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November 23, 2016

Windward Planning Commission County of Hawai'i Aupuni Center 101 Aupuni Street, Suite 3 Hilo, Hawai'i 96720 Attn: Sarah Hata Finley

> Community Based Education Support Services (CBESS) v. Windward Planning Re:

Commission, County of Hawai'i, et al.; Civil No. CAAP-16-0000813

Dear Commission:

Please be advised that the above referenced matter is back in the Intermediate Court of Appeals on appeal.

As always, our office will diligently represent, defend and advise the County of Hawai'i on all relevant matters pertaining to this matter.

Should you have any questions with regard to the above, please do not hesitate to contact our office.

Very truly yours,

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ANGELIC M. HO **Deputy Corporation Counsel**

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Electronically Filed Intermediate Court of Appeals CAAP-16-0000813 31-JAN-2020 08:56 AM

NOS. CAAP-17-0000050, CAAP-16-0000813, AND CAAP-16-0000879 (CONSOLIDATED)

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CAAP-17-0000050

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL, Applicant/Appellant/Appellant, and

COMMUNITY BASED EDUCATION SUPPORT SERVICES, Applicant/Appellant/Appellee,

WINDWARD PLANNING COMMISSION, COUNTY OF HAWAII,
Appellee/Appellee

DEPARTMENT OF PLANNING, COUNTY OF HAWAII, Respondent/Appellee/Appellee,

SANDRA SONG, JEFFREY GOMES, SIDNEY FUKE, TERENCE YOSHIOKA, Intervenors/Appellees/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT (CIVIL NO. 14-1-223)

AND

CAAP-16-0000813

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL,
Applicant/Appellant/Appellee,
and

COMMUNITY BASED EDUCATION SUPPORT SERVICES, Applicant/Appellant/Appellant,

WINDWARD PLANNING COMMISSION, COUNTY OF HAWAII, Appellee/Appellee

DEPARTMENT OF PLANNING, COUNTY OF HAWAII,
Respondent/Appellee/Appellee,

anc

SANDRA SONG, JEFFREY GOMES, SIDNEY FUKE, TERENCE YOSHIOKA, Intervenors/Appellees/Appellees

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Appellee/Appellee
DEPARTMENT OF PLANNING, COUNTY OF HAWAII,

Respondent/Appellee/Appellee, and

SANDRA SONG, JEFFREY GOMES, SIDNEY FUKE, TERENCE YOSHIOKA, Intervenors/Appellees/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT (CIVIL NO. 14-1-223)

MEMORANDUM OPINION

(By: Fujise, Presiding Judge, Leonard and Chan, JJ.)

In this consolidated appeal, Applicant-AppellantAppellant Community Based Education Support Services (CBESS) (in
CAAP-16-0000813) and Applicant-Appellant-Appellant Connections
New Century Public Charter School (Connections) (in CAAP-160000879 and CAAP-17-0000050) (collectively, Appellants) appeal
from the July 14, 2015 Decision and Order Affirming Windward
Planning Commission [(Planning Commission)], County of Hawaii's
Findings of Fact [(FOFs)], Conclusions of Law [(COLs)] and
Decision and Order Denying Special Permit Application No. SPP 12138 (Order Affirming), the October 2, 2016 First Amended
Judgment, and the January 13, 2017 Second Amended Final Judgment

The parties initially appealed from a judgment entered on July 14, 2015. However, those appeals were dismissed by this court because that judgment was not an appealable final judgment. See Community Based Educ. Support Servs. v. Connections New Century Public Charter School, CAAP-15-0000556, 2016 WL 2943201 (Haw. App. Apr. 19, 2016) (order). The Circuit Court subsequently entered a First Amended Judgment on October 26, 2016, and then entered a Second Amended Judgment on January 13, 2017.

(Final Judgment), all entered in the Circuit Court of the Third Circuit (Circuit Court).²

I. BACKGROUND

Connections is a public charter school that operates an elementary and middle school in Hilo and a high school located just outside of Hilo. CBESS is a domestic non-profit corporation that supports and raises funds for Connections. Connections wishes to consolidate its campuses and so it sought to develop a new campus on 70.15 acres of land located within the State Land Use Agricultural District, at Ponahawai, Kūkūau 2nd, South Hilo, Hawai'i, commonly referred to as the "Kaūmana" area of Hilo (Property). Connections proposed to develop a charter school campus with dorm facilities, a number of school buildings, and other related improvements for students from kindergarten through twelfth grade (the Development).

In March of 2008, Connections obtained approval, in principle, for a direct lease of the Property for school purposes from the State Board of Land and Natural Resources (BLNR). A Direct Lease was issued by BLNR in January 2011.

On or about July 25, 2012, Connections and CBESS, as co-applicants, submitted their Special Permit Application No. SPP 12-138 (Special Permit Application) to the County of Hawai'i Planning Department (Planning Department). Public hearings on the Special Permit Application were scheduled and notices were provided to interested parties. The first public hearing was on November 9, 2012, at which time representatives for Connections,

The Honorable Judge Melvin H. Fujino presided.

its experts, and interested surrounding property owners provided testimony and other evidence. At that time, no request was made for a contested case hearing before the Planning Commission. It appears that both the Planning Commission and Appellants believed at this point that there was no option for a contested case hearing because, as a result of the size of the Property, the final decision to approve or deny the special permit would be made by the State of Hawai'i Land Use Commission (LUC). The Planning Commission and Connections agreed to delay the vote on the Special Permit Application so that additional discussions could be conducted regarding traffic and other concerns with the proposal.

The second public hearing occurred on December 6, 2012. The Planning Commission noted that several outstanding items had been produced by Connections, including additional information regarding its anticipated water use calculations. However, Connections requested a continuance because the Attorney General's Office for the State of Hawai'i was taking over legal representation for Connections. The decision on the Special Permit Application was again delayed.

A third public hearing was conducted on January 10, 2013. At that time, a motion was made to deny the Special Permit Application, which was seconded. Because of various absences by members of the Planning Commission, no final vote was held, and the Planning Department and counsel for the Planning Commission were instructed to prepare proposed findings of fact and legal

conclusions denying the permit. Connections and CBESS would then have a chance to respond to proposed findings and conclusions.

Thereafter, in a letter issued by the Planning

Department notifying the public that a fourth public hearing

would be conducted regarding the Special Permit Application, the

Planning Director informed the public that contrary to prior

understanding, interested parties could intervene and demand

contested case hearing procedures. As a result, the Planning

Commission suspended the preparation of proposed findings of fact

and conclusions of law.

At the fourth public hearing, held on March 7, 2013, the motion to deny the Special Permit Application was withdrawn. The Planning Commission received a petition to initiate a contested case from Intervenor-Appellee-Appellee Jeffrey Gomes (Gomes). Gomes was granted standing to intervene at the hearing, and the Planning Commission voted to retain a hearing officer to conduct the contested case hearing.

The Honorable Sandra Pechter Song (ret.) was retained to serve as the hearing officer (Hearing Officer) for the contested case. Hearings were held over five days on October 21, 2013, October 22, 2013, November 12, 2013, January 8, 2014, and January 22, 2014. The Hearing Officer submitted a Hearing Officer's Report (Report) to the parties and the Planning Commission on April 7, 2014. The Report concluded that the Special Permit Application should be denied. CBESS and Connections submitted Joint Exceptions to Hearing Officers [sic]

Report, Finding of Fact, Conclusions of Law and Recommendation.

The Planning Director also submitted exceptions to the Report.

The Planning Commission conducted its fifth public hearing on May 1, 2014, and voted to uphold the Report and to deny the Special Permit Application. On May 12, 2014, the Planning Commission issued its final FOFs, COLs and Decision and Order (Decision and Order).

Connections and CBESS appealed the Planning

Commission's Decision and Order to the Circuit Court. After

hearing arguments on the matter, the Circuit Court issued its

Order Affirming and, ultimately, the Final Judgment affirming the

Planning Commission's denial of the Special Permit Application.

Connections and CBESS timely filed notices of appeal.

II. POINTS OF ERROR

CBESS frames its points of error as contending that the Circuit Court and the Planning Commission clearly erred in adopting the Planning Commission's FOFs 9, 14, 18, 21, 36, 46-55, and 59, erred in adopting the Planning Commission's COLs 4 and 5, and clearly erred in adopting the mixed factual findings and legal conclusions stated in FOFs 62 and 63. These findings and conclusions primarily pertain to traffic, water supply, the focus on the immediate vicinity, as opposed to the larger community, suitability for agricultural use, and compatibility with the General Plan. CBESS also argues that the procedures followed by the Planning Commission denied it due process.

Connections raises eight points of error, contending that: (1) the Circuit Court erred when it based its decision on

a presumption as to the validity of the Planning Commission's decision and the Appellants' "heavy burden" of demonstrating that the decision was invalid because it was unjust and unreasonable in its consequences; (2) the Planning Commission erred in its application of Planning Commission Rule 6-3(b)(5)(A)-(G) to the Special Permit Application and the Circuit Court erred in affirming the Planning Commission's application of the rule; (3) the Circuit Court erred in affirming the Planning Commission's determination regarding building setbacks and roadway improvements; (4) the Circuit Court erred in affirming the Planning Commission's determination regarding the burden on the County's water supply; (5) the Circuit Court erred in affirming the Planning Commission's determination regarding the needs of the immediate community and the location of the school; (6) the Circuit Court erred in affirming the Planning Commission's determination regarding suitability for agricultural use; (7) the Circuit Court erred in affirming the Planning Commission's determination regarding consistency with the General Plan; and (8) the Circuit Court erred in affirming the Planning Commission's determination that, inter alia, Appellants had not demonstrated "how the development of a regional charter school on the Property that does not specifically service the needs of the immediate community and that is overwhelmingly objected to by the immediate community is a reasonable site for this facility." III. APPLICABLE STANDARD OF REVIEW

On this secondary appeal, this court applies the following standards:

The standard of review is one in which the appellate court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in [Hawaii Revised Statutes (HRS)] § 91-14(g) (1993) to the agency's decision.

HRS § 91-14, entitled "Judicial review of contested cases," provides in relevant part:

- (g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

 (1) In violation of constitutional or
 - In violation of constitutional or statutory provisions; or
 - (2) In excess of the statutory authority or jurisdiction of the agency; or
 - (3) Made upon unlawful procedure; or
 - (4) Affected by other error of law; or
 - (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Under HRS § 91-14(g), conclusions of law are reviewable under subsections (1), (2), and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection (5); and an agency's exercise of discretion under subsection (6).

Kolio v. Haw. Pub. Hous. Auth., 135 Hawai'i 267, 270-71, 349 P.3d
374, 377-78 (2015) (citations and brackets omitted).

When determining whether an agency abused its discretion pursuant to HRS § 91-14(g)(6), the court must first determine whether the agency determination under review was the type of agency action within the boundaries of the agency's delegated authority. If the determination was within the agency's realm of discretion, then the court must analyze whether the agency abused that discretion. If the determination was not within the agency's discretion, then it is not entitled to the deferential abuse of discretion standard of review.

In regards to the abuse of discretion standard of review, this court has held that agency determinations, even if made within the agency's sphere of expertise, are not presumptively valid; however, an agency's discretionary determinations are entitled to deference, and an appellant has a high burden to surmount that deference. This court has further described an agency's proper exercise of discretion as not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result. Therefore, a hearings officer abuses his or her discretion when he or she clearly exceeds bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party.

Id. at 271, 349 P.3d at 378 (citations, quotation marks, and brackets omitted).

IV. <u>DISCUSSION</u>

A. <u>Due Process</u>

CBESS argues that its due process rights were violated through the procedures utilized by the Planning Commission.

Following the submission of the Special Permit Application, three public hearings were initially conducted by the Planning Commission. During these hearings, the Planning Commission heard the testimony of numerous witnesses, including experts testifying on behalf of Appellants, in addition to evidence from other interested parties. A motion to deny the Special Permit Application was made and seconded at the third hearing, but no vote occurred due to a lack of a quorum and so that findings of fact and conclusions of law could be drawn up for review by all members of the Planning Commission before a final vote. After the third public hearing, the Planning Commission apparently learned that a mistake had been made and that Appellants, or other parties with standing, had the right to demand a contested case hearing. A letter was issued to interested parties relaying this information. At the fourth public hearing, a request was made by Gomes to initiate a contested case. The motion to deny the Special Permit Application was withdrawn, and the matter continued to a contested case with the appointment of the Hearing Officer, with the testimony of numerous witnesses and the consideration of additional evidence from all parties. After receiving the Report of the Hearing Officer and Appellants' responses thereto, the Planning Commission voted to deny the Special Permit Application.

CBESS argues that this procedure violated its due process rights in that the Planning Commission's decision "had already been predetermined" and the Planning Commission's "process was meaningless." CBESS further argues that the procedures that the Hawai'i Supreme Court found violated due process in Mauna Kea Anaina Hou provide guidance in this case. See Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res., 136 Hawai'i 376, 363 P.3d 224 (2015). In Mauna Kea Anaina Hou, BLNR voted at the same public meeting to both approve an application and permit and to hold a contested case hearing. Id. at 383-84, 363 P.3d at 231-32. On appeal, the supreme court held that BLNR's decision to approve a permit prior to a contested case hearing violated appellants' due process rights. Id. at 388-91, 363 P.3d at 236-39. The Supreme Court further held that the approval of both the permit and contested case procedures at the same time denied the appellants a meaningful opportunity to be heard in both reality and appearance. <u>Id.</u> at 391, 363 P.3d at 239.

In the present case, however, no vote to deny or approve the Special Permit Application was conducted before the contested case hearing. Instead, a motion to deny the Special Permit Application was made and seconded, but the vote on the permit was then delayed. A final vote on that motion was never taken; rather the motion was withdrawn, and a contested case was scheduled. The Planning Commission's action on the Special

Permit Application was after the completion of contested case proceedings.

We note that in a subsequent case, Kilakila 'O Haleakalā v. Bd. of Land & Nat. Res., 138 Hawai'i 383, 382 P.3d 195 (2016), at the first public hearing regarding the permitting of a Maui telescope, Kilakila requested a contested case hearing. Id. at 397, 382 P.3d at 209. Without granting the request for a contested case hearing, BLNR approved the first permit for construction of the telescope, and Kilakila successfully appealed that decision. Id. The first permit was subsequently made void by stipulation. <u>Id.</u> at 397-98, 382 P.3d at 209-10. However, while the appeal of the first permit was pending, BLNR granted Kilakila's request for a contested case hearing and after that proceeding concluded, BLNR issued an order approving a second permit for the construction of the telescope. <u>Id.</u> at 398, 382 P.3d at 210. One of Kilakila's claims on appeal regarding the issuance of the second permit was that BLNR had violated its due process rights because BLNR had voted on the first permit for construction prior to the contested case hearing; essentially, Kilakila argued that BLNR had prejudged the granting of the second permit before the contested case proceedings. Id. The supreme court rejected that argument and concluded that, since the first permit was voided, "appellants' due process rights were adequately protected by the contested case hearing and subsequent vote by BLNR." Id.

In this case, even though the case proceeded initially without a contested case hearing being held, no vote was taken by

the Planning Commission on the Special Permit Application before the contested case proceedings were completed and the Planning Commission was provided the report therefrom. The motion to deny cannot be considered a vote on the Special Permit Application. Moreover, the subsequent withdrawal of that motion was followed by full contested case procedures and then a vote. As in Kilakila 'O Haleakalā, we conclude that CBESS's due process rights were adequately protected by the contested case hearing and the subsequent vote by the Planning Commission.

Thus, we reject CBESS's claim that the procedures utilized by the Planning Commission violated its due process rights.

B. The Circuit Court's Standard of Review

Connections argues that the Circuit Court used the wrong standard of review in affirming the Planning Commission's Decision and Order and that this constitutes reversible error requiring a remand to the Circuit Court. In affirming the Planning Commission's Decision and Order, the Circuit Court stated:

The Court's review of the Commission's Decision and D&O is qualified by the principle that an agency's decision carries a presumption of validity and applicants have the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences.

Connections is correct that the standard set forth above is not applicable here. The supreme court has instructed that: (1) the "unjust and unreasonable" language quoted above only applies to review of decisions in the Public Utilities

Commission ratemaking context; and (2) an agency's decision does

not have a presumption of validity; rather, the agency's discretionary determinations are entitled only to deference. See Paul's Elec. Serv., Inc. v. Befitel, 104 Hawai'i 412, 418-19, 91 P.3d 494, 500-01 (2004). Agency decisions are generally considered under the abuse of discretion standard applicable to all discretionary decisions of lower tribunals: "[G]enerally, to constitute an abuse it must appear that the [agency] clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Id. at 419, 91 P.3d at 501 (internal quotation marks and citation omitted).

However, the Circuit Court correctly articulated the standards of review with respect to the Planning Commission's factual findings, the clearly erroneous standard, and its conclusions of law, de novo review. See Diamond v. Dobbin, 132 Hawai'i 9, 24, 319 P.3d 1017, 1032 (2014). Notwithstanding the Circuit Court's error in its standard of review, based upon our own standard of review, this court can proceed to "review the court's findings of fact under the 'clearly erroneous' standard and its conclusions of law under the de novo standard, without any particularized presumption of validity or need to consider whether the agency's decision was 'unjust and unreasonable.'"

Id. Therefore, the Circuit Court's error is harmless.

C. The Special Permit Requirement

Appellants were required to obtain a special permit for the Development because the Property is located in a state agricultural district and a school is not a permitted use under

HRS § 205-4.5 (2013 Supp.), which lists permissible uses within state agricultural districts. HRS § 205-6 (2017) delegates authority to the county planning commissions to adopt procedures governing the issuance of special permits and states, in relevant part:

(a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired.

. . . .

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter.

. . . .

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

(Emphasis added.)

Therefore, in considering whether to approve a special permit, the Planning Commission must find that (1) the special permit is for an "unusual and reasonable use" within the agricultural district and (2) the permit would "promote the effectiveness and objectives of [HRS Chapter 205]." Id. As this court has previously recognized, "[t]he Hawai'i Supreme Court has ruled that the 'overarching purpose' of HRS Chapter 205 is to 'protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development.'" Kauai Springs, Inc. v. Planning Comm'n of Cty. of Kauai, 130 Hawai'i

407, 426, 312 P.3d 283, 302 (App. 2013) (<u>Kauai Springs I</u>) (quoting <u>Curtis v. Bd. of Appeals, Cty. of Hawai'i</u>, 90 Hawai'i 384, 396, 978 P.2d 822, 834 (1999)).

The Hawai'i Supreme Court has explained the rationale for the special permit as follows:

The special use or exception evolved as a land use control device from a recognition of the hardship frequently visited upon landowners due to the inherent rigidity of the Euclidean zoning system, and of the inapplicability of variance or boundary amendment procedures to all land use problems. [3 A. Rathkopf, The Law of Zoning and Planning, § 41.03 at 41-8 to 41-10 (4th ed. 1981 & Supp. 1981)]; 3 R. Anderson, American Law of Zoning § 19.01 at 358-59 (2d ed. 1977). Unlike a district boundary amendment, which is analogous to a rezoning in its effect of reclassifying land, and unlike a variance, which permits a landowner to use his property in a manner forbidden by ordinance or statute, a special permit allows the owner to put his land to a use expressly permitted by ordinance or statute on proof that certain facts and conditions exist, without altering the underlying zoning classification. Its essential purpose, as explained by the state Attorney General, is to provide landowners relief in exceptional situations where the use desired would not change the essential character of the district nor be inconsistent therewith. 1963 Op. Att'y Gen. 63-37. "By the use of the special use permits, the broad division of uses in terms of residential, commercial, and industrial, and subdivisions of each, can be supplemented by requiring a use which falls conveniently within a class assigned to a particular district, but which has singular characteristics which may be incompatible with some uses of such class, to submit the [use to] administrative scrutiny, to meet certain standards, and to comply with conditions." 3 R. Anderson, supra § 19.01 at 359.

Neighborhood Bd. No. 24 (Waianae Coast) v. State Land Use Comm'n, 64 Haw. 265, 270-71, 639 P.2d 1097, 1101-02 (1982).3

Guidelines have been adopted, pursuant to HRS chapter 205, that require the Planning Commission to consider the following criteria in determining whether a proposed use within an agricultural district is an "unusual and reasonable use":

Although HRS § 205-6 has been amended since the <u>Waianae Coast</u> case was published, it does not appear that the changes affect the rationale for the special permitting process, as stated by the supreme court in that case. <u>See, e.g., Curtis</u>, 90 Hawai'i at 397, 978 P.2d at 835 (discussing 1998 version of HRS § 205-6); Conf. Comm. Rep. No. 131, in 1998 Senate Journal, at 801 (same); Conf. Comm. Rep. No. 175, in 2005 Senate Journal, at 1080 (discussing 2005 amendments).

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- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;

(4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and

(5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

Hawai'i Administrative Rules (HAR) § 15-15-95(b) (eff. 2000).4

These guidelines have been incorporated into the County of Hawai'i Planning Commission Rules of Practice and Procedure Rule (**Planning Commission Rule**) 6-3(b)(5)(A)-(E)(2016), which

\$ 15-15-95 Petition before county planning commission.

(a) Any person who desires to use land within an agricultural or rural district for other than a permissible agricultural or rural use may petition the county planning commission within which the land is located for a special permit to use the land in the manner desired. Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission.

(b) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

(1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;

(2) The desired use would not adversely affect surrounding property;

(3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;

(4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and

(5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

(continued...)

 $^{^4}$ HAR § 15-15-95 has since been amended. At the time the Special Permit Application was filed, HAR § 15-15-95 stated, in relevant part:

Planning Commission Rule 6-3 states, in relevant part:

set forth the criteria that must be considered by the Planning Commission when an application for a special permit is sought:

- (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (B) The desired use shall not adversely affect surrounding properties;
- (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection:
- school improvements, and police and fire protection;
 (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district[.]

5(...continued) 6-3 Petition and Content

A petition for a Special Permit shall be filed with the Commission's office and shall include the following:

- (b) Original and twenty copies of:
 - (5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:
 - (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - (B) The desired use shall not adversely affect surrounding properties;
 - (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
 - (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
 - (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
 - (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
 - (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Planning Commission Rule 6-3(b)(5)(A)-(E); see also Planning Commission Rule 6-7 (grounds for special permit). Two additional criteria have been adopted in the Planning Commission's rules regarding the Planning Commission's consideration of a special permit. They are as follows:

- (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- present use; and

 (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Planning Commission Rule 6-3(b)(5)(F)-(G); see also Planning Commission Rule 6-7 (grounds for special permit).

We consider Appellants' many challenges to the Planning Commission's FOFs and COLs in the context of the Planning Commission's rules.

1. Affect on Surrounding Properties

Planning Commission Rule 6-3(b)(5)(B) provides that the "desired use shall not adversely affect surrounding properties." CBESS challenges FOF 18, which states:

18. Notwithstanding the findings of the [Traffic Impact Analysis Report (TIAR)] and the recommendations of the Police Department and Department of Public Works, the area residents uniformly expressed concerns about the adverse traffic impact of the Development along Edita Street and Kaūmana Drive. Also, residents objected that the TIAR was four years old and the traffic counts contained in the TIAR were taken when certain schools were not in session.

CBESS and Connections both challenge FOFs 46 and 47, which state:

- 46. Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents.
- 47. Measures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate

the overwhelming concerns raised by surrounding property owners.

Appellants do not contest FOF 17, which states:

17. A [TIAR] dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaūmana Drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service or LOS [(LOS)] operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B". Although the TIAR concludes that traffic will not be adversely affected by reason of the Development, the County Department of Public Works recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.

On appeal, Appellants argue that the Planning Commission clearly erred in determining that there would be an adverse effect on the surrounding properties. The Planning Commission submits that there is substantial evidence that the Development would create and exacerbate "traffic concerns - quantity, quality, and safety." Gomes points to the Planning Commission's arguments.

Appellants presented expert testimony from, and the TIAR prepared by, Phillip J. Rowell (Rowell), a Civil Engineer with decades of experience in transportation and traffic engineering across the State of Hawai'i, as well as earlier traffic and transportation engineering experience in numerous mainland states, Malaysia, and Hong Kong.⁶

Rowell testified regarding the industry standards that must be used in preparing a TIAR, including that the TIAR

Appellants also presented, inter alia, expert testimony from Ron Thiel, the Chief of the Traffic Division for the County of Hawai'i, also a Civil Engineer, who has been practicing traffic engineering with decades of traffic engineering experience.

prepared by him in this case complied with those standards and that the testimony and informational reports submitted by community members and Development opponents did not follow any of the standard procedures and criteria guidelines. Rowell testified that, based on his study, as reflected in the TIAR, all traffic control movements at the intersection of Edita Street and Kaŭmana. Drive would operate well above the minimum acceptable standard for an urban area, which he considered to be "pretty good operating conditions" upon completion of the project. Rowell nevertheless made a number of recommendations, including new surveys and traffic counts at the completion of the final phase of the project to confirm assumptions and to determine if additional mitigation would be required. He also recommended a "left-turn pocket" into the Property to minimize any impact to the community, even though the LOS was already at A, the highest level, or B.

Rowell acknowledged that, by the time of the contested case hearing, the TIAR was four years old and, if the Development moved forward to LUC, in his experience, the LUC would require an updated study. He agreed with the statement that the TIAR should be updated at some point and said he recommended that. On cross-examination, Rowell stated that the timing of the traffic counts was scheduled to get the counts before the public schools took summer break. He acknowledged that the Kamehameha Schools Hawai'i campus term ended a week earlier, but opined that that campus would impact traffic on Kaūmana Drive very slightly. He

also acknowledged that any new development projects in the area proposed after 2010, or 2009 when he did his data collection, would not be reflected in the TIAR. Rowell did not talk to area residents about traffic and road conditions. Rowell testified that none of the projects or potential projects identified on cross-examination would cause him to change the conclusion of the study, even though it might change the data.

Notwithstanding Rowell's testimony and the TIAR Report, as well as the other testimony and evidence presented by Appellants concerning traffic impact and management, numerous community members submitted written and oral testimony that support the challenged findings regarding adverse traffic impacts. This testimony did not simply state generalized concerns about traffic and was based on years, and in some cases decades, of experiences of living on Edita Street, Kaumana Drive, and other streets in close proximity to the Property. included descriptions of current traffic and road conditions as already being problematic in various ways, including sharp turns, frequent speeding, a high accident rate, and a steep approach on Kaūmana Drive above Edita Street. Kaūmana Drive was described as a winding, narrow road with short sight distances and no shoulders in most areas. Testimony was given that Kaūmana Drive was already a very dangerous, narrow, two-lane road, by a witness who reported having seen numerous accidents in the area. road and traffic conditions were said to already get worse when it rains. Another witness testified that, going back down into

Hilo town from that area, there was already back up and delays at the nearby Ainakoa and Kaūmana intersection. It was reported that the area already has high traffic in the morning. Testimony was given that there was a long history of traffic accidents at Kaumana Drive and Edita Street and on the road just mauka of this intersection, which "cannot handle" additional traffic. This area of Kaumana Drive was described as already being a "traffic hazard." It was pointed out that it rains a lot in Hilo. Some area residents expressed concerns based on recent residential developments and related increases in traffic that have occurred since the TIAR was completed. Notwithstanding the proposed traffic mitigation including, but not limited to, encouraging carpooling, construction of a turn pocket, and campus design to facilitate traffic flow at drop off and pick up times for cars and busses, there was evidence that the Development would eventually accommodate hundreds of students, plus dozens of faculty members, and support staff.

We reject Appellants' contention that expert testimony in opposition to the Development was required for the Planning Commission to find that Connections failed to meet its burden to show that increased traffic from the Development would not have an adverse impact on the surrounding properties. As noted above, it was Connections's burden to show no adverse effect; the Planning Commission was not persuaded by the TIAR and the related testimony submitted by Connections. See 2 Am. Law. Zoning § 14:14, Traffic and congestion criteria (5th ed.), Westlaw

(database updated November 2019) ("Special use permits can also be denied if the applicant fails to submit information required for the board to accurately assess traffic impacts."). In addition to testimony from community members, the record includes a report from the County police department to the Planning Commission, which concluded that the impact of the Development would likely include increased noise and traffic in the area and that without the addition of sidewalks, the Development would make Edita Street unsafe for pedestrian traffic.

On the record in this case, we cannot conclude that the Planning Commission clearly erred in adopting FOFs 18, 46, and 47, and concluding that, even with the proposed traffic mitigation efforts, traffic stemming from the Development would have an adverse effect on surrounding properties.

2. Burden on Public Utilities

Planning Commission Rule 6-3(b)(5)(C) provides that the proposed use "shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection." CBESS challenges the following FOFs with regard to the Development's proposed water usage:

- 21. The available water from the County of Hawai'i municipal water system is insufficient to support the first phase of the Development.
- 48. There is insufficient water available from the County system to service the Development. Therefore, to allow the Development would unreasonably burden the

Department of Water Supply to provide water for its facilities.

- 49. There is no evidence that Connections has the ability to develop a potable water source as a mitigating measure, previously proposed by the Director.
- 50. A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a high school for 107 students [in] its first phase, when the potable water available would only allow for 70 students.

Both Connections and CBESS challenge FOF 51, which states:

51. As such, the proposed use may unreasonably burden the County Department of Water Supply to provide water to the Development.

Appellants acknowledge that the maximum potable water allocation by the Department of Water Supply (DWS) for the Development was 4,200 gallons per day (gpd), which is significantly less than the estimated water needs of the Development, upon completion of all phases of the Development, as proposed in the Special Permit Application. Connections's expert, who created a report for the Development's estimated water usage, calculated that the water requirements for the Development's final phase of construction would require between 6,858 and 10,828 gpd. Additional estimates were created for the Development at different phases of its construction, and the expert concluded that the 4,200 gpd limit of potable water would be exceeded in Phase 7 (of 9) when the elementary school and cafeteria would be constructed and an additional source of

potable water would be needed. Based on the development plan, this would not occur until between ten and sixteen years into construction.

Connections suggested that an additional condition of approval be added to the Planning Department Director's (Planning Director's) favorable recommendation on the Special Permit Application that would essentially limit the number of persons at the Development to the potable water that could be obtained through a combination of the water available from DWS combined with whatever other sources could be developed by Connections. The Planning Director testified that final water use figures are not usually required at the special permit application stage and would normally be addressed through conditions attached to the special permit approval.

It is unclear how the Planning Commission reached its conclusion that the 4,200 gpd water usage allowance from DWS could only support 70 students. The Planning Commission states it is using a 60 gpd per student standard, but the Planning Commission and the parties have failed to identify where that figure came from. There was no finding that the report submitted by Connections's expert showing significantly less water usage

The Special Permit Application stated that, at the time of the application, a "definitive solution" was not evident, but that potential additional sources of potable water might be a rain catchment system, a potable water well, or possibly a future joint-developer agreement whereby Connections might be able to gain additional "water credits." Connections submitted that, since there was a one to two decade period before the DWS allotment would be reached, there was ample time to identify and assess feasibility of other sources and secure the necessary permits. Otherwise, campus development would not proceed beyond what could be sustained by the 4,200 gpd allotment.

was not credible. There is simply nothing in the Planning Commission's Decision and Order or the briefing before this court that explains or supports that calculation. It is contrary to the only evidence provided in the contested case hearing. The failure by the Planning Commission to explain its reasoning prevents this court from providing meaningful review. See Kauai Springs, Inc. v. Planning Comm'n of Cty. of Kaua'i, 133 Hawai'i 141, 164, 324 P.3d 951, 974 (2014) (Kauai Springs II) (an agency's findings should allow the reviewing court to track the steps by which the agency reached its decision).

The evidence in the record showed (1) the Development was to be constructed in phases and the first six phases could be supported by the potable water made available by DWS, (2) there were proposals made by Connections to secure additional potable water without burdening DWS, and (3) Connections agreed to limit the number of persons at the Development to the potable water limit made available by DWS in addition to whatever other sources it could itself secure. There is nothing in the record to suggest that Connections would not or could not be held to its commitments. FOFs 21, 48, and 50 are clearly erroneous and not supported by the evidence. FOF 49 is not clearly erroneous, as there was no definitive evidence in the record that Connections would be able to develop potable water sources. However, the Planning Commission may reconsider any weight it assigned to this finding in light of the Planning Director's testimony regarding the burden placed on applicants for special permits at this stage and Connection's agreement to limit the number of persons on the campus to the amount of water it can obtain. 8 COL 51 is also vacated in light of the above.

3. Unusual Conditions, Trends, and Needs

Planning Commission Rule 6-3(b)(5)(D) provides that the Planning Commission should consider whether "[u]nusual conditions, trends, and needs have arisen since the district boundaries and regulations were established." CBESS challenges FOF 14, which states:

14. The Development does not propose to establish a charter school on the Property to serve the needs of the immediate vicinity in the Kaūmana area of Hilo, although some students from the area may attend this school.

Both CBESS and Connections challenge FOF 52, which states:

52. Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also, the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. However, there was no evidence presented to demonstrate that location of a school that is not intended to specifically service the needs of the immediate community is such an unusual condition, trend or need that justifies location of the Development at this location.

It does not appear that the underlying factual issues are in dispute here. As reflected in part in FOF 14,

The Planning Commission's Answering Brief appears to treat the traffic issues referred to previously when addressing adverse effects on the surrounding community as an additional basis for finding that issuing the Special Permit would be a burden on a public agency. No such finding was made by the Hearing Officer or the Planning Commission. The only basis stated in the Planning Commission's Decision and Order for finding a burden on a public agency was with respect to the Development's proposed water usage. No party argues that the Planning Commission erred in failing to find that the Development's traffic impact would burden a public agency.

Connections's student body was comprised of students primarily from various areas of Hilo and Puna, not specifically the Kaūmana area of Hilo. Connections anticipated roughly a fifty percent split of students from these more distal areas in the future, with an evolving mix of students over time, in light of the additional facilities locations and student population trends. Nor do the facts underlying the first two sentences of FOF 52 appear to be in dispute. "Unusual conditions and needs" have arisen since the land use district was established as an agricultural use district in the 1970s, because the area is now essentially residential in character. The residential nature of the area is apparent from the testimony of the opponents of the Development, as well as the trend in the County General Plan LUPAG (Land Use Planning and Allocation Guide) map designating the area for low density urban use, which is reflected in FOF 52.

Appellants argue, however, that the Planning Commission erred in relying on Planning Commission Rule 6-3(b)(5)(D) as grounds to deny a special permit because the Planning Commission erroneously interpreted it to require proof that the unusual conditions, trends, and/or needs addressed pertain specifically to the immediate vicinity of the subject property. There is nothing in Planning Commission Rule 6-3(b)(5)(D) or the record to support such a restrictive consideration of conditions, trends, and/or needs. In addition, the last sentence of FOF 52 is unclear to this court. It appears to state that this guideline requires a school (or presumably any use) to establish it will

service the needs of its immediate neighbors, in particular, to "justify" its specific location. This latter part of FOF 52 is not grounded in Planning Commission Rule 6-3(b)(5)(D) and therefore denial of the special permit for this reason is arbitrary, exceeds the bounds of reason, and constitutes an abuse of discretion.

4. Suitability of Land for Agricultural Uses

Planning Commission Rule 6-3(b)(5)(E) provides that the Planning Commission must consider whether "[t]he land upon which the proposed use is sought is unsuited for the uses permitted within the district."

The Planning Commission found as follows:

- 53. The Land Study Bureau soil classification rating for the Property is "D" or "Poor," which suggests that the land may be unsuited for agricultural uses.
- 54. Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use. In addition, Connections is proposing to construct greenhouses on the Property and conduct an agricultural program in conjunction with its curriculum.
- 55. Based upon the representations of Connections, it cannot be found that the Property is unsuited for agricultural uses.

CBESS and Connections challenge FOF 55.

The foundational facts here are not in dispute.

Although located in an agricultural district, the soil classification for the Property is rated "D" or "Poor." As found by the Planning Commission, this suggests that the Property may be unsuited for agricultural uses. The Planning Director also testified that the Property and its surrounding areas are not in

fact used for agriculture, but have become residential in character. Without further explanation, "[b]ased on the representation of Connections," the Planning Commission found and concluded that the Property is suitable for agricultural uses.

However, the nature of the "representations" alluded to by the Planning Commission is apparent from the record, indeed, from the Special Permit Application itself. The application states that the applicants' request is to "[d]evelop a K to 12 Charter School Campus with dorm facilities[,] intergenerational programs, a sustainable agriculture program and a forestry/conservation program." The petition attached to and supporting the Special Permit Application includes as part of the applicants' objectives "implementation of a forestry/conservation program and a sustainable agricultural program." The proposed use includes "facilities for a forestry/conservation program [and] a sustainable agricultural program" with "green/shade houses [and] a 6-horse barn" on the lower parcel of the Property and roughly twenty acres of the upper parcel used for reforestation projects and no major school facilities. agricultural and forestry/conservation programs were projected to include about fourteen acres of the lower parcel for agricultural and forestry uses, including for cultivated crops of fruits and vegetables, native trees and plants, and ornamental plants, including greenhouses, hydroponics, aquaponics, and some livestock (chickens, sheep, goats, and horses). Testimony from Appellants' witnesses articulated this vision for the proposed

charter school. In sum, Appellants planned to incorporate a robust agricultural component into its use of the Property, while recognizing that a charter school campus is not considered a permitted use with a State Land Use Agricultural District.

The Planning Commission properly considered whether the Property was unsuited for agricultural use because, pursuant to both State regulations and County rules, that is one of the issues that must be addressed by an applicant seeking a special use permit. As the Planning Commission recognized, in significant ways, the Property was in fact unsuited for agricultural use and was not currently used for any of the uses permitted in agricultural districts. No one opposing the permit argued, or offered evidence, that the Property was suited for and should be used for agricultural purposes in what is now a lowdensity residential area. In a twist of irony, Appellants' vision of a charter school that incorporated and promoted an agriculturally-oriented learning experience for students - hence tending to promote and preserve agriculture in this district and the State, even on unsuited or poorly-suited land - was apparently viewed by the Planning Commission as one of the reasons to deny the Special Permit Application. We note, however, that the Decision and Order is silent as to how the Planning Commission weighed this conundrum. We conclude that it would be an absurd result to read the "unsuited for agricultural use" consideration so strictly and narrowly, particularly under circumstances such as those presented here, to deny a special

permit due to an applicant's attempt to incorporate an agricultural component into its proposed use. See, e.g., Morgan v. Planning Dep't, Cty. of Kaua'i, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004) (planning commission is required to give effect to the policies and objectives of land use statutes and not to interpret them in a manner that would lead to an absurd result).

Accordingly, in view of the reliable, probative, and substantial evidence on the whole record, and in light of the aforementioned considerations, we conclude that FOF 55 must be vacated in order for the Planning Commission to assess the evidence in this light.

5. The General Plan and other Plans

Planning Commission Rule 6-3(b)(5)(G) provides that the Planning Commission must consider whether "[t]he request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans." Both CBESS and Connections challenge FOFs 59 and 62, which state:

- 59. The Development, which proposes a charter school that is not specifically intended to service the immediate community surrounding the school, is not consistent with the uses permitted in areas of low density urban use.
- 62. Although the County General Plan Public Facilities-Education course of action for South Hilo encourages the establishment of additional schools as the need arises, the proposed Development, at the subject location, is contrary to the General Plan.

CBESS first argues that the Planning Commission does not have the authority to "interpret" the General Plan and in doing so exercised powers beyond its authority. Whether the Planning Commission exceeded its statutory authority under HRS

Chapter 205 is an issue of statutory interpretation reviewed de novo by this court. See Malama Maha'ulepu v. Land Use Comm'n, 71 Haw. 332, 335-36, 790 P.2d 906, 908 (1990).

The Charter of the County of Hawai'i (CCH) provides that the county council must adopt a general plan, which is to set forth the council's long range policy for the comprehensive physical, economic, environmental, and socio-cultural well being of the county and "shall be designed to assure the coordinated development of the county and to promote the general welfare and prosperity of its people." CCH § 3-15 (2012).9 The charter

The county council shall adopt by ordinance a general plan which shall set forth the council's policy for longrange comprehensive physical development of the county. shall contain a statement of development objectives, standards and principles with respect to the most desirable use of land within the county for residential, recreational, agricultural, commercial, industrial and other purposes which shall be consistent with proper conservation of natural resources and the preservation of our natural beauty and historical sites; the most desirable density of population in the several parts of the county; a system of principal thoroughfares, highways, streets, and public access to the shorelines, and other open spaces; the general locations, relocations and improvement of public buildings, the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewers, light, power, transit, and other purposes; the extent and location of public housing projects, adequate drainage facilities and control; air pollution; and such other matter as may, in the council's judgment, be beneficial to the social, economic, and governmental conditions and trends and shall be designed to assure the coordinated development of the county and to promote the general welfare and prosperity of its people.

(continued...)

All references are to the 2012 CCH. CCH § 3-15 states: Section 3-15. General Plan.

⁽a) The council shall enact zoning, subdivision, and such other ordinances which shall contain the necessary provisions to carry out the purpose of the general plan.

⁽b) No public improvement or project, or subdivision or zoning ordinance, shall be initiated or adopted unless the same

further provides that:

- (a) The council shall enact zoning, subdivision, and such other ordinances which shall contain the necessary provisions to carry out the purpose of the general plan.
- (b) No public improvement or project, or subdivision or zoning ordinance, shall be initiated or adopted unless the same conforms to and implements the general plan.
- (c) Amendments to the general plan may be initiated by the council or the planning director.

Id.

The Hawai'i County Charter also provides for the creation of the "Planning Department," which consists of the Planning Director and the two planning commissions along with necessary staff. See CCH § 6-7.1. 10 The Planning Director is appointed by the mayor and is the "chief planning officer" of the county and the administrative head of the Planning Department. See id. § 6-7.2(a)-(b). 11 The Planning Director's duties are

Section 6-7.1. Organization.

There shall be a planning department consisting of a planning director, a windward planning commission, a leeward planning commission and the necessary staff.

11 CCH § 6-7.2 states, in relevant part:

Section 6-7.2. Planning Director.

- (a) The planning director shall be appointed by the mayor, confirmed by the council and may be removed by the mayor[.]
- (b) The director shall be the chief planning officer of the county and the administrative head of the department and shall:

(1) Advise the mayor, the windward planning commission, the leeward planning

(continued...)

^{9(...}continued)

conforms to and implements the general plan.

⁽c) Amendments to the general plan may be initiated by the council or the planning director.

¹⁰ CCH § 6-7.1 states:

enumerated in the charter and provide, in relevant part, that the Planning Director shall:

- (1) Advise the mayor, the windward planning commission, the leeward planning commission and the council on all planning and land use matters.
- (2) Prepare a general plan, implementation plans and any amendments thereto in accordance with Section 3-15.
- (7) Make recommendations on rezoning applications, special exceptions and other similar requests.

11 (...continued)

commission and the council on all planning and land use matters.

(2) Prepare a general plan, implementation plans and any amendments thereto in accordance with Section 3-15.

(3) Prepare proposed zoning and subdivision ordinances, zoning maps and regulations and any amendments thereto.

(4) Review the lists of proposed capital improvements contemplated by agencies of the county and recommend the order of their priority.

(5) Administer the subdivision and zoning ordinances and regulations adopted thereunder.

(6) Render decisions on proposed subdivision plans pursuant to law.

(7) Make recommendations on rezoning applications, special exceptions and other similar requests.

(8) Render decisions on proposed variances pursuant to law, except that, if any written objections are made to the planning director's actions under this section, said actions shall be subject to review by the board of appeals in accordance with Section 6-9.2, unless otherwise provided by law or

this chapter.

(9) Perform such other related duties and functions as may be necessary or required pursuant to law and this charter.

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(9) Perform such other related duties and functions as may be necessary or required pursuant to law and this charter.

Id. § 6-7.2(b).

As stated above, the Hawai'i County Charter also creates two planning commissions with jurisdiction over their respective areas of Hawai'i County. See id. § 6-7.3 (Windward Planning Commission) and 6-7.4 (Leeward Planning Commission). The charter provides, in relevant part, that the commissions shall:

- (1) Advise the mayor, council and the planning director on planning and land use matters pursuant to law and this charter.
- (2) Review the general plan, its amendments and other plans and modifications thereof and transmit such plans with recommendations thereon through the mayor to the council for consideration and action.
- (3) Review proposed subdivision and zoning ordinances and amendments thereto and transmit such ordinances with recommendations thereon through the mayor to the council for consideration and action.
- (4) Conduct public hearings in every case prior to action on any matter upon which the commission is required by law or this charter to act.

 Notice of the time and place of the hearing shall be published at least ten days prior to such hearing in at least two daily newspapers of general circulation in the county and shall also be distributed via an electronic medium, such as the Internet.
- (5) Perform such other related duties and functions as may be necessary or required pursuant to law and this charter.

Id. \S 6-7.5(a)(1)-(5).

In addition, the Hawai'i County Charter states that "[e]ach planning commission shall review and take action upon applications for land use changes and community development plans involving only property within their respective jurisdictions, other than those involving the general plan[.]" Id. § 6-7.5(c)

(emphasis added). CBESS argues that this provision, CCH § 6-7.5(c), prohibits the commissions from considering whether a special permit is consistent with the general plan in making their decision to approve or deny a special permit.

The interpretation of a charter is similar to that of a statute and our review is de novo. Ford v. Leithead-Todd, 139 Hawai'i 129, 133, 384 P.3d 905, 909 (App. 2016). First, it appears that the language used in CCH § 6-7.5 is ambiguous. states that "[e]ach planning commission shall review and take action upon applications for land use changes and community development plans involving only property within their respective jurisdictions, other than those involving the general plan[.]" CCH § 6-7.5(c) (emphasis added). However, the general plan is created by the council for the entirety of Hawai'i County and no public improvement may be made unless it conforms to and implements the general plan. See id. § 3-15(b). Therefore, every application for a special permit "involves" the general plan insofar as every improvement must conform to and implement the general plan. Therefore, a more reasonable interpretation is that the Planning Commission does not have jurisdiction over requests to change the general plan. This would be the prerogative of the county council, with the advice of the Planning Director. See id. §§ 3-15, 6-7.2.

This interpretation is also supported by the special permit process as a whole. At least for decisions on special permits for land less than fifteen acres, the only decision maker

on the special permit is the applicable commission. See Planning Commission Rule 6-8. The Planning Director's role in special permit applications is to ensure that the application is not processed if it is "incomplete" as to "form and content" and to provide his or her own recommendation. Id. at Rule 6-4; see also CCH § 6-7.2(b). We reject CBESS's argument that the Planning Director has the responsibility under Planning Commission Rule 6-4 to reject an application if he or she believes the special permit application is contrary to the general plan. The rule does not provide that authority because whether the permit should be granted on the merits is not a decision on whether the application is "incomplete" as to "form and content." The Planning Director is charged with making a recommendation on "special exceptions and other similar requests," but he or she has no role in deciding on the merits of the particular application. See CCH at 6-7.2(b).

In addition, HRS § 205-6(c) provides that the Planning Commission has the discretion to grant a special permit "only when the use would promote the effectiveness and objectives of [HRS Chapter 205]." The general plan is one of the means used to further the objectives of HRS Chapter 205. See CCH § 3-15 (general plan sets forth the council's long-range policy for the comprehensive physical, economic, environmental, and socio-cultural wellbeing of the county and "shall be designed to assure the coordinated development of the county and to promote the general welfare and prosperity of its people"). The general

plan is repeatedly referenced and used in Chapter 205 as part of the planning and development process. See HRS § 205-17 (county general plan one of the criteria to be considered by the LUC regarding district boundaries); HRS § 205-2 (same); HRS § 205-18 (county general plan reviewed every five years to review classification and districting of lands in the State). HRS § 205-6(c) authorizes the Planning Commission to consider the general plan in making a permitting decision, as the general plan is one of the tools used to set out the objectives of HRS Chapter 205, and the Planning Commission is required to find that granting a special permit promotes the effectiveness and objectives of that chapter. Accordingly, CBESS's contention that the Commission exceeded its authority in interpreting the general plan is without merit.

Connections also argues that the Planning Commission's finding that the Development would be contrary to the general plan is arbitrary, clearly erroneous, and against the weight of the evidence. The Planning Commission found that the general plan designates the Property for "low density urban use," which includes "residential, with ancillary community and public uses, and neighborhood and convenience—type commercial uses." The Planning Commission concluded that the Development is not "specifically intended to serve the immediate community surrounding the school" and, therefore, "is not consistent with the uses permitted in areas of low density urban use." No additional explanation is provided.

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The general plan describes three types of "Urban Designations" based on density as follows:

High Density: General commercial, multiple family residential and related services. . . . Medium Density: Village and neighborhood commercial and single family and multiple family residential and related functions. . . . Low Density: Residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. . . .

County of Hawai'i General Plan (General Plan) at p. 14-7 (2005).

Four additional types of urban designations are listed that are not relevant here for resorts, industrial areas, etc.

Id. None of the urban density designations expressly mention elementary or higher education schools as permitted in those areas. However, the Planning Director testified that Hawai'i County does have schools in both urban and agricultural areas. It is unclear why a public charter school, which would eventually include children from the neighboring communities, estimated at fifty percent from the Hilo area, is not an ancillary "public use" and, therefore, consistent with the low-density urban use designation.

The Planning Commission then stated that the general plan instructs that the Planning Commission must consider community concerns in making its decision, citing three general "goals" set forth in the General Plan:

Economic Element - Goal

"Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment."

Public Facilities Element - Goal

"Encourage the Provision of public facilities that effective service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community."

Land Use Element - Policy

"Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

General Plan at 2-13, 10-1, and 14-14. The Planning Commission found that, even though the General Plan encourages the establishment of schools in South Hilo as the need arises (see General Plan at 10-7), due to the significant community concerns expressed regarding the Development, the granting of the Special Permit would be "contrary to the General Plan." Id.

However, a plain reading of the General Plan does not forbid or even discourage the building of school facilities in low density urban areas. There is no satisfactory explanation provided as to why building a school in a low density urban area is contrary to the General Plan. The general goals of the General Plan stated above do not support the proposition that community concern generally can serve as a veto over a special use permit. How much "community concern," however calculated, is required before a special permit is found to be contrary to the general plan is unclear and is ripe for arbitrary and capricious abuse. Given the sparsity of factual findings or explanation in the Planning Commission's decision, this Court has no way to meaningfully evaluate the Planning Commission's conclusion

regarding the permit being contrary to the general plan. See Kauai Springs II, 133 Hawai'i at 164, 324 P.3d at 974 (an agency's findings should allow the reviewing court to track the steps by which the agency reached its decision). Without additional findings by the Planning Commission, the Planning Commission's FOFs 59 and 62, finding that the Development would be contrary to the General Plan, are arbitrary and capricious. COL 5, stating that the Development is not consistent with the County General Plan, must also be vacated.

D. <u>Further Challenges</u>

Both CBESS and Connections challenge FOF 63, which states:

63. The construction of a school on the Property is an unusual use of the land because a school is not a permitted use in the State Land Use Agricultural District. However, the evidence presented does not demonstrate that the Development is a reasonable use of the Property. Specifically, Connections has not demonstrated how this school can be built without sufficient potable water resources. Nor [] has Connections demonstrated how the development of a regional charter school on the Property that does not specifically service the needs of the immediate community and that is overwhelmingly objected to by the immediate community is a reasonable site for this facility. In addition, Connections has not demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application.

CBESS also challenges COL 4, which states:

4. The Development does not adequately meet the requirements or guidelines for a special permit as required by Section 205-6, HRS and Rule 6 of the Commission Rules.

The Planning Commission has wide discretion in deciding whether to approve a special permit and must consider each of the factors set out in its rules to determine whether the granting of

the special permit is warranted. As explained by the Planning Commission in its Answering Brief, the Planning Commission did not base its decision on any single criterion; rather, it was based on the totality of the evidence when applied to all seven criteria. In this light, and given our conclusions above regarding various errors and insufficiencies in the Decision and Order, FOF 63 and COL 4 must be vacated, and it is necessary to remand the case to the Planning Commission for further proceedings. See HRS § 91-14(g) (appellate court may remand the case with instructions for further proceedings; see also Lanai Co., Inc. v. Land Use Comm'n, 105 Hawai'i 296, 316-17, 97 P.3d 372, 392-93 (2004) (remanding to LUC for additional findings and conclusions and further hearings if necessary). 12

V. CONCLUSION

For the foregoing reasons, the Circuit Court's July 14, 2015 Order Affirming and January 13, 2017 Final Judgment and the Planning Commission's May 12, 2014 Decision and Order are

Although not raised as a point of error on appeal, Gomes argues that the Planning Commission failed to consider its public trust obligations with respect to the Property. See generally Mauna Kea Anaina Hou, 136 Hawai'i at 403-09, 363 P.3d at 251-57 (discussing the public trust doctrine under Article XI, Section I of the Hawai'i Constitution). As a special permit was not approved, notwithstanding any other arguments concerning the Planning Commission's public trust duties, it appears that the Planning Commission can address the requisites of the public trust doctrine on remand. See id. at 408-09, 363 P.3d at 256-57.

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

vacated, and this case is remanded to the Planning Commission for further proceedings consistent with this Memorandum Opinion.

DATED: Honolulu, Hawai'i, January 31, 2020.

On the briefs:

Ted H.S. Hong, for Applicant-Appellant COMMUNITY BASED EDUCATION SUPPORT SERVICES.

Holly T. Shikada, Gregg M. Ushiroda, Carter K. Siu, Deputy Attorneys General, State of Hawai'i, for Applicant-Appellant CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL.

D. Kaena Horowitz,
Angelic M.H. Hall,
Deputies Corporation Counsel,
County of Hawai'i,
for Appellee-Appellee
WINDWARD PLANNING COMMISSION,
COUNTY OF HAWAI'I.

Michael J. Matsukawa, for Intervenor-Appellee.

Presiding Judge

Asaciate Judge

Associate Judge

Mitchell D. Roth

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

COH PLANNING DEPT JUN 15 2021 PM1:36

June 15, 2021

John Replogle, Chair and Members of the Windward Planning Commission Windward Planning Commission 101 Pauahi Street, Suite 3 Hilo, HI 96720

Dear Chair Replogle and Commissioners,

A request has been made by Mr. Ted Hong, attorney for Connection New Century Public Charter School and Community Based Education Support Services with regard to the remand from the Hawai'i Intermediate Court of Appeals that I recuse myself from this matter. I was the Chairperson for the Windward Planning Commission when this matter was previously before the Commission. While no conflict of interest exists, in order to avoid any appearance of impropriety, I hereby recuse myself from this matter. Deputy Planning Director Jeff Darrow will act in my stead on behalf of the Planning Department.

Thank you for all your work on behalf of the County.

Sincerely,

ZENDO KERN Planning Director Mitchell D. Roth Mayor

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

June 15, 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Gregg M. Ushiroda
Department of the Attorney General
Education Division
State Office Tower
235 S. Beretania Street, Rm. 304
Honolulu, HI 96813

Dear Mr. Hong and Mr. Ushiroda:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006-141

This is to inform you that the Windward Planning Commission ("Commission") will be holding a discussion and an Executive Session to consult the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Based on Governor's Nineteenth Proclamation Related to the COVID-19, this meeting will be online to prevent the spread of COVID-19 and to maintain physical distancing. The discussion will be held beginning at 9:00 a.m. on Thursday, July 1, 2021. A copy of the agenda is enclosed.

The purpose of the discussion concerns the Intermediate Court of Appeals' January 31, 2020, Memorandum Opinion vacating the County of Hawai'i Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit Application SPP No. 12-000138, and remanding the Special Permit Application back to the Commission for further proceedings consistent with its Memorandum Opinion.

Ted H.S. Hong, Esq. Gregg M. Ushiroda Department of the Attorney General Education Division June 15, 2021 Page 2

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,

JEFFREY W. DARROW Deputy Planning Director

Marja J

Att.

cc/att: Angelica M.H. Hall, Esq., Deputy Corporation Counsel

Jean K. Campbell, Esq., Deputy Corporation Counsel

Mr. Sidney Fuke

Mr. Terrence Yoshioka Michael Matsukawa, Esq.

Mr. Jeffrey Gomes



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742 John Replogle, Chair Gilbert Aguinaldo, Vice Chair Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

AGENDA

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Windward Planning Commission of the County of Hawai'i in accordance with the provisions of Chapters 91 and 92, Hawai'i Revised Statutes, Section 6-7.5(a) of the Charter of the County of Hawai'i, and the Commission's Rules of Practice and Procedure.

Based on the Governor's Nineteenth Proclamation Related to the COVID-19 Emergency dated April 9, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing.

DATE:

Thursday, July 1, 2021

TIME:

9:00 a.m.

PLACE:

This meeting will be held by interactive video conference via Zoom. The public may provide oral testimony at the meeting by joining online or calling into the Zoom meeting. To register for access to the Zoom meeting please contact Melissa Dacayanan-Salvador at Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than 4:30 p.m. on Tuesday, June 29, 2021.

The public may observe the meeting by viewing a live stream on YouTube at:

https://www.youtube.com/channel/UCAFoRMb3rfWLQMPd6TAkEGA?view as=subscriber

The public may provide written testimony via email at WPCtestimony@hawaiicounty.gov or submitted at the Hilo or Kona Planning Departments up to two business days prior to the hearing by 4:30 p.m. (See Submitting Testimony below).

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CALL TO ORDER

APPROVAL OF MINUTES

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

NEW BUSINESS

1. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERIVES (CBESS) (SPP 12-000138)

DISCUSSION ONLY: Executive Session to consult the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities concerning Intermediate Court of Appeals' January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138, and remanding the Special Permit SPP No. 12-000138 back to the Windward Planning Commission for further proceedings consistent with its Memorandum Opinion. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

UNFINISHED BUSINESS

2. APPLICANT: KIRPAL MEDITATION AND ECOLOGICAL CENTER, LLC (SPP 20-000220)

Application for a Special Permit to legitimize the operation of a meditation and ecological center and retreat on 10 acres of land situated within the State Land Use Agricultural District. The subject property is located at 13-260 Pohoiki Road, approximately 0.5 miles west, or mauka, of the intersection with Kalapana-Kapoho Beach Road, Pohoiki, Puna, Hawaiʻi, TMK: (3) 1-3-008:005.

ADMINISTRATIVE MATTERS

1. Discussion of recent Special Management Area (SMA) determinations, minor permits and enforcement action issued by the Planning Director.

ANNOUNCEMENTS

1. The Windward Planning Commission's next monthly meeting is scheduled for Thursday, August 5, 2021 by interactive video conference via Zoom.

ADJOURNMENT

Submitting Testimony: According to Rule 1 (General Rules) of the Planning Commission, a person desiring to submit written testimony shall indicate her/his name; address; and whether the testimony is on her/his behalf or as a representative of an organization or individual. If testimony is being submitted on behalf of an organization, documentation showing membership ratification should accompany the testimony. Public testimony can be submitted by mail or email. Those submitting written testimony by mail should provide fifteen (15) copies for distribution. Public testimony submitted by mail, should be mailed to the Leeward Planning Commission at the Planning Department office addresses in Hilo and Kona listed below. Mailed testimony should be provided at least one week prior to the hearing date to allow for mailing and thorough Commission review. Public testimony that is submitted by email to WPCtestimony@hawaiicounty.gov, should be submitted before 4:30 p.m. two business days prior to the Commission meeting. Testimony that is irrelevant or unduly repetitious may be limited by the Chairperson pursuant to Rule 1.

Notice to Lobbyists: If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist {Article 15, Section 2-91.3(b), Hawai'i County Code}. A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration forms and expenditure report documents are available at the Office of the County Clerk, 25 Aupuni Street, Room 1402, Hilo, Hawai'i 96720.

<u>Board Packet:</u> Pursuant to Hawai'i Revised Statutes Section 92-7.5, the board packet provided to members of this board for this meeting is available for public inspection during regular business hours at the Hilo office of the Planning Department, Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i and at the Kona office of the Planning Department, West Hawai'i Civic Center, 74-5044 Ane Keohokālole Highway, Building E, 2nd Floor, Kailua-Kona, Hawai'i.

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WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Thursday, June 10, 2021) (West Hawai'i Today: Thursday, June 10, 2021) Mitchell D. Roth Mayor

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West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

June 15, 2021

Dear Surrounding Property Owner:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006-141

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Please contact Maija Jackson of this department at (808) 961-8159 should you have questions regarding the above.

Sincerely,

JEFFREY W. DARROW Deputy Planning Director

Attachment

cc: Ted H.S, Hong, Esq.

Gregg M. Ushiroda, Department of the Attorney General - Education Department



County of Hawai'i

WINDWARD PLANNING COMMISSION

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WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Thursday, June 10, 2021) (West Hawai'i Today: Thursday, June 10, 2021)

Connect ins

AHIA, WILLIAM KALAEMAKANI SR-ROADWAY

AKAMINE, CHUN Y TRST 1360-D MELE MANU ST HILO HI 96720 1792

ANDAYA, RICHARD C P 1056 KAUMANA DR HILO HI 96720 1716

ARRUDA, JO ANN R TRST 993 KAUMANA DR APT C HILO HI 96720 6758

BISHOP, MICHAEL K C K/ZAK, PAMELA V BOCK, DAVID PAUL 1485 MELE MANU ST HILO HI 96720 1795

1220 POMAIKAI WAY HILO HI 96720 6753

BOTELHO.BETTY J TRST 78 AKALA RD HILO HI 96720 1454

BOUGHANEM.JAY 720 WAIANUENUE AVE HILO HI 96720 2016

BRILHANTE-HAWAII INC 1342 KILAUEA AVE HILO HI 96720 4292

BUTZ,MARC 55 AKALA RD HILO HI 96720 1401 BYUN, PAUL H 1360 MELE MANU STAPT B HILO HI 96720 6731

CAMPBELL, NANCY JO 1253 KAUMANA DR HILO HI 96720 1719

CARVALHO, JOHN G 1131 KAUMANA DR HILO HI 96720 1717

CHOCK PROPERTIES 2101 NUUANU AVE APT 601 HONOLULU HI 96817 1766

CHOCK, KYLE TR 1100 LAUNA ST HILO HI 96720 3265

CHOCK.LAURA Y TR SR-ROADWAY

CHOCK.LORRIN S K TRST 1978 KOMOHANA ST HILO HI 96720 5935

CHOCK, THEONE K Y FAMILY TRST SABEL, JOHN III TTEE 1051 HOOMAIKAI ST HONOLULU HI 96817 1221

CHUN, MARK RICHARD 1540 MELE MANU ST HILO HI 96720 1796

COMMUNITY BASED EDUCATION SUPPC CORREA, CHARISSE A 174 KAMEHAMEHA AVE HILO HI 96720 2865

1064 KAUMANA DR HILO HI 96720 1716

CRIVELLO, RONALD ANTHONY 1073 KAUMANA DR HILO HI 96720 1715

DOAN,LAM XUAN 33 W NAAUAO ST HILO HI 96720 6704 EBESU, JANEY LATR 1215 KAUMANA DR APT G HILO HI 96720 6718

EBESU, ROYCE TJR 1215 KAUMANA DR APT G HILO HI 96720 6718

ENOKI, CALVIN H TR 1381 KAUMANA DR HILO HI 96720 1721

FALETOI, CHRISTIE ANN TRST PO BOX 53 PEPEEKEO HI 96783 0053

FERGERSTROM, ARNOLD TRST 13 MINOAKA PL HILO HI 96720 2109

FUJIMOTO, BYRON S/BARBARA M TR 142 PUHILI ST HILO HI 96720 1460

FUJISAWA, STANLEY K 1296 KAUMANA DR HILO HI 96720 1720

FUKE, SIDNEY MITSUO/AILEEN SHIGEKO FUKE, SIDNEY MITSUO 1358 MELE MANU STAPT C

HILO HI 96720 6722

1358 MELE MANU STAPT C HILO HI 96720 6722

GERMANO, ALIKA JAMES 1586 NANAINA WAY HILO HI 96720 6770

GIBO, CLIFTON YUKIO 275 KRISTIANO ST HILO HI 96720 6711

GIBO, DENNIS MASAO 1280 KAUMANA DR HILO HI 96720 1720

GOMES, JEFFREY KALANI 281 EDITA ST HILO HI 96720 1707

GOOCH, MARSHALL H 45-630 HALEKOU PL KANEOHE HI 96744 5203 GOYA.MELVIN H TR 1170 KAUMANA DR HILO HI 96720 1757

HASEGAWA, DAVID A C TRST 250 N JUDD ST HONOLULU HI 96817 1704

HENNESSEY, BRENDAN J 1723 S AVENUE N PORTALES NM 88130 7036 HIHL MELEMANU LLC C/O KENNY, DANA HAWAIIAN ISLAND HC 162 KINOOLE ST STE 201 HILO HI 96720 2861

HIRANO, SHINAE 1670 PAUKIKI ST KAILUA HI 96734 4176

HUDAK, DANIEL ROBERT 1488 MELE MANU ST HILO HI 96720 1794

HUNT, RUPERT SAMUEL JR 4207 CARNATION PL HONOLULU HI 96816 3905

IGNACIO, MICHAEL L TR 1411 MELE MANU ST HILO HI 96720 1795

IIDA, ERWIN Y 1449 MELE MANU ST HILO HI 96720 1795

INOUYE.JUNE J TR 2230 APOEPOE ST PEARL CITY HI 96782 1239

IWASAKI.ALAN 232 EDITA ST HILO HI 96720 1708

JAMES.SUSAN L 365 HALELOA PL APT C HONOLULU HI 96821 2269

JOHNSON, MARI-VAUGHN VIRGINIA 1464 MELE MANU ST HILO HI 96720 1794

JTS PROPERTIES LLC PO BOX 4549 HILO HI 96720 0549

KAITOKU, GEORGE/JOYCE TR 1375 KAUMANA DR HILO HI 96720 1721

KANAHELE, KIP MASAO 1520 MELEMANU ST HILO HI 96720 1796

KANEKO, RYAN/AIMEE FAMILY TRST 1294 KAUMANA DR HILO HI 96720 1720

KANEMOTO, MICHAEL ALIKA 1224 POMAIKAI WAY HILO HI 96720 6753

KANEMOTO, WAYNE K TRST 1358 MELE MANU STB HILO HI 96720 6722

KANJA, EVELYN HIROKO 94-1126 AKEU PL WAIPAHU HI 96797

KENNEDY, WILLIAM J 1300 MELE MANU ST HILO HI 96720 1792

KIDDS DEVELOPMENT C/O PAPPAS, JAMES, TREASURER 616 MOANIALA ST HONOLULU HI 96821 2572

KIMURA, LARRY L 243 MIKALA ST HILO HI 96720 1791 KIMURA.LESLIE KA'IU KITAGAWA, MARK KITAMURA.TADAYUKI 1205 POMAIKAI WAY 1101 MALANANI PL 2562 BOOTH RD HILO HI 96720 6753 HILO HI 96720 2736 HONOLULU HI 96813 1146 KLING, CARROLL D KOMATSU, GARRET T TR KUNIOKA-VOLZ, SHERI 504 E WEBER ST 1155 KAUMANA DR 4870 IIWI RD GONZALES LA 70737 3253 HILO HI 96720 1717 KAPAA HI 96746 1913 KUROHARA, RANDALL M KUWAHARA, BRYSON T KUWAHARA, MATTHEW REED SEIZO 1205 POMAIKAI WAY 1142 KAUMANA DR 1227 POMAIKAI WAY HILO HI 96720 6753 HILO HI 96720 1757 HILO HI 96720 6753 LECKOVA, KATARINA LEE-CHING, RICHARD TRUST LEONG.KELLY/ALYSON Y KAKUGAWA T 1468 MELE MANU ST 1468 KAUMANA DR 1290 MELE MANU ST HILO HI 96720 1794 HILO HI 96720 1405 HILO HI 96720 6702 LUDLOFF.ELAINE L H LUIZ EZEKIEL HARVEY MAMHOT, ROXANNE JOY BATALLA 1416C MELE MANU ST PO BOX 116 272 EDITA ST HILO HI 96720 1794 PEPEEKEO HI 96783 0116 HILO HI 96720 1708 MATSU.RUSSELL MATTOS, DAVID J MERRITT.LONNIE ALLEN 1352 KAUMANA DR 1209 KAUMANA DR 1503 KAUMANA DR HILO HI 96720 1722 HILO HI 96720 6757 HILO HI 96720 1479 MISITANO, ANDREW JORDAN MITSUNAGA, EDITH S TR MOCHIDA, IVAN S TR 1600 KAUMANA DR 3572 NIPO ST 77 KUKILA ST HILO HI 96720 1407 HONOLULU HI 96822 1141 HILO HI 96720 4519 MOE, INGE M F MONTANDON.2015 TRST NAGAI, NANCY M 1358 MELE MANU STAPT D 6132 BRAESIDE CT 1035 KAUMANA DR HILO HI 96720 6722 LAS VEGAS NV 89130 1384 HILO HI 96720 1715 NAKAMOTO, TSURUYO NAKAMURA, BRYCE H/SHARYL S TRST NAKANO, SHARON MATSUYO 1348 KAUMANA DR PO BOX 294 1005 KAUMANA DR HILO HI 96720 1722 CAPTAIN COOK HI 96704 0294 HILO HI 96720 1715

NELSON,PATRICK NISHIMOTO,NELSON N NOVAK,ALLEN/LAYNE TR 23 CHONG ST 1414 MELE MANU ST APT B 1414 MELE MANU ST APT C HILO HI 96720 1701 HILO HI 96720 6754 HILO HI 96720 6754

| OGAWA, GLENN H/GAIL H TR | OKUHARA, HENRY S | OKUTSU,RANDAL S TR |
|---|------------------------|----------------------------------|
| 1495 MELE MANU ST | PO BOX 946 | 1876 HALE O KEA ST |
| HILO HI 96720 1795 | HILO HI 96721 0946 | HILO HI 96720 5947 |
| OLDFIELD,RICHARD | OLIVEIRA, MARY JANE | O'NEILL,CHLOE Y D K |
| 1473 KAUMANA DR | 1150 KAUMANA DR | 1074 KAUMANA DR |
| HILO HI 96720 1404 | HILO HI 96720 1757 | HILO HI 96720 1716 |
| OSHIRO,LESTER D | OTA,CRAIG H | OTA,LESLIE N |
| PO BOX 4702 | 206 E KINAI PL APT B | 855 HOOLALA PL |
| HILO HI 96721 0702 | HILO HI 96720 7635 | HILO HI 96720 3344 |
| OTA,TERENCE | OTANI, GEORGE G | OTANI, JAMES M |
| 1736 WAILUKU DR | PO BOX 150 | 1360 KAUMANA DR |
| HILO HI 96720 1226 | HILO HI 96721 0150 | HILO HI 96720 1722 |
| OTANI, JEAN S TRST | OTANI,NORIAKI | PAIVA, PAUL PRESCOTT/SHAWN MORIE |
| 1215 KAUMANA DR APT B | 1489 KAUMANA DR | 1169 KAUMANA DR |
| HILO HI 96720 6718 | HILO HI 96720 1404 | HILO HI 96720 1717 |
| PAPALIMU,KAHIOLANI JUANITA | PAPPAS,MARILYN J TRST | PERREIRA, FAMILY 2008 TRST |
| 1053 KAUMANA DR | 616 MOANIALA ST | 1266 KAUMANA DR |
| HILO HI 96720 1715 | HONOLULU HI 96821 2572 | HILO HI 96720 1720 |
| PHILLIPS,J&D FAMILY TRST | QUIOCHO,LEANDRO JR | REZENTES,HENRY J |
| 1036 KAUMANA DR | 1222 KAUMANA DR APT A | 1367 KAUMANA DR |
| HILO HI 96720 1716 | HILO HI 96720 6719 | HILO HI 96720 1721 |
| RILEY,RANDELL A | ROBLEDO, CRYSTAL | RODILLAS, FRANCIS HERBERT |
| 282 EDITA ST | 1260 KAUMANA DR | 50 AKALA RD |
| HILO HI 96720 1708 | HILO HI 96720 1720 | HILO HI 96720 1449 |
| RUBIO,KAREN LEIKO | RUSHLOW, JOHN HOWARD | SAGAYSAY,EDWIN B |
| 226 AKALA RD | 1147 KAUMANA DR | 94-1006 AHAHUI PL |
| HILO HI 96720 1561 | HILO HI 96720 1717 | MILILANI HI 96789 2554 |
| SAGAYSAY,JASON JUSTIN 1058 KALIMANA DR | SAKAMOTO,LESTER S TRS | SASAMURA, THEODORE HAJIME |

1439 MELE MANU ST

HILO HI 96720 1795

1058 KAUMANA DR HILO HI 96720 1716 1023 KAUMANA DR HILO HI 96720 1715 SATO, MARK M SATO, SANDRA SEARCY, SCOTT RUSSELL PO BOX 529 333 KILAUEA AVE STE 202 1414 MELE MANU STAPTA KANEOHE HI 96744 0529 HILO HI 96720 3013 HILO HI 96720 6754 SEGAWA, CHUCK F SEGAWA, RODNEY MACY F SEGAWA, HERBERT A 1215 KAUMANA DR APT D 1215 KAUMANA DR APT D SR-ROADWAY HILO HI 96720 6718 HILO HI 96720 6718 SEGAWA, WESLEY R TRST SEGUNDO, KAIYA LIN BENET SETO.MICHAEL H TR 19 PUUKO ST PO BOX 6729 29 MAIKAI STAPTA HILO HI 96720 1832 HILO HI 96720 8933 HILO HI 96720 8138 SHAVER.JENNIFER MARGARET TR SHINJO.HAJIME SHIRO, DOUGLAS T 2492 AURORA LN 1272 KAUMANA DR 1360 MELE MANU STAPT C SIMI VALLEY CA 93063 0448 HILO HI 96720 1720 HILO HI 96720 6731 SITE ENGINEERING INC SHOZUYA, ERIC M SOARES, RACHAEL LEINA'ALA ATTN: MASUTANI,M K 1380 MELE MANU ST 1013 KAUMANA DR 1130 N NIMITZ HWY # C-240 HILO HI 96720 1792 HILO HI 96720 1715 HONOLULU HI 96817 4579 SODERBERG DUNN TR SPENCER, EDWARD S TR TADA.GLENN K SODERBERG,P TRS 1110 KAUMANA DR 259 EDITA ST 1510 MELE MANU ST HILO HI 96720 1718 HILO HI 96720 1707 HILO HI 96720 1796 TAKAI.WESLEY T TRST TAKASE, GLENN M TAKATA, BRICE HIROSHI 1222 KAUMANA DR APT E 36 AKALA RD 1416 B MELE MANU ST HILO HI 96720 6719 HILO HI 96720 1449 HILO HI 96720 6755 THATCHER, JOHN L II THATCHER JOHN L TIOGANGCO, ANNE AKEMI TR 1188 KAUMANA DR 1188 KAUMANA DR 1391 KAUMANA DR HILO HI 96720 6751 HILO HI 96720 6751 HILO HI 96720 1721 TOKUUKE, JON P TOMA, BRYSON TMK 2561-8 1395 MELE MANU ST 1374 KAUMANA DR SR-ROADWAY HILO HI 96720 1793 HILO HI 96720 1722

250 KRISTIANO ST

HILO HI 96720 6711

TRIMBOLI REMODELING LLC

840 KULALOA RD

HILO HI 96720 3569

TRUESDELL, JOEL W/ELIZABETH F TRST TSUCHIYA, KARL K TRST

1175 KAUMANA DR

HILO HI 96720 1717

TURNER, JASON PHILLIP 1209 KAUMANA DR APT C HILO HI 96720 6757

USHIJIMA, DEAN K 1215 KAUMANA DR APT C HILO HI 96720 6718

VARIOUS OWNERS SR-ROADWAY

VERIATO, FRANKLIN D/VERIATO, VIRGINIA WILHELM, STEVE K 1500 MELE MANU ST HILO HI 96720 1796

1416C MELE MANU ST HILO HI 96720

WILSON, CYRUS H 1090 KAUMANA DR APT A HILO HI 96720 6734

WILSON, LEE MICHAEL MORITA 1536 MELE MANU ST HILO HI 96720 1796

WONG, STEPHEN K C S TRST 1211 KAUMANA DR HILO HI 96720 1719

YAHATA, MICHIKO 98-459 HOONO ST PEARL CITY HI 96782 2337

YAMANE, RAYMOND IWAO TRST 1473 MELE MANU ST HILO HI 96720 1795

YAMASHIRO, REYN M T 50 MANULELE ST HILO HI 96720 1628

YAMASHITA, GARY M 1457 MELE MANU ST HILO HI 96720 1795

YOKOTA, MELVIN H/JAN T TRST 1358 MELE MANU STAPTA HILO HI 96720 6722

YOKOYAMA, JAN KIMI TRST 1300 KAUMANA DR HILO HI 96720 1722

YOSHIMURA, GARY K 1441 KAUMANA DR HILO HI 96720 1404

Mori, Ashley

From:

O'Bitts, Melissa M < melissa.m.mihara@hawaii.gov>

COH PLANNING DEPT JUN 23 2021 PM1:00

Sent:

Friday, June 18, 2021 1:57 PM

To:

Dacayanan, Melissa

Cc:

Ushiroda, Gregg M; ted@tedhonglaw.com; Hall, Angelic (Malia); kapulu@msn.com;

shinji_salmoiraghi@connectionspcs.org

Subject:

SPP 12-000138 Connections New Century Public Charter School/Community Based

Education Support Services (CBESS)

Attachments:

Letter from Gregg M. Ushiroda, Deputy Attorney General to Jeffrey W. Darrow, Deputy

Director dated June 18, 2021.pdf

Sensitivity:

Confidential

Dear Jeffrey W. Darrow, Deputy Planning Director:

Attached please find the Letter from Gregg M. Ushiroda, Deputy Attorney General to Jeffrey W. Darrow, Deputy Director dated June 18, 2021.

Should there be any questions and/or comments, please do not hesitate to contact Gregg Ushiroda, Deputy Attorney General at (808) 586-1255 or via email.

Thank you very much for your time and attention to this matter,

Melissa M. O'Bitts

Legal Assistant State of Hawaii Department of the Attorney General Education Division (808) 586-1255

Confidentiality Notice: This e-mail message (and any attachments) is for the sole use of the intended recipient(s). It may contain confidential and/or privileged information. It might also be protected from disclosure under the Hawai'i Uniform Information Practices Act (UIPA) or other laws and regulations. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender immediately in a separate e-mail and destroy the original message and any copies.

DAVID Y. IGE GOVERNOR



CLARE E. CONNORS

HOLLY T. SHIKADA FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL

235 S. BERETANIA STREET, RM 304 HONOLULU, HAWAII 96813 (808) 586-1255

June 18, 2021

Jeffrey W. Darrow Deputy Planning Director Planning Department County of Hawai'i 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720

Re: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006-41

Dear Deputy Director Darrow

This is to inform you that I am withdrawing as counsel of record for Applicant Connections New Century Public Charter School ("Connections) in this matter effective immediately. New legal counsel will be appointed to represent Connections in this matter, and our office will notify you when that happens. I would also like to request that the scheduling of the pre-hearing conference be postponed until such time as new counsel can make an appearance for Connections.

Thank you for your time and attention to this matter.

Sincerely,

Gregg M. Ushiroda

Deputy Attorney General

cc: Mr. Shinji Salmoiraghi Deputy Corporation Counsel Angelic M.H. Hall Michael J. Matsukawa, Esq. Ted H.S. Hong, Esq. DAVID Y. IGE GOVERNOR



CLARE E. CONNORS

HOLLY T. SHIKADA FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL

235 S. BERETANIA STREET, RM 304 HONOLULU, HAWAII 96813 (808) 586-1255

COH PLANNING DEPT JUN 21 2021 PM2:38

June 18, 2021

REC'D BY MAIL

Jeffrey W. Darrow Deputy Planning Director Planning Department County of Hawai'i 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720

Re:

Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006-41

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Thank you for your time and attention to this matter.

Sincerely,

Gregg M. Ushiroda

Deputy Attorney General

cc: Mr. Shinji Salmoiraghi Deputy Corporation Counsel Angelic M.H. Hall Michael J. Matsukawa, Esq. Ted H.S. Hong, Esq.

Department of the Attorney General 235 S. Beretania Street, Rm. 304 Honolulu, HI 96813 STATE OF HAWAI'I **Education Division**

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18 JUN 2021 PM 2 L

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ZIP 96813 041L11225990

Deputy Planning Director 101 Pauahi Street, Suite 3 Planning Department Hilo, Hawai'i 96720 Jeffrey W. Darrow County of Hawai'i

JUN 21 2021 PM2:38 COH PLANNING DEPT

007004000

THE STATE OF THE S

COH PLANNING DEPT

JUN 23 2021 PM12:59

Mori, Ashley

From:

michael matsukawa <kapulu@msn.com>

Sent:

Friday, June 18, 2021 2:44 PM

To:

O'Bitts, Melissa M; Dacayanan, Melissa

Cc:

Ushiroda, Gregg M; ted@tedhonglaw.com; Hall, Angelic (Malia);

shinji_salmoiraghi@connectionspcs.org

Subject:

Re: SPP 12-000138 Connections New Century Public Charter School/Community Based

Education Support Services (CBESS)

Sensitivity:

Confidential

Michael Matsukawa will await the commission's decision on procedure going foward. Mr. Gomes is still interested in participating in the remand, but wants to know the scope of the remand hearing (which I think the commission will be discussing on July 1st). Will it only take limited evidence? Will it start all over again, with brand new evidentiary hearings on all subjects? Will the hearing be focused only on the topic referred to by the ICA opinion and evidence to supplement the already existing record of evidence?

Michael J. Matsukawa 75-5751 Kuakini Highway Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385

From: O'Bitts, Melissa M <melissa.m.mihara@hawaii.gov>

Sent: Friday, June 18, 2021 4:57 PM

To: Dacayanan, Melissa < Melissa. Dacayanan@hawaiicounty.gov>

Cc: Ushiroda, Gregg M <gregg.m.ushiroda@hawaii.gov>; ted@tedhonglaw.com <ted@tedhonglaw.com>;

AngelicMalia.Hall@hawaiicounty.gov <AngelicMalia.Hall@hawaiicounty.gov>; kapulu@msn.com <kapulu@msn.com>; shinji salmoiraghi@connectionspcs.org <shinji salmoiraghi@connectionspcs.org>

Subject: SPP 12-000138 Connections New Century Public Charter School/Community Based Education Support Services (CBESS)

Dear Jeffrey W. Darrow, Deputy Planning Director:

Attached please find the Letter from Gregg M. Ushiroda, Deputy Attorney General to Jeffrey W. Darrow, Deputy Director dated June 18, 2021.

Should there be any questions and/or comments, please do not hesitate to contact Gregg Ushiroda, Deputy Attorney General at (808) 586-1255 or via email.

Thank you very much for your time and attention to this matter,

Melissa M. O'Bitts

Legal Assistant State of Hawaii Department of the Attorney General Education Division (808) 586-1255 <u>Confidentiality Notice</u>: This e-mail message (and any attachments) is for the sole use of the intended recipient(s). It may contain confidential and/or privileged information. It might also be protected from disclosure under the Hawai'i Uniform Information Practices Act (UIPA) or other laws and regulations. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender immediately in a separate e-mail and destroy the original message and any copies.

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

MINUTES JULY 1, 2021

The Windward Planning Commission met in regular session at 9:07 a.m., with Chairman John Replogle presiding. Based on the Governor's Nineteenth Proclamation Related to the COVID-19 Emergency dated April 9, 2021, this meeting was held online, with live-streaming for the public to observe the meeting.

VIRTUAL ATTENDANCE (COMMISSIONERS): Dean Au, Joseph Clarkson, Dennis Lin, Thomas Raffipiy, John Replogle.

ABSENT AND EXCUSED: Gilbert Aguinaldo, Michelle Galimba.

VIRTUAL ATTENDANCE (STAFF): Zendo Kern (Planning Director), Jeffrey Darrow (Deputy Planning Director), Malia Hall (Deputy Corporation Counsel for the Windward Planning Commission), Jean Campbell (Deputy Corporation Counsel for the Planning Department), Eric Cook (Planner), Maija Jackson (Temporary Assignment Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary).

<u>Secretary's Notes</u>: Throughout the meeting, there were some technical and/or internet difficulties which made the speaker inaudible. Please note that the notation "—" in these Minutes and the Exhibit Transcripts means that there were technical and/or internet difficulties which made the conversation inaudible.

A quorum was present. Chairman Replogle called the meeting to order. He explained the procedure and protocol for this online meeting and live public testimony. He introduced the Commissioners and staff who were in virtual attendance.

APPROVAL OF MINUTES

At 9:12 a.m. it was moved by Commissioner Lin and seconded by Commissioner Clarkson that the minutes of June 3, 2021, be approved. A voice vote was taken, and the motion carried with all in favor and no noes.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

Chairman Replogle called upon the public testifiers, explained the procedure, and swore them in to tell the truth in their testimony.

At 9:17 a.m. one individual provided statement regarding New Business Item 1, the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**. The testimony ended at 9:21 a.m. [SEE HEARING TRANSCRIPT – EXHIBIT A]

At 9:22 a.m. three individuals provided statements regarding Unfinished Business Item 2, the application of **KIRPAL MEDITATION AND ECOLOGICAL CENTER**, **LLC** (**SPP 20-000220**). The testimony ended at 9:33 a.m. [SEE HEARING TRANSCRIPT – EXHIBIT B]

NEW BUSINESS

1. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

DISCUSSION ONLY: Executive Session to consult the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities concerning Intermediate Court of Appeals' January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138, and remanding the Special Permit SPP No. 12-000138 back to the Windward Planning Commission for further proceedings consistent with its Memorandum Opinion. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

The Commission took this item up at 9:38 a.m.

Prior to a motion to enter Executive Session, Commission Raffipiy for full transparency, stated his wife works at the Connections Charter School therefore, he must recuse himself in participating with the agenda item. Commissioner Au also stated for full transparency he was on the Planning Commission when the application was originally heard. He stated that moving forward he still can serve on the agenda item. Counsel Malia Hall asked Commissioner Au whether he can be fair and impartial throughout the proceeding and Commissioner Au stated yes.

It was moved by Commissioner Clarkson and seconded by Commissioner Lin that the Commission go into Executive Session.

The live-stream meeting was placed on hold and at 9:44 a.m. the Commission went into executive session.

The hearing item ended at 10:15 a.m. [NO TRANSCRIPT AVAILABLE]

It was moved by Commissioner Clarkson and seconded by Commissioner Lin to continue Item 1 to the next meeting in August. A voice vote on the motion was taken, and the motion carried with none opposed.

UNFINISHED BUSINESS

2. APPLICANT: KIRPAL MEDITATION AND ECOLOGICAL CENTER, LLC (SPP 20-000220)

Application for a Special Permit to legitimize the operation of a meditation and ecological center and retreat on 10 acres of land situated within the State Land Use Agricultural District. The subject property is located at 13-260 Pohoiki Road, approximately 0.5 miles west, or mauka, of the intersection with Kalapana-Kapoho Beach Road, Pohoiki, Puna, Hawai'i, TMK: (3) 1-3-008:005.

The Commission took this item up at 10:15 a.m.

Action: It was moved by Commissioner Lin and seconded by Commissioner Au that the application for Special Permit No. 20-000220, be approved based on the Planning Director's recommendation and conditions, which shall be adopted. A roll call vote was taken, and the motion carried with five (5) ayes (Lin, Au, Aguinaldo, Clarkson, Raffipiy, Replogle) and no noes.

The hearing item ended at 11:08 a.m. [SEE HEARING TRANSCRIPT – EXHIBIT C]

ADMINISTRATIVE MATTERS

1. Discussion of recent Special Management Area (SMA) determinations, minor permits and enforcement action issued by the Planning Director.

The Commission took this item up at 11:08 a.m. Ms. Jackson said the Special Management Area (SMA) Assessment log and the Short-Form log were provided and asked if the Commission had questions. There was no discussion or questions on the recent SMA logs.

ANNOUNCEMENTS

Chairman Replogle stated as a reminder the Joint Planning Commission Meeting is scheduled for July 15, 2021, at 9:30 a.m. via Zoom on the proposed amendments to the Planning Commission Rules in preparation for Energov. He also stated the Windward Planning Commission's next monthly meeting is scheduled for Thursday, August 5, 2021, by interactive video conference via Zoom.

Commissioner Au stated in preparation for the July 15th meeting with the Leeward Planning Commission, he read the long document and understands what will be discussed. Based on past discussions he thought the Commission was going to add in rules and procedures at the upcoming meeting was disappointed a proposed rule or language addressing a commissioner's conflict of interest was not on this agenda. He also stated while he was Chair for the Board of Appeals there was a clear and defined set of rules regarding conflict of interest. He stated since with the Planning Commission, once or twice a commissioner has had to announce or recuse or potentially recuse themselves but with a set of rules it will be a whole lot easier for all to follow. He inquired with the Planning Department and was instructed this will be taken care in future meetings.

Commissioner Au asked staff and Director Kern whether that will be addressed at another joint meeting. Director Kern replied "yes, it would be another joint meeting and will be set up in general discussion around that and some ideas they have outside of the rule change that is being focused on right now". Commissioner Au inquired if joint meetings are held every 2 years. Director Kern stated it can be done sooner and can be discussed more on time frame etc. at the joint meeting so everyone is on the same page. Commissioner Au stated it is important to tighten up the Commission rules with the environment they are in now to protect the Commission and Commissioners because they all are volunteering.

Commissioner Clarkson reminded Planning Department staff of the glitch in the rule regarding reconsideration and to exempt directions from the Courts. He also asked staff whether suggestions for revision of the rules related to Energov should be sent to staff individually or provided at the joint meeting. Director Kern answered that commissioners may send comments or concerns to staff as they come up. Ms. Jackson instructed Commissioner Clarkson to email her, and she will try to respond to the questions and will share with the whole joint Commission at the next meeting.

ADJOURNMENT

There being no further business, it was moved by Commissioner Au and seconded by Commissioner Clarkson that the meeting be adjourned. A voice vote on the motion to adjourn was taken, and the motion carried with none opposed. Chairman Replogle adjourned the meeting at 11:14 a.m.

Respectfully submitted,

Melissa Dacayanan Salvador,

ATTEST:

John R Replogle

John R. Replogle, Chairman

Windward Planning Commission

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

TESTIMONY TRANSCRIPT JULY 1, 2021

Public testimony regarding the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)** was called to order at 9:17 a.m. via live stream online meeting, with Chairman John Replogle presiding.

COMMISSIONERS PRESENT: Dean Au, Joseph Clarkson, Dennis Lin, John Replogle

ABSENT AND EXCUSED: Gilbert Aguinaldo, Michelle Galimba

RECUSED: Thomas Raffipiy

ALSO IN ATTENDANCE: Malia Hall, Esq. (Counsel for the Commission), Jean Campbell, Esq. (Counsel for the Planning Department), Jeffrey Darrow (Deputy Planning Director), Maija Jackson (Planning Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary)

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERIVES (CBESS) (SPP 12-000138)

DISCUSSION ONLY: Executive Session to consult the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities concerning Intermediate Court of Appeals' January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138, and remanding the Special Permit SPP No. 12-000138 back to the Windward Planning Commission for further proceedings consistent with its Memorandum Opinion. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

Secretary's Note: "—" indicates indiscernible speech due to internet/technical difficulties or simultaneous talk.

REPLOGLE: First testifier, Mr. Stephen Wong.

WONG: Hello?

REPLOGLE: Hello, Mr. Wong?

WONG: Yes, this is Mr. Wong.

REPLOGLE: Okay, I'm going to have to swear you in again because you did not get say, you didn't get to do it.

WONG: Okay.

REPLOGLE: Please raise your right hand, do you swear to affirm to tell the truth before the Windward Planning Commission?

WONG: I do.

REPLOGLE: Okay, thank you and before you start, state your name and the town you live in prior to your testimony. You may begin when you are ready.

WONG: My name is Stephen Wong and I live in Hilo, Hawai'i.

REPLOGLE: Okay. You are testifying on Connections?

WONG: Yes.

REPLOGLE: Okay, you may begin.

WONG: Okay, so, I'd like to state that the first thing is I'm not one of the good old boys of Hilo, I'm just a regular guy. Second, I want you to take just 5 seconds and listen. You noticed how quiet it is, it is really quiet, you only hear the birds up here. And also, we have 5 schools in a 4-mile radius Hilo Union, Hilo Intermediate, Hilo High, DeSilva and Kaumana Elementary School. Do we need a, do we really need another school and a dorm up here? And also, the infrastructure, the water, the sewer, the roads, can that handle that many more people up here? And I also have questions with this school. A while back one of the teachers, I guess he's a teacher, told me that they were going to build a farm and I asked him "what they going to do with the pigs" because there's a lot of pigs in that property. And he told me he's going to shoot um'. Now this is not a hunting area, this a residential area and that's his mindset is that he's gonna shoot them. And also, earlier this year I see 4 students from that school going by in the property with their all-terrain vehicle, 4 of um', sitting in there, no social distancing and next thing you know the school is shut down because of COVID-19. I mean what kind of practice does this school do, I mean.

But my real concern is to you know it's so quiet up here. And that's all I gotta say. Thank you.

REPLOGLE: Thank you, thank you Mr. Wong. I believe the Commission is going to go into Executive Session now, and when that is done the Commissioners may have some questions for you regarding your testimony so, if you can hang on till we're done with that, please.

WONG: Aw, you froze up.

REPLOGLE: I froze up? So, I will repeat it for you. The Commission is going to go in —

HALL: John, sorry.

REPLOGLE: Yes.

HALL: There will be no questions today for that.

REPLOGLE: Okay.

HALL: We are only going into executive session, if Mr. Wong would like to come to next hearing, then, you know you guys can ask him questions if you have questions at that time.

WONG: Okay, so.

REPLOGLE: Okay.

WONG: You folks have a date for the next hearing?

HALL: Uh' not at this moment, most likely it will be next month but, um' just look out for the agenda and it will be posted in the paper as well as online on the County calendar.

WONG: Okay or somebody can send me an email too?

HALL: Yes.

WONG: Okay, thank you very much.

REPLOGLE: Thank you Mr. Wong.

WONG: Okay, bye.

REPLOGLE: Bye.

The public testimony ended at 9:21 a.m.

Respectfully submitted,

Melissa Dacayanan Salvador

Secretary to Boards and Commissions

Mori, Ashley

From:

John Thatcher < john_thatcher@connectionspcs.org>

Sent:

Thursday, July 01, 2021 4:02 PM

To:

Dacayanan, Melissa

Cc:

CorpCounsel

Subject:

Complaint about false testimony

COH PLANNING DEPT JUL 6 2021 AM9:06

Aloha,

Can you please send the following to the Windward Planning Commission members?

My name is John Thatcher. Yesterday was my last day working as the principal of Connections Public Charter School. This morning I listened to the sworn testimony given at the Windward Planning Commission meeting by Mr. Stephen Wong. I had a meeting, already scheduled, with the staff working at the Kaumana property. I informed them of Mr. Wong's two allegations. First he said that he had talked to what he believed to be one of our teachers. Mr. Wong's property is near the bottom eastern side of the property. All projects school staff are currently working on at the Kaumana property are on the Edita St. side of the lower parcel. No member of the school's staff ever talked to Mr. Wong. His claim that one of our "teachers" told him that we were going to "shoot pigs" is totally false. I do not doubt that Mr. Wong may have talked to a trespassing pig hunter and made the assumption it was a member of our staff. We do not allow hunting on the property. Mr. Wong should have called the police.

Mr. Wong then went on to accuse the school of putting students in danger of catching COVID-19. He claimed that he saw four of our students riding in an ATV without masks. Then he claimed that soon after the school had to shut down. Again, this claim is totally false. Last year the school opened on August 10, 2020 and remained open throughout the school year.

In April, 2021 one of our fully vaccinated staff tested positive for the virus. Out of precaution, we shut down for 10 days. Afterward, we remained open until June 3. The school has had a few students working on agriculture projects throughout the school year. No more than 2 students have ever worked on the property at any time this year. Furthermore, these students are not allowed to drive the ATV. They are also supervised at all times by an adult member of the staff. There is no reason they would have been in the area near Mr. Wong's house. I talked to all of the members of the staff that have supervised student workers.

All of them told me that what Mr. Wong described, did not happen. And, as the principal of the school, I would have known if a student that worked at the property tested positive for COVID-19.

I'm not sure what motivated Mr. Wong to fabricate stories about Connections. I have had no previous contact with him. None of the school's staff have ever reported having any contact with him. All of the school's staff have been directed to report any interactions with the community members around the Kaumana property. The school is committed to being a good neighbor and would have taken immediate action if Mr. Wong had reported the incidents he claimed happened. With his property bordering the school's, I am very surprised that he did not make a police report concerning the potential use of firearms in a residential neighborhood. I am still an active Governing Board member for the school. I would like to request an investigation of Mr. Wong's allegations on behalf of our board of directors. I may be reached at

935-4234 or via email at John_Thatcher@connectionspcs.org.

Mitchell D. Roth

مؤجد

Lee E. Lord

Managing Director



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 .

Phone (808) 961-8288 • Fax (808) 961-8742

John Replogle, Chair Gilbert Aguinaldo, Vice-Chair Dean Au Joseph Glarkson Michelle Galimba Dennis Lin Thomas Raffipiy

> COH PLANNING DEPT JUL 7 2021 AM8:55

July 6, 2021

Dear Parties:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

Pursuant to Planning Commission Rule 4-18, the Windward Planning Commission ("Commission") requests that the parties each provide a brief to the Commission on the following issue:

Whether the Commission should make a decision on the record as presented or open the record and consider new evidence?

A brief of no more than 10 pages shall be submitted by email and regular mail (or hand delivered rather than regular mail) to Commission Secretary Melissa Dacayanan on or before July 28, 2021 (Wednesday) close of business and served on the other parties. This matter will be agendized for the Commission's August 5, 2021, meeting. Pursuant to Planning Commission Rule 4-18, extension will not be granted unless a stipulation is filed with the Commission.

Ms. Dacayanan can be emailed at Melissa. Dacayanan@hawaiicounty.gov. The Commission mailing address is 101 Pauahi Street, Suite 3, Hilo, Hawai'i, 96720.

Should you have any questions, please contact Malia Hall, Deputy Corporation Counsel for the Windward Planning Commission at 961-8251.

Sincerely,

John R Replogle
John R Replogle 2016 2012 21 48 HST;

John R. Replogle Windward Planning Commission Chair

cc: Ted H.S. Hong, Esq. (via e-mail only)
Attorney General K. Carter Siu, Esq. (via-email only)
Michael Matsukawa, Esq. (via email only)
Deputy Corporation Counsel Jean K. Campbell, Esq. (via email only)

Hawai'i County is an Equal Opportunity Provider and Employer

Mitchell D. Roth

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

July 13, 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Carter K. Siu
Department of the Attorney General
Education Division
State Office Tower
235 S. Beretania Street, Rm. 304
Honolulu, HI 96813

Michael J. Matsukawa, Esq. 75-5751 Kuakini Highway Kailua-Kona, HI 96740

Dear Sirs:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission ("Commission") will be holding a discussion and action limited to the procedural question on whether the Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit No. SPP 12-000138, which was remanded back to the Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Commission's May 12, 2014 Decision an Order, which denied Special Permit SPP No. 12-00138.

Based on the Governor's Twenty-First Proclamation Related to the COVID-19, this meeting will be online to prevent the spread of COVID-19 and to maintain physical distancing. The discussion will be held beginning at 9:00 a.m. on Thursday, August 5, 2021. A copy of the agenda is enclosed.

Ted H.S. Hong, Esq Carter K. Siu Department of the Attorney General Education Division Michael J. Matsukawa, Esq. July 13, 2021 Page 2

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,

JEFFREY W. DARROW Deputy Planning Director

Att.

cc/att: Angelica M.H. Hall, Esq., Deputy Corporation Counsel

Jean K. Campbell, Esq., Deputy Corporation Counsel

Mr. Sidney Fuke

Mr. Terrence Yoshioka



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742 John Replogle, Chair
Gilbert Aguinaldo, Vice Chair
Dean Au
Joseph Clarkson
Michelle Galimba
Dennis Lin
Thomas Raffipiy

AGENDA

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Windward Planning Commission of the County of Hawai'i in accordance with the provisions of Chapters 91 and 92, Hawai'i Revised Statutes, Section 6-7.5(a) of the Charter of the County of Hawai'i, and the Commission's Rules of Practice and Procedure.

Based on the Governor's Twenty-First Proclamation Related to the COVID-19 Emergency dated June 7, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing.

DATE:

Thursday, August 5, 2021

TIME:

9:00 a.m.

PLACE:

This meeting will be held by interactive video conference via Zoom. The public may provide oral testimony at the meeting by joining online or calling into the Zoom meeting. To register for access to the Zoom meeting please contact Melissa Dacayanan-Salvador at Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than 4:30 p.m. on Tuesday, August 3, 2021.

The public may observe the meeting by viewing a live stream on YouTube at:

 $https://www.youtube.com/channel/UCAFoRMb3rfWLQMPd6TAkE\ GA?view_as=subscriber$

The public may provide written testimony via email at WPCtestimony@hawaiicounty.gov or submitted at the Hilo or Kona Planning Department locations up to two business days prior to the hearing by 4:30 p.m. (See Submitting Testimony below).

The Planning Director's background report (including application) and recommendation report for each agenda item will be available for review at www.planning.hawaiicounty.gov prior to the meeting. This information can also be requested by sending an email to Melissa Dacayanan-Salvador at Melissa.Dacayanan@hawaiicounty.gov.

In the case of technical difficulties with the virtual meeting, a recording of the meeting will be posted at www.planning.hawaiicounty.gov no later than 24 hours after the conclusion of the meeting.

CALL TO ORDER

APPROVAL OF MINUTES

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

NEW BUSINESS

APPLICANT: HAWAI'I ISLAND HUMANE SOCIETY (Amend SPP 387) 1.

Request to amend Special Permit No. 387 to allow the construction of a new 1,975 square foot dog pavilion to house an additional 30 dogs, a 762 square foot exercise area, three offices with 392 square feet of new space, modifications to the exterior of the existing facility to provide for a consistent façade and related improvements. Additionally, once the new pavilion is constructed, the applicant is requesting to demolish an existing, 1,600 square foot, 17-kennel structure and expand the exercise and training area by the same land area. Special Permit No. 387 was approved in 1978 to legitimize and expand the Hawai'i Island Humane Society use on approximately 2.69 acres of land within the State Land Use Agricultural district. The subject property is located at 16-873 Kea'au-Pāhoa Road (Route 130), approximately 1,500 feet southeast of its intersection with the Kea'au-Pāhoa Bypass Road, Kea'au, Puna, Hawai'i,

TMK: 1-6-003:074.

UNFINISHED BUSINESS

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ 2. COMMUNITY BASED EDUCATION SUPPORT SERIVES (CBESS) (SPP 12-000138)

Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit SPP No. 12-000138, which was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaumana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

ADMINISTRATIVE MATTERS

1. Discussion of recent Special Management Area (SMA) determinations, minor permits and enforcement action issued by the Planning Director.

ANNOUNCEMENTS

1. The Windward Planning Commission's next monthly meeting is scheduled for Thursday, September 2, 2021 by interactive video conference via Zoom.

ADJOURNMENT

Submitting Testimony: According to Rule 1 (General Rules) of the Planning Commission, a person desiring to submit written testimony shall indicate her/his name; address; and whether the testimony is on her/his behalf or as a representative of an organization or individual. If testimony is being submitted on behalf of an organization, documentation showing membership ratification should accompany the testimony. Public testimony can be submitted by mail or email. Those submitting written testimony by mail should provide fifteen (15) copies for distribution. Public testimony submitted by mail, should be mailed to the Windward Planning Commission at the Planning Department office addresses in Hilo and Kona listed below. Mailed testimony should be provided at least one week prior to the hearing date to allow for mailing and thorough Commission review. Public testimony that is submitted by email to WPCtestimony@hawaiicounty.gov, should be submitted before 4:30 p.m. two business days prior to the Commission meeting. Testimony that is irrelevant or unduly repetitious may be limited by the Chairperson pursuant to Rule 1.

Contested Case Procedure: Pursuant to Rule 4, Contested Case Procedure, of the County of Hawai'i Planning Commission Rules of Practice and Procedure, any person seeking to intervene as a party to a contested case hearing on Agenda Item No. 1 above is required to file a written request which must be received in the office of the Planning Department no later than seven (7) calendar days prior to the Planning Commission's first public meeting on the matter. Such written request shall be in conformity with Rule 4, in a form as provided by the Planning Department entitled "Petition for Standing in a Contested Case Hearing." The written petition/request shall be filed with the Planning Commission at Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i 96720, and accompanied by a filing fee of \$200 payable to the Director of Finance. Any party may retain counsel if that person so desires. Rule 4 may be inspected or purchased (\$2.50) at the above-cited location. Rule 4 may also be viewed at the County of Hawai'i Planning Department website under Resources and References (http://www.planning.hawaiicounty.gov).

Notice to Lobbyists: If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist {Article 15, Section 2-91.3(b), Hawai'i County Code}. A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration

forms and expenditure report documents are available at the Office of the County Clerk, 25 Aupuni Street, Room 1402, Hilo, Hawai'i 96720.

<u>Board Packet:</u> Pursuant to Hawai'i Revised Statutes Section 92-7.5, the board packet provided to members of this board for this meeting is available for public inspection during regular business hours at the Hilo office of the Planning Department, Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i and at the Kona office of the Planning Department, West Hawai'i Civic Center, 74-5044 Ane Keohokālole Highway, Building E, 2nd Floor, Kailua-Kona, Hawai'i.

Anyone who requires an auxiliary aid or service, other reasonable modification, or language interpretation to access this meeting, please contact the Planning Department at 961-8288 as soon as possible, but no later than five working days prior to the meeting date, to arrange for accommodations. "Other reasonable modification" refers to communication methods or devices for people with disabilities who are mentally and/or physically challenged.

Hawai'i County is an Equal Opportunity Provider and Employer

WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, July 16, 2021) (West Hawai'i Today: Friday, July 16, 2021) Mitchell D. Roth Mayor

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

July 13, 2021

Dear Surrounding Property Owner:

Remand of SPP 12-000138 to the Windward Planning Commission **SUBJECT:**

> Connections New Century Public Charter School/Community Applicant:

> > **Based Education Support Services (CBESS)**

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission ("Commission") will be holding a discussion and action limited to the procedural question on whether the Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit No. SPP 12-000138, which was remanded back to the Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Commission's May 12, 2014 Decision an Order, which denied Special Permit SPP No. 12-00138. Based on the Governor's Twenty-First Proclamation Related to the COVID-19, this meeting will be online to prevent the spread of COVID-19 and to maintain physical distancing. The discussion will be held beginning at 9:00 a.m. on Thursday, August 5, 2021.

You may participate by providing written or oral testimony by following the instruction on the enclosed agenda. You may also watch the meeting on YouTube at the URL provided on the agenda.

Please contact Maija Jackson of this department at (808) 961-8159 should you have questions regarding the above.

Sincerely,

JEFFREY W. DARROW Deputy Planning Director

Attachment

cc: Ted H.S. Hong, Esq.

Carter K. Siu, Department of the Attorney General - Education Department

Michael Matsukawa, Esq.

AHIA.WILLIAM KALAEMAKANI SR-ROADWAY

AKAMINE, CHUN Y TRST 1360-D MELE MANU ST HILO HI 96720 1792

ANDAYA, RICHARD C P 1056 KAUMANA DR HILO HI 96720 1716

ARRUDA, JO ANN R TRST 993 KAUMANA DR APT C HILO HI 96720 6758

BISHOP, MICHAEL K C K/ZAK, PAMELA V BOCK, DAVID PAUL 1485 MELE MANU ST HILO HI 96720 1795

1220 POMAIKAI WAY HILO HI 96720 6753

BOTELHO, BETTY J TRST 78 AKALA RD HILO HI 96720 1454

BOUGHANEM, JAY 720 WAIANUENUE AVE HILO HI 96720 2016

BRILHANTE-HAWAII INC 1342 KILAUEA AVE HILO HI 96720 4292

BUTZ MARC 55 AKALA RD HILO HI 96720 1401 BYUN.PAUL H 1360 MELE MANU STAPT B HILO HI 96720 6731

CAMPBELL, NANCY JO 1253 KAUMANA DR HILO HI 96720 1719

CARVALHO, JOHN G 1131 KAUMANA DR HILO HI 96720 1717

CHOCK PROPERTIES 2101 NUUANU AVE APT 601 HONOLULU HI 96817 1766

CHOCK, KYLE TR 1100 LAUNA ST HILO HI 96720 3265

CHOCK, LAURA Y TR SR-ROADWAY

CHOCK, LORRIN S K TRST 1978 KOMOHANA ST HILO HI 96720 5935

CHOCK, THEONE K Y FAMILY TRST SABEL.JOHN III TTEE 1051 HOOMAIKAI ST HONOLULU HI 96817 1221

CHUN.MARK RICHARD 1540 MELE MANU ST HILO HI 96720 1796

COMMUNITY BASED EDUCATION SUPPC CORREA. CHARISSE A 174 KAMEHAMEHA AVE HILO HI 96720 2865

1064 KAUMANA DR HILO HI 96720 1716

CRIVELLO, RONALD ANTHONY 1073 KAUMANA DR HILO HI 96720 1715

DOAN, LAM XUAN 33 W NAAUAO ST HILO HI 96720 6704 EBESU, JANEY LATR 1215 KAUMANA DR APT G HILO HI 96720 6718

EBESU, ROYCE TJR 1215 KAUMANA DR APT G HILO HI 96720 6718

ENOKI, CALVIN HTR 1381 KAUMANA DR HILO HI 96720 1721

FALETOI, CHRISTIE ANN TRST - PO BOX 53 PEPEEKEO HI 96783 0053

FERGERSTROM, ARNOLD TRST 13 MINOAKA PL HILO HI 96720 2109

FUJIMOTO.BYRON S/BARBARA M TR 142 PUHILI ST HILO HI 96720 1460

FUJISAWA, STANLEY K 1296 KAUMANA DR HILO HI 96720 1720

FUKE, SIDNEY MITSUO/AILEEN SHIGEK 1358 MELE MANU ST APT C HILO HI 96720 6722 FUKE, SIDNEY MITSUO 1358 MELE MANU STAPT C' HILO HI 96720 6722 GERMANO, ALIKOA JAMES 1586 NANAINA WAY HILO HI 96720 6770

GIBO, CLIFTON YUKIO 275 KRISTIANO ST HILO HI 96720 6711

GIBO, DENNIS MASAO 1280 KAUMANA DR HILO HI 96720 1720 GOMES, JEFFREY KALANI 281 EDITA ST HILO HI 96720 1707

GOOCH, MARSHALL H 45-630 HALEKOU PL KANEOHE HI 96744 5203 GOYA,MELVIN H TR 1170 KAUMANA DR HILO HI 96720 1757

HASEGAWA, DAVID A CTRST 250 N JUDD ST HONOLULU HI 96817 1704

HENNESSEY, BRENDAN J 1723 S AVENUE N PORTALES NM 88130 7036 HIHL MELEMANU LLC C/O KENNY, DANA HAWAIIAN ISLAND HC 162 KINOOLE ST STE 201 HILO HI 96720 2861

HIRANO, SHINAE 1670 PAUKIKI ST KAILUA HI 96734 4176

HUDAK, DANIEL ROBERT 1488 MELE MANU ST HILO HI 96720 1794 HUNT, RUPERT SAMUEL JR 4207 CARNATION PL HONOLULU HI 96816 3905 IGNACIO, MICHAEL L TR 1411 MELE MANU ST HILO HI 96720 1795

IIDA,ERWIN Y 1449 MELE MANU ST HILO HI 96720 1795

INOUYE, JUNE J TR 2230 APOEPOE ST PEARL CITY HI 96782 1239 IWASAKI,ALAN 232 EDITA ST HILO HI 96720 1708

JAMES, SUSAN L 365 HALELOA PL APT C HONOLULU HI 96821 2269

JOHNSON,MARI-VAUGHN VIRGINIA 1464 MELE MANU ST HILO HI 96720 1794 JTS PROPERTIES LLC PO BOX 4549 HILO HI 96720 0549

KAITOKU, GEORGE/JOYCE TR 1375 KAUMANA DR HILO HI 96720 1721

KANAHELE,KIP MASAO 1520 MELEMANU ST HILO HI 96720 1796 KANEKÕ, RYANVAIMEE FAMILY TRST 1294 KAUMANA DR HILO HI 96720 1720

KANEMOTO, MICHAEL ALIKA 1224 POMAIKAI WAY HILO HI 96720 6753 KANEMOTO, WAYNE K TRST 1358 MELE MANU ST B HILO HI 96720 6722 KANJA, EVELYN HIROKO 94-1126 AKEU PL WAIPAHU HI 96797

KENNEDY, WILLIAM J 1300 MELE MANU ST HILO HI 96720 1792 KIDDS DEVELOPMENT C/O PAPPAS, JAMES, TREASURER 616 MOANIALA ST HONOLULU HI 96821 2572

KIMURA,LARRY L 243 MIKALA ST HILO HI 96720 1791 KIMURA, LESLIE KA'IU 1205 POMAIKAI WAY HILO HI 96720 6753 KITAGAWA,MARK 1101 MALANANI PL HILO HI 96720 2736

KITAMURA, TADAYUKI 2562 BOOTH RD HONOLULU HI 96813 1146

KLING, CARROLL D 504 E WEBER ST GONZALES LA 70737 3253

KOMATSU, GARRET T TR 1155 KAUMANA DR HILO HI 96720 1717 KUNIOKA-VOLZ,SHERI 4870 IIWI RD KAPAA HI 96746 1913

KUROHARA,RANDALL M 1205 POMAIKAI WAY HILO HI 96720 6753 KUWAHARA, BRYSON T 1142 KAUMANA DR HILO HI 96720 1757

KUWAHARA,MATTHEW REED SEIZO 1227 POMAIKAI WAY HILO HI 96720 6753

LECKOVA,KATARINA 1468 MELE MANU ST HILO HI 96720 1794 LEE-CHING, RICHARD TRUST 1468 KAUMANA DR HILO HI 96720 1405

LEONG,KELLY/ALYSON Y KAKUGAWA T 1290 MELE MANU ST HILO HI 96720 6702

LUDLOFF,ELAINE L H 1416C MELE MANU ST HILO HI 96720 1794 LUIZ, EZEKIEL HARVEY PO BOX 116 PEPEEKEO HI 96783 0116 MAMHOT, ROXANNE JOY BATALLA 272 EDITA ST HILO HI 96720 1708

MATSU, RUSSELL 1352 KAUMANA DR HILO HI 96720 1722

MATTOS, DAVID J 1209 KAUMANA DR HILO HI 96720 6757 MERRITT, LONNIE ALLEN 1503 KAUMANA DR HILO HI 96720 1479

MISITANO, ANDREW JORDAN 1600 KAUMANA DR HILO HI 96720 1407

MITSUNAGA, EDITH S TR 3572 NIPO ST HONOLULU HI 96822 1141 MOCHIDA, IVAN S TR 77 KUKILA ST HILO HI 96720 4519

MOE, INGE M F 1358 MELE MANU STAPT D HILO HI 96720 6722

MONTANDON, 2015 TRST 6132 BRAESIDE CT LAS VEGAS NV 89130 1384 NAGAI, NANCY M 1035 KAUMANA DR HILO HI 96720 1715

NAKAMOTO, TSURUYO 1348 KAUMANA DR HILO HI 96720 1722 NAKAMURA, BRYCE H/SHARYL S TRST PO BOX 294 CAPTAIN COOK HI 96704 0294 NAKANO,SHARON MATSUYO 1005 KAUMANA DR HILO HI 96720 1715

NELSON, PATRICK 23 CHONG ST HILO HI 96720 1701 NISHIMOTO, NELSON N 1414 MELE MANU ST APT B HILO HI 96720 6754

NOVAK,ALLEN/LAYNE TR 1414 MELE MANU STAPT C HILO HI 96720 6754

PHILLIPS, J&D FAMILY TRST QUIOCHO, LE 1036 KAUMANA DR 1222 KAUMA

RILEY,RANDELL A 282 EDITA ST HILO HI 96720 1708

HILO HI 96720 1716

RUBIO,KAREN LEIKO 226 AKALA RD HILO. HI 96720 1561

SAGAYSAY, JASON JUSTIN 1058 KAUMANA DR HILO HI 96720 1716 QUIOCHO,LEANDRO JR 1222 KAUMANA DR APT A HILO HI 96720 6719

ROBLEDO, CRYSTAL 1260 KAUMANA DR HILO HI 96720 1720

RUSHLOW, JOHN HOWARD 1147 KAUMANA DR HILO HI 96720 1717

SAKAMOTO, LESTER S TRS 1439 MELE MANU ST HILO HI 96720 1795 REZENTES, HENRY J 1367 KAUMANA DR HILO HI 96720 1721

RODILLAS,FRANCIS HERBERT 50 AKALA RD HILO HI 96720 1449

SAGAYSAY,EDWIN B 94-1006 AHAHUI PL MILILANI HI 96789 2554

SASAMURA, THEODORE HAJIME 1023 KAUMANA DR HILO HI 96720 1715 SATO, MARK M PO BOX 529 KANEOHE HI 96744 0529 SATO.SANDRA 333 KILAUEA AVE STE 202 HILO HI 96720 3013

SEARCY, SCOTT RUSSELL 1414 MELE MANU STAPT A HILO HI 96720 6754

SEGAWA.CHUCK F 1215 KAUMANA DR APT D HILO HI 96720 6718

SEGAWA, HERBERT A SR-ROADWAY

SEGAWA.RODNEY MACY F 1215 KAUMANA DR APT D HILO HI 96720 6718

SEGAWA, WESLEY R TRST 19 PUUKO ST HILO HI 96720 1832

SEGUNDO, KAIYA LIN BENET PO BOX 6729 HILO HI 96720 8933

SETO.MICHAEL H TR 29 MAIKAI STAPTA HILO HI 96720 8138

SHAVER, JENNIFER MARGARET TR 2492 AURORA LN SIMI VALLEY CA 93063 0448

SHINJO, HAJIME 1272 KAUMANA DR HILO HI 96720 1720

SHIRO, DOUGLAS T 1360 MELE MANU STAPT C HILO HI 96720 6731

SHOZUYA, ERIC M 1380 MELE MANU ST HILO HI 96720 1792

SITE ENGINEERING INC ATTN: MASUTANI.M K 1130 N NIMITZ HWY # C-240 HONOLULU HI 96817 4579

SOARES, RACHAEL LEINA'ALA 1013 KAUMANA DR HILO HI 96720 1715

SODERBERG DUNN TR SODERBERG.P TRS 1510 MELE MANU ST HILO HI 96720 1796

SPENCER, EDWARD S TR 1110 KAUMANA DR HILO HI 96720 1718

TADA, GLENN K 259 EDITA ST HILO HI 96720 1707

TAKAI, WESLEY T TRST 1222 KAUMANA DR APT E HILO HI 96720 6719

TAKASE, GLENN M 36 AKALA RD HILO HI 96720 1449 TAKATA, BRICE HIROSHI 1416 B MELE MANU ST HILO HI 96720 6755

THATCHER.JOHN L !! 1188 KAUMANA DR HILO HI 96720 6751

THATCHER.JOHN L 1188 KAUMANA DR HILO HI 96720 6751

TIOGANGCO.ANNE AKEMI TR 1391 KAUMANA DR HILO HI 96720 1721

TMK 2561-8 SR-ROADWAY TOKUUKE, JON P 1395 MELE MANU ST HILO HI 96720 1793

TOMA, BRYSON 1374 KAUMANA DR HILO HI 96720 1722

TRIMBOLI REMODELING LLC 840 KULALOA RD HILO HI 96720 3569

TRUESDELL, JOEL W/ELIZABETH F TRS 250 KRISTIANO ST HILO HI 96720 6711

TSUCHIYA, KARL K TRST 1175 KAUMANA DR HILO HI 96720 1717

TURNER, JASON PHILLIP 1209 KAUMANA DR APT C HILO HI 96720 6757

USHIJIMA, DEAN K 1215 KAUMANA DR APT C HILO HI 96720 6718

VARIOUS OWNERS SR-ROADWAY

VERIATO, FRANKLIN D/VERIATO, VIRGI. IA WILHELM, STEVE K 1500 MELE MANU ST HILO HI 96720 1796

1416C MELE MANU ST HILO HI 96720

WILSON, CYRUS H 1090 KAUMANA DR APT A HILO HI 96720 6734

WILSON, LEE MICHAEL MORITA 1536 MELE MANU ST HILO HI 96720 1796

WONG, STEPHEN K C S TRST 1211 KAUMANA DR HILO HI 96720 1719

YAHATA, MICHIKO 98-459 HOONO ST PEARL CITY HI 96782 2337

YAMANE, RAYMOND IWAO TRST 1473 MELE MANU ST HILO HI 96720 1795

YAMASHIRO, REYN M T 50 MANULELE ST HILO HI 96720 1628

YAMASHITA, GARY M 1457 MELE MANU ST HILO HI 96720 1795

YOKOTA, MELVIN H/JAN T TRST 1358 MELE MANU STAPTA HILO HI 96720 6722

YOKOYAMA, JAN KIMI TRST 1300 KAUMANA DR HILO HI 96720 1722

YOSHIMURA, GARY K 1441 KAUMANA DR HILO HI 96720 1404



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742 John Replogle, Chair Gilbert Aguinaldo, Vice Chair Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

AGENDA

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Windward Planning Commission of the County of Hawai'i in accordance with the provisions of Chapters 91 and 92, Hawai'i Revised Statutes, Section 6-7.5(a) of the Charter of the County of Hawai'i, and the Commission's Rules of Practice and Procedure.

Based on the Governor's Twenty-First Proclamation Related to the COVID-19 Emergency dated June 7, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing.

DATE:

Thursday, August 5, 2021

TIME:

9:00 a.m.

PLACE:

This meeting will be held by interactive video conference via Zoom. The public may provide oral testimony at the meeting by joining online or calling into the Zoom meeting. To register for access to the Zoom meeting please contact Melissa Dacayanan-Salvador at Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than 4:30 p.m. on Tuesday, August 3, 2021.

The public may observe the meeting by viewing a live stream on YouTube at:

https://www.youtube.com/channel/UCAFoRMb3rfWLQMPd6TAkE GA?view_as=subscriber

The public may provide written testimony via email at WPCtestimony@hawaiicounty.gov or submitted at the Hilo or Kona Planning Department locations up to two business days prior to the hearing by 4:30 p.m. (See Submitting Testimony below).

The Planning Director's background report (including application) and recommendation report for each agenda item will be available for review at www.planning.hawaiicounty.gov prior to the meeting. This information can also be requested by sending an email to Melissa Dacayanan-Salvador at Melissa.Dacayanan@hawaiicounty.gov.

In the case of technical difficulties with the virtual meeting, a recording of the meeting will be posted at www.planning.hawaiicounty.gov no later than 24 hours after the conclusion of the meeting.

CALL TO ORDER

APPROVAL OF MINUTES

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

NEW BUSINESS

1. APPLICANT: HAWAI'I ISLAND HUMANE SOCIETY (Amend SPP 387)
Request to amend Special Permit No. 387 to allow the construction of a new 1,975 square foot dog pavilion to house an additional 30 dogs, a 762 square foot exercise area, three offices with 392 square feet of new space, modifications to the exterior of the existing facility to provide for a consistent façade and related improvements. Additionally, once the new pavilion is constructed, the applicant is requesting to demolish an existing, 1,600 square foot, 17-kennel structure and expand the exercise and training area by the same land area. Special Permit No. 387 was approved in 1978 to legitimize and expand the Hawai'i Island Humane Society use on approximately 2.69 acres of land within the State Land Use Agricultural district. The subject property is located at 16-873 Kea'au-Pāhoa Road (Route 130), approximately 1,500 feet southeast of its intersection with the Kea'au-Pāhoa Bypass Road, Kea'au, Puna, Hawai'i, TMK: 1-6-003:074.

UNFINISHED BUSINESS

2. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERIVES (CBESS) (SPP 12-000138)

Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit SPP No. 12-000138, which was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

ADMINISTRATIVE MATTERS

1. Discussion of recent Special Management Area (SMA) determinations, minor permits and enforcement action issued by the Planning Director.

ANNOUNCEMENTS

1. The Windward Planning Commission's next monthly meeting is scheduled for Thursday, September 2, 2021 by interactive video conference via Zoom.

ADJOURNMENT

Submitting Testimony: According to Rule 1 (General Rules) of the Planning Commission, a person desiring to submit written testimony shall indicate her/his name; address; and whether the testimony is on her/his behalf or as a representative of an organization or individual. If testimony is being submitted on behalf of an organization, documentation showing membership ratification should accompany the testimony. Public testimony can be submitted by mail or email. Those submitting written testimony by mail should provide fifteen (15) copies for distribution. Public testimony submitted by mail, should be mailed to the Windward Planning Commission at the Planning Department office addresses in Hilo and Kona listed below. Mailed testimony should be provided at least one week prior to the hearing date to allow for mailing and thorough Commission review. Public testimony that is submitted by email to WPCtestimony@hawaiicounty.gov, should be submitted before 4:30 p.m. two business days prior to the Commission meeting. Testimony that is irrelevant or unduly repetitious may be limited by the Chairperson pursuant to Rule 1.

Contested Case Procedure: Pursuant to Rule 4, Contested Case Procedure, of the County of Hawai'i Planning Commission Rules of Practice and Procedure, any person seeking to intervene as a party to a contested case hearing on Agenda Item No. 1 above is required to file a written request which must be received in the office of the Planning Department no later than seven (7) calendar days prior to the Planning Commission's first public meeting on the matter. Such written request shall be in conformity with Rule 4, in a form as provided by the Planning Department entitled "Petition for Standing in a Contested Case Hearing." The written petition/request shall be filed with the Planning Commission at Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i 96720, and accompanied by a filing fee of \$200 payable to the Director of Finance. Any party may retain counsel if that person so desires. Rule 4 may be inspected or purchased (\$2.50) at the above-cited location. Rule 4 may also be viewed at the County of Hawai'i Planning Department website under Resources and References (http://www.planning.hawaiicounty.gov).

Notice to Lobbyists: If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist {Article 15, Section 2-91.3(b), Hawai'i County Code}. A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration

forms and expenditure report documents are available at the Office of the County Clerk, 25 Aupuni Street, Room 1402, Hilo, Hawai'i 96720.

<u>Board Packet:</u> Pursuant to Hawai'i Revised Statutes Section 92-7.5, the board packet provided to members of this board for this meeting is available for public inspection during regular business hours at the Hilo office of the Planning Department, Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i and at the Kona office of the Planning Department, West Hawai'i Civic Center, 74-5044 Ane Keohokālole Highway, Building E, 2nd Floor, Kailua-Kona, Hawai'i.

Anyone who requires an auxiliary aid or service, other reasonable modification, or language interpretation to access this meeting, please contact the Planning Department at 961-8288 as soon as possible, but no later than five working days prior to the meeting date, to arrange for accommodations. "Other reasonable modification" refers to communication methods or devices for people with disabilities who are mentally and/or physically challenged.

Hawai'i County is an Equal Opportunity Provider and Employer

WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, July 16, 2021) (West Hawai'i Today: Friday, July 16, 2021)

07/27/2021 3:43:58 PM

CLARE E. CONNORS

ATTORNEY GENERAL

HOLLY T. SHIKADA

FIRST DEPUTY ATTORNEY GENERAL

Received via Email

DAVID Y. IGE GOVERNOR



STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL EDUCATION DIVISION

235 SOUTH BERETANIA STREET LEIOPAPA A KAMEHAMEHA BUILDING HONOLULU, HAWAII 96813 Telephone: (808) 586-1255 Facsimile: (808) 586-1488

July 27, 2021

Via U.S. Mail and E-Mail
Mr. John R. Replogle
Windward Planning Commission
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

E-Mail: Melissa.Dacayanan@hawaiicounty.gov

Re: Remand of SPP 12-000138 to the Windward Planning Commission

Dear Chair Replogle:

This letter is being submitted on behalf of Connections New Century Public Charter School (Connections) and in response to your letter dated July 6, 2021 requesting a brief on the following issue: "[w]hether the Commission should make a decision on the record as presented or open the record and consider new evidence." I have conferred with Ted Hong, Esq. on this matter, and he will be submitting a thorough legal brief on this subject. Connections joins and supports CBESS's position.

Connections would also like to emphasize that the need for additional evidence is unwarranted in this case and requests that the Commission makes its decision based on the direction and mandate provided by the Intermediate Court of Appeals.

Cartel K. Siu

Deputy Attorney General

cc: Michael Matsukawa, Esq.

Deputy Corporation Counsel, Jean K. Campbell, Esq.

Ted Hong, Esq.

County of Hawaii Planning Department Intake

07/27/2021 3:44:47 PM

Received via Email

MICHAEL J. MATSUKAWA, 1885 75-5751 Kuakini Highway, Room 201 Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385 Email: kapulu@msn.com

Attorney for Intervenor JEFFREY GOMES

BEFORE THE WINDWARD PLANNING COMMISSION COUNTY OF HAWAII STATE OF HAWAII

In Re: Application of Connections

New Century Public Charter School

for a Special Permit on land in the

State Land Use Agriculture District

Ponahawai, Kukuau 2d, South

Hilo, County and State of Hawaii

(TMK 2-5-006:141)

SPP 12-000138 (on remand after appeal)

INTERVENOR'S BRIEF ON SCOPE OF HEARING ON REMAND; CERTIFICATE OF SERVICE

INTERVENOR'S BRIEF ON SCOPE OF FURTHER HEARING ON REMAND

The Windward Planning Commission (the "Commission") requested the parties to respond to the following question:

 "Whether the Commission should make a [new or amended] decision on the record as presented or open the record and consider new evidence?"

As a preface, Intervenor directs the Commission to the Intermediate Court of Appeals' decision that was filed on January 31, 2020 as to points that require more clarity on the part of the Commission's final decision and order.

A. POINTS FOR CONSIDERATION ON REMAND

First, the Court resolved "technical" arguments that had been raised on appeal regarding (a) the decision criteria for a Special Permit, 1 (b) the binding effect and interpretation of the County of Hawaii zoning ordinance as to the kinds of activity that are permitted in the State Land Use Agriculture District without a Special Permit 2 and (c) the implementation of the County of Hawaii General Plan.3

Second, the Court then focused on the Commission's findings and conclusions that were assigned as error on appeal and determined whether the evidence in the record supports or does not support the Commission's decision and order. These points are:

- 1. The school's adverse effect on surrounding properties (Point 1, Pages 18 to 23);
- 2. The burden placed on public agencies to support the school and affected communities (Point 2, Pages 23 to 27);
- 3. The unusual conditions, trends and needs that have arisen since the land was assigned to the State Land Use Agriculture District,

See Decision, Pages 13 to 18 regarding Section 205-6, HRS, the Land Commission's rule 15-15-95(b) and the County of Hawaii's Rules of Practice Rule 6-3(b)(5).

See Decision, Pages 13 to 14 regarding the standard to use in determining if a particular use is "permissible" in the State Land Use Agriculture District.

See Decision, Pages 32 to 39 regarding the Commission's duty, authority and power to implement the County of Hawaii General Plan.

specifically the "restrictive" interpretation and application of this provision (Point 3, Pages 27 to 29);

- 4. The "conundrum" regarding the suitability of the land for agriculture use in context of the applicant's proposal to incorporate agriculture activity in its proposed project (Point 4, Pages 29 to 32);
- 5. The uses contemplated by the General Plan that are allowed in low density urban areas as "ancillary" activity (Point 5, Pages 32 to 42);
- 6. The need for more specificity in the Commission's findings and conclusions (Page 43).

B. CASE POSTURE ON REMAND

The Commission may address the foregoing points, within the limits established by the Court's ruling, and the Commission also has the discretion to address points that the Court did not address, based on the existing record and without having to reopen the evidentiary portion of the hearing to receive additional evidence. See discussion in Part D, below.

The Commission's authority on remand is similar to that of a circuit court after its decision is vacated on appeal and the case is sent back to the circuit court on remand for further action. Hawaii precedent is that the posture of the case on remand is restored to its original status as it was in immediately before the decision-maker rendered its decision the first time. See Wall v. Focke, 22 Haw. 2231, 223 (1914); Bailey Bakery, Ltd. v. Borthwick, 38 Haw. 83 (1948) (per curiam). In other words, the "clock is turned back" to the

date when the Commission closed its hearing, considered arguments presented and entered into executive session to begin its deliberations.

- B. ADDITIONAL EVIDENCE REQUIRED, IF ANY
- 1. The Commission can amend its findings and conclusions based on the existing record without opening its proceeding to take additional evidence. If, for example, the Commission needs information that pertains to Point 2 (the 60 gallons per day standard), the Commission can "comb" its record, including the expert's report on water consumption, to identify the source of that standard and/or can consider published agency materials that pertain to Point 2.
 - <u>Point 2</u>: Page 25. Use of the 60 gallons per day standard, because it is not clear "where that figure came from." However, the Court added that the "Commission may nonetheless reconsider any weight it assigned to" Finding No. 49.
- 2. The Commission has the discretion to amend its other findings and/or conclusions based on the existing record as well and without taking further evidence that pertain to:
 - Point 3: Pages 28 to 29. Support for a "restrictive" interpretation of the change in "conditions, trends and/or needs" decision criterion;
 - <u>Point 4:</u> Pages 31 to 32. Assessment of the applicant's proposal to employ agricultural activity on the land as part of the school's operations and the effect on the "suitability" for agriculture use decision criterion;
 - <u>Point 5</u>: Page 39. Explanation of why a school is not consistent with activity on land in a low density urban area (as an "ancillary community and public use" or "neighborhood ... commercial use") under the General Plan decision criterion;
 - <u>Point 6</u>: Page 43. Refinement of the Commission's decision by articulating the specific decision criterion relied upon (or multiple

decision criteria relied upon) as opposed to reliance solely on the "totality of the evidence."

3. To the extent that the Commission might need additional information on legislative history or agency practice (a) as to Point 3 to support its interpretation of the change in "conditions, trends and/or needs" decision criterion or (b) as to Point 5 to support its interpretation of the General Plan decision criterion (allowable "ancillary" activity in low density urban areas), the Commission can obtain that information from public sources (if not already in the existing record) without taking further evidence, unless such information can be obtained only by soliciting testimony from appropriate agency officials.

D. UNADDRESSED SUBJECTS

As is stated above, the Court limited its ruling to the issues set forth in its opinion. As such, on remand and pursuant to *Wall v. Focke, supra, and Bailey Bakery, Ltd. v. Borthwick, supra*, the Commission may address points that the Court did <u>not</u> address without having to reopen the evidentiary portion of the hearing to receive additional evidence. For example, in his Answering Brief, Intervenor directed the Court to the <u>Public Natural Resource</u> Trust, which is based on the State Constitution, Article XI, Section 1, but the Court did not address this argument. Arguably, the Court assumed that the

No doubt, some might argue that the Commission should exercise caution if the Commission were to entertain changing a finding or conclusion that the Court did not address on appeal. One might argue that it might be error to altogether change a prior finding or conclusion that had been made by earlier commissioners without good cause. Of course, the Commission should not be deterred from making new and additional findings or conclusions if it can set forth justifiable reasons for the same.

Commission would, on remand, address this argument and supplement its findings and conclusions accordingly, without taking further evidence thereon.

Also, in the original hearing, Intervenor had asked the Commission to consider the impacts that the applicant's project would have on Kaumana Cave and the protective measures that must be employed to ensure that Kaumana Cave, which is a "surrounding property," is not adversely affected by the applicant's project (which is designed to take place in stages over a period of years). Pursuant to this request, the Commission had to determine whether mitigation measures do in fact exist and if so, can and will provide the requisite degree of protection (if at all) for Kaumana Cave over the entire life of the applicant's project. The Commission's Finding No. 31 (Page 7) and Finding Nos. 46 and 47 (Page 10) do not specifically address these impacts except to say that if proper mitigation measures are employed, those impacts will probably be minimized (but without more explanation).⁵

CONCLUSION

The only evidentiary matter that the Commission might want to address is the 60 gallons per day standard (Point 2). However, that standard may already be imbedded in expert's report on water consumption and/or in

Intervenor did not file a cross-appeal before the circuit court or the Intermediate Court of Appeals on this point in light of the Commission's original decision to deny the applicant's request for a Special Permit. On remand, this issue remains open for discussion since the record contains evidence on this point. Nothing precludes Intervenor from seeking relief on this point on remand.

the Department of Water Supply's published standards and if so, there would be no need to take evidence on the same by testimony.

The Commission can address the other points <u>without</u> taking additional evidence. And, of course, the Commission has the discretion to address issues that the Court did not address if the Commission believes that is necessary. Wall v. Focke, supra, and Bailey Bakery, Ltd. v. Borthwick, supra.

Dated at Kailua-Kona, Hawaii: July 22, 2021.

JEFFREY GOMES, Intervenor

By Mish Mish

His Attorney

The Intermediate Court of Appeals stated that it could not find that standard in the record. However, the Court, prior to entering its decision on appeal, did not ask the parties for supplemental briefing on this subject.

BEFORE THE WINDWARD PLANNING COMMISSION COUNTY OF HAWAII STATE OF HAWAII

| In Re: Application of Connections) New Century Public Charter School) for a Special Permit on land in the) State Land Use Agriculture District) | SPP 12-000138 (on remand after appeal) |
|---|---|
| Ponahawai, Kukuau 2d, South Hilo, County and State of Hawaii (TMK 2-5-006:141) | CERTIFICATE OF SERVICE |

CERTIFICATE OF SERVICE

I certify that I served a copy of the attached document on the following individuals by mailing said copy to them at their addresses noted below, postage prepaid, at the U.S. Post Office at Kailua-Kona, Hawaii on July _____, 2021 and, further, emailed said copy to their respective email addresses noted:

TED H.S. HONG P.O. Box 4217 Hilo, HI 96720 ted@tedhonglaw.com

JEAN K. CAMPBELL 101 Aupuni St., #325 Hilo, HI 96720 Jean.Campbell @hawaiicounty.gov CARTER K. SIU 235 S. Beretania St., Room 304 Honolulu, HI 96813 carter.k.siu@hawaii.gov

MELISSA DACAYANAN
Planning Dep't, County of Hawaii
101 Pauahi Street
Hilo, HI 96720
Melissa.Dacayanan
@hawaiicounty.gov

Dated at Kailua-Kona, HI: July 27,2021.

Michael J. Matsukawa Attorney for Intervenor

County of Hawaii Planning Department Intake

07/28/2021 10:19:20 AM

Received via Email

ELIZABETH A. STRANCE 4715 Corporation Counsel

JEAN K. CAMPBELL 7424
Deputy Corporation Counsel
County of Hawai'i
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

Telephone: (808) 961-8251 Facsimile: (808) 961-8622

E-mail: JeanK.Campbell@hawaiicounty.gov

Attorneys for Appellee COUNTY OF HAWAI'I PLANNING DEPARTMENT

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

STATE OF HAWAII

In the Matter of

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES

Application for Special Permit Application No. 12-000138

TMK: (3) 2-5-006-141; Kaumana, South Hilo, Hawaii

SPP NO. 12-000138 (On Remand After Appeal)

APPELLEE COUNTY OF HAWAI'I PLANNING DEPARTMENT'S BRIEF ON SCOPE OF HEARING ON REMAND; CERTIFICATE OF SERVICE

APPELLEE COUNTY OF HAWAI'I PLANNING DEPARTMENT'S
BRIEF ON SCOPE OF HEARING ON REMAND

Appellee COUNTY OF HAWAI'I PLANNING DEPARTMENT ("Planning

Department"), by and through the undersigned counsel, hereby states it takes no position as to the Windward Planning Commission's request as mentioned below:

"Whether the Commission should make a [new or amended] decision on the record as presented or open the record and consider new evidence?"

Dated: Hilo, Hawai'i, July 28, 2021.

COUNTY OF HAWAI'I PLANNING DEPARTMENT, Appellee

By__

Deputy Corporation Counsel

Its Attorney

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

In the Matter of

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES

Application for Special Permit Application No. 12-000138

TMK: (3) 2-5-006-141; Kaumana, South Hilo, Hawaii

SPP NO. 12-000138 (On Remand After Appeal)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served upon the following parties via their email addresses and U.S. Mail, postage prepaid on July 28, 2021:

Michael J. Matsukawa 75-5751 Kuakini Hwy., Room 201 Kailua Kona, HI 96740 kapulu@msn.com

Carter K. Siu 235 S. Beretania Street, Room 304 Honolulu, HI 96813 Carter.k.siu@hawaii.gov Ted H.S. Hong PO Box 4217 Hilo, HI 96720 ted@tedhonglaw.com

Melissa Dacayanan
Planning Department
County of Hawaii
101 Pauahi Street
Hilo, HI 96720
Melissa.dacayanan@hawaiicounty.gov

Dated: Hilo, Hawai'i, July 28, 2021.

COUNTY OF HAWAI'I, PLANNING DEPARTMENT, Appellee

JEAN K. CAMPBELL Deputy Corporation Counsel

Its Attorney



TED H.S. HONG ATTORNEY AT LAW, LLLC

EMPLOYMENT,
WORKPLACE LAW & LITIGATION

P.O. Box 4217, Hп.o, HI 96720 Теlерноме: (808) 933-1919 Fax: (808) 935-8281 July 28, 2021

Hon. John R. Replogle Chair Windward Planning Commission Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720



REC'D HAND DELIVERED

RE: Remand of SPP 12-000138 to the Windward Planning

Commission

Applicant: Connections New Century Public Charter

School/Community Based Education Support

Services (CBESS)

Tax Map Key: 2-5-006:141

Dear Chairperson Replogle and Windward Planning Commission Members:

The purpose of this letter is to respond to Mr. Replogle's email letter dated July 6, 2021. I am submitting this letter-brief response on behalf of CBESS. My understanding is that legal counsel for Connections New Century Public Charter School, will join in my response.

I. OBJECTION

My client and I appreciate the opportunity of addressing this issue, however, and with all due respect, the Commission and the Planning Department have their own, separate, legal counsel from the Office of the Corporation Counsel. I am sure that in the Executive Session held a few weeks ago addressed the issue of how the Commission should proceed.

My objection is giving legal advice to the Commission. I am having to invoice my client for the time it takes to submit this letter-brief on an issue that the Commission thoroughly discussed and decided with its legal counsel.

From my perspective, it appears that the Commission is asking CBESS what it should do to foreclose CBESS from raising other grounds for appeal from what could be the next denial of my client's permit application.

I object to this process and certainly do not feel I should be placed in the position of contradicting my colleagues at the Corporation Counsel, or prejudicing my client's appeal.

P.O. Box 4217, HILO, HI 96720

Telephone: (808) 933-1919 Fax: (808) 935-8281 Web: TedHongLaw.com



II. EXECUTIVE SUMMARY

The Windward Planning Commission is <u>NOT</u> required to hold an evidentiary hearing on remand. There are three (3) factors identified by the Intermediate Court of Appeals which were vacated. From the perspective of CBESS, those three (3) issues should be considered as favorable to the applicant, Connections/CBESS. The Commission should NOT conduct an evidentiary hearing, including taking new and additional testimony and documents concerning the three (3) factors the Intermediate Court of Appeals ruled in my Client's favor.

III. LAW and ANALYSIS

A. What are the requirements of a judicial "Remand."

In May of 2021, the Hawaii State Supreme Court issued a decision concerning the scope of remanding proceedings to an administrative agency. *In re Mater of Hawai'i Electric Light Company, Inc.*, 149 Hawai'i 239, 487 P.3d 708 (2021). Originally, the administrative agency's, Public Utilities Commission ("PUC"), decision was vacated and remanded back to the PUC. <u>Id.</u>, 149 Hawai'i at 240, 487 P.3d at 709. The PUC read the Court's original decision to mean that the proceedings on remand would be a complete "do over." <u>Id.</u>, 149 Hawai'i at 240-241, 487 P.3d at 709-710.

The Hawaii State Supreme Court vacated and reversed the "do over." <u>Id.</u>, 149 Hawai'i at 242, 487 P.3d at 711. The decision is particularly noteworthy for its unusually direct and blunt language. It began by citing the general rule concerning "remanded" proceedings:

On remand, a trial court must closely adhere to the true intent and meaning of the appellate court's mandate. See *State v. Lincoln*, 72 Haw. 480, 485, 825 P.2d 64, 68 (1992) (quoting 5 Am.Jur.2d Appeal and Error § 991 (1962 & Supp.1991) (footnote omitted)). **Likewise, administrative agencies are bound by reviewing courts' remand orders**. See *Fed. Power Comm'n v. Pac. Power & Light Co.*, 307 U.S. 156, 160, 59 S.Ct. 766, 83 L.Ed. 1180 (1939). (Emphasis added)

Matter of Hawai'i Elec. Light Co., Inc., 149 Hawai'i 239, 241, 487 P.3d 708, 710, 2021 WL 2071970 (2021).



The State Supreme Court then identified what an agency must consider when a case or decision is remanded back:

The "true intent and meaning" of a reviewing court's mandate is not to be found in a solitary word or decontextualized phrase, but rather in the opinion, as a whole, read in conjunction with the judgment and interpreted in light of the case's procedural history and context. See Frost v. Liberty Mut. Ins. Co., 813 S.W.2d 302, 305 (Mo. 1991)("It is well settled that the mandate is not to be read and applied in a vacuum. The opinion is part of the mandate and must be used to interpret the mandate") (cleaned up). (Emphasis added)

Matter of Hawai'i Elec. Light Co., Inc., 149 Hawai'i 239, 241, 487 P.3d 708, 710, 2021 WL 2071970 (2021).

The factors/issues the Intermediate Court of Appeals reversed and remanded in its decision, *Connections, et al., v. Windward Planning Commission, et al.*, 146 Hawai'i 155, 456 P.3d 1002, 2020 WL 508136 (2020), does not require the Windward Planning Commission to conduct an evidentiary hearing and allow the introduce additional testimony and documents.

B. What issues did the ICA rule in favor of the Applicant?

In Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136 (Ct. App. 2020), the Intermediate Court of Appeals concluded:

For the foregoing reasons, the Circuit Court's July 14, 2015 Order Affirming and January 13, 2017 Final Judgment and the Planning Commission's May 12, 2014 Decision and Order are vacated, and this case is remanded to the Planning Commission for further proceedings consistent with this Memorandum Opinion. (Emphasis added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai`i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *19 (Ct. App. 2020).

The appeals court vacated the Third Circuit Court's decision. "Redo-ing"



or conducting an evidentiary hearing would be the same mistake the PUC committed in *Matter of Hawai'i Elec. Light Co., Inc.*, 149 Hawai'i 239, 487 P.3d 708, 2021 WL 2071970 (2021). The Intermediate Court of Appeals identified the three issues that the Applicant successfully appealed:

(1) CONNECTIONS/CBESS can meet the water commitments (Findings of Fact #21, 48 and 50).

The Intermediate Court of Appeals held:

There is nothing in the record to suggest that Connections would not or could not be held to its commitments. FOFs 21, 48, and 50 are clearly erroneous and not supported by the evidence. FOF 49 is not clearly erroneous, as there was no definitive evidence in the record that Connections would be able to develop potable water sources. However, the Planning Commission may reconsider any weight it assigned to this finding in light of the Planning Director's testimony regarding the burden placed on applicants for special permits at this stage and Connection's agreement to limit the number of persons on the campus to the amount of water it can obtain. COL 51 is also vacated in light of the above. (Footnote omitted) (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *12 (Ct. App. 2020).

On remand, the Commission is required to find in the Applicant's favor including: (a) The available County water supply is sufficient to support the first phase of the proposed development (FOF #21; Connections, supra, at *11); (b) the available water, based on the estimates provided by Connections/CBESS would NOT unreasonably burden the Department of Water Supply (FOF #48; Connections, supra, at *11); and (c) the potable water limitations and mitigation proposals are sufficient (FOF #50; Connections, supra, at *11).

The Intermediate Court of Appeals decision specifically vacated and reversed FOF 63, which was the Commission's unlawful finding that the School could not adhere to the County imposed water limitations. The Commission is NOT required to take new evidence on this issue.



2. CONNECTIONS/CBESS' proposed use is suited for agricultural purposes (FOF 55).

The Intermediate Court of Appeal also held:

We conclude that it would be an absurd result to read the "unsuited for agricultural use" consideration so strictly and narrowly, particularly under circumstances such as those presented here, to deny a special permit due to an applicant's attempt to incorporate an agricultural component into its proposed use. See, e.g., Morgan v. Planning Dep't, Cty. of Kaua'I, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004) (planning commission is required to give effect to the policies and objectives of land use statutes and not to interpret them in a manner that would lead to an absurd result).

Accordingly, in view of the reliable, probative, and substantial evidence on the whole record, and in light of the aforementioned considerations, we conclude that FOF 55 must be vacated in order for the Planning Commission to assess the evidence in this light. (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *14–15 (Ct. App. 2020).

The plain and unambiguous language of the ICA's decision requires the Commission to find that Connections/CBESS' proposal to include an agricultural component and conservation practices as part of its curriculum would be well "suited for agricultural use."

The Intermediate Court of Appeals decision specifically rejected the Commission's FOF 55, which was the Commission's unlawful finding that the School's agriculture focus made it "unsuitable for agricultural use." The Commission is NOT required to take new evidence on this issue.

3. CONNECTIONS/CBESS' school is a permissible use in a low density urban area, consistent with the County's General Plan. (FOF #59 and 62; COL #5)

The Intermediate Court of Appeals clearly rebuked the Commission's



original decision:

However, a plain reading of the General Plan does not forbid or even discourage the building of school facilities in low density urban areas. There is no satisfactory explanation provided as to why building a school in a low density urban area is contrary to the General Plan. The general goals of the General Plan stated above do not support the proposition that community concern generally can serve as a veto over a special use permit. How much "community concern," however calculated, is required before a special permit is found to be contrary to the general plan is unclear and is ripe for arbitrary and capricious abuse. Given the sparsity of factual findings or explanation in the Planning Commission's decision, this Court has no way to meaningfully evaluate the Planning Commission's conclusion regarding the permit being contrary to the general plan. See Kauai Springs II, 133 Hawai'i at 164, 324 P.3d at 974 (an agency's findings should allow the reviewing court to track the steps by which the agency reached its decision). Without additional findings by the Planning Commission, the Planning Commission's FOFs 59 and 62, finding that the Development would be contrary to the General Plan, are arbitrary and capricious. COL 5, stating that the Development is not consistent with the County General Plan, must also be vacated. (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *18 (Ct. App. 2020).

Connections/CBESS plans can be built in a low density urban area, under the County's General Plan. The Court clearly rejected NIMBY type of objections or testimony and ruled it was impermissible. Clearly, the skewing or slanting of factors in favor of a few influential friends and neighbors, was unequivocally rejected on appeal. No further fact finding is needed, as a matter of law.

C. "Vacate" means a reversal.

The Intermediate Court of Appeals opinion, which "vacated" the Planning



Commission's unlawful finding, is not only a rejection of the Planning Commission's Findings of Fact and Conclusions of Law, but the effect is that the Planning Commission is directed to rule in the favor of the Applicant. Recently, in *Local 402, Am. Pharamond Conille v. Council 93, Am. Fed'n of State, County, & Mun. Employees*, No. 17-CV-11495, 2021 WL 2383021 (D. Mass. June 10, 2021), the court noted:

Turning to Plaintiffs' argument with respect to the First Circuit's order to "vacate" rather than "reverse" Count III, such contention does not warrant a different outcome. The First Circuit vacated the district court's dismissal of Count III because the internal union appeal had not yet concluded. Conille, 935 F.3d at 9. "Although the word reverse shares vacate's meanings of to annul and to set aside, it has an additional, more extensive definition: '[t]o reverse a judgment means to overthrow it by contrary decision, make it void, undo or annul it for error.' "Kelso v. U.S. Dep't of State, 13 F. Supp. 2d 12, 18 (D.D.C. 1998) (internal quotation marks and citations omitted) (emphasis removed). The Court does not consider the Circuit's decision to reverse and remand Count II and, by contrast, its decision to vacate and order dismissal without prejudice Count III to be an unintentional differentiation. (Emphases added)

Local 402, Am. Pharamond Conille v. Council 93, Am. Fed'n of State, County, & Mun. Employees, No. 17-CV-11495, 2021 WL 2383021, at *4 (D. Mass. June 10, 2021).

Similarly, in *In re IBM Credit Corp.*, 222 N.C.App. 418, 731 S.E.2d 444 (2012), the appeals court also addressed what "vacate" and "reverse" in appeal means:

In IBM II, as discussed above, we again remanded the case to the Tax Commission for reconsideration. The final mandate is stated simply as "Reversed and remanded." See IBM II, 201 N.C.App. at 354, 689 S.E.2d at 494. The Tax Commission may have construed the fact that IBM I used the term "vacate" and that IBM II used the word "reverse" as creating some sort of meaningful difference in the portions of its final decision approved or disapproved by this Court. But a full reading of IBM II



reveals that the entire second final decision by the Tax Commission was reversed. *IBM II* did not approve some portions of the second final decision and disapprove other portions. As a practical matter, the terms "vacate" and "reverse" are synonymous as used in most cases. The term "reverse" is defined as "[t]o overthrow, vacate, set aside, make void, annul, repeal, or revoke; as, to reverse a judgment, sentence, or decree, of a lower court by an appellate court, or to change to the contrary or to a former condition." Black's Law Dictionary 1319 (6th ed.1990) (emphasis added); See D & W, Inc. v. *427 City of Charlotte, 268 N.C. 720, 722, 152 S.E.2d 199, 202 (1966) ("To reverse an injunction is to vacate it.")

In re IBM Credit Corp., 222 N.C.App. 418, 426–27, 731 S.E.2d 444, 448–49 (2012).

In the present case, as it relates to the three (3) issues that the Intermediate Court of Appeals "vacated" given the plain language of the appeals court's decision, there can be no doubt that the Commission erred and should have ruled in favor of the Applicant, CONNECTIONS/CBESS.

IV. CONCLUSION

The instructions of the Intermediate Court of Appeal, in *Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n*, 146 Hawai'i 155, 456 P.3d 1002, 2020 WL 508136 (Ct. App. 2020), were clear. The Commission should NOT hold an evidentiary hearing to accept additional testimony and documents. The Commission is required to make a factual and legal determination that the proposal brought by Connections/CBESS fulfills the requirements set out in Sec. 205-6, Hawaii Revised Statutes and Rule 6 of the Windward Planning Commission.

Thank you for your kind attention to this matter.

cc:

Respectfully.

Ped H. S. Hong

CBESS

Carter Siu, Esq.

Michael Matsukawa, Esq. Jean K. Campell, Esq.

Mori, Ashley

From: Ming Peng <mpeng@hirad.com>
Sent: Tuesday, August 03, 2021 8:37 AM

To: WPCtestimony
Subject: connections
Attachments: connections.pdf

Attached is my written testimony opposing the construction of Connections school on Edita street.

Thank you.

Ming Peng

PRIVILEGED AND CONFIDENTIAL: This document and the information contained herein are confidential and protected from disclosure pursuant to Federal law. This message is intended only for the use of the Addressee(s) and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that the use, dissemination, or copying of this information is strictly prohibited. If you received this communication in error, please erase all copies of the message and its attachments and notify the sender immediately.

Dear Windward Planning Commission:

As a resident of Pacific Plantations subdivision, I remain opposed to the proposed development of Connections Public Charter School on Edita Street. There is continued opposition from residents with whom I have spoken. I have observed no action for the following issues since the previous denials for this permit.

- 1. Traffic has not been properly addressed. The proposed construction planned on Edita street is the only ingress and egress into the subdivision. There are NO alternate routes into the area. The proposed construction and subsequent facility will increase traffic demands, along our street and along Kaumana. I feel this is a profound oversight.
- 2. The utilization of County water has not been resolved, not only for the facility but also for the fire department.
- 3. Is there a need for an additional school in the area? There already are several schools clustered along Kaumana within a 4 mile radius: Kaumana elementary school, DeSilva elementary, and the Hilo schools.

The County of Hawaii Planning Department document dated Sept 28, 2012, states "the entire project is projected to be completed within 16 to 25 years" (page 2). The surrounding community along Kaumana would be expected to endure increasing noise, traffic, utilization of resources (water, power) for the next 16 to 25 years from construction.

In conclusion, this permit has been denied several times. Because of the above, I urge the planning commission to once again deny permitting this project.

Thank you for your time.

Ming Peng 1547 Mele Manu St. Hilo 96720 August 3, 2021

COH Planning Dept. 8/3/2021 Received via Email

Mori, Ashley

From: Erik Lash <lash.erik@gmail.com>
Sent: Tuesday, August 03, 2021 1:22 PM
To: Dacayanan, Melissa; WPCtestimony

Subject:Testimony in Opposition of SPP 12-000138Attachments:Testimony in Opposition of SPP 12_000138.pdf

Aloha,

Attached please find my written testimony in opposition of SPP-000138 for the Windward Planning Commission meeting scheduled for Thursday, August 5, 2021.

Mahalo

Erik Lash 808.542.3247

Erik Lash

1253 Kaumana Drive, Hilo HI 96720

8/3/2021

Testimony in Opposition of SPP 12-000138

Good afternoon,

I reside at the corner of Kaumana Drive and Edita Street. Edita has character as a quiet family friendly neighborhood where your neighbors' wave to you when you walk down the street. It is a nice place to call home.

Overall I am not opposed to educational campuses. Indeed, I believe that they should be supported.

What I am opposed to is the incompatible use between an agriculturally zoned property in a residential neighborhood and a live-in campus with libraries, dormitories, cafeterias, hundreds of students by day, students and visitors coming and going by night.

The intersection of Kaumana Drive and Edita is not built to support the level of traffic that this will bring with it, all of the buses, all of the cars, all of the farm vehicles, all of the delivery vehicles.

As it stands now at night during the weekends people do donuts at the end of Edita in the middle of the night waking up the neighborhood. Motorcyclists use it as the starting point for drag racing up the Kaumana curves. Occasionally people pull over and a domestic ensues. Occasionally there is a fender bender when someone is trying to turn into Edita from Kaumana.

There is already too much traffic for this residential neighborhood. Traffic up Kaumana at the intersection routinely moves well more than the 35-mph speed limit often in the neighborhood of 50 mph – too fast for the road.

As far as I'm aware counties sewer system does not reach the subject property. I am concerned about where is the sewage going to go from the dormitories and classrooms? Having not read the full proposal I am unfamiliar with the waste management plan proposed which also leads me to also ask if solid waste management and disposal has been addressed.

Another consideration when viewing the incompatibility of a live-in campus with the neighborhood is that of shopping services. Live-in campuses form their own mini-cities and bring with them all the infrastructure requirements and activity of a mini-city. There are no shopping facilities within a couple miles of the property begging the question when someone will apply for a commercial permit to put in a gas station and minimart for the neighborhood.

Agricultural lands are agricultural for a reason. The purpose they serve is to foster and promote agriculture. Some of them lend themselves to ancillary uses very well. Others don't.

Do I believe Connections can be a good steward and promote agriculture on their campus? Yes.

Do I believe the property selected is appropriate for the special permit to allow overnight dormitories? No.

If this matter is taken up again, I ask the Planning Commission to consider the indirect effects that the campus will have on its neighbors and the quality of life in the neighborhood by ensuring that the County of Hawaii takes adequate steps to ensure proper design of intersection changes, traffic flow changes, and utility services.

It is projected that there will be at least 381 students on this campus plus all the support staff to run the facility and visitors. Transit traffic activity will be almost continuous from 7am to 5:30pm.

Community/neighborhood resident support system designs should include consideration of traffic speed enforcement steps, a potential new stoplight to support safe ingress and egress from Kaumana onto and off of Edita during high traffic times, police security for the neighborhood and the campus, and assistance to neighbors that wish to fence in or soundproof their properties or take other measures such as implementing security camera systems to safeguard them from the increase in non-resident commercial/industrial and student/support traffic.

I also ask the Planning Commission to ensure thorough review of the waste management plans and compliance of those plans with appropriate long-term approaches for county waste management and agricultural land use.

Finally, I would also like to take a moment to ask everyone to consider the primary question at hand with the remand of SPP 12-000138 back to the Windward Planning Commission for consideration, is this development appropriate for the land that it is sited on, land zoned agricultural with the only access point being through a residential neighborhood. I urge you to consider it as an incompatible use that would be better homed in a more appropriate location and not issue a Special Permit.

Sincerely,

Erik Lash

Mori, Ashley

From: Ke`ala Lee Loy <keleeloy@hawaii.rr.com>
Sent: Tuesday, August 03, 2021 3:58 PM

To: WPCtestimony

Subject: Testimony in opposition of Special Permit Application for Connections Charter School

Windward Planning Commission Meeting August 5, 2021

Item #2 Applicant: Connections New Century Public Charter School

My name is Dr. Henry Lee Loy. I reside at 1579 Mele Manu St. in Kaumana, Hawai'i.

I am not against the education of students at Connections Charter Public School. Both my wife and I are educators and products of Hawai'i's public school system. I do have concerns about the topics stated below:

#1 Traffic

A school of this magnitude is inappropriate for the proposed location. (Exhibit #1: 3-D site rendering Connections Public Charter School Special Permit Application Form for Kaumana Campus, July 2012 Figure 2-9)

Never should the life or safety of any student or community member be jeopardized. The 3-D rendering site map shows that the campus will have a singular vehicle road access to the campus from Edita St. Edita street is the only access for Mele Manu and Edita residents to Kaumana Drive. If the proposed school is constructed it will also be the only access to Kaumana Drive for the campus. The intersection of Edita St and Kaumana Drive is dangerous and located only a few hundred feet from the school's entrance.

Traffic will back up on both Edita St and Kaumana Drive creating a dangerous situation. Adding a left hand turn lane on Edita St. into the campus will be inadequate to handle peak traffic flow. Because of limited sight distance on Kaumana Drive the addition of traffic signal lights at the intersection of Kaumana Drive and Edita St would be prohibitive. One way in and out of the campus presents a dangerous situation for students, school staff, fire, EMS, police and the neighborhood community.

There are no public schools in Hilo that have only a singular vehicle access for their campus. This week, residents in Waikoloa were forced to evacuate their homes suddenly because of an out of control brush fire (Exhibit #2 Waikoloa fire) which could have ended with tragedy because there was only one exit down to the beach road which was itself gridlocked. This could happen in our neighborhood too.

With the opening up of the new Daniel K. Inouye highway in addition to new subdivisions and a long-term Care Facility in the area traffic has increased on Kaumana Drive. (Exhibit #3) On a daily basis the Kaumana Cave parking lot overflows and cars are dangerously parked on shoulder of Kaumana Drive.

The Traffic Impact Analysis Report of 2009 which is obsolete stated that the future traffic growth along Kaumana Drive was expected to be minimal and there would be no growth of traffic on Edita St. In the

past few years several new homes have been built off of Mele Manu St. (Exhibit # 4). I submit documentation with photographs showing 1 of 7 new speed humps installed in the past 3 years to stem the increased flow of speeding traffic up and down Mele Manu St.

As schools welcome back students this week please be cognizant of the traffic congestion in your neighborhood where you live and the negative impact that a school of this magnitude would have on ours.

#2 Wastewater

Connections is considering using "Living Machine" biological wastewater treatment system over a conventional septic system. While using bacteria, plants and other organisms such as snails and fish to breakdown and digest the organic pollutants sounds environmentally appealing I am concerned about the quality and safety of the water that the school intends to reuse for possible non-potable use to supplement the maximum 4,200 gallons of potable water available from the Department of Water Supply.

At full build out of the school "the water demand for this project based on a total of 435 students (@ 60 gallons/student) is 26,100 gpd. This is well above the stated 4,200 gpd currently available from Hawai'i DWS." According to Lenore N. Ohye, Acting Deputy Director Commission on Water Resource Management Department of Land and Natural Resources State of Hawai'i, in a letter dated September 15, 2010. (Note: the 60 gpd student standard is derived from the 2002 Water Systems Standard Publication of the State of Hawai'i, page iii-3, table 100-18 Domestic Consumption guidelines for schools: Average daily demand is 60 gallons per student for the island of Hawai'i)

Is the recycled wastewater safe for agricultural irrigation and livestock use or if it can be released safely back into the environment? Currently there is no evidence showing anyone has gotten COVID -19 through drinking water, recreational water or wastewater, but SARS-CoV-2 can be shed in the feces of individuals with symptomatic or asymptomatic infection (Center for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Foodborne, Waterborne and Environmental Diseases, Waterborne Disease and Outbreak Surveillance Reporting)

We remain early in the pandemic and I expect the Covid virus to mutate further as seen with the Delta Variant and there is no end game in sight at this time.

#3 Kaumana Cave System beneath the proposed project

The extensive Kaumana Cave System extends below both the upper and lower parcels. Wastewater could seep down into caves despite using a minimum 100 foot buffer between any school facility and the cave.

I noted a 6-stall Horse barn is planned to be built less than 200 feet from the cave. It's possible animal waste could percolate through the ground into the nearby cave. Storm water run off with non potable pollutants could eventually find its way into the nearby Waipahoehoe Stream , then possibly into the Alenaio stream which runs through downtown Hilo and eventually out into Hilo bay.

#4 Stability and other unmapped sections of Kaumana Caves

Lastly, I am concerned about the stability of Kaumana Caves and other as yet undiscovered and unmapped cave sections. Students and school staff could be injured by potential cave roof collapses. At the Kaumana Caves park a few years ago a tourist fell through a crack in the lava and had to be extracted by helicopter. Dr Fred Stone a respected spelunker (Cave explorer) fell and was seriously injured while exploring a cave opening on

Edita St. a few years ago. To date the 33 acre upper parcel remains unfenced, with broken bars covering a cave opening, while the lower 37 acre parcel is fenced in with hog wire.

I can see an accident just waiting to happen. In conclusion, the proposed location of Connections Public Charter School in an established residential neighborhood is inappropriate. You have been given the authority to deny this Special Use Permit and I respectfully ask that you do so.

Respectfully Submitted,



Waikoloa close up



Henry K. Lee Loy, M.D.

1579 Mele Manu St.

Hilo, Hawai'i 96720

leeloyh002@hawaii.rr.com



TED H.S. HONG ATTORNEY AT LAW, LLLC

EMPLOYMENT, WORKPLACE LAW & LITIGATION

P.O. Box 4217, Hп.o, HI 96720 Телерноме: (808) 933-1919 Fax: (808) 935-8281 August 4, 2021

COH PLANNING DEPT AUG 4 2021 AH11:56

REC'D HAND DELIVERED

Hon. John R. Replogle Chair Windward Planning Commission Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720

RE: Remand of SPP 12-000138 to the Windward Planning

Commission

Applicant: Connections New Century Public Charter

School/Community Based Education Support

Services (CBESS)

Tax Map Key: 2-5-006:141

Agenda Item #2: Unfinished Business

Date: August 5, 2021

Dear Chairperson Replogle and Windward Planning Commission Members:

The purpose of this letter is to formally object on behalf of CBESS to the Windward Planning Commission's acceptance and consideration of public testimony concerning the merits of the Applicant's proposal. CBESS respectfully requests that the Commission rejects these submissions and NOT review or consider them as part of their decision making.

In its published Agenda, the only issue before the Windward Planning Commission is:

Discussion and action limited to the <u>procedural question</u> on whether the Windward Planning Commission will make a decision on the record as presented or open the record to new evidence regarding Special Permit SPP No. 12-000138, . . . (Emphasis added)

Any testimony concerning the merits of the Applicant's proposal are irrelevant and the Commission's acceptance and consideration of such testimony violates the Applicant's due process rights. In relevant part, Sec. 91-10, Hawaii Revised Statutes ("HRS") states:

§91-10 Rules of evidence; official notice. In contested cases:

(1) Except as provided in section 91-8.5, any oral or

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documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law;

* * *

- (3) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence;
- (4) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed; and (Emphases added)

* * *

With respect to "due process" the Hawaii State Supreme Court has said time and again that, "notice and an opportunity to be heard at a meaningful time and in a meaningful manner[,]" are the hallmarks of "due process." *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015).

The Commission's acceptance and consideration of public testimony that goes to the merits of the Applicant's Special Permit request unfairly prejudices the Applicant. The supplemental material is not relevant. The only relevant issue is whether the Commission should make decision on the Record or reopen the hearing to take new evidence. Submission of additional public testimony on the merits of the application, forecloses and prejudices my client's right to cross-examine those individuals who are intentionally misstating facts to support the denial of the permit request or present rebuttal evidence to document the Truth and actual facts. My client and I have been fighting these fraudulent claims, bullying tactics and



intimidation from the residents for years.

Recently, this bullying by neighbors has taken a very dark turn. On July 10, 2021, one of the School's employees was assaulted and beaten by thugs who apparently were at the School's property by invitation of one of the vocal opponents of the project. The assault and beating was in plain sight of this resident and from what I understand, another vocal opponent of my client's proposal. They did nothing to stop the beating. They did nothing to report the beating. The resident later mocked the employee by coming up to him after the incident and said something to the effect that he hoped "no one" was hurt. He obviously saw that my client's employee was the only person being beaten, but went out of his way to mock him.

This new comes on top of the residents slapping "No Connections in Kaumana" stickers on the walls and windows of the current school's location and bus. Children were intimidated and frightened by the criminal acts of these alleged adults. Then when the fencing was going up around the property, the School has had to endure, cut fences, persistent damage to equipment, including someone gluing the locks to the property shut.

The School has consistently reported these incidents to the Police, but their reports have been routinely dismissed by the Hawaii County Police Department because of who the opponents of this project are.

I raise these facts, because if the Commission accepts into evidence or as part of the record the public testimony concerning the merits of the Application, then we are entitled to cross-examine these people and we are entitled to present evidence to rebut their falsehoods.

The Commission is only addressing a procedural issue. I urge it to focus on that issue and pursuant to Sec. 91-10, HRS, reject additional or supplemental public testimony regarding the merits of the proposal.

Respectfully

cc: CBESS

Carter Siu, Esq.

Michael Matsukawa, Esq. Jean K. Campell, Esq.

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

MINUTES AUGUST 5, 2021

The Windward Planning Commission met in regular session at 9:01 a.m., with Chairman John Replogle presiding. Based on the Governor's Twenty-First Proclamation Related to the COVID-19 Emergency dated June 7, 2021, this meeting was held online, with live-streaming for the public to observe the meeting.

VIRTUAL ATTENDANCE (COMMISSIONERS): Dean Au, Gilbert Aguinaldo, Joseph Clarkson, Dennis Lin, Michelle Galimba, Thomas Raffipiy (recused and excused at 9:06 a.m.), John Replogle.

VIRTUAL ATTENDANCE (STAFF): Jeffrey Darrow (Deputy Planning Director), Malia Hall (Deputy Corporation Counsel for the Windward Planning Commission), Jean Campbell (Deputy Corporation Counsel for the Planning Department), Maija Jackson (Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary).

<u>Secretary's Notes</u>: Throughout the meeting, there were some technical and/or internet difficulties which made the speaker inaudible. Please note that the notation "—" in these Minutes and the Exhibit Transcripts means that there were technical and/or internet difficulties which made the conversation inaudible.

A quorum was present. Chairman Replogle called the meeting to order. He explained the procedure and protocol for this online meeting and live public testimony. He introduced the Commissioners and staff who were in virtual attendance.

APPROVAL OF MINUTES

At 9:04 a.m. it was moved by Commissioner Raffipiy and seconded by Commissioner Au that the minutes of July 1, 2021, be approved. A voice vote was taken, and the motion carried with all in favor and no noes.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

Chairman Replogle called upon the public testifiers, explained the procedure, and swore him in to tell the truth in their testimony.

At 9:05 a.m. one individual provided statement regarding New Business Item 1, the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**. The testimony ended at 9:21 a.m. *[SEE TESTIMONY TRANSCRIPT – EXHIBIT A]*

It was moved by Commissioner Lin and seconded by Commissioner Au that public testimony be closed. A voice vote was taken, and the motioned carried all in favor.

NEW BUSINESS

1. APPLICANT: HAWAI'I ISLAND HUMANE SOCIETY (Amend SPP 387)

Request to amend Special Permit No. 387 to allow the construction of a new 1,975 square foot dog pavilion to house an additional 30 dogs, a 762 square foot exercise area, three offices with 392 square feet of new space, modifications to the exterior of the existing facility to provide for a consistent façade and related improvements. Additionally, once the new pavilion is constructed, the applicant is requesting to demolish an existing, 1,600 square foot, 17-kennel structure and expand the exercise and training area by the same land area. Special Permit No. 387 was approved in 1978 to legitimize and expand the Hawai'i Island Humane Society use on approximately 2.69 acres of land within the State Land Use Agricultural district. The subject property is located at 16-873 Kea'au-Pāhoa Road (Route 130), approximately 1,500 feet southeast of its intersection with the Kea'au-Pāhoa Bypass Road, Kea'au, Puna, Hawai'i,

TMK: 1-6-003:074.

This item was returned by the Planning Department as it was deemed unnecessary and not heard.

UNFINISHED BUSINESS

2. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit SPP No. 12-000138, which was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

The Commission took this item up at 9:22 a.m.

At 9:25 a.m., it was moved by Commissioner Au and seconded by Commissioner Aguinaldo that the Commission enter into executive session to consult with its attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5. A voice vote was taken of all Commissioners present, and the motion carried with six aye votes.

The live-stream meeting was placed on hold and at 9:28 a.m. the Commission went into executive session.

At 9:39 a.m. the live-stream meeting reconvened.

Action: It was moved by Commissioner Clarkson and seconded by Commissioner Galimba to open the record to hear new evidence limited to items in the Appellate Court's opinion. A roll call vote was taken, and the motion failed with two (2) ayes (Clarkson, Galimba) and four (4) noes (Aguinaldo, Au, Lin, Replogle).

It was moved by Commissioner Lin and seconded by Commissioner Au that the Commission make a decision on the record as presented at the next Commission hearing. A roll call vote was taken, and the motion carried with four (4) ayes (Lin, Au, Aguinaldo, Replogle) and two (2) noes (Clarkson, Galimba).

It was moved by Commissioner Au and seconded by Commissioner Lin to continue the hearing to the Commission's October 7, 2021, to allow the Commission ample time to review the entire record. A voice vote was taken, and the motion carried with all in favor and no noes.

The hearing item ended at 10:26 a.m. [SEE HEARING TRANSCRIPT – EXHIBIT B]

ADMINISTRATIVE MATTERS

1. Discussion of recent Special Management Area (SMA) determinations, minor permits and enforcement action issued by the Planning Director.

The Commission took this item up at 10:26 a.m. Ms. Jackson said there are no administrative matters but, the Special Management Area (SMA) Assessment log and the SMA Short-Form log is normally provided and apologized as one was not provided this month due to the transition with the new EPIC permitting system. She requested for an extra month to create a new log within the EPIC system and hopefully at the October meeting the SMA log will show information from July through September. There were no objections by the Commission.

ANNOUNCEMENTS

Chairman Replogle stated the Windward Planning Commission's next monthly meeting is scheduled for Thursday, September 2, 2021, by interactive video conference via Zoom.

Commissioner Au asked staff how many items were scheduled on the September agenda and indicated that he would like to make additions to the Planning Commission rules. Ms. Jackson indicated that there was just one item on the September agenda. She stated as far as the rules go, once Planning Department Staff's familiarization with EPIC system is completed then the focus would shift back to initiating some rule amendments. According to Ms. Jackson, the two priority rule amendments include rule updates to address changes to state law through Act 16 related to the Special Management Area (SMA) and Shoreline Setback Variances. The second priority is a rule amendment mentioned by Commissioner Au, to address the recusal of Commissioners with suggested language from the Board of Appeals rule on the same topic. Ms. Jackson also

mentioned she looked at the Board of Appeals rule and will provide Commissioner Au a copy to identify which sections he would like to include in a new Planning Commission rule.

Commissioner Clarkson asked if a clean copy of the existing Planning Commission rules as interpreted by the Planning Department after the last Joint meeting was available. Ms. Jackson answered affirmatively, indicating that a copy of the new rules would be provided shortly. Commissioner Au addressed the students in attendance from Connections New Century Public Charter School and indicated his appreciation for their attendance. He stated government is an interesting process and he hoped to see them one day in getting involved with government.

ADJOURNMENT

There being no further business, a voice vote for adjournment was taken all in favor and none opposed. Chairman Replogle adjourned the meeting at 10:31 a.m.

Respectfully submitted,

Melissa Dacayanan-Salvador

Melissa Dacayanan-Salvador (Oct 8, 2021 07-21 HST)

Melissa Dacayanan-Salvador, Secretary

ATTEST:

John R Replogle
John R Replogle (Oct 15, 2021 11:54 HST)

John R. Replogle, Chairman Windward Planning Commission

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

TESTIMONY TRANSCRIPT AUGUST 5, 2021

Public testimony regarding the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)** was called to order at 9:05 a.m. via live stream online meeting, with Chairman John Replogle presiding.

COMMISSIONERS PRESENT: Dean Au, Gilbert Aguinaldo, Joseph Clarkson, Michelle Galimba, Dennis Lin, John Replogle

EXCUSED AND RECUSED: Thomas Raffipiy

ALSO IN ATTENDANCE: Malia Hall, Esq. (Counsel for the Commission), Jean Campbell, Esq. (Counsel for the Planning Department), Jeffrey Darrow (Deputy Planning Director), Maija Jackson (Planning Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary)

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit SPP No. 12-000138, which was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141

Secretary's Note: "—" indicates indiscernible speech due to internet/technical difficulties or simultaneous talk.

REPLOGLE: We have one testifier registered to give oral testimony for Item #2 Connections/CBESS (SPP 12-138). Henry Lee Loy. I ask that you limit your testimony to three minutes. Also, I would like to remind you that your testimony should be limited to the procedural question before the Commission today and should not include testimony on the merits of the application.

RAFFIPIY: Mr. Chairman? Point of order.

REPLOGLE: Yes, please.

RAFFIPIY: As stated at last month's meeting, I will have to recuse myself from hearing this agenda item and being that this is the only item that will be discussed today I request that I be excused from the meeting.

REPLOGLE: Yes, you may be excused, I thought it was very good of you to show up today. Thank you very much Thomas, you are excused.

RAFFIPIY: Thank you Mr. Chairman. Thank you all.

REPLOGLE: Have a good day.

RAFFIPIY: You too.

REPLOGLE: Okay, so, testimony to the merits of the application. After your testimony, please log out of the Zoom platform and switch to the YouTube channel if you wish to observe the meeting. This is to limit the number of participants on the screen in order to manage the meeting and also minimize connection disturbance or noise. I am going to swear you in. Please raise your right hand. Okay, do you swear to affirm to tell the truth before the Windward Planning Commission?

LEE LOY: Yes, sir.

REPLOGLE: Please state your name and the town you live on prior to your testimony and you may begin.

LEE LOY: My names is Dr. Henry Lee Loy, I'm a retired physician in Hilo, Hawai'i. It is important that this Commission know and understand that never has anyone spoken against the existence of Connections Public Charter School. To be clear, we are opposing the development of a Public Charter School on Edita Street entrance road for multiple safety reasons that have been and will be iterated via oral or written testimony. A school of this magnitude is inappropriate for the proposed location. I'll address water usage estimates and the availability of potable water from the Department of Water Supply henceforth DWS. The project acknowledges that the maximum potable water allocation by DWS for development is 4,200 gallons per day.

REPLOGLE: Excuse me, sir.

LEE LOY: This application form based on 60 gallons per day per student standard a 4,200 gallons allocation could support 70 students. The Intermediate Court of Appeals decision questions —

HALL: Chair, point of order.

REPLOGLE: Excuse me, excuse me Mr. Lee Loy. Can you pause. Your testimony is supposed to be in regard to the documentation not problems or issues concerned with the school being there or not being there. We're here today to decide whether to allow new public testimony in or to continue and use testimony already provided and —

HALL: Let me just verify that, sorry.

REPLOGLE: Go ahead.

HALL: Chair.

REPLOGLE: Yeah, no, please.

HALL: Yes, Mr. Lee Loy basically this is only for a procedural question today on whether we are going to open up the record or just make a decision, the Commission will be making a decision on the record. So, if you would like to testify on the merits of the application that would be happening at the next hearing will have an actual hearing where you can testify to those things. But at this point we are not hearing testimony on the actual school itself just on the procedural question of whether the Commission should make a decision on the records as presented or open up to limited evidence.

LEE LOY: Okay, on the procedural question would my testimony given regarding clarification on the figure of the student standard be relevant to today's meeting?

REPLOGLE: I don't believe so. The question today is, should we the Commission and please correct me Ms. Hall. Should we the Commission take what is on the record and use that to make a decision as to whether to allow the school to be or to say no, we can't do that. Or, should we allow the record to be opened and now like you're testifying just now, you could do that at the next meeting, if that's what we decide. So, you would be speaking either for going with the previous testimony and not opening it up, or you would like to see it reopened and why. I don't know if that was real clear, but I hope so.

LEE LOY: I guess, I feel my testimony would support the fact that the Findings of Fact are legitimate and that there is already evidence within that has been given, but it needs clarification and that's what I'm trying to do as the Circuit Court had remanded to the Commission. I was trying to help clarify that which would help whether it needs to be either used as is or open up for more testimony, I guess.

REPLOGLE: Okay. However, your testimony is facts of things as you said that have already been stated and are in the record. Is that correct?

LEE LOY: Yes, they are, but I think it needed clarification of where that student standard came from which was not mentioned, which is what the Third Circuit Court of Appeals asked for.

REPLOGLE: Okay, and I think, possibly, it would be okay to address that. I don't believe we need to hear about the gallons of water or any of that. But I do believe if you have a point to make in regards to opening, reopening the hearing or going with what exists, we would appreciate hearing that.

LEE LOY: Okay. Can I proceed then with just trying not to address that.

REPLOGLE: Yes, I don't want to cut you off and you made the time I would like to give you the opportunity to say, make your point should we go with what's already been stated and if that's what we the Commission decide. At the next meeting, what you're talking about today would be totally relevant.

LEE LOY: I'm sorry Mr. Chairman.

REPLOGLE: If we decide to go with what's on the record, at the next meeting you could what you were saying to us about the water and all that, you're refreshing those important points in the decision that was made. Okay, and that would be great to hear at our next meeting when this would be on the agenda if it's decided to be reopened to fresh testimony you could still make your presentation in the form you were attempting to today. I think I'm getting that correct.

LEE LOY: Well, I think my testimony today maybe relevant, and it may apply to either you go with a current testimony or whether you open it up, so, I think it will relevant either way.

REPLOGLE: Okay, which would you prefer it to be, that's the question today that you should be supporting.

LEE LOY: You're asking me, I'm sorry what are you asking me again? Sorry.

REPLOGLE: Anybody wish to, what I'm trying to say is if today you say I don't think we should open it up —

HALL: Chair, chair.

REPLOGLE: Yes.

HALL: Counsel for CBESS has his hand up.

REPLOGLE: Oh, I'm sorry. May I see your, oh okay, Mr. Hong please.

HONG: Thank you. I was just informed by the attorney for Connections.

REPLOGLE: Yes.

HONG: That for some reason his link is not working, and he can't get into the Zoom hearing, Deputy Attorney General Carter Siu. So, I was wondering if someone from the Planning Department or the Commission could send Mr. Siu a link. Oh, there he is. Now his connected.

Thank you. The other thing that I did want to mention is again, this is a procedural issue and Mr. Lee Loy is trying to pollute the record again by putting in additional facts that we are, if the Chair is going to allow that then we are entitled to rebut those facts and this now reopens the entire hearing. So, I would suggest that the Chair and the Commission abide by its agenda and have him either address the procedural issue, reopen the hearing and have it be a do-over or not. Without getting into the facts, because once we start getting into the facts regarding the per gallon and all that kind of stuff. If Mr. Lee Loy is going to get into that, we are entitled to rebut that. Thank you.

REPLOGLE: I agree with you Mr. Hong and that's what I'm trying to clarify for Mr. Lee Loy. So, and I think you helped me there. So, Mr. Lee Loy, it's the procedure, not the gallons. Do you want it to just stay as it is or do you think it should be reopened to new public testimony? That's your options here. We do not wish to hear about the gallons or any of that. —

LIN: Chair, Commissioner Clarkson has a question.

REPLOGLE: Mr. Clarkson, go ahead.

CLARKSON: Yes, I just like to ask our Corporation Counsel a question to clarify this issue. If the Commission decides to make its additional considerations only on the record, will testimony of any kind be allowed, and if so, by the public. If so, what kind of testimony would be allowed?

HALL: You're saying, if you guys decide to make a decision on the record?

CLARKSON: Yes, I think it's unclear to Mr. Lee Loy and to me from what you said earlier and what Chair Replogle is saying.

HALL: Well State Law and Planning Commission rules require that the Commission take public testimony. So, public testimony will be given, with that said, if the record as presented you guys will be making a decision on the record as presented.

CLARKSON: So, we are required to take testimony but if we decide here today to only make a reconsideration on the record, we will be disregarding all of that testimony. Is that the case?

HALL: Yes.

CLARKSON: Okay, thank you.

REPLOGLE: Okay, once again Mr. Lee Loy. For keeping the record as it is and proceeding at the next meeting with that or would you like to see it open to new public testimony? So someone who didn't testify in 2014 could come and testify at the next meeting for or against the school, but, they would be new testimony.

HALL: Chair, sorry.

REPLOGLE: Yes.

HALL: It's not just public testimony, it would be new evidence, it would be—

REPLOGLE: Okay.

HALL: —the applicants and the would also be able to so, Mr. Lee Loy the question is basically do you want them to make a decision on the record that has been already presented, or would you like new evidence to be entered into the record?

LEE LOY: Okay.

REPLOGLE: There you go.

LEE LOY: Alright, thank you Chairman, Commission members and Counsel. I appreciate your time, your efforts to volunteer and those who are uncompensated. So, what I'm going to do is just defer that decision to the Chair and the Commission and I guess that's your job. So, no further comments from me, sir.

REPLOGLE: Thank you very much Mr. Lee Loy.

LEE LOY: Should I leave?

REPLOGLE: Okay, you may go to Zoom, excuse me not Zoom, but YouTube if you wish to watch and follow the proceeding from this point on.

LEE LOY: Very good, have a good day everyone.

REPLOGLE: Okay, thank you.

The public testimony ended at 9:21 a.m.

Respectfully submitted,
Melissa Dacayanan-Salvador

Melissa Dacayanan-Salvador Secretary to Boards and Commissions

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

HEARING TRANSCRIPT AUGUST 5, 2021

A regularly advertised hearing on the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)** was called to order at 9:22 a.m. via live-stream online meeting, with Chairman John Replogle presiding.

COMMISSIONERS IN ATTENDANCE: Dean Au, Gilbert Aguinaldo, Joseph Clarkson, Michelle Galimba, Dennis Lin, and John Replogle

RECUSED: Thomas Raffipiy

ALSO IN ATTENDANCE: Malia Hall, Esq. (Counsel for the Commission), Jeffrey Darrow, (Deputy Planning Director), Jean Campbell, Esq. (Counsel for the Planning Director) Maija Jackson (Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary)

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit SPP No. 12-000138, which was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141

Secretary's Note: "—" indicates that there were technical and/or internet difficulties, which made the conversation inaudible.

REPLOGLE: So, we're going to move onto unfinished business. The applicant is Connections New Century Public Charter School/Community Based Education Support Services (CBESS), SPP 12-000138. Discussion and action limited to the procedural question on whether the Windward Planning Commission will make a decision on the record as presented or open the record to hear new evidence regarding Special Permit No. 12-000138, which was remanded back to the Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit SPP

No. 12-000138. The subject Special Permit sought to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

There will be no presentation at this meeting, as it is only to decide if the Commission will make a decision on the record or reopen the record. A presentation may be given at the next meeting. The following parties are present. Please state your name and who you represent.

AU: Mr. Chair, point of order please. I have a question.

REPLOGLE: Yes, please go ahead.

AU: Could I go ahead and make a motion to go into executive session, I have a bunch of questions before we hear the applicant, I have questions for our Counsel. So, I move to go into executive session.

REPLOGLE: Can I have a second?

AGUINALDO: Second by raising his hand.

REPLOGLE; Okay, we have a second. Oh, I'm sorry. What am I doing now? Okay all those in favor of a brief executive session say aye.

COMMISISONERS: A voice vote was taken of all Commissioners present, and the motion carried with six aye votes and no noes.

REPLOGLE: Okay, we will go into an executive session.

The live-stream meeting was placed on hold and at 9:28 a.m. the Commission went into executive session. The live-stream meeting was reconvened at 9:39 a.m.

REPLOGLE: We're back in session, and thank you Applicants, Intervenor and Planning Department for your patience. I'm going to swear you all in together, please raise your right hand. Yes, okay. Do you swear to affirm to tell the truth in this matter before the Windward Planning Commission?

HONG: Yes.

REPLOGLE: Okay we good?

THATCHER: Yes.

REPLOGLE: Please say, yes sir. Okay.

SIU: Yes.

MATSUKAWA: Yes.

REPLOGLE: Thank you, so will be begin with the applicants Connections and CBESS will both be presenting. Please begin.

HONG: Good morning Mr. Chairman, members of the Planning Commission. My name is Ted Hong, I represent CBESS, the Community Based Education Support Services, that is, the non-profit current entity of Connections School the governing board. You have my letter that we submitted pursuant to the Boards July 6, 2021, letter. With me this morning on behalf of CBESS is John Thatcher, the retired principal of Connections he's there with green wall background. You have before you my letter of July 28, 2021, we certainly would be more than happy to answer any questions that the Chairman or the Commissioners may have regarding our position on this matter, and I believe Mr. Carter Siu would like to say something. Thank you.

REPLOGLE: Thank you. Mr. Siu?

SIU: Good morning, this is Carter Siu on behalf of Connections Charter School. I just joined in Mr. Hong's brief and that's it. I think I submitted something as well, but yes, I concur with Mr. Hong.

HONG: Mr. Chairman, if I may note also present is Romeo Garcia, the present Principal of Connections Charter School and he has several students watching as well.

REPLOGLE: Thank you. Okay, and your position is to stay with the program.

HONG: I think Mr. Matsukawa wanted to say something.

REPLOGLE: Okay, the Intervenor Mr. Matsukawa. You have the floor.

MATSUKAWA: Yes, I just wanted to let the Commissioners know that we stand on our brief that we had filed earlier and have nothing in addition to add. Other than to help the Commission understand the effect of a remand the court cases hold that when there is a remand the court from time to time makes a statement of the law or a particular point and that's called the law of the case. And that statement, which is the law of the case becomes exactly what it is, is the governing law against which we all have to function on the remand. Thank you.

REPLOGLE: Okay. The Planning Department do you have anything to say?

DARROW: We also submitted our position and at this time we take no position on the matter.

REPLOGLE: Okay, thank you. And applicants, do you have any points you would like to address before I open questions from the Commission?

HONG: Thank you Mr. Chairman, members of the Commission again, this is Ted Hong on behalf of CBESS. The only point that we want to make this morning is again that we feel that reopening or redoing the hearing, the contested case hearing would unnecessarily delay the project because that would be essentially in violation of the Hu Honua Hawai'i State Supreme Court's decision on what an administrative agency should do on a remand. And I think at this point there's been a lot of information provided from the parties and I would suspect that the Commissioners may have some questions and I think Mr. Siu and I would be more than happy to respond to any questions of the Commissioners, or the Chair may have. Thank you.

REPLOGLE: Thank you Mr. Hong. Is there anything else? Okay, I'm going to move to a motion for action. Well, actually we are going to open it, yes, Mr. Clarkson.

CLARKSON: I was prepared to make a motion for action but, if I'm premature let me know.

REPLOGLE: No, no, no.

CLARKSON: Okay, I move that the Commission open the record to hear new evidence limited to the following, those items in the appellate court's opinion where they suggest additional findings and additional hearings might be necessary not being several.

REPLOGLE: Okay, do we have a second?

GALIMBA: I'll second that.

REPLOGLE: Okay. All those in favor of this motion, please signal.

HALL: Chair, point of order.

REPLOGLE: This should be a vote, yes, go ahead.

HALL: There should be discussion, Chair and then a roll call vote after discussion is finished.

REPLOGLE: Okay, thank you. Mr. Au?

AU: Thank you Mr. Chair. I just have a question for Commissioner Clarkson and Commissioner Galimba regarding the motion. The way the motion stands right now I don't support it. I think we have enough evidence to make a decision. Obviously, we going to hear from both sides, and both attorneys but I think we have enough evidence. But I would still like to hear other Commissioners and even Commissioner Galimba and Commissioner Clarkson on why you're making that motion and the way I stand as of now is that I don't support the motion, but I do want to hear from all the Commissioners regarding this motion. Thank you.

LIN: I would tend to agree with Mr. Au, I think we have sufficient information within the courts document as well as on the record. And I believe that it would cost a lot more money and time for everybody else to go through this whole process again.

REPLOGLE: Thank you. Mr. Clarkson?

CLARKSON: I'd like to just speak briefly in favor of my motion. I just noted at least in two places Page 42 of the opinion where the Appellate Court notes that; without additional findings by the Planning Commission, the Planning Commission's Findings of Fact 59 and 62 finding that the development would be contrary to the General Plan or arbitrary and capricious. So, this seems to imply consideration including additional findings now there may be a legal term, legal meaning for findings there that I'm missing but I would think it would include evidence. And then on Page 43, the Appellate Court talks about why they may remand, and they refer to the Lanai Company Inc. versus Land Use Commission case. Where a case was remanded to the LUC for additional findings and conclusions and further hearings if necessary. So, it seems to me that I would call a rather vague conclusion.

Where is it. Where they say where the court said this case is remanded to the Planning Commission for further proceedings consistent with this opinion. That they're obviously opening the door to new evidence and a reconsideration and testimony about old evidence and that if they wanted us to restrict ourselves strictly to the record, they could have easily said so and didn't and in fact made at least two references to additional findings and possible hearings. That's why I think certain things especially the lack of evidence in the record for the water use criteria that was discussed in the previous Commissions' decision. I don't see how that can be resolved without additional evidence from an additional testimony. There're numerous things like that. What is the importance of notifying all the people within 500 feet of the project? Whereas the appellate court talked a lot about the meaning of community and whether there should be differential consideration of different parts of the overall community, and so I think that there are a lot of issues that need to be covered before the Commission to make a non-arbitrary and capricious decision. Thank you.

REPLOGLE: Thank you Mr. Clarkson. Mr. Au, any thoughts?

AU: Yeah, I'll just respond to Commissioner Clarkson's response. I think that's fair, that's your opinion and you like to hear that and I respect that. So, after those comments I'm on the fence now but I would still like to hear from the other Commissioners.

GALIMBA: Could I speak Chair?

REPLOGLE: Yes, Ms. Galimba.

GALIMBA: So, I guess I'd like to ask a clarification on that because I agree with Commissioner Clarkson that we need to be able to very clearly articulate our reasons for either supporting or rejecting the proposal. And there were those points that Commissioner Clarkson mentioned in the order that requires our fairly detailed attention. So, I guess the question that I would like to ask is would we need to open it to more evidence and more testimony to do that properly like specifically the General Plan question that Commissioner Clarkson brought up. So, I guess I'm asking Counsel that question. In your opinion, is there enough evidence in the already existing documentation to do our job properly as far as articulating our decision?

HALL: Let me frame it this way, I do not think that the remand from the ICA commands the Commission to open the record. I'll say that. I say that it leaves it open ended. If you guys need additional evidence, I really can't speak to that. I think that if you guys have read through the entire record and you're prepared to make a decision on that record then there's no need to open the record. And then the other one, if you feel like you're not prepared to make a decision after reviewing the whole record, then you may open for limited testimony. But I would advise on that motion is very broad and that it should probably be much more specific as to what specifically the Commission is looking for to supplement the record.

REPLOGLE: And we should state that so that would be opening it only to those topics?

HALL: Yes.

REPLOGLE: Okay, thank you.

CLARKSON: Well, if I may amend my motion then it should be reopened only for those items that the Appellate Court, only those items in the original Commission decision that the Appellate Court vacated.

HALL: The entire Decision and Order was vacated Commissioner Clarkson.

CLARKSON: Alright, well, what do you call those items that were specifically noted by the Appellate Court then?

HALL: You would need the specific subject areas. The Court did highlight specific items of fact that they felt were not supported.

CLARKSON: Right.

HALL: But that doesn't necessarily mean that you couldn't support them with evidence that is already on the record, but that's up to the Commission if they feel like in an approval or denial can be supported by the existing record.

CLARKSON: Well, its—

REPLOGLE: Mr. Clarkson, yes.

CLARKSON: Yes, it's clear that the record that support in fact the Court could find no evidence in the record to support a particular number of water use per student requirement. And so therefore there isn't clearly enough information in the record for us to reconsider that. I think we need to get evidence as to where that 60 gallons per student came from, or what a new or current value might be and I don't see how we can get that number simply by looking at a record where the Court declared that the information did not exist.

REPLOGLE: Okay.

GALIMBA: So, Commissioner Clarkson do you want to limit your motion to that specific topic? Which I think it would be very valid as you point out, we haven't heard since then where that came from, but it isn't in the record of the original case I believe.

CLARKSON: Well, I'm sorry I'm remiss, I'm not prepared to list the specific topics that we should be limited to. I didn't think it would be required that if we opened it up to any new evidence that that would be a fairly broad category covering numerous items that were discussed in the opinion memorandum. If the rest of the Commission would like much more specificity then I'll have to ask for their patience and letting me go through and find all the findings and other decisions that Commission made that were deemed unsatisfactory by the Court.

AU: Mr. Chair, I have my hand raised.

REPLOGLE: Oh, I'm sorry Mr. Au, please go ahead.

AU: I would still like to hear from our Honorable Chair on his opinion and I still want to hear from Commissioner Aguinaldo. But before you do that, I would like to respond to Commissioner Galimba's question to Commissioner Clarkson. If we open up the record I don't know what the consequences are going to be if we just limit it to one or two or three things. It's either we open it or we don't. That's my feeling Malia, Ms. Hall maybe you can interject on that, but I still want to hear from my fellow Commissioner Gilbert Aguinaldo and our Honorable Chair Replogle.

REPLOGLE: Mr. Aguinaldo?

AGUINALDO: I just think that based on what is being discussed, I just truly feel that we can proceed and in moving forward, but to an extent of again with our fellow Commissioners on that once you open the can, that's the thing right. If we have enough sufficient evidence to move forward let it be and if not, what is the limit count of the questions right, what are we going talk about.

REPLOGLE: Thank you. Your Honorable Chairman thinks that we should stick with the record as it is. I think opening the record as been stated is opening it, it should either be opened or not opened. And the Court made its decision based on what was presented the first time and I don't know that we should be opening it back up again where it's been quite a few years and we're dealing with that time and space is the question. So, I don't believe we should open it back up to new testimony, I think we should go with what we have and make our decision. Mr. Lin?

LIN: Chair, I'll like to call for question.

REPLOGLE: Okay.

LIN: So, I'd like to call for the vote on the motion that Mr. Clarkson presented.

REPLOGLE: Alright.

AU: Mr. Chair.

REPLOGLE: Yes.

AU: Before we make the vote, I would like get Ms. Hall's procedural, what is going to happen if this motion get voted up or voted down. Can you just explain to us what may and may not happen?

HALL: So, if the motion passes, then the record will be opened and then the next hearing there will be public testimony, the applicant and intervenor will present their arguments and then if the Commission still feels that they have enough information at the end of that testimony and that argument, then they can make a decision at that time. If you vote against it, then we need a new motion for whatever you so choose and from there we go from there and then I can advise you as to what the procedure will be on for that.

REPLOGLE: Okay.

LIN: Ms. Hall, can I make a motion, a separate motion to move that the Commission make a decision on the record as presented at our next meeting?

HALL: We have to deal with the first motion first.

REPLOGLE: Yes.

HALL: Then we have to see if that, unless Commissioner Clarkson wants to withdraw his motion but, presently we have a motion on the floor that needs to be —

REPLOGLE: We should decide on that. Okay. All those, wait a minute. It would be a roll call vote for this?

JACKSON: Yes.

REPLOGLE: Okay. So, Commissioner Clarkson correct me if I get this wrong but, Commissioner Clarkson would like to have the record reopened so we can address issues that the Court outlined as needing more information.

CLARKSON: That's correct.

JACKSON: Okay.

REPLOGLE: So, staff.

JACKSON: Commissioner Clarkson?

CLARKSON: Aye.

JACKSON: Commissioner Galimba?

GALIMBA: Aye.

JACKSON: Commission Aguinaldo?

AGUINALDO: No.

JACKSON: Commissioner Au?

AU: No.

JACKSON: Commissioner Lin?

LIN: No.

JACKSON: Commissioner, I'm sorry, Chair Replogle?

REPLOGLE: No.

JACKSON: Okay, the motion fails four (4) to two (2).

REPLOGLE: Okay, now Commissioner Lin. If you'd like to make your motion or whatever it was you would were considering.

LIN: I move that the Commission make a decision on the record as presented at our next Commission hearing.

AU: Second.

REPLOGLE: Moved and seconded to hear the evidence as presented initially and make our decision based on that. Any discussion?

AU: Mr. Chair?

REPLOGLE: Yes, Mr. Au.

AU: I would like to state that I support this motion that I seconded for the reason that I believe that we have sufficient evidence, and we can go into detail on each line item if the attorneys choose to do so. And with that based off that information, I believe that we can still make the best decision that we can. But I just wanted to clarify that for the record.

REPLOGLE: Thank you. Anyone else, Mr. Clarkson.

CLARKSON: Yeah, I just liked to speak against the motion by reiterating what our Counsel told us earlier that if we vote in favor of this the record as presented, I assume it would be the

complete record "—" will be the only basis on which to discuss any future action and that all testimony from the public presumably from the parties, from the Planning Department will be disregarded by the Commission because it's not already on the record. So, we will be I guess reviewing the record separately on our own time and then discussing the record in our next meeting in order to make a new decision, but without any ability to clarify any point within the record with additional information.

AU: Mr. Chair, I got a question for Ms. Hall.

REPLOGLE: Go ahead Mr. Au.

AU: So, Ms. Hall, just to clarify or confirm or just to make sure for my piece of mind. Commissioner Clarkson is stating that we won't be able to hear the applicant, but I believe we will be able to talk to both applicants and the applicant's attorney, is that correct?

HALL: Yes.

AU: Okay, well I believe through that process things could get mitigated. The attorneys and the parties could work on their own to figure things out. This has been a long haul for all parties, for the community, for the applicant and we are giving them a shot to work it out and whether they do so it's up to them. But for our hearing, we're only going to hear what was already on the record so, I hope that addresses some of your concerns, Mr. Clarkson?

CLARKSON: No, no.

REPLOGLE: Mr. Clarkson?

CLARKSON: It does not address my concerns because there's a contradiction between what I understand the record to be and the fact that additional discussion will be added to the record at the next meeting by the applicant and the intervenors and others. Are we going to add information to the record or are we going to strictly consider the written information that's in the record? That is what I'd like to know, I thought we should be able to add it, but the Commission obviously disagrees, so I just like to know what that means. Will the applicant be able to speak to interpret the record again in our additional hearings or will we only and I don't know if that's the case why that wouldn't be the same as opening the record for new information.

AU: I think that is a fair question, Ms. Hall can you answer that for us?

HALL: There's a distinguishing between allowing the applicant to speak to their original arguments and their original application and that of bringing in completely new facts that are not on the record. So, if the applicant so choses, they will be able to present on the original application as is with no new facts as will the intervenor be able present on the original facts with no new facts.

REPLOGLE: Mr. Lin?

LIN: So, Ms. Hall, the clarification would be that the applicant as well as the intervenor could make clarifications based off what the record states? So, we could ask them questions about certain points that were made on the record pertaining to their portion. Is that correct?

HALL: Without introduction of new facts, yes.

REPLOGLE: Okay. So, an as example, they I'm sorry go ahead, Ms. Galimba.

GALIMBA: No, sorry I think you're probably going; I was confused about this interchange right now so.

REPLOGLE: Okay, so. If I understand this correctly. I'm just going to pick a topic water because it was mentioned. Both the applicant and the intervenor can talk to the water question, but they can't add anything new like, oh, we got another 100,000 gallons coming from Kawaihae. That wasn't in the original record so you can't add that, but they can address the water as they understand it to make it clearer. Is that correct?

HALL: Yes, they can present the fact that the information on the record is sufficient to make a decision to whichever way they go.

REPLOGLE: Okay. Alright, thank you.

CLARKSON: Excuse me Chair. I just don't understand that, because the Appellate Court has already said that the information on the record is not sufficient to determine whether the Commission's action was arbitrary and capricious or not. So, if we restrict and we have restricted ourselves to the information in the record we are declaring that we must only make an arbitrary and capricious decision on this matter. I mean to me following the court's logic, we're stuck!

HALL: "—" Commissioner Clarkson that's basically what the applicant and the intervenor will argue to is whether you are stuck or not, whether that you need that information to approve or deny the application. They will make their argument on the present record. So, I don't want to go anymore deeper, because I don't want to give you an idea either way or represent either argument, but, I would just say that. Their job will be to show you that there's sufficient evidence on the record to present to support their arguments for approval or denial.

REPLOGLE: Thank you. So, I'm sorry here but, I'd entertain, are we, we have a motion on the floor. Okay and Mr. Lin would you restate it please.

LIN: I move that the Commission make a decision on the record as presented at our next Commission hearing.

REPLOGLE: Okay, thank you. roll call please.

LIN: You need a second?

REPLOGLE: It was moved and seconded, I just wanted you to refresh everyone.

LIN: Okay.

JACKSON: Commissioner Lin?

LIN: Aye.

JACKSON: Commissioner Au?

AU: Aye.

JACKSON: Commissioner Aguinaldo?

AGUINALDO: Aye.

JACKSON: Commissioner Clarkson?

CLARKSON: No.

JACKSON: Commissioner Galimba?

GALIMBA: No.

JACKSON: And Chair Replogle?

REPLOGLE: Aye.

JACKSON: Okay, the motion carries four (4) to two (2).

HALL: Chair?

REPLOGLE: Yes.

HALL: I would just want to remind the Commissioners, you must review the entire record, all the transcripts, everything that was given to you, the Court record back from the very beginning of the hearings.

REPLOGLE: Okay.

LIN: Chair, I believe Mr. Hong has something to say.

REPLOLGE: Mr. Hong?

HONG: Thank you Mr. Chair and members of the Commission. This is a, regardless of which side you're on of this issue, the record is very comprehensive, it's a lot of information. May I

respectfully suggest that instead of setting the next hearing on this issue for September that a little bit more time be given for the Commissioners to review the record because again it is quite comprehensive and lengthy. Several days of a contested case hearing, several days of actual Commission hearings, excuse me, so, may I suggest that if the Commission is going to set this for the hearing that maybe it be extended that hearing date and time be extended out a bit.

REPLOGLE: Thank you Mr. Hong. Mr. Matsukawa?

MATSUKAWA: Following what Mr. Hong had to say, I was wondering if your staff could work it out with the appellate court because the original record to my recollection was filed in a digital format that can be retrieved by everybody, but since the appellate court has closed the case we can't get access to it, unless we go eCourt Kōkua and we have to pay I think five bucks to see it. But if somehow, they could make it available and then everybody can look at that as that was the record that was filed at the Intermediate Court of Appeals. I don't know how the procedure works but it would be helpful.

REPLOGLE: Thank you.

HALL: Yes, the record will be made available because it will be part of the Board packet and therefore, it will be posted wherever that gets posted Jeff or Maija.

MATSUKAWA: The digital format, the one that went to the ICA would be great.

JACKSON: Yes, we post that on our website under the Planning applications, and then we will send a drop box link to the parties as well as the Commissioners.

REPLOGLE: Okay. Regarding Mr. Hong's suggestion that we maybe not take this up in September. Any, Mr. Au?

AU: I understand all the Commissioners here are volunteering and I appreciate Mr. Hong's comments, but this is what we signed up for, so, I think we should plug through and do it in September that's my opinion.

REPLOGLE: Yes, Mr. Clarkson.

CLARKSON: How many pages of documents are in the record that we are talking about here?

REPLOLGE: Mr. Hong, do you know how many pages roughly?

HONG: Well, no, I won't say too many probably we killed a lot of trees, but it is quite extensive. I'd say there were probably, easily tens of thousands of pages of documents including transcripts.

CLARKSON: Yes, I'd just like to respond to Commissioner Au's suggestion that I personally will go on the record now in saying that I will not be able to review tens of thousands of pages of

documents by September and that if asked to I'll have to recuse myself because my judgement will be ill advised.

REPLOGLE: Okay, thank you. Anybody else have some thoughts on this?

HALL: Or would someone like to make a motion to continue till a later date or the call of the Chair for October that way you can have a proper discussion.

AU: Mr. Chair I'll make a motion.

REPLOGLE: Mr. Au?

AU: So, I move that we push it back till the October meeting, if Mr. Clarkson feels that's sufficient time to review the many pages, tens of thousands of pages of documents.

REPLOGLE: Second?

CLARKSON: I'll do my best.

LIN: I second.

REPLOGLE: Okay, it's been moved and seconded that we move the next hearing on Connections to the October meeting which would be in the first week of October, Thursday.

LIN: Staff, could you confirm that date for the record please.

JACKSON: Yes, that would be October 7th.

LIN: Thank you.

REPLOGLE: And are the attorneys and other people able to do that?

HONG: This is Ted Hong, I'll make myself available.

REPLOGLE: Okay.

SIU: Hi, this is Carter Siu, I'm available.

REPLOGLE: Okay, thank you.

MATSUKAWA: On the seventh is fine with the Intervenor.

REPLOGLE: Alright. All those in favor of, well the motion is moving our Connections hearing to the October 7th meeting instead of September 2nd, all those in favor, aye or raise your hand.

COMMISSIONERS: Raised their hands.

REPLOGLE: Okay, opposed? Okay, so this topic will be taken up on October 7th in two months' time basically. Mr. Clarkson?

CLARKSON: I just have one more question is to what format the documents will be in that we will review, and will they be in a format in which we can highlight and make notes, marginal notes without printing them out.

REPLOGLE: I cannot answer that.

JACKSON: Commissioner Clarkson we usually send you a drop box link and that drop box link attaches to PDF format documents. So, if you have the ability to edit in Adobe and then you'll be able to make those margin notes.

CLARKSON: I only have Acrobat Reader and can you clarify whether that's sufficient to make notes and to highlight items of text.

JACKSON: I think Acrobat Reader does have that capability, but I will check on that and verify and then work with you to get the information to you in a format that you can make notes on.

CLARKSON: Thank you so much.

JACKSON: Yeah.

REPLOGLE: Mr. Matsukawa, sorry.

MATSUKAWA: I'd just wanted to ask a practical question. I understand that the Planning Department has the record on its site and will be made available to us. Is there someone going to check whether what went to the ICA is the same thing that's posted on the County website?

HALL: Yes, we can verify that the Planning Department is the one that created the record to be sent to court in the beginning so, I'm trying to just think if it will have the ICA numbers or just the circuit court numbers but I can double check. It would be the same record but maybe different page numbers.

MATSUKAWA: Right, that's what I was trying to, I remember there's some slight changes in the presentation but if the documents are the same then no problem.

HALL: Yeah, they should be the exact same documents they just might be numbered differently but there will be an index.

REPLOGLE: Okay, thank you, you'll be of our decision in writing.

The item ended at 10:26 a.m.

Respectfully submitted,

Melissa Dacayanan—Salvador Melissa Dacayanan-Salvador (Oct 8, 2021 07:21 HST)

Melissa Dacayanan-Salvador Secretary Windward Planning Commission

RECORD OF VOTING

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: August | 5, 2021 | | | | • | | | |
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| APPLICANT: Con | nections Public | Charter Se | chool/CBESS | S (SPP-12-00) | 0138) | | | |
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| * OTHER/REMARKS Open record based on Appellate Court Remand. | | | | | | | | |
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| COMMISSIONERS: | | AYE | NO | EXCUSED | ABSTAIN | ABSENT | | |
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| AU, Dean | | | V | | | | | |
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| REPLOGLE, John (| Chair) | | | | | | | |

RECORD OF VOTING

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

DATE: August 5, 2021

| APPLICANT:C | onnections Public | Charter Sc | hool/CRF | SS (SPP-12-00 | 0138) | |
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| REPLOGLE, John | (Chair) | V | | | | |

RECORD OF VOTING

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: Augus | 13, 2021 | | | | | | |
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| APPLICANT: Co | nnections Public | Charter So | chool/CBI | ESS (SPP-12-00) | 0138) | | |
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| COMMISSIONERS | S: | AYE | V ₀₁ | ce Vote - | all aye | opposed ABSENT | |
| AGUINALDO, Gilbo | ert (Vice-Chair) | | | | | | |
| AU, Dean | 0 | | | | | | |
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| REPLOGLE, John | (Chair) | | | | | | |

REC'D BY MATL

Windward Planning Committee C/o Hawaii County Planning Dept. 101 Pauahi Street Hilo HI 96720

Re: Connections New Century Public Charter School Special Permit

I am writing to express my opposition to building the Connections Public Charter School on the corner of Edita Street and Kaumana Drive under a Special Permit.

I exit my subdivision from Luana Way onto Kaumana Drive which can be a very busy intersection with a short range of vision uphill as traffic approaches. Cars drive down Kaumana Drive at breakneck speeds and drivers have to be extremely careful pulling out especially during times of school traffic. Should the school be built, the additional amount of traffic at these times would exacerbate an already dangerous situation for drivers exiting onto Kaumana Drive from Luana Way and other streets.

I would also like to mention the disruption that will be caused to residents of Edita Street during construction and when the school is operational. They deserve better than this.

I hope you will take these concerns into consideration before deciding whether or not to grant a Special Permit to the school.

Sincerely,

Linda Pexa

31 Helani Place, Hilo HI 9620

lindapexa@hotmail.com



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Windward Planning Committee To Hawaii County Planning Dept. 101 Pauahi St. Hile H1 96720

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Mitchell D. Roth

Lee E. Lord
Managing Director



John Replogle, Chair
Gilbert Aguinaldo, Vice-Chair
Dean Au
Joseph Clarkson
Michelle Galimba
Dennis Lin
Thomas Raffipiy

County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742

AUG 1 8 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Carter K. Siu
Department of the Attorney General
Education Division
State Office Tower
235 S. Beretania Street, Rm. 304
Honolulu, HI 96813

Michael J. Matsukawa, Esq. 75-5751 Kuakini Highway Kailua-Kona, HI 96740

Jean K. Campbell, Esq. 101 Aupuni Street, Suite 325 Hilo, HI 96720

Dear Sirs:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

The Windward Planning Commission ("Commission"), at its duly held public hearing on August 5, 2021, voted the Commission will make a decision on the record as presented regarding Special Permit No. SPP 12-000138 which was remanded back to the Commission by the Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020, Memorandum Opinion vacating the County of Hawai'i Commission's May 12, 2014, Decision an Order, which denied Special Permit SPP No. 12-00138.

Ted Hong Esq. Carter Siu, Attorney General Michael Matsukawa, Esq. Jean K. Campbell, Esq. Page 2

The Commission recommended to consider this matter at the October 2021 Windward Planning Commission meeting to allow the Commission ample time to review the entire record and all parties were in agreement. You will be notified of the details of the continued hearing when they have been determined.

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,

JONN K KEDVOGVE John R Replogle (Aug 18, 2021 15:31 HST)

John R. Replogle, Chair Windward Planning Commission

cc: A. Malia Ho Hall, Esq., Deputy Corporation Counsel (via email)

From: Dayva Keolanui <dayva@keolanuiconsulting.com>

Sent: Wednesday, August 18, 2021 1:16 PM

To: WPCtestimony
Cc: Kumu Belcher

Subject: Testimony Opposing Special Permit Application for Connections Charter School

Aloha,

My name is Dayva Keolanui and I am submitting testimony in opposition to the special permit application for Connections Charter School, in Kaumana.

I live in the neighborhood of the proposed construction, at 1670 Meli Place, along with my husband and our infant daughter. Both myself and my husband are products of Hilo public schools and support the education of students at Connections Charter School. We oppose the Special Use Permit proposed for construction due to issues of safety, traffic, and infrastructure at the Edita Street site.

The proposed 3-D rendering site map shows the proposed campus having only one vehicular entrance from Edita Street. The only access road to our neighborhood is Edita Street. Edita Street is already a busy street at peak traffic times and unable to safely accommodate the hundreds of more cars this project would add. In the past three years, we have seen an increase in traffic. Seven speed bumps have been added to Mele Manu Street within this time because of safety concerns. Also, the turn onto Kaumana Drive, from Edita Street, is already a dangerous one, with limited visibility of oncoming vehicles.

There are already two schools, Kaumana Elementary and E.B. De Silva Elementary, in the area. The traffic on Kaumana drive is already increased during school drop off and pick up times. With E.B. De Silva creating a bottleneck at the Mohouli extension intersection and Kaumana Elementary backing up traffic to the blind turn above Kaumana Caves. Kaumana Drive is not able to safely accommodate the increased traffic Connections Charter School would create.

A school campus of this size for Connections Public Charter School is inappropriate for the proposed location, in residential Kaumana. I respectfully ask for you to deny the Special Use Permit in question.

Mahalo,

Dayva Keolanui Freelance Marketing & Graphic Design 808.557.8790 dayva@keolanuiconsulting.com



From: Henry K Lee Loy <leeloyh002@hawaii.rr.com>

Sent: Friday, August 27, 2021 1:04 PM

To: Planning Internet Mail **Subject:** Connections testimony

Gentlemen, on August 3, 2021 I submitted written testimony via email at 3:58 pm to the WPC for the August 5, 2021 hearing. I would like to know of its disposition as I was abruptly stopped from delivering oral testimony on August 5, 2021 on Zoom by chairman Replogle. Was it ever read by the members of the WPC? Was it discarded or kept in the Planning Department Files?

Respectfully,

Henry Lee Loy

Sent from my iPhone

COH PLANNING DEPT SEP 13 2021 AM11:44

REC'D BY MAIL

CLARE E. CONNORS ATTORNEY GENERAL

HOLLY T. SHIKADA FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL EDUCATION DIVISION

235 S. BERETANIA STREET, ROOM 304 HONOLULU, HAWAII 96813 TELEPHONE: (808) 586-1255

September 10, 2021

Via U.S. Mail and Email
Mr. John R. Replogle
Windward Planning Commission
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Email: Melissa.Dacayanan@hawaiicounty.gov

Re: Remand of SPP 12-000138 to the Windward Planning Commission

Dear Chair Replogle:

DAVID Y. IGE

GOVERNOR

My name is Kevin M. Richardson, and I am a Deputy Attorney General with the Department of the Attorney General. With this letter I enter my appearance as counsel of record for Applicant Connections New Century Public Charter School ("Connections") in the above-entitled matter. Please direct any future filings or correspondence to me at the above mailing address and/or email address (Kevin.M.Richardson@hawaii.gov). Thank you for your assistance in this matter.

Respectfully,

Kevin M. Richardson Deputy Attorney General

cc: Deputy Corporation Counsel, Jean K. Campbell, Esq.

Ted H.S. Hong, Esq.

Michael J. Matsukawa, Esq.

STATE OF HAWAI'I
Department of the Attorney General
Education Division
235 S. Beretania Street, Rm. 304
Honolulu, HI 96813

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Mr. John R. Replogle Windward Planning Commission

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Mitchell D. Roth Mayor

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

September 13, 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Kevin M. Richardson Department of the Attorney General **Education Division** State Office Tower 235 S. Beretania Street, Rm. 304 Honolulu, HI 96813

Michael J. Matsukawa, Esq. 75-5751 Kuakini Highway Kailua-Kona, HI 96740

Dear Sirs:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission ("Commission") will be holding a hearing on Special Permit application SPP No. 12-000138 record as presented on appeal. SPP 12-000138, was remanded back to the Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Commission's May 12, 2014 Decision an Order, which denied Special Permit SPP No. 12-00138. The Application is for a Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaumana, South Hilo, Hawaii, TMK: 2-5-006:141.

Ted H.S. Hong, Esq Kevin M. Richardson Department of the Attorney General Education Division Michael J. Matsukawa, Esq. September 13, 2021 Page 2

Based on the Governor's Proclamation Related to the COVID-19, this meeting will be online to prevent the spread of COVID-19 and to maintain physical distancing. The discussion will be held beginning at 9:00 a.m. on Thursday, October 7, 2021. Staff will send you a Zoom link prior to the meeting so that you can participate in the meeting. A copy of the agenda is enclosed.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

Jeffrey W. Darrow
Jeffrey W. Darrow (Sep 15, 2021 08:26 HST)

JEFFREY W. DARROW Deputy Planning Director

Att.

cc/att: Angelica M.H. Hall, Esq., Deputy Corporation Counsel (via email)

Jean K. Campbell, Esq., Deputy Corporation Counsel (via email)

Mr. Sidney Fuke (via email) Mr. Terrence Yoshioka Mitchell D. Roth Mayor



John Replogle, Chair

Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

Gilbert Aguinaldo, Vice Chair

County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742

AGENDA

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Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than

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CALL TO ORDER

APPROVAL OF MINUTES

Review and Approval of the August 5, 2021 Windward Planning Commission Minutes.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

NEW BUSINESS

1. APPLICANT: TAKATA DENTAL HEALTH CENTER INC. (AMEND REZ 11-000146)

Application for time extensions to Condition B (time to complete construction) and Condition C (water commitment) of Change of Zone Ordinance No. 12 33 which rezoned one (1) acre of land from a Single-Family Residential – 10,000 square feet (RS-10) to a Residential-Commercial Mixed Use – 20,000 square feet (RCX-20) zoning district. The subject property is located at 1732 Kīlauea Avenue, approximately 750 feet south of its intersection with Kāwili Street intersection, Waiākea Homestead Houselots, South Hilo, Hawai'i, TMK: 2-2-038:028.

2. APPLICANT: LEILA SHIMIZU (REZ 21-000247)

Application for a Change of Zone from a Single-Family Residential-10,000 square feet (RS-10) to an Industrial-Commercial Mixed - 20,000 square feet (MCX-20) zoning district for approximately 22,300-square feet of land. The subject properties are located at 755 Kekūanāoʻa Street and 605 Kalanikoa Street, at the northeast corner of the Kekūanāoʻa Street - Kalanikoa Street intersection, Waiākea Houselots, South Hilo, Hawaiʻi, TMKs: 2-2-035:049 and 2-2-035:096.

3. APPLICANT: ARTS AND SCIENCES CENTER (SPP 21-000228)

Application for a Special Permit to allow the construction and operation of an elementary school campus for approximately 300 students on approximately 2.31 acres of land within the State Land Use Agricultural district. The subject property is located at 16-1678 34th Avenue, on the northwest corner of the Orchidland Drive – 34th Avenue intersection, Orchid Land Estates, Puna, Hawai'i, TMK: 1-6-010:083.

UNFINISHED BUSINESS

4. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

Hearing on Special Permit application SPP No. 12-000138 record as presented on appeal. SPP No. 12-000138 was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31,

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AGENDA ITEMS FOR NEXT MEETING

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The Windward Planning Commission's next monthly meeting is scheduled for Thursday, November 4, 2021 by interactive video conference via Zoom.

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WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, September 17, 2021) (West Hawai'i Today: Friday, September 17, 2021) Mitchell D. Roth Mayor

Lee E. Lord Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

September 13, 2021

Dear Surrounding Property Owner:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

> Connections New Century Public Charter School/Community Applicant:

> > **Based Education Support Services (CBESS)**

Tax Map Key: 2-5-006:141

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JEFFREY W. DARROW

Deputy Planning Director

Surrounding Property Owner

September 13, 2021 Page 2

Attachment

cc: Ted H.S, Hong, Esq. Kevin M. Richardson, Department of the Attorney General – Education Department Michael Matsukawa, Esq.

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WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, September 17, 2021) (West Hawai'i Today: Friday, September 17, 2021)

From: mireille.desjardins@hotmail.com

Sent: Thursday, September 16, 2021 3:52 PM

To: WPCtestimony

Subject: Connections PCS Kaumana project

Aloha,

I am a parent of 3 children currently attending Connections PCS.

When we heard about the wonderful project that would offer our kids a big yard to play, a big garden with classes on sustainability, to name only those 2 aspects, we were thrilled.

In Hawaii, food sovereignty and sustainability is becoming urgent. Raising our kids to add nature to their lifestyle will be beneficial for Hawaii, for the land, and for the people. Being around nature and taking care of plants/trees is like a therapy for kids.

Connections is an awesome school with good, caring people, we can see how even the teenagers are kind and well behaved. There is a feeling of family when we enter this school.

But the school is currently not in a good location. No yard to play, homeless and drugged people sitting close to the entrance and at the nearest park, they need to have most of their recess indoors. Parking is hard, in the middle of tourists parked for the store next door. I really hope they can move to the new location. Parents have been waiting for this for years! Yet, they stay with the school anyway, because this is a good school.

Honestly, I can understand people not like a big construction in their neighborhood, but a school?! Preventing kids from improving their school and having access to wonderful outdoor programs is just selfish.

Please,

Think about the kids. They are the future.

Thank you for reading,

Mireille Desjardins Mom

From: A. Gary Gardner < gardnerg003@hawaii.rr.com>

Sent: Thursday, September 16, 2021 10:14 AM

To: WPCtestimony **Subject:** Connections school.

There is no doubt that Edita St. off Kaumana Drive would need a total re-construction to accommodate increased traffic.

When Puainako Extension was under construction, access at the end of Edita St. was used to facilitate that construction. Isn't there any way that access could be obtained and utilized to approach the school. All the students that live below Komohana St. would prefer that access, and one of the complaints about potential problems at Edita-Kaumana intersection would be moot.

Albert G. Gardner Kaumana resident

From: Carolyn <c.kaichi2001@gmail.com>
Sent: Carolyn <c.kaichi2001@gmail.com>

To: WPCtestimony

Subject: Windward Planning Commission - Connections School Testimony

Attachments: Adverse Impact Testimony .docx.pdf

Aloha,

Please find my testimony attached.

Mahalo,

Carolyn Kaichi

Aloha,

My name is Carolyn Kaichi, and I live at 1616 Mele Manu St., near the site of the proposed charter school. The project will have an adverse impact on the surrounding neighborhood.

The record will show that there were considerable objections from the community. A petition was submitted which showed that of the 106 lots within the Pacific Plantation Subdivision, 90 or 85% opposed the project.

Further, a survey was taken of properties within 500 feet of the proposed site. There were 170 lots, excluding government land and road lots. Of these, 116 or 68% opposed; 54 or 31% took no position or could not be contacted (vacant land or absentee owners).

One of the criteria for a Special Permit is whether the use would have an adverse impact to surrounding property." The statement from the Police Department noting its adverse traffic impact combined with the perceptions and statements of the overwhelming majority of the project's neighbors should be sufficient to conclude that the request indeed would have an adverse impact. One has only to look closely at the roads to see there is only one way in and out of the area and will create a major gridlock for residents.

As noted by the Court, the Commission has wide discretion in deciding whether to approve a special permit. While the request may meet some of the other criteria, the most critical one – in our estimation – is its impact to the community. We therefore respectfully request the Commission to exercise its discretion and deny the request.

Mahalo,

Carolyn Kaichi

CKarly

From: SeismicCWave <hansentsang@gmail.com>

Sent: Friday, September 17, 2021 8:32 PM

To: WPCtestimony

Subject: I oppose Connection School Kaumana Campus.

I say No to Connection School.

My name is Hansen Tsang and I live with my wife at 1628 Mele Manu Street. I am one mile away from the proposed Connection School campus location. I can only access my home via Edita Street.

I strongly oppose the building of the Connection School campus on Kaumana.

- 1. Public safety is the biggest reason I am against the campus. The campus will be located in an area that has inadequate infrastructure to support such a project. The proposed campus will be located where there will be a traffic bottle neck for both the campus and the surrounding homes. The traffic bottle neck will take effect immediate at the start of the construction phase and becomes a permanent problem when the campus opens to students all year long. The campus is only accessible via Edita Street. Edita Street is the ONLY access to the entire Pacific Plantation subdivision. The Connection School campus will effectively be a BLOCKADE to the subdivision. How would you like someone putting up a blockade by your front door?
- 2. The same area of Kaumana is fed by a small water tank up the hill. That water tank is meant for single family dwelling units. It is NOT adequate to provide water to a school campus. Will the county requires the owner of the school to improve the infrastructure for the community before approving the permit? There are questions about where the school is getting water for their use. The questions have not been adequately answered.
- 3. Waste from the construction phase and actual school use will be increased tremendously. That area of Kaumana has a network of underground caves, porous lava rocks and adjacent river tributaries. During a rainy period which is very often the rain water will leach whatever undesirable substances and carry them down stream into the various rivers and eventually into Hilo Bay. Do we want more toxic runoffs? Has the county adequately address the waste issue created by the school? Will the school install an adequate sewer system to carry their waste to the county sewage treatment plant?

Just imagine a large school campus located in a quiet residential neighborhood with access provided by a narrow country road. What happens when grandpa needs an ambulance at 7:30 in the morning but the ambulance is blocked by school traffic?

Hansen Tsang (808) 756-8197 1628 Mele Manu Street Hilo, Hawaii 96720

Mori, Ashley

From: wpirie <wpirie@gmail.com>

Sent: Tuesday, September 21, 2021 4:06 PM

To: WPCtestimony

Subject: connections public charter school. WPC hearing 10/7 hearing testimony.

My name is Ward Pirie. I live at 538 Kaumana Drive.

I support the CPCS Kaumana school project.

Concerns:

1: Public Safety.

One way access a problem. A second entrance/exit may be available from Puainako? I am not familiar with the topography Or land ownership of that area. But it should be investigated.

2: Traffic.

Yes, a second entrance/exit would help. And if you live on Kaumana Drive for 25 years you are used to traffic.

3: Water.

I receive 100+ inches rainfall a year. Catchment makes sense.

4: More waste.

We are all downstream in Kaumana, and flood overflow is frequent. Pigs, rats, carcasses and cesspools all contribute. There is always more development to contribute to the flow.

The "Living Machine" seems interesting. I would like to see it in action.

Friends and Neighbors in Kaumana, please support this educational opportunity. Thanks for your consideration.

Ward

Mori, Ashley

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Wednesday, September 22, 2021 8:24 AM

To: WPCtestimony
Subject: Letters of support

Attachments: Tammy- Support Letter.pdf; Eric- Support Letter.pdf

Attached are letters of support I received and sent to you for consideration.

Thank you.

To the Windward Planing Commission,

I am in support in having our school in Kaumana for our staff and students. I have been an employee here at Connections for almost 8 years and my youngest brother graduated from here as well. My 2 oldest daughters have graduated from Connections and my youngest daughter will be graduating this year. My son is in the 8th grade currently. Connections has done amazing things for my children and my family have grown so much while at Connections.

I feel it's a great location to expand our school in Kaumana as our students have been learning a lot of things about agriculture up at the property like planting, growing vegetables etc.

We have awesome students here at Connections and staff that support our students in so many ways. Please open your hearts and have compassion and understanding that we are a family oriented school and positive environment as well. Thank you for your time in reading my letter.

Thank you,

Tammy Keao Office Staff

To: Windward Planing Commission

My name is William Boyd and I am in support of Connections Public Charter School building a new school campus on the Edita Street parcel. I have worked for Connections for the past 21 years and have had one of my daughters graduate from Connections, a well as my other 3 children attend. By having my own children at Connections it gives me a vested interest in the school and to make sure that my children's school is doing everything they can to educate my children the best they possibly can.

This parcel is a great location for students to explore the value of sustainability as well as how to take care of their land and community. Many students today have no idea what the word sustainability really means. Someone asked me once, if you lost your job today, would you be able to feed your family? That question made me think and I had to answer NO because I, as an adult, did not have the skills to utilize the land to feed my family. We at Connections are trying to teach the next generation that you can take care of your family as well as your community with resources right in your back yard. To me, that is real teaching. Helping students to understand how learning is integrated into their really world situations is how we can change the trajectory of our youth.

There has been a lot of opposition from people that really don't have all of the information to accurately make statements. We are not trying to hurt the community, we are trying to help the community and teach our students to do the same. Shouldn't a school teach their students how to be an impact in society after they graduate? With the kaumana property we are able to do just that. We want our students to move into adulthood with the concepts of community and making community all of our kuliana.

Again, I am in support of Connections Public charter School moving into the Edita street campus with the intent of teaching students the importance of community, sustainability and taking their responsibility seriously by making an impact in their community.

Thank you for your time.

William Boyd

Mori, Ashley

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Wednesday, September 22, 2021 8:22 AM

To: WPCtestimony Subject: Letter of Support

Attachments: Deissery- letter of support.pdf; Heather- WPC letter of support.pdf; Ipo- Planning

Commission Letter.pdf

Attached are letters of support I received and sent to you for consideration.

Thank you.

September 19, 2021

To The Windward Planning Commission:

I would like to say that as a resident of Kaumana I do support the building of Connection Public Charter School in our area. It has been a project that has been put off for too long and it is well needed to support our children.

I would like to also address the issues they have against it:

- 1. Those who are against the school made reference to a group called "Malama Kaumana Ohana Group". For as long as I have lived in Kaumana (over 20 years) I have not heard of such a group and speaking with others they have not heard of it either. It would be nice to see how many families are participating in this Malama Kaumana Ohana Group.
- 2. As far as traffic, we do have traffic at certain times of the day but with people going to work and children going to school like any other area. But traffic is less than what it was with the Puainako extension.
- 3. The problem with water and the construction of the building of the school, I would say that with the technology available today and proper planning all of these issues can be addressed to ensure that problems will not arise. The engineers and contractors are well able to work through these problems and have a plan that will satisfy the requirements of the state and those with water concerns.

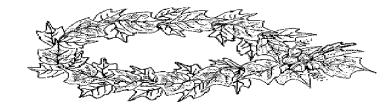
I would also like to ask a question, "Why can't the entrance to the school be made on the Puainako side of the property?

We as adults and leaders in the community need to give the next generation positive messages. I believe that Connections School will make the best use of the land to ensure that our children will get the best education and life changing experiences.

I would encourage you to grant their permit to get this project done.

Sincerely,

Deissery Pestano



'A'ohe pau ka 'ike i ka halau ho'okahi

Connections Public Charter School A Community, Business & Education Learning 'Ohana

September 16, 2021

Aloha Windward Planning Commissioners,

I am a life-long resident of Hawai'i Island, and fourth generation kama'aina. My family has been invested in the well-being of East Hawai'i since the late 1800s. I was educated here in the public school system, as were my parents, grandparents, siblings, children, nieces, nephews, aunts, uncles, cousins and grandchildren.

I have also been employed in public education here since 2001, and have seen first-hand the benefits of choice and of charter school opportunities. As a 21-year employee of Connections Public Charter School, as well as a parent of students here, I have closely observed the processes and systems implemented through the school's mission. I can attest that students and families (including my own) continue to have immeasurable support and opportunity for growth and success in their journeys.

Among their greatest opportunities is the option for real-life education and hands-on learning in their experiences with the many projects they have been able to participate in, at the property leased in Kaumana for that purpose. There, students work with mentors and skilled staff to learn many aspects of agriculture, ecosystems, building and engineering, animal husbandry, and social skill building. These opportunities have been provided because of the commitment of the school community, with support from the network of like-minded members of the broader Statewide community whose goals for student success mirror those of Connections' staff and leadership.

Despite opposition from a few nearby Kaumana residents who continue to **spread false information**, **and to question issues that have long-since been addressed**, Connections' intention to support the well-being and success of our students remains. We will continue to be good neighbors, and always consider the quality of life of the surrounding residents, the island and the planet. Our students should be able to expect the same consideration from others.

Please vote to approve the Special Use Permit application so that Connections can move forward to improve opportunities for Hawaii's children.

Sincerely,

Heather Forbes McDaniel

Ipoleiokalani Pestano

P.O. Box 6457, Hilo, Hawaii 96720

September 16, 2021

Windward Planning Commission

Hilo Planning Department

101 Pauahi St # 3, Hilo, Hawaii 96720

Windward Planning Commission,

My name is Ipoleiokalani Pestano, current high school math teacher at Connections

Public Charter School as well as a member of the graduating class of 2008. I am writing to share

my full support of Connections petition to build a new campus on the 70 acres of stand land in

Kaumana.

I understand there are many people who have voiced their concern over the possibility of the school being built in Kaumana due to the increased traffic, water availability, and amount of bodies and noise that would be added to the community. However, are these concerns made when houses are built? Do the neighbors go around and accept/deny people who move into the community? Is there a screening process needed to buy or rent homes in the area? Is there a monitoring process to restrict people from driving in and through Kaumana? The answer to all of these questions are NO. If anyone can build, move, or drive through the community, why are we any different?

As a school, our focus is to educate the students and teach them how to live sustainably.

This property would provide that opportunity and so much more. We are educating the future

generations; everyone should learn how to plant, grow, harvest, and repurpose material provided by the 'aina.

As a former student, I know first hand how much of an opportunity this would be for the students of Connections. Students attend Connections from all over, from Lapahoehoe to Ka'u and everything in between. We have always been a project based school, teaching students to live and utilize the resources at hand; establishing projects that develop personal skills and techniques for students to utilize in their adult lives. As a student at Connection, I did many projects that I still remember today. Based on techniques and skills I learned at Connections, I was able to open my own baking business; I became a math teacher using all the opportunities and skills I was given at Connections; I was able to travel around the United States sharing and learning about project based projects that enhanced students' knowledge and capabilities while attending Connections. I know of many people who attended school with me who have taken up careers in areas they learned in Connections, such as construction, carpentry, agriculture, farming, veterinarians, and more. Everything Connections provided helped us grow into the people we are today. We were provided the life skills to make a difference in this world. Think about how much greater the possibilities could be with Connections Public Charter School being stationed on 70 acres of agricultural land, the possibilities are endless.

In 2020, Hawaii Island had an estimated total of 6,458 homeless people with 3,604 of that number being students (United States Interagency Council of Homelessness, 2021). How many of these students suffer day-to-day without knowing how to live off of what they are already given? I'm not saying we want to promote homelessness, but think about what these numbers would be if more people knew how to live sustainably. We want to teach our students to eat what can be grown or caught, build from the trees and leaves from the forest, and sell products made

from material straight from their backyard. Connections prepares our students for the real world. How many people do you know who could benefit from these types of skills? How many people could survive and provide for their families with this type of opportunity?

Connections has been a beacon to so many lives over the past two decades. It continues to grow and equip its students with the necessary tools and techniques to live after they leave our school. As both a past and present member of Connections, it is my opinion that Connections would not only change the lives of its students and their families, but also change the lives of the community members for the better if we were to build our school on this property. Why are people standing in the way of our ability to make a difference for the community? Why are we restricting students from gaining important skills and knowledge because of traffic? Noise is one of the issues, we will be miles away from ANY neighbor; they are more likely to hear the people next door then they are to hear ANY of our students. The allegations and concerns are outrageous and uncalled for.

Ua Mau ke Ea o Ka 'Aina i ka Pono!

The life of the land is perpetuated in righteousness!

Thank you for your time,

Ipoleiokalani Pestano

Mori, Ashley

From: Patti Taira-Tokuuke <pttaira@gmail.com>
Sent: Wednesday, September 22, 2021 10:04 AM

To: WPCtestimony Subject: Testimony

Attachments: Tokuuke Testimony.pdf

Please see my attached testimony for the Oct 7th Windward Planning Commission meeting regarding Connections Charter School.

PattiTaira-Tokuuke

My name is Patti Taira-Tokuuke, and I live at 1395 Mele Manu Street, near the site of the proposed charter school. The project will have an adverse impact on the surrounding neighborhood.

The record will show that there were considerable objections from the community. A petition was submitted which showed that of the 106 lots within the Pacific Plantation Subdivision, 90 or 85% opposed the project.

Further, a survey was taken of properties within 500 feet of the proposed site. There were 170 lots, excluding government land and road lots. Of these, 116 or 68% opposed; 54 or 31% took no position or could not be contacted (vacant land or absentee owners).

One of the criteria for a Special Permit is whether the use would have an advese impact to surrounding property." The statement from the Police Department noting its adverse traffic impact combined with the perceptions and statements of the overwhelming majority of the project's neighbors should be sufficient to conclude that the request indeed would have an adverse impact.

As noted by the Court, the Commission has wide discretion in deciding whether to approve a special permit. While the request may meet some of the other criteria, the most critical one – in our estimation – is its impact to the community. We therefore respectfully request the Commission to exercise its discretion and deny the request.

If you would like to contact me, please call 895-1259.

Thank you for allowing me to submit testimony.

Patti Daira-D

Patti Taira-Tokuuke

COH PLANNING DEPT SEP 27 2021 AH10:39 REC'D BY MAIL

County of Hawaii Windward Planning Commission Remand of SPP 12-000138 Connections New Century Public Charter School

September 23, 2021

To Whom It May Concern:

My name is Ivan Mochida, and I live on Edita Street, less than 200 feet from the proposed school. I testified against the project before and time has not changed my mind in continuing to object to it.

By its own admission, the school will introduce more than 50% of its students from outside of the area. That will definitely introduce more and more traffic to the winding and narrow Kaumana Drive and at a time when there will be lots of morning and afternoon peak hour traffic. Think Waianuenue Avenue or Puainako Street. But at least those roads are straight and not winding like Kaumana Drive.

Then, there is issue of more traffic conflicts at the intersection of Kaumana Drive and Edita Street, where sight distance is not the best for traffic leaving Edita Street.

It is clear in my mind and the minds of many of my neighbors that the project will have an adverse impact on the neighborhood. Even the Police Department commented that the impact will be adverse in terms of noise and safety.

While the applicant may not feel that the impacts are negative, we – the ones who are living in the area – say they are. In its decision, the Intermediate Court of Appeals maintained that the burden fell on the applicant – not us, the neighbors - to demonstrate that their project's impact will not be adverse. And that, in my mind, they have not demonstrated.

That alone should be sufficient for the Commission to deny the request. Thank you for this testifying opportunity.

Sincerely,

--Wan Mochida

Jem S. Mehida



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IVAN MOCHIDA CONTRACTING, INC. General Contractor 77 Kukila Street

Hilo, Hawaii 96720

County of Hawaii
Windward Planning Commission
101 Pauahi Street, Suite 3
Hilo, Hawaii 94720
Attn: Melissa Dacayanan - Salvador

COH PLANNING DEPT SEP 27 2021 AM10:39

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Mori, Ashley

From: Larry Kimura <larrykim@hawaii.edu>
Sent: Friday, September 24, 2021 7:24 PM

To: WPCtestimony

Subject: Testimony in Opposition of Special Application for Connections Charter School

My name is Larry Kimura. I reside at 243 Mikala Street, Ka'ūmana, Hilo, Hawai'i.

I am not against education of students at the Connections Charter Public School. My testimony is against the proposed site at Ka'ūmana. I believe I submitted my testimony opposing this site years ago when Connections first made this application.

First of all, Connections has not asked or polled the residents of Ka'ūmana about having a school in the community's neighborhood. Communication comes to us via newsprint or an agenda posted for a Hawai'i County meeting. The only way the community can express itself is to attend the County meeting or submit testimony in writing. A major civic program such as a school should be welcomed into the community in which it serves.

I am sure the concern for increased traffic going to and coming from the school site on Ka'ūmana's existing twisty, minimal shoulder road, presents a major concern for all.

So far, no transparency has reached the community that Connections has the funds to construct the campus being put forward to the public. This is a critical concern. Adequate funding for such a charter runned public facility and program must be ascertained. The public should not be put in a position down the road, holding the bag for the shortcomings of a project.

Respectfully submitted me ka mahalo,

Larry Kimura

Mori, Ashley

From: michael matsukawa <kapulu@msn.com>
Sent: Friday, September 24, 2021 9:54 AM

To:Dacayanan, MelissaSubject:Connections SPP HearingAttachments:DOC004.pdf; DOC006.pdf

Please see attached letter and proposed amended findings, conclusions, order and decision. A hard copy was mailed to the persons noted and to you.

Please register me to participate in the October 7th hearing.

Michael J. Matsukawa 75-5751 Kuakini Highway Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385

MICHAEL J. MATSUKAWA

ATTORNEY AT LAW
TERRITORIAL CENTRE, SUITE 201
75-5751 KUAKINI HIGHWAY
KAILUA-KONA, HI 96740
TELEPHONE NO. (808) 329-1385
FAX NO. (808) 329-0512
E-MAIL kapulu@msn.com

September 24, 2021

Windward Planning Commission County of Hawaii 101 Aupuni Street Hilo, Hawaii 96813

Att'n: Staff

Re: SPP No. 12-00138

Connections New Century Public Charter School (Application for Special Permit)

Greetings:

Please find enclosed proposed amendments that Intervenor Jeffrey Gomes proposes, which amendments are based on the existing agency record. The Intermediate Court of Appeals remanded this matter to the commission and the proposed amendments address the court's request for more specific findings and conclusions. Thank you.

Michael J. Matsukawa

ENC

MICHAEL J. MATSUKAWA, 1885 75-5751 Kuakini Highway, Room 201 Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385

Attorney for Intervenor JEFFREY GOMES

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

| In the Matter of |) SPP No. 12-00138 |
|--------------------------------|----------------------------------|
| CONNECTIONS NEW CENTURY |) |
| PUBLIC CHARTER SCHOOL AND |) INTERVENOR'S PROPOSED |
| COMMUNITY BASED EDUCATIONAL |) AMENDMENTS TO WINDWARD |
| SUPPORT SERVICES |) PLANNING COMMISSION'S |
| |) FINDINGS OF FACT, CONCLU- |
| |) SIONS OF LAW AND DECISION |
| |) AND ORDER; EXHIBIT "1" |
| |) |
| |) CERTIFICATE OF SERVICE |
| |) |
| | Original Argument and Decision |
| |) Date: 5/1/14 |
| Application for Special Permit |) Place: Aupuni Center, Hilo, HI |
| Application No.; 12-000138 |) |
| | On Remand: |
| TMK (3) 2-5-006-141; Kaumana |) Date: 10/7/21 |
| South Hilo, Hawaii |) Place: Remote Hearing |
| |) |

INTERVENOR'S PROPOSED AMENDMENTS TO WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

Pursuant to Section 91-9(c) & (d)(4), HRS and Rules 4-19 and 4-20 of the Planning Commission's Rules of Practice and Procedure, Intervenor JEFFREY GOMES, by and through his attorney, Michael J. Matsukawa, submits

proposed amendments that the Windward Planning Commission should adopt on remand from the Intermediate Court of Appeals.

The proposed amendments are set forth in Exhibit "1." Editing marks are set forth in Exhibit "1" to the commission's original findings, conclusions, decision and order. Deleted matter are crossed out. Added matter are italicized. The proposed amendments are based upon the existing record in this proceeding.

Dated at Kailua-Kona, Hawaii: September 15, 2021.

MICHAEL J. MATSUKAWA Attorney for Intervenor Jeffrey Gomes

EXHIBIT "1"

Using Original FF/CL/Order

Delete Matter struck
Add New Matter italicized

BEFORE THE COUNTY OF HAWAI'I

WINDWARD PLANNING COMMISSION

| In the Matter of |) SPP No. 12-00138 |
|--------------------------------|---------------------------------------|
| CONNECTIONS NEW CENTURY |) |
| PUBLIC CHARTER SCHOOL AND |) COUNTY OF HAWAI'I WINDWARD |
| COMMUNITY BASED EDUCATIONAL |) PLANNING COMMISSION'S AMENDED |
| SUPPORT SERVICES | · · · · · · · · · · · · · · · · · · · |
| |) FINDINGS OF FACT, CONCLUSIONS |
| |) OF LAW AND DECISION AND ORDER; |
| Application for Special Permit |) CERTIFICATE OF SERVICE |
| Application No. 12-000138 |) |
| |) Argument and Decision |
| TMK (3) 2-5-006-141; Kaumana, |) Date: 5/1/14 |
| South Hilo, Hawaii |) Place: Aupuni Center, Hilo, HI |
| |) |
| | On Remand: |
| |) Date: 10/7/21 |
| |) Place: Remote Hearing |
| |) |
| |) |

COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S <u>AMENDED</u> FINDINGS OF FACT, CONCLUSIONS OF LAW <u>AND DECISION AND ORDER</u>

The County of Hawai'i Windward Planning Commission (hereinafter referred to herein as "Planning Commission") submits filed its original Findings of Fact, Conclusions of Law and Decision and Order pursuant to the request of the Windward Planning Commission of the County of Hawai'i at its May 1, 2014 meeting in Hilo, Hawai'i. Present before the Planning

EXHIBIT "1"

Commission were Ted H.S. Hong, counsel for Applicant Community Based Education Support Services; Carter K. Siu, Deputy Attorney General, for Applicant Connections New Century Public Charter School (hereinafter collectively referred to herein as "Connections"); Amy G. Self, Deputy Corporation Counsel, for County of Hawai'i Planning Director (herein as "Director); Jeffery K. Gomes (herein as "Gomes"), Intervenor, Pro Se; and Sandra Pechter Song, the Hearing Officer (herein as "Hearing Officer"). The contested case hearings by the Hearing Officer were held on October 21, and 22, 2013, November 12, 2013, January 8 and 22, 2014.

On January 30, 2020, following an appeal from the Planning Commission's original decision in CAAP-17-0000050, the Intermediate Court of Appeals remanded the case to the Planning Commission for further proceedings consistent with the Intermediate Court of Appeals' decision. On October 7, 2021, the Planning Commission held a further hearing on Connections' application based on the existing record previously created without taking further evidence.

Present before the Planning Commission were _________.

At its hearing held on October 7, 2021, the Planning Commission voted to deny

Connections' application and the Planning Commission now submits its Amended Findings of

Fact, Conclusions of Law and Decision and Order.

AMENDED FINDINGS OF FACT

I. <u>Procedural Background</u>

1. This matter involves an application filed by Connections on July 25, 2012, for a special permit, pursuant to Section 205-6, Hawai'i Revised Statutes ("HRS") and Rule 6 of the County of Hawai'i Planning Commission Rules of Practice and Procedure (hereinafter "Commission Rules") to allow the development of a charter school campus with dorm facilities and

related improvements for students in kindergarten through twelfth grade (hereinafter, the "Development"), on 70.15 acres of land situated within the State Land Use Agricultural District, at Ponahawai, Kukuau 2nd, South Hilo, Hawai'i, commonly referred to as the Kaumana area of Hilo, designated by State of Hawai'i Tax Map Key ("TMK") (3) 2-5-006-141 (hereinafter, the "Property").

- 2. Connections has leased the Property on which the Development is proposed from the State of Hawaii Department of Land and Natural Resources under General Lease No. S-6029.
- 3. Notices of the Windward Planning Commission of the County of Hawai'i (hereinafter "Planning Commission") hearings on the proposed Development, including hearings held on remand, were provided to property owners surrounding the proposed Development.
- 4. The *Planning* Commission held public hearings on the Connections application on November 9, 2012 [sic], December 6, 2012 and January 10, 2013. At the hearing held on January 10, 2013, the *Planning* Commission moved [sic] to deny the Connections application and instructed the *Planning* Commission staff to prepare proposed findings of fact, conclusions of land and order, which would be considered for adoption by the Planning Commission at its meeting of March 7, 2013.
- 5. At the *Planning* Commission meeting of March 7, 2013, the *Planning* Commission suspended the preparation of the findings of fact, conclusions of law and order, and granted a request by Connections for a contested case on the subject application. Gomes submitted a petition to intervene in this matter of March 7, 2013, and the *Planning* Commission admitted him as a party to the proceeding.

- 6. A petition to intervene in this proceeding was filed by Terrence Yoshioka on November 4, 2013, after the contested case hearing in this proceeding had already commenced. On November 8, 2013, the Hearing Officer denied this petition in accordance with Rule 4-6 of the Commission Rules, on the ground that the subject petition was untimely filed.
- 7. The Director is a party to this proceeding pursuant to Rule 4-7(a) of the Commission Rules. The Director initially recommended approval of the Connections application, subject to specific conditions, but took no position on the application at the contested case hearing.
- 8. The subject application involves a parcel of land greater than fifteen acres in area. Therefore, any permit approved by the *Planning* Commission is subject to final approval by the State Land Use Commission. *As stated, the Planning Commission held a public hearing on remand and voted to deny Connections' application.*

II. Proposed Development

A. General Description

- 9. The Connections application proposes the development of a K to 12 charter school campus with dorm facilities, and intergenerational program that would provide childcare and elder care at a single facility on the Development, together with related uses on the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion would be used for outdoor type of education programs, including a forestry preservation program.
- 10. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25

intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, kitchen/dining facility, library /resource center, caretaker's residence and other related facilities. Two parking lots capable of supporting 140 parking stalls would be provided.

- 11. The Development would relocate and expand the existing charter school which is presently operating from two separate campuses. The elementary and middle schools are in the Kress Building on Kamehameha Avenue, in downtown Hilo, and the high school is located in leased facilities at the Nani Mau Gardens, just outside of Hilo town.
- 12. Connections proposes having 50 full-time and 17 part-time employees at full buildout of the Development, which is the same number presently employed for this charter school.
- 13. Connections anticipates that 50% of the student population will come from the Hilo area and 50% from the Puna area miles away from the Development. The present student population for this charter school is composed primary of students from these two geographic areas.
- 14. The Development does not propose to establish a charter school on the Property to serve the needs of the immediate vicinity in the Kaumana area of Hilo, although some students from the area may attend this school.
- 15. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school and administration building, with the projected opening to be with 2.5 to 3.5 years.

B. <u>Public Utilities and Services</u> Access/Traffic

- 16. Access to the Development is proposed from Edita Street which connects with Kaumana Drive, a major Hilo artery. Both roads are owned and maintained by the County of Hawai'i. Edia Street has a 60-foot right-of-way width, with a 48-foot wide pavement width fronting the Development. The paved area accommodates two 20-foot wide travel lanes, a 20-foot wide shoulder on the northeast side of the road, and an 8-foot wide shoulder on the southwest side. Edita Street is in good condition; however, the Hawai'i County Police Department recommended that the unpaved should along Edita Street extending from Kaumana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.
- 17. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaumana Drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service or LOS operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B". Although the TIAR concludes that traffic will not be adversely affected by reason of the Development, the County Department of Public Works recommended that a separate left turn land onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.

18. Notwithstanding the findings of the TIAR and the recommendations of the Police Department and Department of Public Works, the area residents uniformly expressed concerns about the adverse traffic impact of the Development along Edita Street and Kaumana Drive.

Also, residents objected that the TIAR was four years old and the traffic counts contained in the TIAR were taken when certain schools were not in session.

Water

- 49. 19.a A maximum of 4,200 gallons per day (hereinafter "gpd") of water or seven (7) water units from an existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus, is available from the County of Hawai'i municipal water system to serve the entire Development. Based on a 60 gpd per student standard, 4,200 gallons of County water could only support 70 students. At full build out the entire Development would require 26,100 gpd.
- 19.b Contrary to the Intermediate Court of Appeals' statements, an official from the County Department of Water Supply testified that the department uses a general consumption rate of 60 gpd per student, subject to the calculations that the applicant submits for the estimated rate of consumption at a school. (Transcript: November 9, 2012, T. McCall, Page 84, Record on Appeal at 1630) In its Final Environmental Assessment (Record on Appeal 124) Connections used the same 60 gpd consumption rate for the school.
- 19.c Based on a 60 gpd per student general consumption rate, 4,200 gallons of County water could support 70 students. Connections' expert presented a matrix of various water consumption rates, but his calculations were not final. Using the Department of Water Supply's

60 gpd general consumption rate, [a]t full build build-out the entire Development would require 26,100 gpd.

- 21. 20. Based on the 60 gpd consumption rate, [t]he available water from the County of Hawai'i municipal water system is insufficient to support the first phase of the Development.
- 21. The available water from the County of Hawai'i municipal water system is insufficient to support the first phase of the Development.
- 21. Notwithstanding the unavailability of potable water from the County system for the Development, the existing 8-inch waterline within Edita Street is adequate to provide the required 2,000 gallons of water per minute for fire protection of the propped Development.
- 22. Connections has proposed using water efficient fixtures and supplementing the available County water with either a catchment system for non-potable water or developing an additional water source. However, Connections has not produced any evidence to demonstrate that it has or can develop sufficient water for the Development.

Wastewater

23. Connections is proposing to provide its own wastewater system meeting the requirements of the State of Hawai'i Department of Health (hereinafter "DOH"). Connections prefers installing an ecological/biological wastewater system called the "Living Machine." However, should such a system prove to be unfeasible, Connections would install a traditional septic system with leach fields or any other system required by DOH.

Drainage

24. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the property is outside the 500-year

flood plain. Notwithstanding this flood designation, during severe storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Eidita Street.

Utilities

25. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kauman Drive.

Public Safety

26. The Hawai'i County Police Department expressed concern that the Development would increase noise, crime and traffic. However, there was no evidence that the Police Department lacks the ability to provide police protection for the Development.

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

- 27. The Property is zoned A-1a and is presently vacant and undeveloped. Under the County of Hawaii Zoning Code, a school is not a direct permitted use on land that is zoned A-1a. Section 25-5-72, Hawaii County Code.
- 28. Surrounding lands to the south and west of the Property are zoned A-1a, with properties further south being zoned A-20a and A-10a [sic]. Lands to the north of the Property area zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaumana Drive. One parcel is also zoned Open adjoining the northwest corner of the lower portion of the

Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity.

- 29. The soils on the Property are primarily composed of pahoehoe lava flow. The State Department of Agriculture's map showing agricultural lands of importance to the State of Hawai'i shows the Property as being unclassified. Also, the Land Study Bureau classifies the soil on the Property under its detail land classification system, as "D" or "Poor" for agricultural activity.
- 30. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 1880-1881. Although Connections submitted a request to the State Historic Preservation Division ("SHPD"), by letter dated August 17, 2010, requesting a "no-effect" determination from that agency, SHPD has not responded to the request.
- 31. A portion of the Kaumana Cava is accessible from the upper portion of the Property. Connections is proposing to refrain from constructing any major school facilities on the upper portion of the Property and to maintain a minimum 100-foot buffer on either side of the cave alignment to alleviate concerns about impact from the Development on the cave ecosystem. The hearing officer made a site inspection of the Property and observed concrete waste material that had been placed on the Property.
- 32. A botanical survey of the Property identified 11 native plant species, but none of these species are considered protected species.
- 33. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.

34. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

IV. STATE AND COUNTY PLANS

- 35. The Property is located within the State Land Use Agricultural District. A school is not a permitted use within the Agricultural District; however, a school may be permitted in this district if a special permit (or exception) is obtained for such use pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules as an exception to existing land use laws. Similarly, under the County of Hawaii Zoning Code, a school may be permitted in the district if a special permit (or exception) is obtained for such use, as is provided in Section 25-5-72(d)(7), Hawaii County Code. See Neighborhood Board No. 24 v. State Land Use Commission, 64 Haw. 265, 270-271, 639 P.2d 1097, 1101-1102 (1982) ("exception" or a special permit is a land use control device for obtaining relief from zoning restrictions in certain situations).
- 36. 36.a The County of Hawai'i General Plan Land Use Element provides, at 14-7, that:

"There are no universal standards for determining the amount of land needed in the future for each land use or activity located within an area. Estimates can be made, however, of the future land use acreage allocation for each use. The land use pattern is a broad flexible design intended to guide the direction and quality of future developments in a coordinated and rational manner. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map indicates the general location of various land uses in relation to each other."

The County General Plan Land Use element, at 14-13 to 14-14, contains the following goals, policies and standards:

"14.1.2(a) Designate and allocate land uses in <u>appropriate proportions and mix</u> and in keeping with the social, cultural and physical environments of the County.

"14.1.3(c) Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhoods, community, region and County.

"14.1.4(a) The broad-brush boundaries indicated are graphic expressions of the General Plan policies, particularly those relating to land uses. ... Land required for community and government services and programs ... may be accommodated within the allocated acreages." (emphasis added)

Although these provisions generally apply to actions of County of Hawai'i officials when they zone land, these provisions also provide guidance to the Planning Commission when the commission is requested to allow land to be used for a development by way of a special permit (or exception).

Urban type land uses are assigned to the following categories:

• Urban Designation

"High Density: General commercial, multiple family residential and related services (multiple family residential – up to 87 units per acre).

"Medium Density: Village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential —up to 35 units per acre).

"Low Density: Residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre."

The County of Hawai'i General Plan Land Use Pattern Allocation Guide ("LUPAG")

Map designates the Property for low density urban uses. The LUPAG designation of Low

Density urban use allows for residential uses, with ancillary community and public uses, and

neighborhood and convenience type commercial uses The Development is not proposed to be a

community or public use for the Kaumana area of Hilo.

- 36.b The differing levels of urban density set forth in the General Plan reflect a graduated pattern of regional uses and activities (high density) to village uses and activities (medium density) and to neighborhood uses and activities (low density).
- 36.c The General Plan does not define the kind of activity that is deemed to be "ancillary" for land that is located in the LUPAG Low Density urban area and that is zoned A-la.
- 36.d A dictionary meaning of the word "ancillary" is "subsidiary" or "supplemental," meaning that a use that is "ancillary" to land located in the LUPAG Low Density Urban area would be a use that is "subsidiary" or "supplemental" to the activities that are allowed for such land under the County of Hawaii Zoning Code.
- 37. 36.e The County of Hawai'i zoning for the Property is Agricultural with a minimum lot size of one acre (A-1a). Under Section 25-5-72(d) of the Hawaii'i County Code, a school is not a direct permitted use, but a school may be constructed and operated on the Property if a special permit (or exception) is obtained for that purpose permitted in an Agriculture zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District. In this respect, a school can be a form of "ancillary" (or supplemental) activity that is placed on land that is located in the LUPAG Low Density Urban area. See Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 271, 639 P.2d at 1102 ("the broad division of uses" in various land use districts "can be supplemented" by way of an exception or special permit).
- 36. However, the question that remains is whether the Planning Commission should or should not grant Connections a special permit (or exception) for the school.

37. The General Plan Public Lands element, at 14-65, states:

"The use of publicly owned lands needs to be more <u>judiciously administered</u>. There is at present <u>no</u> master plan for the vast public lands; ... (emphasis added)

"14.9.2 Goals

(a) Utilize publicly owned lands in the best public interest and to maximum benefit for the greatest number of people.

"14.9.3 Policies

- (a) Encourage uses of public lands that will satisfy specific public needs, such as housing, recreation, open space and education.
- (b) Encourage the adoption of State programs for State lands consistent with the General Plan."

Article XI, Section 1 of the Hawai'i State Constitution also requires the County of Hawai'i, as a political subdivision of the State, to promote the development and utilization of publicly owned land in a manner that is consistent with their conservation and in furtherance of the self-sufficiency of the state." Section 13-29 of the County of Hawaii Charter contains a similar directive to the Planning Commission.

38. The Development, which is proposed to be located on State land, is subject to the Hawai'i State Environmental Impact Statement law, Chapter 343, HRS. Connections prepared an environmental assessment in accordance with Chapter 343, and declaration with a finding of no significant impact was issued for the Development by the State of Hawai'i Department of Land and Natural Resources.

39. The Property is not situated within the Special Management Area ("SMA"), since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

V. SPECIAL PERMIT REQUIREMENTS

- 40. HRS Section 205-6, which governs special permits, provides in pertinent *part* as follows:
 - "(a) The county planning commission may permit certain unusual and reasonable uses within agricultural ... districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural ... district other than for an agricultural ... use ... may petition the planning commission of the county within which the person's land is located for permission to sue the person's land in the manner desired. ...
 - "(c) The county planning commission may, under such protective restrictions as may be necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter ...
 - "(d) Special permits for land the rea of which is greater than fifteen acres ... shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval including the adherence to representations mad by the applicant."
 - 41. Planning Commission Rule 6-7 provides, in pertinent part, that:

"[t]he Commission shall not approve a Special Permit unless it is found that the proposed use;

- "(a) is an unusual and reasonable use of land situated within the Agricultural ... District ...; and
- "(b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

"The Commission shall also consider the criteria listed under Section 6.3(b)(5)(A) through (G)."

- 42. The seven criteria under Planning Commission Rule 6-3(b)(5)(A) through (G) are:
 - "(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - "(B) The desired use shall not adversely affect surrounding properties;
 - "(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
 - "(D) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established;
 - "(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
 - "(F) The proposed use will not substantially alter or change the essential character of the land and the present use;
 - "(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design plans."
- 43. Although Gomes asserts that the criteria for a use permit should be considered in the subject application, that criteria is not relevant to a special permit determination.

VI. APPLICATION OF SPECIAL PERMIT CRITERIA TO THE DEVELOPMENT

A. Land Use Law Objectives

- 44. The purpose of the State Land Use Law is to preserve the lands of high agricultural potential for agricultural use. The Property consists of land that is not considered highly valuable for agricultural sues. Thus, the use of the Property for a school is not contrary to the objectives sought to be accomplished by the State Land Use Law (Chapter 205, HRS).
- 45. Likewise, the Development, which proposes the construction of a school for 381 students and related facilities is not akin to a major recreational theme park attracting 1.5 million

people each year to the area. Therefore, such a development would not frustrate the objectives and effectiveness of the Hawaii's land use scheme and would not require a State land use boundary amendment in lieu of a special permit. Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 272, 639 P.2d at 1103. However, the State Office of Planning, in its letter dated October 3, 2012 (Record on Appeal at 404), stated that a boundary amendment might be an alternative procedure to employ in this case.

B. <u>Affect on Surrounding Properties</u>

- 46. Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents.
- 47. Measures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate the overwhelming concerns raised by surrounding property owners.

C. Burden on Public Agencies to Provide Services

- 48. There is insufficient water available from the County water system to service the Development. Therefore, to allow the Development would unreasonably burden the Department of Water Supply to provide water for its facilities.
- 49. There is no evidence that Connections has the ability to develop a potable water source as a mitigating measure, previously proposed by the Director.
- 50. A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a high school for 107 students [in] its first phase, when the

potable water available, pursuant to the Department of Water Supply's general consumption rate of 60 gpd per student, which Connections also utilizes, would only allow for 70 students.

51. As such, the proposed use may unreasonably burden the County Department of Watery Supply to provide water to the Development.

D. Unusual Conditions, Trends and Needs

- 52. Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also, the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. Hower, there was no evidence presented to demonstrate the location of a school that is not intended to specifically service the needs of the immediate community is such an unusual condition, trend or need that justifies location of the Development at this location.
- 52.a Act 187, Hawaii Session Laws (1961), precursor to Chapter 205, HRS and Rule 6-3(b)(5)(D) of the Commission Rules, required the Planning Commission to consider unusual conditions or uses that could not have been reasonably foreseen when the State Land Use Agricultural District boundaries and Regulations were adopted or amended.
- 52.b The State Land Use Agricultural District in which the Property is located includes the Property, the residential subdivision lying along Edita Street and Melemanu Street and the large-lot subdivision lying along the Puainako Street extension. These properties lie between Kaumana Drive and the Puainako Street extension. The development of the subdivisions was foreseeable and was encouraged by the then existing district boundary and regulations for the district.

52.c There was no evidence to demonstrate that any unusual conditions, trends or needs have arisen, or were unforeseen, since the State Land Use Agricultural District in which the Property is located was established in the 1970s.

E. Suitability of Land for Agricultural Uses

- 53. The Land Study Bureau soil classification rating for the Property is "D" or "Poor," which suggests that the land may be unsuited for agricultural uses. The State

 Department of Agriculture did not provide comments in Connections' Final Environmental

 Assessment or to the Planning Commission.
- 54. Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use. In addition, Connections is proposing to construct greenhouses on the Property and conduct an agricultural program in conjunction with its curriculum
- 55. Connections can use the Property, or a portion of the Property, for agricultural uses with or without a school on the Property Based upon the representations of Connections, it cannot be said that the Property is unsuited for agricultural uses.
 - F. <u>Alteration or Change of the Essential Character of the Land and District</u> and <u>Present Use of the Land and District</u>
- 56. The Property is a forest and is vacant of any structures. The lower half of the property will be converted into a school with classrooms, dormitories, a gymnasium cafeteria and parking lots.
- 57. 57.a As stated above, the State Land Use Agricultural District includes the Property, the residential subdivision lying along Edita Street and Melemanu Street and the

large-lot subdivision lying along the Puainako Street extension, i.e., the land lying between Kaumana Drive and the Puainako Street extension.

57.b The establishment of a school within the Agricultural District will bring changes to the district. Connections contend the changes are beneficial to the district, but the Planning Commission finds that [t]he Development of a school on the Property will change the essential character of the land and the district forested land and its undeveloped use. See Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 271, 639 P.2d at 1102 (relief by way of exception or special permit may be allowed when "the use desired would not change the essential character of the district or be inconsistent therewith").

G. Consistency with the General Plan

- 58. The County General Plan LUPAG map designates the Property for low density urban use. "Low density uses" under the General Plan include residential, with ancillary community and public uses, and neighborhood and convenience type commercial uses.
- 58.a The Planning Commission, in determining whether Connections should be granted a special permit (or exception) from existing land use laws for the school, must evaluate the evidence against the goals, policies and standards set forth in the General Plan, which goals, policies and standards are discussed in Finding of Fact Nos. 36.a to 37, above, and 58.e to 58.g, below.
- 58.b As for publicly owned land, the General Plan Land Use element for Publicly Owned Land, at 14-65, calls for the "judicious administration" of "State programs for State land," but the State has not yet published a "master plan" that the Planning Commission can consider. (Finding of Fact No. 37)

- 58.c The State Department of Land and Natural Resources, through its board, issued General Lease No. S-6029 to Connections for a school, which action can be considered to be part of the State's "master plan," but at the same time, the State Office of Planning, now the State Office of Planning and Sustainable Development, has suggested that a boundary amendment might be an alternative procedure to be employed to ensure that the Property is "judiciously administered." (Letter dated October 3, 2012, Record on Appeal 404)
- 58.d The absence of a formal State "master plan" for publicly owned lands, such as the Property, makes it difficult for the Planning Commission to determine whether the Planning Commission should or should not grant Connections a special permit (or exception) for the school.
- 60. 58.e Furthermore, [t]he Economic, Public Facilities and Land Use elements of the County General Plan, at 2-13, 10-1 and 14-14, all also require the Planning Commission to consideration of other social and community concerns as follows:

Economic Element – Goal

"Provide an economic environment that allows new, expanded, or improved economic opportunities that are <u>compatible</u> with the County's cultural natural and social environment."

<u>Public Facilities Element – Goal</u>

"Encourage the [p]rovision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community."

Land Use Element – Policy

"Encourage the development and maintenance of communities <u>meeting</u> the needs of its residents in balance with the physical and social environments." (emphasis added)

- 61 58.f The evidence has established significant concerns from the community regarding the compatibility of the Development with the surrounding community. (Finding of Fact Nos. 46 to 50, 52.c, 55 and 57.b)
- 62. 58.g Although [T]he County General Plan Public Facilities Education course of action for South Hilo, at 10-7, Item 10.2.4.2.2(a), also encourages the establishment of additional schools as the need arises, but the proposed Development, at the subject location, is not compatible with surrounding properties contrary to the General Plan.
- 58.h On balance, the Planning Commission therefore determines that the Development is not consistent with or is contrary to the General Plan's goals, policies and standards.
- 59. The Development, which proposes a charter school that is not specifically intended to service the immediate community surround the school, is not consistent with the uses permitted in areas of low density urban use.

<u>H. Public Natural Resources Trust</u>

- 59.a According to the General Plan Public Land element, publicly owned land should be used for the "best public interest" and the "maximum benefit for the greatest number of people." Similarly, Article XI, Section 1 of the Hawaii State Constitution requires the development of such land to be "consistent with their conservation and in furtherance of the self-sufficiency of the state."
- 59.b In this instance, the publicly owned resources are the Property itself and to some degree the supply of potable water that is managed by the County of Hawaii Department of Water Supply.

59.c In <u>Kauai Springs, Inc. v. Planning Commission</u>, 133 Haw. 141, 173, 324 P.3d
951, 983 (2014), a case that involved the use of water, the Hawaii Supreme Court announced the principles that the Planning Commission should follow. Pertinent portions of the court's decision provide:

When an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations in the waters of the state. ... An agency must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process. ... The agency measures the proposed use under a "reasonable and beneficial use" standard, which requires examination of the proposed use in relation to other public and private uses. ... The agency must apply a presumption in favor of public use, access, enjoyment, and resource protection. (emphasis added)

The agency is duty-bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes.... Permit applicants must demonstrate their actual needs, and, within the constraints of available knowledge, the propriety of draining water from public streams to satisfy those needs. ... If there is a reasonable allegation of harm to one of the uses protected by the public trust, then the applicant must demonstrate that there is no harm in fact or that any potential harm does not preclude a finding that the requested use is nevertheless reasonable and beneficial.

The applicant's proposed use <u>must be denied if the applicant does not show that</u> there is no practicable alternative water source. ... "Such a requirement is intrinsic to the public trust." ... "The [agency] cannot fairly balance competing interests in a scarce public trust resource if it renders its decision prior to evaluating the availability of alternative sources of water" (emphasis added)

Lastly, if the impact is found to be reasonable and beneficial, then in light of the cumulative impact of existing and proposed diversions on trust purposes, the applicant must implement reasonable measures to mitigate this impact.

- 59.d There is no evidence that when the State Department of Land and Natural Resources decided to issue General Lease No. S-6029 to Connections that the Department subjected Connections' proposal to the rigorous analysis described by the Hawaii Supreme Court.
- 59.e The Planning Commission can assume, nonetheless, that the State Department of Land and Natural Resources, in requiring Connections to obtain a special permit for the school,

believed that the Planning Commission would be the initial public agency that will undertake the analysis of the "reasonableness" and "beneficial" value of Connections' proposal.

VII. <u>UNUSUAL AND REASONABLE USE OF LAND</u>

- 63. 60.a The construction of a school on the Property is an unusual use of the land because a school is not a permitted use in the State Land Use Agricultural District. However, the evidence presented does not demonstrate that the Development is a reasonable use of the Property. Specifically, Connections has not demonstrated how the school can be built without sufficient potable water resources. Nor, has Connections demonstrated how the development of a regional charter school on the Property that does not specially service the needs of the immediate community and that is overwhelmingly objected to by the immediate community is reasonable site for this facility. In addition, Connections has not demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application.
- 60.b In determining whether the school is a "reasonable" use of the Property, the Planning Commission considered whether the Development possesses the characteristics of a "reasonable" use, measured against the guidelines that are set forth in Rule 6-3(b)(5)(A) to (G) and Article XI, Section 1 of the Hawaii State Constitution.
- 60.c Although the Development does not contradict the objectives and effectiveness of the State Land Use Law (Chapter 205, HRS) and Regulations and although the State Department of Land and Natural Resources believes the Property can be used for a school, provided that the Planning Commission grants a special permit therefor, the evidence demonstrates that
- * (1) the Development will adversely affect surrounding properties, Rule 6-3(b)(5)(B), and, further, that

- * (2) there is insufficient potable water available for the Development, as proposed, Rule 6-3(b)(5)(C),
- * (3) no unusual conditions, trends or needs in the State Land Use Agricultural District have arisen since the district boundaries and regulations therefor were first established, Rule 6-3(b)(5)(D),
- * (4) the Property is suited for agricultural purposes, with or without the Development, Rule 6-3(b)(5)(E),
- * (5) the Development will alter the essential character of the Property and the State Land Use Agricultural District in which the Property is located, Rule 6-3(b)(5)(F), and, further, when measured against the applicable goals, policies and standards of the General Plan.
 - * (6) the school is not compatible with existing activities in the subject State Land Use Agricultural District, Rule 6-3(b)(5)(G).
- 60.d Finally, the Planning Commission is mindful of the letter of the State Office of Planning, now the State Office of Planning and Sustainable Development, dated October 3, 2012, (Record on Appeal 404), that a boundary amendment might be a preferred alternative for Connections to obtain the entitlements it needs to build and operate a school on the Property.
- 60.e As for the public natural resources trust, the evidence demonstrates that the Development is not a "reasonable" use of publicly owned land, even though a school might be "beneficial" to public education.

AMENDED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the *Planning* Commission makes the following Conclusions of Law:

1. To the extent that any of the Findings of Fact constitute Conclusions of Law, or Conclusions of Law constitute Findings of Fact, they shall be considered and construed as such.

- 2. The *Planning* Commission has jurisdiction over the subject special permit application including the ability to deny or recommend its approval to the State Land Use Commission, pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.
- 3. Connections had the burden of proof in this matter before the *Planning*Commission, including the burden of producing evidence as well as the burden or persuasion, by a preponderance of evidence, to demonstrate how its request is consistent with the guidelines for a special permit is a "reasonable" use as outlined by Section 205-6, HRS and Rule 6 of the Commission Rules and by the Hawaii Supreme Court in Kauai Springs, Inc. v. County Planning Commission, supra. Connections has failed to meet this burden.
- 4. The Development does not adequately meet the requirements or guidelines for a special permit as required by Section 105-6, HRS and Rule 6 of the Commission Rules.
- 5. The Development is not consistent with the County General Plan, particularly as to the impacts on the immediate community.

AMENDED ORDER

Based on the preceding Findings of Fact and Conclusions of Law, Special Permit

Application SPP No. 12-000138 of Connections New Century Public Charter School and

Community Based Education Support Services to develop a K to 12 charter school campus with

dorm facilities and related uses on 70.15 acres situated within the State Land Use Agricultural

District is hereby denied.

| Dated: Hilo, Hawai'i, _ | May 12, 2014 |
|-------------------------|------------------------------|
| | |
| | By |
| | RONALD GONZALES, Chairman |
| | Windward Planning Commission |

END OF EXHIBIT "1"

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

| In the Matter of |) | SPP No. 12-00138 |
|--|------------------|------------------------|
| CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL AND COMMUNITY BASED EDUCATIONAL SUPPORT SERVICES |)))) | |
| Application for Special Permit Application No. 12-000138 |))) | CERTIFICATE OF SERVICE |
| TMK (3) 2-5-006-141, Kaumana South Hilo, Hawaii |))) | |

CERTIFICATE OF SERVICE

Pursuant to Rule 4-3 of the Planning Commissions Rules of Practice and Procedure, I mailed a copy of the foregoing document to the following persons, addressed as follows and postage prepaid:

TED H. S. HONG

P.O. Box 4217

Hilo, Hawaii 96720

CARTER K. SIU

235 S. Beretania St., Room 304

Honolulu, Hawaii 91813

JEAN K. CAMPBELL

Office of Corp. Counsel
Planning Department
101 Aupuni St., Suite 325
Hilo, Hawaii 96720

[and by email to Melissa.

dacayanan@hawaiicounty.gov]

Dated at Kailua-Kona, Hawaii: September ____, 2021

Michael J. Matsukawa Attorney for Intervenor

From: Jenny Nishida <junatong12@gmail.com>
Sent: Sunday, September 26, 2021 1:09 PM

To: WPCtestimony

Subject: Testimony in opposition of Special Permit for Connection Public Charter School on

Edita Street

Hi,

My name is Jenny. My family and I reside at Mele Manu Street in the Kaumana, Hawaii community. We are writing to express our concerns with the special permit for a public charter school on Edita Street.

We are not against the education of students at Connection Public Charter School. We are opposing the construction of a school for more than 400 students on Edita Street due to traffic and public safety concerns. Edita Street is the only access for Mele Manu Street, the only street for everyone in the Mele Manu neighborhood to get in and out. We rely on this access to get to Kaumana Drive, the street we use to take our kids to school and go to work everyday. With Edita Street and Kaumana Drive being one way in, one way out for traffic, adding more than 400 cars to the narrow streets will certainly create undue traffic problems, stress and chaos in the community. And what about the impact of food delivery trucks going in and out providing support services to the school on a regular basis? Are our narrow streets designed for a small residential community adequate for such added commercial type uses? Another thing of concern is in case of life emergency situations such as hurricanes, can our narrow streets handle the traffic flow of vehicles on the road from both Connection Charter School and Kaumana Elementary school which is less than a mile away?

In conclusion, the proposed location of Connection Public Charter School in an established residential neighborhood is inappropriate. We respectfully ask the Windward Planning Commission to vote "NO" on the special permit.

We thank you for your consideration.

From: Linda pexa <lindapexa@hotmail.com>
Sent: Sunday, September 26, 2021 4:05 PM

To: WPCtestimony

Subject: Connections New Century Public Charter School

To the Members of Wiindward Planning Committee

I am writing to express my opposition to the construction of Connections Public Charter School on land bordering Edita Drive. The proposed student body is 435 which will result in greatly increased amounts of traffic entering Kaumana Drive at peak school traffic times. This narrow winding road is already dangerous for those, such as myself, who access this street from the many subdivisions that feed into it because of limited sight access and speeding vehicles. It is also frightening to think what would happen if emergency vehicles try to head up at down during these times.

There is also the issue of wastewater coming from the school and channeling through subdivisions below the school and even reaching Hilo Bay. The school is proposing the use of an ecological wastewater system which is a new technology and may not be safe. Waterborne diseases such as leptospirosis, dengue fever and rat lung disease could be carried downstream.

It seems that an alternative site, which will not impact a quiet neighborhood and cause traffic and water drainage problems, needs to be found for Connections Public Charter School.

Linda Pexa 31 Helani Place Hilo HI 96720

From: anna kennedy <annak5220@bellsouth.net>
Sent: Monday, September 27, 2021 4:24 PM

To: WPCtestimony

Cc: MalamaKauahana@gmail.com

Subject: Testimony in opposition of Special Permit Application for Connections Charter School:

Windward Planning Commission Meeting Oct 7, 2021 Agenda item #4

Attachments: testimony.pdf; ATT00001.htm

I am Anna Kennedy, I own and live at 1300 Mele Manu Street in Pacific Plantation. Three generations live in this home. We are new to this address but not new to Hilo. I have studied the evidence submitted to the issue.

We are not opposed to The Connections Charter School concept. but thoroughly question whether this is the right location for a school of this size and intended agricultural program

The Commission's denial, on page 7, (Commission's Findings of Facts) indicates that the "Land Study Bureau classifies the soil on the Property under its detailed land classification system at "F" or "Poor" for agricultural activity. To me, Tying to farm without dirt would be akin to trying to drive a car without wheels. And not all agricultural produce is suited for greenhouses.

Our home, as well as at least 15 others, is in direct sight and sound of the proposed school. Under the schools building phase proposal we would be exposed to building construction noise and disturbance for 10 to 26 years. As well as general noise of a school and farm.

We also support the neighborhoods already expressed concerns regarding Traffic, Noise, Water availability, and public safety of the surrounding community.

The Windward Planning Commission made a thorough and fair assessment of the request for a special permit. I believe that the commission originally made the right decision to deny the permit dated May 2014 and hope that it will stand on its good work and again vote to deny the permit.

Our Thanks to the members of the Windward Planning Commissions for your work and due diligence.

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Monday, September 27, 2021 8:42 AM

To: WPCtestimony

Subject: letter of support from Paul Mendoza

Attachments: Paul Mendoza.pdf

Here is another letter of support that was sent to me from Paul Mendoza. Thank you

Paul S. Mendoza September 25, 2021 P.O. Box 5604 Hilo, Hi 96720 Contact phone No. 808-936-4055

To whom it may concern,

My name is Paul Mendoza, and I am the lead flooring designer here at HPM Building Supply in Hilo. Over the last 10 years I was fortunate enough to perform numerous flooring projects for Connections Public Charter School. Throughout that time, I was able to establish strong professional relationships with faculty, staff, and school leaders. I witnessed firsthand the professionalism and genuine care that the school has for their student's personal growth and development and how students are held at a very high priority. The culture and values that the school exhibited while I performed flooring services at their current site, was quite frankly, something I've never seen on any other school campus and is beyond admirable.

I've observed the amount of dedication and intentionality that the school places on improving in areas of safety, ensuring a healthy/conducive learning environment, and their continuous commitment in looking for new innovative ways of improvement in all areas. I honestly believe that the new proposed site would help carry out the schools' vision in ensuring that students are getting access to a learning environment that contributes to their development. An environment where students will be able to flourish and learn how to utilize our natural resources and be self-sustainable.

As a fellow gardener/farmer, I understand the importance of teaching my children how to be self-sustainable and how to utilize the natural resources that's abundantly provided for us... especially during such hard times which we are currently faced with. The lack of access that students at Connections PCS currently have to resources such as agriculture, and farming is restricting and impedes on students getting the most out of such an essential life skill.

I have extreme confidence that Connections PCS can meet and remedy all concerns and issues regarding this project moving forward.

I humbly ask that you render favorable consideration for the new site to be approved.

Sincerely,

Paul S. Mendoza

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Wednesday, September 29, 2021 11:51 AM

To: WPCtestimony

Subject: Letter of support (Petition) Connections SPP-12-138

Attachments: Doc - Sep 29 2021 - 11-37 AM.pdf

Attached is a partition of support.

I support the Connections New century Public School to have a new campus at Kaumana Property.

| Name | Address | PhoneNumbers |
|------------------|---|----------------|
| · Crystal Fortin | 17-155 Palarai Street Kearan, HI. 90749 | 808-464-0187 |
| Marilyn Mae | 466 Hinano St. Apt Hilo, HI 96720 302 | (808) 494-4146 |
| Kalelmamo Racpan | P.O BOX 6805 Hilo, HI 96720 | 808-785-5735 |
| Sandy Cabral | POBOX 266 Kurtistown, HI. 96760 | 800-937-5396 |
| Dela Fonin | 1914 IE 2nd Pl Battle Ground, WA . 98604 | 1-360-980-1894 |
| Betty Fortin | 17-155 Palaai St. Keaau, HI. 916749 | 808-987-3700 |
| Henry Fortin | 17-155 Palaai St. Keaau, HI . 96749 | 808-895-6556 |
| Kainoa Ke | 1914 SE Zna pi Battle Ground, WA . 98604 | 1-360-842=7393 |
| Kelia Ke | 1914 SE 2nd PI Battle Ground, WA. 19604 | 1-360-909-2698 |

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Wednesday, September 29, 2021 9:18 AM

To: WPCtestimony

Subject: letter of support (John Gallagher) Connections SPP-12-138

Attachments: Letter of support - John Gallagher.pdf

A letter of support from John Gallagher

To whom it may concern,

I am writing this letter in support of Connections Public Charter School at the Kaumana property. I have had the honor of teaching at Connections Public Charter School for the past four years. The small size of our student population gives rise to some amazing opportunities for students and staff alike. We are unlike any other school on this island. I am proud of our students' commitment to the malama for our aina and a strong kokua for our community. The development of the property for our school will allow our students to grow and prosper in our community with real world experiences and skills necessary for our future. I implore you to help our students in our cause. It is pono.

Mahalo,

John Gallagher
Social Studies Teacher
Connections PCS

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Wednesday, September 29, 2021 11:22 AM

To: WPCtestimony

Subject: Letters of support (Graham, Bohol, Ponce, Tahan, Deann, Kaua, Staycen, Tosh)

Connections SPP-12-138

Attachments: Letter of Support - Mason Graham.pdf; Letter of support- tahan.pdf; Letter of

support-RhodzynBohol.pdf; letterofsupport-deann.pdf; LetterofSupport-

GaugePonce.pdf; LetterofSupport-Ke`ilikai Kaua.pdf; LetterofSupport-Staycen.pdf;

Tosh's Support Letter.pdf

Attached are 8 letters of support from students.

Dear Windward Planning Commision,

- 1. Hello I am Tosh Thompson, I am 14 years old and have just started to go to connections this year.
- 2. I think the Kaumana property is a very good place for connections to build their new school as it will open up new opportunities for students to learn. As well the students can learn agriculture with the agricultural zones. This new school will also be able to have more students and not have them cramped together into one building. Along with that we will have better learning infrastructure such as libraries and proper labs.

Sincerely, Tosh Thompson

Dear Windward Commision,

My name is Staycen. I've been going to this school for a while now and I will explain why I would like the school to be up in Kaumana with the farm. I would agree with the school to build up there so we could take care of the farm and still have time to educate the students of Connections Public Charter School. I only agree to it because I have a younger sister and I want her to have a good enough education, and also to be able to have fun outdoors. I would like to properly say that I think it would be a good idea to build it up there for another reason, so we can learn about things outdoors and how to do things outdoors.

Thank you for taking the time to read my letter! Sincerely, Staycen

Dear Windward Planning Commission

My name is Ke`ilikai Kaua. I'm in the 7th grade, I've been at this school since I was in kindergarten.

I support the making of the school because the school keeps getting more students every year. The more students the less space. I think we should be able to build the school so students can have more space to learn and be more creative.

Sincerely, Ke'ilikai Kaua

Dear Windward Planning Commission,

I amGauge Ponce and I have attended here at Connections for 2 years and I support the development of the school because if we move up to the kaumana property we will no longer be in the tsunami zone and I think it will be better for the school and the younger generation so that they don't have to walk up far to get out of the tsunami zone but it was Mr. Thacher's dream is to move to kaumana.

Thank you Senseraly Gauge Ponce Dear Windward Planning Commission,

My name is Deann, I'm 12 and I've been in Connections since 3rd grade. I think it would be a good idea to move our school to the Kaumana property because it's a beautiful place, in addition it's a bigger place which is better for the students because the property we're in now is a small place for a school.

Thank you! Sincerely, deann Dear Windward Planning Commision,

Hi my name is Rhodzyn Bohol i am in 10th grade and have been attending Connections for 2 years. I support the development of building a new school for our future kids that attend connections because we have been in the old crest theater for a while now and it's hard to have a lot of kids in our school because of the low space we have. I think that building this new school for our future students will benefit them alot and help us teach more students in a better and more educational way. Also going through this pandemic it's harder on having more kids in school because of social distancing. Also having more land will allow us to teach our students different ways to be an adult. Such as we will have more land for farming to teach our students how to farm, and even construction. Our message is to get these young kids ready for their future and able to live a healthy and financially stable life. Other than that this is just basically what I think about the Kaumana property we have to build our new school.

Thank you, Sincerely, Rhodzyn Bohol

Dear windward commission

My name is tahan, I am 13 years old. I have been going to connections for 4 years, from 5th grade to 8th grade. I support the development of our kaumana property. First, we need more space, and if you care about covid, and kids dying you should let us have a new school. We are all cramped up in this hilo building. Second, I know you care about smelling animal poop, but it actually just smells like grass. Third, we are gonna make plants and do good things for the environment.

Thank you! Sincerely, Tahan Dear Windward Planning Commission.

- 1. My name is Mason Graham and I have been at Connections Public Charter School for 3 years now.
- 2. I am supporting the development of our Kaumana property because I think it would help us make the environment around the Kaumana property more pleasant for plants and animals.

Thank you Sincerely Mason Graham

From: yokotam002@hawaii.rr.com

Sent: Wednesday, September 29, 2021 5:04 PM

To: WPCtestimony

Subject: Remand of SPP 12-000138 to the WPC

Attachments: M. Yokota Connections Testimony.210929.pdf

Attention Mr. John Replogle, Chairman:

I am submitting written testimony for the pending hearing. Please attached.

Melvin H. Yokota

Melvin H. Yokota 1358 Mele Manu Street Apt A Hilo, Hawaii September 29, 2021

County of Hawaii Windward Planning Commission Aupuni Center 101 Pauahi Street Suite Hilo, Hawaii 96720

Subject:

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNICY

BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

To the Windward Planning Commission:

I am submitting this written testimony as a private resident of Pacific Plantations Subdivision.

1. Water supply.

- a. Previously submitted evidence indicates that the County of Hawaii Department of Water Supply can only support 7 units of water (4200 gpd at 60 gpd per person) for the campus. There has been misstatements as to 70 persons (students + staff) vs 70 students. From an engineering standpoint, the 4200 gpd really applies to the total head count of students + staff. Therefore, the actual number of students that the DWS limit is equal to 70 the number of staff personnel.
- b. The applicant has not demonstrated a viable engineering solution that demonstrates their plans can support any larger campus. During previous hearings, they offered tidbits like rainwater harvesting and perhaps encouraging the DWS to construct a deepwell onsite.
 - i. Rainwater harvesting is practical for single family residential units, but during dry spells, residents in areas with catchment systems must haul water to maintain their reserve. At ultimate buildout, Connections proposed 406 students with a staff of 50 full time and 17 part time persons. I believe this may require additional personnel to account for wastewater treatment and management. Without additional staff the total headcount is 473 persons at full buildout. At 60 gpd, this would require 28,500 gpd. Under extreme drought conditions, this will require 2.5 loads from a 10,000 gallon tanker per day to supply the rest of the water needs of the campus. Having 10,000 gallon water tankers on Kaumana drive would be a potential traffic safety problem on the narrow roads and tight curves on Kaumana Drive.
 - ii. Connections had suggested previously tossed out the idea of having the Department of Water Supply construct a deepwell onsite. I believe that this is an unreasonable presumption. Deepwells at this elevation are very costly and would have to be constructed to support continuous community needs. The

school would have to create a permanent easement for constructing power lines and large pipelines to accommodate a deepwell and reservoir site. Such a deepwell for even 28,000 gpd is not cost effective, and the water revenues for such a deepwell would not justify that DWS provide this kind of solution on privately leased property.

c. Since the applicant has not provided engineered designs documenting how the additional water requirements would be met, it is our contention that the applicant should resubmit his application for Phase 1 only (to accommodate 4200 gpd). Subsequent applications for modification of the special permit should be submitted to demonstrate that the applicant has a fully engineered water solution. The Windward Planning Commission should not approve the permit application in a manner that allows the applicant to expand the facility beyond Phase 1 without further scrutiny.

2. Wastewater.

a. The Living Machine

- i. The Connections permit application indicates their plan to use The Living Machine Wastewater Technology. It is a biological process that has been used on the mainland for municipal wastewater treatment in some communities since 2001. While it is potentially less costly to operate than conventional wastewater treatment plants, Connections has not demonstrated that it will be feasible. In order to alleviate odor, activated carbon filters or biofilters will have to be regularly maintained. The process uses anoxic reactors, closed aerobic reactors, open aerobic reactors, clarifiers and an ecological fluidized bed. Some of this equipment are open tanks with plants. Connections has not identified what kind of plants would be used, and whether they are consistent with the flora in the area. Some mainland installations have used tomato plants as part of the process. The clarifiers on the mainland use duckweed, duckweed is not native to Hawaii, and if released into to the environment could be problematic. The Living Machine literature does not describe what other plants, fish and snails are used in the process. Some of the drawbacks of the process is that it has only been shown to remove about 50 percent of influent phosphorous associated with incoming solids. Because of the type of process, it will require periodic harvesting and removal of accumulated plant litter. The Living Machine process can either use liquid beds or beds with granular aggregate as the medium. If it uses liquid beds, it requires control of mosquitoes and flies which will potentially increase those pests which are objectionable in a mostly residential area like Kaumana and Pacific Plantations. A highlighted copy of a EPA Wastewater Technology Fact Sheet is attached for additional information on the process.
- ii. Because the Living Machine is a biological process, it is not clear how well it will continue to function in a balanced manner if the daily flow is not maintained in a relatively constant manner like in a municipal plant or commercial facility like

Puna Kai Shopping Center. Since the school is subject to weekends and vacation periods, does the process continue to function correctly if the process flows are drastically reduced like during summer recesses? Long reductions in flows could affect how the biological processes work, reducing the amount of beneficial microbes. If this occurs, when the school is back in session, it could take some time for the microbes to return to full capacity.

- iii. If not properly designed, heavy rainfall can cause these kinds of system to overflow and contaminate the surrounding area. Even with a granular aggregate type media, heavy rainfall can create free liquid surfaces that attract mosquitoes and flies. Hot weather can overburden bacteria with food and upset the process. Even if the process uses fixed film ecology with aggregate medium instead of liquid medium the community needs assurances that this process is viable in this environment and will not create issues with flies and mosquitoes.
- iv. If the process vessels are low to the ground, they are a potential attractive nuisance to feral pigs. In recent years, the proliferation of feral pigs have caused heavy damage to residential gardens and lawns in Pacific Plantations Subdivision.

b. Septic systems

- i. Connections has proposed a septic system as an alternative to the Living Machine system. They have provided no studies to show how such a system will be designed to accommodate the full buildout of the campus and how large a septic field is required to support the ultimate flows. Since the campus is built on a relatively young lava flow, percolation of the effluent is unknown, especially under conditions of high rainfall. If the ground is saturated, the effluent could upwell and migrate with surface flow from rainwater. High saturation of the percolation field from rainwater could prevent septic tank effluent from diffusing properly.
- ii. It would seem more logical to allow this kind of development in an area that has access to wastewater infrastructure and treatment plants.

3. Feral Pigs

- a. In recent years, the Pacific Plantation Subdivision has seen a proliferation of feral pigs that intrude into and damage residential gardens and yards.
- b. The programs described by the permit application has the potential to become an attractive nuisance for feral pigs. Feed and water troughs for livestock as well as gardens on campus could attract hogs resulting in increased pig populations that will adversely impact the residential gardens and yards in the Kaumana area and Pacific Plantations.

- c. If not designed properly the Living Machine wastewater treatment system could also be an attractive nuisance to feral pigs. If Feral pigs are attracted to the Living Machine wastewater treatment system, it could jeopardize the proper operation of the system and create odors, mosquito and flies issues.
- d. Feral pigs could pose a danger to students and staff.
- e. Cafeteria and dorm cooking area storage areas for food waste could also provide an attractive nuisance for feral pigs.

In my view, Connections has tossed out ideas for solutions, but have not fully developed the solutions for the water and wastewater systems. Until fully engineered solutions are proposed for Government and community review, the permit application should be denied.

Respectfully Submitted:

Melvin H. Golota
Melvin H. Yokota

Attachment: EPA Wastewater Technology Fact Sheet - The Living Machine



Wastewater Technology Fact Sheet

The Living Machine®

DESCRIPTION

The Living Machine® is an emerging wastewater treatment technology that utilizes a series of tanks, which support vegetation and a variety of other organisms. The Living Machine® was conceived by Dr. John Todd, President of the non-profit organization Ocean Arks International, and gets its name from the ecologically-based components that are incorporated within its treatment processes (microorganisms, protozoa, higher animals such as snails, and plants). The Living Machine® has sometimes been referred to as the "Advanced Ecologically Engineered System" or AEES. The Living Machine® is now designed and marketed by Living Machines, Inc. of Taos, New Mexico.

The Living Machine[®] is a second generation design. Dr. Todd developed the Living MachineTM design concept after working on a number of similar small pilot-scale facilities, now referred to as Solar AquaticsTM and marketed by Ecological Engineering Associates of Marion, Massachusetts.

The Living Machine® incorporates many of the same basic processes (e.g., sedimentation, filtration, clarification, adsorption, nitrification and



Source: U.S. EPA., 2001.

FIGURE 1 THE OPEN AEROBIC TANKS OF THE LIVING MACHINE® IN SOUTH BURLINGTON, VT

denitrification, volatilization, and anaerobic and aerobic decomposition) that are used in conventional biological treatment systems. What makes the Living Machine® different from other systems is its use of plants and animals in its treatment process, and its unique aesthetic appearance. While these systems are aesthetic appealing, the extent to which the plants and animals contribute to the treatment process in current Living Machine® designs is still being verified (U.S. EPA, 2001). In temperate climates, the process is typically housed within a large greenhouse, which protects the process from colder temperatures.

Living Machines, Inc. describes the Living Machine® as being a wastewater treatment system that:

- Is capable of achieving tertiary treatment;
- Costs less to operate than conventional systems when used to achieve a tertiary level of treatment; and
- Doesn't typically require chemicals that are harmful to the environment" as a part of its treatment process (Living Machines, Inc., 2001).

Several federally-funded Living Machine® demonstration systems have been constructed, the largest of which handled design flows of up to 80,000 gpd. As configured for these demonstrations, these systems treated municipal wastewaters at various strengths, and reliably produced effluents with five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), and Total Nitrogen ≤ 10 mg/L, Nitrate ≤5 mg/L, and Ammonia ≤ 1 mg/L (U.S. EPA, 2001 and see Table 1). With regard to phosphorus removal, the Living Machine® process is capable of about 50 percent removal with influents within the 5-11 mg/L range (U.S. EPA, 2001). In addition to

the demonstration projects, the Living Machine® technology is being used by a variety of municipal and industrial clients, where similar performance has been reported.

Treatment Process

A typical Living Machine® comprises six principle treatment components, after influent screening. In process order (see Figure 1), these are (1) an anaerobic reactor, (2) an anoxic tank, (3) a closed aerobic reactor, (4) aerobic reactors, (5) a clarifier, and (6) "ecological fluidized beds" (EFBs). While the open aerobic reactors and EFBs are found in almost all Living Machines®, the other components are not always utilized in the treatment process. The specific components used are selected by the designers depending upon the characteristics of the wastewater to be treated and the treatment objectives. Sometimes additional process components may be added if considered necessary by the designers. For example, the demonstration system in Frederick, Maryland utilized a "Final Clarifier" and a high-rate subsurface flow (SF) wetland as the last two components of its treatment train.

Anaerobic Reactor (Step 1)

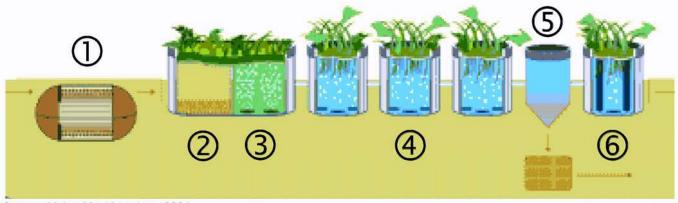
When it is employed, the anaerobic reactor serves as the initial step of the process. The reactor is similar in appearance and operation to a septic tank, and it is usually covered and buried below grade. The main purpose of the anaerobic reactor is to reduce the concentrations of BOD₅ and solids in the wastewater prior to treatment by the other components of the process. When necessary, gases are passed through an activated carbon filter to control odor.

Raw influent enters the reactor, which acts as a primary sedimentation basin. Some of the anaerobic reactors used have an initial sludge blanket zone, followed by a second zone for clarification. Additionally, strips of plastic mesh netting are sometimes used in the clarification zone to assist with the trapping and settling of solids, and to provide surface area for the colonization of anaerobic bacteria, which help to digest the solids. Sludge is typically removed periodically via perforated pipes on the bottom of the reactor, and wasted to a reed bed or other biosolids treatment processes. Gasses produced are passed through an activated carbon filter or biofilter for odor control.

Anoxic Reactor (Step 2)

The anoxic reactor is mixed and has controlled aeration to prevent anaerobic conditions, and to encourage floc-forming and denitrifying microorganisms. The primary purpose of the anoxic reactor is to promote growth of floc-forming microorganisms, which will remove a significant portion of the incoming BOD₅.

Mixing is accomplished through aeration by a coarse bubble diffuser. These diffusers are typically operated so that dissolved oxygen is maintained



Source: Living Machines Inc., 2001.

FIGURE 1 THE COMPONENTS OF THE LIVING MACHINE®: (1) ANAEROBIC REACTOR, (2) ANOXIC REACTOR, (3) CLOSED AEROBIC REACTOR, (4) OPEN AEROBIC REACTORS, (5) CLARIFIER, AND (6) "ECOLOGICAL FLUID BED"

below 0.4 mg/L. The space over the reactor is vented through an odor control device, which is usually a planted biofilter. Additionally, an attached growth medium can be placed in the compartment to facilitate growth of bacteria and microorganisms.

Settled biosolids from the clarifier (Step 5), and nitrified process water from the final open aerobic reactor (Step 4) are recycled back into this reactor. The purpose of these recycles is to provide sufficient carbon sources to the anoxic reactor to support denitrification without using supplemental chemicals, such as methanol.

Closed Aerobic Reactor (Step 3)

The purpose of the closed aerobic reactor is to reduce the dissolved wastewater BOD₅ to low levels, to remove further odorous gases, and to stimulate nitrification.

Aeration and mixing in this reactor are provided by fine bubble diffusers. Odor control is again achieved by using a planted biofilter. This biofilter typically sits directly over the reactor and is planted with vegetation intended to control moisture levels in the filter material.

Open Aerobic Reactors (Step 4)

Next in the process train are the open aerobic reactors, or aerated tanks. They are similar to the closed aerobic reactor in design and mechanics (i.e., aeration is provided by fine bubble diffusers); however, instead of being covered with a biofilter, the surfaces of these reactors are covered with vegetation supported by racks. These plants serve to provide surface area for microbial growth, perform nutrient uptake, and can serve as a habitat for beneficial insects and microorganisms. To what extent the plants enhance the performance treatment process in the Living Machine® is still being verified (U.S. EPA, 2001). However, with the variety of vegetation present in these reactors, these units (along with the Ecological Fluidized Beds -Step 6) set the Living Machine® apart from other treatment systems in terms of their unique appearance and aesthetic appeal.

The aerobic reactors are designed to reduce BOD₅ to better than secondary levels and to complete the process of nitrification. The size and number of these reactors used in a Living Machine® design are determined by influent characteristics, effluent requirements, flow conditions, and the design water and air temperatures.

Clarifier (Step 5)

The clarifier is basically a settling tank that allows remaining solids to separate from the treated wastewater. The settled solids are pumped back to the closed aerobic reactor (Step 3), or they are transferred to a holding tank, and then removed for disposal. The surface of the clarifier is often covered with duckweed, which prevents algae from growing in the reactor.

Ecological Fluidized Beds (Step 6)

The final step in the typical Living Machine[®] process are the "ecological fluidized beds" (EFBs). These are polishing filters that perform final treatment of the wastewater, and one to three are used in series to reduce BOD₅, TSS and nutrients meet final effluent requirements.

An EFB consists of both an inner and outer tank. The inner tank contains an attached growth medium, such as crushed rock, lava rock, or shaped plastic pieces. The wastewater flows into the EFB in the annular space between the inner and outer tanks and is raised by air lift pipes to the top of the inner ring that contains the media. The bottom of the inner tank is not sealed, so the wastewater percolates through the gravel media and returns to the outer annular space, from where it is again moved back to the top of the gravel bed. The air lifts also serve to aerate the water and maintain aerobic conditions.

The unit serves as a fixed bed, downflow, granular media filter and separates particulate matter from the water. Additionally, the microorganisms that occupy the granular media surfaces provide any final nitrification reactions.

As sludge collects on the EFB, it reduces its ability to filter. This would eventually clog the bed completely. Therefore, additional aeration diffusers beneath the gravel bed are periodically turned on to create an upflow airlift, reversing the flow direction. This aeration is intended to "fluidize" the bed and release the trapped sludge (hence the name of this unit). This sludge is washed over and accumulated at the bottom of the outer annular space where it can be collected manually, and wasted along with the biosolids from the anaerobic reactor. Consequently, the name "ecological fluidized bed" is somewhat misleading for this unit since, in its treatment mode, it acts like a typical, conventional, downflow coarse media contact filter unit. Only during backwash cleaning does the bed become partially fluidized.

After this last step, the wastewater should be suitable for discharge to surface waters or a subsurface disposal system, or reused for landscape irrigation, toilet flushing, vehicle washing, etc. (Living Machines, Inc., 2001).

APPLICABILITY

The Living Machine® is well suited for treating both municipal and some industrial wastewaters. As with most treatment systems using plants, it can require a larger footprint than more conventional systems, and its requirement for a greenhouse in more temperate climates can impact costs. However, its unique and aesthetically pleasing appearance make it an ideal system in areas that oppose traditional treatment operations based on aesthetics (i.e., smell and appearance). designers also stress the educational benefits of the Living Machine (http://www.livingmachines.com/htm/planet2.htm) in raising awareness of wastewater treatment methods and benefits.

ADVANTAGES/DISADVANTAGES

Advantages

- Capable of treating wastewaters to BOD₅,
 TSS, and Total Nitrogen ≤ 10 mg/L, Nitrate
 ≤ 5 mg/L, and Ammonia ≤ 1 mg/L.
- Offers a unique, aesthetically pleasing environment for treating and recycling wastewater. This may be helpful when

attempting to locate the treatment system in areas where the public opposes traditional wastewater treatment operations for aesthetic reasons.

Disadvantages

- The Living Machine® has only been shown to remove about 50 percent of influent phosphorous (with influents in the range of 5-11 mg/L). The removed phosphorus appears to be primarily associated with the incoming solids.
- The process requires a greenhouse for reliable operation in the cold weather of more temperate climates, adding to system costs.

DESIGN CRITERIA

Every Living Machine® system is designed by Living Machines, Inc. based upon the expected wastewater volume and content, as well as the treatment requirements and local climate. Once these factors are known, the designers then determine whether a greenhouse is necessary, what types of reactors are needed, how many of each type of reactor are required, and what capacity is required to achieve the suitable residence times.

PERFORMANCE

The Living Machine® has reliably achieved treatment goals of BOD5, TSS, and Total Nitrogen \leq 10 mg/L, Nitrate \leq 5 mg/L, and Ammonia \leq 1 mg/L. Table 1 shows the results of independent evaluations of two demonstration systems. The Living Machine® demonstration project in Frederick, Maryland was designed to treat 40,000 gpd of screened and degritted wastewater. It employed a single anaerobic reactor for primary solids digestion, then three parallel treatment trains, each comprised of two open aerobic reactors, a clarifier, three "ecological fluidized beds," a final clarifier, and a small, high-rate subsurface flow wetland. The demonstration project located in South Burlington, Vermont was designed to treat 80,000 gpd of screened and degritted wastewater,

TABLE 1 PERFORMANCE OF THE FREDERICK AND BURLINGTON LIVING MACHINES®

| | FREDERICK | | | | BURLINGTON | | | |
|-------------------------------|------------------|-------------------------------------|------------------|--------------|-------------------|------------------|--------------|------------------|
| Parameter | Influent mg/L | GH Influent mg/L ^a | Effluent mg/L | % Removal | Influent mg/L | Effluent mg/L | % Removal | Effluent Goal |
| BOD ₅ | 230 | 156 | 4 | 97 | 227 | 5.9 | 97 | <10 |
| COD | 944 | 378 | 21 | 94 | 556 | 35.9 | 94 | |
| TSS | 381 | 70 | 2 | 97 | 213 | 5.3 | 98 | <10 |
| NH ₃ | u u | 22 | 1.2 | 94 | 16.3 | 0.4 | 98 | <1 |
| NO ₃ | _ | 20.8 | 10 | 52 | 15.9 ^b | 4.9 | 69 | <5 |
| TN (total nitrogen) | ē | 44 | 11 | 75 | 29.3 | 5.6 | 81 | <10 |
| TP (total phos- phorus) | 11 | 7.7 | 6 | 45 | 6.0 | 2.0 | 67 | <3 |

- a Effluent from the anaerobic reactor at Frederick into the reactors contained within the greenhouse.
- b Assumes that all removed ammonia is converted to nitrate.

Source: U.S. EPA, 2001.

and employed five open aerobic reactors (though one of these was later converted to an anoxic reactor), a clarifier, and three "ecological fluidized beds."

In these instances, the Living Machine® was capable of BOD₅ and TSS removal in excess of 95 percent. While the Frederick system did not consistently achieve its goal of < 5 mg/L for Nitrate, the Burlington Living Machine® did. The Living Machine® reliably demonstrated about 50 percent removal of Total Phosphorous (TP), although the Burlington system had a low influent TP concentration (U.S. EPA, 2001).

While the Frederick Living Machine® achieved quite good coliform removal (< 200 MPN/100mL), the Burlington system's effluent was above 1,000 MPN/100mL. Consequently, disinfection may be required as an additional step depending upon system configuration and effluent requirements.

OPERATION AND MAINTENANCE

Routine Activities

The routine operation and maintenance (O&M) requirements for Living Machines® are similar to the requirements for a conventional wastewater treatment plant, with a few additional requirements. These additional requirements include cleaning the inlet/outlet structure; cleaning the screen and tank; removing and disposing sludge; and maintaining and repairing machinery. Other requirements are vegetation management, including routine harvesting to promote plant growth, and removal of accumulated plant litter. Additionally, it may be necessary to manage fish and snail populations, and control mosquitoes and flies (if applicable).

Residuals Management

The Living Machine® produces residuals comparable in quantity to conventional treatment systems. However, some of these residuals are biosolids, while others are in the form of plant

TABLE 2 PRESENT WORTH COMPARISON OF "LIVING MACHINES" AND CONVENTIONAL SYSTEMS

| Process | 40,000 gpd | 80,000 gpd | 1 million gpd | |
|-------------------------------------|--------------------------|--------------------------|---------------------------|--|
| "Living Machine" with greenhouse | \$1,077,7771 | \$1,710,280 ¹ | \$10,457,542 ² | |
| "Living Machine" without greenhouse | \$985,391 | \$1,570,246 | \$9,232,257 | |
| Conventional System | \$1,207,036 ¹ | \$1,903,751 ¹ | \$8,579,978 ² | |

- (1) Cost difference is less than 20 percent
- (2) Cost difference is greater than 20 percent

Source: U.S. EPA, 2001.

material. Analyses at the Frederick demonstration system showed that plant residuals could be composted and used for many agricultural or horticultural purposes. The biosolids would likely require stabilization and treatment to reduce pathogens and indicator organisms before they would meet Part 503 limits for sewage sludge (U.S. EPA, 2001).

COSTS

Since the Living Machine® is designed, marketed and trademarked by Living Machines, Inc., precise cost data are proprietary. However, a cost comparison with "conventional" treatment systems was performed as a part of an independent U.S. EPA evaluation of the Living Machines® (U.S. EPA, 2001). Table 2 summarizes the results of this cost comparison.

This analysis concluded that Living Machines® are typically cost competitive with more conventional wastewater treatment systems at flow volumes up to 1,000,000 gpd, if they are located in a warm climate where a greenhouse is not necessary. However, if the climate cannot support the plants year-round and a greenhouse must be constructed, construction costs will increase. Addition of a greenhouse structure makes the Living Machine® cost competitive with more conventional systems up to flow rates of around 600,000 gpd.

REFERENCES

Other Related Fact Sheets

Other EPA Fact Sheets can be found at the following web address:

http://www.epa.gov/owm/mtb/mtbfact.htm

- Living Machines, Inc., 2001. Web Site: http://www.livingmachines.com/
- Massachusetts Foundation for Excellence in Marine and Polymer Sciences, Inc., Boston, MA, Ocean Arks International, Living Technologies, Inc., 1997. Advanced Ecologically Engineered System, South Burlington, Vermont.
- 3. U.S. EPA, 2001. The "Living Machine" Wastewater Treatment Technology: An Evaluation of Performance and System Cost. EPA 832-R-01-004.

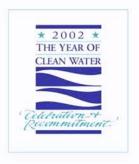
ADDITIONAL INFORMATION

Living Machines, Inc. 125 La Posta Road 8018 NDCBU Taos, New Mexico 87571 http://www.livingmachines.com/ The mention of trade names or commercial products does not constitute endorsement or recommendation for use by the U.S. Environmental Protection Agency.

Office of Water EPA 832-F-02-025 October 2002

For more information contact:

Municipal Technology Branch U.S. EPA ICC Building 1200 Pennsylvania Ave., NW 7th Floor, Mail Code 4201M Washington, D.C. 20460





From: Malanai Arcuri <malanaiarcuri@gmail.com>
Sent: Thursday, September 30, 2021 11:14 AM

To: WPCtestimony

Subject: Testimony in Support of Connections New Century Public Charter School

Aloha, Windward Planning Commission,

I am writing to you in support of building the new campus of Connections New Century Public Charter School in Kaumana. I attended Connections from 6th grade through my graduation in 2015. I received my associates in Liberal Arts from Hawaii Community College and my bachelor's in Business Administration from UH Hilo. I am now a fiscal analyst for the Nebraska Department of Health and Human Services. Connections gave me the education and resources to pursue higher education that led to the start of my professional career.

It is disheartening to see all the pushback that Connections has received about building the new campus. Connections has done their due diligence in planning the campus to minimize environmental impacts. It is true that there will be an increase in traffic, however it will be minimal as there will be 2 buses for students and the student body will only be 381. Connections needs this campus as the Kress building is too small and is degrading due to its age. Connections provides an education just as good as any public school and has the added benefit of small class sizes. I believe the benefits of the new campus will outweigh the impacts it has to the surrounding neighborhood.

I humbly ask that you grant Connections the permit to build the new campus.

Mahalo, Malanai Arcuri

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Thursday, September 30, 2021 8:40 AM

To: WPCtestimony

Subject:letter of support from BriannaAttachments:letter of support- Brianna.pdf

Another students letter of support

September, 23,2021 Dear, windward planning commission, I would like a new school. We need a new school So that we can be more intouch with pature. I want to be out of the townsmi area. We would like it as soon as possible so that we can be mare happy with our soundings. Thank you for you Diana B Cumae

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Thursday, September 30, 2021 8:42 AM

To: WPCtestimony

Subject: letter of support from Alexis Raimon

Attachments: letter of support- Alexis.jpg

Letter of support from another student.

September 13, 2021
Dear Windward Planning Commission,
I would want Connection to build a new school but wentneed your permission to let us build a school. I want to build a school because we can learn agriculture. We can plant food so we don't have to get food & shiped here. And from now and on we can get fresh food insed. of shiped food. Thank you for your time.

Mahlo, Alexis Raimon 6th grade at connections.

From: heidi richgruber <hdrichgr@gmail.com>
Sent: heidi richgruber <hdrichgr@gmail.com>
Thursday, September 30, 2021 1:39 PM

To: Eric Boyd
Cc: WPCtestimony

Subject: Letter supporting new campus (SPP-12-138)

Attachments: 2021_09_support Connections.pdf

Aloha,

I submit the attached letter of support to be considered at next week's meeting. Please confirm that you received the attachment.

Mahalo, Heidi Heidi D. Richgruber, BS, E-RYT 500 PO Box 268 Honomu HI 96728

> Email: hdrichgr@gmail.com Mobile: 608-345-0887

September 30, 2021

Dear Planning Commission:

As a Connections parent and volunteer, I am writing in support of the new school campus on the agricultural-zoned land at Edita Street off Kaumana Drive.

Our child has attended Connections for three years and we are impressed with how the school supports our community. Connections teachers and staff foster unique learning opportunities for our keiki. The current school building is clean, cared for, and secure. When we chose Connections for our kindergarten-age child, our only concern was the lack of outdoor space. The current facilities on Kamehameha Avenue do not include an on-site playground, garden, or open field.

In education it is known that the environment in which learning occurs is vital to its success. It has been demonstrated¹ that:

- School performance increases when children learn outdoors;
- Learning outdoors is healthy;
- Learning outdoors supports child development;
- Outdoor education and play support emotional, behavioral and intellectual development;
- Studies have shown that students who learn outdoors develop a sense of self, independence, confidence, creativity, decision-making and problem-solving skills, empathy towards others, motor skills, self-discipline, and initiative;
- Teaching and learning outdoors is fun;
- Outdoors learning experiences are the foundation of raising the next generation of active citizens who take care of their natural and human communities; and
- Outdoor learning connects families and the community to the school.

Let's come together to provide sunlight, fresh air, and open space for our growing children to thrive. I ask you to come together as a school body, neighboring community, and planning commission to bring the school's vision to realization.

Sincerely, Heidi D. Richgruber

¹ Outdoor Education – Research Summary https://www.uwsp.edu/cnr-ap/leaf/school-grounds/documents/outdoor%20education%20research%20for%20school%20Grounds.pdf

From: Eric Boyd <eric_boyd@connectionspcs.org>
Sent: Thursday, September 30, 2021 12:26 PM

To: WPCtestimony

Subject: Letter of support from Tricia Schalk

Attachments: Page 1.jpg; Page 2.jpg; Page 3.jpg; Page 4.jpg; Page 5.jpg

Letter of support

To Whom It May Concern,

I am writing in support of Connections Public Charter School building a new campus in Kaumana. In a professional capacity I have worked in the classroom in many schools in both the Puna and Hilo school districts. I've also worked with therapeutic foster youth, who attended schools throughout the Big Island. In my opinion, Connections is head and shoulders above the other schools. That's why I decided to send my son there. Our education system in Hawaii is seriously lacking and failing our children. Charter schools rose up in an effort to address these shortfalls. Children learn differently and the traditional model of sitting in a desk all day and listening to a teacher just doesn't work for many children, especially those in native populations. They benefit from a more hands-on and experiential learning style, which is what charter schools offer. Yet, charter schools aren't given the support and respect that they deserve from the DOE or the community, which is just plain sad. The administration and boards of charter schools are forced to waste precious time fighting for the basics that other traditional DOE schools are just given and that is just plain wrong. All their focus should be on the day-today running of the school. All the parents of charter school students pay taxes just the same as parents of traditional DOE students, and deserve to have comparable school settings. Any community would be enhanced by having this school be a part of it rather than a detriment.

Connections is an amazing school and I highly recommend them to everyone. Every teacher and staff love the kids and wants what is in their best interest. My son is only in 1st grade and all the teachers and staff know him by name, which is amazing. The school utilizes many different modalities for teaching the children, including technology and native Hawaiian culture. They care about the development of the whole child, not just their educational needs. They have done an excellent job during the pandemic of supporting the children's educational needs while protecting their physical health and safety. They incorporate exercise, music, and the arts into their curriculum rather than focusing all their attention to just teaching to the Standards. They keep class sizes small, so kids can receive the individualized attention they need and deserve. My son has excelled and thrived since attending this school. There is open communication between the school and parents and they encourage us to partner together to ensure the success of each student. Every concern I have ever raised with the school has been adequately dealt with from the teacher to the principal.

The school has done the best they can for over a decade to make their current campus work for the students and teachers, but there are drawbacks to that location that are out of its control. For one, it is in a tsunami zone and it would be nice to move the campus to a safer location, if possible. Thankfully, we get very few tsunami warnings, but it only takes one to destroy the school building. There are protocols in place to keep the children safe. This area is a high traffic area due to tourists and the locals that like to shop at the Farmer's Market and the other stores and restaurants on Bayfront. It is difficult to find parking or to pick up your child in the afternoons, especially on Wednesdays. There's always been a large homeless population that frequents Bayfront, but that population has exploded over the last couple of years. It can

be frightening for the younger children, especially if there is someone having mental health issues or a drug induced psychosis. It also provides a teaching opportunity, so we can teach our children about the downsides of life and having compassion for others less fortunate than ourselves.

This new campus would provide a safe, permanent home for Connections Public Charter School. It would allow the school to enhance the school experience for the students and staff by having more space. It would expand the types of classes and resources they could offer. Most importantly, it would offer a safe outside area for the children to use for recess, gym class, activities, and sports. Something they don't have now. If they want to do outside activities, they need to walk to Kalakaua Park, which isn't always easy to do in the very wet weather we have in Hilo. The new campus would have a community garden and animals to care for. There is a lack of jobs in Hawaii and many are forced to work in the hospitality industry as a result or to leave the islands all together. As we have seen from the COVID-19 pandemic, these types of jobs can be easily threatened causing catastrophic economic fallout for individuals and our community. We also know that our reliance on the barges to bring in all our food is not sustainable. This new campus would allow the school to train our next generation of farmers, even if they only grew food on their own land. They can also teach the students how to care for animals, like horses, cows, goats, and sheep. The food and animals on campus could be used to raise money for the school or to fund learning trips for the students. In the process, it could teach the students valuable lessons about money and business first hand. Another valuable lesson needed to be successful in life.

Connections is not selfish and is willing to share their campus with other DOE schools in the summer months and perhaps at other times. Allowing Connections to build their campus in Kaumana benefits not just their students, but all students. That seems like a win-win to me. The larger campus will also allow more students to attend Connections that want to. Because Connections is such a great school, it is difficult to get into and you are often placed on the waitlist, because there simply isn't enough space. I appreciate that Connections tries to keep their class sizes small, so each student gets the attention that they need and deserve. The class sizes in a traditional DOE school are disgraceful and not good for the students or the poor teachers, who have to teach under those conditions. How can you do hands-on activities with so many hands or address individual needs?

Let's address the complaints some people in Kaumana have regarding this project. First, they are concerned about the increased traffic and that the only way to the campus is through Edita Street. You cannot deny that there will be an increase in traffic, but not enough to seriously impact the community. Connections is only slightly bigger than Kaumana Elementary and much smaller than E.B. DeSilva Elementary, which are already in the community. When we are talking about traffic, it would only be an issue twice a day between 7:00 a.m. – 8:30 a.m. and between 2:00 p.m. – 2:45 p.m. The latter would only impact those people who do not work, work from home, or work an alternative schedule to the traditional 9:00 a.m. – 5:00 p.m.

There are many sibling groups, people who carpool together, and students who take the bus, so this cuts down on the amount of traffic. I transport my child to and from school every day. The drop-offs in the morning are staggered and not all at once. It is very rare that you see a line of cars and if you do it has never been more than 3, including myself. The afternoon pickup is a little more hectic, but that is only because the school is located in a very high traffic, business area.

School is not in session all the time so during those times there would be no traffic at all. They get a week for Fall Break, almost a month for Christmas, a week for Spring Break, almost 3 months for Summer Break, and a few single days off sprinkled throughout the year. Any summer activities at the campus would be a very limited number of cars. If people are concerned about the intersection at Edita Street, couldn't a police officer or some type of crossing guard help direct traffic if it becomes an issue. Many years ago, before there was a light at North Kulani in Mountain View, there was often a police officer helping direct traffic to aid parents trying to make a left hand turn to take their kids to Mountain View Elementary. There are workable solutions to any problem if there is a desire to resolve them.

Another piece that goes along with the traffic complaint is the rumor that many Pacific Plantation residents don't want their community to be connected to the Puainako Extension, which is really a separate issue and has nothing to do with the school per say. It causes them to bad mouth the building of the school as more of a protective factor. Their real fear is that building the school there would increase the likelihood that the county will connect the subdivision to the Puainako Extension for safety reasons. This isn't really fair to Connections given the fact that the county may make that decision regardless of whether the school is built there or not.

Another frequent complaint from Kaumana residents is the lack of adequate water supply. This is another frivolous and ridiculous complaint. There is a large reservoir that supplies the area. The fact that there are 2 other schools of similar size in the area, who are able to function with adequate water supply, tells you it is possible. Even if the school could not connect to county water, it could still be viable through the use of a catchment system. The majority of the Puna District is on a catchment system, so a lot of the students, who attend the school are used to this. Volcano Charter School has thrived for over a decade on a catchment system, so we know it is possible for a school of this size to be successful. I would argue that a properly maintained catchment and filtration system are just as good if not better than county water and more cost effective for the school. As a state, we are prioritizing green living, so why not also support the use of catchment systems as opposed to municipal plumbing? It would certainly make people more accountable for their water usage. If people are concerned about the students consuming rain water, potable water can easily be brought in for drinking or washing of consumables. The claims of leptospirosis are a remote possibility, but not likely, especially with a properly maintained system. I've lived on a catchment system for decades and have never had a problem, nor have the hundreds of others I know who live on the same

type of system. The complaint of increased mosquito population is also just plain wrong. Everyone knows mosquitos spawn in stagnant water. Catchment water is frequently moving because it is constantly being filled and removed with use. Therefore, it is not stagnant.

I think this also touches on another issue. There are a lot of people in Hilo who are very judgmental about people from Puna and how they live. That comes from misconceptions about Puna. Since Connections can take kids from anywhere in east Hawaii, there are a lot of kids from Puna who attend the school. I can't help but wonder if that plays a role in why some Kaumana residents don't want the school in their community. In case you think I am making this up, I ran into this situation first hand. I used to supervise undergraduate and graduate level practicum students in a professional capacity. During that time, I had two different students, who lived in Hilo their entire lives, who were scared to death to go out in the field with me to subdivisions or schools in Puna. These students did not know one another. Both students had never in their lives even been to Puna, which was just crazy to me. When I questioned them about it, they both reported that their parents told them that Puna was a scary place with a lot of poor people, crime and drugs. Let's just say our travels together was an eye-opening experience for them both. Also, I have had other people from Hilo turn their noses up at me and make negative comments to me or share negative perceptions, because I live in Hawaiian Acres. I really hope I am wrong about this playing a role. If I am right, those residents would be amazed at the amount of Puna kids already attending E.B. De Silva and other Hilo schools on Geographical Exceptions (GE).

Another actual complaint the Kaumana residents have is regarding waste management. They are concerned that the school will not be connected to a sewer system and that waste from the school can wind up in Hilo Bay. This argument is just completely ridiculous. Connections intends to install a state-of-the art waste management system. They cannot install anything that isn't approved and inspected by the county. If the county determines it is safe, then who are the Kaumana residents to say otherwise? A similar system has been installed at the new Puna Kai Shopping Center in Pahoa, so these types of systems have been approved and used before. It's laughable that now the residents care about poop making its way to Hilo Bay when the majority of older homes in Hilo have a cesspool. The number of cesspools already in Hilo far outweigh the amount of waste the school would produce and has been flowing into Hilo Bay for decades. How many of those concerned Kaumana residents have paid the \$10,000 plus amount of money it would cost to replace their own cesspools with a septic system? I doubt few of them. Besides, Connections would never do anything to intentionally harm the community or ecosystem that their students are living in or utilizing. They wouldn't put in a waste management system that could potentially cause harm.

Another common complaint against Connections being built is that Kaumana is made up of a series of lava tubes and caves and it could cause a dangerous situation. Newsflash...the whole island is made up of lava tubes and caves, because we have 5 volcanos! I'm sure Puna has more lava tubes than Hilo, like the Kazumura Lava Tube that meanders through large

stretches of the district for miles. Yet despite the lava tubes and caves, all kinds of structures and complexes have been built all over these islands and will continue to be built. Again, that is why the county is involved in all building projects and grading permits are needed to assess viability of land clearing and construction. Bulldozer operators are professionals, who know how to work with our unique landscapes and geology.

Another complaint I have heard is that having a school in your neighborhood will lower property values. Another absurd assertion! Having schools in your neighborhood actually increases property values. It's something that sets your community apart from other comparable communities. Parents want their children close to them and it's a bonus if your children live close enough to walk to school. If you have ever looked for properties to buy, you will see that realtors frequently list the schools close by and play it up when a house is close to a particular school. If it wasn't important or a selling point, they wouldn't bother to list it.

It's funny that everyone wants improved roads, schools, and infrastructure, but when it comes to actually doing it, they turn around and say, "not in my community," or "not in my backyard." That's what Connections is up against right now. None of the complaints have been against the school itself, because there's nothing to complain about. It's just residents selfishly saying, "not in my community." I'm sorry, but that's not enough of a reason to stop the construction of this school, which would only enhance and benefit that same community. All of the supposed reasons for their opposition are easily explained away like I have done above. There really is no good justification to deny Connections' request to build at this location. Therefore, I ask that the Committee please approve the school to be built at this location without any further delays. The Connections community has waited long enough to make this dream a reality. In my heart I truly believe more good than bad will come from that decision and you certainly won't regret it.

Thank you for taking the time to listen! If you have any questions or want more information or clarification, please feel free to contact me at (808) 966 -7211 or honumoon@yahoo.com.

Sincerely,

Mica Schalk Tricia Schalk

Parent

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Friday, October 1, 2021 1:08 PM

To: WPCtestimony

Subject:Letters of support (zip file)Attachments:Letters of Support.zip

Attached are several letters of support

I am one of the students of Connections Public charter school. I am very excited to have our school at Kaʻūmana property and to have that community have us and show us our aloha and our ohana. Our school really supports that to keep fighting for our school to be at Kaʻūmana property. We will always try our best to do this because we want our school to be at Kaʻūmana property for the kumu's and the students to learn more and have more room and also we can have more helpers and have more students at our school. We need help to build our new school and for us to be over at Kaʻūmana property to have us up there and Connections was fighting for 9 years until now. The reason that I moved to Connections public charter school is because this school will never give up on you and they will keep you on task and push you forward. I have been here only for this year and I know that this school will always be here and helping us even if we are annoying they will still understand what we have to do.

Mahalo, Kaena Au & Grade 10

My name is Kaliyah, I am in the 11th grade at Connections Public Charter School. I've been at Connections for 11 years. Our school has been fighting for the Ka'ūmana property since I started going to this school, maybe even before I started going to this school. The reason why I moved here 11 years ago is because my mom saw a better opportunity for me to get better at reading, writing, math, science and so much more things. I have learned so much from all the things that my mom wanted from me too, I've learned math, reading, writing and science. All of these subjects have improved for me over the years. Coming to this school was the best decision that I have ever made in my entire 11 years of being here. This school has been a great school for my family and I. I hope to graduate from this school just like how my sister did 2 years ago. I wanna graduate from this school because this school gives us opportunities and support in many different ways. I wanna leave for college, come back to see this amazing school and staff that have been there for me all of my 11 years of being here. The land would give us great opportunities to connect with the land and whatever animals that we decide to have on our land. I really hope that the Windward Planning Commission can give our school the opportunity to become a bigger and better school for the future.

Mahalo, Kaliyah K. Prieto - Enaena & 11th grade

I have been here since 6th grade and i came from hilo union and i moved because i didn't like it there i got into trouble to much and over here is more fun and i dont get into trouble to much over here

Mahalo, *Kamakoa bagorio 10th grade* Dear Windward Planning Commission,

Due to the social distancing mandate, Connections Public Charter School is rather cramped. As such, many students and staff at CPCS would agree that it would be very nice to have some more room. Connections has many plans for the Kaumana Property that they are currently leasing. Some of these include a second school building to expand their capacity and a dormitory to accommodate foreign students with no place to stay. In my opinion, these would be a great and incredibly beneficial addition to Connections, so I humbly request that you consider funding this project.

Yours truly,

Isaak Lucas, 10th grade

I am Mica Mahalak, a 9th grade student at Kaʻūmana property. I have been here for one year (this is my second year). Right now Kaʻūmana property is a great spot to learn how to mend the land/work with the land and animals. This is just a part of the 72 acres that we could have access to. I have looked at the plan for the new school that would get built if you would let us and I would love to go there. I would love to be part of the group of students that has set in motion the building of that incredible learning space and maybe come and visit it in the future or even teach there.

Mahalo, Mica Mahalak 9th grade

I am Savanah from Connections Public Charter School. I came from Oklahoma, a state with poor educational quality, and moved to Hawaii at the beginning of high school. My experience at Connections has been like no other. I feel supported, welcomed, I'm surrounded by people whom I feel comfortable around, and I have had nothing but good times in my high school education.

As a student of Connections since 9th grade, this school is highly deserving of a new building. Only 2 or 3 classes have windows, we have no outdoor area to call our own, and we've been confined to this structure for too long. Make our future brighter by granting us the land we need.

Mahalo from Savanah, 11th grade

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Friday, October 1, 2021 8:50 AM

To: WPCtestimony

Subject: Letter of support from Kathy Booth (SPP-12-138)

Attachments: Letter of Support- Kathy Booth.pdf

Letter of support from Kathy Booth

September 29, 2021

Windward Planning Commission Letter of Support - Connections Public Charter School

To Whom It May Concern,

My name is Kathleen Booth and I am the first grade teacher at Connections Public Charter School. I did not begin my relationship with Connections as an employee though, I began as a parent. When my son Daniel was in pre-school at the YWCA, I began looking for a school which was challenging, nurturing, and a part of the Hilo community. I was fortunate to find Connections in the Kress building. My son started kindergarten at Connections and attended school there through the sixth grade. It was during this time that I decided to change careers, go back to school and become a teacher. I was so impressed with the work the teachers were doing at Connections; I knew I would love to be one!

The reason why I am writing this letter is to show my support for the development of the Kaumana Property. The staff and students of Connections will benefit greatly from teaching and learning in a school that can provide them with the possibility of hands-on, project based, outdoor learning surrounded by trees and nature instead of concrete and asphalt. Learning how to live off the land sustainably is not possible in a downtown building. Please allow us to develop a new campus where students K-12 can not only learn outdoors, but they can play outdoors as well

As a teacher at Connections, for the past 15 years, and a parent for 5 years before that, I am dedicated to the success of our school. I believe in the hard work and commitment from my colleagues. I humbly ask for your support in our quest to develop a more appropriate campus for our school ohana.

Thank you for your time and consideration,

Kathleen Booth

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Friday, October 1, 2021 11:58 AM

To: WPCtestimony

Subject: letters of support from Katie Strong & Emily Garland (SPP-12-138)

Attachments: Kaumana Letter- Katie.pdf; Leter of support -Emily.pdf

Here are letters of support from Katie and Emily

October 1, 2021

Emily Garland 188 Hale St., Apt 2B Hilo, HI 96720

Dear Windward Planning Commission,

I am writing in support of allowing Connections Public Charter School to build a school on its Kaumana property.

I am a special education teacher at Connections and have seen firsthand how integral this Kaumana space is to child development.

I planted sandalwood trees with a class of fourth-grade students on the Kaumana property. The students were thrilled at the opportunity to get outside and connect with nature. They talked about the trip for months afterward.

The students at Connections' downtown campus have no outdoor space. A school on the Kaumana property would provide students with their own space to run and play and participate in sports. A Kaumana school would also provide students with the opportunity to learn about their natural environment. Students would learn how to grow their own food. Students would also gain a space for hands-on, project-based learning in every subject.

In our increasingly indoor world, it is vital to foster connections in our youth to our vibrant outdoor environment. Connections is doing essential work in this field. Allowing Connections to build a school on its Kaumana property would do wonders for our next generation of leaders.

Please allow Connections to build a school on its Kaumana property.

Sincerely,

Emily Garland

Emyl Harland

October 1, 2021

Katie Strong 188 Hale St., Apt 2B Hilo, HI 96720

Dear Windward Planning Commission,

I am writing in support of a Connections Public Charter School campus on its Kaumana land.

This Kaumana campus would greatly benefit our society. Providing an outdoor space for students is essential for their health and development. Our struggle against the COVID-19 pandemic makes it even more essential for students to be outside breathing fresh air and benefiting from their physical world. Humans have been dependent on their natural environment for more than 200,000 years. Sadly, we are losing the connection to our outside world. This is irrevocably damaging to our physical and emotional health.

Please support Connections. Give our keiki a chance to be keiki again and allow them to play, breathe and learn outdoors.

Sincerely,

Katie Strong

Katia Strong

Hilo

From: Henry Lee Loy <leeloyh002@hawaii.rr.com>

Sent: Friday, October 1, 2021 2:16 PM

To: WPCtestimony

Subject: Written Testimony for 10.07.2021 opposing Connection's Special Permit Application

10-7-21 Email Testimony

My name is Dr. Henry Lee Loy. I am a retired physician. I reside at 1579 Mele Manu St. Hilo, Hawaii. I am not against the existence of Connections Public Charter School. I oppose the development of a public charter school for 435 students and a 30 person dormatory on the Edita street entrance road for multiple health and safety reasons. My testimony is based upon the existing record in this proceeding.

#1 Traffic

A school of this magnitude is inappropriate for the proposed location. (Exhibit #1: 3-D site rendering Connections Public Charter School Special Permit Application Form (SPAF) for Kaumana Campus, July 2012 Figure 2-9, photo Folder #4 p.58 of 475, #1284, showing single vehicular access from Edita St., with arrows indicating property is located 0.5 miles away from Kaūmana Elementary School and 1.9 miles away from Ernest B. DeSilva Elementary school). On January 31, 2020 the Intermediate Court Of Appeals concluded "even with the proposed traffic mitigation efforts, traffic stemming from the Development would have an adverse effect on surrounding properties." (Exhibit #2 Photo Folder #4 p. 54 of 475, #1280 of School Bus picking up students on Kaumana Drive). Kaumana Drive is tortuous with many curves and no sidewalks. (Exhibit #3 Photo Folder #4 p. 53 of 475, #1279 of car accident scene at the intersection of Kaumana Drive and Edita Street with Ambulance, EMS personal, and Police present). PDF Folder #14, p. 108-110, #3433-3449 JG6 Educational Specifications (EDSPECS) For High Schools, Department of Education, State of Hawaii, December 2006. "Chapter 1: Introduction Section 101-General "The Educational Specifications and Standards for Facilities" shall control and provide the basic guidelines in the acquisition and development of school sites and in the master planning, designing and construction of facilities for all public schools in the State of Hawaii" p.108 of 145. Section 103-Description of the Educational Specifications "The EDSPECS is a guide for the planning of school facilities that takes into account a collection of objectives relating to the needs of the community..."p. 109 of 145. Chapter 2: Planning Section 201-Planning Guidelines, Site Considerations, and Site Concepts for High Schools. 201.3 Site Selection Criteria "The selected site should meet the following general guidelines...(e.) Traffic: The site should not be in an area hazardous to pedestrian or vehicular traffic safety." As shown in Exhibit #2 and #3 above, and the conclusion by the Intermediate Court of Appeals that traffic stemming from the Development would have an adverse effect on surrounding properties the project site will be in an area hazardous to pedestrian and vehicular traffic safety and not meet the EDSPECS guidelines. "The site should have a minimum of two vehicular access points each on a different side of the property." p110 of 145. The Application form states "The campus would have a single vehicular access from Edita Street" (p. 6 SPAF) As seen on Exhibit #1 Edita street is the only access for Mele Manu St. and Edita St. residents. Edita St. will also be the only access to Kaumana Drive for the campus. Finally, in a letter from Fire Chief Darryl Oliveira to Ms. Judy Mariant of Will Chee -Planning & Environmental of February 15, 2009: "Fire apparatus access roads shall be in accordance with UFC Section 10.207: Fire Apparatus Access Roads: More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access." (Appendix A SPAF) Having only one way in and out of the campus does not meet the

EDSPECS guidlines and presents a clear and present danger for Students, Staff, Fire, EMS, Police and the neighborhood community.

#2 Water

The school does not have enough drinking water. "The County of Hawaii Department of Water Supply (DWS) has stated that potable water allocation to the property is limited to 4,200 gallons per day (gpd). Based on a 60 gpd per student standard, the 4200-gallon allocation could support 70 students." (P. 10 SPAF) The Intermediate Court of Appeals' decision questions where the 60 gpd per STUDENT STANDARD came from and that figure required more clarity to explain or support that calculation. On November 9, 2012 PLANNING COMMISSION HEARING TRANSCRIPT p. 84 "MCCALL: Okay I'm Tim McCall, and a civil engineer with the Department of Water Supply. And, yeah you are correct. The amount of water available to that parcel is 4,200 gallons a day...Our water system standards, you know, cause the guidelines say, you know, for school you should estimate, you know, 60 gallons a day per student." (Folder #4 p.84, #1630) In a letter from Lenore N. Ohye, Acting Deputy Director Commission on Water Resource Management to Morris Atta, Administrator Land Division September 15, 2010: "The water demand for this project based on a total of 435 students (@ 60 gallons/student) is 26,100 gpd. This demand is well above the stated 4,200 gpd currently available from Hawaii DWS. While the planned use of harvested rainwater for non-potable uses may reduce the actual potable demand, there should be analyses to estimate what the actual demand for potable water would be." Special Permit Application Form; Revised Draft Environmental Assessment. In a letter from Quirino Antonio, Jr., Manager-Chief Engineer DWS to Ms. BJ Leithead Todd, Director Planning Department of August 29, 2012: Further evidence of the use the Department's Water System Standards for schools is also documented "For your information, the existing 8inch waterline within Edita Street is looped and therefore adequate to provide the required 2,000 gallons per minute of flow for fire protection, as per the Department's Water System Standards for schools." In a letter from Quirino Antonio, Jr., Manager-Chief Engineer DWS to Celia Shen, Will Chee-Planning & Environmental of January 14, 2013: "We have reviewed the preliminary water usage estimate and have the following comments... Based on the preliminary water usage estimate submitted, we will assume that the entire project requires an average daily demand of 10,828 GPD, which is equivalent to twenty-seven (27) units of water at 400 GPD per unit. As such, the Department's existing water system cannot support any additional water demand within the subject parcel at this time. In order to provide additional water, extensive improvments would be required, which may include, but not limited to, source, storage, booster pumps, transmission, and distribution facilities." Email from Kurt Inaba DWS to Layne Novak on August 28, 2013 "As for a cost of their improvements, it will really depend on what options they pursue. If they were to improve our water system to meet their needs as stated in the attached letter, the ball park figure would in the 4 Million Dollar range on the low end. That would include the development of a source, storage reservoir, and transmission lines. The Department is not currently planning to participate in these improvements." (Folder #4 p. 121 of 145, Exhibit JG7 #3450) On p. 26 of the Intermediate Court of Appeals Memorandum Opinion the court affirmed that "there was no definitive evidence in the record that Connections would be able to develop potable water sources." Furthermore, PDF Folder # 14 Exhibit JG6 "Educational Specifications (EDSPECS) for High Schools, Department of Education, State of Hawaii December 2006, 201.3 Site Selection Criteria (h) Availability of Utilities: Appropriate utility infrastructure needs to be in place prior to the start of school

construction." (P. 110 of 145 Planning Guidelines for High Schools). Therefore the project would place an unreasonable burden on a Public Utility, the County Department of Water Supply to provide water for its facilities.

#3 Wastewater, Storm runoff and Drainage

There will be an increase of human and livestock waste, as well as contamination from chemicals and sediment associated with 17 acres of agricultural use. "The Kaūmana area is not served by a municipal wastewater system. Therefore, like all the surrounding properties, Connections would have to provide its own wastewater system as part of the project. An ecological wastewater treatment system would be implemented for the school. One well-known and established system is called the "Living Machine". This type of system is Connections' preferred option over a conventional septic system. Biological treatment systems ... consist of a settling tank(s) and series of tanks/systems (underground or aboveground, depending on the specific design of the system) that progressively clean the wastewater. Bacteria, algae, plants, and other organisms, such as snails and fish are used to break down and digest the organic pollutants...an approximately 12,000 square foot area has been set aside for the biological treatment system." (p. 10,11 SPAF). "If it is not economically feasible to implement a biological wastewater treatment and recycled water system, the school can resort to installing a traditional septic system with leach fields or other disposal system as deemed appropriate" "the project site is located within a critical wastewater disposal area (CWDA) with one (1) acre lot

exception as determined by the Hawaii County Wastewater Advisory Committee. CWDAs are areas where wastewater disposal has the potential to cause adverse effects to the environment and human health because of hydrogeological conditions." (p.63, 64 SPAF).

"The school does intend to include an agricultular program...Roughly one-half of the lower parcel (approximately 17 acres) has been allocated for the agricultural use...in addition the school would like to have a small number of livestock." (P.11, 27 SPAF)

"3.3 Hydrology, Surface Water, and Groundwater: Rainfall is abundant in the Hilo area, with the project area receiving between 160 and 200 inches of rain annually (Juvik and Juvik, 1998). Much of the rainfall percolates into the ground, recharging the underground aquifers. During periods of heavy precipitation, runoff can be problematic if the amount and rate of runoff exceeds the percolation rate of the underlying ground water. Surface Water: There are no perennial streams, lakes or ponds within the project site or in the immediate vicinity. The nearest perennial stream is Waipahoehoe Stream, which flows north of the project site and feeds into Wailoa River. There is topographical evidence that indicates the presence of an intermittent stream south of the lower parcel that drains toward Alenaio Stream. Runoff that flows through Kaūmana Cave to the concrete channel along Edita Street feeds into this intermittent stream..." (P.47 SPAF)

(See Exhibit # 4, SPAF Exhibit C: Location Map showing Property in relation to Waipahoehoe Stream, Alenaio Stream, Downtown Hilo, Wailoa River and Hilo Bay) Contrary to the planners statement above the perennial Waipahoehoe Stream is in the immediate vicinity, as it borders the northern boundary of the lower parcel and flows eastward toward downtown Hilo and the planners admit Waipahoehoe Stream feeds into Wailoa River and another intermittent stream flows eastward along the southern border of the lower parcel and drains toward the Alenaio Stream. "Waipahoehoe stream is in the vicinity of the project, and any potential impacts to this stream should be disclosed." (Letter of February 19, 2009 from Ken C. Kawahara, P.E., Deputy director Commission on Water Resource Management DLNR to Morris Atta, Land Division DLNR, SUBJECT: Early Consultstion for Draft Environmental Assessment for Connections New Century Public Charter School, Hilo, Hawaii).

"In the Kaūmana area. The storm drainage system consists old roadside ditches, culverts, and narrow channels. Most of the area's storm water runoff is discharged through Waipahoehoe or Alenaio Stream." (P 60,61 SPAF)

"Although rare, high flow events have been known to occur from storm water that flows through Kaūmana Cave. Water that naturally seeps into Kaūmana Cave during periods of high rainfall along with surface runoff from the upper regions of Kaūmana Drive that enter into Kaūmana Cave can create high flow conditions. As storm waters are channeled through Kaūmana Cave, there is a potential that water volume could be high enough to exit the cave system through the cave opening on Edita street. From the Edita Street exit, storm water then flows through a concrete channel running parallel to, and alongside Edita Street, where it is directed into a culvert underneath the road and into an intermittent stream that borders the lower parcel's southern boundary. During very severe storms, water has been known to overtop the concrete channel and flow across Edita Street, resulting in some flooding of adjacent areas." (p. 14 SPAF) (See Exhibit # 5, Photo of Concrete Channel and Culvert alongside Edita St. which overflows during severe storms. Note the entrance to the school will be located directly across from the Concrete Channel and Culvert. Folder # 4 p. 56 of 475, #1282)

"Previous flood events in the Kaūmana area do raise concerns with regard to flood conditions." (p. 24 Special permit application form)

During the draft Environmental Assessment (EA) of 2009 Environmental researcher Patricia Kambesis who had conducted speleological, hydrological and resource inventory work in the Kaūmana Cave System since 1996 stated a full Environmental Impact Study was needed to be completed for developement of the project, the Draft EA "Only takes into account the surface hydrology of the area and there is no mention whatsoever of ground water. In fact a perennial underground stream, which is perched on layers of Pahala Ash, flows in the lower levels of Kaūmana Cave. The recharge area for that stream is in and around Kaūmana town. The stream continues to flow underground beyond

the Edita Street culvert and it has been speculated that it recharges a major spring in Hilo. During storm events, the stream overflows its lower level confines and actually upwells into and flows through the main conduit of the cave system. Residents have reported that during major storm events, the Edita Street entrance discharges a heavy flow of water. The ground water hydrology of the cave system is vulnerable to surface pollution caused by faulty septic systems, contaminant transport from roadways, and from chemicals and sediment associated with urban and agricultural land use. Paving more surfaces

for building and parking also increases the flood vulnerability of the area. In order to responsibly manage the surface and groundwater hydrology associated with Kaūmana Cave, a hydrologic study needs to be conducted to delineate the groundwater recharge area, identify underground flow routes and to confirm points of discharge both during base level and storm flow conditions"... The intent of the EA was "to ensure that comprehensive and systematic consideration is given to potential impacts of the proposed action upon the natural and man-made environment" (draft EA p. 7) "...nor any assesssment of the ground water hydrology, or the caves natural resources, indicates that comprehensive and systematic consideration has NOT been given to the impact of construction and developement. These omissions not only potentially compromise Kaūmana Cave System but also run contrary to Connections vision of "constructing a green school which would become a model of sustainable developement and design" (Draft EA p.13). Kaumana Cave System is important for its natural, historical and cultural resources. It is currently used for educational and research purposes, and is a popular tourist and recreational site. Any developement in the area should address impacts within each of these contexts and as such a full environmental impact study is critically important" (Letter dated September 3, 2009 from Patricia Kambesis, Assistant Director Hoffman Environmental Research Institue Western Kentucky University to Will Chee Planning). On May 7, 2010 in a letter from Planner Celia Shen of Will Chee Planning & Environmental to Patricia Kambesis wrote "...we believe that a hydrological study of the scope you indicate is not warranted for this project."

Letters from Ken Kawahara Deputy Director and Lenore N. Ohye Acting Deputy Director, Department of Land and Natural Resources, Commission on Water Resource Management both state "The Commission on Water Resource Management is the agency responsible for administering the State Water Code. Under the Code, all waters of the State are held in trust for the benefit of the citizens of the State, therefore, all water use is subject to legally protected water rights." Further more Chapter 174C -2 State Water Code Declaration of policy: "(c)...adequate provision shall be made for the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhanchment of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

- (d) The state water code shall be liberally interpreted to protect and improve the quality of waters of the State and to provide that no substance be discharged into such waters without first receiving the necessary treatment or other corrective action. The people of Hawaii have a substantial interest in the prevention, abatement, and control of both new and existing water pollution and in the maintenance of high standards of water quality.
- (e) The state water code shall be liberally interpreted and applied in a manner which conforms with the intentions and plans of the counties in terms of land use planning."

The potential impact on the Waipahoehoe Stream in the immediate vicinity as advised by the State of Hawaii Department of Land and Natural Resources Commission on Water Resource Management was not properly scrutinized due to the lack of input and conflicting information presented by the Connection's planner. As Patricia Kambesis wrote "the ground water hydrology of the cave system is vulnerable to surface pollution caused by faulty septic systems, contaminant transport from roadways, and from chemicals and sediment associated with urban and agricultural land use". Therefore wastewater, storm runoff and drainage from the project could potentially adversely impact the ground water hydrology of the cave system, Waipahoehoe Stream, Alenaio Stream, Wailoa River and Hilo Bay. All of these waters are under the protection of the Hawaii Water Code.

In conclusion, the proposed location of Connections Public School with 435 students, a 30 person dormitory, a 6 horse barn, some livestock, a robust agricultural progam of 17 acres, encompassing a total of 70 acres in an established

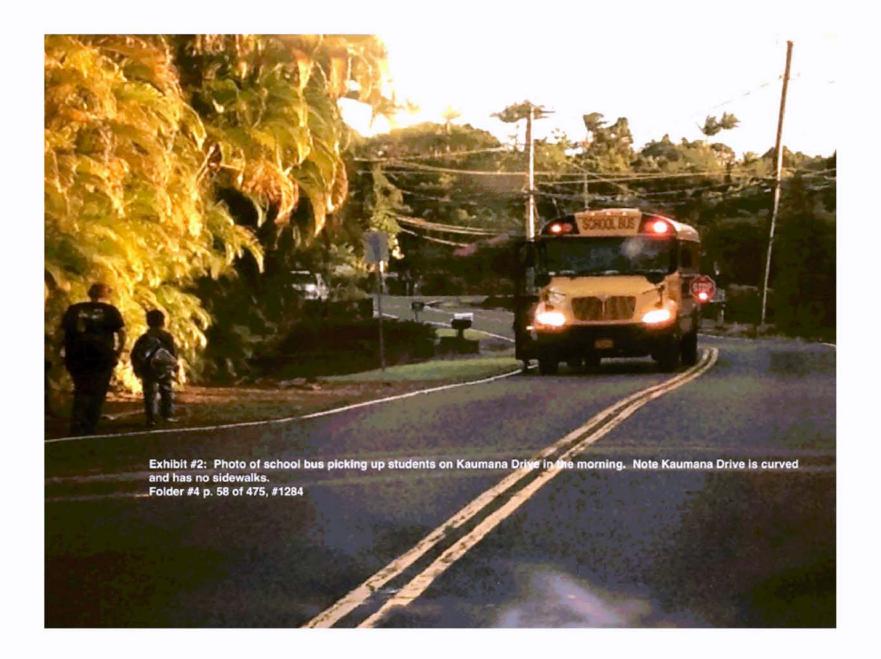
residential neighborhood is inappropriate due to multiple health and safety reasons that will affect Students, Staff, the neighboring community and even the town of Hilo downstream of the project. You have been given the authority to deny this Special Use Permit and I respectfully ask that you do so.

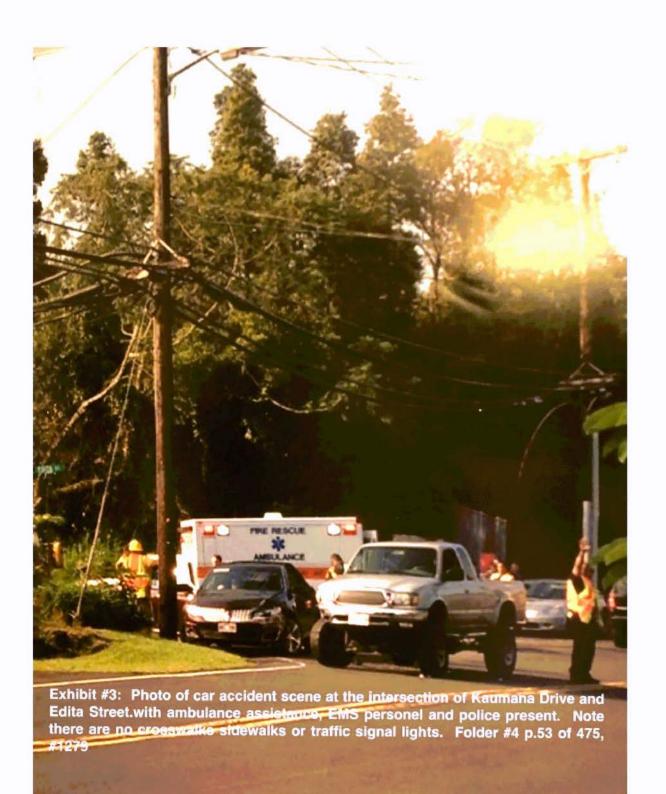
Respectfully Submitted,

Dr. Henry K. Lee Loy

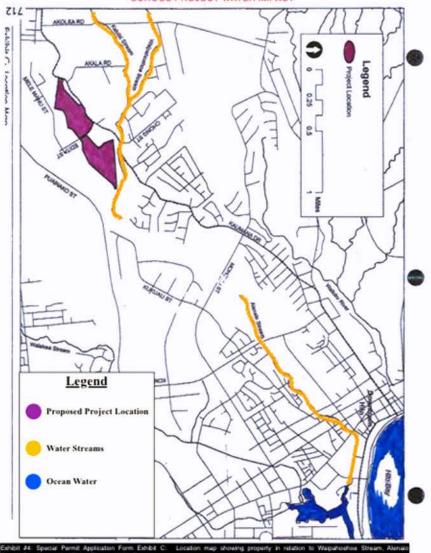


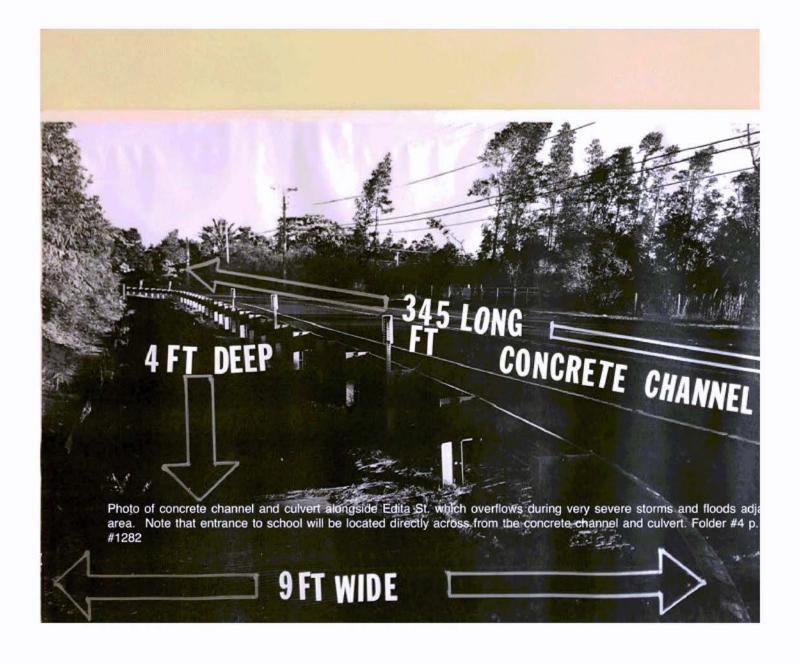






PROPOSED CONNECTIONS PUBLIC CHARTER SCHOOL PROJECT WATER IMPACT





Mori, Ashley

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Friday, October 1, 2021 10:42 AM

To: WPCtestimony

Subject: Letter of Support from student Nainoa (SPP-12-138)

Attachments: __Planning Commission- Nainoa.pdf

Letter of support from a student, Nainoa

Dear Planning Commission

My name is Nainoa Hines and I go to Connections pcs. I live by the kaumana property. It would be nice if I could walk to school and back. Less gas will be used.

When I go to the property I like to plant stuff and move our goats. The goat help cut tall grass and some brushes down. I also like to water the plants.

When my mom drives me and my siblings down to school we see so many no connections in kaumana signs. It make me sad to see all these disrespectful signs in my neighborhood

From Nainoa Hines

Mori, Ashley

From: Yolanda Keehne <yolandakeehne@gmail.com>

Sent: Friday, October 1, 2021 6:22 PM

To: WPCtestimony

Subject: Letter Opposing the Construction of the New Connections Public Charter School

10-1-21

Attachments: Letter Opposing Construction of the New Connections Public Char.pdf; ATT00001.htm

Aloha,

Attached please find my testimony in the form of a letter opposing the construction of

the new Connections Public Charter School campus in upper Kaumana.

Sincerely,

Yolanda Keehne Upper Kaumana Resident October 2, 2021

Yolanda M. Keehne 69 'Uhaloa Place Hilo, HI 96720

Windward Planning Commission County of Hawaii Hilo, HI 96720 Email: WPCtestimony@hawaiicounty.gov

RE:

Testimony in Opposition of the Proposed Construction of the New Connections Public Charter School in Upper Kaumana, Hilo, Hawaii

To Whom It May Concern:

I am writing in opposition of the proposed construction of the **Connections Public Charter School** campus in upper Kaumana, near Edita Street and Kaumana Drive. My home is located approximately 2 miles from this area and I have been a resident there for 42 years. As a result I believe that I am qualified to offer my opinion on this important matter.

First of all, the area is not equipped with the proper infrastructure to support a school campus of this size. There is no existing water supply source that could accommodate such a high consumption rate required for a school campus.

In addition to this, there is no existing wastewater system that could accommodate such a large facility. Flooding events are commonplace in this area and have presented numerous problems in the past. Most of the "run off" from rainstorms and flooding nearby is discharged via the Alenaio or Waipahoehoe streams and this project could exacerbate the problems related to this.

Finally, the construction of a large school campus on the proposed property would certainly create more traffic nearby and it would adversely affect safety and transportation issues for faculty, students, parents, fire-rescue services, law enforcement services and residents in the surrounding communities. This is not simply a matter of "not in my back yard," i.e. **NIMBY**, rather it is a matter of multiple complex essential issues that must be carefully considered for the *greater good* and the far-reaching negative consequences that are likely to occur as a result of poor planning.

Sincerely,

Yolanda M. Keehne

Yolanda Fr. Keekne

Mori, Ashley

From: Joy A Loo <mcleodj003@hawaii.rr.com>

Sent: Friday, October 1, 2021 2:34 PM

To: WPCtestimony

Subject: Oppose Connections Charter School on Edita Street in Kaumana

My Name is Joy A. Loo. I reside at 164 Hokulani Street in Kaumana.

I am a lifelong resident of Kaumana, and I oppose the construction of Connections Charter School on Edita Street on Kaumana. I orginally testified against this development & signed the petition against the construction of the school along with over 80% of my Kaumana community. My reasons for opposition against Connections Charter School on Edita St, in Kaumana have not changed.

- 1. Safety Issues: One way in and out of the proposed campus is a bad idea, indicates poor planning and is potentially dangerous situation for students, staff, Fire, Police and EMS personnel in the event of an emergency. The school was offered other locations including a site near the UH College of Agriculture, which they declined, although the school admin claims to be a agricultural based school.
- 2. Traffic: on January 31, 2020 the Intermediate Court of Appeals concluded that "Traffic stemming from the Development would have an adverse effect on surrounding properties". The placing of this school in this neighborhood community with limited access will result in a significant increase in traffic as the roads in this area are simply not designed to accommodate As a lifetime Kaumana resident, I resent how this will personally affect me and my ohana. The school administration had also admitted that children of the Kaumana community would not necessarily be considered as potential students of their campus. Why have a school in Kaumana that doesn't welcome community students?
- 3. Water Supply: The school has already acknowledged that the maximum potable water available from the Department of Water Supply (DWS) is 4200 Gallons per Day (GPD), and at full build out, the rate of consumption is expected be anywhere from 6858 to 10,828 (GPD), and possibly as high as 26,600 GPD. While they have stated that they could build a rainwater catchment system or a well to accommodate the sizeable increase in demand, they have also stated that they would then it over to DWS to operate and maintain. Why should any public utility such as DWS be responsible for operating and managing the water supply issue on behalf of a privately owned institution. And if they decide to go the rain catchment route, what happens in times of drought?
- 4. Pollution: The proposed school leaders stated that their preference for providing a wastewater solution for its own wastewater is through the use of a treatment system called the "Living Machine", which uses bacteria, algae, plants, snails and fish to breakdown and digest organic pollutants. On page 14 of the permit form itself, it states that "During very severe storms, water has been known to overtop the concrete channel and flow across Edita Street", and on page 24 of the permit form it also states that "most of the area's storm water run off is discharged through Waipahoehoe or Alenaio Streams". As the Waipahoehoe Stream which flows into the Wailoa River is nearby, can the school assure that the accidental release of foreign biological matter will never occur?

For these reasons & the fact that they take an adversarial stance toward the Kaumana Community, I again ask you to vote NO to Connections in Kaumana.

Mahalo, Joy A Whitmarsh Loo 808-987-1447 mcleodj003@hawaii.rr.com

Mori, Ashley

From: michael matsukawa <kapulu@msn.com>

Sent: Friday, October 1, 2021 9:01 AM

To:Dacayanan, MelissaSubject:Connections Hearing

Attachments: DOC002.pdf

Attached is a corrected Exhibit "1." The attachment corrects some typographical errors set forth in the Exhibit "1" that I had submitted earlier. Hard copy sent to all parties.

Michael J. Matsukawa 75-5751 Kuakini Highway Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385 MICHAEL J. MATSUKAWA, 1885 75-5751 Kuakini Highway, Room 201 Kailua-Kona, Hawaii 96740 Telephone (808) 329-1385

Attorney for Intervenor JEFFREY GOMES

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

| In the Matter of |) SPP No. 12-00138 |
|---|----------------------------------|
| CONNECTIONS NEW CENTURY |) TYPOGRAPHICAL CHANGES |
| PUBLIC CHARTER SCHOOL AND |) TO INTERVENOR'S PROPOSED |
| COMMUNITY BASED EDUCATIONAL |) <u>AMENDMENTS</u> TO WINDWARD |
| SUPPORT SERVICES |) PLANNING COMMISSION'S |
| |) FINDINGS OF FACT, CONCLU- |
| |) SIONS OF LAW AND DECISION |
| |) AND ORDER; EXHIBIT "1" |
| |) CERTIFICATE OF SERVICE |
| | Original Argument and Decision |
| | Date: 5/1/14 |
| Application for Special Permit Application No.; 12-000138 |) Place: Aupuni Center, Hilo, HI |
| | On Remand: |
| TMK (3) 2-5-006-141; Kaumana | Date: 10/7/21 |
| South Hilo, Hawaii |) Place: Remote Hearing |
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TYPOGRAPHICAL CHANGES TO INTERVENOR'S PROPOSED AMENDMENTS TO WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

Intervenor JEFFREY GOMES, by and through his attorney, Michael

J. Matsukawa, submits typographical corrections to Exhibit "1" previously

submitted herein. Typographical errors exist in Exhibit "1" and have been corrected. The same editing marks remain.

Dated at Kailua-Kona, Hawaii: October 1, 2021.

MICHAEL J. MATSUKAWA Attorney for Intervenor Jeffrey

Gomes

EXHIBIT "1"

Using Original FF/CL/Order

Delete Matter struck
Add New Matter italicized

BEFORE THE COUNTY OF HAWAI'I

WINDWARD PLANNING COMMISSION

| CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL AND COMMUNITY BASED EDUCATIONAL SUPPORT SERVICES PLANNING COMMISSION'S AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER; CERTIFICATE OF SERVICE Application No. 12-000138 Argument and Decision TMK (3) 2-5-006-141; Kaumana, Date: 5/1/14 Place: Aupuni Center, Hilo, HI On Remand: Date: 10/7/21 Place: Remote Hearing | In the Matter of |) | SPP No. 12-00138 |
|--|--------------------------------|---|--------------------------------|
| COMMUNITY BASED EDUCATIONAL SUPPORT SERVICES FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER; Application for Special Permit Application No. 12-000138 Argument and Decision TMK (3) 2-5-006-141; Kaumana, Date: 5/1/14 South Hilo, Hawaii Place: Aupuni Center, Hilo, HI On Remand: Date: 10/7/21 | CONNECTIONS NEW CENTURY |) | |
| SUPPORT SERVICES) FINDINGS OF FACT, CONCLUSIONS) OF LAW AND DECISION AND ORDER; Application for Special Permit) CERTIFICATE OF SERVICE Application No. 12-000138) Argument and Decision TMK (3) 2-5-006-141; Kaumana,) Date: 5/1/14 South Hilo, Hawaii) Place: Aupuni Center, Hilo, HI) On Remand:) Date: 10/7/21 | PUBLIC CHARTER SCHOOL AND |) | COUNTY OF HAWAI'I WINDWARD |
|) OF LAW AND DECISION AND ORDER; Application for Special Permit | COMMUNITY BASED EDUCATIONAL |) | PLANNING COMMISSION'S AMENDED |
| Application for Special Permit Application No. 12-000138 Argument and Decision TMK (3) 2-5-006-141; Kaumana, Date: 5/1/14 South Hilo, Hawaii Place: Aupuni Center, Hilo, HI On Remand: Date: 10/7/21 | SUPPORT SERVICES |) | FINDINGS OF FACT, CONCLUSIONS |
| Application No. 12-000138) Argument and Decision TMK (3) 2-5-006-141; Kaumana, Date: 5/1/14 South Hilo, Hawaii) On Remand: Date: 10/7/21 | |) | OF LAW AND DECISION AND ORDER; |
|) Argument and Decision TMK (3) 2-5-006-141; Kaumana, South Hilo, Hawaii) Date: 5/1/14 Place: Aupuni Center, Hilo, HI) On Remand: Date: 10/7/21 | Application for Special Permit |) | CERTIFICATE OF SERVICE |
| TMK (3) 2-5-006-141; Kaumana,) Date: 5/1/14 South Hilo, Hawaii) Place: Aupuni Center, Hilo, HI) On Remand:) Date: 10/7/21 | Application No. 12-000138 |) | |
| South Hilo, Hawaii) Place: Aupuni Center, Hilo, HI) On Remand:) Date: 10/7/21 | |) | Argument and Decision |
|) On Remand: Date: 10/7/21 | TMK (3) 2-5-006-141; Kaumana, |) | Date: 5/1/14 |
|) Date: 10/7/21 | South Hilo, Hawaii |) | Place: Aupuni Center, Hilo, HI |
|) Date: 10/7/21 | |) | • |
| , | |) | On Remand: |
|) Place: Remote Hearing | |) | Date: 10/7/21 |
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COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S <u>AMENDED</u> FINDINGS OF FACT, CONCLUSIONS OF LAW <u>AND DECISION AND ORDER</u>

The County of Hawai'i Windward Planning Commission (hereinafter referred to herein as "Planning Commission") submits filed its original Findings of Fact, Conclusions of Law and Decision and Order pursuant to the request of the Windward Planning Commission of the County of Hawai'i at its May 1, 2014 meeting in Hilo, Hawai'i. Present before the Planning

EXHIBIT "1"

Commission were Ted H.S. Hong, counsel for Applicant Community Based Education Support Services; Carter K. Siu, Deputy Attorney General, for Applicant Connections New Century Public Charter School (hereinafter collectively referred to herein as "Connections"); Amy G. Self, Deputy Corporation Counsel, for County of Hawai'i Planning Director (herein as "Director); Jeffery K. Gomes (herein as "Gomes"), Intervenor, Pro Se; and Sandra Pechter Song, the Hearing Officer (herein as "Hearing Officer"). The contested case hearings by the Hearing Officer were held on October 21, and 22, 2013, November 12, 2013, January 8 and 22, 2014.

On January 30, 2020, following an appeal from the Planning Commission's original decision in CAAP-17-0000050, the Intermediate Court of Appeals remanded the case to the Planning Commission for further proceedings consistent with the Intermediate Court of Appeals' decision. On October 7, 2021, the Planning Commission held a further hearing on Connections' application based on the existing record previously created without taking further evidence.

Present before the Planning Commission were

At its hearing held on October 7, 2021, the Planning Commission voted to deny

Connections' application and the Planning Commission now submits its Amended Findings of

Fact, Conclusions of Law and Decision and Order.

AMENDED FINDINGS OF FACT

I. Procedural Background

1. This matter involves an application filed by Connections on July 25, 2012, for a special permit, pursuant to Section 205-6, Hawai'i Revised Statutes ("HRS") and Rule 6 of the County of Hawai'i Planning Commission Rules of Practice and Procedure (hereinafter "Commission Rules") to allow the development of a charter school campus with dorm facilities and

related improvements for students in kindergarten through twelfth grade (hereinafter, the "Development"), on 70.15 acres of land situated within the State Land Use Agricultural District, at Ponahawai, Kukuau 2nd, South Hilo, Hawai'i, commonly referred to as the Kaumana area of Hilo, designated by State of Hawai'i Tax Map Key ("TMK") (3) 2-5-006-141 (hereinafter, the "Property").

- 2. Connections has leased the Property on which the Development is proposed from the State of Hawaii Department of Land and Natural Resources under General Lease No. S-6029.
- 3. Notices of the Windward Planning Commission of the County of Hawai'i (hereinafter "Planning Commission") hearings on the proposed Development, including hearings held on remand, were provided to property owners surrounding the proposed Development.
- 4. The *Planning* Commission held public hearings on the Connections application on November 9, 2012 [sic], December 6, 2012 and January 10, 2013. At the hearing held on January 10, 2013, the *Planning* Commission moved [sic] to deny the Connections application and instructed the *Planning* Commission staff to prepare proposed findings of fact, conclusions of law and order, which would be considered for adoption by the Planning Commission at its meeting of March 7, 2013.
- 5. At the *Planning* Commission meeting of March 7, 2013, the *Planning* Commission suspended the preparation of the findings of fact, conclusions of law and order, and granted a request by Connections for a contested case on the subject application. Gomes submitted a petition to intervene in this matter of March 7, 2013, and the *Planning* Commission admitted him as a party to the proceeding.

- 6. A petition to intervene in this proceeding was filed by Terrence Yoshioka on November 4, 2013, after the contested case hearing in this proceeding had already commenced. On November 8, 2013, the Hearing Officer denied this petition in accordance with Rule 4-6 of the Commission Rules, on the ground that the subject petition was untimely filed.
- 7. The Director is a party to this proceeding pursuant to Rule 4-7(a) of the Commission Rules. The Director initially recommended approval of the Connections application, subject to specific conditions, but took no position on the application at the contested case hearing.
- 8. The subject application involves a parcel of land greater than fifteen acres in area. Therefore, any permit approved by the *Planning* Commission is subject to final approval by the State Land Use Commission. *As stated, the Planning Commission held a public hearing on remand and voted to deny Connections' application.*

II. Proposed Development

A. General Description

- 9. The Connections application proposes the development of a K to 12 charter school campus with dorm facilities, and intergenerational program that would provide childcare and elder care at a single facility on the Development, together with related uses on the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion would be used for outdoor type of education programs, including a forestry preservation program.
- 10. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25

intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, kitchen/dining facility, library /resource center, caretaker's residence and other related facilities. Two parking lots capable of supporting 140 parking stalls would be provided.

- 11. The Development would relocate and expand the existing charter school which is presently operating from two separate campuses. The elementary and middle schools are in the Kress Building on Kamehameha Avenue, in downtown Hilo, and the high school is located in leased facilities at the Nani Mau Gardens, just outside of Hilo town.
- 12. Connections proposes having 50 full-time and 17 part-time employees at full buildout of the Development, which is the same number presently employed for this charter school.
- 13. Connections anticipates that 50% of the student population will come from the Hilo area and 50% from the Puna area miles away from the Development. The present student population for this charter school is composed primary of students from these two geographic areas.
- 14. The Development does not propose to establish a charter school on the Property to serve the needs of the immediate vicinity in the Kaumana area of Hilo, although some students from the area may attend this school.
- 15. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school and administration building, with the projected opening to be within 2.5 to 3.5 years.

B. <u>Public Utilities and Services</u> Access/Traffic

- 16. Access to the Development is proposed from Edita Street which connects with Kaumana Drive, a major Hilo artery. Both roads are owned and maintained by the County of Hawai'i. Edita Street has a 60-foot right-of-way width, with a 48-foot wide pavement width fronting the Development. The paved area accommodates two 20-foot wide travel lanes, a 20-foot wide shoulder on the northeast side of the road, and an 8-foot wide shoulder on the southwest side. Edita Street is in good condition; however, the Hawai'i County Police Department recommended that the unpaved shoulderalong Edita Street extending from Kaumana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.
- 17. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaumana Drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service or LOS operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B". Although the TIAR concludes that traffic will not be adversely affected by reason of the Development, the County Department of Public Works recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.

18. Notwithstanding the findings of the TIAR and the recommendations of the Police Department and Department of Public Works, the area residents uniformly expressed concerns about the adverse traffic impact of the Development along Edita Street and Kaumana Drive.

Also, residents objected that the TIAR was four years old and the traffic counts contained in the TIAR were taken when certain schools were not in session.

Water

- 19. 19.a A maximum of 4,200 gallons per day (hereinafter "gpd") of water or seven (7) water units from an existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus, is available from the County of Hawai'i municipal water system to serve the entire Development. Based on a 60 gpd per student standard, 4,200 gallons of County water could only support 70 students. At full build out the entire Development would require 26,100 gpd.
- 19.b Contrary to the Intermediate Court of Appeals' statements, an official from the County Department of Water Supply testified that the department uses a general consumption rate of 60 gpd per student, subject to the calculations that the applicant submits for the estimated rate of consumption at a school. (Transcript: November 9, 2012, T. McCall, Page 84, Record on Appeal at 1630) In its Final Environmental Assessment (Record on Appeal 124) Connections used the same 60 gpd consumption rate for the school.
- 19.c Based on a 60 gpd per student general consumption rate, 4,200 gallons of County water could support 70 students. Connections' expert presented a matrix of various water consumption rates, but his calculations were not final. Using the Department of Water Supply's

60 gpd general consumption rate, [a]t full build-out the entire Development would require 26,100 gpd.

- 21. 20. Based on the 60 gpd consumption rate, [t]he available water from the County of Hawai'i municipal water system is insufficient to support the first phase of the Development.
- 21. The available water from the County of Hawai'i municipal water system is insufficient to support the first phase of the Development.
- 21. Notwithstanding the unavailability of potable water from the County system for the Development, the existing 8-inch waterline within Edita Street is adequate to provide the required 2,000 gallons of water per minute for fire protection of the proposed Development.
- 22. Connections has proposed using water efficient fixtures and supplementing the available County water with either a catchment system for non-potable water or developing an additional water source. However, Connections has not produced any evidence to demonstrate that it has or can develop sufficient water for the Development.

Wastewater

23. Connections is proposing to provide its own wastewater system meeting the requirements of the State of Hawai'i Department of Health (hereinafter "DOH"). Connections prefers installing an ecological/biological wastewater system called the "Living Machine." However, should such a system prove to be unfeasible, Connections would install a traditional septic system with leach fields or any other system required by DOH.

Drainage

24. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the property is outside the 500-year

flood plain. Notwithstanding this flood designation, during severe storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Edita Street.

<u>Utilities</u>

25. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kaumana Drive.

Public Safety

26. The Hawai'i County Police Department expressed concern that the Development would increase noise, crime and traffic. However, there was no evidence that the Police Department lacks the ability to provide police protection for the Development.

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

- 27. The Property is zoned A-1a and is presently vacant and undeveloped. Under the County of Hawaii Zoning Code, a school is not a direct permitted use on land that is zoned A-1a. Section 25-5-72, Hawaii County Code.
- 28. Surrounding lands to the south and west of the Property are zoned A-1a, with properties further south being zoned A-20a and A-10a [sic]. Lands to the north of the Property area zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaumana Drive.

 One parcel is also zoned Open adjoining the northwest corner of the lower portion of the

Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity.

- 29. The soils on the Property are primarily composed of pahoehoe lava flow. The State Department of Agriculture's map showing agricultural lands of importance to the State of Hawai'i shows the Property as being unclassified. Also, the Land Study Bureau classifies the soil on the Property under its detail land classification system, as "D" or "Poor" for agricultural activity.
- 30. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 12880-1881. Although Connections submitted a request to the State Historic Preservation Division ("SHPD"), by letter dated August 17, 2010, requesting a "no-effect" determination from that agency, SHPD has not responded to the request.
- 31. A portion of the Kaumana Cave is accessible from the upper portion of the Property. Connections is proposing to refrain from constructing any major school facilities on the upper portion of the Property and to maintain a minimum 100-foot buffer on either side of the cave alignment to alleviate concerns about impact from the Development on the cave ecosystem. The hearing officer made a site inspection of the Property and observed concrete waste material that had been placed on the Property.
- 32. A botanical survey of the Property identified 11 native plant species, but none of these species are considered protected species.
- 33. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.

34. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

IV. STATE AND COUNTY PLANS

- 35. The Property is *located* within the State Land Use Agricultural District. A school is not a permitted use within the Agricultural District; however, a school may be permitted in this district if a special permit (or exception) is obtained for such use pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules as an exception to existing land use laws. Similarly, under the County of Hawaii Zoning Code, a school may be permitted in the district if a special permit (or exception) is obtained for such use, as is provided in Section 25-5-72(d)(7), Hawaii County Code. See Neighborhood Board No. 24 v. State Land Use Commission, 64 Haw. 265, 270-271, 639 P.2d 1097, 1101-1102 (1982) ("exception" or a special permit is a land use control device for obtaining relief from zoning restrictions in certain situations).
- 36. 36.a The County of Hawai'i General Plan Land Use Element provides, at 14-7, that:

"There are no universal standards for determining the amount of land needed in the future for each land use or activity located within an area. Estimates can be made, however, of the future land use acreage allocation for each use. The land use pattern is a broad flexible design intended to guide the direction and quality of future developments in a coordinated and rational manner. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map indicates the general location of various land uses in relation to each other."

The County General Plan Land Use element, at 14-13 to 14-14, contains the following goals, policies and standards:

"14.1.2(a) Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.

"14.1.3(c) Allocate appropriate requested zoning <u>in accordance with the existing</u> <u>or projected needs</u> of neighborhoods, community, region and County.

"14.1.4(a) The broad-brush boundaries indicated are graphic expressions of the General Plan policies, particularly those relating to land uses. ... Land required for community and government services and programs ... may be accommodated within the allocated acreages." (emphasis added)

Although these provisions generally apply to actions of County of Hawai'i officials when they zone land, these provisions also provide guidance to the Planning Commission when the commission is requested to allow land to be used for a development by way of a special permit (or exception).

Urban type land uses are assigned to the following categories:

• Urban Designation

"<u>High Density</u>: General commercial, multiple family residential and related services (multiple family residential – up to 87 units per acre).

"Medium Density: Village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential—up to 35 units per acre).

"Low Density: Residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre."

The County of Hawai'i General Plan Land Use Pattern Allocation Guide ("LUPAG")

Map designates the Property for low density urban uses. The LUPAG designation of Low

Density urban use allows for residential uses, with ancillary community and public uses, and

neighborhood and convenience type commercial uses The Development is not proposed to be a

community or public use for the Kaumana area of Hilo.

- 36.b The differing levels of urban density set forth in the General Plan reflect a graduated pattern of regional uses and activities (high density) to village uses and activities (medium density) and to neighborhood uses and activities (low density).
- 36.c The General Plan does not define the kind of activity that is deemed to be "ancillary" for land that is located in the LUPAG Low Density urban area and that is zoned A-la.
- 36.d A dictionary meaning of the word "ancillary" is "subsidiary" or "supplemental," meaning that a use that is "ancillary" to land located in the LUPAG Low Density Urban area would be a use that is "subsidiary" or "supplemental" to the activities that are allowed for such land under the County of Hawaii Zoning Code.
- 37. 36.e The County of Hawai'i zoning for the Property is Agricultural with a minimum lot size of one acre (A-1a). Under Section 25-5-72(d) of the Hawaii'i County Code, a school is not a direct permitted use, but a school may be constructed and operated on the Property if a special permit (or exception) is obtained for that purpose permitted in an Agriculture zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District. In this respect, a school can be a form of "ancillary" (or supplemental) activity that is placed on land that is located in the LUPAG Low Density Urban area. See Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 271, 639 P.2d at 1102 ("the broad division of uses" in various land use districts "can be supplemented" by way of an exception or special permit).
- 36. However, the question that remains is whether the Planning Commission should or should not grant Connections a special permit (or exception) for the school.

37. The General Plan Public Lands element, at 14-65, states:

"The use of publicly owned lands needs to be more <u>judiciously administered</u>. There is at present <u>no</u> master plan for the vast public lands; ... (emphasis added)

"14.9.2 Goals

(a) Utilize publicly owned lands in the best public interest and to maximum benefit for the greatest number of people.

"14.9.3 Policies

- (a) Encourage uses of public lands that will satisfy specific public needs, such as housing, recreation, open space and education.
- (b) Encourage the adoption of State programs for State lands consistent with the General Plan."

Article XI, Section 1 of the Hawai'i State Constitution also requires the County of Hawai'i, as a political subdivision of the State, to promote the development and utilization of publicly owned land in a manner that is consistent with their conservation and in furtherance of the self-sufficiency of the state." Section 13-29 of the County of Hawaii Charter contains a similar directive to the Planning Commission.

38. The Development, which is proposed to be located on State land, is subject to the Hawai'i State Environmental Impact Statement law, Chapter 343, HRS. Connections prepared an environmental assessment in accordance with Chapter 343, and declaration with a finding of no significant impact was issued for the Development by the State of Hawai'i Department of Land and Natural Resources.

39. The Property is not situated within the Special Management Area ("SMA"), since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

V. SPECIAL PERMIT REQUIREMENTS

- 40. HRS Section 205-6, which governs special permits, provides in pertinent *part* as follows:
 - "(a) The county planning commission may permit certain unusual and reasonable uses within agricultural ... districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural ... district other than for an agricultural ... use ... may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. ...

"(c) The county planning commission may, under such protective restrictions as may be necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter ...

...

- "(d) Special permits for land the rea of which is greater than fifteen acres ... shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval including the adherence to representations made by the applicant."
- 41. Planning Commission Rule 6-7 provides, in pertinent part, that:

"[t]he Commission shall not approve a Special Permit unless it is found that the proposed use;

- "(a) is an unusual and reasonable use of land situated within the Agricultural ... District ...; and
- "(b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

"The Commission shall also consider the criteria listed under Section 6.3(b)(5)(A) through (G)."

- 42. The seven criteria under Planning Commission Rule 6-3(b)(5)(A) through (G) are:
 - "(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - "(B) The desired use shall not adversely affect surrounding properties;
 - "(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
 - "(D) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established;
 - "(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
 - "(F) The proposed use will not substantially alter or change the essential character of the land and the present use;
 - "(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design plans."
- 43. Although Gomes asserts that the criteria for a use permit should be considered in the subject application, that criteria is not relevant to a special permit determination.

VI. APPLICATION OF SPECIAL PERMIT CRITERIA TO THE DEVELOPMENT

A. Land Use Law Objectives

- 44. The purpose of the State Land Use Law is to preserve the lands of high agricultural potential for agricultural use. The Property consists of land that is not considered highly valuable for agricultural uses. Thus, the use of the Property for a school is not contrary to the objectives sought to be accomplished by the State Land Use Law (Chapter 205, HRS).
- 45. Likewise, the Development, which proposes the construction of a school for 381 students and related facilities is not akin to a major recreational theme park attracting 1.5 million

people each year to the area. Therefore, such a development would not frustrate the objectives and effectiveness of the Hawaii's land use scheme and would not require a State land use boundary amendment in lieu of a special permit. Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 272, 639 P.2d at 1103. However, the State Office of Planning, in its letter dated October 3, 2012 (Record on Appeal at 404), stated that a boundary amendment might be an alternative procedure to employ in this case.

B. <u>Affect on Surrounding Properties</u>

- 46. Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents.
- 47. Measures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate the overwhelming concerns raised by surrounding property owners.

C. Burden on Public Agencies to Provide Services

- 48. There is insufficient water available from the County water system to service the Development. Therefore, to allow the Development would unreasonably burden the Department of Water Supply to provide water for its facilities.
- 49. There is no evidence that Connections has the ability to develop a potable water source as a mitigating measure, previously proposed by the Director.
- 50. A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a high school for 107 students [in] its first phase, when the

potable water available, pursuant to the Department of Water Supply's general consumption rate of 60 gpd per student rate, which Connections also utilizes, would only allow for 70 students.

51. As such, the proposed use may unreasonably burden the County Department of Watery Supply to provide water to the Development.

D. <u>Unusual Conditions</u>, Trends and Needs

- district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also, the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. Hower, there was no evidence presented to demonstrate the location of a school that is not intended to specifically service the needs of the immediate community is such an unusual condition, trend or need that justifies location of the Development at this location.
- 52.a Act 187, Hawaii Session Laws (1961), precursor to Chapter 205, HRS and Rule 6-3(b)(5)(D) of the Commission Rules, required the Planning Commission to consider unusual conditions or uses that could not have been reasonably foreseen when the State Land Use Agricultural District boundaries and Regulations were adopted or amended.
- 52.b The State Land Use Agricultural District in which the Property is located includes the Property, the residential subdivision lying along Edita Street and Mele Manu Street and the large-lot subdivision lying along the Puainako Street extension. These properties lie between Kaumana Drive and the Puainako Street extension. The development of the subdivisions was foreseeable and was encouraged by the then existing district boundary and regulations for the district.

52.c There was no evidence to demonstrate that any unusual conditions, trends or needs have arisen, or were unforeseen, since the State Land Use Agricultural District in which the Property is located was established in the 1970s.

E. <u>Suitability of Land for Agricultural Uses</u>

- 53. The Land Study Bureau soil classification rating for the Property is "D" or "Poor," which suggests that the land may be unsuited for agricultural uses. *The State*Department of Agriculture did not provide comments in Connections' Final Environmental Assessment or to the Planning Commission.
- 54. Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use. In addition, Connections is proposing to construct greenhouses on the Property and conduct an agricultural program in conjunction with its curriculum.
- 55. Connections can use the Property, or a portion of the Property, for agricultural uses with or without a school on the Property Based upon the representations of Connections, it cannot be said that the Property is unsuited for agricultural uses.
 - F. <u>Alteration or Change of the Essential Character of the Land and District</u> and Present Use of the Land and District
- 56. The Property is a forest and is vacant of any structures. The lower half of the property will be converted into a school with classrooms, dormitories, a gymnasium, cafeteria and parking lots.
- 57. 57.a As stated above, the State Land Use Agricultural District includes the Property, the residential subdivision lying along Edita Street and Mele Manu Street and the

large-lot subdivision lying along the Puainako Street extension, i.e., the land lying between Kaumana Drive and the Puainako Street extension.

57.b The establishment of a school within the Agricultural District will bring changes to the district. Connections contend the changes are beneficial to the district, but the Planning Commission finds that [t]he Development of a school on the Property will change the essential character of the land and the district forested land and its undeveloped use. See Neighborhood Board No. 24 v. State Land Use Commission, supra, 64 Haw. at 271, 639 P.2d at 1102 (relief by way of exception or special permit may be allowed when "the use desired would not change the essential character of the district or be inconsistent therewith").

G. Consistency with the General Plan

- 58. The County General Plan LUPAG map designates the Property for low density urban use. "Low density uses" under the General Plan include residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses.
- 58.a The Planning Commission, in determining whether Connections should be granted a special permit (or exception) from existing land use laws for the school, must evaluate the evidence against the goals, policies and standards set forth in the General Plan, which goals, policies and standards are discussed in Finding of Fact Nos. 36.a to 37, above, and 58.e to 58.g, below.
- 58.b As for publicly owned land, the General Plan Land Use element for Publicly Owned Land, at 14-65, calls for the "judicious administration" of "State programs for State land," but the State has not yet published a "master plan" that the Planning Commission can consider. (Finding of Fact No. 37)

- 58.c The State Department of Land and Natural Resources, through its board, issued General Lease No. S-6029 to Connections for a school, which action can be considered to be part of the State's "master plan," but at the same time, the State Office of Planning, now the State Office of Planning and Sustainable Development, has suggested that a boundary amendment might be an alternative procedure to be employed to ensure that the Property is "judiciously administered." (Letter dated October 3, 2012, Record on Appeal 404)
- 58.d The absence of a formal State "master plan" for publicly owned lands, such as the Property, makes it difficult for the Planning Commission to determine whether the Planning Commission should or should not grant Connections a special permit (or exception) for the school.
- 60. 58.e Furthermore, [t]he Economic, Public Facilities and Land Use elements of the County General Plan, at 2-13, 10-1 and 14-14, all also require the Planning Commission to consideration of other social and community concerns as follows:

Economic Element - Goal

"Provide an economic environment that allows new, expanded, or improved economic opportunities that are <u>compatible</u> with the County's cultural natural and social environment."

Public Facilities Element - Goal

"Encourage the [p]rovision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community."

Land Use Element – Policy

"Encourage the development and maintenance of communities <u>meeting</u> the needs of its residents in balance with the physical and social environments." (emphasis added)

- 61 58.f The evidence has established significant concerns from the community regarding the compatibility of the Development with the surrounding community. (Finding of Fact Nos. 46 to 50, 52.c, 55 and 57.b)
- 62. 58.g Although [T]he County General Plan Public Facilities Education course of action for South Hilo, at 10-7, Item 10.2.4.2.2(a), also encourages the establishment of additional schools as the need arises, but the proposed Development, at the subject location, is not compatible with surrounding properties contrary to the General Plan.
- 58.h On balance, the Planning Commission therefore determines that the Development is not consistent with or is contrary to the General Plan's goals, policies and standards.
- 59. The Development, which proposes a charter school that is not specifically intended to service the immediate community surround the school, is not consistent with the uses permitted in areas of low density urban use.

H. Public Natural Resources Trust

- 59.a According to the General Plan Public Land element, publicly owned land should be used for the "best public interest" and the "maximum benefit for the greatest number of people." Similarly, Article XI, Section 1 of the Hawaii State Constitution requires the development of such land to be "consistent with their conservation and in furtherance of the self-sufficiency of the state."
- 59.b In this instance, the publicly owned resources are the Property itself and to some degree the supply of potable water that is managed by the County of Hawaii Department of Water Supply.

59.c In <u>Kauai Springs, Inc. v. Planning Commission</u>, 133 Haw. 141, 173, 324 P.3d 951, 983 (2014), a case that involved the use of water, the Hawaii Supreme Court announced the principles that the Planning Commission should follow. Pertinent portions of the court's decision provide:

When an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations in the waters of the state. ... An agency must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process. ... The agency measures the proposed use under a "reasonable and beneficial use" standard, which requires examination of the proposed use in relation to other public and private uses. ... The agency must apply a presumption in favor of public use, access, enjoyment, and resource protection. (emphasis added)

The agency is duty-bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes.... Permit applicants must demonstrate their actual needs, and, within the constraints of available knowledge, the propriety of draining water from public streams to satisfy those needs. ... If there is a reasonable allegation of harm to one of the uses protected by the public trust, then the applicant must demonstrate that there is no harm in fact or that any potential harm does not preclude a finding that the requested use is nevertheless reasonable and beneficial.

. . .

The applicant's proposed use <u>must be denied if the applicant does not show that</u> there is no practicable alternative water source. ... "Such a requirement is intrinsic to the public trust." ... "The [agency] cannot fairly balance competing interests in a scarce public trust resource if it renders its decision prior to evaluating the availability of alternative sources of water" (emphasis added)

Lastly, if the impact is found to be reasonable and beneficial, then in light of the cumulative impact of existing and proposed diversions on trust purposes, the applicant must implement reasonable measures to mitigate this impact.

- 59.d There is no evidence that when the State Department of Land and Natural Resources decided to issue General Lease No. S-6029 to Connections that the Department subjected Connections' proposal to the rigorous analysis described by the Hawaii Supreme Court.
- 59.e The Planning Commission can assume, nonetheless, that the State Department of Land and Natural Resources, in requiring Connections to obtain a special permit for the school,

believed that the Planning Commission would be the initial public agency that will undertake the analysis of the "reasonableness" and "beneficial" value of Connections' proposal.

VII. <u>UNUSUAL AND REASONABLE USE OF LAND</u>

- 63. 60.a The construction of a school on the Property is an unusual use of the land because a school is not a permitted use in the State Land Use Agricultural District. However, the evidence presented does not demonstrate that the Development is a reasonable use of the Property. Specifically, Connections has not demonstrated how the school can be built without sufficient potable water resources. Nor, has Connections demonstrated how the development of a regional charter school on the Property that does not specially service the needs of the immediate community and that is overwhelmingly objected to by the immediate community is reasonable site for this facility. In addition, Connections has not demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application.
- 60.b In determining whether the school is a "reasonable" use of the Property, the Planning Commission considered whether the Development possesses the characteristics of a "reasonable" use, measured against the guidelines that are set forth in Rule 6-3(b)(5)(A) to (G) and Article XI, Section 1 of the Hawaii State Constitution.
- 60.c Although the Development does not contradict the objectives and effectiveness of the State Land Use Law (Chapter 205, HRS) and Regulations and although the State Department of Land and Natural Resources believes the Property can be used for a school, provided that the Planning Commission grants a special permit therefor, the evidence demonstrates that
- *(1) the Development will adversely affect surrounding properties, Rule 6-3(b)(5)(B), and, further, that

- * (2) there is insufficient potable water available for the Development, as proposed, Rule 6-3(b)(5)(C),
- * (3) no unusual conditions, trends or needs in the State Land Use Agricultural District have arisen since the district boundaries and regulations therefor were first established, Rule 6-3(b)(5)(D),
- * (4) the Property is suited for agricultural purposes, with or without the Development, $Rule\ 6-3(b)(5)(E)$,
- * (5) the Development will alter the essential character of the Property and the State Land Use Agricultural District in which the Property is located, Rule 6-3(b)(5)(F),

and, further, when measured against the applicable goals, policies and standards of the General Plan.

- * (6) the school is not compatible with existing activities in the subject State Land Use Agricultural District, Rule 6-3(b)(5)(G).
- 60.d Finally, the Planning Commission is mindful of the letter of the State Office of Planning, now the State Office of Planning and Sustainable Development, dated October 3, 2012, (Record on Appeal 404), that a boundary amendment might be a preferred alternative for Connections to obtain the entitlements it needs to build and operate a school on the Property.
- 60.e As for the public natural resources trust, the evidence demonstrates that the Development is not a "reasonable" use of publicly owned land, even though a school might be "beneficial" to public education.

AMENDED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the *Planning* Commission makes the following Conclusions of Law:

1. To the extent that any of the Findings of Fact constitute Conclusions of Law, or Conclusions of Law constitute Findings of Fact, they shall be considered and construed as such.

- 2. The *Planning* Commission has jurisdiction over the subject special permit application including the ability to deny or recommend its approval to the State Land Use Commission, pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.
- 3. Connections had the burden of proof in this matter before the *Planning*Commission, including the burden of producing evidence as well as the burden of persuasion, by a preponderance of evidence, to demonstrate how its request is consistent with the guidelines for a special permit- is a "reasonable" use as outlined by Section 205-6, HRS and Rule 6 of the Commission Rules and by the Hawaii Supreme Court in Kauai Springs, Inc. v. County Planning Commission, supra. Connections has failed to meet this burden.
- 4. The Development does not adequately meet the requirements or guidelines for a special permit as required by Section 105-6, HRS and Rule 6 of the Commission Rules.
- 5. The Development is not consistent with the County General Plan, particularly as to the impacts on the immediate community.

AMENDED ORDER

Based on the preceding Findings of Fact and Conclusions of Law, Special Permit

Application SPP No. 12-000138 of Connections New Century Public Charter School and

Community Based Education Support Services to develop a K to 12 charter school campus with

dorm facilities and related uses on 70.15 acres situated within the State Land Use Agricultural

District is hereby denied.

| Dated: Hilo, Hawai'i, | May 12, 2014 |
|-----------------------|------------------------------|
| | |
| | Ву |
| | RONALD GONZALES, Chairman |
| | Windward Planning Commission |

END OF EXHIBIT "1"

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

| In the Matter of |) SPP No. 12-00138 |
|--------------------------------|--------------------------|
| CONNECTIONS NEW CENTURY |) |
| PUBLIC CHARTER SCHOOL AND |) |
| COMMUNITY BASED EDUCATIONAL | ,) |
| SUPPORT SERVICES |) |
| |) CERTIFICATE OF SERVICE |
| |) |
| Application for Special Permit |) |
| Application No.; 12-000138 |) |
| |) |
| TMK (3) 2-5-006-141; Kaumana |) |
| South Hilo, Hawaii |) |
| | |

CERTIFICATE OF SERVICE

I served a copy of the foregoing document upon the individuals who are formal "parties" to the contested case by mail through the U.S. Postal Service, postage prepaid, on October 1, 2021:

| TED H.S. HONG | CARTER K. SIU |
|--------------------|--------------------------------|
| P. O. Box 4217 | 235 S. Beretania St., Room 304 |
| Hilo, Hawaii 96720 | Honolulu, Hawaii 96813 |
| JEAN K. CAMPBELL | MELISSA DACAYANAN |

Office of Corp. Counsel
Planning Department
101 Aupuni Street, #325
Hilo, Hawaii 96720
Planning Department
101 Pauahi Street
Hilo, Hawaii 96720

Dated at Kailua-Kona, Hawaii: October 1, 2021.

MICHAEL J. MATSUKAWA

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Friday, October 1, 2021 8:49 AM

To: WPCtestimony

Subject: letter of support from John Woolverton (SPP-12-138)

Attachments: Support Letter- John Woolverton.pdf

Letter of support from John Woolverton

To: Windward Planning Commission

From: John Woolverton

- --Faculty Chairperson: Connections Public Charter School
- --Resident of Kaumana City, Ua Nahele St., Hilo HI 96720

This letter's purpose is to appeal in favor of the approval of Connections Public Charter School's development plan in Edita St. off Kaumana Drive. It is written by somebody that commutes up and down Kaumana Drive daily.

(In comparison to the current Kress building location) The fact that a more spacious, open-air campus with access to outdoor recreation and learning facilities will be a benefit to the students' physical and mental health, and therefore be much more conducive to successful learning and an overall healthy and vibrant school environment, is evident on its face, and therefore is not the primary argument conveyed by this letter.

With a legal, proper, and sustainable plan in place for water and sewage, there can really be no other decisive counter argument in opposition to Connections' development plan, especially one that centers around traffic concerns. Therefore, the primary theme of this letter is to allay any fears that a school on Edita St. off Kaumana Dr. will cause any significant traffic disruption and/or delays, and arguments made to the contrary are therefore exaggerated and biased by ulterior motives and disingenuous self-interest.

Assertion: Connections PCS campus on Edita St. will NOT cause significant traffic disruption.

Arguments:

- 1. Kaumana Elementary School, whose enrollment is not that much smaller than Connections' K-12, already exists on Kaumana Drive (just a mere ¼ mile mauka of Edita St.), is adjacent to a main North-South cross street named Akolea Rd, and whose entrance is located on a downhill and twisted section of Kaumana Dr. much more perilous than the Edita St. intersection, does NOT cause any traffic disruption whatsoever.
- 2. Connections' start time (between 8:15 8:30am) is clearly after any "rush" period in the area, which occurs, if at all, decidedly earlier than those times. ("rush" being a misnomer for any time on this part of Kaumana Dr. since the Saddle Rd. extension was completed)
- 3. Students that use Connections' bus service arrive significantly earlier in the morning than the students to use their families' own transportation. Therefore, the daily arrival to students on campus is decidedly staggered. Never are they all arriving at school simultaneously. Never will traffic arrive on Edita street all at one time.
- 4. Traffic moving mauka on Kaumana Dr., the direction from which the students will be arriving (on a staggered timetable as asserted above), is extremely light on weekday mornings. Traffic moving makai at this time on this part of Kaumana Dr. is barely any heavier.
- 5. The massive shoulders on Edita St. make any notion that the residents of Edita St. will be "blockaded" clearly false.

Thank you for your consideration of the above arguments.

John B. Woolverton

- --Faculty Chairperson: Connections Public Charter School
- --Resident of Kaumana City, Ua Nahele St., Hilo HI 96720

From: Mele Andaya <mele.andaya@hotmail.com>

Sent: Saturday, October 2, 2021 10:46 AM

To: WPCtestimony

Subject: WPC Hearing-Connections Public Charter School

Aloha,

My name is Segundo Andaya. I reside on Kaumana Drive. I am opposed to construction of a school on Edita Street. On January 31, 2020, the Intermediate Court of Appeals concluded "traffic stemming from the Development would have an adverse effect on surrounding properties." Kaumana Drive has many blind curves and a dramatic increase in traffic that will incur should Connections Public Charter School be constructed will compromise the safety of all residents residing on Kaumana Drive. This is not a good location for this school.

Thanks, Segundo Andaya

From: Ke'ala Lee Loy <keleeloy@hawaii.rr.com>
Sent: Saturday, October 2, 2021 12:01 PM

To: WPCtestimony

Subject: Testimony in opposition to Special Use Permit Application for Connections Public

Charter School

To: Windward Planning Commission

Re: Agenda Item #4 Connections Public Charter School (CPCS) Permit Application

The Connections Public Charter School (CPCS) Permit Application has been denied twice since 2014. It has been appealed twice and both appeals were upheld. We find ourselves here once again as the Court of Appeals remanded the decision back to you, the Windward Planning Commission (WPC).

To be clear, CPCS is a GREAT idea, it is just a TERRIBLE location with SAFETY red flags everywhere you look.

What's changed that we find ourselves here once again before the WPC?

Has the proposed project changed?

Has the geography of the proposed project site changed?

What's changed?

Other than being in an unprecedented worldwide pandemic, what's changed are the members of this commission. This commission voted to exclude any current or updated information while deciding on the proposed permit application. In my opinion that was an irresponsible and reprehensible decision as this pandemic will change EVERYTHING about how we move forward in our educational institutions. I get it, you don't want to be inundated with MORE information.

Let us not forget there are principles, guidelines and best practices about living on an island in the middle of the Pacific that cannot be discounted or avoided. There are too may development GREAT ideas and not enough attention to the potential outcomes.

He ali'i ka 'āina he kauwā ke kanaka.

The land is chief, man is its servant/steward.

There's much wisdom in this 'ōlelo no'eau, it implies we are all land stewards because we need it to survive. It doesn't need us, we need it. It reminds us that the lay of the land, its geographical features and natural elements are in charge, not us. There are basic mauka/makai principals of island living that are really quite predictable. Island living teaches us what happens mauka affects and effects makai. Every. Single. Time. A wise and well-trained kahuna kuhikuhi pu'uone (expert who points out the land contours and its relationship to the natural elements, equivalent to about 5 different engineer titles) could tell you precisely why a school of this nature is not appropriate to build on Edita Street.

We can predict that the waste water will trickle makai with normal Hilo rain or travel with bullet force during torrential rain down Waipahoehoe and Alenaio, ultimately ending up in Hilo Bay.

When kanaka (the servant or steward, us) alluded to in the 'Ōlelo No'eau proceeds with its plan even though the geography tells us it is inappropriate, we end up with huge problems like the Hilo Bay soccer field previously known as Wailama River, the 'Ō'ōkala Dairy with its offensive smelly wastes heading makai in the gulches of neighborhoods and the overflow of the Kaūmana culvert exiting from Kaūmana caves on Edita across from the proposed project site. All examples of **force fitting permit applications** and **poor planning.**

As the Windward Planning Commission with the power to approve or deny this special permit, please take the time to study the case and know and understand the lay of the land this project is requesting a permit for. Our community deserves your full attention to all the details before making this decision. Please use your moral compass to guide you.

Mahalo nui,

Pauline Ke'ala Lee Loy

1579 Mele Manu St,

Hilo Hi. 96720

keleeloy@hawaii.rr.com

Ke'ala Lee Loy keleeloy@hawaii.rr.com

From: Fay Sakata <fsakata07@gmail.com>
Sent: Sunday, October 3, 2021 5:06 PM

To: WPCtestimony

Subject: Testimony in Opposition of Special Permit Application for Connections Charter School

My name is Fay Sakata, and I live on Mele Manu Street, near the site of the proposed charter school. The project will have an adverse impact on the surrounding neighborhood.

On the matter of the General Plan, while it could be argued that the school is an ancillary use as part of the Low Density designation, it is still not an automatically allowable use. The General Plan must be viewed against the Zoning Code, which implements the General Plan. The Zoning Code, like the General Plan, are all part of the existing record.

Within the single-family residential zone, a school is not an outrightly permitted use. It is subject to a Use Permit, the same public review and approval process as the Special Permit. Section 25-2-60 states that "Use permits are permits for certain permitted uses in zoning districts which require special attention to insure that the uses will neither unduly burden public agencies to provide public services nor cause substantial adverse impacts upon the surrounding community.

The point here is that impact to surrounding community or neighbors is an overarching criteria, whether a Use Permit or Special Permit. And the neighbors are overwhelming saying that the project will have an adverse impact to their quality of life in terms of noise, traffic, and the like.

As noted by my fellow neighbors and the Court, we request the Commission to exercise its discretion and deny the request.

Thank you for your time,

Fay Sakata Mele Manu Street Resident

From: Ryan Nishida <velveeda16@yahoo.com>
Sent: Sunday, October 3, 2021 11:18 PM

To: WPCtestimony

Subject: Connections Public Charter School Special Permit Application

Aloha Windward Planning Commission (WPC),

My name is Ryan Nishida, and I am writing this testimony in opposition of the Special Permit Application (SPA) for the construction of the Connections Public Charter School (CPCS) campus in Upper Kaumana. While no one can deny that a need exists for the students of CPCS to have facilities befitting their curricula, the proposed location in Kaumana lacks necessary infrastructure to accommodate a student body and campus of the size proposed by CPCS. As I am sure you are all aware, there exists a great deal of opposition from the residents in immediate proximity to the project and I'd like to offer additional testimony in support of the opposition to CPCS's SPA in its current form.

Deficiency in Exploration of Alternative Sites – Page 16 of the Environmental Assessment (EA) of CPCS's SPA, lists alternative development sites that were considered for their campus and lists reasons for being excluded. While they state that roughly 50% of their current student body resides outside of Hilo, none of the alternative sites evaluated were outside of Hilo's city limits. Considering the opposition of area residents and the lack of infrastructure, it would be reasonable to explore other locations outside of the city limits that can still effectively keep the school within close proximity to a large portion of their student body. Such exploration could lead to locations better suited to accommodate their needs that have supporting infrastructure, compatible zoning, and community support for their project.

Traffic - According the Traffic Impact Analysis Report (TIAR) in CPCS's SPA, there are to be 681 total trips to and from the campus on a daily basis resulting from this project. 681 additional vehicles on a narrow shoulder-less Kaumana Dr. and at a stop sign on Edita Street on any given day is beyond reasonable. As a resident, I traverse this roadway on a daily basis and every traffic occurrence whether its a vehicle accident, road maintenance, mail delivery, busses dropping off passengers, or even pedestrians attempting to walk on Kaumana Drive can cause significant delays and potential for significant bodily harm and injury. During times of emergency or natural disasters which can be frequent these days, I fear that the additional traffic load from this school will render Kaumana Drive ineffective and will prevent residents from their only means of accessing their homes. In addition, I feel that the TIAR as it stands, lacks significant explanation as to how and when the data was attained as there is no date on the information used other than the excerpts taken from other studies. Based on the date of the SPA I can only conclude that the TIAR is in excess of 10 years old and its relevance should be brought into question. For a campus that is meant to have 473 persons on site (381 students, 25 intergenerational clients, 50 full time staff, and 17 part time staff) are we to assume they will not require large commercial delivery and support vehicles for their cafeteria, solid waste, and water tankers that will need to traverse a narrow two-lane road with no shoulder on a regular basis for their needs? None of this was explained in the TIAR.

Water Supply – According to CPCS's SPA, the County Department of Water Supply allows for 4200 gallons of potable water per day. To put this number in perspective, based on my own water bill, my family of 4 uses 280 gpd (70 gpd per person) of county water to drink, cook, bathe and take care of household duties. CPCS's SPA proposes a residence hall of 30 individuals, and a cafeteria to support their 473 students and staff. CPCS estimates that 60 gpd is needed per person and by this criteria, 42% of their allowable potable water will need to be used in support of the resident hall alone not including the daily needs of students as well as the cafeteria they propose to have. They also estimate that they can create a catchment system that can generate as much as 30,000 gpd of non-potable water, however that system would represent barely enough to sustain the 473 person campus for 1 day based on the 60gpd estimate. This will likely result in the need to have water tanker trucks deliver water to support this campus and ultimately add to traffic on Kaumana Drive.

Prolonged "Temporary" Construction – According to page 12 of the SPA, the phases of construction whether started independently or concurrently, may take up to 25 years. 25 years of intermittent construction even if using BMPs is incredibly taxing to a residential neighborhood. As the SPA states, construction will be dependent on funding, which means that intermittent construction can take even longer for this project. To allow a 25 year construction quagmire in a residential area that will cause traffic delays, noise, and dust pollution is beyond the limit of reasonable and sound judgment.

Due Process - The "Old Boy Network" system that CPCS's attorney's bristle against is being used at the Hawaii State level to strong-arm the WPC into approving their request. The State Appellate Court ruling has effectively undermined the County of Hawaii and its right to exercise land use, its zoning code, and its General Plan in its own jurisdiction. Hawaii County's Permitted Uses By Zoning District table explicitly states that Schools are allowed in zones MCX, ML, and MG, none of which are applicable to the site and area in question.

(https://www.planning.hawaiicounty.gov/home/showpublisheddocument/301481/637203338523370000) If that is the case, why have a zoning code if such exceptions are to be made regardless of the testimony of the residents who these zoning codes are intended to protect? CPCS is effectively telling the WPC and impacted area residents that they can build their project because their supporters at the State level say they can, and that the WPC and impacted residents have no right to stop their project.

For the reasons stated above and the opposition from the affected parties residing in the physical location of the proposed project, I believe the WPC would be derelict in its duty were it to approve the Special Permit request for a project as enormous as CPCS that is based upon information over a decade old and one that fails to address the lack of critical infrastructure including water, noise caused by endless construction, and traffic congestion required for a project of its size.

Thank you for your time and consideration,

Ryan Nishida

From: Steven Sakata <stevenysakata@hawaiiantel.net>

Sent: Sunday, October 3, 2021 6:12 PM

To: WPCtestimony

Subject: written testimony for "Connection School application case"

My name is Steven Sakata, and I live on Mele Manu St., near the site of the proposed charter school. The project will have an adverse impact on the surrounding neighborhood. The record will show that there were considerable objections from the community. A petition was submitted which showed that of the 106 lots within the Pacific Plantation Subdivision, 90 or 85% opposed the project. Further, a survey was taken of properties within 500 feet of the proposed site. There were 170 lots, excluding government land and road lots. Of these, 116 or 68% opposed; 54 or 31% took no position or could not be contacted (vacant land or absentee owners). One of the criteria for a Special Permit is whether the use would have an adverse impact to surrounding property." The statement from the Police Department noting its adverse traffic impact combined with the perceptions and statements of the overwhelming majority of the project's neighbors should be sufficient to conclude that the request indeed would have an adverse impact. As noted by the Court, the Commission has wide discretion in deciding whether to approve a special permit. While the request may meet some of the other criteria, the most critical one – in our estimation – is its impact to the community. We therefore respectfully request the Commission to exercise its discretion and deny the request.

Sincerely, Steven Sakata

From: Eric Boyd <eric_boyd@connectionspcs.org>

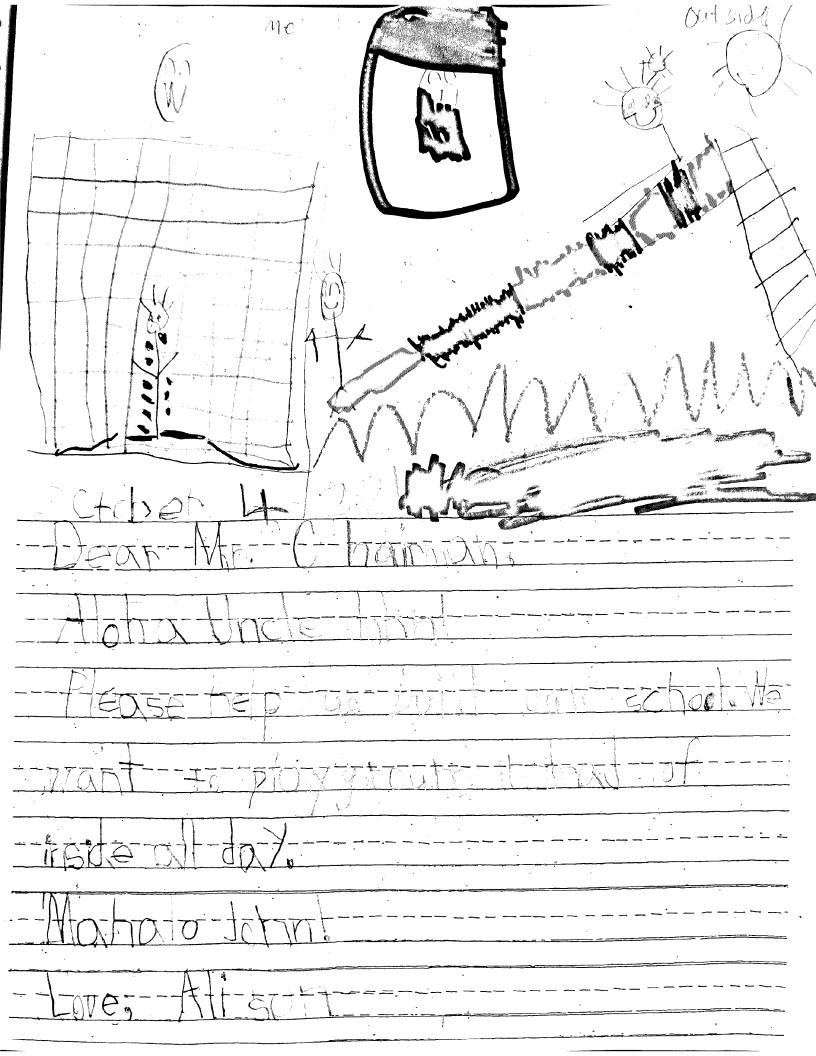
Sent: Monday, October 4, 2021 2:16 PM

To: WPCtestimony

Subject: Letter of support from Alison (SPP-12-138)

Attachments: Letter of support- Alison.pdf

Another great letter of support from a 1st. grader- Alison



From: June Sakamoto <jsyokota@hawaii.rr.com>

Sent: Monday, October 4, 2021 2:30 PM

To: WPCtestimony

Subject: Testimony re Connections hearing on 10-07-21

Attachments: Testimony of June Sakamoto re Connections hearing 10-07-21.pdf; ATT00001.htm

To the Windward Planning Commission:

I have attached my written testimony regarding the Special Permit Application by Connections New Century PCS. Please distribute this to the Commissioners and appropriate parties prior to the hearing on October 7, 2021. Thank you.

October 4, 2021

To: The Windward Planning Commission

From: June Sakamoto (1439 Mele Manu St., Hilo, HI 96720)

Re: Connections Charter School's Application for a Special Permit

This testimony is submitted on behalf of myself, in opposition to Connections Charter School being built on Edita Street in Kaumana due to the negative impacts the school will have on traffic, safety, and our quality of life.

Increased traffic and safety issues are a concern, not only for residents of the Pacific Plantations Subdivision, but also of residents up and down the length of Kaumana Drive. A 2002 article in the Star Bulletin quoted Planning Director Bobby Jean Leithead-Todd as saying that the "narrow, winding Kaumana Drive...has the highest accident rate of any two-lane road on the island." An article on the website of Geometrician Associates (they were hired to do the EIS for the Puainako Street Extension project) states "County officials were faced with high accident rates on ...Kaumana Drive, a curvy, narrow road with numerous driveways." A 9/22/2004 Star Bulletin article referred to Kaumana Drive as "narrow and winding with drop-offs into open drainage ditches along much of its length." The Puainako Street extension helped ease some of the traffic, but traffic will once again increase if Connections is allowed on Edita St. Imagine what it will mean for fire and emergency services or police trying to make their way through congested traffic on Kaumana Drive! Imagine, too, what this will mean for residents of the area!

A school of Connections' size will diminish the Kaumana neighborhood's intrinsic serene nature, which is one of the reasons why our community overwhelmingly opposes this project. Commissioner Au conceded years ago that community consensus is important because after all, the community is the one that will be driving by the project every day. Then-Commissioner Moses expressed it perfectly when she said, "An important criteria for any development is the community support for it." Testimonies on record and signatures of people opposing the school have clearly shown an important lack of support for the school by the surrounding neighborhood.

Before placing your vote, I ask that you deeply consider the residents who will be affected most by the ramifications of your decision. If the Commission approves the permit, residents who set their roots here many years ago will have to live with your decision for what could possibly be the rest of their lives. This means enduring years of construction, increased traffic and noise, safety concerns, a diminished peaceful existence, and so on. And down the road, the County would likely again face a need to address traffic and safety issues on Kaumana Drive due to the increased traffic generated by this development.

I ask the Commission to please deny Connections Charter School's application for a special permit so they may seek an appropriate location for their development.

From: NEWTON MILLER <rabbit4273@yahoo.com>

Sent: Monday, October 4, 2021 10:11 PM

To: WPCtestimony

Subject: Testimony concerning Connections Charter School - Opposition

Aloha,

My testimony is below. I would also like to testify at the hearing. Mahalo.

My name is Kimo Miller, resident on Kaumana Drive near Edita street. I am voicing my opposition to having Connections Charter School in our quiet Kaumana neighborhood.

First of all, as noted in early testimonies, their vision of having a K thru 12 school in our neighborhood will without a doubt cause disruptions and challenges to the lifestyles that many of us in our elderly years have enjoyed for many years.

It's been 7 years since the commission dealt with this Charter school request and I am dumbfounded that why in these 7 years, the schools visionaries have not found a more suitable location in Hilo with the land and access that would not disrupt an already existing neighborhood. They had the time to look for alternative sites and even meet with the community to look for some compromises; but no, they chose to be more "in your face" to the community and plug on.

I know alternatives exist for this school. Perhaps some mutually agreeable compromises cannot be reached; at least they could have but did not make the effort.

Thank you for taking my testimony under consideration. Aloha!

Kimo Miller 808-961-0104

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Monday, October 4, 2021 2:05 PM

To: WPCtestimony

Subject: Letter of support from Kaui (SPP-12-138)

Attachments: Letter of support- Kaui.pdf

Letter of support from 1st. grader Kaui

Playground

From: Les Sakamoto <lessakamoto@gmail.com>

Sent: Monday, October 4, 2021 9:34 AM

To: WPCtestimony

Subject: Written testimony attached for Connections hearing on 10/07/2021

Attachments: Testimony of Lester Sakamoto re Connections PCS Hearing on Oct 7 at 9 am.pdf

I am presenting my written testimony to the Windward Planning Commission, attached as a PDF file. This testimony is submitted in connection with the Hearing on Special Permit Application SPP No. 12-000138 scheduled for October 7, 2021. Please ensure my testimony is made available to the Commissioners and all appropriate parties.

Respectfully submitted,

Lester Sakamoto

1439 Mele Manu St.

Hilo, HI 96720

<<...>>

TESTIMONY OF LESTER SAKAMOTO

RE: REMAND OF SPP 12-000138 TO THE WINDWARD PLANNING COMMISSION FOR APPLICANT CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL HEARING DATE: THURSDAY, OCTOBER 7, 2021 AT 9:00 A.M.

October 3, 2021

To the Windward Planning Commission and its Chair, the Hon. John R. Replogle:

My name is Lester Sakamoto, and I have lived in the Pacific Plantations Subdivision, situated near the location of the Connections New Century Public Charter School's proposed new campus, for nearly 30 years. I am testifying against this project due to the location selected for this development. But first, I must emphasize that I am not against the school itself, its faculty, or its students, but rather, against the site that was chosen for their new complex.

I believe that the Special Permit Application SPP No. 12-000138 of Connections New Century Public Charter School should be denied because the Applicant failed to meet the grounds for a Special Permit as stipulated by Section 6-7 of the County of Hawaii Planning Commission Rules of Practice and Procedure.

Section 6-7 of that document states that one of the requirements that must be met for approval of the Special permit is that the proposed use "Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended" [Section 6-7(b)], and further states that "The Commission shall also consider the criteria listed under Section 6-3(b)(5)(A) through (G)" [emphasis added], to wit:

"The following criteria shall also be addressed:

- (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (B) The desired use shall not adversely affect surrounding properties;
- (C) Such use shall not unreasonably burden public agencies to provide road and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district:
- (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans."

I am writing to urge the Windward Planning Commission members to very carefully address each of the seven above-captioned criteria when considering whether the Special Permit should be granted. Please

look beyond the rhetoric and anecdotal representations made by the Applicant that, on the surface, might appear to satisfy these conditions. With further analysis, and with the benefit of public testimonies, you will find that what the Applicant has provided often lacks definitive supportive substance; i.e., they may have discussed—but they have not suitably addressed and definitely have NOT satisfied—all of these objectives. The burden is upon the Applicant to prove compliance and congruence with these objectives, and I believe their failure to do so is reason to deny the Special Permit.

During prior hearings on this case, there were numerous credible testimonies submitted against the Special Permit Application, and this ultimately led to the Planning Commission's denial of the Applicant's Special Permit. The facts, issues and substantive reasons for denial of that permit presented by these testimonies are still valid today, particularly those relating to the lack of adequate water supply, issues relating to wastewater treatment and disposal, traffic and safety, etc., so I will not repeat them here.

Instead, I will focus on just two of the criteria listed under Section 6-3 of the Planning Commission Rules of Practice and Procedure, specifically that "the desired use shall not adversely affect surrounding properties" [Section 6-3(b)(5)(B)] and "the proposed use will not substantially alter or change the essential character of the land and the present use" [Section 6-3(b)(5)(F)].

As mentioned earlier, I have been a resident of the Pacific Plantations subdivision for nearly three decades. As such, I am quite familiar with the past and current character of the subject land and its surroundings. Through the years, I have witnessed our neighborhood grow into a friendly, cohesive, and peaceful community. We have been blessed with great neighbors and friends whose ages span several generations. Having the natural forested area near the entrance of our subdivision (the proposed site of the new school complex) served as an ecological buffer from the main road (Kaumana Drive), adding significantly to our quiet and peaceful existence here; i.e., our intrinsic quality of life.

But now we are faced with the prospect of a large K-12 charter school campus—with potential enrollment of nearly 400 students, plus dormitory facilities, a gymnasium, resource center, caretaker's residence, two parking lots supporting 140 stalls, etc.—literally bulldozing its way into our quiet and peaceful neighborhood. I am here to testify that this WILL DEFINITELY adversely affect not only the surrounding properties, but our entire subdivision, and the negative impact will further extend deep into the entire Kaumana Drive corridor due to increased traffic, noise and compromised safety, not to mention the adequate availability of water to support the planned development of the school, among myriad other adverse effects. Over 400 people have signed a petition opposing the school's proposed location because the development's adverse impacts on the surrounding community and beyond have not been satisfactorily addressed by the Applicant, nor has the Applicant made commitments to acceptable, definitive mitigation measures as conditions of the Special Permit.

We, who live in the Pacific Plantations subdivision, have only one access/egress route to/from Kaumana Drive, and that is via Edita Street. The location of the proposed new school near the entrance to Edita Street will create congestion that does not currently exist. The Applicant submitted a Traffic Impact Analysis Report (TIAR) which concluded that traffic will not be adversely impacted by the new school. However, that report is questionable, since the study was based on traffic counts taken on May 28, 2009, a date when certain schools and/or classes were not in session. I suspect that could be why, in spite of the TIAR, the County Department of Public Works still recommended that Connections construct a separate left turn lane to the school AND prepare a comprehensive traffic management plan. Incidentally, the Hawaii County Police Department also recommended that Connections build a paved shoulder along Edita Street extending from Kaumana Drive to the school's entrance for pedestrian

safety. But these measures, even if fully implemented, will still not eliminate the congestion at the school's entrance on Edita Street, potentially exacerbating access by medical/fire/police vehicles during emergencies.

In earlier hearings, certain proponents of Connections have testified that communities usually embrace, rather than reject, neighborhood schools and apparently used this argument to label our Pacific Plantations residents as NIMBYs who are against the school for no other reason than "Not In My Back Yard", when we should instead be welcoming new educational institutions. This was despite our repeated efforts to say, with utmost sincerity, that we are not against the school itself, but rather, the chosen location of this new development, and we stated our many legitimate reasons. One realtor even offered his services to assist the school's leaders in exploring alternative sites, but I understand this, too, has fallen on deaf ears.

Thus, supporters of the school continue to claim, without corroborative and demonstrable supporting evidence, that the school will irrefutably benefit—and not adversely affect—the surrounding properties and neighborhood. I wish to point out that for *traditional neighborhood schools*, where the school serves its adjacent communities, and/or the neighborhood gradually evolved around the established school in a symbiotic manner, this might have held true; that is, the school benefited its surrounding community that itself populated the student body. But this is not the case for Connections New Century, a Public Charter School which, unlike traditional neighborhood schools, is not designed to exclusively serve, or even grant admission preferences, to students of its surrounding geographical region. That is an important distinction.

Apparently, the former County of Hawaii Planning Director also made this distinction and indicated concern. The Director had stated,

"From a planning perspective, this request has proven to be difficult in arriving at a position we are comfortable with. The greatest difficulty we encountered was determining whether or not this is an appropriate location for a public charter school whose student body largely consists of students who do not live in this particular section of Hilo. Currently, there are approximately 50 percent of the student body coming from the Puna District and approximately 50 percent coming from different locations in the South Hilo District."

The Director further stated:

"...a K-12 school should be located in close proximity to where people live and near the center of probably student population for the proposed school. This will enhance integration of the school into the community and thus create a better neighborhood and a more livable community. A school should not be located in an area where the students live a far distance from the school and require students to be transported via buses or vehicles."

Residents of our subdivision and of the greater Kaumana community are already adequately served by several well-established schools, including Kaumana Elementary, E.B. DeSilva Elementary School, Hilo Union School, Hilo Intermediate School, and Hilo High School. Thus, the proposed Connections New Century Public Charter School will provide little or no discernible benefit that could possibly outweigh

the numerous and very significant adverse effects to the surrounding properties, and to the greater Kaumana community as well.

The subject property—the 70+ acres of peaceful forested lands, untouched vegetation, natural cave systems and chirping birds—has a distinct character precisely because it is undeveloped. It should not be seen as "just vacant land" available for any development—and especially not a large K-12 school campus with a dormitory, gymnasium, library/resource center, roads, parking lots, etc. The proposed use will unquestionably and undeniably alter the essential character of this land and its present use. To conclude otherwise would be absurd.

Besides, given the magnitude of negative impacts by the proposed development upon the character of the land and its significant adverse effects on the surrounding properties, coupled with the sheer scale of this project (as compared to, say, a small pre-school facility or nature study lab), I contend that the proper channel for land use entitlement should be via a State Land Use Boundary Amendment instead of a Special Permit.

For the reasons mentioned above—that is, that the Applicant's desired use of the subject land WILL adversely affect surrounding properties and it WILL substantially alter or change the essential character of the land and the present use—I humbly ask that you, the members of the Windward Planning Commission vote to DENY the Special Permit Application submitted by the Connections Public Charter School. Doing so will not jeopardize the school's endeavors to build a new campus elsewhere; it will simply—and rightfully—compel the leaders of the Connections New Century Public Charter School to seek a new and appropriate location for such a development.

Unlike the Kaumana property, a site that is appropriately zoned with less inherent restrictions, community dissent, or stringent conditions of approval will allow the project to quickly get off the ground. As Connections' own consultant Celia Chen previously noted on record, the conceptual drawings for the (Kaumana) campus are still in their very early planning stages, and can be easily modified to accommodate changing conditions. Thus, by moving the development to a more suitable location, the investment in these plans will not be lost, but can be readily used to springboard the project once that new site is secured. Only then will the school be able to advance quickly—and harmoniously—to achieve its stated goals.

Thank you in advance for your favorable consideration and for your vote to recommend DENIAL of this Special Permit.

Respectfully submitted,

Lester Sakamoto

Lester Sakamoto 1439 Mele Manu St. Hilo, HI 96720 (This testimony is submitted on my own behalf.)

From: Eric Boyd <eric_boyd@connectionspcs.org>

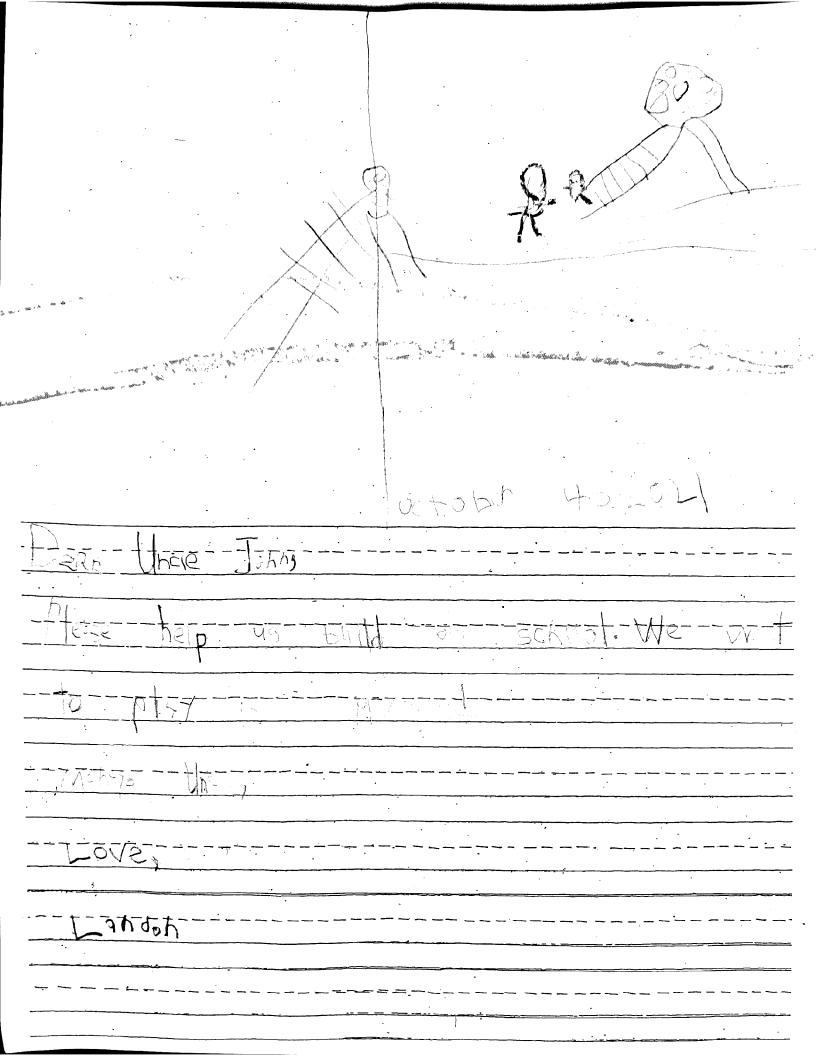
Sent: Monday, October 4, 2021 1:58 PM

To: WPCtestimony

Subject: Letter of support from Landon (SPP-12-138)

Attachments: Letter of support- Landon.pdf

Letter of support from Landon. 1st. grade



From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Monday, October 4, 2021 10:29 AM

To: WPCtestimony

Subject: Letter of support from Dirk Monterosso (SPP-12-138)

Attachments: Dirk Monterosso-Letter of Support.pdf

Letter of support from Dirk Monterosso

I just generally feel like the people who are against the school being in that area are just overall being really selfish, and uneducated. The lack of water is already debunked; as someone who has been up to that area, I saw that we were making huge catchment tanks, we will provide our own water. It's also not like it doesn't rain a lot up there, I'm more than sure we would not hog and steal all of the residents' water.

As a smaller charter school, a bigger campus that is within the material we learn, it would help the students that come here thrive more than they already do, and it's disheartening to see people selfish enough to keep hard-working students from reaching for their own potential. How they are acting is the epitome of selfishness. The school is all for self-sustainability, and teaching students how to care for the forests and land we have here, and everywhere. We would be the last school to even think about creating more waste in that area.

The school has done so much to make sure that we will have little to no impact on the people who live around the site. I just feel like the people protesting haven't even tried to show proof of their claims, and are uneducated on what the school is like. It seems like it's all out of general greed for the land, and all these people are doing is just stunting the children of this school to learn and help the land. kaum

From: Allen Novak <alnnovak@msn.com>
Sent: Monday, October 4, 2021 7:26 PM

To: WPCtestimony

Subject: Re: Remand of SPP 12-000138 to the Windward Planning Commission 10/7/21

Attachments: Connections testimony 10 7 21.docx

Please accept my written testimony for the 10/7/21~9:00~a.m. Windward Planning Commission meeting regarding remand of SPP 12-000138.

Windward Planning Commission County of Hawaii 101 Aupuni Street Hilo, Hawaii 96720

October 4, 2021

County of Hawaii Planning Department
Honorable Zendo Kern, Jeffrey Darrow and members of the Windward Planning Commission,

Re: Remand of SPP 12-000138 to the Windward Planning Commission

My name is Allen Novak. I have lived at 1414-C Mele Manu Street for 28 years, near the site of the proposed charter school development. The project will have an adverse impact on the surrounding neighborhood.

We know that water supply is questionable. There's a question about whether the 8" main that supplies the entire neighborhood is adequate to meet the need of the school and surrounding residences combined. Water for this proposed project is needed to accommodate 385 students, faculty, staff and visitors. In addition the project specifies a dormitory which will need 24/7 water to supply shower, kitchen and toilet demands on top of the water needed for the day time students. I do not believe that there can be an adequate supply of potable water for the school and surrounding residences from the 8" main even if the school uses catchment for non-potable water.

Sewage disposal is a related concern. There is no piped sewage in this area. The surrounding residences are low density creating minimal wastewater disposal in the area. The school has proposed a cesspool or leach field for this fairly large quantity of staff, students, faculty and individuals staying in the dormitory. It would create a significant additional burden of waste water. We do have the Kaumana Cave extensions directly under this area, which would be conduits transporting contaminated sewage to locations down slope.

Additional issue - Traffic:

The proposed project will bring a high volume of traffic not spread throughout the day, but condensed into morning and afternoon periods. That traffic is proposed to access the development through one entrance on Edita Street. Edita Street is the only way in or out of my neighborhood. Edita Street between Kaumana Drive and the proposed development is a narrow, two lane, rural street with soft shoulders unsuitable for pedestrian use when it rains. A high volume of traffic will attempt to access the school on this narrow, curved street creating a serious traffic accident hazard. Children dropped off on Edita near Kaumana Drive will need to walk on the paved roadway to access the entrance to the development. This will cause an extreme safety hazard.

I would like to request that the Commission deny the special use permit request today. The issue I wish to address isn't the program of the charter public school, I have no qualms about what they're doing for the students. And I think a lot of the testimony they have given you about the quality of their program is valid. However, I feel that the location that they have chosen is inappropriate.

Thank you for considering my written testimony.

Allen Novak

From: Eric Boyd <eric_boyd@connectionspcs.org>

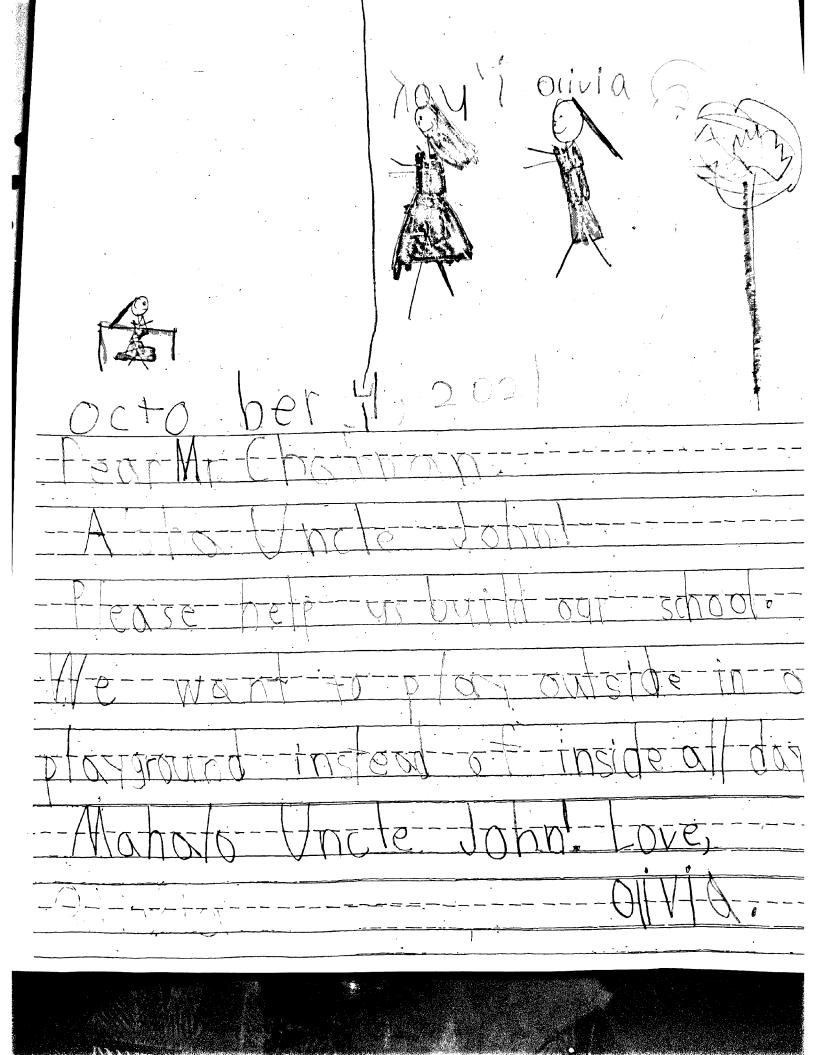
Sent: Monday, October 4, 2021 2:01 PM

To: WPCtestimony

Subject: Letter of support from Olivia (SPP-12-138)

Attachments: Letter of support- Olivia.pdf

Here is a letter of support from 1st. grader Olivia



From: Regina Miller < lolamillerdesigns@yahoo.com>

Sent: Monday, October 4, 2021 10:26 PM

To: WPCtestimony

Subject: Written Testimony Opposing Connections Charter School

Aloha! My name is Regina Miller. I would like to submit this written testimony in opposition to Connections Charter School relocating into our neighborhood.

I live on Kaumana Drive. I do not think a school in our immediate community is in the best interest of the residents who have lived here for years.

I would like to bring up a point that I have not heard brought up before.

I want to point out that on the corner of Kaumana Dr and Chong St., there is a popular swimming hole and waterfall that many of our residents use when the water is calm. The pool is about 200 yards away from the school. The waterfall is treacherous during heavy rains which happens a lot in Kaumana.

School Kids being kids will naturally find out about this swimming hole. You cannot tell me that the kids will not be curious and want to experience swimming in a natural fresh water pool. They will have to navigate the winding road on narrow paths to go and swim in this pool. There are no sidewalks for them to walk safely. I am a resident on this path and I honestly will fear for when they walk up and down Kaumana drive with cars zooming by knowing that accidents are possible.

Please do not approve the schools request. We would appreciate the Commissions respect towards the lives we live as residences that would be affected.

Mahalo for your time to read my concerns.

Regina Miller

From: Liz Stanton < liz@hawaiiagfoundation.org>
Sent: Monday, October 4, 2021 10:27 AM

To: WPCtestimony

Subject: Support for Connections New Century Public School

Please support-

Item #4 Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138. This school is a leader in the farm-to-school movements and is helping Hawaii meet its food sustainability goals.

Liz Stanton-Barrera Education Programs Manager

Direct: (808) 295-1245

Email: <u>liz@hawaiiagfoundation.org</u>

HAWAI'I AGRICULTURAL FOUNDATION

3538 Waialae Avenue, #203 Honolulu, HI 96816 HawaiiAgFoundation.org

From: Donna Therrien <donna@hawaiiagfoundation.org>

Sent: Monday, October 4, 2021 9:57 AM

To: WPCtestimony

Subject: Support for Connections New Century Public School

Please support-

Item #4 Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138. This school is a leader in the farm-to-school movements and is helping Hawaii meet its food sustainability goals.

Donna Therrien M.ed

Director of Education
Direct: (808) 386-1171

HAWAI'I AGRICULTURAL FOUNDATION

3538 Waialae Avenue, #203 Honolulu, HI 96816 HawaiiAgFoundation.org

Main: (808) 927-9749

From: Wayne Kanemoto <kanemotow001@hawaii.rr.com>

Sent: Monday, October 4, 2021 3:13 PM

To: WPCtestimony

Subject:Connections School Hearing 7 October 2021Attachments:Connections 2021 testimony.pdf; ATT00001.htm

Attached is my testimony

September 29, 2021

I, Wayne Kanemoto, live at 1358 Mele Manu St., near the site of the proposed Connections New Century Public Charter School. I submitted testimony on 1 May, 2014 and summarize the points relevant to this hearing for the Windward Planning Commission decision making.

- 1. Connections has not taken steps to be a "good neighbor" by engaging our community to earn our respect, trust and support. Instead, litigation is their preferred method.
- Windward Planning Commission Board members and Hearings Officer decision to deny their application was based upon the information on water, traffic and quality of life of residence in the community. Connections did not convince them that our concerns were not valid, and disapproved their application as this board should.
- 3. The priority, for spending funds in education, is to provide quality instruction, recruitment of qualified staff, and transportation of students. Money spent on buildings is a poor investment.

In addition:

- 1. Construction and operation of a school for 381 students, 67 full and part time employees with 140 parking stalls is out of character for this area zoning.
- 2. Entrance and exit from the same point is a "choke point", a safety issue.

· Please do not approve the request.

Wayne Kanemoto

From: Toby Yamashiro <tobyyamashiro@gmail.com>

Sent: Monday, October 4, 2021 9:10 PM

To: WPCtestimony

Subject: Connections New Century Charter School Special Permit Application (10/7/21 hrg):

Testimony in opposition

Dear Commissioners,

Thank you for this opportunity to submit testimony in opposition to the Connections New Century Charter School's Special Permit Application. The proposed development is inconsistent with the character of the surrounding community, as well as the land's agricultural zoning. The proposed development would have significant negative impacts on the surrounding community (traffic, noise, visual impacts, etc.), particularly considering the large size of the project (the lower parcel is over twice the size of the nearby Kaumana Elementary and E.B. deSilva Elementary Schools combined).

Thank you, Toby Yamashiro

From: Leilani Saarinen <leiinhawaii@gmail.com>

Sent: Tuesday, October 5, 2021 1:46 PM

To: WPCtestimony

Subject: Fwd: Kaumana property support letter (SPP-12-138)

----- Forwarded message ------

From: Leilani Saarinen <leiinhawaii@gmail.com>

Date: Tue, Oct 5, 2021 at 1:45 PM

Subject: Kaumana property support letter To: <eric boyd@connectionspcs.org>

Aloha,

My name is Leilani Bauer. I have a daughter in 7th grade that has attended CPCS for the past 3 years, a son that just started in Kindergarten, and my step-daughter that just started in the 2nd grade.

I feel that having a school campus with an excellent outdoor and hands-on classroom is an incredible opportunity for students of all ages. Growing up here in Hawaii, I went to HCC for agriculture because it has always been such a huge part of my life. Teaching students to care for and appreciate the natural world we are so blessed to live in here in Hawaii is important for the needed environmental awareness that is absolutely critical for the future generations to have! When students are interested and engaged in the learning process it benefits the whole learning / teaching situation. To have a safe space for young students to begin and keep their curiosity and love for nature, creating older students and young adults who value the natural resources that our human survival truly depends on. We are at a critical time in the planet's overall health and I believe that students young and old connecting to the natural environment will keep furthering our understanding and diligent work towards a sustainable global balance to ensure the food supplies and clean air and clean water here in Hawaii and around the world for the generations here today and to come.

I proudly support the new school campus in Kaumana and would greatly appreciate yours too.

Mahalo, Leilani Bauer

From: Michael Bishop <pexdragon@gmail.com>
Sent: Tuesday, October 5, 2021 11:16 AM

To: WPCtestimony

Subject: FW: RE; REMAND OF SPP 12-000138 ; Review of special use permit for Charter School

Aloha:

My name is Michael Bishop and my place of residence is 1485 Mele Manu St., Hilo. I appreciate this opportunity to express my concerns and thank the board members for their time and consideration.

I am not here to dismiss education or to discount development. What I am appealing to today is the combined sense of COMMUNITY!

The construction of this project started with the sanctioned approval from assorted State of Hawaii departments. Perhaps unfamiliar with East Hawaii as a community they allowed this envisioned build out to include sporting complexes, large animal compounds pens and corrals, adult and child care dormitories mixed among (6) class structures a cafeteria, one, caretaker's personal residence, and support facilities with a fresh water well to be dug at some future time. All of this on agricultural land yet to receive any variance by means of a special use permit and imposed over a limited access residential neighborhood setting. This start assumed quite a bit from the intended community.

Written into the original build out program, the plan to drill a fresh water well was clearly introduced numerous times. This would surely burden the water department and substantially draw on this precious resource.

With a firm statement of autonomy, the past testimony from school administrators did, most notably voice their exclusion from any requirements to guidance and oversite, by example that of the Department of Education. In this case school operations and its facilities needs or management will comply to minimal accountability in general from any supervising authority and does not compliment a community based commitment. Concerning

This concern would be, who and what agency has the capacity for oversite at all. One unique and unconventional system for sewage disposal, as proposed in their general plan should require demanding oversite. Surely preventing any negative impact on the communities health and the natural environment is critical. Who is to do this.

Over the years to come, imagine the countless hours of traffic and congestion prompted by one single neighborhood address. Picture a flush of residents, guests, students, staff and service vehicles all interacting daily with the community on one small access road. This would compound adversity and would be a serious disservice to the community for ever.

One county department suggested the need to alter Kaumana drive another suggests adding onto the Edita St. corridor. Small changes yes, never the less consequential changes, having lasting impact on the surrounding properties and clearly showing insight to traffic and safety concerns for the larger community.

Though the previous board affirmed its opposition to this build out by not issuing a special use permit outright, that opposition clearly needs to be voiced again, rigorously! This neighborhood and its residence seem alone, once more facing the dogged insistence of misguided self interest and gain, over community.

As a matter of record a former member of your board voiced:

"The greatest difficulty we encountered was determining whether or not this is an appropriate location for a public charter school whose student body largely consists of students who do not live in this particular section of Hilo"

A very large question of accountability and responsibility connected to unfettered land use, could spring up just down the road from me soon.

Afraid of what could come implores me to ask all of you.

"Please soundly dismiss this application and strongly object to the special use process as its means to inject such a large scaled complex and its complexities into this urban community."

Respectfully: Michael Bishop

From: Kristi Davis <hairbrain68@hotmail.com>
Sent: Tuesday, October 5, 2021 1:30 PM

To: WPCtestimony Cc: David Bock

Subject: Connections New Century PCS opposition

Windward Planning Commission County of Hawaii 101 Pauahi St. Hilo. HI 96720

Dear Commissioners,

I am opposed to allowing Connections New Century Public Charter School to obtain a permit to build a new school on state land off of Edita Street in Hilo.

The land on which the school would be built is zoned for agriculture. Building a school there is not an appropriate use of ag-zoned land.

Schools are noisy and busy and generate lots of traffic. The site chosen by the school is situated between quiet residential neighborhoods. Building a nearly 400-student school with a dormitory for overnight stays is completely unacceptable for this area and is not proper use for this land.

I'm sure the commission would not permit a 30-bed hotel to be built there, so you must therefore not allow a school with a 30-bed dorm to be built. Again, this is entirely inappropriate for ag-zoned land in this residential community.

The school will create traffic congestion for people living in the neighboring communities, and also for those using Kaumana Drive and Saddle Road.

That section of Kaumana Drive has a high volume of traffic, and its intersection with Edita is on a dangerous curve. Dozens or even hundreds of extra vehicles each day trying to enter and exit via Edita is a horrible idea that literally could cost someone their life at that intersection.

Mahalo for your time and consideration.

Kristi Davis

1220 Pomaikai Way Hilo, HI 96720

From:Ted Hong <ted@tedhonglaw.com>Sent:Tuesday, October 5, 2021 3:42 PMTo:Dacayanan, Melissa; Araujo, Jaclyn

Subject: Item #4 Connections New Century Public Charter School/CBESS (SPP-12-000138)

Attachments: CBESS.2021.Romeo's Presentation for Planning Commission.docx

Aloha, attached is the written testimony for one of the people who will be speaking on behalf of the School during the presentation. Please include this for the Commissioners to review and as part of the Record.

Thanks,

Ted H. S. Hong Attorney at Law

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Romeo Garcia's Presentation for Windward Planning Commission

Date: Thursday, Oct. 7, 2021 9:00 AM

Connections Public Charter School Board of Directors (Alphabetical)

Kirk Bailey, Community Member
Romeo Garcia, Poʻo Kumu/Director
Elsie Hayashi, Community Member
Ron Kim, CPCS Parent
Anna Madrid, CPCS Parent
Libby Oshiyama, Community Member
Shinji Salmoiraghi, Board President/Community Member
Pamela Thatcher, Faculty Representative
Christina Wilbourn, Staff Representative

Pua Kaai, Charter School Commission Liaison

School Leadership

Romeo Garcia, Po'o Kumu/Director B.A., Theater Arts and Rhetoric, Occidental College M.A., Education: Staff and Curriculum Development, Mills College Doctoral Student, Educational Leadership, Mills College (Leave of Absence)

Bio: Romeo Garcia has worked as an educator since 1984. He began his career as an elementary school teacher in the Oakland Unified School District in Oakland, California. He worked at Mills College in Oakland from 1986 -2006 as the Director of Federal TRIO Programs: Upward Bound and Educational Talent Search and as the Assistant to the President. Romeo is co-founder of ARISE Charter High School in Oakland. He has been an Educational Consultant, Executive Director of the Peralta Community Colleges Foundation and Dean of Special Services and Programs at Merritt Community College. Romeo moved to Hawai'i Island in 2016 where he served as the Po'o Kumu/Director at Laupāhoehoe Community Public Charter School. Romeo has been at Connections Public Charter School since 2018 as the Vice Principal and now as Po'o Kumu/Director.

School Mission: To create an 'ohana that is conducive to the recognition and development of individual talents. Thematic and experiential learning experiences are provided that focus on how students construct knowledge using creative and critical thinking. Classroom experiences are connected to real life experiences so that students can grow in the understanding of themselves in relation to their community and the world.

Connections' 'Ōlelo No'eau (#203): "' 'A'ohe pau ka 'ike i ka hālau ho'okāhi." "All knowledge is not taught in one school."

Geographical Distribution

This is the breakdown of the Hawai'i County Districts and cities that the students are from based on mailing addresses. Note that there may be some discrepancy because this is a mailing address, not a physical address. Should be a small amount.

This is according to Hawai'i County Districts: Hilo, Puna, Other. We provide free bus transportation to families that need it.

| District | Number | Percentage |
|----------|--------|------------|
| Hilo | 250 | 69.64% |
| Puna | 108 | 30.08% |
| Other | 1 | 0.28% |
| | 359 | 100.00% |

| Oit. | Mla a | D |
|-------------------|--------|------------|
| City | Number | Percentage |
| Hakalau | 1 | 0.28% |
| Hawaii Nat'l Park | 2 | 0.56% |
| Hilo | 221 | 61.56% |
| Honomu | 1 | 0.28% |
| Keaau | 52 | 14.48% |
| Kurtistown | 11 | 3.06% |
| Mt View | 24 | 6.69% |
| Pahala | 1 | 0.28% |
| Pahoa | 18 | 5.01% |
| Papaikou | 6 | 1.67% |
| Pepeekeo | 21 | 5.85% |
| Volcano | 1 | 0.28% |
| | 359 | 100.00% |

^{*}HIDOE Infinite Campus Database

| Total K-12 Enrollment | 359 |
|---------------------------|-----|
| Male | 188 |
| Female | 171 |
| Special Education | 68 |
| 504 Student Support Plans | 19 |
| English Language Learners | 28 |

Student Demographics

| Race | Number | Percentage |
|----------------------------------|--------|------------|
| American Indian or Alaska Native | 10 | 2.79% |
| Black | 16 | 4.46% |
| Chinese | 2 | 0.56% |
| Filipino | 15 | 4.18% |
| Native Hawaiian | 138 | 38.44% |
| Japanese | 15 | 4.18% |
| Portuguese | 15 | 4.18% |
| Samoan | 1 | 0.28% |
| White | 98 | 27.30% |
| Micronesian | 19 | 5.29% |
| Tongan | 5 | 1.39% |
| Other Asian | 6 | 1.67% |
| Other Pacific Islander | 8 | 2.23% |
| Primary Not Selected | 11 | 3.06% |
| Total | 359 | 100.00% |

^{*}HIDOE Infinite Campus Database

Child Nutrition

Since Connections serves predominantly low-income families (87.9%) we offer free, nutritious school meals to all children through the U.S.Department of Agriculture Child Nutrition Program. During the school closures caused by the pandemic in the school year 2020-2021, Connections offered free meals to students in the Hilo community.

Grants

Artists in the Schools

REACH - Afterschool Programing

UPLINK - Afterschool Programing, Technology Focus

U.S. Department of Agriculture - Child Nutrition Program, Community Eligibility Provision

- U.S Department of Agriculture Farm to School Grant
- U.S. Department of Education Title 1 Program
- U.S. Department of Education 21st Century Learning Center Grant

Partnerships

Akaka Foundation for Tropical Forests

Hawai'i Afterschool Alliance

Hawai'i Agriculture Foundation

Hawai'i PK-12 Research & Development Consortium, State Innovation Initiative

Ho'ouna Pono Drug Prevention Program

Kamehameha Schools - Environmental Education Programs

Kama'āina Kids

Kohala Foundation

University of Hawai'i System - UH and HCC

Connections Alumni

Work at Connections - We currently have alumni employed in the following positions:

- Math and Culinary Arts teacher who has been teaching at Connections for years.
- The coordinator of our 21st Century Learning Center grant.
- Two Educational Assistant in the Elementary level. One also works in our afterschool program.
- One staff person who works in our Studio Shaka After School Program
- One staff person on our facilities team.
- Two current students who work as Studio Shaka After School Program coordinators.

Attend College - Graduates are enrolled in both University of Hawaiii and Hawaiii Community College programs. One of our students, *Kit Neikirk*, is currently studying in Scotland as an exchange student from the University of Hawaiii. He was featured last week in an article entitled Boy Wonder. This graduate's current research "focuses on recording and analyzing the changes to mitochondria in relation to knock down of genes. Neikirk began his post-secondary academic career as a high school freshman at only 13 years old, when he also started classes at community college level. He graduated high school from Connections Public Charter School in Hilo as a sophomore, the youngest in his graduating class. He entered UH Hilo in 2019 as a 15-year-old triple major in biology, sociology, and chemistry. He plans to graduate with his bachelor degrees in spring 2023, and from there attend medical school to continue his journey toward becoming a healthcare provider."

Are in the Local Workforce

KTA, Walmart, Mattress Firm, Big Island Countertops, Bed Mart, Tony Honda, Target, Kawamoto's, Miranda's Country Store, Tractor Supply Company, Hilo Fish Company, Pizza Hut, Hilo Kia, Life Care Center, Hamakua Honey, Taco Bell, Pho' Viet, N.A.R.S, Hilo Bay Cafe, American Eagle, U.H. Hilo, Hapuna Prince Hotel, Aloha Monday's, Home Depot, HPM, Ross Department Store.

<u>Visit Campus Regularly</u> - Because Connections continues to be a resource and because they have an allegiance to the school based on the appreciation they're for their experience as a student, we have regular visits from alumni of the school. They come for further support and/or to update us on their lives.

From: Gerri Hala Latu <aloha4aina@msn.com>
Sent: Tuesday, October 5, 2021 5:33 AM

To: WPCtestimony

Subject:Letter of Support for Connections PCSAttachments:Support Letter Connections PCS.pdf

Importance: High

Gerri K. Hala Latu aloha4aina@msn.com Geraidine K. Hala Latu 74 Kaulana St. Hilo, HI 96720

To whom it may concern:

I am sending you this letter in support of Connections PCS. My daughter attends this school and has been there for the last three years. She LOVES it there and she has so much support from her teachers, school staff, and Principal. I am urging you to please allow Connections PCS to build their school up in Kaumana. The Kress building has been their place to go to, but I have been concerned with the homeless population that has been growing on front street. This is really no place for our students to continue learning and growing. By having their own school in Upper Kaumana, the children will be safe and protected where they can feel free to express themselves and develop the skills necessary to be strong and industrious young men and women.

I hope my words will make an impact with you and your decision to allow Connections PCS to build their own school. This school is amazing and if it were not for them, I am not sure if my shy daughter would have grown to what she is today. If you have any questions regarding my testimony, please do not hesitate to call me at 808-936-8074.

Sincerely,

Geraldine K. Hala Latu

Parent of Meleana O. Haia Latu

9th Grade Student, Connections PCS

From: iwasaki farms <iwasakifarms@gmail.com>

Sent: Tuesday, October 5, 2021 7:10 AM

To: WPCtestimony

Subject: RE: SPP 12-000138 Permit Testimony

October 4, 2021

Windward Planning Commission

RE: SPP 12-000138 Permit Testimony

Dear Commissioners,

Above the intersection of Kaumana Drive and Edita Street (the proposed location of Connections Charter School, "School") is a blind curve with limited sight distance. You are hereby notified that this creates an extremely dangerous traffic liability due to the fact that many cars exit the blind curve at a high rate of speed. Having a 300 plus person campus with no left turn lane will put drivers' lives at risk.

In addition, the School has submitted on its application one paragraph mentioning it intends to comply with wastewater regulations but offers no specifics and no proof that it has the required approval from the state Department of Health and the federal Environmental Protection Agency.

Due to the facts stated above, it is clear that the School's permit is not properly sufficient, the necessary infrastructure to insure safety is absent, and the present location will create a life threatening situation, therefore the School's permit application must be denied as a matter of law.

Respectfully submitted,

Alan Iwasaki

Resident of Edita Street

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Tuesday, October 5, 2021 1:50 PM

To: WPCtestimony

Subject:Letters of support from Leilani Bauer, Joann, Lucas, and Lamatro (SPP-12-138)Attachments:Letter of support- Joann.pdf; Letter of support- Leilani Bauer.odt; Letter of support-

Lucas.pdf; Letter of support.pdf

More letters of support

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Aloha,

My name is Leilani Bauer. I have a daughter in 7th grade that has attended CPCS for the past 3 years, a son that just started in Kindergarten, and my step-daughter that just started in the 2nd grade.

I feel that having a school campus with an excellent outdoor and hands-on classroom is an incredible opportunity for students of all ages. Growing up here in Hawaii, I went to HCC for agriculture because it has always been such a huge part of my life. Teaching students to care for and appreciate the natural world we are so blessed to live in here in Hawaii is important for the needed environmental awareness that is absolutely critical for the future generations to have! When students are interested and engaged in the learning process it benefits the whole learning / teaching situation. To have a safe space for young students to begin and keep their curiosity and love for nature, creating older students and young adults who value the natural resources that our human survival truly depends on. We are at a critical time in the planet's overall health and I believe that students young and old connecting to the natural environment will keep furthering our understanding and diligent work towards a sustainable global balance to ensure the food supplies and clean air and clean water here in Hawaii and around the world for the generations here today and to come.

I proudly support the new school campus in Kaumana and would greatly appreciate yours too.

Mahalo, Leilani Bauer Dear Windward Planning Commission,

We want a safer school from tsunamis. We need to play outside and get exercise. We want to see the animals.

Mahalo,

Lucas Kratel

10-5-21 100. To the Windward Planning Commission We would like a school in kanmands of we can plan and learn about plants and Vegethbles . There is a lread another road going to Saddle So traffic Will not Significantly increase because we need more oddicational stuff and more Plants.

and more stuff we can explore sincerly sometro pocology

Gradie 4

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Tuesday, October 5, 2021 1:58 PM

To: WPCtestimony

Subject: Letter of support from Joshua (SPP-12-138)

Attachments: Letter of support- Joshua.pdf

Letter of support from another student

To the Windward Planning Commission,

We would like a bigger school so we can play outside, have a garden, and feed the animals.

We need to play outside so we can exercise.

Thank you, Joshua Okamoto Grade 4

From: Joseph Kamelamela <kalani96720@gmail.com>

Sent: Tuesday, October 5, 2021 9:42 PM

To: WPCtestimony

Cc: Pua

Subject: Connections School Zoning Application/Permit, Edita Street (SPP-12-138)

Aloha, Chair and members of the East Hawaii Planning Commission

We, Joseph K. Kamelamela and Karen Napua Brown, reside on 41 liwipolena Road, about a mile downhill of the proposed school, which is off of Kaumana Drive. We are in favor of the Zoning application/permit because Connections Schools has provided, and will continue to provide, essential and significant educational access to children to thrive in a learning environment that will have them succeed, now and in the future, in our community.

Upon a review of the proposed school plans in Kaumana, it seems that Connections School has addressed the concerns of the community: it will have water; it will not unreasonably increase floodwaters; it will have a state of the art waste disposal system; the main campus buildings will not be built over portions of the Kaumana cave system; and it will install an appropriate left turn lane on Kaumana Drive to improve traffic flow.

We are confident that any other concerns by the community can be resolved upon further communication with the school children and their parents, and Principal, teachers and staff of Connections.

Mahalo nui loa for your consideration of our support of the school.

Respectfully submitted,

Joseph K. Kamelamela Karen Napua Brown

From: Ka'iu Kimura < kaiukimura@gmail.com>
Sent: Tuesday, October 5, 2021 6:17 AM

To: WPCtestimony

Subject:Testimony re SPP 12-000138 Connections Public Charter SchoolAttachments:20211004_NoConnectionsTestimony_Kimura_Kurohara.docx

Aloha,

Mahalo nui for the opportunity to provide testimony to the WPC hearing regarding SPP 12-000138. Attached is our testimony which stands in opposition to the proposed project.

Please let me know if I can provide any additional information.

Mahalo nui, Ka'iu Kimura (and Randy Kurohara)

Randy Kurohara & Kaʻiu Kimura 1205 Pōmaikaʻi Way Hilo, Hawaiʻi 96720

TESTIMONY IN **OPPOSITION** TO:

SPP 12-000138: Special Permit for Connection Public Charter School to be built on Edita Street

4 October 2021

Aloha nui e nā lālā o ke komike ho'olālā 'o ka Windward Planning Commission - Hawai'i Mokupuni,

We are writing in OPPOSITION to the approval of the special use permit request to grant Connections Charter School approval to build on Edita Street.

We reside at the Pacific Plantations residential subdivision. We have lived here since 2014, and prior to that, 1998 to 2008. Over the years there has been significant growth in the amount of traffic coming in through Edita Street - a 1 way in/out subdivision - located off of the narrow Ka'umana Drive. Adding a K-12 school with potential enrollment of 400+ students, and faculty and staff who are not from the local area would exponentially increase and impact traffic flow and safety in and out of Edita Street – an area already challenged by traffic in high peak times for those of us who live in Pacfic Plantations and along Ka'umana Road both "ma uka" and "ma kai" of Edita Street. One way in and out of the campus, and the neighborhood, is a dangerous situation for students, staff, Fire, Police, EMS and the Ka'umana community at large.

In addition, the school acknowledges the maximum potable water available from the Department of Water Supply (DWS) is 4,200 gallons per day (GPD). A full build out of the school would require between 6,858 and 10,828 gallons per day. How would this difference be made up in order to support the schools infrastructure and population? It is mentioned in the plan that a water catchment or well system could be developed then turned over to DWS to maintain. That will place unreasonable burden on the County's public utility.

There has been no consultation between the school's representatives and the Pacific Plantations community. I understand that no new information will be entertained in the review of this permit. However, as a resident of the community that will be directly and adversely impacted by this development, I had hoped that the school would have attempted to connect with the residents to build relationship and resolution to our concerns. No such efforts were undertaken which reflects the kind of "neighbor" that seeks to live in this tight knit community.

Mahalo nui for the opportunity to submit this testimony and for your consideration of this request.

Me ke aloha kaiāulu na'auao,

Randy Kurohara

Ka'iu Kimura

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Tuesday, October 5, 2021 1:33 PM

To: WPCtestimony

Subject: Letter of support from Andrea (SPP-12-138)

Attachments: Letter to Windward Planning Commission- Andrea.pdf

Another letter of support

October 5, 2021

To Whom It May Concern,

I am writing this letter in support of Connections Public Charter School being located in Kaumana. I live in Kaumana and I am in support of Connections Public Charter School being on the 72 acres in Kaumana. Kaumana Elementary is also in Kaumana, essentially the same size school as Connections Public Charter School. We do fine with the people traveling to the school.

With the Puainako extension being built there is a large decrease of traffic on Kaumana road as now people can go to town via the Puainako extension as opposed to the Kaumana road.

Connections Public Charter School is currently housed on bayfront in the Historic Kress building, however, the facilities are lacking and the students are exposed to the riff raff of homelessness and crazy people living on the streets on Bayfront. If the students got to have a new school, they could be on the school property able to attend school resources all on one property as opposed to having to walk to the park, cross front street (Kamehameha Avenue) as pedestrians on a very busy road.

Having a new school would provide new facilities for the students, all contained on one property, safe.

Thank you for your consideration of a taxpayer and educator of 16 years.

I am confident The Windward Planning Commission will make the right decision regarding our future, the students of Connections Public Charter School.

Sincerely,

Andrea Lord

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Tuesday, October 5, 2021 11:03 AM

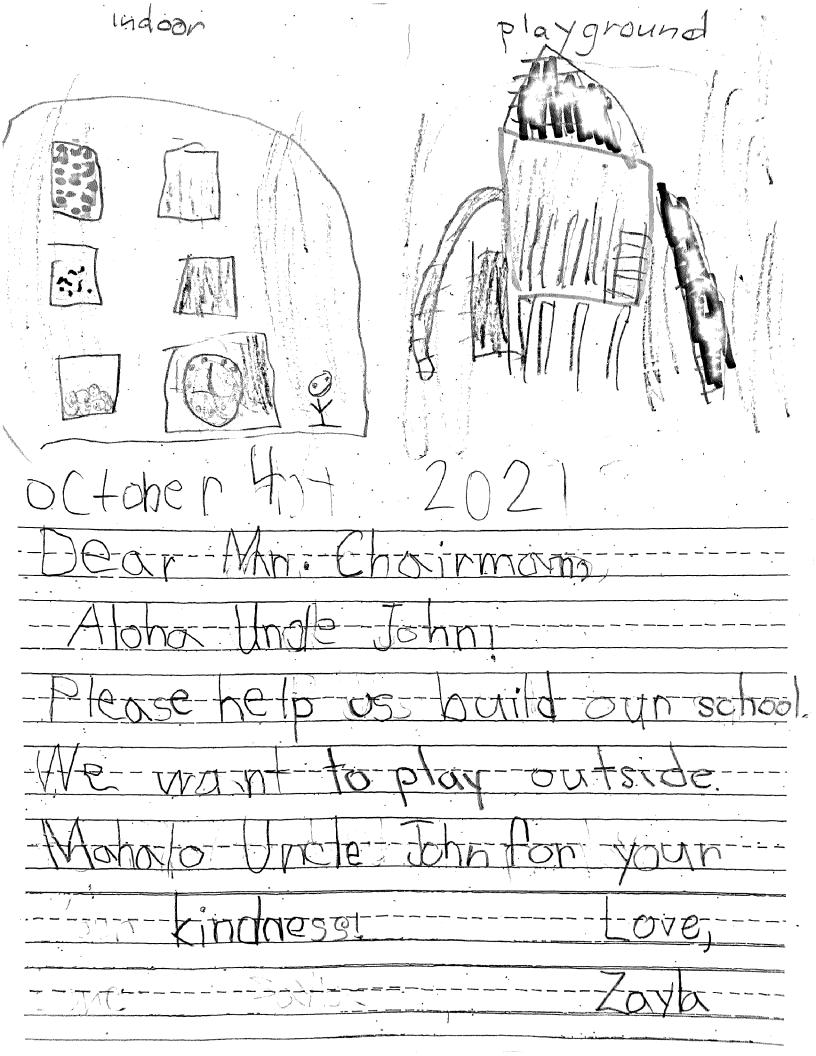
To: WPCtestimony

Subject: Letters of support from 1st Graders (SPP-12-138)

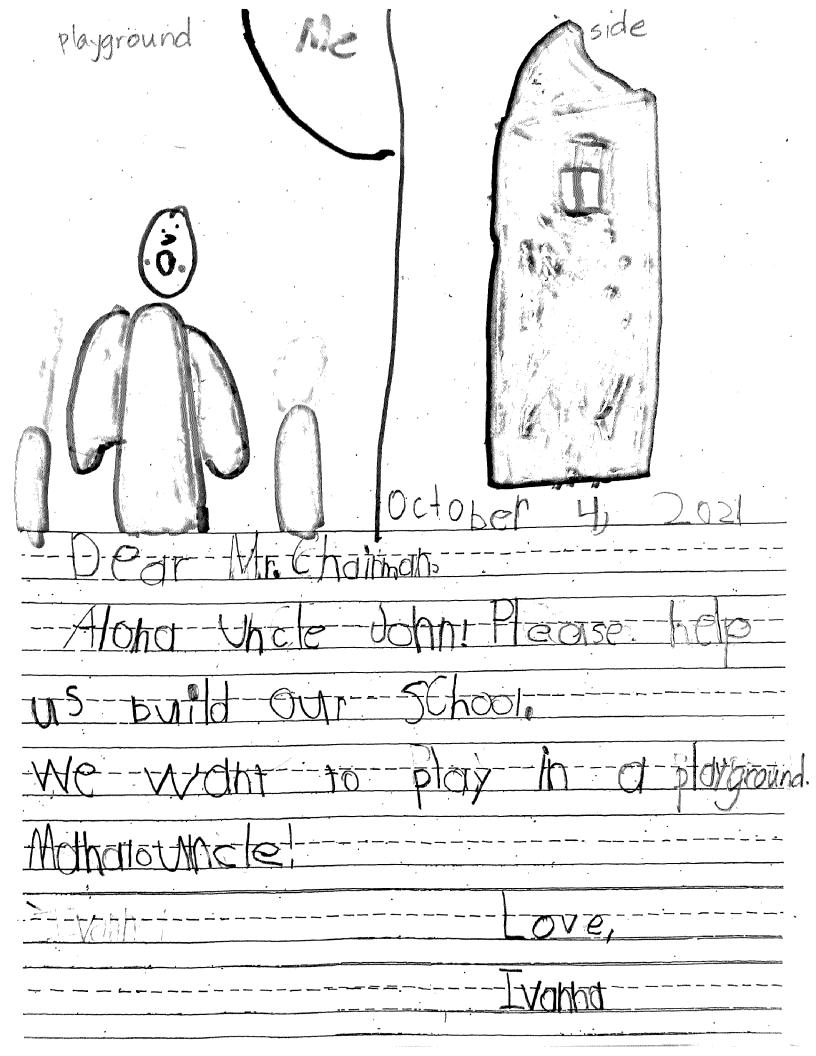
Attachments: Letters of support- 1st grade.pdf

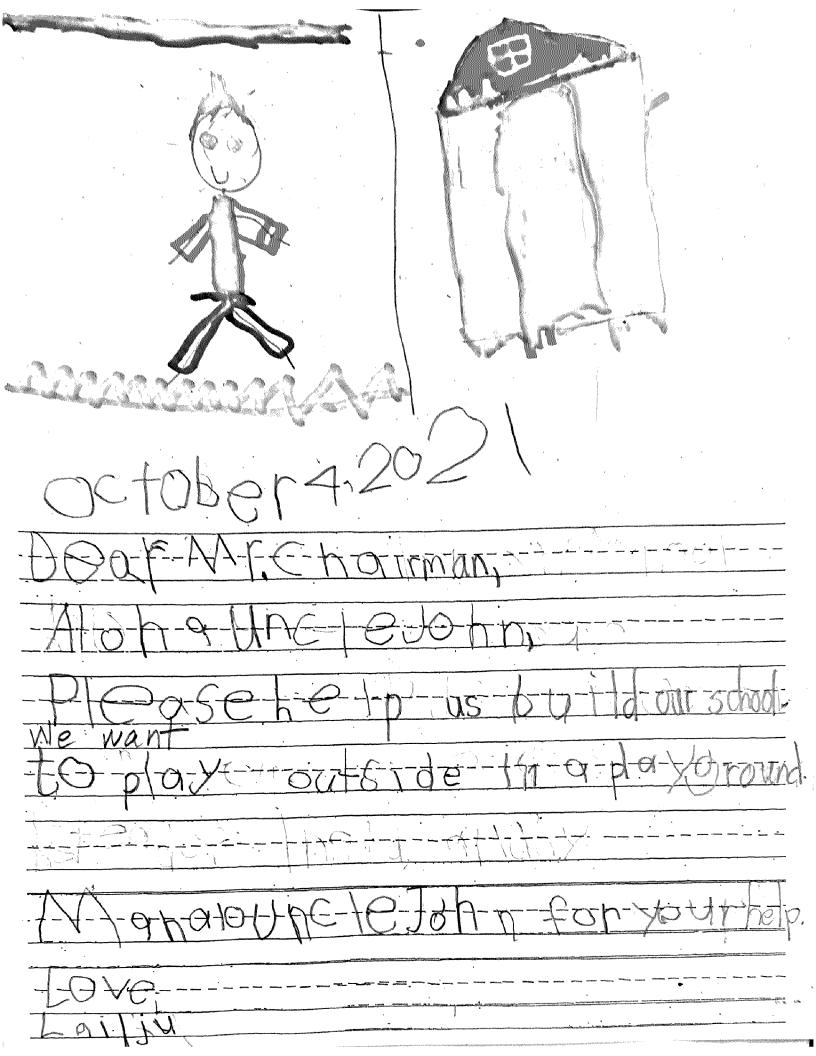
Attached are 7 letters of support from 1st graders.

Inside playground



indoor Playground





indoor

Mori, Ashley

From: Lawaia Naihe < lawaianaihe@hoakeolapono.org>

Sent: Tuesday, October 5, 2021 11:10 AM

To: WPCtestimony

Subject: Ho'ākeolapono Support Connections PCS

Aloha Windward Planning Commission,

My name is Lawai'a Naihe- Director of Hoʻākeolapono Academy and Institute. I have been working with Public Charter Schools for over 6 years, and I am in support of what Connections PCS is doing up at Kaumana.

In 2019, I started working with John Thatcher- Retired Principal Connections. Connections PCS is dedicated to utilizing 21st-century sustainable techniques that minimize its need for county municipals. Connections will be collecting rainwater for our aquaponic systems and toilets. On average, a 100-gallon aquaponics system loses 1-3 gallons of water per week to evaporation. However, if we contain these aquaponic systems, our water loss is substantially lowered.

Connections PCS is also using the land of Kaumana to find and offer solutions to Hawaii islands ROD problems. They have started collecting data on these beetles and are currently devising reforestation solutions. The connections Ohia Nursery holds around 100 Ohia starters made from clippings.

I could go on and on about the positive programs that Connections are doing on the Kaumana Property.

It is such a shame that an educational entity would reach so many roadblocks. It seems that the community elite, are against Hawaiian students utilizing this land. Hoʻākeolapono is a program that was created for our Hawaiian community, and what Connections PCS is accomplishing up at Kaumana, is Amazing.

Mahalo Nui for your time,

Lawai'a Naihe,

Ho'akeolapono Director (808)652-4208 Box 475 Anahola, HI. 96703

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This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

Mori, Ashley

From: Shinji Salmoiraghi <shinji_salmoiraghi@connectionspcs.org>

Sent: Tuesday, October 5, 2021 1:29 PM

To: WPCtestimony

Subject: Testimony for Connections (SPP-12-138)

Attachments: Dear WPC.PDF; To the Esteemed Members of the Windward Planning

Commission.docx

To Whom It May Concern, please find attached my testimony for the proposed Connections PCS. I have also attached an additional letter of testimony from one of the other Connections PCS Gov Board members.

Sincerely,

Shinji Salmoiraghi

To the Esteemed Members of the Windward Planning Commission;

I am a former educator and a proponent for the proposal set forth by Connections Public Charter School to utilize the Kaumana property.

Sustainability is an issue our county, our State, and even our country is working toward. Teaching students skills that will promote the ability to think, to innovate, to create a more sustainable environment should be applauded and encouraged. The students of Connections learn by doing. Clearing land to make it suitable for agriculture, learning to use resources that are available, understanding the processes of financial planning to obtain equipment and necessary materials, learning awareness of how one's actions impact others, as well as to cooperate with peers, adults, and the community are invaluable lessons that cannot be duplicated in the classroom alone. Learning skills that are applicable to real life encourages students to be active participants. Real life skills help steer our youth to be contributing adults of the future.

Connections has also secured a sizable grant from our federal government. Doesn't this count for anything? Our government does not dole out monies to ventures that are questionable or not well researched. Connections has done their research is has made solid proposals to qualify for \$12million.

I understand there are residents who feel Connections does not belong there. Among these residents are highly educated and "connected" individuals who hope to block the development of the property. The reasons for their opposition as stated in the editorials submitted to the Hawaii Tribune Herald are questionable. Have they done their research or are they victims of propaganda? I am confident these opponents are not opposed to education. I feel it is a lack of knowledge and fear of what might happen. Change is a scary thing. However, change is part of our existence. Where would we be today without change?

We need to be ready for the future. Using agriculture and the many facets included in agriculture is one of Connections' methods to provide real world learning experiences to students. It is never too early to help students learn and develop skills for today and for the future.

Sincerely,

Elsie Hayashi
Former Educator
Community Representative of Connections Governing Board

Dear Windward Planning Commission,

I am writing to show my support of Connections Public Charter School's proposed construction of a new and appropriate campus in Kaumana. I am a former employee of Connections PCS for seven years and I am currently in my third year as a volunteer on the school's governing board. I believe in the school's vision to establish and sustain a community, business, and learning ohana. Connections PCS seeks to create this learning ohana through the recognition and development of our individual student talents.

The Connections PCS learning ohana is based on "constructivist" theory which emphasizes the student learner, not the teacher. In constructivist theory, the learner interacts with the objects, people and events of the world around them, encountering problems and therefore constructing their own conceptualizations and solutions to those problems. Currently, Connections PCS services a learning ohana of 350-380 students and approximately 50 staff in the 3 story Kress building located in downtown Hilo. One of our main objectives is to teach students the concept of "sustainability". Our learning ohana would flourish under the proposed new school campus in Kaumana. We would have the space and resources to teach our haumana to be responsible stewards of the land and to graduate high school with practical skills, valuable knowledge and a connection to the aina which we all come from and belong to.

Given all the controversy that this proposed new campus has created has brought to light all the potential problems that may arise from this venture. We live in a complicated and polarized world full of challenges. We do not shelter our students from this reality. Things like traffic, water, runoff, and environmental concerns are not unique to the Edita St. location. These are challenges that any new development faces no matter where the land is located. Opponents of the new campus state that the winding nature of Kaumana Drive is not conducive to safety or traffic, however I do not hear them petitioning to get rid of Kaumana Elementary which is further up the same road.

I can not think of a better way to teach our students the concept of being good global citizens. Leading by example, through sustainable and responsible development, we can show our students that our community and school leaders can build an appropriate campus that will foster their learning as well as give back to the community. Proper urban planning makes all the difference in our successful execution of this project and Connections PCS is committed to minimizing any perceived negative impacts of building in Kaumana off of Edita St.

So far, most of the noise from the opposition has been about what a minority of residents in a small area do not want in their backyard. While these are valid concerns, we need to look at the bigger picture of what all the benefits of building this new campus will bring. Each school year, hundreds of local students and their families will be better off, more educated, and more prepared to serve the world. When you multiply this greater good year after year, the positive compounding effect will be exponential.

I am also a resident of Kaumana. I do not fear the concerns of water, runoff, and traffic. These are problems with solutions. One of my parents is a retired urban planner. What I learned growing up is that development in itself is neither good nor bad, but rather it is inevitable so we should do it properly and sustainably. I believe that this is an opportunity to show our students constructivism in real life and that through responsible development, we can solve and mitigate real world problems. With respect and gratitude, I request that Connections PCS be allowed to build their new campus at the proposed location.

Sincerely,

Shinji Salmoiraghi

Connections PCS Governing Board Chair

Mori, Ashley

From: Eric Boyd <eric_boyd@connectionspcs.org>

Sent: Tuesday, October 5, 2021 1:32 PM

To: WPCtestimony

Subject:Letters of support from Students Sophia, Chloe, and Kawika (SPP-12-138)Attachments:Windward Planning Commission- Sophia.pdf; Windward Planning Commission-

Chloe.pdf; Letter to Windward Planning Commission- Kawika.pdf

Letters of sup[port from 4th. graders

Dear Windward Planning Commission

I want a school to pet the horse and the goat and to grow a garden and to grow a lot of plas and to have a big space to play and to have a playground and some swings. I would also like a slide and monkey bars. I would like a new building with a new classroom that doesn't drip or leak water when it rains. I hope we can build our new building at the Kaumana property so we can have lots of nice things at our new school. Please and thank you.

Mahalo

Sophia

Grade 4

Aloha Windward Planning Commission,

I am thinking about having a big trampoline in the classroom. I am also thinking about The treasure box being almost as big as the green chear right next to the bord. And i am also thinking about having a playground right next to the games. I would like to use the playground to have outdoor recess. I am hoping to have a new school so please allow Connections to build a school at the Kaumana property so we can learn and grow there. Mahalo

Chloe

Grade 4

October 5, 2021

To the Windward Planning Commission:

I am writing to ask that you approve our school being in Kaumana so that we can have a new school.

Having a new school in Kaumana would mean we can be on the land, we are keiki o ka aina this way we can actually live being children of the land.

We are Hawaiian, the State of Hawaii seal, per Google, "Hawaii's motto is a Hawaiian phrase, "**Ua mau ke ea o ka aina i ka pono**", which literally translates to "the life of the land is perpetuated in righteousness." This motto was further explained to me to mean "to do what is right in your life and for the land."

I hope you make the right choice to let us have our school on the land.

Signed a sincere Hawaiian in 4th grade,

Kawika Tahutini

Mori, Ashley

From: Blaine Stuart <findbgs@gmail.com>
Sent: Tuesday, October 5, 2021 6:37 PM

To: WPCtestimony

Subject: Connections school testimony (SPP-12-138)

I am against the Connections school on Edita. My biggest concern is with the school's legal representative, Ted Hong. In 2004, Hong was characterized as arrogant and without "judicial temperament" by his legal colleagues in the Hawaii State Bar. In my own personal dealings with Hong I have found him to be dishonest, evasive, arrogant and completely without honor. It is my personal opinion that he can not be trusted.

Additionally, we live just off of Kaumana Street, and it is very difficult to squeeze into traffic at the corner of Kaumana and Terrace Drive. Especially when we are trying to get our kids to school at EB Desilva.

For these reasons I am not in favor of a school on Edita.

Blaine Stuart Hilo, HI

Sent from my iPhone

TED H. S. HONG, ESQ.

OCT 5 2021 PM3:15

REC'D HAND DELIVERED

Attorney at Law
P. O. Box 4217
Hilo, Hawaii 96720-0217
(808) 933-1919
Ted@tedhonglaw.com

TRANSMITTAL MEMORANDUM

TO: Melissa Dacayanan-Salvador

Windward Planning Commission

County of Hawaii, Planning Department

101 Pauahi Street, Suite 3

Hilo, Hawai'i

FROM: Ted H. S. Hong, Esq.

DATE: October 5, 2021

RE: Item #4 Connections New Century Public Charter School/CBESS (SPP-12-000138)

Enclosed, please find the following:

| Original: | | Copy(ies): Dated: | | Description: | | | |
|----------------------------------|--|-------------------|------------|---|---|--|--|
| 1 | | 16 | 10/05/2021 | Applicant Community Based Support Services' Proposed Findings of Fact, Conclusions of Law and Order | | | |
| 1 | | 16 | 10/05/2021 | Applicant Community Based Support Services' Submission of Additional Ex in Support of Application | | | |
| () () () (XX) () | For your files Per your request Per our conversation | | | () () () () | For signature and return For signature IN BLACK INK For review & comment For distribution For recording/filing Other: | | |

REMARKS: Please return one filed marked copy to our messenger or office. Electronic version

to be submitted. Thanks.



TED H. S. HONG 3569 Attorney at Law P. O. Box 4217 Hilo, HI 96720 Telephone No. 808.933.1919 Facsimile No. 808.935.8281 ted@tedhonglaw.com

COH PLANNING DEPT OCT 5 2021 PM3:17 REC'D HAND DELIVERED

Attorney for Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of |) | SPP No. 12-0 | 000138 | | |
|--|-------------------|-------------------------------|-------------------------|--|--|
| |) | | | | |
| CONNECTIONS NEW CENTURY | | APPLICANT COMMUNITY BASED | | | |
| PUBLIC CHARTER SCHOOL and | | SUPPORT S | ERVICES' PROPOSED | | |
| COMMUNITY BASED EDUCATION | | FINDINGS C | OF FACT, CONCLUSIONS OF | | |
| SUPPORT SERVICES, | | LAW and ORDER; CERTIFICATE OF | | | |
| | | SERVICE | | | |
| Application for Special Permit Application |) | | | | |
| No. 12-000138, | | Remanded Hearing: | | | |
| |) | DATE: | October 7, 2021 | | |
| TMK: (3) 2-5-006-141; Kaumana, South |) | TIME: | 9:00 a.m. | | |
| | | | | | |
| |) | | | | |
| |) | | | | |
| TMK: (3) 2-5-006-141; Kaumana, South Hilo, Hawaii. |))) _) | | | | |

APPLICANT COMMUNITY BASED SUPPORT SERVICES' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER

Comes Now, Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES, (hereinafter referred to as "CBESS"), by and through its undersigned counsel and hereby submits its Proposed Findings of Fact, Conclusions of Law and Order, as follows:

I. PROCEDURAL BACKGROUND

This matter involves an application filed by Connections on July 25, 202, for a special permit, pursuant to Section 205-6, Hawaii Revised Statues ("HRS") and Rule 6 of the County of

Hawaii Planning Commission Rules of Practice and Procedure (hereinafter "Commission Rules") to allow the development of a charter school campus and related improvements for students in kindergarten through twelfth grade (hereinafter, the "Development"), on 70.15 acres of land situated within the State land Use Agricultural District, at Ponahawai, Kukuau 2nd, South Hilo, Hawaii, commonly referred to as the Kaumana area of Hilo, designated by the State of Hawaii Tax Map Key ("TMK") (3)2-5-006:141 (hereinafter, the "Property").

Connections has lease the Property on which the Development is proposed from the State of Hawaii under General Lease No. S-6029.

Notices of the Windward Planning Commission of the County of Hawaii (hereinafter "Commission") hearings on the proposed Development were provided to property owners surrounding the proposed Development. The County of Hawaii provided surrounding property owners Notice of the remanded hearing of October 7, 2021.

The original contested case hearings by the Commission's Hearing Officer were held on October 21, 22, 2013 and November 12, 2013, January 8, and 22, 2014.

The Commission held public hearings on the Connections application on November 9, 2012, December 6, 2012 and January 10, 2013.

The County of Hawaii's Director of the Department of Planning, is a part to this proceeding pursuant to Rule 4-7(a) of the Commission Rules. The Director initially and recently recommended approval for the Connections application, subject to specific conditions.

The subject application involves a parcel of land greater than fifteen acres in area.

Therefore, any permit approved by the Commission is subject to final approval by the State Land Use Commission.

The Windward Planning Commission unlawfully rejected the Application on May 12, 2014. The Applicant successfully appealed and the County of Hawaii Windward Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order dated May 12, 2014 were vacated and remanded to the Windward Planning Commission on January 31, 2020. See, Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136 (Ct. App. 2020).

II. FINDINGS OF FACT

A. Proposed Development

(1) General Description:

- 1. The Connections application proposes the development of a K to 12 charter school campus on the lower portion of the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion of the Development would be used for outdoor type of educational programs limited to conservation and forestry preservation.
- 2. The lower campus would support project 167 elementary students, 107 intermediate students, and 107 high school students (381 K through 12 students).
- 3. The Applicant aspires to include at some indefinite time in the future, a dormitory capable of supporting 30 students during Summer breaks.
- 4. The Applicant also aspires to include a gymnasium, kitchen/dining facility, library/resource center, caretaker's residence and other related facilities. Two parking lots capable of support 140 parking stalls are envisioned.
 - 5. Connections proposed a maximum of 50 full-time and 17 part-time employees at full

build-out of the Development, which is the same number presently employed for this charter school.

- 6. Connections' current student body reflects that over 50% of the student population comes from North and South Hilo area and some of the remaining students from the Puna area.
- 7. The Development is open to students, faculty and staff from all geographic areas of the island of Hawaii, including the immediate vicinity in the Kaumana area of Hilo.
- 8. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school and administration building, with the projected opening to be within 2.5 to 3.5 years.

(2) Public Utilities and Services:

- 9. Access/Traffic: Access to the Development is proposed from Edita Street which connects with Kaumana Drive, a secondary Hilo artery. Both roads are owned and maintained by the County of Hawaii. Edita Street has a 60-foot right-of-way width, with a 48-foot wide pavement width fronting the Development. The paved area accommodates two 20-foot wide travel lanes, a 20-foot wide shoulder on the northeast side of the road, and an 8-foot wide shoulder on the southwest side. Edita Street is in good condition; however, the Hawaii County Police Department recommended that the unpaved shoulder along Edita Street extending from Kaumana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.
- 10. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaumana Drive

Intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current allevel of service or LOS operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B". Although the TIAR concludes that traffic will not be adversely affected by reasons of the Development, the County Department of Public Works recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and the Connections should prepare a comprehensive traffic management plans for the Development.

(3) Water Resources and Use:

- 11. The Applicant agrees to the limits set by the County of Hawaii, Department of Water Supply at a maximum of 4,2000 gallons per day (hereinafter "gpd") of water of seven (7) water units from the existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus to service the entire Development.
- 12. Based on a 60 gpd per student standard, 4,200 gallons of County water can support 70 students. At full build-out the entire Development would require 26,100 gpd of potable water, if other sources are not used.
- 13. Notwithstanding the insufficient availability of potable water from the County system for the fully completed Development, the existing 8-inch waterline within Edita Street is adequate to provide the required 2,000 gallons of water per minute for fire protection of the proposed Development.
- 14. To supplement its needs, Connections will install water efficient fixtures and supplement the available County water with either catchment system for non-potable water or

developing an additional water source, on-site. Water catchment for a Charter School is an acceptable alternative and successfully being used by other Charter Schools in the County of Hawaii, including but not limited to Hawaii Academy of Arts and Science, Public Charter School, in Puna, Hawaii.

- 17. "There is nothing in the record to suggest that Connections would not or could not be held to its commitments." *Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n*, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *12 (Ct. App. 2020).
- 16. There is no definitive evidence in the record that Connections would be able to develop other, alternative, non-County, potable water sources. *Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n*, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *12 (Ct. App. 2020).
- 17. The proposed, phased, development, with a combination of County supplied water and water catchment can supply the potable and non-potable needs of the proposed Development.

(4) Wastewater:

18. Connections is proposing to provide its own wastewater system that meets the requirements of the State of Hawaii Department of Health (hereinafter "DOH") and federal laws and regulations. Connections prefers using compostable toilets and installing an ecological/biological wastewater system called the "Living Machine." This system is currently being successfully used and approved by the State of Hawaii, Department of Health in a commercial shopping center on the Island of Hawaii. However, should such a system prove to be unfeasible, Connections would install a traditional septic system with leach fields or any other system required by DOH. Compostable toilets are currently being used with success by the State

of Hawaii, the Federal Government and Kamehameha Schools in their facilities on the island of Hawaii.

(5) Drainage:

19. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the Property is outside the 500-year flood plain. Notwithstanding this flood designation, during serve storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Edita Street.

(6) Utilities:

20. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kaumana Drive.

(7) Public Safety:

- 21. The Hawaii County Police Department expressed concerns that the Development would increase noise, crime and traffic. However, there was no evidence that the Police Department lacks the intent or ability to provide police protection for the Development.
- 22. Since its inception, several of the surrounding property owners have committed several property and personal crimes. Several residents defaced the School at the current location, with offensive, intimidating stickers threatening the Applicant, its students faculty and staff that the School should not exist and stay out of the Kaumana area. Several residents put up intimidating yard signs condemning the existence of the School. One resident even testified that

the privileged neighbors don't want "Puna type kids, running through out neighborhood."

- 23. Several residents have dumped hazardous material onto the proposed property, including car batteries, oil, construction waste, dead animal and fish carcasses.
- 24. Several residents have cut and broken down the fence line that borders the School's leased property and neighboring properties.
- 25. Several residents have harassed School employees while they were on the School property.
- 26. Several residents have glued the gate locks shut and damaged school equipment on the property.
- 27. Recently, in July of 2021, one or more residents had several thugs that assaulted one of School's employees, while residents quietly observed. The employee had to receive medical treatment for his injuries.
- 28. At no time has the Hawaii County Police Department received any credible complaints about School employees and students while working on the property.
- 29. The School intends to rely on federal law enforcement and the Department of the Attorney General, State of Hawaii for future investigations, reporting and prosecution against any future crimes committed against the School, its students, faculty, staff and property.
 - (8) Physical Characteristics of the Property and Surrounding Areas:
 - 30. The Property is presently vacant and undeveloped.
- 31. Surrounding lands to the south and west of the Property are zoned A-1a, with property further south being zoned A-20a and A-10a [sic]. Lands to the north across Kaumana Drive are zoned RS-10 and RS-15, with some lands zoned A3a further north across Kaumana

Drive. One parcel is also zoned Open adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands.

- 32. The soil on the Property are primarily composed of pahoehoe lave flow. The State Department of Agriculture's map showing agricultural lands of importance to the state of Hawaii show the Property as being unclassified. Also, the Land Study Bureau classifies the soil on the Property under it detailed land classification system, as "D" or "Poor" for agricultural activity.
 - a. Based on the proposal submitted by the Applicant, the Intermediate Court of Appeals, State of Hawai held:

We conclude that it would be an absurd result to read the "unsuited for agricultural use" consideration so strictly and narrowly, particularly under circumstances such as those presented here, to deny a special permit due to an applicant's attempt to incorporate an agricultural component into its proposed use. See, e.g., Morgan v. Planning Dep't, Cty. of Kaua'I, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004) (planning commission is required to give effect to the policies and objectives of land use statutes and not to interpret them in a manner that would lead to an absurd result). (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *14–15 (Ct. App. 2020).

- b. Sustainable Agriculture: The Applicant has shown that it will educate students, using hands-on teaching, how to develop and raise crops using aquaponics and the Native Hawaiian practice of terraced loi's. The suggestion that the School has to implement agriculture in the traditional sense of tilling the land, was and is absurd.
- 33. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 1880-1881. Although

Connections submitted a request to the State Historic Preservation Division ("SHPD"), by letter dated August 17, 2010, requesting a "no-effect" determination form that agency, SHPD has not responded to the request.

- 34. A portion of the Kaumana Cave is accessible from the upper portion of the Property. Connections will not and has committed to surrounding property owners and other people who have assisted the School in preparing this application that it will NOT use or construct any school facilities on the upper portion of the Property and to maintain a minimum of 100-foot buffer on either side of the cave alignment to alleviate concerns about impact from the Development on the cave ecosystem. The School's commits to keeping this part of the subject property in conservation and will promote and educate its students in the preservation and conservation of native vegetation and forest.
- 35. A botanical survey of the Property identified eleven (11) native plant species, but none of those species are considered protected species.
- 36. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.
- 37. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

III. CONCLUSIONS OF LAW

A. State and County Plans

1. The Property is within the State Land Use Agricultural District. A school may be permitted in this district if a special permit is obtained for such use pursuant to Section 205-6,

HRS and Rule 6 of the Commission Rules.

- 2. The County of Hawaii General Plan Land Use Pattern Allocation Guide ("LUPAG")

 Map designates the Property for low density urban uses. The LUPAG designation of Low

 Density urban use, allow for residential uses, with ancillary community and public uses, and

 neighborhood and convenience-type commercial uses. The Development is not proposed for the

 exclusive use of the Kaumana community or surrounding property owners, as currently Edita and

 Mele Manu streets are limited to.
- 3. The County of Hawaii zoning for the Property is Agricultural with a minimum lot size of one acre (A-1a). Under Section 25-5-72(d) of the Hawaii County Code, a school is permitted in an Agricultural zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District.
- 4. The Development, which is proposed to be located on State land, is subject to the Hawaii State Environmental Impact Statement law, Chapter 343, HRS. Connections prepared and environmental assessment in accordance with Chapter 343, and declaration with a finding of no significant impact was issued for the Development by the State of Hawaii Department of Land and Natural Resources.
- 5. The Property is not situated within the Special Management Area ("SMA"), since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

B. Special Permit Requirements

- 6. Section 205-6, HRS, which governs special permit, provides in relevant part:
- (a) The county planning commission may permit certain unusual and reasonable

uses within agricultural...district other than those for which the district is classified. Any person who desires to use the person's land within an agricultural...district other than for agricultural...use... may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired...

* * *

- (c) The county planning commission may, under such protective restriction as may be necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter...
- (d) Special permit for land the area of which is greater than fifteen acres...shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval including the adherence to representations made by the applicant.
- 7. Planning Commission Rule 6-7, provides, in relevant part, that:

[t]he Commission shall not approve a Special Permit unless it is found that the proposed use . . .

- (a) Is an unusual and reasonable use of land situated within the Agricultural...District...;and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statues, as amended.

The Commission shall also consider the criteria listed under Section 6.3(b)(5) (A) through (G).

- 8. The seven criteria under Planning Commission Rule 6.3.(b)(5)(A) through (G) include:
 - (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - (B) The desired use shall not adversely affect surrounding properties;
 - (C) Such use shall not unreasonable burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

- (D) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design plans."

C. Application of Special Permit Criteria to the Development

(1) Land Use Law Objectives:

- a. The purpose of the State Land Use Law is to preserve the lands of high agricultural potential for agricultural use. The Property consists of land that is not considered highly valuable for agricultural uses. Thus, the use of the Property for a school is not contrary to the objectives sought to be accomplished by the State Land Use Law.
- b. The Development, which proposes the construction of a school for 381 students and related facilities is not similar to a major recreational them park attracting 1.5 million people each year. Therefore, such a development would not frustrate the objectives and effectives of the Hawaii's land use scheme and would not require a State land use boundary amendment in lieu of a special permit.

 Neighborhood Board No. 24 vs. State Land Use Commission, 64 Haw. 265, 272, 639, P.2d 1097, 1103 (1982).

(2) Affect on Surrounding Properties

a. Based upon the testimony from surrounding and neighboring property

owners, the Development may have a minor adverse effect on surrounding properties by creating noise, traffic, and marginally impact the quality of life of the adjoining residents.

b. Measures proposed by Connections, regarding the establishment of building setbacks, roadway improvements to Edita Street and will limit pick up and drop off of students from its current location in Downtown Hilo, similar to Kamehameha Schools which has students using school buses that originate from various locations, such as Prince Kuhio Plaza and Parker Ranch Shopping Center, to reduce traffic.

(3) Burden on Public Agencies to Provide Services:

- a. The evidence supports that Connections has the ability to utilize its current water credits and develop other water sources as a mitigating measure, previously proposed by the Director, including water saving devices, compostable toilets and catchment water for non-potable needs such as restrooms and irrigation.
- b. A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a high school for a maximum of 107 students in its first phase, when the potable water available would only allow for 70 students.
- c. A possible additional potable water source is using commercial, water suppliers for drinking purposes only.

d. As such, the proposed use will not unreasonably burden the County

Department of Water Supply to provide water to the Development.

(4) Unusual Conditions, Trends and Needs:

a. Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become, an exclusive, gated, privileged, residential neighborhood. Residents have demanded that the two (2) public streets, Edita and Mele Manu remain limited to residents only to the exclusion of the general public. The County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. However, there was no evidence presented to demonstrate that location of the School that is not intended to specifically service the needs of the elite, privileged surrounding community is such an unusual condition, trend or need that justifies denying the School's limited development at this location.

(5) Suitability of Land for Agricultural Uses:

- a. The Land Study Bureau soil classification rating for the Property is "D" or "Poor," which suggests that the soil may be unsuited for traditional agricultural uses.
- b. Connections is committed to maintain the upper portion or nearly one-half of the Property for conservation and forestry preservation.
- c. Connections is committed to a sustainable agriculture practices including construction of greenhouses on the Property, aquaponics and terraced

loi's as part of its curriculum.

d. Based upon the representations of Connections, it cannot be found that the Property is unsuited for the School's agricultural uses.

(6) Alteration or Change of the Essential Character of the Land and Present Use:

- a. The Property is presently a forest and is vacant of any structures. The lower half of the Property will be developed into a school with classrooms, a gymnasium/cafeteria, administration and parking lots.
- b. The Development of a school will NOT change the essential character of the forested land and its undeveloped use in the mauka or upper portion of the property.

(7) Consistency with the General Plan:

- a. The County General Plan LUPAG map designates the Property for low density urban use. "Low density uses" under the General Plan include residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses.
- b. The Development, which proposes a charter school that is not specifically services the immediate surrounding property owners but is open to the North and South Hilo community is consistent with the uses permitted in the area of low density urban uses.
- c. The Economic, Public Facilities and Land Use elements of the County General Plan generally requires consideration of social and community concerns including:

Economic Element – Goal

Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

Public Facilities Element - Goal

Encourage the Provision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community.

<u>Land Use Element – Policy</u>

Encourage the development and maintenance of communities meeting the need of its residents in balance with the physical and social environments.

- d. The evidence has established community concerns are exaggerated, have no basis in fact, are based on intentional falsehoods and mistruths.
- e. The County General Plan Public Facilities-Education course of action for South Hilo encourages the establishment of additional schools as the need arises, the Development, at the subject location, fulfills those needs as the majority of students are from the Hilo, Hawaii area.

(8) Unusual and Reasonable Use of Land

a. The construction of a school on the Property is an unusual use of the land because a school is not a permitted use in the State Land Use Agricultural District. However, the evidence presented demonstrates that the Development is a reasonable use of the Property. Connections has demonstrated that the proposed school, built in phases, can be built with sufficient potable water resources, based

on the School's current gallons per day average for students. Connections demonstrated that the development of a regional charter school on the Property does service the needs of the North and South Hilo community because the current and projected student population comes from the North and South Hilo area. Connections has demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application.

D. Conclusions

Based upon the forgoing Findings of Fact, the Commission makes the following Conclusions of Law:

- To the extent that any of the Findings of Fact constitute Conclusions of Law, or
 Conclusions of Law constitute Findings of Fact, they shall be considered and construed as such.
- 2. The Commission has jurisdiction over the subject special permit application, including the ability to recommend it approval to the State Land Use Commission, pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.
- 3. Connections has the burden of proof on this matter before the Commission, including the burden of producing evidence as well as the burden of persuasion, by a preponderance of evidence, to demonstrate how its request is consistent with the guidelines for a special permit as outlined in Section 205-6, HRS, and Rule 6 of the Commission Rules. Connections has met this burden.
- 4. The Development adequately meets the requirements or guidelines for a special permit as required by Section 205-6, HRS and Rule 6 of the Commission Rules.
 - 5. The Development is consistent with the County General Plan, particularly as to

the impacts on the immediate community.

ORDER

Based upon the preceding Findings of Fact and Conclusions of Law, Special Permit

Application SPP No. 12-000138 of Connections New Century Public Charter School and

Community Based Education Support Services to develop a K to 12 charter school campus with

dorm facilities and related uses on 70.15 acres situate within the State Land use Agricultural

District is hereby GRANTED.

DATED:

Hilo, Hawaii, October 5, 2021.

JOHN REPLOGLE Chairperson Windward Planning Commission COUNTY OF HAWAII

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of | | SPP No. 12-000138 | | |
|--|----|-------------------|-------------------|--|
| |) | | | |
| CONNECTIONS NEW CENTURY |) | CERTIFICA | TE OF SERVICE | |
| PUBLIC CHARTER SCHOOL and |) | | | |
| COMMUNITY BASED EDUCATION |) | | | |
| SUPPORT SERVICES, |) | | | |
| |) | | | |
| Application for Special Permit Application |) | | | |
| No. 12-000138, | | Remanded F | Remanded Hearing: | |
| |) | DATE: | October 7, 2021 | |
| TMK: (3) 2-5-006-141; Kaumana, South |) | TIME: | 9:00 a.m. | |
| Hilo, Hawaii. |) | | | |
| |) | | | |
| | _) | | | |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Applicant Community Based Support Services' Proposed Findings of Fact, Conclusions of Law and Order, was duly served on the following party in this action, by United States Postal Service, prepaid and by electronic means:

Kevin M, Richardson, Esq. Deputy Attorney General State of Hawai'i 235 South Beretania Street, Room 304 Honolulu, Hawai'i 96813 Kevin.m.richardson@hawaii.gov

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The Hon. Elizabeth Strance Corporation Counsel 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720

Attorney for Planning Director

DATED: Hilo, Hawaii, October 5, 2021.

TED H. S. HONG Attorney at Law

Attorney for Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES



COH PLANNING DEPT OCT 5 2021 PH3:24

REC'D HAND DELIVERED

TED H. S. HONG 3569 Attorney at Law P. O. Box 4217 Hilo, HI 96720 Telephone No. 808.933.1919 Facsimile No. 808.935.8281 ted@tedhonglaw.com

Attorney for Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of |) | SPP No. 12-0 | 00138 | |
|---|--------|-------------------------|--|-----------------------|
| CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES, |))) | SUPPORT SE ADDITIONA | COMMUNITY EERVICES' SUBM LEXHIBITS IN S TION; CERTIFIC | IISSION OF SUPPORT |
| Application for Special Permit Application No. 12-000138, |)) | Remanded He | earing: October 7, 2021 | |
| TMK: (3) 2-5-006-141; Kaumana, South Hilo, Hawaii. |) | TIME: | 9:00 a.m. | |

APPLICANT COMMUNITY BASED SUPPORT SERVICES' SUBMISSION OF ADDITIONAL EXHIBITS IN SUPPORT OF APPLICATION

Comes Now, Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES, (hereinafter referred to as "CBESS"), by and through its undersigned counsel and hereby submits its additional exhibits in support of its Application that the Applicant intends to rely and on and respectfully requests be incorporated into the Record.

DATED: Hilo, Hawaii, October 5, 2021.

Respectfully submitted,

TED H. S. HONG

Attorney at Law

Attorney for Applicant

COMMUNITY BASED

EDUCATION SUPPORT SERVICES

Hawaii Grown

Can Urban Farming Solve Hawaii's Food Crisis?

High-tech farming is costly and limited in what it can grow, but techniques could help Hawaii with its dependency on food imports.



By Brittany Lyte 💆 🖸 🐧 / About 10 hours ago © Reading time: 11 minutes.



It's a sobering challenge: Reduce Hawaii's precarious dependence on food imports by ramping up local crop production to fill the plates of more than 1.4 million residents, as well as millions of tourists who visit the islands each year, amid projections of intensifying drought, water scarcity and competition for farmable land.



One route to getting there calls for crops to be grown on asphalt and in warehouses, either completely indoors or in advanced greenhouses.

More like science labs than farms, some of these futuristic food production setups don't require soil for

plants to grow. Often, artificial lights replace natural sun. And since moisture and nutrients can be delivered directly to the root, far less water is required to grow crops this way than in conventional farming.

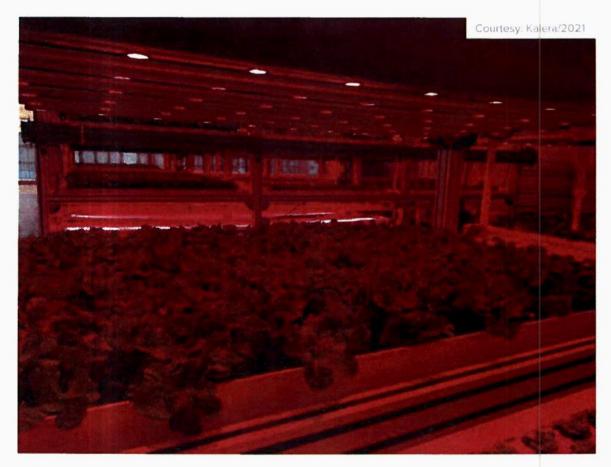
Other variables, such as humidity and temperature, can be precisely controlled to create an optimal climate to produce more crops with less space, while minimizing environmental damage.

In Hawaii, this new era of agriculture is already underway — and starting to grow.

In a 40-foot shipping container off Farrington Highway in Waipahu, Bee's Greens Co. grows butterhead and romaine lettuce under LED bulbs. Plants are stacked on top of each other in this vertical hydroponic system, achieving the same yields as a 1.5-acre conventional farm.

On Lanai, a 2-acre, high-tech greenhouse farm by tech entrepreneur Larry Ellison's Sensei Ag produced 35,000 pounds of produce in less than three months last year. In 2021, the company expects to harvest 500,000 pounds of food for statewide consumption, including Swiss chard, basil, tomatoes, cucumbers and eggplant, without a pinch of soil.

And by mid-2022, the Florida-based indoor farming company Kalera plans to open a 15,000-square-foot facility, roughly the size of an Olympic swimming pool, in Ko Olina in West Oahu. The leafy greens grower's partially automated vertical farm would be Hawaii's largest, producing several million heads of lettuce per year, the company says.



In December, the Florida-based urban food producer Kalera announced its plans to build Hawaii's largest vertical farm in West Oahu.

The University of Hawaii Manoa's Department of Tropical Plant and Soil Sciences has identified agriculture systems that use technology to modify the natural environment to boost crop yields as a priority area for future curriculum expansion, according to Theodore Radovich, a professor of sustainable farming systems.

By eliminating seasonality, pest problems and bouts of bad weather, ag-tech advocates say this burgeoning sector is key to helping Hawaii improve its food sovereignty at a time when climate change is expected to give rise to exceedingly volatile weather that threatens to <u>disrupt crop production and food supply chains</u>.

Related Articles



Climate Change Is A Big Problem For

Farmers In Hawaii

SEPTEMBER 26, 2021

California produces a critical chunk of the nation's fruits, vegetables and nuts, including 99% of walnuts, 95% of celery, 89% of cauliflower, 71% spinach and 69% of carrots. But the state is in the grips of a brutal and persistent drought, causing agricultural water shortages that could have potentially catastrophic effects on the nation's food supply.

In the Midwest, where most of the nation's corn grows, wetter springs and hotter summers could lead to a 25% drop in corn production by 2050.

And the list goes on.

"As it gets hotter, most crops are going to suffer," said Jesse Cooke, vice president of investments and analytics at the Ulupono Initiative, which supports projects focused on locally produced food, renewable energy, clean transportation, waste and water management.

"So you need more of these high-technology types of farming setups to be able to provide more food to the masses, and it will just become more important as we move along because climate change is going to have big effects," Cooke added.

Not A Panacea

Vertical farms and advanced greenhouses are limited, however, in what they can grow.

Ideal for small, dense crops, such as lettuce, tomatoes, cucumbers, peppers and eggplant, these ag-tech systems aren't well suited for large plants or anything that grows on a bush or a tree.

Most indoor farms in America stick to lettuce, herbs and microgreens.



Sensei Farms Lanai, a 2-acre indoor farming pilot project by Larry Ellison's Sensei Ag, produced 35,000 pounds of produce in less than three months last year.

Another hurdle is a need for massive capital investment. The systems usually need to operate an artificial climate to create superior growing conditions, and that comes with big energy costs.

In Hawaii, where sunshine is plentiful, paying the highest energy costs in the nation to grow crops with LED lights may prove to be a weak point in the indoor farming business model, Cooke said.

State energy regulators are considering giving greenhouse and indoor farming operators a break following the passage of a bill in the Legislature in 2019 that authorized the Public Utilities Commission to establish preferential electricity rates for what's known as protected agriculture.

How much relief ag-tech growers might qualify for, however, is still unknown.

Brian Miyamoto, executive director of the Hawaii Farm Bureau, said new technology could help make agriculture a significant contributor to the state economy once again.

EXHIBIT "1"

Yet while he wants to see Hawaii farmers embrace cutting-edge food production systems, he's concerned that they might cannibalize small, traditional farms.

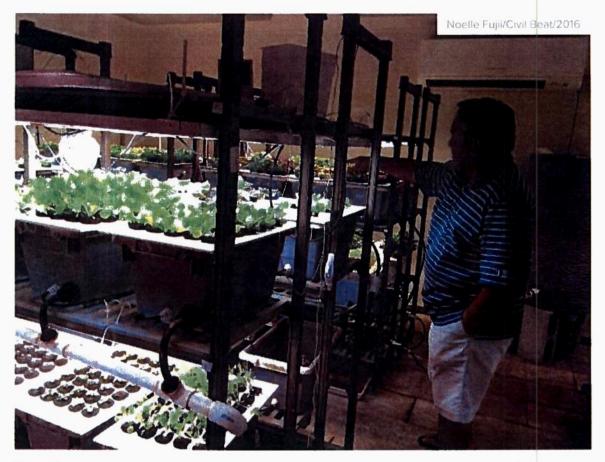
"We need everybody — small farmers, medium farmers and large farmers — to help grow the industry and produce more of the food we eat here to get us closer to food security," Miyamoto said. "But remember that most Hawaii farmers are small farmers. We don't want to see this technology come in and (create) a net loss by putting (them) out of business."

The Key To Competitive Pricing? Growing At Scale

Hawaii imports more than 80% of its food, including more than 90% of the lettuce consumed in the islands.

The opportunity to take a bite out of the lettuce import market is what led Kalera, headquartered in Orlando, Florida, to start its business on Oahu, said Kalera CEO Daniel Malechuk.

Undeterred by Hawaii's high energy and real estate prices, Malechuk said the company aims to offset some of those costs by selling its product at a far higher price point in the islands than it does on the mainland, as dictated by the local market.



Kerry Kakazu, owner of MetroGrow Hawaii, said he uses mists, LED lighting and controlled temperatures to grow his crops indoors. MetroGrow Hawaii is an urban, vertical farm, meaning crops are planted densely and stacked on trays, taking up a small area of space, rather than being spread across acres of land outdoors.

That doesn't mean Kalera lettuce will be a luxury brand. The company plans to match, or come close to the sale price of lettuce imports.

When it's up and running, Kalera's indoor farm in West Oahu will use about 3% of the water that would be required to grow the same amount of lettuce conventionally, Malehuck said. And he says the farm's yields per square meter will be about 400 times greater than a traditional farm.

Kalera will also have the ability to deliver lettuce to retailers within hours of harvest, Malechuck said, which gives the product at least a four-week shelf life. Imported vegetable producers can't compete with that.

"Our goal is to have a product that is the most superior product anybody's ever had and price it in an affordable manner," Malechuk said.

The Road From Niche Market To Mass Market

With the right technology, farms can more easily achieve competitive pricing and product consistency — keys to selling to large grocers, like Costco and Safeway.

"My estimate is probably only 5% to 10% of the farmers in Hawaii have consistent sales with large grocers because it's just very tough to do that," Cooke said. "You can't say, 'Hey, we had an infestation, we can't provide to your Foodland stores this week.' Foodland hates that. They need to know exactly what they're getting every single week."

That's why major grocers do a bulk of their business with mainland-based food producers, Cooke said. The local agriculture sector, as a whole, can't provide enough volume or consistency in quality.

Courtesy: Mari's Gardens/2021

When MetroGrow Hawaii launched the first vertical farm in the state in an 800-squarefoot warehouse in

During the 2008 economic slump, Mari's Gardens in Mililani converted part of its ornamental landscaping business into a hydroponic vegetable farm, betting that people would be more willing to spend money on food than tropical plants. McDonald's was its first major client.

Kakaako in 2013, it focused on high-end leafy greens that are difficult to farm traditionally in the islands.

Today the company operates out of a 2,000 square-foot warehouse, harvesting specialty items sought by chefs, including baby greens, ice plant and pea shoots.

The company's crop selection is partly designed to avoid competition with traditional farmers, MetroGrow President Kerry Kakazu said.

Another driver lies in the fact that the company needs to stick with crops that sell at higher price points in order to recoup giant energy costs.

At its current size, Kakazu said the business is close to achieving profitability. But he wants to shift the business model away from niche products and focus instead on growing more affordable leafy greens.

To do this profitably, Kakazu said he'll need to scale up. He's considering a fivefold expansion of the company's grow space.

The entrepreneur is also trying to cut down on labor costs by increasing automation. For example, Kakazu said he wants to automate the refilling of the farm's water tanks.

He also wants to slash energy costs by reducing the company's costly use of air-conditioning and finding a way to incorporate natural sunlight into the warehouse to minimize LED lighting.

"It's always in the back of my mind that we want to help Hawaii's food sufficiency," Kakazu said. "We have to modify our system or greatly increase the yields to do it economically."

Mari's Gardens, an ornamental landscaping company in Mililani that grows produce in an aquaponic and hydroponic greenhouse, is going through a similar transition.

After the company lost about a third of its restaurant orders due to the pandemic, it shifted its primary customer base to supermarkets. Like

MetroGrow, the business is considering scaling up production to achieve more competitive pricing.

But store manager Brendon Lau said he will also need to cut costs by adopting more automation and reducing energy usage.

High Tech Isn't Always Better

Kunia Country Farms is home to <u>one of the largest aquaponics systems in</u>

Hawaii. The farm grows leafy greens in a closed-loop system where the fish in the system provide nutrients for the plants to grow, and the plants act as a filter to clean the water that recirculates back to the fish.

Co-founder Jason Brand describes it as a sustainable, mid-tech farm that uses machines that border on robots only to harvest, wash and pack the produce.

This automation helps the 3-acre farm, which produces roughly 5,000 pounds of lettuce each week, match the price of imported lettuce, Brand said.

Jason Brand warns that implementing the best technology isn't necessarily a recipe for success in an island chain with such a limited population size.

In a big city on the mainland, Brand said it would make sense for him to invest in a fully automated farm. But if he invested in that level of technology on Oahu, Brand said he'd need to scale so large that he'd put nearly every other leafy green producer on the island out of business — something he doesn't want to do.

"We would have to be the sole provider of all the leafy greens on the island in order to achieve the scale that we would need to reach to make back the capital," Brand said. "Do we really want only 10 farmers on the island, each

one with a fully scaled, automated system, to produce their one crop? Because economically, there would be no room for anybody else."

Instead of investing in more automation, Brand said the farm is focused on growing as much food as it can while keeping its footprint small, something that helps reduce labor costs while preserving land for other purposes, such as housing and renewable energy projects.

That's one of the values of the ag-tech sector— it frees up land for other uses.

As the state strives to grow more food and produce more green energy, relocating some farming into urban settings could help ease <u>competition for land between the agriculture and renewable energy sectors</u>, said state Sen. Mike Gabbard, chairman of the agriculture committee.

The senator said he wants to revisit a bill that died in the Legislature in 2019 that would require the Hawaii Department of Agriculture to study the feasibility of designating Kalihi, Kakaako, Moanalua and Waianae as ag-tech zones.

Incentives, such as land tax breaks, could be used to attract farmers to jumpstart a new sector in urban farming, he said.

"Hawaii Grown" is funded in part by grants from the Ulupono Fund at the Hawaii Community Foundation, the Marisla Fund at the Hawaii Community Foundation, and the Frost Family Foundation.

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About the Author



Brittany Lyte 💆 🖂 🔊

Brittany Lyte is a reporter for Civil Beat. You can reach her by email at blyte@civilbeat.org or follow on Twitter at @blyte

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STAY UP TO DATE ON THE CORONAVIRUS AND OTHER HAWAII ISSUES

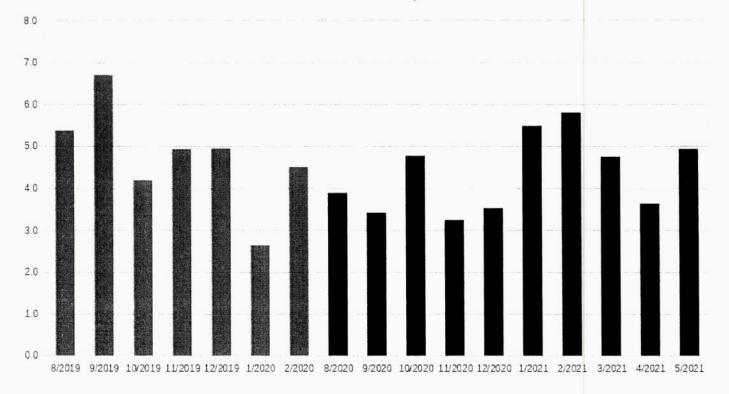
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CONNECTIONS - KRESS BUILDING

Students Gallons Per Day Water Use



GrowNYC has updated our COVID-related safety protocols across Greenmarkets, Farmstands, and Fresh Food Box sites in accordance with new guidelines from the CDC and New York City and State Departments of Health.

(/blog/greenmarkets-are-open)



HOME (/) | GREEN SPACE (/GREENSPACE) | GREEN INFRASTRUCTURE (/GARDENS/GREEN-INFRASTRUCTURE-TOOLKIT) | RAINWATER HARVESTING (/GARDENS/RAINWATER-HARVESTING)

Rainwater Harvesting



06:28

No natural resource is more important to community gardeners than water, and identifying and ensuring a dependable source is vital to every garden's successibility."

Faced with a drought in the summer of 2001 that restricted gardener access to hydrants, GrowNYC and GreenThumb founded the Water Resources Group to promote and fine-tune the idea of water conservation. For our efforts, GrowNYC's rainwater harvesting team received an Environmental Excellence Award from the New York State Department of Environmental Conservation.

There are more than 140 rainwater harvesting systems (/openspace/rainwater-harvesting/map) in New York City community gardens, collecting over 1.5 million gallons of rainwater a year from nearby roofs or shade structures, making water collection convenient for gardeners, and reducing demand on the public water supply system. They also help mitigate rainstorm runoff, which can overload storm drains and pollute the waters surrounding the city.

Interested in having a system in your community garden? Contact us (/about/contact#openspace) or read our How-To Guide (/files/osg/RWH.how.to.pdf) and build your own!

Rainwater Harvesting Resources

- Our Rainwater Harvesting How-To Guide
 (https://www.grownyc.org/files/osg/RainwaterManual_2018_FINAL_HighRes.pdf) will teach you how to build a rainwater harvesting system of your own.
- Building plans for a Winged Structure
 (http://grownyc.org/images/ospace/infra/Rainwater_Harvesting_Shade_Structure.pdf), which you can build in your garden and use as a rainwater collection source.
- Rainwater Calculation Tables (/images/ospace/infra/rainwater_collection_calculation.pdf): Formulas
 for calculating how many gallons of rainwater can be collected from a roof or structure.
- Our Rainwater Harvesting in NYC Community Gardens Map (/openspace/rainwater-harvesting/map), showing where RWH systems are located throughout the city.
- The Water Resource Group rainwater harvesting brochure is available as a PDF here (/files/osg/rwh_brochure.pdf).

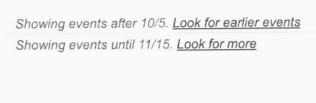
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Calendar

GrowNYC Tours & Learning Opportunities (/blog/grownyc-learning-opportunities-adults-and-students)



GrowNYC offers in-person and virtual learning opportunties for students and adults at Greenmarkets and the our Teaching Garden at Governors Island.

MORE FROM THE GROWNYC BLOG (/BLOG)



(/greenmarket)

FOOD ACCESS & AGRICULTURE

Our network of Greenmarket farmers markets, Farmstands, and Fresh Food Box sites (/ourmarkets), coupled with GrowNYC Wholesale, ensures that all New Yorkers have access to the freshest, healthiest local food.



(/oroe)

CONSERVATION

We provide food scrap drop-offs, clothing collections, Stop 'N' Swap® community reuse events, and zero waste trainings to make resource conservation easy for all.



(/openspace)

GREEN SPACE

We build and rejuvenate community & school gardens in all 5 boroughs, and support even more gardens through volunteer days, technical assistance, school garden grants, & more.



(/education)

EDUCATION

We foster future environmental stewards by providing 66,000 children each year with programs that provide meaningful interactions with the natural environment.

GROW

GrowNYC is *the* sustainability resource for New Yorkers: providing free tools and services anyone can use in order to improve our City and environment. #letsgrownyc

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(http://www.charitynavigator.org/index.cfm? bay=search.summary&orgid=6003#.VYwkpxN3nVE)

UH Hilo Stories

'A'ohe pau ka 'ike i ka hālau ho'okahi | One learns from many sources | A publication of the Office of the Chancellor, University of Hawai'i at Hilo

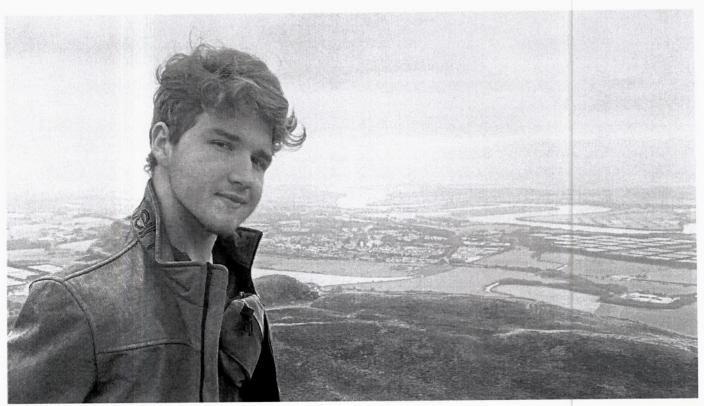






Meet UH Hilo undergraduate Kit Neikirk, geneticist and editor-in-chief Posted on September 27, 2021

Kit Neikirk's research focuses on recording and analyzing the changes to mitochondria in relation to knock down of genes. He is currently on exchange studying abroad in Scotland, his first stop this academic year while continuing his studies in Europe.



Kit Neikirk at the end of a day-hike in Dumyat Hill, Scotland, at a vista overlooking Stirling, the town where he is currently studying on exchange. Courtesy photo.

By **Elena Espinoza**.

EXHIBIT "4."

A triple major studying genetics at the University of Hawai'i at Hilo has written five articles for publication in scientific journals. One is already published and four are in press.

Kit Neikirk's research focuses on recording and analyzing the changes to mitochondria in relation to knock down of genes. He is currently on exchange studying abroad in Scotland, his first stop this academic year while continuing his studies in Europe.

"Anyone interested in the health profession, such as I, should try to expose themselves to as many cultures as possible, " he says. "It is important you can work with someone from any background, as you never know who's going to walk through that door in need of your help."

Neikirk began his post-secondary academic career as a high school freshman at only 13 years old, when he also started classes at community college level. He graduated high school from Connections Public Charter School in Hilo as a sophomore, the youngest in his graduating class. He entered UH Hilo in 2019 as a 15-year-old triple major in biology, sociology, and chemistry. He plans to graduate with his bachelor degrees in spring 2023, and from there attend medical school to continue his journey toward becoming a healthcare provider.

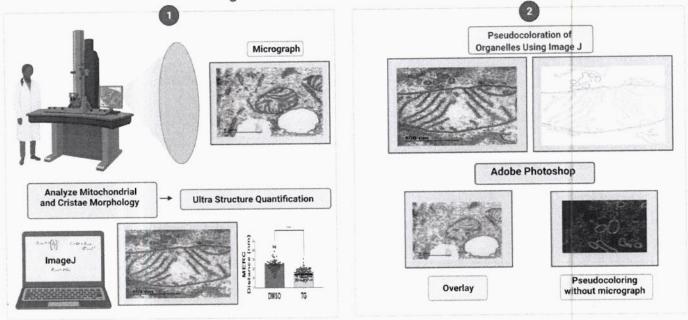
 Learn more about Kit Neikirk's background and first-year studies at UH Hilo: <u>Boy Wonder</u>, by Kasumi Collins, Ke Kalahea, Fall 2020)

Over the past summer, Neikirk was given the opportunity to work alongside one of his research mentors, **Antentor Hinton**, an assistant professor at Vanderbilt University who specializes in mitochondria and transmission electron microscopy, on several scientific journal articles. As of fall 2021, the budding researcher Neikirk has five journal articles that have been or are in the process of being published.

One focus of Neikirk's research is looking at the changes (fusions and fissions) to mitochondria due to knock downs of certain genes and the methods in which the data can be analyzed. Gene knockdown is a temporary decrease in gene expression caused by an experimental technique.

In his article, <u>"A Universal Approach to Analyzing Transmission Electron Microscopy with ImageJ"</u>, Neikirk, alongside other professors and students, explains a technique for collecting said data using transmission electron microscopy. TEM allows scientists to create high quality black and white images of subcellular components by sending electrons through the sample.

Standardized method for measuring and quantifying organelle features using transmission electron microscopy (TEM)



Graphical abstract from "A Universal Approach to Analyzing Transmission Electron Microscopy with ImageJ," Kit Neikirk, et al. <u>Source</u>.

Neikirk explains another technique of electron microscopy: scanning electron microscopy. "Specifically, we are using serial block-face scanning electron microscopy," he says. "This is where you slowly cut away at a sample and continuously scan around it via electrons, comparable to a time lapse. From there you can go backwards and reconstruct a 3-D image. By making a 3-D model of the mitochondria, you can really see how they change from knock downs."

Study and research abroad

Neikirk is now in studying abroad at Stirling University, Scotland, through UH Hilo's <u>Direct Exchange</u>

<u>Program</u>. His focus is on cell biology, ecology, and genetics, and is taking courses that UH Hilo

doesn't offer, allowing him to expand his education in ways he otherwise could not do.

After Stirling, he plans to attend Uppsala University in Sweden, where he will continue biology courses as well as his work in physiological research.

Neikirk is thankful for the academic and social opportunities he has had during his time abroad.

"It's a wonderful and eye-opening opportunity to be somewhere with different people and different cultures." He appreciates all of the "real life experiences" he is receiving through his time travelling, researching, and publishing with high-impact journals.

Neikirk is passionate about the furtherance of the scientific and academic community and plans to continue contributing to them through his future work as a health professional.

Neikirk's plans to return to Hilo next year to complete a few upper level courses before finishing his bachelor's degree in spring 2023. After graduation, Neikirk plans to take the Medical College Admission Test and continue his academic career in medical school.

He says he wants to use his knowledge and skills for the greater good.

"The COVID-19 pandemic has highlighted the need for help. We are in a global catastrophe and it's hard not to be inspired to help." He is looking into the medical fields of oncology, the study of cancer, and pediatrics, healthcare dealing with adolescents.

"I believe it is very important to give patients a chance to live a long and fulfilling life."

Expanding opportunities for other students to get published, too



At UH Hilo, Neikirk serves as editor in chief for UH Hilo's <u>Hohonu: A Journal of Academic Writing</u>, a program of the Board of Student Publications.

"Kit's CV is nothing short of astounding," says <u>Kirsten Møllegaard</u>, professor English, chair of the department, and an advisor for Hohonu. "We are fortunate to have him as a student at UH Hilo."

Neikirk has big plans for the journal this year and speaks heavily on improving student opportunity to get published.

"I'm trying to give feedback to students and give them the chance to resubmit," he explains. "I want to maximize the chance for students to get published."

Neikirk also wants to expand the journal's scope beyond publication. He plans on organizing and hosting virtual events that give students the opportunity to "critically engage" through discussion with peers.

"So much of science and academia as a whole is about discussion," he says. "I want to give students platforms to read the Hohonu journal and facilitate those conversations between students that are so vital to the advancement of academia."

Story by Elena Espinoza, an English major also earning certification in teaching English as a second language.

Research, Students, View All Stories

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of |) | SPP No. 12-0 | 000138 |
|--|----|--------------|-----------------|
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| CONNECTIONS NEW CENTURY |) | CERTIFICA | TE OF SERVICE |
| PUBLIC CHARTER SCHOOL and |) | | |
| COMMUNITY BASED EDUCATION |) | | |
| SUPPORT SERVICES, |) | | |
| |) | | |
| Application for Special Permit Application |) | | |
| No. 12-000138, |) | Remanded H | earing: |
| |) | DATE: | October 7, 2021 |
| TMK: (3) 2-5-006-141; Kaumana, South |) | TIME: | 9:00 a.m. |
| Hilo, Hawaii. |) | | |
| |) | | |
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Applicant Community Based Support Services' Submission of Additional Exhibits in Support of Application, was duly served on the following party in this action, by United States Postal Service, prepaid and by electronic means:

Kevin M, Richardson, Esq. Deputy Attorney General State of Hawai'i 235 South Beretania Street, Room 304 Honolulu, Hawai'i 96813

Attorney for Applicant Connections New Century Charter School

Angelic Malia Hall, Esq. Deputy Corporation Counsel 101 Aupuni Street, Suite 325 Hilo, Hawai' I 96720 Kevin.m.richardson@hawaii.gov

AngelicMalia.Hall@hawaiicounty.gov

Attorney for County of Hawai 'I, Windward Planning Commission

Michael J. Matsukawa, Esq. Territorial Centre, Suite 201 75-5751 Kuakini Highway Kailua-Kona, Hawaii 96740

Attorney for Intervenor Jeffrey K. Gomes

Mr. Jeff Darrow, Deputy Planning Director County ofHawai'i Planning Department 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720

The Hon. Elizabeth Strance Corporation Counsel 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720

Attorney for Planning Director

DATED:

Hilo, Hawaii, October 5, 2021.

TED H. S. HONĞ

Attorney at Law

Attorney for Applicant COMMUNITY BASED

EDUCATION SUPPORT SERVICES

Mori, Ashley

From: P Thatcher <pamela_thatcher@connectionspcs.org>

Sent: Tuesday, October 5, 2021 9:52 AM

To: WPCtestimony

Cc: Romeo Garcia; John Thatcher; Eric Boyd

Subject: Testimony for Connections Public Charter School

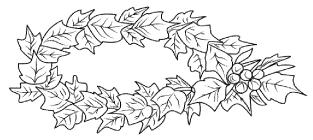
Attachments: Pam Thatcher CPCS 10-5-21 for Windward Planning Commission.pdf

Aloha,

Here is my testimony in support of Connections Public Charter School for the October 7th WPC meeting.

Mahalo,

Pam Thatcher



'A 'ohe pau ka 'ike i ka hālau ho'okāhi

Connections Public Charter School

A Community, Business & Education Learning 'Ohana Monday, October 5, 2021

Windward Planning Commission 25 Aupuni Street Hilo, Hawaii 96720

Dear Windward Planning Commission:

My name is Pam Thatcher, and I have been a teacher at Connections Public Charter School since 1995 when Connections began as a school-within-a-school at Mt. View Elementary. This is my 39th year of teaching, with the first 17 years spent as a teacher for the Hawai'i Department of Education (HDOE). I am writing this letter to ask for your support as we plan to develop the land in Kaūmana that was leased from the State of Hawai'i.

Actually, this is the second letter that I have written to the Windward Planning Commission requesting support for our project. Nine years ago, I wrote the first letter—humbly asking for support, for the same reason. Our plans included building a LEED-certified (Leadership in Energy and Environmental Design), highly efficient, cost-saving green school. Ironically, NIMBY (not in my back yard) opposers have painted the exact opposite picture of our intentions. Sadly, in our world today, it seems that false information can become normalized truth for some who are driven by personal agendas.

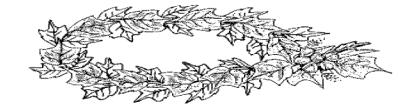
Nine years is a long time to wait while plans are stalled due to false accusations. Students who were kindergarteners are now in ninth grade. Elementary and middle-school students who were excited to attend high school at the new campus have graduated. Teachers and administrators who began the school and excitedly awaited the new environmentally friendly green school have retired. Meanwhile, we continue grow and push forward, educating our students with new $21^{\rm st}$ century strategies, even during the pandemic.

Last year while HDOE students were completely online, our students attended school in person as we safely carried out our own hybrid model. We focused on safety and social-emotional wellness while educating our students, who are thriving. The Kaūmana property has provided opportunities for students to learn real-world skills through project-based learning and personalized learning plans. One of our goals at Connections is to embody a growth mindset. We would like to create new opportunities for our students, families, and the community through the development of the property. Know that we continue to pursue environmentally friendly, research-based ideas that will teach our students respect for the land as well as for our neighbors. We hope to share innovation and resources with our school families and the community.

I am including the unedited first letter that I wrote nine years ago. The vision and mission of our school remain the same. Again, I humbly ask for your support. Please approve the special permit, so we can continue to provide the best opportunities for our students.

Mahalo,

Pam Thatcher



'A'ohe pau ka 'ike i ka halau ho'okahi

Connections Public Charter School

A Community, Business & Education Learning `Ohana Friday, November 2, 2012

Windward Planning Commission 25 Aupuni Street Hilo, HI 96720

Dear Windward Planning Commission:

I have been a teacher at Connections Public Charter School since its inception as a school-within-a-school in the fall of 1995. Even with seventeen years tenure in the Hawaii State Department of Education and a total of thirty years as a public school teacher in Hawaii, I remain as invigorated and excited about teaching as I was when I began all those years ago. This continued energy is fueled by my students, colleagues, and the families that I serve.

In Connections, we believe in educating the whole child. The vision, mission, and goals of Connections play a vital role in the teaching and learning that occur in our school.

Our vision represents the head, or brain. Our *Detailed Implementation Plan* states that "...inquiry and project-based curricula will stress independent thinking, development of the individual's mind and talents, cooperative learning, sense of self within the neighborhood and the world-wide community with particular attention to the precious and unique environment of Hawaii..."

At the heart, or body, of our school is the mission statement in which "...Thematic and experiential learning experiences are provided which focus on how students construct knowledge using creative and critical thinking... Classroom experiences are connected to real life experiences so that students can grow in the understanding of themselves in relation to their community and the world."

Goals, carried out with arms and legs, hands and feet, include these:

- "Caring, Responsible Community Members: Students shall develop their abilities to become responsible members of a family, work group, or local/global community within the framework of democracy.
- Stewards of Hawaii's Unique Environment: Students will understand a variety of eco-systems, natural energy flows and the natural environment in order to preserve and design systems to renew natural resources and habitats."

My colleagues and I work diligently, collaborating to maintain these beliefs. It has not been easy with our school located in downtown Hilo. Our innovative, research-based science curricula from the University of Hawaii at Manoa's Curriculum Research and Development Group include many environmental and agricultural topics. It has been impossible to complete some of these project-based units which require daily monitoring, data collection, and analysis.

For nearly five years now, we have been planning a new campus where we will have many more opportunities to fully implement our curricula. We have done the research and carefully gone through the proper steps in this planning process. It is painful for us, adults and children alike, to see signs around town in protest of our plan. We are a close-knit school, and in the words of my sixth-grade students, "It is like seeing signs about our family." One of my students said, "I have never felt like an outcast until now." Five years into the planning, all we want is a place where we can expand the possibilities for teaching and learning.

As a 30-year, veteran public school teacher, I humbly ask for your support in our quest for a more appropriate campus. Please approve the special use permit so we can continue our plan to build in Kaumana.

Sincerely,

Pamela Thatcher

Mori, Ashley

From: Eric Boyd <eric_boyd@connectionspcs.org>

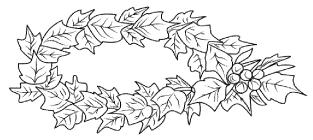
Sent: Tuesday, October 5, 2021 11:07 AM

To: WPCtestimony

Subject: Letter of support from Pam Thatcher (SPP-12-138)

Attachments: Pam Thatcher CPCS 10-5-21 for Windward Planning Commission.pdf

Letter of support from Pam Thatcher



'A 'ohe pau ka 'ike i ka hālau ho'okāhi

Connections Public Charter School

A Community, Business & Education Learning 'Ohana Monday, October 5, 2021

Windward Planning Commission 25 Aupuni Street Hilo, Hawaii 96720

Dear Windward Planning Commission:

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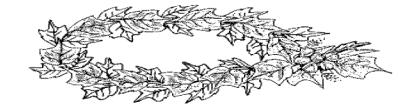
Nine years is a long time to wait while plans are stalled due to false accusations. Students who were kindergarteners are now in ninth grade. Elementary and middle-school students who were excited to attend high school at the new campus have graduated. Teachers and administrators who began the school and excitedly awaited the new environmentally friendly green school have retired. Meanwhile, we continue grow and push forward, educating our students with new $21^{\rm st}$ century strategies, even during the pandemic.

Last year while HDOE students were completely online, our students attended school in person as we safely carried out our own hybrid model. We focused on safety and social-emotional wellness while educating our students, who are thriving. The Kaūmana property has provided opportunities for students to learn real-world skills through project-based learning and personalized learning plans. One of our goals at Connections is to embody a growth mindset. We would like to create new opportunities for our students, families, and the community through the development of the property. Know that we continue to pursue environmentally friendly, research-based ideas that will teach our students respect for the land as well as for our neighbors. We hope to share innovation and resources with our school families and the community.

I am including the unedited first letter that I wrote nine years ago. The vision and mission of our school remain the same. Again, I humbly ask for your support. Please approve the special permit, so we can continue to provide the best opportunities for our students.

Mahalo,

Pam Thatcher



'A'ohe pau ka 'ike i ka halau ho'okahi

Connections Public Charter School

A Community, Business & Education Learning `Ohana Friday, November 2, 2012

Windward Planning Commission 25 Aupuni Street Hilo, HI 96720

Dear Windward Planning Commission:

I have been a teacher at Connections Public Charter School since its inception as a school-within-a-school in the fall of 1995. Even with seventeen years tenure in the Hawaii State Department of Education and a total of thirty years as a public school teacher in Hawaii, I remain as invigorated and excited about teaching as I was when I began all those years ago. This continued energy is fueled by my students, colleagues, and the families that I serve.

In Connections, we believe in educating the whole child. The vision, mission, and goals of Connections play a vital role in the teaching and learning that occur in our school.

Our vision represents the head, or brain. Our *Detailed Implementation Plan* states that "...inquiry and project-based curricula will stress independent thinking, development of the individual's mind and talents, cooperative learning, sense of self within the neighborhood and the world-wide community with particular attention to the precious and unique environment of Hawaii..."

At the heart, or body, of our school is the mission statement in which "...Thematic and experiential learning experiences are provided which focus on how students construct knowledge using creative and critical thinking... Classroom experiences are connected to real life experiences so that students can grow in the understanding of themselves in relation to their community and the world."

Goals, carried out with arms and legs, hands and feet, include these:

- "Caring, Responsible Community Members: Students shall develop their abilities to become responsible members of a family, work group, or local/global community within the framework of democracy.
- Stewards of Hawaii's Unique Environment: Students will understand a variety of eco-systems, natural energy flows and the natural environment in order to preserve and design systems to renew natural resources and habitats."

My colleagues and I work diligently, collaborating to maintain these beliefs. It has not been easy with our school located in downtown Hilo. Our innovative, research-based science curricula from the University of Hawaii at Manoa's Curriculum Research and Development Group include many environmental and agricultural topics. It has been impossible to complete some of these project-based units which require daily monitoring, data collection, and analysis.

For nearly five years now, we have been planning a new campus where we will have many more opportunities to fully implement our curricula. We have done the research and carefully gone through the proper steps in this planning process. It is painful for us, adults and children alike, to see signs around town in protest of our plan. We are a close-knit school, and in the words of my sixth-grade students, "It is like seeing signs about our family." One of my students said, "I have never felt like an outcast until now." Five years into the planning, all we want is a place where we can expand the possibilities for teaching and learning.

As a 30-year, veteran public school teacher, I humbly ask for your support in our quest for a more appropriate campus. Please approve the special use permit so we can continue our plan to build in Kaumana.

Sincerely,

Pamela Thatcher



COH PLANNING DEPT OCT 6 2021 PM1:53

REC'D HAND DELIVERED

Tel. (808) 933-1919 🌣 Fax (808) 935-8281

TRANSMITTAL MEMO

| 1 | |
|---|---|
| | |
| | 1 |

Melissa Dacayanan-Salvador

Windward Planning Commission

County of Hawaii, Planning Department

101 Pauahi Street, Suite 3

Hilo, HI 96720 Hand Delivered

FROM:

Shaydlin Richards, Legal Assistar

DATE:

October 6, 2021

RE:

Item #4 Connections New Century Public Charter School/CBESS

(SPP-12-000138)

Enclosed, please find the following:

| Item(s): | Date: | Description: |
|----------|-----------|---|
| 17 | 10/6/2021 | Original and Sixteen (16) copies of Applicant Community Based Support Services' Submission of Proposed Conditions of Approval; Certificate of Service |

| TRA | NSM | ITT | ED | : |
|-----|-----|-----|----|---|
| | | | | |

| Per your request | Your approval, signature, and return |
|------------------------------|--|
| ✓ Your information and files | Your review and comments |
| For necessary action | Your signature and forwarding as indicated |
| Please see remarks below | ☐ Please rush |

REMARKS:

Please contact our office if you have any questions or concerns. Thank you.



TED H. S. HONG 3569 Attorney at Law P. O. Box 4217 Hilo, HI 96720 Telephone No. 808.933.1919 Facsimile No. 808.935.8281 ted@tedhonglaw.com

COH PLANNING DEPT OCT 6 2021 PM1:53

REC'D HAND DELIVERED

Attorney for Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of |) | SPP No. 12-0 | 00138 |
|--|----|--------------|------------------------|
| |) | | |
| CONNECTIONS NEW CENTURY |) | APPLICANT | COMMUNITY BASED |
| PUBLIC CHARTER SCHOOL and |) | SUPPORT SI | ERVICES' SUBMISSION OF |
| COMMUNITY BASED EDUCATION |) | PROPOSED | CONDITIONS OF |
| SUPPORT SERVICES, |) | APPROVAL; | CERTIFICATE OF |
| |) | SERVICE | |
| Application for Special Permit Application |) | | |
| No. 12-000138, |) | Remanded He | earing: |
| |) | DATE: | October 7, 2021 |
| TMK: (3) 2-5-006-141; Kaumana, South |) | TIME: | 9:00 a.m. |
| Hilo, Hawaii. |) | | |
| |) | | |
| y = 35.5 | _) | | |

APPLICANT COMMUNITY BASED SUPPORT SERVICES' SUBMISSION OF PROPOSED CONDITIONS OF APPROVAL

Comes Now, Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES, (hereinafter referred to as "CBESS"), by and through its undersigned counsel and hereby submits its Proposed Conditions of Approval for the Commission's consideration and adoption.

Based on the evidence presented and applying the standards and rules herein, along with the Commission's Findings of Fact, Conclusions of Law and Order, the Applicants, Connections and CBESS, have satisfied the requirements of Planning Commission Rule 6-7 and Rule 6-

3(b)(5)(A)-(F). It is recommended that the Planning Commission approve the Application for Special Permit of Connections and CBESS, as recommended by the Planning Director and include the following as part of its conditions of approval:

- 1. The Applicants, successors or assigns shall be responsible for complying with all stated additional terms and conditions of approval deemed appropriate by the Planning Director.
- 2. The proposed use shall be conducted in a manner that is substantially representative of plans and operational details contained within the Application for Special Permit including the amount of students and hours of operation, and representations made before the Windward Planning Commission.
- 3. Prior to the issuance of a water commitment by the Department of Water Supply, the Applicants shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawaii and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this permit. The calculations must include the estimated peak flow in gallons per minute and total estimated maximum daily potable water demand in gallons per day. Should the applicant utilize more than the maximum average daily usage of potable water (4,200 gpd) from the existing County 8-inch water line, the applicant will be required to secure or construct an additional source of potable water.
- 4. The Applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
 - 5. Construction of the high school phase shall be completed within ten (10) years from

the effective date of this permit. Prior to the start of construction for each separate school (high, intermediate, elementary), the applicant, successor(s) or assign(s) shall secure Final Plan Approval for the development of each proposed phase from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code.

Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping along the perimeter of the entire 70 acre project site shall also be indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) buffer yard requirements for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) Zone.

- 6. On plans submitted for Plan Approval review or any land alteration permit(s), the Applicants shall identify the location of Kaumana Cave within the Subject Property and to ensure its protection, also identify a 100-foot wide preservation buffer along its entire perimeter. No use, structures or land alteration activities shall be permitted within this Kaumana Cave preservation buffer.
- 7. The Applicants shall conduct an updated traffic report prior to the submission of plans for Plan Approval for the intermediate and the elementary school phases, in a manner meeting with the approval of the Department of Public Works. If the updated traffic reports determine that additional traffic mitigation measures are required, these required improvements shall be constructed by the Applicants at no cost to the County prior to the issuance of a Certificate of Occupancy for the respective school phases.
- 8. All driveway connections to Edita Street shall conform to Chapter 22, County Streets, of the Hawaii County Code.

- 9. The Applicants shall construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at Road A meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy for any portion of the project.
- 10. The Applicants shall construct an 8-foot paved shoulder along the northeastern (Makai) side of Edit Street from the south end of the Subject Property to the intersection of Edita Street and Kaumana Drive (Standard Detail R-34) meeting with the approval of the Department of Public Works prior to the issuance of Certificate of Occupancy for any portion of the project.
- 11. The Applicants shall submit a Traffic Management Plan to be reviewed and approved by the Department of Public Works-Traffic Division in consultation with the Police Department prior to the receipt of Final Plan Approval for any portion of the project. The comprehensive plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. The Applicants shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The Applicants shall incorporate carpooling, bus and van services, and staggering school pick-up and drop-off times.
- 12. The Applicants shall design project driveways/roads, parking and loading areas so all school traffic and congestion is confined to the project site and does not overflow onto County roads. Should adjoining lands be developed in a manner that would provide a reasonable opportunity to provide an alternate means of access to the proposed school site from the Puainako Street extension, the Applicants shall provide necessary improvements within its own property to facilitate access to the Puainako Street extension across adjoining lands when

directed by the Planning Director.

- 13. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. A drainage plan may be required by the Plan Approval process in accordance with Section 25-2-72(3) of the Hawaii County Code.
- 14. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.
- 15. The method of wastewater disposal shall meet the requirements of the Department of Health.
- 16. Prior to any ground altering activities, the Applicants shall submit a monitoring plan in accordance with HAR 12-279 to the DLNR-SHPD for review and approval. A copy of the approved monitoring plan shall be provided to the Planning Department prior to issuance of Final Plan Approval.
- 17. All ground altering activities associated with the proposed development shall be monitored by a qualified archaeologist in a manner meeting with the approval of the DLNR-SHPD.
- 18. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- 19. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- 20. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Special Permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
- 21. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - a. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicants, successors or assigns, and that are not the result or their fault or negligence.
 - b. Granting of the time extension would not be contrary to the General
 Plan or Zoning Code.
 - c. Granting of the time extension would not be contrary to the original reasons for granting the permit.
 - d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
 - e. If the Applicants should require an additional extension of time, the Planning Department shall submit the Applicant's request to the Planning Commission for appropriate action.
 - f. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiated procedures to revoke

this Special Permit.

DATED:

Hilo, Hawaii, October 5, 2021.

JOHN REPLOGLE Chairperson Windward Planning Commission COUNTY OF HAWAII

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

| In the Matter of |) | SPP No. 12 | -000138 |
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| |) | | |
| CONNECTIONS NEW CENTURY |) | CERTIFICA | ATE OF SERVICE |
| PUBLIC CHARTER SCHOOL and |) | | |
| COMMUNITY BASED EDUCATION |) | | |
| SUPPORT SERVICES, |) | | |
| |) | | |
| Application for Special Permit Application |) | | |
| No. 12-000138, |) | Remanded | Hearing: |
| |) | DATE: | October 7, 2021 |
| TMK: (3) 2-5-006-141; Kaumana, South |) | TIME: | 9:00 a.m. |
| Hilo, Hawaii. |) | | |
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Applicant Community Based Support Services' Submission of Additional Exhibits in Support of Application, was duly served on the following party in this action, by United States Postal Service, prepaid and by electronic means:

Kevin M, Richardson, Esq. Deputy Attorney General State of Hawai'i 235 South Beretania Street, Room 304 Honolulu, Hawai'i 96813 Kevin.m.richardson@hawaii.gov

Attorney for Applicant Connections New Century Charter School

Angelic Malia Hall, Esq. Deputy Corporation Counsel 101 Aupuni Street, Suite 325 Hilo, Hawai' I 96720 AngelicMalia.Hall@hawaiicounty.gov

Attorney for County of Hawai 'I, Windward Planning Commission

Michael J. Matsukawa, Esq. Territorial Centre, Suite 201 75-5751 Kuakini Highway Kailua-Kona, Hawaii 96740

Attorney for Intervenor Jeffrey K. Gomes

Mr. Jeff Darrow, Deputy Planning Director County of Hawai'i Planning Department 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720

The Hon. Elizabeth Strance Corporation Counsel 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720

Attorney for Planning Director

DATED: Hilo, Hawaii, October 6, 2021.

TED H. S. HONG Attorney at Law

Attorney for Applicant COMMUNITY BASED

EDUCATION SUPPORT SERVICES

WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: October | er 7, 2021 | | | | | |
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WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: October 7, 2021 | | | _ | |
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WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: October | r 7, 2021 | | | | | |
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WINDWARD PLANNING COMMISSION COUNTY OF HAWAI'I

| DATE: October | er 7, 2021 | | | | <u>_</u> 6 | | |
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| REPLOGLE, John | (Chair) | V | | | | | |

Mori, Ashley

From: Ke`ala Lee Loy <keleeloy@hawaii.rr.com>

Sent: Friday, October 8, 2021 9:55 AM **To:** Dacayanan, Melissa; WPCtestimony

Cc: Kay, Christian

Subject: Letter to Windward Planning Commission Chair Replogle and Commissioners

Aloha Melissa,

Would you be kind enough to forward this letter to the Windward Planning Commission for me. Mahalo nui for your assistance.

Ke'ala

Dear Chair Replogle and Members of the Windward Planning Commission,

I testified in opposition of Connections Charter Public School's special use permit application to build their proposed campus on Edita Street in Kaūmana on October 7, 2021. Though disappointed with the outcome of the 4-1 vote approving the special use permit, I will trust in the process and look for opportunities to further present opposition as it moves to the State Land Use Commission.

Meanwhile, what I find more offensive and insulting is the lecture received from the commission members about "Where's the aloha?". There are systems in place for government entities to be vetted by community members most impacted by its decisions. The hearing yesterday did not have anything to do with ALOHA, it was about approval or denial of a special use permit being granted for an inappropriate construction project in our residential area of Kaūmana. I continue to witness various special interest groups, organizations and others use the "aloha" card when Hawaiians, Kanaka maoli or Hawai'i residents verbalize their opinions, opposition or dislike of something occurring in their residential community, island or state.

Where's the aloha you asked? Let me brief you about where the aloha went? I am native Hawaiian and have been an educator for 35 years in public and private institutions. As a student at the University of Hawai'i at Hilo I participated in various protests and symposiums to include Hawaiian Language and Hawaiian Studies as a major subject of study at UHH, by the time I graduated, it was still non existent. I attended rallies and organized concerts attended by George Helm himself to generate funds for the Protect Kaho'olawe 'Ohana and was on the boat turned away by the Coast Guard while heading to Kaho'olawe to participate in ceremony and protest the bombing of this sacred island.

This all happened in the 1970's when Hawaiians were evolving as Kū'ē, or people of resistance. My perspective was more about a supressed indigenous people who had awakened and would now actively participate in affairs that affected our quality of life. Moving forward in Hawai'i, the 70's was then deemed "The Hawaiian Renaisance". My life's work as an educator was to teach the accurate Hawaiian history, language and culture, not just the parts adequately meeting the mandates catipulted by the Constitutional Convention in 1978. Myself and my 'ohana live aloha every single day. Unfortunately the participants in this proposed project have not. Most residents in the area were unaware of the project even though the school claims it did its due diligence with the community just as most were unaware that it had been remanded back to the Windward Planning Commission for reconsideration.

There has been much attention and advancement for indigenous people displaced and disregarded in their homelands due to colonization, urbanization and over-development. The Public Trust issues are even more offensive when Hawaiians remain waitlisted while non-Hawaiian groups enjoy the use of Ceded Lands (now referred to as Public Trust) for minimum fees while it should be providing revenue for the Department of Hawaiian Homes to improve infrastructure to minimize that waitlist.

Yesterday's meeting reminded me that we have not yet advanced as much as we should have for members of the Windward Planning Commission to ask, "Where's the Aloha?." The question was inappropriate for the day's agenda. It suggested that testfiers in oppostion of the project lacked aloha and should just invite and welcome the proposed project into their community despite the numerous safety concerns posited over the last nine years and reiterated yesterday. (History cautions us about that scenario) .

Another observation: if you watch the recorded meeting it clearly demonstrates that those in opposition adhered to the new rule voted by this commission to limit discussions to information on record, while the CPCS/CBESS was allowed ample time to tout their newly claimed merits and introduce new information not on record. It behooves me why the corporation counsel or Chair did not intervene.

| Again, I found it offensive and reco | mmend that vou not ask | "Where's the ALOHA?". |
|--------------------------------------|------------------------|-----------------------|
|--------------------------------------|------------------------|-----------------------|

Me ka 'oia i'o nō,

Pauline Ke'ala Lee Loy

Kaūmana, Hawaiʻi

Mitchell D. Roth

Lee E. Lord

Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow
Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

October 12, 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Kevin M. Richardson Department of the Attorney General Education Division State Office Tower 235 S. Beretania Street, Rm. 304 Honolulu, HI 96813

Michael J. Matsukawa, Esq. 75-5751 Kuakini Highway Kailua-Kona, HI 96740

Dear Sirs:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission will be holding a hearing for the consideration and adoption of the Proposed Findings of Fact, Conclusions of Law and Decision and Order for approval and favorable recommendation to the State Land Use Commission of Special Permit No. 12-000138 to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawaii, TMK: 2-5-006:141.

Ted H.S. Hong, Esq Kevin M. Richardson Department of the Attorney General Education Division Michael J. Matsukawa, Esq. October 12, 2021 Page 2

Based on the Governor's Emergency Proclamation Related to the State's COVID-19 Delta Response dated October 1, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing. The live stream meeting will be held beginning at 9:00 a.m. on Thursday, November 4, 2021. Please contact Christian Kay at the number below to participate in this meeting via the Zoom video-conferencing platform. A copy of the agenda is enclosed.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

Maija Jackson for Maija Jackson for (Oct 12, 2021 11:52 HST)

JEFFREY W. DARROW Deputy Planning Director

Att.

cc/att: Angelica M.H. Hall, Esq., Deputy Corporation Counsel (via email) Jean K. Campbell, Esq., Deputy Corporation Counsel (via email) Mitchell D. Roth Mayor



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742

John Replogle, Chair

Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

Gilbert Aguinaldo, Vice Chair

AGENDA

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Windward Planning Commission of the County of Hawai'i in accordance with the provisions of Chapters 91 and 92, Hawai'i Revised Statutes, Section 6-7.5(a) of the Charter of the County of Hawai'i, and the Commission's Rules of Practice and Procedure.

Based on the Governor's Emergency Proclamation Related to the State's COVID-19 Delta Response dated October 1, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing.

DATE: Thursday, November 4, 2021

TIME: 9:00 a.m.

PLACE: This meeting will be held by interactive video conference through

> Zoom. The public may provide oral testimony at the meeting by joining online or calling into the Zoom meeting. To register for oral

testimony please contact Melissa Dacayanan-Salvador at

Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than

4:30 p.m. on Tuesday, November 2, 2021.

The public may observe the meeting by viewing a live stream on

YouTube at:

https://www.youtube.com/channel/UCAFoRMb3rfWLQMPd6TAkE

GA?view as=subscriber

The public may provide written testimony via email at WPCtestimony@hawaiicounty.gov or submitted at the Hilo or Kona Planning Departments up to two business days prior to the hearing by 4:30 p.m. (See Submitting Testimony below).

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CALL TO ORDER

APPROVAL OF MINUTES

Review and Approval of the July 15, 2021 Joint Planning Commission Minutes and October 7, 2021 Windward Planning Commission Minutes.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

NEW BUSINESS

1. INITIATOR: PLANNING DIRECTOR (CHAQUEAUX, LLC & 159 KALANIKOA SP, LLC) (REZ-97-000004/PL-PDI-2021-000001)

The Planning Director has initiated the repeal of Change of Zone Ordinance No. 97 106 and amending Section 25-8-33 (City of Hilo Zone Map), Chapter 25, Article 8, of the Hawai'i County Code 1983 (2016 edition, as amended), by reverting the current zoning of the subject properties from Industrial Commercial Mixed-20,000 square feet (MCX-20) to their original, Limited Industrial-20,000 square feet (ML-20) zoning district for 147,736 square feet of land. The rezone area, consisting of five parcels is located at the southeast corner of Kalanikoa and Kuawa Streets, approximately 130 feet west of Kanoelehua Avenue at Waiākea, South Hilo, Hawai'i, TMKs: (3) 2-2-032:023 & 2-2-032:101 through 104.

2. APPLICANT: HAWAI'I ISLAND COMMUNITY DEVELOPMENT CORPORATION (HICDC)(SLU 20-000054)

Application for a State Land Use Boundary Amendment from Agricultural to Urban for approximately 9.09 acres of land. The property is located at 1450 Mohouli Street, directly west (mauka) of the Mohouli Senior Housing Project and the County of Hawai'i Fire Administration Support Complex, approximately 1,600 feet west of the Mohouli Street and Komohana Street intersection, Waiākea, South Hilo, Hawai'i, TMK: (3) 2-4-001:168.

UNFINISHED BUSINESS

3. APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)

Consideration and Adoption of Proposed Findings of Fact, Conclusions of Law and Decision and Order for approval and favorable recommendation to the State Land Use Commission of Special Permit No. 12-000138 to develop a K to 12 charter school

campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

AGENDA ITEMS FOR NEXT MEETING

ANNOUNCEMENTS

The Windward Planning Commission's next monthly meeting is scheduled for Thursday, December 2, 2021 by interactive video conference via Zoom.

ADJOURNMENT

Submitting Testimony: Pursuant to Hawai'i County Planning Commission Rules of Practice and Procedure (PC), Rule 1, General Rules, a person desiring to submit written testimony shall indicate her/his name; address; and whether the testimony is on her/his behalf or as a representative of an organization or individual. If testimony is being submitted on behalf of an organization, documentation showing membership ratification should accompany the testimony. Public testimony can be submitted by mail or email. Those submitting written testimony by mail should provide one copy for distribution. Public testimony submitted by mail, should be mailed to the Windward Planning Commission at the Planning Department office addresses in Hilo and Kona listed below. Mailed testimony should be provided at least one week prior to the hearing date to allow for mailing and thorough Commission review. Public testimony that is submitted by email to WPCtestimony@hawaiicounty.gov, should be submitted before 4:30 p.m. two (2) business days prior to the Commission meeting. Additionally, pursuant to Rule 1, the Chairperson may limit testimony that is irrelevant or unduly repetitious.

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<u>Board Packet:</u> Pursuant to Hawai'i Revised Statutes Section 92-7.5, the board packet provided to members of this board for this meeting is available for public inspection during regular business hours at the Hilo office of the Planning Department, Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i and at the Kona office of the Planning Department, West Hawai'i Civic Center, 74-5044 Ane Keohokālole Highway, Building E, 2nd Floor, Kailua-Kona, Hawai'i.

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Hawai'i County is an Equal Opportunity Provider and Employer

WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, October 15, 2021) (West Hawai'i Today: Friday, October 15, 2021) Mitchell D. Roth

Lee E. Lord

Managing Director

West Hawai'i Office 74-5044 Ane Keohokālole Hwy Kailua-Kona, Hawai'i 96740 Phone (808) 323-4770 Fax (808) 327-3563



Zendo Kern Director

Jeffrey W. Darrow Deputy Director

East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Phone (808) 961-8288 Fax (808) 961-8742

October 12, 2021

Dear Surrounding Property Owner:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission will be holding a hearing for the consideration and adoption of the Proposed Findings of Fact, Conclusions of Law and Decision and Order for approval and favorable recommendation to the State Land Use Commission of Special Permit No. 12-000138 to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawaii, TMK: 2-5-006:141.

Based on the Governor's Emergency Proclamation Related to the State's COVID-19 Delta Response dated October 1, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing. The live stream meeting will be held beginning at **9:00 a.m. on Thursday, November 4, 2021.** A copy of the agenda is enclosed.

You may participate by providing written or oral testimony by following the instructions on the enclosed agenda. You may also watch the meeting on YouTube at the URL provided on the agenda.

Please contact Christian Kay of this department at (808) 961-8136 should you have questions regarding the above.

Sincerely,

Maija Jackson for Maija Jackson for (Oct 12, 2021 11:52 HST)

JEFFREY W. DARROW Deputy Planning Director Surrounding Property Owner October 12, 2021 Page 2

Attachment

cc: Ted H.S, Hong, Esq. Kevin M. Richardson, Department of the Attorney General – Education Department Michael Matsukawa, Esq.

Mitchell D. Roth Mayor



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742

John Replogle, Chair

Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

Gilbert Aguinaldo, Vice Chair

AGENDA

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Windward Planning Commission of the County of Hawai'i in accordance with the provisions of Chapters 91 and 92, Hawai'i Revised Statutes, Section 6-7.5(a) of the Charter of the County of Hawai'i, and the Commission's Rules of Practice and Procedure.

Based on the Governor's Emergency Proclamation Related to the State's COVID-19 Delta Response dated October 1, 2021, this meeting will be online until further notice. This is to prevent the spread of COVID-19 and to maintain physical distancing.

DATE: Thursday, November 4, 2021

TIME: 9:00 a.m.

PLACE: This meeting will be held by interactive video conference through

> Zoom. The public may provide oral testimony at the meeting by joining online or calling into the Zoom meeting. To register for oral

testimony please contact Melissa Dacayanan-Salvador at

Melissa.Dacayanan@hawaiicounty.gov or 808-961-8156 no later than

4:30 p.m. on Tuesday, November 2, 2021.

The public may observe the meeting by viewing a live stream on

YouTube at:

https://www.youtube.com/channel/UCAFoRMb3rfWLQMPd6TAkE

GA?view as=subscriber

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WINDWARD PLANNING COMMISSION John Replogle, Chair

(Hawai'i Tribune Herald: Friday, October 15, 2021) (West Hawai'i Today: Friday, October 15, 2021) Mitchell D. Roth Mayor

Lee E. Lord
Managing Director



John Replogle, Chair Gilbert Aguinaldo, Vice-Chair Dean Au Joseph Clarkson Michelle Galimba Dennis Lin Thomas Raffipiy

County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720 Phone (808) 961-8288 • Fax (808) 961-8742

October 13, 2021

Ted H.S. Hong, Esq. P.O. Box 4217 Hilo, HI 96720

Kevin M. Richardson Department of the Attorney General Education Division State Office Tower 235 S. Beretania Street, Rm. 304 Honolulu, HI 96813

Michael J. Matsukawa, Esq. 75-5751 Kuakini Highway Kailua-Kona, HI 96740

Dear Sirs:

SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission

Applicant: Connections New Century Public Charter School/Community

Based Education Support Services (CBESS)

Tax Map Key: 2-5-006:141

This is to inform you that the Windward Planning Commission (Commission), at its meeting on October 7, 2020, voted for Special Permit SPP 12-000138 to be approved and a favorable recommendation be forwarded to the State Land Use Commission based on the Planning Director's October 31, 2012, revised recommendation. The Commission will consider the Proposed Findings of Fact, Conclusions of Law and Decision and Order for the Commission's approval and favorable recommendation of Special Permit SPP-12-000138 at the Commission's next meeting on November 4, 2021.

Ted H.S. Hong, Esq Kevin M. Richardson Department of the Attorney General Education Division Michael J. Matsukawa, Esq. Page 2

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

John R Replogle (Oct 13, 2021 10:18 HST)

John R. Replogle, Chairman Windward Planning Commission

cc via email: Malia Hall, Esq., Deputy Corporation Counsel

Jean K. Campbell, Esq., Deputy Corporation Counsel

Windward Planning Commission County of Hawai'i 101 Pauahi Street, Suite 3 Hilo, Hi 96720-4224

Telephone: (808) 961-8288 Facsimile: (808) 961-8742

BEFORE THE COUNTY OF HAWAI'I

WINDWARD PLANNING COMMISSION

In the Matter of

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL AND COMMUNITY BASED EDUCATION SUPPORT SERVICES

Application for Special Permit Application No. 12-000138

TMK (3) 2-5-006:141; Kaūmana, South Hilo, Hawai'i

SPP No. 12-000138

COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION AND ORDER; CERTIFICATE OF SERVICE

Remand Hearing:

Date: October 7, 2021

Time: 9:00 am

Location: Held by Remote Hearing

COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

The County of Hawai'i Windward Planning Commission having duly considered the entire record in the above-entitled matter, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. PROCEDURAL MATTERS

1. On July 25, 2012, Connections New Century Charter School

("Connections") and Community Based Support Services ("CBESS") (hereinafter collectively

referred to as the "Applicants") filed an application for a special permit ("SPP- 12-000138"), pursuant to Section 205-6, Hawai'i Revised Statutes ("HRS") and Rule 6 of the County of Hawai'i Planning Commission Rules of Practice and Procedure ("Commission Rules"), to allow the development of a charter school campus and related improvements for students in kindergarten through twelfth grade (the "Development"), on 70.15 acres of land situated within the State Land Use Agricultural District, at Ponahawai, Kūkūau 2nd, South Hilo, Hawai'i, commonly referred to as the "Kaūmana" area, Tax Map Key ("TMK") (3) 2-5-006:141 (the "Property").

- Public Hearings on SPP 12-000138 were scheduled and notices were provided to interested parties.
- The Hawai'i County Windward Planning Commission ("Commission")
 initially held public hearings on SPP 12-000138 on November 9, 2012, December 6, 2012, and
 January 10, 2013.
- 4. On November 9, 2012, Connections, its experts, and interested surrounding property owners provided testimony and evidence. No requests for a contested case were made. The Commission and Applicants believed that there was not an option for a contested case because the State Land Use Commission ("LUC") would make the final decision to approve or deny SPP 12-000138. The Commission and Applicants agreed to delay vote on SPP 12-000138 to conduct further discussion on traffic and other concerns raised about the application.
- On December 6, 2012, Connections produced additional information and requested a continuance because the State of Hawai'i Attorney General's Office was taking over

as Connections legal representation. The Commission granted Connections' request for a continuance.

- 6. On January 10, 2013, the Commission moved to deny SPP 12-00138.

 However, no vote was held because members of the Commission were absent. The Commission also instructed the Hawai'i County Planning Department ("Planning Department") and Deputy Corporation Counsel of the Commission to draft consideration of findings of fact, conclusions of law for denial of SPP 12-000138 for consideration at the Commission's March 7, 2013, meeting.
- 7. On February 15, 2013, the Planning Department mailed out a notice of public hearing to the surrounding property owners, which included notice of the right to file for intervention in contested case and a petition for standing to intervene in a contested case. Thus, the Planning Department suspended drafting proposed findings of fact, and conclusions of law.
- 8. On March 7, 2013, due to concerns raised about contested case procedures the Commission withdrew its motion to deny SPP 12-000138 and granted a request by Connections for a contested case hearing. The Commission also granted standing to Intervenor Jeffrey Gomes and voted to retain a hearing officer to conduct the contested case hearing.
- 9. Retired Judge Sandra Petcher Song was retained as the contested case hearing officer ("Hearing Officer"). The contested case hearing was held over five days on October 21, 2013, October 22, 2013, November 12, 2013, January 8, 2014, and January 22, 2014.
- 10. On April 7, 2014, the Hearing Officer submitted a hearings officer report to the Commission and the Parties. The report concluded that SPP 12-000138 should denied.
 The Applicants submitted joint exceptions to the Hearing Officer's report, Finding of Fact,

Conclusions of Law and Recommendation. The Planning Department also submitted exceptions to the Hearing Officer's report.

- On May 1, 2014, the Commission voted to uphold the Hearing Officer's recommendation and deny SPP 12-000138.
- On May 19, 2014, the Commission issued its final Findings of Fact,
 Conclusions of Law, Decisions and Order.
- 13. On June 9, 2014, and June 19, 2014, CBESS and Connections, respectively, filed timely notices of appeal of the Commission's Decision and Order in the State of Hawai'i Third Circuit Court ("Circuit Court").
- 14. After hearing arguments on the matter, the Circuit Court issued a Decision and Order affirming the Commission's decision on July 14, 2015.
- 15. On January 13, 2017, the Circuit Court entered in its Second Amended Final Judgment in favor of the Commission, Intervenor Gomes, the Planning Department, and the Hearing Officer.
- On January 21, 2017, Connections filed a timely notice of appeal to the
 State of Hawai'i Intermediate Court of Appeals (ICA).
- 17. On January 31, 2020, the ICA issued a Memorandum Opinion vacating the Circuit Court's July 14, 2015, Order and January 13, 2017 Final Judgment and the Commission's May 19, 2014 Decisions and Order, and remanded the case back to the Commission for further proceedings consistent with its Memorandum Opinion.
- 18. On July 6, 2021, the Commission via a letter from the Commission Chair requested the parties provide a brief to the Commission on "[w]hether the Commission should make a decision on the record as presented or open the record and consider new evidence?"

- July 30, 2021, the Commission received briefs from CBESS, Intervenor
 Gomes, and the Planning Department. Connections submitted a letter joining CBESS's brief.
- 20. On August 5, 2021, the Commission voted to decide on the record as presented and continue the hearing to the Commission's October 7, 2021 meeting to allow time to review the voluminous record.
- 21. On October 7, 2021, after review of the entire record on appeal, hearing public testimony and presentations by the Parties, the Commission voted to approve SPP 12-000138 based on the Planning Director's October 31, 2012 revised recommendation with conditions ("PD's Recommendation"), which was adopted.

II. PROPOSED DEVELOPMENT

A. Description of Proposed Use

- 22. Special Permit Application SPP 12-000138 proposes the development of a K to 12 charter school campus with dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Property, together with related uses on the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion would be used for outdoor educational programs, including a forestry preservation program.
- 23. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25 intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, kitchen/dining facility, library/resource center, caretaker's residence and other related facilities. Two parking lots with a total of 140 parking stalls would be provided.

- 24. The Development would relocate and expand the existing charter school which is presently operating from two separate campuses. The elementary and middle schools are in the Kress Building on Kamehameha Avenue, in downtown Hilo, and the high school is in leased facilities at the Nani Mau Gardens, just outside of Hilo town.
- 25. Connections proposes having 50 full-time and 17 part-time employees at full build-out of the Development, which is the same number presently employed for this charter school.
- 26. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school and administration building, with the projected opening to be within 2.5 to 3.5 years.

B. PUBLIC UTILITIES AND SERVICES

Access

- 27. Access to the Development is proposed from Edita Street which connects with Kaūmana Drive. Both roads are owned and maintained by the County of Hawai'i. Edita Street has a 60-foot right-of-way width, with a 48-foot-wide pavement width fronting the Development. The paved area accommodates two 20-foot-wide travel lanes, a 20-foot-wide shoulder on the northeast side of the road, and an 8-foot-wide shoulder on the Southwest side. Edita Street is in good condition.
- 28. The Hawai'i County Police Department ("HPD") recommended that the unpaved shoulder along Edita Street extending from Kaūmana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.
 - 29. The Applicants have agreed to follow HPD's recommendation.

30. PD's Recommendation condition 8 states, "[t]he applicant shall construct an 8-foot paved shoulder along the northeastern (Makai) side of Edita street from the south end of the subject property to the intersection of Edita Street and Kaūmana Drive (Standard Detail R-34) meeting with the approval of the Department of Public Works."

Traffic

- 31. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaūmana Drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service ("LOS") operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B".
- 32. The Hawai'i County Department of Public Works ("DPW") recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.
- 33. Applicants have agreed to mitigate and minimize potential traffic impacts by following DPW's recommendations.
- 34. PD's Recommendation condition 7 states, "[t]he applicant shall construct a separate turn lane for left turns from eastbound Edita Street into Lower Campus at Road A meeting with the approval of the Department of Public Works."
 - 35. PD's Recommendation condition 9 states,

[t]he applicant shall submit a Traffic Management Plan to be reviewed and approved by the Department of Public Works-Traffic Division in consultation with the Police Department. The comprehensive plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. The applicant shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The applicant shall incorporate carpooling, bus and van services, and staggering school pick-up and drop-off times.

36. PD's Recommendation Condition 10 states, "[t]he applicant shall design project driveways/roads, parking and loading areas so all school traffic and congestion is confined to the project site."

Water

- 37. The Property has access to County of Hawai'i water up to a maximum daily usage of 4,200 gallons per day ("gpd") of water or seven (7) water units (600 gpd per unit) from an existing 8-inch waterline on Kaūmana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus to service the entire Development.
- 38. The existing 8-inch waterline within Edita Street is looped to provide the required 2,000 gallons of water per minute for fire protection for the proposed Development.

 This requirement is based on the Hawai'i County Department of Water Supply's ("DWS") water system standards for schools.
- 39. Potable water needs will be met by connecting to the existing county water supply infrastructure.
- 40. The Applicants have also proposed to meet non-potable water supply needs by developing an extensive rainwater collection system consisting of catchment tanks, storage reservoirs/tanks with a network of water lines to distribute collected water throughout the campus and/or by developing an additional water source.

41. Per PD's recommendation condition 2, the Applicants have agreed to submit anticipated maximum daily water usage and a water commitment deposit to the Hawai'i County Department of Water Supply within 180 of effective date of this permit. The calculations must include the estimated peak flow in gallons per minute and total estimated maximum potable water demand in gallons per day.

Wastewater

- 42. PD's Recommendation condition 13 states, "[t]he method of sewage disposal shall meet with the requirements of the [State of Hawai'i] Department of Health" ("DOH").
- 43. Connections is proposing to provide its own wastewater system meeting the requirements of the DOH. Connections prefers installing an ecological/biological wastewater system called the "Living Machine." However, if such a system proves to be unfeasible, Connections will install a traditional septic system with leach fields, or any other system required by the DOH.

Drainage

44. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the Property is outside the 500-year flood plain. Notwithstanding this flood designation, during severe storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Edita Street.

Electric/Phone

45. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kaūmana Drive.

Public Safety

46. The HPD expressed concern that the Development would increase noise, crime and traffic. However, there was no evidence that HPD lacks the ability to provide police protection for the Development.

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

- 47. The Property is presently vacant and undeveloped.
- 48. Surrounding lands to the south and west of the Property are zoned A-la, with properties further south being zoned A-20a and A-10a. Properties to the north of the Property are zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaūmana Drive. One parcel is also zoned OPEN adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity.
- 49. The soils on the Property are primarily composed of pahoehoe lava flow. The Agriculture Lands of Importance to the State of Hawai'i map designates the property as unclassified. Also, the Land Study Bureau classifies the soil on the Property under its detailed land classification system, as "D" or "Poor" for agricultural activity.
- 50. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 1880-1881.

 Although Connections submitted a request to the State Historic Preservation Division ("SHPD"),

by letter dated August 17, 2010, requesting a "no-effect" determination from that agency, SHPD has not responded to the request.

- 51. A portion of the Kaūmana Cave is accessible from the upper portion of the Property. Connections has agreed, per PD's Recommendation condition 5, to maintain a minimum 100-foot buffer along the cave's entire perimeter within the Property to alleviate concerns about impact from the Development on the cave's ecosystem. No use, structures or land alteration activities shall be permitted within this Kaūmana cave preservation buffer.
- 52. A botanical survey of the Property identified 11 native plant species, but none of those species are considered protected species.
- 53. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.
- 54. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

IV. STATE AND COUNTY PLANS

- 55. The Property is within the State Land Use Agricultural District. A school is not a permitted use within the Agricultural district; however, a school may be permitted in this district if a special permit is obtained for such use pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.
- 56. The County of Hawai'i General Plan Land Use Pattern Allocation Guide ("LUPAG") Map designates the Property for low density urban uses. The LUPAG designation of Low-Density urban use, allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses.

- 58. The County of Hawai'i zoning for the Property is Agricultural with a minimum lot size of one acre (A-la). Under Section 25-5-72(d) of the Hawai'i County Code, a school is permitted in an Agricultural zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District.
- 59. The Development, which will be located on State land, is subject to the Hawai'i State Environmental Impact Statement law, Chapter 343, Hawai'i Revised Statute ("HRS"). Connections prepared an environment assessment in accordance with HRS Chapter 343, and a declaration with a finding of no significant impact was issued for the Development by the State of Hawai'i Department of Land and Natural Resources. State of Hawai'i leased the land to Connections for sixty-five (65) years under General Lease No. S-6029.
- 60. The Property is not situated within the Special Management Area ("SMA"), since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

V. SPECIAL PERMIT REQUIREMENTS

- 61. HRS Section 205-6, which governs special permits provides, in the relevant part, as follows:
 - "(a) The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural...district other than for an agricultural...use...may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired.

. . .

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter.

. . .

(d) Special permits for land the area of which is greater than fifteen acres ... shall be subject to approval by the land use commission. The land use

commission may impose additional restrictions as may be necessary or appropriate in granting the approval including the adherence to representations made by the applicant."

62. Commission Rule 6-7, provides, in the relevant part, that:

"The Commission shall not approve a Special Permit unless it is found that the proposed use:

- (a) Is an unusual and reasonable use of land situated within the Agricultural... District...; and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The Commission shall also consider the criteria listed under Section 6-3(b)(5)(A) through (G)."

- 63. Planning Commission Rule 6-3(b)(5)(A) through (E)
 - A. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - B. The desired use shall not adversely affect surrounding properties;
 - C. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
 - D. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established;
 - E. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
 - F. The proposed use will not substantially alter or change the essential character of the land and the present use; and
 - G. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design plans.
- 64. The criteria under Hawai'i Administrative Rules (HAR) Section 15-15-95(c)(1) through 15-15-95(c)(5), which is the Criteria the LUC uses to review special permits, are almost identical to Planning Commission Rule 6-3(b)(5)(A) through (E).

VI. CONFORMANCE WITH SPECIAL PERMIT CRITERIA

- 65. The Applicants proposed Development meets the criteria for an "unusual and reasonable" use as defined by Commission Rule 6-3(b)(5) and HAR Section 15-15-95(b) as follows:
 - A. The Use Shall Not Be Contrary to the Objectives Sought to Be Accomplished by the Land Use Law and Regulations.

The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands from those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. Within the Agricultural District, the intent is to preserve or keep lands of high agricultural potential for agricultural use. The Applicants propose to develop a new academic campus, which will include an elementary, intermediate, and high school facilities to support 381 students and 25 intergenerational clients. The Property is owned by the State of Hawai'i and consists of soil that is classified as "D" or Poor" by the Land Study Bureau's Detailed Land Classification System.

Although the land upon which the proposed use it sought is unsuited for agricultural uses, the Applicants are proposing to have agricultural programs on the lower campus. The agricultural program facilities include green houses, a 6-horse barn, and cultivated gardens, which may include vegetables, taro, fruit trees, native plants, and ornamental plants. The agricultural program may also include livestock like chickens, goats, pigs, and horses. The Applicants intend to use the upper parcel for a forestry/conservation program, which focuses on forest resource management and conservation, and forest ecosystem restoration.

Thus, the proposed use would not be contrary to state land use laws and regulations. Further, the proposed Development intends to have agricultural uses and therefore,

would not frustrate the objectives and effectiveness of the Hawai'i's land use scheme and require a state land use boundary amendment in lieu of a special permit.

B. The Desired Use Would Not Adversely Affect Surrounding Properties

Surrounding lands to the south and west of the Property are zoned A-la, with properties further south being zoned A-20a and A-10a. Properties to the north of the Property are zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaūmana Drive. One parcel is also zoned OPEN adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity. The nearest dwellings to the upper parcel are located on adjoining properties to the north along Kaūmana Drive and to the south along Mele Manu Street. The nearest dwellings to the lower parcel where most facilities will be located to the north along Edita Street and Kaūmana Drive.

Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents. However, the Applicants have agreed to multiple conditions to mitigate and minimize the potential adverse effects the Development could create for the surrounding properties. For example, a comprehensive traffic management plan will be developed and implemented to ensure that school traffic and congestion does not overflow onto County roads. The Applicants are also required, per PD's Recommendation condition 4, to create a landscaping buffer along the entire 70-acre project site to eliminate or minimize "noise, dust, litter, glare of lights, signs or unsightly areas between adjacent land uses or between a land use and roadway." Planning Department Rule No. 17 (Landscaping Requirements).

C. The Use Would Not Unreasonably Burden Public Agencies to Provide Roads and Streets, Sewers, Water, Drainage, School Improvements, And Police and Fire Protection.

As mentioned above, the Developments primary access will be via Edita Street, which extends form Kaūmana Drive. The Applicant's traffic impact analysis report for the Development indicates that at full build-out the level of service will be "A" or "B", which is better than acceptable levels of service. However, TIAR did indicate school related vehicles turning left into the campus will cause delays to through traffic along Edita Street unless a separate turn lane is provided. The Applicants are required to construct a separate turn lane to address this potential impact to traffic.

There is no municipal sewer system available at the Property, but the Applicants intend to provide its own wastewater system that will meet the DOH's requirements. County water service is available from an 8-inch water line on Kaūmana Drive for the upper campus and from an 8-inch water line on Edita Street for the Lower campus. The Applicants are required to dispose of all Development related run-off onsite. Both police and fire are located relatively close to the Development. Electricity, water and wastewater disposal facilities and other essential services are or will be available for the proposed school and related improvements.

D. <u>Unusual Conditions, Trends and Needs Have Arisen Since the District Boundaries</u> and Rules Were Established.

Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also, the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. Connections currently operates two campuses one at the Kress Building, Downtown Hilo and at Nani Mau Gardens Facility. Neither location

is an ideal place for a school campus, establishment of the Kaūmana campus will provide new educational opportunities for current and future students.

E. The Land Upon Which the Proposed Use is Sought is Unsuited for the Uses Permitted the District.

The Land Study Bureau Detailed Land Classification System (with "A" being the best and "E" being the worst) classifies the soil, which mainly consists of pahoehoe lava as "D" or "Poor" for agricultural activity. The land on which the proposed use if located is "Unclassified" by Agriculture Lands of Importance to the State of Hawai'i ("ALISH") System.

As mentioned above, although the land is unsuited for agricultural uses,

Connections is proposing to maintain the upper portion or nearly one-half of the Property for

forestry use, and to construct greenhouses and conduct an agricultural program in conjunction

with its curriculum on the lower campus.

F. The Proposed Use Will Not Substantially Alter or Change of the Essential Character of the Land and Present Use.

The current character and present use of the subject property is undeveloped, vacant of structures and uses. The current character of the surrounding area is residential and agricultural. The present use of the area is mainly residential with come agricultural activity and vacant land. The Applicants have proposed to construct buildings as single-story structures, like the surrounding residential community, to help minimize the change to the essential character of the land.

G. The Request Is Not Contrary to The General Plan and Official Community Development Plan and Other Design Plans.

The Economic, Public Facilities and Land Use elements of the County General Plan all require consideration of social and community concerns as follows:

Economic Element – Goal

- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Provide residents with opportunities to improve quality of life through economic development that enhances the County's natural and social environments.

Public Facilities-Education (Course of Actions for South Hilo)

- Encourage the establishment of additional schools as need arises.
- Encourage the Provision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community.

Land Use-Public Lands

 "Encourage uses of public lands that will satisfy specific public needs, such as housing, recreation, open space and education.

VII. THE PUBLIC TRUST DOCTRINE

66. Article XI, Conservation, Control and Development of Resources, Section 1 of the Constitution of the State of Hawai'i states the following:

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance for the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."

The proposed Development is State Land and therefore is considered a public trust resource. The proposed use is not contrary to the public trust doctrine because the Applicants intend to use the land for educational purposes that will benefit our present and future generations. Further, on the lower campus, the Applicants intend to develop an agricultural program, which would have cultivated gardens to teach children how to grow food. On the

upper campus, the Applicants intend to create a forestry/conservation program, which will focus on forest resource management and conservation and forest ecosystem restoration. Both programs are in line with the public trust doctrine's goal to promote the furtherance of a self-sufficient State. There are few higher uses of land than to educate our keiki on how to cultivate, manage and restore the land so that the land may be preserved for future generations.

CONCLUSIONS OF LAW

The construction and operation of a school is not a permitted use within the State Land Use Agricultural District pursuant to 205-2, HRS. The Application to develop a K-12 charter school campus constitutes and "unusual and reasonable" use as provided in HRS Section 205-6 as established by HAR Section 15-15-95(b) and Commission Rule 6-7(b), and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

DECISION AND ORDER

Based upon the preceding Findings of Fact and Conclusions of Law, Special Permit

Application SPP No. 12-000138 submitted by Applicants Connections New Century Public

Charter School and Community Based Education Support Services to develop a K to 12 charter school campus with dorm facilities and related uses on 70.15 acres situated within the State Land

Use Agricultural District is hereby approved and a favorable recommendation shall be forwarded to the State of Hawai'i Land Use Commission.

DATED: Hilo, Hawai'i, November 4, 2021.