BEFORE HEARINGS OFFICER SANDRA SONG

COUNTY OF HAWAII

In the Matter of Connection New Century Public Charter School and Community Based Education Support Services ) SPP-12-000138 ) VOLUME IV ) (Pages 448 - 590) ) ) Special Permit Application No. ) 12-000138 ) ) ) TRANSCRIPT 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

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FOR ID IN EVIDENCE

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

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

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

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

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

MR. GOMES: Jeff Gomes.

THE HEARINGS OFFICER: Good morning. Since this is a contested case hearing, the rules require that we take public testimony before any evidence in this case. Is there anybody here to give any public testimony today? The record will reflect no response.
I do have though a written letter from Paul Scotty Paiva dated November 5, 2013. I'm going to accept that as public testimony in this hearing. And I believe all the parties were provided with copies of this testimony.

Mr. Hong?

MR. HONG: Yes, thank you.

THE HEARINGS OFFICER: Mr. Siu.

MR. SIU: Yes.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: Yes.

THE HEARINGS OFFICER: And Mr. Gomes?

MR. GOMES: Yes.

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

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

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

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

DIRECT EXAMINATION
BY MR. HONG:

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

A. I'm sorry?

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

A. Okay.

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

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

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

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

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

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

Q. When did you get your license in Hawaii?

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

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

Q. And this is all as a traffic engineer?

A. Yes.

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

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

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

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

I have current projects in Oahu, Maui, Big Island, and Kauai. And I'd like to point out, all
these projects done in the mainland and over here all follow the same procedures, same methodology, and same criteria.

Q. And same industry standards?
A. That's correct.

Q. In terms of any experience here in the County of Hawaii in terms of projects, if you could just highlight those for us, please.
A. The major projects have been the Hawaii Academy of Arts and Sciences, Laloa Street extension, the University of Hawaii West Hawaii Campus, the Captain Cook Police Station, the Kaumana Business Park, Palamanui. I worked on the Regency project on Kaumana Drive, and I'm currently working on the Saddle Road extension.

Q. And have you received any commissions or awards in your professional capacity?
A. I'm a life member of the ITE, and I also have a Martin -- George --

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

BY MR. HONG:

Q. Could you repeat that, please?
A. George W. Martin Award of Excellence.

Q. And ITE stands for what?
A. The Institute of Transportation Engineers.
Q. Okay. In terms of your professional experience, what qualifications and experience are necessary to conduct and produce a credible, reliable TIAR?
A. In Hawaii, the TIAR has to be signed and usually sealed by a professional engineer. Usually a civil, but sometimes done by other dissidents.
Q. All right. In terms of the Regency project that you talked about, Mr. Sidney Fuke is involved in that project as one of the planners; is that right?
A. Correct.
Q. During the course of performing the TIAR for Regency, did Mr. Fuke express any dissatisfaction with your work?
A. No.
Q. What industry guidelines that are part of the industry standard must be used in preparing a TIAR?
A. Primarily, the Highway Capacity Manual, which is published by the Institute of Transportation Engineers. We also have the Transportation Impact Analysis Procedures --
THE COURT REPORTER: I'm sorry, sir. Could you put the mike right by your mouth, please?
THE WITNESS: Okay.
THE COURT REPORTER: Can we make this a little louder?
MR. DARROW: Sure.

THE COURT REPORTER: Thank you.

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

BY MR. HONG:

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

A. Yes.

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

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

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

A. Not that I could tell.

Q. Let's talk about the Connections project. When
1 were you first retained for the Connections project?
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 projects for the TIAR?
6 A. I did a field reconnaissance of the area. I met with the County Department of Public Works, traffic engineer, to be specific, and I met with the State Department of Transportation.
7 Q. Were any concerns expressed by any governmental agency or were any concerns expressed by some of the opponents of the school with respect to your TIAR report?
8 A. My discussions with the County was primarily on what recommendations I would come up with. The State had no interest because we were not having a connection to any State highways. So that was the only input I had, and there was no concerns.
9 Q. In terms of -- if any of the school opponents expressed a concern about your TIAR report, what would you have done?
10 A. We would have -- depending on the comment, of course, we would have expanded the study area, primarily as to the study intersections, and my real concern was obtaining information on what I should use to determine
to come up with the background forecast. We got no input
at all.

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

A. I'm sorry?

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

A. I had no direct contact with the community.

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

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

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

A. Yes.

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

A. Not that I could tell. There were no citations
in the reports.

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

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

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

A. Right.

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

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

Two, the school should develop and implement a traffic management plan and even -- and a third recommendation is that even if -- with the acceptable levels of service, I recommended that they put in a
left-turn lane for traffic into the project to minimize the impacts on through traffic along Edita.

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

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

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

Q. And you checked that yourself?

A. Yes, I did.

Q. Could you describe the mitigating measures that Connections will implement to reduce loss of service?

Excuse me, L-O-S, and what does that stand for again?

A. Level of service.

Q. Level of service, excuse me.

A. Repeat the question?

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

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

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

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

Q. When you said you had a discussion, who were you discussing it with?
A. With the client.

Q. In terms of some other criticism that has been raised about the TIAR, one of the criticisms was that the TIAR is outdated. How do you respond to that?
A. First of all, it's not outdated. Right now it is
the most current document we have. If we go -- move
forward with this project to the State Land Use
Commission, it's been my experience that the Land Use
Commission will require an updated traffic study because
one, it's been four years since we did the traffic
counts; and, two, the list of the related projects that
we would use and the background forecasts needs to be
updated.

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

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

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

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

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

A. Yes, and I recommended that.

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

THE HEARINGS OFFICER: Mr. Siu, any questions?

MR. SIU: I have none.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: No, thank you.

THE HEARINGS OFFICER: Mr. Gomes?

MR. GOMES: Yes, Ma'am.

THE HEARINGS OFFICER: Go ahead.

CROSS-EXAMINATION

BY MR. GOMES:

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

A. Correct.

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

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

Q. And you do have a degree in engineering.

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

Q. What kind of engineering is that?
1 A. Civil.
2 Q. And your company is called Phillip Rowell and Associates?
3 A. Yes.
4 Q. And how many associates do you have?
5 A. Right now I have none. I'm a one-man operation, but in the past I've had two employees.
6 Q. And were they -- those employees helping you when you did --
7 A. I am the sole engineer for the company.
8 Q. Where do you live again?
9 A. Kaneohe.
10 Q. Can you please state the purpose and objective of the traffic impact analysis study?
11 A. I'm going to cite you what I wrote in the report. -- I guess I won't. Primarily to estimate traffic characteristics of the project in terms of the peak hour traffic, a.m. and p.m. In this particular case, we did a midday also. To identify and discuss the traffic impacts of the project in terms of changes in the volumes, changes of levels of service at the study intersections, and to identify and discuss the appropriate mitigation to mitigate the impacts as a result of project-generated traffic.
12 Q. And who hired you to do the traffic impact
analysis report?

A. Connections.

Q. So not Wil Chee Planning?

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

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

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

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

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

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

A. Initially, yeah.

Q. How much did they pay you?

A. I don't have that information.

Q. Roughly.

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

Q. Okay, thank you. You were asked to do the study. 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?
A. Yeah.

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

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

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

A. Yes, and that is standard.

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

A. I believe it was May 28th.

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

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

Q. And why was that month selected?

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

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

A. Yeah.

Q. That implies that the traffic increases during school time, right?
A. I'm not quite sure what you mean by increases. We have pretty specific guidelines with DOT that they consider a Tuesday or a Thursday typical. And this would not be a back-to-school because I think schools let out a week or two after this.

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

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

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

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

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

A. Yes.
Q. Are you aware that represents over 7,000 students who were not in school in Hilo on that day?
A. Yes, but doubt -- it would impact the traffic on Kaumana Drive very slightly.
Q. You said earlier that you got no input from the community. Why do you think that is?

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

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

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

BY MR. GOMES:
Q. But the TIAR that you did was part of the environmental assessment.
A. Yes.
Q. And are you aware that Title 11, Chapter 200 of the TIAR -- I mean of the Hawaii Advisement or Administrative Rules, Subchapter 6, 11-200-9, Assessment of Agency Actions and Applicant Actions, A(1), it says, "Seek, at the earliest practicable time, the advice and
input of the county agency responsible for implementing the county general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as other citizen groups and individuals which the proposing agency reasonably believes to be affected." Have you ever sought out?

A. I'm sorry?

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

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

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

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

BY MR. GOMES:

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 rule exists?
4 A. Yes.
5 Q. On Oahu where you live when school is out especially during the summer, is there more traffic in the morning than on a regular school day?
6 A. I do not do traffic counts when public schools are recessed so I couldn't answer that.
7 Q. Do you watch the traffic reports on the morning news?
8 A. I'm sorry?
9 Q. Do you watch the traffic reports on the morning news on TV?
10 A. Sometimes.
11 Q. And have you ever heard the newscasters say that since school is out for the summer you can expect more or heavier traffic this morning?
12 MR. HONG: Excuse me. I'm going to object to this line of questioning as lack of foundation. It's not relevant, and I think it's also duplicative because he's already testified regarding what impact school being in session in that Kaumana area had on his report.
13 THE HEARINGS OFFICER: I'm going to sustain the
objection. You have to be more specific and relate to this project.

BY MR. GOMES:

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

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

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

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

Q. Thank you. In your report you state that the background growth was based on reconnaissance of the study area and information provided by Wil Chee Planning.
It was concluded that the future growth along Kaumana Drive is expected to be minimal. Did you do the reconnaissance of the study area or did Wil Chee Planning do this reconnaissance?

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

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

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

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

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

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

A. I came to that conclusion.
Q. Did you or Wil Chee Planning know or have information about the Hawaiian Homes Commission subdivision in Kaumana?

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

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

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

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

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

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

A. Probably, but even then, I would have to filter those requests to see which developments are going to happen before our design year. If they're going to
happen after our design year, they're not included in the forecasts.

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

A. Nobody noted it.

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

A. No.

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

A. When was that proposed?

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

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

Q. I don't know when it was.

A. I'm sorry?

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

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

Q. And did you know about the proposed 26-lot
subdivision, Punahoa 1st and Ponahawaii, near the intersection of Kaumana Drive and Mohouli?

A. Same question. When was that proposed?

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

A. No.

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

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

Q. That's "no" also.

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

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

A. When was that one proposed?

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

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

Q. So "no" then.

A. Yes.

Q. The police department recommended sidewalks on Edita Street. Why didn't you recommend sidewalks in the TIAR?
A. My understanding at the time of the report that we wanted all pedestrians to enter the project. We didn't want pedestrians walking along the roadway. Sidewalks would only encourage that.

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

A. I don't understand that.

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

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

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

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

Q. And what area did you review? Kaumana area, Hilo area, Puna area?
A. No, because of the amount of traffic this generates, it is considered a small traffic impact study, small development, and that defines the study area. The previous traffic studies that I've done in the area went up to Kaumana Drive and the access to the project, and all those studies have been approved.

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

A. Yes.

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

A. I'm sorry?

Q. How did you do your manual traffic count?

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

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

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

A. I have a subcontractor that does my counts.
Q. And what kind of qualifications do they need to count cars?
A. You need traffic counters and some people.
Q. Okay. Was it raining or was it a sunny day in Kaumana?
A. I don't know.
Q. Does your TIAR take into account slower traffic times when it rains?
A. I'm sorry?
Q. Does your TIAR take into account slower traffic times when it rains?
A. No. We try to make sure that it's clear so it should be typical traffic conditions.
Q. Why did you do the manual traffic count only on one day?
A. That is standard procedure.
Q. What is the difference between existing traffic volumes and manual traffic counts?
A. They should be the same.
Q. What is the definition of existing traffic volume?
A. Counts that we go out there and determine. They're actual counts.
Q. But -- so existing -- when you count, existing 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
existing or say 2020, 2015 traffic compares it to an
earlier job and you calculate an average annual growth
rate using a compound interest formula.
Q. And when you do the traffic count, you're just
counting cars. You're not checking speed or the way
people drive.
A. Typically, we count cars and pedestrians.
Q. Since you did not mention any of the projects I
asked you about in the TIAR, could the average annual
growth rate have been higher than you calculated?
A. No. Because the traffic generated by those
projects is a separate number added on top of the growth
rate. In a lot of cases, the growth rate is simply to
consider in your calculation traffic generated by small
projects that don't do a traffic study. And if I follow
procedures published by the ITE, I'm supposed to use one
or the other. In this case I used both, which means my
numbers are very, very conservative.
Q. Is it correct that your report assumes that there
would be no traffic growth of traffic along Edita Street?
A. If you recon' the area, Edita Street is pretty
well-developed. There would not be any additional
traffic generated along Edita.
Q. Would Mr. Brilhante's adjacent 45-lot subdivision
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
school?

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

Q. But is it correct?

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

Q. So your answer is "yes."

A. I'm sorry?

Q. You answer is "yes"?

A. Yes.

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

A. That is correct.

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

A. Yes.

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

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

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

A. No. Again, I keep saying this. You got to go
back to 2009 when we did our data collection. And if this information is not available then or is not available, then, obviously, it's not in the report.

Q. Could these projects affect future traffic?

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

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

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

So it would not change -- if I had done an impact analysis as to each phase, it would not change the conclusions of this report.
Q. So since we're not 2014, the phasing schedule has understandably changed. Do you know whether the specific phases have been changed; and if so, what are their current timetables?

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

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

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

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

A. We limited our study area to Edita because that was the information we got from input from the County and from the State. There's also some guidelines in ITE
about the limits of your study area. And, typically, any
major intersection outside of a half mile would not be
included.

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

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

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

THE HEARINGS OFFICER: I'm going to overrule it.

If you can answer the question, go ahead.

THE WITNESS: If I understand the question. Yes,
it would help the decision makers, but the decision
makers are supposed to be for a traffic study, familiar
with the methodology of a traffic impact study. Nothing
you've given me here would make me change the conclusions
of the study. It may change the data, it may change the
final numbers, it may change the delays, but it would not change the conclusions. And I think a traffic engineer transportation planner reviewing this report would realize that the traffic study was done in 2009, would realize that the conclusions are not going to change, and that at some point, yes, the traffic study should be updated. And I think the appropriate and most likely place where that will occur is the State Land Use Commission will require an updated traffic study because of the time we did the study; and, thus, that simple.

BY MR. GOMES:

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

A. Correct.

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

A. Correct.

Q. For example, even if the LOS changes from A to B,
it does not measure quality of life factors such as
social or human effect of 100 percent -- 150 percent
increase in wait time from 5 seconds to 15 seconds;
correct?
A. It is my understanding that all of those things
that you noted are included in level of service. If I'm
operating at level service A, everything is good, very
little delay. And the increase in traffic, to me, is
secondary. A change in level of service is what I look
for. If I've got 15 cars and I increase to 30, that's a
100 percent increase, but 30 cars along a road is not a
very big increase.
 If, by the same token, I can have 500 cars on
a roadway and I can add, you know, 50, that's only a
10 percent increase, but it may change the level of
service from C to D, in which I have a problem.
So, the real numbers don't mean anything --
ye'll factor into the level of service, but I think you
have to put it in the context of what that beginning
number is.
Q. Are you familiar with the term, "quality of
life"?
A. Yes, I am.
Q. And what does that mean to you?
A. It means I'm not looking -- at this particular
case, I'm not looking at a long line of traffic trying to turn left. I'm still not -- still do not have volumes that provide a cue that are belching smoke and so forth. It's just not happening here.

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

Q. Your Attachment G discusses the ambient or existing traffic conditions, correct?
A. I'm sorry?

Q. Your Attachment G discusses the ambient or existing traffic conditions, correct?
A. Yes.

Q. Along Kaumana Drive at the Edita Street intersection, there were 102 mauka-bound and 219 makai-bound traffic movements, for a total of 321, correct?
A. Where are you at? You're looking at Attachment G, right?

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

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

THE HEARINGS OFFICER: Wait, excuse me.

Mr. Gomes, can you please start referring to the record
if you're going to ask the witness about certain questions.

MR. GOMES: Okay.

THE WITNESS: Where are you now?

BY MR. GOMES:

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

A. Just repeat the comment about the volumes.

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

A. Okay.

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

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

Q. And at the Edita Street-Kaumana Drive intersection, the same Attachment G notes that there are 13 inbound and 49 outbound movements for a total of 62 movements during the a.m. peak, correct?
A.      Say that again?
Q.      The Attachment G notes that there are 13 inbound
        and 49 outbound movements for a total of 62 movements
during the a.m. peak, correct?
A.      I don't see that. I don't see 13 trips anywhere
        on here.
Q.      What do you show for inbound and outbound
        movements during the a.m. peak?
A.      Inbound, a.m., total of 108 out of a total of 79.
        Those assignments are shown on the Attachments I through
        -- maybe I'm looking at the wrong attachment. If I
        follow you, you're looking at Attachment G which is
        existing, right?
Q.      Yes.
A.      Okay, that's not used in the impact analysis.
        What is used is Attachment H, which is the 2022
        background. And then if you go through Attachments I, J,
        K, and L, you add that traffic and you come up to
        Attachment M, which is background plus project. And
        that's -- Attachment M is the one where you want to look
        at the analysis and see what the impact is on completion
        of the project.
        MR. HONG: Just to interject, Attachment M as in
        Mary, is at page 706.
THE HEARINGS OFFICER: Thank you, Mr. Hong.
Mr. Gomes, do you have more questions?

MR. GOMES: Yes, Ma'am.

BY MR. GOMES:

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

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

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

That plan would probably be developed -- school, me, and probably a representative of the County, probably
Ron Theil. And they would put together this plan and it would be a written document. And that's how you would manage the traffic.

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

Q. This hasn't been done yet or suggested.
A. No. It is typically done af' -- you know, when the school is getting ready to open and they have firm numbers on the student population.

Q. And is there any guaranty that a traffic management plan will be implemented?
A. It is my understanding that it is a recommendation of the County, and it will probably be a recommendation of the State Land Use Commission, so they would have to do it.

Q. And it can be adjusted over time, right, to find out --
A. It should be adjusted annually.

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

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

MR. HONG: Yes, briefly.
REDIRECT EXAMINATION

BY MR. HONG:

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

A. Yes.

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

A. That's right.

Q. And that includes that traffic management plan.

A. That's right, yes.

MR. HONG: Thank you, nothing further.

THE HEARINGS OFFICER: Mr. Siu.

MR. SIU: I have nothing.

THE HEARINGS OFFICER: Ms. Self.

MS. SELF: Nothing.

THE HEARINGS OFFICER: Thank you very much,
Mr. Rowell. You're excused as a witness.

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

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

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

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

MR. GOMES: No objection.

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

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

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

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

MS. SELF: That's correct.

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

MR. HONG: No, thank you.
MR. SIU: No objection.

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

MS. SELF: Good morning, Mr. Kanuha.

THE WITNESS: Good morning.

THE HEARINGS OFFICER: He has to be sworn in.

MS. SELF: Oh, sorry.

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

DUANE KANUHA

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

DIRECT EXAMINATION

BY MS. SELF:

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

A. Yes, I did.

Q. And what is that?

A. In reciting my professional experience, I neglected to state for the record that I was a member of the State Land Use Commission from 2005 until 2011, and I also served as vice chair and chair for that commission during that time.
Q. Okay. And also you were asked whether a school would be a permitted use in a residential district. Do you recall answering that question?
A. Yes, I believe in response to a question from the hearings officer, I stated that a school was a permitted use in a residential district. And I think I needed to clarify that, that it's a permitted use provided that a use permit is also secured.

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

THE HEARINGS OFFICER: Mr. Hong?

MR. HONG: I have a couple of questions.

CROSS-EXAMINATION

BY MR. HONG:

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

Q. And as -- in your capacity as planning director and based on your training and experience, is a State use land -- a State land use boundary amendment required in this particular case?
A. Not necessarily required, no --

Q. Thank you.

A. -- in my opinion,
Q.      I'm sorry, you were saying?
A.      In my opinion, it's not necessarily required.

MR. HONG: Thank you.

THE HEARINGS OFFICER: Mr. Siu.

MR. SIU: I have no questions.

THE HEARINGS OFFICER: Mr. Gomes.

MR. GOMES: No questions.

EXAMINATION

Q.      Mr. Kanuha, you say a State land use boundary amendment is not required. Why?
A.      There -- it's not a required action for schools, for example, although it could be. I think the way I answered the question is that it's not mandated that if you are proposing a school, that a State land use boundary amendment is required.

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

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

MR. HONG: No.

THE HEARINGS OFFICER: Mr. Siu?

MR. SIU: I have none.
THE HEARINGS OFFICER: Ms. Self?

MS. SELF: No.

THE HEARINGS OFFICER: And Mr. Gomes.

MR. GOMES: No questions.

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

Mr. Hong, your next witness.

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

DARYN ARAI

called as a witness by the Applicant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HONG:

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

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

Q. And was the Planning Department served with a 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 responding to that particular subpoena?
4 A. Yes, I am.
5 Q. And the records you produced today are kept in the ordinary course of business in the Planning Department?
6 A. Yes, it is.
7 Q. And also are these records that you're going to produce today fair and accurate copies?
8 A. Yes, they are.
9 Q. And in terms of the records you've produced, you've brought with you the entire file with respect to the Kamehameha Schools up in Keaau, that development; is that correct?
10 A. That is correct.
11 Q. We've identified four particular documents from that file that we'd like actually produced and certified that these are true and accurate correct documents. Have you done that?
12 A. Yes, I have. I just need to possibly clarify what you mean by produced.
13 Q. When I say, "produced," I mean you're bringing with you or submitting to the hearings officer four
documents that are fair and accurate copies of the
original file regarding Kamehameha Schools, Keaau.

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

Q. Oh, okay.

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

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

MR. HONG: All right.

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

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

The third document is the State land use
designation map, a portion concerning the Kamehameha Schools development in Keaau.

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

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

A. Two of the documents, the December 6, '99 letter from LUC to Virginia Goldstein is in my possession. The January 7, 2000 PBR letter to Esther Ueda is also in my possession. And those two items are actually a part of the record maintained by the Planning Department.

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

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

A. Yes, they are, as digital information.

Q. Mr. Jeff Darrow had distributed two maps earlier to us. Are these fair and accurate copies of the maps
that you keep within the Hawaii County Planning Department?

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

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

A. That's correct.

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

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

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

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

MR. HONG: That's the one that's pink and green, a light green with a dark black.
THE HEARINGS OFFICER: Actually, I have listed A23, which is the HHMI website. So the next in order would be A24.

MR. HONG: A24, thank you.

(Exhibit A24 was marked for identification.)

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

MR. SIU: Twenty-five?

MS. SELF: Twenty-five.

MR. HONG: That will be 25.

(Exhibit A25 was marked for identification.)

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

MR. HONG: Yes.

THE HEARINGS OFFICER: Mr. Siu, any objection?

MR. SIU: I have no objections.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: No objections.

THE HEARINGS OFFICER: Mr. Gomes?

MR. GOMES: No objections.

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

(Exhibit A24 and A25 were received into evidence.)
And the other documents identified by Mr. Arai, if he can provide a copy of those documents today before the end of the hearing, we can admit those into evidence as well assuming no party objects.

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

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

MR. SIU: I do not.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: No.

THE HEARINGS OFFICER: Mr. Gomes?

MR. GOMES: No questions.

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

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

BOBBY JEAN LEITHEAD-TODD

called as a witness by the Applicant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HONG:

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

THE HEARINGS OFFICER: Ms. Lee Loy, if you are
trying to turn pages, that's fine, but I'd ask you not to talk to the witness.

BY MR. HONG:

Q. We're looking at page 1227 and also page 881. So, Ma'am, would you state your name for the record and spell your name, please?

Q. I'd like to begin this morning by talking about your educational and professional background. Could you highlight your educational background for us, please?
A. I have a BA in English literature with a substantial amount of course work in Hawaiian studies because I was originally going to head for a Hawaiian studies major at one point. Then I have a Juris Doctor from the William S. Richardson School of Law. In terms of -- just the education or you wanted -- I'm sorry.

Q. You can do both, please.
A. Okay. And then, professionally, I have worked as a staff person at the State legislature, Lieutenant Governor's office. And then after -- during and after law school as an associate attorney at Case Kay & Lynch and then Case & Lynch. Oh, actually, Case & Lynch. I was hired by Case Kay & Lynch and then by the time I
started working, they had morphed into Case & Lynch. I then worked for the County as a deputy corporation counsel as the legislative auditor under the County Council and then was elected to the County Council four times where I was the chairman of the Council's planning committee for six and a half years and then returned to the Office of Corporation Counsel where I was the deputy corporation counsel assigned to the Planning Department for approximately four years before I left to become the Director of the Department of Environmental Management.

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

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

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

A. As the head of the department, I oversee the work of the staff which is housed in two offices, the bulk of the staff being here in Hilo and the rest in Kona. And
we do a variety of things from drafting amendments to the subdivision code and the zoning code, overseeing implementation of subdivision and zoning code as well as providing support to the Planning Commissions and Board of Appeals on appeals from both the planning director as well as the director of Public Works.

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

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

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

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

A. Yes.
Q. Are you familiar with those?
A. I haven't reviewed it recently, but I'm familiar with it.
Q. And then in terms of pages 1227 through 1231, these were the revised conditions that were generated by the Planning Department. Do you recall seeing those?
A. Yes.
Q. Since becoming Planning Director, other than a review of the record, have you done any other investigation or examination of the Connections special permit application?
A. My review has been primarily limited to any of the materials that were submitted to our department through the application. I have independently driven through the area on Edita Street to just view where the parcel was as well as looking at Puainako extension to see what possibilities were there. But in terms of anything else outside of this, other than the meetings that we've had, no, just completely in my capacity as the director in the application process.
Q. Up to the point where you left as Planning Director for the County of Hawaii, did the Planning Department's position change in terms of the revised recommendations of the Planning Department appearing in the record at pages 881 through 896?
A. If what you're asking me if our -- if I kept a favorable recommendation, no, my position did not change and the position of the Department did not change. I'm not -- I have not kept apprised of anything that's changed since I left in May of 2013.

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

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

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

This island has over a million acres of agricultural land and a million acres of conservation and very little land that's actually classified urban. So it's not unusual to have an application for agricultural
land, but you have to go through the process and you would look at its impact on traffic, you would look at its impact on surrounding uses. You would look at whether it was taking and let's say important agricultural land out of agricultural use. If it were A or B land, we would scrutinize it a little bit more.

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

Q. All right. You're familiar with the process of -- for a State land use boundary amendment?
A. Yes, I am.

Q. In terms of -- let me ask this question more directly. In terms of the Connections permit, special use permit, did you at any time feel, in your professional opinion and based on your experience, that that should have been perceived, that process should have gone through a State land use boundary amendment?
A. No, I did not.

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

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

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

A. Yes, I am.

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

A. Yes, I am.

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

A. Yes.

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

A. Yes.

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

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

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

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

And so when I looked at the makai land, it looked like it's out of that flood area where we have a lot of drainage come through so it looked like there was an opportunity to provide an additional connection from Kaumana Drive to the Puainako extension as opposed to having everybody go all the way up to Wilder to hook up.
So that was something that I was interested in seeing that if that subdivision were to go forward.

Q. And you communicated that to Mr. Brilhante?
A. Yes, I did. The other reason I was wanted in it is I thought that prospectively in the future it had the potential of providing alternative access too because Connections was already in the office at the time the subdivision came in. And I know that the way a lot of these applications work is you don't build out immediately. You build out over a period of time, so I thought there was a potential and that in the long run, access through Puainako might be better for everyone.

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

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

A. Part of it is that -- trying to address some of the concerns of the community. Part of it was I was aware that there were some proposals to develop and thought that a better access would be off of Puainako. And that just has to do with the fact that Puainako has been designed with broad shoulders, and so I felt that in the long run that that was a better connection.
Besides, it's always nice to have more than one. You know, if something happens on Kaumana, you could redirect traffic that way. If something happens on Puainako, you still have access on Kaumana.

Q. And in terms of that paragraph, did the applicant have any objection to the inclusion of that particular condition?

A. I do not recall any objection.

MR. HONG: Thank you, Ms. Leithead-Todd. No further questions.

THE HEARINGS OFFICER: Mr. Siu, any questions?

MR. SIU: I have no questions.

THE HEARINGS OFFICER: Ms. Self.

MS. SELF: No questions.

THE HEARINGS OFFICER: Mr. Gomes.

MR. GOMES: I have some questions.

THE HEARINGS OFFICER: Go ahead.

CROSS-EXAMINATION

BY MR. GOMES:

Q. Good morning.

A. Good morning.

Q. Where do you currently reside?

A. I currently reside in an area that's Kaumana Country Club Estates, more commonly referred to as Kaumana Gentry, off of Wilder and off of the Puainako
Q. How long have you lived there?
A. I lived there since 1989. I was raised on Kaumana Drive, however, just above Aipuni Street.

Q. Are you familiar with the project site?
A. Yes, I am.

Q. And are you aware that the first community meeting held by the applicant that the Boyd family signed in with an Ewa Beach address?
A. I do not recall that.

Q. And are you aware that there's no evidence of the 2009 community meeting where the community could have been invited to?
A. I am not familiar with that.

Q. Are you aware that the applicant and his former attorney insists that several community members requested a fence be put up so that is why they put the fence up around the property?
A. I am not aware that that's the reason for the fence being put up, per se.

Q. And are you aware that in the minutes of the community meetings there's no evidence of anyone asking the applicant to put up a fence?
A. I am not familiar with the community minutes of the community meeting. I don't recall that.
Q. Are you aware that on page 970 of the evidence at the community meeting held on September 2, 2011, someone asked how high the fence was going to be and the school replied, six feet?
A. This, I'm familiar with.
Q. Is there a benefit to change the fence from six-foot fence to a four-foot fence?
A. I really couldn't speak to that. Six feet is usually the maximum height you can do a fence without additional permitting.
Q. So a six-foot fence could have been done without a permit.
A. Typically, yes, unless there's some accompanying grubbing or grading or other issues that come up in terms of putting the fence in.
Q. Are you familiar with the violations the applicant committed while illegally fencing the property?
A. I saw some newspaper articles and there was some material presented to the Department about that.
Q. Do you recall the applicant's former attorney claiming to file complaints against On The Line Fencing with the DCCA?
A. I cannot recall that. I think there was something in the newspaper about that, but that's -- I 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
bulldozing, grubbing, clearing and fencing on all phases
of the project?

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

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

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

Q. Are you familiar with the EA process?

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

Q. In your opinion, should the applicant have tried
to make contact with the community as it requires in the
environmental or in Title 11, Chapter 200 prior to doing
the environmental assessment?
A. I wouldn't say that you're required to contact prior to doing the assessment, but when you're doing an assessment, you typically are looking at what's on the property as well as what's surrounding the property. And depending on what you're proposing, you may send notice out to the neighbors and invite them to comment. But you're not necessarily required to go door to door or -- because you're looking at what impact it has, but you typically would publish and invite people to comment on it.

Q. Okay.

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

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

I, being a neighbor that's bordering the school, and my entire neighborhood which has to drive in and out
pass the school, could we be reasonably affected by the project?
A. It could be seen that way, but they typically have to produce a list to the accepting agency of everyone that they have contacted and what efforts and what meetings they have done. And then whoever accepts that, determines whether the notice has been sufficient and the engagement has been sufficient. And they also look at the comments that come in.
Q. Okay. I'm concerned about the word, "seek." It says, "seek." And does that mean they're supposed to come look for us or ask us?
A. That can be done through multiple ways. It can be done through letters. They don't come knocking on the door of the Planning Department. They'll send a letter out saying we're proposing to do something. They may put a notice in the paper for the general public. If they -- certain projects they might want to contact all the neighbors that are immediately adjacent.
I don't independently recall right now exactly who they contacted, but as part of that process, you would probably have community meetings and that might be the seeking input.
Q. Okay. But as far as you know, you've never seen any evidence that the environmental assessment was --
that anyone sought out people from the community to share input on the environmental assessment.

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

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

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

Q. That was after the environmental assessment.

JoNelle Fukushima on page 2145 claims to be a Kaumana resident on her petition for standing in the contested case hearing. Do you recall JoNelle Fukushima asking to be -- to have standing in the contested case hearing?

A. Not offhand.

Q. Her address is 1785 Waianuenue Avenue, which is in P'iihonua. That's not Kaumana, correct?

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

There could be a number of reasons, and without that record and looking at what their rationale is, the
address alone of your residency would not necessarily be
an indication of why you asked to have standing in the
contested case.
Q. So it's -- if she was not misleading to say that
she's a Kaumana resident when she lives in Pi'ihonua.
THE HEARINGS OFFICER: Mr. Gomes, I have given
you great latitude in your questioning, but I cannot see
any basis as to why this is relevant or material to this
proceeding. That -- if there was a decision on a
petition, it was made a long time ago. The time for
appeal has run.
So I am going to ask you to move on to another
line of questioning.
BY MR. GOMES:
Q. Did you attend any of the meetings held by the
applicant with the community?
A. No, I did not.
Q. There was one meeting -- you may not recall, but
you were there, and you were asked to speak. So do you
recall your comments?
A. This was a meeting -- where was this meeting?
Q. This was in the Kaumana Elementary School
cafeteria.
A. Oh, yes, I do remember.
Q. And do you recall making a statement that the
application would probably be approved?
A. While I don't recall, it would not be
inconsistent that I made that statement based on my
review of the files and my knowledge of other special
permits.
Q. You were the Planning Director when the Planning
Department's recommendation was offered to the Planning
Commission, correct?
A. Yes.
Q. Is it also correct to say that the Department's
recommendation is your recommendation as the Planning
Director?
A. Pursuant to the code, it's officially my
recommendation, but it's not made in a vacuum.
Typically, what happens in the Department is the staff
reviews an application, they draft a recommendation, and
I can agree or disagree. And if I disagree, then I tell
them to go back and redraft it.
In this case, we had discussion back and forth
over the application. And, ultimately, both staff and I
agreed that the recommendation should be favorable.
Q. In their recommendation, you noted that from a
planning perspective, this request has proven difficult
in arriving at a position we are comfortable with.
MR. HONG: Excuse me, I object. If there could
be a page reference, please?

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

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

THE HEARINGS OFFICER: Is this something in the recommendation?

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

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

THE WITNESS: It's page 775.

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

BY MR. GOMES:

Q. Why -- why was it difficult?

A. The biggest issue that we had, really, was when we looked at the student body. And since a substantial portion of the student body came from the Puna area, we were questioning whether locating the school up in Kaumana was an appropriate location for a student body. However, ultimately, when we reviewed it, we looked at the fact that the student body changes.
When Connections originally started, and this I'm familiar with because my good friend lived in Glenwood and taught at Mountain View Elementary School where Connections started.

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

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

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

Q. You noted the fact remains that as a school is developed and the student body evolves, the school could mature into an institution that more directly serves the
residents of the area. Could you describe how that statement is a fact?

A. That statement comes from my experience with the evolution of Connections, that as it has moved from Mountain View into downtown Hilo, you have seen a change in the students that it serves from 100 percent Puna residents to where it's more of a 50-50 mix now. So I think that that is not only probably an accurate forecast of what will happen, but it accurately reflects what has actually occurred as the school has moved locations.

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

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

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

BY MR. GOMES:

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

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

Q. What is your impression of the current 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 relevant?

4 MR. GOMES: Pardon?

5 THE HEARINGS OFFICER: How is this relevant?

6 Your question, how is it relevant?

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

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

9 MR. GOMES: Okay.

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

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

12 THE HEARINGS OFFICER: Sustained.

13 BY MR. GOMES:

14 Q. You also concluded that the request would not adversely affect surrounding properties, limit the impacts and the ways in traffic. Did you ever consider the residents' quality of life? Did you consider that zero percent of the community submitted letters of support for the school?
A. I have not seen support from the community.

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

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

A. No, we did not.

Q. Why not?

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

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

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

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

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

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

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

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

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

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

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

MR. GOMES: Part of their reason the mauka property, the mauka parcel will not be developed is because it's on top of the cave. And I believe the cave system runs completely underneath the makai parcel as in...
the indentation I showed you during the walk-through and
the proof of the lava tube at the bottom of the drywell
which does not overflow and runs underneath the property.

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

BY MR. GOMES:

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

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

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

A. It will change the current use of the land which
is the land's not being utilized, but it's not -- it's
consistent, in my estimation, with the grounds for
granting a special permit.
Q. One of the goals of the public facility's element of the general plan state, "Encourage the provision of public facilities that effectively service the community and visitor needs and seeks ways of improving public services through better and more functional facilities in keeping with the environmental and esthetic concerns of the community."

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

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

When you're looking at the general plan elements, you have to understand that a lot of it is not where you take a parcel out of context of the entire community. And that when you're talking about community, you're sometimes not just talking about the people who live immediately adjacent to a development, but a larger
community. So you have to weigh all of that, the impact
to the immediately adjacent neighbors as well as the
benefit to the larger community, and I believe that in
looking at this, we did balance that.

Q. And what is your definition of quality of life?
A. I don't know that I could give that to you
specifically because my definition of quality of life
encompasses a lot more than just land use. It's kind of
the total neighborhood and everything else that is
important.

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

And my connection -- if you're talking about
quality of life, my great-grandfather raised grapes in
Kaumana. I would probably prefer the quality of life
that he had because he owned a whole big chunk and there
weren't hardly anybody living up there, but time
progresses.
I live in a subdivision that didn't exist before and I love the subdivision that I'm in because it's a dead-end subdivision. Someday my subdivision's not going to be a dead-end subdivision. So my definition of quality of life will probably go down, but the other side of that is that there will be other people who will have an opportunity to have homes in an area of the island that's close to jobs and other amenities.

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

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

BY MR. GOMES:

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

A. It would be better to have it. I think there have been a lot of things that could have been done better, but I think that the school can be successful as time goes by. I think they can build a relationship as they develop and I think ultimately the success of the
school is going to be based on whether they can provide a
decent education for its students and whether their
students are successful once they leave the school.
Because if you have students who leave the school and
graduate and are successful, that will be the true
indication of whether the school succeeds.
Q. Are you aware then, I was invited to visit the
school, and after visiting the school, one of the
teachers had asked me for help because we do the same
line of work. And I offered to help them in any way I
could, but then there was no contact after that except
for pictures of my home. They're showing pictures of my
home trying to pick a fight with me.
MR. HONG: Objection, lacks relevance, lacks
foundation.
THE HEARINGS OFFICER: I'm going to sustain the
objection. It's not relevant and its immaterial to this
hearing.
BY MR. GOMES:
Q. Can you explain the difference between
ministerial and discretionary application?
MR. HONG: I'm going to object. Again, lacks
relevance and calls for a legal conclusion.
THE HEARINGS OFFICER: Mr. Gomes, how is this
relevant?
MR. GOMES: I just want to know, for example, building permit, grading permit, subdivision applications, ministerial.

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

MR. GOMES: I have no further questions.

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

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

(Exhibit A26 marked for identification.)

REDIRECT EXAMINATION

BY MR. HONG:

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

A. Yes.

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

A. Yes.

Q. On the second page, Subsection D(7), what are the
permitted uses there provided that they follow up with a
special use permit would be schools; is that right?

A. Yes.

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

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

MR. SIU: I do not.

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

MS. SELF: No.

THE HEARINGS OFFICER: Mr. Gomes?

MR. GOMES: No objection.

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

(Exhibit A26 was received into evidence.)

MR. HONG: Thank you. Nothing further.

MR. SIU: I have no questions.

THE HEARINGS OFFICER: Any further questions?

Mr. Gomes, any further questions?

MR. GOMES: No further questions.

THE HEARINGS OFFICER: Ms. Self, any questions?

I'm sorry.

MS. SELF: No, no thank you.
THE HEARINGS OFFICER: Thank you.

Ms. Leithead-Todd, you're excused.

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

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

THE HEARINGS OFFICER: Mr. Siu, any objection?

MR. SIU: I have none.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: None.

THE HEARINGS OFFICER: Mr. Gomes?

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

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

MR. GOMES: No objection.

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

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

THE HEARINGS OFFICER: We'll take a short recess
for the court reporter at this time.

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

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

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

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

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

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

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

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

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

DIRECT EXAMINATION
BY MR. HONG:

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

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

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

A. I'm a land use planning consultant.

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

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

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

A. That's correct.

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

A. Essentially for eight years between 1976 through 1984.

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

A. Correct.

Q. How many times, generally?

A. As a consultant or as -- representing the
Planning Department?

Q. As a consultant.

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

Q. Okay.

A. -- applications.

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

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

BY MR. HONG:

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

A. Yes, I do.

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

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

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

A. Correct.

Q. And in terms of page 352, you talk about traffic
under paragraph one. Do you see that?
A. Yes.
Q. You state that the validity of the study is being questioned, the TIAR, by Mr. Rowell; is that correct?
A. Correct.
Q. And you know Mr. Rowell; is that true?
A. Not very well, but I was associated with one of the work that he did on a project that I was involved in.
Q. That's the Regency project on Kaumana, correct?
A. Correct.
Q. Did you have any -- did you express any objections or concerns to him about the work he did for your project, the Regency project?
A. No.
Q. In terms of -- your statement goes on to talk about windy and narrow Kaumana Drive, not necessarily Edita Street, you talk about 400 students. Do you see that information you provide there?
A. Yes.
Q. Did you base your concerns on any study, independent study by a traffic engineer?
A. No.
Q. In terms of the next paragraph, paragraph 2, that talks about water. The project requires 26,100 gallons per day. Do you see that?
1 A. Yes.

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

3 A. Correct.

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

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

6 Q. Yes.

7 A. Yes.

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

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

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

11 A. No, I'm not.

12 Q. You're not aware that the Volcano Charter School
uses catchment water?
A. No, I'm not.
Q. You're not aware that the school called SPACE down in Kalapana which is a satellite school of HAAS, you're not aware that they use catchment water.
A. I don't know whether all of the schools that you had mentioned are K to 12 with a dormitory facility.
Q. So when you were putting that information about catchment not acceptable by DOE, you were restricting it to schools that are K to 12 and have dormitories. Is that what you're telling us today?
A. Not necessarily. I think that was just a general comment that I made that if this were like a public facility, that generally, public facility or publicly-sponsored type of institution would have to have a water system that would be consistent with whatever the County requires.
Q. You're aware HAAS is a public facility, isn't it?
A. HAAS being?
Q. Hawaii Academy of Arts and Sciences in Puna. It's a public charter school.
A. Well, you mentioned it. I didn't know.
Q. You didn't know that HAAS is a public charter school?
A. That was not my application so I don't really pay
detailed attention on matters like that.

Q. You've using your experience and making a
statement to the Windward Planning Commission regarding
DOE schools and using catchment water or not. Did you
think it was important to actually do any research with
respect to what other charter schools are doing?
A. Not necessarily. I was just making a general
comment about this is a public facility. It's going to
be a K to 12 with a dormitory facility. And as a result,
that it should be complying to with whatever any public
facility requirement should be. I am aware that there
are a number of other special permits that were issued
that do not have a municipal or not being provided by a
municipal water system. It's not necessarily limited to
only DOE or public-related type of facilities, but there
are others.

Q. All right. On the next page 1353, paragraph 3,
wastewater. You note the septic system possible --
identified leaching and that it could occur in possible
cave -- possible caves in the area and create some
financial harm. Do you see that?
A. Some environmental harm, not --
Q. Yeah, environmental harm.
A. -- financial.
Q. I'm sorry.
1 A. Yes, I see that.
2 Q. And were there any studies that you conducted or hired any consultants to do any studies to verify that allegation?
3 A. No, I did not.
4 Q. All right. You also talk about the quality of life, paragraph 5 on page 1353. Do you see that?
5 A. Yes, I do.
6 Q. You identified potential loss of forest and its potential native plant and animal species. You also identified noise, traffic, real property impasse, loss of potential sense of security. Do you see that?
7 A. Yes, I do.
8 Q. Did you -- was that allegation based on any independent studies or consultants that you --
9 A. No.
10 Q. Let me go on to the next area. We're now looking at pages 1960 through 1999. This is a Power Point presentation, Connections Charter School issues that you made before the Windward Planning Commission. Pages 1960 and 1999.
11 A. Okay.
12 Q. Before you gave this Power Point presentation to the Windward Planning Commission, you were sworn under oath to tell the truth; isn't that right?
A. I believe so, yes.
Q. And you took that oath seriously?
A. Yes.
Q. All right. On page 1966, you identified land use entitlement process should -- that it should be a State land use boundary amendment, not a special permit. Do you see that?
A. Yes.
Q. Did you assist Terence Yoshioka in writing his written testimony and submissions to the Windward Planning Commission?
A. No.
Q. Did you provide him with any information?
A. We talked about it, so I don't know what information he may have discerned as a result of our conversation. He had a copy of the environmental assessment and the application. And I don't recall when I -- whether I had made a copy personally for him or whether he had secured it through another source, but the direct answer to your question is no, I did not assist him or prepare his testimony.
Q. All right. If you look at the next page, page 1967. Do you see that?
A. Yes.
Q. And it says in the first -- well, it says school
situated in State land use urban and not agricultural
district. Do you see that?
A. Yes.
Q. And then it also says, "Recently constructed
schools, Kealakehe, Keaau, Kamehameha School all in the
SLU, State Land Use urban district." Do you see that?
A. Yes.
Q. Isn't it true that Kamehameha Schools, Keaau, is
actually in a State land use agricultural district?
A. I'm not sure.
Q. All right.
A. But my understanding is that it is in the urban
district. They had initially applied for a special
permit and they were mandated to come in for a boundary
amendment. Whether in fact they did, I'm not really
sure.
Q. Let me show you what's been entered into evidence
as Exhibits A24, 25, 27 and 28. If you could look
through all four exhibits and when you've looked through
them, let me know, and I have a few questions I'd like to
ask you based on them.
A. Okay.
Q. In terms of the statements you make on page 1967
of the Planning Commission record, those statements
regarding Kamehameha Schools being in a State use --
1 State land use urban district, that's not true, isn't that right?
2 A. Well, without getting more information relative -- in a subsequent correspondence to the January 7, 2000, I can't necessarily say that it's not true, but just based on whatever you presented then, if this is correct, whatever exhibits you provided me, then it is what I represented then including Kamehameha Schools, it's not entirely accurate. A portion of it is within the urban district and portions of it are not.
3 Q. And a large portion of it, in terms of Kamehameha Schools in Keaau, you would agree is in the State land use ag zone, isn't that right?
4 A. I can't really say that because looking at the map, I don't know where the school facility is relative to one of your exhibits which shows the distinction between the ag and the urban area.
5 Q. Well, let's start with A24 in evidence. A24, you recognize, don't you? That's the light green --
6 A. Are you referring to this?
7 Q. Yes, the designations in the exhibits that you hold in your hand are in the back.
8 A. Okay.
9 Q. So if you look at A24, you're familiar with this 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
would have to stand corrected. You are correct.


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

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

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

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

Q. All right. I'd like you to turn to your testimony at page 1972. And if you could also look at --
jump ahead to page 1320. This is the testimony you submitted by Mr. Yoshioka. Basically, on page 1320, excuse me, on page 1320, he makes the statement and I'm paraphrasing this. Schools are not permitted in an ag-zoned area. Did you provide Mr. Yoshioka with that information?

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

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

A. Yes.

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

A. Correct.

Q. What is your current zoning for your house?

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

However, we all know that a lot of times the
actual zoning and State land use designation do not necessarily correspond to the actual use of the properties.

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

Q. And, again, it's fair to say that you did not hire a independent traffic engineer or any traffic engineer to verify the statistics and concerns that you raise here?
A. No.

Q. On page 2114 -- on page 2114, this is another Power Point presentation you made to the Windward Planning Commission. Do you see that?
A. Yes, I do.

Q. And this is a Power Point presentation that you put together personally?
A. Yes, with the help of others within the community.

Q. And, again, you were sworn under oath before you testified and presented this Power Point presentation?
A. Correct. To provide information to the best of my knowledge.

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 relationship is a festering sore.
3 Q. Are you denying -- let me ask this question. Are you aware of anyone -- are you aware of anyone who vandalized the school by putting bumper stickers, No Connections bumper stickers up at the school at the Kress Building?
4 A. No, I'm not.
5 Q. Are you aware of a website, No Connections Ever.com?
6 A. I don't know what the website is, but I've been receiving a lot of email regarding the Connections school. And, you know, whether the server is actually No Connections.com, I'm not sure. I can look at it.
7 Q. Do you know who sponsored or paid for that website address?
8 A. I don't know who sponsored or paid for it.
9 Q. In terms of the EA process, environmental assessment process, you're aware of that process based on your experience and profession, correct?
10 A. Generally, yes.
11 Q. And you've gone through that process a number of times?
12 A. Yes.
Q. So you're familiar generally with the procedures, the deadlines, the response times associated with generally in the environmental assessment, right?
A. Generally, correct.
Q. Isn't it true that you -- at no time did you submit any responses or concerns with respect to the proposed EA in this particular application?
A. Yeah, I did not.
Q. Are you willing to sit on the campus design committee of the Connections Charter School to help minimize any future impacts should the school be located at the Kaumana site?
A. Well, probably -- I would have to qualify my response by noting that it would be yes, subject to three conditions, I guess.
Like one is that provided that I have the time because I'm still employed, self-employed, and I do considerable community work and I'm trying to transition into a semi-retirement phase so I got to just -- try to balance it out. So time is the number thing.
The other thing too is like how the existing neighborhood or my neighbors are going to feel. You know, if they basically feel that they're totally against the project and then I'm there assisting it, I'm going to feel like I'm a rat fink. So I think I'm going to feel a
little bit uncomfortable about serving -- you know,
serving on such a committee.

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

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

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

Q. Participating in any developments in the Kaumana
area.

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

MR. HONG: Yes.

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

BY MR. HONG:

Q. I'm referring to your role as a planning
consultant.
A. I don't have any active clients up in the Kaumana area.
Q. In terms of the Pacific Plantation subdivision, what was your role in that subdivision development or what's your role in that development?
A. In the subdivision within which I live in?
Q. Yeah, were you the planning consultant on that particular subdivision?
A. No, I believe that the subdivision was approved while I was working for the County. I don't know whether I was the deputy or planning director at that time so --
Q. And did you participate financially in that particular subdivision in any way?
A. Oh, absolutely not. It would have been a conflict.
MR. HONG: Thank you. No further questions.
THE HEARINGS OFFICER: Mr. Siu, any questions?
MR. SIU: I have no questions.
THE HEARINGS OFFICER: Ms. Self?
MS. SELF: No questions.
THE HEARINGS OFFICER: Mr. Gomes?
MR. GOMES: I have a few questions.
CROSS-EXAMINATION
BY MR. GOMES:
Q. Mr. Fuke, can you briefly describe your educational background and work experience?

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

BY MR. GOMES:

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

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

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

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

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

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

BY MR. GOMES:

Q. The applicant's attorney sent an email to all
parties stating that you were directly bankrolling this litigation. Can you please confirm or deny this allegation?

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

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

Q. Are you getting paid to be here today?

A. No, I'm not.

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

A. Yes.

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

A. Well, initially, there was a community meeting. You know, there was a -- there was a meeting called by the applicant to discuss the project, and I just kind of
sat in and listened. And I felt that -- at that point in
time, like because my occupation really deal with land
use matters that as a general practice, you know, I don't
want to testify for or against any project. You know,
but -- and so I felt that as the questions came up, you
know, by members of the community whether it was from you
or others like our neighbors that were asking questions
about the process, I've felt like okay, I could, you
know, get involved by providing some of what I know in
terms of the process and some of the concerns and provide
guidance in that respect. And I felt that I wanted to
limit myself only to that particular role.

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

And I felt at that time I was being booted, I was
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
where like I felt like I needed to get more involved.

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

MR. SIU: Objection, relevance.

THE HEARINGS OFFICER: I'll sustain the objection.

BY MR. GOMES:

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

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

And so I felt that well, okay, I'll try to help you as much as I can. And that's the reason why I had at the first -- you know, at the prehearing conference, I attended the meeting and I basically represented, you know, to the hearing officer that I would be there just to assist you to provide guidance and whatever information I can. Because I have gone through like a number of contested case hearing that I have some, you
know, some measure of understanding, not like a total understanding of the process unlike an attorney who have -- you know, who actually take you through the whole process, but having been through that, I had some general understanding so I felt that I could be of some value to you.

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

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

MR. HONG: Objection.

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

MR. GOMES: Okay.

THE HEARINGS OFFICER: Please stick to the application before us.
BY MR. GOMES:

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

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

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

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

And so I've been involved in a number of projects that have not been approved by either the Planning Commission or the County Council. And there've been like two projects that I'm kind of aware of that I was involved in that because of the opposition by the community, that the applicant on its own and, you know, had elected to withdraw.
And this is one, ironically, it was for a school out in the North Kona area near Makalei subdivision. It's in the area of Pu'ukala, and it was going to be like -- again, ironically, the same type of school, you know, K to 12 school with a dormitory, access coming in from a single road. And the community was asking for alternative access, and that was difficult to achieve and at the end of the day, the applicant just felt like it was not good to push it anymore.

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

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

Q. In those situations like the one before us, what is your opinion as to the developer's rights or
expectation of approval?

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

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

And I think that when you have discretionary kind of decisions, especially like special permits, rezonings or variances -- not variances, but use permits, there's like a public hearing process. And anytime you go -- or like SMA special management area permits, anytime you go before the Planning Commission for those kinds of permits then, there's a public hearing requirement.
And when you have a public hearing, the basis -- to me, the basis for a public hearing is to enable the public to express themselves and for the decisionmakers to at least have the depth, the community effect of that issue and then the Commission or the Council can make its own decision based upon the community input. Because if the community input is not important, then you really don't need to have a public hearing process and that's why there's a distinction between a discretionary type of permit and a ministerial type of permit.

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

MR. HONG: Objection, lacks relevance.

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

BY MR. GOMES:

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

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

THE HEARINGS OFFICER: I'm going to overrule the objection. Mr. Hong, you opened the door so he can -- it's a legitimate question.
THE WITNESS: In my opinion, based on my experience, I think that there are certain tests that the application -- that there are certain tests that the project can meet. Special -- certain tests of the special permit criteria that can be fulfilled and others cannot. And I think that from my point of view, what is really important was, you know, what was the -- what's the community's perception as far as like perceived impacts and not so much like statistical impact.

I mean, for example, you can look at the traffic impact and you'll have like a TIAR that says that you're going to have level of service A or level of service B with or without the project, but then it doesn't necessarily address like how the community is going to -- you know, the community that's going to be directly impacted is going to feel the effects of having now to have a -- you know, either a 58 percent more increase on traffic along Kaumana Drive.

MR. HONG: Excuse me, I'm going to object at this point, and I apologize for interrupting, but this response is not responsive to the question that was asked.

THE HEARINGS OFFICER: Mr. Gomes, you're going to have to ask --

MR. GOMES: In his professional opinion.
THE HEARINGS OFFICER: Okay, I'm not going to allow a long narrative so you're going to have to ask questions and Mr. Fuke's going to have to answer them, okay? Can you be more specific with your questions.

BY MR. GOMES:

Q. Can you just shorten your answer. In your professional opinion, why do you think the proposed development meets the test or not.

A. Okay. It was already provided, I guess in this thick binder, you know the -- and I had the initial Power Point presentation that was given. I think that a lot of it, a lot of the summary reasons I provided in that.

Essentially, you have -- the community is not really -- the community perceives that it's going to be adverse impact on the project.

From an infrastructure standpoint, there is the question about whether there's an adequate amount of water that's going to service the project. In spite of the applicant's claim that they can use -- that they're proposing to use like a catchment system, there is a question as far as whether, for a school of this size, you get a K to 12 with a dormitory, but is the entire catchment system going to be adequate.

The notion that they have only 4200 gallons of water now and that they're going to think about how
they're going to address the issue down the road, it's like kicking that issue, you know, so-called kicking the can down the road.

And I think it's important for the decisionmakers to have that information upfront rather than having to say like well, don't worry, but do they care about it. But I think, in summary, like it's already contained in the initial Power Point presentation that I've given.

Q. And have you experienced any form of the school reaching out and doing anything for the community such as possibly inviting you or the community to an open house at the school that shows what they do?

MR. SIU: Objection, your Honor.

BY MR. GOMES:

Q. Conduct cleanup in our neighborhood to show a sign of good faith that -- are you aware of anything that the school has done positive in the community?

THE HEARINGS OFFICER: Mr. Gomes, how is this relevant? How is this relevant to this application?

MR. GOMES: Mrs. Leithead-Todd had directed the school to reach out to the community and try to bond with the community. And the only thing they did was they had one committee meeting on a work day and the principal wasn't even there. And so we went to the school and there was no parking.
THE HEARINGS OFFICER: Mr. Gomes, this is not relevant. I'm going to sustain the objection.

MR. GOMES: No further questions.

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

MR. HONG: Brief followup.

REDIRECT EXAMINATION

BY MR. HONG:

Q. You talked about -- you just talked about kicking the can down the road. You -- is it your testimony that you've never been involved in projects that were developed over phases?

A. No, I have.

Q. And in terms of when you developed and presented plans or your projects to the Planning Commission or the Planning Department, you identified certain phases and what it would need to meet -- the infrastructure needs to meet that particular phase, correct?

A. Yes, except that in this situation when I mentioned like kicking the can down the road as it relates to water, because I think that in other applications even if you develop the project in phases, there's an answer to how you're going to be addressing the overall water needs for the project. And in my estimation, that answer was not provided in the
Q. The answer wasn't provided. When you say the answer wasn't provided, you mean for the total build-out, correct?
A. That's correct, yeah.
Q. And is it your testimony, based on your experience that you've had, you could only get Planning Department approval for projects where you can provide that specific amount of water for the total project or other infrastructure needs?
A. No, what I'm saying is that at least the answer to how you're going to provide water for the entire project is provided.
Q. And my question was, are you suggesting that in terms of your experience that you haven't gotten planning or you've had Planning Department or Planning Commission denials for projects where you're only presenting the project in phases and presenting those infrastructure needs on those incremental phases.
A. I don't quite understand your question.
Q. Okay, the question is --
THE HEARINGS OFFICER: Mr. Hong, I don't understand the question so can you please rephrase it?
BY MR. HONG:
Q. My question is, have you ever received a Planning
Department denial in terms of a recommendation or a
disapproval or denial from the Planning Commission with
respect to any project that you've worked on that's
developed over phases where you've only provided
information that would meet certain phases?

A. I don't recall.

Q. Let me refer you to Exhibit 26 that you should
have in front of you. It's a two-page document, Section
25-5-72 of the zoning code.

MR. HONG: May I approach the witness?

THE HEARINGS OFFICER: Go ahead.

BY MR. HONG:

Q. Oh, you got it. You found it. Do you see that
in front of you?

A. Are you referring to the portions of the zoning
code relating to the agricultural districts?

Q. Yes.

A. Yes, I have it before me.

Q. You're familiar with that section?

A. Yes.

Q. Section 25-5-72, Permitted Uses in an
Agricultural Zone. You're familiar with that?

A. Yes, I am.

Q. And is it fair to say that under Subsection
(d)(7), schools are a permitted use in an agricultural
zone provided they meet the permit requirements, right?

A. No, it's not as cavalier as that, as how you state it. It's permitted -- in an ag district if you have a special use permit. If it's a State land use urban district, but you're County zoned, if County zoning it's ag, then you need a use permit. Both the special permit and the use permit are discretionary permits and there are criteria that must be addressed before they can be approved by the Commission.

Q. And where does it say community support is one of the criteria?

A. No, I didn't say that community support is one of the criteria. I'm just saying that when you have a discretionary permitting process such as a use permit or a special permit, the purpose for a public hearing is to allow the public to express their concerns or their support or whatever and for the Planning Commission, if it would be up to the Commission or the decisionmaker to take that into account in terms of arriving at a decision.

If it were not important, then you do not have a need to have a public hearing.

Q. You had testified earlier regarding a meeting with the community where they elected not to expend any more resources and hire an attorney. Do you recall that?
A. Yes, I made that comment, yes.

Q. And did you contact Mr. Alan Okamoto at any time to write any of the questions or any of the documents that was presented to the Planning Commission or any of the questions that were asked of any of the witnesses today?

A. No.

Q. Were you aware that Mr. Okamoto was doing that?

A. No.

MR. HONG: Nothing further.

THE HEARINGS OFFICER: Mr. Siu?

MR. SIU: I have no questions.

THE HEARINGS OFFICER: Ms. Self.

MS. SELF: No.

THE HEARINGS OFFICER: I take it, Mr. Gomes, you're done.

MR. GOMES: I'm done, thank you.

THE HEARINGS OFFICER: Thank you.

MR. HONG: Oh, shoot. We did issue a subpoena duces tecum to Mr. Fuke to bring documents with him.

THE HEARINGS OFFICER: Are you, Mr. Hong, going to go through documents with Mr. Fuke right now?

MR. HONG: No, I wanted him to turn it over, but I just wanted to review them during the recess.

THE HEARINGS OFFICER: Well, then he's not done.
Then we're not done with Mr. Fuke as a witness because he's going to -- if there's a subpoena duces tecum and you have any questions or you want any documents submitted, he's going to be needed, and we're not going to finish this hearing.

MR. HONG: I'm not going to ask him any questions on the documents. I just wanted to look at the documents that he brought.

THE HEARINGS OFFICER: Well, we're not finished with this hearing then.

MR. HONG: All right.

THE HEARINGS OFFICER: That's fine. That's fine if you want to do that. We'll take a lunch recess and you can look at the documents and we'll proceed from there.

MR. HONG: Well, Mr. Fuke, did you bring documents pursuant to the subpoena duces tecum?

THE WITNESS: Well, what I have in here are just like -- are copies of the email only. And your request for providing all of the information, when I went back and checked, you know, it's like almost like -- a little less than two filing cabinets worth. And you were expecting me to make five copies of two filing cabinets worth of all of the things that I did over the last couple of years ranging from subdivisions to rezoning and 
all that kind of stuff.

And some of this information is proprietary. I think that the request is like overly broad. I have prepared a list of all of the applications that I've worked on over the last couple of years if you -- and I made five copies and you can take a look at that. And if you can tell me specifically what kind of information you want from the file and if it's not proprietary, then I'll be more than happy to produce it for you.

On the other hand, please note that almost all of these applications, they are public record. So they are readily accessible at the Planning Department or at the State -- in this case, the Conservation District Use Permit I worked on. It's either at the State Land Board or at the County Planning Department.

THE HEARINGS OFFICER: Mr. Hong, I understand you've subpoenaed all of the projects that Mr. Fuke has worked on; is that correct?

MR. HONG: That's correct.

THE HEARINGS OFFICER: Can you please explain how other projects, not this project, are relevant to the subject matter of this hearing.

MR. HONG: I wanted to see which projects were related to the Kaumana school area where we wanted to put the Connections school area.
THE HEARINGS OFFICER: You mean in the vicinity of this project.

MR. HONG: That's correct.

THE HEARINGS OFFICER: But your subpoena didn't say that. Your subpoena asked for every projects.

MR. HONG: I didn't want to leave it to the discretion of Mr. Fuke to figure out -- to determine what's relevant and what's not. So I wanted to do that, and if it's not relevant, obviously, I'm not going to enter it into the record.

THE HEARINGS OFFICER: And how do other Kaumana projects have any bearing on this project?

MR. HONG: Well, if we're talking about traffic, if we're talking about community impacts, which apparently Mr. Fuke has done extensively and Mr. Gomes, I think that that would also be relevant.

THE HEARINGS OFFICER: Okay. Do any other parties have any comments on the subpoena? Mr. Siu.

MR. SIU: I have no comments.

THE HEARINGS OFFICER: Ms. Self.

MS. SELF: No comments.

THE HEARINGS OFFICER: Mr. Gomes.

MR. GOMES: I think it's very inconvenient to have Mr. Fuke print all of that.

MR. HONG: I'm not asking that he print. Again,
I'm going to --

THE HEARINGS OFFICER: I find that the admission -- I'm going to find, based on Mr. Gomes -- based on what I've heard up to now, I find that Mr. Fuke's work on other projects is not relevant to the subject matter of this proceeding and I'm going to order that Mr. Fuke not have to produce any of those documents.

So, Mr. Hong, you're not going to be able to get the documents.

MR. HONG: I understand. We also have emails that he produced with respect to the No Connections Ever.com. And that group, I'd like to take a look at those.

THE HEARINGS OFFICER: Any documents relating to this project, I will allow to be produced, but not with respect to other projects.

MR. HONG: All right. May I --

THE HEARINGS OFFICER: Mr. Fuke, did you bring those documents?

THE WITNESS: Yes.

THE HEARINGS OFFICER: Okay. Then Mr. Hong can look at those documents. I guess we will recess for lunch because I don't think we're done. Mr. Hong, do you have other witnesses?

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
serve any relevant purpose concerning any of the issues before the hearings officer.

So I don't think that we'll be entering these into evidence. And I have no further questions for Mr. Fuke.

THE HEARINGS OFFICER: Mr. Hong, do you have any further witnesses?

MR. HONG: Well, we had subpoenaed Layne Novak. In talking to the process server, I know she -- her husband accepted service for her. My understanding there may be a procedural issue about filing the subpoena with the return of service?

THE HEARINGS OFFICER: I should have the subpoena along with the return of service, but what are you asking for, Mr. Hong? If she's not present, what are you asking for?

MR. HONG: Well, I note that we served her. We've asked her to be present. She would be our next witness. My understanding is she is not here.

THE HEARINGS OFFICER: Mr. Hong, the choices are, if she is not here, it is -- and you ask for -- and you want her here, the only thing that can happen is a petition needs to be filed with the Circuit Court for issuance of an order to show cause or contempt proceeding for her to appear because I can't issue that. Only the
Circuit Court can, and under the State law, I have the -- the Planning Commission or the hearing officer would have to apply to the Circuit Court for that.

Are you asking for that?

MR. HONG: No, I just want to note for the record that we subpoenaed her to be here and she has not appeared.

THE HEARINGS OFFICER: I will so note that.

MR. HONG: Thank you.

THE HEARINGS OFFICER: Do you have any further witnesses?

MR. HONG: I actually have a -- I was anticipating calling Mr. Gomes, but I think I'm going to waive that at this point. I do have Mr. Thatcher who would testify in rebuttal with respect to Mr. Fuke's allegations that he was threatened by Mr. Thatcher.

THE HEARINGS OFFICER: Well, Mr. Hong, if you want to call him as a witness, you can go ahead.

MR. HONG: All right.

JOHN THATCHER

having been called as a witness by the Applicant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HONG:
Q.      Sir, would you state your name for the record, 
please.
A.      John Thatcher.
Q.      And if you'd spell your last name.
Q.      Were you present when Mr. Fuke testified about 
your allegedly coming up to him after a community meeting 
and threatening him?
A.      Yes, I was.
Q.      Did you do that?
A.      I talked to him after the meeting, but I didn't 
threaten him.
Q.      Did you tell him at any point that you were going 
to bring in -- if he didn't support the Connections 
project, that you were going to bring in other people to 
testify against the Regency project?
A.      My words were, "I'm here by myself." If I was 
trying to do something, I was actually talking to the guy 
with the company that's building. And I said if I was 
going do something, I would have brought a lot more of 
the people from our school. I said I came here by 
myself. And I guess that was perceived as threatening 
something.
Q.      But you never threatened him or threatened the 
project?
A. No.

MR. HONG: All right, thank you. Nothing further.

THE HEARINGS OFFICER: Mr. Siu, any questions?

MR. SIU: I have no questions.

THE HEARINGS OFFICER: Ms. Self?

MS. SELF: None.

THE HEARINGS OFFICER: Mr. Gomes.

MR. GOMES: No questions.

THE HEARINGS OFFICER: Thank you, Mr. Thatcher, you're excused.

MR. HONG: We have no further witnesses or evidence and rest.

THE HEARINGS OFFICER: Mr. Siu, anything further?

MR. SIU: I have nothing further.

THE HEARINGS OFFICER: Ms. Self.

MS. SELF: No.

THE HEARINGS OFFICER: Mr. Gomes.

MR. GOMES: Nothing.

THE HEARINGS OFFICER: Well, it's my understanding that the parties have agreed to participate in mediation. And since the parties have -- and the mediator who the parties have selected, Mr. Bess, isn't here at the moment because he went to get lunch, but he 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
otherwise agreed to by the parties. I looked at the
rules this morning. Now, it is questionable whether
you'll have -- whether -- as far as -- where's my notes.
The hearing closes when -- at the end of submission of
evidence, briefs, and oral arguments, if any.

Because we're not doing briefs and we're doing
findings of fact, it is arguable that this hearing
doesn't close until the end of submission of findings of
fact under the Planning Commission Rules although I will
admit, it's ambiguous. If there is -- I mean I would
like to allow the parties, if there is an opportunity to
reach a consensus in this matter, to include a mediation
agreement, if there is going to be one as part of this
file hearing.

If there is a mediation agreement and I close the
hearing, I can't include that agreement. So my
suggestion is we continue this hearing, maybe for two
weeks, a very short time period so this thing would not
drag on for a long time. I do agree it's gone on way too
long. I would have been happy finishing it in one day if
we could have. It's my -- I like to finish these things
sooner than later.

So can we get -- I don't know if everybody has
their calendars with them. We can go off the record.
Let's go off the record while everyone looks at their
calendars.

(Discussion had off the record.)

THE HEARINGS OFFICER: Okay, we're back on the record. What we're going to do is we're going to continue this hearing to January 22nd at 9:30 a.m. All the parties have indicated that they're available at this time with the exception of Mr. Hong, might have a phone conference that might last a little bit longer. And the place for this reconvened hearing, the Planning Department will advise us all where the hearing will be.

In the meantime, it is my understanding that the parties will be participating in mediation and I believe Mr. Bess should be here shortly to start the process.

MR. HONG: Thank you.

THE HEARINGS OFFICER: So we're recessed for today. And, again, Mr. Hong, you didn't want anything -- any action taken against Ms. Novak.

MR. HONG: No, not by me.

THE HEARINGS OFFICER: Thank you.

(The hearing concluded at 1:40 p.m.)
STATE OF HAWAII

COUNTY OF HAWAII

I, Susan R. Nakamoto, CSR #237, certified shorthand reporter in the State of Hawaii, do hereby certify that the foregoing pages are a true and correct transcription of the proceedings in this matter.

Dated this 13th day of January, 2014.

CERTIFIED SHORTHAND REPORTER

SUSAN R. NAKAMOTO, CSR 237