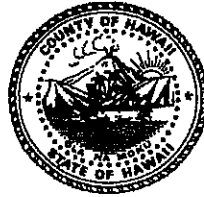


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

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

**County of Hawai'i**  
**PLANNING DEPARTMENT**

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

February 15, 2013

Dear Surrounding Property Owner:

Special Permit Application (SPP 12-000138)  
Applicant: Connections New Century Public Charter School and Community  
Based Education Support Services  
Request: To Develop a K to 12 Charter School Campus with Dorm Facilities,  
Intergenerational Programs, a Sustainable Agriculture Program and a  
Forestry/Conservation Program  
Tax Map Key: 2-5-006:141

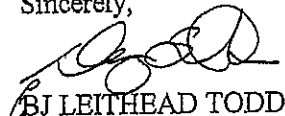
This is to inform you that the above Special Permit is scheduled for a continued public hearing by the Windward Planning Commission (the "Planning Commission"). Said hearing, among others, will be held beginning at 9:30 a.m. on Thursday, March 7, 2013, in the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i. A copy of the public notice is attached for your information. A motion to deny the Special Permit application is pending.

You are invited to comment on the application at the hearing or submit written comments prior to the hearing. Written comments (original and nine copies) will be appreciated at least one week prior to the hearing date in the Planning Department.

It has come to the Planning Commission's attention that, contrary to prior understanding, interested persons should be given opportunity to request intervention as parties in this case. Should you wish to intervene as a party to a contested case hearing before the Planning Commission, you are required to file a completed "PETITION FOR STANDING IN A CONTESTED CASE HEARING" (See Appendix A) by February 28, 2013 with the Planning Commission at Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i 96720, accompanied by a filing fee of \$200 payable to the Director of Finance. Any party may retain counsel if that person so desires. Requesting intervention is generally considered a prerequisite for claiming standing to participate in an appeal to Circuit Court on any final decision on this case.

Should you have any questions, please feel free to contact Jeff Darrow at 961-8158.

Sincerely,

  
BJ LEITHEAD TODD  
Planning Director

Att.

cc: Ms. Monica Morris, Esq.  
Ted Hong, Esq.  
Connections New Century Public Charter School

FEB 15 2013

**PETITION FOR STANDING IN CONTESTED CASE HEARING**  
(Page 1 of 2)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I. STATUS OF PETITIONER**

A. Is your interest in this matter clearly distinguishable from that of the general public?  
Yes \_\_\_ No \_\_\_

If the answer is "yes", please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the answer is "no", please explain how the proposed action will nevertheless cause you actual or threatened injury:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Are you a government agency whose jurisdiction includes the land involved in the subject request? Yes \_\_\_ No \_\_\_

If the answer is "yes", please explain the nature of the agency's jurisdiction:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Do you lawfully reside on or have some property interest in the land involved in the subject request? Yes \_\_\_ No \_\_\_

If the answer is "yes", please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PETITION FOR STANDING IN CONTESTED CASE HEARING**  
(Page 2 of 2)

D. Are you a person or persons descended from native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes?  
Yes \_\_\_ No \_\_\_

If the answer is "yes", please submit any geneological evidence and historical evidence showing the exercise of those rights to support the statement.

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\_\_\_\_\_  
PETITIONER'S SIGNATURE

STATE OF HAWAII     )  
                                  ) SS.  
COUNTY OF HAWAII )

On this \_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_.

APPENDIX A



TMK(3)2-5-061:046  
Kip Masao & Valerie Kanahele  
1520 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:048  
Robert & Celeste Santor  
1540 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:069  
Glenn & Gail Ogawa  
1495 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:072  
Gary & Rochelle Yamashita  
1457 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:025  
Michael & Claudia Ignacio  
1411 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:015  
HHL Melemanu LLC  
c/o Dana Kenny  
Hawaiian Island Homes  
162 Kinoole Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:007  
Bryan Hiroaki Family Sugiyama  
72 Palua Loop  
Hilo, Hawaii 96720

TMK(3)2-5-061:004  
Wataru Hirano  
Phyllis Sano  
Naomi Hirano-Omizo Trust  
Shinae Hirano  
235 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-011:012  
Carroll and Donnie Faye Cling  
1045 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:015  
Ronald and Loretta Crivello  
1073 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-061: 107, 106, 105, 104, 103, 102  
Brilhante-Hawaii, Inc.  
1342 Kilauea Avenue  
Hilo, Hawaii 96720

TMK(3)2-5-061:047  
Lee & Adriann Wilson  
1536 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:070  
Michael, Pam, Lee Botelho Trust  
1485 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:073  
Erwin & Julie Iida  
1449 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:024  
Jan & Patti Tokuuke  
1395 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:008  
Melvin & Jan Yokota  
1358 A Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:006  
John & Gail Kimura  
1300 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:080  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

TMK(3)2-5-011:013  
Joseph and Kahiolani Papalimu  
1053 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:016  
Mark and Melissa Sato  
Post Office Box 529  
Kaneohe, Hawaii 96720

TMK(3)2-5-061:049  
Joel & Elizabeth Truesdell  
250 Kristiano Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:068  
Larry Kimura  
243 Mikala Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:071  
Raymond Yamane  
1473 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:026  
Lester Sakamoto  
1439 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:016  
Eric & Barbara Shozuya  
1380 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:009  
Wayne & Amy Kanemoto  
1358 B Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:005  
Kelly Leong & Alyson Kakugawa Trust  
1290 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-011:011  
Nancy/Masaru Nagai Trust  
Nancy Nagai  
1035 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:014  
Norma and Arnold Fegerstrom  
1065 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:017  
Arnold Fegerstrom Trust  
20 Wawai Loop  
Hilo, Hawaii 96720





TMK(3)2-5-011:018  
John Howard Rushlow  
1147 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:038 and 039  
John Carvalho  
1131 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:010  
Theodore Sasamura  
Janet Sasamura  
Sandra Leong  
Craig Sasamura  
1023 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:025  
William Phillips, Drenna Sweet-Phillips  
1036 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:050  
Jo Ann Arruda Turst  
993 C Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:002  
Fujie Yamamoto Trust  
c/o Yamamoto, Else CO-TTEE  
1245 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:024  
Katsuko Otani Trust  
1215 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:027  
Rodeny and Susan Segawa  
1215 D. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:070  
Rodney and Susan Segawa  
1215 D. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:043  
Catalina Perez  
1209 A. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:019  
Thomas Spencer Trust  
New Tan Spencer Dec'd  
1110 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:021, 022 and 043  
Correa Family Trust  
c/o Barbara Brickwood-Correa  
1068 B. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:023  
Clifford and Linda Zane  
553 Hiilei Place  
Wailuku, Hawaii 96793

TMK(3)2-5-011:044  
Sharon and Owen Nakano  
1005 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:021  
Carvalho Family Trust  
Post Office Box 2463  
Kailua-Kona, Hawaii 96740

TMK(3)2-5-027:003  
Randal Okutsu Trust  
1876 Hale O Kea Street  
Hilo, Hawaii 96720

TMK(3)2-5-027:025  
Jean Otani and Jean Otani Trust  
1215 B Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:068  
Royce and Jane Ebesu  
1215 G. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:005  
Sandra Sato  
1213 A. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:044  
Henry and Norine Okuhara  
Post Office Box 945  
Hilo, Hawaii 96720

TMK(3)2-5-011:020  
Aiko and Cyrus Wilson  
1090 A Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:009  
Christopher Grave Hardenbrook  
Leslie Elizabeth Sears  
1013 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-011:024  
Matthias Kusch  
Post Office Box 166  
Pepeekeo, Hawaii 96783

TMK(3)2-5-011:048  
Steve and Krystn Hinck  
4646 Fort Davis Street  
Simi Valley, CA 93063

TMK(3)2-5-027:001  
Edith Mitsunaga Trust  
3572 Nipo Street  
Honolulu, Hawaii 96822

TMK(3)2-5-027:058, 059, 060, 061, 062,  
063, 064, 065, 067, 066  
Edith Mitsunaga Trust  
3572 Nipo Street  
Honolulu, Hawaii 96822

TMK(3)2-5-027:026  
Dean and Else Ushijima  
1215 Kaumana Drive Apt. C  
Hilo, Hawaii 96720

TMK(3)2-5-027:069  
Janey Ebesu Trust  
1215 G. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:046  
Edward and Caroline Hasegawa  
250 N. Judd Street  
Honolulu, Hawaii 96817

TMK(3)2-5-027:045  
Jason and Jennifer Turner  
1209 C. Kaumana Drive  
Hilo, Hawaii 96720



TMK(3)2-5-027:053

Karl Tsuchiya  
823 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:056

Tatsuo Inouye Trust  
June Inouye Trust  
2230 Apoepoe Street  
Pearl City, Hawaii 96782

TMK(3)2-5-027:008

Mary Jane Oliveira  
Manuel Oliveira III  
Manual Oliveira Jr.  
1150 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:052

Ezekiel Harvey Luiz Trust  
Noreen Mai Luiz Trust  
Post Office Box 1166  
Hilo, Hawaii 96720

TMK(3)2-5-027:054

Paul and Shawn Paiva  
1169 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:047

Melvin and Kiyono Goya  
1170 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:009

Michiko Yahata  
98-459 Hoono Street  
Pearl City, Hawaii 96782

TMK(3)2-5-027:034

Bryce and Sharyl Nakamura  
Post Office Box 294  
Captain Cook, Hawaii 96704

TMK(3)2-5-027:014

Miyoko M. Hoshide  
1280 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:038

Jan Yokoyama  
1300 Kaumana Drive  
Hilo, Hawaii 96720

*Resent  
2/20/13*

TMK(3)2-5-027:016

James Otani  
1360 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:013

Ste Engineering, Inc  
c/o Masutani MK  
545 Kaaahi Street  
Honolulu, Hawaii 96817

TMK(3)2-5-027:012, 072, 077, 078

Laura Y Chock Trust  
555 Naniakea Street  
Hilo, Hawaii 96720

TMK(3)2-5-027:010

Kerry Keith Long  
Post Office Box 1481  
Hilo, Hawaii 96720

TMK(3)2-5-027:055

Garret Komatsu  
1155 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:057, 007

Bryson and Lorna Kuwahara  
1142 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:042

David and Lauri Mattos  
Post Office Box 5599  
Hilo, Hawaii 96721

TMK(3)2-5-027:035

Paulette Robledo Trust  
1260 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:040

Hajime & Aileen Shinjo  
1272 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:039

Stanley Fujisawa  
Tammy Fujisawa  
Curtis Fujisawa  
Minerva Fujisawa  
1296 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:041

Russell & Lorraine Matsu  
1352 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:032

Leandro & Wand Quiocho  
1222-A Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:073 and 079

Theone Keam Yung Chock  
1051 Hoomaikai Street  
Honolulu, Hawaii 96817

TMK(3)2-5-027:011

Wesley and Sandra Takai  
1222 E. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-027:028 and 022  
John and Pamela Thatcher  
1188 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:011  
Doreen and Tara Leao  
1503 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:008  
Ellen Etsuko Hirayama, Ellen Setsuko Hirayama  
Kimiko Kitamura, Susan Kitamura  
Tadayuki Kitamura, Wayne Kitamura  
1479 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:036  
Brenda Hennessey  
Melissa Johnson  
1447 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:004  
Anne Tiogangco  
Jordan Tiogangco  
1391 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:040  
Matthew Hinez  
Post Office Box 4305  
Hilo, Hawaii 96720

TMK(3)2-5-040:041  
James Shaver  
1027 Kagawa Street  
Pacific Palisades, California 90272

TMK(3)2-5-040:018 and 042  
Martha and Francis Rodillas  
50 Akala Road  
Hilo, Hawaii 96720

TMK(3)2-5-040:013  
Karen and Lloyd Rubio  
226 Akala Road  
Hilo, Hawaii 96720

TMK(3)2-5-014:001  
Wallace Chong Trust  
788 Haihai Street  
Hilo, Hawaii 96720

TMK(3)2-5-027:074 and 080  
Lorrin S.K. Chock Trust  
Naomi Takemoto-Chock Trust  
1978 Komohana Ext.  
Hilo, Hawaii 96720

TMK(3)2-5-040:010  
Kelli Jennifer Leihua Tomota  
98 Kulaloa Road  
Hilo, Hawaii 96720

TMK(3)2-5-040:007  
Frances and Richard Oldfield  
1473 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:005  
Chiseko Yoshimura  
Gary Yoshimura  
1441 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:003  
Calvin Enoki  
Sandra Sayama-Enoki  
1381 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:001  
Dain Oblero  
Sean Oblero  
Henry Rezentos  
Raquel Rezentos  
1367 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:015  
Richard Lee-Ching Trust  
1468 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:013  
Karen and Lloyd Rubio  
226 Akala Road  
Hilo, Hawaii 96720

TMK(3)2-5-040:019  
Marc Butz  
Desiree Giangregorio  
55 Akala Road  
Hilo, Hawaii 96720

TMK(3)2-5-014:005  
Glenn Kearns Trust  
Virginia Kearns Trust  
33 W Naauao Street  
Hilo, Hawaii 96720

TMK(3)2-5-027:033  
Carole and Mark Abril  
1222 B. Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:009  
Noriaki Otani, Fujie Otani  
Brad Otani, Max Otani  
Shawn Paiva  
1489 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:006  
Jewels and Mark Almeida  
561 Alihi Place  
Kailua, Hawaii 96734

TMK(3)2-5-040:035  
David Hasegawa  
250 N. Judd Street  
Honolulu, Hawaii 96817

TMK(3)2-5-040:002  
George Kaitoku  
Joyce Kaitoku  
1375 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:039  
Bryson Toma  
1374 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:014  
Byron Fujimoto  
Shirley Iwase  
142 Puhili Street  
Hilo, Hawaii 96720

TMK(3)2-5-040:019  
Marc Butz  
Desiree Giangregorio  
55 Akala Road  
Hilo, Hawaii 96720

TMK(3)2-5-040:020  
Shawn and Jeanie Flood  
1600 Kaumana Drive  
Hilo, Hawaii 96720

TMK(3)2-5-040:013  
Albert Chong  
Sharon Chong  
1476 Kikiaha Street  
Hilo, Hawaii 96720

TMK(3)2-5-006-003  
State of Hawaii - DLNR  
75 Aupuni Street  
Hilo, Hawaii 96720

TMK(3)2-5-006-052  
Wesley and Phyllis Segawa  
19 Puuko Street  
Hilo, Hawaii 96720

TMK(3)2-5-006-061  
Kidds Development  
c/o James Pappas  
616 Moaniala Street  
Honolulu, Hawaii 96821

TMK(3)2-5-006-160  
Brilhante-Hawaii, Inc.  
1342 Kilauea Avenue  
Hilo, Hawaii 96720

TMK(3)2-5-006-151  
Marilyn J. Pappas Trust  
616 Moaniala Street  
Honolulu, Hawaii 96821

TMK(3)2-5-061-033  
Randell A. Riley  
282 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-032  
Rosanne-Joy Cano Batalla  
272 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-031  
Lorna and Neil Yamashiro  
50 Manulele Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-029  
Alan and Patsy Iwasaki  
232 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-028  
Ivan S. Mochida Trust  
77 Kukila Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-001  
Jeffrey Kalani Gomes  
Wendy Keiko Gomes  
281 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-002  
Glenn and Karyn Tada  
259 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061-003  
Ernest A. Sakamoto Trust  
1416 Pu'u Ale Place  
Hilo, Hawaii 96720

TMK(3)2-5-061-012  
Chun Y Akamine, Trust  
1360-D Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:011  
Lorin T and Margareta Araujo  
1358-D Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:010  
Aileen and Sidney Fuke  
1358 C. Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:013  
Douglas Shiro  
1360 C. Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:014  
Bevington Family Trust  
1360 Mele Manu Street #B  
Hilo, Hawaii 96720

TMK(3)2-5-061:017  
Brenda and David Camacho  
1414 A Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:018  
Nelson Nishimoto & Patty Kiyoko  
1414 Mele Manu Street, Apt B  
Hilo, Hawaii 96720

TMK(3)2-5-061:019  
Allen and Layne Novak  
1414 C Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:020  
Elain Ludoff, Steve and Patricia Wilhelm  
1416 C. Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:021  
Brice and Christine Takata  
c/o 777 Ainako Avenue  
Hilo, Hawaii 96720

TMK(3)2-5-061:030  
Mark Chun & Marianne Takamiya  
250 Edita Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:022  
Markus Herzog 2010 Trust  
Post Office Box 5915  
Hilo, Hawaii 96720

TMK(3)2-5-061:041  
Trust Mok  
1464 Mele Manu Street  
Hilo, Hawaii 96720

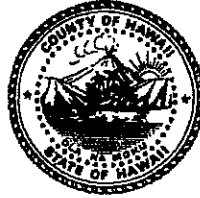
TMK(3)2-5-061:042  
Noemi and Rudy Arzaga  
1468 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:043  
Daniel Robert Hudak  
1468 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:044  
Franklin & Virginia Veriato  
1500 Mele Manu Street  
Hilo, Hawaii 96720

TMK(3)2-5-061:045  
Gary & Jacqueline Murai  
299 A. Alu Road  
Wailuku, Hawaii 96793

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

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

**County of Hawai'i**  
PLANNING DEPARTMENT

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

February 15, 2013

Monica Morris, Esq.  
Office of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

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

Dear Ms. Morris and Mr. Hong:

Special Permit Application (SPP 12-000138)

Applicant: Connections New Century Public Charter School and Community  
Based Education Support Services

Request: To Develop a K to 12 Charter School Campus with Dorm Facilities,  
Intergenerational Programs, a Sustainable Agriculture Program and a  
Forestry/Conservation Program

Tax Map Key: 2-5-006:141

The continued hearing on the above special permit, among others, is scheduled for 9:30 a.m. on Thursday, March 7, 2013, in the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i. Your presence or the presence of an authorized representative will be appreciated in order that all questions relative to the request may be clarified. A copy of the public notice is attached for your information.

The Planning Department will be notifying surrounding property owners of the continued hearing that will also provide an opportunity to intervene as a party to a contested case hearing before the Planning Commission in accordance with Planning Commission Rule No. 4 regarding Contested Case Procedure.

Should you have any questions regarding the above, please do not hesitate to contact Jeff Darrow of this department at 961-8288, ext. 8158.

Sincerely,

BJ LEITHEAD TODD

Planning Director

Att.

cc: Connections New Century Public Charter School & CBESS  
Amy Self, Esq.

FEB 15 2013

**NOTICE OF PUBLIC MEETING AND HEARINGS**

**WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI'I**

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 Planning Commission's Rules of Practice and Procedure.

**DATE:** Thursday, March 7, 2013

**TIME:** 9:00 a.m.

**PLACE:** County of Hawai'i Aupuni Center Conference Room  
101 Pauahi Street, Hilo, HI 96720

**STATEMENTS FROM THE PUBLIC** – Note that statements from the public regarding any particular item on this agenda will be taken at the time the particular item is called to order.

**NEW BUSINESS – 9:00 a.m.**

1. **APPLICANT: ROBERT AND RUBY KOBAYASHI (Amend SPP 1194)**  
Request to amend Condition No. 2 (life of permit) of Special Permit No. 1194, which was approved by the Planning Commission on January 17, 2003 to allow the establishment of an auto repair shop on approximately 3,500 square feet of land within the State Land Use Agricultural District. The property is located at the northwest corner of the Keaau-Pahoa Road (Highway 130) and Ilima Street intersection, Orchidland Estates Subdivision, Keaau, Puna, Hawaii, TMK: 1-6-9:166.

**UNFINISHED BUSINESS – 9:30 a.m.**

2. **APPLICANT: JAS W. GLOVER, LTD. (SPP 12-145)**  
Continued hearing on an application for a Special Permit to allow the establishment of a new quarry site on approximately 10.15 acres within a 140.368-acre property situated within the State Land Use Agricultural District. The project site is located east of the Hawaii National Guard Site and Hilo International Airport and approximately 3,800 feet west of the County's Sewer Treatment Plant Site at Honohono-nui, South Hilo, Hawaii, TMK: 2-1-13:Portion of 4.
3. **APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL /CBESS (SPP 12-138)**  
Continued hearing on an application 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 Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

The Commission anticipates convening an executive meeting regarding the above matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, for the purpose of consulting with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. A 2/3 vote pursuant to Hawaii Revised Statutes, Section 92-4 and Planning Commission Rule 1-5(e) is necessary to hold an executive meeting.

## MINUTES

Approval of Minutes of the January 10, 2013 meeting

## ADMINISTRATIVE MATTERS

1. Status of applications heard by Windward Planning Commission that are pending before County Council.
2. The Commission anticipates convening an executive meeting regarding agenda Item No. 3, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, for the purpose of consulting with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. A 2/3 vote pursuant to Hawaii Revised Statutes, Section 92-4 and Planning Commission Rule 1-5(e) is necessary to hold an executive meeting.

## ANNOUNCEMENTS

## ADJOURNMENT

The purpose of the public hearings is to afford all interested persons a reasonable opportunity to be heard on the above matters.

**Submitting Testimony:** According to Rule 1 (General Rules) of the Planning Commission, a person desiring to submit oral or written testimony shall indicate her/his name; residence 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. Written testimony shall be submitted with an original and nine copies prior to testifying. The Commission would appreciate timely submittal to the Planning Department at least one week prior to the hearing date to allow for mailing and thorough Commission review. Testimony that is irrelevant or unduly repetitious may be limited by the Chairperson pursuant to Rule 1.

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 Nos. 1 & 3 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 website (<http://www.co.Hawaii.hi.us>).

Anyone who requires an auxiliary aid or service, other reasonable modification, or language interpretation to access this meeting please contact Sharon Nomura (961-8155) or Daryn Arai (961-8142) of the Planning Department as soon as possible, but no later than five 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  
DEAN AU, Chairperson

(Hawaii Tribune Herald: Thursday, February 21, 2012)  
(West Hawaii Today: Thursday, February 21, 2012)



**Ted H.S. Hong**  
**Attorney at Law**

Employment, Workplace Law & Litigation

**Sue Lee Loy**  
Planner and Legal Assistant

February 19, 2013

The Honorable Deau Au, Chairman  
Windward Planning Commission  
County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

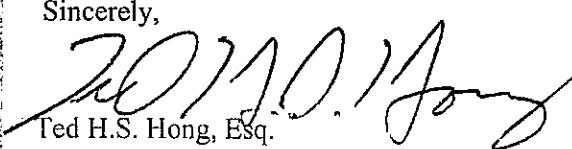
RE: SPECIAL PERMIT APPLICATION (SPP 12-000138)  
Applicant: Connection New Century Public Charter School and Community Based Education Support Services (CBESS)  
Request: To Develop a K to 12 Charter School Campus with Dorm Facilities, Intergenerational Programs, a Sustainable Agriculture Program and a Forestry/Conservation Program  
Tax Map Key: (3)2-5-006:141

Dear Chairman Au:

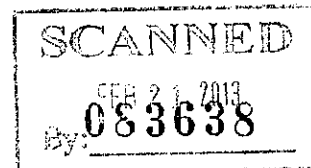
At its January 10, 2013, members of the Windward Planning Commission voted to deny the above application and await counsel for the Windward Planning Commission to prepare Findings of Fact ("FOF"), Conclusions of Law ("COL") and a Decision and Order ("D&O"). On January 25, 2013 the Planning Department transmitted to our office the Planning Department Record of SPP 12-000138. While researching information on the preparation of our Exceptions to the FOF, COF and the D&O new information emerged that there were some procedural errors which included inaccurate instructions related to 1) the ability for parties to request a contested case, 2) the ability to intervene at the State Land Use and 3) improper notification related to a contested case process at the Planning Commission level and the State Land Use level creating a significant due process violation.

Our office has communicated these concerns to the Planning Department and based on this, parties have agreed to suspend the preparation of the FOF, COF and D&O to raise these issues before the Windward Planning Commission at its March 7, 2013 meeting to state our positions and proposed courses of action.

Sincerely,

  
Ted H.S. Hong, Esq.

C: Deputy Attorney General Monica T. Morris, Esq.  
The Honorable Bobby Jean Leithead Todd, Planning Director  
Ivan Torigoe, Esq., County of Hawaii Corporation Counsel  
Amy Self, Esq., County of Hawaii Corporation Counsel  
CBESS





## 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

February 28, 2013

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

Dear Mr. Hong:

Special Permit Application (SPP 12-000138)

Applicant: Connections New Century Public Charter School and Community  
Based Education Support Services (CBESS)

Request: To Develop a K to 12 Charter School Campus with Dorm Facilities,  
Intergenerational Programs, a Sustainable Agriculture Program and a  
Forestry/Conservation Program

Tax Map Key: 2-5-006:141

Thank you for your letter dated February 19, 2013. This will confirm that I have concurred, as Chairman of the Commission and Presiding Officer, in the parties' agreement to suspend preparation of the proposed Findings of Fact, Conclusions of Law, and Decision and Order pending further discussion of procedural issues at the next Commission hearing.

Also, please note that your letter stated that the Commission had "voted to deny" the subject application. That was probably a typographical error, for the Commission did not "vote to deny" but does have pending a motion to deny which has been seconded and continued.

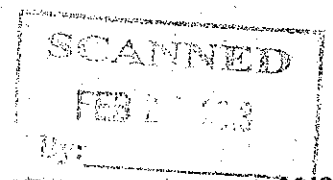
Thank you for your cooperation.

Sincerely,

Dean Au, Chairman  
Windward Planning Commission

cc: Monica T. Morris, Esq., Deputy Attorney General  
The Honorable Bobby Jean Leithead-Todd, Planning Director  
Ivan Torigoe, Esq., Deputy Corporation Counsel  
Amy Self, Esq., Deputy Corporation Counsel  
CBESS

*Hawai'i County is an Equal Opportunity Provider and Employer*



FEB 28 2013

NEIL ABERCROMBIE  
GOVERNOR



PLANNING DEPARTMENT  
COMMUNITY DEVELOPMENT

2013 MAR -4 PM DAVID M. LOUIE  
ATTORNEY GENERAL

RUSSELL A. SUZUKI  
FIRST DEPUTY ATTORNEY GENERAL

**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

March 1, 2013

**VIA FACSIMILE AND U.S. MAIL**


The Honorable Dean Au, Chairman  
Windward Planning Commission, County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

RE: **SPECIAL PERMIT APPLICATION (SPP 12-000138)**  
**Applicant: Connections New Century Public Charter School and**  
**Community Based Education Support Services (CBESS)**

Dear Chairman Au:

The purpose of this letter is to join in Mr. Ted Hong's letter dated February 19, 2013, in which he communicated certain procedural errors that occurred relating to SPP 12-000138. These procedural errors are reflected in the record, and resulted in confusion and to the detriment of Applicant. Moreover, due process considerations require that adequate notice be provided to Applicant of what procedures will be utilized, to afford Applicant the opportunity to properly present its case in support of SPP 12-000138.

I look forward to appearing before the Windward Planning Commission at its March 7, 2013, meeting to state our positions and proposed courses of action. In light of these procedural errors, at the very minimum, Applicant should be afforded the opportunity to supplement the record with additional evidence and information in support of SPP-000138, at a duly noticed time and place in the future.

Very truly yours,  
  
Monica T.L. Morris  
Deputy Attorney General

C: The Honorable Bobby Jean Leithead Todd, Planning Director  
Ted H.S. Hong, Esq. (via email)  
Ivan Torigoe, Esq. County of Hawaii Corporation Counsel (via email)  
Amy Self, Esq., County of Hawaii Corporation Counsel (via email)



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

HONOLULU HI 968

nearest

03/07/2013

01 MAR 2013 PM 1 L

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FIRST-CLASS MAIL

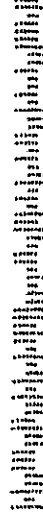
\$00.46



ZIP 968  
041112

THE HONORABLE DEAN AU, CHAIRMAN  
WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII  
101 PAUAAHI STREET, SUITE 3  
HILO, HAWAII 96720

96720422403



**PETITION FOR STANDING IN A CONTESTED CASE HEARING**

(Page 1 of 2)

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

NAME: JoNelle Fukushima

2013 MAR -4 PM 2: 53

ADDRESS: 1785 Waiianuenue Ave.  
Hilo, HI 96720

PHONE NO.: (808) 937-6374

APPLICANT/

DOCKET NO.: Special Permit No. 12-000138

A. Is your interest in this matter clearly distinguishable from that of the general public?  
Yes  No

If the answer is "yes", please explain:

LIVE NEAR PROJECT AREA.

If the answer is "no", please explain how the proposed action will nevertheless cause you actual or threatened injury:

B. Are you a government agency whose jurisdiction includes the land involved in the subject request?

Yes  No

If the answer is "yes", please explain the nature of the agency's jurisdiction:

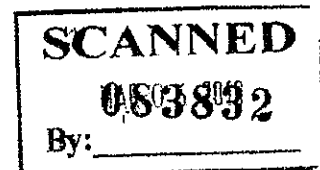
C. Do you lawfully reside on or have some property interest in the land involved in the subject request?

Yes  No

If the answer is "yes", please explain:

LIVE NEAR PROJECT AREA.

Appendix A



**PETITION FOR STANDING IN A CONTESTED CASE HEARING**

(Page 2 of 2)

D. Are you a person or persons descended from native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes?

Yes \_\_\_\_\_ No X

If the answer is "yes", please submit any genealogical evidence and historical evidence showing the exercise of those rights to support your statement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

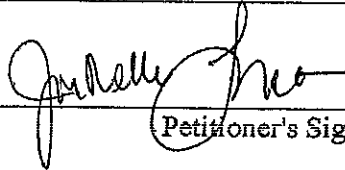
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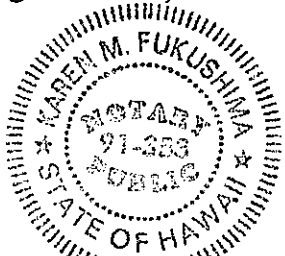
\_\_\_\_\_



Petitioner's Signature

STATE OF HAWAII )  
) SS.  
COUNTY OF HAWAII )

On this 28th day of February, 2013, before me personally appeared Jonelle Fukushima, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



  
Notary Public, State of Hawaii

Karen M. Fukushima

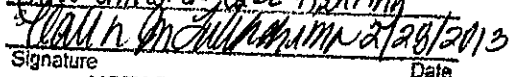
My commission expires: 5-30-2015

My Commission No # 91-353

Doc Date: Undated # Pages: 2

Name: Third Circuit

Doc. Description: Petition for Standing in a Contested Case Hearing

  
Signature Date

Appendix A

NOTARY CERTIFICATION

PLANNING DEPARTMENT

County of Hawaii  
101 Pauahi St., Ste. 3  
Hilo, Hawaii 96720

# RECEIPT

MAR 05 2013

DATE

No. 554761

RECEIVED FROM Connections New Century Public \$ 200.00

FOR REAL Charter School DOLLARS

FOR Contested Case Hearing SPP-12-000138

ACCOUNT 174 Kam Ave Hilo HI

PAYMENT 200 FROM Jo Nelle Fulkushime

BAL. DUE BY M J Joy

CASH  
 DEBIT  
 MONEY ORDER  
 CREDIT CARD



CONNECTIONS NEW CENTURY  
PUBLIC CHARTER SCHOOL  
174 Kamehameha Avenue  
Hilo, HI 96720-2834

First Hawaiian Bank

KAMEHAMEHA BRANCH  
HILO, HI 96720

59-10171213

2/28/2013

8218

PAY TO THE ORDER OF Director of Finance

\$ \*\*200.00

Two Hundred and 00/100\*\*\*\*\* DOLLARS

Director of Finance  
Phyllis Cahal  
101 Pauahi St, Ste 3 County of Hawaii  
Hilo, HI 96720 Planning Dept.

Heather R McDowell

MEMO

Special Use Permit #12-000138

⑆00008218⑆ ⑆21301015⑆ 90⑆034820⑆

**RECEIPT** DATE **MAR 05 2013** No. **554761**

RECEIVED FROM **Connections New Century Publy** \$ **200.00**

**174 Kam Ave Hilo HI** Charitable Schms

FOR RENT **Contested Case Hearing SPP-12-000138** DOLLARS

FOR **To Nelle Fullshume**

CASH  
 CHECK **200** FROM **MJ**  
 MONEY ORDER  
 CREDIT CARD

ACCOUNT **200** BY **MJ**

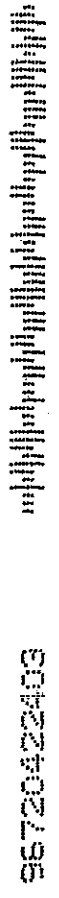
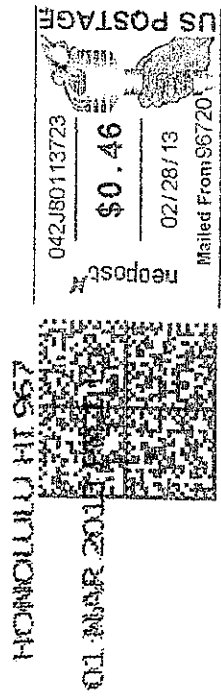
PAYMENT **200**

BAL. DUE


PLANNING DEPARTMENT  
 County of Hawaii  
 101 Paauhahi St., Ste. 3  
 Hilo, Hawaii 96720

Connections PCS  
 174 Kamehameha Ave.  
 Hilo, HI 96720

Hawaii County Planning Dept  
 101 Paauhahi St Suite 3  
 Hilo, HI 96720







**Ted H.S. Hong**  
**Attorney at Law**

*Employment, Workplace Law & Litigation*

**Sue Lee Loy**  
Planner and Legal Assistant

March 6, 2013

The Honorable Deau Au, Chairman  
and Members of Windward Planning Commission  
County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

RE: STATUS REPORT – MARCH 2013  
SPECIAL PERMIT APPLICATION (SPP 12-000138)  
Applicant: Connection New Century Public Charter School and Community Based Education  
Support Services (CBESS)  
Request: To Develop a K to 12 Charter School Campus with Dorm Facilities, Intergenerational  
Programs, a Sustainable Agriculture Program and a Forestry/Conservation Program  
Tax Map Key: (3)2-5-006:141

Dear Chairman Au and Commissioners:

The purpose of this letter is to provide the Windward Planning Commission and the Planning Department with a comprehensive update of other items related to the above-reference property that work in conjunction with the regulatory and entitlement process currently before the Windward Planning Commission.

GENERAL LEASE No. S-6029 – STATE DEPARTMENT OF LAND AND NATURAL RESOURCES

On February 15, 2013, the Department of Land and Natural Resources provided Connections New Century Public Charter School, hereinafter “Connections” with a fully executed copy of General Lease No. S-6029, hereinafter “Lease.” The Lease, which commenced on February 1, 2013 authorizes Connections to enter and occupy the subject premises. A copy of this letter is attached as Exhibit A.

General Lease No. S-6029 includes 37 agreements and covenants between parties and the executed copy of the lease binds Connections to adhere to those agreements, however, it is prudent that we provide additional information related to the following Conditions.

General Lease No. S-6029 - Condition 35 – Removal of Trash

*The Lessee shall be responsible to for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.*

Pursuant to Conditions 35, Connections will begin the process of removing all the illegally dumped trash upon the premises. As a professional courtesy, Connections will communicate with the Planning Department the commencement date of this activity.

General Lease No. S-6029 - Condition 37 – Survey and Boundary Stakeout

*The lessee shall be solely responsible for any survey and boundary stakeout of the lease premises.*

Pursuant to Condition 37, Connections continues to work with land survey Robert Shirai of Island Survey to complete topographic survey of the property. It is anticipated that this work will be completed by March 30, 2013.

October 26, 2012 – Enforcement of Violation

On October 26, 2012 the Board of Land and Natural Resources, hereinafter “Board” heard an enforcement violation for the subject property and provided Connections with corrective actions to address the violation. A copy of the Board’s recommendations is attached as Exhibit B. Part of the corrective action included the submittal of a Restoration Plan. Attached as Exhibit C, is the Restoration (Reforestation) Plan prepared by David Miranda that was transmitted to the Board. Pursuant to the directive of the corrective action and as a professional courtesy, Connections will communicate with the Planning Department the commencement date of activity associated with the Restoration (Reforestation) Plan.

Connections has not received any other notices from the Department or Board of Land and Natural Resources.

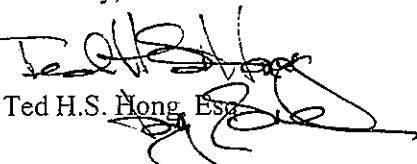
COUNTY OF HAWAII GRADING VIOLATION

On August 31, 2012, the County of Hawaii Public Works Department transmitted to Connection a notice related to a grading violation. This violation occurred when a bulldozing sub-contract failed to adhere to the terms of a contract to provide fencing for the perimeter of the property. A grubbing and grading plan was prepared by Engineer Paul Nash, which has been reviewed and approved the Department of Public Works and is currently under review by the State Historic Preservation Division. Unfortunately this agency is seriously under staffed and it is unknown at this time when this permit will be approved. Mr. Nash continues to follow-up with the Historic Preservation Division.

Connections has not received any other notices from the County of Hawaii Department of Public Works.

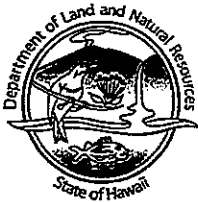
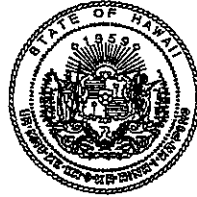
It continues to be the goal of Connections and Community Based Education Support Services (“CBESS”) to address any concerns for the property and we believe this updated status report is helpful to the Commission.

Sincerely,

  
Ted H.S. Hong, Esq.

C: Deputy Attorney General Monica T. Morris, Esq.  
The Honorable Bobby Jean Leithead Todd, Planning Director  
CBESS





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599  
February 15, 2013

Ref. No.: GL S-6029  
Author: LD-GH

Connections New Century  
Public Charter School  
174 Kamehameha Avenue  
Hilo, HI 96720

Dear Sirs:

Subject: General Lease No. S-6029 to Connections New Century Public Charter School for School Purposes; Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141.

Enclosed, for your records, is one fully executed copy of the above referenced document, commencing as of February 1, 2013. You are hereby authorized to enter and occupy the subject premises as of this commencement date.

We call your attention to the paragraphs 8 of your lease regarding improvements, which states in part;

*The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure, or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, unless otherwise provided in this lease.*

We look forward to working with you as our tenant. If there is anything we can help you with or if you have any questions, please do not hesitate to contact us at (808) 961-9590. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon C. Heit".

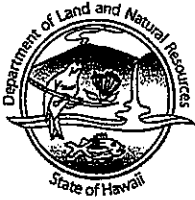
Gordon C. Heit  
District Land Agent

Enclosures *w/o*

cc: Land Board Member  
Central Files  
District Files  
*Red Hong*

*Exhibit* A handwritten mark or signature next to the word "Exhibit".





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599

October 29, 2012

Ref. No.: 08HD-018  
Author: LD-GH

Connections New Century  
Public Charter School  
174 Kamehameha Avenue  
Hilo, HI 96720

Dear Sirs:

Subject: Enforcement of Violation on Unencumbered Public Lands, Unauthorized Land Clearing, Construction of Perimeter Fence and Removal of Ohia Timber by Connections New Century Public Charter School, Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141 portion.

At its meeting of October 26, 2012, under agenda item D-2 (copy enclosed), the Board of Land and Natural Resources approved the above referenced action as amended.

The Board amended staff's recommendations as follows:

**Recommendation No. 2 was amended to reduce the fine from \$5,000 to \$500. Recommendation 3 was amended to delete the removal of the fence requirement and revise the provision to complete restoration within 60 days; recommendation 3 to read in its entirety: "Recommend Connections to submit to the Department a Restoration Plan within 60 days from the date of this Board's action at Connections' expense;"**

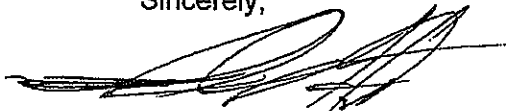
All other recommendations shall be complied with.

Although not a condition of the Board approval, Board member Goode had wanted the minutes to reflect the Board's encouragement that the school retain a project management to oversee all facets of the permitting and construction of the school improvements.

*Exhibit* A handwritten signature in black ink, appearing to be "B" or similar, written over the word "Exhibit".

If you have any questions, please feel free to contact me at the Hawaii District Land Office at (808) 961-9590. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gordon C. Heit', with a long horizontal flourish extending to the left.

Gordon C. Heit  
District Land Agent

Enclosure

cc: Central Files  
District Files  
Ted Hong ✓

**AMENDED**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 26, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Enforcement of Violation on Unencumbered Public Lands, Unauthorized Land Clearing, Construction of Perimeter Fence and Removal of Ohia Timber by Connections New Century Public Charter School, Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141 portion.

PURPOSE:

Enforcement of violation of Hawaii Administrative Rules relating to unencumbered public lands, unauthorized bulldozing and land clearing construction of perimeter fence and removal of ohia timber by the Connections New Century Public Charter School and/or agents acting on their behalf occurring on State unencumbered lands makai of Edita Street, Hilo, further identified by tax map key 3<sup>rd</sup>/2-5-06:141 and shown as Exhibit A.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended  
Section 13-221-23, and 28, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

On March 28, 2008 under agenda item D5, the Board of Land and Natural Resources approved in principle, the issuance of a direct lease to the Connections New Century Public Charter School (Connections) for school purposes pending the finding of no significant impact (FONSI) of their environmental assessment for the school site. Then, at its meeting of January 13, 2012 under agenda item D-4, the Board approved the direct lease to Connections for a period of sixty-five (65) years. There was no management right of entry agreement on either Board submittal and no authorization for the applicant to enter onto the State land prior to the lease document being fully executed.

*As Amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON *BB*  
October 26, 2012

D-2085



On July 27, 2012, Hawaii District Land Office (HDLO) staff received a telephone call from the Law Office of Ted H. S. Hong, agent for Connections informing DLNR staff that a contractor hired by Connections had cut and removed several ohia logs from the property without authorization. When asked to explain further, staff was then informed the contractor had bulldozed the perimeter of the lower portion of the State property and erected a hog-wire fence around the boundary with several gates placed at strategic locations. This information was followed by a letter (copy to HDLO) dated August 2, 2012 from the office of Mr. Hong to the contractor apprising them of possible legal repercussions.

A theft investigation for the removal of ohia trees from State property was opened by the County of Hawaii Police Department on July 14, 2012. Subsequently, this information has been forwarded to the DOCARE East Hawaii District Branch for further investigation.

A site inspection of the property was conducted on August 10, 2012 by staff and confirms the bulldozing activity in addition to the construction of a hog-wire fence along the perimeter of the lower portion of parcel 141. The inspection revealed evidence of several ohia trees being pushed over. Some of the larger trees appeared to have been cut with a chain saw and removed. It is not clear whether they were cut prior to being bulldozed. The exact number of trees removed has not been determined thus far. (Photos attached as Exhibit B)

As a requirement for the issuance of a direct lease, the applicant, Connections was required to conduct an Environmental Assessment for the proposed use of State lands<sup>1</sup>. In the Final Environmental Assessment (FEA) submitted by Connections, and published on November 8, 2010, caution was given to any land clearing and construction in areas where possible lava tubes may be present. The FEA identified portions of the Kaumana Caves system as being located under a section of the lower property and recommended the position be identified and flagged. The FEA also stated that clearing of the ohia forest above the cave could have significant indirect effects to the cave ecosystem. It appears from the maps provided in the FEA that the bulldozing occurred over a portion of the cave system.

Pursuant to section 13-221-23, HAR, "No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substances on the premises". The perimeter of the lower portion of the property was bulldozed and a hog-wire fence was constructed. This action constitutes a disturbance to the geological features.

Further, Section 13-221-28(d) cites "No person shall destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in Chapter 4-6B, HAR, within the premises", the removal of Ohia timber at the subject location is considered a violation of this administrative rule.

---

<sup>1</sup> The Environmental Assessment submitted by the Applicant to the Office of Environmental and Quality Control (OEQC) does not provide for the construction or installation of perimeter fencing.

Staff is therefore recommending the Board impose a fine in the amount of \$5,000 against Connections New Century Public Charter School. Additionally, Staff spent 12 hours conducting two site inspections of the unauthorized clearing and fence installation, reviewing files, meeting with Mr. Hong and preparing the present Board submittal. Staff therefore recommends an assessment of administrative costs against Connections in the amount of \$540. Further, staff is recommending the removal of the perimeter fence and restoration of the land at Connections' expense. Finally, staff is recommending that the Board reserve the right to impose additional fines against Connections or others in the event the ongoing investigation by DOCARE Officers into the alleged theft of ohia trees from State land warrants such action.

RECOMMENDATION:

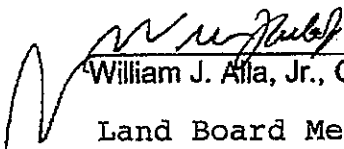
That the Board:

1. Find that Connections New Century Public Charter School violated Sections 13-221-23 and 13-228-28, Hawaii Administrative Rules;
2. Impose a fine in the amount of \$5,000 and assess administrative costs in the amount of \$540 against Connections pursuant to HRS § 171-6;
3. Require Connections to remove the fence line and restore the land to the satisfaction of the department within 60 days from the date of this Board action at Connections' expense;
4. Reserve the right to impose additional fines in the event the ongoing investigation by DOCARE Officers into the alleged theft of ohia trees from State land warrants such action; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Afa, Jr., Chairperson

Land Board Meeting: October 26, 2012; D-2: Approved as amended.  
See additional page for amendments.

**Land Board Meeting: October 26, 2012; D-2**

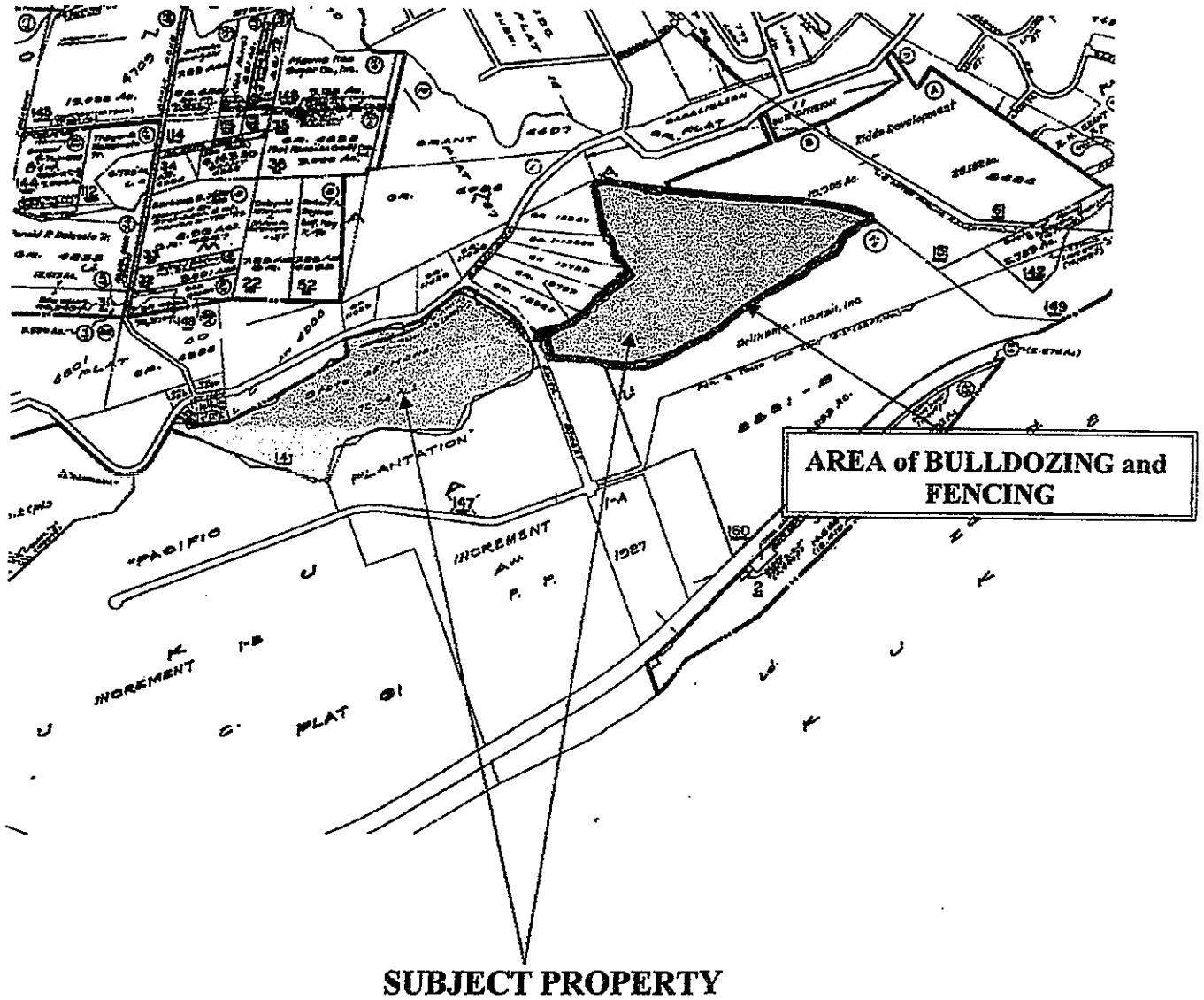
**Approved as amended. Recommendation No. 2 was amended to reduce the fine from \$5,000 to \$500. Recommendation 3 was amended to delete the removal of the fence requirement and revise the provision to complete restoration within 60 days; recommendation 3 to read in its entirety: “Recommend Connections to submit to the Department a Restoration Plan within 60 days from the date of this Board’s action at Connections’ expense;”**

Though not as a condition of the Board’s approval, Board member Goode had wanted the minutes to reflect the Board’s encouragement (and Connections’ concurrence) that the school retain a project management to oversee all facets of the permitting and construction of the school improvements.

# EXHIBIT A

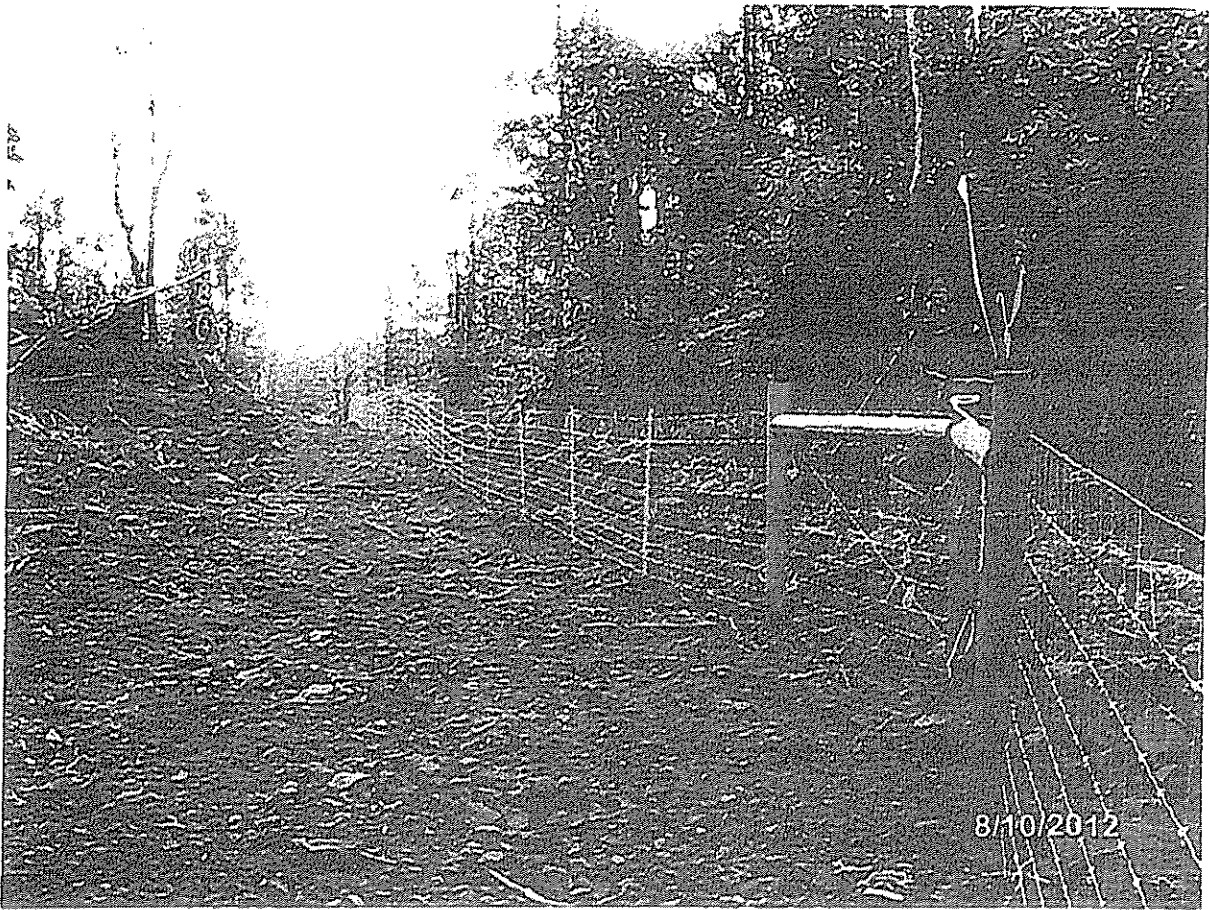
## CONNECTIONS PUBLIC CHARTER SCHOOL

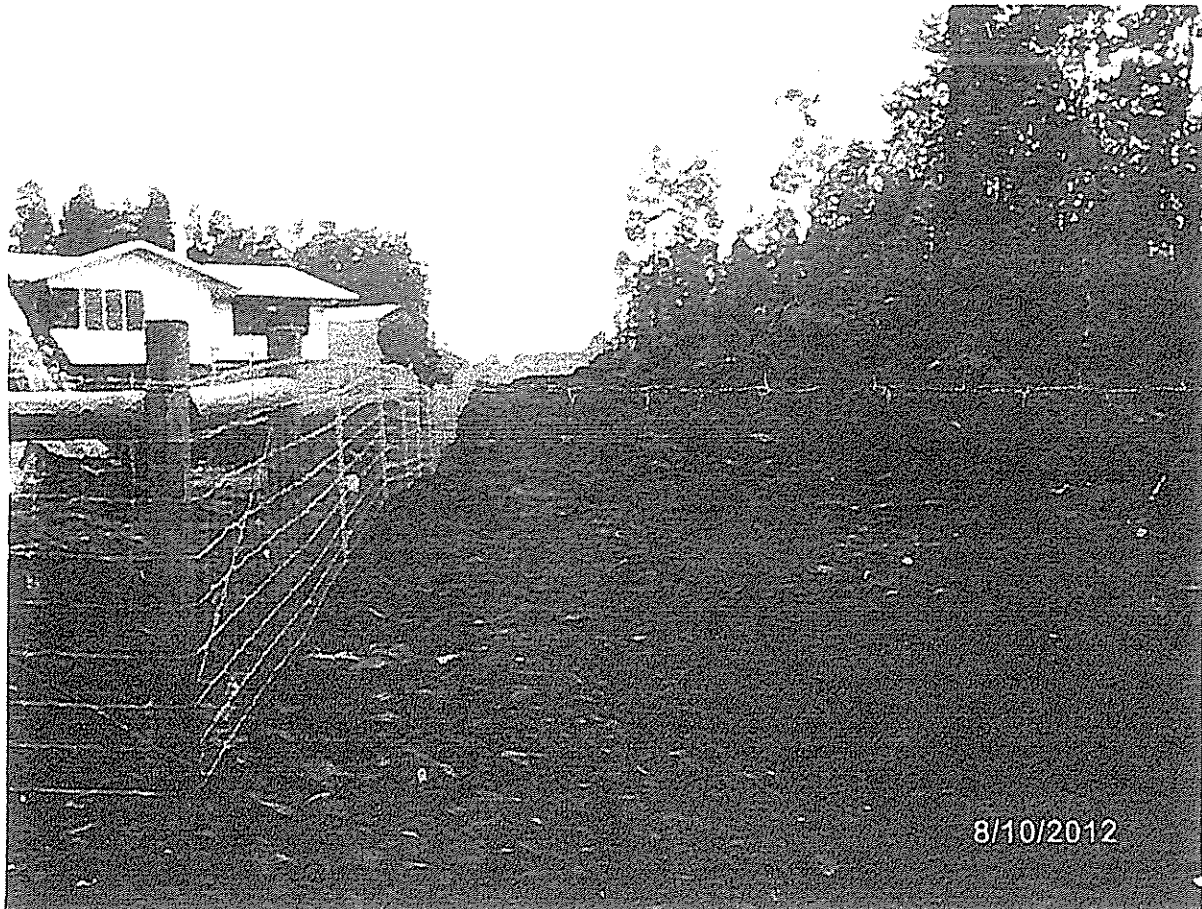
TMK: 3<sup>rd</sup>/2-5-06:141











**EXHIBIT B**

c



## A Reforestation Plan for Connections PCHS Kaumana Property – Makai Parcel

### **The Problem:**

During the summer of 2012 (exact dates ?); a contract was issued to On The Line Fencing; a private fence building company. The company was hired to install fencing around the perimeter boundary of the Connections PCHS leasehold property on the makai side of Edita Street off Kaumana Drive. Having constructed the fence line; the contractor or its associates proceeded to do bull dozer work along the fence line in excess of what the contract allowed. A large number of Ohia (*Metrosideros collina subsp. polymorpha*) trees were intentionally cut and removed from the property. Mature Strawberry guava (*Psidium cattleianum*) trees were also bulldozed and pushed into heaps along the lower boundary. These trees were to have been preserved as is or if cut, used as raw material for student project based classes, i.e. Makery Class, a computer assisted design training class.

In most areas, the topsoil was scraped down to the base rock with occasional patches of soil left remaining. On August 7, 21, and 27, 2012 I visited the property to assess damage to the property. Since the date of the contractor's activity; high levels of invasive species are already germinating on the disturbed scarified areas created by the bulldozer. Notably present are concentrations of seedlings of *Melochia sp.*, *Stachytarpheta* (Vervain), numerous *Cyperus sp.* (sedges), various grasses, *Melastome sp.*, *Psidium cattleianum* (strawberry guava) and *Paederia scandens* (pilau maile). A more complete list needs to be compiled when access to the property is reinstated.

Additionally; the exposed soil on sloped terrain poses an erosion and siltation problem. This needs to be addressed especially if it is shown that Waipahoehoe Stream flows to the ocean or enters lava tube systems (it does).

### **Needs:**

Damaged or removed trees and vegetation need to be replaced.

Weeds species need to be removed or controlled either by hand pulling (student projects) or judicious application of herbicides (by skilled applicator).

Replacement trees and understory plant species need to be seeded or transplanted to the disturbed areas.

Large trees that were pushed into stack piles, i.e. Strawberry guava, Alexander palms, Ohia trees, need to be uncovered and assessed for possible use as raw material. If salvageable, these timbers need to be stored for later use. It may be possible to use some logs for mud bars to

slow water flow on exposed slopes. This evaluation needs to happen soon before the rainy season begins and these trees rot and become useless.

**Tools Needed:**

Chain saws, fuel/oil for same

Machetes

Heavy pruning saws, pruning shears

Shovels, picks, o’o digging bars

Other tools

**Possible Approaches:**

Establish “planting zones” where replanting will occur. Rather than attempt to “blanket” the contiguous scarred areas with seed or transplants; create numerous smaller “islands” of planted replacement species that can be maintained. These areas might be circular or irregular in shape but they should be several square meters in size, i.e. 10 meter x 10 meter. These areas could also be used as potential monitoring sites for student projects and the progress of the reforestation effort could be charted as part of an ongoing biological sciences curriculum.

Begin the process of transplanting suitable species to the “planting zones” using species which already exist on the property. The same species might also be acquired off site from other construction sites if their property owners were agreeable, i.e. Ohia and Rhus sp. However, this seems impractical from a logistical perspective.

Salvage suitable transplants from onsite dozer piles where possible.

Since the substrate of the planting sites is mostly fractured rock with pockets of soil; the size of the transplanted material will be important. O’o bars (digging sticks) can be used to open cracks up a bit to accommodate transplants. Soil from adjacent areas can be used to secure roots in these cracks.

Spread seed or plant root pieces (Rhus can be propagated this way) in the various “planting zones” sourced from on-site vegetation.

**How to Proceed**

Create a list of plant species that are appropriate for the replanting effort. This list should include native and non-native species that are already on the property.

Locate areas on site where trees of a suitable size for transplant exist. These areas occur along the route of trails that were cut in 2011 and 2012. Some of the better places to look on these trails are places where lava flows are visible and the soil depth is shallow. These places often had seedling beds with Ohia (*Metrosideros sp.*), Uki (*Cladium sp.*), Pukiawe (*Styphelia sp.*), *Rhus sp.*, and ti leaf (*Cordyline sp.*) and possibly other species. Ohia is likely the most common desirable tree that is easily transplanted. Transplants can range from smaller seedlings 1 or 2 feet in height up to 7 or 8 feet. Experience has shown that Ohia has a shallow root system and is fairly easy to remove and relocate. The larger sized transplants are awkward to move around so finding trees near their transplant sight will be important.

In some of the shaded ravines, seedlings of Alexander palm (*Archontophoenix alexandrae*) and Hilo holly (*Ardisia crenata*) can be found. These are easily transplanted. A few sun tolerant fern species might also be successfully transplanted. These include Pala 'a (*Sphenomeris chinensis*) and Sword or Boston ferns (*Nephrolepis sp.*) Tree ferns are rare to non-existent on this parcel. Only one hapu'u fern was found on the makai parcel during earlier surveys and that plant has since been eaten by feral pigs. Another fern that prefers very wet areas is *Cyclosorus interruptus*. A major patch of this fern was destroyed by fencing activities. However, some portions still remain and this might be used as a source of material to plant into areas expected to be usually, very wet.

Seed should also be collected where available for dispersal in the "planting zones". Especially; Ohia (*Metrosideros*) seed from intentionally cut trees might still be after-ripening on piled debris and might be harvested as salvage. (Perhaps the adjacent property owner (Brilhante) might be amenable to allowing collection from fallen trees on that property.)

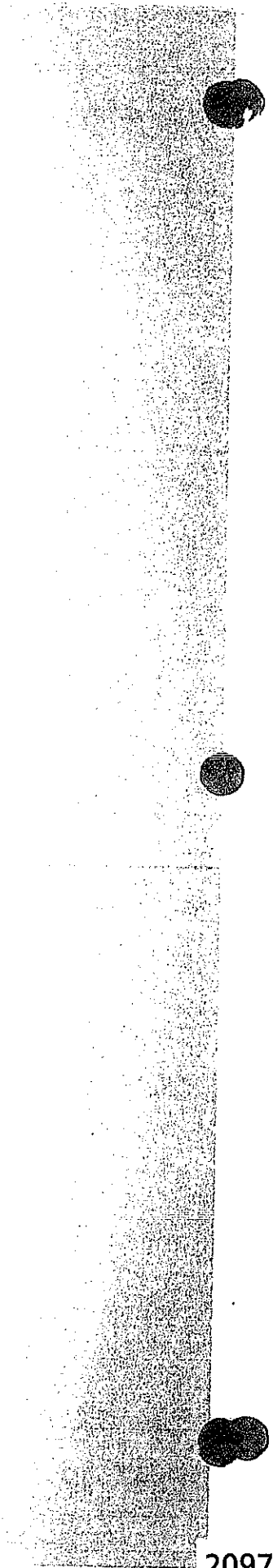
### **Student Participation**

Connections PCHS students can potentially be very instrumental in the reforestation effort. With good organization; planting zones can be established and quickly planted. Students can be utilized to gather seed, seedlings and other propagative material. They can also assist in replanting these gathered plants.

This is also an excellent learning opportunity for students looking for science, PE and other education credits. It would also be an opportunity for team and class building and establishing a sense of ownership toward the future of the school. Perhaps a role can be found for the middle school students as well.

Rec'd at 3/1/5mcs by mo  
Inst'd 1/8 Read

**ENOUGH  
ALREADY!**



**COMMUNITY  
RESPECTFULLY REQUESTS**

- **Vote on the pending motion  
to DENY the application  
NOW instead of going  
through a contested case  
hearing**

# PURPOSES OF CONTESTED CASE HEARING

- ❖ To provide decision-makers with the most complete and relevant information needed to make a proper decision
- ❖ To enable parties – applicant and others – **opportunity** to provide that relevant information

# PURPOSES OF CONTESTED CASE HEARING (Cont'd)

- Commission Rule 4-1 (Purpose)  
acknowledges ability of parties to **waive or modify** the contested case hearing process.

- The notion is that the essence or spirit of a contested case can still be achieved through a less intimidating legal process.

# PROCESS

- Pre-hearing – parties identified and scope of hearing outlined
  - Applicant and Planning Department automatic parties
  - Others subject to Commission approval



# PROCESS (cont'd)

## Evidentiary Portion

- Burden of proof rests with applicant, as it is **APPLICANT** who is requesting a Special Use which is **not otherwise allowed by law**
- Applicant and all other parties make their case

# PROCESS (cont'd)

## Evidentiary Portion (cont'd)

- Opportunity to provide written and oral testimony to support or rebut one's position
- Opportunity to cross-examine witnesses

# PROCESS (cont'd)

## Decision-Making

- Preparation of Findings of Fact (“FOF”) and Conclusions of Law (“COL”) based on record
- Ability of Parties to comment on FOF and COL
- Final Decision

# WHY ENOUGH ALREADY?

A. **The spirit of the Contested Case Hearing** has been met

- Ample opportunity by Applicant and Community to present their case
- Sufficient information on record for decision-makers

# WHY ENOUGH ALREADY?

(cont'd)

- B. Possible worst case scenario of a  
● **judicial appeal – Remand with instructions for a Contested Case Hearing**
- C. Not prolonging a festering sore –  
● **healing process can begin**

# WHY ENOUGH ALREADY?

(cont'd)

The burden to demonstrate how its application meets the test for a Special Permit rests with the applicant. Thus, was the Applicant given sufficient opportunity to present its case?

**THE COMMUNITY BELIEVES - YES!**

# WHY ENOUGH ALREADY?

(cont'd)

## A. Spirit of CC

1. During these hearings, Applicant given **Ample Opportunity**:
  - To provide opening and closing arguments
  - While unable to cross-examine public testifiers, to provide supportive written and oral testimony

# WHY ENOUGH ALREADY?

(cont'd)

- To provide rebuttal witnesses or testimony
- 2. Has been represented by **two attorneys** – one from the State – who are well aware of the process and need to build a strong **evidentiary record** regardless of a CC hearing
-



# WHY ENOUGH ALREADY?

(cont'd)

3. If Applicant's witnesses were unable to fully testify because of plane or other schedules, it was **Applicant's responsibility** to ask – but didn't - for a continuance and/or provide written testimonies to:
  - Buttress its case, and/or
  - Rebut any testimony

# WHY ENOUGH ALREADY?

(cont`d)

- 4. Is there sufficient information on the record for the Commission to make an informed decision?

**THE COMMUNITY BELIEVES - YES!**

# WHY ENOUGH ALREADY?

## (Cont'd)

### B. Judicial Appeal

- If appealed, outcome **unknown**
- If denied - case closed, unless further appealed
- If appeal sustained - probably a remand with instructions to hold a formal Contested Case Hearing

# WHY ENOUGH ALREADY?

(cont'd)

- Given all that has happened to date, **why assume** that the applicant's due process would be violated or compromised because of the absence of a formal CC hearing? Perhaps that direction should come from the court.

# WHY ENOUGH ALREADY?

(cont'd)

## C. Festering Sore

- 1. Great divide between community and applicant
  - Accusations of bullying and intimidation
  - Negative publicity hurled at each other
  - TRO request (dismissed) made against one of the residents

# WHY ENOUGH ALREADY?

(cont'd)

2. Community feels that it is being yanked back and forth with various maneuvers ranging from the tag-team of attorneys and now, this CC hearing request
3. Sore has festered too long and some kind of closure, even temporary, is needed

# WHY ENOUGH ALREADY?

(cont'd)

4. If appealed, during the interim, there will be **NEEDED** time for:
  - some healing (time can help heal wounds)
  - possible opportunity to see if parties can work together whether for this or another location for the school

# WHY ENOUGH ALREADY?

(cont'd)

- 5. Going with the CC now provides the applicant with another bite of the proverbial “apple”, resulting in this sore to fester.
- Would subject the community to more stress and the need to give up more of their time.



# CONCLUSION

- ❖ In summary, the essence of a contested case hearing was met:
  - An opportunity for the applicant and all other interested persons to participate in the hearing process and build their respective records
  - There is **sufficient information** on the record for the Commission to render a decision.

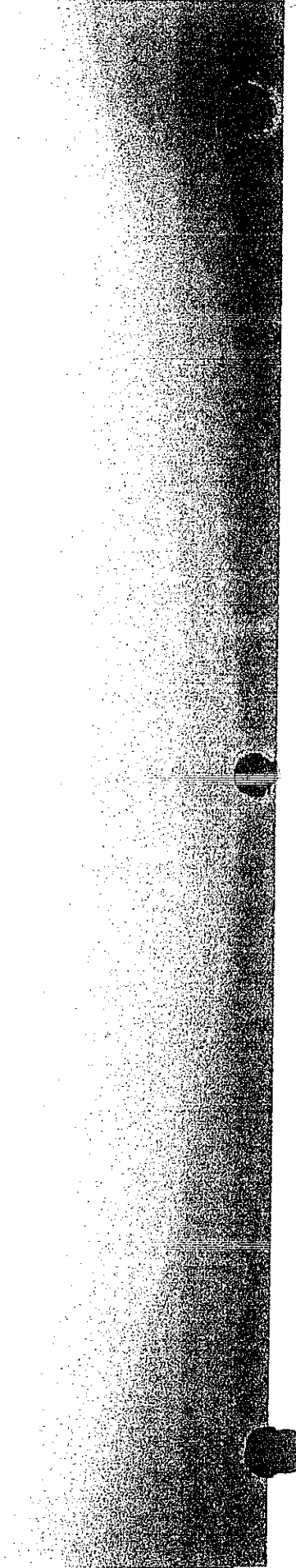
## CONCLUSION (cont'd)

❖ The **only missing** component is the draft proposed Findings of Fact and Conclusion of Law (FOFOL) and **responses** to this draft by the applicant and others

# THE COMMUNITY REQUESTS

- **Call for the question and vote on the pending motion to deny and deny the application without a formal contested case hearing, and,**
- **Formally adopt the FOFCOL after comments have been received by the applicant and others at a subsequent meeting.**

**ENOUGH  
ALREADY!**



**PETITION FOR STANDING IN CONTESTED CASE HEARING**

(Page 1 of 2)

PLANNING DEPARTMENT  
DEPARTMENT OF LAND AND NATURAL RESOURCES

2013 MAR -7 PM 12: 46

NAME: Jeffrey K. Gomes  
ADDRESS: 281 Edita Street  
Hilo, HI 96720

**I. STATUS OF PETITIONER**

A. Is your interest in this matter clearly distinguishable from that of the general public?  
Yes  No

If the answer is "yes", please explain:  
As an adjoining property owner to the proposed project, my family and I will be severely impacted by the project.

If the answer is "no", please explain how the proposed action will nevertheless cause you actual or threatened injury:

B. Are you a government agency whose jurisdiction includes the land involved in the subject request? Yes  No

If the answer is "yes", please explain the nature of the agency's jurisdiction:

C. Do you lawfully reside on or have some property interest in the land involved in the subject request? Yes  No

If the answer is "yes", please explain:

APPENDIX A

SCANNED  
MAR 07 2013  
By: 083918

Re'd at 3/7 mtg by [initials]  
Dist'd [initials]

PETITION FOR STANDING IN CONTESTED CASE HEARING  
(Page 2 of 2)

D. Are you a person or persons descended from native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes?  
Yes X No    

If the answer is "yes", please submit any geneological evidence and historical evidence showing the exercise of those rights to support the statement.

While I am also native Hawaiian - as evidenced by our my daughter's attendance at Kamehameha School, my issue is more as a neighboring property owner.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
PETITIONER'S SIGNATURE

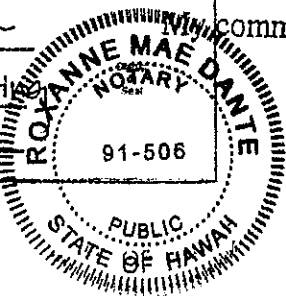
STATE OF HAWAII     )  
                                      ) SS.  
COUNTY OF HAWAII   )

On this 8<sup>th</sup> day of March, 2013, before me personally appeared Jeffrey K. Gomes, to <sup>me</sup> me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Signature]  
Notary Public, State of Hawaii

rel

|  |                     |
|--|---------------------|
| Doc. Date: <u>3/7/13</u>   | # Pages: <u>2</u>   |
| Notary Name: Roxanne Mae Dante Third Circuit                             |                     |
| Doc. Description: <u>Petition for Standing in Contested Case Hearing</u> |                     |
| <u>[Signature]</u>   | Date: <u>3/7/13</u> |
| Notary Signature <u>rel</u> Date   |                     |



commission expires: 8/1/2015

APPENDIX A

**RECEIPT**

DATE MAR 07 2013

No. 554767

RECEIVED FROM Sidney Fuke Planning Co.

100 Lanahi St. #212 Hilo HI 96720

\$200.00

FOR RENT SP-12-00138 Refund on festival tax

FOR Refund on festival tax

ACCOUNT Jeffrey Barnes

PAYMENT 200

BAL. DUE

CASH  CHECK  MONEY ORDER  CREDIT CARD

FROM Jeffrey Barnes TO

BY [Signature]

PLANNING DEPARTMENT  
County of Hawaii  
101 Paluahi St., Ste 3  
HILO, HAWAII 96720

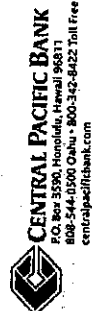
**SIDNEY FUKU**  
PLANNING CONSULTANT  
PH. 808-969-1822  
100 PALUAAHI ST STE 212  
HILO, HI 96720

PAY TO THE ORDER OF County Director of Finance

Two hundred and no/100

\$ 200.00

DOLLARS



Sidney Fuke

FOR

2124

⑆012464⑆ ⑆21301578⑆ 20002002 4⑆

12464

58-157/1213

DATE March 7, 2013



DOLLARS

PLANNING DEPARTMENT

County of Hawaii

101 Panahi St., Ste. 3

|   |                         |  |                              |
|---|-------------------------|--|------------------------------|
| <b>RECEIPT</b>                                      |                         | DATE <b>MAR 07 2013</b>                | No. <b>554767</b>            |
| RECEIVED FROM <b>Sidney Fuke Planning Co.</b>       |                         | <b>\$ 200<sup>00</sup></b>             |                              |
| FOR RENT <b>111 Panahi St. #212, Hilo, HI 96720</b> |                         | DOLLARS                                |                              |
| FOR <b>G.P. 12-000138 Detention Contested Case</b>  |                         |  |                              |
| ACCOUNT   |                         | <input type="radio"/> CASH             | FROM <b>Jeffrey Gomes</b> TO |
| PAYMENT   | <b>200<sup>00</sup></b> | <input checked="" type="radio"/> CHECK |                              |
| BAL. DUE  |                         | <input type="radio"/> MONEY ORDER      | BY <b>M. J. Gay</b>          |
|   |                         | <input type="radio"/> CREDIT CARD      |                              |



**RECORD OF VOTING**

**WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII**

**DATE:** March 7, 2013

**APPLICANT:** Connections / CBESS SPP 12-138

**ACTION:**        **MOVED** Gonzales        **SECOND** Ishibashi

- APPROVE AS RECOMMENDED BY PLANNING DIRECTOR
- APPROVE WITH AMENDMENTS
- DENY
- CONTINUE/DEFER \_\_\_\_\_

**OTHER/REMARKS** Executive Session

*Voice Vote - All Aye*

**COMMISSIONERS:**                      **AYE**        **NO**        **EXCUSED**    **ABSTAIN**    **ABSENT**

|                                    |  |  |   |  |  |
|------------------------------------|--|--|---|--|--|
| <b>GONZALES, Ronald</b>            |  |  |   |  |  |
| <b>ISHIBASHI, Wallace</b>          |  |  |   |  |  |
| <b>MOSES, Raylene</b>              |  |  |   |  |  |
| <b>ONO, Stephen</b>                |  |  | ✓ |  |  |
| <b>AU, Dean (Chairman Pro Tem)</b> |  |  |   |  |  |

**RECORD OF VOTING**

**WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII**

**DATE:** March 7, 2013

**APPLICANT:** Connections New Century Public Charter School

**ACTION:**            **MOVED** Gonzales            **SECOND** Moses

- APPROVE AS RECOMMENDED BY PLANNING DIRECTOR
- APPROVE WITH AMENDMENTS
- DENY
- CONTINUE/DEFER \_\_\_\_\_
- OTHER/REMARKS Executive session

4-0 voice

**COMMISSIONERS:**                      **AYE**      **NO**      **EXCUSED**      **ABSTAIN**      **ABSENT**

|                                    |  |  |   |  |  |
|------------------------------------|--|--|---|--|--|
| <b>GONZALES, Ronald</b> ①          |  |  |   |  |  |
| <b>ISHIBASHI, Wallace</b>          |  |  |   |  |  |
| <b>MOSES, Raylene</b> ②            |  |  |   |  |  |
| <b>ONO, Stephen</b>                |  |  | ✓ |  |  |
| <b>AU, Dean (Chairman Pro Tem)</b> |  |  |   |  |  |

**RECORD OF VOTING**

**WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII**

**DATE:** March 7, 2013

**APPLICANT:** Connections New Century Public Charter School

**ACTION:**            **MOVED** Ishibashi            **SECOND** Moses

*Motion  
Passes  
4-0*

- APPROVE AS RECOMMENDED BY PLANNING DIRECTOR
- APPROVE WITH AMENDMENTS
- DENY
- CONTINUE/DEFER \_\_\_\_\_
- OTHER/REMARKS Grant Standing to intervene  
w a Contested case to Jeffrey Gomes

**COMMISSIONERS:**                      **AYE**      **NO**      **EXCUSED**      **ABSTAIN**      **ABSENT**

|                                    |   |  |   |  |  |
|------------------------------------|---|--|---|--|--|
| <b>GONZALES, Ronald</b>            | ✓ |  |   |  |  |
| <b>ISHIBASHI, Wallace</b>          | ✓ |  |   |  |  |
| <b>MOSES, Raylene</b>              | ✓ |  |   |  |  |
| <b>ONO, Stephen</b>                |   |  | ✓ |  |  |
| <b>AU, Dean (Chairman Pro Tem)</b> | ✓ |  |   |  |  |

**RECORD OF VOTING**

**WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII**

**DATE:** March 7, 2013

**APPLICANT:** Connections/CBESS SPP 12-000138

**ACTION:**            **MOVED** Moses                            **SECOND** Ishibashi

*Motion  
Passed  
4-0*

- APPROVE AS RECOMMENDED BY PLANNING DIRECTOR
- APPROVE WITH AMENDMENTS
- DENY
- CONTINUE/DEFER \_\_\_\_\_

**OTHER/REMARKS** Motion to Hire A  
HEARING'S OFFICER to Hear the Contested Case

**COMMISSIONERS:**                            **AYE**            **NO**            **EXCUSED**    **ABSTAIN**    **ABSENT**

|                               |  |   |  |   |  |  |
|-------------------------------|--|---|--|---|--|--|
| <b>GONZALES, Ronald</b>       |  | ✓ |  |   |  |  |
| <b>ISHIBASHI, Wallace</b> (2) |  | ✓ |  |   |  |  |
| <b>MOSES, Raylene</b> (1)     |  | ✓ |  |   |  |  |
| <b>ONO, Stephen</b>           |  |   |  | ✓ |  |  |
| <b>AU, Dean (Chair)</b>       |  | ✓ |  |   |  |  |

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI'I

HEARING TRANSCRIPT  
MARCH 7, 2013

A regularly advertised hearing on the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL /CBESS (SPP 12-138)** was called to order at 9:51 a.m. in the County of Hawai'i, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Dean Au presiding.

COMMISSIONERS PRESENT: Dean Au, Ronald Gonzales, Wallace Ishibashi, and Raylene Moses

STAFF PRESENT: Ivan Torigoe (Deputy Corporation Counsel), B. J. Leithead Todd (Planning Director), Daryn Arai (Planning Program Manager), Phyllis Fujimoto (Staff Planner), Maija Cottle (Staff Planner), Jeff Darrow (Staff Planner), and Sharon Nomura (Secretary)

And approximately 35 people from the public in attendance.

ABSENT AND EXCUSED: Stephen Ono

APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL /CBESS (SPP 12-138)

Continued hearing on an application 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 Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

AU: Okay, applicant number three CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/CBESS, Special Permit No. 12-138. We are going to do something different here. Before you guys get seated, we are going to go, I'd like to entertain a motion, oh, Commissioner Gonzales is not here yet. I thought he was here. There is Commissioner Gonzales. I'm sorry, I thought you were here.

GONZALES: Sorry. I was outside.

AU: What I'd like to do is I'd like to entertain a motion for an executive session prior to getting started, just to get our Commissioners up to speed. Certain things have transpired since the last meeting; and, maybe, Corporation Counsel can explain.

TORIGOE: Yes. So, Mr. Chairman, the purpose of this executive session would be to consult with me and to get legal counsel regarding this application. Is that correct?

AU: Yes, that's correct. So ready to entertain a motion?

GONZALES: I'd like to propose a motion to go into executive session.

ISHIBASHI: Second.

AU: Okay. All in favor, aye?

COMMISSIONERS: Aye.

AU: Opposed? Thank you guys very much. You guys have to leave the room. And we'll call you guys right back in. Thank you very much. Thank you, guys.

EXECUTIVE SESSION – The Commission went into executive session at 9:51 a.m. The Commission came out of executive session at 10:18 a.m. by a motion made by Commissioner Ishibashi, seconded by Commissioner Gonzales, and unanimously carried by a voice vote of all Commissioners in attendance.

AU: The Windward Planning Commission meeting will come back to order from Executive Session. Staff, can you please give us a quick update, status report, on where we're at. Is Mr. Arai here?

DARROW: I'll give the update. Thank you, Mr. Chairman. Again, this is the, in reference to the application for Connections New Century Public Charter School and CBESS for a special permit application. At our last hearing, I believe it was January 10<sup>th</sup> the Commission made and seconded a motion to deny the special permit application. At that time Corporation Counsel advised that before voting the Planning Commission needs to follow Planning Commission Rule 4-22, which applies when not all members were present at all the hearings. No. 1, Proposed Findings of Fact, Conclusions of Law, Decisions and Order must be served on the parties. No. 2, adversely affected parties have an opportunity to file exceptions and have arguments. No. 3, the Planning Commission is to consider the whole record before making a decision. The Planning Commission Chairman asked Corporation Counsel to prepare Findings of Fact, Conclusions of Law and Decision and Order and to arrange filing a schedule with the parties. And, lastly, the parties had concerns about the proper use of contested case procedures. So Corporation Counsel reviewed the long-standing Planning Commission practice. With that, I'll direct it to our Corporation Counsel.

AU: Thank you.

TORIGOE: Okay. Mr. Chair?

AU: Yes.

TORIGOE: Yeah. Let me just pick it up from there, just to update you on what I did when I realized that there were some concerns about the contested case procedures. As you know, I guess, the practice of the Planning Commission has been not to allow for application for intervention or for contested cases in these kinds of special permits where it could be denied

here, or if it's approved here it goes up to the LUC. There was an assumption that at the LUC contested case procedures would be available.

So I reviewed that practiced and looked at the LUC rules and talked to the LUC staff. And basically what I found were two things:

One is that, you have to keep in mind that at any time there is an application like a special permit where the Planning Commission's decision is the final one before somebody can take an appeal, that is considered a contested case for legal purposes. And that means that even if there isn't any opposition, even if there isn't an intervenor, the applicant himself is a party to a contested case; and that's automatic in your rules as well. Okay. And that means that an applicant can avail him/herself of contested case procedures that are spelled out in the rules, such as calling witnesses, subpoenaing evidence, and things like that. When I looked at the procedure that the Planning Commission had been following basically telling the public and the applicant that there will be no contested case procedure here, then that's problematic. Because if an applicant for a special permit is voted down here, then their next step is to appeal to Circuit Court. But in order to do that, they should have been given the opportunity to use contested case procedures to make a record so that they could, you know, file an appeal with a good record. Okay? So in this case, that's something to keep in mind.

The other thing I found is that when I looked at the LUC rules, they did not make provision for intervention and for contested cases at the LUC level, although they do specifically make provision for intervention and contested case for things like State Land Use Boundary Amendments and anything else other than special permits. And when I talked to the staff there, they basically said that it is not their normal procedure to conduct contested case hearings and have intervention at the LUC level. So basically we cannot rely on the LUC to take care of the intervention and contested case procedures. In fact, they also have the power to remand the case back down to the Planning Commission if they feel that the record is not complete.

So with all that in mind, then the, I spoke with the parties's attorneys and with the Chairperson, and the parties had agreed that the Findings of Fact and Conclusions of Law should be put on hold pending further discussion regarding what the next step should be, you know, in view of the fact that an applicant ought to have some contested case procedure rights, and that the LUC cannot be relied on to do that. So that's basically where we are today. And you also have, as was mentioned, a motion to deny on the floor. So that also needs to be dealt with. Okay, so that's where we are right now.

AU: Okay, thank you, Mr. Torigoe. Can I have the applicant and their representatives please come forward. Can we pull up another chair. Okay, I have a question before we get started, but I'm going to swear everybody in. So please raise your right hand. Do you affirm and swear to tell the truth on this matter now before the Hawai'i County Planning Commission?

REPRESENTATIVES: Yes.

AU: Okay. When it is your turn to speak, please state your name clearly and where you reside. Before we get started, question though, who represents who? And maybe if we can just, if

someone can clarify that, or maybe two people clarify that. But please state your name and where you reside first.

MORRIS: Monica Morris, Deputy Attorney General, Department of the State Attorney General. I reside in Honolulu, Hawai'i. I'm here to represent Connections Public Charter School.

HONG: Good Morning, Mr. Chairman and Members of the Planning Commission. My name is Ted Hong. I reside in Hilo. I represent CBESS; and with me this morning to my left is Joyce Derbyshire who is the president.

DERBYSHIRE: Joan.

HONG: Joan. I'm sorry, Joan Derbyshire who is the president of CBESS.

DERBYSHIRE: Joan Derbyshire, president of Community Based Educational Support Services which is a 501(c)(3) nonprofit. I live at 27 Elm Drive in Hilo.

THATCHER: You want us to keep going?

AU: Yeah, I'll just go ahead and -. Just to get it on record, everybody.

THATCHER: Okay. John Thatcher, I'm the principal of Connections Public Charter School. I live in Kaūmana.

S. LEE LOY: Aloha, Chairman and Commissioners. My name is Sue Lee Loy. I live in Pana'ewa. I'm currently doing work for both CBESS and Connections as it relates to land use requirements through the special permit, special permit process.

AU: Okay. Does any Commissioners have any questions regarding who represents who at this point? Okay, well, you guys have the floor. You can go ahead, Monica.

MORRIS: Thank you. I'm going to start. Thank you, Chair. Thank you, Members of the Commission. I'd like to set out a couple of things; and I thank you for your patience and forbearance. At the outset what I'd like to state for the record is that if the Planning Commission is inclined to deny the special permit application, the applicant hereby requests, and is entitled to, a contested case pursuant to Rule 4-1, and Hawai'i Revised Statutes Section 205-6. Now with respect to the Commission's rules on contested case, Rule 4-1 says that, the final sentence says, with respect to this contested case procedure, "It shall therefore be followed in all cases where State statutes provide for direct appeal from the Commission to the Circuit Court." Now there is such a statute that provides for direct appeal to the Circuit Court. That is found in Hawai'i Revised Statutes Section 205-6 which speaks to, specifically to special permits. In particular subsection (e), says this, "A denial either by the county planning commission or by the land use commission, or modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawai'i rules of civil procedure." So this statute triggers the contested case process.



Now the Commission's own rules make it clear that a petition for a special permit is different from a contested case. Therefore, the argument that the hearing on the special permit is the contested case absolutely fails. The definition itself of contested case is found in your Rule 1, which provides this, "Contested case' means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." That is a description and definition of contested case in your own rule, Rule 1-3. So if the Commission is of the mind that the hearing on the special permit was the contested case proceeding itself, that is flawed by your own, your very own rules. As I go on, Rule 4 of the Commission's rules speak specifically to contested case proceedings. Rule 6 of the Commission's own rules speak to special permit applications. Those rules are completely different. They are not one and the same. I think what happened in the last hearing that the Commission had in January was that there was an attempt to collapse both the special permit hearing and the contested case procedures into one ball of wax. That is absolutely flawed reasoning. Again, clearly, the rules for contested case are different from the rules for a special permit. Different notice requirements apply, and the procedures are very different. Now the rules, you do have rules. The rules are silent, however. Your rules are silent, however, as to what someone has to do to request a contested case.

In this regard I'd like to speak to the petition for standing that was recently submitted. The Connections and CBESS in an abundance of caution not knowing exactly where the Commission was going to go with the special permit, in an abundance of caution, a petition for standing was submitted. The record reflects that Connections financed the filing fee for that. I want to state for the record that that was done in an abundance of caution because the applicant didn't know what procedures were going to be followed, notwithstanding that your own rules clearly identified the procedures relating to contested case and special permit applications. Based on the actions that were taken at the last Commission hearing, that is why that petition for standing was submitted - and I wanted to address that now - again, in the abundance of caution to preserve its due process rights. I've already made an oral request for a contested case on behalf of my client. I wanted to address several more issues just so that the Commission is properly briefed.

Now, as I said earlier, your rules are silent as to what someone has to do to request a contested case. In this regard, case law has established precedence, clear, as precedents - if there is no rule, due process notions of fairness absolutely apply. Perry versus Planning Commission sets precedence on this. This is a Hawai'i Supreme Court Case decided in 1980. The citation is 52 Hawai'i, 666; and this is what the Hawai'i Supreme Court ruled - even if there is not a property, a clear property right that is present, nevertheless an application for a special permit constitutes at least, at minimum, a privilege. Therefore, there are still due process rights that apply.

These are the due process rights that apply. One, everyone has to understand what procedures will be followed. Secondly, the parties, and in particular the applicant in this case, needs the full opportunity and is entitled by law to a full opportunity to present its case. Thirdly, the notion of fairness of procedures. Those three anchors are what is at minimum required to be provided. Now the public, commission, the Planning Commission, not the applicant, carries the burden of notifying interested parties with respect to due process cases or contested cases. The authority for that can be found in Hawai'i Revised Statutes Section 205-6 and Rule 4 of your own rules with respect to contested case procedures.

I think I've addressed everything that I needed to. And so I thank you for your patience. Thank you.

AU: I have a quick question.

MORRIS: Yes.

AU: So you said a petition for standing is, that's the one you're talking about, the one that we just received on March 4, we received it on March 7<sup>th</sup>? Is that the one you're referring to by a Jonelle Fukushima?

MORRIS: I think the date stamped there is March 4<sup>th</sup>. I think the understanding with respect to that was, the understanding there was the, as long as it was postmarked by February 28<sup>th</sup> that would be sufficient. I can't speak to where that understanding came from, but that was the understanding.

AU: Do you know this Jonelle Fukushima? Is she here?

MORRIS: Yes.

AU: Okay, thank you. You want to add to that?

MORRIS: If I could add to that. The school and CBESS, again, in an abundance of caution, just to preserve their contested case rights, they have filled out a petition for standing in a contested case. I don't believe that's necessary, because as the applicant they have perfect standing to request a contested case. But if that's what the Commission wants to solidify the record, they are prepared to submit that. However, I would ask that the \$200 filing fee be waived. But, so, again, in an abundance of caution that petition for standing was submitted. We also have other petitions for standing ready to submit. Again, I don't feel it's necessary, but to preserve, to preserve the due process and contested case rights.

TORIGOE: Mr. Chairman?

AU: Ivan.

TORIGOE: Yeah. Can I address just real quick – Rule 4-6 of the Planning Commission rules, it says, "In all proceedings where the Commission's action is directly appealable to Circuit Court," which would include if there's a denial, the applicant here, and then, "the applicant and the Planning Director will be designated parties to the action." So I would agree that the applicant is basically an automatic contested case party here and does not need to file any request for a contested case standing.

AU: Mr. Hong?

HONG: Thank you, Mr. Chairman. Good morning, again. We are here this morning because of a procedural error. And that error has risen to a level where now it affects my client's constitutional due process rights. And the error was that because we and the Planning Department agreed that if there was going to be a contested case, and we've said it too on numerous occasions in these proceedings, the contested was going to occur at the State level. It

was in the notices that we set to the community and surrounding property owners. We said it on the record a number of times. Everybody had assumed that. Now it turns out that that notice that was sent to the community, that notice that was sent to the surrounding property owners, that representation that was made at the Planning Commission meetings was wrong. And, you know, we're not trying to point fingers or say it's anybody's fault. It's just that this is kind of a relatively unusual process, and we're still kind of finding our way. But we now know what the right way is; and the problem is everybody who is here up to this point was given the wrong information.

So what's the remedy? The remedy is to withdraw the motion, and second, to deny the special permit application, approve Ms. Fukushima's and the applicant's request for a contested case, appoint an independent third party hearings officer, and allow us to proceed with the contested case according to the Planning Commission's procedures. Then when the hearings officer completes the contested case proceedings, puts together his findings or her findings of fact, conclusions of law, they'll submit it to the Planning Commission. Similar to what happened in the Hu Honua case, the Pepe'ekeō Point case, they'll submit it to the Planning Commission. You guys could take a look at it and either adopt it, reject it or, you know, do what you want to do. But my point is, given the procedural errors, given the notice requirements under the law, there is a mistake. And that's the way I see how to correct the mistake.

If you choose to proceed along the lines where we're going today and vote on the motion to deny the permit application, I think any reasonable attorney would come in and say that you just made our day, because that's going to be an easy appeal. And what the Third Circuit Court is going to say, the remedy on the appeal is you go back to the Planning Commission. They have to appoint a hearings officer and then, you know, the whole thing again.

So instead of wasting everybody's time, I would hope that the Planning Commission takes that into consideration. And I just want to place on the record that in the event that we are required to go to a Third Circuit appeal to request a contested case or say that this was a procedural error that was made and the Planning Commission should have withdrawn the denial motion and appointed an independent hearings officer, in the event that that does occur, you know, we will be asking for our attorney's fees and cost, because we think that's unnecessarily delaying the process. If the Chairman, or the Planning Commissioners, has any questions, I'd be happy to answer them.

AU: Any questions for Mr. Hong? Anybody else would like to say something? Ms. Lee Loy?

S. LEE LOY: Chairman, Commissioners, I was tasked with doing one other thing. You've heard enough legal posturing and positioning about what's before you folks. What I was tasked to do was provide you folks with a quick status report of other items related to this property. What I wanted to do is give you folks a very comprehensive look at other moving pieces related to this piece of property. So what I submitted to the Commission is just a quick update.

First and foremost, the general lease with the State Department of Land and Natural Resources has now been fully executed. Connections now has the general lease as of February 1<sup>st</sup>. As part of that lease, it includes 37 different agreements and covenants that the lessee, Connections, will have to comply with. There are two particular conditions that I want to point out before the

Commission and Members of the Planning Department. One is Condition 35. It requires the lessee to remove all trash on the property within 90 days. The clock is now ticking on that component of the condition. As a professional courtesy I've been asked by Connections to notify the Planning Department when they commence with that work. Another one is Condition 37. They are required to prepare a boundary survey. I was just notified this morning that they have completed that, although in the report I've provided you folks it was supposed to be done by the end of this month. They are now complete. The information has now been transmitted to the Department of Land and Natural Resources.

Another component, back in October the property was issued a violation for the fencing and perimeter work that was done. Part of the remedies and the cures for that violation was for them to submit a reforestation or restoration plan. The applicants have done that. And they now have to commence with that work for the reforestation and restoration plan. Since that time, there have been no other violations or concerns from the State's side.

In conjunction with the fencing, there was a grading violation. The applicants have prepared a grading permit. They have received preliminary approval from the Department of Public Works. The plans are currently before the State Historic Preservation Division. Unfortunately that agency is seriously understaffed. We check probably every week, every other week; and we're just waiting for those approvals. So, you know, I just wanted to kind of show you folks the effort that the applicants go through to comply with other things related to this property. So thank you.

AU: Mr. Hong?

HONG: I'm sorry, just for the record, on behalf of CBESS we also request a contested case hearing.

AU: Ivan?

TORIGOE: Yeah, thank you, Mr. Chairman. And I think CBESS was also on the initial application, was it not?

HONG: Yes.

TORIGOE: Okay, so they would be considered applicants also and automatically parties to the contested case.

AU: Okay. Would you, would anybody like to add to that? Okay, well, thank you guys very much. I'd like to call, before I call up our testifiers, I'd like to call up Ms. Amy Self and our Planning Director, BJ.

So we do have 18 people signed up to testify; and they're all going to give their time to Mr. Sidney Fuke. So he has 54 minutes, when we get into that. Can you guys raise you right hand, please. Do you swear and affirm to tell the truth today in front of the Windward Planning Commission?

TESTIFIERS: I do. Yes.

AU: Please state your name and where you reside before you start.

LEITHEAD TODD: Bobbie Leithead Todd, Planning Director. I reside in Hilo.

SELF: Deputy Corporation Counsel Amy Self. I represent the Planning Director and the Planning Department. I reside in Hilo.

AU: Okay, has our Planning Director's position changed on this application?

LEITHEAD TODD: No, it has not.

AU: Okay. Do you guys have any comments on what the applicant is saying or any procedures as we move forward?

SELF: The way the Planning Director is viewing the process is that if it's going to go to contested case hearing then, of course, notice has to go out to the neighbors within the surrounding properties to give them an opportunity to intervene, because I don't believe that has been addressed. I don't think they've been given an opportunity to intervene.

TORIGOE: Mr. Chairman?

AU: Go ahead, Ivan.

TORIGOE: Yeah, staff indicates that Planning Department did notify everyone who was on the original list of people within the necessary permit, radius distance from the property, as well as additional people. Everyone was given, you know, notice of today's meeting that included the opportunity for intervention. And this was mailed February 15, 2013.

SELF: But the decision for a contested case hasn't even been made yet. So we don't, how were they notified since the decision hasn't even been made as to whether or not -? Is today the contested case hearing or -?

TORIGOE: Well, I understand that the notice, they basically informed people that they had the right to file for a contested case and included the usual form. Maybe staff can confirm that.

SELF: Well, you know, they would be intervenors, yes, okay. They would be -.

AU: Mr. Arai?

ARAI: Because of the concerns, regarding procedural concerns that were raised, as part of our normal notification to surrounding property owners regarding the upcoming, today's meeting, we included in that notice an opportunity for everyone, for the public to file for intervention in a contested case proceeding. Along with that notice was the actual petition that was included in the meeting notice. So as part of advertising today's meeting, we did include the opportunity for intervention; and that letter was mailed out of the Planning Department on February 15<sup>th</sup>.

SELF: Okay. And in that notice, were they given a deadline for when they had to submit the application by?

ARAI: Pursuant to Rule 4, seven days prior to today's meeting.

SELF: Okay. Then the Planning Director will not take a position on what's before you at this point.

AU: Okay. Any questions for the Planning Director and Ms. Self? Okay, thank you, guys. We have 18 testifiers. And just for the record I'm going to say their names and they're going to give it all to Sidney. So Allen Novak, Layne Novak, David Camacho, Jan Yokota, June Sakamoto, Les Sakamoto, Glenn Tada, Ming Peng, Aileen Fuke, Jeff Gomes, Sidney Fuke, Jeff Gomes, Lorrin Araujo, Margaret Araujo, Fay Sakata, Wayne Kanemoto, Jan Yokoyama, Norine Okuhara, and Bishop. And so, Mr. Sidney Fuke, please come forward. And I need to swear you in before you get started. Do you swear and affirm to tell the truth in front of the Windward Planning Commission today?

FUKE: I do.

AU: Okay, thank you. Please state your name and where you reside, and get started.

FUKE: Morning, Mr. Chairman. My name is Sidney Fuke, and I'm here kind of like reflecting a lot of the community's feelings at this point in time. I wouldn't necessarily say it's unanimous, but it seems to be like a consensus of their position at this point in time.

What we'd like to share through a power point is not so much talking about the legalese aspect, you know, of what you've just heard over the last 10 or 15 minutes, you know, regarding contested case hearing, so on and so forth, but more just to give, share with the Commission from a lay's perspective or from the community's perspective where we are today and where we would hope that the Commission could take this application.

Essentially what the community is saying is that "We've had enough." We've had like, and what our specific request is, is we're really asking for the Commission to vote on the pending motion to deny, which is what you have before you now, instead of going through a contested case hearing. If you understand like, you know, very, in a very elementary way, what is the purpose of the contested case hearing? It's basically to provide the decision-makers, in this case here the Commissioners, you know, with the most complete and relevant information needed so that you can make a decision. And it's also designed to give the parties, the applicant and the others, the opportunity to provide you with that relevant information. The Commission's rules itself provide an ability for the parties to waive or modify the contested case hearing process. And the question is like why? You know, it's like basically saying you can modify it, you can waive it, as long as, you know, you basically keep -. The essence or the spirit of the contested case can still be achieved through a less intimidating process.

Now the process is like first you've got to have the prehearing where the parties are all identified, which is what you're trying to, what is being requested today, and the scope of the

hearing has to be identified. Obviously, as pointed out earlier, the applicant and the Planning Department are automatic parties. Then others would be subject to the Commission's approval.

And the second phase, of course, is the evidentiary portion. Then the burden of proof, as you know, like whether you're going through a contested case or even like a noncontested case situation, or rezoning application where it's a noncontested case situation, the burden of proof always rests with the applicant to make its case. Because it's the applicant who's requesting the special use, not the community. It's the applicant's burden. And the evidentiary portion is that the applicant makes his case, all other parties got to make their case too, the community in this case here. And there's an opportunity to provide written or oral testimonies to justify one's positions, including rebuttal information. There's an opportunity to cross-examine witness.

The third phase is decision-making. Then if you do a contested case hearing, you need to have a Findings of Fact and Conclusions of Law based on the record and then, of course, the abilities of the parties to comment on the Findings of Fact and Conclusions of Law. And then, obviously then the Commission makes a final decision.

Now the question is like why is the community saying it's enough already? You know, it feels like the spirit of the contested case hearing has been met. There was ample opportunity given by, you know, by the Commission, there was ample opportunity by the Applicant and the Community to present its case. There was sufficient information on the record to fulfill the spirit of the contested case hearing. The possible worst case scenario of a judicial appeal is probably, as was indicated earlier, a remand with instructions for a contested case hearing. And the third reason why the community is saying is enough is that, you know, we don't want, there's a festering sore, and we don't want to prolong it any more. And it provides, a decision provides an opportunity for the healing process to begin.

So why enough again? You know, as I mentioned earlier, the burden to demonstrate how its application meets the test for a special permit rests with the applicant. So the question is - was the applicant given sufficient opportunity to present its case? And the community obviously says yes.

Now during this hearing, and why we say yes is because during these hearings the applicant was given the ample opportunity; and I think the operative term here is opportunity, opportunity to provide opening and closing arguments. They were given ample opportunity to provide written and oral testimony to support its case. Sure, they weren't able to cross-examine any of the public witnesses. But, nevertheless, to supplement its case to build a record, they had the opportunity to provide written and oral testimony, and also opportunity to provide rebuttal witnesses or testimony. Okay?

The other thing is like the applicant had been represented by two attorneys, including one from the State, who are or should be well aware of the process and the need to build a strong evidentiary record for their client's application, regardless of whether a formal contested case hearing is held or not. So if the applicant's witnesses were unable to fully testify because of their plane schedules or other schedules, it's still the applicant's responsibility to ask for a continuance and/or provide written testimonies to support its case or rebut any testimony.

So is there sufficient information on the record for the Commission to make an informed decision? The community believes yes! And this is supported by the very fact that you already have a pending motion.

So on the judicial thing, which is the second reason, if it's appealed, as you know, true the outcome sure at this point in time is unknown. But if it is denied, if the Commission denies the application the case is closed, unless it goes further on appeal, and it probably would be appealed if it's a denial. And if it's appealed and the appeal is sustained, as was mentioned earlier, probably the Court would say, Commission, you've got to hold a formal contested case hearing. So given all that that has happened to date, now I guess the community is saying why assume that the applicant's due process would be violated or compromised because of the absence of a formal contested case hearing, perhaps that direction should come from the court.

The third item is like what the community is saying is enough, it's the festering sore. Everybody knows that there's a great divide between the community and the applicant. There are accusations of bullying and intimidation. There's negative publicity hurled at each other. There was actually a TRO request, which was subsequently dismissed, being made, was made against one of the residents. The community also feels that it has been yanked back and forth with all kinds of maneuvers ranging from the tag-team of attorneys and now this contested case hearing request. The sore has festered too long and some kind of closure, even temporary, is needed

If appealed - during the interim, there will be a needed time for some healing, you know, we all know that time can help heal the wounds - possible opportunity to see if the parties can work together, whether it's for this site or another location of the school.

Going with the contested case hearing now provides the applicant with another bite of the proverbial "apple", resulting in this sore to continue to fester. The community would be subjected to more stress and the need to give up more of their time, like many of us have had.

So, in summary, the essence of a contested case hearing has been met. There was an opportunity, again, the operative term is opportunity, for the applicant and all other interested parties, persons to participate in the hearing process and build their respective records. There is sufficient information on the record for the Commission to render a decision.

The only missing component is the draft proposed Findings of Fact and Conclusion of Law, and responses or exceptions to this draft by the applicant and others.

So, in summary, what the community is really requesting of the Commission, notwithstanding the advice that you've been receiving from your legal counsel, is a call for the question, and vote on the motion to deny, and hopefully deny the application without a formal contested case hearing. And then you formally adopt the Findings of Fact and Conclusions of Law after comments or exceptions have been received by the applicant and any other interested persons at a subsequent meeting. And this is a practice that's common with the Land Use Commission or the Board of Appeals. They make a decision and then there's the official Findings of Fact and Conclusions of Law. And that's accepted at the, adopted rather, at the subsequent meeting. Essentially the community is just saying IT'S ENOUGH. So, thank you very much.



AU: Any questions for Mr. Fuke? Okay, thank you, Mr. Fuke. Okay, Fellow Commissioners, you guys want to -?

HONG: Mr. Chair -?

AU: Okay, Mr. Hong, you can come forward.

HONG: I just wanted to respond to Mr. Fuke's statements. And, you know, let me just be very clear. The ends do not justify the means. I don't care what the context is. Okay, the ends do not justify the means, if that's what Mr. Fuke is telling you. The Alegadel case (ALEGADEL) basically says that where a government commission establishes rules, you have to follow the rules. And people have an expectation, the public has an expectation, a right, to have those commissions, boards, and agencies follow the rules. We are asking you for nothing less than to follow the rules.

Let me clarify, we have not been able to call witnesses. People testified voluntarily. A number of our witnesses had to leave. We had not had the opportunity, and Mr. Fuke agrees, to cross-examine witnesses. And why is that important? Because then we can test the accuracy of what they're saying, we can challenge their credibility of the individual who is providing testimony. One of the hallmarks of due process is allowing the other party to ask questions, to test the credibility, to challenge the allegations made. And we were denied that opportunity, we never had that opportunity. We were not able to present tests, excuse me, evidence with respect to -. We submitted documents, but we did not have to, submit evidence that was taken into the record regarding any of the allegations made or the counter allegations made. And the hearings that we went through by definition to this point don't meet the definition of a contested case. And there is no case that Mr. Fuke, or Judge Yoshioka, or anybody can cite that would say that close is good enough. That is not the case when it comes to government boards, agencies and commissions. Regardless of where I sit and who I represent every citizen has a right to the process; and that's all we're asking for. And that is not what we have gotten to this point. So in terms of the remedy that we're suggesting we feel it's appropriate. And Mr. Fuke agrees that if we carry along the line that you guys are on, most likely the court is going to say, you know, chutes and ladder, you guys got to come back and there's got to be a contested case hearing. Months will have gone by, time is going to be, has gone by, the expense to my client is going to increase in amount. So instead of doing that, let's take care of this issue now. The Commission can decide and make its own recommendations based on the hearings officer's decision, like in the Pepe'ekeō Point case, and then we move on from there. Thank you.

AU: Thank you, Mr. Hong. Okay, Fellow Commissioners, so what we have is we have a motion on the floor, and the motion is to deny by Commissioner Gonzales and Commissioner Ishibashi. So we, so, you know, technically we are in the discussion portion of this hearing. So if we move, as we move forward, you know, I just want to make a comment from a land use standpoint. Okay, I sympathize with the community. And, you know, they feel bullied and, you know, they feel that they were treated unfairly. And, you know, the whole situation, we've heard it for the last four hearings already. But from a land use standpoint, you know, we have the State that approves this special permit, cause the State leased them the land, we have our Planning Department approving it. So from a land use standpoint it's appropriate. But we need to do our job as Commissioners to also listen to the community. And, you know, that's why we're chosen as Commissioners, and that's our job here. So, you know, I just want to say that as we move

forward. And what I'd like to do right now is I'd like to entertain a motion to go into executive session.

GONZALES: Second.

AU: You've got to make a motion first.

GONZALES: I'd like to make a motion to go into executive session.

TORIGOE: For the purposes of -?

AU: For the purposes, to consult with our attorney?

GONZALES: For the purpose of consulting with our attorney.

AU: Can I get a second, please.

MOSES: Second.

AU: Okay, all in favor aye?

COMMISSIONERS: Aye.

AU: Thank you, you guys. You guys are going to have to leave really quick. And we're going to have to discuss a few things.

**EXECUTIVE SESSION** – The Commission went into executive session at 9:51 a.m. The Commission came out of executive session at 10:22 a.m. by a motion made by Commissioner Gonzales, seconded by Commissioner Moses, and unanimously carried by a voice vote of all Commissioners in attendance.

AU: Okay. Windward Planning Commission come back to order. Okay, we have a pending motion to deny. The motion was made by Commissioner Gonzales and it was seconded by Commissioner Ishibashi. So what do you guys want to do?

GONZALES: Are you going to call people up? You want to go first? Comments? Anybody else? Raylene, comments before -?

MOSES: No.

GONZALES: No? Wally, you want to say anything?

ISHIBASHI: No.

GONZALES: Well, great. I think we're all in agreement if we vote on this today we're going to end up in court, we're going to end up having an appeal, we're going to end up back here doing this again. I'm personally not real thrilled with the way it's going. I mean this has been, what, four months already, four or five months? A lot of time, a lot of effort, a lot of feelings, you know, not good feelings. You know, I kind of feel intimidated, you know, so I know how you

guys feel. I know what some of you folks are saying, but this is a rat. And with that, Mr. Chairman, I would like to withdraw my motion to deny it.

AU: Okay, and my second, the Commissioner that seconded it, are you okay with that? Do you agree with that?

ISHIBASHI: Yeah, I would like to withdraw my second to that motion. And, again, we're trying to give everybody a fair shot at the whole, the whole process. We're not trying to take away anybody's rights or privileges under the process. And I think we need the right information and the right questions to be asked and answered, and then we come back and make the right decision at that time. So we, I remove the second to the motion.

AU: Okay, thank you very much. So the motion has been withdrawn. Are there any objections from any of the Commissioners? No objection from me. Okay, so now what we're going into is, we're going to go into a petition for standing in contested case. Can I please call up Jonelle Fukushima, please. Okay. And can I have Ms. Monica Morris, please come up. And question for Mr. Darrow. What is the procedure, process of filing for the petition for standing? What are the dates, is it postmarked, is it when you received it, when you filed it? And did this petition make it?

TORIGOE: Can address it -?

AU: Ivan, please go ahead.

TORIGOE: Yeah, Mr. Chairman, just going back to Rule 4-6 again. It says that, again, it says, "In all proceedings where the Commission's action is directly appealable to Circuit Court, the applicant and the Planning Director will be designated parties to the action. Any other person seeking to intervene as a party shall file a written request on a form approved by the Planning Director and accompanied by a filing fee of two hundred dollars no later than seven calendar days prior to the Commission's first meeting on the matter." So basically it said any person seeking to intervene, besides the applicant and the Director, needs to file this form no later than seven calendar days before the meeting.

AU: Okay. Mr. Arai, or Mr. Darrow, maybe if you can answer my question. Just, you know, what is the process, times, dates, whether it's postmarked, or whether you received it from the hearing that we're in now, cause we did start our hearing. Maybe you can just go over that first before I ask questions to the people here.

DARROW: Thank you, Mr. Chairman. The question is whether or not the application was filed within seven days prior to this Planning Commission meeting, based on the fact that this was the meeting that they were instructed to send out a request for a petition for standing, because of the fact that there was information given before that was incorrect. This particular, we now have two petitions before us. This one from Jonelle Fukushima was received in the Planning Department March 4<sup>th</sup>, although it's postdated on the envelope as January 28<sup>th</sup>, I'm sorry, February 28<sup>th</sup>. So to this is going to be given to legal interpretation, which I would have to defer to our Corporation Counsel in terms of whether or not we're going to consider the postmark as being filed within seven days. If we consider that then it would be timely. If we do not and we look at the date it was received, then it would not be timely.

AU: So the record states from when it was received, that's what it states. Right?

DARROW: It says filed.

AU: Filed.

DARROW: Yeah.

AU: Received and filed?

DARROW: Well, it just says filed. That's why it's a matter of interpretation whether or not filed means received at the Planning Department or postmarked.

AU: Okay, thank you. Ivan, would you like to interject or -? You know, what Ms. Morris mentioned was, you know, her interpretation was postmarked. Is that correct, Ms. Morris? Please talk into the microphone

MORRIS: I live on Oahu, yeah?

AU: Right.

MORRIS: So, yeah, my understanding in talking with my client, the school, was that their understanding, and they probably would need to, I guess, clarify this, was that so long as it was postmarked by February 28<sup>th</sup>, it would meet the filing requirement.

S. LEE LOY: If I might, too -. Part of the requirement for the petition for standing requires that a notary assign on it, and that would confirm the date of the notary was seven days prior to the hearing. The other component here is I believe the following day was a furlough for the County. So it would have been received the next day, but because it was a furlough day, they didn't receive it till that Monday.

AU: Ms. Fukushima, I need to swear you in. Can you please raise your right hand. Do you affirm and swear to tell the truth in front of the Hawai'i County Planning Commission today?

FUKUSHIMA: I do.

AU: Okay. Question that I have for you is what is your relationship with Connections, cause you do reside on Waianuenue Avenue, right?

FUKUSHIMA: Correct.

AU: So what is your relationship with Connections?

FUKUSHIMA: Okay, I am a, first of all, I am a Kaūmana resident. But currently, as of one month ago, I joined the board of Connections Public Charter School. So that's my relationship with this point. I am a new member.

AU: Okay, so this petition for standing was submitted by you. But Ms. Morris has mentioned in her testimony earlier at that, you know -. She's helping you submit it?

FUKUSHIMA: There was not clear, it wasn't very clear guidance about whether I should do it on behalf of myself or for the fact that I am now currently a board member. And so it would depend on the outcome about which way I would choose to go individually or to choose to elect to be part of the -.

AU: Okay. Okay, well, you know, we just received another petition by Mr. Gomes, Mr. Jeff Gomes. And before we get into that one we need to take care of this one. Mr. Ishibashi, Commissioner Ishibashi?

ISHIBASHI: I got one question. Would it be necessary to have you as a, stand, grant you standing in this contested case?

FUKUSHIMA: As, like I said in, you know, for the fact that we wanted to make sure that all bases were covered and in doing the right thing and following the rules, we really didn't have the proper guidance at the time or people to really ask which way we should go, so I filed that to ensure that we would have timely ability to continue.

ISHIBASHI: Okay, cause we already have two already automatic. Right? So -.

MORRIS: Okay. And if I can just clarify, with respect to my representation of Connections, my interest is in representing the school, not any individual but the school. With respect to the petition filed by Ms. Fukushima that was sponsored by my client. Again, as I said earlier, that was just to ensure that the school's interests in contested case procedures were insured, because there was confusion with respect to that. But what I want to state unequivocally is that my interest is in representing the school. So long as they have automatic standing, which has been confirmed today, that is my interest with respect to that.

AU: Okay, thank you. Ivan, you want to add to that?

TORIGOE: Okay. So I guess, Ms. Morris, I don't know if this is something that you want to discuss with Ms. Fukushima or not, but we're just wondering if it's necessary for the Commission to even take up her standing if the school is already automatically a party.

MORRIS: As far as the interest of the school, as long as they're an automatic party, then that's my concern.

TORIGOE: So I guess the question then for Ms. Fukushima is if the school's interests are protected in that way that they're an automatic party, do you still feel that you need to be admitted as a party? And would you be representing yourself, would you be hiring an attorney or -?

FUKUSHIMA: No, I think that as long as it's covered then, yes, it's fine.

AU: Okay, so you would like to withdraw -?

FUKUSHIMA: Yes.

AU: Your petition for standing in a contested case?

FUKUSHIMA: Yes.

AU: Okay.

MORRIS: Can the school get its \$200 back? It's on a, it's on a real bare bones budget. I just make that request.

AU: That's for our - .

MORRIS: Okay, thank you.

AU: Planning Department to decide.

MORRIS: Thank you very much.

TORIGOE: Actually the rule says that, "If the request for intervention is withdrawn in writing before the commencement of the hearing, the filing fee shall be refunded to the person seeking standing to intervene."

FUKUSHIMA: May I say that I did not at the time, like I said, know that I would be withdrawing it; and the rules are still ambiguous, so to speak. So whether an individual or having just the school, I feel like I could still put that in writing. I just didn't have that available, the rules. I didn't understand that that would be the process.

MORRIS: Does the school get its money back? Is that what I heard you just say?

TORIGOE: Actually the rule says you have to, the rule says, this is just what the rule says, "If the request for intervention is withdrawn in writing before the commencement of the hearing, the filing fee shall be refunded...." So -.

MORRIS: Is that the contested case hearing?

TORIGOE: Contested case hearing. Well, technically the whole hearing is a contested case hearing, you know, in the sense that it is the final hearing before a decision is made that can be appealed to court. So, well, I guess at this point we'd have to leave that with the Planning Director and, if necessary, then we can consult with them.

MORRIS: Thank you very much. Thank you.

AU: Okay. Any more questions for -? Okay, thank you guys. You guys may be seated. Okay, we just also received another petition. And, staff, have you received a \$200 check?

DARROW: We have. There is one deficiency with the submittal. If you look on page 2, you'll notice that the notary public put tomorrow's date, unfortunately. And so at that point, and then it was also received today, as of today's hearing. So if you're considering this petition, it might be more appropriate to have this redone and have a correct date placed on the notary. But, again, we do, this was received today; and it did come with the \$200 filing fee.

AU: Okay with that said, our rules state, Mr. Gomes, that it needs to be in prior. It just didn't make it. It was submitted today. And because of the, also, the other deficiency on the application we will not be able to accept it. And, Mr. Fuke, please come forward. You want to say something?

FUKE: Yes.

AU: And then after that I'd like Ms. Amy Self and BJ to also come up too.

FUKE: Mr. Chairman, again, for the record, Sidney Fuke. From the get-go, I guess, this application from a processing standpoint has been so topsy turvy. I mean if you're going to just look at the rules themselves, I mean, I can just cite you, for example, it's like the applicant shall serve notice to surrounding property owners regarding the contested case hearing. Who sent that letter? The Planning Department. The other thing too, is like it says like, well, shall file a written request, inform seven days prior to the Commission's first meeting. You can debate whether this is the first meeting, the third or the fourth, or whatever. I mean like bottom line is that there's like so much interpretations and misinterpretations as far as what the process is. So I guess all Mr. Gomes is asking is that, fine, if it's going to be denied then I guess his only recourse is that after you go through all this contested case hearing, then he'll just file an appeal that he was denied a due process. I think for the most part if you look at due process issues, the concern is more as it relates to the intervening parties, or at least the parties that have, the parties that are not the applicant. In all of the court cases, not all, but many of the court cases that, for example, was cited today, you know, they deal like with not the applicant, they deal with other parties. So if you deny Mr. Gomes an opportunity to be a part of the proceedings, then I guess the community and everybody else would have to resign and just provide their testimony through the public hearing portion all over again, unless the record is already there that he can, for the Commissioners or the hearings officer, just accept whatever is already provided as being the record. And so having said that -.

AU: Okay. Mr. Gomes, can you raise your right hand. Do you swear and affirm to tell the truth in front of the Planning Commission today?

J. GOMES: Yes.

AU: Okay. So, microphone please. Please state your name and where you reside and, you know, will you just explain to us the reasoning for your petition.

J. GOMES: Jeff Gomes. I live in Kaūmana. My reasoning is I'm not sure of what the procedures are. And, you know, I don't have an attorney. So I'm still not exactly sure what my rights are to, I feel like I'm defending my home and my family. And I'm just asking you for the opportunity to let me be a part of this process. That's my understanding of what a contested case hearing is. And I've asked Sidney to try and explain it to me. I kind of have an idea of what it is but I'm not sure. Up until today I thought a contested case hearing was going to be in front of a court. I didn't know it was going to be in front of you, until Sidney explained it to me again. So I want to be a part of the process. I want to be able to ask questions about what was done, what should have been done. Because I followed the process, I'm part of it. I'm physically, mentally, and emotionally affected by everything that has been going on, myself, my family and my neighbors. And I just, I'm asking you to let me be a part of the process, please.

AU: Thank you. Any questions for the person, petitioner? The attorney for the County Planning Department and our Planning Director, would you guys like to add to Mr. Gomes's request or petition?

SELF: On to state that the Planning Director has no objections to the intervention of either of the applicants, either of the petitions to intervene. We have no problem with that.

AU: Okay, well, from a procedure standpoint and our rules, as our Commission attorney has stated that, you know, it doesn't make it, it doesn't meet the criteria. So what I'm looking at is to deny, to not grant standing.

TORIGOE: It would have to be a Commission decision.

AU: Yeah, that's what I recommend. And, you know, it would have to be a Commission decision. And, Planning Director, would you like add something?

LEITHEAD TODD: I may not have an accurate memory, but I believe that, in the past, prior Planning Commissions have allowed people to intervene, even at, you know, the 11<sup>th</sup> hour, so to speak, as opposed to enforcing the seven-day requirement. That's entirely within your call. However, just as stated by the representatives for the applicant in an abundance of caution, I would hate to go through a contested case, deny standing, go through a contested case with Connections, then end up having an appeal, go to court, and have the court say that despite the rules we should have given standing, given the convoluted and confusing manner in which all of this has played out. And so it's kind of like what harm does it have to the applicant if you allow Mr. Gomes to intervene. Because if you deny, given this strange procedural history that we have here, and we end up in Circuit Court and the Circuit, we go through this and one way or another we get a decision, cause we haven't even addressed whether, I think, at least I haven't heard conclusively whether you're hearing it or whether it's going to a hearings officer -. But you could go through this whole, deny standing, go through this whole process, and then go to Circuit Court; and then Circuit Court says, you know, because you're dealing with pro se, somebody who's not represented by counsel, because you're dealing with something that got very confusing that we should have erred on the side of caution and allowed him. And I'd hate to go through all of this and then have a remand to then allow Mr. Gomes to have standing. And I'm just saying I don't know what the Court would do; but I'd rather have him in and delete that as one possibility for appeal, than deny and then have that hanging over my head like a sword. Thank you.

AU: Okay, Mr. Hong, where is your applicant's position on Mr. Gomes's petition?

HONG: You know, I think the Planning Director's perspective is entirely reasonable but here's where I'm coming from. The notary page says, is defective; and it's defective as a matter of law. And my suggestion is that maybe the Planning Department in the future take off the requirement for the notary. But right now, and this is actually a mistake that could affect this individual's right to be a notary because this is completely wrong as a matter of law. I mean if the rule requires a notarized petition, I'm sorry, but today is March 7<sup>th</sup>. And this notary can be held legally responsible for this. But, you know, again I hear what Ms. Leithead Todd is saying. I think that's reasonable. I'm just coming from, you know, the procedure and this is inherently defective. Thank you.



AU: Okay, Mr. Hong, if we were, if this Commission, this body, was to grant standing to Mr. Gomes, how will it affect -? Or maybe I should be asking Ms. Fukushima, how will it affect your stance on that? Because, you know, we want to err on the side of caution. And, you know, since we're giving a break to somebody else, and this is the same special permit that we're going into, how do you feel about Well, I mean, Connections, you represent Connections, no, you represent CBESS. Yeah, I'm just a little confused here on who's -.

TORIGOE: Mr. Chair, I think we need a discussion with the AG and Ms. Fukushima. It seemed like Ms. Fukushima's petition was filed in an abundance of caution to make sure that, you know, both CBESS and the School were represented as parties. And since they both are, then they felt like it was okay for her not to get standing here. It's a little different. So, you know, I think if you guys, you know, if it's expressions of the need to be flexible and equitable in this kind of situation then, so you may want to consider that. If you need another executive session, we can do that too.

AU: Commissioner Moses?

MOSES: Yeah, Chair Au. Is it possible to have somebody explain for the benefit of Mr. Gomes what a contested case is, and what the procedures are, and what happens in a contested case? And is that possible - so that he has understanding of exactly what happens and what occurs?

AU: Okay. Yeah, we have a room full of attorneys so if one of you can take it?

TORIGOE: Let me just, real quick.

AU: Okay, thank you, Mr. Torigoe.

TORIGOE: Mr. Gomes, I assume that you have, you said that you talked to Mr. Fuke already; and Mr. Fuke is pretty well informed about this process. But real generally you understand that in a formal contested case then this can be as informal as the parties agree or it can be fairly trial like. And it allows for things like the parties calling witnesses, and asking any questions, just like in court to testify. And it allows us, for the other parties to cross-examine the witnesses, ask them questions, to test what they're saying and their credibility. It also allows for the parties to ask for subpoena of other witnesses, or other witnesses, if necessary, and things of that nature. And so it allows for development of a relatively full, almost trial like record if that's what the parties want to do. So, just so you understand that that's the kind of thing that a contested case is likely to entail with all these attorneys involved. And probably the main reason why people also request standing is so that they will have the right to pursue appeal to court, if necessary, from the final decision. So I guess the Chair, or Commissioner Moses just, I think, wanted to make sure you understood the kinds of demands that would be put upon you if you were a party to the contested case, and that often times people will have an attorney to help them with that kind of thing.

AU: Thank you. Mr. Arai, where are we with a contested case, possibly having two, three, four contested cases with this applicant? I mean do we have enough money in our funds? Where are we? It's all going to be one contested case?

ARAI: We do have the ability to hire a hearings officer. I cannot guess as to the length of the hearing itself. We've had recent hearings that have gone from as little as \$20,000 for a particular session up to a 40, \$40,000. All I can say at this point is if the Commission elects or refers this contested case proceeding to a hearings officer we will get a hearings officer for you. So don't let that be, weigh on your judgment.

AU: Ivan?

TORIGOE: Yeah. One of the factors that may weigh into the kind of contested case that happens is the extent to which the parties might be agreeable to using some of the existing record, rather than, you know, doing everything all over again. So I wonder if we could ask the parties if they would be agreeable to doing that, to the extent that is practical.

AU: Yes. If all parties are agreeable to use the existing record as a basis for the contested case proceedings.

HONG: Speaking on behalf of CBESS, I mean, I don't believe that I'm trying to extend or, I don't want to overcharge my clients, obviously. And I'm not going to try and build, increase the bills on behalf of my client. To the extent that I can use part of the record, I obviously want to use part of the record. But I know that what is absent from the record is our ability to challenge the credibility of some of the allegations made, and what the accuracy of those allegations are that were made. So insofar as that is concerned, I'm not going to agree to anything that would, to have unsubstantiated testimony that was given at a public hearing used against my client without me having the opportunity to cross-examine that individual. So yes and no. And obviously I don't want to have to spend any more time in a contested case than I have to. So I'm going to try and, on my client's behalf, make it as efficient as possible.

AU: Ms. Morris?

MORRIS: Thank you. I would likewise want this to be acted upon in as efficient a manner as possible. Time means money for my client. There is an application that's being prepared to the USDA for low interest loans so that facilities could be built should the special permit application be approved. So, so, a drawn out process would not be to the benefit of my client. So I would agree to the extent possible to move this along as quickly as possible, and without waiving my client's rights and interests. Whatever can be used, provided on the record previously, would be to the advantage in moving this along as efficiently as possible.

What I'd also kind of like to express a concern is that I know with respect to pro se persons who are not represented by counsel, courts are generally very liberal in allowing latitude to that because they're not represented by counsel. What I would, however, urge that whoever is presiding over the contested case that there not be undue delay associated with a pro se party. So, again, if I could just ask that this matter be moved along as quickly as possible without compromising my client's due process rights.

ISHIBASHI: I have a question.

AU: Commissioner Ishibashi.

ISHIBASHI: The intent is not to stymie or hold back any participation from the public though, right?

HONG: Not at all.

ISHIBASHI: Okay. So because they're on the record they have the right to be cross-examined and testify?

HONG: Right.

ISHIBASHI: Okay, thank you.

AU: Okay, so all parties, Ms. Self or BJ, where is your position on this?

SELF: I think that everything that's been on the record already is going to be a part of this because you have each of the testifiers were sworn under, testified under oath. It's a public hearing. All of these are have been public hearings. So I think that that information that has come before you already would automatically be part of the record. I guess you could, I guess the parties could decide which parts they want to move into evidence during the hearing. But as far as, well, that's the only thing we had to add. Did you want to say anything else?

LEITHEAD TODD: That's all.

AU: Okay. Well, this Commission, this body needs to decide if Mr. Gomes's petition stands, if we can give him standing. And what I'd like to add to it is because we're doing, possibly doing that, then I want to offer it to Ms. Fukushima as well. We want to, just like our Planning Director said, to err on the side of caution; and I understand there's no reason to because CBESS and Connections is already, you know, they already have the contested case. We're offering it. So if this body chooses to -.

MOSES: Are you requesting a motion?

AU: No, no. We don't need to request a motion for the petition.

TORIGOE: You need a motion, a motion to grant standing.

ISHIBASHI: If it's necessary, I make a motion that we grant standing for Brother Gomes.

MOSES: Second.

ISHIBASHI: If it's necessary. If it's not because it's part of the record already -.

TORIGOE: You should have a motion.

ISHIBASHI: Okay, I make a motion that we accept Jeffrey Gomes's petition for standing in this contested case.

AU: The motion by Commissioner Ishibashi is to grant standing to Mr. Gomes.

MOSES: Second.

TORIGOE: Yeah, Mr. Chairman, staff suggests, and I think it's a good idea, that if there's going to be a motion like that that it be conditioned on Mr. Gomes getting that notary corrected.

GOMES: I will.

TORIGOE: And that should be done, what, you think that should be done today? Is that -?

GOMES: Yes.

AU: Okay. So the motion is by Commissioner Ishibashi and seconded by Commissioner Moses. Discussion? Yeah, guys, this has been going on, it has been pretty crazy. We have a lot of things that we're looking at. And just like I said, I think we need to err on the side of caution. So we'll take this motion first. And if there's no other discussion, we'll vote on it.

DARROW: Thank you, Mr. Chairman. The motion before us is to grant standing in a contested case to Jeffrey Gomes. With that I'll take the roll call. Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Gonzales?

GONZALES: Aye.

DARROW: Commissioner Moses?

MOSES: Aye.

DARROW: I'm sorry, I was out of order. But, Mr. Chairman?

AU: Aye.

DARROW: With that, the motion passes four to zero.

AU: Okay. You'll be notified in writing. And now I'd like to entertain a motion to grant Ms. Fukushima's petition for standing, if she chooses to, if she wants to. Maybe Ms. Fukushima can -?

FUKUSHIMA: No.

AU: Okay, but it is on the record that -. Can you just come up and speak into the microphone. You're sworn in so you can go ahead.

FUKUSHIMA: Thank you. No, I do not wish to have mine, I wish to withdraw it. I do have a comment though as a private citizen and kind of observing. Not only is it eye-opening but it's very interesting to me how the rules may change. I understand in the nature of wanting to save time and all the projected, where it may end up and what the court might say, and whatever. This -. It's disturbing to me, just as a person listening, not in connection, in relationship to

Connections. But I raised my children in this community. I think had the shoe been on the other foot, had maybe it been me, had I turned it in -. Because we were talking about the post mark, the notary of mine, which I read what you read. I had the opportunity, I took time off my job to go pay for the notary to do the best that I could with it. And you're right, a lot of the information was not forthcoming or easy to understand. But I did the best that I could as a single mother of three kids and as a business owner to make the time and to try and find out the best information I could. And so for future reference, I'd like to say it isn't fair to me as a private citizen. I'm fighting for the rights of my children as well, born and raised in Kaūmana. And so I would say to you, Mr. Gomes as well, that it saddens me that our community of Kaūmana and the way that you guys talk about community, you don't represent the entire community of Kaūmana. There are a great many people in Kaūmana who have not come forward to speak out of fear of the backlash from the minority of those who are speaking here today, I being one. And I'm coming forward to, I just wanted to say for future reference, it just felt like a big waste of time that I had to go and do and jump through hoops to get my, you know -. Anyway, thank you very much. I appreciate it. Thank you.

AU: Ivan?

TORIGOE: Yeah, as far as the record and make sure that there's no question with the Commissioners that the CBESS and the School, Connections itself, are automatic parties to the contested case.

AU: Okay.

TORIGOE: Okay, thank you.

AU: So, Fellow Commissioners, we are well aware of that, right?

GONZALES: Yes.

AU: Okay. So next thing we need to do is we need to decide as a Commission if we want to be the hearings, if we want to hear this petition or if we want to hire a hearings officer. So, we're ready to entertain a motion.

MOSES: I make a motion that we have a hearings officer.

AU: That we hire a hearings officer.

MOSES: Yeah, hire a hearings officer.

ISHIBASHI: Second.

AU: Okay, discussion? Yeah, with what Mr. Arai said that we do have the resources that is limited, but we do have the resources, I think that would be the smartest thing to do considering how this whole applicant is going. Commissioner Moses?

MOSES: I do have a question though.

AU: Yes.

MOSES: And maybe you can clarify. We talked about the record. What is going to be given to the hearings officer in this contested case? And is it, you know, it was asked if, you know, what should be given as far as record. And I'd like to see the entirety of the record be given, in its entirety.

AU: Well, we do have the entirety. I got a big box back here, they can take a look at it. But we do have our CDs. So the hearings officer, if we choose to hire a hearings officer, the hearings officer will get all that information. A CD was submitted to us, I believe it's like 2000 pages, things that we've been receiving for the last four months. Even going into the first hearing we got all these binders. So I hope that answers your question. And maybe Ivan can interject.

TORIGOE: Yeah. I'd just say that, yeah, the entire record is what it is. But in a contested case hearing there would probably be some discussion about what parts of it should be given formal status as exhibits or, and then what kind of cross-examination may occur. So there will be some discussion about the weight and importance and credibility of the evidence in the course of the contested case hearing.

AU: Okay, thank you, Ivan. Good question, Commissioner Moses.

TORIGOE: You can take the vote if there's no other discussion -.

AU: Yeah. If there's no other discussion, we'll go, we'll take a vote. Mr. Darrow?

DARROW: Thank you, Mr. Chairman. The motion before us is to hire a hearings officer. With that, I'll take the motion, or the vote. Commissioner Moses?

MOSES: Aye.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Gonzales?

GONZALES: Aye.

DARROW: And Mr. Chairman?

AU: Aye.

DARROW: The motion passes four to zero.

AU: Everybody will get notified in writing. Thank you. For all parties, CBESS, Connections, County of Hawai'i Planning Department, petitioners, Mr. Gomes, Ivan, does anybody have anything to say? Put it on the record now. Any other issues? Mr. Hong?

HONG: I'm sorry, I'm just being too fundamental, I mean elementary. But was there a motion to grant the contested case hearing? Is that necessary or -?

TORIGOE: I really don't think that's necessary -.

HONG: Oh, good.

TORIGOE: At this point. And if any of the Commissioners disagree then we should know now. But it is inherently a contested case.

HONG: Okay, sorry, thank you.

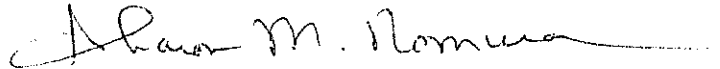
AU: Mr. Gomes?

GOMES: May I retrieve my original petition and I'll go get it corrected.

AU: Yes. The original petition, I believe Mr. Darrow has it. And anybody else? Okay, well, thank you very much. We'll see you guys later. Everybody will be notified in writing. Thank you.

The discussion ended at 12:07 p.m.

respectfully submitted,



Sharon M. Nomura, Secretary  
Windward Planning Commission

**Ted H.S. Hong**  
**Attorney at Law**

Employment, Workplace Law & Litigation

**Sue Lee Loy**  
Planner and Legal Assistant

REC'D  
COUNTY CLERK  
2013 MAR 13 PM 3:08

March 13, 2013

The Honorable Bobby Jean Leithead-Todd, Director  
County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

Major Randy Apele  
County of Hawaii Police Department  
349 Kapiolani Street  
Hilo, Hawaii 96720

The Honorable J Yoshimoto  
Hawaii County Council  
25 Aupuni Street  
Hilo, Hawaii 96720

Gordon Heit, Land Manager  
Department of Land and Natural Resources  
State of Hawaii  
75 Aupuni Street  
Hilo, Hawaii 96720

Kelly Gomes, Engineering Division  
County of Hawaii Department of Public Works  
101 Pauahi Street, Suite 2  
Hilo, Hawaii 96720

RE: NOTICE OF ACTIVITY REALTED TO THE REMOVAL OF TRASH AND  
RESTORATION/REFORESTATION PLAN  
SPECIAL PERMIT APPLICATION (SPP 12-000138)

Applicant: Connection New Century Public Charter School and Community Based Education  
Support Services (CBESS)

Request: To Develop a K to 12 Charter School Campus with Dorm Facilities, Intergenerational  
Programs, a Sustainable Agriculture Program and a Forestry/Conservation Program

Tax Map Key: (3)2-5-006:141

Aloha:

The purpose of this letter is to provide your department with formal notice about activity that will occur at the above-reference property, hereinafter "Property," and a general outline or guideline of activity anticipated at the Property associated with the removal of trash and a restoration/reforestation plan.

As discussed at the Planning Commission Hearing of March 7, 2013, Connections is in receipt of a fully executed copy of General Lease No. S-6029, hereinafter "Lease." The Lease, which commenced on February 1, 2013, authorizes Connections to enter and occupy the Property.

Condition 35 of the Lease provides the following:

*The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days. A copy of the entire Lease is attached hereto as Exhibit*

"A"

SCANNED  
084095



Ms. Leithead Todd, Major Apele, Councilmember Yoshimoto, Mr. Heit and Mr. Gomes  
RE: NOTICE OF ACTIVITY REALTED TO THE REMOVAL OF TRASH AND  
RESTORATION/REFORESTATION PLAN

March 13, 2013

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On October 26, 2012 the Board of Land and Natural Resources, hereinafter "Board" heard an enforcement violation for the Property and provided Connections with corrective actions to address the violation. The Board's decision reads as follows "*recommend Connections to submit to the Department a Restoration Plan within 60 days from the date of this Board's action at Connections' expense.*" A copy of the Restoration (Reforestation) Plan, prepared by David Miranda is attached hereto as Exhibit "B"

On March 18, 2013, pursuant to Conditions 35 of the Lease and the directive of the Board's decision of October 26, 2012 , Connections will commence with the removing of the illegally dumped trash upon the Property and implement the Restoration (Reforestation) Plan. The following is a general outline of the activities that will occur.

**Types of activity that will occur at the Property**

- document presences/collect/gather/pile various types of illegally dumped trash<sup>1</sup>;
- removal<sup>2</sup> of trash; .
- remove damaged plants and/or invasive species;
- remove/control<sup>3</sup> weed and/or vegetation for the maintenance of the perimeter fence and fence line;
- general maintenance and weed and/or vegetation control along Edita Street (within the County right-of-way) fronting the Property;
- establish "planting zones" for the restoration and reestablishment of native plants and other species located at the Property;
- create/development of a list of plant species appropriate for replanting/restoration/reforestation;
- create/development of mapping information related to plant species location upon the Property;
- gather seed, seedlings and other propagative material to assist with replanting/restoration/reforestation;
- periodic security checks at the Property;
- Property stewardship and general care.

**Hours of Activity**

Activities are planned at the Property between the hours of 8 a.m. and 4:00 p.m, Monday through Friday. No activities are planned or will occur on a weekend or a holiday.

---

<sup>1</sup> Trash may include but not be limited to discarded household items, plastic containers, tires, car batteries, wood or lumber remnants, used coolant or oils either cooking or motor, roof iron or wires of all types and any and all unwanted items found on the Property. Connections will document the location and type of trash found and should there be a need, Connection shall properly dispose of these illegally dumped items.

<sup>2</sup> This may require the need for a personal vehicle (pick-up truck) of some type and/or if necessary the staging of a dumpster.

<sup>3</sup> Items associated with this activity will include chain saws, fuel/oil for the same, weed eaters fuel/oil/line for the same, machetes, heavy pruning saws, pruning shears, shovels, picks, o'o digging bars and any other tools needed to achieve the goal of removal or control.

Ms. Leithead Todd, Major Apele, Councilmember Yoshimoto, Mr. Heit and Mr. Gomes  
RE: NOTICE OF ACTIVITY REALTED TO THE REMOVAL OF TRASH AND  
RESTORATION/REFORESTATION PLAN

March 13, 2013

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**Individuals associated with Activity**

Approximately three (3) or four (4) adults (staff/faculty) and no more than ten (10) students along with the associated vehicles will be at the Property.

A comprehensive review of all the applicable land use rules, regulations, codes and governances conclude that the activities discussed above are appropriate and allowable. Should there be any concerns regarding these activities or the need to address other concerns that may arise, please feel free to contact Sue Lee Loy via email at [sue@tedhonglaw.com](mailto:sue@tedhonglaw.com) or at 933-1919. It continues to be the goal of the Connections and CBESS to address concerns related to the Property.

Sincerely,

Ted H.S. Hong, Esq.

C: Deputy Attorney General Monica T. Morris, Esq.  
Connections/CBESS





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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

PLEASE DO NOT  
DATE DOCUMENT

GENERAL LEASE NO.

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL, a public charter school under the State of Hawaii, whose address is 174 Kamehameha Avenue, Hilo, Hawaii 96720, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-95(a)(2) and Section 171-95.5, Hawaii Revised Statutes, and Charter signed by the Governor of the State of Hawaii, the Chairperson of the Board of Education, and the Superintendent of Education on May 5, 2000, for and in consideration of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Ponahawai, South Hilo, Island of Hawaii, Hawaii, identified as "Connections New Century Public Charter School, Mauka Parcel" more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof, and "Connections New Century Public Charter School, Makai Parcel" more particularly described in Exhibit "C" and delineated on Exhibit "D," both attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65), commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, up to and including the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal semi-annual installments on \_\_\_\_\_ and \_\_\_\_\_ of each and every year during the term as follows:

A. For the first ten (10) years, the sum of FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00), per annum.

B. The annual rental reserved shall be reopened and redetermined on tenth (10th), twentieth (20th), thirtieth (30th), fortieth (40th), fiftieth (50th) and sixtieth (60th) years.

C. Determination of rent upon reopening. The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor's receipt of Lessee's notification, Lessee's appraiser and the Board's appraiser shall appoint a third appraiser, unless Lessee's appraiser and the Board's appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee's own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a



service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

2. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

3. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

5. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

6. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

7. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the

lease term, to enter the premises and examine the state of its repair and condition.

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

9. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

11. Character of use. The Lessee shall use or allow the premises leased to be used solely for school purposes.

12. Assignments, etc. The Lessee shall not sublease, subrent, transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the Board.

13. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee

relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

14. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

15. Breach. Time is of the essence in this agreement and if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

16. Condemnation. If at any time, during the term of

this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises was leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

17. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good

cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

20. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

21. Surrender or termination. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

22. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

23. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning

Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

24. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

26. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

27. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

28. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within

or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.

29. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

30. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail or cease to use, or abandon all or any portion of said premises, this lease shall cease and terminate.

31. Building construction. All building construction shall be in full compliance with all laws, rules and regulations of the federal, state, and county governments and in accordance with plans and specifications submitted to an approved by the Chairperson prior to commencement of construction.

32. Clearances. The lessee shall be responsible for obtaining all necessary federal, state or county clearances.

33. Time of essence Time is of the essence in all provisions of this lease.

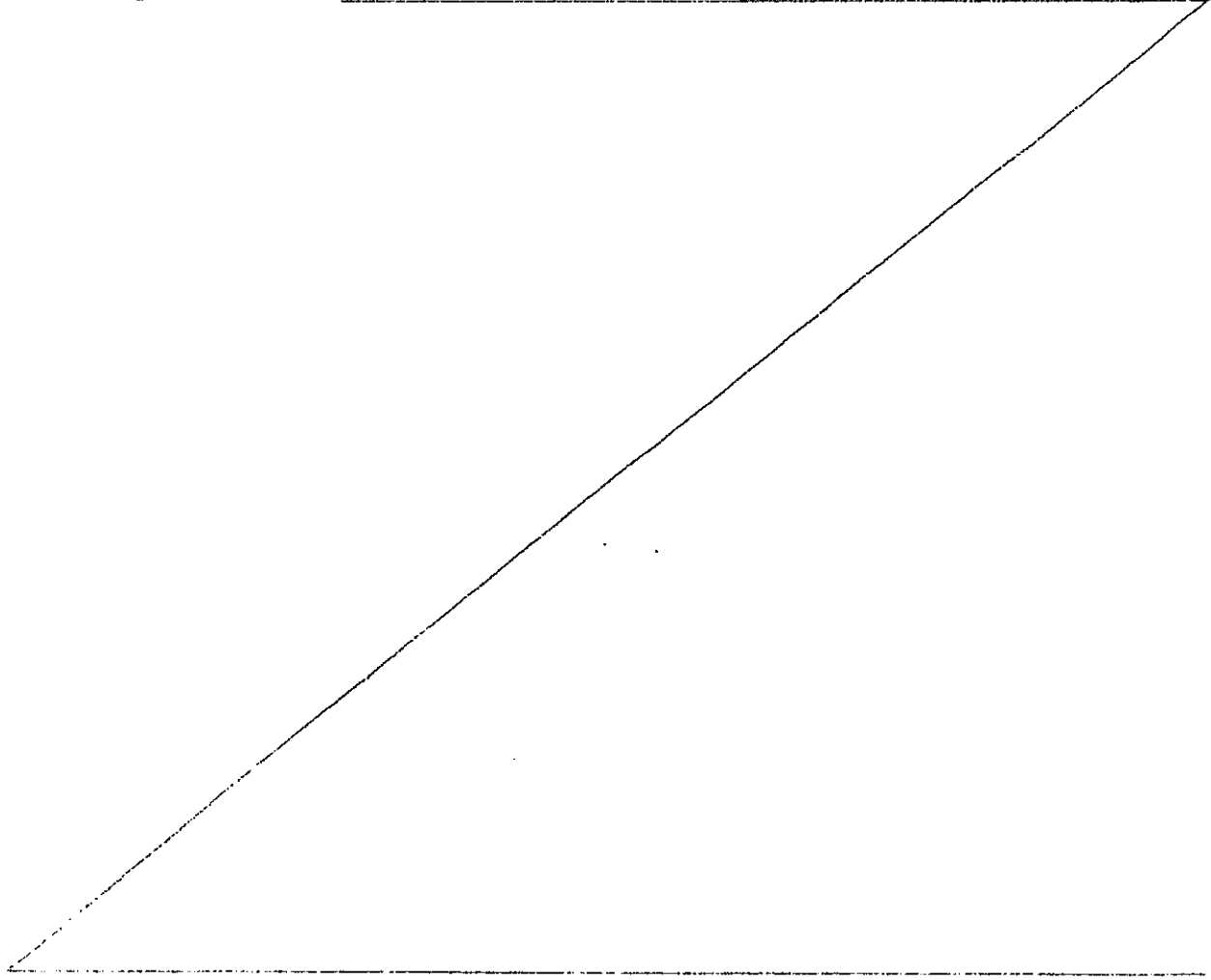
34. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

35. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.



36. Phase I environmental site assessment. Prior to termination or revocation of the subject lease, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination or revocation, unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

37. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.



Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days unless otherwise specified.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

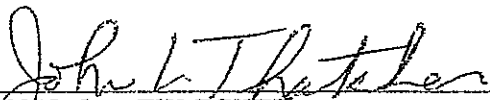
STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on January 13, 2011.

By \_\_\_\_\_  
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and  
Natural Resources

LESSOR

CONNECTIONS NEW CENTURY PUBLIC  
CHARTER SCHOOL, a public charter  
school under the State of Hawaii

  
\_\_\_\_\_  
JOHN L. THATCHER  
its CEO

LESSEE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JULIE H. CHINA  
Deputy Attorney General

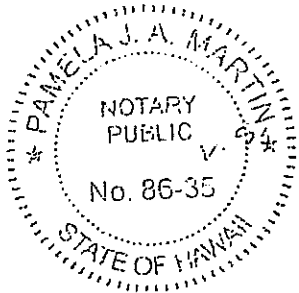
Dated: November 20, 2012

STATE OF HAWAII

COUNTY OF Hawaii

SS.

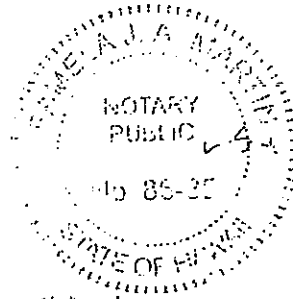
On this 18<sup>th</sup> day of December, 2012, before me personally appeared JOHN L. THATCHER, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Pamela J.A. Martin  
Notary Public, State of Hawaii

PAMELA J.A. MARTIN

My commission expires: 01/29/2014



Undated at time of Notarization

Doc. Date: 12/18/12 of Pages 24  
Notary Name: PAMELA J.A. MARTIN

Doc. Description: General Lease No. S-6029  
and Connections to Century Pacific Charter School

Pamela J.A. Martin  
Notary Signature Date: 12/18/12



STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,178

May 10, 2012

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL

MAUKA PARCEL

Ponahawai, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Ponahawai.

Beginning at the southeast corner of this parcel of land and on the west side of Edita Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 9710.53 feet South and 8928.82 feet West, thence running by azimuths measured clockwise from True South:-

1. 51° 30' 502.51 feet along Pacific Plantation, Increment 1-A, File Plan 1927;
2. 16° 20' 185.00 feet along Pacific Plantation, Increment 1-A, File Plan 1927;
3. 79° 26' 515.00 feet along Pacific Plantation, Increment 1-A, File Plan 1927;
4. 63° 00' 244.00 feet along Pacific Plantation, Increment 1-A, File Plan 1927;
5. 13° 00' 393.00 feet along Pacific Plantation, Increment 1-A, File Plan 1927;
6. 95° 44' 553.00 feet along Pacific Plantation, Increment 1-B;

7. 98° 46' 732.00 feet along Pacific Plantation, Increment 1-B;
8. 201° 16' 134.11 feet along the east side of Kaumana Drive;
9. 287° 12' 180.46 feet along Grant 10393 to Kenichi Niimi;
10. 252° 28' 235.02 feet along Grant 10971 to George Wong Makaea, Grant 10473 to Hisanori Kitamura and Grant 10392 to Hiroshi Futagodani;
11. 333° 30' 28.30 feet along R.P. 5516, L.C. Aw. 4983 to Kukeleau;
12. 229° 17' 30" 979.55 feet along R.P. 5516, L.C. Aw. 4983 to Kukeleau;
13. 158° 40' 118.11 feet along R.P. 5516, L.C. Aw. 4983 to Kukeleau;
14. 236° 21' 54.88 feet along the east side of Kaumana Drive;
15. Thence along the east side of Kaumana drive on a curve to the right with a radius of 750.00 feet, the chord azimuth and distance being:  
248° 33' 316.99 feet;
16. 260° 45' 40.22 feet along the east side of Kaumana Drive;
17. 242° 01' 122.17 feet along the east side of Kaumana Drive;
18. 221° 40' 341.67 feet along the east side of Kaumana Drive;
19. 210° 35' 33.51 feet along the east side of Kaumana Drive;
20. Thence along the south corner of the intersection of Kaumana Drive and Edita Street on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
251° 30' 39.30 feet;
21. 292° 25' 307.72 feet along the west side of Edita Street;
22. Thence along the west side of Edita Street on a curve to the right with a radius of 265.00 feet, the chord azimuth and distance being:  
303° 42' 30" 103.78 feet;
23. 315° 00' 193.27 feet along the west side of Edita Street;

24. Thence along the west side of Edita Street on a curve to the right with a radius of 223.21 feet,  
the chord azimuth and distance being:  
322° 11' 45"                            55.92 feet;
  
25. 329° 23' 30"                            122.21 feet along the west side of Edita Street to the point of  
beginning and containing an AREA OF 32.918  
ACRES.

SUBJECT, HOWEVER, to the following easements as shown on plan attached hereto and made a part hereof:

1. Perpetual Non-Exclusive Telephone Easement T-3A covered by Grant of Easement: State of Hawaii to GTE Hawaiian Telephone Co., Inc. dated October 6, 1998 and recorded as Document Nos. 99-006096 and 99-006097 (Land Office Deed S-28322).
  
2. Perpetual Non-Exclusive Telephone Easement T-3 covered by Grant of Easement: State of Hawaii to GTE Hawaiian Telephone Co., Inc. dated June 7, 1999 and recorded as Document Nos. 99-155328 and 99-155329 (Land Office Deed S-28353).

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

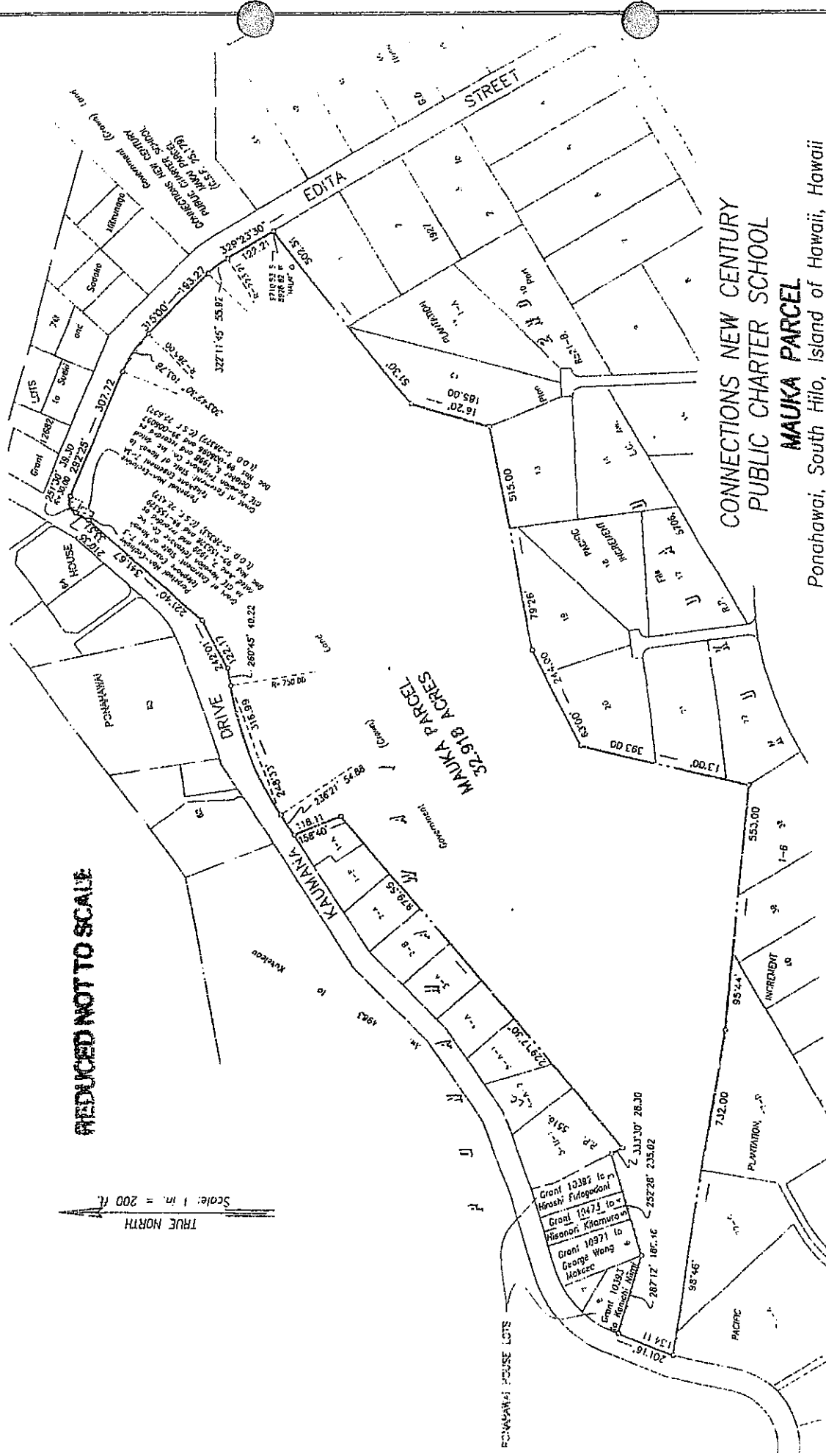
By: Glenn J. Kodani  
Glenn J. Kodani  
Land Surveyor

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Compiled from map and desc. furn.  
by Island Survey, Inc. Said map and desc.  
have been examined and checked as to form  
and mathematical correctness but not on the  
ground by the Survey Division.

REDUCED NOT TO SCALE

Scale: 1 in. = 200 ft.  
TRUE NORTH



CONNECTIONS NEW CENTURY  
PUBLIC CHARTER SCHOOL  
**MAUKA PARCEL**

Ponahawai, South Hilo, Island of Hawaii, Hawaii

Scale: 1 inch = 200 feet

Job 44-103(12)  
C. BH.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

TAX MAP 2-5-06/Par.141

C.S.F. NO. 25.178

CPH May 10, 2012

EXHIBIT 66 RP





STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,179

May 10, 2012

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL  
MAKAI PARCEL

Ponahawai, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Ponahawai.

Beginning at the southwest corner of this parcel of land and on the east side of Edita Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAJ" being 9672.83 feet South and 8881.42 feet West, thence running by azimuths measured clockwise from True South:-

1. 149° 23' 30"                      113.89 feet along the east side of Edita Street;
2. Thence along the east side of Edita Street on a curve to the left with a radius of 283.21 feet, the chord azimuth and distance being:  
142° 11' 45"                      70.95 feet;
3. 225° 00'                      794.78 feet along Grant 12682 to Sueki and Sadako Mitsunaga, Grant 12799 to Kanichi and Fujie F. Yamamoto and Grant 12729 to Yukio and Elaine Yuriko Y. Okutsu;
4. 135° 00'                      369.38 feet along Grant 12729 to Yukio and Elaine Yuriko Y. Okutsu, Grant S-13689 to Riichi Segawa and Furuyo Otani Segawa;
5. 159° 59' 30"                      389.60 feet along Grant 13547 to William K. Ahia and Lily Auld Ahia;

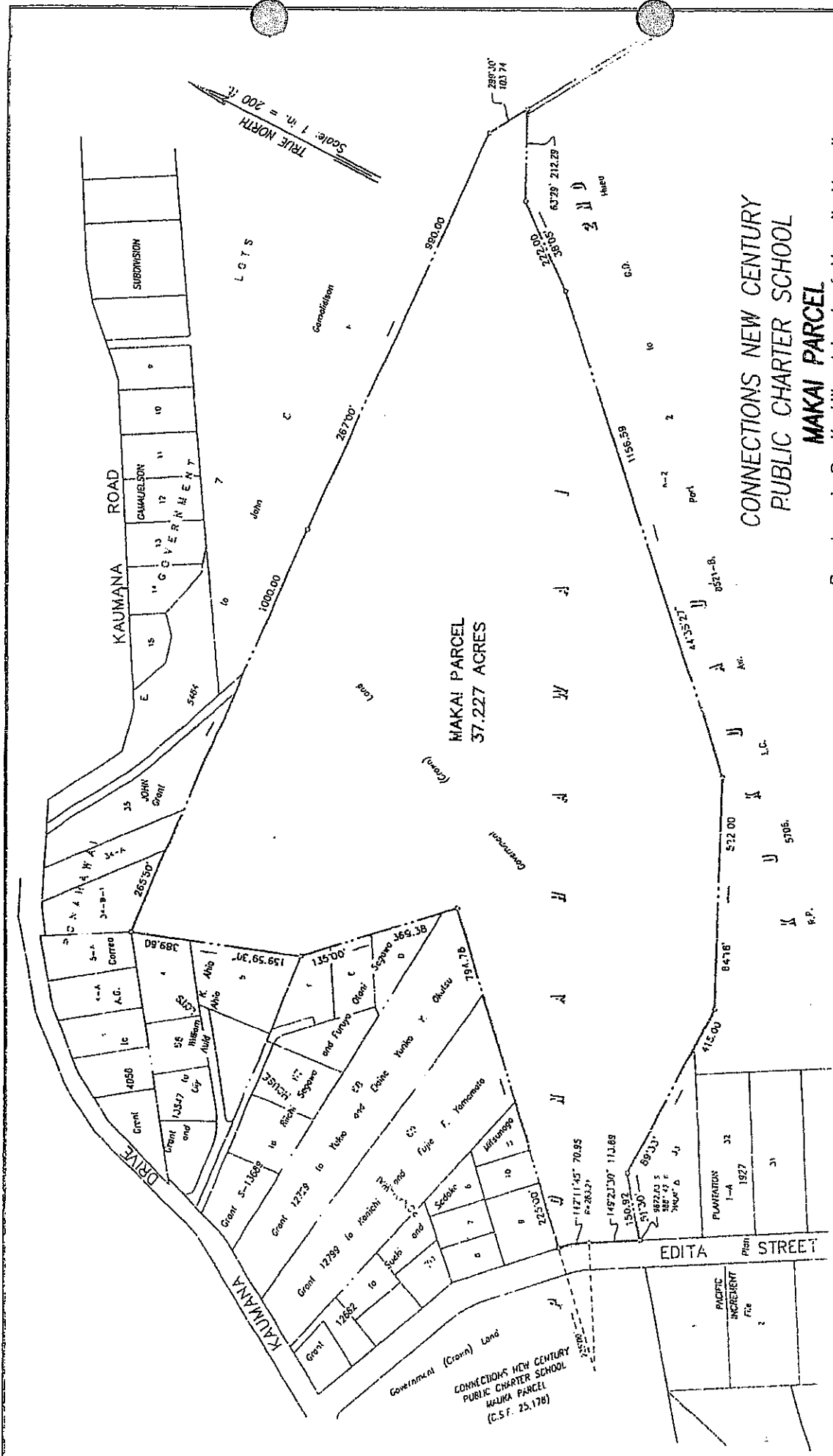
- |     |             |   |
|-----|-------------|---|
| 6.  | 265° 50'    | 1000.00 feet along Grant 5484 to John E. Gamalielson;   |
| 7.  | 267° 00'    | 990.00 feet along Grant 5484 to John E. Gamalielson;  |
| 8.  | 299° 30'    | 103.74 feet along Grant 5484 to John E. Gamalielson;  |
| 9.  | 63° 29'     | 212.29 feet along R.P. 5706, L.C. Aw. 8521-B, Part 2 to G.D. Hueu;  |
| 10. | 38° 05'     | 222.00 feet along R.P. 5706, L.C. Aw. 8521-B, Part 2 to G.D. Hueu;  |
| 11. | 44° 35' 27" | 1156.59 feet along R.P. 5706, L.C. Aw. 8521-B, Part 2 to G.D. Hueu;   |
| 12. | 64° 18'     | 522.00 feet along R.P. 5706, L.C. Aw. 8521-B, Part 2 to G.D. Hueu;  |
| 13. | 89° 33'     | 415.00 feet along R.P. 5706, L.C. Aw. 8521-B, Part 2 to G.D. Hueu and Pacific Plantation, Increment 1-A, File Plan 1927;              |
| 14. | 51° 30'     | 150.92 feet along Pacific Plantation, Increment 1-A, File Plan 1927 to the point of beginning and containing an AREA OF 37.227 ACRES. |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: *Glenn J. Kodani*  
Glenn J. Kodani  
Land Surveyor

ry

Compiled from map and desc. furn.  
by Island Survey, Inc. Said map and desc.  
have been examined and checked as to form  
and mathematical correctness but not on the  
ground by the Survey Division.



Job 4-103(12)  
C. BK.

TAX MAP 2-5-06/Par.141  
C.S.F. NO. 25,178

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

6111 May 10, 2012

REDUCED NOT TO SCALE

EXHIBIT "D"



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

PHONE: (808) 961-9590

FAX: (808) 961-9599

December 12, 2012

Ref. No.: GL S-6029

Author: LD-GH

Connections New Century  
Public Charter School  
174 Kamehameha Avenue  
Hilo, HI 96720

Dear Sirs:

Subject: General Lease No. S-6029, Connections New Century Public Charter School, for School Purposes, Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141

Enclosed are an original and three (3) copies of the above referenced document.

Please review, sign and notarize all copies in accordance with the following instructions, which you may also want to share with your notary.

1. All legal lessees must sign on the appropriate signature lines provided for LESSEE. If a name is spelled incorrectly, please make the necessary corrections and initial.
2. Do **not** date the document! (Only the notary page should be dated.)
3. Do **not** make any additions, deletions or changes to the terms and conditions of the document. Any such changes will require starting the document preparation process over again.
4. For the notary page:
  - a. All blanks must be filled in.
  - b. The appropriate county name must be filled in.
  - c. The notary's name must be printed directly under the notary's signature line.
  - d. The notary's seal must be affixed with "L.S" printed over the seal (if embossed)

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. ATKA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER, WATER RESOURCE MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599  
December 12, 2012

Ref. No.: GL S-6029  
Author: LD-GH

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Public Charter School  
174 Kamehameha Avenue  
Hilo, HI 96720

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B

A Reforestation Plan for Connections PCHS Kaumana Property – Makai Parcel

**The Problem:**

During the summer of 2012 (exact dates ?); a contract was issued to On The Line Fencing; a private fence building company. The company was hired to install fencing around the perimeter boundary of the Connections PCHS leasehold property on the makai side of Edita Street off Kaumana Drive. Having constructed the fence line; the contractor or its associates proceeded to do bull dozer work along the fence line in excess of what the contract allowed. A large number of Ohia (*Metrosideros collina subsp. polymorpha*) trees were intentionally cut and removed from the property. Mature Strawberry guava (*Psidium cattleianum*) trees were also bulldozed and pushed into heaps along the lower boundary. These trees were to have been preserved as is or if cut, used as raw material for student project based classes, i.e. Makery Class, a computer assisted design training class.

In most areas, the topsoil was scraped down to the base rock with occasional patches of soil left remaining. On August 7, 21, and 27, 2012 I visited the property to assess damage to the property. Since the date of the contractor's activity; high levels of invasive species are already germinating on the disturbed scarified areas created by the bulldozer. Notably present are concentrations of seedlings of *Melochia sp.*, *Stachytarpheta* (Vervain), numerous *Cyperus sp.* (sedges), various grasses, *Melastome sp.*, *Psidium cattleianum* (strawberry guava) and *Paederia scandens* (pilau maile). A more complete list needs to be compiled when access to the property is reinstated.

Additionally; the exposed soil on sloped terrain poses an erosion and siltation problem. This needs to be addressed especially if it is shown that Waipahoehoe Stream flows to the ocean or enters lava tube systems (it does).

**Needs:**

Damaged or removed trees and vegetation need to be replaced.

Weeds species need to be removed or controlled either by hand pulling (student projects) or judicious application of herbicides (by skilled applicator).

Replacement trees and understory plant species need to be seeded or transplanted to the disturbed areas.

Large trees that were pushed into stack piles, i.e. Strawberry guava, Alexander palms, Ohia trees, need to be uncovered and assessed for possible use as raw material. If salvageable, these timbers need to be stored for later use. It may be possible to use some logs for mud bars to

slow water flow on exposed slopes. This evaluation needs to happen soon before the rainy season begins and these trees rot and become useless.

**Tools Needed:**

Chain saws, fuel/oil for same

Machetes

Heavy pruning saws, pruning shears

Shovels, picks, o'o digging bars

Other tools

**Possible Approaches:**

Establish "planting zones" where replanting will occur. Rather than attempt to "blanket" the contiguous scarred areas with seed or transplants; create numerous smaller "islands" of planted replacement species that can be maintained. These areas might be circular or irregular in shape but they should be several square meters in size, i.e. 10 meter x 10 meter. These areas could also be used as potential monitoring sites for student projects and the progress of the reforestation effort could be charted as part of an ongoing biological sciences curriculum.

Begin the process of transplanting suitable species to the "planting zones" using species which already exist on the property. The same species might also be acquired off site from other construction sites if their property owners were agreeable, i.e. Ohia and Rhus sp. However, this seems impractical from a logistical perspective.

Salvage suitable transplants from onsite dozer piles where possible.

Since the substrate of the planting sites is mostly fractured rock with pockets of soil; the size of the transplanted material will be important. O'o bars (digging sticks) can be used to open cracks up a bit to accommodate transplants. Soil from adjacent areas can be used to secure roots in these cracks.

Spread seed or plant root pieces (Rhus can be propagated this way) in the various "planting zones" sourced from on-site vegetation.

**How to Proceed**

Create a list of plant species that are appropriate for the replanting effort. This list should include native and non-native species that are already on the property.



Locate areas on site where trees of a suitable size for transplant exist. These areas occur along the route of trails that were cut in 2011 and 2012. Some of the better places to look on these trails are places where lava flows are visible and the soil depth is shallow. These places often had seedling beds with Ohia (*Metrosideros sp.*), Uki (*Cladium sp.*), Pukiawe (*Styphelia sp.*), *Rhus sp.*, and ti leaf (*Cordyline sp.*) and possibly other species. Ohia is likely the most common desirable tree that is easily transplanted. Transplants can range from smaller seedlings 1 or 2 feet in height up to 7 or 8 feet. Experience has shown that Ohia has a shallow root system and is fairly easy to remove and relocate. The larger sized transplants are awkward to move around so finding trees near their transplant sight will be important.

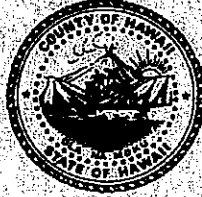
In some of the shaded ravines, seedlings of Alexander palm (*Archontophoenix alexandrae*) and Hilo holly (*Ardisia crenata*) can be found. These are easily transplanted. A few sun tolerant fern species might also be successfully transplanted. These include Pala 'a (*Sphenomeris chinensis*) and Sword or Boston ferns (*Nephrolepis sp.*) Tree ferns are rare to non-existent on this parcel. Only one hapu'u fern was found on the makai parcel during earlier surveys and that plant has since been eaten by feral pigs. Another fern that prefers very wet areas is *Cyclosorus interruptus*. A major patch of this fern was destroyed by fencing activities. However, some portions still remain and this might be used as a source of material to plant into areas expected to be usually, very wet.

Seed should also be collected where available for dispersal in the "planting zones". Especially; Ohia (*Metrosideros*) seed from intentionally cut trees might still be after-ripening on piled debris and might be harvested as salvage. (Perhaps the adjacent property owner (Brilhante) might be amenable to allowing collection from fallen trees on that property.)

### **Student Participation**

Connections PCHS students can potentially be very instrumental in the reforestation effort. With good organization; planting zones can be established and quickly planted. Students can be utilized to gather seed, seedlings and other propagative material. They can also assist in replanting these gathered plants.

This is also an excellent learning opportunity for students looking for science, PE and other education credits. It would also be an opportunity for team and class building and establishing a sense of ownership toward the future of the school. Perhaps a role can be found for the middle school students as well.



## 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

MAR 21 2013

Monica Morris, Esq.  
Office of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attorney for Applicant, Connections New Century Public Charter School

Ted H. S. Hong, Esq.  
P.O. Box 4217  
Hilo, HI 96720  
Attorney for Applicant, Community Based Education Support Services (CBESS)

Amy Self, Esq.  
Office of the Corporation Counsel  
333 Kilauea Avenue, 2<sup>nd</sup> Floor  
Hilo, HI 96720  
Attorney for Planning Director, BJ Leithhead Todd

Mr. Jeff Gomes  
281 Edita Street  
Hilo, HI 96720  
Intervenor

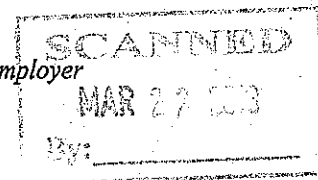
Dear Ms. Morris, Mr. Hong, Ms. Self, and Mr. Gomes:

Special Permit Application (SPP 12-000138)  
Applicant: Connections New Century Public Charter School and Community  
Based Education Support Services  
Request: To Develop a K to 12 Charter School Campus with Dorm Facilities,  
Intergenerational Programs, a Sustainable Agriculture Program and a  
Forestry/Conservation Program  
Tax Map Key: 2-5-006:141

The Windward Planning Commission, at its March 7, 2013 meeting, took the following actions regarding the subject application:

1. By unanimous consent, withdrew its pending motion to deny the subject special permit application;
2. Confirmed that the Applicants are automatically a party in a contested case proceeding;

*Hawai'i County is an Equal Opportunity Provider and Employer*



MAR 21 2013

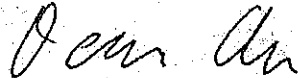
Monica Morris, Esq.  
Ted H. S. Hong, Esq.  
Amy Self, Esq.  
Mr. Jeff Gomes  
Page 2

3. Confirmed the withdrawal of the Petition for Intervention in a Contested Case Hearing by JoNelle Fukushima;
4. Voted to grant standing in a contested case proceeding to Mr. Jeff Gomes; and
5. Directed the Planning Director to secure the services of a hearings officer to conduct the contested case proceedings.

Once retained, the hearings officer, pursuant to Commission Rule 4-4(b), will be contacting all of the parties to hold conferences and make determinations as necessary to fix the schedule for these matters.

If you have questions concerning this matter, please contact Daryn Arai of the Planning Department at (808) 961-8142.

Sincerely,

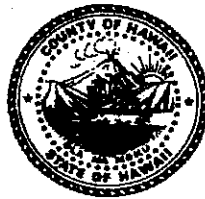


Dean Au, Chairman  
Windward Planning Commission

Lconnections02wpc

cc: Ivan Torigoe, Esq.  
Ms. JoNelle Fukushima

William P. Kenoi  
Mayor  
PLANNING DEPARTMENT  
COUNTY OF HAWAII



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

2013 APR 12 PM 12:26

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

**County of Hawai'i**  
PLANNING DEPARTMENT

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

April 8, 2013

CONNECTIONS CENTURY PUBLIC CHARTER SCHOOL  
175 Kamehameha Avenue  
Hilo, HI 96720

Re: Your check #8218

Dear Sirs:

On March 5, 2013 you submitted check #8218 in the amount of \$200.00 as an application fee for a Contested Case Hearing. Our Accounting section was instructed to hold your check pending a decision from the Director on whether to accept or return your fee.

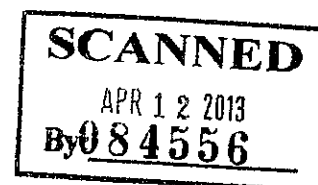
Due to unforeseen circumstances, we are unable to locate your check and would like to ask if you could check with your bank to see if this check has been presented for payment. Kindly reply to Cheryl Torrison, Sr. Account Clerk at 961-8169.

We apologize for this situation and would appreciate any information you can provide. Thank you very much.

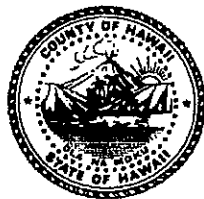
Sincerely,

  
BJ Leithead Todd  
Planning Director

JBG:ct



William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

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

**County of Hawai'i**  
PLANNING DEPARTMENT

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

April 22, 2013

Attn: Ms. Sandy Kelley  
CONNECTIONS CENTURY PUBLIC CHARTER SCHOOL  
175 Kamehameha Avenue  
Hilo, HI 96720

Re: Your check #8218 for Contested Case Hearing SPP-12-0000138

Dear Ms. Kelley:


Thank you for your call to report that your check #8218 written on March 5, 2013 to County Director of Finance in the amount of \$200.00 has not been presented to your bank for payment.

The Planning Department has received a notice of withdrawal for the Contested Case Hearing referenced above and would like to inform you that we are unable to locate your check #8218. Therefore, and for obvious reason, we are not able to return your check. We will continue our search and if we do come across the errant check, we will inform you.

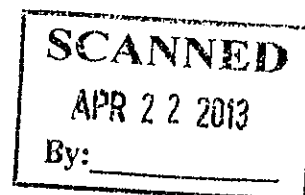
In your previous telephone conversation with Cheryl Torrison, Account Clerk, there was discussion about a replacement check and subsequent advice for stop payment on the lost check. Please be advised that since we are not requesting a replacement check, we will not reimburse any bank fees for stop payment.

We sincerely apologize for any inconvenience this may cause you. If you have any questions please contact Joaquin Gamiao, Administrative Services Officer at 961-8174 or Cheryl at 961-8169.

Sincerely,

  
BJ Leithead Todd  
Planning Director

JBG:ct



**Ted H.S. Hong**  
**Attorney at Law**

*Employment, Workplace Law & Litigation*

**Sue Lee Loy**  
Planner and Legal Assistant

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 MAY 23 11:03

May 23, 2013

Gordon Heit, Land Manager  
Department of Land and Natural Resources  
State of Hawaii  
75 Aupuni Street  
Hilo, Hawaii 96720

The Honorable Bobby Jean Leithead-Todd, Director  
County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

The Honorable J Yoshimoto  
Hawaii County Council  
25 Aupuni Street  
Hilo, Hawaii 96720

Kelly Gomes, Engineering Division  
County of Hawaii Department of Public Works  
101 Pauahi Street, Suite 2  
Hilo, Hawaii 96720

Major Randy Apele  
County of Hawaii Police Department  
349 Kapiolani Street  
Hilo, Hawaii 96720

RE: ACTIVITY UPDATE RELATED TO THE REMOVAL OF TRASH AND  
RESTORATION/REFORESTATION PLAN  
SPECIAL PERMIT APPLICATION (SPP 12-000138)  
Applicant: Connection New Century Public Charter School and Community Based Education  
Support Services (CBESS)  
Request: To Develop a K to 12 Charter School Campus with Dorm Facilities, Intergenerational  
Programs, a Sustainable Agriculture Program and a Forestry/Conservation Program  
Tax Map Key: (3)2-5-006:141

Aloha:

Allow this letter to provide you and your office an update of activity that continues to occur at the above-referenced property, hereinafter "Property." On March 13, 2013 our office noticed the various activities that would occur at the Property and as of this writing all of those activities continue to occur.

For your perusal, enclosed please find some photograph of various types of rubbish/trash that continues to be collected and disposed of from the Property. Connections/CBESS employees also prepared the enclosed map to identify the general area that the rubbish has been located. The numbers on the photograph correspond to numbered locations on the map. The map also provides information related to abandoned marijuana grow sites that were previously reported to the County of Hawaii Police Department and other miscellaneous reports of property/fence damage<sup>1</sup>. Connections/CBESS will continue to be good stewards of the Property and report any property damage, illegal and/or trespassing activities to the proper authorities.

<sup>1</sup> Locations are general in nature and are used to provide general context on the overall site and in no way equate to size.

Mr. Heit, Ms. Leithead Todd, Councilmember Yoshimoto, Mr. Gomes and Major Apele,  
RE: ACTIVITY UPDATE REALTED TO THE REMOVAL OF TRASH AND  
RESTORATION/REFORESTATION PLAN

May 23, 2013

Page 2

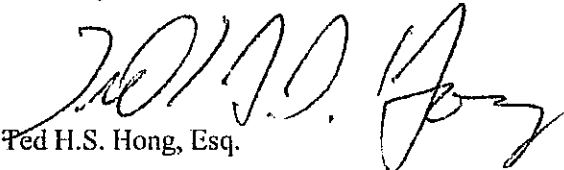
Connections/CBESS has also identified the need to establish a portable bathroom or lua for the caretakers and students that assist with the removal of rubbish and the reforestation/restoration program at the Property.

Based on discussions via electronic mail (email) with the Department of Land and Natural Resources, ("DLNR") Connections/CBESS will establish a portable lua at the Property beginning on Monday, June 3, 2013.

In addition, Connection/CBESS has also received an email approval from DLNR that would allow the use of a portable 10'X10' "pop-up" tent. The approval for the allowance of a pop-up tent was provided with the specific guideline that the tent is put up and taken down every day. The pop-up tent is used to provide shelter for the caretakers and students that assist with the various activities on the Property and Connections/CBESS will continue to adhere to this guideline provided by DLNR.

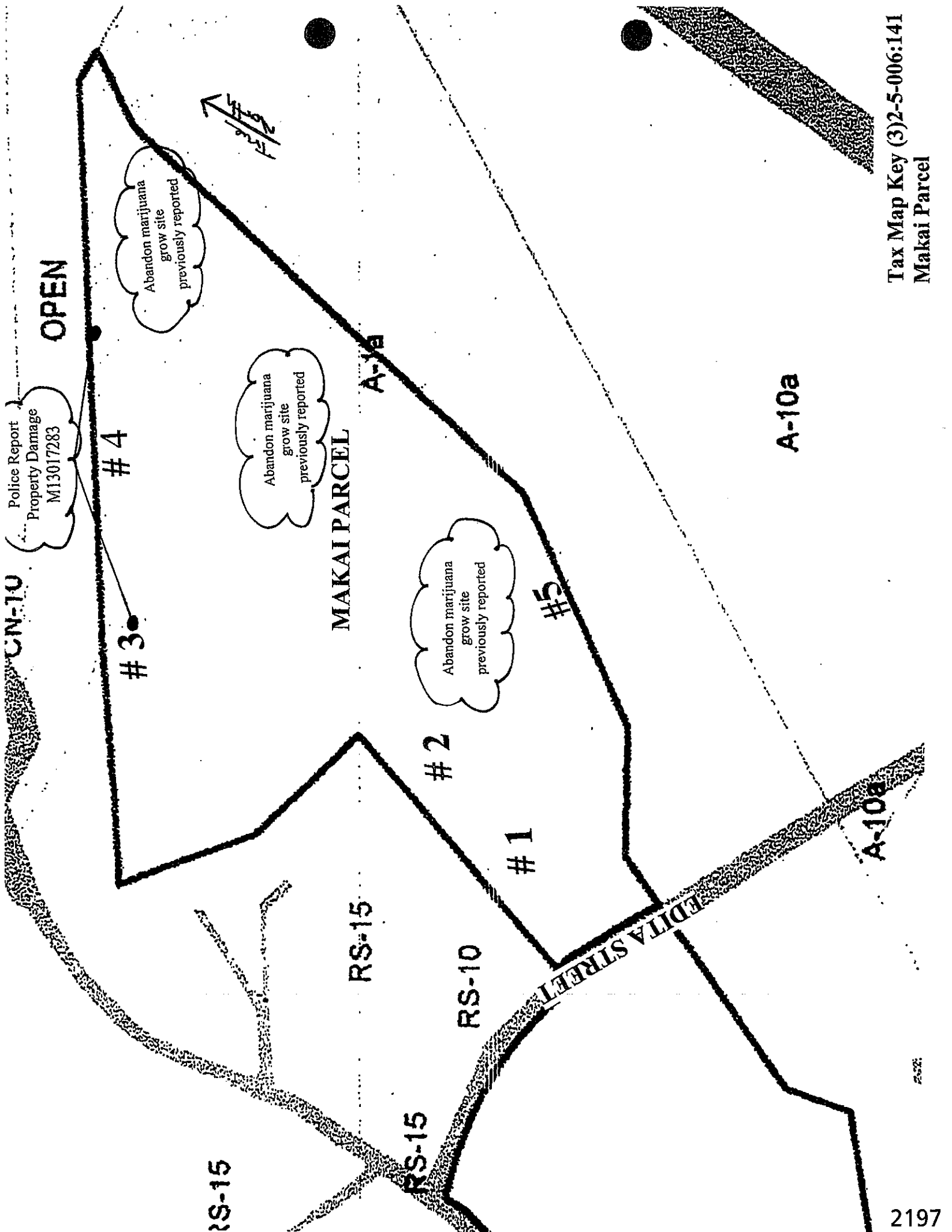
Connections/CBESS continues to comply with all other applicable land use rules, regulations, codes and governances and should there be any concerns regarding the activities or the need to address other concerns that arise, please feel free to contact Sue Lee Loy via email at [sue@tedhonglaw.com](mailto:sue@tedhonglaw.com) or at 933-1919. It continues to be the goal of the Connections and CBESS to address concerns related to the Property.

Sincerely,

  
Ted H.S. Hong, Esq.

Enclosures (photographs and map)

C: Deputy Attorney General Monica T. Morris, Esq.  
Connections/CBESS



Police Report  
Property Damage  
M13017283

OPEN

# 4

Abandon marijuana  
grow site  
previously reported

Abandon marijuana  
grow site  
previously reported

MAKAI PARCEL

A-10a

# 3

Abandon marijuana  
grow site  
previously reported

# 2

# 5

# 1

RS-15

RS-10

A-10a

A-10a

EDITA STREET

RS-15

RS-15

Tax Map Key (3)2-5-006:141  
Makai Parcel





#1





# 2





#3

2200



#4



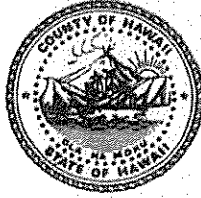
2201



#5



William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
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**County of Hawai'i**  
PLANNING DEPARTMENT

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

May 30, 2013

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

Dear Mr. Hong:

Special Permit No. 12-000138

Applicant: Connection New Century Public Charter School and Community  
Based Education Support Services (CBESS)

Request: To Develop a K to 12 Charter School Campus with Dorm Facilities, Intergenerational  
Programs, a Sustainable Agriculture Program and a Forestry/Conservation Program


Tax Map Key: 2-5-006:141

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This is to acknowledge your letter dated May 23, 2013 relating to the removal of trash on a  
portion of the above referenced property. Thank you for keeping us informed.

If you have any questions, please feel free to contact Jeff Darrow at 961-8158.

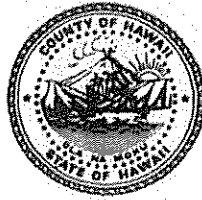
Sincerely,

  
BJ LEITHEAD TODD  
Planning Director

JWD:smn

P:\wpwin60\Jeff\Letters\PC\LHong-Connections-trash removal.doc

MAY 31 2013



## 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

July 12, 2013

Monica Morris, Esq.  
Office of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attorney for Applicant, Connections New Century Public Charter School

Ted H. S. Hong, Esq.  
P.O. Box 4217  
Hilo, HI 96720  
Attorney for Applicant, Community Based Education Support Services (CBESS)

Amy Self, Esq.  
Office of the Corporation Counsel  
333 Kilauea Avenue, 2<sup>nd</sup> Floor  
Hilo, HI 96720  
Attorney for Planning Director, Duane Kanuha

Mr. Jeff Gomes  
281 Edita Street  
Hilo, HI 96720  
Intervenor

Dear Ms. Morris, Mr. Hong, Ms. Self, and Mr. Gomes:

Contested Case Proceedings on the Matter before the Windward Planning Commission  
Regarding Special Permit Application No. 12-000138 (SPP-12-000138)  
Applicant: Connections New Century Public Charter School and Community Based  
Education Support Services  
TMK: 2-5-006:141; Kaūmana, South Hilo, Hawai'i

We would like to announce that the Windward Planning Commission has retained Sandra Pechter Song, Esq. to serve as hearings officer for the contested case hearing in the above-entitled matter. The selection of Mrs. Song was done in accordance with the State Public Procurement Code, Section 103D, Hawai'i Revised Statutes.

JUL 15 2013

Monica Morris, Esq.  
Ted H. S. Hong, Esq.  
Amy Self, Esq.  
Mr. Jeff Gomes  
Page 2  
July 12, 2013

Mrs. Song will be contacting all of the parties who have been granted standing in this particular contested case proceeding to announce a date, time and place for a pre-hearing meeting to discuss procedural and other related matters.

Sincerely,



Wallace A. Ishibashi, Jr., Chairman  
Windward Planning Commission

cc: Windward Planning Commission  
Duane Kanuha, Planning Director  
Margaret Masunaga, Deputy Corporation Counsel  
Sandra Pechter Song, Esq.