

BEFORE HEARINGS OFFICER SANDRA SONG

COUNTY OF HAWAII

In the Matter of Connections New)
Century Public Charter School and)
Community Based Education Support)
Services)
)
Special Permit Application No.)
12-000138)
_____)

TRANSCRIPT

VOLUME I

(Pages 1 through 255)

of the Public Hearing had in the above-entitled matter
before Hearings Officer Sandra Song at 75 Aupuni
Street, Conference Rooms, Hilo, Hawaii 96720,
commencing at 9:04 a.m., on October 21, 2013.

HEARINGS OFFICER: SANDRA SONG, ESQ.

10 Kamehameha Avenue
Hilo, Hawaii 96720

REPORTED BY: Teri Serah Hoskins, CSR No. 452

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1 THE HEARINGS OFFICER: Good morning. This is
2 a special permit hearing, SDP No. 12-000138. It's in
3 the matter of Connections New Century Public Charter
4 School and Community Based Education Support Services.

5 This is an application for a special permit
6 regarding the property located at Kaumana, South Hilo,
7 Island of Hawaii, State of Hawaii, designated by tax
8 map key (3)2-5-6, parcel 141.

9 I'm Sandra Song, and I am the hearing officer
10 appointed by the Planning Commission in this matter.

11 Before I begin, I just would like, and I'm
12 going to ask, all the parties to introduce themselves.
13 Just to note, everything is being taken down by a court
14 reporter, so please speak into the microphone so she
15 can hear everything that is being said. Also please
16 turn off your cell phones, if you have them on, so that
17 we don't have any unreasonable interruptions.

18 Can the parties please identify themselves.

19 MR. HONG: Good morning, Ms. Hearing Officer.
20 My name is Ted Hong. I represent the Community Based
21 Education Support Services, also known as CBESS, who is
22 an applicant.

23 MR. SIU: Good morning, Deputy Attorney
24 General Carter Siu here appearing on behalf of the
25 Connections New Century Public Charter School.

1 MS. SELF: Good morning. Deputy Corp.
2 Counsel Amy Self representing the planning director of
3 the County of Hawaii.

4 MR. GOMES: Good morning. Jeff Gomes.

5 THE HEARINGS OFFICER: Good morning.

6 Under the Planning Commission rules, the
7 first thing that happens at this type of hearing is to
8 take public testimony, and anybody applying for public
9 testimony to testify as a public witness is supposed to
10 have signed up before the hearing. I have a sign-up
11 sheet with four people wishing to testify. I also have
12 written testimony from an additional person. At this
13 time, is there anybody that has not signed the sign-up
14 sheet that wishes to testify as a public witness in
15 this matter?

16 Let the record reflect no response.

17 Okay. I have four people that have indicated
18 that they would like to testify. I'm going to read off
19 the names, and I ask all of you to stand at one time so
20 I can swear all of you in at one time.

21 Dr. Henry Lee Loy, Terence Yoshioka, Melvin
22 Yokota, and Jan Yokoyama.

23 . . .

24 . . .

25 . . .

1 Dr. Henry Lee Loy, Terence Yoshioka,
2 Melvin Yokota, Jan Yokoyama,
3 having been first duly sworn to tell the truth, the
4 whole truth and nothing but the truth, was examined and
5 testified as follows:

6

7 THE HEARINGS OFFICER: Thank you.

8 I just want to let everybody know we have a
9 long hearing. We have two days of hearing, so public
10 testimony will be limited to three minutes. Since it
11 is public testimony, there is no cross-examination
12 allowed of the public witnesses. If any party believes
13 that one of the people testifying as a public witness
14 would be appropriate to testify as their witness, they
15 can have them testify in their portion of the case and,
16 if necessary, I will sign any subpoena for those
17 witnesses.

18 So let's start with Dr. Henry Lee Loy. If
19 you want to take the seat. And please talk into the
20 microphone so we can hear you.

21 DR. LEE LOY: Yes.

22 Good morning. My name is Dr. Henry Lee Loy,
23 and I live on Mele Manu Street.

24 There is further evidence that the proposed
25 location of the Connections Public Charter School is

1 inappropriate. To leverage traffic congestion, there
2 is evidence that every public elementary school in Hilo
3 has a separate one-way entrance and a separate one-way
4 exit or two separate drop-off and pick-up points on two
5 different streets. Images and specifics are being
6 submitted in evidence.

7 The proposed Connections Public Charter
8 School will have only one driveway to accommodate both
9 entrance and exit access on Edita Street, located only
10 a few hundred feet from the potential dangerous
11 intersection of Edita Street and Kaumana Drive.
12 Traffic will back up and down Kaumana Drive and Edita
13 Street, causing an immediate and adverse impact,
14 endangering the lives of residents and students alike.

15 There's additional evidence the traffic
16 impact analysis report, the result of a one-day traffic
17 count at Edita Street and Kaumana Drive intersection on
18 May 28th, 2009 is obsolete, biased, and not an example
19 of a typical school day. Documents on file said that
20 three large schools in Hilo were already closed for
21 summer break. Those schools were the University of
22 Hawaii-Hilo, the Hawaii Community College, and the
23 Kamehameha Schools Hawaii campus. Over 7,000 students
24 were not in school that day, creating a variable that
25 could question the accuracy of the study conducted.

1 The report stated that future traffic routes
2 along Kaumana Drive was expected to be minimal and
3 there would be no growth of traffic on Edita Street.
4 Since the report was completed, documentation has been
5 submitted that evidences several new subdivisions that
6 have been or are being developed which will greatly
7 increase traffic.

8 Documentation requested from the Hawaii
9 County Police Department is submitted showing that
10 traffic accidents increased from 11 to 18 in the area
11 which covers Kaumana Drive and Edita Street in the past
12 year.

13 Lastly, there is evidence that shark-teeth
14 striping has been added to Kaumana Drive to warn
15 drivers of the dangerous road conditions, and I have
16 submitted that.

17 In conclusion, Madam Hearing Officer, the
18 proposed location of the Connections Public School in
19 an established residential neighborhood is
20 inappropriate, and I respectfully request that you deny
21 the special use permit.

22 Thank you.

23 THE HEARINGS OFFICER: Thank you, Dr. Lee
24 Loy. And you did submit written testimony. Is that
25 correct?

1 DR. LEE LOY: Yes.

2 THE HEARINGS OFFICER: And do all the parties
3 have the written testimony of Dr. Lee Loy?

4 MR. GOMES: Yes.

5 MS. SELF: Yes.

6 MR. SIU: Yes.

7 MR. HONG: Yes.

8 THE HEARINGS OFFICER: Thank you very much.
9 Terence Yoshioka.

10 MR. YOSHIOKA: Madam Hearing Officer and
11 members of the Planning Commission, my name is Terence
12 Yoshioka, and I am testifying on my own behalf as a
13 resident of the Pacific Plantation subdivision.

14 In the course of my research on special
15 permits, I came across a Hawaii Supreme Court case
16 which I believe will offer you assistance in reaching
17 your decision on the application. The case is
18 Neighborhood Board vs. State Land Use Commission, 64
19 Hawaii 265-1982.

20 In this action, the Hawaii Supreme Court
21 found that the special permit for the development of a
22 103-acre recreational theme park in an agricultural
23 district "frustrates the objectives and effectiveness
24 of Hawaii's land use scheme," super on page 272.

25 The Hawaii Supreme Court further stated that

1 "We do not believe the legislature envisioned the
2 special use technique to be used as a method of
3 circumventing district boundary amendment procedures to
4 allow the ad hoc infusion of major urban uses into
5 agricultural districts," super at page 273.

6 In discussing the special permit process, the
7 Hawaii Supreme Court found that "Its essential purpose,
8 as explained by the Attorney General, is to provide
9 land owners relief in exceptional situations where the
10 use desired would not change the essential character of
11 the district nor be inconsistent therewith," super on
12 page 271.

13 In essence, the use of the special permit
14 process to effectuate what amounts to be district
15 boundary amendment would frustrate the effectiveness
16 and objectives of HRS Chapter 205 rather than to
17 promote them.

18 If this commission follows the principles
19 enunciated in the Neighborhood Board decision, I
20 believe you will conclude that the construction of this
21 school will be contrary to the 6-3(b(51) of the
22 Planning Commission Rules of Practice and Procedure as
23 it will substantially alter or change the essential
24 character of the land and the present use, thereby
25 requiring a district boundary amendment rather than a

1 special permit.

2 I therefore urge you to rule accordingly, and
3 I thank you for your time.

4 THE HEARINGS OFFICER: Thank you very much.

5 And you did provide written testimony?

6 MR. YOSHIOKA: Yes, I did.

7 THE HEARINGS OFFICER: And do all the parties
8 have the written testimony?

9 MR. GOMES: Yes.

10 MS. SELF: Yes.

11 MR. SIU: Yes.

12 MR. HONG: Yes.

13 THE HEARINGS OFFICER: Thank you.

14 Melvin Yokota.

15 Mr. Yokota, can you provide your name and
16 address when you start?

17 MR. YOKOTA: Okay. My name is Mel Yokota.

18 I'm a resident of Mele Manu Street. I am also a
19 project manager and electrical engineer by profession.

20 I spent last week reviewing the final
21 environmental assessment from a project manager's
22 standpoint, because that's what I do regularly, and my
23 basic question in reviewing it was "Is this something I
24 would be ready to submit if my team of consultants had
25 prepared this?"

1 The inconsistencies I discovered were
2 several. There were discrepancies in information
3 between what we had heard from the administration of
4 the charter school versus what was written up by the
5 planning consultant. There were incorrect facts and
6 arithmetic, resulting in incorrect conclusions.

7 In reading the assessment, it was apparent
8 that the authors assumed the school would primarily
9 service the Kaumana area, contrary to what the
10 administration of the school had told the community.
11 This leads to inadequate estimates of traffic volume
12 and minimizes the area impacted.

13 The high numbers of students coming from
14 outside the Hilo High and Waiakea complexes demands
15 that the traffic evaluation address traffic impacts
16 throughout the greater Hilo area.

17 Incorrect information are also used in the
18 assessment, leading to incorrect conclusions,
19 particularly with respect to water resources required.
20 They conclude that rainfall will be sufficient for a
21 catchment system. And looking at historical rainfall
22 data for Kaumana, I find that it is correct if you look
23 at average rainfall data. They did not consider the
24 minimal precipitation conditions. And when I look at
25 that, I think it is clear that they would have to

1 construct a well to support their water requirements.

2 There were too many things in this report
3 that I questioned, and it would take too long to go
4 over them in detail, but as an engineering manager, I
5 would not be able to submit a document like this for
6 public review. Thank you.

7 MR. HONG: Excuse me. Madam Chair?

8 THE HEARINGS OFFICER: Yes.

9 MR. HONG: We have been trying to subpoena
10 Mr. Yokota and have been unsuccessful with the amended
11 subpoena. I would ask the Hearings Officer to direct
12 Mr. Yokota to stay here, we finish printing up the
13 amended subpoena, and it is being walked over from my
14 office. So I would ask the Hearings Officer to direct
15 Mr. Yokota to stay here until served with the subpoena.

16 THE HEARINGS OFFICER: Mr. Hong, was that one
17 of the subpoenas that you gave to me to sign last week?

18 MR. HONG: Yes. The server left the subpoena
19 at Mr. Yokota's house without Mr. Yokota coming to the
20 door, so I understand leaving a subpoena at the
21 doorstep is not necessarily a service. So he was one
22 of the people subpoenaed that we would like to have
23 testify in our case-in-chief.

24 THE HEARINGS OFFICER: Mr. Yokota, I am going
25 to ask that you stay.

1 How long will it take for your office to
2 bring the subpoena?

3 MR. HONG: Should be about ten minutes at the
4 most.

5 THE HEARINGS OFFICER: I am going to ask that
6 you stay so that you can be served with a subpoena. I
7 did announce at the beginning of this proceeding that
8 if there was a public witness that anybody wanted to
9 testify, I would allow them to have a subpoena issued
10 to that witness; so if you could just stay here a short
11 time.

12 MR. YOKOTA: Okay.

13 THE HEARINGS OFFICER: Thank you.

14 And do the parties have copies of
15 Mr. Yokota's written testimony?

16 MR. GOMES: Yes.

17 MS. SELF: Yes.

18 MR. SIU: Yes.

19 MR. HONG: Yes.

20 THE HEARINGS OFFICER: Thank you.

21 Take a seat. Thank you.

22 Finally, we have Jan Yokoyama.

23 MS. YOKOYAMA: Good morning. Hello, my name
24 is Jan Yokoyama. I live at 1300 Kaumana Drive and have
25 lived there for over 40 years. I'm also the block

1 ordering aide for Kaumana Cave Neighborhood Watch.

2 I am opposed to Connections School being
3 built due to traffic and safety concerns. I recently
4 did an informal traffic survey on Monday, October 14th,
5 from 7:00 to 8:00 a.m. I was parked at the mauka
6 corner of Edita and Kaumana Drive. I counted 93 cars
7 coming up past me, 220 cars going down, and 57 cars
8 either entering or leaving Edita Street. The 57-car
9 count was unduplicated, meaning they passed me on
10 Kaumana Drive. I didn't count them.

11 The cars coming down Kaumana Drive were
12 whizzing past me and alarmed me to the point that I
13 called Lieutenant Darren Horio of Community Policing to
14 schedule the speed trailers to be placed on the corner.
15 Hopefully, this will slow them down.

16 Also, some of the cars coming out of Edita
17 Street were not coming to a complete stop at the stop
18 sign. I witnessed a near-rear-end collision of a car
19 leaving Edita Street and coming upon a car leaving the
20 driveway on Kaumana Drive.

21 Edita Street and Kaumana Drive are not built
22 to handle any more traffic that the Connections School
23 will bring.

24 Thank you very much.

25 THE HEARINGS OFFICER: Thank you.

1 And do the parties have Ms. Yokoyama's
2 testimony?

3 MR. GOMES: Yes.

4 MS. SELF: Yes.

5 MR. SIU: Yes.

6 MR. HONG: Yes.

7 THE HEARINGS OFFICER: Thank you.

8 I also have written testimony from one other
9 person, Lee Botelho. Do the parties have that written
10 testimony?

11 MR. GOMES: Yes.

12 MS. SELF: Yes.

13 MR. SIU: Yes.

14 MR. HONG: Yes.

15 THE HEARINGS OFFICER: Again, is there
16 anybody else that wishes to testify as a public witness
17 before this proceeding?

18 Let the record reflect no response.

19 All right. Now, before we take the testimony
20 in this case, there are some procedural matters to go
21 through.

22 The first is, Mr. Hong, you submitted a
23 request for either telephone testimony or an additional
24 hearing date because of unavailability of witnesses?

25 MR. HONG: That's correct.

1 THE HEARINGS OFFICER: Can you address that?

2 MR. HONG: That's correct. We are asking for
3 at least another half day for -- to allow us to take
4 the testimony of Bobby Jean Leithead Todd, the former
5 planning director, and also another one of our
6 witnesses, who -- I don't have him on the list, but it
7 is in my communications, who is not available.

8 I know Bobby Jean is out of the state and
9 won't be back; so we would think, in terms of her
10 testimony, she is a vital witness in this particular
11 case.

12 THE HEARINGS OFFICER: Mr. Siu, do you have
13 any comments on this?

14 MR. SIU: I do not.

15 THE HEARINGS OFFICER: Ms. Self?

16 MS. SELF: No.

17 THE HEARINGS OFFICER: And Mr. Gomes?

18 MR. GOMES: I am okay with the change.

19 THE HEARINGS OFFICER: Are you talking about
20 Mr. Rowell?

21 MR. HONG: Yes. I'm sorry. Phillip Rowell.

22 THE HEARINGS OFFICER: The traffic engineer?

23 MR. HONG: Right, the traffic engineer.

24 THE HEARINGS OFFICER: And those are the only
25 two witnesses?

1 MR. HONG: Yes.

2 THE HEARINGS OFFICER: As I'm sure you know,
3 we cannot do telephone testimony in this conference
4 room. It just is not workable, and there are all sorts
5 of other problems with telephone testimony; but an
6 additional hearing date seems appropriate.

7 I also think if we have an additional hearing
8 date, I would like to have a site visit so I can see
9 the property. I don't think we need to have a court
10 reporter there, unless the parties insist, but I would
11 like to at least see the property.

12 MR. HONG: I think that's actually a good
13 idea. In terms of the site visit, I have no objection
14 to a court reporter not being there. However, if you
15 are anticipating asking the parties questions regarding
16 the property or what you see on the property, perhaps
17 maybe a court reporter would be appropriate after the
18 site visit or -- I don't know how you would like to
19 work that out.

20 THE HEARINGS OFFICER: We could take a
21 tape-recorder to save some expense. It's going to be
22 very expensive to have our court reporter come up.
23 That is my only thought.

24 Mr. Siu?

25 MR. SIU: I have no objections to a

1 tape-recorder or any kind of recording device.

2 THE HEARINGS OFFICER: Ms. Self?

3 MS. SELF: I have no objections.

4 THE HEARINGS OFFICER: And Mr. Gomes?

5 MR. GOMES: Will I be allowed?

6 THE HEARINGS OFFICER: All the parties have
7 to be there.

8 MR. GOMES: Oh, great.

9 Will the public be allowed?

10 THE HEARINGS OFFICER: Well, it's a public
11 proceeding, so the public can't be excluded. However,
12 I don't think the Planning Department is going to make
13 accommodations to drive the public up to the site.

14 MR. GOMES: Okay. But if --

15 THE HEARINGS OFFICER: If they just happen to
16 be there, they can be there.

17 MR. GOMES: Okay.

18 THE HEARINGS OFFICER: But the public cannot
19 interfere with the proceeding.

20 MR. GOMES: Makes sense.

21 THE HEARINGS OFFICER: Do any of the par- --
22 Ms. Self, you have dealt with this a lot. What do you
23 recommend? Do you have any ideas on whether this needs
24 to be recorded, the site visit?

25 MS. SELF: Well, I would have to look at the

1 Planning Commission rule. There is a rule on taking
2 public testimony, and it is not a Sunshine Law.

3 THE HEARINGS OFFICER: No, I'm not talking
4 about public testimony. I'm talking about --

5 MS. SELF: But that's the only reason --

6 THE HEARINGS OFFICER: -- a court reporter.

7 MS. SELF: That is the only reason why I
8 would think you need to have a court reporter is if
9 it's necessary to take public testimony, but I don't
10 think it's going at the site visit.

11 THE HEARINGS OFFICER: We are going to take
12 public testimony at the next hearing as well. We have
13 to at the beginning of the proceeding.

14 MS. SELF: Okay. I don't see a problem,
15 then.

16 THE HEARINGS OFFICER: All right. The dates
17 that the Planning Department has are November 12th and
18 the 21st and the 13th. I'm not available on the 13th.

19 Mr. Hong?

20 MR. HONG: I have no objection to either
21 date. Thank you.

22 THE HEARINGS OFFICER: Mr. Siu?

23 MR. SIU: Repeat the dates that you were --

24 THE HEARINGS OFFICER: The 12th and the 21st
25 of November.

1 MR. SIU: I'm available on the 12th.

2 THE HEARINGS OFFICER: Ms. Self?

3 MS. SELF: No, I have no problem with those
4 dates.

5 THE HEARINGS OFFICER: Mr. Gomes?

6 MR. GOMES: The 12th or 21st of November,
7 either date is fine for me.

8 THE HEARINGS OFFICER: Why don't we set this
9 for the 12th. And the Planning Department staff will
10 be able to secure either this room or the Aupuni
11 center, and we will let you know which room. By
12 tomorrow, we will let you know which room is available.

13 MR. GOMES: Excuse me. This is not the site
14 visit date?

15 THE HEARINGS OFFICER: We will do the site
16 visit at the same time, on the same day.

17 MR. GOMES: Okay.

18 THE HEARINGS OFFICER: Because, Mr. Hong, you
19 said it should only be a half a day?

20 MR. HONG: That's correct.

21 The other thing I would note is we are
22 handing you the subpoenas now, the amended subpoenas
23 now, for Mr. Yokota.

24 The other thing is we would ask that whoever
25 goes onto the property sign the appropriate liability

1 waiver, and we will supply that on the 12th before they
2 enter the property. It is undeveloped vacant land.

3 THE HEARINGS OFFICER: Mr. Hong, I have never
4 had to do that for a site visit or any proceeding, Land
5 Use Commission, Planning Commission.

6 Ms. Self?

7 MS. SELF: I think that's a good idea. We
8 did that for the Hu Honua case as well.

9 THE HEARINGS OFFICER: All right. Then,
10 Mr. Hong, I am going to ask that you get the
11 appropriate waiver to us by five business days before
12 the hearing.

13 MR. HONG: That's fine.

14 THE HEARINGS OFFICER: No later.

15 MR. HONG: I will circulate it to all
16 parties.

17 THE HEARINGS OFFICER: There was just a
18 second copy, Mr. Hong. Your office gave me -- you only
19 need one signed copy. Isn't that correct?

20 MR. HONG: That's correct.

21 THE HEARINGS OFFICER: Okay. What I want to
22 do now is go through the record -- each of the parties
23 received a copy of the Planning Department record, the
24 Planning Commission record, which includes pages 1 to
25 2005, and I have a copy of that record in these large

1 books, these two binders. I asked for any objections
2 to be submitted to me before the hearing. I did not
3 receive any objection. In fact, the parties, I
4 believe, all agreed that this could be entered into the
5 record.

6 So I am going to -- do any parties have any
7 objection at this time?

8 Mr. Hong?

9 MR. HONG: I misheard. I thought the record
10 went from pages 1 to 2205. Did I mishear that?

11 THE HEARINGS OFFICER: No.

12 MR. HONG: Okay. Sorry. No objection.

13 THE HEARINGS OFFICER: Mr. Siu?

14 MR. SIU: No objection.

15 THE HEARINGS OFFICER: Ms. Self?

16 MS. SELF: No objections.

17 THE HEARINGS OFFICER: Mr. Gomes?

18 MR. GOMES: No objection.

19 THE HEARINGS OFFICER: Then I am going to
20 admit pages 1 through 2005 of the Planning Commission
21 proceeding into evidence in this case.

22 What I want to do is to see if -- we have
23 long exhibit lists from the various parties. Have the
24 parties talked at all about whether you would stipulate
25 to any of the exhibits into evidence?

1 MR. GOMES: I have not.

2 THE HEARINGS OFFICER: Mr. Hong?

3 Would it be worth taking a short recess so
4 that the parties can discuss if they want to stipulate
5 to some of the exhibits?

6 Mr. Hong?

7 MR. HONG: We will stipulate -- if we can
8 stipulate the exhibits in of both parties, I have no
9 objection.

10 MR. GOMES: What does "stipulate" mean?

11 THE HEARINGS OFFICER: Agree.

12 MR. GOMES: Okay.

13 THE HEARINGS OFFICER: That you have no
14 objections. And what Mr. Hong is saying is that he
15 will agree to your exhibits being admitted into
16 evidence without anything further if you will agree to
17 his exhibits being admitted into evidence.

18 MR. GOMES: Okay.

19 THE HEARINGS OFFICER: Mr. Gomes, do you
20 have --

21 MR. GOMES: That sounds good.

22 THE HEARINGS OFFICER: Ms. Self?

23 MS. SELF: No objection.

24 THE HEARINGS OFFICER: Mr. Siu?

25 MR. SIU: No objections.

1 THE HEARINGS OFFICER: Then in that case, I
2 am going to admit into evidence Exhibits A1 through A20
3 of the Applicant's exhibits.

4 I will admit into evidence -- and I'm
5 assuming, Mr. Hong, this includes the Planning
6 Department's exhibits as well?

7 MR. HONG: That's correct.

8 THE HEARINGS OFFICER: Mr. Siu?

9 MR. SIU: Yes.

10 THE HEARINGS OFFICER: And Mr. Gomes?

11 MR. GOMES: Yes.

12 THE HEARINGS OFFICER: Then I will admit into
13 evidence the Planning Department's exhibits PD1 through
14 PD3 into evidence.

15 Finally, I will admit Mr. Gomes' exhibits,
16 JG1 through JG18 into evidence.

17 A couple of more procedural matters. I
18 haven't received any requests from any of the parties
19 for the witness exclusion rule to apply. This is an
20 administrative hearing, but if the parties so request
21 that, then I will ask that anybody that is going to
22 testify will have to leave the room.

23 MR. HONG: We would ask that the exclusionary
24 rule be invoked.

25 THE HEARINGS OFFICER: Okay. Since it has

1 been requested by one of the parties, I am going to ask
2 anybody that is subpoenaed as a witness to testify in
3 this proceeding, or you know you are going to testify
4 because one of the parties has asked you to testify,
5 you are going to have to leave the room until you are
6 called.

7 The room has emptied out. Not completely.

8 All right. Just a couple of more procedural
9 things. Glenn Tada has a conflict schedule, and he has
10 been subpoenaed to testify. He is here this morning,
11 and he needs to testify before 11:30; so, Mr. Hong, I
12 am going to ask that he be called out of order if you
13 want to call him as a witness.

14 Is that a "Yes"?

15 MR. HONG: Yes.

16 THE HEARINGS OFFICER: Okay.

17 And, also, Dr. Peng e-mailed me yesterday,
18 and I sent a response back to all the parties that I
19 guess he is subpoenaed -- I don't know if it's a he or
20 she.

21 MR. HONG: He.

22 THE HEARINGS OFFICER: He is subpoenaed to
23 testify tomorrow at 10:30, and he did accommodate that,
24 but the revised subpoena looked like it might need more
25 time, so he asked if he could testify as close to 10:30

1 as possible.

2 MR. HONG: Absolutely.

3 THE HEARINGS OFFICER: Okay, Mr. Hong. So
4 those two will be accommodated.

5 Is there any procedural matter we need to go
6 through now before we start testimony?

7 MR. GOMES: Ma'am?

8 THE HEARINGS OFFICER: Mr. Gomes?

9 MR. GOMES: My witness, Dana Kenny, can't be
10 here until tomorrow. Is that okay?

11 THE HEARINGS OFFICER: Well, the hearing runs
12 two days, so I am sure we can take your witness
13 tomorrow.

14 MR. GOMES: Okay. Thank you very much.

15 MR. HONG: There is one procedural matter.
16 We had sent earlier a revision to our pre-hearing
17 brief, revised page 10.

18 THE HEARINGS OFFICER: Yes?

19 MR. HONG: I just wanted to make sure
20 everybody got that.

21 THE HEARINGS OFFICER: Thank you for bringing
22 that up, because I wanted to raise that issue.

23 I'm getting a lot of things through e-mail.
24 If you are going to amend a document, then don't just
25 do a page, but do an amendment with a cover sheet, an

1 errata sheet or something so that things don't get lost
2 in the future. I just don't want documents lost and
3 then parties complaining that they didn't receive it.

4 So, Mr. Hong, I will take that sheet, but in
5 the future, if there is anything more, please put on a
6 cover sheet.

7 MR. HONG: Well, would it be more appropriate
8 that, before the end of the day, we submit the revised
9 brief in total?

10 THE HEARINGS OFFICER: You can do an errata
11 and just that page if you would like.

12 MR. HONG: All right.

13 THE HEARINGS OFFICER: Whatever is easier for
14 you.

15 MR. HONG: Thank you.

16 And just for the record, I am distributing
17 the revised page 10.

18 Okay. If there are no other further
19 procedural matters, since we do have a court reporter,
20 we will be taking breaks periodically. She needs some
21 breaks to rest her hands. We will also be taking a
22 break at lunch, I believe probably an hour break, and
23 then proceed on.

24 All right. Mr. Hong, since you and Mr. Siu
25 are the Applicants, you, according to the Planning

1 Commission rules, begin first. So would you like to
2 call your first witness?

3 MR. HONG: Yes. Our first witness this
4 morning is John Thatcher.

5

6 JOHN THATCHER,
7 having been first duly sworn to tell the truth, the
8 whole truth and nothing but the truth, was examined and
9 testified as follows:

10

11 THE HEARINGS OFFICER: Go ahead.

12 MR. HONG: Thank you.

13

14 DIRECT EXAMINATION

15 BY MR. HONG:

16 Q Sir, would you state your name, please, and
17 your address.

18 A My name is John Lamar Thatcher II, and I live
19 at 1188 Kaumana Drive in Hilo.

20 Q And would you spell your last name for us,
21 please.

22 A T-h-a-t-c-h-e-r.

23 Q This morning I would like to begin by talking
24 about your background. If you could highlight your
25 educational background for us, please.

1 A Okay. I was a DOE elementary teacher at
2 schools on Oahu and Big Island from 1978 to 2002. I
3 have a Master's in education in educational
4 communications and technology from University of
5 Hawaii-Manoa, and I have another Master's of education
6 in educational supervision/administration from Arizona
7 State's federally funded Leadership for Educational
8 Entrepreneurs Program.

9 I have been the principal at Connections
10 Public Charter School for about ten years. Connections
11 started as a school within a school in 1995, and I
12 worked at Connections on Mountain View campus then. I
13 am certified and licensed in the state of Hawaii as a
14 K-12 principal.

15 Q Okay. And then if you could highlight your
16 other professional experiences in addition to your
17 being a principal at Connections.

18 A Okay. I have been a teacher at Connections
19 when it was a school within a school. I have also been
20 a kind of a vice principal at Connections before I was
21 the principal.

22 Q In terms of Connections, has that school,
23 under your leadership, received any recognitions or
24 awards?

25 A We have received quite a few recognitions and

1 awards. I think that what is pertinent to this hearing
2 is the new system for classifying schools came about
3 after the State of Hawaii was awarded a waiver from the
4 federal No Child Left Behind law. In 2013, they were
5 awarded this.

6 And there is a new system called the Strive
7 High Performance System. In the last year that this
8 system was used, Connections students exceeded the
9 Strive High reading goal. We also received a 40
10 percent for science. There was no goal last year, but
11 the goal for this year is 40 percent for science. The
12 Connections score was 223 points.

13 Based on this, there is five different steps
14 that the school could be placed in. One is recognition
15 as the highest. Second is continuous improvement.
16 Third is focus. Fourth is priority. And the last one
17 is the superintendent zone for the lowest-ranked
18 schools.

19 For the highest-performing schools, there is
20 financial awards, administrative flexibility. The
21 lower-performing schools received customized supports.

22 Connections is placed in the continuous
23 improvement, along with about 80 percent of all of the
24 public schools in Hawaii, and it is considered a
25 positive trajectory and indicates that a school does

1 not need intensified support from the complex or the
2 State office.

3 Q Okay. Let's talk about charter schools in
4 general. How did you first become involved in this
5 charter school movement?

6 A In 1995, Connections became a school within a
7 school at Mountain View. There was no charter school
8 law at that time. Five years later, the school
9 converted to become the first start-up charter school
10 in the state of Hawaii.

11 The curriculum that we use is
12 constructivist-based with a focus on developing
13 multiple modalities of learning. And our school has
14 had a formal partnership with the University of
15 Hawaii's Curriculum Research and Development Group
16 since we were a school within a school. So one of the
17 projects that we have been developing over the years is
18 in conjunction with the Curriculum Research and
19 Development Group and the Universe School, Institute of
20 Developmental Psychology and Pedagogy in Russia, and
21 this program is called Measure Up.

22 The mathematics in this elementary program is
23 developed through measurement. This curriculum gives
24 young children a foundation in number-algebra
25 measurements simultaneously. The students are involved

1 in hands-on tasks that lead to strong conceptual
2 understanding.

3 We became a charter school to provide a
4 research-based arm for the benefit of all public
5 schools. This is why we have maintained a strong
6 partnership with the university and especially with the
7 Curriculum Research and Development Group.

8 Q Okay. And in terms of charter schools, could
9 you describe the governance in terms of charter
10 schools?

11 A The current governance structure is set by
12 section 302D, No. 12, and it says the governing board
13 of all the charter schools -- each has a governing
14 board, and that that board shall be the independent
15 governing body of its charter school and shall have
16 oversight over and be responsible for the financial,
17 organizational, and academic viability of the charter
18 school, implementation of the charter, and the
19 independent authority to determine the organization and
20 management of the school, the curriculum, virtual
21 education, and compliance with applicable federal and
22 state laws. The governing board shall ensure its
23 school complies with the terms of the charter contract
24 between the authorizer and the school.

25 Q And you have a contract between the

1 authorizer and your charter school?

2 A Yes. I have a copy of that here.

3 Q Okay. Could you tell us briefly about how
4 charter schools like Connections is funded?

5 A Okay. We are funded, again, according to the
6 law. This is 302D, No. 28. This law was changed over
7 the years. And beginning with the fiscal year 2012-13
8 and all years afterwards, the non-facilities general
9 fund per-people funding request for charter school
10 students shall be the same as the general fund per
11 pupil.

12 THE HEARINGS OFFICER: Mr. Hong, is your
13 witness reading his testimony?

14 MR. HONG: Well, he made some notes.

15 THE HEARINGS OFFICER: Because if he is
16 reading his testimony, then the written testimony
17 should be provided to all the parties.

18 THE WITNESS: I can do that.

19 MR. HONG: I understand. We can provide that
20 later.

21 BY MR. HONG:

22 Q So without --

23 THE HEARINGS OFFICER: Mr. Hong, if
24 Mr. Thatcher has to be cross-examined, you are going to
25 have to provide it to the parties before he is

1 cross-examined.

2 But go ahead with your testimony.

3 THE WITNESS: I cannot read if you would
4 rather.

5 BY MR. HONG:

6 Q Yeah, why don't you not read from your notes.

7 MR. HONG: Because I would submit that part
8 of his notes also includes attorney-client-privileged
9 information and work-product information.

10 BY MR. HONG:

11 Q So instead of reading from your notes -- and
12 I know you are reading from some of the statutes --
13 describe for us generally how charter schools are
14 funded.

15 A Charter schools, according to the law, are
16 funded at the same level as Department of Education
17 schools, the general fund allocation.

18 Q Okay. And in terms of DOE, what is the DOE's
19 role in charter schools?

20 A The Department of Education is responsible
21 for federally funded or federal programs that apply to
22 charter schools, just like any other public school. So
23 the Department of Education is primarily responsible
24 for the support of the special education and the title
25 programs, like Title 1.

1 Q What is the department's role in terms of
2 curriculum and facilities?

3 A The department has no role for charter
4 schools in curriculum or facilities.

5 Q So it has nothing to do -- in terms of your
6 facilities, DOE has nothing to do with it?

7 A For our school, we are a start-up charter
8 school, not a conversion charter school. If we were a
9 conversion charter school like Laupahoehoe, then the
10 DOE would have some responsibility for providing
11 facilities, but Connections is a start-up charter
12 school.

13 Q So Connections is responsible for its own
14 facilities?

15 A Yes, we are.

16 Q Okay. In terms of charter schools, are they
17 organized or developed according to certain core
18 concepts or core-oriented curriculum?

19 A Some schools are. There are some that have a
20 Hawaiian language cultural emphasis. Our school has an
21 emphasis that is more of a multi-cultural emphasis, and
22 we have an emphasis on programs that are developed by
23 the Curriculum Research and Development Group.

24 Q All right. Now what I would like to do is
25 talk about Connections specifically. You know, could

1 you tell us about Connections in terms of how it
2 started, how it has developed and grown?

3 A Okay. As I said before, we started as a
4 school within a school on the Mountain View campus.
5 And when the charter school law was passed, we became a
6 charter school in the year 2000. Charter schools are
7 schools of choice, so families choose to send their
8 children to a charter school because they believe --
9 most of them are because they believe in the programs
10 that the school offers.

11 Q And in terms of how Connections has grown and
12 developed, if you could explain that for us, please.

13 A We started as a K through 6 elementary
14 school. The next year, we became a K through 12
15 program and moved to the Kress building.

16 After a year of doing a K to 12 school, the
17 funding became an issue for maintaining the secondary,
18 or the high school, component of our school, so we cut
19 back to a K to 8 school. And in -- I think it was in
20 about 2006, we were the recipients of a Coalition of
21 Essential Schools grant through the Bill and Melinda
22 Gates Foundation, and we were given five years of
23 support for redeveloping our high school. So we
24 currently are a K to 12 program, and many of our
25 students will continue from kindergarten through 12th

1 grade.

2 We also get influxes in the secondary school
3 mainly for programmatic reasons.

4 Q In terms of your student body, do you have to
5 submit a plan for identifying, recruiting, and
6 selecting students under the law 302D-13?

7 A Yes, we do.

8 Q And that would be to that charter school
9 commission you talked about?

10 A Yes.

11 Q The suggestion has been made that the school
12 has not demonstrated "a need" for its agricultural
13 emphasis. Did you have to submit the school's
14 curriculum for review and approval, and are you
15 accountable to that charter school commission for that
16 curriculum?

17 A The governing board has the independent
18 authority to decide on the curriculum, so the
19 commission does not approve or disapprove the
20 curriculum for an existing charter school. If a new
21 charter school is started, then they would have to
22 convince the commission or the authorizer that the
23 curriculum that they are petitioning to put in place is
24 a sound curriculum.

25 When we first started as a charter school, we

1 did submit our plan to the Board of Education, and
2 because of our strong connection with the university
3 and the Curriculum Research/Development Group, we had
4 very few questions about our curriculum.

5 Q And you talked about the governing board.
6 Could you explain the organizational structure of
7 Connections?

8 A The governing board is a group of about seven
9 individuals from the school and the community. I think
10 by law, only one-third of them can work for the school.
11 And the governing board makes the -- those kinds of
12 decisions about the school and is the board that is
13 entrusted with maintaining the integrity of the
14 charter.

15 Q And then who is CBESS in relation to that?

16 A CBESS is an associated nonprofit that works
17 with the school for fundraising, particularly.

18 Q Okay. The school has received criticism that
19 since a number of students are from Puna, the school
20 should be in Puna. As a charter school, are you
21 limited to students from a geographic area on this
22 island?

23 A No. In our contract, we say where our
24 students will come from, and we have basically noted
25 that our students come from any area on the eastern

1 side of the Big Island all the way as far north as
2 Hamakua, all the way to Na'alehu, in that direction,
3 and just -- it's a huge area.

4 Q And in terms of your student population, does
5 that also include students from the Kaumana area?

6 A Yes, it does.

7 Q Tell us about the current locations in terms
8 of the Connections campuses.

9 A Okay. Our K to 8 program is in the Kress
10 building in downtown Hilo, 174 Kamehameha Avenue. Our
11 high school campus, 9 to 12, is at the Nani Mau
12 Gardens. We are leasing space in the old area that
13 used to be the salon.

14 Q And in terms of student demographics, could
15 you expand on that a little bit, please?

16 A Okay. About -- let's see -- in this school
17 year, about 74 percent of our students are receiving
18 free and reduced lunch, and this is the indicator that
19 is used to measure the poverty level at the school.

20 Ethnically, our school is about 40 percent
21 Native Hawaiian, 30 percent Caucasian, 12 percent
22 Asian, 7 percent Native American, 4 percent other
23 Pacific Islanders, 3 percent African-American, and 2
24 percent Hispanic.

25 Q Okay. And then in terms of your faculty and

1 staff?

2 A We employ about 25 full-time teachers and
3 about 28 other part-time and full-time staff to
4 support.

5 Q Let's go and talk about the new Connections,
6 what you envision.

7 What prompted the need to look for a new
8 campus site?

9 A Probably the most critical fact is that our
10 main building is the Kress building. And the nonprofit
11 is the owner -- CBESS is the owner of the Kress
12 building. It is in a tsunami inundation zone, so many
13 of our parents have been asking us over the years if we
14 would consider moving to a different site. Many of our
15 faculty would also like to see us move out of a tsunami
16 inundation zone.

17 We also would like to eliminate the high
18 school cost for our high school at the Nani Mau
19 Gardens. That is a year-to-year thing.

20 We need a new campus to ultimately provide
21 space for programs that we would like to establish, to
22 provide dormitory facilities for visiting groups of
23 educators and students, to facilitate interaction
24 amongst all the different levels. Our high school and
25 our elementary and middle school are physically

1 separated by about seven miles, so it does not give us
2 the amount of interaction that we ideally would like.

3 And I think very important is that we don't
4 really have the land at the Kress building to really
5 establish all of the agriculture programs, all of the
6 forestry conservation programs that we would like to
7 implement and are consistent with some of the reasons
8 why we originally started our charter school.

9 So with this, we would really like to
10 integrate the surrounding -- the natural environment
11 with much of the curriculum that we have been using
12 since the beginning.

13 Q And in terms of the process, describe the
14 process you and CBESS has followed to look for a new
15 campus site.

16 A Okay. In 2006, Act 292 of the legislature
17 created a task force on charter schools, on charter
18 school governance.

19 Q Just as a reminder, you can't read from your
20 notes.

21 A I know, but I can't memorize some of that.

22 And one of the things that came out of this
23 task force was the critical need for facilities for
24 charter schools. And the law was changed in 2007 to
25 allow for charter schools to petition the Board of Land

1 and Natural Resources for empty land that we could use
2 to build on; so we sent a petition to the Department of
3 Land and Natural Resources and were given a list of
4 about five properties that would potentially meet the
5 criteria we were looking for.

6 We looked at all of these properties. We
7 studied them. We visited the sites. And the best
8 location that we could find was the Kaumana property,
9 so we indicated that we would like to proceed with that
10 property.

11 At that point, we hired Wil Chee Planning,
12 and through CBESS and through the school's available
13 funds, we worked with Wil Chee Planning to go through
14 the environmental assessment reports and all of the
15 bureaucratic steps that we had to take to secure the
16 property and the studies we had to do.

17 Our first environmental assessment was met by
18 some opposition from people that were involved with
19 Kaumana Cave, and at that point, the Department of Land
20 and Natural Resources said, "Why don't you look at
21 another list of properties and see if you can find
22 another property, because we really don't want to get
23 into a battle."

24 And we looked at the list of properties that
25 they gave us. None of the properties were as good as

1 or as suitable for a site, in the opinion of our local
2 school board and CBESS. And so we met with the leader
3 of the cave opposition, Dr. Fred Stone, and we asked
4 him, you know, "Is there anything we can do to, you
5 know, help you to understand our vision and what we are
6 trying to do?" And he said, "The only thing that would
7 satisfy me is if you would not build on the upper
8 portion of the property."

9 And so I brought that back to the boards, and
10 they agreed that we would not build on the upper
11 portion of the property; we would do a new
12 environmental assessment.

13 And so we did an amended environmental
14 assessment, even though our first one had passed, and
15 this took us another couple of years to go through
16 that. And that one was accepted in 2011, I believe.
17 And all of the development is on the lower end of the
18 property that only touches on Edita Street.

19 Q Right. And in terms of the lists that you
20 were given -- you talked to us about two lists of
21 properties that you were given -- did you at any time
22 or anybody from Connections say, "We are not going to
23 consider anything outside the Kaumana area"?

24 A No.

25 MR. HONG: We have an enlarged chart that is

1 in evidence regarding the conceptual plan. I was
2 wondering if I could bring that up.

3 THE HEARINGS OFFICER: Mr. Hong, are you
4 talking about the site plan?

5 MR. HONG: Yes.

6 THE HEARINGS OFFICER: Would you like --
7 there is a Power Point that can be put up if you would
8 like. The computer is hooked up if you want the site
9 plan.

10 MR. HONG: Oh, well, that is fine too, I
11 guess. We also have it on an easel. And that would be
12 our preference, only because -- if we just use the
13 easel; that way, Mr. Thatcher is actually going to, you
14 know, point to it and everything else instead of
15 actually having to walk --

16 THE HEARINGS OFFICER: Okay. If you want to
17 use the easel, that's fine.

18 MS. SELF: We can't see that.

19 THE HEARINGS OFFICER: He put it there.

20 MS. SELF: You can.

21 THE HEARINGS OFFICER: Sorry. Yeah, he put
22 it there.

23 MR. HONG: Let me see.

24 THE HEARINGS OFFICER: Oh, Mr. Hong, before
25 we proceed any further, I'm sorry to interrupt you, but

1 I don't have any of the exhibits that are stipulated
2 into evidence. They were supposed to be brought here
3 today. So I hope we have them all, because we
4 stipulated to them, and it would be nice to have them
5 in front of me.

6 MR. GOMES: Do I hand them to you now?

7 THE HEARINGS OFFICER: And I was very
8 specific before this hearing that the exhibits were to
9 be numbered and presented at the hearing.

10 Mr. Gomes, if you have your exhibits, you can
11 hand them to me as well.

12 And, Ms. Self, do you have the County's
13 exhibits?

14 MS. SELF: Yes.

15 THE HEARINGS OFFICER: Can I have those?

16 Mr. Hong, I don't think these are all your
17 exhibits.

18 MR. HONG: We refer to the exhibits that are
19 in the record --

20 THE HEARINGS OFFICER: Oh, I see.

21 MR. HONG: -- as those already being --

22 THE HEARINGS OFFICER: Those are in the
23 record?

24 MR. HONG: Right.

25 MS. SELF: That's the same thing for the

1 Planning director. Ours are all --

2 THE HEARINGS OFFICER: They are in the
3 record?

4 MS. SELF: All of ours are in the record, and
5 we refer to them by page numbers.

6 THE HEARINGS OFFICER: Thank you.

7 Mr. Gomes, do you have your exhibits?

8 MR. GOMES: Yes, ma'am.

9 THE HEARINGS OFFICER: Mr. Hong, if this map
10 is in the record, could you tell me where in the record
11 it is?

12 MR. HONG: We are looking at page 87 in the
13 record -- of the Planning Commission record.

14 THE HEARINGS OFFICER: Thank you. Go ahead.

15 MR. HONG: Thank you.

16 BY MR. HONG:

17 Q Mr. Thatcher, using the blow-up of page 87 in
18 the planning commission record, would you kind of go
19 through, you know, that conceptual plan, the vision
20 that you were telling us about with respect to what you
21 anticipate the campus is going to be?

22 A Okay. This is a concept of a full
23 development of the campus. I think it's important to
24 make the point that this is a phase development, that
25 the first phase would not look like this. It would be

1 only the high school facilities, which would be -- high
2 school facilities is No. 5, right over here.

3 That would also include the dormitory, which
4 is No. 10 on this, which is farther towards the front,
5 right there, and it would include some -- or much of
6 the agriculture development areas, which would be at
7 the bottom section of the map, and the caretaker's
8 cottage, which would be up towards the front of the
9 map.

10 Q No -- I'm sorry. I've used this map so often
11 that I forget. Could you, for purposes of the hearings
12 officer, orient us? Where is Edita Street? Where is
13 Kaumana Drive?

14 A Sorry.

15 So Edita Street would be the street that is
16 dividing the upper and the lower end of the property.
17 So turning in on Kaumana Drive, to the left, there are
18 a group of about 11 houses that are on the left side.
19 The driveway would be at the section right here to go
20 into the lower end of the property. There is no
21 development of any roads on the upper portion of the
22 property. The driveway would be a two-lane driveway
23 that could be used for entrance and exit. And when
24 coming into the property, the first buildings would be
25 the dormitory towards the front. And the driveway

1 extends into kind of a circle pattern, roundabout kind
2 of a fixture right here.

3 And the campus, the elementary, the middle
4 school, the high school would be around that area, with
5 more parking lots. And the agriculture area towards
6 the bottom and the greenhouses would be supporting
7 that, all towards the bottom section of the property.

8 Q Okay. In terms of not only hiring Wil Chee,
9 you had talked to us about listening to Dr. Stone with
10 respect to how you envisioned -- or realizing your
11 vision of the campus. Did you also include or try and
12 include the community in that discussion?

13 A At that point, we had had, I think, maybe two
14 community meetings at the Kress building; so at the
15 community meetings, we updated the participants that
16 came with the changes that we were going to make in the
17 plan. I'm not sure where else.

18 Q Okay. In terms of the plan, you said that
19 the first phase would be the high school --

20 A Yes.

21 Q -- and perhaps the dormitories?

22 A Yes.

23 Q Right.

24 A And the agriculture.

25 Q And agricultural facilities.

1 With respect to the campus, did you have to
2 follow the DOE ed. specs for building, or -- yeah, for
3 planning and building your new school?

4 A No, we did not.

5 Q Why not?

6 A Those specs were created for larger
7 institutions; so there is one for elementary schools,
8 one for middle schools, and one for high schools. The
9 DOE was not supporting in any way. They were not
10 obligated to support the construction of this. So
11 those guidelines were created for Department of
12 Education facilities.

13 There are no guidelines for facilities for
14 charter schools in the state of Hawaii. So what we
15 followed was more of the standard practices and the
16 national best practices for construction of facilities,
17 and we worked with a number of different groups,
18 formally and informally, to create the concept for this
19 campus.

20 My assistant and I also visited other sites
21 on the mainland that had similar designs that we were
22 looking at and got a lot of ideas from those and worked
23 with Urban Works, an architect firm, to come up with
24 some conceptual designs for the new campus.

25 Q In total, when the whole complete campus is

1 finished, what is the maximum amount of students that
2 will be on the campus?

3 A The maximum would be 400.

4 Q In terms of your high school currently, which
5 is the first phase that we are talking about, how many
6 students are enrolled in the high school?

7 A About 120.

8 Q And with respect to the DOE guidelines, the
9 DOE ed. specs, we talked about there being separate
10 specs for elementary school. That was for -- my
11 understanding is for about 550 elementary school
12 students?

13 A Yeah. That is the average size.

14 Q And then in terms of the average size for the
15 DOE ed. specs, that would be approximately 600
16 students?

17 A Intermediate students, yes.

18 Q And for high school would be how many,
19 approximately?

20 A 1,000.

21 Q 1,000. Okay.

22 A So if you looked at this, you know,
23 conservatively, a K to 12 school would be about 2,150
24 students all together.

25 Q And that would be under the DOE ed. specs?

1 A That would be what -- if they combined all
2 three.

3 Q Right.

4 In terms of incorporating community concerns,
5 you actually agreed at the other hearings to try and
6 move this conceptive drawing, in terms of buildings, as
7 far to the bottom of the property, the lower property,
8 away from the other residences. Is that right?

9 A Yes, we did. And we also took other
10 suggestions. It was suggested at one meeting that we
11 look for another way of accessing the property. And
12 when I went to talk to the owner of the property that
13 is adjacent that would actually give us access from the
14 new road, the new --

15 Q Puainako extension?

16 A Puainako Extension Road. And I initially
17 went to talk to him, and he pretty much told me that he
18 has been lobbied by people from Pacific Plantations not
19 to let us use anything that he had and that he felt --
20 he felt threatened by their demeanor.

21 Q That's Mr. Brilhante, right?

22 A Yes.

23 Q And he said he would try to keep an open mind
24 regarding access out onto Puainako Extension?

25 A Yes, he said he would keep an open mind, and

1 he said the reason why is one of his nieces went to our
2 school, and in his words, he said we are the only
3 school that ever tried to help her.

4 Q Let's talk about the intended uses. You said
5 there was going to be some agricultural component, and
6 there is some buildings on the property with respect to
7 agriculture. In terms of the -- what are those
8 programs? What are some of the programs that you
9 intend to implement at the site?

10 A Okay. The philosophy of Connections from the
11 beginning has been to create curriculum that is a
12 sustainable-oriented curriculum, so to try to move our
13 students in a direction where they could enter into the
14 sustainable economy of the future on the Big Island; so
15 many of our community members were a little upset that
16 their kids that did well in school would end up either
17 on Oahu or on the mainland to be able to get a job that
18 was paying them a living wage.

19 Part of our initial reasons for starting
20 Connections was to look at those industries that we
21 considered to be sustainable; so we considered
22 agriculture to be a sustainable industry. Forestry
23 conservation, support of the scientific community was
24 another area. Ecotourism was another area. We also
25 felt that the construction industry would be a

1 sustainable industry.

2 So having identified many of these areas, we
3 especially worked with our high school to try to gear
4 our programs towards those industries and exposure to
5 those industries. And so the agriculture was a big
6 component.

7 Our elementary -- beginning in our elementary
8 science program that's called DASH, was developed by
9 the Curriculum Research/Development Group, there is a
10 strong agricultural component in there starting in the
11 kindergarten and going through the sixth grade, and
12 then the middle and high school science programs we use
13 are also aimed towards supporting a good foundational
14 background for agriculture, forestry conservation.

15 Q Well, the soil conditions have been rated D,
16 a poor rating. How do you plant crops in the ground up
17 there on your property to do agriculture?

18 A Well, I think what we are finding over the
19 years is that agriculture is evolving away from the old
20 model of everything goes in the ground
21 plantation-style, and there is a lot more use of
22 hydroponics, aquaponics, greenhouses, shadehouses.
23 Most of the area, except for towards the bottom where
24 the river is, is pretty solid pahoehoe foundation; and
25 so the agriculture that would go on there would be

1 similar to many of the areas where our kids come from,
2 especially in Puna, where there is a limited soil. And
3 people that are farming in that area need to use
4 alternative methods, and the alternative methods are
5 proving to be way more productive than the old methods
6 with, you know, problems with contamination of soil and
7 things like that. It's a more futuristic way of doing
8 agriculture.

9 Q Okay. So you had talked about some of the
10 students coming from Puna. I mean, are your programs
11 directly related to just helping students who are just
12 from Puna?

13 A No, but we started -- the school started in
14 Puna, in Mountain View. And we have many families that
15 have actually -- we have the children of children that
16 we started working with, and so many of them appreciate
17 the education that they received from us. Some of the
18 kids say, "I got more science at Connections as an
19 elementary student than I got all through my high
20 school years." And so we have a strong foundation of
21 people that live in that area; and as a charter school,
22 we can't discriminate if those are the people that are
23 applying to enter our school.

24 Q Okay. And so there are three general
25 programs that you would like to continue up there at

1 the campus. Could you describe them for us, please.

2 A Well, there's more than three, but those
3 three, the agriculture, the forestry conservation, and
4 the ecotourism, I think, would be the third one, the
5 way the property is, considering the upper and the
6 lower portion, the upper portion, which borders on most
7 of Pacific Plantations, is about 35 acres of 80 percent
8 Ohia trees and uluhe fern, which are both endemic or
9 indigenous to the island, to the state of Hawaii. The
10 other 20 percent of the growth is more exotic and trees
11 that have come in, plants that have come in, mostly
12 around the houses and the roads.

13 The lower portion of the property, where we
14 intend to build, is about 20 percent native growth and
15 about 80 percent exotic; so trees like albizia trees,
16 guaiwi, all of these are the kinds of exotic plants
17 that are considered invasive, and many people are
18 taking steps to try to eliminate those.

19 So in being able to show students, "Okay,
20 here's what a native forest looks like," about 80
21 percent. There is still some things that need to be
22 re-introduced, like Koa trees, different kinds of ferns
23 that probably grew there historically in a lowland wet
24 rainforest. And we can show them through the bottom
25 how fast some of the invasives can spread, how they

1 come onto the property, and we can teach the kids ways
2 of mitigating the effects of the invasives, and not
3 necessarily just by poison, but more sustainable ways
4 of mitigating the effects. And I can't do that as well
5 in a classroom. A teacher cannot.

6 If you can take the students right outside
7 your door and say, "Here's what an albizia looks like
8 when it first starts, here's a keiki," okay, "Here's
9 one that has been growing for 20 years. Look at the
10 rate of growth in only 20 years. Look what happened to
11 this one that has probably been growing for 50 years,
12 and it has fallen over. Imagine if that was in your
13 back yard."

14 So we can't do that effectively in a
15 classroom, but we can do it on a site like this.

16 Q Sure.

17 One of the programs that you have right now
18 is that makery program?

19 A Yes.

20 Q Could you describe what you are doing and how
21 that would play into using this property.

22 A Okay. The makery is another program that
23 came to us through the Curriculum Research and
24 Development Group. The man who started the program is
25 Dr. Neil Scott. He is from New Zealand, and he is an

1 expatriate from New Zealand that has been working in
2 the United States for many years. He recently -- well,
3 maybe ten years ago -- was working at Stanford, and his
4 wife was very ill. He came to Hawaii on his way back
5 to New Zealand and just happened to meet some people
6 from the university who offered him a job immediately
7 because of his background.

8 And the makery is basically, like a bakery,
9 you can bake things. In a makery, you make things.
10 The students learn to make things. So the students
11 start off learning design with computer-aided design
12 programs. They are using very sophisticated software,
13 the software that is used by the telescopes and their
14 machine shops. They are using a lot of other
15 state-of-the-art software that is called CNC software,
16 computer numerically controlled. So from their
17 designs, for anything they can imagine, they take the
18 design, they learn to convert it into machine language,
19 and it interfaces with machines like 3D printers, laser
20 cutters. And so the kids are able to do very abstract,
21 high-level math on the computers, and they are able to
22 see the kinds of things that they can create.

23 And so they are also integrating art into
24 this. And we worked with the University of
25 Hawaii-Hilo's art department. And in our program, all

1 of the kids have to use original designs. They cannot
2 go onto the internet and steal a design and use that.
3 So the ethics of this kind of modern manufacturing is
4 also taught.

5 Q And what is the intent there?

6 A The intent is to give students the skills
7 that they need to enter industries like -- the
8 telescopes are going to have a huge need for people
9 that can do CNC work. The scientific community on the
10 Big Island that is growing every day has a need for
11 this kind of work. On the practical level, anyone that
12 is making cabinets, bathroom fixtures, whatever, needs
13 to know this kind of design work.

14 And so there are a lot of opportunities for
15 students that have this kind of a background to either
16 pursue higher education or to get jobs very quickly out
17 of high school and be making up to \$50,000 a year right
18 out of high school.

19 Q Okay. Another program you are implementing
20 and you would like to carry over to this property would
21 be the after-school program for your high school
22 students?

23 A Yes.

24 Q Explain that.

25 A Our after-school program is the first in the

1 state of Hawaii that is part of the High Tech Youth
2 Network. The High Tech Youth Network is an
3 organization that started with the -- what is known as
4 the Computer Clubhouse Model on the mainland. Started
5 out of MIT.

6 And Computer Clubhouses are actually in about
7 20 different countries now, and they are focused on
8 populations that are underserved is the word that is
9 used, and they are implementing programs in
10 after-school that expose kids to areas like sound
11 production, video production and editing.

12 And the High-Tech Youth Network has really
13 responded through their visits to our program and would
14 like to create makeries that will go along with the
15 High Tech Youth Networks all around New Zealand. And
16 their goal -- they have established a North Pacific
17 regional office in Honolulu, and they are currently
18 expanding, with our program as the first one, as the
19 model. They are anticipating expansion to many of the
20 charter schools throughout the state. So they have
21 worked with the governor's office, lieutenant
22 governor's office, to try to help support these kinds
23 of programs. And we started this year with 16 kids on
24 the third day of school. Within a month, we had 86
25 kids in the program, so...

1 Q And describe the program. What time does it
2 start, what time does it end?

3 A It starts right after school. So school
4 usually ends at 2:00. We start about 2:30. We do not
5 charge our students anything. Unlike A-Plus -- we have
6 A-Plus, where families are charged unless they are at
7 the, you know, free or reduced lunch level. The
8 after-school program -- the kids named it Studio
9 Shaka -- is going until 6:30 in the evening. We also
10 provide transportation to some students who either
11 don't want to or can't take the bus to their homes.

12 Q And then this is a third aspect in terms of
13 the programs you want to continue. Some of your high
14 school students -- and we are now talking about phase
15 one -- attend or take community college courses at
16 UH-Hilo?

17 A Yes.

18 Q Tell us about that.

19 A At our school, one of our graduation
20 requirements is that all students must have at least
21 one post-secondary class to graduate. And
22 post-secondary classes are usually taken at the
23 community college or the university.

24 Because many of our students can apply for
25 funding through programs that support Native Hawaiian

1 students or economically disadvantaged students, many
2 of our students will take college-level classes
3 starting at 11th and 12th grade and basically get
4 credit through the college and through our school; and
5 so it's kind of like they are getting double credits.

6 And especially those who cannot afford to go
7 to college, whose families have never gone to college,
8 this is a way of introducing the kids to the college
9 environment and supporting their development. We give
10 them rides, we pick them up, whatever it takes to get
11 them there.

12 And so most of our juniors and seniors -- in
13 fact, some of our seniors, that is where all of their
14 classes are taken.

15 Q So even though we are talking about bodies or
16 number of students at that first phase, 107 -- or 1- --

17 A 120.

18 Q 120 -- not all 120 students will be on the
19 campus at any given day, correct?

20 A Yes.

21 And, you know, the first part of the year,
22 some of the seniors are taking classes. The second
23 part of the year, most of our seniors are not there, so
24 that would put the population that is there on a
25 regular basis at closer to about 90 students on a daily

1 basis.

2 Q Okay. And how many of those students are
3 bused in or given some kind of transportation in?

4 A Almost all of our students are. Most of our
5 students -- very few of them have a car or can afford a
6 car.

7 Q Okay. In terms of developing this property
8 and getting to the point where we are now, you would
9 agree that some mistakes have been made in terms of
10 clearing the land, let's say, or identifying the
11 perimeter of the property?

12 A Yeah.

13 When we first started, we had no support from
14 anyone, and so except for the planning -- the planning
15 groups that we had hired, we really did not have any
16 experience or enough money to go out and hire a
17 planning -- or a manager of the project.

18 In response to some of the concerns of the
19 neighbors, they asked that "Why couldn't a fence be put
20 up around the perimeter of the property?" So we said,
21 "Okay. We have funds that we could put up a fence."
22 So we hired someone to put up a fence. The guy we
23 hired subcontracted a bulldozer to -- he was supposed
24 to clear one blade wide.

25 While the work was going on, I had to go to

1 the mainland. One of my nephews had cancer at 28 years
2 old and died, and I had to go to the mainland; so my
3 assistant was in charge of oversight of that, and,
4 unfortunately, his wife had to be flown to Oahu, to the
5 hospital. She was hapai, and there was complications.

6 While both of us were away, the contractor
7 for the fence and the bulldozer that he had
8 subcontracted to was cutting the pathway too wide, two
9 bulldozer widths or more in some places. And it was
10 reported that they were taking trees, Ohia trees, off
11 the property.

12 One of my own children saw trucks going down
13 Kaumana Drive, because we live on Kaumana Drive, and
14 called me in Texas and said, "Are these guys supposed
15 to be taking trees out?" I said, "Absolutely not.
16 Call the police." So he called the police, and the
17 initial police report was made.

18 So, you know, I think -- after that
19 experience, we learned our lesson.

20 Q Right.

21 And there was a lack of a grading permit that
22 we retroactively --

23 A Right. We went back and retroactively got
24 the grading permit.

25 Q And in terms of -- was there any fine or

1 anything imposed?

2 A The department -- or the Board of Land and
3 Natural Resources fined us the minimum and noted that
4 we had self-reported this incident, and they fined us
5 the minimum that they could.

6 I think it's important to note that we
7 probably wouldn't have needed the grading permit if the
8 contractor had stayed to the one blade wide. The land
9 that would have been graded would have been less than
10 an acre. And that was the original contract with that.

11 Q Part of what the board had required was a
12 reforestation plan?

13 A Yes.

14 Q And did you comply with that?

15 A Yes. Had a reforestation plan that was
16 developed by an expert.

17 Q And was that approved by the board?

18 A Yes, it was.

19 Q Okay. Let's talk about funding. Just to be
20 clear, DOE provides charters no funding in terms of
21 facilities?

22 A Yes.

23 Q And in terms of this particular project, how
24 is it your intent to get the funding to build the
25 project?

1 A Well, one of the reasons for building on
2 state land is that makes us eligible for going in for
3 grant and aids or other funding that could be available
4 to state projects. So we can petition the legislature,
5 we can write grants and aids for support for this. We
6 can also work with other entities that would typically
7 build on state lands. There are entities that will do
8 turnkey projects, even, for charter schools or other
9 private schools. And for public schools, the
10 requirement is that you are on state land. For the
11 state, they will not give us money to build if we are
12 trying to build on private property.

13 Q Okay. And then in terms of the initial
14 phase, the first phase, do you have the funding to
15 start building that?

16 A Yes, we do. We have it obligated under a
17 U.S.D.A. Department of Agriculture 40-year loan at a
18 low interest rate, and that was secured several years
19 ago. And in our last meeting with the U.S.D.A.
20 officials, they said, "The money is sitting in an
21 account, and as soon as you are ready to start
22 building, then you can start drawing down the funds."
23 They will not lapse or go back to the government.

24 MR. HONG: And just for scheduling purposes,
25 I only have a few more minutes.

1 THE WITNESS: And that is \$8 million.

2 BY MR. HONG:

3 Q Okay. And then a concern was brought up
4 about a charter school using catchment. Are you aware
5 of any other charter schools on this island using
6 catchment -- yeah, uses catchment water?

7 A I know that the Volcano School I believe was
8 awarded the former Keokea Lani Outdoor Education
9 Center. When I moved to the Big Island in 1992, I was
10 originally planning to work at that facility, so I am
11 very familiar with that facility. It was open for many
12 years for all of the sixth-graders on the Big Island to
13 go to the facility and go through outdoor education
14 projects. They are solely using catchment. It is a
15 covered catchment tank that is tested on a regular
16 basis, and the water is used for everything, all the
17 water needs for that school.

18 Q Okay. In terms of wrapping up, the last
19 topic I want to talk to you about today is community
20 input. How many meetings with the community do you
21 recall having regarding your project?

22 A I recall having four meetings. There may
23 have been a fifth, but I don't recall that one.

24 Q Okay. And the primary concerns were traffic,
25 water, essentially "not in our neighborhood"?

1 A That was most of the concerns. The most -- I
2 guess the hardest concerns for us to understand were
3 the concerns that our students, because they were poor,
4 would be breaking into people's houses. And that was
5 hard for a lot of our community to take, that, you
6 know, just because our students are poor does not mean
7 that they are thieves.

8 And one woman I was talking to said, "Well,
9 maybe" -- when I explained to her we have security, our
10 kids aren't roaming the streets, she said, "Well, maybe
11 it won't be them, it will be their families when they
12 see our nice houses." And that was very hard to deal
13 with.

14 Q Well, in terms of traffic and water, you
15 revised your project plans. Is that correct?

16 A Yes, we did.

17 Q Those concerns were brought up, and one of
18 the offers you made to the community was to put
19 community members on a campus design committee. Is
20 that right?

21 A Yes, we did.

22 Q So you could incorporate their input with
23 respect to any of the other phases?

24 A Yes.

25 Q Does that still stand today?

1 A Of course.

2 Q Do you think, despite that conflict and
3 hostility with the community, you can still work with
4 community members?

5 A I know we can work with them.

6 Q Okay. And you live in the Kaumana community.
7 You said your wife/family travel up and down Kaumana
8 Drive every day. Would you want to initiate a
9 construction project in that area that would endanger
10 your family or yourself?

11 A No. Absolutely not.

12 MR. HONG: Okay. Thank you, Mr. Thatcher. I
13 have no further questions.

14 THE HEARINGS OFFICER: We are going to take a
15 break for the court reporter; but before we take the
16 break, we have to call a witness out of order. So,
17 Mr. Gomes, how long do you think you will take for
18 cross-examination of Mr. Thatcher?

19 MR. GOMES: At least a half hour.

20 THE HEARINGS OFFICER: And what I am going to
21 do, Mr. Hong, is ask you, after the recess, to take
22 that other witness, and then we will recall
23 Mr. Thatcher to finish his testimony.

24 MR. HONG: Very good. Thank you.

25 THE HEARINGS OFFICER: Ten minutes.

1 (Recess ensued from 10:38 a.m. to 10:46 a.m.)

2 THE HEARINGS OFFICER: We are back on the
3 record.

4 Before we begin, I will note the presence of
5 the parties.

6 Carrie -- Maki? --

7 MS. MARX: Marx.

8 THE HEARINGS OFFICER: -- I'm sorry, Marx --
9 has asked if she can videotape this proceeding, so I am
10 going to ask the parties if any of the parties have any
11 objection. I have told Ms. Marx that my position with
12 videotape, including the press, is they should be
13 allowed to do it, providing that it is unobtrusive and
14 doesn't interfere with the proceeding.

15 So, Mr. Hong, do you have any objection to
16 her videotaping?

17 MR. HONG: Yes, we object. She is not an
18 objective party. She is actually opposed to the
19 project, has taken a position against it, testified at
20 the Planning Commission against it; so we object.

21 THE HEARINGS OFFICER: Mr. Siu?

22 MR. SIU: I join in Mr. Hong's objection.

23 THE HEARINGS OFFICER: Ms. Self?

24 MS. SELF: We don't have a stand on this one.

25 THE HEARINGS OFFICER: Mr. Gomes?

1 MR. GOMES: No objections.

2 THE HEARINGS OFFICER: All right. Since
3 there is an objection, Ms. Marx, I am not going to
4 allow you to videotape this proceeding. You are free
5 to order a copy of the transcript from the court
6 reporter. Whether or not you are a party, you can
7 still order a copy if you wish to pay for it.

8 Mr. Hong, do you want to proceed?

9 MR. HONG: Yes.

10 Before us is Mr. Glenn Tada. And we are
11 looking at pages 1428 through 1429 in the Planning
12 Commission record.

13 THE HEARINGS OFFICER: Mr. Tada, would you
14 please raise your right hand.

15

16

GLENN TADA,

17 having been first duly sworn to tell the truth, the
18 whole truth and nothing but the truth, was examined and
19 testified as follows:

20 THE HEARINGS OFFICER: Could you just give us
21 your full name and your address.

22 THE WITNESS: My name is Glenn Tada. My
23 address is 259 Edita Street.

24 THE HEARINGS OFFICER: Go ahead, Mr. Hong.

25 MR. HONG: Thank you.

DIRECT EXAMINATION

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BY MR. HONG:

Q Mr. Tada, you have before you from the Planning Commission record pages 1428 through 1429. Do you see that?

A Yes, I do.

Q And that is a letter that you signed and your wife Karen Tada signed, right?

A That is correct.

Q And you presented that to the Planning Commission, right?

A Yes, we did.

Q Okay. One of the concerns you wrote in your letter was that you were concerned about "building a large facility that would change the climate of my neighborhood."

Do you see that?

A What paragraph are you on?

Q Hold on.

A I'm sorry. The first paragraph?

Q Yeah. Right there, first paragraph, second-to-the-last line. "By permitting Connections Charter to build a large facility." Do you see that?

A Yes, I do.

Q "Change that climate of my neighborhood,"

1 correct? That is your sentence, right? You wrote
2 that?

3 A My wife wrote the letter.

4 Q Okay. You agreed with the contents of that
5 letter?

6 A Yes, I did.

7 Q And that is a fair and accurate copy of your
8 signature on page 1429?

9 A Yes, sir.

10 Q Okay. So when you were talking about
11 building a large facility changing the climate of your
12 neighborhood, you mean the total project, correct, as
13 fully built out?

14 A You mean the Connections school, correct?

15 Q Yes.

16 A Yes.

17 Q Okay. And farther along down your letter,
18 you are talking about "Our area is not adequate to
19 sustain a facility of that size and student count."

20 Do you see that particular part?

21 A Yes.

22 Q And with respect to -- let me cut to the
23 chase in terms of this entire letter. I was going to
24 go down paragraph by paragraph, but in terms of this
25 particular letter, your concern was, when you look at

1 the project as a whole, when it is fully built out, not
2 the individual phases, correct?

3 A That is correct. The school as a whole,
4 correct. My concerns were, of course, the traffic.

5 Q Sure. Okay.

6 Did you ever provide any comments or
7 challenges to the final environmental assessment?

8 A No, I did not.

9 Q Why not?

10 A I wasn't aware that I should have or would
11 have had the opportunity.

12 Q Okay. Would you be willing to sit on a
13 campus design committee to help minimize the impacts of
14 the project?

15 A I would have to check. I'm not sure if my
16 job will allow me the time to set aside for this type
17 of endeavor.

18 Q Okay. There is a website,
19 "NoConnectionsever.com." Were you aware of that
20 website?

21 A No, I was not.

22 Q Okay. Were you getting e-mail from anybody
23 from NoConnectionsever.com?

24 A I would have to check. I did receive a few
25 e-mails from someone in the neighborhood.

1 Q Layne Novak?

2 A That is correct. I'm not sure what website
3 or e-mail it was being sent off.

4 Q Okay. And, to your knowledge, as you are
5 sitting here under oath this morning, do you know who
6 defaced or vandalized the school with bumper stickers
7 on October 17th or 18th of 2012?

8 A No, I do not.

9 MR. HONG: Okay. Thank you, Mr. Tada. No
10 further questions.

11 THE HEARINGS OFFICER: Mr. Siu, I take it you
12 have no questions?

13 MR. SIU: That's correct.

14 THE HEARINGS OFFICER: Ms. Self?

15 MS. SELF: No questions.

16 THE HEARINGS OFFICER: Mr. Gomes?

17 MR. GOMES: No questions.

18 THE HEARINGS OFFICER: Thank you. You are
19 excused.

20 Also, once a witness is excused, may the
21 witness remain in the room?

22 MR. HONG: No objection.

23 THE HEARINGS OFFICER: Mr. Siu?

24 MR. SIU: I have no objection.

25 MS. SELF: No objection.

1 MR. GOMES: No objections.

2 THE HEARINGS OFFICER: You are free to stay
3 until you have to leave, but not in the witness chair.

4 THE WITNESS: Thank you.

5 MR. HONG: We have an individual responding
6 to a subpoena duces tecum that you had signed from the
7 Real Property Tax Division who is going to produce
8 records this morning.

9 THE HEARINGS OFFICER: Do you want to call
10 her as a witness?

11 MR. HONG: Right. That will get her out real
12 quick.

13 THE HEARINGS OFFICER: That's fine.

14 MR. HONG: Thank you.

15 One more matter. Mr. Thatcher is an
16 Applicant, certainly the representative of the
17 Applicant, Connections School. I would consider him a
18 party of the entity and would ask that he be allowed to
19 sit in for the entire proceedings even though he is a
20 witness.

21 THE HEARINGS OFFICER: Mr. Siu, any
22 objections?

23 MR. SIU: No.

24 THE HEARINGS OFFICER: Ms. Self?

25 MS. SELF: No objections.

1 THE HEARINGS OFFICER: Mr. Gomes?

2 MR. GOMES: No objections.

3 THE HEARINGS OFFICER: He may sit.

4 MR. HONG: Thank you.

5 THE HEARINGS OFFICER: Although I don't think
6 there is going to be enough room at the counsel table
7 for him.

8 MR. HONG: That's true.

9 THE HEARINGS OFFICER: Can you please raise
10 your right hand.

11

12 LISA NAHOOPII,

13 having been first duly sworn to tell the truth, the
14 whole truth and nothing but the truth, was examined and
15 testified as follows:

16 THE HEARINGS OFFICER: Thank you. Can you
17 state your full name and your address?

18 THE WITNESS: Lisa Nahoopii, P.O. Box 2997,
19 Kamuela, Hawaii 96743.

20

21 DIRECT EXAMINATION

22 BY MR. HONG:

23 Q And, ma'am, would you spell your last name
24 for the record, please.

25 A Sure. N, as in Nancy, a-h-o-o-p, as in

1 Peter, i-i.

2 Q Thank you.

3 And where are you presently employed?

4 A County of Hawai'i Real Property Tax Office.

5 Q All right. And was the County of Hawai'i
6 Real Property Tax Office served with a subpoena duces
7 tecum?

8 A Yes.

9 Q And are you the representative from the Real
10 Property Tax Office responding to that subpoena duces
11 tecum?

12 A Yes.

13 Q And did you produce records pursuant to that
14 subpoena duces tecum?

15 A Yes.

16 Q And are those fair and accurate copies of the
17 records kept within the Real Property Tax Division?

18 A It is.

19 Q And are those records that you produced and
20 made copies of kept in the ordinary course of business
21 from the Real Property Tax Department?

22 A Yes.

23 Q All right. And could you describe the
24 records that you have brought?

25 A Okay. So we were required -- or requested to

1 bring over about ten years of data that we had on the
2 property parcel number, and the parcel number that was
3 before us was (2)5-047-012.

4 So we have a plat map. I was told to bring
5 an original and four copies. Do I need to pass that
6 out?

7 Q No, no, you can just turn them over.

8 A Okay.

9 Q And you brought an original and four copies?

10 A I did, and we certified them to be the
11 original.

12 MR. HONG: I don't believe I have any further
13 questions unless, in terms of the hearings officer,
14 would you take the original and four or take the
15 original and --

16 THE HEARINGS OFFICER: Are you introducing
17 these as exhibits into this proceeding?

18 MR. HONG: We anticipate them to be rebuttal
19 evidence based on the witnesses who are listed, so...

20 THE HEARINGS OFFICER: Then we are not taking
21 any of this until you submit something into evidence
22 and there is an opportunity for objections. Even
23 though the record is under seal, there is still a
24 question of whether they are relevant and material. If
25 you want to introduce them now, that's fine, but I'm

1 going to ask the other parties if there are any
2 objections; then you are going to have to represent why
3 it's material and relevant to submit them into
4 evidence.

5 MR. HONG: All right. Then we will mark
6 these as our next in order and then ask that they be
7 entered into evidence.

8 THE HEARINGS OFFICER: Okay. What number is
9 that in order, Mr. Hong?

10 MR. HONG: 821.

11 THE HEARINGS OFFICER: Mr. Hong, can you
12 provide why the ten years of tax records are relevant
13 and material to this proceeding?

14 MR. HONG: They are relevant and material
15 because there has been testimony, and it is in the
16 Planning Commission record, and we anticipate that one
17 of the witnesses who will be called by Mr. Gomes is
18 going to testify that the school in their residential
19 neighborhood -- or their neighborhood would diminish or
20 decrease real property tax values. These records are
21 from a house directly across the street from Kaumana
22 Elementary School that has shown that, in the last ten
23 years, that property value has increased.

24 THE HEARINGS OFFICER: Okay. Mr. Siu?

25 MR. SIU: No objections.

1 THE HEARINGS OFFICER: Ms. Self?

2 MS. SELF: No objections.

3 THE HEARINGS OFFICER: Mr. Gomes?

4 MR. GOMES: No objections.

5 THE HEARINGS OFFICER: Then I will admit A-21
6 into evidence.

7 Can you provide me with the original and
8 copies to the parties?

9 MR. HONG: Yes.

10 For the record, I am handing the Hearings
11 Officer an original of A-21 and the other parties a
12 copy of A-21.

13 MR. GOMES: Thank you.

14 MR. HONG: And I have no further questions of
15 this witness.

16 THE HEARINGS OFFICER: Mr. Siu, any
17 questions?

18 MR. SIU: I have nothing.

19 THE HEARINGS OFFICER: Ms. Self, cross
20 examination?

21 MS. SELF: No questions.

22 THE HEARINGS OFFICER: Mr. Gomes, any
23 questions for this witness?

24 MR. GOMES: I have a couple of questions.

25 THE HEARINGS OFFICER: Go ahead.

1 MR. GOMES: Do I mark this first as A-21?

2 THE HEARINGS OFFICER: It is your copy.

3 MR. GOMES: Okay. Thank you.

4

5 CROSS EXAMINATION

6 BY MR. GOMES:

7 Q Hi.

8 A Hi.

9 Q Mrs. Nahoopii?

10 A Uh-huh.

11 Q I'm Jeff Gomes.

12 Do you know offhand how many properties on

13 Kaumana Drive are undeveloped?

14 A No.

15 Q Is it possible that there could be 100, 200?

16 A I don't know.

17 Q That is not what you do?

18 A No.

19 MR. GOMES: Thank you. No further questions.

20 THE HEARINGS OFFICER: Any redirect?

21 MR. HONG: No questions.

22 THE HEARINGS OFFICER: Thank you so much for

23 your time.

24 THE WITNESS: Thank you.

25 MR. HONG: I believe Mr. Thatcher is still on

1 the stand.

2 THE HEARINGS OFFICER: Yes.

3 MR. HONG: Thank you.

4 THE HEARINGS OFFICER: Mr. Thatcher, let me
5 remind you you are still under oath.

6 THE WITNESS: Thank you.

7 THE HEARINGS OFFICER: Mr. Siu, since you are
8 doing this jointly, I take it you don't have any
9 questions of Mr. Hong's witnesses?

10 MR. SIU: That is correct.

11 THE HEARINGS OFFICER: So I don't need to ask
12 you after his direct. Is that correct?

13 MR. SIU: You don't have to. It's nice, but
14 you don't have to.

15 THE HEARINGS OFFICER: Ms. Self, do you have
16 any cross examination?

17 MS. SELF: No, I don't.

18 THE HEARINGS OFFICER: Mr. Gomes?

19 MR. GOMES: I have some.

20 THE HEARINGS OFFICER: Go ahead.

21

22 CROSS EXAMINATION

23 BY MR. GOMES:

24 Q May I call you John?

25 A Sure.

1 Q John, what is your relationship to
2 Connections Charter School?

3 A I am the principal of Connections.

4 Q And you are authorized to testify on behalf
5 of the school at this hearing?

6 A Yes, I am.

7 Q Have you read the special permit application
8 submitted by the school?

9 A Yes, I have.

10 Q And are you familiar with the representations
11 made in the application?

12 A Yes, I am.

13 Q And do you agree with those representations?
14 If not, what portions of the application do you not
15 agree with?

16 A I agree with them.

17 Q And are you familiar with the properties
18 which are the subject of this application?

19 A Yes, I am, the property.

20 Q Is that because you live nearby the property?

21 A I'm familiar with it because this is the
22 property we submitted for use as a school.

23 Q In connection with the application, the
24 school submitted a final environmental assessment dated
25 November 8, 2010. Is that correct?

1 A I believe that is the date.

2 Q You, as well as other administrators of the
3 school, provided input in the preparation of the final
4 environmental assessment. Is that correct?

5 A I'm not sure what you mean by "the other
6 administrators." I provided input. I can speak for
7 myself.

8 Q Did you ask anybody else from your school to
9 provide input?

10 A Personally did I ask them to? I don't recall
11 if I did.

12 Q And did you or others connected with the
13 school approve the final environmental assessment?

14 A The final was not under our jurisdiction to
15 approve.

16 Q Under Section 2.3.2, "Alternative Site
17 Locations," on page 15 of the final environmental
18 assessment, it states as follows: Connections
19 conducted an extensive search of possible properties on
20 which to develop a new school campus and found that the
21 Kaumana project site was the only acceptable site
22 within the school's service area that satisfied its
23 selection criteria. In addition, the Kaumana project
24 site was uniquely suited to support both an
25 agricultural program and a conservation program.

1 Do you agree with this statement?

2 A Yes, I do.

3 Q What is the school's service area?

4 A As I stated previously, it is an area that
5 extends from Hamakua to the north down to Pahoa in the
6 south and up the Volcano highway as far as Na'alehu,
7 and all of the Hilo area.

8 Q Okay. And how was this service area
9 determined? By whom was it determined?

10 A It was determined by our governing board.

11 Q The other properties which you considered are
12 identified in table 2-1 on page 16 of the final
13 environmental assessment. Is that correct?

14 A I don't see that in front of me. Could you
15 repeat the page numbers?

16 Q It is table 2-1 on page 16 of the final
17 environmental assessment.

18 THE HEARINGS OFFICER: Mr. Gomes, do you have
19 a copy of that that you can show the witness?

20 MR. HONG: My understanding is that we are
21 looking at page 77 of the Planning Commission record.
22 Is that right?

23 MR. GOMES: No. This is the final
24 environmental assessment.

25 MR. HONG: Looking at page 506 and 507 of the

1 Planning Commission record.

2 MR. GOMES:

3 Q So it is on page 16, table 2-1.

4 MR. HONG: 16?

5 THE WITNESS: That is not what you have put
6 in front of me.

7 MR. HONG: Page 16. Sorry, say that again?
8 Section?

9 MR. GOMES: Table 2-1 on page 16 of the final
10 environmental assessment.

11 MR. HONG: Oh, he is looking at the petition.
12 Okay. Page 16 of the final --

13 MS. SELF: Page 490 --

14 MR. HONG: 490.

15 MS. SELF: -- of the record.

16 MR. GOMES: Okay, of the record.

17 MS. SELF: Right.

18 MR. GOMES: Okay.

19 BY MR. GOMES:

20 Q And none of these properties were deemed to
21 have satisfied the school's selection criteria exactly.
22 Is that right?

23 A That's correct.

24 Q Would you explain what the selection criteria
25 was?

1 A The selection criteria was based on the size
2 of the property, access to the property, the
3 infrastructure that was nearby. Those were the main
4 criteria.

5 Q And who was on your selection committee?

6 A This would be the governing board. At that
7 time, it was called the local school board.

8 Q Were any community members from Kaumana on
9 your selection committee?

10 A I don't recall at that time. There was one
11 member that lived in the neighborhood. I'm not sure if
12 he was on the governing board at that time.

13 Q And what time was this? What period of time
14 was this when you did that selection?

15 A That would have been probably 2010. I can't
16 give you an exact month or date.

17 Q And can you tell us why the subject
18 properties are uniquely suited to support both an
19 agricultural and conservation program?

20 A As I stated before, the upper portion of the
21 property -- the two properties are about identical in
22 size, very close. The upper portion of the property,
23 which has a border with your house, is about 80 percent
24 endemic, indigenous native Hawaiian plants. The lower
25 portion of the property is about 20 percent native

1 Hawaiian plants. And so as a living laboratory, this
2 site provides us with an opportunity to teach our
3 children about invasive plants, about forestry and
4 conservation practices. It gives us an opportunity for
5 our students to investigate the flora of a typical
6 rainforest, windward rainforest, at about 7- to 900
7 feet.

8 Historically, there were Koa trees that grew
9 in lowland elevations. In fact, I believe that the
10 Koia -- I think that's the name of it -- grew almost
11 down to the coast. So these are opportunities that
12 provide for us to be able to show how invasives can
13 come into a native forest and for us to show the kinds
14 of conditions that would make it favorable for these to
15 invade an area. And the fact that 80 percent of the
16 property on the upper portion is still fairly pristine
17 is something that is a little unique to the property.

18 Q Thank you.

19 So are you saying that none of the other
20 properties are suitable to support both an agricultural
21 and conservation program?

22 A The governing board at the time did not see
23 that any of these properties would have fulfilled that
24 requirement and been of a size that was workable for
25 the school.

1 Q Going back to the selection criteria, you
2 concluded that a 20-acre cultivation area was needed
3 for school's agricultural program. Is that correct?

4 A We concluded that it would be ideal if we
5 could set aside 20 acres, because this is the size of
6 the agricultural park that the university is using
7 close to Kea'au.

8 Q And do you know how many crops are grown on
9 the UH farm?

10 A No, I don't know exactly.

11 Q Or how many students are involved in
12 cultivating the farm?

13 A I am not familiar with that.

14 Q Do you know the classification of the soil of
15 the UH farm?

16 A I believe there's probably several different
17 kinds of soil.

18 Q Does Connections currently have an
19 agricultural program?

20 A Yes, we do. We have a limited program.

21 Q And where do you conduct your agriculture?

22 A Some of the research is classroom-based
23 research. In fact, a lot of it is. And our students
24 are growing things hydroponically, aquaponically, at
25 both the Kress campus and at the Nani Mau Gardens.

1 Q And how many students are enrolled in each
2 program?

3 A We have 359 students in our school.

4 Q And they are all enrolled in the agricultural
5 program?

6 A We don't enroll them in that program.
7 They -- all of our students at the school have an
8 opportunity to take classes that are related to
9 agriculture. In fact, many of our classes have an
10 agricultural component that is integrated into the
11 classroom.

12 Q So are all the students required to take the
13 agricultural curriculum?

14 A All of the students are required to take
15 certain amounts of math, of science, of all the other
16 disciplines; and so, in essence, all of our students
17 will be exposed to the agricultural components of our
18 school.

19 Q Has the school conducted any studies to
20 determine the demand or need for such programs within
21 the state?

22 MR. HONG: Excuse me. I object, not
23 relevant. 205-6 is the criteria there. Talks about
24 what the party desires with respect to the land use,
25 not necessarily that it has to conduct a need.

1 THE HEARINGS OFFICER: Mr. Gomes, what is
2 your response? Do you have a response?

3 MR. GOMES: I can move on to another
4 question.

5 THE HEARINGS OFFICER: Then I sustain the
6 objection.

7 BY MR. GOMES:

8 Q What are the terms of the state lease for the
9 properties?

10 A The lease, I believe, is for 65 years.

11 Q And does it give you the right to make any
12 improvements without permits?

13 A I believe that any improvements would have to
14 not -- initially, without the permits, would have to
15 support agricultural uses, but I'm not clear on that.

16 Q And you were cited for a violation. Is that
17 correct?

18 A We self-reported the violation of the
19 bulldozer.

20 Q And were you cited for it?

21 A The school was cited, yes.

22 Q So why did you have to do the grading without
23 getting a permit?

24 A As I stated previously, the contract called
25 for grading of less than an acre, so that would not

1 have required us to get a grading permit.

2 Q But why put up the fence before any action
3 was going to be taken on the property?

4 A The fence was a response to try to show good
5 faith to the community members that had requested that
6 we put up a fence to mark the boundaries.

7 Q I read through all the minutes of all the
8 community meetings, and nobody requested a fence.
9 There was only one question asking if you are going to
10 put up a fence, and the response from the school was,
11 "Yes, a six-foot fence."

12 A If you say so.

13 Q So who from the community asked you to put up
14 a fence and made you willing to spend almost \$100,000
15 to put up a fence?

16 A It was our feeling from the community meeting
17 that good fences might make good neighbors. Part of
18 our rationale was also that there was some rather
19 severe dumping of garbage, automobile parts from
20 neighboring properties, and a lot of the stuff was
21 dumped onto the property, and we felt that a fence
22 would enable us to clean up the property, as one of the
23 conditions of our lease stipulated, and would make it
24 difficult for people to dump stuff in the area.

25 Q So no one from the community asked you to put

1 up a fence?

2 MR. HONG: Object, it's argumentative. He
3 has already testified that.

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

6 Move on, Mr. Gomes.

7 BY MR. GOMES:

8 Q Did you send out letters to the students and
9 parents to generate support for your project?

10 A Yes, I have.

11 Q And what did it state?

12 A Which one?

13 Q Did any of the letters state that the
14 community does not want students?

15 A I don't recall saying something like that.

16 Q In your earlier testimony, you mentioned that
17 the people from the community had said something about
18 "the kids from your school, when they come up to our
19 neighborhood, would rob our homes." I went to two of
20 the community meetings. I never heard anything like
21 that. I read through all the minutes. There's nothing
22 like that in the minutes. When did anyone from the
23 community talk to the kids and tell them these awful
24 things?

25 A I'm really unclear on what you are asking.

1 Q You stated earlier that you felt bad because
2 someone at the community meeting had said "when the
3 kids come up to our neighborhood, they are going to rob
4 our homes."

5 MR. HONG: I object, misstates facts in
6 evidence. That is not what he said.

7 THE HEARINGS OFFICER: The testimony speaks
8 for itself, but I will overrule the objection.

9 THE WITNESS: I believe that I said that I --
10 that community members had spoken to me -- community
11 members have spoken to me outside of community
12 meetings. Also that included have called me on the
13 phone and have spoken outside of community meetings.
14 And in this instance, it was an elderly woman who used
15 to go to church with us that stated that that was her
16 concern. And it was not in a community meeting, and I
17 do not believe I said it was in a community meeting.
18 If I did, then I was mistaken.

19 BY MR. GOMES:

20 Q So if she told you that, why would you
21 transfer that information to the kids and hurt their
22 feelings?

23 MR. HONG: You know, I object. It's
24 speculative, irrelevant, and it misstates facts in
25 evidence.

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

3 Move on, Mr. Gomes.

4 MR. GOMES: Okay.

5 BY MR. GOMES:

6 Q Did you threaten one of the community
7 residents that you would muster opposition to a project
8 he was working on if he did not back off?

9 A No, I did not.

10 Q Do you know whether that person was against
11 your project?

12 A I'm not sure who you are speaking about.

13 Q Sidney Fuke.

14 A So did I know that Sidney Fuke was against
15 our project? Yes, he had expressed alliance with those
16 of you that are opposed to the project.

17 Q And by you threatening him to muster
18 opposition, is that a form of bullying?

19 MR. HONG: You know, I object. It misstates
20 facts in evidence. It is not relevant.

21 THE HEARINGS OFFICER: I'm going to sustain
22 it.

23 Mr. Gomes, he testified that he didn't
24 threaten anybody, so you have to rephrase your
25 question.

1 MR. GOMES: It is in the previous record.

2 THE HEARINGS OFFICER: Well, you can present
3 it another way, but this witness has just testified
4 that his testimony is he didn't threaten anybody.

5 BY MR. GOMES:

6 Q Did you send me a message on Facebook
7 accusing me of having something to do with the suicide
8 of one of your students?

9 A Absolutely not. I sent you a message
10 informing you that a student that your wife had taught
11 had committed suicide, one of our students.

12 Q Are you part the Kaumana Association?

13 A No, I am not.

14 Q Are you part of the Kaumana Cave Association?

15 A No, I am not.

16 Q Are you part of the Kaumana Kumeana
17 Association?

18 A No.

19 Q How do you describe the community you live
20 in?

21 A I describe the community as a economically
22 mixed community with houses ranging from low-income to
23 fairly upper middle class. I believe that there are a
24 number of families that have lived in the community for
25 at least 100 years. I know some of these families, the

1 Mitsunagas, the Otanis. I believe that there was a
2 fairly large influx of people to the community within
3 the last 40 years or so. And I'm not sure what else
4 you would like, Mr. Gomes.

5 Q How long have you lived at your present
6 residence?

7 A I have lived in my residence since 1992.

8 Q And do you own your home?

9 A Yes, I do.

10 Q Do you think you are sensitive to the
11 community's needs or thoughts?

12 A I believe I am to the entire community.

13 Q How?

14 A I am not sure what you are looking for.

15 Q Okay. Are you aware that most of the
16 immediate community are not in favor of the school or
17 any K through 12 school being built at this location?

18 A I am not aware of that.

19 Q Okay. What are the ingredients of a
20 successful school?

21 A The ingredients of a successful school. I
22 can't speak for all schools. I can speak for our
23 school. And a big part of what I believe makes our
24 school successful is that we are a charter school with
25 a local governance through a governing board.

1 Q Do you require or even desire any community
2 support?

3 A We have community members on our governing
4 board.

5 Q And is that all you need, just a few members
6 on the board, as far as you are concerned?

7 A I'm not sure what you mean by "community
8 need"?

9 Q Community support.

10 A No, of course that is not all the community
11 support that we would expect or desire.

12 Q If approved, will the project be developed
13 all at once?

14 A No, it will not. Be developed in phases.

15 Q Over how long a period?

16 A Probably ten to fifteen, maybe even twenty,
17 years.

18 Q Is it fair to let the community sustain the
19 construction over that long a period?

20 A I'm not sure what you mean by sustaining
21 construction. The phases would be completed one phase
22 at a time. It would not be 20 years of construction.

23 Q Did you think of vetting this project with
24 the community you live in about this project?

25 A Of course we did. That is why we did two

1 environmental assessments.

2 Q Why were we not notified of the environmental
3 assessment?

4 A I'm not sure why you weren't aware of that.

5 Q Did you inform the community?

6 A I just answered the question.

7 Q How did you inform the community?

8 A We informed the community through community
9 meetings. There were five community meetings held.
10 There were at least three newspaper articles that
11 talked about the potential project. I'm not sure what
12 else to say. It has been a topic of conversation with
13 many community members since 2007.

14 Q Do you have records of all five community
15 meetings?

16 A Yes, we do.

17 Q Could you possibly present them? Not
18 necessarily now, but tomorrow?

19 A If need be.

20 Q In your opinion, what were the outcome of the
21 community meetings?

22 A The outcomes?

23 Q Was the community in favor of your project
24 overwhelmingly?

25 A I wouldn't say that all of the people at the

1 community meetings represented the voice of the entire
2 community. There were perhaps 50 or 60 people at the
3 most that I saw at the community -- one of the
4 community meetings I went to. The majority of the
5 people at that community meeting were from your
6 subdivision, Pacific Plantations, 95 percent.

7 Q Isn't that subdivision affected the most by
8 your school?

9 A I wouldn't say that.

10 Q Okay. Are you concerned about the effects on
11 that subdivision? Are you sensitive to that
12 subdivision's concerns?

13 A We have been trying to be sensitive, yes. We
14 are concerned about it.

15 Q Are you aware of any K through 12 schools
16 that are within the State Land Use Agricultural
17 District?

18 A Any K through 12 schools that are on
19 agriculture zoned land?

20 Q Within State Land Use Agricultural District.

21 A Yes. I know at least one that I can think
22 of.

23 Q Which is it?

24 A I believe that Waters of Life, or at least
25 part of the time, they were operating on agriculturally

1 zoned land.

2 Q And that is a K through 12 school?

3 A It has been in the past.

4 Q Why did you go through the special permit
5 instead of the State Land Use boundary?

6 MR. HONG: Objection, calls for legal
7 conclusion.

8 THE HEARINGS OFFICER: I am going to overrule
9 it and allow the question.

10 THE WITNESS: When we were first
11 investigating the use of land for charter schools, we
12 relied on the County of Hawai'i's guidelines. At the
13 time, the County of Hawai'i's guidelines stipulated
14 that charter schools should try to secure land that was
15 on agriculturally zoned -- agriculturally zoned
16 properties, and that if we secured land on these
17 properties, that we would not have to go through a
18 special use permit. It would be granted by the County.

19 BY MR. GOMES:

20 Q And what is the relationship of a charter
21 school to the state system?

22 A Charter schools are public schools. They are
23 part of the public school system in the state of
24 Hawaii.

25 Q Are you required to comply with state

1 standards, curriculum, physical facilities?

2 A We are required to comply with state
3 standards. That is the only one.

4 Q Were these taken into consideration when
5 choosing a site?

6 A Yes, the standards were.

7 Q In terms of size, do you know whether the
8 site meets the requirement you need?

9 A We are not required to follow the DOE
10 guidelines on facilities, as I stated earlier. I'm
11 talking about the standards of curriculum.

12 Q Okay. What about infrastructure?

13 A We are required to meet the County
14 infrastructure requirements.

15 Q What about the access requirements, dual
16 access requirement?

17 A That is not a requirement outside of the
18 Department of Education's guidelines.

19 Q And being a parent and a principal of the
20 school, do you understand the need for dual access to a
21 property for safety?

22 A I understand what your point is. That does
23 not mean I agree with it.

24 Q So you don't agree with dual access?

25 A Theoretically, we would love to have dual

1 access, but as I stated earlier, when we tried to
2 secure that access, there were several members of your
3 community, the Pleasant Plantations community, that
4 went to Mr. Brilhante and asked him not to support us
5 getting that access.

6 Q So do you disagree with the need for dual
7 access?

8 A I have no opinion.

9 Q And where do the students come from?

10 A Do you mean where do our students live?

11 Q Yes.

12 A Okay. Roughly half of our students live in
13 the Hilo area and about half of them live in Puna or --

14 Q When you say they are going to be mostly
15 bused in, do the Hilo students get bused in also?

16 A Currently, about -- most of the busing is
17 from the Puna communities, and we have some students
18 that will use our bus for transportation in the Hilo
19 area, but not generally to their homes.

20 Q So you have a pick-up site where students can
21 meet, say, at a park somewhere, or at the mall, and
22 then they get on the bus and ride the bus up to the
23 school?

24 A Yes.

25 Q And how many buses do you have?

1 A We are operating three buses right now.

2 Q And is that what you anticipate eventually,
3 three buses?

4 A We have no plans currently to add more or
5 take any away.

6 Q And are you aware of the impact on Edita
7 Street?

8 A What impact is that?

9 Q Traffic.

10 A I'm aware of testimony this morning that said
11 that many of the people coming down Edita were not
12 stopping fully at the intersection with Kaumana, but
13 our school is not located there; so I'm aware
14 that there seems to be a problem with traffic on Edita
15 Street. That was said in public testimony this
16 morning.

17 Q Yes.

18 A And it seemed like the majority of the
19 traffic problems were from the current residents that
20 were going too fast down Edita Street and were not
21 stopping at the stop light before they were turning
22 right onto Kaumana Drive.

23 Q What impact of other streets, like Chong
24 Street and Terrace Drive, have you considered?

25 A We have considered what the traffic study

1 report said, that there would be no significant impact.

2 Q Do you recall who was on your site selection
3 committee?

4 A As I said previously, it was the members of
5 our local school board.

6 Q And do you remember who they were?

7 A I cannot tell you exactly who they were. I
8 remember most of them.

9 Q How did you do the alternative site study?

10 A The site study was done by me and other
11 members of the board visiting some of these properties
12 and looking at them. I did some research on the
13 properties to look at the infrastructure that was in
14 place.

15 Q So was there an assumption that, no problem,
16 we can just use the site on Edita Street; everything
17 should be okay?

18 A There was never an assumption.

19 Q Now, this is a problem from the community
20 standpoint. What are your plans, to just force your
21 way in and look for an alternative?

22 MR. HONG: Objection, argumentative.

23 THE HEARINGS OFFICER: I'm going to sustain
24 the objection. You have to rephrase your question.

25 MR. GOMES: I will skip that question.

1 BY MR. GOMES:

2 Q When was the consultant to do the
3 environmental assessment selected?

4 A Probably in about 2007 or 2008.

5 Q Was it after the site was selected?

6 A Yes.

7 Q Were there any instructions given to the EA
8 consultant regarding this site?

9 A Now, are you talking about the first
10 environmental assessment or the second one?

11 Q Either.

12 A And what was your question again?

13 Q Were there any instructions given to the
14 environmental assessment consultant regarding the site?

15 A Of course there was instructions given. I'm
16 not sure what kinds of instructions you are talking
17 about.

18 Q How was the consultant selected?

19 A The consultant was selected by the governing
20 board, looking at what our available options were, and
21 we went through references that were provided for us
22 through people in the industry.

23 Q Do you feel it should have been through the
24 procurement process?

25 A No. Charter schools are not bound to use the

1 procurement process of the Department of Education.

2 MR. GOMES: No further questions.

3 THE HEARINGS OFFICER: Do you have any
4 redirect?

5 MR. HONG: No. Oh, wait, I do, briefly.

6

7 REDIRECT EXAMINATION

8 BY MR. HONG:

9 Q In terms of informing the community about the
10 project, do you recall efforts made by -- well, do you
11 recall students going door to door to houses in the
12 community, giving them a flier about the project?

13 A Yes, I do.

14 Q And inviting them to attend a community
15 meeting?

16 A Yes, I do.

17 MR. HONG: Thank you. Nothing further.

18 THE HEARINGS OFFICER: Mr. Thatcher, you are
19 not done yet. I have questions.

20

21 EXAMINATION

22 BY THE HEARINGS OFFICER:

23 Q First of all, you talked about the bottom of
24 the property and the top of the property, where there
25 was some objection to the use of the top of the

1 property. Could you go to the map and show me where
2 the top is versus the bottom?

3 A It is a different map.

4 Q On the site plan?

5 A It's a different map.

6 It would be --

7 Q Is this site plan --

8 A This is the bottom. The top would be that
9 portion and what is up above.

10 So if you look at this one, so here is the
11 bottom of the property. The top of the property
12 would -- where does it end? Someplace up here.

13 Q Okay. So how many acres are you talking
14 about, this bottom of the property?

15 A It is about 35 acres.

16 Q And the top of the property is how many
17 acres?

18 A I think it is about 36 or 37, perhaps.

19 Q So the agricultural area you had in your
20 site -- going back to your site plan --

21 A Right.

22 Q -- that is still the bottom of the property?

23 A Yes.

24 MR. HONG: I just note for the record it is
25 up on the display through the computer, from the LUPAG

1 map.

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

3 BY THE HEARINGS OFFICER:

4 Q Okay. Also I noticed in the record that
5 there was an intent to lease from the State from May of
6 2012. Did you actually sign a lease with the State yet
7 for your property?

8 A Yes, we have.

9 Q When was that done?

10 A That was done I believe in 2011.

11 MR. HONG: We are looking for it in the
12 record. I believe it is --

13 THE HEARINGS OFFICER: The lease is actually
14 in the record?

15 MR. HONG: Yes.

16 THE HEARINGS OFFICER: Because I saw the
17 intent to lease, but not the actual lease. All right.

18 BY THE HEARINGS OFFICER:

19 Q So you have had the lease -- you have had
20 control of the property for how many years now?

21 A About two years.

22 Q Have you started any farming programs for
23 your students on the property?

24 A No, we have not.

25 Q Is there any reason why you haven't yet?

1 A The Department of Land and Natural Resources
2 has asked us to not start any programs until after we
3 have gone through the special use permit, and we have
4 agreed to not do anything until then. All we have done
5 on the property is work to clean up the rubbish that
6 was dumped there over the years, and we have removed at
7 least a container full of auto parts and other rubbish.
8 And that was a requirement of the lease, that we clean
9 up the property.

10 Q So they have told you that you can't do
11 anything, including agricultural activities, on the
12 property until you get a permit?

13 A They pretty much said that we should not.

14 MR. HONG: I just note for the record that
15 the lease appears in the Planning Commission record
16 beginning at page 2161.

17 THE HEARINGS OFFICER: Thank you, Mr. Hong,
18 for that.

19 BY THE HEARINGS OFFICER:

20 Q Also, you talked about your vision of
21 sustainability?

22 A Yes.

23 Q Right now, from what you testified to, it
24 sounds like your science programs include agricultural
25 components both for the elementary and the high school.

1 Is that correct?

2 A Yes, that's correct.

3 Q Do you have any specific classes just geared
4 to agriculture for your elementary school?

5 A For the elementary students?

6 Q Yes, for the, say, K to 8?

7 A The elementary, K to 6, curriculum is called
8 DASH, Developmental Approaches to Science and Health,
9 so much of the science is integrated with health
10 components.

11 And so the nutrition components of the
12 science curriculum, which can also be considered health
13 components, are supported by a curriculum that builds
14 from kindergarten on plants, how they are grown, what
15 kinds of plants we eat, raising crops in a school
16 garden, from about, oh, second grade, third grade,
17 definitely. In third grade, the components of testing
18 soil, PH, are introduced. In fourth grade, components
19 about Native Hawaiian diet, all of these kinds of
20 things, are introduced.

21 So by the time the kids get to sixth grade,
22 the curriculum actually expands out to a project that
23 involves terrafication of the Martian environment to
24 make it more Earth-like.

25 Q Go ahead.

1 A It is a very integrated approach to teaching
2 science.

3 Q Right. That is a pretty standard program,
4 though, that is accepted in charter schools today?

5 A Well, it is -- I don't know about all charter
6 schools, but it is a program that we use, because every
7 charter school decides its own curriculum.

8 Q All right. And as far as your 9 to 12
9 classes, do you have any specific classes for your high
10 school in farming or agriculture?

11 A We have offered classes in agriculture. We
12 don't always offer the same courses every semester
13 because we are a small high school. It depends on the
14 needs of the students.

15 Q So what classes have you offered?

16 A We have offered everything from hydroponics
17 to raised bed to nursery to ornamentals to gardening
18 tied to nutrition. It is also a component of our
19 after-school program.

20 Q And where have you done the field work for
21 these classes?

22 A Most of it is done right in the vicinity of
23 the classrooms; so at one point, we were in
24 negotiations with the former owner of the Nani Mau to
25 use more of their land for doing agriculture and

1 aquaponic projects with their small little reservoir
2 where they had talapia and catfish over there, but we
3 have not entered into any kind of agreement with the
4 current owners.

5 Q But your facilities right now presently do
6 not allow them -- am I correct -- for doing a community
7 garden?

8 A No. It is a private facility, and we have
9 not approached them about a community garden because of
10 their concerns with, you know, liability.

11 Q And what kind of forestry programs do you
12 envision for your new location?

13 A There are several organizations. I can't
14 remember which one the -- there was one that approached
15 you folks' -- Ted Hong's office, I think, Sue --
16 yeah --

17 Q If you --

18 A Dr. Stone is a member of one community group
19 or one conservation group that has asked if we would be
20 interested in subleasing the land or working with them
21 to investigate and restore the property to what it may
22 have been like before the 1880 flow.

23 Q And can you describe in a little bit more
24 detail what kind of agricultural programs you are going
25 to do on the bottom portion which you have designated

1 for agriculture? You have about 17 acres or so.

2 A Right.

3 One of the projects that we really hope to
4 get established is a farm-to-school project where our
5 students could grow different commodity items that the
6 school could use in our food program, things like
7 oranges, tangerines. Those grow well in that area.
8 There is a need for orchards of those kinds, avocados,
9 things that we could use in our food program. That
10 would be a big component of it.

11 And so the kids can see how things are grown,
12 and hydroponic vegetables, and then see them in the --
13 the thought of farm-to-school projects is if the kids
14 see things being grown, they are more likely to eat
15 things that they may not choose to eat in a traditional
16 cafeteria.

17 THE HEARINGS OFFICER: I don't have any other
18 questions.

19 Mr. Hong, do you have any questions based on
20 what I have asked Mr. Thatcher?

21 MR. HONG: No, thank you.

22 THE HEARINGS OFFICER: Mr. Siu?

23 MR. SIU: None.

24 THE HEARINGS OFFICER: Ms. Self?

25 MS. SELF: No.

1 THE HEARINGS OFFICER: Mr. Gomes?

2 MR. GOMES: No further questions.

3 THE HEARINGS OFFICER: Thank you very much,
4 Mr. Thatcher. You are excused.

5 MR. HONG: Our next witness is Joan
6 Derbyshire.

7 THE HEARINGS OFFICER: Mr. Hong, how long do
8 you think she is going to be?

9 MR. HONG: Approximately 15 minutes.

10 THE HEARINGS OFFICER: So we can take her
11 before our break?

12 MR. HONG: Right.

13 THE WITNESS: Good morning. My name is Joan
14 Derbyshire.

15 THE HEARINGS OFFICER: Raise your right hand.

16

17 JOAN DERBYSHIRE,

18 having been first duly sworn to tell the truth, the
19 whole truth and nothing but the truth, was examined and
20 testified as follows:

21 THE HEARINGS OFFICER: Can you please state
22 your name and give us your address.

23 THE WITNESS: My name is Joan Derbyshire, and
24 I am at 27 Elm Drive in Hilo.

25 . . .

DIRECT EXAMINATION

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BY MR. HONG:

Q Would you tell us briefly about your educational and professional background, please.

A I am currently a teacher at Connections Public Charter School. I graduated from college in 1973. I got a Master's in 2003. I am certified in primary, elementary, Montessori, middle school math, and special ed.

Q How did you come to be involved with Connections School?

A Actually, I called the school to apply for my children to go to the school, and the woman on the other end said, "Oh, you're a teacher?" And I didn't know how she could know that. She thought I was applying for a job; so I did it.

Q Okay. How has your involvement with the school grown?

A I had been involved on the board level for the school itself when we first started back in 2001 in the Kress building, and I have been on the board of CBESS for five years.

Q And describe the role of CBESS in terms of school operations.

A CBESS is the nonprofit arm of -- pretty much

1 CBESS was created to assist and help for the school
2 itself.

3 Q Okay. In terms of the new Connections
4 property up in Kaumana, you are familiar with the
5 proposal to develop that property?

6 A Yes. We started that process in 2007.

7 Q Okay. And did CBESS approve that proposal?

8 A Yes.

9 Q And what is CBESS's role in the special
10 permit application?

11 A We are actually co-applicants with the school
12 in the special needs application.

13 Q And in terms of CBESS, what role does it play
14 in the process, the special permit application process?

15 A Well, we are one of the co-applicants. Once
16 we end up with -- once we were -- would get a special
17 use -- or special permit, we would be the
18 administrators of the project.

19 Q Okay. Let's talk about the project itself.

20 This is a phased project; it is supposed to
21 be constructed in phases, right?

22 A Yes.

23 Q And in terms of funding for the phases, could
24 you tell us about that?

25 A Well, the funding is coming through many

1 different sources: Donations, grants, loans, new
2 market tax credits. Initially, we have applied and
3 received a U.S.D.A. loan for 8 million, and that will
4 get us started on the first phase.

5 Q Could you describe for us the level of
6 CBESS's commitment to the new campus in total?

7 A Well, from the very beginning, we have always
8 envisioned one campus. Right now, we are on two
9 campuses, and we are all pretty committed to trying to
10 put together a one-campus school.

11 Q After the 8 million that you had talked about
12 earlier to fund the first phase, how do you intend to
13 pursue funding for the remainder of the phases?

14 A Well, donations, grants. Whatever comes up,
15 we apply for. We don't get the same level of support
16 from the State that other schools do, so we have to go
17 out and fundraise and look for other sources of
18 funding.

19 Q And is the board unified on its commitment to
20 the entire project in securing funding for the future
21 phases?

22 A Yes.

23 MR. HONG: All right. Thank you. No further
24 questions.

25 THE HEARINGS OFFICER: Ms. Self, cross

1 examination?

2 MS. SELF: I have no cross examination.

3 THE HEARINGS OFFICER: Mr. Gomes?

4 MR. GOMES: I just have a few questions.

5

6 CROSS EXAMINATION

7 BY MR. GOMES:

8 Q First of all, I applaud the makery project.

9 I think it's a wonderful project. I've seen it. John
10 invited me to the school. When I first met John, he
11 had told me, "Jeff, we are almost family. I know your
12 brother-in-law, I know your sister-in-law, I watched
13 your kids," and so -- my wife and I tried to support
14 John. I visited his school. I met Bill Thorpe.

15 Do you know Bill Thorpe?

16 A Yes.

17 Q I was really impressed with Bill. What did
18 you think of Bill?

19 A He is a great guy. I have worked with him
20 since about -- I would say he came on about 2005-2006.

21 Q I don't know if you know this, but what Bill
22 teaches at the school I do for a living, and I was -- I
23 was so amazed that somebody is teaching this to kids.
24 I told Bill, "Let me help you. I can do whatever --
25 whatever you are doing, I can go way beyond."

1 MR. HONG: You know, I am going to object to
2 this not being relevant.

3 THE HEARINGS OFFICER: Mr. Gomes, you cannot
4 testify now. You have to ask questions.

5 MR. GOMES: Okay.

6 THE HEARINGS OFFICER: If you want to testify
7 as a party, you can later on, but not now.

8 BY MR. GOMES:

9 Q So my question is I offered help to Bill.
10 Bill e-mailed me and asked me to help, and I said,
11 "Sure, whatever you want." But he never responded
12 after that.

13 If I offered to help again, do you think he
14 would accept my help?

15 MR. HONG: Objection, calls for speculation
16 on the part of the witness.

17 THE WITNESS: Yeah, I have no idea.

18 THE HEARINGS OFFICER: I will overrule it.
19 If you can answer it, answer it.

20 THE WITNESS: Well, I have no idea.

21 BY MR. GOMES:

22 Q Well, John spoke about working with albizia
23 and guaiwi and eradicating it, but I use it. I have
24 use for it, and I can teach the kids how to use it.

25 THE HEARINGS OFFICER: Mr. Gomes --

1 BY MR. GOMES:

2 Q If I offered to help, will you accept my
3 help?

4 THE HEARINGS OFFICER: Mr. Gomes, I am going
5 to remind you again you cannot testify. You have to
6 ask questions of the witness.

7 MR. GOMES: Okay.

8 BY MR. GOMES:

9 Q Do you know a Janelle Fukushima?

10 A No, I don't believe so.

11 Q She was a board member.

12 A Oh.

13 Q Never heard of her?

14 A I was not on the board for several years in
15 between, so I'm not familiar with her name.

16 Q And what does "CBESS" stand for?

17 A Community Based Educational Support Services.

18 Q And what does the word "community" in CBESS
19 represent?

20 A I'm not sure your -- community is --

21 MR. HONG: To the best you can answer the
22 question.

23 THE WITNESS: A community is a group of
24 like-minded people, I would say.

25 MR. GOMES: Okay. Thank you.

1 No further questions.

2 THE HEARINGS OFFICER: Any redirect,
3 Mr. Hong?

4 MR. HONG: No, thank you.

5 THE HEARINGS OFFICER: Thank you very much
6 for your time.

7 THE WITNESS: Thank you.

8 THE HEARINGS OFFICER: Well, I think,
9 Mr. Hong, you were faster than 15 minutes, so --

10 MR. HONG: I would rather overestimate than
11 underestimate.

12 THE HEARINGS OFFICER: I think what we should
13 do now, since it's five to 12:00, we will take a lunch
14 recess and come back at 1:00.

15 MR. HONG: Thank you.

16 (Recess ensued from 11:56 a.m. to 12:59 a.m.)

17 THE HEARINGS OFFICER: We are back on the
18 record after a lunch recess, and I will note the
19 presence of all the parties.

20 Mr. Hong, are you ready to proceed with your
21 next witness?

22 MR. HONG: Yes.

23 Our next witness is Dennis Hirota.

24 I would just note, as an administrative
25 matter, we are looking at maybe taking Mr. Hirota,

1 followed by Mr. Kevin Louma, because he has got a plane
2 also, and then followed by Thiel, Kurt Inaba, and then
3 Duane Kanuha and David Miranda. That is the general
4 line-up for now.

5 THE HEARINGS OFFICER: Thank you.

6 And, Mr. Hong, Terence Yoshioka asked if he
7 could be taken out of turn. And I know you have
8 Honolulu witnesses, so if you can squeeze him in...

9 MR. HONG: I would represent that based on
10 Mr. Yoshioka's submissions that are in the Planning
11 Commission record and his testimony, I think the
12 examination is going to be quite extensive, so if I
13 take him out of order, that means all the County
14 witnesses will probably have to show up tomorrow.

15 THE HEARINGS OFFICER: Is he subpoenaed for
16 today?

17 MR. HONG: We had scheduled him for tomorrow,
18 actually.

19 THE HEARINGS OFFICER: All right. Well, if
20 you scheduled him for tomorrow, then he will have to
21 come back tomorrow.

22 MR. HONG: Okay. Thank you.

23 THE HEARINGS OFFICER: Mr. Hirota, could you
24 please raise your right hand.

25

1 DENNIS ISAWA HIROTA,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined and
4 testified as follows:

5 THE HEARINGS OFFICER: Could you state your
6 full name and your address for the record, please.

7 THE WITNESS: Dennis Isawa Hirota. My office
8 address is 864 South Beretania in Honolulu.

9 THE HEARINGS OFFICER: Thank you.

10 Mr. Hong, proceed.

11

12 DIRECT EXAMINATION

13 BY MR. HONG:

14 Q Sir, I would like you to refer to Exhibit
15 A-18.

16 Is that a fair and accurate copy of your
17 curriculum vitae?

18 A Is this the one?

19 Q Yes.

20 A Yes.

21 Q Okay. If you could just highlight your
22 educational and professional experience for us, please.

23 A I have a Bachelor's of civil engineering from
24 the University of Michigan in 1963; I have a Master's
25 in sanitary engineering, 1964, from the University of

1 Michigan; and I have a Ph.D. from the University of
2 Michigan in 1970.

3 Q And in terms of your professional experience,
4 please.

5 A Since 1986 to the present, I have been the
6 president of Sam Hirota, Inc., which was a company
7 founded by my dad. We have approximately 24 employees.
8 And we do civil engineering, land surveying, and
9 three-dimensional imaging.

10 Q Could you highlight some of the projects that
11 you worked on, your company has worked on, and what you
12 did for them similar to the scope of work for
13 Connections?

14 A We have worked on many schools. The recent
15 one was a Punahou K-1 neighborhood. We have worked on
16 the -- I have a mental block right now. Right next to
17 Punahou, we worked on Le Jardin Academy in Kailua. We
18 have worked on several schools on Guam. We have
19 worked -- on this island, we have worked on Pukio. We
20 are working on Kohanaiki now. We have worked at
21 Hualalai. We have worked at Mauna Kea. We have worked
22 at Mauna Lani. We have done a lot of work on this
23 particular island.

24 Q And are you licensed to practice in terms of
25 engineering?

1 A Yes. I have -- since 1973, I have a civil
2 engineering license, 3377.

3 Q And are you certified in any particular area
4 in engineering?

5 A Not in the geotech or any of the other ones,
6 but just general civil engineering.

7 Q Any recognitions and awards you have
8 received?

9 A In 2009, I was selected by the Hawaii Society
10 of Professional Engineers as the engineer leader.

11 Q Okay. I would like to talk about the
12 Connections project. When did you first become
13 involved in that?

14 A Okay. The first document that we have in our
15 file was actually dated July of 2007. This particular
16 area, under Wil Chee Planning, I believe it was April
17 of 2009.

18 Q And could you describe the scope of work you
19 did for Connections?

20 A We did some conceptual civil engineering site
21 work on their campus plan.

22 Q And you are familiar with where we are in
23 terms of the stage of the project?

24 A Yes.

25 Q At this stage of the project, can you, to any

1 reasonable degree of engineering certainty, render an
2 exact opinion about water use estimates that were
3 submitted?

4 A Not at this time.

5 Q Why not?

6 A Well, because these are conceptual plans, and
7 we haven't spent any time on detailed civil engineering
8 work.

9 Q And what kind of detailed civil engineering
10 work would that involve?

11 A Well, infrastructure, site grading, all the
12 ones that we would normally proceed with, assuming that
13 we had all the approvals.

14 Q And where would that come in, in terms of the
15 plan or the process?

16 A Well, normally, this would be probably a year
17 or two down the road. I don't know exactly what the
18 timing is on this particular project, but significantly
19 beyond where we are right now.

20 Q Okay. So in terms of the current water
21 estimates, water use estimates, are you saying that
22 they are imprecise?

23 A No. What I am saying is they are precise
24 requirements, but we just not -- we just have not spent
25 the time to evaluate what all the different

1 alternatives are for providing water for this project.

2 Q And based on your training and experience,
3 what alternatives are available for Connections, given
4 its usage or anticipated usage if it exceeds County
5 limitations?

6 A Well, we, as an example -- I will take the
7 example of the National Park Service. We did a project
8 for the National Park Service where we won a Grand
9 Conceptor award. In that particular one, the park
10 service was hauling water up to the top of Haleakala to
11 provide toilet-flushing water and drinking water. And,
12 basically, we were able to do a catchment system which
13 included roofs in the parking lot and the roadways and
14 collected water, treated it to the point where we could
15 use it for flushing. And that significantly reduced
16 their irrigation as well as their toilet-flushing
17 requirements.

18 Q So given the engineering, you could work with
19 the school in terms of bringing -- so it doesn't have
20 to actually exceed the County limitations? That is
21 what you are saying?

22 A Yes.

23 Q Okay. There was a concern expressed that
24 when the first phase of the project is completed and
25 water use begins, water to the residential neighborhood

1 homes will diminish in terms of pressure and
2 availability. Based on your study and experience and
3 to a reasonable degree of engineering certainty, how
4 realistic is that concern?

5 A I don't believe it's realistic, because the
6 Department of Water Supply has the responsibility to
7 continue to provide domestic potable water to the area.

8 MR. HONG: Okay. Thank you, Mr. Hirota. No
9 further questions.

10 THE HEARINGS OFFICER: Mr. Siu, any
11 questions?

12 MR. SIU: None.

13 THE HEARINGS OFFICER: Ms. Self?

14 MS. SELF: No questions.

15 THE HEARINGS OFFICER: Mr. Gomes?

16 MR. GOMES: I have a few questions, please.

17

18 CROSS EXAMINATION

19 BY MR. GOMES:

20 Q Good afternoon, sir.

21 Have you been to the site?

22 A Yes.

23 Q Have you been to the alternate sites?

24 A When you say "the alternate sites" --

25 Q There was a list of alternate sites besides

1 this site that the school had chosen.

2 A Could you name them? Because I'm not quite
3 sure which ones they might be.

4 Q They are by tax map key.

5 A Unfortunately, I wouldn't know any property
6 by tax map key alone.

7 Q Okay. But do you recall visiting any other
8 site for the school that could have possibly been
9 chosen for the school?

10 A I don't recall visiting any other sites.

11 Q How many times have you been up to the site?

12 A Well, we worked on several projects in and
13 around Kaumana, so I have been up there many, many
14 times.

15 Q So you are familiar with Kaumana Drive?

16 A Yes.

17 Q How much rain would be required daily to
18 catch the amount of water that the school requires?

19 A I can't tell you at this time, because we
20 haven't gone through the hydrology to determine that
21 exclusively or in detail. We have some information,
22 but I don't recall what the number is.

23 MR. GOMES: Okay. That's it. Thank you very
24 much.

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EXAMINATION

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BY THE HEARINGS OFFICER:

Q Mr. Hirota, I have a couple of questions.

A Sure.

Q The Department of Water Supply has indicated there is some water available. Is that right?

A That is my understanding.

Q Okay. You don't know how much it is, though?

A My understanding is seven units or about 4200 gallons.

Q Seven units only?

A Yes.

Q But the amount of development really depends on how you design your project. Is that correct?

A That's my understanding.

Q Number of restrooms or kitchens or that type of thing. So you have to submit calculations to the Department of Water Supply?

A Yes.

Q And that would mean that you either have to find another water source if there is inadequate water or you would have to limit the project to the amount of available water?

A That's my understanding.

THE HEARINGS OFFICER: That's all the

1 questions I have.

2 Any other questions?

3 MR. HONG: Yes.

4

5 REDIRECT EXAMINATION

6 BY MR. HONG:

7 Q At what point in time would you actually do
8 that engineering or that task to determine whether or
9 not you have to limit the scope of the project?

10 A Assuming the project would go forward from
11 this point, we would spend additional time at some
12 point in, you know, the future.

13 Q So it is premature at this stage to have
14 those actual calculations?

15 A I believe so.

16 MR. HONG: All right. Thank you. Nothing
17 further.

18 THE HEARINGS OFFICER: Mr. Gomes, another
19 question?

20 MR. GOMES: Yeah.

21

22 RECROSS EXAMINATION

23 BY MR. GOMES:

24 Q I'm sorry, I forgot.

25 Are you familiar with the -- I don't know if

1 it's a rule, but the school has said they are not going
2 to build on the upper portion because of the cave
3 underneath the upper portion?

4 A I'm not familiar with all the details.

5 Q Okay. Is that something that you consider in
6 your line of work?

7 A When you say "consider"...

8 Q Do you investigate something like that?

9 A We do not do geotechnical investigations.

10 MR. GOMES: Okay. Thank you.

11 THE HEARINGS OFFICER: Thank you, Mr. Hirota.
12 You are excused.

13 THE WITNESS: Thank you.

14 MR. HONG: Thank you.

15 Our next witness is Kevin Louma. Our next
16 witness will be referring to Exhibit A-13.

17

18 KEVIN LOUMA,

19 having been first duly sworn to tell the truth, the
20 whole truth and nothing but the truth, was examined and
21 testified as follows:

22 THE HEARINGS OFFICER: Could you please state
23 your full name and your address, please.

24 THE WITNESS: Kevin Louma. My address in
25 Honolulu?

1 THE HEARINGS OFFICER: That's fine.

2 THE WITNESS: 2285 Girls road, Apartment 5B,
3 Honolulu, Hawaii, 96817.

4 THE HEARINGS OFFICER: Mr. Hong, before we
5 begin, I don't see Mr. Louma on your witness list. Is
6 he taking the place of another engineer?

7 MS. SELF: He's on here.

8 MR. HONG: We have him -- you may have gotten
9 a prior witness list where we submitted a witness list.
10 Ms. Self confirms that he is on our witness list.

11 MS. SELF: He is on the bottom of the first
12 page.

13 MR. HONG: L-o-u-m-a?

14 THE HEARINGS OFFICER: It is not on the one I
15 have. However, there were so many amended witness
16 lists that it could be on one of earlier ones.

17 Okay, that's fine.

18 MR. HONG: Thank you.

19

20 DIRECT EXAMINATION

21 BY MR. HONG:

22 Q Just so we're clear, could you spell the name
23 of the street that you live on?

24 A Girls Road?

25 Q Yeah.

1 A G-i-r-l-s.

2 Q Oh, okay. Sorry.

3 A Unusual.

4 Q Yeah. I thought --

5 A It's on Kamehameha Schools' campus, so...

6 Q Oh, okay. Sorry about that.

7 Exhibit A-13, is that a fair and accurate
8 copy of your current CV?

9 A That is correct.

10 Q Could you highlight your educational and
11 professional experience for us, please.

12 A Yes. Educational, as far as the college I
13 went to, university?

14 Q Yes.

15 A I got a B.S. in calculated engineering from
16 University of Michigan, and I am a licensed
17 professional engineer in the states of Hawaii and
18 California. My Hawaii P.E. license number is 13191,
19 and my California one is 32388. I am also a LEED
20 accredited professional with the USGBC, U.S. Green
21 Building Council.

22 Q Where are you presently employed?

23 A At WSP Hawaii.

24 Q And could you tell us what your duties and
25 responsibilities are?

1 A I am the vice president of the WSP Hawaii
2 office, which is a branch of the WSP Group, which is a
3 global corporation. And I am also the mechanical LEED
4 of the WSP Hawaii, the Honolulu office of WSP Group.

5 Q Okay. You are familiar with the scope of
6 work you performed for Connections School?

7 A That is correct.

8 Q Could you describe for us what other projects
9 you did and what you did for them similar to the scope
10 of work for Connections?

11 A So I have worked on many school projects,
12 some of them being the new Wailuku Elementary School.
13 That was an elementary school campus that was just
14 built in Wailuku, Maui. Also at Hawaii Baptist
15 Academy, they built a new building there. And Iolani
16 Schools in Honolulu, they built a new building there
17 which I did the water use calculations for.

18 I have, for Lanai High School, built a new
19 six-bedroom classroom there, which I did the Hawaii
20 water use calculations for that school as well, and
21 King Kekaulike, built -- or is in the process,
22 hopefully, of building a new auditorium where I had to
23 do the water use calculations for that expansion of the
24 campus in King Kekaulike.

25 Q Okay. Have you received any recognitions or

1 awards in your professional capacity?

2 A Well, the USGBC is -- being a LEED accredited
3 professional, but not really any awards, per se.

4 Q Okay. In terms of the Connections project,
5 when did you first become involved in that?

6 A I became involved back in -- October of 2012
7 was the initial correspondence that I have.

8 Q Okay. And describe the scope of work you did
9 for Connections.

10 A My scope of work was to do calculations for
11 water usage on campus under varying scenarios for the
12 client just to see, under dissonant circumstances, how
13 much water would be used on campus.

14 Q And let me refer you to the Planning
15 Commission record at pages 1678 through 1684. Okay.
16 So we have enlarged part of those charts at pages 1682
17 through 1684 of the EA report.

18 Could you describe for us the process you
19 used in coming up with these particular calculations?

20 A Yes. So speaking with the client, they gave
21 me different circumstances in finding out the water
22 usage under these different circumstances. I don't
23 know if you want to look at the -- 1683 right here.
24 Under this scenario, it takes in a student enrollment
25 381, full-time staff of 50, part-time staff of 17,

1 program client -- intergenerational program client is
2 25, intergenerational program staff of five.

3 So with those calculations, we initially
4 do -- okay -- kids in the classroom and using restrooms
5 and the staff using restrooms, we can pretty much do a
6 fairly accurate assumption, which is the same
7 calculation that we use with -- for LEED calculations
8 for the USGBC, where you take an assumption of how many
9 times the staff and students would use a restroom and
10 how many times they would use a sink.

11 And then those calculations are done there
12 with the assumption that with a low-flow water closet,
13 1.28 gallons per flush, urinal, .5 gallons per flush,
14 conventional lavatory, with them washing their hands
15 after they use the water closet, 15 seconds, and about
16 2 GPM or -- that's .5 GPM flow. Then the classroom
17 sink, assuming each kid would use the sink one time per
18 day for 15 seconds and then at about 2 GPM. Then you
19 get a total from that.

20 Then they also made the assumption that 30 of
21 those students would be boarding students, so using the
22 American Waterworks Association basis for how much
23 water a boarding student would use, which would vary
24 between 53 and 106, we had a calculation for minimum
25 usage and maximum usage, the minimum side being 1590

1 and the maximum side being 3180. And then, from that
2 basis, we came to a total campus use under those
3 circumstances. And this is without a cafeteria as
4 well.

5 And if you took out the boarding students,
6 the total would just be that 2035, because that would
7 be just students and faculty, no cafeteria there and
8 nobody showering on site. And this would not include
9 any water that is being used on site for irrigation
10 purposes or feeding animals. That would be assumed
11 that would be done from a non-potable source.

12 Q Okay. And then if you are looking at page
13 1684, what are you showing us here?

14 A So on this one, we are told that the project
15 would be done in phases, potentially, so they want us
16 to give different scenarios. Okay, it's just going to
17 be a high school. Only the high school is being built
18 initially. So we did the calculations with 107 high
19 school students. To my understanding, that is about
20 the current amount of high school students they
21 currently have. And then full-time staff and part-time
22 staff. Then we got a total using the same assumptions
23 for the water closet, gallons per flush urinal, gallons
24 per flush lavatory, GPM, and classroom GPM, came up
25 with 531 gallons per day with the 107 high school

1 students and about 13 full-time staff and about five
2 part-time staff.

3 And then we did the same thing with
4 intermediate school students and then the same thing
5 with the elementary school students and then
6 intergenerational clients, just -- and that total,
7 again, came to 2035 that we had last time. So that is
8 a breakdown if the campus was built just as a high
9 school now and then so on, so on, as it expanded.

10 Q Right.

11 You had talked about the standards you used,
12 the American --

13 A Waterworks Association.

14 Q And how often have you used those standards
15 before?

16 A In Honolulu County, they are not really as
17 concerned with the total water usage, but Maui is under
18 more drought situations that everyone is aware of, so
19 we had to use those calculations for the Wailuku
20 Elementary School and also for King Kekaulike, so on
21 two projects, but it is mostly depending on the water
22 available on the island. So we have used them at those
23 two projects.

24 Q Okay. And in terms of AWWA standards, you
25 have had training in their use and application?

1 A Not much training is necessary, because it's
2 just -- it's pretty much a chart that you just look at,
3 looking at -- it gives a heading. This is for -- well,
4 there's a schools group, and then it says for boarding
5 students, with cafeteria. So it is fairly basic.

6 Q Is it an industry standard?

7 A Yes.

8 Q And in terms of the opinions expressed in
9 your report, were those done to a reasonable degree of
10 engineering certainty?

11 A Yes, based on average usage of students and
12 faculty, they -- they seem like reasonable numbers.

13 Q Okay. At this stage of the project, can you,
14 to any reasonable degree of engineering certainty, give
15 an exact opinion about the water use?

16 A I cannot give an exact opinion about the
17 water use because even after -- even with the -- or the
18 campus is in the full throttle in the design phase, you
19 are not going to know exactly how someone is going to
20 operate a faucet when they are actually there on site,
21 because no one does everything exactly the same from
22 day to day, but these are, I feel, and also the USGBC,
23 which is the one who issues the LEED certification,
24 they feel these are appropriate assumptions for water
25 use of people; so that's a good criteria to go by.

1 Q Okay. And "USGBC" stands for what?

2 A United States Green Building Council.

3 Q What is that?

4 A They are the authority that hands out LEED
5 certifications for different properties; so it is the
6 main sustainable governmental organization in the
7 United States.

8 Q When you talk about LEED certification,
9 that's "LEED," correct?

10 A Yeah, Leadership in Energy Efficient Design.
11 Yeah, LEED.

12 Q In terms of actually getting to the point
13 where you can get more precise water use calculation,
14 would the actual type of fixtures that they want to
15 install be part of that equation, essentially?

16 A Yes. So if you looked at the previous chart
17 that we were looking at, so with the urinals at -- this
18 one is fine too. This is a little larger. So with the
19 urinals, you don't have to use a .5 gallons per flush
20 one. You could use a .125 gallons per flush one,
21 and the -- or water closet 1.28 is pretty much as good
22 as you can do. But you could actually do better than
23 what they are showing there. Also, in a classroom
24 sink, you wouldn't necessarily have to use a 2 GPM
25 flow. You could put an aerator on there and have it be

1 1.0 GPM.

2 So there are other measures that you could do
3 to reduce the water consumption. Also, if there was
4 some rainwater harvesting on site, we could use that
5 for flushing of toilets. And you can see by the chart
6 there, the flush of the water closets is the main usage
7 of water on site, so you could reduce it drastically by
8 doing those type of measures. I know in Haleakala and
9 other areas, they do all the flushing by that type of
10 method.

11 So there's other ways that you could even
12 reduce that total, that could be vetted during the
13 design phase, to meet whatever the Department of Water
14 Supply is requiring.

15 Q And would it be fair to say at this stage of
16 the project, the design project, what you are talking
17 about in terms of the actual fixtures in calculating
18 that into the estimate, it is too early to do that?

19 A We are just making assumptions right now. So
20 during the design phase, you really nail down what
21 exact fixtures you are going to use and the exact
22 gallons per flush, or GPM, and we could tailor that to
23 whatever the Department of Water Supply requires.

24 MR. HONG: Okay. Thank you. No further
25 questions.

1 THE HEARINGS OFFICER: Mr. Siu?

2 MR. SIU: I have nothing.

3 MS. SELF: No questions.

4 THE HEARINGS OFFICER: Mr. Gomes?

5 MR. GOMES: I have a few questions, please.

6

7

CROSS EXAMINATION

8 BY MR. GOMES:

9 Q As far as you know, is catchment okay for
10 consumption --

11 A No --

12 Q -- in a public school?

13 A No, it would not be. So we wouldn't be using
14 it for the lavatory closets or the kitchen sink
15 faucets. It would only be used for flushing purposes.

16 Q Could they use it for gardening, like running
17 a garden hose?

18 A You could use it for irrigation purposes,
19 yes.

20 Q Or for hosing down the horse stables?

21 A You could use it for that purposes.

22 Q And is it possible that if a child is using
23 it to wash it down and gets thirsty and he accidentally
24 drinks from the hose, he could get sick?

25 A That would be possible. They definitely need

1 to be -- there would be training, or if it is deemed as
2 too dangerous, then they should avoid that.

3 Q As far as you know, are there any plans to
4 use catchment water for consumption?

5 A That part of the design hasn't been moved
6 forward yet, so it has been talked about, but no
7 definitive decisions have been made on that at this
8 point.

9 Q And when you do your numbers, do you consider
10 kids like to play with water in the bathroom and they
11 often leave the sink running and stuff like that?

12 A We only do numbers on the typical operation,
13 so it is possible during -- a kid could just turn a
14 faucet on. One thing you could do to avoid that is
15 using a metering faucet that would shut off after ten
16 seconds or five seconds, whatever you want to set it
17 to; but if you didn't use a metering faucet, they could
18 leave a faucet on, or they could just keep on hitting
19 it just because they are screwing around. So that
20 would be unusual behavior, but that is possible.

21 Q Okay.

22 A So that is not -- but that is not taken into
23 consideration with those calculations.

24 Q Are you familiar with boarding at a school?

25 A Yes. I actually live on Kamehameha School

1 campus.

2 Q So have you ever seen boarders waste water in
3 showers on campus?

4 A They are actually pretty good there, and
5 there is good oversight, so the main thing is good
6 oversight, but of course kids have left showers on; so
7 it is somewhat -- it can happen.

8 Q As far as funding goes, is it okay to ask how
9 much was spent on your company, how much you charged
10 the school so far?

11 A It's -- I believe it is. It is under \$5,000.

12 Q And do you intend to stay with the project
13 throughout the 25 years of construction?

14 MR. HONG: You know, I object. It misstates
15 facts in evidence. Nobody said 25 years.

16 THE HEARINGS OFFICER: Would you be more
17 specific, Mr. Gomes?

18 BY MR. GOMES:

19 Q Do you intend to stay with the project until
20 it's done?

21 A I would be on the project until it is fully
22 commissioned and then turned over to the client, but I
23 would not, well, stay on -- after that, it would be on
24 an as-needed basis.

25 Q Okay. And is this your first project where

1 you are building a school of this magnitude, from
2 kindergarten through 12th?

3 A Well, the Wailuku Elementary School was -- I
4 mean, it's much larger than this one, but it is only K
5 through 5th grade; so while there really isn't any
6 other campus in Hawaii that I am aware -- well, yeah, I
7 guess Punahou and Iolani, but no new ones are being
8 built that are K through 12 in near recent history that
9 I am aware of. But I have been -- like Wailuku
10 Elementary School was -- as far as students goes, it
11 would be much larger than this one.

12 Q But K through 12?

13 A Yeah, but not K through 12.

14 Q This is your first one?

15 A Yeah.

16 MR. GOMES: No further questions. Thank you.

17 THE HEARINGS OFFICER: I have a few
18 questions.

19

20 EXAMINATION

21 BY THE HEARINGS OFFICER:

22 Q First of all, Mr. Louma, is there a reason
23 why you didn't include cafeteria and showers, like for
24 a gym, in your calculations?

25 A We did do one, if you look on page 1682. We

1 didn't have it up here, but I did it. I did do one
2 with the cafeteria using the American Waterworks
3 Association standard. So this -- page 1682. So there
4 is a calculation there.

5 Q So you are looking at between 68,000 --

6 A 6,800.

7 Q -- and 348 gallons --

8 A Yeah.

9 Q -- and 10,000 gallons a day?

10 A Yeah, with -- if you are going to have a
11 cafeteria and boarding. So, yeah, they had me do
12 multiple scenarios. The ones that were presented here
13 were only a couple of the options.

14 Q Also, is your work mostly with water
15 fixtures, the engineering for the water fixtures for a
16 project, or do you do other things with LEED too?

17 A I would do -- well, it's the mechanical --
18 the air conditioning system, the plumbing system, which
19 includes the fixtures, and the fire sprinkler design
20 within the building.

21 Q So your company is limited to that?

22 A Well, my company also can do the electrical
23 design as well, so we can do many different services;
24 but my scope, being the mechanical engineer/head of the
25 mechanical department office would only include air

1 conditioning, plumbing, and fire protection.

2 Q And the other things you were recommending
3 with the low-flow water closet, urinal, the type of
4 fixtures and plumbing you are recommending, have you
5 used that in other projects?

6 A Yes. And, actually, at Wailuku Elementary
7 School, we actually used waterless urinals, so those
8 don't use any flushing, but it's slightly more
9 maintenance; but we have the pint flush, .125. That is
10 the only thing I really do specify now because it works
11 just as well as a .5-gallons per flush; but we are just
12 being slightly conservative in these numbers that we
13 are doing here.

14 Q So these kind of fixtures, in your opinion,
15 do work?

16 A Yeah. Industry standards. Correct.

17 THE HEARINGS OFFICER: Okay. Mr. Hong, do
18 you have any more questions?

19 MR. HONG: Nothing further.

20 THE HEARINGS OFFICER: Mr. Gomes, go ahead.

21

22 RE CROSS EXAMINATION

23 BY MR. GOMES:

24 Q As far as you know, are the restrooms set up
25 to where the seniors would be using the same restrooms

1 as kindergarteners?

2 A I am not aware of the entire layout right
3 now, because it's so early in the design phase, exactly
4 how the restroom situation would be split up.

5 Q Would that make a difference in water usage,
6 if there were more restrooms, to divide them?

7 A Our calculations are only done on the people
8 quantity and the fixtures available, so how the
9 restrooms are shared, unless it was -- unless we had it
10 set up so only the seniors could use this one and we
11 had higher-flow fixtures or something, but it's --
12 currently, it is just based on the students and faculty
13 and assumed common-type fixtures, common-type water
14 closet, common-type lav and sink for all -- all faculty
15 and students.

16 Q Okay. Thank you very much.

17 A Yep.

18 THE HEARINGS OFFICER: Thank you. You are
19 excused.

20 THE WITNESS: Thank you.

21 THE HEARINGS OFFICER: Mr. Hong, I just have
22 a point of clarification. Mr. Yoshioka is asking if he
23 is supposed to be called today. I thought he was
24 subpoenaed for tomorrow. Is that correct?

25 MR. HONG: I thought he was subpoenaed for

1 tomorrow also.

2 THE HEARINGS OFFICER: So he can leave today
3 and come back tomorrow.

4 MR. HONG: Absolutely.

5 THE HEARINGS OFFICER: And what about
6 Mr. Yokota.

7 MR. HONG: Do we have Mr. Yokota scheduled
8 for --

9 THE HEARINGS OFFICER: And I think part of
10 the confusion is there have been subpoenas and amended
11 subpoenas served, so people are a little confused.

12 MR. HONG: We have Mr. Yokota scheduled for
13 8:00 tomorrow morning.

14 THE HEARINGS OFFICER: I just suspect
15 that amended subpoenas were served, so there is some
16 confusion.

17 MR. HONG: Right.

18 THE HEARINGS OFFICER: So they can come back
19 tomorrow morning. Thank you.

20 MR. HONG: Thank you.

21 And our next witness is Ron Thiel.

22 . . .

23 . . .

24 . . .

25 . . .

1 RON THIEL,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined and
4 testified as follows:

5 THE HEARINGS OFFICER: Thank you.

6 Can you please state your full name and
7 provide us with your address.

8 THE WITNESS: Speak into this?

9 MR. HONG: Yes.

10 THE HEARINGS OFFICER: Yes, speak into the
11 microphone.

12 THE WITNESS: Is it on?

13 MR. HONG: Yes.

14 THE WITNESS: My name is Ron Thiel. I'm
15 chief of the Traffic Division for the County of
16 Hawai'i.

17

18 DIRECT EXAMINATION

19 BY MR. HONG:

20 Q Sir, would you give us a highlight of your
21 educational and professional experience, please.

22 A I have got a Bachelor of Science degree in
23 civil engineering from University of Hawaii back in
24 1960.

25 My experience?

1 Q Yes.

2 A I have 49 years of professional engineering
3 experience as of last month. I'm going to celebrate my
4 50th next year with a big party.

5 The experience in traffic engineering?

6 Q Yes, please.

7 A I started -- civil engineering covers the
8 topic of disciplines. Even in college, we took traffic
9 engineering and traffic transportation classes. I
10 dealt with traffic on and off through the years, but I
11 finally joined what was called the Traffic Engineering
12 Division with the State of Alaska Department of
13 Transportation 1994, and I have been practicing traffic
14 engineering ever since except one year -- actually, one
15 and a half years, when I was working in Kona for a
16 engineering department.

17 Q Okay. And have you been certified in the
18 area of traffic engineering?

19 A Well, there isn't a certification. There is
20 something called the PTOE, professional -- I can't
21 remember what it all stands for -- professional traffic
22 operations engineer. But most traffic engineers come
23 from general practicing in traffic and work their way
24 up through the -- through that discipline; and I'm one
25 of those. I'm basically a traditional traffic

1 engineer, self-taught, and experienced in that
2 discipline.

3 Q Okay. In terms of the Connections project,
4 when did you first become aware of that project?

5 A I believe it was earlier 2010. That was
6 before I got the TIAR, the engineering document.

7 Q That would be Mr. Phillip Rowell?

8 A Yes.

9 Q Okay. Let me refer you to the Planning
10 Commission record at pages 773 through 787.

11 A Okay.

12 Q Have you reviewed the County of Hawai'i
13 Planning Department recommendations at those pages, 773
14 through 787, before your testimony today?

15 A Not just recently. I remember them from
16 before, but I haven't gone over them in details since
17 the last hearing.

18 Q Okay. Well, there were some revised
19 recommendations at pages 881. And these are the
20 revised recommendations from the Planning Department,
21 pages 881 through 896 of the Planning Commission
22 record.

23 Have you reviewed those revised
24 recommendations before the hearing today?

25 A No, I did not.

1 Q Okay. And in terms of the special permit
2 application which is at pages 1227 through 1231, did
3 you review the special permit application?

4 A No, I didn't. And I thought we were going to
5 be reviewing them in house -- or at this time, so I
6 didn't go over them and review.

7 Q Well, in terms of the EA, environmental
8 assessment, with respect to the TIAR, you reviewed the
9 TIAR?

10 A Yes, I did.

11 Q And I reference pages 131 through 135 of the
12 Planning Commission record. There is a page 135,
13 section 3.12.1. 3.12.1. Sorry, got the wrong page.

14 A Yes.

15 Q That begins at page 132. I apologize.

16 In terms of those recommendations, your
17 testimony before the Planning Commission was that you
18 agreed with those recommendations?

19 A Yes, that is correct.

20 Q And as you sit here today, are there any
21 changes in your opinion?

22 A No.

23 Q In terms of a traffic management plan, why do
24 you think that was important in terms of your
25 evaluation and recommendation?

1 A That was one of -- the third comment we made
2 when we reviewed the TIAR the first time, and this is
3 the second TIAR that I have added that to. The first
4 one was Parker School up in Waimea. And this is
5 something that I am trying to add to the TIAR, that
6 gives us the flexibility of reviewing the traffic
7 congestion throughout the years as the facility
8 continues, because things always change. And the most
9 important thing that we try to deal with is congestion
10 out on the public right-of-ways. So if there is any
11 change that is unforeseen that comes up, we want to be
12 able to work with the group, whoever has the business,
13 and resolve these before they get out in the community
14 or cause safety issues.

15 Q And explain to me how that would work, this
16 traffic management plan or this concept. So the
17 project is already up and running, or at least a
18 portion of it?

19 A Yes.

20 The one we have in place is working -- only
21 had one that's working. And I can tell you a little
22 bit about that. Every year, the individual gives a
23 report to the Traffic Safety Committee meeting up in
24 Waimea and talks about any issues about traffic that
25 has occurred over the past year or what they have been

1 doing. They talked about -- and it would be the same
2 as this thing where we talked about initiating more
3 busing. They talked about different types of
4 carpooling and things like that, things to try to
5 reduce the traffic and congestion. And I meet with
6 them. If I have a problem, I go to the organization
7 and discuss what the problem is; and, basically, so
8 far, we have been able to resolve it each time on a
9 very quiet, friendly basis.

10 Q So you are looking at this traffic management
11 plan as a device to resolve any ongoing problems during
12 the lifetime of the project?

13 A Yes, that is correct. And the problems come
14 from constituents in the area, come from the facility
15 itself, comes from our observations. It comes from any
16 direction whatsoever. And it's new. It hasn't been --
17 well, the first one that I got in Waimea I think was
18 the first one in the entire state.

19 Q And to your knowledge, Connections has agreed
20 to incorporate that as part of its plan, right?

21 A Yes. There are details that need to be
22 worked out, no agreement on those, but it is agreed to
23 work out a traffic management plan.

24 Q Okay. Do you know Phillip Rowell?

25 A Yes, I do.

1 Q How many TIARs have you reviewed for
2 Mr. Rowell?

3 A I'm not quite sure. I think -- I think
4 three. But I was trying to find that information, and
5 I know of two for sure. I think there was a third one.

6 Q Okay. Have you been able to form an opinion
7 concerning Mr. Rowell's professionalism and quality of
8 work?

9 A The way I operate, most of these traffic
10 engineers come to me before they ever start a TIAR to
11 ask what type of a scope that I am looking for. And he
12 came to me previously, several years before this,
13 actually, and we discussed -- we discussed philosophy
14 in traffic engineering, what wants to be shown in a
15 TIAR.

16 The State of Hawaii, or the County, doesn't
17 really have standards for TIARs. I have a set of
18 standards I work with in other jurisdictions I was at
19 in Anchorage, Alaska before I came here. I would share
20 those with him, and I would tell him basically what
21 we're looking for, and it sets a scope and a procedure
22 and an outline to carry forth.

23 Q And you gave those instructions to
24 Mr. Rowell?

25 A Yes, I did.

1 Q Have you ever spoken about those instructions
2 to an individual named Melvin, or Mel, Yokota?

3 A I don't recognize the name, but who is he
4 associated with?

5 Q He is a P.E. associated with a company called
6 HHMI Corporation.

7 A I can't say for sure.

8 Q Okay. But it doesn't sound familiar, the
9 name?

10 A No.

11 Q Okay. In terms of the TIAR that Mr. Rowell
12 submitted to you, did you see any deficiencies or
13 shortcomings?

14 A No, I didn't. I actually saw a little
15 overconservative in one aspect of it.

16 Q What was that?

17 A His TIAR didn't assume that there would be
18 use of buses, because he wasn't quite sure when he
19 started, and then kind of towards the end, that charter
20 school was committing to using buses. So his entire
21 TIAR is based on the traffic generated by the parents.

22 Q Okay. And in terms of the findings of
23 Mr. Rowell's TIAR, did you agree with his findings?

24 A Yes, I did.

25 Q How many TIARs have you reviewed in the

1 course of your career with the County?

2 A Well, this morning, I counted 57 of them on
3 my shelf. I know I have done over 100. I don't keep
4 all of them. And a lot of them, people contact me --
5 engineers contact me, and we discuss the issues, and I
6 never see a TIAR. They didn't -- they don't -- I mean,
7 they were just fishing for information, trying to
8 figure out if the project would go through, and it
9 didn't go through. So well over 100 projects for sure
10 that I have worked on.

11 Q Okay. And in terms of -- let me ask you this
12 question. Can an electrical engineer submit a TIAR?

13 A I'm hesitating, because I know in Alaska they
14 could, but here in Hawaii, I'm not -- I'm not sure if
15 they can. I don't know specifically.

16 Traffic TIARs are generally done by engineers
17 who, no matter what the discipline is, have experience
18 in that. I can't really answer your question.

19 Q Okay. I appreciate that.

20 So in your opinion, based on your experience,
21 did Mr. Rowell's TIAR meet any of your professional
22 standards and expectations as the traffic administrator
23 for the County?

24 A Yes, it did.

25 MR. HONG: Okay. Thank you, Mr. Thiel. No

1 further questions.

2 MR. SIU: I have nothing.

3 THE HEARINGS OFFICER: Ms. Self?

4 MS. SELF: I don't have any questions at this
5 time.

6 THE HEARINGS OFFICER: Mr. Gomes?

7

8 CROSS EXAMINATION

9 BY MR. GOMES:

10 Q Hi, Mr. Thiel.

11 A Yes.

12 Q Are you familiar with Kaumana Drive?

13 A Yes, I am.

14 Q In your opinion, should it be repaved?

15 A That is the access road into --

16 Q Kaumana Drive.

17 A Off of Kaumana?

18 Oh, you said "Kaumana"?

19 Q Kaumana Drive.

20 A Oh. Oh, pardon me. I thought you said

21 "Kalani."

22 That is not my expertise. You would have to
23 talk to the Highway Division.

24 Q Oh, no, just your opinion. You are familiar
25 with the road, right? You have driven it? Have you

1 ever driven on the road and thought they need to repave
2 this thing?

3 A Well, I am not to answer that question. From
4 a traffic engineering point of view, I don't deal with
5 the structure of the pavement.

6 Q Okay. And the police department had
7 suggested sidewalks be put in on Edita Street. Do you
8 agree with that?

9 A Sidewalks. There are a lot of communities
10 that don't want sidewalks. Sidewalks have been
11 established by zoning and by the wishes of the local
12 people, and I don't know what the wishes are there. As
13 far as access goes, there are shoulders, room for
14 people to walk on the shoulders of that area. In a lot
15 of places, they use shoulders instead of sidewalks,
16 pedestrians use shoulders instead of sidewalks.

17 Q Right.

18 The police department suggested it because
19 there is grass and muddy areas next to the road, and he
20 thought the kids wouldn't want to walk on the grass and
21 walk on the road was my understanding.

22 A I see.

23 THE HEARINGS OFFICER: Mr. Gomes, you have to
24 ask questions, not testify.

25 MR. GOMES: I'm sorry.

1 BY MR. GOMES:

2 Q Do you think Phillip Rowell did not suggest
3 sidewalks because he's overlooked the need for
4 sidewalks in the area or he knew that there would be no
5 kids walking to school?

6 A I have no idea why he wouldn't say anything
7 about sidewalks.

8 I'm looking at a map -- an overview map
9 because I think the narrow part you were talking about
10 is not at the site, but towards Kaumana Drive. That's
11 the portion?

12 Q Yes.

13 A Not in front of the site? Because there's
14 wide shoulders in front of the site.

15 Q Right.

16 A I don't know how wide that pavement is at
17 this point in time. I don't know if there's sufficient
18 shoulders for the people to walk on or not.

19 Q Okay. And is there some kind of college
20 degree anyone can acquire to become a traffic
21 specialist?

22 A Yes. It's given a label PTOE, professional
23 transportation operation engineer.

24 MR. GOMES: Thank you very much.

25 THE HEARINGS OFFICER: Mr. Hong, any

1 redirect?

2 MR. HONG: No, thank you.

3

4 EXAMINATION

5 BY THE HEARINGS OFFICER:

6 Q Mr. Thiel, I have a few questions.

7 First of all, how long have you worked for
8 the County of Hawai'i in your position right now?

9 A I started chief of Traffic Division in 2005,
10 June 16th.

11 Q Did you work for Public Works before that in
12 this county?

13 A Yes, I did. I worked for them exactly two
14 years before that, from June 16th, 2003 to June 15th of
15 2005.

16 Q Okay. Also in your position, you had to
17 review this application. Isn't that correct? The
18 Planning Department sent it to your division for
19 comments?

20 A Yes.

21 When you say "application," we look at -- I
22 don't know if we see the whole application. We look at
23 the Traffic Impact Analysis Report, and we look at some
24 of these other documents that I was shown.

25 Q So just so I understand it, your division is

1 responsible for the amount of traffic -- whether any
2 improvements are required because of the traffic
3 because of the proposed project?

4 A No.

5 Q No? What is your division responsible for?

6 A We review only and make recommendations to
7 the Planning Department, and we make recommendations
8 from the traffic viewpoint. The Highway -- or the
9 Engineering Division of DPW makes comments based on the
10 geometrics and the paving and the sidewalks and things
11 like that.

12 Q So you don't comment on sidewalks, then?

13 A No, not normally.

14 Q All right. What were your recommendations
15 with this application?

16 A We had three comments in the review. Is that
17 what you would like me to refer to?

18 Q Yes.

19 A And those three comments -- they are in the
20 record somewhere.

21 Well, one of them was the traffic management
22 plan, and the others were -- had the housekeeping
23 comments, if I remember right. But I don't -- I don't
24 seem to have that transmittal.

25 Q So in your comments, is it correct that you

1 didn't recommend any turn lanes or turn pockets on
2 Kaumana Drive because of the traffic generated --

3 A I believe we did. We recommended a left turn
4 pocket.

5 Q You did recommend a left turn pocket?

6 A I believe so, but I would sure like to see
7 that document that we sent. I thought I had it here.

8 Q And you have no idea whether the Planning
9 Department incorporated those comments into their
10 recommendations, do you?

11 A No, I -- I thought they did, but I can't say
12 for sure.

13 Are you able to hear me with this mic on the
14 table?

15 Q Yes.

16 A Oh, okay.

17 MS. SELF: If I may interject, it would be an
18 exhibit to the background report, and I'm looking for
19 it right now.

20 BY THE HEARINGS OFFICER:

21 Q Mr. Thiel, since Ms. Self is looking for
22 that, let me just go into one of your recommendations
23 is a traffic management plan?

24 A Yes.

25 Q And that is something that is a long-term

1 kind of plan where the owner of the project meets
2 periodically and reports about the traffic. Is that
3 right? Or puts something together?

4 A Yes, that is correct.

5 Q And how long is this supposed to last, the
6 traffic management plan?

7 A Forever.

8 Q So hypothetically, if a project is ten years
9 down the road and if a project has created an enormous
10 traffic problem and bottleneck so that improvements
11 would be required, how can you enforce the owner making
12 those improvements ten years after the permit is
13 granted?

14 A Usually what I am looking at in the traffic
15 management plan doesn't require geometric improvements.
16 It is more dealing with the traffic, making sure the
17 parent pick-up and drop-off facility is working, has to
18 do with the number of cars that are coming in, whether
19 there's carpools, things like that. I'm not looking at
20 any geometric improvements that you are referring to.

21 Q So, for example, you wouldn't, in your
22 traffic management plan, at some point require a
23 traffic light to be installed?

24 A Well, I have never thought of that before.
25 That is a good question. I think that would be over

1 and above -- because a traffic light would be generated
2 by lots of different actions, not just what one
3 facility...

4 Q Sometimes it is one facility, though, causing
5 most of the bottleneck?

6 A Well, yes, but usually in a TIAR, that is
7 identified up front and recommendations are made in
8 that up front. There's different what we call design
9 horizon years on projects, and we would just look for
10 that design horizon year for improvements. The traffic
11 plan is -- the traffic management plan is different.
12 As far as I'm concerned, it is ongoing; but it has to
13 do with the circulation of traffic, the way it is
14 handled, not the improvements.

15 Q What if, ten years down the road, the owner
16 doesn't want to do anything involved with the traffic
17 management plan? How does it get enforced?

18 A Well, it's of record. It's a requirement of
19 the zoning. We have the use of enforcing the Zoning
20 Department.

21 MR. HONG: I would just note for the record,
22 I think we are referring to page 733.

23 THE WITNESS: So we made five
24 recommendations. Do you want me to read them off, the
25 comments that we made?

1 BY THE HEARINGS OFFICER:

2 Q Sure.

3 A 1. Project Driveway/Roads. Parking and
4 loading area shall be designed so as all school traffic
5 and possible congestion at project site does not
6 overflow onto county roads.

7 Now, that is a real key issue that determines
8 what is going to happen for many years out. We can
9 determine that up front; so we are not expecting that
10 that's addressed, to have geometric improvements like
11 you are talking about.

12 Q So, in other words, if this is done, then you
13 won't have a situation like Hilo High when the kids are
14 getting out and the traffic is backed up for three
15 blocks?

16 A I wouldn't compare this to Hilo High. That
17 is a state function -- or a state organization, and we
18 have no control over what they do whatsoever. We don't
19 even have a chance to review their plans.

20 Q I'm understanding that; but what you are
21 saying is if this recommendation is followed, then you
22 shouldn't have the traffic jam that you have at Hilo
23 High. Is that what you are saying?

24 A Yes, that is correct.

25 Q Okay.

1 A 2. Alternative 1 and preferred alternative
2 would be ideal in that the project is limited to one
3 access point.

4 And that is what I understand we were just
5 agreeing with, the recommendation in the TIAR.

6 3. A school zone treatment shall be
7 incorporated into the project.

8 And that has to do with identifying the
9 school zone, putting signs up, marking the school
10 zones, and sometimes flashing lights.

11 4. The Edita Street community should be
12 contacted and discuss the possibility of incorporating
13 traffic coming into the project.

14 In other words, there are different aspects
15 like -- like signage and striping and other things that
16 address the traffic, to keep the traffic going to the
17 posted speed.

18 And then No. 5 is the traffic management
19 plan.

20 THE HEARINGS OFFICER: Thank you. Thank you
21 for that information.

22 Mr. Hong, do you have any further questions
23 based on this?

24 MR. HONG: Yes, I do.

25

REDIRECT EXAMINATION

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BY MR. HONG:

Q If you could turn to page 1228 of the Planning Commission.

So if you look at page 1228, which is revised recommendations of the Planning Department. I would like you to focus on condition 7 through 12.

A Okay.

Q And in terms of 7 through 12, my understanding is -- well, do you agree with those recommendations 7 through 12?

A I agree with No. 7 -- well, these aren't my recommendations. These are coming from the Department of Public Works, though.

Q Right.

A Okay. No. 8 -- I agree with No. 8. I agree with No. 9. And No. 10 is providing shoulders, not sidewalks, and I agree with that.

Is that it?

Q Then 11 and 12, please.

A No. 11 is the traffic management plan. I think that's pretty close to what we said. Let me read it. Yes, I agree with No. 11.

And No. 12. And that's our most important one, No. 12. That's making sure everything is confined

1 within the project limits. I agree with No. 12.

2 MR. HONG: Thank you.

3 THE HEARINGS OFFICER: Mr. Siu, anything
4 further?

5 MR. SIU: Nothing.

6 THE HEARINGS OFFICER: Ms. Self?

7 MS. SELF: Nothing.

8 THE HEARINGS OFFICER: Mr. Gomes?

9 MR. GOMES: I have a couple more, please.

10

11 RE CROSS EXAMINATION

12 BY MR. GOMES:

13 Q Mr. Thiel, Dr. Henry Lee Loy turned in
14 written testimony stating that the TIAR was done in May
15 of 2009. Does that make it outdated since it has been
16 so long ago and different communities have popped up
17 along Kaumana Drive?

18 A Well, normally I would say yes, but you know,
19 we had an economic turndown from 2009. The traffic
20 volumes went up to about 2009, and then they started
21 plummeting, and we are just getting back to about where
22 they were, and maybe just a little bit higher now; so I
23 would say, given any unforeseen conditions, it would be
24 pretty close to the way it is now.

25 I just did a review on another project of

1 this very nature to determine what the volumes were
2 along the Hamakua Coast, and I didn't see too much of a
3 change in volumes.

4 Q Okay. He also states that because the study
5 was done on one day, May 28th, that University of
6 Hawaii-Hilo, Hawaii Community College, and Kamehameha
7 Schools Hawaii campus were out and so over 7,000
8 students were not in school that day.

9 Would that make a difference in the TIAR?

10 A It could make a difference. It actually
11 could make it even worse. They might have even been on
12 this street instead of at school.

13 Let me give you just a little bit of history
14 on TIARs. We generally look at what is called average
15 daily traffic -- average annual daily traffic. We try
16 to determine the annual traffic over the entire year.
17 And counts were taken on individual days, but we have
18 permanent traffic records that tell us what the
19 traffic -- how the traffic varies from one day to the
20 next, whether it's Monday or Friday, what time of the
21 year, what month, what week, what activities. And we
22 can adjust all that information. And, generally, the
23 information you will see in these are adjusted to the
24 AADT, the average annual daily traffic. So it doesn't
25 make any difference what year, what day, what week the

1 traffic counts are taken; it should all be adjusted.

2 After it's adjusted, then we start rounding
3 off figures and information and looking at a.m. peak
4 hour and p.m. peak hour. And the peak hour is
5 generally the criteria we look at when determining the
6 level of service. The level of service in this area is
7 running A and B, which is a very lively of service.
8 You can go down to a C or a D, which increases the
9 delay time probably about three times, and still have
10 adequate functioning.

11 What normal people see that contradicts the
12 TIARs is that day, at that particular moment, when
13 everything went bad and you have an incredible amount
14 of traffic in the road. And we call those peak
15 conditions. I don't even know if we have a name for
16 them. But there will be maybe a five-minute period
17 where you have a lot of congestion, a lot of things
18 going on. We don't design to those.

19 We generally design -- all of our criteria
20 generally looks at designing the 85 percent of the
21 traffic, 85 percent of everything that you see out
22 there. And a lot of times, the people are questioning
23 that upper 15 percent. Everything is a generality.
24 This is a best-guess scenario. That is why I like the
25 traffic management plan, because it allows us to look

1 at it afterwards.

2 But the best-guess scenario is rounded off to
3 give you a generalized piece of information. And I
4 have seen time and time again where the public have
5 come in and said, "You didn't do this at this specific
6 date at this specific condition." And that is not what
7 these are intended to represent.

8 Q Thank you.

9 As far as the busing goes, have you seen the
10 bus routes?

11 A No. No, I haven't. This TIAR didn't
12 identify buses. And when I was looking at it, the
13 traffic on that road, Edita Road, caused by the schools
14 increased the traffic about 20 percent. That is not in
15 the TIAR. But I didn't see a bus route because there
16 wasn't talk about bus utilization at that time.

17 Q So if we go by that TIAR, and considering
18 that 50 percent of the students come from the Puna
19 District, if they weren't being bussed, does the study
20 need to be further up or down Kaumana Drive? Does that
21 make a difference if they are coming from a farther
22 area?

23 A Well, one of the things that I did to test
24 the TIAR is to look at the current traffic counts to
25 see if the counts that I was seeing in the TIAR were

1 actually commensurate with the area, with the time.
2 And I saw very close similarities in what I saw from
3 state traffic permanent counters -- not permanent
4 counters, but counters and what the traffic engineer
5 gave.

6 The amount of traffic on that road at any
7 time is somewhere around, I think, 50 cars, and there
8 are 2,200 cars on Kaumana, so we are looking at 2 1/2
9 percent increase. A 2 1/2 percent increase, I wouldn't
10 be looking at a study up and down Kaumana.

11 Q Okay. And the TIAR is only taking into
12 consideration the number of cars, not the type of
13 driver, like I'm a parent dropping off my kid, I'm in a
14 hurry, and I got to get to work. That is not
15 considered, right? It's just the number of cars on the
16 road?

17 A Well, yes and no. It talks about the number
18 of cars, but when we start looking at the parent
19 pick-up and drop-off facility and the way that the
20 plans are laid out, we start looking at the very thing
21 that you mentioned; and we know there are things that
22 we need to look at that can address that and solve the
23 problem that you are talking about, which is the
24 hurriedness of the parents.

25 Q And currently, the school only has one point

1 for entrance and exit. In your professional opinion,
2 should they have a second point for exit, say a single
3 entrance point and a different exit point?

4 A I don't think they need to have a second one.
5 They are talking about volumes of, at the most, 29 cars
6 in the -- wait a minute. That is coming out of Edita.
7 I don't know if I have the right one for -- let's see.
8 Well, I do not see sufficient volumes that would cause
9 the creation of a second driveway.

10 MR. GOMES: Okay. Thank you very much.

11 THE HEARINGS OFFICER: Thank you, Mr. Thiel.
12 You are excused.

13 MR. HONG: Thank you.

14 THE HEARINGS OFFICER: Why don't we take a
15 ten-minute recess.

16 (Recess ensued from 2:18 p.m. to 2:28 p.m.)

17 THE HEARINGS OFFICER: We are back on the
18 record, and I will note the presence of all the
19 parties.

20 Before we begin with the next witness, this
21 morning, before we started with witnesses, we talked
22 about a continued hearing for the purpose of -- there
23 are two witnesses that Mr. Hong has and also to the
24 site visit. So the Commission staff has reserved this
25 room for November 12th. We will begin at 9:00, and

1 because it's a public hearing, we will take testimony
2 at 9:00 a.m. if there's public testimony. We will then
3 go and have a site visit on the property, and if the
4 parties feel testimony is necessary, we will have a
5 court reporter there, and then we will come back here
6 and finish up with the last of the evidence.

7 Is that acceptable, Mr. Hong?

8 MR. HONG: That's fine, thank you.

9 THE HEARINGS OFFICER: Mr. Siu?

10 MR. SIU: That's correct. That's correct.

11 THE HEARINGS OFFICER: Ms. Self?

12 MS. SELF: Yeah.

13 THE HEARINGS OFFICER: And, Mr. Gomes, is
14 that okay?

15 MR. GOMES: Yes, ma'am.

16 THE HEARINGS OFFICER: Okay. Then let's
17 proceed with the next witness.

18 MR. HONG: Our next witness is Kurt Inaba.

19 THE HEARINGS OFFICER: Mr. Inaba, do you want
20 to raise your hand?

21

22 KURT INOUYE INABA,
23 having been first duly sworn to tell the truth, the
24 whole truth and nothing but the truth, was examined and
25 testified as follows:

1 THE HEARINGS OFFICER: Thank you.

2 Can you state your full name and provide us
3 with your address.

4 THE WITNESS: Kurt Inouye Inaba, 18 Ki'e
5 Place, Hilo, Hawaii, 96720.

6

7 DIRECT EXAMINATION

8 BY MR. HONG:

9 Q Okay. Mr. Inaba, could you go over your
10 educational and professional background, please.

11 A I graduated from the University of Hawaii at
12 Manoa in engineering, civil engineering field.

13 Professional background, I became a professional
14 engineer licensed in the civil field.

15 Q When were you licensed?

16 A Sorry, fair question.

17 Q Okay. But you are licensed?

18 A Yeah. In 19 -- I believe '97.

19 Q Okay. And in terms of your professional
20 career, were you working in the public, private sector,
21 or what were you doing?

22 A In the public sector, I started working at
23 the Department of Water Supply.

24 Q And what is your present title?

25 A The engineering division head, the Department

1 of Water Supply.

2 Q And could you tell us what you do as the
3 engineering division head?

4 A Just -- I basically oversee engineering
5 functions, budgeting, planning, design, construction
6 within the department.

7 Q Have you have been certified in any areas or
8 an emphasis in certain areas in terms of your civil
9 engineering license?

10 A No, just general civil engineering.

11 Q Okay. When did you first become involved
12 with the Connections project?

13 A Boy, it was probably when the application was
14 submitted. I don't know exactly what date that is.
15 There was a discussion basically with staff to go over
16 the application.

17 Q Okay. I would like you to turn to pages 1678
18 through 1684 of the Planning Commission record.

19 A Okay.

20 THE HEARINGS OFFICER: I'm sorry, Mr. Hong,
21 what pages again?

22 MR. HONG: 1678 through 1684. These are the
23 water calculations again.

24 BY MR. HONG:

25 Q And specifically, if you could turn to 1682.

1 Mr. Inaba, you are familiar with the AWWA
2 standards and guidelines?

3 A Yeah.

4 Q And how are you familiar with them?

5 A We utilize the standards in our work.

6 Q And in terms of the area of civil engineering
7 and your work at the Department of Water Supply, would
8 you consider them reliable and industry standard?

9 A Yes.

10 Q In terms of Mr. Louma's estimation at pages
11 1682 through 1684, did you see any deviations or errors
12 in terms of his anticipated water use estimates?

13 A No.

14 Q Would you agree that the proposed project is
15 to be constructed and occupied in a series of phases?

16 A That was what was proposed. That was our
17 understanding, yes.

18 Q And in terms of -- the Department of Water
19 Supply set a limit of 4200 gallons per day. Is that
20 the limit for the entire project when fully completed?

21 A Yes.

22 Q There was a concern expressed when that first
23 phase of the project is completed and use begins, water
24 to the residential neighborhood homes would diminish in
25 terms of pressure and availability.

1 Based on your studying and experience, and to
2 a reasonable degree of engineering certainty, how
3 realistic is that expectation or concern?

4 A If they use what was allotted, then that
5 shouldn't be a concern.

6 Q Okay. At this stage of the project, can the
7 Department of Water Supply, to any reasonable degree of
8 engineering certainty, render an exact opinion about
9 the water use estimates?

10 A No.

11 Q Why not?

12 A It's basically -- again, it's estimates. I
13 guess it's based on the current plan, as best as the, I
14 guess, developer knows. That's pretty typical.

15 Q And in terms of plans, generally, is it the
16 normal course of a development that you are going to be
17 given other sets of calculations as the design starts
18 to really gel?

19 A We have received that, yes.

20 Q And from those revised estimates, then you
21 can get a better idea of what the actual water use is
22 going to be?

23 A Yeah.

24 Q At a special permit application phase of any
25 project, is a developer or entity developing the land

1 required to produce final or actual water use in
2 construction plans, including those final water use
3 figures?

4 A Not at the permit application phase.

5 Q Are you aware of any charter schools using
6 catchment water?

7 A I believe there is one, yes.

8 Q Which one is that?

9 A I don't know the name, but I think it's in
10 Kona. I know that they do have -- I don't know if they
11 are using it for potable use, fire protection, but
12 there is, I know, a catchment tank on the property.

13 Q Okay. What about HAAS, Hawaii Academy of
14 Arts and Sciences?

15 A I am not aware of that school.

16 MR. HONG: Okay. Thank you. Nothing
17 further.

18 THE HEARINGS OFFICER: Mr. Siu?

19 MR. SIU: I have nothing.

20 THE HEARINGS OFFICER: Ms. Self?

21 MS. SELF: Nothing.

22 THE HEARINGS OFFICER: Mr. Gomes?

23 MR. GOMES: Just a couple of questions.

24 . . .

25 . . .

CROSS EXAMINATION

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BY MR. GOMES:

Q With the amount of water now that's available to the site, will that ever be enough for the entire school?

A If it was the only source, based on the calcs that were submitted, I don't believe so.

Q Okay. And are you familiar with the site on Edita Street? It's two parcels.

A Yeah.

Q So right now, they are planning to use just the lower campus for -- or for the campus, the lower parcel; but if they need water on the upper parcel because of the forestry program, does that affect the amount of water available on the lower parcel?

A Yeah. There --

Q It comes from the same source?

A Same, yeah.

Q And as far as you know, are you okay with catchment water being used at a school?

A Well, we only, I guess, review in compliance with our standards. It's beyond our jurisdiction to comment and review private -- I guess we could consider that a private system. We basically go to the meter -- the public side, yeah, up to the meter.

1 MR. GOMES: Okay. No further questions.

2 Thank you.

3 THE HEARINGS OFFICER: Any redirect?

4 MR. HONG: Yes.

5

6 REDIRECT EXAMINATION

7 BY MR. HONG:

8 Q I just need to borrow the book. Thank you.

9 Let me show you the Planning Commission

10 record. These are the revised conditions from the

11 Planning Department beginning at page 1227.

12 If you would look at condition 3 and 4. Do

13 you agree with those particular conditions?

14 A Yep. Yep.

15 Q So for both 3 and 4, you agree with those?

16 A Yeah.

17 MR. HONG: Okay. Nothing further.

18 THE HEARINGS OFFICER: Thank you, Mr. Inaba.

19 You are excused.

20 MR. HONG: Our next witness is Duane Kanuha.

21 THE HEARINGS OFFICER: Want to raise your

22 right hand, Mr. Kanuha?

23 . . .

24 . . .

25 . . .

1 DUANE KANUHA,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined and
4 testified as follows:

5 THE HEARINGS OFFICER: Thank you.

6 Can you please state your full name and give
7 us your address.

8 THE WITNESS: Duane Kanuha, P.O. Box 6532,
9 Hilo, Hawaii.

10

11 DIRECT EXAMINATION

12 BY MR. HONG:

13 Q Sir, would you highlight your educational and
14 professional experience for us, please.

15 A Okay. I am a graduate of Hilo High School
16 and also have a B.A. from the University of Hawaii at
17 Hilo in geography, specifically urban geography.

18 My professional experience, I started off as
19 a contract employee for the Hawaii County Planning
20 Department in 1974. In 1977, I was appointed deputy
21 director. I served in that capacity until 1984.
22 Following that, I spent a year or two as the deputy
23 land agent for the Department of Land and Natural
24 Resources land Management Division.

25 Following that, I opened up the Hilo branch

1 for PBR Hawaii.

2 And then in 1988, I was appointed planning
3 director, served in that capacity from 1988 to 1990.

4 From 1991 to 1992, I was the land
5 director/chief restructuring officer for Hamakua Sugar
6 Company.

7 And then, following that, in 1992, I joined
8 at that time Shalom International of Hawaii. They are
9 now called Shirley Kohala Corporation, and -- as
10 executive vice president. And I also served as COO for
11 several of their subsidiaries. They work in Hawaii,
12 Napa valley, California, Japan, and Bali.

13 So I spent 21 years with them, and then I
14 retired, and I was asked to serve as planning director
15 for the County of Hawai'i, and I have been in that
16 capacity since June of this year.

17 Q Okay. In terms of the Connections project,
18 when did you first become aware of that?

19 A I think just from some of the newspaper
20 articles.

21 Q When you became planning director in June of
22 this year, did you review the file regarding
23 Connections at all?

24 A Not right away. I ended up going through the
25 entire record more recently, within the last couple of

1 weeks.

2 Q Okay. Let me show you the revised
3 recommendations from the Planning Department at page
4 1227 of the Planning Commission record.

5 A Okay.

6 Q You have had the opportunity to review that
7 before coming in this afternoon?

8 A Yes, I have.

9 Q Since becoming planning director, other than
10 the review of what is on file at the Planning
11 Department, did you do any other investigation or
12 examination of the Connections special permit
13 application?

14 A No, I have not.

15 Q As the current planning director, has the
16 department's position changed in terms of those revised
17 recommendations you see before you?

18 A No, they haven't.

19 Q In terms of the parameters of the Planning
20 Department, in this kind of application, could you tell
21 us what parameters does the Planning Department use to
22 determine whether the proposed use is appropriate?

23 A The Planning Department -- well, to the
24 review by the Planning Commission, they have two basic
25 criteria. The first criteria is whether or not the

1 application perpetuates the objectives of Chapter 205.
2 And the other one is whether or not the proposed use is
3 a special or unusual application in that particular
4 area.

5 Q Okay. In terms of the Planning Department
6 rules -- Planning Commission rules in this Chapter 205,
7 does the Hawaii County Planning Department have the
8 right to tell a developer where to locate a particular
9 project?

10 A No.

11 Q Does the Planning Department have the right
12 to select the parcel that it things would be more
13 appropriate for a particular project?

14 A No.

15 Q And at the special permit application phase
16 of any project, is a developer or entity developing the
17 land required to produce final or actual construction
18 plans, including final water use figures?

19 A Usually not. Those usually come through
20 conditions of approval if the permit is approved, which
21 require, you know, more precise site plans,
22 construction plans, et cetera.

23 Q Okay. And then also at the special permit
24 application phase of any project, under Section 205-6
25 HRS, is the developer or entity developing the land

1 required to show any kind of proof of need for that
2 particular use, such as a home or store or even a
3 school?

4 A There is not a specific requirement to show
5 that need, but in order to substantiate the project
6 itself, based on the criteria that I just stated, you
7 know, whether it furthers the objective of Chapter 205,
8 or it's a special or unusual circumstance, the
9 justification usually becomes part and parcel of it.

10 MR. HONG: Okay. Thank you, Mr. Kanuha. No
11 further questions.

12 THE HEARINGS OFFICER: Mr. Siu?

13 MR. SIU: Nothing.

14 THE HEARINGS OFFICER: Ms. Self?

15 MS. SELF: No questions.

16 THE HEARINGS OFFICER: Mr. Gomes?

17 MR. GOMES: I would like to show Mr. Kanuha
18 my video of the dry well that the Planning Department
19 came to investigate.

20 THE HEARINGS OFFICER: Mr. Gomes, do you have
21 equipment so you can show that?

22 MR. GOMES: Yes, ma'am.

23 THE HEARINGS OFFICER: And you have questions
24 about that? Is that why you are showing this to him?

25 MR. GOMES: Yes. The Planning Department --

1 THE HEARINGS OFFICER: Have you produced
2 copies of this to the other parties?

3 MR. GOMES: Yes.

4 THE HEARINGS OFFICER: Mr. Hong, have you
5 seen this?

6 MR. HONG: Yes, the dry well.

7 THE HEARINGS OFFICER: Mr. Siu, you have seen
8 this?

9 MR. SIU: Yeah.

10 THE HEARINGS OFFICER: And, Ms. Self, you
11 have seen this video?

12 MS. SELF: I haven't opened it up yet, but...

13 THE HEARINGS OFFICER: All right. But,
14 again, you have to ask questions about it. Do you
15 understand? This is not testimony.

16 MR. GOMES: Yes, ma'am.

17 THE HEARINGS OFFICER: Okay. Is it going to
18 take you a while to set this up?

19 MR. GOMES: I hope not.

20 THE HEARINGS OFFICER: Mr. Gomes, do you want
21 this projected on the screen -- I mean on the wall, or
22 are you doing this --

23 MR. GOMES: I have it right here. I just
24 have to hit "Play." But --

25 THE HEARINGS OFFICER: Well, how is everybody

1 going to see that?

2 MR. GOMES: Okay. I will turn it --

3 THE HEARINGS OFFICER: Why don't we just take
4 a recess in place while he's...

5 (Recess ensued from 2:48 p.m. to 2:50 p.m.)

6 MR. HONG: I would ask that the court
7 reporter not take down what is being stated over the
8 video.

9 (The video was played.)

10 THE HEARINGS OFFICER: Mr. Gomes, do you want
11 to proceed with your questions?

12 MR. GOMES: Yes, please.

13

14 CROSS EXAMINATION

15 BY MR. GOMES:

16 Q The Planning Department had come out to that
17 site to look at the dry well last year in October
18 because of the possibility that it was a lava tube, and
19 Theresa Dunham had instructed the school to investigate
20 that lava tube. They had Pacific Legacy investigate
21 it. And this is what Pacific Legacy -- if you go to --
22 if anybody wants to follow along on page 1070, this is
23 the response that Pacific Legacy gave for their
24 investigation of that dry well, 1069 and 1070.

25 So they wrote back saying: During times of

1 heavy rainfall, water is known to flow through Kaumana
2 Cave. Dr. Fred Stone, who prepared a report on the
3 cave in 1992 as part of the Puainako Road Extension
4 Environmental Impact Study, indicated that according to
5 residents across the road from this entrance, the Edita
6 Street entrance to the tube, during heavy rains in the
7 mid-1970s, Kaumana Cave flooded, and water gushed from
8 the cave and covered Edita Street. It was the reason
9 that the diversion culvert was constructed.

10 In more recent conversations with local
11 residents, Pacific Legacy was told that during times of
12 heavy rainfall, water flowing out of the cave will be
13 channeled along the culvert and into the dry well along
14 Edita Street. If the rain persists, the dry well will
15 gradually fill up with water and eventually overflow.
16 This would indicate that the dry well, whose entrance
17 probably feeds into a section of lava tube that is a
18 self-contained unit that does not connect with the
19 larger-tube complex such as Kaumana Cave. If it did
20 connect with Kaumana Cave somewhere further makai, then
21 the flood waters would not fill up and overflow, but
22 would be drained away.

23 BY MR. GOMES:

24 Q So, in your opinion, seeing the water flowing
25 and knowing that this dry well would not fill up -- the

1 only reason that it did fill up during the 2001
2 hundred-year flood was because the drain was clogged
3 from debris -- should it be investigated? Because if
4 the upper parcel cannot be built on because it is over
5 the caves, this shows that the Kaumana Caves runs
6 directly underneath the parcel also.

7 MR. HONG: Is there a question?

8 MR. GOMES: That was my question.

9 THE HEARINGS OFFICER: Mr. Gomes, can you
10 rephrase that as a question to Mr. Kanuha? Because I
11 don't understand what you are asking.

12 BY MR. GOMES:

13 Q So does the cave, the lava tube at the bottom
14 of this dry well, does it need to be investigated to
15 prove that it is not connected to Kaumana Cave and does
16 not run underneath the property?

17 MR. HONG: I'm going to object as not being
18 relevant to this witness's testimony or the issues
19 here. And it's lack of foundation.

20 THE HEARINGS OFFICER: Mr. Kanuha, are you
21 able to answer that question?

22 THE WITNESS: No, I'm not. I'm not an
23 engineer. Our office does not do engineering work.

24 The responsibility for drainage requirements,
25 drainage improvements, et cetera, that is left up to

1 the Department of Public Works Engineering Division,
2 and, you know, this sounds to me like an existing
3 condition that exists now.

4 Obviously, if this has been brought to the
5 attention of us and the applicants as well, that should
6 this project go forward, obviously there will be more
7 attention paid to it in terms of determining exactly,
8 you know, where this water goes and whether or not --
9 the improvements that will be required will probably be
10 adjusted to accommodate those flows to go where they
11 are supposed to be going.

12 MR. GOMES: Okay. I have a few more
13 questions.

14 THE HEARINGS OFFICER: Go ahead.

15 BY MR. GOMES:

16 Q Regarding residents or students of the
17 Connections Charter School, you have concerns about
18 this application because most of the students who will
19 attend this school do not reside near the school. Is
20 that correct?

21 A I don't have that concern, and I don't think
22 it's a concern that's covered in the criteria that we
23 use to make a determination of it. It may play into
24 the decision-making process, but in this particular
25 case, I don't think it overrides how the recommendation

1 was put together.

2 Q So the 50 percent of current students
3 residing in Puna District makes no difference?

4 MR. HONG: Objection. It's cumulative. It
5 has been asked and answered.

6 THE HEARINGS OFFICER: If he can answer, I
7 will allow it.

8 Can you answer the question?

9 THE WITNESS: I think I answered it, that it
10 does come into consideration, but it is not one of the
11 prime criteria that we use when we assess these kinds
12 of applications.

13 BY MR. GOMES:

14 Q Ideally, students should not live a far
15 distance from a school. Is that correct?

16 A I don't have the expertise to make that
17 determination.

18 Q Do you know what percentage of the students
19 reside in the Kaumana area?

20 A Again, as I stated earlier, that number is
21 not an overriding criteria in things of this nature.

22 I think maybe I might use an example of
23 churches, you know. We don't make any findings as to
24 where the denomination comes from when an application
25 for a church comes before us.

1 Q Okay. But it is possible that none of the
2 students come from the Kaumana area?

3 A I think the record shows that, you know,
4 that's true.

5 Q Do you consider personally the residence of
6 the students to be an important factor of your
7 recommendation?

8 A Again, we have to look at this as objectively
9 as we can in terms of the information that's been
10 placed before us and put on the record. I don't
11 believe it's an overriding criteria in the
12 decision-making process.

13 Q So regardless of its importance, why did you
14 recommend approval of the special permit when at least
15 50 percent, and possibly 100 percent, of the students
16 don't live near the school?

17 MR. HONG: You know, I object. It's
18 cumulative. It has been asked and answered at least
19 three times.

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

22 Go on to your next question.

23 BY MR. GOMES:

24 Q You also considered the integration of the
25 school into the community as another factor supporting

1 your recommendation for approval. Is that correct?

2 A Yes.

3 Q Is this integration into the community
4 something you presume will happen?

5 A Again, whether it happens or not is not one
6 of the criteria that we use when we come up with these
7 recommendations. Certainly we would like to see
8 integration of the uses, but, again, it is not an
9 overriding criteria.

10 Q Okay. Would it be correct to say that you
11 have no factual basis to support your belief that the
12 school will develop a strong connection with the
13 community?

14 A Can you repeat the question?

15 Q Would it be correct to say that you have no
16 factual basis to support your belief that the school
17 will develop a strong connection with the community?

18 A No.

19 Q To grant approval of the special permit, the
20 Commission must find that the proposed use is an
21 unusual and reasonable use of land situated in an
22 agricultural district and the proposed use would
23 promote the effectiveness and objectives of Chapter
24 205, Hawaii Revised Statutes. Is that correct?

25 A That's correct.

1 Q You believe these conditions have been met.
2 Is that correct?

3 A In a recommendation to the Commission, we
4 believe they have.

5 Q Your recommendation states that applicant's
6 request is unusual because a school is not considered
7 agricultural in nature. Is that correct?

8 A I think that's one of the -- one of the --
9 one of the issues that we based our recommendation on.

10 Q So are you saying, then, that any use that is
11 not considered agricultural in nature would be
12 considered unusual and would therefore satisfy this
13 condition?

14 MR. HONG: Objection. It lacks foundation,
15 calls for speculation, and it is not relevant. We are
16 talking about this particular use.

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

19 BY MR. GOMES:

20 Q The recommendation goes on to say that the
21 request for special permit is reasonable because
22 communities within agricultural districts require
23 certain services to support the agricultural community
24 in which they are included, including schools.

25 You agree with this statement?

1 A Yes.

2 Q What is the agricultural community you are
3 referring to?

4 A The agricultural community in the context
5 that we used here is basically as it relates to Chapter
6 205, which, you know, designates lands as, you know,
7 agricultural classification. The county zoning also,
8 you know, designates this property for agricultural
9 designation.

10 That is notwithstanding what the actual uses
11 are, okay, because, again, on a case-by-case basis, in
12 a lot of situations where use is proposed, the
13 surrounding neighborhood may not necessarily
14 represent a neighborhood or surrounding environment
15 that is agricultural in nature. And I think in this
16 particular case, you know, as you well know, that area
17 is probably not used extensively for agricultural, and
18 the surrounding uses are not essentially agricultural;
19 and that is why the recommendation is based on what the
20 actual designations are that we are looking for. And,
21 you know, that is the purpose for the special permit
22 and exceptions.

23 Q Thank you.

24 And the subject agricultural property is part
25 of the agricultural community that you are referring

1 to. Is that correct?

2 A It is part of the agricultural community from
3 an institutional standpoint, what it's zoned for, what
4 the land use is designated for.

5 Q And would you agree that the subject property
6 does not require a school?

7 A Would I agree that the subject property does
8 not require a school? Yes.

9 Q Yes?

10 A Yes, it doesn't require a school.

11 Q Are there any nearby agricultural districts
12 that require a school?

13 A I don't believe any agricultural district
14 requires a school, which is why the vehicle to consider
15 allowing schools is this special permit process.

16 Q Would you then consider placement of a school
17 in an agricultural community that does not require a
18 school to be unreasonable?

19 A No.

20 Q If the soil on the property is poor, the
21 property cannot be used for agricultural purposes, such
22 as recreational or picnic area. Isn't that true?

23 A Yes.

24 Q And if other agricultural uses besides
25 crop-farming are possible on a property, why would you

1 consider it reasonable to allow a school that is not
2 required by the agricultural community to be built on
3 the property?

4 A I think I stated that schools are not
5 required, okay, to -- they are not permitted uses in
6 this situation, which is why we have the special
7 permit.

8 Q Okay. Moving on to the next criteria, the
9 use sought by the special permit must promote the
10 effectiveness and objectives of Chapter 205, Hawaii
11 Revised Statutes. Is that correct?

12 A That's correct.

13 Q And you have determined that the school will
14 not adversely affect the preservation and use of the
15 county's prime agricultural lands, and, therefore, it
16 is not contrary to the objectives sought to be
17 accomplished by the State Land Use law and regulations.
18 Is that correct?

19 A That's correct.

20 Q This is because the property has poor soil
21 and is not prime agricultural land. Is that right?

22 A That's correct.

23 Q Is the preservation of prime agricultural
24 lands the only objective of our State Land Use law that
25 you considered?

1 A Can you repeat the question?

2 Q Is the preservation of prime agricultural
3 lands the only objective of our State Land Use laws
4 that you considered?

5 A No.

6 Q Are there other objectives you could have
7 considered?

8 A We don't create the objectives. I mean, the
9 objectives are laid out in state statute, and the
10 counties just implement what the statutes say. We
11 don't create those objectives.

12 Q In what document and section did you find the
13 objectives of preserving prime agricultural lands?

14 A Well, right off the top of my head, I
15 considered -- state constitution, you know, contains
16 those objectives. And without being specific to
17 chapter and verse, so does the Hawaii state plan and a
18 lot -- and Chapter 205 of the Hawaii Revised Statutes,
19 primarily.

20 Q Okay. The applicant could have sought a
21 district boundary amendment to change the
22 classification of this property from rural to urban.
23 Is that correct?

24 MR. HONG: Objection, speculative. Also
25 calls for a legal conclusion.

1 THE HEARINGS OFFICER: I'm going to overrule
2 the objection.

3 What is your question?

4 BY MR. GOMES:

5 Q Could the applicant have sought a district
6 boundary amendment to change the classification of this
7 property from rural to urban?

8 A First of all, it is not rural, it is
9 agricultural, so that classification would have to be
10 from agricultural to urban. Yes, that is an
11 alternative.

12 Q Thank you.

13 And if the classification was changed to
14 urban, applicant would be able to build its school on
15 the property. Is that correct?

16 A That's correct.

17 Q Are there conditions under which the
18 requested use should be accomplished by way of a
19 district boundary amendment?

20 A I think I just answered that, that the use
21 would be permitted if the property was changed -- the
22 land use designation was changed from agricultural to
23 urban.

24 Q So if there are conditions when the applicant
25 should apply for a boundary amendment, would you not

1 say that it was the objective of our land use laws to
2 preclude this special permit process when those
3 conditions exist?

4 A No.

5 Q Do you agree that the special use process
6 should not be used to circumvent district boundary
7 amendment procedures?

8 A This specific requirements and whether --
9 where a special permit is applicable and a boundary
10 amendment is more applicable.

11 In this particular case, for this particular
12 application, an application for a special permit is an
13 applicable application.

14 Q So to summarize the Planning Department's
15 position, it's my understanding that although the
16 department believes the students should reside near the
17 school, the department is recommending approval of the
18 special permit despite the fact that most of the
19 students reside in Puna and elsewhere in south of Hilo.
20 Is that correct?

21 MR. HONG: Objection. It is argumentative.

22 THE HEARINGS OFFICER: Sustained.

23 MR. HONG: It is also cumulative.

24 THE HEARINGS OFFICER: Sustained.

25 BY MR. GOMES:

1 Q Why is the land poorly suited for
2 agricultural activities?

3 A We don't make that determination. That
4 determination is made by studies conducted by the State
5 Department of Agriculture and other agricultural
6 entities. They establish the classification for the
7 lands.

8 Q How is the school an unusual use?

9 A Well, it is an unusual use because it's not a
10 permitted use in this particular zone, both on the
11 state level and the county level.

12 Q So does it not belong in an urban area?

13 A We have schools in agricultural areas as
14 well. We have schools in urban areas. I think, as a
15 rule of thumb, it just depends on the size and scale of
16 the school. And in this particular case, based on the
17 acreage involved as compared to other -- let's say
18 public schools, it doesn't necessarily fit into that
19 category. It could fit into either category; but for
20 purposes of this application, a special permit, as I
21 said earlier, is an appropriate application for it.

22 Q Okay. And is the proposed site situated
23 within an agricultural community?

24 A Again, I said it's situated in an
25 agricultural zone district both on the state and county

1 level.

2 Q On pages 6 through 7, the department
3 concludes that the traffic impact would not be adverse
4 because the TIAR states LOS to operate at acceptable
5 levels with left turn lanes added at Edita Street.

6 Do you consider impact on other streets?

7 A In our analysis, we depend on what the
8 findings of the TIAR tells us. We also consult with
9 the Department of Public Works. If necessary, we also
10 consult with the State Department of Highways,
11 Transportation/Highways Division. Again, our office
12 is -- you know, we are not engineers, you know, so we
13 depend on the commentary of consulting agencies to
14 assist us in determining whether or not a TIAR is
15 acceptable or not.

16 Q Do you consider percentage of the impact at
17 that intersection, such as percentage increase over 100
18 percent --

19 MR. HONG: You know, object, lack of
20 foundation.

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

23 You have to lay a foundation, Mr. Gomes.

24 BY MR. GOMES:

25 Q Do you believe that, regarding noise, that

1 landscaping is sufficient?

2 A That landscaping is?

3 Q Sufficient.

4 A Sufficient?

5 Landscaping is one of the mitigating measures
6 to mitigate noise.

7 Q Because when the noise -- what kind of noise
8 are you anticipating to be mitigated?

9 A Well, I think I would ask you that. You
10 know, what are you talking about when you say "mitigate
11 noise"?

12 Q They are planning to plant Koa trees which
13 will eventually be harvested, so there's going to be
14 chainsaws, sawmills, cranes, logging equipment.

15 MR. HONG: It's highly speculative and lacks
16 foundation. Assuming -- you know, there's no
17 evidentiary support for those wildly speculative uses.

18 THE HEARINGS OFFICER: I'm going to sustain
19 the objection as speculative.

20 BY MR. GOMES:

21 Q Did you consider construction noise and
22 length of construction period for 25 years?

23 MR. HONG: You know, again, I object. It
24 misstates facts in evidence. Nobody said this
25 construction is going to take 25 years.

1 THE HEARINGS OFFICER: Sustained.

2 You can rephrase the question, Mr. Gomes.

3 BY MR. GOMES:

4 Q The construction was predicted to last 16 to
5 25 years.

6 MR. HONG: That is not the evidence that has
7 been testified to by Mr. Thatcher.

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

10 MR. GOMES: Okay.

11 BY MR. GOMES:

12 Q Did you consider impacts to value of the
13 adjoining properties?

14 A Can you ask the question again?

15 Q Did you consider impacts to value of
16 adjoining properties?

17 A Again, that is not one of the primary
18 criteria that we use in coming up with a
19 recommendation.

20 Q How is level of impacts and quality of life
21 determined?

22 A I think it just depends what your
23 interpretation is of "quality of life."

24 Q So they are perceptual and personal?

25 A You are asking the question, not me.

1 Q Do you consider comments of the community?

2 A Yes.

3 Q If so, are you aware of what the community is
4 saying and why?

5 A Yes.

6 Q Who can best determine an adverse impact,
7 outsiders or persons who will be impacted most, such as
8 residents?

9 A Both.

10 Q Who knows best where the shoe pinches, an
11 outsider who says, 'No, it's not sore' or one who is
12 wearing the shoe and saying, 'It's sore'?

13 THE HEARINGS OFFICER: Mr. Gomes, I'm going
14 to strike that. I'm going to strike that question.
15 That's not an appropriate question.

16 MR. GOMES: I apologize.

17 BY MR. GOMES:

18 Q How are you able to justify no adverse impact
19 in light of the police department's August 13, 2012
20 comments: The proposed school is being placed in a
21 residential area that will likely affect the quality of
22 life for residents that border this proposed site, that
23 that would be an increase in noise, crime, and traffic?

24 A There's going to be impacts, you know, one
25 way or another. The level of what constitutes -- what

1 would constitute adverse impacts, you know, I think
2 also, in our deliberations, we consider that. We also
3 consider what the significance of that adverse impact
4 is, because there's different levels of this kind of
5 impact that you are talking about.

6 Q The department noted the traffic impact is
7 not adverse because of the planned left turn lane.

8 Did you consider impacts to other streets
9 along Kaumana Drive and the possible need for more
10 police personnel for traffic control?

11 A I think the record will show that for each of
12 these impacts and the level of adversity that these
13 impacts will bring, that they have then or either
14 instituted on behalf of our office or governmental
15 agencies or on behalf of the applicant various measures
16 to mitigate those impacts, and I think the record is
17 quite clear that there has been efforts to do that.

18 I would point to the revised conditions in
19 the Planning Department's recommendations as efforts
20 that have more precisely tried to mitigate what they
21 anticipate those adverse impacts would be.

22 Q Okay. Thank you.

23 On page 9 of the department's recommendation,
24 the department noted that nonagricultural uses,
25 including schools, can be allowed through special

1 permit. Is that true?

2 MR. HONG: You know, I'm going to object.
3 There is no page. I mean, he is saying page 9, but we
4 are using the Planning Commission record pages, and
5 there's no reference to that, so I would ask for
6 clarification.

7 THE HEARINGS OFFICER: Mr. Gomes, what are
8 you referring to?

9 MR. GOMES: Page 9 of the department's
10 recommendations.

11 THE HEARINGS OFFICER: Are you talking about
12 the revised recommendation at page 1227 of the record?

13 MS. SELF: Is this what you are referring to?

14 MR. GOMES: Yes.

15 THE HEARINGS OFFICER: What you are referring
16 to?

17 MR. GOMES: I'm sorry, yes, page 889.

18 MR. HONG: I'm sorry?

19 MR. GOMES: It's page 889 of the record.

20 THE WITNESS: 889. Okay.

21 BY MR. GOMES:

22 Q The department noted that nonagricultural
23 uses, including school, can be allowed through special
24 permit. Is that true?

25 A What part of this are you referring to?

1 Q Oh, I'm sorry.

2 Can you elaborate on what the unusual
3 conditions, trends and needs that have arisen since the
4 district boundaries were established?

5 A What was your question again?

6 Q Can you elaborate on what the unusual
7 conditions, trends, and needs that have arisen since
8 the district boundaries were established?

9 A And you are referring to page 889?

10 Q Yes.

11 A Item D?

12 Q Yes.

13 A Okay. So...

14 Q How would you describe the growth trend in
15 this area, more agricultural or more urban?

16 A I think I could refer you to the last
17 sentence in that paragraph which says: Although the
18 property and surrounding areas are designated for
19 agricultural uses by both state and county land use
20 laws, that the issuance of a special permit, various
21 nonagricultural services may be allowed, including
22 schools.

23 MR. GOMES: Thank you. No further questions.

24 THE WITNESS: Thank you.

25 THE HEARINGS OFFICER: Mr. Hong, do you have

1 any redirect?

2

3 REDIRECT EXAMINATION

4 BY MR. HONG:

5 Q If you could turn to page 401, please.

6 A Okay.

7 Q In terms of compliance with the factors in
8 Chapter 205 of Hawaii Revised Statutes, would what
9 appears to be a letter dated October 3rd, 2012 from the
10 Office of Planning, Department of Business, Economic
11 Development, and Tourism, would that be one of the
12 considerations the Planning Department takes into
13 consideration?

14 A Correct. We do give it fairly strong weight
15 in the recommendation.

16 MR. HONG: Thank you. Nothing further.

17 THE HEARINGS OFFICER: Mr. Kanuha, I have a
18 few questions for you.

19

20 EXAMINATION

21 BY THE HEARINGS OFFICER:

22 Q I take it you are familiar with the land use
23 designations of the property, this property?

24 A Yes.

25 Q Okay. And so the property is State Land Use

1 agriculture, right?

2 A Correct.

3 Q Right. Which doesn't specifically allow
4 schools?

5 A Correct.

6 Q But the general plan designation is, what,
7 low-density urban?

8 A General plan designation is low-density
9 urban.

10 Q And what is low-density urban?

11 A Low-density urban primarily represents
12 anticipated future low-density residential uses,
13 essentially; so those are areas that, over time, the
14 department and the county as a whole -- because the
15 general plan is a policy document -- envisioned that
16 that area will eventually become more residential than
17 agricultural.

18 Q And the zoning is agriculture, but it's
19 surrounded by agricultural properties, is that correct,
20 and residential properties, single-family residential?

21 A I would say more residential. More
22 residential.

23 Q Are schools allowed in single-family
24 residential districts?

25 A Yes.

1 Q Okay. Are agricultural buildings such as
2 greenhouses and other agricultural buildings allowed in
3 single-family-zoned districts?

4 A Actually, I don't know right offhand.

5 Q My question is there has been some discussion
6 about do you apply for a boundary amendment? And if
7 there is a boundary amendment, it would mean rezoning
8 the property as well?

9 A Correct.

10 Q And it would be rezoning if the adjoining
11 property is residential, so anything other than
12 residential may not fit. Is that correct?

13 A That's correct.

14 Q But once the property is rezoned residential,
15 would it allow for the agricultural uses proposed by
16 the school?

17 A Yes.

18 Q You still could do that in a residential
19 district?

20 A Correct.

21 Q But you also said the special permit you
22 believe is appropriate, as planning director?

23 A Yes.

24 Q And could you tell us why?

25 A First of all, I don't believe there's any

1 predominant urban-zoned property in the surrounding
2 area. It is still primarily agricultural. The size
3 and scope of the proposal and the time frame for
4 development we feel still falls within the criteria
5 where a special permit, you know, could be entertained.

6 THE HEARINGS OFFICER: Okay. Thank you. I
7 don't have any other questions.

8 Mr. Hong, do you have any other questions
9 based on what I have just asked?

10 MR. HONG: Well, yes.

11

12 FURTHER REDIRECT EXAMINATION

13 BY MR. HONG:

14 Q Actually, in terms of the process, does the
15 size of the property have any bearing on what the
16 process will be to approve that particular land use?

17 A That's a good question, I mean, but I think
18 in terms of past special permits that we have approved
19 for facilities like this, at this size, and to be
20 developed over the time frame that you are talking
21 about, we still -- I still feel that it falls within
22 the category where a special permit could be applied
23 for.

24 Q And then were you involved with the
25 development of Kamehameha Schools out in Kea'au?

1 A No, I wasn't.

2 Q Or are you aware that Kamehameha Schools,
3 two-thirds, or even greater, three-fourths, of the
4 campus sits actually on agriculturally zoned area?

5 A I'm not aware of that.

6 MR. HONG: Okay. Thank you.

7 THE HEARINGS OFFICER: Mr. Siu, any further
8 questions?

9 MR. SIU: I have nothing further.

10 THE HEARINGS OFFICER: Ms. Self?

11 MS. SELF: No questions.

12 THE HEARINGS OFFICER: Mr. Gomes, anything
13 more?

14 MR. GOMES: I have one more, please.

15

16 FURTHER RECROSS EXAMINATION

17 BY MR. GOMES:

18 Q Will not be contrary to general plan and
19 other pertinent documents. The public facilities'
20 element goal: Encourage the provision of public
21 facility that effectively service the community and
22 visitor needs and seek ways of improving public service
23 through better and more functional facilities, in
24 keeping with the environmental and aesthetic concerns
25 of the community.

1 Does the request meet this criteria, knowing
2 the community's concerns?

3 A Well, the thing about general plan, the
4 general plan goals, policies, and objectives require
5 just that. They don't specifically say, "This is what
6 you comply with, this is what you don't comply with."

7 As a policy document, what you'll find is
8 that there's a lot of competing policies in the plan
9 itself; so it doesn't tell you exactly what you do.
10 What it does is it gives you parameters under which you
11 base your recommendation, you know, on a case-by-case
12 basis, on a rezoning basis or on a special purpose
13 basis.

14 So to pick one objective or one statement
15 from the general plan and use that as the sole
16 determination criteria would actually be erroneous,
17 because there's -- you know, I have worked with this
18 document for almost 40 years. There's other elements
19 within there that will direct you the complete opposite
20 way.

21 So, you know, that's what planning is all
22 about. The document doesn't tell you exactly what to
23 do. You need to weigh off each of these elements and
24 make a decision based on that.

25 THE HEARINGS OFFICER: Mr. Gomes, are you

1 done?

2 MR. GOMES: Two more questions, please.

3 BY MR. GOMES:

4 Q Land use plans' element policy: Encourage
5 the development and maintenance of communities, meeting
6 the needs of its residents in balance with the physical
7 and social environments.

8 Knowing that if there is strong opposition
9 from the community most directly impacted by this
10 project, can you elaborate on how the project would
11 fulfill this policy?

12 A You know, again, the recommendation of the
13 decision-making process doesn't rely on one policy that
14 overrides, you know, everything else. In this
15 particular case, that policy is one that may apply to
16 it.

17 On a case-by-case basis and in this
18 particular case, you know, we believe that the
19 recommendation put forth contains enough mitigation
20 efforts and is also consistent with other policies that
21 would in turn support what the applicant is trying to
22 do right here.

23 Q And do you know who is responsible to enforce
24 violations of the environmental assessment?

25 THE HEARINGS OFFICER: Mr. Gomes, I am going

1 to stop you. That goes way beyond anything I asked or
2 any testimony so far.

3 Now, do you have any other questions that
4 relate to my questions or Mr. Hong's --

5 MR. GOMES: Oh, no.

6 THE HEARINGS OFFICER: -- redirect.

7 MR. GOMES: Thank you.

8 THE HEARINGS OFFICER: Mr. Kanuha, thank you
9 very much. You are excused.

10 THE WITNESS: Thank you.

11 MR. HONG: Thank you.

12 Our next witness is David Miranda, and we are
13 going to be referring to A-17.

14 THE HEARINGS OFFICER: Do you want to raise
15 your right hand so I can swear you in?

16

17 DAVID MIRANDA,

18 having been first duly sworn to tell the truth, the
19 whole truth and nothing but the truth, was examined and
20 testified as follows:

21 THE HEARINGS OFFICER: Thank you.

22 Can you state your full name and provide us
23 with your address.

24 THE WITNESS: My name is David Miranda. My
25 residence is at 11-3719 Ala Ohia Street in Volcano.

1 Been there for 23 years.

2 THE HEARINGS OFFICER: Mr. Hong, do you want
3 to proceed?

4 MR. HONG: Thank you.

5

6 DIRECT EXAMINATION

7 BY MR. HONG:

8 Q Let me show you what has been entered into
9 evidence as Exhibit -- you've got to use your
10 microphone -- A-17. Do you see that?

11 A Yes.

12 Q And is that a current copy of your CV?

13 A Yes, it is.

14 Q Could you highlight for us your educational
15 and professional experience, please.

16 A I'm a graduate in horticulture. I have a
17 Bachelor of Science in horticulture technology from the
18 University of Hawaii at Manoa. I did that in 1978.

19 I have got a strong second major in botany.
20 I did not complete that course in botany. I was about
21 six credits shy. My career in horticulture called me
22 first, so that's where I went.

23 Professional expertise, I have been in the
24 nursery business for just about 40 years now. I
25 studied and apprenticed in horticulture. I'm a plant

1 propagator/breeder. I have my own side business, and I
2 do horticultural and botanical consultation for farms
3 and other enterprises.

4 I don't know if that's a sufficient answer.

5 Q Yes.

6 And you are with a company Ecos Incorporated?

7 A Ecos Incorporated.

8 Q Thank you.

9 And tell me what you do for that company.

10 A I work for Ecos Incorporated, and I am a
11 botanical consultant. I do botanical field surveys
12 with that company on all the various islands: A lot of
13 work on this island, Maui, Kauai, Lanai. Those are the
14 primary islands.

15 I go into the field, and we look at land
16 parcels; we determine what kind of plant material is
17 there, what other biological resources are present; we
18 ascertain whether there are endangered species there or
19 not or whether the habitat is suitable for sustaining
20 those kind of species.

21 So I basically go around identifying plants.

22 Q And what about animal life or other
23 biological life?

24 A As part of what I do, we are always looking
25 at the animal, the fauna. We look at birds. We look

1 at -- any kind of animal that we see there we take note
2 of, because they often impact the vegetation that is
3 extant on the property.

4 Q And you -- I'm sorry, go ahead.

5 A I don't do insects.

6 Q Okay. Excuse me.

7 You have participated in the EA and EIS
8 process as a consultant?

9 A Yes, I have.

10 Q How many times?

11 A More times than I really could count. I have
12 been involved in maybe 15, 20 projects over the years
13 with Ecos, of all sorts, of all kinds of projects where
14 assessments needed to be made.

15 Q And you are familiar with the Connections
16 project?

17 A Yes, I am.

18 Q When did you first become involved in that?

19 A I actually worked part-time for Connections.
20 I had a child going to school there. I started working
21 part-time with Connections back in March of 2011, I
22 believe it was. And that ran through the later end --
23 later part of 2012.

24 And what I did for Connections was go on to
25 the two Kaumana parcels, the makai and the mauka --

1 there, you have it up there -- and I was asked to
2 explore those parcels, determine what sort of
3 biological resources were there, describe them, make
4 plant lists of that property, and to delineate those
5 areas where there were concentrations of native
6 vegetation, because the school intended to preserve
7 those particular areas, because they turned out to be
8 rather pure stand. The school wanted to conserve it
9 and use it for education/conservation purposes to teach
10 the children these kind of skills. And that's exactly
11 what I did.

12 On those two parcels there, especially the
13 makai, you know, the one that is more triangular, the
14 upside one, that is the makai parcel, the lower parcel.
15 I placed transects pretty much parallel to each other
16 from the top all the way to the bottom boundary. I did
17 the same on the upper parcel as well. I have a total
18 of about ten transects on those parcels, flagged and
19 marked with GPS.

20 I made very thorough listings of the plant
21 material that I found on those transects. Ultimately,
22 I was able to get enough transects in there that my
23 coverage was extremely thorough. In some places, you
24 can stand on one transect and see the flags of another
25 transect 100 feet away.

1 I think I could tell you pretty much
2 everything that is on that property.

3 Q Well, could you tell us what you observed
4 about the flora on the property?

5 A Both properties -- well, I will take the
6 lower property first, which is the uppermost one in
7 your picture there. It is primarily composed of exotic
8 vegetation, a very limited number of native species on
9 there.

10 I counted a total of about 15 native species
11 between the two properties. Of those 15 native
12 species, only four are endemic. The other 11 are
13 indigenous. If you are not familiar with the term,
14 "endemic" means it is exclusive to the Hawaiian Islands
15 or even to the Big Island. If it is indigenous, it
16 also is native to Hawaii, naturally occurs here, but it
17 also occurs elsewhere in the world.

18 On these parcels here, the endemic species
19 are primarily Ohia, which is the dominant one. There
20 is very, very little Koa at all. The Koa is almost
21 exclusively on your lower parcel there, the one closer
22 to Kaumana Cave. There was one hapu'u, which has since
23 been eaten by a pig, so it no longer exists on the
24 property. And other endemic is a plant in the mango
25 family. It's called Roos san machenses (phonetic), and

1 that is an endemic, and it is prevalent on the
2 property. None of them are endangered.

3 The bulk of what is growing there on both of
4 those parcels are what we call exotics. Another way,
5 they are weeds.

6 Q Okay. What, if anything, did you observe
7 about the fauna?

8 A I have seen -- in terms of fauna, I have seen
9 pigs, rat, mongoose, dog, cat, chickens, no humans.
10 Occasionally, the place is overflowed by hawks. I have
11 never seen hawks nesting on either of the parcels. It
12 doesn't mean that they don't, but I have never observed
13 that, and I have never observed hawks roosting in any
14 of the trees. And beyond that, in terms of fauna,
15 that's it.

16 Q There was a suggestion that there's Hawaiian
17 hoary bats in the area?

18 A The bats are you ubiquitous here in the Hilo
19 area. They are everywhere. They may not be common,
20 but they are all over the place. I have never seen the
21 hoary bat on either of those parcels. To tell you the
22 truth, most of the vegetation on either of the parcels
23 is not really the best kind of a roosting habitat for
24 the hoary bat.

25 Q Why do you say that?

1 A The Hawaiian hoary bat, it is a solitary
2 animal. It is a tree-roosting bat. It doesn't go and
3 live in lava tubes. It needs a tree. It needs a place
4 to roost. They like to have trees that are maybe 15,
5 20 foot, at least, in height, and they like to have a
6 canopy where the animal can get up into it and roost.
7 They roost by hanging upside-down. Okay? What is
8 critical for their habitat is when they leave their
9 roost, what the bat does is release, it does a
10 free-fall, it flips over, and it takes off. So if the
11 vegetation is too tangled, it is not appropriate
12 habitat for a bat.

13 There are very few trees sufficient to meet
14 the needs of a bat. More likely, the surrounding yard,
15 because they are very adaptable. You could find bats
16 in your avocado tree, an orange tree, a mango tree, any
17 kind of a tree. It doesn't need to be a native tree,
18 but it needs to have height, and it needs to have a
19 fairly open structure in that canopy in order for the
20 animal to navigate out.

21 Q Okay. In terms of Connections, are you
22 helping them or assisting them in developing their
23 forestry and conservation program?

24 A I have been, yeah. I had put together a
25 concept plan for them with suggestions from the

1 horticultural perspective, which is what I do quite
2 often. And I submitted that, yes.

3 Q Based on your training and experience, in
4 terms of the property in Kaumana where Connections
5 would like to put its school, would you consider that
6 to be suitable for a forestry and conservation program?

7 A I think that it is. And the reason I believe
8 that is -- and, you know, having talked with
9 Mr. Thatcher about what was intended, there are a lot
10 of exotic trees on the property. The biggest of them
11 really are the strawberry guava, which, believe it or
12 not, I've found many, many trees in there six-,
13 eight-inch-diameter trees, strawberry guava. Usually
14 you don't see strawberry guava do that; so those trees
15 have been there a very, very long time. As a resource,
16 that could be utilized for the various projects the
17 school had, the makery projects and so on. The same
18 with the Ohia.

19 The site can support the planting-out of
20 various kinds of trees, with the intention of
21 eventually using them in some manner; but, really, from
22 the school's -- as I understand their intention, the
23 forestry program would be one of teaching the kids --
24 and they are not kids, they are young adults -- teach
25 these young adults how to grow, how to collect seed

1 material, propagate material, how to handling it, how
2 to grow it, you know, which means having a greenhouse
3 of some sort; so these kids would learn a technical
4 skill which then could go on. And they could grow
5 anything they wanted, whether it's lettuce or trees.
6 There's the idea there.

7 The place is eminently suitable for it
8 because many of the areas that are totally taken over
9 by uluhe and other kinds of weedy species, as they go
10 about slowly getting these things under control or out
11 of the way, that opens up all kinds of areas for
12 forestation projects to occur.

13 Q Now, you are aware of an incident where some
14 of the Ohia and other vegetation was bulldozed by the
15 fence installers?

16 A Yes.

17 Q And you were helping Connections in
18 developing and submitting a reforestation plan to the
19 Department of Land and Natural Resources for their
20 review and approval?

21 A That's correct.

22 Q And describe the plan that you assisted
23 Connections with.

24 A I described the damage that I saw -- that I
25 found when I was asked to go and take a look. I

1 described the damage and assessed it. I found that,
2 based on what I saw, serious action needed to be taken,
3 because the activity resulted in invasive species
4 already coming in.

5 My suggestion was -- I provided them with a
6 listing of what kind of things they could replant in
7 there and using the vegetation already on the site.
8 And so that would be primarily the Ohia, but it could
9 also extend to the Koa. And they could plant anything
10 else, really.

11 And I suggested how they would go -- how they
12 might go about it; and rather than just blanket
13 planting, like you saw with the eucalyptus out Hamakua
14 side, I suggested that they focus on establishing
15 smaller islands of vegetation that the students would
16 actually put in, maintain, monitor, and they could
17 monitor the science and biology projects for long-term,
18 to monitor the regrowth and the reforestation on these
19 areas that were damaged. And that's pretty much what I
20 suggested to them.

21 Q And, to your knowledge, has Connections been
22 complying with that reforestation plan?

23 A To tell you truth, I know they accepted the
24 plan.

25 Q That would be the Department of Land and

1 Natural Resources?

2 A Yes, DLNR. But I don't know what has gone on
3 since then, because after this fiasco with the fencing,
4 the school personnel, myself, we were not allowed to go
5 on the property; and so I have not been back on the
6 property since about August 28th to see what may have
7 since been done, so I can't really answer to that
8 question.

9 Q Okay. Before coming to testify this
10 afternoon, did you see a video that was entered into
11 evidence earlier by Mr. Gomes regarding what is alleged
12 to be a bat in the area?

13 A Yes, I did see that.

14 Q And based on your training and experience,
15 are you familiar with the appearance and habits and
16 flight patterns of the Hawaii hoary bat?

17 A Yeah.

18 Q And in terms of what you saw in that video --
19 well, what was your opinion of what you saw in the
20 video? Is that a bat?

21 A My opinion is that was not a bat. That was a
22 bird. That was a bird.

23 Q Why is that?

24 A And I say that because of a number of things:
25 First, the size of the object in that video, which was

1 not a very good video. The animal is too large. Its
2 flight is too symmetrical. Its wing beat is just too
3 strong. And bats do not fly like that. Bats fly very,
4 very fast. They are high-speed flyers. They don't
5 have slow-mode. They are very erratic in how they fly,
6 because that is the way they catch the insects that
7 they eat. Bats do not have a set of tail feathers like
8 birds do. They have got a little basket on the back
9 end there that they catch the insects in. And so as
10 they are busy flying around, this darting and erratic
11 motion that you see is actually a lot of -- the bat is
12 chasing an insect down. It catches it in its little
13 basket, it does a flip over, snatches the insect out of
14 there, and is right back to flying, all like that. A
15 bat cannot fly slow, as you saw in that video, or as I
16 saw in that video. What I saw is not characteristic of
17 bat behavior, of bat-flying patterns.

18 MR. HONG: Okay. Thank you, Mr. Miranda. No
19 further questions.

20 THE HEARINGS OFFICER: Mr. Siu, any
21 questions?

22 MR. SIU: I have none.

23 THE HEARINGS OFFICER: Ms. Self?

24 MS. SELF: No questions.

25 THE HEARINGS OFFICER: Mr. Gomes?

CROSS EXAMINATION

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BY MR. GOMES:

Q Hey.

A Hi, sir.

Q When were you first introduced to the property?

A According to my field notebooks, my first foray that property was in March of 2011, of 2011.

Q So you were on the property, doing work on the property, before it got bulldozed?

A Yes.

MR. GOMES: Thank you. No further questions.

THE HEARINGS OFFICER: No redirect?

MR. HONG: No.

THE HEARINGS OFFICER: Thank you very much. You are excused.

MR. HONG: Thank you.

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

MR. HONG: We have another witness, Celia Shen. And I don't know if you want to take a break now or later. And I will tell you that in terms of her testimony, it's going to be about an hour, maybe even a little bit more. She is going to be lengthy.

Do you want to take a break now?

1 THE HEARINGS OFFICER: Yeah, we are going to
2 have to take a five-minute break.

3 MR. HONG: All right.

4 THE HEARINGS OFFICER: We will take a
5 five-minute break.

6 (Recess ensued from 3:55 p.m. to 4:03 p.m.)

7 THE HEARINGS OFFICER: Are we ready?

8 MR. HONG: Yes, thank you.

9 THE HEARINGS OFFICER: During the recess, I
10 learned that because this is a state facility, we have
11 to leave by 4:30. If not, we have to get special
12 dispensation from DAG.

13 So Mr. Hong has agreed to begin his testimony
14 with his witness. We will end at 4:30, and if
15 everybody agrees, we can start at 8:30 tomorrow morning
16 instead of 9:00.

17 Mr. Gomes, is that okay?

18 MR. GOMES: That's fine with me.

19 THE HEARINGS OFFICER: Ms. Self?

20 MS. SELF: That's fine.

21 THE HEARINGS OFFICER: Mr. Siu?

22 MR. SIU: Yes.

23 THE HEARINGS OFFICER: You're staying
24 overnight?

25 MR. SIU: Yeah.

1 THE HEARINGS OFFICER: Mr. Hong, you agree?

2 MR. HONG: Yes.

3 THE HEARINGS OFFICER: First let's swear in
4 the witness.

5 Raise your right hand.

6

7 CELIA SHEN,

8 having been first duly sworn to tell the truth, the
9 whole truth and nothing but the truth, was examined and
10 testified as follows:

11 THE HEARINGS OFFICER: Thank you.

12 Can you state your full name and provide us
13 with your address.

14 THE WITNESS: My name is Celia Shen.

15 My home address?

16 THE HEARINGS OFFICER: Home or business
17 address.

18 THE WITNESS: Business address is 1018 Palm
19 Drive in Honolulu.

20 THE HEARINGS OFFICER: Proceed, Mr. Hong.

21 MR. HONG: Thank you.

22

23 DIRECT EXAMINATION

24 BY MR. HONG:

25 Q We are going to start with Exhibit A-11.

1 Let me show you what has been marked for
2 identification as Exhibit A-11. Do you recognize that
3 document?

4 A Yes.

5 Q Is that a fair and accurate copy of your
6 current curriculum vitae?

7 A Yes.

8 Q If you could highlight your educational
9 experience and highlight your professional experience
10 for us, please.

11 A Okay. I have a Bachelor's degree in
12 architecture, a graduate certificate in historic
13 preservation, and a Master's degree in urban and
14 regional planning.

15 My professional experience, I spent -- after
16 I got my Bachelor's degree, I spent three and a half
17 years working for A & B Properties as a land-planning
18 analyst, working on development projects for the
19 company.

20 I have also spent time as an independent
21 contractor, working on historic preservation projects,
22 primarily preparing nominations for the State Register
23 of Historic Places. And then, for the past nine years,
24 I have been with WCP as a planner.

25 Q And what do you do as a planner?

1 A I work on a variety of projects, ranging from
2 physical planning, doing master planning, conceptual
3 planning, site plans, as well as facility studies,
4 doing space studies. I also do environmental review of
5 projects, so that's EAs, EISs, for state agencies,
6 private clients, and federal agencies.

7 Q In terms of EAs or EISs, how many have you
8 done as a planner?

9 A Since I have been with WCP, I have probably
10 done about, I would say, maybe 16, 17 of them.

11 Q Okay. And you are familiar with the scope of
12 work with respect to the Connections project?

13 A Yes.

14 Q And could you highlight some of the projects
15 in your career that you have done similar to the scope
16 of work for Connections?

17 A You know, I have worked on a few school
18 projects, some things for St. Louis School, for St.
19 Francis School. Those primarily involve doing some
20 space planning and permitting for those schools.

21 As far as conceptual- or master-planning type
22 projects, probably the most similar project I have
23 worked on is the long-range development plan for the UH
24 in West Hawaii. I believe it's now called Hawaii
25 Community College at Malama Nui.

1 Q And in terms of Connections, when did you
2 first become involved with that particular project?

3 A We first got involved with Connections -- I
4 believe it was in the spring of 2008. Mr. John
5 Thatcher came to us. He was in the process of
6 acquiring a lease with DLNR, so he already had a
7 property that he was in discussions with DLNR, to try
8 to get a lease. And in order to finalize that lease,
9 the school needed to come up with a campus plan and to
10 do an environmental assessment of that plan.

11 Q And could you describe for us the scope of
12 that work?

13 A Sure.

14 In order to develop the campus plan, we had
15 to do some space planning first for the school. So,
16 basically, that's getting an idea of their academic
17 program and transfer those -- the academic program into
18 space needs, and developing approximate square
19 footages, space types, and coming out with what they
20 call a space program. And based on the space program,
21 you know, we developed the conceptual building
22 footprints and a site plan for the property.

23 And so, now, based on the conceptual campus
24 plan that we derive, we then move on to the
25 environmental assessment process; so, you know,

1 analyzing the potential environmental impacts of
2 developing that campus plan.

3 Q All right. I would like to refer to the
4 Planning Commission record page 56 through page 328,
5 please.

6 From page 56 on to page 320 is the final
7 environmental assessment that you prepared?

8 A Yes. That's correct.

9 Q In terms of the final EA, did you provide
10 that to community members?

11 A No.

12 Q Did somebody ask you to send them a copy of
13 the final EA, like Mr. Gomes?

14 A No.

15 Q Did you e-mail it to anybody?

16 A No.

17 We submitted the final EA to the required
18 agencies, which is essentially the approving agency,
19 which is DLNR, and the applicant.

20 Q All right. And what is the process in terms
21 of seeking community input regarding the EA?

22 A So the process is you develop a draft EA, and
23 in developing a draft EA, we engage in what you call
24 early consultation. So there's a list of agencies and
25 organizations with the OEQC, the Office of

1 Environmental Quality Control. These are sort of
2 typical agencies that they recommend you consult with.
3 So, you know, we send letters to these agencies, and if
4 you get a response back, that kind of helps you develop
5 a scope of analysis of what issues you need to address
6 in the EA.

7 And so from there, you develop a draft EA.
8 The draft EA is then published by the Office of
9 Environmental Quality Control. And so they post in
10 their bimonthly -- bimonthly notice the list of
11 available EAs, and then it's also available for
12 download on their website.

13 So in addition to that, we also distribute
14 the EAs to certain agencies, state/county agencies,
15 federal agencies, as well as community organizations
16 that have made known that they would like to be
17 involved in consultation, as well as we do send it to
18 individuals who do request it.

19 Q And in this case, did anybody request a draft
20 EA?

21 A Yes. It was not requested of me directly.
22 What had occurred was when we released the draft EA, we
23 also sent a copy of the draft EA to the Hawaii Tribune
24 Herald. They published a news article about the
25 project and information about where people could

1 acquire the draft EA as well as the comment period and
2 where to send comments.

3 So subsequent to that, I had received a call
4 from someone at DLNR, who is the approving agency for
5 this EA. She was relaying to me that someone had
6 called her and was requesting information about the
7 project, and they were concerned that the state was
8 going to take some of their property for the school.
9 And so she had further explained that -- she explained
10 the situation to this person and asked if I could send
11 this person a copy of the draft EA, which I did.

12 Q And who was that person?

13 A That was Mr. Gomes.

14 Q Jeff Gomes?

15 A Yes.

16 Q Okay. So the draft EA was sent to him. Was
17 that still within the comment period?

18 A Yes.

19 So my e-mail to him -- I e-mailed him a PDF
20 copy of the draft EA as well as explained when the
21 comment period was and where he should send comments
22 to.

23 Q Okay. And do you recall him sending any
24 comments or anybody from the community sending comments
25 regarding the draft EA?

1 A No.

2 Q And then in terms of the final EA, that was
3 prepared and submitted. Is that right?

4 A Yes. There was actually a second -- a
5 revised draft EA issued. When we had issued the first
6 draft EA, we got several comments from researchers and
7 speleologists about the Kaumana Cave which underlies
8 the top parcel of the property. So Mr. Thatcher had
9 talked to Dr. Fred Stone, who was one of the
10 letter-writers and commenters, and -- you know, to
11 engage and understand what their concerns were, what
12 they would like, you know, how to address those
13 concerns.

14 So in responding to their comments and their
15 concerns, we actually went back to the drawing board,
16 and we redesigned the campus and consolidated
17 everything onto that bottom parcel.

18 And we made a decision to -- instead of going
19 to the final EA, we decided, because there was such a
20 difference in the project, that we actually re-issue a
21 second draft EA, which was called a revised draft EA.
22 So it actually went out for a second 30-day public
23 comment period. And then from there, this was the end
24 result was the final EA in October of 2010.

25 Q Okay. So why don't you give us a overview of

1 the project, where we are now.

2 A Okay. Subsequent to completion of the draft
3 EA, the school was in the process of finalizing the
4 lease with DLNR. There was some work that needed to be
5 done in order to finalize that, including getting the
6 boundary survey. So in the interim period, you know,
7 we started, you know, putting together the application
8 for the special permit and were waiting for, you know,
9 the finalization of the lease.

10 So at this point, last year, we submitted the
11 special permit application, we went through the
12 Planning Commission hearings, which ultimately ended up
13 as this contested case hearing.

14 Q All right. Could you describe the current
15 project parameters?

16 A Sure. In what sense is that?

17 Q Well, this is a phased project, right?

18 A Yes.

19 Q All right. And let me put up a different
20 diagram.

21 Do you recognize that particular diagram?

22 A Yes.

23 Q And what is that?

24 A That is the lower parcel of the property, and
25 that is the conceptual campus plan.

1 Q And who drafted that?

2 A Our office did.

3 Q Okay. In terms of the phases, what is your
4 understanding of where the first phase is going to go,
5 or what would be involved in the first phase?

6 A The first phase is, you know, to get some of
7 the agriculture uses up on the property.

8 The second, after that, was the -- the second
9 priority is getting the high school -- moving the high
10 school from Nani Mau Gardens onto the property as well
11 as building the administration building, along with the
12 high school.

13 The next phase after that would be the
14 intermediate school and the library resource center.

15 After that would be the elementary program,
16 the elementary school, and then the -- I believe it's
17 the dining facility.

18 And then the last phase would be the
19 multi-purpose gymnasium, dormitory facilities.

20 Q Okay. When you look at this particular
21 diagram, this conceptual plan, when was that made,
22 approximately, to the best of your recollection?

23 A Around about the summer of 2010. About,
24 yeah, spring or summer 2010, prior to issuance of
25 the...

1 Q Since that time, there were other community
2 meetings that you attended, listening to some of the
3 concerns of the community, right?

4 A Yes. There was a community -- I mean, there
5 was a community meeting in 2009, which was actually
6 prior to the initial draft EA.

7 Q Well, I'm saying that after this diagram came
8 up --

9 A Oh, after this?

10 Q -- there were other community meetings,
11 right?

12 A Yes.

13 Q And as a result, my understanding is that in
14 terms of the actual -- well, or the next stage of the
15 evolution of this conceptual plan is the idea is to
16 actually move the campus further down? Is that
17 correct?

18 A That was one of the issues that was raised at
19 one of community meetings. Some of the residents
20 particularly on Edita Street and, in particular, I
21 recall the resident actually in that first house
22 adjacent to the makai parcel, they asked if it was
23 possible -- if the campus could actually be moved
24 further into the property just so that it would be a
25 little bit farther away from their house. And we -- I

1 responded that it is possible, particularly if
2 secondary access could be gained, you know, somewhere
3 lower on the parcel.

4 Q Okay. Traffic and water were the primary
5 issues raised by the community in terms of this
6 project. Would you agree?

7 A I would agree that they were raised as
8 primary issues. I don't necessarily agree that they
9 actually are issues. We had a traffic study done as
10 part of the environmental assessment, the TIAR, which
11 is a traffic impact analysis report. The conclusions
12 of that report indicated that even with build-out of
13 the campus, the level of service along Edita Street and
14 Kaumana Drive in the area of the project would remain
15 at either A or B.

16 Q And what does that mean?

17 A It's a measurement of -- the LOS is a level
18 of service measurement, and it ranges from A through E,
19 with A being the highest level of service and E the
20 lowest. I can't get into specifics about what exactly
21 goes into how they develop those rankings, but the
22 conclusion was that even with the project, the levels
23 of service would still be at an acceptable level.

24 Q And you got that through Phillip Rowell's
25 traffic impact analysis report?

1 A Yes.

2 MR. HONG: I just note for the record that
3 the TIAR appears in the record at 289 through 306.

4 BY MR. HONG:

5 Q Where are we, and what are the next steps in
6 terms of planning and engineering with respect to this
7 project?

8 A The next step in terms of planning and design
9 is to take it to the next level, a more detailed plan.
10 Right now, this is basically a conceptual plan, and
11 there are some issues with water that need to be
12 addressed. And that pertains to how the Department of
13 Water Supply -- the allocated water from DWS is going
14 to be used for this project, in conjunction with other
15 things that are being planned by the school as far as
16 developing a wastewater system that generates recycled
17 water, where that can be used, where catchment water
18 could be used.

19 So all of this kind of needs to be looked at
20 comprehensively, and that is kind of the next step of a
21 detailed infrastructure planning that needs to take
22 place is getting on board all of these engineers that
23 specialize in these different things, generating some
24 estimated numbers, and really looking at the
25 feasibility of the different options that are available

1 to the school as far as how water can be supplied and
2 can supplement the DWS allocation.

3 Q Well, in terms of the DWS allocation, has the
4 Department of Water Supply, in discussions with you,
5 ever expressed any objection to the project as
6 proposed?

7 A No.

8 Q And based on your experience, is this project
9 and the amount of engineering detail being required
10 typical or the norm?

11 A Not in my experience, not at this level of
12 planning that we are currently engaged in.

13 Q Why not?

14 A Because this is really kind of at a land use
15 level. For example, like the numbers that the
16 Department of Water Supply is requesting, the estimated
17 gallons per day and the maximum flow rate in gallons
18 per minute, those things need to be determined, you
19 know, after the certain fixtures -- what kind of
20 fixtures are going to be used in the building, how many
21 fixtures. And that usually comes as part of the design
22 phase. And I believe earlier today, a mechanical
23 engineer who we have been working with on this project
24 spoke, and in my experience, that is very unusual. I
25 very rarely work with mechanical engineers. As a

1 planner, we typically don't engage mechanical engineers
2 in our project, because that is really getting into a
3 more detailed level of planning and design.

4 Q Okay. In terms of your experience, is it
5 typical that the kinds of conceptual plans that are
6 submitted at this stage in the planning process -- do
7 they match up with how the project will ultimately
8 look?

9 A No. Like I said, in subsequent phases,
10 addition alternative studies and work is done. So,
11 typically, you will get a detailed topographic study, a
12 survey -- I'm sorry -- you will get geotechnical
13 studies as well as any other studies that -- you know,
14 depending on what the property may be undertaking. And
15 when that information comes in, you know, it may force
16 you to kind of have to re-look at your conceptual plan.

17 So, for example, if your topographic survey
18 shows maybe you have got these natural depressions in
19 your property that might be ideal for a stormwater
20 detention basin, you know, you may need to relocate
21 certain elements of your plan so that you can best take
22 advantage of the natural contours of the site, as well
23 as, you know, like a geotechnical study.

24 And we do test-pourings and find that, well,
25 where you have drawn this building here, that is not

1 really an ideal place to, you know, put a building. It
2 doesn't make for a good foundation type. You know, you
3 may need to move it so many feet this way or that way.
4 So as you move along in the planning and design stage,
5 you require more information.

6 It typically does really require that you,
7 you know, go back and look at the conceptual plan. And
8 it is a reiterative process, you know, where you start
9 with this, get more information, you go back, you
10 reevaluate, and you make changes as necessary.

11 Q So for somebody to come and say, "That's the
12 campus," "That's the plan," "That's how it's going to
13 look like," and "That's how it's positioned," would
14 that be a correct statement or incorrect statement?

15 A That would be an incorrect statement.

16 Q Because of what you said about the difference
17 between a conceptual plan and the actual building?

18 A Yes.

19 And, you know, I been on several projects. I
20 mean, for example, the UH West Hawaii that I mentioned
21 earlier, our firm has actually been involved in that
22 project for over the last two decades. The original
23 location of that project within the larger 500-acre
24 parcel that the university has, we did the original
25 long-range development plan. And, again, that's kind

1 of a planning function, a planning effort. And
2 subsequent to that, it goes into the hands of the
3 architects that do more of the refined site planning
4 and developing the architectural themes.

5 And when I look at that, it actually looked
6 quite different than what we had portrayed in the
7 long-range development plan. And, ultimately, it's
8 even farther changed now. They actually moved it
9 somewhere else within that 500-acre parcel.

10 So, you know, it's not unusual for projects
11 to evolve and change. That's just the nature of
12 development.

13 MR. HONG: All right. Madam Hearings
14 Officer, maybe this is a good time to take a recess?

15 THE HEARINGS OFFICER: I would agree.

16 We are going to recess this hearing until
17 tomorrow morning. We will start tomorrow at 8:30.

18 Thank you for spending the night so you can
19 finish your defendant tomorrow.

20 MR. HONG: Thank you.

21 (The hearing is adjourned at 4:28 p.m.)

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25

1 STATE OF HAWAII)
2) ss.
3 COUNTY OF HAWAII)
4

5 I, TERI SERAH HOSKINS, a certified court
6 reporter in the State of Hawaii, do hereby certify that
7 the foregoing pages are a true and correct
8 transcription of the proceedings in the above matter.

9

10 Dated this 31st day of October, 2013.

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16 Teri Serah Hoskins, CSR No. 452

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