

CONNECTIONS CHARTER SCHOOL CONTESTED CASE HEARING
Special Permit Application No. 12-000138
PLEADINGS

1. Notice of No Objection to Planning Commission Record
Dated: 9/4/13 Hong, Esq.
2. Duane Kanuha, County of Hawaii Planning Director's Notice of No Objection to Planning Commission Record; Certificate of Service
Dated: 9/5/13 Amy Self, Esq.
3. List of Witnesses; Certificate of Service
Dated: 10/3/13 Amy Self, Esq.
4. Applicant's Connection New Century Public Charter School and Community Based Education Support Services (CBESS) Joint Submission of Applicant's Exhibit List; Certificate of Service
Dated: 10/4/13 Louie/Siu/Hong, Esq.
5. Applicant's Connection New Century Public Charter School and Community Based Education Support Services (CBESS) Joint Submission of Applicant's Witness List; Certificate of Service
Dated: 10/4/13 Louie/Siu/Hong, Esq.
6. Return of Service, Acknowledgment of Service, Subpoena (Bobby Jean Leithead Todd)
Dated: 10/9/13 Hong, Esq.
7. Return of Service, Acknowledgment of Service, Subpoena (Kurt Inaba)
Dated: 10/9/13 Hong, Esq.
8. Return of Service, Acknowledgment of Service, Subpoena (Ronald Thiel)
Dated: 10/9/13 Hong, Esq.
9. Return of Service, Acknowledgment of Service, Subpoena (Duane Kanuha)
Dated: 10/9/13 Hong, Esq.
10. Return of Service, Acknowledgment of Service, Subpoena (Glenn Tada)
Dated: 10/9/13 Hong, Esq.
11. Return of Service, Acknowledgment of Service, Subpoena (June Sakamoto)
Dated: 10/9/13 Hong, Esq.
12. Return of Service, Acknowledgment of Service, Subpoena (Ming Peng)
Dated: 10/9/13 Hong, Esq.

CONNECTIONS CHARTER SCHOOL CONTESTED CASE HEARING
Special Permit Application No. 12-000138
PLEADINGS

13. Return of Service, Acknowledgment of Service, Subpoena (Jan Yokota)
Dated: 10/9/13 Hong, Esq.
14. Return of Service, Acknowledgment of Service, Subpoena (Melvin Yokota)
Dated: 10/9/13 Hong, Esq.
15. Return of Service, Acknowledgment of Service, Subpoena Duces Tecum (Melvin Yokota)
Dated: 10/9/13 Hong, Esq.
16. Return of Service, Acknowledgment of Service, Subpoena (Terence Yoshioka)
Dated: 10/14/13 Hong, Esq.
17. Return of Service, Acknowledgment of Service, Subpoena Duces Tecum (Terence Yoshioka)
Dated: 10/14/13 Hong, Esq.
18. Return of Service, Acknowledgment of Service, Subpoena (Jan Yokoyama)
Dated: 10/14/13 Hong, Esq.
19. Return of Service, Acknowledgment of Service, Subpoena (Allen Novak)
Dated: 10/15/13 Hong, Esq.
20. Applicant's Connection New Century Public Charter School and Community Based
Education Support Services (CBESS) Joint Submission of Applicant's First Amended
Witness List; Certificate of Service
Dated: 10/15/13 Louie/Siu/Hong, Esq.
21. Applicants Connection New Century Public Charter School and Community Based
Education Support Services (CBESS) Joint Pre-Hearing Brief; Certificate of Service
Dated: 10/17/13 Louie/Siu/Hong, Esq.
22. Amended Subpoena (Notice to Appear – Kurt Inaba)
Dated: 10/18/13 Hong, Esq.
23. Return of Service, Acknowledgment of Service, Subpoena (Ron Thiel)
Dated: 10/18/13 Hong, Esq.
24. Return of Service, Acknowledgment of Service, Subpoena (Custodian of Records, County of
Hawaii, Real Property Tax Office)
Dated: 10/18/13 Hong, Esq.

CONNECTIONS CHARTER SCHOOL CONTESTED CASE HEARING
Special Permit Application No. 12-000138
PLEADINGS

25. Amended Subpoena (Duane Kanuha)
Dated: 10/21/13 Hong, Esq.
26. List of Witnesses
Dated: -- Jeff Gomes
27. Petition for Standing in a Contested Case Hearing; Affidavit of Terence Yoshioka; Affidavit of Jeff Gomes
Dated: 11/4/13 Terence Yoshioka
28. Errata to Applicants Connection New Century Charter School and Community Based Education Support Services (CBESS) Joint Pre-Hearing Brief; Certificate of Service
Dated: 11/5/13 Louie/Siu/Hong, Esq.
29. Return of Service; Acknowledgment of Service, Subpoena (Bobby Jean Leithead Todd)
Dated: 11/7/13 Hong, Esq.
30. Return of Service; Acknowledgment of Service, Subpoena and Subpoena Duces Tecum (Sidney Fuke)
Dated: 11/7/13 Hong, Esq.
31. Declaration of Dianthe Castillo; Exhibits "1 – 3"
Dated: 11/7/13 Hong, Esq.
32. Applicant Connections New Century Public Charter School's Objection to Terence Yoshioka's Petition for Standing in a Contested Case Hearing; Certificate of Service
Dated: 11/8/13 Louie/Siu/Hong, Esq.
33. Applicant CBESS' Memorandum in Opposition to Petition for Standing in a Contested Case Hearing Filed on November 4, 2013; Declaration of Ted H.S. Hong; Exhibits "1" – "3"; Certificate of Service
Dated: 11/8/13 Hong, Esq.
34. Denial of Terence Yoshioka's Petition for Standing in a Contested Case Hearing
Dated: 11/25/13 D. Kanuha
35. Return of Service; Acknowledgment of Service (Layne Novak)
Dated: 12/24/13 Hong, Esq.

CONNECTIONS CHARTER SCHOOL CONTESTED CASE HEARING
Special Permit Application No. 12-000138
PLEADINGS

36. Subpoena Duces Tecum (Custodian of Records, County of Hawaii Planning Department)
Dated: 12/31/13 Hong, Esq.
37. Subpoena (Custodian of Records, County of Hawaii Planning Department)
Dated: 12/31/13 Hong, Esq.
38. Applicants Connection New Century Public Charter School and Community Based
Education Support Services (CBESS); Joint Proposed Findings of Fact, Conclusions of Law,
and Decision and Recommendation; Certificate of Service
Dated: 2/12/14 Louie/Siu/Hong, Esq.
39. Order Adopting Proposed Findings of Fact, Conclusions of Law, and Decision and Order
Denying Application SPP No. 12-000138; Certificate of Service
Received: 2/12/14 Jeff Gomes
40. Duane Kanuha, County of Hawaii Planning Director's Statement of Taking No Position as to
the Submission of Findings of Fact, Conclusions of Law and Decision and Order; Certificate
of Service
Dated: 2/12/14 Amy Self, Esq.
- NOTE: The following pleadings are out of chronological order:***
41. Amended Subpoena Duces Tecum; Notice to a Person or Entity Served; With a Subpoena
Duces Tecum Who Is Not a Party to this Case (Terence Yoshioka)
Dated: 10/17/13 Hong, Esq.
42. Return of Service, Acknowledgment of Service (Subpoena served on Rachelle Ley)
Dated: 10/18/13 Hong, Esq.
43. Return of Service, Acknowledgment of Service (Subpoena served on Kurt Inaba)
Dated: 10/18/13 Hong, Esq.
44. Return of Service, Acknowledgment of Service (Subpoena served on Ronald L. Thiel)
Dated: 10/18/13 Hong, Esq.
45. Return of Service, Acknowledgment of Service (Subpoena served on Lisa Nahoopii)
Dated: 10/18/13 Hong, Esq.
46. Return of Service, Acknowledgment of Service (Amended subpoena served on M. Yokota)
Dated: 10/20/13 Hong, Esq.

CONNECTIONS CHARTER SCHOOL CONTESTED CASE HEARING
Special Permit Application No. 12-000138
PLEADINGS

47. Return of Service, Acknowledgment of Service (Amended subpoena served on J. Yokota)
Dated: 10/20/13 Hong, Esq.
48. Return of Service, Acknowledgment of Service (Amended subpoena duces tecum served on M. Yokota)
Dated: 10/20/13 Hong, Esq.
49. Return of Service, Acknowledgment of Service (Amended subpoena served on Lester Sakamoto)
Dated: 10/20/13 Hong, Esq.
50. Return of Service, Acknowledgment of Service (Amended subpoena served on N. Ang-Peng)
Dated: 10/20/13 Hong, Esq.
51. Return of Service, Acknowledgment of Service (Amended subpoena served on David Camacho)
Dated: 10/20/13 Hong, Esq.
52. Return of Service, Acknowledgment of Service (Amended subpoena served on Glenn Tada)
Dated: 10/20/13 Hong, Esq.
53. Return of Service, Acknowledgment of Service (Amended subpoena served on Jan Yokoyama)
Dated: 10/20/13 Hong, Esq.
54. Hearing Officer's Report; Certificate of Service
Dated: 4/7/14 Sandra Song, Esq.

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

IN THE PLANNING COMMISSION

COUNTY OF HAWAII

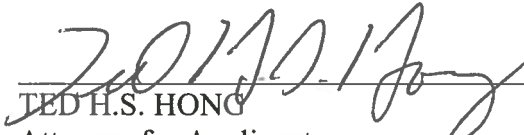
In Matter:)	
)	
SPECIAL PERMIT APPLICATION )	)	NOTICE OF NO OBJECTION
NO. 12-000138 )	)	TO PLANNING COMMISSION RECORD
)	
)	
_____))	

NOTICE OF NO OBJECTION TO PLANNING COMMISSION RECORD

Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES, by and through its undersigned counsel, TED H.S. HONG, hereby provides notice that it has no objection to the Planning Commission record.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing conference held by Hearings Officer Sandra Song.

DATED: Hilo, Hawaii September 4, 2013.



 TED H.S. HONG
 Attorney for Applicant
 COMMUNITY BASED EDUCATION
 SUPPORT SERVICES (CBESS)

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

IN THE PLANNING COMMISSION

COUNTY OF HAWAII

In Matter:)	
)	
Special Permit Application	)	NOTICE OF NO OBJECTION
No. 12-000138	)	TO RECORD
)	
)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 4, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

Sandra P. Song, Esq. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

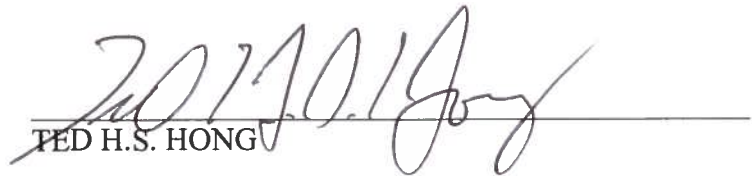
Carter Siu, Esq. (Carter.K.Siu@hawaii.gov)
Deputy Attorney General
Attorney for Applicant Connections New Century Public Charter School
235 S. Beretania Street, Room 304
Honolulu, Hawaii 96813

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Hilo, Hawaii September 4, 2013.


TED H.S. HONG

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

LINCOLN S. T. ASHIDA 4478
Corporation Counsel

AMY G. SELF 7628
Deputy Corporation Counsel
Office of the Corporation Counsel
333 Kīlauea Avenue, Suite 210
Hilo, Hawai'i 96720
Tel. No. (808) 961-8251
Fax No. (808) 961-8622
Email: aself@co.hawaii.hi.us

Attorneys for Duane Kanuha, County of Hawai'i Planning Director

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

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

Application for Special Permit Application No.
12-000138

TMK: (3) 2-5-006:141; Kaūmana, South Hilo,
Hawai'i

SPP-12-000138

DUANE KANUHA, COUNTY OF HAWAI'I
PLANNING DIRECTOR'S NOTICE OF NO
OBJECTION TO PLANNING COMMISSION
RECORD; CERTIFICATE OF SERVICE

**DUANE KANUHA, COUNTY OF HAWAI'I PLANNING DIRECTOR'S NOTICE OF
NO OBJECTION TO PLANNING COMMISSION RECORD**

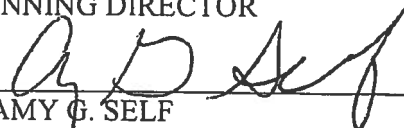
DUANE KANUHA, COUNTY OF HAWAI'I PLANNING DIRECTOR, by and through
his undersigned counsel, hereby submits his notice of no objection to the Planning Commission
Record.

This notice is made pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

Dated: Hilo, Hawai'i, September 5, 2013.

DUANE KANUHA, COUNTY OF HAWAI'I
PLANNING DIRECTOR

By


AMY G. SELF
Deputy Corporation Counsel
His Attorney

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

SPP-12-000138

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

CERTIFICATE OF SERVICE

Application for Special Permit Application No.
12-000138

TMK: (3) 2-5-006:141; Kaūmana, South Hilo,
Hawai'i

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 5, 2013, a copy of the foregoing document was served upon the following in the manner indicated below:

	<u>Hand Delivery</u>	<u>Mail</u>	<u>Email</u>
SANDRA P. SONG, ESQ. 10 Kamehameha Avenue Hilo, Hawai'i 96720 Email: sandrasong@hawaiiintel.net Hearings Officer			(X)
CARTER SIU, ESQ. Deputy Attorney General State of Hawai'i 235 S. Beretania Street, Room 304 Honolulu, Hawai'i 96813 Email: Carter.K.Siu@hawaii.gov Attorney for CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL			(X)
TED H.S. HONG, ESQ. P. O. Box 4217 Hilo, Hawai'i 96720 Email: ted@tedhonglaw.com Attorney for COMMUNITY BASED EDUCATION SUPPORT SERVICES			(X)

Hand Delivery

Mail

Email


JEFF GOMES
281 Edita Street
Hilo, Hawai'i 96720
Email: kalanigomes@hawaiiantel.net
Intervenor

(X)

DARYN ARAI
JEFF DARROW
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Email: darai@co.hawaii.hi.us
jdarrow@co.hawaii.hi.us
Windward Planning Commission

(X)

Dated: Hilo, Hawai'i, September 5, 2013.



AMY G. SELF
Deputy Corporation Counsel
County of Hawai'i

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICANT: SPP-12-000138
Connections New Century Public Charter School and
Community Based Education Support Services

PARTY: County of Hawai'i Planning Department

LIST OF WITNESS

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN:	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Duane Kanuha, Director COH Planning Department		COH Planning Department Background Report, Revised Recommendation and Revised Conditions for SPP 12-000138	No	PD1, PD2 and PD3	30 to 45 minutes

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

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

Application for Special Permit Application No.
12-000138

TMK: (3) 2-5-006:141; Kaūmana, South Hilo,
Hawai'i

SPP-12-000138

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2013, a copy of the County of Hawai'i Planning
Department's List of Witness was served upon the following in the manner indicated below:

	<u>Hand Delivery</u>	<u>Mail</u>	<u>Email</u>
SANDRA P. SONG, ESQ. 10 Kamehameha Avenue Hilo, Hawai'i 96720 Email: sandrasong@hawaiiantel.net Hearings Officer			(X)
CARTER SIU, ESQ. Deputy Attorney General State of Hawai'i 235 S. Beretania Street, Room 304 Honolulu, Hawai'i 96813 Email: Carter.K.Siu@hawaii.gov Attorney for CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL			(X)

Hand Delivery Mail Email

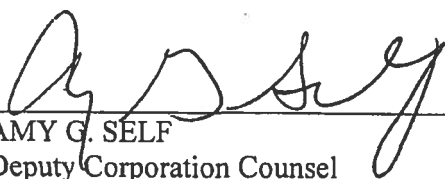
TED H.S. HONG, ESQ. (X)
P. O. Box 4217
Hilo, Hawai'i 96720
Email: ted@tedhonglaw.com
Attorney for COMMUNITY BASED EDUCATION
SUPPORT SERVICES

DARYN ARAI (X)
JEFF DARROW
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Email: darai@co.hawaii.hi.us
jdarrow@co.hawaii.hi.us
Windward Planning Commission

JEFF GOMES (X)
281 Edita Street
Hilo, Hawai'i 96720
Email: kalanigomes@hawaiiantel.net
Intervenor

Sidney Fuke (X)
Email: sidfuke@hawaiiantel.net

Dated: Hilo, Hawai'i, October 3, 2013.



AMY G. SELF
Deputy Corporation Counsel
County of Hawai'i

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANT'S CONNECTION NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS) JOINT
Application for Special Permit Application	)	SUBMISSION OF APPLICANT'S EXHIBIT
No. 12-000138	)	LIST ; CERTIFICATE OF SERVICE
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S EXHIBIT LIST

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES, hereby submits its Joint
Submission of Applicant's Exhibit List attached hereto and through its undersigned counsel,
CARTER K. SIU and TED H.S. HONG, hereby provides notice that the foregoing documents
are submitted and shall be used during the Contested Case Hearing.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October 4, 2013.



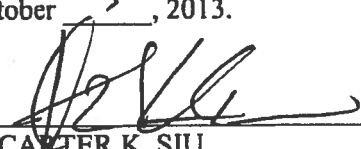
TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

**APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S EXHIBIT LIST**

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
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Submission of Applicant's Exhibit List attached hereto and through its undersigned counsel,
CARATER K. SIU and TED H.S. HONG, hereby provides notice that the foregoing documents
are submitted and shall be used during the Contested Case Hearing.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

DATED: Honolulu, Hawaii October 2, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

PAGE NO. 1

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana, South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PARTY: OBJECTIONS	ADMIT
A1	Special Permit Application (See Record 1 to 2205)		
A2	Special Permit Application and Agency Comments (See Record at 1 to 404)		
A3	County of Hawaii Planning Department Background Report (See Record at 419 to 772)		
A4	County of Hawaii Planning Department Recommendations (See Record at 773 to 787)		
A5	County of Hawaii Planning Department REVISED Recommendations (See Record at 881 to 896)		
A6	County of Hawaii REVISED Conditions (See Record at 1227 to 1231)		
A7	Proposed Additional Conditions of Approval (See Record at 1890 to 1891)		

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana, South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF EXHIBITS

A8	Preliminary Estimates of Potable Water Consumption (See Record at 1678 to 1648)		
A9	Relationship to Land Use Land and Objectives (See Record at 1315 to 1328)		
A10	Abbreviated Study of the Traffic Impact on the Greater Hilo (See Record at 1329 to 1339)		
A11	Curriculum Vitae – Celia Shen, Senior Planner Will Chee Planning, Inc		
A12	Curriculum Vitae – Phillip J. Rowell, Traffic Engineer		
A13	Curriculum Vitae – Kevin Luoma, Senior Engineer		
A14	Curriculum Vitae – Eric B. Guinther, Botanist		
A15	Curriculum Vitae – Reginald E. David		
A16	Curriculum Vitae – John J. Ida, Architect		
A17	Curriculum Vitae – David Miranda, Horticulture		
A18	Curriculum Vitae – Dennis I. Hirota, Civil Engineer		
A19	Curriculum Vitae – Steven Montgomery, Biologist		
A20	State Historic Preservation Division – Grading Approval, letter dated April 11, 2013 (no historic properties were affected)		

CELIA SHEN
Senior Planner
Wil Chee – Planning, Inc.

Ms. Shen holds a BArch (1991), a Graduate Certificate in Historic Preservation (2000) and a MURP in Urban and Regional Planning (2004) from the University of Hawai'i at Mānoa. Her 14 years of professional experience includes working as a land use planner and as an independent consultant specializing in the research and preparation of nomination forms for the Hawai'i Register of Historic Places. She has additional experience as a University of Hawai'i graduate research assistant where she conducted traffic safety studies and a marine aquaculture siting study, both of which required the extensive use of GIS. Ms. Shen joined Wil Chee – Planning, Inc. (WCP) in April of 2004.

Work Experience

April 2004 – current Wil Chee – Planning, Inc.

Ms. Shen's responsibilities at WCP include land use, conceptual, and master planning; space/facility planning; permitting; and environmental impact documents. While at WCP, she has been involved with educational facility projects for St. Francis School, St. Louis School, Connections Public Charter School, and the University of Hawai'i. She was the lead planner for several master planning projects for new resorts and residential developments in China and headed a team that prepared two Environmental Assessments (EAs) for a road reconstruction project in Aceh, Indonesia, following the disastrous tsunami of December 2004. Her background in preparation of National Environmental Policy Act (NEPA) and HRS Chapter 343 documents is extensive, having been involved in EAs and Environmental Impact Statements (EISs) for a wide range of project types.

Key projects at WCP include:

- 2011 Project manager and lead author for the 202K Grow the Force EA, Marine Corps Base Hawai'i - Kāne'ohe
- 2011 Project Manager for the MILCON Projects P-749 and P-750 Bachelor Enlisted Quarters Supplemental EA, Marine Corps Base Hawai'i - Kāne'ohe
- 2011 Project planner and contributing author for the Construction of a Flood Mitigation Project (PN 56024) at Fort Shafter Flats EA
- 2011 Project planner and contributing author for the Technology Demonstration for Remotely Operated Underwater Munitions Recovery System (ROUMRS) and Energetic Hazard Demilitarization System (EHDS) EA, Ordnance Reef, Wai'anae, Hawai'i
- 2010 Project manager and lead author for the Long Range Development Plan Revision and Update, and Supplemental EIS, University of Hawai'i Center – West Hawai'i
- 2010 Project manager and lead planner for the Conditional Use Permit for St. Francis School
- 2010 Planner and primary author for the Bachelors Enlisted Quarters Feasibility Study, Marine Corp Base Hawai'i - Kāne'ohe
- 2009 Project manager and lead planner for the Minor Modification and Zoning Variance for the St. Louis School Ching Technology & Learning Center
- 2009 Project manager and lead planner for the University of Hawai'i Holmes Hall Facility Renovations, Technical Assistance to Prepare a Proposal Package to the Recovery Act NIST Construction Grant Program
- 2009 Project manager and lead author for the MILCON Projects P-749 and P-750 Bachelor Enlisted Quarters EA, Marine Corps Base Hawai'i - Kāne'ohe

- 2008 Project Manager and primary author for the Proposed Construction of the Joint POW/MIA Accounting Command Facility EA, Hickam Air Force Base
- 2008 Project planner and contributing author for the Central O'ahu Wastewater Facilities Plan EIS
- 2007 Lead planner for the St. Louis School Lower School Space Study
- 2007 Lead planner for the St. Louis School Classroom Study
- 2007 Lead planner and primary author for the Kuntz Ballfield Area Site Survey Report, Hickam Air Force Base
- 2007 Project planner and contributing author for the Integrated Cultural Resources Management Plan, Marine Corps Base Hawai'i
- 2005 Project planner and primary author for the John Rodgers Tank Farm Phase I Environmental Baseline Survey Report
- 2005 Project planner and primary author for the Band Aceh to Meulaboh Road Reconstruction and Rehabilitation Project Phase I and Phase II EAs, Island of Sumatra, Indonesia

Jan 2001 – May 2003 University of Hawaii, Dept. of Urban and Regional Planning (Honolulu, HI)

Graduate Research Assistant

Aquaculture Feasibility Study - Responsible for conducting the literature review; collecting oceanographic data from various government agencies, researchers, etc.; modifying data for use in a geographic information system (GIS); generating spatial data layers; generating a demonstration model; and writing the final project report (*Using Geographic Information Systems to Survey Offshore Aquaculture Sites in Hawaii*).

Bicycle Observation Study - Responsible for conducting the literature review, analyzing data collected from field observations, and writing the final project report (*Bicycle Observation Study*).

Pedestrian Observation Study - Responsible for conducting the literature review, collecting observational data in the field, analyzing observational data, and writing the final project report (*Assessing the Potential for Utilizing Video Technology in Pedestrian Studies*).

Aug 2001 – Aug 2003 Independent Consultant

Responsible for researching and preparing State Register of Historic Places nomination forms.

- Completed nomination forms for the Andrews, Miller, Potter, Reed, Snyder, and Davis Residences as part of the College Hills thematic nomination; and the Petersen Residence for The Contemporary Museum. All residences were successfully nominated to the Hawai'i Register of Historic Places.

Nov 2000 – Jan 2001 Independent Consultant

Assisted the O'ahu Metropolitan Planning Organization in carrying out various activities related to the public input process undertaken to complete the 5-year update of Oahu's 25-year transportation plan (*Transportation for Oahu Plan 2025*).

- Assisted participants at public input and focus group meetings to complete public preference surveys, and compiled post-meeting summaries that highlighted critical issues, concerns and ideas raised during these meetings.
- Compiled, analyzed and organized for publication, the survey data gathered during the public input meetings.

Apr 1997 – Aug 1997 Historic Preservation Division, State of Hawai'i (Honolulu, HI)

June 1998 – Aug 2000

Historic Preservation Specialist Intern

Celia Shen
Curriculum Vitae
Page 3 of 3

Responsible for maintaining the historic architectural properties database. Assisted in the research and preparation of nominations to the State Register of Historic Places.

- Implemented the successful conversion of the historic architectural properties database into Access and enhanced the inventory's usability and accessibility.
- Cataloged the architectural properties photograph collection and added it to the historical architectural properties database.
- Assisted in the preparation of State Register nomination forms including the University of Hawaii's East-West Center.

Apr 1992 – Dec 1995 Alexander & Baldwin Properties, Inc. (Honolulu, HI)

Land Planning Analyst

Responsible for the development of land use alternatives, objectives, design concepts, written narration and supporting graphics in order to aid management in developing land planning strategies and evaluating land use options.

- Coordinated the preparation of zoning amendment petitions for the Port Allen Industrial Expansion (Kauai) and the Grocery Warehouse lot (Kaua'i), and assisted in the preparation of the Kukui'ula Planned Community Revised Phase I (Kaua'i) zoning amendment petition. All three projects received County approval for a change in zoning.
- Coordinated the preparation of the Kaunoa II Agricultural Subdivision (Maui) SMA application. Project received County approval of the SMA permit.
- Contributed to the development and refinement of A&B Properties' Port Allen/Eleele Master Plan (Kaua'i) for company-owned lands in the region.
- Prepared Capital Expenditure Requests (CER) requiring executive management approval, to facilitate the progression of land development projects. CER amounts ranged from \$15,000 to \$170,000.

Education

University of Hawai'i at Mānoa

Major: Architecture

Degree: Bachelor's of Architecture, December 1991

University of Virginia - Charlottesville

Major: Urban and Environmental Planning, 25 graduate semester credits completed

University of Hawai'i at Mānoa

Major: Historic Preservation

Degree: Graduate Certificate in Historic Preservation, May 2000

Major: Urban and Regional Planning

Degree: Master's of Urban and Regional Planning, May 2004

Professional Affiliations

American Planning Association – National and Hawaii Chapter

PHILLIP J. ROWELL, P.E.

Principal, Phillip Rowell and Associates

EDUCATION	BS, Civil Engineering, 1971, Clemson University MS, Civil Engineering (Transportation & Traffic Engineering), 1972, Clemson University
REGISTRATION	Professional Civil Engineer in California (1975) & Hawaii (1989)
MEMBERSHIPS	Institute of Transportation Engineers (Life Member)
EXPERIENCE RECORD	
1995 to Present	Phillip Rowell and Associates , Honolulu, Hawaii Principal of consulting firm specializing in transportation planning and traffic engineering projects in Hawaii and California. The following are representative recent projects: <ul style="list-style-type: none">• Piilani Promenade (Kihei)• Saddle Road Extension TIAR• KIC Resort Area 26 TIAR (Kailua-Kona)• Puunene Heavy Industrial Subdivision• Cosco, Lihue, Kauai• Fort Shafter Flats Drainage Improvements Traffic Management Plan• Kapa'a Light Industrial Park (Oahu)• Stryker Brigade Combat Team Facilities at MCBH• Onizuka Space Center Museum at Keahole Airport• Hyatt Regency Master Plan (Kaanapali)• Target (Salt Lake)• Puunene Avenue-Mokulele Highway Widening• UH West Hawaii Campus• Oahu Commercial Harbors 2020 Master Plan• NMFS Honolulu Laboratory Renewal• Pico-Union Neighborhood Traffic Protection Plan (Los Angeles)• American Dental Association Convention Traffic Management Plan (Honolulu)• Lions Clubs International Convention Traffic Management Plan (Honolulu)• First Hawaiian International Auto Show Traffic Management Plan• No. 1 Capital District Building Traffic Impact Analysis• China - U.S. Center Traffic Impact Analysis (Hilo)
1995	Parsons Engineering Science, Inc. , Honolulu, Hawaii Senior Traffic Engineer - Responsibilities included business development in the areas of traffic engineering and transportation planning and coordination of traffic studies with other disciplines and offices. Manager of traffic engineering projects conducted by the Honolulu office. Manager of traffic engineering projects conducted by the Honolulu office, including traffic studies for: <ul style="list-style-type: none">• Hawaii Convention Center Traffic Analysis• Walmart Traffic Impact Study, Waikeke, Hilo, Hawaii
1989 to 1995	Barton-Aschman Associates, Inc. , Honolulu, Hawaii Principal Associate - Manager of the Honolulu office and project director for all projects conducted in that office. Served as Project Manager on the following representative projects: <ul style="list-style-type: none">• Castle Junction Interchange Study• Aloha Tower Traffic Study• Maui Business Park, Phase 2, Kahului, Maui• Maui Lu Traffic Study, Kihei, Maui• Makena Resort Master Plan Traffic Impact Study• Kona Coast Resort TIS and Ali'i Drive Design, Kona• Kahului Town Center TIAR and Basis of Design Study, Kahului, Maui• Aloha Tower Traffic Impact Studies, Honolulu• Traffic and Parking Studies for Honolulu International Airport• Traffic and Parking Study for Guam International Airport Expansion• Construction Traffic Management Plan for Honolulu International Airport

- 1984 to 1989 **Barton-Aschman Associates, Inc.**, Pasadena, CA
Senior Associate - Performed traffic impact and parking studies in California, Hawai'i, Arizona, and Nevada. Representative projects include:
- General Telephone Co. HQ Traffic Study, Thousand Oaks, CA
 - Citywide Traffic Impact Mitigation Fee Study, Carlsbad, CA
 - Ave. R/Ave. S Corridor and Impact Fee Study, Palmdale, CA
 - HUSITE Transportation Planning Study, Las Vegas, NV
 - CBD Redevelopment Transportation Study, Las Vegas, NV
 - Harbor Gateway Transportation Study, Los Angeles, CA
 - West Hollywood City-wide Parking Study, West Hollywood, CA
 - Hollywood Parking Study, Los Angeles, CA
 - Tucson Mall/Tucson Place Traffic Study, Tucson, AZ
- 1982 to 1984 **Department of Transportation**, Beverly Hills, CA
City Traffic Engineer and Assistant Director of Transportation -Beverly Hills, CA - Responsibilities included the day-to-day operations of the engineering and parking sections of the DOT; review of all traffic impact studies submitted to the City; installation and maintenance of traffic signals; independently conducting traffic studies for City projects; and implementation of the City's street and alley lighting program, public shuttle bus programs, and Street Master Plan.
- 1980 to 1982 **Wilbur Smith and Associates**, Kuala Lumpur, Malaysia & Hong Kong
Project Design Engineer - Conducted traffic studies and prepared preliminary geometric plans for 11 interchanges along the Jitra-Butterworth Toll Road in Malaysia. Subsequently prepared final plans for the interchanges. In Hong Kong, prepared plans for a new interchange connecting mainland China with Hong Kong.
- 1978 to 1980 **Wilbur Smith and Associates**, Lexington, Kentucky
Project Design Engineer - Prepared plans and specs for the following:
- Main Street Interchange, Lexington, KY
 - Edgewood Boulevard, Lansing, MI
 - I-40/I-640 Interchange, Knoxville, TN
 - Kenwood Subdivision, Lexington, KY
- 1974 to 1978 **Wilbur Smith and Associate**, Los Angeles, CA
Senior Transportation Planner - Major projects worked on were:
- Walt Disney World Transportation Study, Orlando, Florida
 - City-Wide Circulation Study, Santa Maria, California
 - San Gabriel Valley Transit Study for SCRTD, Los Angeles, CA
 - West Los Angeles Transit Study for SCRTD, Los Angeles, CA
- 1974 to 1974 **Wilbur Smith and Associates**, Columbia, SC
Design Engineer - Representative projects include:
- South Mountain Retirement Resort, Burke County, NC
 - Waccamaw Plantation, Waccamaw, SC
 - Monroe Downtown Redevelopment Project, Monroe, NC
 - Seaboard Park Redevelopment Project, Columbia, SC
- 1971 to 1972 **Civil Engineering Department**, Clemson University, Clemson, SC
Graduate Teaching Assistant - Graduate teaching assistant in the Civil Engineering Department. Classes included transportation planning and traffic engineering.



Kevin Luoma PE LEED® AP

Senior Engineer
Associate
WSP Hawaii, Inc.

Career Summary

Kevin brings over 10 years of experience and a proven ability to apply his mechanical and sustainable design knowledge to a broad range of projects.

Kevin's skills and his dedication to clients and their complete satisfaction makes him a strong contributor on any design team.®

Professional Qualifications

B.S. Mechanical Engineering, University of Michigan

Licensed Professional Engineer – Mechanical – Hawaii (#13191) & California (#32388)

LEED® – Accredited Professional, US Green Building Council

Professional Memberships

Board of Governors, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)

Member, Hawaii Chapter of the US Green Building Council

Selected relevant experience

Project Experience

Education

- Malama Learning Center, Kapolei, Maui
- Lanai High School – 6 Classroom Building, Lanai, Hawaii
- Morgan Stanley Tenant Improvement, Honolulu, Hawaii
- University of Hawaii IT Services Building, Honolulu, Hawaii
- University of Hawaii Culinary Institute of the Pacific, Honolulu, Hawaii
- King Kekaulike High School Auditorium
- Wailuku Elementary School, Wailuku, Hawaii
- Hawaii Pacific University New Chiller Plant and Academic Center Renovation, Kaneohe, Hawaii
- Hawaii Baptist Academy High School Expansion, Honolulu, Hawaii
- Iolani School Innovation Center, Honolulu, Hawaii

Exhibit 13

Curriculum Vitae

Commissioning

- Lokelani Intermediate School, Kihei, Hawaii
- University of Hawaii Webster Hall School of Nursing, Honolulu, Hawaii
- Waianae High School, Waianae, Hawaii

Sustainable / LEED®

- Malama Learning Center, Kapolei, Maui
- Pacific Beach Hotel LEED EBOM Study, Honolulu, Hawaii
- Kauai Federal Credit Union, Kauai, Hawaii
- Lanai High School – 6 Classroom Building, Lanai, Hawaii
- Morgan Stanley Tenant Improvement, Honolulu, Hawaii

Healthcare

- Queen's Medical Center, Honolulu, Hawaii
- Prentice Women's Hospital, Chicago, Illinois
- Northwestern Memorial Hospital, Chicago, Illinois
- Northwestern Memorial Hospital Outpatient Imaging Center, Chicago, Illinois
- Rush University Medical Center, Chicago, Illinois
- Bollingbrook Medical Center, Bollingbrook, Illinois
- Guam Surgery Center, Tumon, Guam
- Mahelona Memorial Hospital, Kapaa, Kauai, Hawaii

Retail/Restaurant

- Mobi PCS, Nanakuli, Hawaii
- Burberry Duty Free Shop, Honolulu, Hawaii

Office

- Ali'i Place, Honolulu, Hawaii
- Pacific Guardian Center, Honolulu, Hawaii
- ABN AMRO Plaza, Chicago, Illinois
- Dearborn Center, Chicago, Illinois
- Waterfront Plaza, Honolulu, Hawaii

General

- Abbott Labs Daycare Facility, Gurney, Illinois
- Omori Residence, Honolulu, Hawaii
- DOW Agrosiences, Kauai, Hawaii

ERIC B. GUNTHER
AECOS Inc.



Eric B. Guinther is an ecologist/botanist and aquatic biologist with over 40 years of experience conducting environmental studies throughout the central Pacific Basin. His responsibilities at *AECOS* include: conducting field surveys, producing environmental survey reports, and making plant and animal identifications (taxonomy). As president and chief biologist at *AECOS Inc.*, he plays a role in corporate/project management and directs a team of seven fellow biologists with specialties in marine biological surveys (certified for SCUBA), stream and lake surveys, wetland surveys and delineations, and terrestrial biological surveys, including botanical surveys. As chief editor, he is responsible for quality control over all reports prepared by the *AECOS* biologists.

Mr. Guinther's educational background emphasized ecology, encompassing zoology, botany, geology, and water quality. He has worked extensively in marine, freshwater, and terrestrial environments—mostly throughout the Hawaiian Islands. However, he has conducted surveys in many parts of the western and central Pacific, including Guam, Tinian, Saipan, American Samoa, Western Samoa, Kwajalein Atoll, Canton Atoll, Fanning Atoll, Christmas Island, Yap, Palau, and Japan. He has experience in collecting field data using Trimble GNSS and processing GIS data with ArcView/ArcMap.

In the last two decades, Mr. Guinther's field work has involved mostly surveys assessing the distribution of terrestrial plants to document potentially sensitive species (rare native or listed species) for client projects, and conducting wetland inventory and delineations of jurisdictional waters. In his free time he grows native Hawaiian plants in a home nursery for out-planting at a native planting site on windward O'ahu at Nā Pōhaku o Hauwahine, a state park reserve.

Education

University of the Pacific, B.A. Biology. 1965.

University of the Pacific, graduate studies. 1965-1967.

University of Hawaii, graduate studies. 1967-1973.

Positions and Experience

1983 to present - Principal and President, *AECOS, Inc.*

1982 to 1983 - Principal and Corporate Treasurer, *AECOS, Inc.*

1974 to 1981 - Biologist and Vice President, *AECOS, Inc.*

1972 to 1974 - Marine Benthic Biologist, *AECOS, Inc.*

1970 to 1973 - Research Assistant, University of Hawaii.

1967 to 1970 - Teaching Assistant, University of Hawaii.

1964 to 1967 - Teaching Assistant, University of the Pacific.

Reginald E. David

Rana Biological Consulting
PO Box 1371
Kailua-Kona, Hawaii 96745

Phone: (808) 329-9141
Cell: (808) 937-0124
e.mail: rdavid@ilhawaii.net

Employment: President, Rana Biological Consulting 2009 - present
1975-2009: President, Rana Productions, Ltd.

Professional Experience:

Over the past 26 years I have worked as a terrestrial vertebrate biologist in Hawai'i and the Tropical Pacific.

Between 1986 and the present I have conducted over 1000 faunal surveys for the USFWS, the State of Hawaii, and numerous private concerns, on all of the main Hawaiian Islands as well as on Midway, Nihoa, Necker and Kure Atolls. I have extensive field experience in New Zealand, Tahiti, Kiritimati, Guam, Saipan, Tinian, Gilbert Islands, Vanuatu, Republic of Palau, Eastern Siberia, Korea and the western United States. I am also experienced in the radar tracking of seabirds and bats as well as ultrasonic censusing of bats. I have authored over 20 peer-reviewed papers, one book and over 375 technical reports on birds and mammals.

I have a good working knowledge of USFWS, State of Hawai'i, and the Federal Department of Transportation environmental laws and regulations. I am experienced in preparing Biological Assessments (BA's) required under Section "7" of the Endangered Species Act (ESA) and in negotiating mitigation under Section "7" of the ESA with the USFWS. I am also experienced in preparing Habitat Conservation Plans, and Section 10 and State 195D HCPs. I also have experience in preparing Natural Resource Management Plans (NRMP's) and DoD, Integrated Natural Resource Management Plans (INRMP's) as well as State of Hawai'i Section 343 Environmental Assessments. I also have over 10 year of experience in consulting on behalf of entities on USFWS Critical Habitat and endangered species delineations.

Over the past 18 years I have functioned as the senior biologist on several large projects, responsible for overseeing all biological work performed by scientists covering the full spectrum of biological disciplines from geology to wetlands and marine sciences. I have also performed as the lead biologist representing federal and State of Hawai'i clients before state and federal regulatory agencies on complex projects like the Federal Highways Administration, Saddle Road Project.

A 40-page list of my publications, and technical reports is available upon request.

Related Activities:

- US Fish & Wildlife & DLNR, Newell's Shearwater Working Group.
- US Fish & Wildlife & DLNR, Hawaiian hoary bat Technical Working Group
- State of Hawai'i Department of Land and Natural Resources, Natural Areas Reserve Commission (NARS) Commissioner: 1999 - 2004
- Moderator - HawaiiBirding chatline and website: 2002 -present
- Hawai'i Natural Heritage Program, Ornithological Advisory Committee.

Reginald E. David

- The Mauna Kea Management Board – Environmental Committee.
- US Fish & Wildlife Service, 'Alala Recovery Team Member: 1994 – Present.
- National Audubon Society: Board of Directors member: 1993-1996
- Hawaii Audubon Society: Board of Directors member: 1989 - 1996, 1998
- Hawai'i Audubon Society: Treasurer 1998
- Hawai'i Audubon Society: President 1990-1994
- US Fish & Wildlife & DLNR, Hawaii Endangered Waterfowl Recovery Team Advisory Committee

Membership in Professional Societies:

- American Ornithologist's Union,
- Association of Field Ornithologists,
- Cooper's Ornithological Society,
- Wilson's Ornithological Society,
- The Wildlife Society.

John J. Ida, AIA, CSI

Role

Technical Advisor

Education

1969

University of Hawaii
Bachelor of Architecture

1969-1972

Officer, United States Army

1973

University of Washington
Master of Architecture

Registrations

Hawaii
Washington
CSI Accredited Professional

Professional Experience

1984-

Urban Works, Inc.

1981-1983

TRA

1974-1981

Mithun

Professional Affiliations

AIA Honolulu President Elect, 2014
AIA Honolulu Treasurer, 2012
Meals on Wheels, Board of Directors
Board Chair, Waialae Iki V

John Ida is a cofounder and managing partner at Urban Works, an architectural firm in Honolulu, which specializes in medical-dental, educational, housing and community-related projects. He has been active in the architectural community since 1980, following the completion of his graduate education and subsequent employment in Seattle. John received a Bachelor of Architecture from the University of Hawaii and his Master of Architecture from the University of Washington.

Selected Projects

Education

ongoing Hale Aloha, Manono Campus, University of Hawaii Hilo
2012 Palamanui Campus, Phase 1 & 2, Hawaii Community College
2004 New Elementary Campus, Mid-Pacific Institute
2000 Gateway House Renovation, University of Hawaii
1992 Renovation to Municipal Building & Orvis Auditorium, University of Hawaii

Programming / Master Planning

2012 University of Hawaii Center at West Hawaii (UHCWH)
2007 Manono Campus, Long Range Development Plan, University of Hawaii
2004 West Hawaii Civic Center, County of Hawaii
1999 Lihue Police Station & Emergency Operations Center, County of Maui
1982 Master Plan for East-West Center, University of Hawaii

Institutions

2004 Chong Family Chinese Cultural Center
2002 Oceanic Institute Hatchery & Nursery Facility, Hawaii Pacific University

Medical

2012 8th Floor Joint Center, Queen's Medical Center
2010 Queens Center Cancer Center, Queen's Medical Center
2005 Hawaii Medical Library, Queen's Medical Center
2004 Kinau 1 Building, Queen's Medical Center
2003 Queens Medical Center Master Plan
2003 New Addition to Doctor Transcription Area, Queen's Medical Center
2000 Queens Medical Center Iolani Building Master Plan
1999 Queen's Patient Rooms on Iolani II

Performing Arts

ongoing Diamond Head Theatre

Industry / Infrastructure

2013 East Kapolei Fire Station, City & County of Honolulu
2012 Middle Street Intermodal Center, City & County of Honolulu
2012 Honolulu Zoo New Entry and Gift Shop, City & County of Honolulu
2007 Honolulu Zoo Learning Center, City & County of Honolulu
2007 Middle Street Handi-Van Facility & Maintenance Shed, City & County of Honolulu
2004 Hina Mauka, City & County of Honolulu
2003 Juvenile Detention Facility, DAGS
1996 Hana Airport Master Plan & NCP, State Department of Transportation

Residential / Hospitality

2007 Kaka'ako Lofts, Honolulu, HI
2007 Hilton Waikaloa Lagoon Grille Renovation
2002 Hamai Residence
1999 Waialae Iki 5 Residential



AECOS, Inc.

45-939 Kamehameha Highway, Suite 104 ♦ Kaneohe HI 96744
Telephone: (808)234-7770 ♦ Fax: (808)234-7775 ♦ Email: aecos@aecos.com

DAVID MIRANDA

David Miranda received a B.S. degree in Horticulture Technology in 1978 from the University of Hawai'i at Mānoa. He has worked in a variety of horticulture enterprises and has undertaken botanical surveys for the National Park Service, Connections PCS and *AECOS*. David currently owns and operates his own native plant/gardening business and works part time for *AECOS* and on-call for Connections PCS. His part time work for *AECOS*, includes conducting botanical field surveys and stream water quality monitoring. David has over 35 years of experience in the field of horticulture and botany. His experience includes:

- Identifying native and ornamental plants in the field.
- Using taxonomic keys to identify plants not easily identifiable in the field.
- Surveying in remote and varied terrain throughout the state of Hawai'i.
- Developing propagative methods for native plants and ornamentals.
- Evaluating and monitoring crops for disease and nutrient problems through observation and experimental plots.
- Navigating varied terrain with compass, map and GPS (familiar with Trimble and Garmin).
- Collecting water samples and performing field measurements for stream monitoring programs on the island of Hawai'i.
- Assisting with aquatic and riparian stream and shoreline flora and fauna surveys.
- Basic knowledge and use of Microsoft Word and Excel.

Recent projects that David has completed for *AECOS*, Inc. include botanical surveys for the Auwahi Wind Farm, botanist for the Waikoloa Military Training Area soil sampling project, biological survey and water quality for the Kapiolani Road extension project, and botanist for the Pahala Timber project. Recent projects completed for Connections PCS included miles of transect surveys and trails on the Connections PCS Kaumana project site.

David has completed the 40-hour basic health and safety training required for hazardous waste workers under OSHA 1910.120.

David has a keen interest in Hawaiian and biblical history and archaeology. He has an avid interest in the natural history of Hawai'i and is adept at sighting and identifying rare native plants and native birds. He is an avid hiker and hunter of feral pigs and promotes hunting and gun safety. David shares his knowledge and mentors teens and young adults interested in the natural history of Hawai'i, hunting and native plant propagation.

**Dennis I. Hirota, PhD, PE, LPLS
President, Civil Engineer/Land Surveyor
Sam O. Hirota, Inc.**

Dr. Dennis Hirota is the President of Sam Hirota Inc., a third-generation family operated civil engineering and surveying consulting company, founded by his father 50 years ago.

Work Experience

January 1971 – current Sam O. Hirota, Inc.

Dr. Hirota was appointed President in 1986. His responsibilities include all operations for the firm for land surveying, civil engineering and digital imaging. He has extensive experience in the use of in-house computers and software for mapping, planning and site civil engineering work. Civil engineering work includes master planning, subdivisions, roadway design, earthwork, drainage, water and sewer systems.

He was the 2009 "Engineer of the Year" award by the Hawaii Society of Professional Engineers.

Recent civil engineering projects on the Island of Hawaii

Current	Hualalai Maintenance Complex, Kailua-Kona, Hawaii
Current	Hualalai Mauka Subdivision, North-Kona, Hawaii
Current	Hualalai Commercial Lot Subdivision
Current	The Shores at Kohanaiki Resort Subdivision, North-Kona, Hawaii
Current	Kaupulehu Development Lot 45 & 46 Subdivision, North-Kona, Hawaii
Current	Kona Village Resort, Kailua-Kona, Hawaii
2009-2012	Kealakaa Street Extension Study, Kailua-Kona, Hawaii
2006-2010	Hienaloli Extension Study, Kailua-Kona, Hawaii
2004-2011	Waikoloa Employee Housing, Kamakoa Vistas, Waikoloa, Hawaii
2004-2011	Ka Milo at Maunalani Resort, Maunalani, Waikoloa, South Kohala, Hawaii
2004-2012	Stroud Subdivision, North Kona, Hawaii
2003-2008	Maniniowali Subdivision, Kailua-Kona, Hawaii
2003-2205	Kukio Golf Course & Maintenance Facility, Kailua-Kona, Hawaii
1999-2005	Kukio Subdivision, Kailua-Kona, Hawaii

1968 – 1971 USAF Weapons Laboratory, Kirtland AFB, New Mexico, Capt, USAF, Sr. Environmental Engineer - Experience with Civil and Environmental Engineering site support for complex USAF installations. Specific experience in solving problems concerned with water distribution; wastewater collection and treatment; and industrial waste treatment for major US Air Force maintenance and scientific facilities.

Education

University of Michigan
Major: Civil Engineering
Degree: Bachelor of Science, Civil Engineering –1963

University of Michigan
Major: Civil Engineering
Degree: MS, Sanitary Engineering –1964

University of Michigan
Major: Civil Engineering
Degree: PhD–1970

Professional Registrations

Registered Civil Engineer, Hawaii/1973/#3377
Registered Land Surveyor, Hawaii/1997/#9141
Registered Land Court, Hawaii/2004/#289

Professional Affiliations

American Council of Engineering Companies of Hawaii
Hawaii Land Surveyors Association
Society of American Military Engineers

Board

University of Hawaii, Board of Regents – 2004-2008, Vice Chair 2008

Steven L. Montgomery, Ph. D.

94-610 Palai Street
Waipahu, Hawai'i 96797-4535 USA
tel: (808) 676-4974 fax: (808) 677-3721 cell: (808)-342-6244
email: manninga001@hawaii.rr.com

BIOLOGICAL CONSULTING

Experienced field collector of invertebrates and plants in Hawai'i and the Pacific

- experienced with land and fresh water ecosystems
- especially successful at locating extremely rare species
- discovered 30+ new species; many new state records, localities, re-discoveries

EDUCATION

- 1984 Ph. D. (Entomology), College of Tropical Agriculture, University of Hawai'i, Manoa
Lepidoptera
- 1973 Master of Science (Entomology), College of Tropical Agriculture, Univ. of Hawai'i
Drosophila
- 1969 B. A. (Biology), Grinnell College, Iowa

WORK EXPERIENCE

- present - 1978 Biological Consultant, self-employed: provides scientific expertise on Hawai'i and the Pacific to private landowners, government agencies (surveys, collecting, identifications, checklists, and reports)
- 1988-82 Researcher, Hawai'i State Legislature
Rep. James Shon - Committees - Ocean and Marine Resources, Health
Sen. Anthony Chang - Committees - Environment, Judiciary
- 1980 Biological Consultant, Cooperative National Park Resources Studies Unit.
Examined stomach contents from native Hawaiian birds to identify food items using partial remains (*e.g.*, caterpillar jaw or fly wing)
- 1979 Assistant Botanist, Island Forest Bird Census Team, U. S. Fish and Wildlife Service
- 1978 Field consultant, co-author, *Unique Wildlife Ecosystems Concept Plan*,
U. S. Fish and Wildlife Service
- 1977-72 Natural Areas Specialist, Dept. of Land and Natural Resources,
Natural Area Reserves System Commission, State of Hawai'i
- 1972-64 Employed in biological projects and programs in Hawai'i, Oklahoma,
Louisiana, and Michigan for U.S. Public Health Service, U.S. Department
of Agriculture, Notre Dame University, and University of Hawai'i

FIELD EXPERIENCE

- since 1967 Extensive experience in the Hawaiian Islands of Ni'ihau, Kaua'i, O'ahu, Maui, Moloka'i, Lāna'i, Kaho'olawe, Hawai'i, Northwest Hawaiian Islands, off-shore islets
- 1988 and 1977 Scientific expeditions to several Pacific Islands, including the Marquesas, Tuamotu and Society Archipelagoes
- 1988 Scientific coordinator, Fatu Hiva Expedition in the Marquesas
- since 1964 Field work in divergent environments: New Zealand; Easter Island; New Guinea; Japan (Kyoto, Osaka, Tokyo), Ogasawara Islands (Chichi Jima, Ha ha Jima); Indonesia; French Polynesia; Palau; Cook Islands; British Columbia, Grenada - West Indies, Puerto Rico; Alaska, Arizona, Indiana, Iowa, Louisiana, Michigan

COMMUNITY NETWORKING and SERVICE

- since 1979 Research Associate in Entomology, Bishop Museum, Honolulu, HI
- 2002-2006 Land Use Commission, Governor's appointee, State of Hawaii
- 2000-1993 Natural Area Reserve System Commission, Governor's appointee,
1971-1970 State of Hawaii
- 1994-1976 Agriculture Department, Advisory Subcommittee on Plants

Examples of activity at decision making level:

- 'Ahahui Malama I Ka Lokahi - current Board member
- National Wildlife Federation - 1995 - elected Board of Directors, Western states; 28 years Hawaii representative; chaired national committees, including International Affairs
- Conservation Council for Hawai'i (National Wildlife Federation affiliate) Hawaii representative, 20 years; chaired several national committees

Recognition: selected awards

- 2010 Hawai'i Nature Center, 20 year volunteer recognition
- 2003 Hele Wawae Mamao Award, Hike Leader of the Year, Sierra Club High School Hikers
- 2002 Unsung Hero, Hawaii's Thousand Friends
- 2002 Koa Award, Conservation Council for Hawai'i
- 2000 Coral Reef Award, Conservation Council for Hawai'i
- 1998 Outstanding Citizen Wildlife Contributor of the Year, Western Association of Fish and Wildlife Agencies
- 1997 Hawai'i Environmental Education Association, Award of Excellence
Conservationist of Year, Earth Day Celebration Award
- 1996 Annual Conservation Service Award, Environmentalist of the Year,
Rotary Club of West Honolulu; State Senate & Honolulu City Council resolutions
Conservation Award, Hawai'i Audubon Society
- 1984 State House of Representatives, Resolution for Wildlife Week Service
- 1983 National Wildlife Federation, Conservation Service Citation
- 1980 Rep. Morris Udall, Alaska Coalition, Letter of Commendation
- 1971 National Science Foundation grant, Student Originated Studies,
Project Director - Hawai'i Dryland Ecology study with 9 member team

PUBLICATIONS and REPORTS

“Survey of Terrestrial Invertebrate Resources at Weliweli, Kōloa, Kaua‘i Island.” July 2011, report to AECOS for CIRI Land Development Company.

“Survey of Terrestrial Wildlife Resources at Kahuku, Ka‘ū, Hawai‘i Island.” February 2011, report to PBR Hawai‘i & Associates for Nani Kahuku ‘Āina, LLC. 73pp.

“Survey of Terrestrial Invertebrate Resources on agricultural lands at Honokōhau, North Kona, Hawai‘i Island.” Nov 2010, report to PBR Hawai‘i & Associates for Lanihau Properties.

“Survey of Terrestrial Invertebrate Resources at Honokōhau Makai, Honokōhau, North Kona, Hawai‘i Island.” Nov 2010, report to PBR Hawai‘i & Associates for Lanihau Properties.

“Regional Study Area Report for O‘ahu, terrestrial invertebrate resources, for Hawaiian Electric Big Wind O‘ahu Interconnection Project,” May 2010, report to CH2M Hill, Honolulu, for Hawaiian Electric Company, Inc.

“Weed and Pest Prevention and Response Plan for Rogers Ranch, Pu‘u Wa‘awa‘a, Hawai‘i,” April 2010. With Anita Manning.

“Results of survey for *Manduca* on *Nicotiana glauca* along Mamalahoa Highway (Route 190), Island of Hawaii.” February 2010, report to Parsons Brinckerhoff for Hawai‘i State Department of Transportation.

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Apr 24, 2008

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DISCOVERIES – a partial record

NEW SPECIES

Hawaiian Islands

flies

Drosophila montgomeryi, Wai'anae, O'ahu
D. antopocerus n. species, South Kona, Hawai'i
D. touchardia, on Olona shrub above Kahana, O'ahu
D. toxochaetae on Olona at Mapulehu, **Moloka'i**
D. paucicilia, Wai'anae, O'ahu
D. obatae
D. reynoldsiae
D. ohemakai Moloka'i
D. pulipes, Hawai'i

Asteia montgomeryi, N. Kona Wiliwili Branch Fly

Limonia hardyi [flightless crane fly]

Campsicnemus n. sp. [Mt. Ka'ala, O'ahu flightless long-legged fly]

moths

Agrotius n. sp. [summit ice cutworm noctuid]

Eupithecia n. sp. [East Maui orange]

E. new species #8 [Moloka'i, Maui, O'ahu bristly caterpillar]

Aumakua omaomao, Maui & Moloka'i populations

other

Nysius wekiuicola [Wekiu vampire bug] with F. G. Howarth

insects

Plagithmysus montgomeryi [akoko longhorn wood borer]

plants

Remya montgomeryi, Kaua'i [aster family]

Stenogyne campanulata, Kaua'i [woolly mint]

Perottetia n. sp., Mōhihi wet forest, Kaua'i [Olomea]

Hedyotis n. sp., Manono shrub Nāpali cliffs

Chamaesyce elenorae, Kalalau [cliff akoko or spurge]

Hibiscadelphus woodii, Kaua'i, with K. Wood

Pacific Islands

moths

Gymnoscelis montgomeryi on *Clematis* flower,
Ogasawara Islands [dimorphic looper]

Cleora sp, Ogasawara Islands [looper]

Asymphorodes montgomeryi, Marquesas Is. [micromoth]

flies

Chloropid n. sp., Orohena, Tahiti [flightless fly]

REDISCOVERIES

- Hawaiian Islands
snails *Cookeconcha*, Koloa, Kaua'i
 Newcombia, on pua, Oloku'i, Moloka'i
- insects *Micromus cookeorum*, flightless brown lacewing, Maui
 Eupithecia niphoreas [ambush predatory behavior]
 Theridion grallator, Happyface spider [notice of markings on back]
 Caconemobius schauinslandii, Pu'u'koa'e, Kaho'olawe
- plants *Chamaesyce olowaluan*, a tree akoko, with S. Perlman
- Marquesas *Trichometra*, flightless water measurer bug

NEW LOCALITIES

- Hawaiian Islands
plants *Euphorbia haeleleanum*, akoko, Ha'ele'ele Valley on Kaua'i
 Caesalpinia kavaiensis, uhiuhi, Koai'e, Kaua'i

NEW STATE and ISLAND RECORDS partial record

- arthropod *Schizomida*, Manoa Quarry cave, O'ahu, with F. G. Howarth
- insects *Hydrellia tritici*, rice leaf miner, Maui and Hawai'i
 Amiota Ephydridae, shore fly
- Agonum muelleri* (Herbst) (Coleoptera: Carabidae) Mauna Kea summit

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES**

601 Kamokila Boulevard, Suite 555
Kapolei, HI 96806

WILLIAM J. AHLA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOARDING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOHAWI (SI) AND RESERVE COMMISSION
LAND
STATE PARKS

April 11, 2013

Mr. Paul Nash, P.E.
Atlas Engineering, LLC.
P.O. Box 11188
Hilo, Hawai'i 96721
(c/o zp_nash@yahoo.com)

LOG NO: 2012.3020
DOC NO: 1304TD01
Archaeology

Dear Mr. Nash:

Subject: **Chapter 6E-42 Historic Preservation Review –
Hawai'i County Grading Permit for Construction of a Property Boundary Fence
Ponahawai Ahupua'a, South Hilo District, Island of Hawai'i
TMK: (3) 2-5-006: 141**

Thank you for requesting our review of the proposed application, which was received in our office October 9, 2012. We apologize for the delayed response. The permit is for after the fact work to install a fence along the property boundary of an approximately 41-acre portion of the 72.34-acre parcel. The parcel is owned by the State of Hawaii and leased to Connections Charter School. The work consisted of grading and grubbing along a 25 foot wide path to allow access for wire fence installation around the area identified as the lower campus. Total area affected by the work was 4.3 acres.

The project area was subjected to an archaeological field survey, during which no historic properties were identified (Reeve & Cleghorn 2010). Dense vegetation restricted surface visibility during the survey; however, the entire parcel is situated on a late 19th century lava flow, which limits the likelihood of surface archaeological resources. Our office previously requested that the full extent of a known lava tube system (Kaumana Cave) be examined beneath this parcel in order to verify whether historic properties are presence in subterranean contexts (Letter dated September 24, 2009, Log 2009.3291, Doc. 0909TD2). Additional fieldwork was conducted within the cave, and it was concluded that the cave was beneath the upper campus area only, and that no historic properties were present within the portions of the cave that run beneath the upper campus area (Reeve 2010).

Given the negative findings of the surface survey, and the absence of any newly discovered cave openings during the subject ground work, we believe that **no historic properties were affected** by this project.

Please contact Theresa K. Donham at (808) 933-7653 if you have any questions or concerns regarding this letter.

Aloha,

A handwritten signature in black ink, appearing to read "Theresa K. Donham".

Theresa K. Donham
Archaeology Branch Chief

Exhibit A-20

DAVID M. LOUIE 2612
Attorney General of Hawaii

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Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANT'S CONNECTIONS NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS);
Application for Special Permit Application	)	CERTIFICATE OF SERVICE
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:


SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
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101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October 3, 2013.



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Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
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COMMUNITY BASED EDUCATION
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BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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Application for Special Permit Application)	CERTIFICATE OF SERVICE
No. 12-000138)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

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I HEREBY CERTIFY that on October 4, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
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DATED: Honolulu, Hawaii October 3, 2013.



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DATED: Honolulu, Hawaii October _____, 2013.

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DATED: Honolulu, Hawaii October 4, 2013.



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BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

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BASED EDUCATION SUPPORT)	APPLICANT'S CONNECTION NEW
SERVICES)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS) JOINT
Application for Special Permit Application)	SUBMISSION OF APPLICANT'S WITNESS
No. 12-000138)	LIST ; CERTIFICATE OF SERVICE
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

I HEREBY CERTIFY that on October 4, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiintel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiintel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October 3, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S WITNESS LIST

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES, hereby submits its Joint
Submission of Applicant's Witness List attached hereto and through its undersigned counsel,
CARTER K. SIU and TED H.S. HONG, hereby provides notice that they intend to call the
following witnesses to testify as the Contested Case Hearing.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October 4, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana, South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
John Thatcher – Principal Connections	Applicant	Application		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Joan Derbyshire – CBESS	Applicant	Application		A1, A2, A3, A4, A5 A6 & A7	15 mins.
Celia Shen, Senior Planner	Land Use	Application		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Phillip Rowell, Traffic Engineer	Traffic	Traffic Report		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Ron Thiel, County of Hawaii Traffic Division	Traffic	Traffic Report, Traffic Conditions		A1, A2, A3, A4, A5 A6 & A7	15 mins.
Kevin Lumo, Engineer	Water Use	Water Use		A8	30 mins.
Kurt Inaba, Engineer Department of Water Supply	Water Use	Water Use, Water Conditions		A8	15 mins.

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana,

South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Duane Kanuha, Planning Director	Land Use Regulatory Process and Entitlements	Land Use, Procedure and Process		A2, A3, A4, A5, A6 & A7	15 mins.
Bobby Jean Leithead Todd, Past Planning Director	Land Use Regulatory Process and Entitlements	Land Use, Procedure and Process		A2, A3, A4, A5, A6 & A7	30 mins.
Sidney Fuke		Land Use, Community Issues		A2, A3, A4, A5, A6 & A7	45 mins.
Layne Novak		Community Issue		A2, A3, A4, A5, A6 & A7	45 mins.
Terence T. Yoshioka		Land Use, Community Issues		A2, A3, A4, A5, A6, A7 & A9	45 mins.
Melvin Yokota		Traffic, Community Issues		A2, A3, A4, A5, A6, A7 & A10	45 mins.
Allen L. Novak		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
June Sakamoto		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
David Camacho		Water, Traffic, Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jan Yokota		Community Issues		A2, A3, A4,	15 mins.

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana,

South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Glenn Tada		Community Issues		A5, A6 & A7	15 mins.
Ming Peng		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jan Yokoyama		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jason Phillip Turner		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jennifer Sims Turner		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANT'S CONNECTIONS NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS);
Application for Special Permit Application	)	CERTIFICATE OF SERVICE
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

**APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S WITNESS LIST**

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES, hereby submits its Joint
Submission of Applicant's Witness List attached hereto and through its undersigned counsel,
CARATER K. SIU and TED H.S. HONG, hereby provides notice that they intend to call the
following witnesses to testify as the Contested Case Hearing.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

DATED: Honolulu, Hawaii October 3, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

I HEREBY CERTIFY that on October 4, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiintel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiintel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October 4, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

6

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

SHARON Henry

Signature of Party Served:

Sharon Henry

Address Where Served:

1100 Kanoelohua Ave, Hilo 96720

Type of Document Served

Subpoena. Notice To Appear
for B.J. Ventresca, Todd

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Dianthu R. Cañillo

Print Name of Server Dianthu R. Cañillo

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: BOBBY JEAN LEITHEAD
Application for Special Permit Application	)	TODD]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

BOBBY JEAN LEITHEAD TODD
Address: 2100 Kanoelehua Avenue Hilo, Hawaii 96720
Phone: (808)961-8083

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Monday, October 21, 2013

TIME:

1:00 p.m. to 3:00 p.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Kurt Inaba

Signature of Party Served:

Kurt Inaba

Address Where Served:

915 Kikuanana St. Apt. 20, Hilo, 96720

Type of Document Served

Subpoena - Notice To Appear

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Dianthu K. Castillo

Print Name of Server Dianthu K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: KURT INABA]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

KURT INABA
Address: 345 Kekuanaoa Street, Suite 20, Hilo, Hawaii 96720
Phone: (808)961-8050

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Ron Thiel

Signature of Party Served:

Ronald R. Thiel

Address Where Served:

108 Railroad Ave. Hilo 96720

Type of Document Served

Subpoena Noticed to Appear

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Diantho K. Castillo

Print Name of Server Diantho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: RON THEIL]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

RON THEIL
Address: 108 Railroad Avenue Hilo, Hawaii 96720
Phone: (808)961-8341

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Monday, October 21, 2013

TIME:

11:00 a.m. to 1:00 p.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Duane Kanuha

Signature of Party Served:



Address Where Served:

101 Paunahi St., Pt. B. Hilo 96720

Type of Document Served

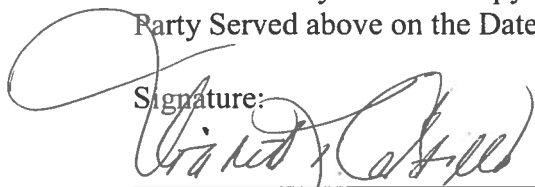
Subpoena - Noticed To Appear

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Dyantho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: DUANE KANUHA]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

DUANE KANUHA
Address: 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720
Phone: (808)961-8288

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Monday, October 21, 2013

TIME:

1:00 a.m. to 3:00 p.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:
Glen Tada

Signature of Party Served:


Address Where Served:
959 Edith St., Hilo 96720

Type of Document Served
Subpoena

Date of Services:
10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: GLENN TADA]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

GLENN TADA
Address: 259 Edita Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

10:30 a.m. to 11:30 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Junio Pukamotu

Signature of Party Served:

Junio Pukamotu

Address Where Served:

1439 Makemaku St. Hilo 96720

Type of Document Served

Public Hearing

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Wanda J. Child

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: JUNE SAKAMOTO]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

JUNE SAKAMOTO
Address: 1439 Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

10:00 a.m. to 11:00 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC)
CHARTER SCHOOL AND COMMUNITY)
BASED EDUCATION SUPPORT)
SERVICES) RETURN OF SERVICE,
) ACKNOWLEDGMENT OF SERVICE
)
Application for Special Permit Application)
No. 12-000138)
)
TMK: (3)2-5-006:141; Kaumana, South Hilo,)
Island of Hawaii)

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Ming Peng

Signature of Party Served:

[Handwritten Signature]

Address Where Served:

1541 Makemahu Dr. Hilo 96720

Type of Document Served

Subpoena

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: MING PENG]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE
OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

MING PENG
Address: 1547 Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday October 22, 2013

TIME:

10:30 a.m. to 11:30 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Jan Yokota

Signature of Party Served:

Jan Yokota

Address Where Served:

1358 A. Molo Manu St. Hilo 96720

Type of Document Served

Subpoena

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Signature]

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: JAN YOKOTA]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE
OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

JAN YOKOTA
Address: 1358-A Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

10:00 a.m. to 11:00 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Jan Yokota

Signature of Party Served:

Jan Yokota

Address Where Served:

1358 A. Molo Manu St., Hilo 96720

Type of Document Served

Subpoena - Melvin Yokota

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS:MELVIN H. YOKOTA]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

MELVIN H, YOKOTA
Address: 1358-A Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

8:00 a.m. to 10:00 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Jan Yokota

Signature of Party Served:

Jan Yokota

Address Where Served:

1358 A Molo Manu St. Hilo 96720

Type of Document Served

Subpoena Duces Tecum
for Melvin Yokota

Date of Services:

10-9-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Signature]

Print Name of Server

Acknowledgement of Hearings Officer

Sandra Song

ORIGINAL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA DUCES TECUM; NOTICE TO A
CHARTER SCHOOL AND COMMUNITY	)	PERSON OR ENTITY SERVED; WITH A
BASED EDUCATION SUPPORT	)	SUBPOENA DUCES TECUM WHO IS NOT
SERVICES	)	A PARTY TO THIS CASE
)	
Application for Special Permit Application	)	[WITNESS:MELVIN H. YOKOTA]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

MELVIN H. YOKOTA
Address: 1358-A Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear before a Notary Public from Island Court Reporting & Transcription Services at a County of Hawaii Windward Planning Commission Contested Case Hearing (County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, Hawaii 96720), who is duly authorized to administer oaths, on **Monday, October 21, 2013; commencing at 9:00 AM**, to testify as a witness on the part of the Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) at the taking of an oral deposition in the above-entitled matter.

YOU ARE FURTHER ORDERED to bring with you the original and 4 copies for a total of 5 sets of the books, papers, documents or other things in your possession or under your control, described as follows:

1. Your current Curriculum Vitae.
2. Any and all Traffic Impact Analysis Report (TIAR) you have authored, co-authored, and/or provided data for within the past two (2) years.
3. Any and all study of traffic you have authored, co-authored, and/or provided data for within the past two (2) years.
4. Any and all regulatory and/or land use entitlement applications that you have authored, co-authored and/or provided data for within the past two (2) years.
5. Any and all documents and correspondence memoranda, letters, correspondence, emails within the past two (2) years to present, that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

6. Any and all communications from directors or officers of the group Kaumana community association to members of the group Kaumana community association within the past two (2) years to present that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

WITNESS, you are hereby commanded to appear at the time and place indicated to testify; you are to bring all of the above described records with you.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

**NOTICE TO A PERSON OR ENTITY SERVED WITH A
SUBPOENA DUCES TECUM WHO IS NOT A PARTY TO THIS CASE**

The Subpoena attached hereto should specifically set forth the materials sought to be subpoenaed. Any person and/or entity or their attorney objecting to the Subpoena or to disclosure of any materials subpoenaed shall appear on the date and at the time and place for return indicated on the Subpoena and State their objections. Failure to object on the return date may be considered a waiver of any objections.

The person or entity subpoenaed or their counsel may submit a written statement of objections to the Hearings Officer listed above. If a person or entity objects to disclosure of only part of the material, the pages or sections of material considered confidential and/or nondisclosable shall be tabbed or marked for the Hearings Officer.

Matters presented at the return may be continued from time to time without further notice except as announced at the time of return.

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Terence Yoshioka

Signature of Party Served:

Terence Yoshioka

Address Where Served:

1572 Molo Manu St. Hilo 96720

Type of Document Served

Subpoena

Date of Services:

10-14-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server Diantho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA DUCES TECUM; NOTICE TO A
CHARTER SCHOOL AND COMMUNITY	)	PERSON OR ENTITY SERVED; WITH A
BASED EDUCATION SUPPORT	)	SUBPOENA DUCES TECUM WHO IS NOT
SERVICES	)	A PARTY TO THIS CASE
)	
)	
Application for Special Permit Application	)	[WITNESS:TERENCE YOSHIOKA]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

TERENCE YOSHIOKA
Address: 1572 Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear before a Notary Public from Island Court Reporting & Transcription Services at a County of Hawaii Windward Planning Commission Contested Case Hearing (County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, Hawaii 96720), who is duly authorized to administer oaths, on **Monday, October 21, 2013; commencing at 9:00 AM**, to testify as a witness on the part of the Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) at the taking of an oral deposition in the above-entitled matter.

YOU ARE FURTHER ORDERED to bring with you the original and 4 copies for a total of 5 sets of the books, papers, documents or other things in your possession or under your control, described as follows:

1. Your current Curriculum Vitae.
2. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 343.
3. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 205A.
4. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR Title 15, Chapter 15.
5. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR§15-15-95(e).

6. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to the Charter of the County of Hawaii.

7. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to the County of Hawaii Planning Department Rules and Procedures.

8. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to County of Hawaii Planning Commission Rule 6.

9. Any and all documents and correspondence memoranda, letters, correspondence, emails within the past two (2) years to present, that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

10. Any and all communications from directors or officers of the group Kaumana community association to members of the group Kaumana community association within the past two (2) years to present that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

WITNESS, you are hereby commanded to appear at the time and place indicated to testify; you are to bring all of the above described records with you.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Terence Yoshioka

Signature of Party Served:

Terence Yoshioka

Address Where Served:

1572 Mele Manu Street, Hilo 96720

Type of Document Served

Subpoena Duces Tecum

Date of Services:

10.14.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server Dionicio K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: TERENCE T. YOSHIOKA]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE
OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

TERENCE T. YOSHIOKA
Address: 1572 Mele Manu Street, Hilo, Hawaii 96720
Phone: (808)934-9198

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

8:00 a.m. to 10:00 p.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

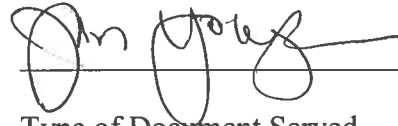
In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Jan Yokoyama

Signature of Party Served:



Address Where Served:

1800 Kaumana Dr., Hilo 96720

Type of Document Served

Subpoena

Date of Services:

10-14-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Diantho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR) WHO IS
CHARTER SCHOOL AND COMMUNITY	)	NOT A PARTY TO THIS CASE
BASED EDUCATION SUPPORT)	
SERVICES)	
	)	[WITNESS: JAN YOKOYAMA]
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

JAN YOKOYAMA
Address: 1300 Kaumana Drive, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

10:30 a.m. to 11:30 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of

) SPP No. 12-000138

)

)

CONNECTION NEW CENTURY PUBLIC
CHARTER SCHOOL AND COMMUNITY
BASED EDUCATION SUPPORT
SERVICES

)

)

)

) RETURN OF SERVICE,
) ACKNOWLEDGMENT OF SERVICE

)

Application for Special Permit Application
No. 12-000138

)

)

)

)

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

)

)

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Signature of Party Served:

Allen Novak

Allen Novak

Address Where Served:

Type of Document Served

1979 Haili Street, Hilo, HI 96720

Subpoena

Date of Services:

10.15.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Dianthe K. Casilla

Print Name of Server Dianthe K. Casilla

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of

) SPP No. 12-000138

)

)

CONNECTION NEW CENTURY PUBLIC
CHARTER SCHOOL AND COMMUNITY
BASED EDUCATION SUPPORT
SERVICES

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Application for Special Permit Application
No. 12-000138

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

) SUBPOENA (NOTICE TO APPEAR) WHO IS
) NOT A PARTY TO THIS CASE

) [WITNESS: ALLEN L. NOVAK]

SUBPOENA

THE STATE OF HAWAII:

TO: THE SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY, OR ANY POLICE
OFFICER IN THE STATE OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness

ALLEN L. NOVAK
Address: 1414 C Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, October 22, 2013

TIME:

10:00 a.m. to 11:00 a.m.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

SANDRA P. SONG
Hearings Officer

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANT'S CONNECTION NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS) JOINT
Application for Special Permit Application	)	SUBMISSION OF APPLICANT'S FIRST
No. 12-000138	)	AMENDED WITNESS LIST ; CERTIFICATE
	)	OF SERVICE
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S FIRST AMENDED WITNESS LIST

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES, hereby submits its Joint
Submission of Applicant's Witness List attached hereto and through its undersigned counsel,
CARTER K. SIU and TED H.S. HONG, hereby provides notice that they intend to call the
following witnesses to testify as the Contested Case Hearing.

This notice is brought pursuant to the deadline set at the August 22, 2013 pre-hearing
conference held by Hearings Officer Sandra Song.

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October 15, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

**APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF APPLICANT'S FIRST AMENDED WITNESS LIST**

Applicant's CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
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DATED: Honolulu, Hawaii October 15, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL

DATED: Hilo, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

PAGE NO. 1

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana, South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES – First Amended

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
John Thatcher – Principal Connections	Applicant	Application		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Joan Derbyshire – CBESS	Applicant	Application		A1, A2, A3, A4, A5 A6 & A7	15 mins.
Celia Shen, Senior Planner	Land Use	Application		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Phillip Rowell, Traffic Engineer	Traffic	Traffic Report		A1, A2, A3, A4, A5 A6 & A7	30 mins.
Ron Thiel, County of Hawaii Traffic Division	Traffic	Traffic Report, Traffic Conditions		A1, A2, A3, A4, A5 A6 & A7	15 mins.
Kevin Lumo, Engineer	Water Use	Water Use		A8	30 mins.
Kurt Inaba, Engineer Department of Water Supply	Water Use	Water Use, Water Conditions		A8	15 mins.

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana,

South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES – First Amended

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Dennis I. Hirota	Civil Engineer	Civil Engineer		A1, A8	15 mins.
Steve Tomei	Civil Engineer	Civil Engineer		A1, A8	15 mins.
Duane Kanuha, Planning Director	Land Use Regulatory Process and Entitlements	Land Use, Procedure and Process		A2, A3, A4, A5, A6 & A7	15 mins.
Bobby Jean Leithead Todd, Past Planning Director	Land Use Regulatory Process and Entitlements	Land Use, Procedure and Process		A2, A3, A4, A5, A6 & A7	30 mins.
Kristen K. Kua		Hawaiian Protocols and Connection to the Aina			15 mins.
David Miranda		Natural history, teachings and protocols of native plants and connection to the aina			15 mins.
Sidney Fuke		Land Use, Community Issues		A2, A3, A4, A5, A6 & A7	45 mins.
Layne Novak		Community Issue		A2, A3, A4, A5, A6 & A7	45 mins.
Terence T. Yoshioka		Land Use, Community Issues		A2, A3, A4, A5, A6, A7 & A9	45 mins.

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO./APPLICATION: Special Permit Application No. 12-000138; TMK(3)2-5-006:141 Kaumana,

South Hilo, Island of Hawaii, County and State of Hawaii

PARTY: Joint Submission by Connections New Century Public Charter School AND Community Based Education Support Services

LIST OF WITNESSES – First Amended

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Melvin Yokota		Traffic, Community Issues		A2, A3, A4, A5, A6, A7 & A10	45 mins.
Allen L. Novak		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
June Sakamoto		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
David Camacho		Water, Traffic, Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jan Yokota		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Glenn Tada		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Ming Peng		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jan Yokoyama		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jason Phillip Turner		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.
Jennifer Sims Turner		Community Issues		A2, A3, A4, A5, A6 & A7	15 mins.

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
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Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
)	
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CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	APPLICANT'S CONNECTIONS NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS);
Application for Special Permit Application	)	CERTIFICATE OF SERVICE
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720


Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
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Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October 15, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

I HEREBY CERTIFY that on October 15, 2013, I caused a true and correct copy
of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
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County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October 15, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

DAVID M. LOUIE 2612
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ORIGINAL

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COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	APPLICANTS CONNECTION NEW
CHARTER SCHOOL AND COMMUNITY	)	CENTURY PUBLIC CHARTER SCHOOL and
BASED EDUCATION SUPPORT	)	COMMUNITY BASED EDUCATION
SERVICES	)	SUPPORT SERVICES (CBESS) JOINT PRE-
	)	HEARING BRIEF; CERTIFICATE OF
	)	SERVICE
Application for Special Permit Application)	
No. 12-000138	)	HEARINGS OFFICER - SANDRA SONG
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,	)	<u>HEARING DATE:</u>
Island of Hawaii	)	OCTOBER 21 AND 22, 2103

APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION
OF A PRE-HEARING BRIEF

Applicants CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES, by and through its undersigned counsel through its undersigned counsel, CARTER K. SIU and TED H.S. HONG, submits their Joint Pre-Hearing Brief.

A. INTRODUCTION

This is a contested case hearing regarding the Application of CONNECTION NEW CENTURY PUBLIC CHARTER SHOOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICE (“CBESS”), hereinafter Applicants for a Special Permit to allow the development of a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres situated in the State Land Use Agricultural District. The Property is owned by the State of Hawaii and is approximately 70 acres in size and is located in Kaumana, South Hilo, on the eastern side of the island of Hawaii and is identified as Tax Map Key (3) 2-5-006: 141 (hereinafter “Property”).

The owner of the Property is the State of Hawaii, it has entered into General Lease No. S-6029 between the State of Hawaii and Connections New Century Public Charter School and it has consented to the request for the Special Permit.

The Planning Department received a Petition for Standing in Contested Case Hearing from Jeffrey Gomes on March 7, 2013. Mr. Gomes is an adjacent property owner. Mr. Gomes was granted standing at the Windward Planning Commission’s March 7, 2013 meeting. On March 7, 2013 the Windward Planning Commission also confirmed the Applicants were a Party in the Contested Cased Hearing.

B. THE HAWAII COUNTY SPECIAL PERMIT APPLICATION PROCESS

Section 25-5-72(c) of the Hawaii County Code (Zoning Code) provides that certain uses are permitted in the County's agricultural district, provided that a special permit is obtained for such uses if the property is located within the State Land Use Agricultural District. Among these uses are guest ranches, lodges, meeting facilities, as well as uses that are not specifically listed but which meet the standards for a special permit under Chapter 205, Hawaii Revised Statutes (HRS). Section 25-5-72(d) requires use permits in the County Agricultural District and special permits if in the State Land Use Agricultural District. Section 25-5-72(d)(7), includes "schools" as a permitted use.

HRS, Section 205-6 governs special permits in the State Land Use Agricultural classification. Under this section, the County Planning Commission has the authority to grant special permits which allow ". . . certain unusual and reasonable uses with agricultural and rural districts other than those for which the district is classified." HRS, Section 205-6(a). The Planning Commission may provide protective restrictions and permit the desired use, if the use would promote the effectiveness and objectives of Chapter 205. A decision in favor of the applicant requires a majority vote of the Planning Commission. Because the Property in this contested case hearing involves more than fifteen acres of land, the Planning Commission forwards a favorable decision/recommendation to the State Land Use Commission, who will meet separately from the county planning commission to consider the Special Permit application. A denial by the Planning Commission is appealable to the Circuit Court and is not forwarded to the State Land Use Commission.

The Hawaii County Planning Commission's Rule 6 governs the special permit process. An application is required to provide a statement of the reasons for the granting of the special permit citing how the proposed use would promote the effectiveness and objectives of HRS, Chapter 205 and why the proposal is an unusual and reasonable use of the land is also required.

Planning Commission Rule 6-3(b)(5) provides that the following criteria are also to be

addressed:

- (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (B) The desired uses shall not adversely affect surrounding properties;
- (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (F) The propose use will not substantially alter or change the essential character of the land and the present use; and
- (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Pursuant to Rule 6-6, the Planning Commission shall not approve a Special Permit unless it is found that the proposed use: (a) is an unusual and reasonable use; and (b) would promote the effectiveness and objectives of Chapter 205, HRS. The Planning Commission also considers the criteria listed under Rule 6-3(b)(5)(A) through (G). Within 30 days after the close of the hearing or within such longer period of time as may be agreed upon, the commission shall either approve the permit (or submit it to the Land Use Commission with a favorable recommendation) by stating the reasons and attaching appropriate performance conditions or deny it by stating the reasons for denial. Id. at Rule 6-7.

C. CONTESTED CASE PROCEDURE

Contested cases are governed by Rule 4 of the Planning Commission's Rules of Practice and Procedure and by HRS, Chapter 91. Under Rule 4-7, the applicant and the Planning Director are designated parties to the action. Persons requesting intervention must demonstrate that their interest is clearly distinguishable from that of the general public or that they have some property

interest in the land or lawfully reside on the land or that even if they do not have an interest different than the public generally, or that the proposed action will cause them actual or threatened harm. Additionally, persons who are descended of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 and practice those rights that are customarily and traditionally exercised for subsistence, culture or religious purposes may be admitted as parties. Id. at Rule 4-7.

Under Rule 4-5, the presiding officer may be the Chairperson of the Planning Commission, one of its members or a hearings officer duly appointed and designated. Sandra P. Song was duly appointed and designated the Hearings Officer for the instant case. The Hearings Officer held a pre-hearing conference on August 22, 2013 and set the following deadlines: the submission of witness lists, exhibit lists and the exchange of exhibits were due on October 4, 2013; all requests for subpoenas, together with the proposed subpoenas to be issued were due no later than October 4, 2013; submission of any motions in this case were due on October 11, 2013; if any party chose to file a pre-hearing memorandum or brief, the deadline for submission of such brief or memorandum is October 17, 2013. The hearing on this matter is scheduled for October 21 and 22, 2013.

Upon completion of taking evidence, the Hearings Officer shall prepare a report, setting forth findings of fact, conclusions of law, and the reasons therefore and submit a recommended order and report to the Planning Commission. Id. at Rule 4-29.

D. THE PETITION FOR SPECIAL PERMIT

The application is a request for Special Permit for the development of a new academic campus that would include an elementary, intermediate and high school facilities and common facilities to support these programs and phased in over a period of time. The campus would also include facilities for a forestry/conservation program, a sustainable agricultural program and a

small intergenerational program that would provide childcare and elder care at a single facility.

Planning Commission Record at 28.

All major school facilities are proposed to be located within the lower parcel. Buildings would be small in scale and organized in clusters of single-story buildings to minimize any visual impact. Subject to reasonable use conditions, major school facilities could include the elementary, intermediate and high school classrooms buildings, the administrative center, the library/resource center, the kitchen/dining facility, a gymnasium/multi-purpose building, green/shade houses, a 6-horse barn, a maintenance building, a 30-person dormitory, a caretaker's residence, and a small facility to house the intergenerational program. When the entire project is built out, the facilities would support a projected 167 elementary students, 107 intermediate students, 107 high school students, and 25 intergenerational clients. Approximately 14 acres of the lower parcel's eastern portion would be allocated for agriculture and forestry uses. Cultivated crops are anticipated to include fruits and vegetables, native trees and plants, and ornamental plants. The total gross square footage of the campus facilities when all constructed would be approximately 90,000 square feet.

While no major school facilities are being proposed for the upper parcel, Applicant intends to use this land area to support a future forestry/conservation program, which focuses on forest resource management and conservation, and forest ecosystem restoration. It is currently estimated that roughly 20 acres of the upper parcel could be used for reforestation projects. A walkway is being proposed for the upper parcel to provide access and viewing opportunities within the forest and minimize any impact on the land. The walkway would be elevated on posts and is the only structure to be built on the upper parcel.

The proposed phased development is projected to take from 16 to 25 years. This timetable is dependent on the Applicant's ability to obtain the necessary financial resources. Construction of the proposed project will likely be implemented in approximately nine (9)

phases. Generally, the Applicants would sequence the building of these phases accordingly : 1) agriculture and forestry/conservation programs and caretaker's residence; 2) high school facilities; 3) intermediate school facilities; 4) elementary school facilities; and 5) gymnasium/multi-purpose facility, dormitory, residence, and intergenerational facility.

The Property is located on land that has a State Land Use Designation of Agricultural. Id. at 25. It is zoned as Agricultural-1 acre (A-1a) and designated as "Low Density Urban on the General Plan Land Use Pattern Allocation Guide ("LUPAG") Map. Id. The Property is not located adjacent to or near any shoreline or mountain areas, therefore the project would not affect public access to these resources. Id. at 40.

The surrounding lands to the south and west are similarly zoned A-1a. Further south are properties zones A-20a and A-10a. To the north are properties zoned RS-10 and RS-15, with some properties zones A-3a further north across Kaumana Drive. There is a property zoned Open that adjoin the lower parcel to the northeast. Surrounding uses consist mainly of single family residences and vacant lands, with some agricultural activity occurring in the area. Id. at 778. Soils within the Property are classified as "D" and are not classified as Agricultural Lands of Importance to the State of Hawaii (ALISH). Id. at 25.

An archaeological assessment survey of the Property was conducted in 2008 and a supplemental field inspection of Kaumana Cave was also conducted at the request of the State Historic Preservation Division (SHPD). Id. at 36. The entire project area is situated on the 1880-1881 lava flow and as a result it is surmised that any pre-existing archaeological or historic sites within the project area would have been destroyed by the flow. No archaeological sites were encountered during the filed investigation. Id. at 36-37. The field inspection of the accessible portion of Kaumana Cave (which underlies the upper parcel of the Property) found that no historic elements, with the exception of pecked names, were encountered. Id. at 37. There have

been no identified traditional or customary native Hawaiian rights exercised at the Property. Id. at 39.

Similarly, a biological assessment, which encompassed flora, vertebrate and invertebrates, was completed. The assessment concluded that there is nothing unique about the Property or its vegetation and the construction and operation of the proposed school would not adversely impact native avian or mammalian resources. Id. at 37-38.

Access to the Property is via Edita Street, which extends off Kaumana Drive in a southeasterly direction, forming a 3-way intersection. The paved width of Edit Street fronting the Property is approximately 48 feet, which accommodates the two travel lands (20 feet), a 20-foot shoulder on the northeast or Makai side of the road, and an 8-foot shoulder on the southwest or mauka side. The street and roadway is in good condition. Id. at 40. According to a Traffic Impact Analysis Report conducted during the environmental assessment process, the proposed use is not expected to generate large increases in traffic volumes and would not result in adverse impacts to traffic and circulation patterns in the project area. Id. at 41. However, the TIAR did conclude that school related vehicles turning left into the project would cause delays to through traffic along Edita Street unless a separate left turn lane is provided for left turns from eastbound Edita Street into the Lower Campus at Road A. Id. at 295.

The Hawaii County Department of Water Supply (DWS) provides water to the area via an existing 8-inch waterline along Kaumana Drive and from an existing 8-inch waterline along Edita Street. The current water availability, which is subject to change is limited to a maximum of seven units of water per pre-existing lot of record. Each unit of water is equal to a maximum of 600 gallons per day; therefore, a maximum of 4,200 gallons per day is available for the proposed project.

E. THE PROPOSED PROJECT SATISFIES THE REQUIREMENTS FOR A SPECIAL PERMIT

The Applicants have fulfilled all requirements of Rule 6-7, Rules of the Planning Commission. The proposed use is unusual because a school is not normally considered agricultural in nature. However, it is a reasonable use that a school be located within the Agricultural district because communities within Agricultural districts require certain services that support the agricultural community in which they are located, including schools. In addition, the proposed use also includes activities related to agricultural education, such as a forestry resource management and conservation program, and forest ecosystem restoration program. The Applicants also intend to grow and cultivate crops such as fruits, vegetables, native trees and plants, and ornamental plants on the Property as part of its curriculum.

The proposed development also complies with the criteria listed under Section 6-3(b)(5)(A) through (G), Rules of the Planning Commission:

Rule 6-3(b)(5)(A). Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The law is intended to preserve, protect and encourage the development of lands in the State of Hawaii for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. For lands in the Agricultural district, the intent is to preserve or keep lands of high agricultural potential in agricultural use. However, some agricultural lands may not be suited for agricultural use, but are classified as such. The soil on the subject Property is classified as “D” or “Poor” by the LSB’s Detailed Land Classification System and is identified mainly as pahoehoe lava flow by the US Soil Survey. Based on this information, the land upon which the proposed use is sought is unsuited for agricultural uses permitted within the Agricultural District. The law allows uses that may not be strictly agricultural in nature yet are reasonable within the district.

The special permit process for usual and reasonable uses within the Agricultural district is available. This is the case herein.

In addition, the project will encourage and promote agricultural activities, such as forest resource management and conservation and forest ecosystem restoration.

Rule 6-3(b)(5)(B). The desired use would not adversely affect surrounding properties. An adverse effect is defined as an unwanted and unanticipated result of taking a particular action. Here, the action is to develop a K to 12 charter school campus with support facilities and related uses on approximately 70 acres of land. Anticipated impacts that would adversely affect surrounding properties from the proposed use are an increase in traffic to the area and an increase of noise. These impacts, however, can be mitigated to minimize their adverse affect to surrounding properties through conditions of approval of the Special Permit. As the TIAR recommended, a separate left turn land shall be provided for left turns from eastbound Edita Street into the Lower Campus at Road A. Based on Community concerns, the Applicants have relocated the campus in an area of the makai parcel furthest away from any residences. Additionally, to help mitigate noise and visual impacts, landscaping will be required along the perimeter of the Property.

Rule 6-3(b)(5)(C). Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Based upon the comments received from various public agencies, the following will be done to ensure that the proposed use shall burden public agencies:

1. Department of Public Works – Traffic Division: As previously mentioned, a condition of approval will be added to require applicant to construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at

Road A. In addition, comments were received from DPW-Traffic Division requesting that Connections submit a traffic management plan to be reviewed and approved by DPW-Traffic Division in consultation with the Police Department. The plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. Finally, the Applicant shall also provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road.

2. Police Department: The Police Department commented that the section of Edita Street from Kaumana Drive leading to the Property has no pavement off of the travel portion of the roadway and would be unsafe for pedestrian traffic. To address this comment from the Police Department, a condition of approval will be added requiring Connection to add an 8-foot paved shoulder along the northeastern (Makai) side of Edita Street from the south end of the Property to the intersection of Edita Street and Kaumana Drive.

3. Department of Water Supply: County water is available for up to a maximum daily usage of 4,200 gallons per day from an existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus. The Property is assigned seven (7) units of water, which equates to an average usage of 600 gallons per day per unit of water (4,200 gpd). The project construction and occupancy will be phased in over a period of time. Sufficient water exists to meet the County's water requirements for several of the first phases of the project. Additionally, the existing 8-inch waterline within Edita Street is looped and therefore adequate to provide the required 2,000 gallons per minute of flow for fire protection, as per the Department's Water System Standards for schools. Potable water

needs will be met by connecting to the existing county water supply infrastructure. Non-potable water supply needs will be met with an extensive rainwater collection system consisting of catchment tanks, storage reservoirs/tanks with a network of water lines to distribute the collected water throughout the campus. The potable water system and the catchment system cannot be interconnected. It may become evident during the design of the development that a potable well is needed, at which time Connection will then need to conduct additional detailed analysis and explore other alternatives that could require the need to apply for additional permits.

4. State Department of Health: There is no municipal wastewater system currently serving the Kaumana area. The Applicants provide for its own waste water system in compliance with State Department of Health and federal regulations.

Based upon the above discussion, conditions of approval shall be utilized to insure that the proposed use does not burden public agencies to provide additional services.

Rule 6-3(b)(5)(D). Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. Although the Property and surrounding areas are designated for agricultural uses by both State and County land use laws, through the issuance of a Special Permit, various "non-agricultural" services may be allowed, including schools.

Rule 6-3(b)(5)(E). The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the soil is classified as "D" or "Poor" by the LSB's Detailed Land Classification System and is identified mainly as pahoehoe lava flow by the US Soil Survey. Based on this

information, the land upon which the proposed use is sought is unsuited for agricultural uses permitted within the Agricultural District. Although the Property is unsuited for agricultural use, The Applicants will have an agricultural program and a forestry/conservation program as part of its curriculum. The agricultural program facilities would be conducted on the lower parcel only and include green houses, cultivated gardens and horse barn. The forestry/conservation program, which focuses on forest resource management, conservation, and forest ecosystem restoration, would use limited parts at the upper parcel as an outdoor learning site.

Rule 6-3(b)(5)(F). The use will not substantially alter or change the essential character of the land and the present use. The current character and present use of the Property is undeveloped, vacant of structures and uses. The current character of the surrounding area is residential to the north and residential/agricultural to the south. The present use of the surrounding area is residential with very limited agricultural activity and vacant land. The proposed use will alter or change the essential character of the makai parcel and its present use from its current vacant, undeveloped character. The school buildings will be constructed as single story structures, with a low, minimal visual profile to lessen any visual change to the essential character of the land. The Applicants have designed the campus to match the surrounding rural characteristics instead of an institutional character typical of a public school campus.

Rule 6-3(b)(5)(G). The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of its goals and policies to guide coordinated growth and development of the County. It is a graphic depiction of the physical relationship among various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The Property is located in an area

identified as Low Density Urban in the General Plan. The Low Density Urban designation allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses where overall residential density may be up to six units per acre. The request will not be contrary to the LUPAG Map designation for this area. Additionally, the approval of the subject request would support the following goals and policies of the Economic, Public Facilities and Land Use elements of General Plan:

Economic Element

- Provide an economic environment that allows new, expanded or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and Social environments.

Public Facilities-Education (Course of Actions for South Hilo)

- Encourage the establishment of additional schools as the need arises.

Land Use-Public Land

- Encourage uses of public lands that will satisfy specific public needs, such as housing, recreation, open space and education.

Based on the above, the proposed request is not contrary to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which is Low Density Urban and allows ancillary community and public uses. The General Plan encourages the use of public land for education and a course of action for South Hilo encourages the establishment of additional schools as the need arises.

Finally, the proposed use is not contrary to the objectives sought to be accomplished by HRS Chapter 205A, relating to the Coastal Zone Management Program. The Property is located over three miles from the closest shoreline and is not located within the Special Management Area.

F. CONCLUSION

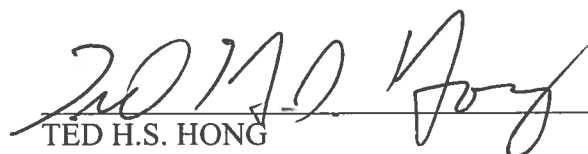
Based on the above, Applicant believes that the proposed use and development of the Property satisfies the requirements of Planning Commission Rule 6-7 and Rule 6-3(b)(5)(A)-(F) and that it should be granted a special permit to allow the phased, incremental development of a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres situated in the State Land Use Agricultural District. Applicant CBESS respectfully requests that the Hearings Officer send a favorable recommendation to the Windward Planning Commission as it relates to SPP No. 12-000138.

DATED: Honolulu, Hawaii, October __, 2013.

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii October 17, 2013.

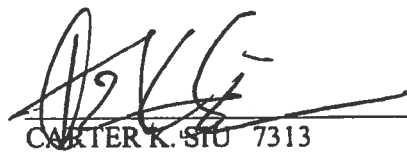


TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

F. CONCLUSION

Based on the above, Applicant believes that the proposed use and development of the Property satisfies the requirements of Planning Commission Rule 6-7 and Rule 6-3(b)(5)(A)-(F) and that it should be granted a special permit to allow the phased, incremental development of a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres situated in the State Land Use Agricultural District. Applicant CBESS respectfully requests that the Hearings Officer send a favorable recommendation to the Windward Planning Commission as it relates to SPP No. 12-000138.

DATED: Honolulu, Hawaii, October 17, 2013.



CARTER K. STU 7313

Deputy Attorney General
Department of the Attorney
General, State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii October __, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANT'S CONNECTIONS NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS);
Application for Special Permit Application	)	CERTIFICATE OF SERVICE
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 17, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October _____, 2013.

CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October 17, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

I HEREBY CERTIFY that on October 17, 2013, I caused a true and correct copy
of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiintel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiintel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii October 17, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY PUBLIC CHARTER
SCHOOL

DATED: Honolulu, Hawaii October _____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	AMENDED
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: KURT INABA]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

AMENDED
SUBPOENA

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii

YOU ARE COMMANDED to subpoena the individual named below:

KURT INABA
Address: 345 Kekuanaoa Street, Suite 20, Hilo, Hawaii 96720
Phone: (808)961-8050

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:
October 21, 2013

TIME:
11:00 a.m. to 1:00 p.m. or until such
time your testimony may be heard.

LOCATION:
Hilo State Building (~~"Old Court House"~~)
75 Aupuni Street
Hilo, Hawaii 96720
Conference Room A, B, C

CR

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii,

October 18, 2013



SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Ronald L. Thiel

Signature of Party Served:

Ronald L. Thiel

Address Where Served:

188 Railroad Ave., Hilo, HI
96720

Type of Document Served

Subpoena (Amended)

Date of Services:

10.18.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server

Dorinda K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
Application for Special Permit Application	)	[WITNESS: RON THIEL in his Individual
No. 12-000138	)	Capacity and Official Capacity as Chief of
	)	Traffic Division, Department of Public
	)	Works, County of Hawaii]
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii, YOU ARE
COMMANDED to subpoena the individual named below:

RON THIEL
Address: 108 Railroad Avenue Hilo, Hawaii 96720
Phone: (808)961-8341

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Monday, October 21, 2013

TIME:

11:00 a.m. to 1:00 p.m.

LOCATION:

~~County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720~~

SA State Building 75 AUPUNI ST., CONF. ROOM 1, B & C

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

Oct. 16, 2013



SANDRA P. SONG
Hearings Officer

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Lisa Nahropii

Signature of Party Served:

[Handwritten Signature]

Address Where Served:

101 Pauahi St #4 Hilo, HI.

Type of Document Served

Subpoena

Date of Services:

10.18.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server

STANLEY R. CASARILLO

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: CUSTODIAN OF RECORDS,
Application for Special Permit Application	)	County of Hawaii, Real Property Tax Office]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
<u>Island of Hawaii</u>)	

SUBPOENA

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii, YOU ARE
COMMANDED to subpoena the individual named below:

CUSTODIAN OF RECORDS, County of Hawaii, Real Property Tax Office
Address: 101 Pauahi Street, Suite 4, Hilo, Hawaii 96720
Phone: (808)961-8201

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below, to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:
Monday, October 21, 2013


TIME:
9:00 A.M.

LOCATION:

SM ~~County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720~~
~~State Building, 75 Aupuni St., Conf. Rooms A, B & C~~
DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, _____

October 16 2013



SANDRA P. SONG
Hearings Officer

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	AMENDED <i>gms</i>
CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL AND COMMUNITY BASED EDUCATION SUPPORT SERVICES	)	SUBPOENA (NOTICE TO APPEAR) WHO IS NOT A PARTY TO THIS CASE
)	
)	
Application for Special Permit Application No. 12-000138	)	[WITNESS: DUANE KANUHA in his Individual and Official Capacity as Director, Planning Department, County of Hawaii]
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo, Island of Hawaii)	

**AMENDED
SUBPOENA**

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii, YOU ARE
COMMANDED to subpoena the individual named below:

YOU ARE COMMANDED to subpoena the following witness

DUANE KANUHA
Address: 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720
Phone: (808)96-8288

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Monday, October 21, 2013

TIME:

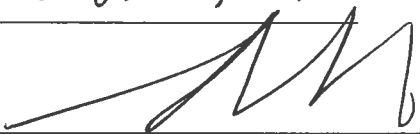
1:00 p.m. to 3:00 p.m.

LOCATION:

**STATE OF HAWAII 75 AUPUNI STREET,
CONFERNECE ROOM A, B, C, HILO, HAWAII 96720**

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, October 21, 2013



SANDRA P. SONG
Hearings Officer

COUNTY OF HAWAII PLANNING COMMISSION

DOCKET NO / APPLICANT: SPP-12-000138
Connections New Century Public Charter School and
Community Based Education Support Service

PARTY: Jeff Gomes

LIST OF WITNESSES

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
Joy Mcleod	Hawaiian Culture	Cultural Use	No		
Norman Keanaaina	Ceded Lands	Ceded Land Use	No		
John thatcher Applicant	School Principal	Building Project	No		
Wayne Kanemoto	Education	Education	No		
Celia Shen WCP	Project Planning	EA and Project Planning	No		
William Aila DLNR	Land Use	Land Use	No		
Dana Kenny	Real Estate	Property Impact	No		

PETITION FOR STANDING IN A CONTESTED CASE HEARING

(Page 1 of 2)

PLANNING DEPARTMENT
STATE OF HAWAII

NAME: Terence Yoshioka 2013 NOV -4 PM 12: 47

ADDRESS: 1572 Mcke Manu St. Hilo, Hawaii 96720

PHONE NO.: (808) 934-9198

APPLICANT/Connections New Century Public Charter School (CBESS)

DOCKET NO.: SPP-12-000138

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

If the answer is "yes", please explain:
Refer to attached affidavits of Terence Yoshioka and Jeff Gomes

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 X

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 X

If the answer is "yes", please explain:

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:

Terence Yoshioke
Petitioner's Signature

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 31st day of October, 2013, before me personally appeared TERENCE YOSHIOKE, 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.

Roy K. Nakamoto
Notary Public, State of Hawaii
ROY K. NAKAMOTO
My commission expires: 10/04/16 W.S.

TERENCE YOSHIOKA
1572 Mele Manu Street
Hilo, Hawaii 96720

PLANNING DEPARTMENT
COUNTY OF HAWAII
253 NOV -4 PM 12: 51

PLANNING DEPARTMENT
COUNTY OF HAWAII
STATE OF HAWAII

In the Matter of the Applicant of	)	Docket No.
)	
CONNECTIONS NEW CENTURY	)	AFFIDAVIT OF TERENCE
PUBLIC CHARTER SCHOOL	)	YOSHIOKA
COMMUNITY BASED EDUCATION)	
SUPPORT SERVICES (CBESS))	
FRIENDS OF CONNECTIONS)	
)	
_____)	

AFFIDAVIT OF TERENCE YOSHIOKA

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

In support of Petition for Standing in a Contested Case Hearing, comes now, TERENCE YOSHIOKA, being first duly sworn on oath, and in support of the Motion to Intervene, does hereby allege as follows:

1. That I am an adult and a resident at 1572 Mele Manu Street, Hilo, Hawaii 96720;
2. That my residence is situated in the Pacific Plantations Subdivision;
3. That the school which Petitioner CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) FRIENDS OF CONNECTIONS is seeking to construct through

this Special Permit process is located on land which is situated in part within or adjacent to the Pacific Plantation Subdivision;

4. That I must pass the school property every time I leave and return to my home and thereby subject myself to the motor vehicle and pedestrian traffic that will be generated by the construction and activities of the school;

5. That my interest in the Special Permit is clearly distinguishable from that of the general public;

6. That I am an attorney and former Family Court Judge who has some experience with land use and zoning matters;

7. That I am precluded from representing anyone due to the inactive status of my license as an attorney;

8. That I am also precluded from offering legal advice or performing any legal services for others;

9. That the foregoing restrictions prevent me from giving any meaningful assistance to Jeff Gomes, who is the only party to this proceeding who is opposing the Special Permit;

10. That unless I am allowed to intervene I believe that Mr. Gomes will be at a serious disadvantage in representing himself and all others who are in opposition to the Special Permit.

11. That if I am allowed to intervene, I believe that my knowledge and experience will lessen the disadvantage to Mr. Gomes and others who are opposed and not participating as parties;

12. That if allowed to intervene, Mr. Gomes has agreed to restrict his participation in further proceedings, to the extent described by the Hearings Officer, as stated in his Affidavit appended hereto;

13. That I believe my participation in their proceeding will not lengthen the time needed to complete the contested case hearing but may actually decrease the time due to my legal training and background;

14. That my participation will level the playing field somewhat and serve to further the ends of justice; and

15. That I do not intend to offer any additional witnesses and will restrict any participation to the cross-examination of other parties' witnesses. Other than this limitation, I intend to fully participate as a party in all other aspect of this proceeding.

And further affiant sayeth not.

Terence Yoshioka
TERENCE YOSHIOKA

Subscribed and sworn to before me

this 31st day of October, 2013

P. P. Malum

LS.

Notary Public, State of Hawaii
My commission expires: 10/14/16

Doc. Date: <u>10/31/13</u> or <input type="checkbox"/> Undated at time of notarization	# Pages: <u>3</u>
Name of Notary: _____	<u>Third</u> Circuit
Document Description: Affidavit of Terence Yoshioka	
<i>P. P. Malum</i>	<u>31</u> ^{RWJ} / _{TP}
Notary Signature	Date
NOTARY CERTIFICATION	(Seal or Stamp)

LS.

JEFF GOMES
281 Edita Street
Hilo, Hawaii 96720

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV -4 PM 12: 51

PLANNING DEPARTMENT

COUNTY OF HAWAII

STATE OF HAWAII

In the Matter of the Applicant of	)	Docket No.
)	
CONNECTIONS NEW CENTURY	)	AFFIDAVIT OF JEFF GOMES
PUBLIC CHARTER SCHOOL)	
COMMUNITY BASED EDUCATION)	
SUPPORT SERVICES (CBESS))	
FRIENDS OF CONNECTIONS)	
_____)	

AFFIDAVIT OF JEFF GOMES

STATE OF HAWAII)
) SS:
 COUNTY OF HAWAII)

In support of Petition for Standing in a Contested Case Hearing, comes now, JEFF GOMES, being first duly sworn on oath, and in support of the Motion to Intervene, does hereby allege as follows:

1. That I am an adult and a resident at 281 Edita Street, Hilo, Hawaii 96720;
2. That my residence is situated in the Pacific Plantations Subdivision;
3. That I am a party to the Special Permit Application of CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) FRIENDS OF CONNECTIONS;
4. That I became a party to oppose the Special Permit as the community in which I live has no community association to voice its objection to the Special Permit;

5. That I do not have sufficient knowledge or experience to adequately represent myself or others who are opposed to the Special Permit in these proceedings;

6. That the intervention by Terence Yoshioka in these proceedings would be welcomed by me as Mr. Yoshioka is more knowledgeable and experienced on land use and zoning matters as well as contested case proceedings, and is more capable of presenting the objections and arguments against the Special Permits;

7. That if Mr. Yoshioka is allowed to intervene, I am willing to accept whatever reasonable terms, conditions and restrictions which the Hearing Officer may impose upon me for the balance of the proceedings; and

8. That I believe Mr. Yoshioka's participation will enhance the probability of producing all relevant and material evidence needed for deciding whether the Special Permit should be approved or denied.


And further affiant sayeth not.




JEFF GOMES

Subscribed and sworn to before me

this 4th day of November, 2013.

R.S. 

Notary Public, State of Hawaii
My commission expires: April 19, 2017

Doc. Date:	<input checked="" type="checkbox"/> Dated or <input type="checkbox"/> Undated at time of notarization	# Pages:	<u>2</u>
Name of Notary:	<u>S. Talich</u>	Third	<u>Circuit</u>
Document Description: <u>Affidavit of Jeff Gomes</u>			
<u></u>	<u>11-4-13</u>		
Notary Signature	Date		
NOTARY CERTIFICATION			(Seal or Stamp) <i>R.S.</i>

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)



BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

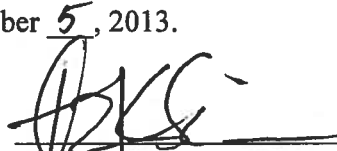
In the Matter of	) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC	) ERRATA TO APPLICANTS CONNECTION
CHARTER SCHOOL AND COMMUNITY	) NEW CENTURY PUBLIC CHARTER
BASED EDUCATION SUPPORT	) SCHOOL and COMMUNITY BASED
SERVICES	) EDUCATION SUPPORT SERVICES
	) (CBESS) JOINT PRE-HEARING BRIEF;
	) CERTIFICATE OF SERVICE
Application for Special Permit Application)
No. 12-000138	) HEARINGS OFFICER - SANDRA SONG
)
)
TMK: (3)2-5-006:141; Kaumana, South Hilo,	) <u>HEARING DATE:</u>
Island of Hawaii	) OCTOBER 21 AND 22, 2103

ERRATA TO APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER
SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT
SUBMISSION OF A PRE-HEARING BRIEF

Applicants CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and
COMMUNITY BASED EDUCATION SUPPORT SERVICES, by and through its undersigned
counsel, CARTER K. SIU and TED H.S. HONG submit their errata sheet to their Joint Pre-
Hearing Brief to correct the following:

1. At Page 10, the second sentence under Paragraph 4, should read as follows: "Based
upon the comments received from various public agencies, the following will be done to ensure
that the proposed use shall *not* burden public agencies:"

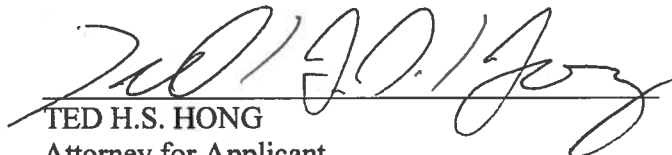
DATED: Honolulu, Hawaii, November 5, 2013.



CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney General,
State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii, November 5, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of	) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC	) CERTIFICATE OF SERVICE
CHARTER SCHOOL AND COMMUNITY	) [RE ERRATA TO APPLICANTS
BASED EDUCATION SUPPORT	) CONNECTION NEW CENTURY PUBLIC
SERVICES	) CHARTER SCHOOL and COMMUNITY
	) BASED EDUCATION SUPPORT
	) SERVICES (CBESS) JOINT PRE-HEARING
Application for Special Permit Application	) BRIEF]
No. 12-000138)
)
TMK: (3)2-5-006:141; Kaumana, South Hilo,)
Island of Hawaii)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 8, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

CARTER K. SIU, ESQ. (Carter.K.Siu@hawaii.gov)
Deputy Attorney General
Attorney for Applicant Connections New Century Public Charter School
235 S. Beretania Street, Room 304
Honolulu, Hawaii 96813

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Hilo, Hawaii, November 8, 2013.



TED H.S. HONG

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

ORIGINAL

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC	) ERRATA TO APPLICANTS CONNECTION
CHARTER SCHOOL AND COMMUNITY	) NEW CENTURY PUBLIC CHARTER
BASED EDUCATION SUPPORT	) SCHOOL and COMMUNITY BASED
SERVICES	) EDUCATION SUPPORT SERIVCES
	) (CBESS) JOINT PRE-HEARING BRIEF;
	) CERTIFICATE OF SERVICE
Application for Special Permit Application)
No. 12-000138	) HEARINGS OFFICER - SANDRA SONG
)
)
TMK: (3)2-5-006:141; Kaumana, South Hilo,	) <u>HEARING DATE:</u>
Island of Hawaii	) OCTOBER 21 AND 22, 2103

ERRATA TO APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION OF A PRE-HEARING BRIEF

Applicants CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES, by and through its undersigned counsel, CARTER K. SIU and TED H.S. HONG submit their errata sheet to their Joint Pre-Hearing Brief to correct the following:

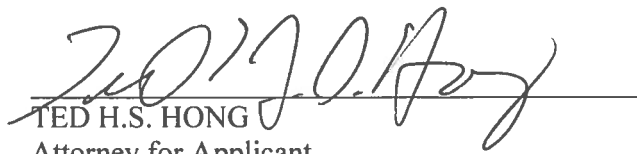
1. At Page 10, the second sentence under Paragraph 4, should read as follows: "Based upon the comments received from various public agencies, the following will be done to ensure that the proposed use shall *not* burden public agencies:"

DATED: Honolulu, Hawaii, November ____, 2013.

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney General,
State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii , November 5, 2013.



TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

ERRATA TO APPLICANT'S CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) JOINT SUBMISSION OF A PRE-HEARING BRIEF

Applicants CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL and COMMUNITY BASED EDUCATION SUPPORT SERVICES, by and through its undersigned counsel, CARTER K. SIU and TED H.S. HONG submit their errata sheet to their Joint Pre-Hearing Brief to correct the following:

1. At Page 10, the second sentence under Paragraph 4, should read as follows: "Based upon the comments received from various public agencies, the following will be done to ensure that the proposed use shall *not* burden public agencies:"

DATED: Honolulu, Hawaii, November 5, 2013.



CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney General,
State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii , November ____, 2013.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	CERTIFICATE OF SERVICE
CHARTER SCHOOL AND COMMUNITY	)	[RE ERRATA TO APPLICANTS
BASED EDUCATION SUPPORT	)	CONNECTION NEW CENTURY PUBLIC
SERVICES	)	CHARTER SCHOOL and COMMUNITY
	)	BASED EDUCATION SUPPORT
	)	SERVICES (CBESS) JOINT PRE-HEARING
Application for Special Permit Application	)	BRIEF]
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

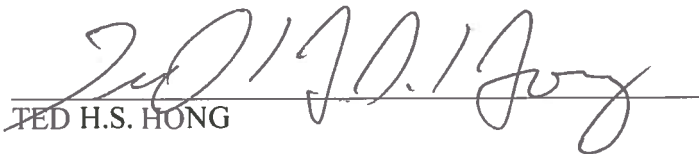
CARTER K. SIU, ESQ. (Carter.K.Siu@hawaii.gov)
Deputy Attorney General
Attorney for Applicant Connections New Century Public Charter School
235 S. Beretania Street, Room 304
Honolulu, Hawaii 96813

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Hilo, Hawaii, November 5, 2013.


TED H.S. HONG

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC	) RETURN OF SERVICE;
CHARTER SCHOOL AND COMMUNITY	) ACKNOWLEDGMENT OF SERVICE
BASED EDUCATION SUPPORT)
SERVICES	) [WITNESS: BOBBY JEAN LEITHEAD
	) TODD]
)
Application for Special Permit Application)
No. 12-000138)
)
)
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)
Island of Hawaii)

RETURN OF SERVICE

The undersigned hereby declares under penalty of perjury and says that he/she served the attached Subpoena by hand delivering a copy to Bobby Jean Leitchhead Todd, on 11-7-2013 at [address] 345 Kekuanana Dr.
Hilo, HI 96720

and tendering to that person the fee for one day's attendance and the mileage allowed by law.

I declare under penalty of the law of the State of Hawai'i that the foregoing is true and correct.

DATED: Hilo, HAWAII, 11-7-2013

Giantho K. Castilla

Civil Deputy/Process Server

Giantho K. Castilla
Printed Name

ACKNOWLEDGEMENT OF SERVICE:

The undersigned acknowledged receipt by personal service of the attached Subpoena.

B.J. Leithhead Todd
Signature

B.J. Leithhead Todd
Printed Name

November 7, 2013 1:30 p.m.
Date and Time

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	[WITNESS: BOBBY JEAN LEITHEAD
SERVICES	)	TODD]
)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE
OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness:

BOBBY JEAN LEITHEAD TODD
2100 Kanoelehua Avenue Hilo, Hawaii 96720
Phone: (808) 961-8083

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, November 12, 2013

TIME:

10:30 a.m., or until such time your
testimony may be heard.

LOCATION:

Hilo State Building ("Old Court House")
75 Aupuni Street
Hilo, Hawaii 96720
Conference Room A, B, C

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATE ISSUED: Hilo, Hawaii, November 6, 2013.



SANDRA P. SONG
Hearings Officer

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	RETURN OF SERVICE;
CHARTER SCHOOL AND COMMUNITY	)	ACKNOWLEDGMENT OF SERVICE
BASED EDUCATION SUPPORT)	
SERVICES	)	[WITNESS: SIDNEY FUKE]
)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE

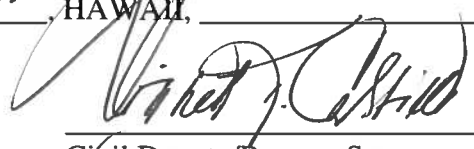
The undersigned hereby declares under penalty of perjury and says that he/she served the attached Subpoena and Subpoena duces tecum by hand delivering a copy to

Molly Harper, on 11-7-2013 at
[address] 100 Kanahi Street, Suite 210
Hilo, Hawaii 96720

and tendering to that person the fee for one day's attendance and the mileage allowed by law.

I declare under penalty of the law of the State of Hawai'i that the foregoing is true and correct.

DATED: 11-7-2013 file, HAWAII, _____.



Civil Deputy/Process Server

Vincent J. Castillo

Printed Name

ACKNOWLEDGEMENT OF SERVICE:

The undersigned acknowledged receipt by personal service of the attached Subpoena.

Molly Harper
Signature

Molly Harper
Printed Name

11-07-2013 11:20 a.m.
Date and Time

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	[WITNESS: SIDNEY FUKE]
SERVICES)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

SUBPOENA

THE STATE OF HAWAII:

TO: ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE
OF HAWAII:

YOU ARE COMMANDED to subpoena the following witness named below:

SIDNEY FUKE
1358 Mele Manu Street, Apt. C
Hilo, Hawaii 96720
Phone: (808) 969-1522

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below,
to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Tuesday, November 12, 2013

TIME:

11:15 a.m. or until such time
your testimony may be heard.

LOCATION:

Hilo State Building ("Old Court House")
75 Aupuni Street
Hilo, Hawaii 96720
Conference Room A, B, C

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATE ISSUED: Hilo, Hawaii,

November 6, 2013



SANDRA P. SONG
Hearings Officer

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	SUBPOENA DUCES TECUM; NOTICE TO
CONNECTION NEW CENTURY PUBLIC	)	A PERSON OR ENTITY SERVED WITH A
CHARTER SCHOOL AND COMMUNITY	)	SUBPOENA DUCES TECUM WHO IS NOT
BASED EDUCATION SUPPORT	)	A PARTY TO THIS CASE
SERVICES)	
)	
	)	[WITNESS: SIDNEY FUKE]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)	
<u>Island of Hawaii</u>)	

SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii

YOU ARE COMMANDED to subpoena the following witness named below:

SIDNEY FUKE

Address: 1358 Mele Manu Street, Apt. C Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear before a Notary Public from Island Court Reporting & Transcription Services, who is duly authorized to administer oaths, on Tuesday, November 12, 2013 at 11:15 AM ~~9:00 AM~~, at the Hilo State Building (“Old Court House”), 75 Aupuni Street, Hilo, Hawaii 96720, Conference Room A, B, C, to testify as a witness (at a County of Hawaii Windward Planning Commission Contested Case Hearing) on the part of the Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) taking of an oral deposition in the above-entitled matter.

YOU ARE FURTHER ORDERED to bring with you the original and 4 copies for a total of 5 sets of the books, papers, documents or other things in your possession or under your control, described as follows:

1. Your current Curriculum Vitae.
2. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 343.
3. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 205A.
4. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR Title 15, Chapter 15.
5. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR§15-15-95(e).

6. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to a Special Permit Application pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure.

7. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Use Permit pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure

8. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to a Variance Application pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure.

9. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to a Water Variance Application pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure.

10. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to a Zoning Amendment pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure.

11. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to a Special Management

Area Application pursuant to the County of Hawaii Planning Department Rules and Procedures and the County of Hawaii Planning Commission Rules of Practice and Procedure.

12. Any and all documents and correspondence memoranda, letters, correspondence, emails within the past two (2) years to present, that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

13. Any and all communications from directors or officers of the group Kaumana community association to members of the group Kaumana community association within the past two (2) years to present that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

WITNESS, you are hereby commanded to appear at the time and place indicated to testify; you are to bring all of the above described records with you.

DATE ISSUED: Hilo, Hawaii, November 6, 2013



SANDRA P. SONG
Hearings Officer

**NOTICE TO A PERSON OR ENTITY SERVED WITH A
SUBPOENA DUCES TECUM WHO IS NOT A PARTY TO THIS CASE**

The Subpoena attached hereto should specifically set forth the materials sought to be subpoenaed. Any person and/or entity or their attorney objecting to the Subpoena or to disclosure of any materials subpoenaed shall appear on the date and at the time and place for return indicated on the Subpoena and State their objections. Failure to object on the return date may be considered a waiver of any objections.

The person or entity subpoenaed or their counsel may submit a written statement of objections to the Hearings Officer listed above. If a person or entity objects to disclosure of only part of the material, the pages or sections of material considered confidential and/or nondisclosable shall be tabbed or marked for the Hearings Officer.

Matters presented at the return may be continued from time to time without further notice except as announced at the time of return.

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	DECLARATION OF DIANTHE
CHARTER SCHOOL AND COMMUNITY	)	CASTILLO; EXHIBITS "1 – 3"
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

DECLARATION OF DIANTHE CASTILLO

I, DIANTHE CASTILLO, do hereby declare and state the following:

1. I was tasked to serve Sydney Fuke with a Subpoena and Subpoena Duces Tecum, on November 7, 2013;
2. On November 7, 2013, at approximately 11:15 a.m., I drove to Syndey Fuke’s place of business located at 100 Pauahi Street, Hilo, Hawaii 96720.
3. I knocked on the door and tried to open it, but the door was locked.
4. I read the sign posted on Sydney Fuke’s office door, which provided specific instructions

on what to do in the event that an item required a signature upon delivery.

5. Incorporated herein and referenced as Exhibit "1", is a true and accurate copy of the photo of the sign on Sydney Fuke's door.

6. Pursuant to the instruction signed by Sydney Fuke, on the door of his place of business, I walked to Suite 210.

7. Suite 210 is a business entitled, Big Isle Smile, Dr. Guy Rapoza, D.D.S., General Dentistry.

8. Incorporated herein and referenced as Exhibit "2", is a true and accurate copy of the photo of the door of Suite 210.

9. I entered Suite 210, pursuant to the direction of Sydney Fuke's sign, and provided Molly Harper, of Suite 210, with Sydney Fuke's Subpoena and Subpoena Duces Tecum, (enclosed in an envelope).

10. I asked Molly Harper if she would sign the Return and Acknowledgement of Service as proof that I delivered the documents.

11. Molly Harper agreed and stated that she always accepts items for Sydney Fuke, and further elaborated that I should not worry, it is common practice for them to accept things on behalf of Sydney Fuke and that Sydney Fuke will receive the envelope.

12. Molly Harper executed the Return and Acknowledgment of Service.

13. I exited Suite 210, with the executed Return and Acknowledgment of Service and took a photograph of the door indicating the address 210.

14. Incorporated herein and referenced as Exhibit "3", is a true and correct copy of the internet advertisement of Dr. Guy Rapoza, D.D.S. dentistry indicating the physical address of the place of business, via a website titled, Manta. This exhibit indicates that

Dr. Guy Rapoza, D.D.S., physical address is 100 Pauahi Street, Suite 210, Hilo, Hawaii
96720.

15. Under the penalty of perjury, I declare that the foregoing statements are true and accurate.

DATED: Hilo, Hawaii, November 7, 2013.



DIANTHE K. CASTILLO

SIDNEY FUKE

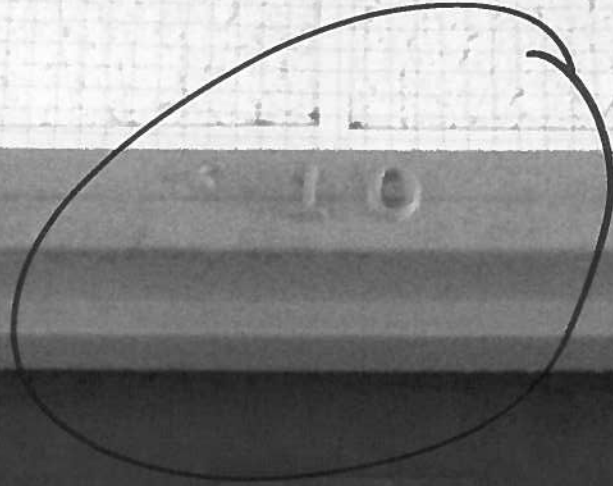
PLANNING CONSULTANT

DELIVERY INSTRUCTIONS:

If the door is locked, please slip under the door whatever material will fit. For all other material and/or where signature is required, please make deliveries to Suite 210 or 215.

Thank you very much,
Sid Fuke

EXHIBIT "1"



1064

Big Isle Smile Inc.

Dr. Guy Rapoza D.D.S.
GENERAL DENTISTRY

EXHIBIT "2"

manta

Find products, ser

Home

U.S. ~ Hilo, HI ~ Healthcare ~ Offices and

Guy Rapoza DDS

100 Pauahi Street # 210

Hilo, HI 96720 - [View Map](#)

Phone: (808) 935-5414

Ads

[Honolulu Family Dentist Dentistry With](#)

www.kingsdentalimplants.com

EXHIBIT "3"

DAVID M. LOUIE 2612
Attorney General
State of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
235 South Beretania Street, Room304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTIONS NEW CENTURY PUBLIC	)	APPLICANT CONNECTIONS NEW
CHARTER SCHOOL AND COMMUNITY	)	CENTURY PUBLIC CHARTER SCHOOL'S
BASED EDUCATION SUPPORT	)	OBJECTION TO TERENCE YOSHIOKA'S
SERVICES	)	PETITION FOR STANDING IN A
	)	CONTESTED CASE HEARING;
	)	CERTIFICATE OF SERVICE
Application for Special Permit Application)	
No. 12-000138	)	HEARINGS OFFICER - SANDRA SONG
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,	)	<u>HEARING DATE:</u>
Island of Hawaii	)	OCTOBER 21 AND 22, 2103

APPLICANT CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL'S OBJECTION TO TERENCE YOSHIOKA'S PETITION FOR STANDING IN A CONTESTED CASE HEARING

Applicant CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL, by and through its undersigned counsel CARTER K. SIU, Deputy Attorney General, submits the following objection to Terence Yoshioka's Petition for Standing in a Contested Case Hearing for this Hearings Officer's review and consideration.

I. **DISCUSSION**

The instant Petition for Standing in a Contested Case Hearing filed by Terence Yoshioka is just another tactic to further delay the proceedings and to increase the amount Applicants must expend in time, costs, and fees to obtain a Special Use Permit. However, the time for Mr. Yoshioka to file for intervention has long passed. Pursuant to County of Hawaii Planning Commission Rules of Practice and Procedure, Rule 4-6, any such petition to intervene “shall” be filed “no later than seven calendar days, prior to the Commission's first meeting on the matter.” The Commission’s use of the word “shall” means that it is a mandatory requirement. Thus, the Commission’s own procedural rule prohibits what Mr. Yoshioka is attempting to do.

Moreover, Mr. Yoshioka has not provided any explanation why he was unable to file his application within the given time period or why he should be excused from complying with a mandatory procedural rule. It must be noted that his tenure as a state family court judge and experience with land use and zoning matters would clearly negate any claim that he was ignorant of the Commission’s procedural rules. His application therefore must be denied as untimely, and a determination of the merits of the petition should not be undertaken.

Assuming, *arguendo*, that the merits of the application is considered, it is clear that Mr. Yoshioka seeks to intervene as a way to subvert the rules in place governing the practice of law. His affidavit claims that he will not engage in the practice of law by providing legal advice to Mr. Gomes (which he already has admitted to doing in alleged association with his former law firm). But, the declared purpose of his intervention is to use his “legal training and background” to decrease the time needed for the case. It is also to “level the playing field” by allowing him to cross-examine witnesses. It is clear that Mr. Yoshioka wants to play the part of the lawyer

without jumping through all the necessary legal requirements to regain his license to practice law. This should not and cannot be condoned.

Mr. Gomes' affidavit makes clear that Mr. Yoshioka intends to engage in the practice of law and to represent the interests of others. As Mr. Gomes admits: "I do not have sufficient knowledge or experience to adequately represent myself or others who are opposed to the Special Permit in these proceedings." Paragraphs 6 and 8 of the affidavit also describe legal work on behalf of his fellow Kaumana residents: "Mr. Yoshioka is more knowledgeable and experienced on land use and zoning matters as well as contested case proceedings, and is more capable of presenting the objections and arguments against the Special Permits" and that "Mr. Yoshioka's participation will enhance the probability of producing all relevant and material evidence needed for deciding whether the Special Permit should be approved or denied."

Finally, and as this Commission has already witnessed during the first two days of the proceedings, Mr. Gomes has not been acting alone. Various members of the community, including Mr. Yoshioka, have provided him with questions to cross-examine Applicant's witnesses. It is not known why the other community members did not pursue intervention at the same time and/or in place of Mr. Gomes, but a decision nonetheless was made for Mr. Gomes to be the representative voice of the community opposition. At this time, though, the only reason for intervention appears to be Mr. Yoshioka's dissatisfaction with Mr. Gomes' performance, which is not an enumerated factor to consider under Rule 4-6(b) of the County of Hawaii Planning Commission Rules of Practice and Procedure.

II. CONCLUSION

Based on the foregoing, Applicant CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL submits that there is no legal or factual basis to support the granting of Terence Yoshika's Petition for Standing in a Contested Case Hearing. The petition, therefore, must be denied.

DATED: Honolulu, Hawaii, November 8, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DAVID M. LOUIE 2612
Attorney General of Hawaii

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Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	CERTIFICATE OF SERVICE
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 8, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

Sandra P. Song, Esq. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

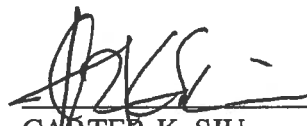
Ted H.S. Hong, Esq. (ted@tedhonglaw.com)
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720

Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, November 8, 2013.



CARTER K. SIU
Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV -8 PM 12:07

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Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	APPLICANT CBESS' MEMORANDUM IN
CONNECTION NEW CENTURY PUBLIC	)	OPPOSITION TO PETITION FOR
CHARTER SCHOOL AND COMMUNITY	)	STANDING IN A CONTESTED CASE
BASED EDUCATION SUPPORT	)	HEARING FILED ON NOVEMBER 4, 2013;
SERVICES	)	DECLARATION OF TED H. S. HONG;
	)	EXHIBITS "1," - "3;" CERTIFICATE OF
	)	SERVICE
Application for Special Permit Application	)	<u>NON-HEARING MOTION:</u>
No. 12-000138	)	DATE: November 8, 2013
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

**APPLICANT CBESS' MEMORANDUM IN OPPOSITION TO PETITION FOR
STANDING IN A CONTESTED CASE HEARING FILED ON
NOVEMBER 4, 2013**

COMES NOW, Applicant, COMMUNITY BASED EDUCATION SUPPORT
SERVICES (hereinafter referred to as "CBESS"), by and through its undersigned counsel and
hereby submits Memorandum in Opposition to Petition for Standing in a Contested Case Hearing
Filed on November 4, 2013, as follows:

I. INTRODUCTION

Mr. Yoshioka has legal “standing” to participate in the present contested case. However, Mr. Yoshioka forfeited that opportunity due to his intentional failure to follow the Planning Commission’s mandatory rules concerning the inclusion of prospective intervenor. Mr. Yoshioka had ample notice of his right to intervene in the present case but chose not to participate directly in the Contested Case hearing until after a significant part of the Applicants’ case had been completed. Mr. Yoshioka has been actively assisting the Respondent, Mr. Gomes, by providing him legal and strategic advice, including drafting questions for Mr. Gomes to ask the Applicants’ witnesses, with the admitted help of another law firm. Mr. Yoshioka deliberately and intentionally waited until a week before the last day of the Contested Case hearing to ambush the Applicant with his request to participate directly as an attorney. Mr. Yoshioka has waived his right to intervene and cannot, at this late date, assert he should be allowed to intervene.

Mr. Yoshioka suffers no prejudice by not being able to intervene because he will continue his admitted “ghost writing” along with a prominent Hilo law firm, Nakamoto, Okamoto & Yamamoto to present Mr. Gomes’s case and legal argument. The Applicant is unfairly prejudiced by this transparent attempt to disrupt and delay the present proceedings. The request to intervene should be denied.

II. FACTS

On or about February 15, 2013, the County of Hawaii Planning Department sent the parties a letter indicating that surrounding property owners, such as Mr. Yoshioka would be given written notice of their opportunity to intervene in a contested case hearing:

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. (Emphasis added)

See, Exhibit "1," attached hereto.

On or about March 7, 2013, before the Windward Planning Commission, at which Mr.

Yoshioka was present, Mr. Daryn Arai, Planning Program Manager, publicly announced:

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 15th.**

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. (Emphasis added)

See, Exhibit "3," at pages 2138-2139, Planning Commission Record (hereinafter referred to as "PCR").

On July 25, 2013, Mr. Yoshioka received notice from his client that:

The pre-hearing conference will be either on 7/30 at 9:30 a.m. or 7/31 at 1:30 p.m. Let me know if you are willing to testify again at this hearing.

See, Exhibit "2," at 06, attached hereto.

On October 2, 2013, Mr. Yoshioka received an email from Layne Novak, Mr. Gomes and

Mr. Fuke:

Attached is a pretty detailed outline (STRATEGY) of the approach and points you may want to cover. This is a "cheat" sheet, so you need to be careful NOT to get this in the hand of the applicant. . . . We can talk about this later. Take care!

Sid.

See, Exhibit “2,” at 03.

On October 12, 2013, Mr. Yoshioka received an email from his client, “Sid Fuke” acknowledging Mr. Yoshioka’s participation as Mr. Gomes’ attorney:

At the same time, by having many - including Terence - on his witness list, he may ask the hearings officer to have them excluded from the hearing, **that way crippling the support for Jeff**. If so, I hope the hearing officer sees through that.

b. I have already asked Terence to assist Jeff, and I think he is prepared to do so. Terence has a new email address and I am copying him on this email.
(Emphasis added)

See, Exhibit “2,” at 08.

On October 16, 2013, Ms. Novak, summarized a meeting in which Mr. Yoshioka as present and admitted:

We had a good turn out last night. Here are some of the highlights:

* * *

3. **Terrance [sic] Yoshioka will assist Jeff with his questions.** (Emphasis added)

See, Exhibit “2,” at 04, attached hereto.

III. LAW and ANALYSIS

A. Mr. Yoshioka has Failed to Comply with Any of the Procedural Requirements to Intervene.

Mr. Yoshioka has failed to comply with the Planning Commission’s Rules concerning intervention and the Hearing Officer has no jurisdiction to hear the Petition. In relevant part, the County of Hawaii, Planning Commission’s Rules of Practice and Procedure (hereinafter referred to as “PCRPP” states:

4-1 Purpose

This rule governs contested case procedure before the Commission whenever it is required by law; provided that any procedure in a contested case may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. **This procedure shall be used in all cases where the action of the Commission is the final action of a County official or agency, prior to the opportunity for appeal to Circuit Court, whenever it is required.** It shall therefore be followed in all cases where State statutes provide for direct appeal from the Commission to Circuit Court. (Emphasis added)

In terms of whether Mr. Yoshioka received notice of his opportunity to intervene in the present case, PCRPP, states:

4-5 Notice of Contested Case Hearing

* * * *

(b) **The notice of the date, time, place, and nature of the hearing shall also be published twice in two newspapers of general circulation in the County.** Within ten days after the application has been filed, a notice shall appear in two County newspapers of general circulation and a second notice, not less than ten days prior to the hearing, shall appear in two County newspapers of general circulation and shall also be filed at least six calendar days prior to the hearing with the Office of the County Clerk.

(c) **The applicant shall serve notice to surrounding property owners and lessees of record pursuant to Section 25-2-4 of Chapter 25, Hawai'i County Code. Such notice shall also include a form developed by the Planning Department that outlines the contested case procedure and who qualifies. In addition, the notice shall state that you have a right to file a written request for a contested case procedure.** (Emphasis added)

Mr. Yoshioka failed to comply with the PCRPP, concerning the filing of his petition to intervene:

4-6 Prehearing Procedure

(a) 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.** If the applicant files a request with the Commission for the deferral or continuance of the hearing prior to the commencement of the hearing, the next regularly scheduled meeting of the Commission will then be considered the subsequent rescheduled hearing date. 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.

(b) **Upon receipt of a written request to intervene, the Commission, at the first meeting on the matter, shall hold a hearing on the written request.** The Applicant shall be admitted as a party if it can demonstrate that:

1) His or her interest is clearly distinguishable from that of the general public; or

* * *

3) That they have some property interest in the land or lawfully reside on the land; or

4) That even though they do not have an interest different than the public generally, that the proposed action will cause them actual or threatened injury in fact; or

* * *

The Commission will grant or deny such written request prior to any further action on the matter.

(c) Appeal from Denial. **Any Applicant who has been denied standing as a party may appeal such denial to the Circuit Court pursuant to Section 91-14, Hawai'i Revised Statutes.**

(d) After establishing the parties to the proceeding, the Commission may either proceed with the hearing, or continue the matter to a more appropriate time and date. (Emphasis added)

(1) Notice of Opportunity to Intervene.

In the present case, Mr. Yoshioka has failed to comply with any of the procedural requirements that would allow him to intervene. Mr. Yoshioka received notice of the opportunity to file a petition to intervene. See, Exhibit “2,” at 04, 06, and 08. Mr. Yoshioka intentionally chose not to respond to the notices providing him the opportunity to intervene and instead decided to act as “shadow” legal counsel for Mr. Gomes. See, Exhibit “2,” at 04 and 08.

(2) Filing Fee.

Mr. Yoshioka has not shown that he submitted the mandatory filing fee to allow him to intervene. See, Rule 4-6(a), PCRPP.

(3) Mr. Yoshioka’s Petition is Untimely.

Rule 4-6(a), PCRPP, required Mr. Yoshioka to file his Petition to Intervene “no later than seven calendar days, prior to the Commission's first meeting on the matter.” Rule 4-6(a), PCRPP, unambiguously requires potential intervener to file petitions to intervene at least seven (7) days before the Planning Commission’s meeting on the contested case. Mr. Yoshioka and his clients acknowledged that the first meeting on the Contested Case hearing was to be held on July 30 or 31, 2013. See, Exhibit “2,” at 06. Mr. Yoshioka and his clients were aware that the Contested Case hearing was to begin on October 21, 2013. See, Exhibit “2,” at 01. Mr. Yoshioka was in attendance in the hearing room until the proceedings recessed in the afternoon on October 22, 2013, despite his earlier representation that he had to leave the hearing early because of another appointment. Mr. Yoshioka was present and in attendance when the Hearing Officer set the further hearing date and time of November 12, 2013. Mr. Yoshioka and Mr. Gomes deliberately and intentionally waited until one week before the last day of the hearing in the present case, to ambush the Applicant with a request to intervene and act as legal counsel for

his clients, including Mr. Gomes. Mr. Yoshioka's request is untimely.

(4) Hearings Officer has No Jurisdiction to Hear the Petition.

Rule 4-6(b), PCRPP, only allows the Planning Commission, not the Hearing Officer, to “hold a hearing on the written request.” Rule 4-6(b), PCRPP, also requires the Commission to rule on the request for intervention **before** any action in the contested case occurs. The obvious purpose is to allow the applicant to challenge prospective intervener's qualifications to intervene in an evidentiary hearing. The Hearing Officer does not have jurisdiction or the authority to conduct such an evidentiary hearing. Mr. Yoshioka's petition to intervene should have been filed and heard by the Planning Commission before the contested case began.

(5) Applicant is Unfairly Prejudiced by the Untimely Petition.

Rule 4-6(c), PCRPP, allows a prospective intervener to file a Chapter 91, HRS, agency appeal if the request for intervention is denied. Mr. Yoshioka's request is a transparent attempt to stop the present proceedings and obtain a new Hearing Officer. Given the requirements of Rule 4-6, PCRPP, and Mr. Yoshioka's wholesale refusal to comply with any of the procedural requirements for intervention, the Hearing Officer has no discretion and must deny the request for intervention. Rule 4-6(c), PCRPP, then allows Mr. Yoshioka to appeal the decision denying his application to the Third Circuit Court. The Chapter 91, HRS Agency Appeal will delay the present proceedings for another year. When combined to the Contested Case hearing procedure and potential appeal, this would mean another three (3) to four (4) years delaying the Applicant's project. The delay is intentional, deliberate and unfairly prejudices the Applicant's use.

In *United States v. Thoreen*, 653 F.2d 1332 (9th Cir. 1981), the court noted that attorneys are “officers of the court” and “must ‘preserve and promote the efficient operation of our system

of justice.” (citations omitted) Id., at 1339. The Court stated that:

Making misrepresentations to the fact finder is inherently obstructive because it frustrates the rational search for truth. It may also delay the proceedings.

Id., at 1340-1341.

The gamesmanship and tactics employed by Mr. Yoshioka and his clients (Mr. Gomes, Mr. Fuke, Ms. Novak and the Nakamoto, Okamoto & Yamamoto Law Firm) are unprofessional, unethical, desperate and transparent. These tactics are indicative not only of the lack of merit of the claims brought by Mr. Yoshioka and his clients, but a fundamental lack of integrity and character.

Mr. Yoshioka testified on October 22, 2013, that the law firm of Nakamoto and Okamoto was actively assisting him in all aspects of his and Mr. Gomes presentation, including but not limited to “ghost writing” Mr. Gomes’ questions to the Applicant’s witnesses. Mr. Yoshioka’s Affidavit in support of his petition to intervene was notarized by Mr. Roy Nakamoto, a partner in the law firm of Nakamoto, Okamoto & Yamamoto. The typeface of Mr. Yoshioka’s and Mr. Gomes’ affidavits and the writing style are identical. It is reasonable to conclude that the Nakamoto, Okamoto law firm assisted and typed out the Affidavits for Mr. Yoshioka and Mr. Gomes. It is clear that this request for intervention is simply a stalling ploy to deny the Applicant any opportunity to legally use its property.

B. Mr. Yoshioka is Prohibited from Acting as Legal Counsel.

Mr. Yoshioka has been acting as *de facto* legal counsel for Mr. Gomes and others, including but not Mr. Fuke, Ms. Novak and others. See, Exhibit “2,” at 04 and 08, attached hereto. Mr. Yoshioka’s affidavit in support of his request for intervention specifically

acknowledges that he wants to use his legal training, experience and knowledge to assist Mr. Gomes and represent the interests of himself and others in his organization. See, Mr. Yoshioka's Affidavit, paragraphs 6, 8, and 11. As a witness in the present case, subpoenaed to appear and having testified under oath, and subject to being recalled as a rebuttal witness, is legally prohibited from appearing as legal counsel in the present matter.

In relevant part, Rule 3.7, Hawaii Rules of Professional Conduct (hereinafter referred to as "HRPC") states:

Rule 3.7. LAWYER AS WITNESS.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

Emphasis added.

The *Commentary* to Rule 3.7, HRPC states in relevant part:

[1] **Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client.**

[2] The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. **A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others.** It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof. (Emphasis added)

Mr. Yoshioka has been serving as a witness and advocate throughout the present proceedings. Before the Planning Commission, he was a legal advocate and submitted written briefs, made several, erroneous pronouncements of the law, which he later admitted were ghost

written by the Nakamoto, Okamoto & Yamamoto law firm. See, Planning Commission Record at 1317-1328 and 1904-1919. In his testimony, he referred repeatedly to case law that were most likely researched and obtained through the efforts of the Nakamoto, Okamoto & Yamamoto law firm, again serving as advocate, even while testifying as a witness for the Applicant. Finally, Mr. Yoshioka's Affidavit in support of his request for intervention specifically states that he seeks permission to use his legal experience and knowledge to represent Mr. Gomes and their shared, cause. See, Mr. Yoshioka's Affidavit at paragraphs 6, 8, and 11.

The Rules of Professional Conduct prohibit Mr. Yoshioka from participating as an advocate for Mr. Gomes, Mr. Fuke, Ms. Novak, and others, including himself.

The Rules of Professional Conduct also prohibit the Nakamoto, Okamoto & Yamamoto law firm from participating as "ghost" or "shadow" legal advocates in the present matter. However, their misconduct is beyond the jurisdiction of the Hearing Officer and most assuredly will be brought up in another forum. It is unfortunate and a sad statement that people who have a public perception of integrity and honesty, have acted in just the opposite manner.

IV. CONCLUSION

Based on the foregoing points of authority and law, the Applicant respectfully requests that the Hearing Officer deny Mr. Yoshioka's request to intervene in the present matter. The Hearing Officer should also make specific findings to include that:

- (1) The request to intervene by Mr. Yoshioka was made in bad faith;
- (2) That the request to intervene and conduct by Mr. Yoshioka and the Nakamoto, Okamoto & Yamamoto law firm has risen to the level of requiring a referral to the Office of Disciplinary Counsel for misconduct and Department of the Attorney General for the

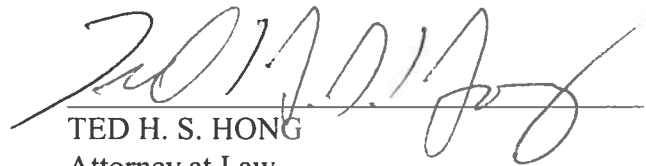
unauthorized practice of law;

(3) That the law firm of Nakamoto, Okamoto & Yamamoto, be directed to either enter an appearance on behalf of Mr. Gomes and openly, directly and honestly participate in the present proceedings or stop its “ghost” or “shadow” representation in the present case; and

(4) That Mr. Yoshioka pay the Applicant its reasonable attorneys’ fees and costs for having to respond to the present motion within ten (10) days after the Order Denying Petition for Standing in a Contested Case Hearing Filed on November 4, 2013.

DATED: Hilo, Hawaii, November 8, 2013.

Respectfully submitted,



TED H. S. HONG
Attorney at Law

Attorney for Applicant

COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	DECLARATION OF TED H. S. HONG
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
Application for Special Permit Application)	
No. 12-000138	)	<u>NON-HEARING MOTION:</u>
	)	DATE: November 8, 2013
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

DECLARATION OF TED H. S. HONG

STATE OF HAWAII)	
	)	SS.
COUNTY OF HAWAII)	

I, TED H. S. HONG, declare that:

1. I am an attorney at law, duly licensed to practice before this Court, and am the attorney for the Attorney for the Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) in the above entitled case.

2. I make this Declaration based on my personal knowledge and am competent to testify about the matters contained in this Declaration.

3. That attached hereto as Exhibit "1," is a true and accurate copy of a letter dated February 15, 2013, addressed to my office from the Planning Department, County of Hawaii and

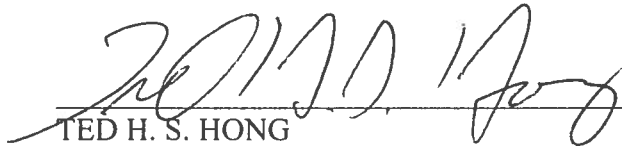
kept in the ordinary course of business.

4. That attached hereto as Exhibit "2," are fair and accurate copies of a series of email received by Terence Yoshioka and produced on October 22, 2013 by Mr. Yoshioka pursuant to Applicant's subpoena duces tecum.

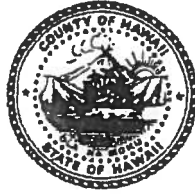
5. That attached hereto as Exhibit "3," is a true and accurate copy of an excerpt from the Hearing Transcript of the Windward Planning Commission, March 7, 2013, which is evidence, as Planning Commission Record, pages 2130, 2138-2139.

6. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Hilo, Hawai'i, on November 8, 2013.


TED H. S. HONG

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

From: "Sid Fuke" <sidfuke@hawaiiantel.net>
Subject: **FW: Connections Contested Case**
Date: October 2, 2013 6:47:03 AM HST
To: "Terence Yoshioka" <tyoshioka5@hawaii.rr.com>

Hope this works. Thanks!

From: Sid Fuke [<mailto:sidfuke@hawaiiantel.net>]
Sent: Tuesday, October 01, 2013 1:33 PM
To: Terence Yoshioka (tyoshioka@hawaiiantel.net)
Cc: 'jeff gomes'
Subject: Connections Contested Case

Hi, Terence:

Sorry we have been playing telephone tags. Basically, I wanted to check on your availability to sit in and assist Jeff with the upcoming contested case hearing. It is scheduled to begin on Monday and Tuesday, October 21-22. I cannot, as I will be in Japan and returning on the 23rd. Please let me know and if so, I can fill you in on some of the matters. Thanks!

Sid

From: "Sid Fuke" <sidfuke@hawaiiintel.net>
Subject: **FW: Connections New Century PCS; SPP-12-000138**
Date: October 4, 2013 7:55:50 AM HST
To: "Terence Yoshioka" <tyoshioka5@hawaii.rr.com>
2 Attachments, 141 KB

FYI.

From: Kualii, Jennifer [<mailto:JKUALII@co.hawaii.hi.us>]
Sent: Thursday, October 03, 2013 1:42 PM
To: sandrasong@hawaiiintel.net; Carter.K.Siu@hawaii.gov; ted@tedhonglaw.com; darai@co.hawaii.hi.us; Darrow, Jeff; kalanigomes@hawaiiintel.net; sidfuke@hawaiiintel.net
Cc: Self, Amy; sue@tedhonglaw.com; kangay@co.hawaii.hi.us
Subject: Connections New Century PCS; SPP-12-000138

Good Afternoon All:

Please find attached the County of Hawai'i Planning Department's List of Witness and List of Exhibits for the above matter.

Should you have any questions, please contact our office.

Thank you,
Jennifer

Jennifer M. Kualii, Legal Technician to
Michael J. Udovic, Amy G. Self
and Noralynne K. Pinao
Deputies Corporation Counsel
Office of the Corporation Counsel
333 Kilauea Avenue, 2nd Floor
Hilo, HI 96720
Tel. No. (808) 961-8251
Fax No. (808) 961-8622



From: "Sid Fuke" <sidfuke@hawaiiantel.net>
Subject: **FW: Connections - Presentation Outline**
Date: October 2, 2013 6:48:29 AM HST
To: "Terence Yoshioka" <tyoshioka5@hawaii.rr.com>
+ 1 Attachment, 32.1 KB

FYI.

From: Sid Fuke [mailto:sidfuke@hawaiiantel.net]
Sent: Monday, September 02, 2013 12:43 PM
To: 'Jeff Gomes'
Subject: FW: Connections - Presentation Outline

Trying again...this is in word format. Let me know.

From: Sid Fuke [mailto:sidfuke@hawaiiantel.net]
Sent: Monday, September 02, 2013 10:03 AM
To: 'Jeff Gomes'
Cc: 'Layne Novak'
Subject: Connections - Presentation Outline

Jeff:

Attached is a pretty detailed outline (STRATEGY) of the approach and points you may want to cover. This is a "cheat" sheet, so you need to be careful NOT to get this in the hands of the applicant. Your witness list and the exhibits have to be geared towards supporting these points. We can talk about this later. Take care!

Sid

[Outline.docx \(32.1 KB\)](#)

From: Layne Novak <noconnectionsever@gmail.com>
Subject: **Last Night's Meeting**
Date: October 16, 2013 10:03:44 AM HST
To: Layne Novak <NoConnectionsEver@gmail.com>
Bcc: tyoshioka5@hawaii.rr.com

Hi everyone,

We had a good turn out last night. Here are some of the highlights:

1. We would like people to provide a 2-minute testimony on NEW evidence regarding traffic, water, sewage, impact on neighborhood, etc. It's not likely that Judge Song will allow one person to accumulate minutes from others the way we had done in the past at the Windward Planning Commission (WPC) meetings.
2. There were 13 people, myself included, that are on Ted Hong's witness list. All, except for myself, were served with subpoenas. These people will not be allowed to watch the entire proceedings so if anyone wants to take notes for the rest of us, please let me know.
3. Terrance Yoshioka will assist Jeff with his questions.
4. Some people want to have a mock hearing so that they have a better understanding of the proceedings so I will let you know when that will be held.

Let me know if you'd like to add anything else.

Aloha,
Layne

From: Layne Novak <noconnectionsever@gmail.com>
Subject: **Contested Case Hearing**
Date: July 25, 2013 3:17:49 PM HST
To: Layne Novak <NoConnectionsEver@gmail.com>
Cc: tkyoshioka@hawaiiantel.net

Hi everyone,

The pre-hearing conference will be either on 7/30 at 9:30 a.m. or 7/31 at 1:30 p.m. Let me know if you are willing to testify again at this hearing.

I need to know ASAP and forward this information to Jeff so he can provide Planning with the approximate number of people.

Thanks,
Layne

From: "Sid Fuke" <sidfuke@hawaiiantel.net>
Subject: FW: Connections New Century PCS; SPP-12-000138
Date: October 4, 2013 7:55:50 AM HST
To: "Terence Yoshioka" <tyoshioka5@hawaii.rr.com>
2 Attachments, 141 KB

FYI.

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To: sandrasong@hawaiiantel.net; Carter.K.Siu@hawaii.gov; ted@tedhonglaw.com; darai@co.hawaii.hi.us; Darrow, Jeff; kalanigomes@hawaiiantel.net; sidfuke@hawaiiantel.net
Cc: Self, Amy; sue@tedhonglaw.com; kangay@co.hawaii.hi.us
Subject: Connections New Century PCS; SPP-12-000138

Good Afternoon All:

Please find attached the County of Hawai'i Planning Department's List of Witness and List of Exhibits for the above matter.

Should you have any questions, please contact our office.

Thank you,
Jennifer

Jennifer M. Kualii, Legal Technician to
Michael J. Udovic, Amy S. Self
and Noralynne K. Pinao
Deputies Corporation Counsel
Office of the Corporation Counsel
333 Kilauea Avenue, 2nd Floor
Hilo, HI 96720
Tel. No. (808) 961-8251
Fax No. (808) 961-8622



From: "Sid Fuke" <sidfuke@hawaiiintel.net>
Subject: **RE: Subpoenas**
Date: October 12, 2013 8:06:52 PM HST
To: "'Layne Novak'" <noconnectionsever@gmail.com>
Cc: "Terence Yoshioka" <tyoshioka5@hawaii.rr.com>, "'jeff gomes'" <kalanigomes@hawaiiintel.net>

Hi, Layne:

I don't know when you will be receiving this, as I am having some problems with internet service here in Japan...especially at the place we stayed the past two nights. Regarding your questions:

- a. I wouldn't worry about Ted's subpoenas. If he asks questions of their testimony and the testifier has not had a chance to review it, the testifier can ask to see it first to refresh his/her memory. As they are not being called as "experts" in a field, they can just express their opinions.

I would not be surprised, however, if Ted asks questions about the community meeting – maybe to find out what they recall my statements, etc. He might be trying to paint me – as Thatcher told me at the community meeting I held re: the regency project – as the "ringleader" and that it was unprofessional of me to do so.

At the same time, by having many – including Terence – on his witness list, he may ask the hearings officer to have them excluded from the hearing, that way crippling the support for Jeff. If so, I hope the hearings officer sees through that.

- b. I have already asked Terence to assist Jeff, and I think he is prepared to do so. Terence has a new email address and I am copying him on this email.

Take care!

Sid

From: Layne Novak [<mailto:noconnectionsever@gmail.com>]
Sent: Friday, October 11, 2013 12:17 PM
To: Sidney Fuke
Subject: Subpoenas

Hi Sidney,

June Sakamoto and Melvin and Jan Yokota got their subpoenas yesterday. They are getting anxious about this and asked if you can give them any information regarding what to expect. They are worried about what Ted will ask of them.

Allen and I have not received our subpoenas yet but since they received theirs, I guess we'll be getting ours shortly.

I will not be testifying, I hope, as I will be leaving for the mainland on Monday, 10/21, albeit in the evening.

By the way, my emails to Terrance have been bouncing. Could you ask Terrance if he could help Jeff with his line of questioning? As far as I know, Jeff has not sent out his subpoenas to Judge Song yet so I'll be pinging again today about getting this done.

Thanks
Layne

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Thanks,
Layne

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

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?

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 15th.

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, Lorin 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

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	CERTIFICATE OF SERVICE
SERVICES)	
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 8, 2013, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

SANDRA P. SONG, ESQ. (sandrasong@hawaiiantel.net)
Hearings Officer
10 Kamehameha Avenue
Hilo, Hawaii 96720

CARTER K. SIU, ESQ. (Carter.K.Siu@hawaii.gov)
Deputy Attorney General
Attorney for Applicant Connections New Century Public Charter School
235 S. Beretania Street, Room 304
Honolulu, Hawaii 96813

Amy Self, Esq. (aself@co.hawaii.hi.us)
Deputy Corporation Counsel
Attorney for the County of Hawaii Planning Director
333 Kilauea Avenue
Hilo, Hawaii 96720


Mr. Jeff Gomes (kalanigomes@hawaiiantel.net)
Intervenor
281 Edita Street
Hilo, Hawaii 96720

Daryn Arai (darai@co.hawaii.hi.us)
Jeff Darrow (jdarrow@co.hawaii.hi.us)
Planning Commission Staff
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Alan M. Okamoto, Esq. (Alan@noyhawaii.com)
187 Kapiolani Street
Hilo, HI 96720

Attorneys for Intervenor and Terence Yoshioka, Esq.

DATED: Hilo, Hawaii, November 8, 2013.



TED H.S. HONG

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

William P. Kenoi
Mayor



SPP No. 12-000138
Page No. 002458
Duane Kanuha
Director

Bobby Command
Deputy Director

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

November 25, 2013

Mr. Terence Yoshioka
1572 Mele Manu Street
Hilo, HI 96720

Dear Mr. Yoshioka:

Special Permit Application No. 12-000138 (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
Subject: Acknowledge Receipt of Petition for Standing in a Contested Case Hearing
TMK: 2-5-006:141

This is to acknowledge receipt of the Petition for Standing in a Contested Case Hearing by Mr. Terence Yoshioka received on November 4, 2013. On November 12, 2013, Hearings Officer Sandra Song ruled that your request for intervention was untimely based on Planning Commission Rule 4.6(a), which states that the written request needs to be filed "no later than seven calendar days, prior to the Commission's first meeting on the matter".

The filing fee will be refunded to you under a separate cover. If you have any questions, please feel free to contact Jeff Darrow at 961-8158.

Sincerely,


DUANE KANUHA
Planning Director

JWD:smn

P:\WPWIN60\JEFF\Letters\Contested Case\LYoshioka-SPP-12-138-AckPetContestCase.doc

Enclosure - Receipt

cc w/petition: Sandra Song, Esq. Hearings Officer
Margaret Matsunaga, Esq., Deputy Corporation Counsel
Amy Self, Esq., Deputy Corporation Counsel
Ted H. S. Hong, Esq
Carter K. Siu, Esq, Deputy Attorney General
Marty Shimizu, Accountant

PETITION FOR STANDING IN A CONTESTED CASE HEARING

(Page 1 of 2)

PLANNING DEPARTMENT
COUNTY OF HAWAII

NAME: Terence Yoshioka 2013 NOV -4 PM 12: 47

ADDRESS: 1572 Mele Manu St. Hilo, Hawaii 96720

PHONE NO.: (808) 934-9198

APPLICANT/Connections New Century Public Charter School (CBESS)

DOCKET NO.: SPP-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:

Refer to attached affidavits of Terence Yoshioka and Jeff Gomes

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:



PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV -4 PM 12: 51

TERENCE YOSHIOKA
1572 Mele Manu Street
Hilo, Hawaii 96720

PLANNING DEPARTMENT

COUNTY OF HAWAII

STATE OF HAWAII

In the Matter of the Applicant of	)	Docket No.
)	
CONNECTIONS NEW CENTURY	)	AFFIDAVIT OF TERENCE
PUBLIC CHARTER SCHOOL	)	YOSHIOKA
COMMUNITY BASED EDUCATION)	
SUPPORT SERVICES (CBESS))	
FRIENDS OF CONNECTIONS)	
_____)	

AFFIDAVIT OF TERENCE YOSHIOKA

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

In support of Petition for Standing in a Contested Case Hearing, comes now, TERENCE YOSHIOKA, being first duly sworn on oath, and in support of the Motion to Intervene, does hereby allege as follows:

1. That I am an adult and a resident at 1572 Mele Manu Street, Hilo, Hawaii 96720;
2. That my residence is situated in the Pacific Plantations Subdivision;
3. That the school which Petitioner CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) FRIENDS OF CONNECTIONS is seeking to construct through

this Special Permit process is located on land which is situated in part within or adjacent to the Pacific Plantation Subdivision;

4. That I must pass the school property every time I leave and return to my home and thereby subject myself to the motor vehicle and pedestrian traffic that will be generated by the construction and activities of the school;

5. That my interest in the Special Permit is clearly distinguishable from that of the general public;

6. That I am an attorney and former Family Court Judge who has some experience with land use and zoning matters;

7. That I am precluded from representing anyone due to the inactive status of my license as an attorney;

8. That I am also precluded from offering legal advice or performing any legal services for others;

9. That the foregoing restrictions prevent me from giving any meaningful assistance to Jeff Gomes, who is the only party to this proceeding who is opposing the Special Permit;

10. That unless I am allowed to intervene I believe that Mr. Gomes will be at a serious disadvantage in representing himself and all others who are in opposition to the Special Permit.

11. That if I am allowed to intervene, I believe that my knowledge and experience will lessen the disadvantage to Mr. Gomes and others who are opposed and not participating as parties;

12. That if allowed to intervene, Mr. Gomes has agreed to restrict his participation in further proceedings, to the extent described by the Hearings Officer, as stated in his Affidavit appended hereto;

13. That I believe my participation in their proceeding will not lengthen the time needed to complete the contested case hearing but may actually decrease the time due to my legal training and background;

14. That my participation will level the playing field somewhat and serve to further the ends of justice; and

15. That I do not intend to offer any additional witnesses and will restrict any participation to the cross-examination of other parties' witnesses. Other than this limitation, I intend to fully participate as a party in all other aspect of this proceeding.

And further affiant sayeth not.

Terence Yoshioka
TERENCE YOSHIOKA

Subscribed and sworn to before me

this 31st day of October, 2013.

[Signature]

L.S.

Notary Public, State of Hawaii

My commission expires: 10/14/16

Doc. Date: <u>10/31/13</u> or <input type="checkbox"/> Undated at time of notarization	# Pages: <u>3</u>
Name of Notary: _____	Third <u> </u> Circuit <u> </u>
Document Description: Affidavit of Terence Yoshioka	
<i>[Signature]</i> Notary Signature	<u>10/31/13</u> Date
NOTARY CERTIFICATION	
(Seal or Stamp)	

L.S.

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV -4 PM 12: 51

JEFF GOMES
281 Edita Street
Hilo, Hawaii 96720

PLANNING DEPARTMENT

COUNTY OF HAWAII

STATE OF HAWAII

In the Matter of the Applicant of	)	Docket No.
)	
CONNECTIONS NEW CENTURY	)	AFFIDAVIT OF JEFF GOMES
PUBLIC CHARTER SCHOOL)	
COMMUNITY BASED EDUCATION)	
SUPPORT SERVICES (CBESS))	
FRIENDS OF CONNECTIONS)	
_____)	

AFFIDAVIT OF JEFF GOMES

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

In support of Petition for Standing in a Contested Case Hearing, comes now, JEFF GOMES, being first duly sworn on oath, and in support of the Motion to Intervene, does hereby allege as follows:

1. That I am an adult and a resident at 281 Edita Street, Hilo, Hawaii 96720;
2. That my residence is situated in the Pacific Plantations Subdivision;
3. That I am a party to the Special Permit Application of CONNECTIONS

NEW CENTURY PUBLIC CHARTER SCHOOL COMMUNITY BASED
EDUCATION SUPPORT SERVICES (CBESS) FRIENDS OF CONNECTIONS;

4. That I became a party to oppose the Special Permit as the community in which I live has no community association to voice its objection to the Special Permit;


5. That I do not have sufficient knowledge or experience to adequately represent myself or others who are opposed to the Special Permit in these proceedings;

6. That the intervention by Terence Yoshioka in these proceedings would be welcomed by me as Mr. Yoshioka is more knowledgeable and experienced on land use and zoning matters as well as contested case proceedings, and is more capable of presenting the objections and arguments against the Special Permits;

7. That if Mr. Yoshioka is allowed to intervene, I am willing to accept whatever reasonable terms, conditions and restrictions which the Hearing Officer may impose upon me for the balance of the proceedings; and

8. That I believe Mr. Yoshioka's participation will enhance the probability of producing all relevant and material evidence needed for deciding whether the Special Permit should be approved or denied.

And further affiant sayeth not.




JEFF GOMES

Subscribed and sworn to before me

this 4th day of NOVEMBER, 2013.

R.S. 

Notary Public, State of Hawaii
My commission expires: April 19, 2017

Doc. Date: _____	or <input type="checkbox"/> Undated at time of notarization	# Pages: <u>2</u>
Name of Notary: <u>S. Talich</u>	Third	Circuit
Document Description: Affidavit of Jeff Gomes		
<u></u>	<u>11-4-13</u>	
Notary Signature	Date	
NOTARY CERTIFICATION		(Seal or Stamp) <i>R.S.</i>

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	) SPP No. 12-000138
)
)
CONNECTION NEW CENTURY PUBLIC	) RETURN OF SERVICE;
CHARTER SCHOOL AND COMMUNITY	) ACKNOWLEDGMENT OF SERVICE
BASED EDUCATION SUPPORT)
SERVICES	) [WITNESS: LAYNE NOVAK]
)
)
Application for Special Permit Application)
No. 12-000138)
)
)
TMK: (3) 2-5-006:141; Kaumana, South Hilo,)
Island of Hawaii)

RETURN OF SERVICE

The undersigned hereby declares under penalty of perjury and says that he/she served the attached Subpoenas and Subpoena duces tecum by hand delivering a copy to

Alan NOVAK, obo Layne NOVAK on December 24, 2013 at 7:21 AM


[address] 1414 C Mele Maui St.,

Hilo, Hawaii

and tendering to that person the fee for one day's attendance and the mileage allowed by law.

I declare under penalty of the law of the State of Hawai'i that the foregoing is true and correct.

DATED: Hilo, HAWAII, December 24, 2013.


Civil Deputy/Process Server
Burton H. Yamaguchi
Printed Name

ACKNOWLEDGEMENT OF SERVICE:

The undersigned acknowledged receipt by personal service of the attached Subpoena.

N/A
Signature

Alan NOVAK, obo Lacey NOVAK (spouse)
Printed Name

12-24-13 / 7:21 AM
Date and Time

Acknowledgement of Hearings Officer

Sandra Song

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA DUCES TECUM
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: CUSTODIAN OF RECORDS,
Application for Special Permit Application	)	County of Hawaii, Planning Department]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
<u>Island of Hawaii</u>)	

SUBPOENA

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii, YOU ARE
COMMANDED to subpoena the individual named below:

CUSTODIAN OF RECORDS, County of Hawaii, Planning Department
Address: 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720
Phone: (808)961-8201

WITNESS, YOU ARE COMMANDED to appear before a Notary Public from Island Court Reporting & Transcription Services at a County of Hawaii Windward Planning Commission Contested Case Hearing (County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, Hawaii 96720), who is duly authorized to administer oaths, on Wednesday, January 8, 2014; commencing at 11:45 AM, to testify as a witness on the part of the Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) at the taking of an oral deposition in the above-entitled matter.

YOU ARE FURTHER ORDERED to bring with you the original ^{SP} and ~~4 copies~~ for a total of ~~5 sets~~ of the following:

1. Any and all records for the following property identified with tax map key number (3) 1-6-003:012; Use Permit No. 181 and/or Special Permit No. 1052, including mapping information that provides the current State Land Use and the County of Hawaii Zoning

WITNESS, you are hereby commanded to appear at the time and place indicated to testify; you are to bring all of the above described records with you.

DATED: Hilo, Hawaii, Dec. 31, 2013



SANDRA P. SONG
Hearings Officer

NOTICE TO A PERSON OR ENTITY SERVED WITH A
SUBPOENA DUCES TECUM WHO IS NOT A PARTY TO THIS CASE

The Subpoena attached hereto should specifically set forth the materials sought to be subpoenaed. Any person and/or entity or their attorney objecting to the Subpoena or to disclosure of any materials subpoenaed shall appear on the date and at the time and place for return indicated on the Subpoena and State their objections. Failure to object on the return date may be considered a waiver of any objections.

The person or entity subpoenaed or their counsel may submit a written statement of objections to the Hearings Officer listed above. If a person or entity objects to disclosure of only part of the material, the pages or sections of material considered confidential and/or nondisclosable shall be tabbed or marked for the Hearings Officer.

Matters presented at the return may be continued from time to time without further notice except as announced at the time of return.

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA (NOTICE TO APPEAR)
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES)	
)	
	)	[WITNESS: CUSTODIAN OF RECORDS,
Application for Special Permit Application	)	County of Hawaii, Planning Department]
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
<u>Island of Hawaii</u>)	

SUBPOENA

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii, YOU ARE
COMMANDED to subpoena the individual named below:

CUSTODIAN OF RECORDS, County of Hawaii, Planning Department
Address: 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720
Phone: (808)961-8288

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated below, to testify as a witness on behalf of the Applicant, above named, in the above-entitled matter.

DATE:

Wednesday, January 8, 2014

TIME:

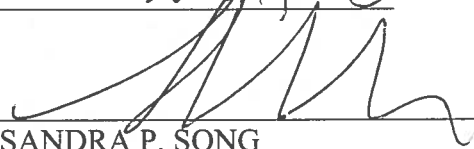
11:45 a.m. or until such time your testimony may be heard.

LOCATION:

County of Hawaii, 101 Pauahi Street, Aupuni Center Conference Room, Hilo, HI 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this tribunal.

DATED: Hilo, Hawaii, December 31, 2013



SANDRA P. SONG
Hearings Officer

DAVID M. LOUIE 2612
Attorney General of Hawaii

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
235 South Beretania Street, Room 304
Honolulu, Hawaii 96813
Telephone No. 808.586.1255
Carter.K.Siu@hawaii.gov

Attorney for Applicant
CONNECTION NEW CENTURY
PUBLIC CHARTER SCHOOL

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WIDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	APPLICANTS CONNECTION NEW
	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
Application for Special Permit Application	)	SUPPORT SERVICES (CBESS); JOINT
No. 12-000138	)	PROPOSED FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND DECISION
	)	AND RECOMMENDATION; CERTIFICATE
	)	OF SERVICE
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii	)	Hearings Officer: Sandra P. Song
	)	Hearing Date: October 21-22, 2013
	)	Time: 9:00 am

**APPLICANT COMMUNITY BASED EDUCATION SUPPORT SERVICES' (CBESS)
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
RECOMMENDATION**

Connections Public Charter School and Community Based Education Support Services filed an Application for Special Permit on July 25, 2012 to permit the development of a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres situated in the State Land Use Agricultural District on the southwest and the northeast sides of Edita Street near its intersection with Kaumana Drive and adjoining the Pacific Plantation Subdivision in Kaumana, South Hilo, Hawaii, TMK: (3) 2-5-006: 141.

After due notice, this Application was scheduled for determination before the Planning Commission on November 9, 2012. After a number of continuances, a petition for Contested Case hearing was filed on March 7, 2013 by Jeffrey Gomes. After due consideration, the Planning Commission, on March 7, 2013, found that Jeffrey Gomes had standing and granted his Petition for Contested Case Hearing and further determined that a hearings officer would be appointed. See Planning Commission Record at pg. 2155.

Sandra P. Song, Esq. was appointed Hearings Officer to preside over the contested case. The Hearings Officer, having examined the record, the testimony, the evidence and the arguments presented during the hearings held on October 21-22, 2013, November 12, 2013, January 8, 2014 and January 22, 2014 makes the following Findings of Fact, Conclusions of Law and decision and order.

FINDINGS OF FACT

1) Connections Public Charter School (hereinafter "Connections") operates in the County of Hawaii and offers a K-12 program to approximately 360 students. See Planning Commission Record, hereinafter ("Record") at pg. 25. Connections currently operates from two

separate campuses and now desires to consolidate all of its academic programs at a single location. Id. Record at 26.

2) In coordination with the State of Hawaii Department of Land and Natural Resources (hereinafter “DLNR”), a State-owned property was identified by the school as a potential site for the new campus. Id. Record at 26.

3) Connections developed a conceptual master plan that would see the development of a new academic campus that would include an elementary, intermediate and high school facilities and common facilities to support these programs. The conceptual plan also provides facilities for a forestry/conservation program, a sustainable agricultural program and a small intergenerational program that would provide childcare and elder care at a single facility. Id. Record at 28.

4) In order to receive approval from DLNR and its Board of Land and Natural Resources (hereinafter “BLNR”) Connections was required to comply with Hawaii Revised Statutes (hereinafter “HRS”) Chapter 343 by preparing an environmental assessment (hereinafter “EA”). A Draft EA was completed and published in the Office of Environmental Quality Control’s (hereinafter “OEQC”) *The Environmental Notice* in August 2009. Supporting studies appended to the Draft EA included biological surveys (e.g., botanical, invertebrate, avian and mammalian), an archeological assessment survey, and a traffic impact assessment report (hereinafter “TIAR”). Id. Record at 26.

5) During the 30-day public review of the Draft EA concerns were raised about the project’s potential impacts on Kaumana Cave, a segment of which underlies the Property’s upper parcel. In response to these concerns and at the request of the State Historic Preservation Division (“hereinafter “SHPD”) an archaeological field inspection of the accessible portion of Kaumana Cave that underlies the Property’s upper parcel was conducted. With the exception of

names carved into the cave walls, no historic elements were found during the inspection.

Connections chose to revise the conceptual campus plan by relocated the major built facilities entirely within the Property's lower parcel and maintained a minimum 100-foot buffer on either side of the cave alignment to alleviate concerns about impacting the cave ecosystem. Id. Record at 26.

6) The Draft EA was amended to address the revised conceptual campus plan and was published in *The Environmental Notice* in August 2010 initiating a second 30-day public review period. Comments received during this 2nd public review were responded to, and DLNR determined that the project as proposed and revised would not have significant environmental effects and issued a Finding of No Significant Impact. The Final EA was published in *The Environmental Notice* in November 2010. Id. Record at 26-27 55-306.

7) Connections requested and received approval BLNR for a long-term land lease for the Property. On May 1, 2012 DLNR published a public notice stating their intent to issue a direct lease of the Property to Connections. Id. Record at 26, 53-54 (the content of the lease can be found on pages 2161-2184 of the Planning Commission Record).

8) With the General Lease in place, Connections moved forward with obtaining all of the necessary entitlements for the Property.

9) On July 25, 2012, Connections, along with Community Based Education Support Services (hereinafter "CBESS") Friends of Connections, the charter school's supporting non-profit organization, submitted its Special Permit application to the Planning Department. Id. Record at 1-3.

Special Permit Application

10) **State Land Use Designation:** The State Land Use Designation is Agricultural. Id. Record at 25.

- 11) **County Zoning:** The County zoning is Agricultural-1 acre (A-1a). Id. Record at 25 and 777.
- 12) **General Plan Land Use Pattern Allocation Guide (“LUPAG”) Map:** The property is designated as “Low Density Urban.” Id. Record at 25 and 783.
- 13) **Project Site.** The property Connections found is located in Kaumana, South Hilo, on the eastern side of the island of Hawaii and is identified as Tax Map Key (3) 2-5-006: 141 (hereinafter “Property”). The Property is owned by the State of Hawaii and is approximately 70 acres in size and is situated approximately 2.5 miles above Hilo town and south of Kaumana Drive. Id. Record at 27. The Property is currently undeveloped and there are no existing uses or structures. Id. Record at 27. In addition, the Property is separated into two parcels at its narrowest point by Edita Street. The upper parcel comprises roughly 33 acres and the lower parcel 37 acres. Id. Record at 27.
- 14) All major school facilities are proposed to be located within the lower parcel. Id. Record at 28-29. While no major school facilities are being proposed for the upper parcel, Connections has indicated that this land area shall support a future forestry conservation program, which will focus on forest resource management and conservation, and forest ecosystem restoration. A walkway is being proposed for the upper parcel to provide access and viewing opportunities. Id. Record at 29-30.
- 15) **Surrounding Zoning/Land Uses.** The surrounding lands to the south and west are similarly zoned A-1a. Further south are properties zones A-20a and A-10a. To the north are properties zoned RS-10 and RS-15, with some properties zones A-3a further north across Kaumana Drive. There is a property zoned Open that adjoin the lower parcel to the northeast.

Surrounding uses consist mainly of single family residences and vacant lands, with some agricultural activity occurring in the area. Id. Record at 778.

16) **Agricultural Lands of Importance to the State of Hawaii (ALISH):** The Property is not classified. Id. Record at 25 and 777.

17) **Land Study Bureau Soil Rating:** Soils within the Property are classified as “D”. Id. Record at 25 and 777.

18) **Flood Insurance Rate Map:** The Federal Emergency Management Agency has classified the area in which the Property is located, as Zone X. Zone C is land with no recognizable flood potential and is located outside both the 100-year and 500-year floodplain. Id. Record at 36 and 781.

19) **Archaeological/Historical Resources:** An archaeological assessment survey of the Property was conducted in 2008 and a supplemental field inspection of Kaumana Cave was also conducted at the request of the State Historic Preservation Division (SHPD). Id. Record at 322-326. The entire project area is situated on the 1880-1881 lava flow and as a result it is surmised that any pre-existing archaeological or historic sites within the project area would have been destroyed by the flow. No archaeological sites were encountered during the filed investigation. Id. Record at 36-37, 258-282 and 322-326. The field inspection of the accessible portion of Kaumana Cave (which underlies the upper parcel of the Property) found that no historic elements, with the exception of pecked names, were encountered. Id. Record at 37, 258-282 and 322-326.

20) **Flora/Fauna Resources:** A biological assessment, which encompassed flora, vertebrate and invertebrates, was completed. The assessment concluded that there is nothing unique about the Property or its vegetation and the construction and operation of the proposed

school would not adversely impact native avian or mammalian resources. Id. Record at 37-38 and 238-257.

21) **Public Access:** The Property is not located adjacent to or near any shoreline or mountain areas, therefore the project would not affect public access to these resources. Id. Record at 40.

22) **Value Cultural Resources:** There have been no identified traditional or customary native Hawaiian rights exercised at the Property. Id. Record at 39.

23) **Description of Access:** Access to the Property is via Edita Street, which extends off Kaumana Drive in a southeasterly direction, forming a 3-way intersection. The paved width of Edit Street fronting the Property is approximately 48 feet, which accommodates the two travel lanes (20 feet), a 20-foot shoulder on the northeast or Makai side of the road, and an 8-foot shoulder on the southwest or mauka side. The road is in good condition. Id. Record at 40 and 779-780.

24) **Traffic Impacts:** According to a Traffic Impact Analysis Report conducted during the environmental assessment process, the proposed use is not expected to generate large increases in traffic volumes and would not result in adverse impacts to traffic and circulation patterns in the project area. Id. Record at 41 and 289-306.

25) **Energy and Communications:** Electrical services in the project area are provided by the Hawaii Electrical Light Company (HELCO) through overhead lines along Edita Street and Kaumana Drive. Communications services are also available to the Property through overhead lines along Edita Street. Id. Record at 42.

26) **Water Supply:** The Hawaii County Department of Water Supply (DWS) provides water to the area via an existing 8-inch waterline along Kaumana Drive and from an existing 8-inch waterline along Edita Street. The current water availability, which is subject to

change is limited to a maximum of seven units of water per pre-existing lot of record. Each unit of water is equal to a maximum of 600 gallons per day; therefore, a maximum of 4,200 gallons per day is available for the proposed project. Id. Record at 42 and 780-781.

27) **Wastewater:** Currently, there is no municipal wastewater system serving the Kaumana area, and the proposed project, like the surrounding area residences, would have to provide its own wastewater system. Id. Record at 42 and 781.

28) On July 31, 2012, the Planning Department acknowledged receipt of the Special Permit application and designated same as SPP 12-000138. Ms. Leithead-Todd's letter informed Connections that it must comply with Hawaii County Zoning Code, Section 25-2-4, and serve notice of the application on surrounding property owners and lessees of record within 500 feet of the perimeter boundary of the Property as well as provide a notice on the Property itself of the Special Permit application. Id. Record at 329-331.

29) Ms. Leithead-Todd also forwarded the Special Permit application to all of the necessary public agencies for review and asked that any written comments be returned by August 28, 2012. Id. Record at 332.

30) On August 8, 2012, Connections, through its attorney, Ted H.S. Hong, acknowledged to the Planning Director that it had successfully notified surrounding property owners and lessees of record within 500 feet of the perimeter boundary of the Property of SPP 12-000138. Id. Record at 334-349.

31) On August 15, 2012, Connections, through its attorney, Ted H.S. Hong, acknowledged to the Planning Director that it had posted a sign on the Property as required by the Hawaii County Zoning Code of SPP 12-000138. Id. Record at 364-373.

32) Throughout the following months, the Planning Director received responses from various county and state agencies regarding their review of the proposed development on the Property. Id. Record at 333, 350-363, 374-388, 393, 401-404.

33) By letter dated October 12, 2012, Connections received a notice from the Planning Director that its Special Permit application would be scheduled for public hearing by the Planning Commission on November 9, 2012. The Planning Director instructed Connections to again provide notice to the surrounding property owners and lessees of the upcoming hearing. Id. Record at 412-416.

34) On October 19, 2012, Connections, through its attorney, Ted H.S. Hong, acknowledged to the Planning Director that it had successfully notified surrounding property owners and lessees of record within 500 feet of the perimeter boundary of the Property of SPP 12-000138 of the upcoming hearing scheduled for November 9, 2012. Id. Record at 802-818.

35) The Planning Department and Planning Commission began receiving a number of comments from the public regarding the pending special permit application. Id. Record at 405-11, 788-93, 819-26, 829-36, 841-43, 846-48, 873-880, 897-911, 1072-197, 1201-26, 1232-1544.

36) Prior to the hearing, the Planning Director transmitted her favorable recommendation of the Special Permit application to the Planning Commission and suggested that they send a favorable recommendation to the State Land Use Commission. Included in that favorable recommendation was a list of conditions of approvals (later revised) that were established to address the concerns that several public agencies had. Id. Record at 773-787 and 1224-31.

37) On November 9, 2012, the Planning Commission met to discuss SPP-12-000138. Id. Record at 1547. After several hours of testimony, the Planning Commission voted to defer the hearing of SPP-12-000138 until December 6, 2012 so that Connections could formalize water

calculations to address the Planning Commission's concerns of an adequate water supply, have a meeting with the Mr. Brilhante, the owner of the adjacent property, to discuss access to the Puainako Street Extension, and meet with the surrounding community to address the concerns that they had expressed. Id. Record at 1640 and 1674.

38) The Planning Department, by letter dated November 13, 2012, notified surrounding property owners of the December 6, 2012 meeting. Id. Record at 1647-1673.

39) On November 21, 2012, Celia Shen of Wil Chee- Planning & Environmental submitted preliminary estimates of potable water consumption on behalf of Connections. Id. Record at 1677-1684.

40) By letter dated December 5, 2012, Connections' attorney, Mr. Hong, wrote a letter to the Planning Director to inform her that the Department of the Attorney General for the State of Hawaii would be representing the charter school. Id. Record at 1708-1709. Deputy Attorney General Monica Morris was assigned to represent Connections, but would be unable to attend the December 6, 2012 Planning Commission meeting due to a scheduling conflict.

41) Also by letter dated December 5, 2012, Connections, through its administrative assistant Eric Boyd, informed surrounding property owners and lessees that it would hold another community informational meeting on the project on December 17, 2012. Id. Record at 1716-1724.

42) At the Windward Planning Commission hearing on December 6, 2012, the Planning Commission voted to continue its consideration of Connections' Special Permit application to its next meeting on January 10, 2013. Id. Record at 1853.

43) By letter dated December 10, 2012, the Planning Director informed Ms. Morris that it was responsible for notifying surrounding property owners and lessees of the January 10,

2013 meeting of the Windward Planning Commission. Id. Record at 1854. Mr. Hong's office, which was directed by Connections, complied with the request. Id. Record at 1868-1885.

44) On or about January 8, 2013, the Planning Department received a report from Connections regarding the community meeting held on December 17, 2012. Id. Record at 1886-1891. After meeting with nearby residents, Connections offered several proposed conditions to go along with the ones provided by the Planning Director to address concerns raised by the community. Id. Record at 1890-1891.

45) The proposed conditions Connections suggested adding were: 1) providing a fifty-foot buffer around the perimeter of the lower parcel in which no occupiable structures be permitted in order to provide adjacent owners with a continued sense of open space; 2) requiring that the upper parcel shall be maintained for educational offerings and restricting the construction of occupiable structures; and 3) in order to facilitate any future roadway widening, Connections would agree to amend the Direct Lease with the State of Hawaii with the consent of DLNR and BLNR to allow for a right-of-way or road widening. Id. Record at 1890-1891.

46) At the January 10, 2013 meeting of the Windward Planning Commission, the Commission made a motion to deny the Special Permit application and directed its staff to prepare draft Findings of Fact, Conclusions of Law, and Decision and Order ("Order") for its consideration at the meeting held on March 7, 2013. Id. Record at 2057. By letter, dated January 24, 2013, Chairman Dean Au explained to Connections (through its attorney) that once the Order is prepared it would be provided to Connections with an opportunity for the filing of exceptions and presentation of argument to the Planning Commission. Id. Record at 2057.

47) By letter dated February 19, 2013, attorney for CBESS, Mr. Hong informed the Planning Commission that some procedural errors were discovered relating to: 1) the ability for parties to request a contested case; 2) the ability to intervene at the State Land Use Commission;

and 3) improper notification related to a contested case process at the Planning Commission level and the State Land Use Commission level creating a due process violation. Id. Record at 2070. In order to address these procedural errors, the preparation of the Order was suspended so that the Planning Commission could first meet. The letter was joined by Deputy Attorney General Monica T.L. Morris. Id. Record at 2072.

48) Chairman Au responded by letter dated February 28, 2013 and confirmed that the preparation of the Order would be suspended pending further discussion of procedural issues at the March 7, 2013 meeting. Id. Record at 2071.

49) At the March 7, 2013 meeting, Mr. Jeffrey Gomes executed and submitted a Petition for Standing in Contested Case Hearing stating as an adjoining property owner to the proposed project, his family would be severely impacted by the project. Id. Record at 2122-25.

50) At the March 7, 2013 meeting, the Planning Commission agreed to grant Mr. Gomes standing in a contested case and subsequently agreed to hire a hearings officer to conduct the contested case hearing on its behalf. Id. Record at 2153-55.

51) By letter dated July 12, 2013, the Planning Commission informed all of the parties that Sandra P. Song, Esq. would serve as hearings officer for the contested case hearing.

CONCLUSIONS OF LAW

1) Section 205-6, Hawaii Revised Statutes states as follows:

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

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the

effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter.

2) The guidelines provided in the State Land Use Law for establishment of Agricultural district boundaries are intended to provide the greatest possible protection to those lands with a high capacity for intensive cultivation. The Property's soils are classified by the LSB as "D" (Poor) for agricultural productivity and the State of Hawaii ALISH system indicates that the Property is not classified as Important Agricultural Land or Agricultural Lands of Importance to the State of Hawaii. Id. Record at 43.

3) A charter school is not considered a permitted use within the State Land Use Agricultural District; however, uses not expressly permitted may be allowed in the Agricultural District by Special Permit on lands having soils with an overall productivity rating of C, D, E or U. See, Sec. 205-2(a)(3), HRS.

4) Additionally, a charter school is not considered a permitted use within an area that has been zoned Agriculture 1 acre (A-1a); however, Hawaii County Code Section 25-572(d) provides that schools may be permitted in the Agriculture district, provided that a Special Permit is issued for the use. See Transcript of Proceedings, Vol. 4, page 539, line 14-16; see also Exhibit A26.

5) Special Permits for a parcel of land greater than 15 acres must be recommended for approval by a county planning commission and then reviewed and affirmed by the Hawaii State Land Use Commission. Malama Maha'uiepu v. Land Use Com'n, 71 Hawaii 332, 334 (1990).

6) County Planning Commissions are vested with the authority to recommend approval for special permits for parcels of land greater than 15 acres for uses that while not otherwise permitted within agricultural districts, are nonetheless "unusual and reasonable" uses

that promote the effectiveness and objectives of Chapter 205 of the Hawaii Revised Statutes. Id. at 332, 336-37; Haw. Rev. Stat. §§ 205-4.5 and 205-6.

7) The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District and (b) the proposed use would promote the effectiveness and objectives of HRS Chapter 205. See Rule 6-7, Planning Commission Rules and Regulations.

8) The requirements of Rule 6-7, Rules of the Planning Commission have been satisfied by Applicant. Applicant has satisfactorily demonstrated by a preponderance of the evidence that the establishment of a K to 12 charter school campus with support facilities and related uses on approximately 70 acres of land is an unusual and reasonable use of lands within the Agricultural district and would further the objectives of the Land Use laws.

9) The proposed use is unusual in that a school is not normally considered agricultural in nature. However, it is a reasonable use that a school be located within the Agricultural district because communities within Agricultural districts requires certain services that support the agricultural community in which they are located, including schools.

10) In addition, the criteria listed under Section 6-3(b)(5)(A) through (G), Rules of the Planning Commission have been satisfied by a preponderance of the evidence by Applicant.

A. **Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The law is intended to preserve, protect and encourage the development of lands in the State of Hawaii for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. For lands in the Agricultural district, the intent is to preserve or keep lands of high agricultural potential in agricultural use. However, some agricultural lands

may not be suited for agricultural use, but are classified as such. The law allows uses that may not be strictly agricultural in nature yet are reasonable within the district. The special permit process for usual and reasonable uses within the Agricultural district is available. This is the case herein.

B. The desired use would not adversely affect surrounding properties.

An adverse effect is defined as an unwanted and unanticipated result of taking a particular action. Here, the action is to develop a K to 12 charter school campus with support facilities and related uses on approximately 70 acres of land. Anticipated impacts that would adversely affect surrounding properties from the proposed use are an increase in traffic to the area and an increase of noise. These impacts, however, can be mitigated to minimize their adverse affect to surrounding properties through conditions of approval of the Special Permit. As the TIAR recommended, a separate left turn land shall be provided for left turns from eastbound Edita Street into the Lower Campus at Road A. Additionally, to help mitigate noise and visual impacts, landscaping will be required along the perimeter of the Property.

C. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Based upon the comments received from various public agencies, the following will be done to ensure that the proposed use shall not burden public agencies:

1. Department of Public Works – Traffic Division: As previously mentioned, a condition of approval will be added to require applicant to construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at Road A. In addition, comments were received from DPW-Traffic Division requesting that Connections submit a traffic management plan to be

reviewed and approved by DPW-Traffic Division in consultation with the Police Department. The plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. Finally, the Applicant shall also provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. A Traffic Impact Analysis Report for this project was prepared by Phillip Rowell. Id. Record at 41 and 289-306. See testimony of Phillip Rowell, Transcript of Proceedings, Vol. 4, page 456, line 15-25, page 457, line 1-7, 25, page 458 line 1-25, page 459, line 1-25, page 460 line 1-25, page 461, line 1-25, page 462, line 1-25, page 463, line 1-25, page 464 line 1-4. The Traffic Impact Analysis Report for this project was evaluated by Ron Theil, Chief of the Traffic Division for the County of Hawaii. Id. Record at 733, See testimony of Ron Theil, Transcript of Proceedings, Vol. 1, page 154, line 1-25, page 155, line 1-25, page 156, line 1-25, page 157, line 1-25, page 158, line 1-25, page 159, line 1-25, page 160, line 1-25, page 161, line 1-25, page 162, line 1-25. The Department of Public Works Traffic Division supports the Planning Departments Conditions of Approval related to traffic mitigative measure. See testimony of Ron Theil, Transcript of Proceedings, Vol 1, page 173, line 1-25, page 174, line 1.

2. Police Department: The Police Department commented that the section of Edita Street from Kaumana Drive leading to the Property has no pavement off of the travel portion of the roadway and would be unsafe for pedestrian traffic. To address this comment from the Police Department, a

condition of approval will be added requiring Connection to add an 8-foot paved shoulder along the northeastern (Makai) side of Edita Street from the south end of the Property to the intersection of Edita Street and Kaumana Drive.

3. Department of Water Supply: County water is available for up to a maximum daily usage of 4,200 gallons per day from an existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus. The Property is assigned seven (7) units of water, which equates to an average usage of 600 gallons per day per unit of water (4,200 gpd). Additionally, the existing 8-inch waterline within Edita Street is looped and therefore adequate to provide the required 2,000 gallons per minute of flow for fire protection, as per the Department's Water System Standards for schools. Potable water needs will be met by connecting to the existing county water supply infrastructure. Non-potable water supply needs will be met with an extensive rainwater collection system consisting of catchment tanks, storage reservoirs/tanks with a network of water lines to distribute the collected water throughout the campus. The potable water system and the catchment system cannot be interconnected. The Applicant also conducted preliminary water calculation related to water usage for a campus under varying scenarios on how much water would be use on campus. Id. Record at 1678 to 1684. See testimony of Kevin Louma, Transcript of Proceedings, Vol. 1, page 139, lines 10-15, page 140, lines 1-25, page 141, lines 1-25, page 142, lines 1-25, page 143, lines 1-25. It may become evident during the design of the development that a potable well is needed, at which time Connection will then need to conduct additional detailed analysis and apply for additional permits. The Department of Water Supply also

reviewed the preliminary water calculations. See testimony of Kurt Inaba, Transcript of Proceedings, Vol. 1, page 182, line 17-25, page 183, line 1-25, page 184, line 1-25, page 185 line 1-25. The Department of Water Supply supports the Planning Department's Conditions of Approval related to water. See testimony of Kurt Inaba, Transcript of Proceedings, Vol. 1, page 187, line 8-16.

4. State Department of Health: There is no municipal wastewater system currently serving the Kaumana area. Connections will have to provide its own waste water system meeting with the State Department of Health regulations.

Based upon the above discussion, conditions of approval shall be utilized to insure that the proposed use does not burden public agencies to provide additional services.

D. **Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. Although the property and surrounding areas are designated for agricultural uses by both State and County land use laws, through the issuance of a Special Permit, various "non-agricultural" services may be allowed, including schools.

E. **The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the soil is classified as "D" or "Poor" by the LSB's Detailed Land Classification System and is identified mainly as pahoehoe lava flow by the US Soil Survey. Based on this information, the land upon which the proposed use is sought is

unsuited for agricultural uses permitted within the Agricultural District. Although the Property is unsuited for agricultural use, Connection is proposing to have an agricultural program and a forestry/conservation program as part of the curriculum. The agricultural program facilities would be conducted from the lower parcel and include green houses, a six-horse barn, and cultivated gardens. The forestry/conservation program, which focuses on forest resource management, conservation, and forest ecosystem restoration, would be located on the upper parcel.

F. **The use will not substantially alter or change the essential character of the land and the present use.** The current character and present use of the Property is undeveloped, vacant of structures and uses. The current character of the surrounding area is residential to the north and residential/agricultural to the south. The present use of the surrounding area is mainly residential with some agricultural activity and vacant land. The proposed use will alter or change the essential character of the land and its present use from its current undeveloped character. Connections has proposed to construct the school building as single story structures, similar to the surrounding residential community, to help minimize the change to the essential character of the land. Connections is encouraged to design the campus to match the surrounding rural character rather than having an institutional character typical of a public school campus.

G. **The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.** The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-

urban form for areas within the County. The Property is located in an area identified as Low Density Urban in the General Plan. The Low Density Urban designation allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses where overall residential density may be up to six units per acre. The request will not be contrary to the LUPAG Map designation for this area. Additionally, the approval of the subject request would support the following goals and policies of the Economic, Public Facilities and Land Use elements of General Plan:

Economic Element

- Provide an economic environment that allows new, expanded or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and Social environments.

Public Facilities-Education (Course of Actions for South Hilo)

- Encourage the establishment of additional schools as the need arises.

Land Use-Public Land

- Encourage uses of public lands that will satisfy specific public needs, such as housing, recreation, open space and education.

Based on the above, the proposed request is not contrary with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which is Low Density Urban and allows ancillary community and public uses. Additionally, the General Plan encourages the use of public land for education and a course of action for South Hilo encourages the establishment of additional schools as the need arises.

11) The proposed use is not contrary to the objectives sought to be accomplished by HRS Chapter 205A, relating to the Coastal Zone Management Program. The Property is located

over three miles from the closest shoreline and is not located within the Special Management Area.

12) There is no designated public access to the mountain areas over the Property.

13) Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shorelines, scenic and open space resources, coastal ecosystems, and marine and coastal resources. Further, the Property will not be affected by any coastal hazards or beach erosion.

14) The Hearings Officer concluded upon a preponderance of the evidence that the Application for Special Permit is reasonable, conforms to the standards in Section 205-6, Hawaii Revised Statutes, does not violate Section 205-4.5, Hawaii Revised Statutes, and is consistent with the standards and requirements set forth by Rule 6-3(b)(5)(A) through (G), Rules of the Planning Commission.

15) Applicant has complied with the requirements found in Rule 6-6(b), Rules of the Planning Commission and mailed a notice of the Application and hearing to owners of interests in properties within five hundred feet of the perimeter boundary of the subject property.

16) Applicant has also complied with Rule 6-6(d) and filed an appropriate proof of mailing document evidencing compliance with the rule.

17) In addition, notice of the public hearings have been published in the newspaper pursuant to Rule 6-6(d).

18) The due process requirements under the Rules of the Planning Commission have been satisfactorily complied with.

State Land Use Boundary Amendment Process is Not Applicable

19) The property in question is in a State Land Use District designated for agricultural purposes. See, Sec. 205-2(a)(3), Hawaii Revised Statutes (hereinafter referred to as “HRS”)

20) The property in question is not an important agricultural lands due to the poor soil rating of “D”, and such property does not need the “greatest possible protection.” Sec. 205-2(a)(3), HRS. Id. Record at 25 and 777.

21) The property in question is not usable for, and not suited to, agricultural and ancillary activities by reason of topography and soils. See, Sec. 205-2(d), HRS. Id. Record at 25 and 777.

22) The property in question is greater than fifteen acres. See, Sec. 205-3.1(a), HRS. Id. Record at 25.

23) The use of the property in question, with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating “D”, is restricted to the uses permitted for agricultural districts as set forth in Section 205-5(c), HRS.

24) Section 205-5(a), HRS, specifically delegates zoning power, to further define permissible uses within State Land Use Districts to the respective counties.

25) Section 205-5(b), HRS, provides that within “agricultural districts” any uses must be compatible to activities described in Section 205-2, HRS and that “accessory uses and services” may be further defined by each county by zoning ordinance. See, Sec. 205-5(b), HRS.

26) The County of Hawaii, in its Zoning Code specifically states, in relevant part:

Section 25-5-72. Permitted uses.

* * *

(d) The following uses may be permitted in the A (agricultural) district, provided that a use permit is issued for each use if the building site is outside of the State

land use agricultural district or a special permit is issued for each use of the building is within the State land use agricultural district:

* * *

(7) Schools.

See also, Sec. 15-15-25(b), Hawaii Administrative Rules.

Emphasis added and included.

27) The Hawaii State Supreme Court's decision in Neighborhood Board No. 24, et al., v. State Land Use Commission, et al., 64 Hawai'i 265, 639 P.2d 1097 (1982), does not apply to the present Petitioner:

(a) In the Neighborhood Board No. 24, supra case, the petitioner proposed a major commercial undertaking involving up to 1.5 million people annually. *Id.*, at 64 Hawai'i at 272, 639 P.2d 1103.

(b) The proposed use was not a "permitted" use as defined by the City and County of Honolulu's Zoning Code. *Id.*

(c) The purpose of the land use boundary amendment process is to "streamline the land use regulatory process by requiring the state commission's approval of such permits only **where the use desired would be of such scale as to impact the state as a whole.** (Emphasis added)" Neighborhood Board No. 24, supra ft. nt. 4, citing House Standing Committee Report No. 572, 10th Hawaii Legislature, 2nd Sessions, 1979 House Journal, at 1410.

28) In the present case, the Petitioners' proposed use is defined as a permitted use by Section 25-5-72, Hawaii County Code. See Transcript of Proceedings, Vol. 4, page 539, line 14-16; see also Exhibit A26.

29) The Petitioners' proposed use does not rise to the scale as to "impact the state as a whole." Neighborhood Board No. 24, *supra* ft. nt. 4, citing House Standing Committee Report No. 572, 10th Hawaii Legislature, 2nd Sessions, 1979 House Journal, at 1410.

30) The Petitioners' proposed use is compatible to activities described in Section 205-2, HRS and Sec. 205-5(b), HRS.

31) There is precedent, at the State Land Use Commission, allowing proposed uses for schools, to proceed using a Special Permit process under Sec. 205-6, HRS. See, Testimony of Duane Kanuha, Transcript of Proceedings, Vol. 4, page 498, lines 15-25; page 499, lines 10-19.

32) The Petitioners' proposal was evaluated by the Office of Planning, *Id.* Record at 401-406 and 758-761.

33) Pursuant to the Office of Planning, the Petitioners' proposal meets the guidelines in HAR §15-15-95, for determining an "unusual and reasonable use" for the purpose of granting a special permit pursuant to HRS. §205-6. *Id.* Record at 402-404 and 759-761.

34) The County of Hawaii Planning Department considers the recommendations of the Office of Planning. See, Testimony of Duane Kanuha, Transcript of Proceedings, Vol. 1, page 216, line 7-15.

35) The Kamehameha Schools, Keaau campus, applied for and was granted a special use permit, to build a substantial part of the school on land with the State Land Use designation for agricultural uses. See, Testimony of Bobby Jean Leithead Todd, Transcript of Proceedings, Vol. 4, page 512, lines 11-25; page 513, lines 1-23; see also, Exhibits A24 and A25.

36) The Petitioners' proposed use is reasonable and unusual under the State Land Use Designation of agricultural, pursuant to Sec. 205-6(a), HRS. See, Testimony of Bobby Jean Leithead Todd, Transcript of Proceedings, Vol. 4, page 511, lines 10-25; page 512, lines 1-10.

DECISION AND RECOMMENDATION

Based on the evidence presented and applying the standards and rules herein, along with the above Findings of Fact and Conclusions of Law, the Applicants, Connections and CBESS, have satisfied the requirements of Planning Commission Rule 6-7 and Rule 6-3(b)(5)(A)-(F). It is recommended that the Planning Commission approve the Application for Special Permit No. 12-000138 of Connections and CBESS, as recommended by the Planning Director:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.

2. The proposed use shall be conducted in a manner that is substantially representative of plans and operational details contained within the Application for Special Permit including the amount of students and hours of operation, and representations made before the Windward Planning Commission.

3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawaii and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this permit. The calculations must include the estimated peak flow in gallons per minute and total estimated maximum daily potable water demand in gallons per day. Should the applicant utilize more than the maximum average daily usage of potable water (4,200 gpd) from the existing County 8-inch water line, the applicant will be required to secure or construct an additional source of potable water or limit the amount of students to the amount of potable water available.

4. The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.

5. Construction of the high school phase shall be completed within ten (10) years from the effective date of this permit. Prior to the start of construction for each separate school (high, intermediate, elementary), the applicant, successor(s) or assign(s) shall secure Final Plan Approval for the development of each proposed phase from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping along the perimeter of the entire 70 acre project site shall also be indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) buffer yard requirements for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) Zone.

6. On plans submitted for Plan Approval review or any land alteration permit(s), the applicant shall identify the location of Kaumana Cave within the Subject Property and to ensure its protection, also identify a 100-foot wide preservation buffer along its entire perimeter. No use, structures or land alteration activities shall be permitted within this Kaumana Cave preservation buffer.

7. The applicant shall conduct an updated traffic report prior to the submittal of plans for Plan Approval for the intermediate and the elementary school phases, in a manner meeting with the approval of the Department of Public Works. If the updated traffic reports determine that additional traffic mitigation measures are required, these required improvements shall be constructed by the applicant at no cost to the County prior to the issuance of a Certificate of Occupancy for the respective school phases.

8. All driveway connections to Edita Street shall conform to Chapter 22, County Streets, of the Hawaii County Code.

9. The applicant shall construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at Road A meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy for any portion of the project.

10. The applicant shall construct an 8-foot paved shoulder along the northeastern (Makai) side of Edita Street from the south end of the Subject Property to the intersection of Edita Street and Kaumana Drive (Standard Detail R-34) meeting with the approval of the Department of Public Works prior to the issuance of Certificate of Occupancy for any portion of the project.

11. The applicant shall submit a Traffic Management Plan to be reviewed and approved by the Department of Public Works-Traffic Division in consultation with the Police Department prior to the receipt of Final Plan Approval for any portion of the project. The comprehensive plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. The applicant shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The applicant shall incorporate carpooling, bus and van services, and staggering school pick-up and drop-off times.

12. The applicant shall design project driveways/roads, parking and loading areas so all school traffic and congestion is confined to the project site and does not overflow onto County roads. Should adjoining lands be developed in a manner that would provide a reasonable opportunity to provide an alternate means of access to the proposed school site from the Puainako Street extension, the applicant shall provide necessary improvements within its own

property to facilitate access to the Puaninako Street extension across adjoining lands when directed by the Planning Director.

13. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. A drainage plan may be required by the Plan Approval process in accordance with Section 25-2-72(3) of the Hawaii County Code.

14. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.

15. The method of sewage disposal shall meet with the requirements of the Department of Health.

16. Prior to any ground altering activities, the applicant shall submit a monitoring plan in accordance with HAR 12-279 to the DLNR-SHPD for review and approval. A copy of the approved monitoring plan shall be provided to the Planning Department prior to issuance of Final Plan Approval.

17. All ground altering activities associated with the proposed development shall be monitored by a qualified archaeologist in a manner meeting with the approval of the DLNR-SHPD.

18. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

19. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

20. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Special Permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

21. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- a. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
- b. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- c. Granting of the time extension would not be contrary to the original reasons for granting the permit.
- d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- e. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

22. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this Special Permit.

Based on the forgoing, it is ordered by the Windward Planning Commission that the Special Permit Application No. 12-000138 be approved and pursuant to Planning Commission Rule 4 Contested Case Procedure and Rule 6 Special Permits, the Windward Planning Commission shall adopt Petitioners Connections and CBESS Proposed Findings of Fact and Conclusions of Law.


DATED: Hilo, Hawaii, _____

SANDRA P. SONG, ESQ.
HEARINGS OFFICER

CONCLUSION

Based on the evidence presented and applying the standards and rules herein, along with the above Findings of Fact and Conclusions of Law, the Applicants, Connections and CBESS, have satisfied the requirements of Planning Commission Rule 6-7 and Rule 6-3(b)(5)(A)-(F). It is recommended that the Planning Commission approve the Application for Special Permit of Connections and CBESS, as recommended by the Planning Director.

DATED: Honolulu, Hawaii, February 22, 2014.

For 

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii February __, 2014.

TED H.S. HONG
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

CONCLUSION

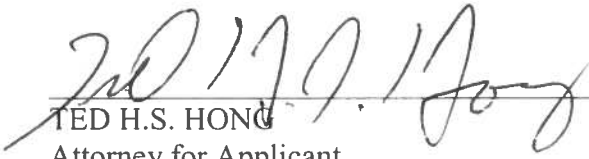
Based on the evidence presented and applying the standards and rules herein, along with the above Findings of Fact and Conclusions of Law, the Applicants, Connections and CBESS, have satisfied the requirements of Planning Commission Rule 6-7 and Rule 6-3(b)(5)(A)-(F). It is recommended that the Planning Commission approve the Application for Special Permit of Connections and CBESS, as recommended by the Planning Director.

DATED: Honolulu, Hawaii, February ___, 2014.

CARTER K. SIU 7313
Deputy Attorney General
Department of the Attorney
General, State of Hawaii

Attorney for Applicant
CONNECTIONS NEW CENTURY
PUBLIC CHARTER SCHOOL

DATED: Hilo, Hawaii February 12, 2014.



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BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT	)	APPLICANTS CONNECTIONS NEW
SERVICES	)	CENTURY PUBLIC CHARTER SCHOOL and
	)	COMMUNITY BASED EDUCATION
	)	SUPPORT SERVICES (CBESS);
	)	CERTIFICATE OF SERVICE
Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2014, I caused a true and correct copy of the foregoing document to be served on the following persons by electronic and postal mail:

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DATED: Hilo, Hawaii February 12, 2014.



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COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the Petition of	) APPLICATION SPP NO. 12-000138
)
CONNECTION NEW CENTURY PUBLIC	) ORDER ADOPTING PROPOSED
CHARTER SCHOOL AND COMMUNITY	) FINDINGS OF FACT, CONCLUSIONS
BASED EDUCATION SUPPORT	) OF LAW, AND DECISION AND
SERVICES	) ORDER
)
For a Special Permit to Establish a K-12)
Charter School Campus, Dorm and Related)
Facilities and Improvements on Approximately)
70 Acres of Land Situated in the State Land)
Use Agricultural in Kaumana, South Hilo,)
Island of Hawaii, State of Hawaii, Tax)
Map Key No: (3) 2-5-006: 141.)

**ORDER ADOPTING PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER DENYING APPLICATION
SPP NO. 12-000138**

I. INTRODUCTION

This matter comes before the Windward Planning Commission of the County of Hawai'i ("Planning Commission") pursuant to Chapter 205-6 of the Hawai'i Revised Statutes ("HRS") and Rule 6 of the Rules of Practice and Procedure of the Planning Commission, upon the application of CONNECTION NEW CENTURY PUBLIC CHARTER SCHOOL AND COMMUNITY BASED EDUCATION SUPPORT SERVICES ("Applicants") to establish a K to 12 charter school campus with dorm facilities and related uses.

The Planning Commission held public hearings on the Applicants' application on November 9, 2012, January 10, 2013, and March 7, 2013. At the conclusion of the March 7, 2013 public hearing, the Applicants requested and were granted a Contested Case ("CC") hearing. The CC hearing, which occurred on October 21, 2013, October 22, 2013, November 12, 2013, and January 8, 2014, was conducted by hearing officer, Ms. Sandra Song.

II. FINDINGS OF FACT

Having reviewed and examined the record in this case and carefully considering all testimony, exhibits, and arguments presented at both the public and CC hearings of this matter, while taking into account the credibility and accuracy of the evidence, the Planning Commission makes the following findings of fact by a preponderance of evidence:

A. Background

1. This matter involves the Applicants' request for a Special Permit to allow the development of 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 ("**application**"). *Exhibit A1, ROA, pages 22-327*
2. The campus is proposed to be situated on property ("**property**") owned by the State of Hawai'i and located in Kaumana, South Hilo, Island and County of Hawai'i. It is further identified by TMK: (3) 2-5-006: 041. *Exhibit A1; ROA, page 27-28*
3. The State of Hawai'i entered into a General Lease No. 8-6029 with the Applicants and has consented to the filing of the Special Permit application. *ROA, page 54*
4. According to the Planning Department background report and the Applicants' application, the property is zoned Agriculture (A-1a) and designated "Low Density Urban" on the County General Plan Land Use Pattern Allocation Guide map. Adjacent properties to the south and west are also zoned A-1a and within the State Land Use Agricultural District, while adjacent properties to the north are zoned RS-10 and RS-15 and within the State Land Urban District. *Exhibit A1, ROA, pages 885-886*
5. The Planning Director recommended approval of the application, subject to a number of conditions. *Exhibit A5, ROA, pages 773-787; 1227-1231*
6. Public hearings were held by the Planning Commission on November 9, 2012, January 10, 2013, March 7, 2013, at which time a number of area residents expressed their objections, verbally or via letters/emails, to the application. *ROA, pages 405-411; 788-793; 819-822; 829-836; 841-842; 875-876; 879-880; 1203; 1253; 1263-1271; 1274-1276; 1290; 1315-1432; 1446-1544*

7. Prior to the Planning Commission's closing of the public hearing on March 7, 2013, after a motion was made and seconded to deny the application, the Applicants requested and were granted a CC hearing on the application. *ROA, pages 2133-2156*
8. At the March 7, 2013 meeting, the Planning Commission granted standing to the Applicants and granted intervention status to a surrounding property owner, Jeffrey Gomes. The Planning Director is already a party pursuant to Rule 4-6(a) of the Planning Commission Rule. The Director was represented by Ms. Amy Self, Esq. The Applicants were represented by Ted H.S. Hong, Esq. and Carter K.Siu, Esq. Mr. Gomes represented himself, *pro se*. Sidney Fuke, also a resident and private planning consultant, was acknowledged as an advisor to Mr. Gomes. *Pre-hearing transcript*
9. The Applicants' attorney subpoenaed a number of residents within the community, including Sidney Fuke, and invoked the "witness exclusion" rule. *Pre-hearing transcript*
10. CC hearings were conducted on October 21, 2013, October 22, 2013, November 12, 2013, and January 8, 2014. After the January 8, 2014 hearing, the parties went into mediation. At the January 21, 2014 hearing, after no resolution was reached, the Hearing Officer closed the CC portion of the hearing.

B. Nature of Applicants' Request

11. The submitted application called for the development of a K to12 charter school campus with dorm facilities, intergenerational program that would provide childcare and elder care at a single facility, and related uses on approximately 70 acres of land. As the site is bisected by Edita Street, the lower portion would consist of the major school or campus facilities, while the upper portion would be used for its outdoor type of educational programs. *ROA, pages 28-30*
12. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25 intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, and other related facilities. Two parking lots capable of supporting 140 parking stalls would be provided. *ROA, pages 28-30*

13. The Applicants anticipate that at least 50% of the projected student population will come from the Puna District. *11/09/12 PH Transcript, page 17; ROA, page 1563*
14. The Applicants represented that the school currently had 50 full-time and 17 part-time employees. *ROA, page 35*
15. The project is intended to be completed within 16 to 25 years. The first phase would include the high school and dormitory. The projected opening would be 2.5 to 3.5 years. *ROA, page 34 and CC Transcript, page 50*
16. The application included a Final Environmental Assessment (“EA”), dated October 2010, that was initially used as part of the Applicants’ request of the State Land Board to use State Land. *ROA, pages 56 – 326*
17. In its description of the “Proposed Action,” the EA acknowledged all of the uses reflected in Applicants’ application, except for the elder care facility. *ROA, page 64*

C. Project’s Infrastructure Considerations

Water

18. The application acknowledged that according to the County Department of Water Supply (“DWS”) potable water was limited to 4,200 gallons per day (“gpd”). Further, based on a 60 gpd standard, the amount of potable water could only support 70 of the estimated 381 K to 12 students, 25 intergenerational clients, and the approximate 50 full-time and 17 part-time employees. *ROA, page 32*
19. Due to the limited amount of potable water, agriculture and landscaping irrigation would rely on rainfall, recycled wastewater effluent, and rainwater catchment system. Additionally, there was a possibility that non-potable water would be used for toilet and custodial uses. *ROA, page 32*
20. Based on the 60 gpd standard noted in the EA, the project would require at least 26,100 gpd. *ROA, page 124*
21. In that regard, the application further added that it understood “that the availability of water does constrain the scope of development on the property

and intends to investigate other sources of water to support the project.” *ROA, page 32*

22. The Applicants’ witness, Mr. Kevin Louma, during the CC portion of the hearing, testified that based on his analysis, the minimum and maximum water usage for the project with a cafeteria would be 6,848 gpd to 10,828 gpd. *CC Transcript, pages 139-142 and ROA, pages 1678-1684*
23. Mr. Kurt Inaba of the DWS testified that 4,200 gpd was the limit for the entire project and that if the project used only its allocated amount, it should not affect water pressure and availability to the community. He added that at this stage, the DWS is unable to determine exactly what the projected water use would be, as that will depend on studies provided by the Applicant. *CC Transcript, pages 182-185*
24. During the course of the public and CC hearing, a surrounding property owner resident and land use planning consultant, Mr. Sidney Fuke, testified whether it was appropriate to approve a project knowing that a) based on the application, the amount of available potable water represented only 16% of the project’s requirement; b) the question of how the balance of the water was going to be provided had not been addressed; and c) whether deferring this issue to an unknown time in the future was fair and appropriate to decision-makers. *ROA, pages 1352, 1353 and CC Transcript, pages 571 and 572*

Traffic

25. The EA and the application contained a Traffic Impact Analysis Report (“**TIAR**”) prepared by Phillip Rowell and Associates, dated June 28, 2010. The TIAR evaluated the project’s impact relative to the intersections of the proposed project’s entrance at Edita Street and at Edita Street and Kaumana Drive. *ROA, pages 41, 288 – 308*
26. Based on traffic counts taken on Thursday, May 28, 2009, the TIAR found that at the intersection of Edita Street and Kaumana Drive, the current Level Of Service (“**LOS**”) operates at LOS “A” or “B”. It further concluded that at the two studied intersections, upon full build out of the proposed development, the LOS would continue to operate at levels “A” or “B”. *ROA, pages 290-292*
27. Mr. Phillip Rowell testified that he had made no contacts with or secured input from the community prior to doing his TIAR. He added that, based on

his experience, if the application were to be considered by the State Land Use Commission, an updated TIAR would be required for two reasons: 1) the traffic counts were done 4 years ago; and 2) the list of related projects and background forecasts would need to be updated. *CC Transcripts, pages 459, 463*

28. Mr. Rowell further testified that a) while he was aware that the University of Hawai`i at Hilo, Hawai`i Community College, and Kamehameha Schools had ended prior to the counts being taken, that should not have affected his analysis or conclusions; b) he was not aware of a number of residential developments in the Kaumana area and subdivisions that would utilize Edita Street and that some of that information could have surfaced after the traffic counts were done in 2009. *CC Transcripts, pages 469-470; 475-477*
29. Mr. Rowell added that a) no sidewalks along Edita Street were recommended because “we wanted all pedestrians to enter the project” and “didn’t want pedestrians walking along the roadway. Sidewalks would only encourage that”; b) that other intersections proximate to Edita Street were not investigated based on input from the State and County as well as relying on the ITE guidelines which does not typically look at intersections outside of half mile; and c) reconfirmed that the best place for an updated TIAR would be at the State Land Use Commission level. *CC Transcripts, pages 479; 486-487; 488*
30. Mr. Rowell concurred that LOS deals with safety and inconvenience and that he understood that it took into account quality of life factors. His primary focus, however, is not necessarily number of movements but whether there is a change in the LOS. *CC Transcripts, pages 488-489*
31. Mr. Ron Thiel, Traffic Division Chief of the Department of Public Works testified that having traffic counts after the University of Hawai`i at Hilo, Hawai`i Community College, and Kamehameha Schools Hawaii campus ended could make a difference in the TIAR. He added that “It actually could make it (TIAR) even worse.” *CC Transcripts, page 174-175*
32. The former Planning Director, Ms. Bobby Jean Leithead Todd, testified that she was aware of a proposed 45-lot subdivision adjacent to the property as well as fronting the Puainako Street Extension and added that “in the long run, access (to the subject property) through Puainako might be better for everyone.” She also commented that “a better access would be off of

Puainako. And that just has to do with the fact that Puainako has been designed with broad shoulders, and so I felt that in the long run that that was a better connection. Besides it's always nice to have more than one. You know, if something happens on Kaumana, you could redirect traffic that way." *CC Transcripts, pages 515-516*

33. The school principal, Mr. John Thatcher, testified that he looked at the possibility of securing an access from the Puainako Extension and had discussions with the affected property owner, Mr. Bill Brillhante. Mr. Thatcher noted that Mr. Brillhante indicated that he had been "lobbied by people from Pacific Plantations not to let us use anything that had and that he felt – he felt threatened by their demeanor" but that he would "keep an open mind" regarding access out onto Puainako Extension. Mr. Thatcher also noted that at the initial meeting with the community on June 3, 2011, it was a priority for the school to get an alternative access. *CC Transcripts, page 53; ROA, page 1784*

34. There were considerable written and oral testimonies from area residents expressing concerns over the traffic impact of the proposed development, particularly along Edita Street and Kaumana Drive and the project's overall adverse impacts to their quality of life. *ROA, pages 405-411; 788-793; 819-822; 829-836; 841-842; 875-876; 879-880; 1203; 1253; 1263-1271; 1274-1276; 1290; 1315-1432; 1446-1544*

35. One of the area residents, Dr. Henry Lee Loy, testified and provided a map reflecting a completed 12-lot residential subdivision and a proposed 45-lot residential subdivision, both of which utilizing Edita Street as access, as well as a proposed 83-home affordable housing subdivision situated about a mile from Edita Street. *ROA, pages 1340-1345, 1822*

Wastewater

36. The Applicants are proposing to provide its own wastewater system meeting with the requirements of the State Department of Health. The preferred system would be an ecological/biological wastewater system called the "Living Machine". Should that prove to be unfeasible, it would resort to the traditional septic system with leach fields or whatever is required by the State Department of Health. *ROA, pages 33 and 425*

Drainage

37. The EA noted that Flood Insurance Rate Map designation of the site is "X" or

areas outside of the 500 year storm. It also acknowledged that during severe storms, “water has been known to overtop the concrete channel and flow across Edita Street, resulting in some flooding of adjacent areas.” It also added that at the design phase, “detailed engineering studies would be conducted in order to develop appropriate drainage plans, which would take into account any measures that might be needed to address the potential flood hazard posed by the conditions of Edita Street.” *ROA, pages 111, 113*

D. Environmental/Cultural Considerations

Flora and Fauna

38. The Planning Department, in reviewing the Applicants’ submittal and EA, noted that there was a biological assessment and botanical survey of the subject site. The biological assessment concluded that the proposed development would not adversely impact native avian or mammalian resources. Further, no protected plant species were recorded during the botanical survey. *ROA 423*

Archaeological/Cultural

39. Likewise, the Planning Department noted that there was an archaeological assessment done in 2008. The assessment did not find any archaeological sites. *ROA 422-423*

40. The State Historic Preservation Division requested a supplemental field inspection of the Kaumana Cave. The inspection report concluded that with the exception of the pecked names, no historic elements were encountered within the Cave that underlies the project site. The Applicants are proposing not to construct any major facilities on the *mauka* or upper portion of the site and maintain a 100-foot wide buffer on either side of the cave alignment. *ROA 422-423*

41. No identified traditional or customary native Hawaiian rights are being exercised at the property. *ROA 423-424*

E. Project’s Social Consideration – Community Issues

38. The application noted that there were four public meetings on the project. The initial one occurred during the EA process. During the subsequent meetings, the consistent theme raised by the immediate community related to traffic. Other concerns or questions raised related to impact on real property tax

values, Applicants' contingency plan in the event the Special Permit were denied, cultural significance of the property, benefits to the community. *ROA, pages 42, 1747, 1748, 1768, 1769, 1784*

39. At the June 3, 2011 community meeting, Mr. John Thatcher confirmed that presently 50% of the students come from Puna and that should the school be established at the proposed site, students from the immediate neighborhood would not necessarily receive any preferential entrance privilege. *ROA, page 1784*
40. Relative to the traffic issue, the application cited that even with the project, the resultant levels of service would still be acceptable and that on the matter of construction access, the applicant is in discussion with the adjoining property owner (Mr. Bill Brilhante). *ROA, page 43*
41. The concerns raised to the Applicants at these public meetings occurred prior to the first Planning Commission hearing on this matter. Subsequent to the filing of the application on July 25, 2012 and at the various public hearings before the Planning Commission, opposition from a considerable number of residents and/or property owners within the community were expressed. These came in the form of emails, letters, and public testimonies. *ROA pages 405-411; 788-793; 819-822; 829-836; 841-842; 875-876; 879-880; 1203; 1253; 1263-1271; 1274-1276; 1290; 1315-1432; 1446-1544; 1892-1900; 1902-1919; 1921-1931; 1960-1999*
42. A petition was presented to the Planning Commission noting that 92% of the residents/landowners within the Pacific Plantation Subdivision opposed the project at this location. Of those within 500 feet of the project, 68% signed a petition opposing the project. Most of the others were vacant lots and could not be personally contacted. *ROA, pages 1368-1413; 1964*
43. Since the Applicants' initial meeting with the community over two years ago on June 3, 2011, concerns, particularly traffic related, were raised, with a suggestion for an alternative access. While there were reported discussions between the Applicants and Mr. Brilhante, nothing has materialized. *ROA, page 1889*
44. Among other things, a) because nothing has materialized on the alternative access issue; b) the Applicants', through Mr. William Boyd, expression that this is their only site; c) and that the impression that the application will be

approved even before its filing as evidenced by comments made by Ms. Bobby Jean Leithead Todd at the September 2, 2011 community meeting that the State Land Use Commission would probably approve the request and Mr. John Thatcher's testimony that the Special Permit would be approved, a number of members of the community feel that there is a deep chasm of trust with the Applicants and, to some extent, the County. *ROA, page 1889, 1768; CC Transcript, page 103 ROA, page 1768*

45. In the EA, while there is a section relating to "Socio-Economic Considerations", there was little discussion relative to the development's impact to the surrounding areas. The discussion focused more on the short term construction-related jobs and the overall improvement of educational services for "Hilo's" children. Without being specific, it noted that the development would have "noticeable, but negligible, cumulative effects on than a presently undeveloped site, and the associated increase in vehicular traffic volume." *ROA, page 136-137*
46. The application, unlike in the areas of flora, fauna, archaeological, or even TIAR, did not include any commissioned and comprehensive social impact analysis for the project. *Exhibit A-1, ROA pages 56-163*
47. The County Police Department commented that this development "is being placed in a residential area that will likely effect (sic) the quality of life for residents that border this proposed site. There will be an increase in noise, crime, and traffic. *ROA, page 363*
48. Through the various testimonies, members of the community have expressed concerns regarding the adverse impact a development of this scope and size would have on their quality of life. Based on the TIAR, the percentage increase of the added traffic resulting by this development on Kaumana Drive is 58% over the current levels and over 330% increase at the Kaumana Drive/ Edita Street intersection. Further, quality of life impacts are not necessarily measured by LOS but are more perceptual and personal. *ROA, pages 1984*
49. The Planning Department, in its revised recommendation, defined an adverse affect as "an unwanted and unanticipated result of taking a particular action." It added that the adverse affect to surrounding properties would come in the form of increase in traffic and noise. Further, while acknowledging that there will be adverse impacts, conditions of approval will be added to address

traffic and noise that will mitigate and minimize these impacts.” *ROA, page 778*

50. The Planning Department continued that “The proposed school will alter or change the essential character of the land and its present use from its current undeveloped character.” *ROA, page 890*

F. Alternatives

51. Members of the community have expressed their opposition not necessarily to the nature and/or quality of the Applicants’ proposed development but to its location and the possible availability of alternative sites. *ROA, pages 1965,1966*

52. Page 16 of the EA identified a number of sites in the Hilo area that were considered for the proposed development. A number of them were dismissed because their small size, configuration, and access limitation. However, at least three were summarily dismissed because they were too large. Private lands, too, were summarily dismissed because of its cost. There was no examination of government lands in Puna, where 50% of the student population would come from. *ROA, page 77*

53. Mr. Fuke testified that the larger properties could have been subdivided, which could have addressed the size issue. *ROA, page 1992*

G. Regulatory Considerations

54. Mr. Terence Yoshioka, retired judge and a resident within the Pacific Plantation Subdivision, testified about the Hawai’i State Supreme Court’s decision on Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission (“LUC”) regarding the LUC’s approval of a Special Permit for a 103-acre recreational theme park. He pointed out that the Court:

- found that approval of the theme park via the Special Permit route “frustrates the objectives and effectiveness of the Hawaii’s land use scheme”;
- did “not believe the legislature envisioned the special use technique to be used as a method of circumventing district boundary amendment procedures to allow the ad hoc infusion of major urban uses into agricultural districts”; and

- the purpose of the Special Permit process “is to provide land owners relief in exceptional situations where the use desired **would not change the essential character of the district nor be inconsistent therewith.**” (Emphasis added)

He then summarized the Court’s opinion noting that “the use of the special permit process to effectuate what amounts to be district boundary amendment would frustrate the effectiveness and objectives of HRS Chapter 205 rather than to promote them.” *CC Transcript, pages 10-11*

55. Judge Yoshioka (Ret.) then opined that “If this commission (Planning Commission) follows the principles enunciated in the Neighborhood Board decision, I believe you will conclude that the construction of this school will be contrary to the 6-3(b)(51) of the Planning Commission Rules of Practice and Procedures as it will substantially alter or change the essential character of the land and the present use, thereby requiring a district boundary amendment rather than a special permit.” *CC Transcript, page 11-12*
56. In response to questions by the Applicants’ attorney, Judge Yoshioka (Ret.) noted that he was not aware the majority of the land upon which the Kamehameha Schools is situated falls within the State Land Use Agricultural District. *CC Transcript, page 365*
57. In response to a cross-examination by the Applicants’ attorney, Mr. Fuke acknowledged that he erred in representing that the Kamehameha Schools was situated entirely within the State Land Use Urban District. Nevertheless, those schools are situated outside of the core of existing communities. *CC Transcript, pages 550-553; ROA, page 1967*
58. Mr. Fuke also testified that the Use Permit and Special Permit process is a discretionary as opposed to a ministerial decision-making process. As such, while community support is not necessarily an expressed criterion for approval, public input is sought. It would then be up to decision-makers to weigh the public input relative to other factors and/or criteria. *CC Transcript, pages 568, 569, 575, 576.*
59. Chapter 25 of the Hawai`i County Zoning Code outlines uses that are allowed in the various zoning districts. Within the County Agricultural zone, schools are not allowed. However, if a site falls within the State Land Use Urban District, the Planning Commission can issue a Use Permit – which is a form of

zoning variance - for a school only if it meets the test for a Use Permit.
Exhibit A-26; CC Transcript, pages 575, 576

60. The County Zoning Code is designed to implement the General Plan. As such, when evaluating a proposed development's relation to the General Plan, applicable provisions of the Zoning Code need to be considered. In this case, the Zoning Code allows schools in the commercial zones, for there is recognition of their commercial-level type of impacts. However, within the Single Family Residential or Agriculture districts (as in the case with lots surrounding and/or proximate to this site), a Use Permit is required because of its potential adverse impacts. The Use Permit process and criteria are generally similar to the Special Permit.

The criteria for a Use Permit read that a proposed use:

Shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and Shall not unreasonably burden public agencies to provide roads, and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure. (Emphasis added)

61. According to the County Planning Department background report, the County General Plan Land Use Pattern Allocation Guide Map designates the property Low Density Urban. The pertinent policies of the General Plan outlined in the Planning Department revised recommendation were:

Economic Element

- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments

Public Facilities-Education (Courses of Actions for South Hilo)

- Encourage the establishment of additional schools as the need arises

Land Use – Public Lands

- Encourage uses of public lands that will satisfy specific public needs,

such as housing, recreation, open space and education. *ROA, pages 421, 891*

62. In his presentation to the Planning Commission, Mr. Fuke outlined other pertinent goals and objectives of the General Plan. These were:

Public Facilities Element – Goal

- Encourage the provision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community.
(Emphasis added)

Land Use Element – Policy

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environments. (Emphasis added) *ROA, pages 1997,1998*

H. Special Permit

Based on the aforementioned findings of fact as well as taking notices of appropriate and governing State statutes, County zoning ordinance, and their Rules, this section evaluates the proposed project relative to the Special Permit criteria.

63. Pursuant to Chapter 205-6, HRS and State LUC Rules 15-15-95, Rule 6-7 of Planning Commission Rules identifies the grounds for issuance of a Special Permit. Specifically, the Rule states that:

“The (Planning) Commission shall not approve a Special Permit unless it is found that the proposed use:

- (a) Is an unusual and reasonable use of land situated within the Agricultural or Rural district, whichever the case may be; and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

The Commission shall also consider the criteria listed under Section 6.3(b)(5)(A) through (G).” (Emphasis added)

64. Schools can have significant infrastructural and community impacts. Thus, they are not permitted in the State Land Use Agricultural District as well as

the County Agricultural zone. Either a Special Permit or Use Permit, as the case may be, would be required, and only after a public hearing. This is to enable the community to weigh in on the request and to have full public disclosure of the project and its impacts.

65. Schools have been approved through the Special Permit process in the past. As such, the concept of a school in the Agricultural District is not necessarily an “unusual” use but should not be considered axiomatically allowed. If it were, it would have been listed as a permitted use. In this case while a use may not necessarily be “unusual,” the operative and twin criterion in this instance is whether it is a “reasonable” use at a particular location and whether it would promote the effectiveness and objectives of Chapter 205, HRS. To help with this assessment, a discussion of the request relative to these criteria follows.

66. Rule 6-3(b)(5)(A): Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The purposes of Chapter 205 (Land Use Law), HRS, as amended, are to:

- preserve, protect and encourage the development of lands in the State for their best uses in the interest of the public welfare; and
- protect, conserve, and rationally develop the State’s urban, agricultural, and conservation lands using a coordinated and balanced approach.

To achieve those purposes, four districts (Agricultural, Rural, Urban, and Conservation) were created and responsible enforcement governing entities were established. A process to establish uses other than what was permitted was also established, such as the State Land Use boundary amendment or Special Permit processes. Hence, the State Land Use Law, as also expressed by the Commission’s rule, is not limited only to the promotion of objectives but its effectiveness. And the concept of effectiveness is measured also by the process by which certain uses are allowed.

Because the soil of the subject site is classified “D” or “Poor” by the Land Study Bureau’s Detailed Land Classification System, it could be maintained that the land is unsuited for agricultural purposes and the proposed use would not result in the removal of critical agricultural lands. Notwithstanding that classification, however, it should be noted that while intensive soil-based crops may be difficult to sustain on the subject site, other agricultural activities that are not heavily soil-based can take place. The fact that the site is not barren but consists of ohia trees and other vegetation attests to this potential.

Further, while the Applicants' agricultural curriculum may arguably be considered agriculturally-related, that is only one small component of the overall basic use. The basic use is still a pre-K to 12 school capable of accommodating nearly 400 students, a dormitory, a gymnasium, about 50 full-time and 17 part-time employees, as well as their associated support requirement that spans over 70 acres of land. Thus, the issue here is not necessarily limited to the proposed use itself, as some schools have been allowed through the Special Permit process. The issue is whether the proposed development – because of its scale - is a “reasonable” use at this particular location and whether it would promote the effectiveness and objectives of Chapter 205, HRS

Judge Yoshioka (Ret.) in his testimony, talked about the State Supreme Court's decision on Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission wherein the Court determined that the use of the Special Permit process for a proposed recreational theme park on 102 acres “frustrates the objectives and effectiveness of the Hawaii's land use scheme”. The purpose of the Special Permit process “is to provide land owners relief in exceptional situations where the use desired would not change the essential character of the district nor be inconsistent therewith.” (Emphasis added)

He then opined that “If this commission (Planning Commission) follows the principles enunciated in the Neighborhood Board decision, I believe you will conclude that the construction of this school will be contrary to the 6-3(b)(5) of the Planning Commission Rules of Practice and Procedures as it will substantially alter or change the essential character of the land and the present use, thereby requiring a district boundary amendment rather than a special permit.”

While it is true that a considerable portion of the Kamehameha Schools campus in Keaau sits on State Land Use Agricultural district and was issued a Special Permit by the State LUC, it was not judicially challenged and, unlike this application, there were no intervenors contesting the decision.

It should also be noted that almost all of the Hokulia development in South Kona is situated on lands within the SLU Agricultural District. The project has a golf course, a members clubhouse, and a number of 1-acre sized lots with agricultural covenants – principally coffee. In spite of the golf course being allowed then without a Special Permit and 1-acre sized lots being permitted by both the County Zoning Code and State Land Use Law, in 2003, Judge Ronald Ibarra ruled that the project was more of an urban use and thus ordered, among other things, that the lands be reclassified into either the Urban or Rural district.

Along those lines, the issue is whether the use of the Special Permit process for the proposed school – particularly given its size and scale and attendant impacts, as well as its proximity and adjacency on the north end to properties within the State Land Use Urban district - would frustrate and undermine the objectives and effectiveness of the State Land Use Law. In this situation, the proposed development does have the effect of urbanizing the site.

It should be noted that the schools are considered a permitted use in the commercial zones of the County Zoning Code. The recognition here is that a school generates impacts comparable to commercial projects. Schools, however, are not permitted within the County Single-Family Residential and Agricultural zones. They could be allowed only if a Use Permit – which is a form of a zoning variance - is granted by the Planning Commission.

The concept of the Use Permit is similar to the Special Permit. The breadth, size, scale, and associated impacts of a proposed use help dictate whether either a) the Use Permit or the rezoning process or b) the Special Permit or Boundary amendment process – as the case may be - is more appropriate. A Use Permit is issued by an administrative agency (Planning Commission), whereas rezoning requires approval of an elected body, the County Council. A Special Permit is issued by the Planning Commission, except as in this situation, if the site exceeds 15 acres subsequent approval by the State LUC. A boundary amendment requires approval of the State LUC and subsequently rezoning approval by the County Council.

Given the project's proposed urbanizing impact to the adjoining community and residents, the more rigorous and transparent land use permitting process would be more appropriate.

67. Rule 6-3(b)(5)(B): The desired use would not adversely affect surrounding properties.

The Planning Department, in its revised favorable recommendation, did clearly acknowledge that the proposed use would have adverse effects on surrounding properties, while adding that they could be mitigated. However, while there is consensus between Mr. Gomes and the Planning Department that the proposed use will have adverse impacts, there is a difference relative to whether these impacts could be mitigated. Mr. Gomes believes that the proposed traffic and noise mitigation are not commensurate with the proposed adverse impacts. Further, the adverse impacts are not necessarily limited to traffic and noise.

While community support of a development is not a mandate for receipt of a *favorable* consideration of an application, having the community weigh in on

a matter is not only consistent with the principles of democracy but lends some insight of the community's thoughts to decision-makers.

In that regard, as made painfully evident by the number of verbal and written testimonies by residents who live or own properties adjacent and/or proximate to the proposed development, the project would have an adverse impact to surrounding properties. A petition was presented to the Planning Commission noting that 92% of the residents/landowners within the Pacific Plantation Subdivision opposed the project at this location. Of those within 500 feet of the project, 68% signed a petition opposing the project. Of the remaining 32% lot owners or residents, many were vacant lots and could not be personally contacted.

These concerns relate to possible adverse real property tax implications as well as diminished quality of life associated with the traffic, noise, and visual impacts resulting from this project. This diminution of quality of life is further supported by the Police Department who concluded that *"This proposed school is being placed in a residential area that will likely effect (sic) the quality of life for residents that border this proposed site. There will be an increase in noise, crime and traffic."*

The development will result in the removal of a substantial amount of ohia trees and associated vegetation, particularly on the lower portion of Edita Street. The trees will be replaced by a number of large non-residential looking structures, parking lots, and other improvements that cannot visually take on a low density residential flavor. These structures would thus not be visually compatible with the surrounding residential area.

Concerns over the proposed development's traffic impact were raised by members of the community at the Applicants' initial meeting with the community on June 3, 2011. This has been a consistent theme expressed throughout the various meetings between the Applicants and the community and before the Planning Commission.

At the same time, the Applicants have steadfastly maintained that the project is *"not expected to generate large increases in traffic volumes and would not result in adverse impacts to traffic and circulation pattern in the project area."* They also noted that *"the findings of the TIAR (Traffic Impact Analysis Report) are conservative and lively overestimates total trip generation for the project"* as it does not take into account that *"approximately 30 percent of Connections' students are bused to school...."*

It should be noted that that percentage relates to the school's existing operation, not projected for this location. Relative to this school, the Applicants have commented that they will have 2 buses. At an average of 30 students per bus, that amounts to 60 students out of its projected estimate of 400 students. This means that only 15% and not 30% percent of the students will be bused to school. The rest will presumably be driven, as evidenced by the comments of the traffic consultant who stated that no sidewalks are needed along Edita Street as students will not be walking to the school.

According to the TIAR, the project is anticipated to generate 187 movements during the AM peak hours on Kaumana Drive. The TIAR also notes that the existing movements are 321. This amounts to a 58% increase over the existing levels. Relative to Edita Street, there are 62 total movements. With the school's projected 187 movements, that would amount to over a 330% increase. Collectively, then, the impacts will be substantial, particularly along Edita Street. Nevertheless, the TIAR maintains that even with the development, the levels of service or LOS will continue to operate at "A" or "B".

LOS does not fully account for variation in perceptions of quality of life. The ones who will be mostly impacted by the project are the adjoining residents and property owners. An overwhelming majority of them have maintained that impacts would be adverse. If it were only one or two, that would be a different story, but that is not the case here. But there was no contact with the community by the traffic consultant, Mr. Phillip Rowell, on this matter during the research and preparation of the TIAR.

The TIAR was based on traffic counts taken on May 28, 2009. Mr. Rowell testified that his conclusion would not change in spite of the counts not taking into consideration the fact that the seniors at Hilo High School had already graduated and that the University of Hawai'i at Hilo, Hawai'i Community College, and Kamehameha School had also all ended. This is a conclusion not explicitly supported by the County Traffic Engineer, Mr. Ron Thiel, who testified that "It (its exclusion) actually could make it (TIAR) even worse."

At the same time, Mr. Rowell testified no sidewalks along Edita Street were needed, as students were not expected to walk to the campus, thus suggesting that all students, faculty, and employees would be driven or bused to the project area. Additionally, while the ITE guidelines which were used to

develop the TIAR suggests that intersections within ½ mile of the project area be evaluated, there was no evaluation of the Chong Street/Kaumana Drive intersection, an intersection coming at a sharp curve and located about ½ mile from Edita Street. Further, the former Planning Director, Ms. Leithead Todd, testified that the project would benefit by having an alternative access.

Mr. Rowell also testified that based on his experience, if the request were to be considered by the State LUC, it would be the best place for an updated TIAR. He added that an updated TIAR would be appropriate for two reasons: 1) the traffic counts were done 4 years ago; and 2) the list of related projects and background forecasts would need to be updated.

On this application, while the State LUC has the authority to approve the Special Permit, the Planning Commission has the initial ability to deny the Special Permit. Given Mr. Rowell's testimony that the TIAR should be updated, it would thus be only logical that the decision-maker – whether for approval or denial – should be equipped to have this report. In this instance, the Planning Commission does NOT have the benefit of this updated TIAR, let alone one that takes into account the proposed development's traffic impact to Chong Street and the possible need for an alternate access.

Unlike areas relating to flora, fauna, archaeological, and even traffic, there was no commissioned social impact analysis or report. Had that been done and made part of the Applicants' submittal, many of the aforementioned concerns raised by Mr. Gomes and the community would have been clearly identified. And from there, it could have been more reasonably determined whether the impacts would be adverse and, in fact, mitigatable.

Given the above plus the fact that nothing has tangibly materialized or proposed in terms of an alternative access, it would be difficult for the Planning Commission to conclude, at this stage, that the proposed development would have "no adverse impact" based on the existing TIAR and absence of a credible social impact analysis or study.

68. Rule 6-3(b)(5)(C): Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

The application represented that based on a 60 gpd standard, the amount of potable water required is 26,100 gpd. According to the DWS, potable water

was limited to 4,200 gpd. The application further added that it understood “that the availability of water does constrain the scope of development on the property and intends to investigate other sources of water to support the project.”

The application and, as of late, the Applicants’ pre-hearing brief, suggest that because of the 4,200 gpd cap, the proposed development will have to proceed in phase. However, the Applicants’ witness, Kevin Louma, testified that through the use of LEED principles, the minimum and maximum water usage for the project with a cafeteria would be 6,848 gpd to 10,828 gpd (which is considerably less than the initial represented requirement of 60 gpd or 26,100 gpd for the entire development). In spite of that being more than the 4,200 gpd that can be provided by the DWS, there is no assurance that the proposed development, because of inherent initial infrastructure costs associated with a LEED certified project, will actually be developed as such. Thus, the consequence of the project exceeding its allocation becomes of concern.

Specifically, whether the proposed development needs 6,848 gpd, 10,828 gpd or 26,100 gpd, the projected water use will still exceed the 4,200 gpd allocation. And the Applicants have not indicated how they will address the need to secure additional potable water. While the Applicants discussed use of the water catchment system, it was not to address the potable requirements.

Not having this information is important, for as Mr. Kurt Inaba of the DWS testified, if the proposed development exceeded the 4,200 gpd allocation, it could have an impact to the neighboring area both in terms of pressure and availability. And the unavailability of adequate potable water for not only the proposed development but the community could burden the DWS to find means to address this need.

Like the TIAR, not having this information and deferring it to some other governmental entity or time in the unknown future forces the Planning Commission to conclude and render a decision on issues that have not been fully addressed and are of significant concerns to adjoining property owners and the immediate community.

As noted earlier, the Police Department has already commented that a school in this area will create an increase in noise, traffic, and crime. While noise may not necessarily directly relate to a Police function, traffic and crime do.

Given the Police Department's comments, the proposed use would invariably create additional demand for police service.

Further, because of the honeycomb of caves in this area, drainage and wastewater systems need to be carefully planned so as to mitigate their potential impacts to surrounding properties, particularly those situated *makai* or east of the subject site. The Applicants have not sufficiently demonstrated how these would be addressed except to say that they would comply with prevailing regulations. However, there is insufficient information at this time on this matter to conclude that there will be no drainage or wastewater impacts.

69. Rule 6-3(b)(5)(D): Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.

The subject site abuts the State Land Use ("SLU") Urban district and County residentially zoned properties to the north. Adjacent properties to the southwest although within the SLU Agricultural district and County zoned A-1a, have been developed and used for rural-residential purposes. The General Plan also designates the proposed site Low Density Urban. As such, the subject site could be considered an area generally bounded by urban and/or quasi-urban residential uses and thus, graphically and functionally, be considered a southerly extension of the existing SLU Urban district.

Therefore, given the size and scope of the proposed development as well as its adjacency to the SLU Urban district, the property should be processed through the more rigorous and transparent SLU boundary amendment and County rezoning processes instead of as a Special Permit.

While the concept of charter schools was given birth to after the district boundaries were established, they are not necessarily immune or exempt from the land use objectives. In that regard, while the filing of this application suggests a need for a new educational facility, the question is whether the proposed site is appropriate.

As noted earlier, given that at least 50% of the projected student population will come from the Puna District and the adverse impacts the proposed development would have to the immediate community, insufficient analysis or thought was given to other properties, be they private or publicly-owned.

The State lands identified in the EA for the South Hilo District did not take into account their ability to be subdivided. Further, a cursory examination of other State lands in this area suggests that properties fronting the well-accessed Puainako Extension were not given careful consideration. In addition to looking at only State lands in the South Hilo District, the Applicants did not examine other potential State lands in the Puna District or any private lands. Potentially, some private lands – although with a higher initial acquisition cost – could be less costly to develop given the needed off-site infrastructure costs and the cost of new buildings and site improvement.

Thus, it is difficult to conclude that there are unusual conditions, trends, and needs that justify the proposed use at this location.

70. Rule 6-3(b)(5)(E): The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

While the site's Land Study Bureau soil classification rating of "D" or "Poor" suggests the land may be unsuited for agricultural uses, it could still be utilized for different type of non-intensive agricultural uses, including hydroponically grown vegetables. Also, in this general area, it is not uncommon to find citrus, avocado and other fruit-bearing trees.

Additionally, forestry and conservation uses are permitted in the Agricultural District. The subject site has a considerable stand of Ohia trees and veins of the Kaumana Caves extend throughout the site. The Hawaiian Hawk and Hawaiian hoary bats are known to roost in this area.

Finally, the Applicants themselves have maintained that they can successfully conduct an agricultural program on the property, thus conceding that the land has agricultural potential.

As such, it is difficult to readily and unequivocally conclude that the site is "unsuited" for these permitted uses as well as having the potential of non-intensive agricultural uses.

71. Rule 6-3(b)(5)(F): The use will not substantially alter or change the essential character of the land and the present use.

The character of the land is primarily an ohia forest. It is vacant of any structures. To accommodate the proposed development, structures such as a dormitory, 10,500 square foot gymnasium, cafeteria, classrooms, etc. will all have to be constructed; parking lots to accommodate more than 140 vehicles will have to be provided; and

paved or improved access to and around the campus must be created. These structures and improvements are planned for at least 20 acres of the lower 37-acre campus.

As such, from a relatively pristine ohia-forested area, a considerable amount of the lower portion of the site will now have urbanized structures and improvements consisting of concrete, asphalt, glass, steel, and wood. Thus the development will definitely and substantially alter and permanently change the essential character of the land and its present forestry/open space use. This is a position and finding that has also been echoed by the Planning Department.

72. Rule 6-3(b)(5)(G): The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

The General Plan Land Use Pattern Allocation Guide Map designates the area for Low Density Urban uses. However, a school use is not necessarily a “low density” type of use.

The County Zoning Code is designed to implement the General Plan. The Zoning Code allows schools within the various Commercial but not Agricultural or any of the residential districts, without first having a Use Permit. This is understandable, as a school – as in this instance with its nearly 400 students with direct and indirect support resulting in nearly 500 persons per day at the site – can easily generate commercial type of impacts.

Because of the potentially adverse impacts a school may have on surrounding properties and/or immediate neighborhood, a Use Permit is required within the Agricultural or Residential zones. This process enables the community to weigh in on the application, while helping decision-makers understand the community’s concerns. This type of transparency in the decision-making process is important to the democratic process and needed to help neutralize comments such as those from the Applicants that the Special Permit would be approved even before the application is filed or public testimony is given or the former Planning Director that the project would probably be approved.

The Use Permit process and criteria are generally similar to the Special Permit.

The criteria for a Use Permit read that a proposed use:

Shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and

Shall not unreasonably burden public agencies to provide roads, and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure. (Emphasis added)

As discussed above, the proposed development would not meet those two criteria, particularly its adverse impact to the community's character and to surrounding properties. The adverse impact to the community has been well attested to by the numerous testimonies, letters, emails, and petition from area residents who oppose the use of the subject property for the Applicants' development.

Thus, since the Zoning Code implements the General Plan and if a project – as in this case - cannot meet the Use Permit test, it would be difficult to conclude that the request would be consistent with the General Plan.

In that regard, there are a number of pertinent elements in the General Plan that cannot support the proposed development. These are as follow:

Economic Element

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

Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.

Again, while the concept of a school may have some economic benefits, it would not be compatible with the surrounding rural/residential uses. Further, directly impacted residents would have their quality of life diminished, not enhanced.

Public Facilities Element

Goal: Encourage the provision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community. (emphasis added.)

Policy: Coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community.

The issue here is not the wisdom of the Applicants' school. The issues are whether the proposed development at this specific location is appropriate and whether the proposed development would be effectively serving the community in a manner that would be in keeping with the environmental and aesthetic concerns of the community. It is concluded that this goal and policy would not be achieved at this location.

The student community for the most part is from areas outside of the immediate community and there is no administrative assurance that children from the area would be able to gain entrance to the facility. The immediate community, which is going to have to bear the effects of this proposed use, has expressed environmental, social, and aesthetic concerns. The Applicants have not demonstrated that they have seriously investigated other properties that could better service their student population at a location where community and infrastructural issues would be less.

Land Use Element

Policy: Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environments.

Because of its adverse impacts, approval of this request at this location would disrupt the existing community. In so doing, its development would not be in balance with the physical and social environments of this area.

While perhaps serving a regional need, the proposed development would not necessarily and effectively serve the needs of the adjoining community that will have to bear the brunt of impacts. If designed to serve a regional need, like the Kamehameha School in Keaau, the proposed development would be

more appropriate in an area where impacts to adjoining properties are not significant and/or impacts can be clearly mitigated.

73. Video clearly shows floodwaters not filling up or overflowing. Also showing water draining away directly under Connections proposed building site.

The “Drywell on Edita Street” video clearly shows water flowing freely from mauka to makai in the bottom of the drywell without over flowing.

EXHIBIT JG2

74. Pacific Legacy confirms the drywell on Edita Street is connected to Kaumana Cave and the school plans to build directly over the cave system.

As experts hired by CPCS to investigate the Kaumana Lava Tube Complex stated in their investigation, “In more recent conversations with local residents”

“If it did connect with Kaumana Cave, somewhere further makai, then the floodwaters would not fill up the well and overflow, but would be drained away.” This detailed investigation by Pacific Legacy proves the proposed plan to build the school on the makai parcel would be done directly over the Kaumana Cave system. *ROA page1070.*

75. EDSPECS requires 50 acres for a high school.

John Thatcher testified under sworn oath that he used the EDSPECS to decide on the current property.

John Thatcher states, “One of the findings there, if the school had a high school campus it should be 50 acres or more.

The chosen site only has 35 acres for their high school.

ROA page1832

76. County Planning Department requires applicant remains responsible for all other governmental requirements in connection with the approved use.

EDSPECS requires; Fencing (minimum 6 feet) around the perimeter and secure gates at the entrances/exits are provided to allow the school control/deter traffic (pedestrian and vehicular) onto the campus.

ROA page 892, EXHIBIT JG6

77. Planning Department consideration; “the new K-12 school should not attempt to isolate itself from the community”

The school illegally put up 4 feet hog wire fence in total disregard to EDSPECS requirement of a 6 feet chain link fence after stating at a community meeting that a six feet fence would be built. *ROA 884, EXHIBIT JG-6 SECTION 901-1, ROA 1263-1264*

“You will see 16 red and white keep out signs posted on the hog wire fence”
Henry K Lee Loy SUBMITTED WRITTEN TESTIMONY DATED 11/12/2013

John Thatcher testified under oath that there were four community meetings. He states, “the hardest concerns for us to understand were the concerns that the students, because they were poor, would be breaking into peoples houses.” Minutes from all community meetings show nothing of anyone concerned about students breaking into homes or ever making such an awful statement. *CC Transcript page 68-69, ROA pages 948-950, 969-970, 972-981*

Mario Patino, former CPCS Board member, in written testimony to the Windward Planning Commission states, “The opposition has not offered to give us land in other areas of our town, nor offered much alternatives for our school other than placing signs of HATE on their lawns.” There is no evidence of HATE signs. *ROA page 1226*

May 14, 2012, John Thatcher attacks, threatens and bullies Sidney Fuke.
ROA pages 1416-1420

November 19, 2012, John Thatcher continues to attack Sidney Fuke and calls Sidney, “One of the angry Kaumana neighbors.”
ROA page 1804

Jason Turner submitted written testimony. The ohia forest proposed for development is an important habitat for the endangered Hawaiian Hawk and

Hawaiian Hoary bat, and Connections School has neglected USFWS recommendations IAW EA report. *ROA pages 1263-1264, 251 para 1 & 2*

Kerri Marks testified that as a Kaumana resident she had not heard of the project but saw the signs along Kaumana Drive. While trying to get information about the project from Ted Hong, when Kerri Marks identified herself as a neighbor who lives up the hill Ted Hong says, "Oh, you're the opposition." *ROA page 1614*

John Rushlow testified, "I was not made aware at anytime about the school being built, about the fencing coming in, about the bulldozing going in" *ROA page 1612*

John Thatcher's written testimony to the Windward Planning Commission states, "a community meeting was held at Kaumana Elementary School to discuss the CPCS Kaumana campus development. Community concerns were noted. One clearly articulated concern was for a fence to be erected around the part of the property that would be used as the main campus facility." Minutes from all community meetings prove that on one asked for a fence to be built. *ROA page 1146, ROA pages 948-950, ROA pages 963-970, ROA pages 972-976*

Ted Hong testifies to the Board of Land and Natural Resources, "They had four community meetings. In those community meetings several community members said you should fence the property to protect it and they did that. Again, same misleading story about the illegal fence project with no evidence of community members asking for a fence in the minutes. *Exhibit JG-4 page 13, ROA pages 948-950, ROA pages 963-970, ROA pages 972-976*

Connections hires personal friends of Ted Hong and John Thatcher who have criminal records, to illegally bulldoze perimeter of makai property and put up 4 feet hog wire fencing. Connections accuses the contractor they hired to do illegal land clearing and fencing of stealing ohia trees from the project site. Ted Hong releases this statement to the Hawaii Tribune Herald, "We were victims of a crime," he said. "We didn't know what they were doing." *ROA page 824, ROA pages 1057-1058*

June 13, 2012, contract between CPCS and On The Line Fencing is signed by Eric Boyd to illegally bulldoze and install illegal 4 feet hog wire fence. *ROA pages 1057-1058*

July 18, 2012, Ted H. S. Hong finally submits request for RIGHT OF ENTRY AUTHORIZATION after illegal land clearing and fencing have already been underway. No mention of bulldozing, land clearing or fencing is in the ROE for topographic survey. *ROA pages 1013-1014.*

Ted H. S. Hong submits as evidence Contractor Complaint Form from the State of Hawaii Department of Commerce and Consumer Affairs signed by Sue Lee Loy. This form has no case number or stamped seal and was never submitted. DCCA has no record of this complaint. *ROA pages 153-1056*

July 14, 2014, Justin Thatcher files police report describing theft of ohia trees, four days before Ted H. S. Hong files for right of entry which made no mention of bulldozing or fencing. *ROA page 1018*

August 01, 2012 William Eric Boyd gives investigating HPD officer C. Acob a home address of 161 B Lanikaula Street, Hilo, HI 96720. This is the arboretum. *ROA page 1034.*

November 2012, Officer Edwin Shishido conducts follow up investigation on tree theft and concludes, "that CCS knew of the ongoing violations that was occurring. It is difficult to believe that CCS knew nothing of the bulldozing, grubbing, land clearing fencing and removal of ohia tree logs." *Exhibit JG-5 last page*

October 2012, press release by Ted H. S. Hong. "a coordinated campaign of bullying, intimidation and harassment against Connections Charter School got uglier." *ROA page 825*

These types of illegal events, misleading statements and hurtful language by Connections Public Charter School and their representatives towards the residents of Kaumana, not only isolate the school from the community but, create huge barriers of distrust towards the school's administration and their ability to follow rules and regulations.

II. CONCLUSIONS OF LAW

Based on the foregoing proposed Findings of Fact, the Planning Commission makes the following Conclusions of Law

1. To the extent that any of the Findings of Fact constitute Conclusions of Law, or Conclusions of Law constitute Findings of Fact, they shall be considered and construed as such.
2. The Planning Commission has jurisdiction over the Special Permit Application, including the ability to deny or recommend its approval to the State Land Use Commission, pursuant to Chapter 205-6, HRS and Rule 6 of the Planning Commission Rules.
3. Pursuant to HRS Section 91-10, the Applicants had the burden of proof on this matter before the Planning Commission, including the burden of producing evidence as well as the burden of persuasion to demonstrate how their request is consistent with the guidelines for a Special Permit as outlined by Chapter 205-6 and Planning Commission Rule 6. The Applicants have not adequately satisfied and thus failed to meet this burden.
4. The proposed development does not adequately meet the test or guidelines for a Special Permit as outlined by Chapter 205-6 and Planning Commission Rule 6.
5. The proposed development would not be consistent with the pertinent policies and objectives of the County General Plan, particularly as it might relate to impacts to the immediate community.
6. The Planning Commission does not rule upon questions of constitutional law.

III. DECISION AND ORDER

Based upon the evidence presented in this matter and in accordance with the foregoing Findings of Fact and Conclusions of Law, and pursuant to Rules 4 (Contested Case Procedure) and 6 (Special Permits) of the Planning Commission Rules, the Planning Commission has adopted intervenor Jeffrey Gomes' Proposed Findings of Fact and Conclusions of Law and has ruled to reject the Applicants' Proposed Findings of Fact and Conclusions of Law.

It is thus hereby decided and ordered by the Planning Commission that the Special Permit Application (SPP NO. 12-000138) of Connection New Century Public Charter School and Community Based Education Support Services be denied.

BEFORE THE WINDWARD PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the Petition of	) APPLICATION SPP NO. 12-000138
)
CONNECTION NEW CENTURY PUBLIC	) ORDER ADOPTING PROPOSED
CHARTER SCHOOL AND COMMUNITY	) FINDINGS OF FACT, CONCLUSIONS
BASED EDUCATION SUPPORT	) OF LAW, AND DECISION AND
SERVICES	) ORDER
)
For a Special Permit to Establish a K-12)
Charter School Campus, Dorm and Related)
Facilities and Improvements on Approximately)
70 Acres of Land Situated in the State Land)
Use Agricultural in Kaumana, South Hilo,)
Island of Hawaii, State of Hawaii, Tax)
<u>Map Key No: (3) 2-5-006: 141.</u>)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February _____, 2014, I caused a true and correct copy of the foregoing document to be served on the following persons via Electronic Mail and U.S. Postal Mail:

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Hilo, HI 96720

DATED: Hilo, Hawai`i February ____, 2014

JEFF GOMES
Intervenor
281 Edita Street
Hilo, HI 96720

LINCOLN S. T. ASHIDA 4478
Corporation Counsel

AMY G. SELF 7628
Deputy Corporation Counsel
Office of the Corporation Counsel
333 Kīlauea Avenue, Suite 210
Hilo, Hawai'i 96720
Tel. No. (808) 961-8251
Fax No. (808) 961-8622
Email: aself@co.hawaii.hi.us

Attorneys for Duane Kanuha, County of Hawai'i Planning Director

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

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

Application for Special Permit Application No.
12-000138

TMK: (3) 2-5-006:141; Kaūmana, South Hilo,
Hawai'i

SPP-12-000138

DUANE KANUHA, COUNTY OF HAWAI'I
PLANNING DIRECTOR'S STATEMENT OF
TAKING NO POSITION AS TO THE
SUBMISSION OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION
AND ORDER; CERTIFICATE OF SERVICE

**DUANE KANUHA, COUNTY OF HAWAI'I PLANNING DIRECTOR'S STATEMENT
OF TAKING NO POSITION AS TO THE SUBMISSION OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER**

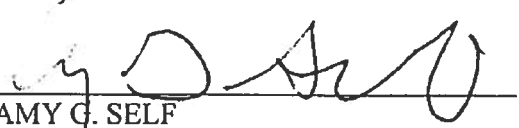
DUANE KANUHA, COUNTY OF HAWAI'I PLANNING DIRECTOR, by and through his undersigned counsel, and in lieu of submitting Findings of Fact, Conclusions of Law and Decision and Order, states that he will take no position in this matter, but reserves his right to submit exceptions to the Findings of Fact, Conclusions of Law and Decision and Order submitted by the other parties in this matter.

Furthermore, the Planning Director takes no position in this matter without prejudice to his ability to later participate should the need arise when the matter is before the Windward Planning Commission.

Dated: Hilo, Hawai'i, February 12, 2014.

DUANE KANUHA, COUNTY OF HAWAI'I
PLANNING DIRECTOR

By



AMY G. SELF
Deputy Corporation Counsel
His Attorney

AND COMMUNITY BASED EDUCATION SUPPORT SERVICES
Application for Special Permit Application No. 12-000138

DUANE KANUHA, COUNTY OF HAWAI'I PLANNING DIRECTOR'S STATEMENT OF
TAKING NO POSITION AS TO THE SUBMISSION OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

SPP-12-000138

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

CERTIFICATE OF SERVICE

Application for Special Permit Application No.
12-000138

TMK: (3) 2-5-006:141; Kaūmana, South Hilo,
Hawai'i

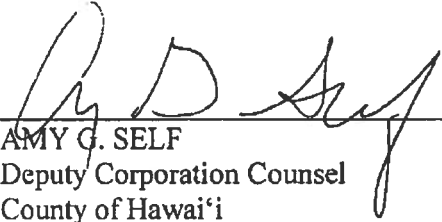
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2014, a copy of the foregoing document was served upon the following in the manner indicated below:

	<u>Hand Delivery</u>	<u>Mail</u>	<u>Email</u>
SANDRA P. SONG, ESQ. 10 Kamehameha Avenue Hilo, Hawai'i 96720 Email: sandrasong@hawaiiantel.net Hearings Officer			(X)
CARTER SIU, ESQ. Deputy Attorney General State of Hawai'i 235 S. Beretania Street, Room 304 Honolulu, Hawai'i 96813 Email: Carter.K.Siu@hawaii.gov Attorney for CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL			(X)
TED H.S. HONG, ESQ. P. O. Box 4217 Hilo, Hawai'i 96720 Email: ted@tedhonglaw.com Attorney for COMMUNITY BASED EDUCATION SUPPORT SERVICES			(X)

	<u>Hand Delivery</u>	<u>Mail</u>	<u>Email</u>
JEFF GOMES 281 Edita Street Hilo, Hawai'i 96720 Email: kalanigomes@hawaiiantel.net Intervenor			(X)
DARYN ARAI JEFF DARROW County of Hawai'i Planning Department 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 Email: darai@co.hawaii.hi.us jdarrow@co.hawaii.hi.us Windward Planning Commission			(X)

Dated: Hilo, Hawai'i, February 12, 2014.



AMY G. SELF
Deputy Corporation Counsel
County of Hawai'i

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES (CBESS)

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
	)	AMENDED
CONNECTION NEW CENTURY PUBLIC	)	SUBPOENA DUCES TECUM; NOTICE TO A
CHARTER SCHOOL AND COMMUNITY	)	PERSON OR ENTITY SERVED; WITH A
BASED EDUCATION SUPPORT	)	SUBPOENA DUCES TECUM WHO IS NOT
SERVICES	)	A PARTY TO THIS CASE
)	
	)	[WITNESS: TERENCE YOSHIOKA]
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

AMENDED
SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO: Any Officer authorized by law to serve subpoenas in the State of Hawaii

YOU ARE COMMANDED to subpoena the following witness:

TERENCE YOSHIOKA
Address: 1572 Mele Manu Street, Hilo, Hawaii 96720

WITNESS, YOU ARE COMMANDED to appear before a Notary Public from Island Court Reporting & Transcription Services, who is duly authorized to administer oaths, on **Monday, October 21, 2013; at 9:00 AM**, at the Hilo State Building (“Old Court House”), 75 Aupuni Street, Hilo, Hawaii 96720, Conference Room A, B, C, to testify as a witness (at a County of Hawaii Windward Planning Commission Contested Case Hearing) on the part of the Applicant COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) taking of an oral deposition in the above-entitled matter.

YOU ARE FURTHER ORDERED to bring with you the original and 4 copies for a total of 5 sets of the books, papers, documents or other things in your possession or under your control, described as follows:

1. Your current Curriculum Vitae.
2. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 343.
3. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to Hawaii Revised Statutes Chapter 205A.
4. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR Title 15, Chapter 15.
5. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to HAR§ 15-15-95(e).

6. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to the Charter of the County of Hawaii.

7. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to the County of Hawaii Planning Department Rules and Procedures.

8. Any and all reports, opinions, finds of facts or conclusions you have authored, co-authored, and/or provided data for within the past two (2) years related to County of Hawaii Planning Commission Rule 6.

9. Any and all documents and correspondence memoranda, letters, correspondence, emails within the past two (2) years to present, that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

10. Any and all communications from directors or officers of the group Kaumana community association to members of the group Kaumana community association within the past two (2) years to present that mentions CONNECTIONS and/or COMMUNITY BASED EDUCATION SUPPORT SERVICES (otherwise known as CBESS), and/or the school project currently being considered by the Windward Planning Commission on the property located at Tax Map Key (3) 2-5-006: 141, which is on the southwest side and the northeast side of Edita Street, at its intersection with Kaumana Drive.

WITNESS, you are hereby commanded to appear at the time and place indicated to testify; you are to bring all of the above described records with you.

DATE ISSUED: Hilo, Hawaii, October 17, 2013



SANDRA P. SONG
Hearings Officer

**NOTICE TO A PERSON OR ENTITY SERVED WITH A
SUBPOENA DUCES TECUM WHO IS NOT A PARTY TO THIS CASE**

The Subpoena attached hereto should specifically set forth the materials sought to be subpoenaed. Any person and/or entity or their attorney objecting to the Subpoena or to disclosure of any materials subpoenaed shall appear on the date and at the time and place for return indicated on the Subpoena and State their objections. Failure to object on the return date may be considered a waiver of any objections.

The person or entity subpoenaed or their counsel may submit a written statement of objections to the Hearings Officer listed above. If a person or entity objects to disclosure of only part of the material, the pages or sections of material considered confidential and/or nondisclosable shall be tabbed or marked for the Hearings Officer.

Matters presented at the return may be continued from time to time without further notice except as announced at the time of return.

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
)	
CONNECTION NEW CENTURY PUBLIC)	
CHARTER SCHOOL AND COMMUNITY)	
BASED EDUCATION SUPPORT)	
SERVICES	)	RETURN OF SERVICE,
	)	ACKNOWLEDGMENT OF SERVICE
)	
Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Rachelle Ley

Signature of Party Served:

Rachelle Ley

Address Where Served:

101 Pauahi St. Ste 4, Hilo
96720

Type of Document Served

Original

Date of Services:

10-18-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Walter R. Castillo

Print Name of Server Walter R. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
)	
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CONNECTION NEW CENTURY PUBLIC)	
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Application for Special Permit Application)	
No. 12-000138)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Kurt Inaba

Signature of Party Served:

Kurt Inaba

Address Where Served:

645 Kekuanana St., Hilo 96720

Type of Document Served

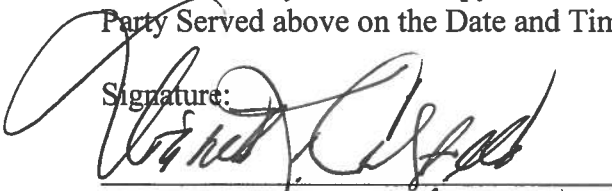
Subpoena

Date of Services:

10-18-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Ariantho K. Casarillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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CONNECTION NEW CENTURY PUBLIC)	
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Application for Special Permit Application)	
No. 12-000138)	
)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Ronald L. Thiel

Signature of Party Served:

Ronald L. Thiel

Address Where Served:

118 Railroad Ave., Hilo, HI
90780

Type of Document Served

Subpoena

Date of Services:

10.18.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Orlando K. Casrillo

Print Name of Server

Orlando K. Casrillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

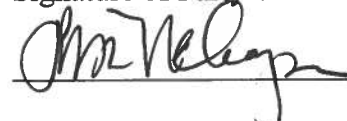
In the Matter of)	SPP No. 12-000138
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CONNECTION NEW CENTURY PUBLIC)	
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Application for Special Permit Application)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Lisa Nahropii

Signature of Party Served:



Address Where Served:

101 Pauahi St #4 Hilo, HI.

Type of Document Served

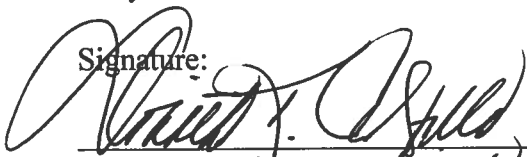
Subpoena

Date of Services:

10.18.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:


Print Name of Server Sandra K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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Application for Special Permit Application)	
No. 12-000138)	
)	
TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

M. Yikera

Signature of Party Served:

Did not answer door

Address Where Served:

1304 McW Mann Dr. Hilo, HI 96720

Type of Document Served

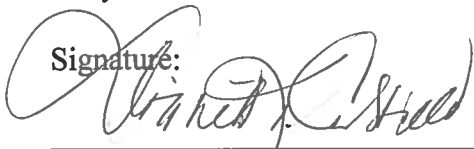
Amended Subpoena

Date of Services:

10-20-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Derrin K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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CONNECTION NEW CENTURY PUBLIC)	
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Application for Special Permit Application)	
No. 12-000138)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

J. Yokoyama

Signature of Party Served:

Did not answer door.

Address Where Served:

Melua Manu Dr., Hilo, HI 96720

Type of Document Served

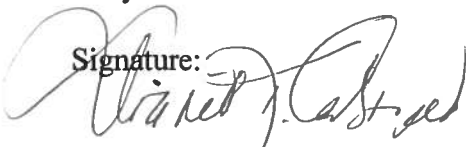
Amended Subpoena.

Date of Services:

10.30.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Dorianth K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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CONNECTION NEW CENTURY PUBLIC)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

M. Yokota

Signature of Party Served:

Did not answer door

Address Where Served:

Melw Manu A Hilo, HI 96720

Type of Document Served

Amended Subpoena Duces Tecum

Date of Services:

10-20-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Print Name of Server Dintho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

LESTER SAKAMON

Signature of Party Served:



Address Where Served:

Melody Manor Dr., Hilo, HI 96730

Type of Document Served

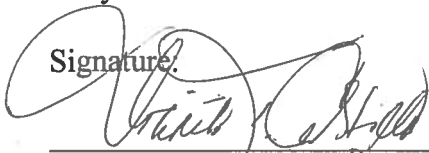
Amended Subpoena

Date of Services:

10.20.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:



Print Name of Server Dinntho K. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

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

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Signature of Party Served:

U. Ang-Peng

U. Ang-Peng

Address Where Served:

Type of Document Served

Melo Manu Dr. Hilo, HI 96720

Amended Subpoena

Date of Services:

10-20-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Diantho R. Crichillo

Print Name of Server Diantho R. Crichillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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Application for Special Permit Application)	
No. 12-000138)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

David Connors

Signature of Party Served:

ally

Address Where Served:

1414 A. Molo Manu St., Hilo 96720

Type of Document Served

Amended Subpoena

Date of Services:

10-20-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Diantho R. Castillo

Print Name of Server Diantho R. Castillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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CONNECTION NEW CENTURY PUBLIC)	
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Application for Special Permit Application)	
No. 12-000138)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:

Glenn Tada

Signature of Party Served:

[Handwritten Signature]

Address Where Served:

Melo Manu St., Edita Dr Hilo 96720

Type of Document Served

Amended Subpoena

Date of Services:

10-20-2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

[Handwritten Signature]

Print Name of Server

Diantho R. Chacillo

Acknowledgement of Hearings Officer

Sandra Song

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of)	SPP No. 12-000138
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Application for Special Permit Application)	
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TMK: (3)2-5-006:141; Kaumana, South Hilo,)	
Island of Hawaii)	

RETURN OF SERVICE; ACKNOWLEDGMENT OF SERVICE

Name of Party Served:
Jan Yokoyama

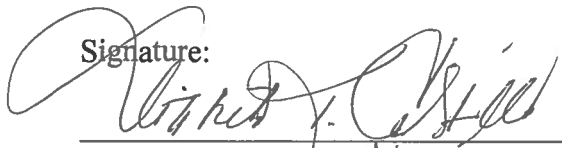
Signature of Party Served:


Address Where Served:
1300 Kaumana Dr.

Type of Document Served
Amended Subpoena

Date of Services:
10.20.2013

I verify that the statement are true to my personal knowledge and belief and do certify that I received a fully executed copy of the document(s) listed above and that I served same on the Party Served above on the Date and Time of Service and the Address listed above.

Signature:

Print Name of Server Dyantho K. Chotillo

Acknowledgement of Hearings Officer

Sandra Song

SANDRA PECHTER SONG 1552
10 Kamehameha Avenue
Hilo, Hawaii 96720
Tel. No. (808) 933-9212
Fax No. (808) 935-3945

Hearing Officer

BEFORE THE PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of	)	SPP No. 12-000138
)	
CONNECTIONS NEW CENTURY PUBLIC	)	HEARING OFFICER'S REPORT;
CHARTER SCHOOL and COMMUNITY	)	CERTIFICATE OF SERVICE
BASED EDUCATION SUPPORT)	
SERVICES	)	Hearing Dates: October 21, 2013, October 22,
	)	2013, November 12, 2013, January 8, 2014
Application for Special Permit Application	)	and January 21, 2014
No. 12-000138)	
)	
TMK: (3) 2-5-006-141; Kaumana, South)	
Hilo, Hawaii)	
_____)	

HEARING OFFICER'S REPORT

This matter came on for contested case hearing before your Hearing Officer on October 21, and 22, 2013, November 12, 2013, January 8 and 21, 2014. At the hearing, Applicant, Connections New Century Public Charter School was represented by its counsel, Carter K. Siu, and Applicant Community Based Education Support Services was represented by its counsel Ted H.S. Hong. Applicants Connections New Century Public Charter School and Community Based Education Support Services will hereinafter be collectively referred to herein as "Connections". Also at the hearing, the County of Hawaii Planning Director (hereinafter "Director") was represented by his counsel, Amy G. Self; and Intervenor Jeffrey K. Gomes (hereinafter "Gomes"), represented himself *pro se*.

At the close of the hearing, the parties were provided with an opportunity to submit proposed findings of fact in this case. Connections and Gomes submitted proposed findings on February 12, 2014. The Director submitted a statement on February 12, 2014 indicating that he was not taking any position in this matter and would not be filing proposed findings of fact. The

Director did, however, reserve the right to submit exceptions to findings submitted by other parties in this matter.

After considering all of the evidence presented at the hearing, the entire record in this proceeding, and the proposed findings of fact submitted by Connections and Gomes, your Hearing Officer makes the following findings of fact, conclusions of law, and recommended order in this case:

FINDINGS OF FACT

I. Procedural Background

1. This matter involves an application filed by Connections on July 25, 2012, for a special permit, pursuant to Section 205-6, Hawaii Revised Statutes (“HRS”) and Rule 6 of the County of Hawaii Planning Commission Rules of Practice and Procedure (hereinafter “Commission Rules”) to allow the development of a charter school campus with dorm facilities and related improvements for students in kindergarten through twelfth grade (hereinafter, the “Development”), on 70.15 acres of land situated within the State Land Use Agricultural District, at Ponahawai, Kukuau 2nd, South Hilo, Hawaii, commonly referred to as the Kaumana area of Hilo, designated by State of Hawaii Tax Map Key (“TMK”) (3) 2-5-006-141 (hereinafter, the “Property”).

2. Connections has leased the Property on which the Development is proposed from the State of Hawaii under General Lease No. S-6029.

3. Notices of the Windward Planning Commission of the County of Hawaii (hereinafter “Commission”) hearings on the proposed Development were provided to property owners surrounding the proposed Development.

4. The Commission held public hearings on the Connections application on November 12, 2012, December 6, 2012 and January 10, 2013. At the hearing held on January 10, 2013, the Commission voted to deny the Connections application and instructed the Commission staff to prepare proposed findings of fact, conclusions of law and order, which would be considered for adoption by the Commission at its meeting of March 7, 2013.

5. At the Commission meeting of March 7, 2013, the Commission suspended the preparation of the findings of fact, conclusions of law and order, and granted a request by

Connections for a contested case on the subject application. Gomes also submitted a petition to intervene in this matter on March 7, 2013, and the Commission admitted him as a party to the proceeding.

6. A petition to intervene in this proceeding was filed by Terrence Yoshioka on November 4, 2013, after the contested case hearing in this proceeding had already commenced. On November 8, 2013, your Hearing Officer denied this petition in accordance with Rule 4-6 of the Commission Rules, on the ground that the subject petition was untimely filed.

7. The Director is a party to this proceeding pursuant to Rule 4-7(a) of the Commission Rules. The Director initially recommended approval of the Connections application, subject specific conditions, but took no position on the application at the contested case hearing.

8. The subject application involves a parcel of land greater than fifteen acres in area. Therefore, any permit approved by the Commission is subject to final approval by the State Land Use Commission

II. Proposed Development

A. General Description

9. The Connections application proposes the development of a K to 12 charter school campus with dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Development, together with related uses on the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion would be used for outdoor type of educational programs, including a forestry preservation program.

10. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25 intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, kitchen/dining facility, library/resource center, caretaker's residence and other related facilities. Two parking lots capable of supporting 140 parking stalls would be provided.

11. The Development would relocate and expand the existing charter school which is presently operating from two separate campuses. The elementary and middle schools are located in the Kress Building on Kamehameha Avenue, in downtown Hilo, and the high school is located

in leased facilities at the Nani Mau Gardens, just outside of Hilo town.

12. Connections proposes having 50 full-time and 17 part-time employees at full build-out of the Development, which is the same number presently employed for this charter school.

13. Connections anticipates that 50% of the student population will come from the Hilo area and 50% from the Puna area miles away from the Development. The present student population for this charter school is composed primarily of students from these two geographic areas.

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

15. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school and administration building, with the projected opening to be within 2.5 to 3.5 years.

B. Public Utilities and Services

Access/Traffic

16. Access to the Development is proposed from Edita Street which connects with Kaumana Drive, a major Hilo artery. Both roads are owned and maintained by the County of Hawaii. Edita Street has a 60-foot right-of-way width, with a 48-foot wide pavement width fronting the Development. The paved area accommodates two 20-foot wide travel lanes, a 20-foot wide shoulder on the northeast side of the road, and an 8-foot wide shoulder on the southwest side. Edita Street is in good condition; however, the Hawaii County Police Department recommended that the unpaved shoulder along Edita Street extending from Kaumana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.

17. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaumana drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service or LOS operates as LOS "A" or "B", meaning that the traffic service is

uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels “A” or “B”. Although the TIAR concludes that traffic will not be adversely affected by reason of the Development, the County Department of Public Works recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.

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

Water

19. A maximum of 4,200 gallons per day (hereinafter “gpd”) of water or seven (7) water units from an existing 8-inch waterline on Kaumana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus, is available from the County of Hawaii municipal water system to service the entire Development. Based on a 60 gpd per student standard, 4,200 gallons of County water could only support 70 students. At full build-out the entire Development would require 26,100 gpd.

20. Notwithstanding the unavailability of potable water from the County system for the Development, the existing 8-inch waterline within Edita street is adequate to provide the required 2,000 gallons of water per minute for fire protection of the proposed Development.

21. The available water from the County of Hawaii municipal water system is insufficient to support the first phase of the Development.

22. Connections has proposed using water efficient fixtures and supplementing the available County water with either a catchment system for non-potable water or developing an additional water source. However, Connections has not produced any evidence to demonstrate that it has or can develop sufficient water for the Development.

Wastewater

23. Connections is proposing to provide its own wastewater system meeting the

requirements of the State of Hawaii Department of Health (hereinafter "DOH"). Connections prefers installing an ecological/biological wastewater system called the "Living Machine". However, should such a system prove to be unfeasible, Connections would install a traditional septic system with leach fields or any other system required by DOH.

Drainage

24. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the Property is outside the 500-year flood plain. Notwithstanding this flood designation, during severe storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Edita Street.

Utilities

25. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kaumana Drive.

Public Safety

26. The Hawaii County Police Department expressed concern that the Development would increase noise, crime and traffic. However, there was no evidence that the Police Department lacks the ability to provide police protection for the Development.

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

27. The Property is presently vacant and undeveloped.

28. Surrounding lands to the south and west of the Property are zoned A-1a, with properties further south being zoned A-20a and-10A. Lands to the north of the Property are zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaumana Drive. One parcel is also zoned Open adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity.

29. The soils on the Property are primarily composed of pahoehoe lava flow. The State

Department of Agriculture's map showing agricultural lands of importance to the State of Hawaii shows the Property as being unclassified. Also, the Land Study Bureau classifies the soil on the Property under its detailed land classification system, as "D" or "Poor" for agricultural activity.

30. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 1880-1881. Although Connections submitted a request to the State Historic Preservation Division ("SHPD"), by letter dated August 17, 2010, requesting a "no-effect" determination from that agency, SHPD has not responded to the request.

31. A portion of the Kaumana Cave is accessible from the upper portion of the Property. Connections is proposing to refrain from constructing any major school facilities on the upper portion of the Property and to maintain a minimum 100-foot buffer on either side of the cave alignment to alleviate concerns about impact from the Development on the cave ecosystem.

32. A botanical survey of the Property identified 11 native plant species, but none of those species are considered protected species.

33. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.

34. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

IV. STATE AND COUNTY PLANS

35. The Property is within the State Land Use Agricultural District. A school is not a permitted use within the Agricultural district; however, a school may be permitted in this district if a special permit is obtained for such use pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.

36. The County of Hawaii General Plan Land Use Pattern Allocation Guide ("LUPAG") Map designates the Property for low density urban uses. The LUPAG designation of Low Density urban use, allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The Development is not proposed to be a community or public use for the Kaumana area of Hilo.

37. The County of Hawaii zoning for the Property is Agricultural with a minimum lot size of one-acre (A-1a). Under Section 25-5-72(d) of the Hawaii County Code, a school is permitted in an Agricultural zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District.

38. The Development, which is proposed to be located on State land, is subject to the Hawaii State Environmental Impact Statement law, Chapter 343, HRS. Connections prepared an environment assessment in accordance with Chapter 343, and declaration with a finding of no significant impact was issued for the Development by the State of Hawaii Department of Land and Natural Resources.

39. The Property is not situated within the Special Management Area (“SMA”), since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

V. SPECIAL PERMIT REQUIREMENTS

40. HRS Section 205-6, which governs special permits, provides in pertinent as follows:

“(a) The county planning commission may permit certain unusual and reasonable uses within agricultural . . . districts other than those for which the district is classified. Any person who desires to use the person’s land within an agricultural . . .district other than for an agricultural . . .use. . .may petition the planning commission of the county within which the person’s land is located for permission to use the person’s land in the manner desired. .

. . .

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

. . .

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

41. Planning Commission Rule 6-7, provides, in pertinent part, that

“[t]he Commission shall not approve a Special Permit unless it is

found that the proposed use

“(a) Is an unusual and reasonable use of land situated within the Agricultural. . .District. . .; and

“(b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

“The Commission shall also consider the criteria listed under Section 6.3(b)(5)(A) through (G).”

42. The seven criteria under Planning Commission Rule 6.3(b)(5)(A) through (G) are:

“(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;

“(B) The desired use shall not adversely affect surrounding properties;

“(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

“(D) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established;

“(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;

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

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

43. Although Gomes asserts that the criteria for a use permit should be considered in the subject application, that criteria is not relevant to a special permit determination.

VI. APPLICATION OF SPECIAL PERMIT CRITERIA TO THE DEVELOPMENT

A. Land Use Law Objectives

44. The purpose of the State Land Use Law is to preserve the lands of high agricultural

potential for agricultural use. The Property consists of land that is not considered highly valuable for agricultural uses. Thus, the use of the Property for a school is not contrary to the objectives sought to be accomplished by the State Land Use Law.

45. Likewise, the Development, which proposes the construction of a school for 381 students and related facilities is not akin to a major recreational theme park attracting 1.5 million people each year to the area. Therefore, such a development would not frustrate the objectives and effectiveness of the Hawaii's land use scheme and would not require a State land use boundary amendment in lieu of a special permit. *Neighborhood Board No. 24 vs. State Land Use Commission*, 64 Haw. 265, 272, 639, P.2d 1097, 1103 (1982).

B. Affect on Surrounding Properties

46. Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents.

47. Measures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate the overwhelming concerns raised by surrounding property owners.

C. Burden on Public Agencies to Provide Services

48. There is insufficient water available from the County system to service the Development. Therefore, to allow the Development would unreasonably burden the Department of Water Supply to provide water for its facilities.

49. There is no evidence that Connections has the ability to develop a potable water source as a mitigating measure, previously proposed by the Director.

50. A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a highschool for 107 students its first phase, when the potable water available would only allow for 70 students.

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

D. Unusual Conditions, Trends and Needs

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

E. Suitability of Land for Agricultural Uses

53. The Land Study Bureau soil classification rating for the Property is “D” or “Poor”, which suggests that the land may be unsuited for agricultural uses.

54. Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use. In addition, Connections is proposing to construct greenhouses on the Property and conduct an agricultural program in conjunction with its curriculum.

55. Based upon the representations of Connections, it cannot be found that the Property is unsuited for agricultural uses.

F. Alteration or Change of the Essential Character of the Land and Present Use

56. The Property is presently a forest and is vacant of any structures. The lower half of the Property will be converted into a school with classrooms, dormitories, a gymnasium cafeteria and parking lots.

57. The Development of a school will change the essential character of the forested land and its undeveloped use.

G. Consistency with the General Plan

58. The County General Plan LUPAG map designates the Property for low density urban use. “Low density uses” under the General Plan include residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses.

59. The Development, which proposes a charter school that is not specifically intended to service the immediate community surrounding the school, is not consistent with the uses permitted in areas of low density urban use.

60. The Economic, Public Facilities and Land Use elements of the County General Plan all require consideration of social and community concerns as follows:

Economic Element - Goal

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

Public Facilities Element - Goal

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

Land Use Element - Policy

“Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environments.”

61. The evidence has established significant concerns from the community regarding the compatibility of the Development with the surrounding community.

62. Although the County General Plan Public Facilities-Education course of action for South Hilo encourages the establishment of additional schools as the need arises, the proposed Development, at the subject location, is contrary to the General Plan.

VII. UNUSUAL AND REASONABLE USE OF LAND

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

most of the criteria to be considered by the Commission in the subject application.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the your Hearing Officer makes the following Conclusions of Law:

1. To the extent that any of the Findings of Fact constitute Conclusions of Law, or Conclusions of Law constitute Findings of Fact, they shall be considered and construed as such.
2. The Commission has jurisdiction over the subject special permit application, including the ability to deny or recommend its approval to the State Land Use Commission, pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.
3. Connections had the burden of proof on this matter before the Commission, including the burden of producing evidence as well as the burden of persuasion, by a preponderance of evidence, to demonstrate how its request is consistent with the guidelines for a special permit as outlined by Section 205-6, HRS and Rule 6 of the Commission Rules. Connections has failed to meet this burden.
4. The Development does not adequately meet the requirements or guidelines for a special permit as required by Section 205-6, HRS and Rule 6 of the Commission Rules.
5. The Development is not consistent with the County General Plan, particularly as to the impacts on the immediate community.

HEARING OFFICER'S RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions of Law, your Hearing Officer recommends to the Windward Planning Commission of the County of Hawaii that Special Permit Application SPP No. 12-000138 of Connections New Century Public Charter School and Community Based Education Support Services be denied.

DATED: Hilo, Hawaii, April 7, 2014



SANDRA PECHTER SONG
Hearing Officer

BEFORE THE PLANNING COMMISSION
COUNTY OF HAWAII

In the Matter of) SPP No. 12-000138
)
CONNECTIONS NEW CENTURY PUBLIC) CERTIFICATE OF SERVICE
CHARTER SCHOOL and COMMUNITY)
BASED EDUCATION SUPPORT)
SERVICES)
)
Application for Special Permit Application)
No. 12-000138)
)
TMK: (30 2-5-006-141; Kaumana, South)
Hilo, Hawaii)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was duly served upon the following parties by depositing the same in the U. S, mail, postage prepaid, and by e-mailing a copy, addressed to:

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DATED: Hilo, Hawaii, April 17, 2014.



SANDRA PECHTER SONG
Hearing Officer