we'll start with --
14 after the break, we'll start with Mr. Kanuha. Thank you.

15 (Recessed at 10:16 a.m. & reconvened at 10:28 a.m.)

16 THE HEARINGS OFFICER: Mr. Gomes, are you ready
17 to proceed? Let's start up again.

18 We're back on the record and I will note the
19 presence of all the parties. It's my understanding that
20 we're going to be calling Mr. Kanuha out of order; is
21 that correct, Ms. Self?

22 MS. SELF: That's correct.

23 THE HEARINGS OFFICER: And none of the other
24 parties object.

25 MR. HONG: No, thank you.

1 MR. SIU: No objection.

2 THE HEARINGS OFFICER: Okay, go ahead, Ms. Self.

3 MS. SELF: Good morning, Mr. Kanuha.

4 THE WITNESS: Good morning.

5 THE HEARINGS OFFICER: He has to be sworn in.

6 MS. SELF: Oh, sorry.

7 THE HEARINGS OFFICER: Would you please stand and
8 raise your right hand.

9 DUANE KANUHA

10 called as a witness on behalf of the Planning Director,
11 having been first duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MS. SELF:

15 Q. Mr. Kanuha, during your testimony back in
16 October, you were asked about your experience in planning
17 and your background in planning. And was there some
18 experience that you failed to mention?

19 A. Yes, I did.

20 Q. And what is that?

21 A. In reciting my professional experience, I
22 neglected to state for the record that I was a member of
23 the State Land Use Commission from 2005 until 2011, and I
24 also served as vice chair and chair for that commission
25 during that time.

1 Q. Okay. And also you were asked whether a school
2 would be a permitted use in a residential district. Do
3 you recall answering that question?

4 A. Yes, I believe in response to a question from the
5 hearings officer, I stated that a school was a permitted
6 use in a residential district. And I think I needed to
7 clarify that, that it's a permitted use provided that a
8 use permit is also secured.

9 MS. SELF: Okay, thank you. I have no other
10 questions.

11 THE HEARINGS OFFICER: Mr. Hong?

12 MR. HONG: I have a couple of questions.

13 CROSS-EXAMINATION

14 BY MR. HONG:

15 Q. Mr. Kanuha, based on your experience at the State
16 Land Use Commission, did you encounter any State use --
17 State land use boundary amendment kind of applications?

18 A. Yes.

19 Q. And as -- in your capacity as planning director
20 and based on your training and experience, is a State use
21 land -- a State land use boundary amendment required in
22 this particular case?

23 A. Not necessarily required, no --

24 Q. Thank you.

25 A. -- in my opinion,

1 Q. I'm sorry, you were saying?

2 A. In my opinion, it's not necessarily required.

3 MR. HONG: Thank you.

4 THE HEARINGS OFFICER: Mr. Siu.

5 MR. SIU: I have no questions.

6 THE HEARINGS OFFICER: Mr. Gomes.

7 MR. GOMES: No questions.

8 EXAMINATION

9 BY THE HEARINGS OFFICER:

10 Q. Mr. Kanuha, you say a State land use boundary
11 amendment is not required. Why?

12 A. There -- it's not a required action for schools,
13 for example, although it could be. I think the way I
14 answered the question is that it's not mandated that if
15 you are proposing a school, that a State land use
16 boundary amendment is required.

17 We've had -- I'm familiar with several petitions
18 that involved schools in other counties and they were all
19 through special permits.

20 THE HEARINGS OFFICER: Thank you. Do any of the
21 -- Mr. Hong, do you have any questions based on my
22 questions?

23 MR. HONG: No.

24 THE HEARINGS OFFICER: Mr. Siu?

25 MR. SIU: I have none.

1 THE HEARINGS OFFICER: Ms. Self?

2 MS. SELF: No.

3 THE HEARINGS OFFICER: And Mr. Gomes.

4 MR. GOMES: No questions.

5 THE HEARINGS OFFICER: Thank you very much,
6 Mr. Kanuha. You're excused.

7 Mr. Hong, your next witness.

8 MR. HONG: Our next witness would have been Bobby
9 Jean Leithead-Todd, but I understand that she's in
10 transit to come down here so we'd like to call -- we
11 issued a subpoena earlier for the custodian of records
12 for the Planning Department so we might as well take that
13 witnesses now.

14 DARYN ARAI
15 called as a witness by the Applicant, having been first
16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HONG:

19 Q. Sir, would you state your name for the record and
20 your position with the Planning Department.

21 A. My name is Daryn Arai. I'm with the Hawaii
22 County Planning Department as one of its planning program
23 managers.

24 Q. And was the Planning Department served with a
25 subpoena and subpoena duces tecum to produce documents in

1 this particular case?

2 A. Yes, it was.

3 Q. And are you the custodian of records in terms of
4 responding to that particular subpoena?

5 A. Yes, I am.

6 Q. And the records you produced today are kept in
7 the ordinary course of business in the Planning
8 Department?

9 A. Yes, it is.

10 Q. And also are these records that you're going to
11 produce today fair and accurate copies?

12 A. Yes, they are.

13 Q. And in terms of the records you've produced,
14 you've brought with you the entire file with respect to
15 the Kamehameha Schools up in Keaau, that development; is
16 that correct?

17 A. That is correct.

18 Q. We've identified four particular documents from
19 that file that we'd like actually produced and certified
20 that these are true and accurate correct documents. Have
21 you done that?

22 A. Yes, I have. I just need to possibly clarify
23 what you mean by produced.

24 Q. When I say, "produced," I mean you're bringing
25 with you or submitting to the hearings officer four

1 documents that are fair and accurate copies of the
2 original file regarding Kamehameha Schools, Keaau.

3 A. Okay, that's what I meant when I said to clarify.
4 I did not bring copies to provide to the hearing officer
5 because I was just subpoenaed to bring the files,
6 original files with me.

7 Q. Oh, okay.

8 MR. HONG: In lieu of submitting the entire
9 original file, Madam Hearings Officer, we're actually
10 looking at only four particular documents within the
11 file.

12 THE HEARINGS OFFICER: Mr. Hong, if you can have
13 Mr. Arai identify the four documents and the Planning
14 Department can provide copies of those documents, that
15 can be put on the record.

16 MR. HONG: All right.

17 Q. (By Mr. Hong) So Mr. Arai, the first document
18 that I'd like to introduce or have the Department produce
19 from the original file would be a December 6, 1999 letter
20 from the State Land Use Commission to Ms. Virginia
21 Goldstein, Director, Planning Department. It is a
22 two-page letter from Esther Ueda, U-E-D-A.

23 The second document is a January 7, 2000 letter
24 from PBR Hawaii to Ms. Esther Ueda.

25 The third document is the State land use

1 designation map, a portion concerning the Kamehameha
2 Schools development in Keaau.

3 And the fourth document is a County of Hawaii
4 zoning map of the area of the Kamehameha Schools
5 development.

6 And are those four documents in your -- in the
7 original file?

8 A. Two of the documents, the December 6, '99 letter
9 from LUC to Virginia Goldstein is in my possession.

10 The January 7, 2000 PBR letter to Esther Ueda is
11 also in my possession. And those two items are actually
12 a part of the record maintained by the Planning
13 Department.

14 Regarding the State land use boundary map and the
15 zoning map, those are productions using data that we have
16 on hand at the Planning Department. It's not necessarily
17 an official part of the record that I brought with me,
18 but I do have that information and I do have copies
19 available for the parties, if necessary.

20 Q. And those two maps, are those two maps kept in
21 the ordinary course of business within the Hawaii County
22 Planning Department?

23 A. Yes, they are, as digital information.

24 Q. Mr. Jeff Darrow had distributed two maps earlier
25 to us. Are these fair and accurate copies of the maps

1 that you keep within the Hawaii County Planning
2 Department?

3 A. They're accurate copies of the digital
4 information that we maintain at the Planning Department.

5 Q. And, again, these two documents are -- the two
6 maps are from the State land use designation map and the
7 Hawaii County zoning map, right?

8 A. That's correct.

9 Q. If you could provide the hearings officer with
10 copies of those documents and we'll make arrangements to
11 make copies for Mr. Gomes and opposing counsel.

12 THE HEARINGS OFFICER: Mr. Hong, I think you're
13 going to have to mark these for identification as
14 exhibits and we have to admit these into evidence. I
15 believe the digital maps Mr. Arai provided to all, all of
16 the copies, so you can mark those for identification now
17 and ask that they be admitted into evidence now.

18 MR. HONG: All right. So what I'd like to do is
19 the State -- have the State land use boundary map
20 designated as -- I think it's our Exhibit 22 which is
21 next in order.

22 MR. GOMES: Is that the shiny one or the dull
23 one?

24 MR. HONG: That's the one that's pink and green,
25 a light green with a dark black.

1 THE HEARINGS OFFICER: Actually, I have listed
2 A23, which is the HHMI website. So the next in order
3 would be A24.

4 MR. HONG: A24, thank you.

5 (Exhibit A24 was marked for identification.)

6 MR. HONG: Then for A25, that would be the County
7 of Hawaii zoning map. And that's the dark green with the
8 lighter shade of green with the designations A-1, A-20.
9 And if that could be designated as A26, please.

10 MR. SIU: Twenty-five?

11 MS. SELF: Twenty-five.

12 MR. HONG: That will be 25.

13 (Exhibit A25 was marked for identification.)

14 THE HEARINGS OFFICER: Mr. Hong, are you asking
15 that those be admitted into evidence?

16 MR. HONG: Yes.

17 THE HEARINGS OFFICER: Mr. Siu, any objection?

18 MR. SIU: I have no objections.

19 THE HEARINGS OFFICER: Ms. Self?

20 MS. SELF: No objections.

21 THE HEARINGS OFFICER: Mr. Gomes?

22 MR. GOMES: No objections.

23 THE HEARINGS OFFICER: I will admit Exhibits
24 A24 and A25 into evidence.

25 (Exhibit A24 and A25 were received into evidence.)

1 And the other documents identified by Mr. Arai,
2 if he can provide a copy of those documents today before
3 the end of the hearing, we can admit those into evidence
4 as well assuming no party objects.

5 MR. HONG: Thank you. No further questions of
6 this witness.

7 THE HEARINGS OFFICER: Mr. Siu, do you have any
8 questions?

9 MR. SIU: I do not.

10 THE HEARINGS OFFICER: Ms. Self?

11 MS. SELF: No.

12 THE HEARINGS OFFICER: Mr. Gomes?

13 MR. GOMES: No questions.

14 THE HEARINGS OFFICER: Thank you very much,
15 Mr. Arai. You're excused.

16 MR. HONG: Our next witness is Bobby Jean
17 Leithead-Todd.

18 BOBBY JEAN LEITHEAD-TODD
19 called as a witness by the Applicant, having been first
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HONG:

23 Q. We're trying to get the Planning Commission
24 record page designation right now.

25 THE HEARINGS OFFICER: Ms. Lee Loy, if you are

1 trying to turn pages, that's fine, but I'd ask you not to
2 talk to the witness.

3 BY MR. HONG:

4 Q. We're looking at page 1227 and also page 881.

5 So, Ma'am, would you state your name for the record and
6 spell your name, please?

7 A. My name is Bobby Jean Leithead-Todd. B-O-B-B-Y
8 J-E-A-N L-E-I-T-H-E-A-D T-O-D-D, and they're all four,
9 separate.

10 Q. I'd like to begin this morning by talking about
11 your educational and professional background. Could you
12 highlight your educational background for us, please?

13 A. I have a BA in English literature with a
14 substantial amount of course work in Hawaiian studies
15 because I was originally going to head for a Hawaiian
16 studies major at one point. Then I have a Juris Doctor
17 from the William S. Richardson School of Law. In terms
18 of -- just the education or you wanted -- I'm sorry.

19 Q. You can do both, please.

20 A. Okay. And then, professionally, I have worked as
21 a staff person at the State legislature, Lieutenant
22 Governor's office. And then after -- during and after
23 law school as an associate attorney at Case Kay & Lynch
24 and then Case & Lynch. Oh, actually, Case & Lynch. I
25 was hired by Case Kay & Lynch and then by the time I

1 started working, they had morphed into Case & Lynch. I
2 then worked for the County as a deputy corporation
3 counsel as the legislative auditor under the County
4 Council and then was elected to the County Council four
5 times where I was the chairman of the Council's planning
6 committee for six and a half years and then returned to
7 the Office of Corporation Counsel where I was the deputy
8 corporation counsel assigned to the Planning Department
9 for approximately four years before I left to become the
10 Director of the Department of Environmental Management.

11 I then -- that was during the Harry Kim
12 administration for a period about -- a little over a year
13 and a half. And then in February of 2009, moved over to
14 the Planning Department, initially as the Acting Deputy
15 Director. And then effective March 1st of 2009, I became
16 the Director of the Planning Department through this past
17 May of 2013.

18 Since June of 2013, I have been the Director of
19 the Department of Environmental Management.

20 Q. In terms of your being the Planning Director for
21 the County of Hawaii, could you tell us briefly what
22 your duties and responsibilities were.

23 A. As the head of the department, I oversee the work
24 of the staff which is housed in two offices, the bulk of
25 the staff being here in Hilo and the rest in Kona. And

1 we do a variety of things from drafting amendments to the
2 subdivision code and the zoning code, overseeing
3 implementation of subdivision and zoning code as well as
4 providing support to the Planning Commissions and Board
5 of Appeals on appeals from both the planning director as
6 well as the director of Public Works.

7 We also administer the SMA permits and oversee
8 that both minors, which are granted by the director and
9 the -- what we would call the major permits, which are
10 approved through the Planning Commissions, and then any
11 other applications that are under either the subdivision
12 or the zoning code. And then we also are responsible for
13 long-range planning so we would oversee both updates to
14 general plan intra amendments to the general plan as well
15 as community development plans.

16 Q. Before coming to testify this morning, had you
17 had the opportunity to review the Planning Department's
18 recommendations -- original recommendations which appear
19 at the -- in the record at pages 773 to 778?

20 A. Not recently. I haven't looked at this in a
21 while, but I'm familiar with the documents.

22 Q. All right. And then there was a revised -- there
23 were revised recommendations that begin at page 881
24 through 896.

25 A. Yes.

1 Q. Are you familiar with those?

2 A. I haven't reviewed it recently, but I'm familiar
3 with it.

4 Q. And then in terms of pages 1227 through 1231,
5 these were the revised conditions that were generated by
6 the Planning Department. Do you recall seeing those?

7 A. Yes.

8 Q. Since becoming Planning Director, other than a
9 review of the record, have you done any other
10 investigation or examination of the Connections special
11 permit application?

12 A. My review has been primarily limited to any of
13 the materials that were submitted to our department
14 through the application. I have independently driven
15 through the area on Edita Street to just view where the
16 parcel was as well as looking at Puainako extension to
17 see what possibilities were there. But in terms of
18 anything else outside of this, other than the meetings
19 that we've had, no, just completely in my capacity as the
20 director in the application process.

21 Q. Up to the point where you left as Planning
22 Director for the County of Hawaii, did the Planning
23 Department's position change in terms of the revised
24 recommendations of the Planning Department appearing in
25 the record at pages 881 through 896?

1 A. If what you're asking me if our -- if I kept a
2 favorable recommendation, no, my position did not change
3 and the position of the Department did not change. I'm
4 not -- I have not kept apprised of anything that's
5 changed since I left in May of 2013.

6 Q. In terms of the process, Connection's application
7 process for a special use permit, tell us what parameters
8 has the Planning Department used to determine whether a
9 proposed use is appropriate?

10 A. Um, we basically follow the same process that we
11 would for any special use permit. And, basically,
12 because it's agricultural land, we would look at whether
13 it's a reasonable or unusual use of ag land. And we
14 would look at whether we had approved similar uses on
15 agricultural land in the past.

16 And in the case of a school, generally, you look
17 at certain public uses that you might not otherwise be
18 able to have in an area because of the State -- Chapter
19 205. So -- but you want to usually have schools close to
20 residential populations and also you want to serve
21 people.

22 This island has over a million acres of
23 agricultural land and a million acres of conservation and
24 very little land that's actually classified urban. So
25 it's not unusual to have an application for agricultural

1 land, but you have to go through the process and you
2 would look at its impact on traffic, you would look at
3 its impact on surrounding uses. You would look at
4 whether it was taking and let's say important
5 agricultural land out of agricultural use. If it were
6 A or B land, we would scrutinize it a little bit more.

7 You would also have to check to see if there were
8 either natural or archaeological features or historic
9 features on the property that might impact the use and
10 conditions that you would put on a permit.

11 Q. All right. You're familiar with the process of
12 -- for a State land use boundary amendment?

13 A. Yes, I am.

14 Q. In terms of -- let me ask this question more
15 directly. In terms of the Connections permit, special
16 use permit, did you at any time feel, in your
17 professional opinion and based on your experience, that
18 that should have been perceived, that process should have
19 gone through a State land use boundary amendment?

20 A. No, I did not.

21 Q. Why not?

22 A. Because it was not unusual to see somebody asking
23 for a school in agricultural land; that was one.

24 Two, this is basically a recommendation that goes
25 to the State because it's more than 15 acres. It goes to

1 the State Land Use Commission and, you know, we had some
2 -- there was background material that indicated the State
3 was supportive of this because a lot of times when it's
4 more than 15 acres, you want to make sure you're on the
5 same page and we had nothing to indicate that the State
6 had an objection to a special use permit for the use of
7 this land as a school.

8 Q. All right. One of the criticisms of this project
9 has been raised that no school has been allowed to
10 operate on land zoned for agriculture. You're aware of
11 the Kamehameha Schools in Keaau?

12 A. Yes, I am.

13 Q. Are you aware that a significant portion of
14 Kamehameha Schools operates on land zoned agriculture?

15 A. Yes, I am.

16 Q. And part of that also, Kamehameha Schools is
17 situated -- a small part of that Kamehameha Schools is
18 situated on land zoned urban, right?

19 A. Yes.

20 Q. And you're aware that Kamehameha Schools went
21 through a special permit application, not a State land
22 use boundary amendment, correct?

23 A. Yes.

24 Q. You're familiar with a project in the Edita/Mele
25 Manu area that is being proposed to be developed by

1 Mr. Brilhante?

2 A. There was a proposal for a subdivision on the
3 makai side of Edita Street. The current Mele Manu was
4 also a Mr. Brilhante subdivision, the one-acre lots, but
5 this is makai. And just where Edita meets at a 90 degree
6 angle with Mele Manu, it would be directly makai of that
7 area.

8 Q. Based on your understanding of the project, where
9 was the ingress and egress from that particular project
10 supposed to be put in?

11 A. Well, as it came to the Department, the proposal
12 was to have the egress and ingress come through Edita and
13 then basically an extension of Mele Manu. When I
14 reviewed it, I was interested in having it connect to the
15 Puainako extension. And the reason is that the
16 long-range plans had always envisioned that Edita Street
17 would eventually connect, but Edita -- between Edita and
18 the Puainako extension there's a flood area that would be
19 very expensive to bridge that area.

20 And so when I looked at the makai land, it looked
21 like it's out of that flood area where we have a lot of
22 drainage come through so it looked like there was an
23 opportunity to provide an additional connection from
24 Kaumana Drive to the Puainako extension as opposed to
25 having everybody go all the way up to Wilder to hook up.

1 So that was something that I was interested in
2 seeing that if that subdivision were to go forward.

3 Q. And you communicated that to Mr. Brilhante?

4 A. Yes, I did. The other reason I was wanted in it
5 is I thought that perspectively in the future it had the
6 potential of providing alternative access too because
7 Connections was already in the office at the time the
8 subdivision came in. And I know that the way a lot of
9 these applications work is you don't build out
10 immediately. You build out over a period of time, so I
11 thought there was a potential and that in the long run,
12 access through Puainako might be better for everyone.

13 Q. If you could turn to page 1229, please. And if
14 you look at paragraph number 12, do you see that?

15 A. Yes, I do.

16 Q. Explain to us why you felt that paragraph should
17 be included in the recommendations or the conditions,
18 excuse me.

19 A. Part of it is that -- trying to address some of
20 the concerns of the community. Part of it was I was
21 aware that there were some proposals to develop and
22 thought that a better access would be off of Puainako.
23 And that just has to do with the fact that Puainako has
24 been designed with broad shoulders, and so I felt that in
25 the long run that that was a better connection.

1 extension.

2 Q. How long have you lived there?

3 A. I lived there since 1989. I was raised on
4 Kaumana Drive, however, just above Aipuni Street.

5 Q. Are you familiar with the project site?

6 A. Yes, I am.

7 Q. And are you aware that the first community
8 meeting held by the applicant that the Boyd family signed
9 in with an Ewa Beach address?

10 A. I do not recall that.

11 Q. And are you aware that there's no evidence of the
12 2009 community meeting where the community could have
13 been invited to?

14 A. I am not familiar with that.

15 Q. Are you aware that the applicant and his former
16 attorney insists that several community members requested
17 a fence be put up so that is why they put the fence up
18 around the property?

19 A. I am not aware that that's the reason for the
20 fence being put up, per se.

21 Q. And are you aware that in the minutes of the
22 community meetings there's no evidence of anyone asking
23 the applicant to put up a fence?

24 A. I am not familiar with the community minutes of
25 the community meeting. I don't recall that.

1 Q. Are you aware that on page 970 of the evidence at
2 the community meeting held on September 2, 2011, someone
3 asked how high the fence was going to be and the school
4 replied, six feet?

5 A. This, I'm familiar with.

6 Q. Is there a benefit to change the fence from
7 six-foot fence to a four-foot fence?

8 A. I really couldn't speak to that. Six feet is
9 usually the maximum height you can do a fence without
10 additional permitting.

11 Q. So a six-foot fence could have been done without
12 a permit.

13 A. Typically, yes, unless there's some accompanying
14 grubbing or grading or other issues that come up in terms
15 of putting the fence in.

16 Q. Are you familiar with the violations the
17 applicant committed while illegally fencing the property?

18 A. I saw some newspaper articles and there was some
19 material presented to the Department about that.

20 Q. Do you recall the applicant's former attorney
21 claiming to file complaints against On The Line Fencing
22 with the DCCA?

23 A. I cannot recall that. I think there was
24 something in the newspaper about that, but that's -- I
25 vaguely remember, but it was not something that I --

1 Q. You wouldn't know the status of that complaint.

2 A. No, I would not.

3 Q. Are you aware that that form was never officially
4 filed and the DCCA has no record of this complaint?

5 A. I have no knowledge of that either.

6 Q. Are you aware that Justin Thatcher is a close
7 personal friend of John Gonsalves, owner of On The Line
8 Fencing?

9 MR. HONG: Excuse me, I'm going to object as lack
10 of relevance.

11 THE HEARINGS OFFICER: Mr. Gomes, how is this
12 relevant to the petition?

13 MR. GOMES: During the complaint about the
14 fencing, Justin Thatcher was the one who filed the
15 complaint.

16 THE HEARINGS OFFICER: Mr. Gomes, I'm going to
17 sustain the objection. This isn't relevant to this
18 petition.

19 BY MR. GOMES:

20 Q. Did you get the opportunity to read the DOCARE
21 investigation report by Officer Shishido?

22 A. I remember reading something about the
23 investigation, yes.

24 Q. And are you aware that Officer Shishido
25 summarizes that Connections knew of the ongoing

1 bulldozing, grubbing, clearing and fencing on all phases
2 of the project?

3 A. I -- without the report in front of me, I would
4 be hesitant to say exactly what's in it, but I do recall
5 that there was an inference that they were aware or
6 should have been aware.

7 Q. Are you aware that Officer Shishido concludes
8 that Connections Charter School knew of the ongoing
9 violations, that they were occurring and that he found it
10 difficult to believe that Connection's Charter School
11 knew nothing of the bulldozing, grubbing, land clearing,
12 fencing, and removal of ohia logs.

13 A. Again, without the document in front of me, I
14 would be hesitant to say exactly what's in it, but I do
15 recall that there was an inference that they should have
16 been aware in something that I read.

17 Q. Are you familiar with the EA process?

18 A. In general, yes. Or for this one, they had to do
19 an environ' -- you have to do an environmental assessment
20 whenever you're going to use State or County land or
21 State or County money, pretty much.

22 Q. In your opinion, should the applicant have tried
23 to make contact with the community as it requires in the
24 environmental or in Title 11, Chapter 200 prior to doing
25 the environmental assessment?

1 A. I wouldn't say that you're required to contact
2 prior to doing the assessment, but when you're doing an
3 assessment, you typically are looking at what's on the
4 property as well as what's surrounding the property. And
5 depending on what you're proposing, you may send notice
6 out to the neighbors and invite them to comment. But
7 you're not necessarily required to go door to door or --
8 because you're looking at what impact it has, but you
9 typically would publish and invite people to comment on
10 it.

11 Q. Okay.

12 A. The notice requirements on the special permit, on
13 the other hand, require the radius of so many hundred
14 feet that you have to specifically give notice to people.

15 Q. In the Department of Health Administrative Rules,
16 Title 11, Chapter 200, subchapter 6A, paragraph 1, says:
17 "Seek, at the earliest practicable time the advice and
18 input of county agencies responsible for implementing the
19 county's general plan for each county in which the
20 proposed action is to occur, and consult with other
21 agencies having jurisdiction or expertise as well as
22 those citizen groups and individuals which the proposing
23 agency reasonably believes to be affected."

24 I, being a neighbor that's bordering the school,
25 and my entire neighborhood which has to drive in and out

1 pass the school, could we be reasonably affected by the
2 project?

3 A. It could be seen that way, but they typically
4 have to produce a list to the accepting agency of
5 everyone that they have contacted and what efforts and
6 what meetings they have done. And then whoever accepts
7 that, determines whether the notice has been sufficient
8 and the engagement has been sufficient. And they also
9 look at the comments that come in.

10 Q. Okay. I'm concerned about the word, "seek." It
11 says, "seek." And does that mean they're supposed to
12 come look for us or ask us?

13 A. That can be done through multiple ways. It can
14 be done through letters. They don't come knocking on the
15 door of the Planning Department. They'll send a letter
16 out saying we're proposing to do something. They may put
17 a notice in the paper for the general public. If they --
18 certain projects they might want to contact all the
19 neighbors that are immediately adjacent.

20 I don't independently recall right now exactly
21 who they contacted, but as part of that process, you
22 would probably have community meetings and that might be
23 the seeking input.

24 Q. Okay. But as far as you know, you've never seen
25 any evidence that the environmental assessment was --

1 that anyone sought out people from the community to share
2 input on the environmental assessment.

3 A. I couldn't say that because without reviewing the
4 record, I couldn't say that they didn't seek out the
5 community.

6 Q. Do you recall seeing any evidence that they did
7 seek out?

8 A. I recall evidence of community meetings. I don't
9 recall specifically whether that was before or after.

10 Q. That was after the environmental assessment.
11 JoNelle Fukushima on page 2145 claims to be a Kaumana
12 resident on her petition for standing in the contested
13 case hearing. Do you recall JoNelle Fukushima asking to
14 be -- to have standing in the contested case hearing?

15 A. Not offhand.

16 Q. Her address is 1785 Waianuenu Avenue, which is
17 in P'iiahonua. That's not Kaumana, correct?

18 A. You don't -- without recalling specifically, you
19 know, the parameters, if somebody asks for a contested
20 case standing in something like Connections, if they have
21 an interest which is distinguishable from that of the
22 general public, that could be that they're a resident, it
23 could be that they have a child attending the school.

24 There could be a number of reasons, and without
25 that record and looking at what their rationale is, the

1 address alone of your residency would not necessarily be
2 an indication of why you asked to have standing in the
3 contested case.

4 Q. So it's -- if she was not misleading to say that
5 she's a Kaumana resident when she lives in Pi'ihonua.

6 THE HEARINGS OFFICER: Mr. Gomes, I have given
7 you great latitude in your questioning, but I cannot see
8 any basis as to why this is relevant or material to this
9 proceeding. That -- if there was a decision on a
10 petition, it was made a long time ago. The time for
11 appeal has run.

12 So I am going to ask you to move on to another
13 line of questioning.

14 BY MR. GOMES:

15 Q. Did you attend any of the meetings held by the
16 applicant with the community?

17 A. No, I did not.

18 Q. There was one meeting -- you may not recall, but
19 you were there, and you were asked to speak. So do you
20 recall your comments?

21 A. This was a meeting -- where was this meeting?

22 Q. This was in the Kaumana Elementary School
23 cafeteria.

24 A. Oh, yes, I do remember.

25 Q. And do you recall making a statement that the

1 application would probably be approved?

2 A. While I don't recall, it would not be
3 inconsistent that I made that statement based on my
4 review of the files and my knowledge of other special
5 permits.

6 Q. You were the Planning Director when the Planning
7 Department's recommendation was offered to the Planning
8 Commission, correct?

9 A. Yes.

10 Q. Is it also correct to say that the Department's
11 recommendation is your recommendation as the Planning
12 Director?

13 A. Pursuant to the code, it's officially my
14 recommendation, but it's not made in a vacuum.
15 Typically, what happens in the Department is the staff
16 reviews an application, they draft a recommendation, and
17 I can agree or disagree. And if I disagree, then I tell
18 them to go back and redraft it.

19 In this case, we had discussion back and forth
20 over the application. And, ultimately, both staff and I
21 agreed that the recommendation should be favorable.

22 Q. In their recommendation, you noted that from a
23 planning perspective, this request has proven difficult
24 in arriving at a position we are comfortable with.

25 MR. HONG: Excuse me, I object. If there could

1 be a page reference, please?

2 THE HEARINGS OFFICER: Mr. Gomes, can you be more
3 specific.

4 MR. GOMES: Sorry, I can't. I forget what page I
5 got -- I didn't note the page.

6 THE HEARINGS OFFICER: Is this something in the
7 recommendation?

8 THE WITNESS: I believe it's the initial
9 recommendation.

10 MR. GOMES: It is. It's in the recommendation
11 and I quoted her as saying from a planning perspective,
12 this request has proven to be difficult in arriving at a
13 position.

14 THE WITNESS: It's page 775.

15 THE HEARINGS OFFICER: And what is your question,
16 Mr. Gomes?

17 BY MR. GOMES:

18 Q. Why -- why was it difficult?

19 A. The biggest issue that we had, really, was when
20 we looked at the student body. And since a substantial
21 portion of the student body came from the Puna area, we
22 were questioning whether locating the school up in
23 Kaumana was an appropriate location for a student body.
24 However, ultimately, when we reviewed it, we looked at
25 the fact that the student body changes.

1 When Connections originally started, and this I'm
2 familiar with because my good friend lived in Glenwood
3 and taught at Mountain View Elementary School where
4 Connections started.

5 When Connections started, I would say that
6 virtually 100 percent of its students resided in Puna.
7 As Connections moved to its location at the Kress
8 Building and subsequently opened up additional facilities
9 at Nani Mau, over the years the percentage of students
10 who were from Puna and the percentage of students who are
11 from let's say South Hilo and North Hilo has changed so
12 that now you have a mix.

13 And, ultimately, if Connections moves to Kaumana,
14 over time you're going to probably see a change in the
15 mix too and you will see over time more and more of those
16 students will reside from South Hilo because that has
17 been the trend if you look at the trend.

18 So it became that we needed to look at the permit
19 in terms of its land use and whether it was an
20 appropriate use of this land as opposed to what
21 percentage of students lived in Puna and what percentage
22 of students lived in Hilo.

23 Q. You noted the fact remains that as a school is
24 developed and the student body evolves, the school could
25 mature into an institution that more directly serves the

1 residents of the area. Could you describe how that
2 statement is a fact?

3 A. That statement comes from my experience with the
4 evolution of Connections, that as it has moved from
5 Mountain View into downtown Hilo, you have seen a change
6 in the students that it serves from 100 percent Puna
7 residents to where it's more of a 50-50 mix now.

8 So I think that that is not only probably an
9 accurate forecast of what will happen, but it accurately
10 reflects what has actually occurred as the school has
11 moved locations.

12 Q. What happens if it does not mature into something
13 that --

14 MR. HONG: I object. It calls for speculation.

15 THE HEARINGS OFFICER: I'm going to sustain the
16 objection. That's speculative.

17 BY MR. GOMES:

18 Q. Are you aware that the applicant has stated at
19 one of the community meetings that it will not make
20 special concessions to students who live in the area to
21 attend school?

22 A. I am not aware directly. I have heard from
23 community members that that was said.

24 Q. What is your impression of the current
25 relationship between the applicant and the area

1 community?

2 MR. HONG: I will object as lack of relevance.

3 THE HEARINGS OFFICER: Mr. Gomes, how is this
4 relevant?

5 MR. GOMES: Pardon?

6 THE HEARINGS OFFICER: How is this relevant?
7 Your question, how is it relevant?

8 MR. GOMES: The survival of a school depends on
9 community support.

10 THE HEARINGS OFFICER: I don't find that question
11 relevant. I'm going to sustain the objection.

12 MR. GOMES: Okay.

13 Q. (By Mr. Gomes) What do you think it will take
14 for the school to mature into an institution that would
15 benefit the community?

16 MR. HONG: I'm objecting. Again, we're going
17 down a very speculative line of questioning.

18 THE HEARINGS OFFICER: Sustained.

19 BY MR. GOMES:

20 Q. You also concluded that the request would not
21 adversely affect surrounding properties, limit the
22 impacts and the ways in traffic. Did you ever consider
23 the residents' quality of life? Did you consider that
24 zero percent of the community submitted letters of
25 support for the school?

1 A. I have not seen support from the community.

2 However -- I'm not going to say that.

3 Q. You took into account the police department's
4 comments regarding pedestrian safety. The police
5 department also commented about how the project is being
6 placed in a residential area that will likely affect the
7 quality of life for residents that propose -- this
8 proposed site. That would be an increase in noise,
9 crime, and traffic. Did you ask the police department to
10 clarify its comments regarding adverse quality of life
11 impacts as well as an increase in crime?

12 A. No, we did not.

13 Q. Why not?

14 A. The police department's comments are very
15 consistent with the kinds of comments they make on almost
16 a wide range of development proposals. And those
17 comments would be true whether you had reclassified the
18 land, whether you had rezoned the land.

19 A school brings traffic, a commercial development
20 brings traffic, an industrial development brings traffic.
21 And generally speaking, it can almost -- anything that
22 isn't -- well, a new residential subdivision could bring
23 additional traffic and additional crime just because
24 you've got more homes there. Or if you wanted to put
25 affordable housing next door, you know, there's all kinds

1 of things you could do that potentially have an impact.

2 So we look at those factors whether -- and the
3 fact that you just have a school there doesn't
4 necessarily mean you're going to have crime. But you are
5 going to have some traffic, and we looked at those
6 factors and then you try to see what can you do to
7 mitigate those concerns. So if a school is proposing
8 overnight facilities, but they're going to be chaperoned,
9 if the school is going to have security like most schools
10 do, you look at all of those things and you try to
11 mitigate those factors.

12 Q. Are you aware of any K through 12 schools that
13 were built within the past 20 years that are within the
14 State land use agricultural district?

15 A. Kamehameha Schools is the one that I can think
16 of, and there are a number of other charter schools that
17 are in the process because there had been confusion in
18 the past over whether you needed to get a special permit.

19 So there are some other charter schools that are
20 on agricultural land and are in the process of getting
21 the special permits. I'm thinking HAAS is one that comes
22 to mind out in the Pahoia area. There's another -- I
23 think it's Ke Kua O Ka La down in the Kapoho area. And
24 part of it is because those schools started not thinking
25 they needed to get a permit. So they're now in the

1 process of getting the permits to comply with the
2 interpretation of the law.

3 Q. Is the current use of the property open space and
4 forestry?

5 A. I would say that the current use of the property
6 is probably nothing. I mean it's classified ag and
7 whatnot, but nobody was actually using the property. I
8 don't believe there was a lease. I don't think there was
9 anything going on. It was just land that the State had
10 that they weren't utilizing. The mauka area has some
11 special concerns because of the existence of Kaumana Cave
12 and that's why there's restrictions or mitigation on the
13 use of that portion in order so that it doesn't impact
14 Kaumana Cave.

15 Q. Do you recall me asking you at the community
16 meeting about the Kaumana Cave that runs from the bottom
17 of my property underneath the project site?

18 MR. HONG: Objection, we're going -- lack of
19 relevance.

20 THE HEARINGS OFFICER: Mr. Gomes, how is this
21 relevant?

22 MR. GOMES: Part of their reason the mauka
23 property, the mauka parcel will not be developed is
24 because it's on top of the cave. And I believe the cave
25 system runs completely underneath the makai parcel as in

1 the indentation I showed you during the walk-through and
2 the proof of the lava tube at the bottom of the drywell
3 which does not overflow and runs underneath the property.

4 THE HEARINGS OFFICER: Mr. Gomes, then you can
5 ask her if she knows whether the cave runs under the
6 project site. But as far as anything else with the cave
7 running mauka, that's not relevant. So I'm sustaining
8 the objection. You can rephrase the question and ask her
9 any question you have that's relevant to this project.

10 BY MR. GOMES:

11 Q. Getting back to my other open space and forestry,
12 is it correct to assume that the type of use is generally
13 quiet?

14 A. I would say that currently, there isn't much use
15 of the property. It's basically vacant land with the
16 upper portion, which is mauka of Edita Street but below
17 the County park, having a lot of Ohia on it.

18 Q. Will not the proposed development with its
19 classrooms, playground, dormitory, and related structures
20 change the essential character and present use of the
21 land?

22 A. It will change the current use of the land which
23 is the land's not being utilized, but it's not -- it's
24 consistent, in my estimation, with the grounds for
25 granting a special permit.

1 Q. One of the goals of the public facility's element
2 of the general plan state, "Encourage the provision of
3 public facilities that effectively service the community
4 and visitor needs and seeks ways of improving public
5 services through better and more functional facilities in
6 keeping with the environmental and esthetic concerns of
7 the community."

8 A policy of the land use element of the general
9 plan also states: "Encourage the development and
10 maintenance of communities in meeting the needs of its
11 residents in balance with the physical and social
12 environments." Can you comment on these policies
13 relative to the proposed development?

14 A. We felt that granting the special use permit was
15 consistent with the overall general plan. And that
16 finding a -- basically, a permanent home for Connections,
17 as opposed to where they are right now, is also
18 consistent with the general plan including providing
19 opportunities.

20 When you're looking at the general plan elements,
21 you have to understand that a lot of it is not where you
22 take a parcel out of context of the entire community.
23 And that when you're talking about community, you're
24 sometimes not just talking about the people who live
25 immediately adjacent to a development, but a larger

1 community. So you have to weigh all of that, the impact
2 to the immediately adjacent neighbors as well as the
3 benefit to the larger community, and I believe that in
4 looking at this, we did balance that.

5 Q. And what is your definition of quality of life?

6 A. I don't know that I could give that to you
7 specifically because my definition of quality of life
8 encompasses a lot more than just land use. It's kind of
9 the total neighborhood and everything else that is
10 important.

11 I personally don't want to be hooked up to
12 machines at the end of my life, but I like having schools
13 close to where I lived for my kids. So I happen to think
14 that the quality of life on the Big Island is pretty
15 good. I've lived in Kaumana from the time I was four
16 until I was 22, and then returned to Kaumana in 1989. So
17 I was there from 1956 to 19 -- early 1970s and then came
18 from back from '89, and I've always thought that that was
19 a good place.

20 And my connection -- if you're talking about
21 quality of life, my great-grandfather raised grapes in
22 Kaumana. I would probably prefer the quality of life
23 that he had because he owned a whole big chunk and there
24 weren't hardly anybody living up there, but time
25 progresses.

1 I live in a subdivision that didn't exist before
2 and I love the subdivision that I'm in because it's a
3 dead-end subdivision. Someday my subdivision's not going
4 to be a dead-end subdivision. So my definition of
5 quality of life will probably go down, but the other side
6 of that is that there will be other people who will have
7 an opportunity to have homes in an area of the island
8 that's close to jobs and other amenities.

9 So it's a balance between my quality of life and
10 the quality of life of other people and giving other
11 people opportunities. And so it's kind of a balance
12 because, you know, somebody asked me once if I want to
13 shut the gate on people moving to Hawaii. And I said,
14 yeah, great. I'd like to shut it back in 1959 before we
15 became a State. Most of the people got real quiet.

16 THE HEARINGS OFFICER: Mr. Gomes, can you go on
17 with your next question.

18 BY MR. GOMES:

19 Q. Do you believe community support is important for
20 the success of the school?

21 A. It would be better to have it. I think there
22 have been a lot of things that could have been done
23 better, but I think that the school can be successful as
24 time goes by. I think they can build a relationship as
25 they develop and I think ultimately the success of the

1 school is going to be based on whether they can provide a
2 decent education for its students and whether their
3 students are successful once they leave the school.
4 Because if you have students who leave the school and
5 graduate and are successful, that will be the true
6 indication of whether the school succeeds.

7 Q. Are you aware then, I was invited to visit the
8 school, and after visiting the school, one of the
9 teachers had asked me for help because we do the same
10 line of work. And I offered to help them in any way I
11 could, but then there was no contact after that except
12 for pictures of my home. They're showing pictures of my
13 home trying to pick a fight with me.

14 MR. HONG: Objection, lacks relevance, lacks
15 foundation.

16 THE HEARINGS OFFICER: I'm going to sustain the
17 objection. It's not relevant and its immaterial to this
18 hearing.

19 BY MR. GOMES:

20 Q. Can you explain the difference between
21 ministerial and discretionary application?

22 MR. HONG: I'm going to object. Again, lacks
23 relevance and calls for a legal conclusion.

24 THE HEARINGS OFFICER: Mr. Gomes, how is this
25 relevant?

1 MR. GOMES: I just want to know, for example,
2 building permit, grading permit, subdivision
3 applications, ministerial.

4 THE HEARINGS OFFICER: Mr. Gomes, again, I've
5 given you great latitude. I find no relevance in this
6 issue. I'm sustaining the objection.

7 MR. GOMES: I have no further questions.

8 THE HEARINGS OFFICER: Mr. Hong, do you have any
9 redirect?

10 MR. HONG: Actually, I do, briefly, on the land
11 use issue. I'd like to have this next document marked as
12 Exhibit 26. This purports to be an excerpt from the
13 Zoning Code, Section 25-5-72. And may the record reflect
14 I'm handing to opposing co-counsel and Mr. Gomes and the
15 witness.

16 (Exhibit A26 marked for identification.)

17 REDIRECT EXAMINATION

18 BY MR. HONG:

19 Q. My question, Ma'am, is you're familiar with
20 Section 25-5-72 of the zoning code?

21 A. Yes.

22 Q. And if you look at -- this talks about what are
23 generally permitted uses in an agricultural district?

24 A. Yes.

25 Q. On the second page, Subsection D(7), what are the

1 permitted uses there provided that they followup with a
2 special use permit would be schools; is that right?

3 A. Yes.

4 MR. HONG: I ask the Hearings Officer to take
5 judicial notice that -- of this section of the zoning
6 code and enter it into evidence as Exhibit 26.

7 THE HEARINGS OFFICER: Mr. Siu, do you have any
8 objection to Exhibit 26 being admitted into evidence?

9 MR. SIU: I do not.

10 THE HEARINGS OFFICER: Ms. Song -- Ms. Self?

11 MS. SELF: No.

12 THE HEARINGS OFFICER: Mr. Gomes?

13 MR. GOMES: No objection.

14 THE HEARINGS OFFICER: Then I will admit Exhibit
15 A26 into evidence. I will also take judicial notice of
16 Section 25-5-72 of the Hawaii County Zoning Code.

17 (Exhibit A26 was received into evidence.)

18 MR. HONG: Thank you. Nothing further.

19 MR. SIU: I have no questions.

20 THE HEARINGS OFFICER: Any further questions?

21 Mr. Gomes, any further questions?

22 MR. GOMES: No further questions.

23 THE HEARINGS OFFICER: Ms. Self, any questions?

24 I'm sorry.

25 MS. SELF: No, no thank you.

1 THE HEARINGS OFFICER: Thank you.

2 Ms. Leithead-Todd, you're excused.

3 We received -- I have these letters that the
4 Planning Department provided from the record. Mr. Hong,
5 did you want those in evidence?

6 MR. HONG: Yes, I'd like to enter them in as
7 Exhibits 27 and 28. 27 would be the December 6, 1999
8 letter from the Land Use Commission and Exhibit 28 would
9 be the January 7, 2000 PBR Hawaii letter.

10 THE HEARINGS OFFICER: Mr. Siu, any objection?

11 MR. SIU: I have none.

12 THE HEARINGS OFFICER: Ms. Self?

13 MS. SELF: None.

14 THE HEARINGS OFFICER: Mr. Gomes?

15 MR. GOMES: I'm sorry, what are the numbers
16 again?

17 THE HEARINGS OFFICER: A27 is the December 6,
18 1999 letter and A28 is the January 7, 2000 letter. Do
19 you have any objection?

20 MR. GOMES: No objection.

21 THE HEARINGS OFFICER: Then I will receive
22 Exhibit A27 and A28 into evidence.

23 (Exhibits A27 and A28 were identified and received
24 into evidence.)

25 THE HEARINGS OFFICER: We'll take a short recess

1 for the court reporter at this time.

2 Mr. Hong, you have just one more witness; is that
3 right?

4 MR. HONG: I have Mr. Fuke as a witness and we
5 anticipated calling Layne Novak because she was finally
6 served. I don't know if she's present and then maybe
7 Mr. Gomes, but I'm re-evaluating that.

8 THE HEARINGS OFFICER: Well, it's 11:30 right
9 now. And before we began, you thought we would be done
10 in the morning. It looks like -- we can go later and we
11 can take Mr. Fuke, but how much longer are you going?

12 MR. HONG: You know, I'd like to talk to my
13 client. He may be actually our last witness.

14 THE HEARINGS OFFICER: All right. We'll take a
15 short recess.

16 (Recessed at 11:35 a.m. and reconvened at 11:45 a.m.)

17 THE HEARINGS OFFICER: We're going to reconvene.
18 Mr. Hong, your next witness.

19 MR. HONG: Thank you. Our next witness is Sidney
20 Fuke.

21 SIDNEY FUKÉ
22 called as a witness on behalf of the Applicant, having
23 been first duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. HONG:

2 Q. Sir, would you state your name for the record and
3 spell your last name.

4 A. Sure. Good morning, everyone. My name is
5 Sidney. Last name is Fuke. It's spelled F as in Frank,
6 U-K-E.

7 Q. And sir, would you tell us what's your
8 profession?

9 A. I'm a land use planning consultant.

10 Q. How long have you been a land use planning
11 consultant?

12 A. Since 1985, so I would say a short -- a shade
13 less than 30 years.

14 Q. And you also served as the Planning Director for
15 the County of Hawaii?

16 A. That's correct.

17 Q. From what period of time to what period of time?

18 A. Essentially for eight years between 1976 through
19 1984.

20 Q. And you've appeared before the Planning
21 Commission for approval on projects, developments,
22 special use permit applications?

23 A. Correct.

24 Q. How many times, generally?

25 A. As a consultant or as -- representing the

1 Planning Department?

2 Q. As a consultant.

3 A. If you average about 10 per year, maybe 8 per
4 year, and given 30, I would say at least 200 --

5 Q. Okay.

6 A. -- applications.

7 Q. In terms of the Planning Commission record, you
8 have it in front of you in two-bound volumes. I'd like
9 you to start with page 1352.

10 THE HEARINGS OFFICER: Ms. Lee Loy, I think he
11 can look at the documents.

12 BY MR. HONG:

13 Q. Let me know when you have those particular pages
14 in front of you.

15 A. Yes, I do.

16 Q. Okay. Pages 1352 to 1354, that was written
17 testimony that you submitted to the Hawaii County
18 Planning Commission; is that right?

19 A. Yes. I didn't deliver it because I was on Oahu
20 that day for another meeting, but I think it was read in
21 the record by someone else.

22 Q. Sure, but this is something that you generated?
23 You typed it up?

24 A. Correct.

25 Q. And in terms of page 352, you talk about traffic

1 under paragraph one. Do you see that?

2 A. Yes.

3 Q. You state that the validity of the study is being
4 questioned, the TIAR, by Mr. Rowell; is that correct?

5 A. Correct.

6 Q. And you know Mr. Rowell; is that true?

7 A. Not very well, but I was associated with one of
8 the work that he did on a project that I was involved in.

9 Q. That's the Regency project on Kaumana, correct?

10 A. Correct.

11 Q. Did you have any -- did you express any
12 objections or concerns to him about the work he did for
13 your project, the Regency project?

14 A. No.

15 Q. In terms of -- your statement goes on to talk
16 about windy and narrow Kaumana Drive, not necessarily
17 Edita Street, you talk about 400 students. Do you see
18 that information you provide there?

19 A. Yes.

20 Q. Did you base your concerns on any study,
21 independent study by a traffic engineer?

22 A. No.

23 Q. In terms of the next paragraph, paragraph 2, that
24 talks about water. The project requires 26,100 gallons
25 per day. Do you see that?

1 A. Yes.

2 Q. You make the statement, "Catchment is not
3 acceptable by the DOE for any of its existing or newer
4 school facilities." That goes over on to page 1353. Do
5 you see that?

6 A. Correct.

7 Q. Do you understand that the school is
8 differentiating between potable and non-potable water
9 with respect to its water use.

10 A. The school -- you're referring to the applicant's
11 school?

12 Q. Yes.

13 A. Yes.

14 Q. And in terms of your 26,100 gallons per day that
15 you cite, that's total use, correct? You don't make that
16 distinction; right?

17 A. No, I don't. That is what was contained in the
18 environmental assessment and the report -- and in the
19 application that was provided by the -- that was
20 submitted by the applicant.

21 Q. And you're not aware that the Hawaii Academy of
22 Arts and Sciences uses catchment water which is also a
23 DOE school?

24 A. No, I'm not.

25 Q. You're not aware that the Volcano Charter School

1 uses catchment water?

2 A. No, I'm not.

3 Q. You're not aware that the school called SPACE
4 down in Kalapana which is a satellite school of HAAS,
5 you're not aware that they use catchment water.

6 A. I don't know whether all of the schools that you
7 had mentioned are K to 12 with a dormitory facility.

8 Q. So when you were putting that information about
9 catchment not acceptable by DOE, you were restricting it
10 to schools that are K to 12 and have dormitories. Is
11 that what you're telling us today?

12 A. Not necessarily. I think that was just a general
13 comment that I made that if this were like a public
14 facility, that generally, public facility or publicly-
15 sponsored type of institution would have to have a water
16 system that would be consistent with whatever the County
17 requires.

18 Q. You're aware HAAS is a public facility, isn't it?

19 A. HAAS being?

20 Q. Hawaii Academy of Arts and Sciences in Puna.
21 It's a public charter school.

22 A. Well, you mentioned it. I didn't know.

23 Q. You didn't know that HAAS is a public charter
24 school?

25 A. That was not my application so I don't really pay

1 detailed attention on matters like that.

2 Q. You've using your experience and making a
3 statement to the Windward Planning Commission regarding
4 DOE schools and using catchment water or not. Did you
5 think it was important to actually do any research with
6 respect to what other charter schools are doing?

7 A. Not necessarily. I was just making a general
8 comment about this is a public facility. It's going to
9 be a K to 12 with a dormitory facility. And as a result,
10 that it should be complying to with whatever any public
11 facility requirement should be. I am aware that there
12 are a number of other special permits that were issued
13 that do not have a municipal or not being provided by a
14 municipal water system. It's not necessarily limited to
15 only DOE or public-related type of facilities, but there
16 are others.

17 Q. All right. On the next page 1353, paragraph 3,
18 wastewater. You note the septic system possible --
19 identified leaching and that it could occur in possible
20 cave -- possible caves in the area and create some
21 financial harm. Do you see that?

22 A. Some environmental harm, not --

23 Q. Yeah, environmental harm.

24 A. -- financial.

25 Q. I'm sorry.

1 A. Yes, I see that.

2 Q. And were there any studies that you conducted or
3 hired any consultants to do any studies to verify that
4 allegation?

5 A. No, I did not.

6 Q. All right. You also talk about the quality of
7 life, paragraph 5 on page 1353. Do you see that?

8 A. Yes, I do.

9 Q. You identified potential loss of forest and its
10 potential native plant and animal species. You also
11 identified noise, traffic, real property impasse, loss of
12 potential sense of security. Do you see that?

13 A. Yes, I do.

14 Q. Did you -- was that allegation based on any
15 independent studies or consultants that you --

16 A. No.

17 Q. Let me go on to the next area. We're now looking
18 at pages 1960 through 1999. This is a Power Point
19 presentation, Connections Charter School issues that you
20 made before the Windward Planning Commission. Pages 1960
21 and 1999.

22 A. Okay.

23 Q. Before you gave this Power Point presentation to
24 the Windward Planning Commission, you were sworn under
25 oath to tell the truth; isn't that right?

1 A. I believe so, yes.

2 Q. And you took that oath seriously?

3 A. Yes.

4 Q. All right. On page 1966, you identified land use
5 entitlement process should -- that it should be a State
6 land use boundary amendment, not a special permit. Do
7 you see that?

8 A. Yes.

9 Q. Did you assist Terence Yoshioka in writing his
10 written testimony and submissions to the Windward
11 Planning Commission?

12 A. No.

13 Q. Did you provide him with any information?

14 A. We talked about it, so I don't know what
15 information he may have discerned as a result of our
16 conversation. He had a copy of the environmental
17 assessment and the application. And I don't recall when
18 I -- whether I had made a copy personally for him or
19 whether he had secured it through another source, but the
20 direct answer to your question is no, I did not assist
21 him or prepare his testimony.

22 Q. All right. If you look at the next page, page
23 1967. Do you see that?

24 A. Yes.

25 Q. And it says in the first -- well, it says school

1 situated in State land use urban and not agricultural
2 district. Do you see that?

3 A. Yes.

4 Q. And then it also says, "Recently constructed
5 schools, Kealakehe, Keaau, Kamehameha School all in the
6 SLU, State Land Use urban district." Do you see that?

7 A. Yes.

8 Q. Isn't it true that Kamehameha Schools, Keaau, is
9 actually in a State land use agricultural district?

10 A. I'm not sure.

11 Q. All right.

12 A. But my understanding is that it is in the urban
13 district. They had initially applied for a special
14 permit and they were mandated to come in for a boundary
15 amendment. Whether in fact they did, I'm not really
16 sure.

17 Q. Let me show you what's been entered into evidence
18 as Exhibits A24, 25, 27 and 28. If you could look
19 through all four exhibits and when you've looked through
20 them, let me know, and I have a few questions I'd like to
21 ask you based on them.

22 A. Okay.

23 Q. In terms of the statements you make on page 1967
24 of the Planning Commission record, those statements
25 regarding Kamehameha Schools being in a State use --

1 State land use urban district, that's not true, isn't
2 that right?

3 A. Well, without getting more information relative
4 -- in a subsequent correspondence to the January 7, 2000,
5 I can't necessarily say that it's not true, but just
6 based on whatever you presented then, if this is correct,
7 whatever exhibits you provided me, then it is what I
8 represented then including Kamehameha Schools, it's not
9 entirely accurate. A portion of it is within the urban
10 district and portions of it are not.

11 Q. And a large portion of it, in terms of Kamehameha
12 Schools in Keaau, you would agree is in the State land
13 use ag zone, isn't that right?

14 A. I can't really say that because looking at the
15 map, I don't know where the school facility is relative
16 to one of your exhibits which shows the distinction
17 between the ag and the urban area.

18 Q. Well, let's start with A24 in evidence. A24, you
19 recognize, don't you? That's the light green --

20 A. Are you referring to this?

21 Q. Yes, the designations in the exhibits that you
22 hold in your hand are in the back.

23 A. Okay.

24 Q. So if you look at A24, you're familiar with this
25 type of map based on your training and experience; isn't

1 that true?

2 A. Yes, I am.

3 Q. And I'll represent that the dark bolded black
4 area is the Kamehameha Schools Keaau boundary. Do you
5 see that?

6 A. Yes.

7 Q. What does the green area represent in the State
8 land use boundary map?

9 A. Agriculture.

10 Q. And what does the pink area represent?

11 A. It would seem urban.

12 Q. Let's take a look at Exhibit 25. Do you
13 recognize that?

14 A. That's the County zoning map.

15 Q. And in terms of the County zoning map, what does
16 it indicate? I'll again represent the bolded black area
17 indicates Kamehameha Schools, Keaau. What does that, the
18 County zoning map, indicate with respect to the land use
19 designation?

20 A. That's in the agriculture, 20 acres.

21 Q. So, again, it's fair to say that what you're
22 saying in terms of the -- what you were sworn to testify
23 to under oath at the Windward Planning Commission that
24 appears at 1967, page 1967, that is not true, correct?

25 A. Relative to the Kamehameha School portion, I

1 would have to stand corrected. You are correct.

2 Q. In terms of page 1969 going through 19 -- page
3 1970, you identify some concerns regarding the Planning
4 Department's recommended rationale. And on page 1970,
5 in spite of the soil classification, site has other
6 agricultural potential. You identify forestry, citrus.
7 The document speaks for itself.

8 My question is, based on this page at 1970,
9 you're aware that the school is intending to perform all
10 these functions on their property as part of the school
11 curriculum, right?

12 A. That's my understanding. You're going to have
13 some agricultural component associated with the school.

14 Q. They plan to do forestry, they were planning to
15 do floricultural crops. They're planning to do non-soil
16 based ag, and they're also keeping the upper parcel, the
17 upper mauka parcel open space. That's fair to say,
18 right?

19 A. Um, I know the mauka portion, based on the
20 revised plan, is intended to be left an open space. As
21 far as the specific activity on the makai side, I can't
22 really say what level of agricultural activity is being
23 proposed, quite honestly.

24 Q. All right. I'd like you to turn to your
25 testimony at page 1972. And if you could also look at --

1 jump ahead to page 1320. This is the testimony you
2 submitted by Mr. Yoshioka. Basically, on page 1320,
3 excuse me, on page 1320, he makes the statement and I'm
4 paraphrasing this. Schools are not permitted in an
5 ag-zoned area. Did you provide Mr. Yoshioka with that
6 information?

7 A. No, I think he's an intelligent enough attorney
8 and former judge that he can do his own research and
9 arrive at his own conclusion.

10 Q. All right. On page 1974 and I -- just for the
11 record, I just have a few more questions. On page 1974
12 of your testimony to the Planning Commission, you said
13 the location is not within an agricultural or needed to
14 support an agricultural community. Do you see that?

15 A. Yes.

16 Q. Then it goes on to say, this area is in an urban
17 slash residential community, not an agricultural
18 community. You see that also?

19 A. Correct.

20 Q. What is your current zoning for your house?

21 A. It's -- the Pacific Plantation subdivision where
22 I, together with a number of other residents, reside is
23 currently zoned ag 1, and the State land use designation
24 is agriculture.

25 However, we all know that a lot of times the

1 actual zoning and State land use designation do not
2 necessarily correspond to the actual use of the
3 properties.

4 Q. On page 1977 through and including pages 1981,
5 you're now identifying certain criticisms or concerns you
6 have regarding Mr. Rowell's TIAR. Do you see those?

7 A. Yes.

8 Q. And, again, it's fair to say that you did not
9 hire a independent traffic engineer or any traffic
10 engineer to verify the statistics and concerns that you
11 raise here?

12 A. No.

13 Q. On page 2114 -- on page 2114, this is another
14 Power Point presentation you made to the Windward
15 Planning Commission. Do you see that?

16 A. Yes, I do.

17 Q. And this is a Power Point presentation that you
18 put together personally?

19 A. Yes, with the help of others within the
20 community.

21 Q. And, again, you were sworn under oath before you
22 testified and presented this Power Point presentation?

23 A. Correct. To provide information to the best of
24 my knowledge.

25 Q. You characterized the school as a festering sore;

1 is that right?

2 A. No, I'm saying -- not the school. I'm saying the
3 relationship is a festering sore.

4 Q. Are you denying -- let me ask this question.
5 Are you aware of anyone -- are you aware of anyone who
6 vandalized the school by putting bumper stickers, No
7 Connections bumper stickers up at the school at the Kress
8 Building?

9 A. No, I'm not.

10 Q. Are you aware of a website, No Connections
11 Ever.com?

12 A. I don't know what the website is, but I've been
13 receiving a lot of email regarding the Connections
14 school. And, you know, whether the server is actually No
15 Connections.com, I'm not sure. I can look at it.

16 Q. Do you know who sponsored or paid for that
17 website address?

18 A. I don't know who sponsored or paid for it.

19 Q. In terms of the EA process, environmental
20 assessment process, you're aware of that process based on
21 your experience and profession, correct?

22 A. Generally, yes.

23 Q. And you've gone through that process a number of
24 times?

25 A. Yes.

1 Q. So you're familiar generally with the procedures,
2 the deadlines, the response times associated with
3 generally in the environmental assessment, right?

4 A. Generally, correct.

5 Q. Isn't it true that you -- at no time did you
6 submit any responses or concerns with respect to the
7 proposed EA in this particular application?

8 A. Yeah, I did not.

9 Q. Are you willing to sit on the campus design
10 committee of the Connections Charter School to help
11 minimize any future impacts should the school be located
12 at the Kaumana site?

13 A. Well, probably -- I would have to qualify my
14 response by noting that it would be yes, subject to three
15 conditions, I guess.

16 Like one is that provided that I have the time
17 because I'm still employed, self-employed, and I do
18 considerable community work and I'm trying to transition
19 into a semi-retirement phase so I got to just -- try to
20 balance it out. So time is the number thing.

21 The other thing too is like how the existing
22 neighborhood or my neighbors are going to feel. You
23 know, if they basically feel that they're totally against
24 the project and then I'm there assisting it, I'm going to
25 feel like I'm a rat fink. So I think I'm going to feel a

1 little bit uncomfortable about serving -- you know,
2 serving on such a committee.

3 And last of all, of course, is that there's been
4 some uncalled for, in my opinion, you know, negative
5 aspersions casted towards my way -- in booting and all
6 that stuff so I think that, you know, unless there's some
7 change in the attitude on the part of like who I'm going
8 to be working with, I think it's going to be difficult
9 emotionally for me to get involved.

10 Q. All right, I understand your concern. Are you
11 developing or consulting with any other active projects
12 in the Kaumana area?

13 A. If I've consulted with or am I -- do I have any
14 --

15 Q. Participating in any developments in the Kaumana
16 area.

17 THE HEARINGS OFFICER: Are you asking at the
18 present time?

19 MR. HONG: Yes.

20 THE WITNESS: And when you say like participating
21 in a sense like from a real estate investment standpoint
22 or are you referring more to -- as my role as a planning
23 consultant?

24 BY MR. HONG:

25 Q. I'm referring to your role as a planning

1 consultant.

2 A. I don't have any active clients up in the Kaumana
3 area.

4 Q. In terms of the Pacific Plantation subdivision,
5 what was your role in that subdivision development or
6 what's your role in that development?

7 A. In the subdivision within which I live in?

8 Q. Yeah, were you the planning consultant on that
9 particular subdivision?

10 A. No, I believe that the subdivision was approved
11 while I was working for the County. I don't know whether
12 I was the deputy or planning director at that time so --

13 Q. And did you participate financially in that
14 particular subdivision in any way?

15 A. Oh, absolutely not. It would have been a
16 conflict.

17 MR. HONG: Thank you. No further questions.

18 THE HEARINGS OFFICER: Mr. Siu, any questions?

19 MR. SIU: I have no questions.

20 THE HEARINGS OFFICER: Ms. Self?

21 MS. SELF: No questions.

22 THE HEARINGS OFFICER: Mr. Gomes?

23 MR. GOMES: I have a few questions.

24 CROSS-EXAMINATION

25 BY MR. GOMES:

1 Q. Mr. Fuke, can you briefly describe your
2 educational background and work experience?

3 THE HEARINGS OFFICER: Mr. Gomes, I'm going to
4 ask you to be specific. He already -- he already
5 testified as to his educational background. If you have
6 specific questions, then you can ask specific questions;
7 otherwise, this is repetitive.

8 BY MR. GOMES:

9 Q. Are you familiar with the general location of the
10 proposed Connections Charter School development in
11 Kaumana?

12 A. Yes, I am. As a matter of fact, the site is --
13 I would say like within 500 feet of our property.

14 Q. How would you characterize your neighbors'
15 position of this proposed development?

16 MR. HONG: Objection. Calls for hearsay and
17 speculative.

18 THE HEARINGS OFFICER: I'm going to allow the
19 question if he can answer it.

20 THE WITNESS: Sure. Based on the meetings that
21 I've had with members of the community, my sense is that
22 they're not happy campers with the project, the proposed
23 development.

24 BY MR. GOMES:

25 Q. The applicant's attorney sent an email to all

1 parties stating that you were directly bankrolling this
2 litigation. Can you please confirm or deny this
3 allegation?

4 A. It's absolutely false. I mean, you know, I may
5 have written a \$200 check to enable you, Mr. Gomes, to
6 become a party to the proceedings and for which I was
7 fully reimbursed by -- from the community themselves.

8 So I think that all things considered, if you
9 call bankroll -- if you call like less than \$100 of cash
10 contribution to the quote, unquote, the cause, and if
11 you're calling that the bankroll, then I guess I would be
12 bankrolling, but I think that if you include my time and
13 you know the energies involved, it has been rather
14 costly. But in terms of financial output, I don't say it
15 was more than \$100.

16 Q. Are you getting paid to be here today?

17 A. No, I'm not.

18 Q. So are you basically losing money by being here
19 today?

20 A. Yes.

21 Q. How would you become -- how did you become
22 involved with this application?

23 A. Well, initially, there was a community meeting.
24 You know, there was a -- there was a meeting called by
25 the applicant to discuss the project, and I just kind of

1 sat in and listened. And I felt that -- at that point in
2 time, like because my occupation really deal with land
3 use matters that as a general practice, you know, I don't
4 want to testify for or against any project. You know,
5 but -- and so I felt that as the questions came up, you
6 know, by members of the community whether it was from you
7 or others like our neighbors that were asking questions
8 about the process, I've felt like okay, I could, you
9 know, get involved by providing some of what I know in
10 terms of the process and some of the concerns and provide
11 guidance in that respect. And I felt that I wanted to
12 limit myself only to that particular role.

13 However, when things got a little bit more
14 personal, then I felt that I got to get involved a little
15 bit more. And when you talk about a little bit more
16 personal, the personal thing had occurred at a community
17 meeting that I had organized for a project about a year
18 and a half ago. And this was for the Regency project
19 where one of the applicants came up to me after the
20 meeting and actually threatened me and by saying, look,
21 if you are the ringleader for this project and if you
22 don't back off, then I'm going to have everybody that we
23 know of to come out and testify against your project.

24 And I felt at that time I was being booted, I was
25 being threatened. I had asked my consultant -- I had

1 asked my client at that point in time, look, if you want
2 me to step away, I'll step away, and my client basically
3 said, no. And then I had asked my client also what was
4 the discussion between you and this individual.

5 Actually, it was Mr. John Thatcher, and my client
6 basically said -- he said the same thing. So I said, you
7 want me to walk away, I'll walk away. I have no problem.
8 And he said, no, stay on, and let's kind of keep on
9 moving. So it became like -- and then there was like
10 some -- I think a newsletter that came out that didn't
11 use my name, but everybody knows that I was the angry
12 resident, and I wasn't angry.

13 And again, as I mentioned earlier, at the
14 beginning part was I was just trying to -- just to share
15 whatever I know to the community to people like yourself
16 and the rest of my neighbors because I felt like you guys
17 were -- you had elected on your own not to retain an
18 attorney and it was going to be cost involved, and I felt
19 that I had a little bit that I could share. And that was
20 how I felt that my role was going to be, but because of
21 all of what had happened since the June or May meeting
22 that we had and all of these other things, the negative
23 things, calling me about bankrolling and all that stuff,
24 you know, my role then came from more like one of an
25 advisory -- it kind of like morphed to a -- to a position

1 where like I felt like I needed to get more involved.

2 Q. Did John Thatcher ever offer an apology to you?

3 MR. SIU: Objection, relevance.

4 THE HEARINGS OFFICER: I'll sustain the
5 objection.

6 BY MR. GOMES:

7 Q. Why did you agree to provide assistance to me on
8 this matter?

9 A. Well, first of all, you asked. And in addition
10 to that, I just felt like -- and you didn't want to
11 expend any more resources than needed to retain the
12 services of an attorney because I had shared with you and
13 others within the community that if you go through a
14 contested case process, that it would generally be
15 beneficial to have an attorney represent you and -- but
16 then the decision was made on your -- for your own
17 reasons, you said no, I'm not going to have an attorney.

18 And so I felt that well, okay, I'll try to help
19 you as much as I can. And that's the reason why I had at
20 the first -- you know, at the prehearing conference, I
21 attended the meeting and I basically represented, you
22 know, to the hearing officer that I would be there just
23 to assist you to provide guidance and whatever
24 information I can. Because I have gone through like a
25 number of contested case hearing that I have some, you

1 know, some measure of understanding, not like a total
2 understanding of the process unlike an attorney who have
3 -- you know, who actually take you through the whole
4 process, but having been through that, I had some general
5 understanding so I felt that I could be of some value to
6 you.

7 That's the reason why I decided to help you. And
8 along the way, you know, because of this -- the attorneys
9 for the developer had requested that there be this
10 witness exclusion rule, I felt that -- I feel right now
11 that you are a bit handicapped in the sense that you -- I
12 was not able to at least hear some of the testimony, the
13 direct testimonies offered and then maybe advise you to
14 say maybe you should ask this question or that question
15 and all that stuff, but that's all said and done so --

16 Q. Do you -- do you feel like the fact that you were
17 subpoenaed, I had made it clear that you were going to
18 assist me was a tactic to keep you from helping me?

19 MR. HONG: Objection.

20 THE HEARINGS OFFICER: Mr. Gomes, I'm going to
21 not allow that. I don't think there's any relevance to
22 this proceeding.

23 MR. GOMES: Okay.

24 THE HEARINGS OFFICER: Please stick to the
25 application before us.

1 BY MR. GOMES:

2 Q. Throughout your over 25 years of private planning
3 career, approximately how many applications requiring
4 County Planning Commission or County Council approvals
5 have you processed?

6 A. As mentioned earlier, if you average about like
7 ten a year, at least about -- I'd say about 200.

8 Q. During this period, have you had situations like
9 this where the directly impacted community was so against
10 a development? If so, what happened?

11 A. Well, I've been involved like in a number of
12 projects that, you know, where you have discretionary
13 approvals, discretionary as opposed to ministerial in a
14 discretionary where it's like the Planning Commission or
15 the County Council they review whatever is presented and
16 sometimes it gets approved, sometimes it gets denied
17 depending on the issues that are brought up by the
18 community or agencies or whatever.

19 And so I've been involved in a number of projects
20 that have not been approved by either the Planning
21 Commission or the County Council. And there've been like
22 two projects that I'm kind of aware of that I was
23 involved in that because of the opposition by the
24 community, that the applicant on its own and, you know,
25 had elected to withdraw.

1 And this is one, ironically, it was for a school
2 out in the North Kona area near Makalei subdivision.
3 It's in the area of Pu'ukala, and it was going to be like
4 -- again, ironically, the same type of school, you know,
5 K to 12 school with a dormitory, access coming in from a
6 single road. And the community was asking for
7 alternative access, and that was difficult to achieve and
8 at the end of the day, the applicant just felt like it
9 was not good to push it anymore.

10 I was involved in another situation in Waimea,
11 this was like for a rezoning. And by the way, the first
12 one was for a special use permit, similar to this.
13 The second one was for a small residential subdivision in
14 Waimea, and it was for like an affordable housing
15 project. And all of the neighbors came out against it
16 and the applicant in that situation felt like it was not
17 appropriate to press it and even if you get the approval,
18 then you create a really bad feeling within the
19 community.

20 So, the short answer to your question is yes, I
21 have been involved in a number of applications where the
22 applicant has, on their own, elected to withdraw or the
23 applications have been denied.

24 Q. In those situations like the one before us, what
25 is your opinion as to the developer's rights or

1 expectation of approval?

2 A. Well, whenever you have a discretionary, as in
3 this situation, it's a discretionary type of permit,
4 then there is no right. If you have like a ministerial
5 type of -- in my -- this is all in my opinion. If you
6 have like a ministerial situation where like it's a
7 building permit or like a subdivision or electrical
8 permit, you know, if you just meet whatever the code is
9 stating, then these are like all over-the-counter type of
10 permits that, you know, you pretty much have a right to
11 do it.

12 On discretionary permits, whether it's like
13 rezoning, special permits or variances, it's really -- it
14 would be a function of however the decisionmaker look at
15 the facts or look at the information provided and then he
16 or she would make that determination or the group,
17 whether it's the County Council or the Planning
18 Commission.

19 And I think that when you have discretionary kind
20 of decisions, especially like special permits, rezonings
21 or variances -- not variances, but use permits, there's
22 like a public hearing process. And anytime you go -- or
23 like SMA special management area permits, anytime you go
24 before the Planning Commission for those kinds of permits
25 then, there's a public hearing requirement.

1 And when you have a public hearing, the basis --
2 to me, the basis for a public hearing is to enable the
3 public to express themselves and for the decisionmakers
4 to at least have the depth, the community effect of that
5 issue and then the Commission or the Council can make its
6 own decision based upon the community input. Because if
7 the community input is not important, then you really
8 don't need to have a public hearing process and that's
9 why there's a distinction between a discretionary type of
10 permit and a ministerial type of permit.

11 Q. What are your thoughts as to how a development of
12 this nature should have proceeded and why?

13 MR. HONG: Objection, lacks relevance.

14 THE HEARINGS OFFICER: I'm going to sustain the
15 objection.

16 BY MR. GOMES:

17 Q. To the best of your knowledge, in your
18 professional opinion, do you think that the proposed
19 development meets the test for a special permit? Why or
20 why not.

21 MR. HONG: Objection, calls for a legal
22 conclusion. Additionally, lacks foundation.

23 THE HEARINGS OFFICER: I'm going to overrule the
24 objection. Mr. Hong, you opened the door so he can --
25 it's a legitimate question.

1 THE WITNESS: In my opinion, based on my
2 experience, I think that there are certain tests that the
3 application -- that there are certain tests that the
4 project can meet. Special -- certain tests of the
5 special permit criteria that can be fulfilled and others
6 cannot. And I think that from my point of view, what is
7 really important was, you know, what was the -- what's
8 the community's perception as far as like perceived
9 impacts and not so much like statistical impact.

10 I mean, for example, you can look at the traffic
11 impact and you'll have like a TIAR that says that you're
12 going to have level of service A or level of service B
13 with or without the project, but then it doesn't
14 necessarily address like how the community is going to --
15 you know, the community that's going to be directly
16 impacted is going to feel the effects of having now to
17 have a -- you know, either a 58 percent more increase on
18 traffic along Kaumana Drive.

19 MR. HONG: Excuse me, I'm going to object at this
20 point, and I apologize for interrupting, but this
21 response is not responsive to the question that was
22 asked.

23 THE HEARINGS OFFICER: Mr. Gomes, you're going to
24 have to ask --

25 MR. GOMES: In his professional opinion.

1 THE HEARINGS OFFICER: Okay, I'm not going to
2 allow a long narrative so you're going to have to ask
3 questions and Mr. Fuke's going to have to answer them,
4 okay? Can you be more specific with your questions.

5 BY MR. GOMES:

6 Q. Can you just shorten your answer. In your
7 professional opinion, why do you think the proposed
8 development meets the test or not.

9 A. Okay. It was already provided, I guess in this
10 thick binder, you know the -- and I had the initial Power
11 Point presentation that was given. I think that a lot of
12 it, a lot of the summary reasons I provided in that.
13 Essentially, you have -- the community is not really --
14 the community perceives that it's going to be adverse
15 impact on the project.

16 From an infrastructure standpoint, there is the
17 question about whether there's an adequate amount of
18 water that's going to service the project. In spite of
19 the applicant's claim that they can use -- that they're
20 proposing to use like a catchment system, there is a
21 question as far as whether, for a school of this size,
22 you get a K to 12 with a dormitory, but is the entire
23 catchment system going to be adequate.

24 The notion that they have only 4200 gallons of
25 water now and that they're going to think about how

1 they're going to address the issue down the road, it's
2 like kicking that issue, you know, so-called kicking the
3 can down the road.

4 And I think it's important for the decisionmakers
5 to have that information upfront rather than having to
6 say like well, don't worry, but do they care about it.
7 But I think, in summary, like it's already contained in
8 the initial Power Point presentation that I've given.

9 Q. And have you experienced any form of the school
10 reaching out and doing anything for the community such as
11 possibly inviting you or the community to an open house
12 at the school that shows what they do?

13 MR. SIU: Objection, your Honor.

14 BY MR. GOMES:

15 Q. Conduct cleanup in our neighborhood to show a
16 sign of good faith that -- are you aware of anything that
17 the school has done positive in the community?

18 THE HEARINGS OFFICER: Mr. Gomes, how is this
19 relevant? How is this relevant to this application?

20 MR. GOMES: Mrs. Leithead-Todd had directed the
21 school to reach out to the community and try to bond with
22 the community. And the only thing they did was they had
23 one committee meeting on a work day and the principal
24 wasn't even there. And so we went to the school and
25 there was no parking.

1 THE HEARINGS OFFICER: Mr. Gomes, this is not
2 relevant. I'm going to sustain the objection.

3 MR. GOMES: No further questions.

4 THE HEARINGS OFFICER: Mr. Hong, do you have any
5 redirect?

6 MR. HONG: Brief followup.

7 REDIRECT EXAMINATION

8 BY MR. HONG:

9 Q. You talked about -- you just talked about kicking
10 the can down the road. You -- is it your testimony that
11 you've never been involved in projects that were
12 developed over phases?

13 A. No, I have.

14 Q. And in terms of when you developed and presented
15 plans or your projects to the Planning Commission or the
16 Planning Department, you identified certain phases and
17 what it would need to meet -- the infrastructure needs to
18 meet that particular phase, correct?

19 A. Yes, except that in this situation when I
20 mentioned like kicking the can down the road as it
21 relates to water, because I think that in other
22 applications even if you develop the project in phases,
23 there's an answer to how you're going to be addressing
24 the overall water needs for the project. And in my
25 estimation, that answer was not provided in the

1 application.

2 Q. The answer wasn't provided. When you say the
3 answer wasn't provided, you mean for the total build-out,
4 correct?

5 A. That's correct, yeah.

6 Q. And is it your testimony, based on your experience
7 that you've had, you could only get Planning Department
8 approval for projects where you can provide that specific
9 amount of water for the total project or other
10 infrastructure needs?

11 A. No, what I'm saying is that at least the answer
12 to how you're going to provide water for the entire
13 project is provided.

14 Q. And my question was, are you suggesting that in
15 terms of your experience that you haven't gotten planning
16 or you've had Planning Department or Planning Commission
17 denials for projects where you're only presenting the
18 project in phases and presenting those infrastructure
19 needs on those incremental phases.

20 A. I don't quite understand your question.

21 Q. Okay, the question is --

22 THE HEARINGS OFFICER: Mr. Hong, I don't
23 understand the question so can you please rephrase it?

24 BY MR. HONG:

25 Q. My question is, have you ever received a Planning

1 Department denial in terms of a recommendation or a
2 disapproval or denial from the Planning Commission with
3 respect to any project that you've worked on that's
4 developed over phases where you've only provided
5 information that would meet certain phases?

6 A. I don't recall.

7 Q. Let me refer you to Exhibit 26 that you should
8 have in front of you. It's a two-page document, Section
9 25-5-72 of the zoning code.

10 MR. HONG: May I approach the witness?

11 THE HEARINGS OFFICER: Go ahead.

12 BY MR. HONG:

13 Q. Oh, you got it. You found it. Do you see that
14 in front of you?

15 A. Are you referring to the portions of the zoning
16 code relating to the agricultural districts?

17 Q. Yes.

18 A. Yes, I have it before me.

19 Q. You're familiar with that section?

20 A. Yes.

21 Q. Section 25-5-72, Permitted Uses in an
22 Agricultural Zone. You're familiar with that?

23 A. Yes, I am.

24 Q. And is it fair to say that under Subsection
25 (d)7), schools are a permitted use in an agricultural

1 zone provided they meet the permit requirements, right?

2 A. No, it's not as cavalier as that, as how you
3 state it. It's permitted -- in an ag district if you
4 have a special use permit. If it's a State land use
5 urban district, but you're County zoned, if County zoning
6 it's ag, then you need a use permit. Both the special
7 permit and the use permit are discretionary permits and
8 there are criteria that must be addressed before they can
9 be approved by the Commission.

10 Q. And where does it say community support is one of
11 the criteria?

12 A. No, I didn't say that community support is one of
13 the criteria. I'm just saying that when you have a
14 discretionary permitting process such as a use permit or
15 a special permit, the purpose for a public hearing is to
16 allow the public to express their concerns or their
17 support or whatever and for the Planning Commission, if
18 it would be up to the Commission or the decisionmaker to
19 take that into account in terms of arriving at a
20 decision.

21 If it were not important, then you do not have a
22 need to have a public hearing.

23 Q. You had testified earlier regarding a meeting
24 with the community where they elected not to expend any
25 more resources and hire an attorney. Do you recall that?

1 A. Yes, I made that comment, yes.

2 Q. And did you contact Mr. Alan Okamoto at any time
3 to write any of the questions or any of the documents
4 that was presented to the Planning Commission or any of
5 the questions that were asked of any of the witnesses
6 today?

7 A. No.

8 Q. Were you aware that Mr. Okamoto was doing that?

9 A. No.

10 MR. HONG: Nothing further.

11 THE HEARINGS OFFICER: Mr. Siu?

12 MR. SIU: I have no questions.

13 THE HEARINGS OFFICER: Ms. Self.

14 MS. SELF: No.

15 THE HEARINGS OFFICER: I take it, Mr. Gomes,
16 you're done.

17 MR. GOMES: I'm done, thank you.

18 THE HEARINGS OFFICER: Thank you.

19 MR. HONG: Oh, shoot. We did issue a subpoena
20 duces tecum to Mr. Fuke to bring documents with him.

21 THE HEARINGS OFFICER: Are you, Mr. Hong, going
22 to go through documents with Mr. Fuke right now?

23 MR. HONG: No, I wanted him to turn it over, but
24 I just wanted to review them during the recess.

25 THE HEARINGS OFFICER: Well, then he's not done.

1 Then we're not done with Mr. Fuke as a witness because
2 he's going to -- if there's a subpoena duces tecum and
3 you have any questions or you want any documents
4 submitted, he's going to be needed, and we're not going
5 to finish this hearing.

6 MR. HONG: I'm not going to ask him any questions
7 on the documents. I just wanted to look at the
8 documents that he brought.

9 THE HEARINGS OFFICER: Well, we're not finished
10 with this hearing then.

11 MR. HONG: All right.

12 THE HEARINGS OFFICER: That's fine. That's fine
13 if you want to do that. We'll take a lunch recess and
14 you can look at the documents and we'll proceed from
15 there.

16 MR. HONG: Well, Mr. Fuke, did you bring
17 documents pursuant to the subpoena duces tecum?

18 THE WITNESS: Well, what I have in here are just
19 like -- are copies of the email only. And your request
20 for providing all of the information, when I went back
21 and checked, you know, it's like almost like -- a little
22 less than two filing cabinets worth. And you were
23 expecting me to make five copies of two filing cabinets
24 worth of all of the things that I did over the last
25 couple of years ranging from subdivisions to rezoning and

1 all that kind of stuff.

2 And some of this information is proprietary. I
3 think that the request is like overly broad. I have
4 prepared a list of all of the applications that I've
5 worked on over the last couple of years if you -- and I
6 made five copies and you can take a look at that. And if
7 you can tell me specifically what kind of information you
8 want from the file and if it's not proprietary, then I'll
9 be more than happy to produce it for you.

10 On the other hand, please note that almost all of
11 these applications, they are public record. So they are
12 readily accessible at the Planning Department or at the
13 State -- in this case, the Conservation District Use
14 Permit I worked on. It's either at the State Land Board
15 or at the County Planning Department.

16 THE HEARINGS OFFICER: Mr. Hong, I understand
17 you've subpoenaed all of the projects that Mr. Fuke has
18 worked on; is that correct?

19 MR. HONG: That's correct.

20 THE HEARINGS OFFICER: Can you please explain how
21 other projects, not this project, are relevant to the
22 subject matter of this hearing.

23 MR. HONG: I wanted to see which projects were
24 related to the Kaumana school area where we wanted to put
25 the Connections school area.

1 THE HEARINGS OFFICER: You mean in the vicinity
2 of this project.

3 MR. HONG: That's correct.

4 THE HEARINGS OFFICER: But your subpoena didn't
5 say that. Your subpoena asked for every projects.

6 MR. HONG: I didn't want to leave it to the
7 discretion of Mr. Fuke to figure out -- to determine
8 what's relevant and what's not. So I wanted to do that,
9 and if it's not relevant, obviously, I'm not going to
10 enter it into the record.

11 THE HEARINGS OFFICER: And how do other Kaumana
12 projects have any bearing on this project?

13 MR. HONG: Well, if we're talking about traffic,
14 if we're talking about community impacts, which
15 apparently Mr. Fuke has done extensively and Mr. Gomes, I
16 think that that would also be relevant.

17 THE HEARINGS OFFICER: Okay. Do any other
18 parties have any comments on the subpoena? Mr. Siu.

19 MR. SIU: I have no comments.

20 THE HEARINGS OFFICER: Ms. Self.

21 MS. SELF: No comments.

22 THE HEARINGS OFFICER: Mr. Gomes.

23 MR. GOMES: I think it's very inconvenient to
24 have Mr. Fuke print all of that.

25 MR. HONG: I'm not asking that he print. Again,

1 I'm going to --

2 THE HEARINGS OFFICER: I find that the admission
3 -- I'm going to find, based on Mr. Gomes -- based on what
4 I've heard up to now, I find that Mr. Fuke's work on
5 other projects is not relevant to the subject matter of
6 this proceeding and I'm going to order that Mr. Fuke not
7 have to produce any of those documents.

8 So, Mr. Hong, you're not going to be able to get
9 the documents.

10 MR. HONG: I understand. We also have emails
11 that he produced with respect to the No Connections
12 Ever.com. And that group, I'd like to take a look at
13 those.

14 THE HEARINGS OFFICER: Any documents relating to
15 this project, I will allow to be produced, but not with
16 respect to other projects.

17 MR. HONG: All right. May I --

18 THE HEARINGS OFFICER: Mr. Fuke, did you bring
19 those documents?

20 THE WITNESS: Yes.

21 THE HEARINGS OFFICER: Okay. Then Mr. Hong can
22 look at those documents. I guess we will recess for
23 lunch because I don't think we're done. Mr. Hong, do you
24 have other witnesses?

25 MR. HONG: I believe in terms of witnesses, we

1 did subpoena -- we did subpoena Layne Novak and -- so I
2 am, for the record, ask and call her, and if she doesn't
3 show up, then I'll at least have that on the record.

4 THE HEARINGS OFFICER: Okay. You need time to
5 look at Mr. Fuke's records.

6 MR. HONG: Yes. Forty-five minutes, half an
7 hour?

8 THE HEARINGS OFFICER: Well, we'll take a lunch
9 break for 45 minutes.

10 MR. HONG: Thank you.

11 THE HEARINGS OFFICER: It's about 12:30 so we'll
12 be back at 1:15.

13 MR. HONG: Thank you.

14 (Recessed taken at 12:30 p.m. & reconvened at 1:20 p.m.)

15 THE HEARINGS OFFICER: We are -- this -- we're
16 back in session.

17 I will note the presence of all the parties.
18 When we left, when we took our lunch recess -- before we
19 took a lunch recess, Mr. Hong was reviewing documents
20 produced by Mr. Fuke. Have you had an opportunity to
21 review those documents?

22 MR. HONG: I'm still reviewing them, but I'm
23 almost done. My impression, in looking at the
24 seven-eighths of the documents that were produced on -- I
25 don't think that entering them into the record would

1 serve any relevant purpose concerning any of the issues
2 before the hearings officer.

3 So I don't think that we'll be entering these
4 into evidence. And I have no further questions for
5 Mr. Fuke.

6 THE HEARINGS OFFICER: Mr. Hong, do you have any
7 further witnesses?

8 MR. HONG: Well, we had subpoenaed Layne Novak.
9 In talking to the process server, I know she -- her
10 husband accepted service for her. My understanding there
11 may be a procedural issue about filing the subpoena with
12 the return of service?

13 THE HEARINGS OFFICER: I should have the subpoena
14 along with the return of service, but what are you asking
15 for, Mr. Hong? If she's not present, what are you asking
16 for?

17 MR. HONG: Well, I note that we served her.
18 We've asked her to be present. She would be our next
19 witness. My understanding is she is not here.

20 THE HEARINGS OFFICER: Mr. Hong, the choices are,
21 if she is not here, it is -- and you ask for -- and you
22 want her here, the only thing that can happen is a
23 petition needs to be filed with the Circuit Court for
24 issuance of an order to show cause or contempt proceeding
25 for her to appear because I can't issue that. Only the

1 Circuit Court can, and under the State law, I have the --
2 the Planning Commission or the hearing officer would have
3 to apply to the Circuit Court for that.

4 Are you asking for that?

5 MR. HONG: No, I just want to note for the record
6 that we subpoenaed her to be here and she has not
7 appeared.

8 THE HEARINGS OFFICER: I will so note that.

9 MR. HONG: Thank you.

10 THE HEARINGS OFFICER: Do you have any further
11 witnesses?

12 MR. HONG: I actually have a -- I was
13 anticipating calling Mr. Gomes, but I think I'm going to
14 waive that at this point. I do have Mr. Thatcher who
15 would testify in rebuttal with respect to Mr. Fuke's
16 allegations that he was threatened by Mr. Thatcher.

17 THE HEARINGS OFFICER: Well, Mr. Hong, if you
18 want to call him as a witness, you can go ahead.

19 MR. HONG: All right.

20 JOHN THATCHER
21 having been called as a witness by the Applicant, having
22 been first duly sworn, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. HONG:

1 Q. Sir, would you state your name for the record,
2 please.

3 A. John Thatcher.

4 Q. And if you'd spell your last name.

5 A. T-H-A-T-C-H-E-R.

6 Q. Were you present when Mr. Fuke testified about
7 your allegedly coming up to him after a community meeting
8 and threatening him?

9 A. Yes, I was.

10 Q. Did you do that?

11 A. I talked to him after the meeting, but I didn't
12 threaten him.

13 Q. Did you tell him at any point that you were going
14 to bring in -- if he didn't support the Connections
15 project, that you were going to bring in other people to
16 testify against the Regency project?

17 A. My words were, "I'm here by myself." If I was
18 trying to do something, I was actually talking to the guy
19 with the company that's building. And I said if I was
20 going do something, I would have brought a lot more of
21 the people from our school. I said I came here by
22 myself. And I guess that was perceived as threatening
23 something.

24 Q. But you never threatened him or threatened the
25 project?

1 A. No.

2 MR. HONG: All right, thank you. Nothing
3 further.

4 THE HEARINGS OFFICER: Mr. Siu, any questions?

5 MR. SIU: I have no questions.

6 THE HEARINGS OFFICER: Ms. Self?

7 MS. SELF: None.

8 THE HEARINGS OFFICER: Mr. Gomes.

9 MR. GOMES: No questions.

10 THE HEARINGS OFFICER: Thank you, Mr. Thatcher,
11 you're excused.

12 MR. HONG: We have no further witnesses or
13 evidence and rest.

14 THE HEARINGS OFFICER: Mr. Siu, anything further?

15 MR. SIU: I have nothing further.

16 THE HEARINGS OFFICER: Ms. Self.

17 MS. SELF: No.

18 THE HEARINGS OFFICER: Mr. Gomes.

19 MR. GOMES: Nothing.

20 THE HEARINGS OFFICER: Well, it's my
21 understanding that the parties have agreed to participate
22 in mediation. And since the parties have -- and the
23 mediator who the parties have selected, Mr. Bess, isn't
24 here at the moment because he went to get lunch, but he
25 has been sitting here most of the morning because I

1 understood that you were going to attempt to start
2 mediation today in the event that there is an agreement
3 that would be incorporated as part of the record in this
4 case.

5 So I believe I cannot close the hearing until I
6 have -- we will have to reconvene after the mediation and
7 then I will close the hearing. The other thing is the
8 Commission rules -- I know the parties wanted everything
9 closed, but I don't want to do that at this point. So I
10 am going to leave the hearing open for a short time
11 period and continue this.

12 At that point, then I will -- if there is no
13 agreement, mediation will set deadlines for submission of
14 findings of fact. Mr. Hong.

15 MR. HONG: I would suggest you reconsider that
16 decision. And the reason is that, this, as you would
17 know, process has been taking a long time with respect to
18 my client.

19 If the Court -- if you close the record at this
20 point, that triggers that 90-day period when you have to
21 submit the findings or report to the Planning Commission,
22 no?

23 THE HEARINGS OFFICER: No. What it says is the
24 Commission has 90 days from the close of the hearing to
25 make a decision; not for me to submit something unless

1 otherwise agreed to by the parties. I looked at the
2 rules this morning. Now, it is questionable whether
3 you'll have -- whether -- as far as -- where's my notes.
4 The hearing closes when -- at the end of submission of
5 evidence, briefs, and oral arguments, if any.

6 Because we're not doing briefs and we're doing
7 findings of fact, it is arguable that this hearing
8 doesn't close until the end of submission of findings of
9 fact under the Planning Commission Rules although I will
10 admit, it's ambiguous. If there is -- I mean I would
11 like to allow the parties, if there is an opportunity to
12 reach a consensus in this matter, to include a mediation
13 agreement, if there is going to be one as part of this
14 file hearing.

15 If there is a mediation agreement and I close the
16 hearing, I can't include that agreement. So my
17 suggestion is we continue this hearing, maybe for two
18 weeks, a very short time period so this thing would not
19 drag on for a long time. I do agree it's gone on way too
20 long. I would have been happy finishing it in one day if
21 we could have. It's my -- I like to finish these things
22 sooner than later.

23 So can we get -- I don't know if everybody has
24 their calendars with them. We can go off the record.
25 Let's go off the record while everyone looks at their

1 calendars.

2 (Discussion had off the record.)

3 THE HEARINGS OFFICER: Okay, we're back on the
4 record. What we're going to do is we're going to
5 continue this hearing to January 22nd at 9:30 a.m. All
6 the parties have indicated that they're available at this
7 time with the exception of Mr. Hong, might have a phone
8 conference that might last a little bit longer. And the
9 place for this reconvened hearing, the Planning
10 Department will advise us all where the hearing will be.

11 In the meantime, it is my understanding that the
12 parties will be participating in mediation and I believe
13 Mr. Bess should be here shortly to start the process.

14 MR. HONG: Thank you.

15 THE HEARINGS OFFICER: So we're recessed for
16 today. And, again, Mr. Hong, you didn't want anything --
17 any action taken against Ms. Novak.

18 MR. HONG: No, not by me.

19 THE HEARINGS OFFICER: Thank you.

20 (The hearing concluded at 1:40 p.m.)

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