

BEFORE HEARINGS OFFICER SANDRA SONG

COUNTY OF HAWAII

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

T R A N S C R I P T

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 9:07 a.m. on October 22, 2013.

HEARINGS OFFICER: SANDRA SONG, ESQ.
10 Kamehameha Avenue
Hilo, Hawaii 96820

REPORTED BY: M. Sharon Souza, CSR No. 184

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I N D E X

Witness Name	Direct	Cross	Redirect	Recross
MELVIN YOKOTA	318	325	329	
MING PENG	332		335	
ALLEN NOVAK	338	344		
WAYNE KANEMOTO	345	352 358		
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DANA KENNY	386	392		

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THE HEARINGS OFFICER: Good morning. This is the continuation of the public hearing for special permit application SPP number 12-00138, in the matter of the Connections New Century Public Charter School and Community Based Education Support Services. This hearing began yesterday, and this is a continued contested case hearing.

I'm Sandra Song the hearings officer. Can each of the parties identify themselves?

MR. HONG: Good morning, my name is Ted Hong. I represent the applicant, CBESS. I note for the record that Mr. John Thatcher representing Connections School is also here. Seated to my right is Sue Lee Loy from my office.

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

MS. SELF: Good morning, Deputy Corporation Counsel, Amy Self here on behalf of the planning director.

MR. GOMES: Jeff Gomes.

THE HEARINGS OFFICER: Good morning, all of

1 you.

2 Since under the Planning Commission rules at
3 the start of every hearing, I'm required to take any
4 public testimony. One person has signed up to
5 testify. If any person sitting in the audience wants
6 to testify as a member of the public, please sign this
7 form now.

8 Would the record reflect no response, but I do
9 have one person, Pauline Keala Lee Loy -- would you
10 like to come up forward?

11 Thank you. Can you raise your right hand?

12 PAULINE KEALA LEE LOY
13 called as a witness on her own behalf, after having
14 first been duly sworn, testified as follows:

15 Thank you. Can you give us your name and your
16 address?

17 MS. LEE LOY: Absolutely.

18 Good morning. My name is Pauline Keala
19 Lee Loy. I'm a resident of 1579 Mele Manu Street
20 where we have resided for seventeen years. I've
21 worked as a teacher and administrator in both, public
22 and private schools for the last thirty-four years.

23 First and foremost, I commend Mr. Thatcher as
24 a school leader and pioneer of nontraditional
25 education. The accolades of both his staff and the

1 students are representative of his visionary
2 dedication to education. There is absolutely no
3 question about the quality of education that the
4 school offers the island community.

5 I am in opposition of the location of
6 Connections Public Charter School to Edita Street
7 because of the imminent traffic disasters. Edita
8 Street off of Kaumana Drive, which leads to Mele Manu
9 Street, simply cannot accommodate the volume of
10 traffic that the proposed development will bring.

11 The opening of the Puainako Street pathway
12 from the Saddle Road to Komohana has certainly
13 alleviated some of the traffic patterns on
14 Kaumana Drive for those heading to West Hawaii.
15 However, a project or program of this magnitude will
16 restore this traffic. If such a project, any project,
17 would be approved at this Edita site, a third lane
18 turn off and traffic light would need to be installed
19 to prevent deadly accidents.

20 The proposed project has simply selected the
21 wrong site for its vision. What is alarming is that
22 the school already invested much of its resources in
23 preparing the site for its use even before all legal
24 matters have been settled. It is a poor display of
25 doing the right thing at the right time for the right

1 reasons. Transparency and accountability is the
2 utmost importance for any institution, public
3 institutions, particularly.

4 Thank you.

5 THE HEARINGS OFFICER: Thank you very much.
6 And you provided written testimony?

7 MS. LEE LOY: Yes, I have.

8 THE HEARINGS OFFICER: Darryn, do we have a
9 copy of that? And all the parties, did you receive
10 copies of the public testimony, Mr. Hong?

11 MR. HONG: Yes.

12 THE HEARINGS OFFICER: Mr. Siu?

13 MR. SIU: Yes.

14 THE HEARINGS OFFICER: Ms. Self?

15 MS. SELF: Yes.

16 THE HEARINGS OFFICER: And Mr. Gomes?

17 MR. GOMES: Yes.

18 THE HEARINGS OFFICER: Thank you very much.
19 We'll proceed with the hearing.

20 Mr. Hong, I believe when we broke yesterday
21 Celia Shen was testifying.

22 MR. HONG: That's correct.

23 THE HEARINGS OFFICER: Ms. Shen, since we're
24 starting this again on the second day, I'm going to
25 swear you in again.

1 CELIA SHEN

2 called as a witness by and on behalf of the Applicant,
3 after having first been duly sworn, was examined and
4 testified as follows:

5 Thank you.

6 FURTHER DIRECT EXAMINATION

7 BY MR. HONG:

8 Q. Ms. Shen, I'm just going to jump back a little
9 -- a few steps just -- oh, sorry, I'm going to jump
10 back a little in terms of your testimony this morning.

11 The draft EA, you had sent an e-mail including
12 the PDF copy to Mr. Gomes, is that right?

13 A. Yes, that's correct.

14 Q. And you have a copy of that e-mail
15 transmittal?

16 A. Yes, I do.

17 Q. Do you recall what day that was submitted or
18 e-mailed to him?

19 A. I believe, if I recall correctly, it was
20 August 30th or 31st of 2009.

21 Q. Okay. Why didn't you send the draft EA to
22 other individual neighbors?

23 A. We followed the directive of HRS 343 HAR
24 11-200 and the guidelines by OEQC. And technically,
25 the law doesn't require you to send it to adjacent

1 property owners. So unlike the permitting process,
2 which we're going through now, which explicitly
3 dictate that you notify adjacent property owners
4 within so many hundred feet, the HRS does not make
5 that explicit -- an explicit requirement. It does
6 require you to consult with agencies, organizations,
7 and individuals. And you know, we have done that. We
8 have consulted with specific individuals, in
9 particular, with these speleologists and the cave
10 researchers, where we talked to certain individuals,
11 and as well, we did send a copy of the EA to
12 Mr. Gomes.

13 Q. Was there anybody at any time, you refused to
14 provide them a copy of the draft EA?

15 A. No. If anyone asks, we do provide by that
16 definition.

17 Q. Now yesterday you also talked about the phases
18 and the priority in terms of the building out the
19 project?

20 A. Yes.

21 Q. You had mentioned that in terms of the phases,
22 the dorms --

23 MR. HONG: Excuse me, Ms. Hearings Officer,
24 may I ask you to direct people in the gallery to put
25 their phones on off?

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

2 I forgot to mention it this morning, please
3 make certain your phones are off, your electronic
4 devices are off in this hearing. If you need to use
5 the phone, please go outside.

6 The court reporter is here taking down
7 everything that we're saying, and it's very disruptive
8 for the cost reporter, because then she cannot hear
9 properly and take down everything properly.

10 Thank you.

11 MR. HONG: Thank you.

12 BY MR. HONG:

13 Q. In terms of the phases we had talked about,
14 you had mentioned yesterday that the dorms would be
15 less and that's different from what Mr. Thatcher
16 testified, why is that?

17 A. Well, initially, when we started out the
18 project that was a higher priority element, and that
19 is reflected in the EA. However, as we moved on with
20 the project, and as I had talked about yesterday,
21 projects do evolve. As you gather more information,
22 it does require you to have to go back and re-evaluate
23 some of your earlier decisions. And this is one of
24 the issues that came up with the water allocation from
25 DWS, knowing that dormitories are a high-water-usage

1 type facility, in order to get the more important
2 elements of the campus on to the property first, you
3 know, we thought it might be better to re-prioritize
4 and move the dormitories to a lower priority, and one
5 of the later elements in order that they can actually
6 get the classrooms up onto the property, and that
7 would be supported by the DWS water.

8 Q. Okay. I'm going to move to a different
9 subject, the appropriateness of agriculture zone for
10 school word zoned agriculture school. What is the
11 Connections intended use to your knowledge?

12 A. Well, the prime area use of the property, of
13 course, would be the school. But in support of that,
14 and in support of their intended agriculture program
15 is agriculture uses of the property for crop
16 production as well as some livestock.

17 Q. And there's been a lot, I think,
18 misunderstanding about what -- how that would be
19 accomplished given that the property is rated D in
20 terms of soil condition.

21 A. Correct.

22 Q. Would you explain in terms of the planning
23 aspects, what is anticipated?

24 A. As we understand it, you know, the school
25 intends to engage in sort of technology-based

1 agriculture. That includes things like, perhaps,
2 hydroponics, aquaponics, as well other agricultural
3 techniques that are not necessarily soil based or
4 in-ground planting.

5 And so because of that, it is appropriate, I
6 mean it is for lesser quality agricultural land such
7 as this for these types of uses.

8 Q. And then in terms of the upper parcel --
9 excuse me.

10 A. The upper parcel is intended for their
11 re-forestry and conservation program. And again, that
12 would be an allowable use within the agricultural
13 district.

14 Q. Now, I just mentioned earlier that the soil is
15 classified as a D reading. In your opinion and based
16 on your experience, what problems or difficulties
17 would Connections have in trying to pursue a permit to
18 use properties with a soil A and B classification?

19 A. As A and B classifications, which is a Land
20 Study Bureau classification, are higher rated
21 agriculture lands. But the classifications range
22 from, you know, from A to E, with A being the highest
23 and E being the lowest.

24 And the State Land Use Law Chapter HRS 205
25 affords the greatest level of protection to A and B

1 lands as well as lands that are listed as agricultural
2 lands of importance under the English classification
3 system. This particular parcel, again, has a D
4 classification under the Land Study Bureau, and it's
5 unclassified under the A list system.

6 So therefore, you know, putting a school on
7 this type of agriculturally classified land, which has
8 a lower quality rating versus trying to get it on
9 lands that are better classified for agriculture stay
10 with the A and B rating or prime classification under
11 the A list, in my opinion, would be more difficult
12 because the law affords those higher level or higher
13 quality agricultural lands, a higher level protection.
14 And to argue that taking those lands out of
15 agriculture and putting a school on it would be a
16 harder argument to meet versus the lower quality
17 agricultural land that this property represents.

18 Q. And then I'd like to go onto another topic
19 about the objections to the project. One of the
20 objections to the project is it doesn't conform to DOE
21 ed specs in terms of the buildings. Could you explain
22 -- well, are you familiar with the DOE ed specs?

23 A. Yes, I am familiar with the ed specs.

24 Q. And would those apply in this case?

25 A. No, they don't. The school does not receive

1 facility funds from the DOE, and therefore, they're
2 not required to follow the ed specs. As well, the ed
3 specs are guidelines, they're not necessarily strict
4 requirements. And also the ed specs are designed for
5 really large public schools. So the guidelines they
6 give you for site planning and space planning is
7 really for a different kind of school than what's
8 being proposed here.

9 For example, so the DOE ed specs, they layout
10 minimum enrollment for a new school. So for an
11 elementary school, the minimum enrollment would be
12 five-hundred-fifty students in order to justify a new
13 school. For an intermediate school it would be six
14 hundred students. And for a high school that would be
15 a thousand students.

16 And so in the case of Connections, they're
17 projected maximum enrollment doesn't even meet the
18 minimum enrollment standards for elementary school.
19 So you know, saying that we need to adhere to the DOE
20 ed specs, I disagree with that. We're not really
21 required to, and it's not really appropriate to follow
22 all of the guidelines within the ed specs.

23 Q. Okay. Impact on surrounding community, how
24 are -- in terms of your planning, and you know,
25 shepherding this project, how are you trying to

1 resolve or how is the applicant trying to resolve
2 these concerns raised by the community?

3 A. Like I talked about previously, this is a
4 conceptual plan, planning is an ongoing process. And
5 we discussed previously that this is not the final
6 plan. This is -- what you see here is not fixed. And
7 we've had meetings with the public previously, they
8 have expressed some concerns. And as we have
9 previously talked about one of the things that they
10 would, perhaps, like to see is the campus could be
11 moved further down into the property. That is
12 something that we will consider and look at when we
13 move forward getting into the design phase. And as
14 more of the more technical studies are done as far as
15 the details, site survey, geotechnical reports, you
16 know, we'll take all of that information as well as
17 the concerns that have been expressed by the
18 neighborhood and look at everything comprehensively,
19 and we can make those adjustments to adjust those
20 concerns.

21 And as well, the school has offered to allow
22 community members to participate in a planning and
23 design committee in order to afford the community
24 continued input into the design of this campus.

25 Q. One of the issues also brought up continually

1 seems to be the traffic study. The accusation has
2 been made that it was outdated, how do you respond to
3 that?

4 A. Well, the traffic study was -- the final
5 traffic study was completed in June of 2010, which is
6 included in the -- the revised draft EA and the final
7 EA, which were done in August of 2010 and in October
8 of 2010, respectively.

9 We submitted the special permit application
10 July of 2012. So given the time line of those
11 elements, I think the validity of the traffic study is
12 -- these things have occurred within a reasonable
13 amount of time and the conclusions of the traffic
14 study are, you know, still valid.

15 Q. And in terms of Mr. Rowell, he testified --
16 you recall him being -- you recall being present when
17 he testified before the Planning Commission?

18 A. Yes.

19 Q. And in terms of his traffic study, TIAR, did
20 Mr. Rowell mention whether a new one needed to be done
21 or just an update needed to be done?

22 A. He indicated that an update would need to be
23 done prior to going before the State Land Use
24 Commission. As I understand it, the State Land Use
25 Commission requires a traffic study to be done within

1 three years, I believe. And so as this process moves
2 forward, if the Planning Commission does make a
3 favorable recommendation, and this application gets
4 pushed up to the State Land Use Commission, you know,
5 a revised or updated traffic study would have to be
6 done before it gets to that next phase.

7 Q. Okay. Thank you, Ms. Shen, no further
8 questions.

9 THE HEARINGS OFFICER: Mr. Siu, cross
10 examination?

11 MR. SIU: I have nothing.

12 THE HEARINGS OFFICER: Ms. Self?

13 MS. SELF: No questions.

14 THE HEARINGS OFFICER: Mr. Gomes?

15 MR. GOMES: I have a few questions, please.

16 CROSS EXAMINATION

17 BY MR. GOMES:

18 Q. Good morning.

19 A. Good morning.

20 Q. When did you come on board with Connections?

21 A. We, um, started -- our involvement in this
22 project started in 2008.

23 Q. Are you the project manager?

24 A. Yes, I am.

25 Q. Is this your first K through twelve project?

1 A. In terms of doing a sort of conceptual master
2 plan, yes.

3 Q. As far as you know, has John Thatcher ever
4 built a K through twelve school facility before?

5 A. Not to my knowledge, no.

6 Q. As far as you know, has anyone on his staff or
7 advisors built a K through twelve school facility
8 before?

9 A. Not to my knowledge.

10 Q. Has anyone else associated with the project
11 built a K through twelve school facility before?

12 A. Can you clarify your question in terms of
13 involvement? Are you talking about related to the
14 school or in terms of the project team?

15 Q. The project team or anyone working at the
16 school.

17 A. I can't answer for people working at the
18 school in terms of the project team, and I can't be
19 absolutely specific, but the architect that we are
20 working with, Urban Works, has done several school
21 projects. They've done some things for Punahou and as
22 well as some other school projects.

23 Q. Have they done an entire K through twelve
24 facility --

25 A. I cannot answer that with certainty.

1 Q. So as far as you know, this is the first time
2 for all of you to be building a K through twelve
3 facility?

4 A. I can only speak for us. Yes, this would be
5 the first time that we've been involved in planning a
6 K through twelve facility.

7 Q. And what projects have you done for schools in
8 the past?

9 A. For schools, I've done -- and I talked about a
10 few of them yesterday, we've done space planning
11 projects and campus planning projects for Saint Louis
12 School; permitting projects for Saint Louis and
13 Saint Francis School as well as our involvement with
14 the UH Center, West Hawaii campus.

15 Q. So when you say those -- what is an example of
16 one of the projects, like a gymnasium or a classroom?

17 A. For -- for example, I'll use the Saint Louis
18 School project. One of the things that they came to
19 us for was -- they were at the time, Saint Louis, was
20 grade six through twelve program. And they were
21 thinking about expanding their program to go all the
22 way from K through twelve, and so they needed to do a
23 study on whether they had the land availability as
24 well as what it would take as far as facilities to
25 accommodate that expansion.

1 So we assisted them, again, going through the
2 process of doing some space programming, getting an
3 estimate of -- given their projected enrollment to
4 meet this inspection, how much classroom space they
5 would need as well as supporting school facilities,
6 and you know, deriving, you know, approximate
7 footages, facility types.

8 And then looking at their campus and the area
9 available to them, if you're familiar with
10 Saint Louis School they share a campus with Chaminade
11 University. So Chaminade has certain portions of the
12 property and Saint Louis has others. So we evaluated
13 what lands were available to Saint Louis on that
14 property, which ones would be conducive for posting a
15 full K through six program. And then doing some
16 conceptual layouts similar to this to see how these
17 facilities would fit on those spaces, and whether it
18 make sense for Saint Louis to continue to pursue, you
19 know, a fuller expansion of their current program.

20 Q. So in a situation like that, would the school
21 give you a plan, and you say, okay, we'll build this.
22 Or do they give you an idea and you come up with
23 several suggestions, and propose it to the school and
24 they choose one of the suggestions?

25 A. Yes. That's more or less characterizes the

1 process. They have an idea of we want to do this, how
2 can we do it, can we do it, what would it look like.
3 So that's what -- our studies help them make that
4 decision -- is this something worthwhile for them to
5 pursue.

6 Q. And do you -- does your company do the actual
7 construction?

8 A. No, we are planners. So our involvement, you
9 know, typically, would end, for example, like a
10 project like this, once it gets to the permitting, our
11 involvement would typically end -- after the planning
12 stage, it moves into what they call the design phase.
13 And so other design professionals get involved with
14 -- primarily by the architect. They have engineering
15 specialists come onboard, and then start again, as I
16 talked about previously, those more detailed studies
17 are undertaken. That all feeds into the design
18 process.

19 Q. So you are familiar with the ed specs?

20 A. Yes.

21 Q. And have you ever referenced ed specs during
22 any of the school projects that you've done?

23 A. Yes. We use them as, essentially, as
24 guidelines. And again, the projects that we worked on
25 were not DOE schools. So you know, we don't adhere to

1 the ed specs, a strict adherence to it. We use the ed
2 specs as well as other design guidelines, like time
3 saver standards for site planning, time saver
4 standards for building types. These are all
5 guidelines that we use as resources to help us
6 delineate space requirements, facility types for
7 different types of land uses.

8 So yes, I have used the ed specs. But again,
9 none of the projects that I personally have worked on
10 have required that I have to adhere to the ed specs
11 strictly.

12 Q. Okay. Have you ever referenced the ed specs
13 for this project?

14 A. Yes. We did use the ed specs, again, as I
15 mentioned, we used them as guidelines to kind of help
16 us derive -- and primarily for this project, I used it
17 for helping to get an idea of classroom sizes, based
18 on my discussions with John in terms of how many
19 students ideally their class sizes would be, you know,
20 and taking information specific to this program and
21 looking at the ed specs -- and we don't use the ed
22 specs, like I said, in a strict manner. There is some
23 much interpolation that goes on, because the ed specs
24 are designed for larger public schools, so you kind of
25 make -- you take that as a basis of how you derive.

1 Say, maybe like square footages for a classroom, you
2 know. They may say like for a typical size for a
3 classroom might be nine hundred square feet. But
4 their class sizes are a lot larger than what
5 Connections would be. So you kind of do some rough
6 math, and you kind of estimate, okay, that kind of
7 equates to so many square feet per student. And then
8 you translate that into a smaller -- something that
9 would have less students.

10 So going back to your question, yes, we do use
11 it, but it's not a strict adherence. It kind of gives
12 us a starting point for, you know, coming up with our
13 own sort of plan and guidelines, how we derive spaces,
14 space types, and sizes.

15 Q. And for someone who has never built a school K
16 through twelve facility, would the ed specs be a good
17 reference and guide?

18 MR. HONG: I object, misstates facts in
19 evidence. She never said she did construction or
20 building. She said she does the planning part.

21 THE HEARINGS OFFICER: I heard the objection.
22 I'll overrule it.

23 Answer it. I'll allow her to answer it.

24 A. Can you repeat your question again?

25 BY MR. GOMES:

1 Q. For someone who has never built a K through
2 twelve facility, would the ed specs be a good
3 reference and guide?

4 A. Again, I would say yes. It's a starting point
5 for us, but I also, you know, we do use other
6 references. We do not follow only the ed specs. We
7 did look at, again, we use like a time saver standard.
8 So there are other planning guides that we turn to.
9 The ed specs is not the sole source of where we get
10 our information. And we often combine information
11 from different sources to, you know, generate how we
12 -- we start planning for a project -- a specific
13 project.

14 Q. Have you seen the list of acknowledgements on
15 the ed specs and the professionals who got together to
16 come up with the ed specs?

17 A. No, I have not.

18 Q. Do you agree with the suggestions in the
19 ed specs?

20 MR. HONG: I object, lack of foundation --
21 lack of foundation.

22 THE HEARINGS OFFICER: Mr. Gomes, you're going
23 to have to be more specific. The question is
24 overbroad.

25 BY MR. GOMES:

1 Q. Your design plan did not call for a fence
2 around the property, but ed specs calls for a six-foot
3 fence. The school put in a four-foot fence instead of
4 a six-foot fence, which is required by ed specs. Do
5 you agree that a four-foot fence is better than a
6 six-foot fence?

7 MR. HONG: I'm going to object, it's
8 argumentative.

9 THE HEARINGS OFFICER: I'm going to overrule
10 the objection. If you can answer, go ahead and answer
11 it.

12 A. Can you repeat your question again?

13 BY MR. GOMES:

14 Q. One of my concerns is the school put in a
15 four-foot fence instead of a six-foot fence that is
16 required by ed specs. Do you think the four-foot
17 fence is a better idea than a six-foot fence?

18 A. Again, you know, ed specs are designed for
19 larger public schools. This school differs from your
20 typical public school. It's a much smaller school as
21 well as it incorporates an agricultural program, which
22 public schools don't have the kind of program that
23 this school is proposing. So in terms of do I think
24 that the schools should follow the ed specs to a tee
25 and put in a six-foot fence, no, I don't think

1 necessarily that that is appropriate.

2 Q. So do you understand why the fence is put in?

3 THE HEARINGS OFFICER: Mr. Gomes, that
4 question -- is not clear. You're going to have to
5 rephrase your question.

6 BY MR. GOMES:

7 Q. Okay. The fence is supposed to be for
8 security, to keep wandering people off the campus, and
9 to keep children from leaving the campus. Is it
10 easier for an intruder to climb over a four-foot fence
11 instead of a six-foot fence?

12 MR. HONG: Objection, not relevant, it's
13 argumentative. It's cumulative, because she's already
14 said that the ed specs don't apply, and he's
15 continuing to argue the requirement that somehow this
16 school is supposed to meet the ed specs.

17 THE HEARINGS OFFICER: Mr. Gomes, it's not
18 relevant or material to this proceeding, and also, it
19 is argumentative, so I'm going to sustain the
20 objection.

21 Move on to your next area. Thank you.

22 MR. GOMES: Okay.

23 BY MR. GOMES:

24 Q. Did your company write up the environmental
25 assessment?

1 A. Yes, we did.

2 Q. And what kind of qualifications would someone
3 need to write the environmental assessment?

4 A. There are no specific qualifications in terms
5 of, you know -- the law does not specify that you need
6 to have certain degrees or certain levels of
7 experience. Our firm has -- we've done a lot of
8 environmental assessments. And I've -- as I said
9 yesterday, I personally worked on about sixteen or so
10 of them.

11 Q. So actually, someone like myself with no
12 college background, no engineering background, or
13 experience should be able to produce an acceptable
14 environmental assessment?

15 MR. HONG: Objection, calls for speculation on
16 the part of the witness in terms of what is
17 acceptable?

18 THE HEARINGS OFFICER: I'm going to overrule.
19 If you can answer this, go ahead.

20 A. I would disagree with that.

21 It does, while there are no specific
22 educational or professional requirements, it does take
23 some level of experience and understanding of
24 development projects as well as environmental issues
25 to do an EA.

1 BY MR. GOMES:

2 Q. And after you've finished the environmental
3 assessment, whom do you send it to?

4 A. Can you clarify your question in terms of --

5 Q. What is the point of doing an EA? And when
6 you're done with the environmental assessment, who do
7 you send it out to notify that your environmental
8 assessment is done, and people need to take a look at
9 it?

10 A. Again, we follow the guidelines provided by
11 the HRS, the HAR, and OAQC. We are actually required
12 to send it to, in this case, because it's an applicant
13 action, the EA is sent to the approving agency as well
14 as the applicant. Beyond that, it's -- it's really
15 optional where it's distributed.

16 Q. In the HAR, Title 11, Chapter 200 that I read,
17 line 6 says, "Distribute concurrently with the filing
18 in paragraph 5 the draft environmental assessments to
19 other agencies having jurisdiction or expertise as
20 well as citizen groups and individuals which the
21 proposing agency reasonably believes to be affected."

22 Am I, as a resident and a neighbor bordering
23 the project, in your opinion, an individual that could
24 be affected?

25 A. If we determine -- when we send out the final

1 EA, oftentimes what determines that is who's made
2 comments during the draft period. And so having, you
3 know, received no comments, you know, from yourself,
4 as well as from other people, we don't necessarily
5 send them a final EA. If they request that we send
6 it, we can do that. So it's not -- it's not automatic
7 that we send it out to every -- again, like I said
8 before, you know, it does not require us to send it to
9 the adjacent landowners. And if during the process
10 they had indicated their desire to receive continued
11 -- continued notification of when the final came out,
12 then we would do that.

13 Q. So in your opinion, I am not an individual you
14 believe will be affected by the project, that is why
15 you did not send me an environmental assessment or a
16 draft EA?

17 A. Well, I would have to correct you on that. We
18 did send you a draft EA in August of 2009, and having
19 received no comments on that, we have to make the
20 presumption that you had no issues with that, so we
21 moved forward from there. Now, if you had sent in
22 comments, we would have sent you subsequent versions
23 of the EA.

24 Q. Did you distribute it to me or did I have to
25 ask you for it?

1 A. As I discussed yesterday, we had received a
2 call from DLNR, and they had asked us to send it to
3 you, so yes, we sent it to you.

4 Q. Did you distribute it to me or did I ask for
5 it?

6 MR. HONG: I object. The term is vague and
7 ambiguous, and it's also cumulative, it's been asked
8 and answered.

9 THE HEARINGS OFFICER: Mr. Gomes, I think the
10 testimony and the evidence is very clear that you were
11 sent a copy of this and you didn't directly ask. It
12 came from DLNR, so it's already been asked and
13 answered. So this is cumulative testimony, so I'm
14 going to sustain the objection.

15 MR. GOMES: Okay.

16 BY MR. GOMES:

17 Q. So I received your e-mail, thank you very
18 much, on the 31st of August, and it reads, "At the
19 request of Charlene Unoki of DLNR's land division, I
20 tried to e-mail you the draft environmental assessment
21 for the Connections New Century Public Charter School
22 Project. I'm not sure if my e-mail was successfully
23 received as the attachment was quite large and may
24 have been rejected by your e-mail server. If you did
25 not receive my previous e-mail, the DEA is available

1 to download from the Office of Environmental Quality
2 Control EA, EIS archive. Copy and paste in the
3 following link into your web browser to access.

4 The EA assesses the master plan for the new
5 school campus proposed to be constructed in Kaumana.
6 The project site, which adjoins your property is on
7 land to be leased from the State. The draft EA
8 currently is in the thirty-day public review period,
9 which concludes on September 7, 2009.

10 The comments on the EA should be submitted in
11 writing to DLNR and to Wil Chee Planning and
12 Environmental. If you have any questions, please feel
13 free to contact me. Thank you. Celia."

14 So this was sent to me on August 31st, and the
15 public review period ends on September 7. I have
16 never seen an EA before in my life. I didn't know how
17 to look at it. I'm working --

18 MR. HONG: I'm going to object. The
19 questioner should be asking a question, not
20 testifying.

21 THE HEARINGS OFFICER: Mr. Gomes, I'm going
22 instruct you that you need to ask questions. You will
23 have an opportunity to testify later in this
24 proceeding, but right now you have to ask questions to
25 the witness, not testify. You understand?

1 MR. GOMES: Okay.

2 BY MR. GOMES:

3 Q. Is six days enough time for me to submit a
4 written response?

5 MR. HONG: Excuse me, I'm going to object.
6 Calls for speculation on the part of the witness.

7 THE HEARINGS OFFICER: Overrule the objection.
8 She can answer.

9 A. You are allowed to ask for an extension. We
10 have in the past, you know, people found it -- or
11 received information about the EA close to the
12 deadline. We have been asked, "Can we send in
13 comments later?" And we're usually very accommodating
14 to that. We don't hold strictly to thirty days for
15 the comment period. That's what is specified in the
16 law, but we have, whenever it's asked, we do allow
17 people to continually submit comments -- because there
18 is a period between when that comments period ends and
19 as we start working on the final EA, so we will
20 continue to accept comments after that.

21 BY MR. GOMES:

22 Q. Did you make any attempt back in 2009 to let
23 me know that?

24 A. If you had contacted me, I offered to answer
25 any questions you had. If you had contacted me and

1 asked about the process or if you needed additional
2 time, yes, I would have -- I would have told you that.

3 Q. But did you just offer the information?

4 A. I can't offer information that I don't know
5 you have questions on.

6 Q. Thank you.

7 And so because it's not required by law, did
8 you send a copy to the Kaumana Kumiai?

9 A. Can I ask what is that?

10 Q. It is a -- local organization.

11 A. No.

12 Q. Or did you send one to the Kaumana Caves
13 Neighborhood Watch Association?

14 A. No.

15 Q. And what are the reasons for submitting an
16 environmental assessment or EIS report?

17 A. It's to -- preparing an EA or EIS is to
18 evaluate the potential impacts of a project on the
19 environment. Distributing it to the various agencies
20 and organizations is a way to gather information as
21 well as to help you define a level of analysis that is
22 appropriate for the project.

23 Q. What is the difference between and
24 environmental assessment and an environmental impact
25 statement?

1 A. An environmental impact statement is -- it's a
2 higher level of document, and it's a disclosure
3 document when you -- when your project is expected to
4 have significant environmental impacts. An EA is
5 typically the first step in the process. If you go
6 through the EA process, and you determine that your
7 project will have significant environmental impacts,
8 then it gets elevated, you have to move forward and do
9 an EIS.

10 Q. And does the -- excuse me.

11 Does the report affect the final outcome of
12 the requested action submitted by Connections School?

13 A. Can you clarify your question?

14 Q. Does your report affect what can be built or
15 done?

16 A. It allows the process to move forward. The EA
17 is one step in the planning process, so yes, it does
18 affect the outcome in that -- that -- you know, it
19 allowed the school to get the lease, that was the one
20 of the requirements for finalization of the lease, as
21 well as it feeds into the special permit process in
22 terms of the looking at impacts of the project.

23 Q. And does the environmental impact statement or
24 -- I'm sorry, environmental assessment apply for the
25 rest of the entire project throughout each phase or

1 will you need to do an environmental assessment for
2 each phase?

3 A. Typically, no, you won't do an environmental
4 assessment for each phase. This environmental
5 assessment in this particular case, because it covers
6 the entire project, as long as there is no significant
7 deviations than what was represented for this EA, this
8 EA would be valid for the entire project. Again -- if
9 I may go back to the example that I talked about
10 yesterday, the UH center, West Hawaii. When our firm
11 initially did that project, the first EIS was done, I
12 believe, in 2000 or 2001. In the intervening years,
13 the university changed its mind and they relocated the
14 campus from within their
15 five-hundred-acre parcel to another area within that
16 parcel. And as well, they -- the educational program
17 changed and they wanted to expand the vision of that
18 campus. And so because that, there are significant
19 enough changes than what was represented in the
20 original EIS, that they were required to do what is
21 called a supplemental EIS to address those changes.

22 So again, as long as -- the project is built
23 in reasonable conformance to what was represented in
24 the EA, that EA would be valid for the entire project.
25 But again, you know, if there are significant changes,

1 then another EA would be required to address those
2 changes.

3 Q. So going back to the Title 11, just to clarify
4 for me, because I'm really not sure how the process
5 works, even though Title 11 says, I believe, I'm
6 supposed to be notified, you're not required to notify
7 me or my neighbors that will be affected or border the
8 property?

9 A. No. There is no specific requirement that,
10 again, like the permit process here, there is specific
11 language that says adjacent property owners within so
12 many hundred feet have to be notified. So in terms of
13 the language for an environmental assessment or an
14 EIS, that language does not exist. And how do you
15 determine who the EA or EIS gets distributed to in
16 this case, because it's an applicant action versus an
17 agency action, it's really largely up to the approving
18 agency who the EA or the EIS gets distributed to. If
19 you read the language, it's very specific for
20 applicant actions. It's really at the discretion of
21 the approving agency.

22 So going back to your specific case, you know,
23 when DLNR called me and said, "Can you send this
24 fellow a copy of the EA?" they could have easily made
25 the request, and while you're at it, we want you to

1 send it to, you know, everyone else or anyone within
2 so many hundred feet, or anyone within an adjoining
3 property, but that request was not made of us.

4 Q. What does your company -- or I'm sorry.

5 Does your company consider community
6 involvement important?

7 MR. HONG: You know, I object as vague and
8 ambiguous, as to what stage, when?

9 THE HEARINGS OFFICER: Mr. Gomes, you're going
10 to have to be a little more specific.

11 BY MR. GOMES:

12 Q. I'm looking at a picture from your website
13 under public involvement, and it reads, "An important
14 feature of most planning and environmental work is
15 public involvement, from providing the public with
16 information about upcoming projects in their community
17 to soliciting public comments on environmental
18 remediation efforts, Wil Chee Planning has provided
19 our clients with complete public involvement services.
20 Wil Chee Planners and Environmental Consultants
21 understand and appreciate the value of public opinion.
22 As active, informed, and passionate community members
23 ourselves, we ensure that the community and
24 stakeholders who need to be informed on specific
25 projects are reached."

1 Whose idea was it not to involve the community
2 prior to the environmental assessment?

3 MR. HONG: I'm going to a object, assumes
4 facts not in evidence, lack of evidence, also it's
5 argumentative.

6 THE HEARINGS OFFICER: I'm going to overrule.
7 And let her answer if she can.

8 A. There was no decision to not involve the
9 community. We had a community meeting prior to
10 issuance of the first draft of the EA that was in
11 April of 2009. You know, in retrospect, everyone can
12 go back and look at the process and say, "Well, we
13 could have done things differently." But the public
14 meeting that we held with Connections as well as the
15 newspaper article, we felt that was sufficient to get
16 the word out about the project, and you know, as -- as
17 -- and to help us identify stakeholders.

18 BY MR. GOMES:

19 Q. Was the community invited to the 2009 meeting?

20 A. I cannot specifically address that. I was not
21 involved in the notification process. The school took
22 that responsibility in notifying or publicizing the
23 meeting. I believe there was an ad put in the paper.
24 Beyond that, I'm not sure exactly what -- what
25 specific procedures --

1 Q. Do you have any proof of that meeting ever
2 taking place, for example, sign-in sheet, minutes from
3 the meeting?

4 A. Proof aside from my being at the meeting --

5 Q. Yes, were you at the meeting?

6 A. Yes. I was in attendance at the meeting. We
7 made a presentation of the project as well as the
8 architect was there, again, making a presentation of
9 the project. We had made available copies of the
10 botanical study, the archeological study for anyone
11 who wanted to come in and look at it.

12 Q. So do you have any proof of this meeting,
13 sign-in sheet or minutes?

14 MR. HONG: I object. She's already testified
15 she was there at the meeting, that's proof.

16 THE HEARINGS OFFICER: Mr. Gomes, I'm going to
17 sustain the objection. You have to stick with the
18 issues, and we can't keep asking questions about the
19 same thing you asked already. Move on to your next
20 area.

21 BY MR. GOMES:

22 Q. How will water be provided?

23 A. The Department of Water Supply has stated that
24 currently their system has available to the property
25 an allotment, a maximum allotment of 4200 gallons per

1 day. And we have stated and have continued to tell
2 people that, yes, there is a limited allotment of DWS
3 supplied water, but there are alternatives that are
4 available to the school. And those will be looked at
5 in a subsequent detailed infrastructure planning and
6 design phase.

7 Q. So are there water requirements standards?

8 A. There are guidelines as far as estimated
9 usage.

10 Q. And how much water would be available?

11 A. Would be available?

12 Q. Yes.

13 A. Again, the DWS supplied water to the property
14 at this current time is 4200 gallons per day, maximum
15 gallons per day.

16 Q. Is that sufficient for what you're requesting?

17 A. Again, we cannot definitively say whether that
18 4200 gallons will cover everything. It depends on,
19 again, we will be looking at alternative sources of
20 water, that includes the use of recycled water,
21 catchment water, and in that -- in the subsequent
22 detailed infrastructure planning, the engineers will
23 look at how these alternative sources of water can be
24 used to supplement that 4200 gallons.

25 Now, so whether you're saying -- if you're

1 asking is that 4200 gallons sufficient to -- to
2 support this entire campus, we have continued to say
3 we don't know definitively yet. But we have also
4 agreed to, as a condition of approval, is that if in
5 this subsequent phase it is determined that the entire
6 campus can't be built within that 4200-gallon
7 allocation, as well as in combination with alternative
8 water sources, the school will limit the amount of
9 development to be contained within what can be
10 supported by that 4200 gallons and supplement it by
11 additional water sources.

12 Q. As far as drainage, have you conducted any
13 studies in terms of how the drainage will be handled?

14 A. The engineers have looked at it conceptually.
15 Right now they're looking primarily at having
16 detention basins capturing surface run-off. And
17 again, that feeds into water usage because maybe
18 potentially we can use some of that run-off for
19 non-potable uses.

20 Q. Will there be any impact to properties makai
21 of the project given the honeycomb of caves in this
22 area?

23 MR. HONG: I object, assumes facts not in
24 evidence.

25 THE HEARINGS OFFICER: I'm going to overrule

1 it. If she can answer it --

2 A. The -- the engineers have not looked
3 specifically at subsurface conditions yet. And again,
4 that comes at the next phase. In terms of drainage
5 for this specific project, the project would have to
6 adhere to County drainage standards which essentially
7 means that any excess of flow and beyond what
8 currently flows off of the property, that all has to
9 be maintained on the property. So in terms of like,
10 storm water drainage off the property, there should be
11 no effect to properties makai -- as one of the
12 requirements of what would be required is that the
13 school maintain all of the storm water run-off onsite.

14 BY MR. GOMES:

15 Q. As far as waste water goes, what kind of
16 system will you use for wastewater?

17 A. We anticipate using what's called an
18 ecological wastewater system. And again, going back
19 to the UH West Hawaii project, that is something that
20 is being implemented for that project. And what it
21 is, is it's essentially a biological treatment system.
22 So it mimics the cleansing function of wet lands. And
23 it cleans the waste water effluent, which then can be
24 used -- when I talk about recycled water, this is the
25 recycled water that we're talking about, is water that

1 is treated in a certain level, which can then be used
2 for productive use, it can be used for agriculture, it
3 can be used for irrigating, landscaping. And if you
4 clean it to a high enough level, it can be used for
5 like toilet flushing, as well as a greater span of
6 agriculture uses.

7 Q. And how much does a system like that cost?

8 A. I -- I can't say. I do not have specific
9 experience in designing or building a system like
10 that.

11 Q. Is that a system that can be maintained by the
12 students or do they need a professional outsider to
13 maintain?

14 A. These systems, if they're designed properly,
15 are self-sustaining. There is a little -- very little
16 maintenance that's involved.

17 Kanu O Ka Aina up in Waimea has a system like
18 that, so it is -- and a lot of these systems based on
19 my reading of it, are actually done at schools,
20 because they are used as educational projects. So
21 they actually do require very little maintenance.

22 Q. And what is the life span of a system like
23 that?

24 A. I cannot speak to that, I do not know.

25 Q. Does it use an injection system?

1 A. No. It's -- your wastewater flows into a
2 septic tank, similar to like what you would have at
3 your house, but rather than the effluent from your
4 septic system going out into a leech field, that
5 effluent is then treated, that's where the wet land
6 portion comes in. So the treated effluent is -- it's
7 either used for irrigation -- so you can water -- you
8 can do subsurface drip irrigation. Or if you have
9 excess effluent -- if you have more water than what
10 you actually need for irrigation purposes, you can
11 send it to a drain field.

12 So there is -- there is no -- typically, you
13 would not inject it, although that could be an option,
14 but probably you would just leech it out similar to
15 what you do with your septic system.

16 Q. Is that an exposed system that kids or animals
17 could get into?

18 A. It depends on the specific design of the
19 system. I know for the one at UH West Hawaii, it's
20 actually a subsurface, I think it's a gravel bed, and
21 so the water -- the treated water is actually under a
22 gravel bed. That requirement, specifically, I
23 believe, was because of its proximity to the airport,
24 and they didn't want an open water feature that would
25 attract birds.

1 But there is very -- there is many different
2 ways of designing the system so it could be
3 subsurface. Sometimes the wet land portion are in
4 tanks. But it is a -- it's actually a very clean
5 process. There is very few odors. And if it's
6 designed properly, there is very little vectors.

7 Q. When your company was selected to work on this
8 project, were you asked to look at any alternative
9 sites?

10 A. When the project was brought to us, this site
11 was already in the process of being leased from DLNR.
12 So -- we were not -- if you're asking if we were
13 involved in a site selection process, no.

14 Q. And did you ever suggest to John Thatcher that
15 maybe he should use another site?

16 A. We have had previous discussions that they may
17 want -- when the cave issue came up -- when there were
18 objections to the project because of the cave running
19 through the property, we did discuss possibly looking
20 at other sites, but we were able to resolve that issue
21 talking to the interested -- the researchers and the
22 speleologists. So we were able to resolve that issue
23 without having to consider other sites.

24 Q. As part of the environmental assessment
25 process, is there a need to look at alternatives?

1 A. Yes, it does require you to look at
2 alternatives. Does it require you to look at
3 alternative sites? Not specifically.

4 Q. And can you describe some of the alternatives
5 you looked at?

6 A. We looked at different -- excuse me --
7 different configurations of the property, how the
8 property could be used.

9 Q. On some of the sites, you noted there were two
10 large -- could you consider possibly subdividing those
11 properties?

12 A. No, we did not -- that was not a
13 consideration.

14 Q. In your evaluation of the alternative sites,
15 why did you not consider the Nani Mau site? Were you
16 not asked to --

17 A. Again, we were not involved in -- in looking
18 at alternative sites with the school.

19 Q. When government or public agencies start
20 looking at relocating, they frequently do a selection
21 study, for example, prior to the State building, the
22 Judiciary complex in Hilo, and now in West Hawaii, a
23 selection process was done. Why was such an exercise
24 not done?

25 MR. HONG: I'm going to object, misstates

1 facts not in evidence. Government agencies versus a
2 charter school, it's apples and oranges.

3 THE HEARINGS OFFICER: I don't think it's
4 relevant material to this case, so I'm going to
5 sustain the objection.

6 BY MR. GOMES:

7 Q. Relating to community impact, could you
8 describe the social impact the project would have on
9 the immediate community?

10 A. Can you be more specific in terms of social
11 impact -- what -- are you specifically asking?

12 Q. Any impact that you think the school would
13 have on the community?

14 A. I'm going to refer back to our statements in
15 the EA. Yes, there will be some impact in terms of
16 the noise, in terms of traffic. Putting a school on
17 the property will increase noise in the neighborhood.
18 There will be some increase in traffic.

19 Do these -- do these impacts rise to a level
20 of significance such that, you know, it would be, you
21 have, know a detriment to the community? Certainly
22 the findings of the TIAR do not suggest that. And as
23 far as noise, schools typically -- especially a school
24 of this size where you're not having major athletic
25 events, they stated that the type of noisier events

1 like dances, and things like that will not be held on
2 this property.

3 So you know, during normal school activities
4 during the day, you know, we're not really looking at
5 a significant addition of noise in the area. And
6 there are regulations -- the Department of Health has
7 regulations called community noise standards. And so
8 they do specify allowable decibel levels based on the
9 zoning of the property. And actually, there is
10 specific language in the Department of Health
11 regulations that makes an exception from these decibel
12 standards for schools and for approved school
13 activities.

14 So there is an acknowledgement that, yes,
15 schools do -- there is noise associated with schools,
16 but that in a context of a community, it is an
17 acceptable -- acceptable situation.

18 Q. So you think it would be a positive impact on
19 the community?

20 MR. HONG: Your Honor, object, it's
21 argumentative and cumulative. She's already testified
22 what she feels the impact is going to be.

23 THE HEARINGS OFFICER: Sustain the objection.

24 BY MR. GOMES:

25 Q. How many community meetings did you attend?

1 A. I have attended three so far.

2 Q. And in your opinion, what was the community's
3 reaction?

4 A. Not favorable.

5 Q. Was there a separate social impact analysis
6 done?

7 A. Are you talking about as part of the EA?

8 Q. Yes.

9 A. And meaning a social impact analysis in what
10 sense?

11 Q. What kind of community support the school will
12 receive?

13 A. I don't believe a social impact analysis will
14 look at community support. And typically a separate
15 social impact analysis, at least in my experience, is
16 not done for EA. I mean we do look at social issues,
17 but in terms of a separate study, say, like an
18 archeological or biological study, that's not a
19 typical study that is done, unless for some reason
20 there is some characteristic of a project that
21 warrants a specific study such as that.

22 Q. And are you aware of the police department's
23 comments as far as increased crime and noise?

24 A. I have seen the comment letter from the police
25 department, and I believe the one that you're

1 referring to about impact to crime and noise came as a
2 result of their -- their review of the special permit.
3 Now, previously through the EA process, the police
4 department, their comments through the EA process
5 indicated that they had no concerns, and they did not
6 believe that there were any crime or traffic issues
7 with the project.

8 Q. In the police comments, it also mentioned that
9 sidewalks should be built along Edita Street and you
10 agree to that?

11 A. Not necessarily. I mean this is a rural
12 community. There are no existing sidewalks in the
13 area. The school had agreed to widen the shoulder of
14 the road to accommodate for traffic. The sidewalks
15 are typical of more of a suburban type community.

16 THE HEARINGS OFFICER: Mr. Gomes, you're going
17 to be a while longer, I take it? The reason why I'm
18 asking is we're going to take a recess.

19 Mr. Hong, there are some witnesses that are
20 outside that may not take some time, that can only be
21 here this morning. I don't know if you want to call
22 them out of order, and call Ms. Shen back again. It's
23 your decision.

24 MR. HONG: And who are those witnesses?

25 THE HEARINGS OFFICER: Wayne Kanemoto, which

1 is your witness, Mr. Gomes.

2 And he's only available this morning. But we
3 still have time, it's only 9:30. Melvin Yokota and
4 Terrence Yoshioka. The other thing is there is a
5 Dr. Peng who is going to be here at 10:30.

6 So we'll take a ten-minute recess now. But
7 let me know when we come back how you want to handle
8 this.

9 MR. HONG: All right. Thank you.

10 (Recess.)

11 THE HEARINGS OFFICER: We're back on the
12 record after a recess, and I will note the presence of
13 all the parties. And Ms. Shen is still on the witness
14 stand.

15 Mr. Gomes, you want to proceed?

16 BY MR. GOMES:

17 Q. Have you seen the site?

18 A. Yes, I have.

19 Q. Is the fencing completed?

20 A. I have not been to the site since the fencing
21 was done, so I cannot answer that question.

22 Q. Do you know if the dispute between the
23 contractor and the school has been settled?

24 A. I have no knowledge of that.

25 Q. And will you be fencing the upper parcel?

1 A. That's not my decision. I can't answer that
2 question.

3 Q. Have you recommended fencing for the upper
4 parcel?

5 A. We have not made a recommendation one way or
6 the other.

7 Q. And were you required to notify anybody of
8 this hearing?

9 A. This hearing? Was I required to notify -- I
10 was not required to notify --

11 Q. Will the school be using hydroponics or
12 aquaponics?

13 A. It is my understanding that that is their
14 intention to implement or look at these type of
15 technology-based agricultural uses.

16 Q. And both of those use water, that's correct?

17 A. Yes.

18 Q. Are there any community members that have
19 contributed to the planning of the school?

20 A. Are you asking if any community member
21 specifically have been involved in what we've
22 developed up to this point?

23 Q. Yes.

24 A. No.

25 Q. And do you know of any other schools that uses

1 catchment?

2 A. I believe there are other -- other charter
3 schools that do use catchment. To what extent, I'm
4 not aware of that.

5 Q. Okay. Thank you very much.

6 MR. GOMES: I'm done.

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

9 MR. HONG: Yes, briefly.

10 REDIRECT EXAMINATION

11 BY MR. HONG:

12 Q. Looking at the revised conditions of the
13 planning director at 1227 through 1231, do you
14 recognize those revised conditions?

15 A. Yes, I do.

16 Q. And are those revised conditions acceptable to
17 the applicant?

18 A. Yes.

19 Q. In terms of the -- there was some discussion
20 about the EA -- an EA having to be done for other
21 parts of the project, and your -- you had testified
22 that in response to the question that as long as the
23 project was in reasonable conformance, the EA would be
24 valid for the entire project, do you recall that?

25 A. Yes.

1 Q. You've seen the lease from DLNR to the
2 applicant?

3 A. Yes.

4 Q. And the lease is for a school, not for any
5 other purpose, correct?

6 A. Correct.

7 Q. In terms of notice to the public regarding the
8 draft EA, you had talked about the OEQC, what does
9 that stand for?

10 A. The Office of Environmental Quality Control.

11 Q. And what's their role with respect to
12 distributing or having that information regarding the
13 draft EA available to the public?

14 A. OEQC acts as a clearing house for all of the
15 EAs and EISs that are prepared, so they publish on a
16 bi-weekly basis a newsletter, if you will, called the
17 Environmental Notice. And that lists all of the -- it
18 gives a brief summary of all of the EAs and EISs that
19 are available or have been made available within that
20 two-week period. And they also host a website which
21 has an archive of EAs and EISs where the public can
22 access all of these documents.

23 Q. A question was brought up about a social
24 impact analysis being done, do you recall that
25 question?

1 A. Yes.

2 Q. What is a social impact analysis, and what
3 would trigger that? Is that a term of art in your
4 industry?

5 A. Like I said, in my experience, we never had --
6 I think, actually, there is only one EA that I've
7 worked on where a social impact analysis was done, and
8 that was for -- it was for an Army Corp project, and
9 it was for a stream and drainage improvements. And
10 typically, they'll look at -- or at least the one that
11 I saw, it looked at -- and in this case, because these
12 proposed improvements would require taking of people's
13 property in order to improve the stream and drainage,
14 where I did look at sort of the impacts of that, the
15 economic impacts, you know, to these residents. And,
16 again, in my experience, I haven't seen very many of
17 these, so I don't know specifically what goes into
18 some of these -- independent social impacts.

19 Q. And you know what would trigger the necessity
20 for that kind of analysis?

21 A. I cannot say specifically, again, because the
22 projects that I worked on so far have never
23 necessitated one like that.

24 Q. Okay. Thank you.

25 MR. HONG: No further questions.

1 THE HEARINGS OFFICER: Ms. Shen, I have
2 several questions.

3 First of all, on the environmental impact
4 assessment that you were talking about, the document
5 that you were talking about was one prepared under
6 Chapter 343 of the Hawaii Environmental Impact
7 Statement law?

8 THE WITNESS: That's correct.

9 THE HEARINGS OFFICER: Is an environmental
10 assessment required on all land projects that you work
11 on?

12 THE WITNESS: No, it depends. What triggers
13 --

14 THE HEARINGS OFFICER: And I'm asking about an
15 environmental impact statement under Chapter 343, the
16 State law.

17 THE WITNESS: No, it's not required for all
18 projects. Again, it depends whether it uses State
19 land or State funds, or in some cases certain permits
20 require an EA.

21 THE HEARINGS OFFICER: Okay. What was the
22 trigger for this particular project?

23 THE WITNESS: The use of State Land land.

24 THE HEARINGS OFFICER: Okay.

25 THE WITNESS: So the EA in this particular

1 case, it was required as part of the leasing process
2 with DLNR.

3 THE HEARINGS OFFICER: And that was -- you
4 finished the process in what -- what year?

5 THE WITNESS: 2010 the final EA was issued in
6 2010.

7 THE HEARINGS OFFICER: And that was before the
8 special permit was applied for, is that correct?

9 THE WITNESS: Yes.

10 THE HEARINGS OFFICER: There is a process
11 where if somebody's dissatisfied with the
12 environmental assessment, they can appeal the decision
13 to accept it?

14 THE WITNESS: There is a -- for an EA, there
15 is a, I believe, it's a thirty-day period after the
16 final EA is issued.

17 THE HEARINGS OFFICER: Did anybody contest
18 your final environment assessment in this case?

19 THE WITNESS: No.

20 THE HEARINGS OFFICER: Now, were you involved
21 in preparing the special permit application in this
22 case?

23 THE WITNESS: Yes.

24 THE HEARINGS OFFICER: And just one more
25 question, does the special permit trigger an

1 environmental assessment, that application?

2 THE WITNESS: I believe in my understanding,
3 no, it specifically does not.

4 THE HEARINGS OFFICER: Okay. Did you prepare
5 -- I noticed from the record, that the application was
6 submitted by Mr. Hong.

7 THE WITNESS: Yes.

8 THE HEARINGS OFFICER: Did you work on that
9 application at all?

10 THE WITNESS: Yes, I did.

11 THE HEARINGS OFFICER: And the narrative for
12 the application, was that the document that you
13 prepared?

14 THE WITNESS: Yes.

15 THE HEARINGS OFFICER: All right. Ms. Shen,
16 also since you've been involved with this project and
17 did an environmental assessment for the State lease,
18 as a land use planner, you're familiar with the
19 categories -- the classification of this land?

20 THE WITNESS: Yes.

21 THE HEARINGS OFFICER: Besides being ag, do
22 you know -- do you know what the County general plan
23 designation for it is?

24 THE WITNESS: Yes, it's -- it's low density
25 urban.

1 THE HEARINGS OFFICER: And it's in the State
2 agriculture district?

3 THE WITNESS: It's the State ag district,
4 correct.

5 THE HEARINGS OFFICER: And that's why you're
6 applying for the special permit?

7 THE WITNESS: Correct.

8 THE HEARINGS OFFICER: Did you consider
9 whether or not instead of a special permit, you should
10 have sued the boundary land for this project?

11 THE WITNESS: We did not consider that as an
12 option, as for us, it seemed the specialty permit was
13 the appropriate way to move this project forward.

14 THE HEARINGS OFFICER: And why did you believe
15 that the special permit was appropriate?

16 THE WITNESS: Because schools are allowed in
17 the agriculture zone. Looking at the zoning code it's
18 an allowable use with the special permit. It's also a
19 State Land land use ag. So the zoning code makes no
20 distinction on the size of the project. So just
21 following the code, it's -- it says that schools are
22 allowable in an ag district given a permit, so that's
23 -- that's the route that was followed.

24 THE HEARINGS OFFICER: Also, I think early
25 this morning, you've talked about A and B ag lands

1 versus the soil classification of D. Isn't it true
2 that there'S no A and B ag lands either in Hilo or in
3 the lower Puna District?

4 THE WITNESS: I cannot answer that with
5 certainty. I don't know the ag classifications
6 throughout the area.

7 THE HEARINGS OFFICER: But the A and B ag land
8 and the protectionS for A and B ag lands is not an
9 issue in this permit, is that correct?

10 THE WITNESS: Correct.

11 THE HEARINGS OFFICER: Also from your --
12 perspective as a land use planner, if -- what --
13 considering the zoning, and assuming that the State
14 agreed to it, what could be done with this property
15 other than special permit?

16 THE WITNESS: Under its current -- under its
17 current State Land land uses only?

18 THE HEARINGS OFFICER: Right.

19 THE WITNESS: Other agricultural uses could be
20 done on the property, crop production, livestock.

21 THE HEARINGS OFFICER: Could it be subdivided?

22 THE WITNESS: I believe it could be as long as
23 the result in subdivision continue to maintain the
24 agriculture use as the primary use of the land.

25 THE HEARINGS OFFICER: Okay. And you don't

1 know -- do you know anymore of what could be done in
2 subdividing in this County for this project?

3 THE WITNESS: No, not specifically.

4 THE HEARINGS OFFICER: All right. I don't
5 have any other questions.

6 Mr. Hong, do you have any questions based on
7 my questions?

8 MR. HONG: No, thank you.

9 THE HEARINGS OFFICER: Mr. Siu?

10 MR. SIU: No questions.

11 THE HEARINGS OFFICER: Ms. Self?

12 MS. SELF: Nothing further.

13 THE HEARINGS OFFICER: Mr. Gomes?

14 MR. GOMES: No further questions.

15 THE HEARINGS OFFICER: Thank you very much for
16 your time. You're excused as a witness.

17 Mr. Hong, there are several witnesses waiting
18 outside. I don't know who you're going to call first,
19 because some of the physicians work at the hospital
20 that you may want to -- Dr. Camacho is here. David
21 Camacho, he's a physician. He's a radiologist at Hilo
22 Hospital.

23 MR. HONG: And Dr. Peng is outside?

24 THE HEARINGS OFFICER: Not yet, he should be
25 here pretty soon.

1 MR. HONG: Okay. My plan was to take
2 Mr. Yokota next, but -- but yeah -- I'll take
3 Mr. Yokota.

4 You know, given the time, and I'm going to
5 narrow our case a little bit, and thank
6 Dr. Camacho for appearing, we're going to release him
7 -- given his time situation, but we would like to
8 start with Mr. Yokota.

9 THE HEARINGS OFFICER: Thank you.

10 We'll strike Mr. Camacho from your witness
11 list, and we'll advise him that he can leave.

12 MR. HONG: Right.

13 THE HEARINGS OFFICER: Just one more thing,
14 Mr. Kanemoto, Mr. Gomes, since he's your witness, how
15 long do you think he'll take?

16 MR. GOMES: I hope not more than fifteen
17 minutes.

18 THE HEARINGS OFFICER: Take a seat.

19 MELVIN YOKOTA
20 called as a witness by and on behalf of the Applicant,
21 after having first been duly sworn, was examined and
22 testified as follows:

23 Could you please state your full name and your
24 address?

25 THE WITNESS: Melvin Yokota, 1358A

1 Mele Manu Street.

2 THE HEARINGS OFFICER: Thank you.

3 Mr. Hong, would you proceed?

4 DIRECT EXAMINATION

5 BY MR. HONG:

6 Q. Mr. Yokota, you were issued a subpoena and
7 subpoena duces tecum, correct?

8 A. Yes.

9 Q. Pursuant to the subpoena duces tecum, did you
10 bring any records?

11 A. My resume.

12 Q. No other records?

13 A. No.

14 Q. May I have your resume then?

15 MR. HONG: Just for the record, the witness
16 has handed me a copy of his resume.

17 BY MR. HONG:

18 Q. And this is your current resume, is that
19 right?

20 A. Yes, it is.

21 Q. When did you work on this resume last?

22 A. That was done by our corporate marketing
23 department maybe two or three months ago.

24 Q. Did you have any input in terms of what the
25 narrative is regarding where it says experience and

1 summary?

2 A. Yes, I did.

3 Q. You told them what to write?

4 A. Yes.

5 Q. Okay. You are an electrical engineer, is that
6 right?

7 A. Yes.

8 Q. You previously used to work for HHMI
9 Corporation, is that correct?

10 A. Yes.

11 Q. And explain to us what does HHMI Corporation
12 do?

13 A. HHMI Corporation was an electrical engineering
14 firm, and was bought out by Power Engineers.

15 Q. And in terms of HHMI, how long had you been
16 working there before they were bought out by Power
17 Engineers?

18 A. Since 1979.

19 Q. And you are a licensed electrical engineer?

20 A. Yes.

21 Q. And do you hold any other licenses?

22 A. No.

23 Q. Are you a professional engineer?

24 A. Yes.

25 Q. And have you been licensed as a professional

1 engineer?

2 A. Yes.

3 Q. And is that in the State of Hawaii or any
4 other state?

5 A. Yes, in Hawaii, and originally in 1976 also in
6 Colorado, but that license went inactive.

7 Q. So you hold two engineering licenses,
8 professional engineer and electrical engineer,
9 correct?

10 A. No, it's only one license.

11 Q. It's only one license?

12 A. Yes.

13 Q. But your engineering discipline is electrical
14 engineering?

15 A. Yes.

16 Q. You recall testifying at the two public
17 hearings before the Planning Commission?

18 A. Yes.

19 Q. And I'm referring to page 1581 and also page
20 1836 in your verbal testimony, your oral testimony
21 before the Planning Commission, you never identified
22 yourself as an electrical engineer, correct? Yes?

23 A. Correct.

24 Q. And in terms of your written testimony that is
25 here on page 1329, you identify yourself as a

1 consulting engineer and not electrical engineer,
2 correct?

3 A. That's correct.

4 Q. And then yesterday, when you testified you
5 submitted your public testimony, that was the first
6 time you identified yourself in these particular
7 proceedings as an electrical engineer, correct?

8 A. Yes.

9 Q. And were you familiar -- in terms of your last
10 position with HHMI Corporation, that was the senior
11 electrical engineer, the vice-president -- what was
12 your title?

13 A. At the end it was vice-president and principle
14 electrical engineer.

15 Q. And you're familiar with the HHMI website
16 before Power Engineers bought it out?

17 A. Somewhat, I didn't get involved in putting
18 that together.

19 Q. All right. Let me show you what we'll mark
20 for identification as A-22. And I'll represent this
21 is downloaded from the HHMI website. Why don't you
22 look at this in terms of the company description and
23 see if you recognize that? And may the record reflect
24 that I'm handing out copies to the other parties --
25 oh, I only got two.

1 A. Okay.

2 Q. Does that look familiar?

3 A. Yes.

4 Q. And is that a fair and accurate statement of
5 what HHMI Corporation did?

6 A. In parts.

7 Q. In parts?

8 A. Yes.

9 Q. Well, let me ask this question. In terms of
10 the company description, or what your company did,
11 HHMI, did it ever do TIAR, traffic impact analysis
12 reports?

13 A. No.

14 Q. In terms -- you submitted a quote, "An
15 abbreviated study on the traffic impact on greater
16 Hilo resulting from siting of Connections School at
17 Kaumana," and I just note for the record it's at page
18 1331. You recall that?

19 A. Yes.

20 Q. And you submitted your other report yesterday?

21 A. Yes.

22 Q. A project manager's review?

23 A. Yes.

24 Q. And what training have you had in terms of
25 traffic analysis or impact analysis?

1 A. I haven't had training in analysis of traffic,
2 but I have done traffic-related work.

3 Q. When you say traffic-related work, that means
4 what, putting in stop lights or the wiring for stop
5 lights?

6 A. Putting together plans and specs for
7 signalization of intersections and roadway lighting.

8 Q. Okay. So the lights on the roads and also the
9 stop lights, yeah?

10 A. Yes.

11 Q. Okay. In terms of your written testimony on
12 page 1803, you criticized the delivery of four hundred
13 students each morning, and you asked the question,
14 that wouldn't add to the negative impact, do you
15 recall that?

16 A. Yes.

17 Q. When you're saying four hundred students,
18 you're talking about when the entire project is built
19 out, right?

20 A. Yes.

21 Q. You weren't looking at the phases, right?

22 A. That's correct.

23 Q. Okay. You ever heard of or received any
24 communications from a website "no Connections
25 ever.com"?

1 A. I don't recall that website name.

2 Q. Anybody ever send you any e-mail from that
3 website?

4 A. I only look at e-mails from persons that I
5 know.

6 Q. Okay. You know Layne Novak?

7 A. Yeah, I do.

8 Q. And did she ever send you e-mails from that
9 "no Connections ever.com"?

10 A. I had e-mails from Layne Novak.

11 Q. And was that from the "no Connections
12 ever.com" address?

13 A. No -- I don't know. I don't know, I look at
14 the names.

15 Q. Do you know who the person was -- 'cause
16 you're sitting here under oath, who the person was
17 that defaced or vandalized the school with bumper
18 stickers "no Connections" on October 17 or 18, 2012?

19 A. I have no idea.

20 Q. Okay. In terms of future design, would you be
21 willing to sit on a campus design committee for
22 Connections to help minimize the impacts of the
23 neighborhood?

24 A. I would be willing to provide input.

25 Q. Okay. Thank you.

1 MR. HONG: No further questions.

2 THE HEARINGS OFFICER: Mr. Siu?

3 MR. SIU: I have no questions.

4 THE HEARINGS OFFICER: Ms. Self?

5 MS. SELF: No questions.

6 THE HEARINGS OFFICER: Mr. Gomes?

7 MR. GOMES: I have a few questions, yes.

8 CROSS EXAMINATION

9 BY MR. GOMES:

10 Q. Mr. Yokota, you testified that you're an
11 electrical engineer?

12 A. Yes.

13 Q. Does your work involve any traffic-related
14 work?

15 A. On occasion, yes, but now as project manager,
16 I will put together design teams for
17 multi-disciplinary projects, and I'll retain civil
18 engineers to do roadway designs, and other specialists
19 that is needed.

20 Q. You mentioned that you are a project manager,
21 correct?

22 A. Yes.

23 Q. What does a project manager do?

24 A. In our field, the project manager -- if we're
25 a subconsultant we'll manage just their portions of

1 the project, their specialty. But on occasion, my
2 firm acts as a prime consultant, where we retain half
3 a dozen or more different specialties, and we are
4 responsible for coordinating the scope -- work scope
5 definition, who does what, pre-negotiations. And then
6 when we get into the project design, we're responsible
7 for collating all the work of the disciplines, and
8 doing the final quality control check before we make
9 the sign-ups and submittals to the County.

10 Q. So you do work with specialty consultants?

11 A. All the time.

12 Q. Do you perform reviews of their work?

13 A. All the time.

14 Q. Why?

15 A. As the prime consultant, it is our
16 responsibility to make sure that all of our teams work
17 dovetail together and make sure everything fits, and
18 in the final product it works as intended.

19 Q. Why do you say a water well should be in
20 Connections plans now?

21 A. Okay. In looking at the special assessment,
22 all of my statements are based on what I see in the
23 special assessment or environmental assessment for the
24 special permit. And I looked at the information
25 provided by the school on the number of students. I

1 looked at the square footage of the roofs. I looked
2 at some of the preliminary numbers that were discussed
3 as to what the water supply department could allocate
4 to the property. I went online to investigate or
5 research rainfall data for Kaumana.

6 And in my reviews, the projected rainfall that
7 the study says it can be collected per day was about
8 thirty-thousand gallons. And that is consistent with
9 the average rainfall data.

10 In my business we always consider worst case
11 to make sure that in planning we make sure that all of
12 the facilities that may ultimately be required for a
13 project is considered in the initial design and site
14 layout. Because if we design a project halfway, and
15 decide, oh, my gosh, we don't have room to put in what
16 we really need, then we haven't done our job properly.

17 Q. And in your work, do you leave details until
18 final design?

19 A. We are involved heavily in Federal contracting
20 work. And the way the Federal government funds
21 projects, when we assist the government in planning
22 projects for future funding, we have to take all of
23 the contingencies into account to make sure that the
24 agencies request enough funding to do a complete build
25 out that's complete, and fully functional.

1 Q. Is it possible to predict project needs during
2 conceptual design?

3 A. We do that all the time in Federal projects.
4 There's a lot of considerations that go into design,
5 but we can start with worst case conditions to
6 identify, hey, what is the maximum amount of power, or
7 water, or sewer facilities that will be needed for the
8 site.

9 Q. Is that how you do it?

10 A. Yes.

11 Q. And why do you do that?

12 A. As I said, for Federal projects, you only get
13 one shot at obtaining funding, and we have to make
14 sure that all of the facilities that might be required
15 to complete the project is considered in estimating
16 what the project will actually cost.

17 Q. Is it usual practice to figure out worst case
18 conditions during concept development?

19 A. In our case, yes, because if we fail to
20 consider what will be required during design of a
21 project and construction, if something that wasn't
22 included is actually found to be required, the
23 consultant could be responsible for omissions.

24 Q. And who do you do this worst case design for?

25 A. In general, for Federal agencies.

1 Q. Getting back to the traffic, if you're not a
2 practicing traffic engineer, why did you bother to do
3 your so-called traffic analysis?

4 A. I have to drive through the traffic every day,
5 and my experience is -- my work normally starts at
6 eight o'clock. If I drive to my office between
7 seven-fifteen and eight o'clock on a school day, I
8 encounter long backups on the Kaumana and Mohouli
9 extension, and also at the Mohouli extension and
10 Kaumana Drive intersection. Sometimes I have to wait
11 for three cycles -- three five-minute cycles before I
12 can clear that section.

13 And just thinking about how much -- how many
14 students are going to be coming up to Kaumana School,
15 and realizing that a lot of parents may be dropping
16 their kids off and driving back down in the morning, I
17 thought about how many vehicles are going to be added
18 to those traffic delays. If you consider one hundred
19 vehicles going through the Mohouli extension and
20 Komohana Drive intersections, you could easily get
21 another six five-minute cycles in that one hour.

22 Q. Thank you very much.

23 MR. GOMES: No more questions.

24 THE HEARINGS OFFICER: Mr. Hong, any redirect?

25 MR. HONG: Briefly.

REDIRECT EXAMINATION

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BY MR. HONG:

Q. If you can take a look at page 1330, and at the end, could you read that last paragraph for me please, beginning with the word "it"?

A. Okay. "It is my professional opinion that this special permit application is deficient and must not be approved."

Q. So that was in your professional opinion as an electrical engineer?

A. As a project manager.

Q. As a project manager.

How many special permit applications have you, as a project manager, handled in the County of Hawaii?

A. I haven't done any in the County of Hawaii.

Q. All right.

MR. HONG: At this time, we offer into evidence what has been marked for identification as A-22, which is the original and copies of Mr. Yokota's curriculum vitae. And in terms of A-23, it -- A-23 is going to be he a copy of the HHMI Corporation Company description.

THE HEARINGS OFFICER: Mr. Siu, do you have any objections to A-22 or A-23?

MR. SIU: I have objection.

1 THE HEARINGS OFFICER: Ms. Self, do you have
2 any objections?

3 MS. SELF: No objections.

4 THE HEARINGS OFFICER: Mr. Gomes?

5 MR. GOMES: No objections.

6 THE HEARINGS OFFICER: Then I will admit into
7 evidence Exhibits A-22 and A-23.

8 Mr. Hong will provide me with a copy.

9 MR. HONG: Yes.

10 Thank you. I have nothing further for
11 Mr. Yokota.

12 THE HEARINGS OFFICER: Mr. Yokota, thank you
13 very much. You're excused.

14 MR. HONG: And our next witness would be --

15 THE HEARINGS OFFICER: Dr. Peng is here.
16 We'll call Dr. Peng now.

17 MR. HONG: That would be PCL planning economic
18 record page 409.

19 THE HEARINGS OFFICER: 409.

20 MR. HONG: And then we're going to -- after
21 that, 1346.

22 THE WITNESS: Hi.

23 THE HEARINGS OFFICER: Good morning.

24 Can you please raise your right hand?

25 THE WITNESS: Sure.

1 MING PENG

2 called as a witness by and on behalf of the Applicant,
3 after having first been duly sworn, was examined and
4 testified as follows:

5 THE HEARINGS OFFICER: Thank you. Could you
6 please state your full name and give us your address?

7 THE WITNESS: Ming Peng, 1547 Mele Manu
8 Street.

9 THE HEARINGS OFFICER: You can put your hand
10 down.

11 THE WITNESS: All right.

12 DIRECT EXAMINATION

13 BY MR. HONG:

14 Q. Thank you, Dr. Peng.

15 If you take a look at page 409 in front of you

16 --

17 A. Yeah.

18 Q. -- do you recall that particular e-mail that
19 is dated October 12, 2012? Do you see that?

20 A. Yes.

21 Q. And let me show you pages 1346 and 47 of the
22 Planning Commission record, do you recognize that
23 particular document that you submitted?

24 A. Yes.

25 Q. And that's a fair and accurate copy of your

1 initials at the bottom on page 1347?

2 A. Yes.

3 Q. You also submitted other written testimony, I
4 just note for the record pages 1802, 1922.

5 In terms of your objection to the project,
6 your objection to the project is based on the total
7 built-up project, that's where you get your number
8 four hundred or five hundred students?

9 Let me rephrase my question, Doctor. You
10 understand that in terms of this project, it's going
11 to be done in phases, correct?

12 A. That is correct.

13 Q. And your objections, you said, in your e-mail?

14 A. Yes.

15 Q. You sent a letter, and your letter is at 1346,
16 1347, which you identify as five hundred students or
17 four-hundred-plus students in 409, your objection
18 primarily is to the entire project?

19 A. Yes.

20 Q. You characterized --

21 THE HEARINGS OFFICER: Excuse me, Dr. Peng,
22 can you use the microphone?

23 THE WITNESS: Oh, sorry.

24 MR. HONG: Oh, sorry.

25 BY MR. HONG:

1 Q. You characterized in your letter, 1346,
2 "Identifying increasing unquantifiable levels of
3 physical and psychological stress among the
4 neighbors," you see that?

5 A. Yes.

6 Q. And that was based on your professional
7 opinion, you did some kind of diagnosis of the people
8 in the community?

9 A. No.

10 Q. That's just your opinion as an individual?

11 A. That is correct.

12 Q. Okay. In terms -- have you -- excuse me.

13 "No Connections ever.com," have you ever heard
14 of that website or received an e-mail from that
15 particular website?

16 A. I have received e-mails.

17 Q. All right. And who is -- is -- the person in
18 charge of that website or e-mail?

19 A. I received it from Layne Novak.

20 Q. Okay. Since you're under oath, do you know
21 who defaced and vandalized the school with "no
22 connection" bumper stickers on October 17th and 18th
23 of 2012?

24 A. No.

25 Q. And in terms of the -- one of the things that

1 the applicant or the school is going to implement, if
2 we get further along this process, is to create a
3 campus design committee and have members of the
4 committee sit on and participate as members of that
5 design committee to help minimize impacts on the
6 community. Would you be willing to do that?

7 A. Yes.

8 Q. Thank you.

9 MR. HONG: Nothing further.

10 THE HEARINGS OFFICER: Mr. Siu, any cross
11 exam?

12 MR. SIU: I do not have anything.

13 THE HEARINGS OFFICER: Ms. Self?

14 MS. SELF: No.

15 THE HEARINGS OFFICER: Mr. Gomes?

16 MR. GOMES: No questions.

17 THE HEARINGS OFFICER: Thank you very much,
18 Doctor.

19 MR. HONG: Your Honor, our next witness would
20 be Mr. Yoshioka -- Terrence Yoshioka.

21 THE HEARINGS OFFICER: Do we want to take a
22 another witness?

23 Can we take another witness? Mr. Yoshioka is
24 going to be here in fifteen minutes or do we want to
25 take Mr. Gomes' witness?

1 MR. HONG: Um, since we were unable to serve
2 Mr. Fuke, we were going to call Mr. Yoshioka as our
3 last witness. And then pending the further hearing
4 with Bobby Jean Leithead Todd on November 12, and
5 Phillip Rowell, that would be it for our witnesses.

6 THE HEARINGS OFFICER: Okay. So Jan Yokota,
7 you want to release as a witness?

8 MR. HONG: Yes.

9 THE HEARINGS OFFICER: Okay. And I'm just
10 looking through your witness list, so Allen Novak,
11 June Sakamoto, Jan Yokoyama, Jason Phillip Turner --

12 MR. HONG: Let me -- I'd like to take the
13 testimony of Allen Novak.

14 THE HEARINGS OFFICER: Allen Novak. But
15 Jan Yokoyama, you want to strike as a witness?

16 MR. HONG: Yes.

17 THE HEARINGS OFFICER: And Jason Phillip
18 Turner?

19 MR. HONG: Yes. We're going to start
20 releasing people.

21 THE HEARINGS OFFICER: And Jennifer Sims?

22 MR. HONG: Jennifer Sims -- oh, no.

23 THE HEARINGS OFFICER: You don't want her as a
24 witness?

25 MR. HONG: No.

1 THE HEARINGS OFFICER: And Glenn Tada?

2 MR. HONG: Mr. Glenn Tada testified yesterday.

3 THE HEARINGS OFFICER: Yesterday, that's
4 right.

5 But June Sakamoto, you no longer want?

6 MR. HONG: No. I'm just trying to --

7 THE HEARINGS OFFICER: And Layne Novak?

8 MR. HONG: Layne Novak, we've been unable to
9 serve her.

10 THE HEARINGS OFFICER: Kristen Kua?

11 MR. HONG: Kris, he's actually our witness but
12 we're going to hold him in rebuttal.

13 THE HEARINGS OFFICER: And Steve Tomei?

14 MR. HONG: Yeah, we're not going to have him
15 testify.

16 THE HEARINGS OFFICER: All right. So for
17 right now, it's -- is Allen Novak here to call?

18 MR. HONG: Yes, please.

19 In terms of Mr. Novak, page 405.

20 THE HEARINGS OFFICER: You want to raise your
21 right hand?

22 ALLEN NOVAK

23 called as a witness by and on behalf of the Applicant,
24 after having first been duly sworn, was examined and
25 testified as follows:

1 Could you provide us with your full name and
2 your address?

3 THE WITNESS: Allen L. Novak, address is
4 1414C Mele Manu Street in Hilo.

5 THE HEARINGS OFFICER: Thank you.

6 Mr. Hong, please proceed.

7 MR. HONG: Thank you.

8 DIRECT EXAMINATION

9 BY MR. HONG:

10 Q. Good morning, Allen.

11 A. Good morning.

12 Q. I want to refer you to page 405 in the record.
13 You recognize that as an e-mail that you sent on
14 October 9, 2012?

15 A. I believe it is.

16 Q. One of the objections that you had at the top
17 of your e-mail is first -- oh, excuse me, the second
18 sentence, "I'm opposed," and it basically says, "It
19 will significantly change the character of the
20 neighborhood, which is entirely residential," do you
21 see that?

22 A. Yes.

23 Q. And in terms of the zoning for your particular
24 lot, what is the zoning to your knowledge?

25 A. I believe it's residential.

1 Q. Okay. Not agricultural 1?

2 A. No, I believe it's residential.

3 Q. And what's the basis of your belief?

4 A. My tax -- my annual tax bill is identified as
5 residential.

6 Q. Okay. And the next part says, "The greatest
7 impact on traffic -- you're concerned about
8 transporting well over three hundred students and
9 faculty and staff to support the operations," do you
10 recall that?

11 A. Yes. I see it here.

12 Q. And you've testified at the Planning
13 Commission, and you've been pretty consistent about
14 the traffic being one of your concerns, correct?

15 A. Traffic is one of the concerns yes.

16 Q. And you understand this project is a
17 phased-in project, it will go by phases?

18 A. Well, I've heard a couple of presentations.
19 One of them said something to do with starting out
20 small and then growing to make it bigger.

21 Q. Would it be fair to say that your concern
22 about the traffic impact is when the entire project is
23 built out?

24 A. No. My concern would be the added volume of
25 traffic that would occur in a very narrow range of

1 time. The students arriving for school in the
2 morning, the faculty arriving in the morning, the
3 custodial and maintenance staff all arriving within a
4 very short period of time. And about the time that
5 the people would be trying to exit from the
6 neighborhood, which is a dead-end street, the only way
7 to get in and out of the neighborhood is at Edita
8 Street, right where the school's entrance is proposed.

9 So that Edita street, being a very narrow two
10 lanes, as is Kaumana Drive where Edita intersects with
11 Kaumana Drive also once again, is a very narrow two
12 lanes. But this is going to be high volume for a
13 short period of time in the morning and in the
14 afternoon, and at times where people are probably
15 going to be trying to use Edita Street to enter or
16 exit the subdivision.

17 Q. So in terms of your concerns that you just
18 expressed, are you saying that would happen at the
19 initial first phase, or would that more likely happen
20 at the end when the project is built up?

21 A. I think it would start with the official phase
22 and grow as time went on, probably as the school took
23 on more students and more faculty and more staff,
24 probably continue to get worse.

25 Q. Okay.

1 A. There would be left turns off of Kaumana
2 Street to get into Edita in the morning, and there'd
3 be left turns off of Edita to the school in the
4 morning. So it would create congestion at both of
5 those points.

6 Q. Okay. In terms of -- have you ever heard of
7 the website "no Connections ever.com"?

8 A. I have heard of it.

9 Q. Did you participate in establishing, or
10 supporting, or maintaining that particular website?

11 A. No.

12 Q. Do you know who is associated with that
13 website?

14 A. As I understand, it's just a website that is
15 used for communication amongst the people within the
16 neighborhood.

17 Q. Do you know who started it to your knowledge?

18 A. No, I don't know.

19 Q. Since you're here under oath, do you know who
20 defaced and vandalized the school on October 17th and
21 18th, 2012?

22 A. No, I do not.

23 Q. And one of the things that the -- one of the
24 things that the school is intending to do is create a
25 campus design committee to help minimize the impacts

1 in the neighborhood by the placement of the campus.
2 You know, if we get to that point, would you be
3 willing to sit in and participate in on that
4 committee?

5 A. Yeah. Actually, I met a couple times with
6 folks from Connections School up at the Kaumana
7 Elementary School. And I believe they had a meeting
8 in their own facility in the Kress building. I know
9 especially the one at the Kress building, they -- Eric
10 White, I believe, was the one that was running that
11 meeting. And he started out the meeting by explaining
12 that he had the goal of creating cooperation amongst
13 the community.

14 I attended the meeting. I stood there for
15 quite a while, and even asked couple of questions. I
16 can't remember the questions, but it became very
17 frustrating to me, because it became very apparent
18 that as members of the community expressed a concern
19 about the particular issues, such as the congestion at
20 Kaumana Drive, and Eric White says, "Well, we're all
21 legally required to do" -- it became apparent that the
22 intent wasn't to try to accommodate the concerns of
23 the community. The intent was to legally, minimally
24 get away with. So I lost a lot of confidence and
25 faith in the intent of Connections. I mean it's easy

1 to say the words, "We want to cooperate, we want to
2 hear what you have to say," but I saw no action in
3 that direction.

4 Q. That was your impression?

5 A. That was my impression.

6 Q. All right. You're familiar with the -- it's
7 Pacific Plantation subdivision, is that the name?

8 A. I believe it is, yes.

9 Q. And you have CCRs, covenants, restricted
10 covenants for that particular subdivision?

11 A. There is a covenant, I think it governs the
12 size of the house, something like twelve hundred
13 square feet, if my memory serves me right. And -- no,
14 I believe, farm animals, or certain number, you know,
15 it would be very hard to keep cows and horses on your
16 residential property.

17 Q. It actually goes a little further, doesn't it,
18 prohibit any agricultural use?

19 A. In the covenants?

20 Q. Yes.

21 A. I can't say, that's news to me. Maybe it
22 does, I don't know.

23 Q. Okay. Thank you.

24 MR.HONG: I have no further questions.

25 THE HEARINGS OFFICER: Mr. Siu, cross exam?

1 MR. SIU: I have no questions.

2 THE HEARINGS OFFICER: Ms. Self?

3 MS. SELF: I have no questions.

4 THE HEARINGS OFFICER: Mr. Gomes?

5 MR. GOMES: I have a couple questions.

6 CROSS EXAMINATION

7 BY MR. GOMES:

8 Q. Are you aware that at the school Mr. Hong
9 speaks of that was defaced there are security cameras
10 posted with a large sign that says, "Security cameras
11 are for your safety"?

12 A. No, I don't know that. Are you talking about
13 the location of the Kress building?

14 Q. Yes.

15 A. No, I wasn't aware of that.

16 Q. In your opinion, if there are security
17 cameras, wouldn't it have caught someone defacing the
18 school?

19 A. I would expect so, yes.

20 MR. GOMES: No more questions.

21 THE HEARINGS OFFICER: Thank you, Mr. Novak.

22 THE WITNESS: Thank you.

23 THE HEARINGS OFFICER: You may be excused.

24 Mr. Hong, you're not resting your case since
25 you have additional witnesses?

1 MR. HONG: That is correct.

2 THE HEARINGS OFFICER: You have no other
3 witnesses today?

4 MR. HONG: Other than Mr. Yoshioka.

5 THE HEARINGS OFFICER: May we take Mr. Gomes'
6 witness since they need to leave? I don't think that
7 would be very, very long.

8 MR. HONG: Sure, this would be --

9 MR. GOMES: Wayne Kanemoto.

10 THE HEARINGS OFFICER: Mr. Gomes, while we're
11 waiting, I'm looking at your witness list, are you
12 planning to call all of the witnesses?

13 MR. GOMES: The other witness I'm planning to
14 call is Dana Kenny.

15 THE HEARINGS OFFICER: Good morning.
16 Could you please raise your right hand?

17 WAYNE KANEMOTO
18 called as a witness by and on behalf of Mr. Gomes,
19 after having first been duly sworn, was examined and
20 testified as follows:

21 Could you say please state your name and give
22 us your address?

23 THE WITNESS: My name is Wayne Kanemoto. I
24 live at 1353B Mele Manu Street in Hilo.

25 THE HEARINGS OFFICER: I'm sorry, Mr. Gomes,

1 this is your witness, please proceed.

2 DIRECT EXAMINATION

3 BY MR. GOMES:

4 Q. Mr. Kanemoto, what do you do for a living?

5 A. I'm a retired school administrator.

6 Q. What are your qualifications and background?

7 A. I have a master's in education, curriculum
8 instruction, and school administration.

9 Q. And any National Guard background?

10 A. I have training from the military in
11 operations.

12 Q. Any security training in the National Guard?

13 A. In a general sense, I was the operations
14 officer, so I had to deal with classified information.

15 Q. Are you familiar with the ed specs for high
16 schools in the State of Hawaii?

17 A. I have seen them and reviewed them.

18 Q. Is this document designed to be a law that all
19 schools must follow or just a guideline?

20 A. Oh, it's a guideline that the department put
21 together to use.

22 Q. Are you aware that John Thatcher quotes this
23 document in his public testimony on page 183 to the
24 County?

25 A. I'm not -- I've just heard about it, really,

1 not specifically.

2 Q. Why do you think he would quote the ed specs
3 if he doesn't intend to follow them?

4 MR. HONG: Objection, calls for speculation on
5 part of the witness.

6 THE HEARINGS OFFICER: I'm going to allow it.
7 If you can answer --

8 A. Can you say that again?

9 BY MR. GOMES:

10 Q. Why do you think John Thatcher would quote the
11 ed specs if he doesn't intend to follow it?

12 A. I have no idea, because my understanding --
13 I've been retired from education for over ten years
14 now, but my understanding was that the specifications
15 for the size, the acreage for campuses would be
16 determined by the enrollment, so I'm not sure.

17 I had heard that they needed fifty acres, but
18 that's for a high school of a minimum of a thousand
19 students. So for an elementary school, the acreage
20 required or the recommended is two hundred, and for I
21 think for an intermediate school is eighteen acres.

22 MR. GOMES: May I hand him a copy of the ed
23 specs?

24 THE HEARINGS OFFICER: Whatever you choose --
25 is that a part of the record?

1 MR. GOMES: Yes, Ma'am.

2 THE HEARINGS OFFICER: Could you give us
3 reference to the page on the record where the document
4 is?

5 MR. GOMES: This is Exhibit JG-6 that I handed
6 out. I have extra copies also.

7 BY MR. GOMES:

8 Q. So looking at the acknowledgements page, do
9 you agree that the acknowledgements page has a list of
10 what appears to be reputable educational professionals
11 and business representatives?

12 A. Yes. I recognize the names of several people
13 that I worked with.

14 Q. Would you trust this document as well thought
15 out for the well-being and safety of students?

16 A. As far as I know, 'cause they used it in the
17 planning for Keaau High School.

18 Q. Do you believe the authors of the ed specs
19 intended this to be used by any entity building a
20 public school in Hawaii?

21 MR. HONG: Objection, calls for speculation,
22 lack of foundation.

23 THE HEARINGS OFFICER: I'm going to overrule
24 it, if you can answer that.

25 A. Could you repeat the question again?

1 BY MR. GOMES:

2 Q. Do you believe the authors of the ed specs
3 intended this to be used by any entity building a
4 public school in Hawaii?

5 A. I would believe so -- it would be a standard
6 for them to use in determining and ensuring that the
7 requirements that they felt were needed were met.

8 Q. Schools do evacuation drills, don't they?

9 A. Yes, they do.

10 Q. And on this campus, if they needed to do an
11 evacuation drill or if they needed to evacuate, in
12 your opinion, what would be the best evacuation point?

13 A. I really -- having not looked at the property,
14 I would say -- I couldn't really give you an answer.

15 Q. On the ed specs, it asks or it calls for two
16 points of entrance and exit on separate parts of the
17 property?

18 A. Yes.

19 Q. Would that be safer for the students in the
20 case of an emergency and if an evacuation had to be
21 done?

22 A. Yes.

23 Q. If there was an emergency for the entire
24 community needed to evacuate, and the school was
25 evacuating on to Edita Street because that was the

1 only point of exit, and the community had to use the
2 same point of exit, would that be a bad idea?

3 A. I would say that we'd probably have a lot more
4 congestion, just by the mere fact of the number of
5 people. And there'd be some safety concerns, because
6 to evacuate the students, it probably be more on foot
7 to get them away from the campus and from the area,
8 and most of the residents would be by vehicle, so
9 there would be some concern there.

10 Q. And being that there is only one point of
11 entry and exit, if the emergency -- say, a chemical
12 spill or fire occurred near the entrance or exit, how
13 do you think the students would be evacuated?

14 MR. SIU: Objection, calls for speculation,
15 lacks foundation.

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

18 You're going pretty far afield, Mr. Gomes.

19 BY MR. GOMES:

20 Q. Throughout the ed specs, Chapter 1
21 introduction, the community is mentioned, Section 103,
22 needs of the community is mentioned. The community is
23 mentioned a lot throughout the ed specs. In your
24 opinion, how important is community support for any
25 school?

1 MR. HONG: Excuse me, I'm going to object,
2 lacks foundation. He's asking how important is
3 community as generated -- as this document has been
4 generated?

5 THE HEARINGS OFFICER: I'm going ask you to
6 rephrase the question. Are you asking about the
7 document or are you asking about the community
8 involvement?

9 MR. GOMES: I'm asking about the fact that ed
10 specs, in my opinion, finds community support very
11 important, and I would like Mr. Kanemoto's opinion of
12 how important he thinks community support is for the
13 success of the school.

14 THE HEARINGS OFFICER: Then you're going to
15 have to ask him the question. And your opinion is not
16 an issue when you're asking a question.

17 MR. GOMES: Okay.

18 BY MR. GOMES:

19 Q. Is community support important for any school
20 to succeed?

21 A. Yes. One of the major concerns for any school
22 is community support. Generally, schools are
23 constructed where there is a demand from not only the
24 population, but from the people in the community. So
25 having been a community school principal, that's been

1 one of the things that has been one of the most
2 important factors, is getting community input, and
3 being able to work with the community.

4 Q. Thank you.

5 MR. GOMES: No further questions.

6 THE HEARINGS OFFICER: Mr. Hong, any cross
7 exam?

8 MR. HONG: Sure.

9 CROSS EXAMINATION

10 BY MR. HONG:

11 Q. Mr. Kanemoto --

12 A. Yes.

13 Q. -- are you familiar with the charter school
14 law?

15 A. Somewhat, not very well.

16 Q. Have you read it?

17 A. No.

18 Q. Okay. And in terms of your experience as a
19 school administrator, have you dealt with charter
20 schools at all?

21 A. I've had some dealings with their students
22 that have enrolled in community school.

23 Q. Okay. So in other words, nothing to do with
24 the administration or the administrators of charter
25 schools?

1 A. No, I would say not with charter schools
2 specifically, but looking at what charter schools are
3 set up to do, the community schools were in the same
4 similar position where we have to -- in my mind, I ran
5 the school and had to hire my own staff. I had to do
6 my own budget. I had to work with the teachers on
7 curriculum development. I had to do recruitment of
8 students. So from that standpoint, although, I don't
9 -- I'm not that familiar with charter school rules,
10 but I think the community schools had to do pretty
11 much the same thing that the administrator of a
12 charter school needs to do.

13 Q. Sure. So community schools were exempt from
14 Chapter 103D, the procurement code?

15 A. No.

16 Q. So community schools were exempt from -- or
17 could negotiate their own collective bargaining
18 agreements with any of the unions?

19 A. No, no.

20 Q. So those are things that charter schools did,
21 so there are two fundamental things already that are
22 different between charter schools and community
23 schools, wouldn't you agree?

24 A. Yes, but I have experience in negotiations, in
25 contracts, because I was -- I represented the

1 administrators for HGEA on the State bargaining.

2 Q. And so have I --

3 A. I know, you were there.

4 THE HEARINGS OFFICER: Mr. Hong, stick to the
5 questions.

6 MR. HONG: Okay.

7 BY MR. HONG:

8 Q. Okay. My question is, in terms of the Exhibit
9 JG -- I'm sorry, 6, go through that exhibit since
10 you've have gone through it and are familiar with it.
11 Please identify where it says that is applicable to
12 charter schools?

13 A. It doesn't.

14 Q. Okay. So it doesn't apply to charter schools?

15 A. It's a guideline, yes. It's a guideline for
16 the Department of Education, which charter schools are
17 a part of. And it seems like the charter schools will
18 take what they can use to bolster their position, and
19 not necessarily do it -- are not required to do.

20 MR. HONG: I move to strike as nonresponsive.

21 THE HEARINGS OFFICER: Mr. Hong, I'm not going
22 to strike it. Ask your next question.

23 BY MR. HONG:

24 Q. Okay. How many charter schools are you aware
25 of that actually used those ed specs?

1 A. I'm not aware of any.

2 Q. Okay. Do you see -- if those ed specs are
3 guidelines, can you point out where those ed specs as
4 guidelines apply to charter schools?

5 A. Well, the only thing that I would say in my
6 opinion, that would be looking at Section 201.2 on
7 page -- it says, "planning guidelines for planning new
8 schools" --

9 Q. I'm sorry?

10 A. 201.2 Chapter -- Section 201.

11 Q. You have the page number on the bottom right?

12 A. It says 201 --

13 Q. Hold on for a second. Let me get there.

14 201.1, right?

15 A. Yes, that's what it says here -- 201-1.

16 Q. Okay.

17 A. So if you look at 201.2, enrollment guidelines
18 for an elementary school, the minimum enrollment of
19 five-hundred-fifty. And if you look on 201.3, the
20 usable acreage is twelve acres. So when you go
21 that -- fifty acres is for high school with a minimum
22 enrollment of a thousand.

23 So if I was -- I was the administrator of a
24 charter school that I would look at -- well, even
25 though I have -- I can't -- from what I saw as far as

1 enrollment at Connections, you don't have a thousand
2 students. You don't have sixteen-hundred -- six
3 hundred students. It does not even have
4 five-hundred-fifty students. So I would say that your
5 requirement -- the requirement that I would look for
6 would be between twelve to fifteen acres or twelve to
7 eighteen acres. There is -- it wouldn't make sense to
8 have fifty acres.

9 Q. So you're just kind of using these guidelines
10 pretty fast and loose in terms of trying to figure out
11 what charter schools need?

12 A. Well, you asked me that.

13 Q. No, I didn't ask you that. I'm asking you the
14 question --

15 A. Yes.

16 Q. -- in terms of where does it say --

17 MR. GOMES: Objection, argumentative.

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

20 Rephrase the question and you shouldn't be
21 arguing with the witness.

22 BY MR. HONG:

23 Q. My question is, where does it say in those ed
24 specs in front of you that those guidelines are
25 applicable to charter schools?

1 A. It doesn't say that.

2 Q. Okay. When did you leave Laupahoehoe School?

3 A. 1985.

4 Q. Oh, I have another question. If you can turn
5 to page 1414 of the Planning Commission record, and
6 you see that in the binder in front of you?

7 A. Yes.

8 Q. That's a fair and accurate copy of your
9 signature on the bottom left?

10 A. That's correct.

11 Q. You submitted that particular written
12 testimony for the Planning Commission, do you recall
13 that?

14 A. Yes.

15 Q. One of the -- one of the concerns that you
16 expressed was farther down your letter -- was, "Unless
17 there was sound financial commitment, the probability
18 of survival and prosperity is slim to none," do you
19 see that?

20 A. That's correct.

21 Q. Were you aware at the time that Connections
22 has obtained eight million dollars to begin the
23 planning and construction of its --

24 A. Somewhat aware of it, yes, but I still, having
25 been the principal of Laupahoehoe School, which had

1 funding from the State Legislature, they were always
2 in a bind for current operations. And from what I
3 read in the papers about charter schools, and their
4 financial situation, it's very difficult.

5 And having also talked to an administrator
6 that worked with a charter school, one of the biggest
7 problems -- biggest obstacles is obtaining funding for
8 -- and it's usually for current operation, but to add
9 on capital improvements, I find that to be a daunting
10 task.

11 Q. You realize, or you would agree with me that
12 charter schools receive absolutely no funding from the
13 State of Hawaii regarding facilities?

14 A. That's my understanding.

15 Q. So it's their obligation to go and look for
16 their own funds?

17 A. That's right, and it's a difficult job to do.

18 MR. HONG: Nothing further.

19 THE HEARINGS OFFICER: Mr. Siu, any cross
20 exam?

21 MR. SIU: I might.

22 CROSS EXAMINATION

23 BY MR. SIU:

24 Q. Good morning.

25 A. Good morning.

1 Q. You testified earlier that you believe that
2 the guidelines apply to Connections because they're a
3 part of the DOE?

4 A. No, you mean -- which guidelines?

5 Q. The construction guidelines.

6 A. No, I didn't say that. I said those are
7 guidelines that is not -- my understanding is that
8 charter schools were set up so -- and they do not have
9 to follow guidelines. So that's why I'm saying, they
10 can pick and choose whether to do it or not.

11 Q. Okay. I might have misunderstood your
12 testimony.

13 MR. SIU: Okay, that's all.

14 THE HEARINGS OFFICER: Ms. Self, any cross
15 exam?

16 MS. SELF: Nothing.

17 THE HEARINGS OFFICER: Any redirect,
18 Mr. Gomes?

19 MR. GOMES: No further questions.

20 THE HEARINGS OFFICER: Thank you very much,
21 Mr. Kanemoto, you're excused.

22 Mr. Hong, your next witness is Mr. Yoshioka?

23 MR. HONG: That's right, and we're looking at
24 Planning Commission records 1315 to 1328 for
25 Mr. Yoshioka.

1 TERRENCE YOSHIOKA

2 called as a witness by and on behalf of Applicant,
3 after having first been duly sworn, was examined and
4 testified as follows:

5 THE HEARINGS OFFICER: Please state your name
6 and provide us with your address.

7 THE WITNESS: Terrence Yoshioka, 1572
8 Mele Manu Street, Hilo, Hawaii, 96720.

9 THE HEARINGS OFFICER: Thank you.

10 Mr. Hong, please proceed.

11 DIRECT EXAMINATION

12 BY MR. HONG:

13 Q. Mr. Yoshioka, thank you for your patience.

14 You received a subpoena duces tecum to bring documents
15 with you this morning?

16 A. Yes, I did.

17 Q. And did you do so?

18 A. Yes, I did.

19 Q. All right. Would you please hand them to me?

20 A. You had wanted four copies, I believe.

21 Q. That's correct.

22 A. I believe I have --

23 Q. These are fair and accurate copies?

24 A. Yes.

25 Q. And they were printed up, and were they kept

1 by you?

2 A. Kept by me, yes, I went to the printers and
3 they printed it out for me, and it's been in my
4 possession every since.

5 Q. All right, thank you.

6 Before you, at pages 1315 of the Planning
7 Commission records is a written statement of Terrence
8 Yoshioka --

9 A. Uh hmm.

10 Q. -- and it goes on to page 1328. Do you
11 recognize that particular document?

12 A. Yes, I do.

13 Q. And that's a document that you submitted to
14 the Planning Commission, is that right?

15 A. Yes, I did.

16 Q. All right. If you look at page 1315 -- sorry,
17 you state that, "The applicant has not in any way, or
18 by any recognized standard of proof established a
19 sufficient basis for the granting of this special
20 permit." Do you see that?

21 A. Yes, I do.

22 Q. Okay. Yesterday you cited Section 205 of the
23 Hawaii Revised Statutes, and also referred to the
24 Waianae Neighborhood Board case. My question is, what
25 is the legal standard of proof required by law?

1 A. Legal standard of proof, I think preponderance
2 of the evidence, I believe.

3 Q. Okay. Where do you get that from?

4 A. I can't recall whether it's from a reading of
5 the case or just my general knowledge of the law.

6 Q. Your general knowledge of law or reading the
7 case?

8 A. Yes, I don't recall.

9 Q. You go later on to say on the same page --
10 note, "There are no studies or data to support the
11 need for an agricultural program," do you see that?

12 A. Yes.

13 Q. And do you recall where in Section 205-6 or
14 any of the law that you have read, including the
15 Waianae Neighborhood Board, where it states that "We
16 have to establish a need for an agricultural program
17 or a need of the use" --

18 A. No, it wasn't based upon that position or any
19 provision specifically on Chapter 205.

20 Q. Okay. I appreciate that.

21 Then you go on at page 1317, and talk about
22 the reasons for denial, essentially you're preparing
23 like a finding of fact and conclusions of law for the
24 Commission, right?

25 A. Yes, basically, let me explain, and that --

1 this is sort of a portion of my authorship.

2 Sidney Fuke also prepared much of what was in
3 this finding. So I cannot tell you what is my work
4 product and what is Mr. Fuke's work product.

5 Q. But you signed it and submitted it as part of
6 your --

7 A. Well, at the time, yes, and I did read it, and
8 I agree with the provisions therein and signed it.

9 THE HEARINGS OFFICER: Excuse me,
10 Mr. Yoshioka, could you use the microphone?

11 THE WITNESS: Oh, excuse me.

12 BY MR. HONG:

13 Q. Okay. Well, I'm going to be asking you
14 questions specifically about some of the things that
15 are written there. If it's not part of what you
16 wrote, you just tell me it's not a part of what you
17 wrote, and I'll move on to the next question. Now, at
18 page 1317 --

19 A. Uh hmm.

20 Q. -- there is a portion that states, "It is this
21 reliance upon an agricultural program which it
22 justifies placing a school squarely in the midst of an
23 existing subdivision and far from the residences of
24 its student," do you see that?

25 A. Yes.

1 Q. All right. In terms of an existing
2 subdivision, your subdivision is zoned Ag 1, is that
3 correct?

4 A. That's correct.

5 Q. And did you write that part?

6 A. You know, it's very familiar, but I can't say
7 with certainty that I'm the author of this provision.
8 I could be.

9 Q. Okay. Based on that representation, let me
10 jump ahead then to page 1320.

11 A. Can you find out the paragraph, so I don't
12 have to search for it, because I don't have my reading
13 glasses.

14 Q. That's fine. Unfortunately, I marked up
15 another version of the document, I have to jump back
16 and forth to page 1320 --

17 A. Uh hmm.

18 Q. -- number 5 -- wait --

19 A. Uh hmm.

20 Q. -- 1320.

21 A. Item number 5, what paragraph?

22 Q. Right. I'm looking at the a first one,
23 "Schools can have significant adverse infrastructural
24 and community impacts. Thus, they are not permitted
25 in the State Land land use agricultural district and

1 within the County residential and agricultural zones,"
2 did you write that or Mr. Fuke?

3 A. I believe Mr. Fuke did.

4 Q. Okay. Were you aware when that was written
5 that Kamehameha Schools currently sits -- the majority
6 of the campus, actually, sits on State land use
7 agricultural zoned area?

8 A. No, I was not. Now, was that under a special
9 permit?

10 Q. I believe so.

11 A. Then I think essentially what was intended to
12 be said was that schools are not permitted uses within
13 an agricultural district, except with the granting of
14 a special permit, I think that's implied.

15 Q. Well, the statement is pretty absolute, "Thus,
16 they are not permitted." I mean not, "They are
17 permitted with a special use permit."

18 A. With a special use permit, but not permitted
19 without one.

20 Q. Okay. But you would -- okay. And you don't
21 recall writing that?

22 A. I don't recall writing it, but I'm in
23 agreement with it.

24 Q. So they're not permitted within the State land
25 use ag unless they get a special permit?

1 A. Right.

2 Q. If you go to page 1325 --

3 A. Uh hmm.

4 Q. At the top of the second paragraph, "Given the
5 honeycomb of caves in the area," do you see that?

6 A. Yes.

7 Q. Did you write that?

8 A. No, I didn't.

9 Q. Okay. And there's a part that talks about the
10 Hawaiian hawk at the bottom, in number 5, second to
11 the last sentence on the bottom of the page, "The
12 Hawaiian hawk and Hawaiian hoary bats are known to
13 roost in this area," is that what you wrote or is that
14 what Mr. Fuke wrote?

15 A. You know, it could be either one of us,
16 because I often see three hawks hovering above my
17 property, in fact, landing within twenty feet in the
18 trees of my property. So it could very well come from
19 me. I don't have a definite recollection one way or
20 the other.

21 Q. Did you happen to read the biological
22 assessment or the special permit application or even
23 the final environmental assessment?

24 A. Yes, I did, I did, but I don't recall
25 specifically information leading to this subject.

1 Q. Okay. At page -- jumping back -- I'm sorry,
2 page 1323, I'm looking under -- number 1 --

3 A. Uh hmm.

4 Q. -- second paragraph -- second paragraph, first
5 sentence, "The use does not fulfill the land use law
6 objectives as discussed above." Then on second
7 sentence, "It should also be noted that the impact of
8 the proposed school would have the effect of
9 urbanizing this area." Did you write that or
10 Mr. Fuke?

11 A. I believe Mr. Fuke did, you know. I don't
12 remember whether we had discussion about this, but it
13 is a sentiment that I also share.

14 Q. All right. Are you aware that your
15 subdivision is designated in the low density urban
16 zone on the County journal plan?

17 A. Yes, I believe it was at the time, yeah.

18 Q. Okay.

19 A. And if you note the next sentence, "Even the
20 Kamehameha School campus in Keaau, although originally
21 approved via the special permit process," so you know,
22 it does evidence the state of mind that schools are
23 not permitted in agricultural districts except with
24 special permit.

25 Q. Well, you're aware that currently that

1 Kamehameha Schools, two-thirds of the campus sits
2 currently on agriculturally zoned land and the other
3 third still sits in urban zoned area?

4 A. No, I wasn't aware of that.

5 Q. Don't you think it was important in clarifying
6 that in making this type of statement to the Planning
7 Commission?

8 A. Not particularly. I think the statement does
9 clearly evidence the fact that agricultural districts
10 do not permit schools. And I think that that was a --
11 that intent was adequately expressed in the
12 documentation that we submitted.

13 Q. Well, I'm going to phrase it this way --

14 A. Uh hmm.

15 Q. -- would it be fair to say it was not your
16 intent to mislead the Planning Commission?

17 A. Definitely not.

18 Q. Okay. Page 1324, I'm looking at the second to
19 the last paragraph, first sentence, "While the
20 catchment system," do you see that?

21 A. Yes.

22 Q. "While the catchment system has been used in
23 areas where there is no public system, it is generally
24 not acceptable for public facilities, particularly
25 those geared to students."

1 A. Uh hmm.

2 Q. Did you write that or did Mr. Fuke?

3 A. Mr. Fuke did.

4 Q. So you are aware that there are several
5 schools throughout the island, charter schools that
6 use catchment?

7 A. No, I was not.

8 Q. And in terms of this particular project,
9 you're aware of the water use calculations that the
10 Department of Water Supply -- well, you're aware of
11 the Department of Water Supply's limitations of 4200
12 gallons per day for this project?

13 A. At the time this document was prepared, yes, I
14 was aware, in fact, from my readings of the other
15 documents as well.

16 Q. All right. And you would agree that if the
17 Connections Charter Schools stay within that limit of
18 4200 gallons per day, that that would fulfill the
19 requirements of the Department of Water Supply,
20 correct?

21 A. For what student population, and for what
22 particular needs -- I think it has to be -- 4200
23 gallons has to be limited to a particular number of
24 people on the property that are utilizing this. So in
25 other words, it might be suitable for fifty, seventy

1 people. It might not be suitable for three to
2 four-hundred people.

3 Q. Do you recall seeing that the Department of
4 Water Supply limited that amount based on the number
5 of people that would be on the property?

6 A. No, but I do recall having discussions with
7 others, I think, as well as Mr. Fuke regarding the
8 inadequacy of this amount for the entire project.

9 Q. Well, were you aware that Connections is
10 differentiating between using potable and non-potable
11 water on the campus?

12 A. Well, are you still talking, though, about the
13 number of people -- because potable water would still
14 have to -- you would still have to produce X amount of
15 potable water to support A population of X amount of
16 people. There will be potable and non-potable, but I
17 assume the potable water would be utilized for X
18 number of people.

19 Q. So your concern is as long as there are X
20 number of people and that meets the requirements of
21 the Department of Water Supply-- or it has to meet the
22 requirements of the Department of Water Supply --

23 A. It should be.

24 Q. Okay. I'm just jumping ahead. If you could
25 turn now to page 1902, this is an oral statement --

1 A. Uh hmm.

2 Q. -- or written oral statement of --

3 A. I know what you mean.

4 Q. Okay -- for the Planning Commission.

5 Okay. Is that what you wrote or did anybody
6 else help you write that?

7 A. I believe this is entirely my -- a by-product
8 of myself.

9 Q. Okay. And then if you look at the 1904 --

10 A. Uh hmm.

11 Q. -- that is basically another -- is that the
12 same document that we saw earlier in terms of your
13 reasons for denial of the document that we referred to
14 earlier?

15 A. It looks like the same.

16 Q. And do you recall making any changes to that
17 document that appears on page 1904?

18 A. To be frank with you, I don't recall making
19 any changes to this document if it is the same
20 document as the previous one that we discussed.

21 Q. Okay. So in terms of just -- in terms of
22 those two particular documents, it's just you and
23 Mr. Fuke who wrote those, anybody else?

24 A. You know, as far as the document from 1904 and
25 on, that was Mr. Fuke and myself, it's a

1 co-authorship.

2 Q. Right, right, so I'm saying, the earlier
3 document, which you also titled, "reasons for denial"
4 that was also you and Mr. Fuke also?

5 A. I don't know if he had input from someone
6 else, so I can only speak for myself. But yes, I was
7 part of the team that drafted it, and I know Mr. Fuke
8 was, but I don't know if he had a third party.

9 Q. And in terms of -- you're familiar with the
10 CCRs for the Pacific Plantation subdivision?

11 A. To be honest with you, I didn't even know that
12 we had any, but I was informed by others, that yes, we
13 do have.

14 Q. Do they also inform you that you can't use
15 your property for any agricultural uses?

16 A. I wasn't aware of that, no. I would assume
17 that we can, but it might be limited as to what kind
18 of agricultural use. For example, I just planted four
19 citrus trees on my property. So I guess that might be
20 considered a violation if you can't do any
21 agricultural functions on the property. But maybe in
22 terms of raising cattle, sheep --

23 Q. Sure. Did you write any of the questions for
24 Mr. Gomes for the last two days of hearings?

25 A. Yes, I did.

1 Q. Okay. And which people did you help write
2 questions for that Mr. Gomes could ask?

3 A. I think for the Planning Department and
4 Mr. Thatcher. Not all, I think. I think I assisted
5 him in writing some questions.

6 Q. And were you doing that in the capacity of
7 being a lawyer?

8 A. No, I was not.

9 Q. You're doing that as an interested community
10 member?

11 A. Takes a bit of an explanation, you want me to
12 explain?

13 Q. Well, let me ask you this question. Were you
14 being retained or paid to write those questions?

15 A. No, I was not.

16 Q. Okay. Because I mean there is a prohibition
17 against ghost writing, or unauthorized practice of
18 law, right. I just wanted to make sure --

19 THE HEARINGS OFFICER: Mr. Hong, let's not get
20 into that.

21 Ask the questions.

22 MR. HONG: I'm just clarifying that's not what
23 he's doing.

24 THE HEARINGS OFFICER: He answered the
25 question.

1 A. That's why I was saying it's complicated, so
2 if you want me to explain, I'll explain.

3 BY MR. HONG:

4 Q. Just "yes" or "no", you weren't doing it as an
5 attorney?

6 A. I wasn't doing it as an attorney, but I was
7 doing it under the supervision of a licensed attorney.

8 Q. Okay. Who is the licensed attorney?

9 A. Alan Okamoto.

10 Q. So you were drafting things and then sending
11 it to Mr. Okamoto?

12 A. Yeah.

13 Q. And he would come back --

14 A. He would approve the form and appropriateness
15 of the questions that I drafted for Mr. Gomes. And as
16 I said, if you want me to explain, I'll explain the
17 entire situation.

18 I had consulted with the Hawaii State Bar
19 Association to determine to what extent I could
20 involve myself in these proceedings, because I have an
21 inactive license. So I labored under the assumption,
22 wrongly, I should add for a couple of years, that a
23 restricted or inactive license only precludes me from
24 representing people in contested cases. Okay. And
25 then I found out that I cannot represent them,

1 whatever the type of case it might be, whether it's a
2 court case, or administrative body, et cetera. And I
3 cannot issue advice to them. But I can do so if it's
4 under the supervision of a licensed attorney.

5 And so what I did was, prepare the questions,
6 had Mr. Okamoto review them, determine the
7 appropriateness. He was familiar with the background
8 of the case, and then he gave approval to it, and then
9 I presented it to Mr. Gomes.

10 Q. Did you pay Mr. Okamoto?

11 A. No.

12 Q. He was doing this pro bono?

13 A. Up to this point, we spent about two --
14 two-and-a-half hours, okay.

15 Q. In terms of consultation, was that in person
16 or was that just e-mail or --

17 A. With Mr. Okamoto, you mean?

18 Q. Yeah.

19 A. No, he came over to my house and spent two,
20 two-and-a-half hours going over the questions that I
21 had prepared for Mr. Thatcher and Mr.--

22 Q. Ms. Shen?

23 A. Whoever was presenting the Planning
24 Department. It was not directed to anyone, it was
25 just Planning Department.

1 Q. Did you and Mr. Okamoto study the Planning
2 Commission record or any evidence of the Planning
3 Commission?

4 A. Planning Commission -- oh, we discussed it,
5 but he didn't go over -- well, no, he did go over some
6 documents. I don't know whether or not it involved
7 this record.

8 Q. Did he review the special permit application?

9 A. Yes, he did, yeah.

10 Q. Did he mark it up and provide you any
11 comments?

12 A. No, no.

13 Q. Did he look at the final EA?

14 A. Yes, he did, I believe he did.

15 Q. Did he mark it up --

16 THE HEARINGS OFFICER: Mr. Hong, are you
17 getting into attorney-client privilege communications?
18 And if so, you shouldn't be going there.

19 MR. HONG: I don't know that this is
20 attorney-client privilege.

21 A. While we're on this subject, I'd like to make
22 a statement. And I just forgot to do this when I
23 presented the documentation to you.

24 In the documentation you see an e-mail from
25 Mr. Fuke to myself, in which he makes reference to

1 questions that was also a part of that e-mail, okay.
2 I have elected to not to make copies of those
3 questions, because I do think it falls under the work
4 product rule, and that it does not constitute
5 discoverable material, because this was intended for
6 Mr. Gomes and myself, who Mr. Fuke was expecting to
7 give assistance to Mr. Gomes in an attorney-client
8 capacity, but I don't think he was aware that my
9 inactive license restricted me from actively
10 representing Mr. Gomes in these proceedings.

11 BY MR. HONG:

12 Q. Mr. Fuke is not an attorney, right?

13 A. No, Mr. Fuke is not an attorney, but it was,
14 obviously, for the purpose of assisting Mr. Gomes in
15 the questioning of the witnesses that come before this
16 board.

17 Q. Just trying to be very clear, so are you
18 saying today that Mr. Gomes was your client?

19 A. No, I'm not saying that. I'm saying that
20 questions that were prepared by Mr. Fuke was intended
21 to assist Mr. Gomes, and would fall within the work
22 product rule. In other words, it was part of what was
23 intended to give assistance for purposes of this
24 proceedings. And it wasn't intended for discovery,
25 and should not be intended for discovery.

1 Q. Well --

2 A. It's like asking an attorney's client to
3 provide all materials provided to him by his attorney
4 that was intended to be utilized at the -- whatever
5 contested proceedings.

6 MR. HONG: I would ask the Hearings Officer,
7 based on Mr. Yoshioka's testimony, that he be ordered
8 to produce the entire e-mail including the questions,
9 because that's not work product.

10 THE HEARINGS OFFICER: Mr. Hong, I'd like to
11 look at the subpoena before I'm going to rule on
12 anything. Certainly, Mr. Hong, your subpoenas were
13 extraordinarily broad. I signed all of the subpoenas
14 regardless of the fact they were extraordinarily
15 broad, because parties had a right to ask that the
16 subpoenas be quashed or testimony be quashed. So
17 that's why I signed them. Although, frankly, some of
18 the information you asked for went way beyond what was
19 relevant or reasonable.

20 So until I have looked at the subpoena, I have
21 to go and assess what's going on, and what you asked
22 for and whether it's relevant material even to this
23 proceeding. But I'm not going to instruct anybody to
24 have to bring something that they didn't bring today
25 if it's not materially relevant.

1 MR. HONG: And in terms of the original
2 subpoenas, those were given back to you as part of the
3 record or --

4 THE HEARINGS OFFICER: Mr. Hong, your staff
5 sent me so many amended subpoenas, I started to lose
6 track. The subpoenas -- I don't know if the originals
7 -- we made copies to begin with of the subpoenas, but
8 your staff kept sending us more and more revisions and
9 I don't know if we kept copies of everything.

10 MR. HONG: No, no, I understand that. The
11 ground rules, as you explained to us in terms of the
12 original subpoena that was served, that would be
13 returned to you and made a part of the file. So my
14 question is, do you or the Planning Commission staff
15 have the original subpoena that was actually served?

16 THE HEARINGS OFFICER: No. We don't have --
17 all I have is the return of service, that's all your
18 staff gave me, was return of service.

19 MR. HONG: Right. May I ask for a recess so
20 we can resolve this and find the subpoena and submit
21 it to you?

22 THE HEARINGS OFFICER: Actually, since it's a
23 quarter to twelve, let's take an hour lunch, and come
24 back after the 12:45.

25 MR. HONG: Sure.

1 THE WITNESS: How many more questions do you
2 have?

3 MR. HONG: Well, depends on whether I get
4 those documents or not. And if I don't get those
5 documents then I have just a few more questions, it
6 should take all of another five or ten minutes.

7 THE HEARINGS OFFICER: How long a break do you
8 need, Mr. Hong? If you don't need very long, we'll
9 just take a short recess.

10 MR. HONG: My suggestion is, given the
11 witnesses' schedule, I know we imposed on them in
12 terms of their schedules, we take a short recess and
13 go on, and we take our lunch break.

14 THE WITNESS: Madam Hearings Officer, I
15 believe Mr. Gomes has those questions that were
16 prepared by Mr. Fuke -- the outline, and he can make
17 that available to you for inspection if you want to.

18 THE HEARINGS OFFICER: That's fine.

19 Mr. Gomes, if during the recess, you can
20 provide me with the questions, I can look at them with
21 without exposing them to the other parties.

22 MR. GOMES: Thank you.

23 (Recess.)

24 THE HEARINGS OFFICER: We're back on the
25 record, and I will note the presence of all parties,

1 and the witness is also present, Mr. Yoshioka.

2 Prior to the recess, Mr. Hong provided me with
3 a copy of his amended subpoena duces tecum to
4 Mr. Yoshioka. And there was an issue raised whether
5 an e-mail from Mr. Yoshioka with proposed questions to
6 Mr. Gomes should be disclosed or provided to Mr. Hong.

7 Mr. Hong, do you have anymore argument on this
8 issue?

9 MR. HONG: No -- yes. One of the e-mails that
10 was produced in the subpoena duces tecum does refer to
11 a cheat sheet with respect to the current proceedings.
12 And I think we're entitled to that, because that
13 wasn't a part of the attorney-client privilege between
14 Mr. Fuke, Mr. Yoshioka, and Mr. Gomes. And I think
15 we're entitled to see that.

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

18 MR. SIU: No.

19 THE HEARINGS OFFICER: Ms. Self?

20 MS. SELF: Well, I'm not sure whether there is
21 some relevancy, but we aren't under the rules of
22 evidence. So I guess I have no comments on it.

23 THE HEARINGS OFFICER: Mr. Gomes, do you have
24 any response?

25 MR. GOMES: I don't know what the cheat sheet

1 is.

2 THE HEARINGS OFFICER: Okay. First of all,
3 although the Rules of Evidence are not supposed to be
4 strictly -- do not have to be strictly followed, as
5 presiding officer, I am to rule on all evidence. And
6 also, I am required to exclude any evidence that is
7 irrelevant, immaterial, unduly repetitious, or would
8 infringe on any privilege recognized by law.

9 There is a privilege for work product, and I
10 am sure if that I -- and I think Mr. Gomes, even
11 though he's not an attorney, has that privilege. If I
12 provide a disclosure of this information, it would
13 open -- I think it's a bad practice, because to do
14 that would open the door to Mr. Gomes asking Mr. Hong
15 for all of his questions. And I'm sure Mr. Hong would
16 not want to disclose all of his work product in this
17 proceeding, nor Ms. Self, or Mr. Siu.

18 So consequently, I'm going to hold that that
19 information should not be produced to Mr. Hong.

20 You may go on with your next question,
21 Mr. Hong, for Mr. Yoshioka.

22 BY MR. HONG:

23 Q. Page 1902, please. The paragraph that begins,
24 "Nowhere -- nowhere in its application has applicant
25 provided proof that an agricultural program is needed

1 or wanted by its students," do you see that?

2 A. Yes.

3 Q. And you had testified earlier that because
4 this is a part of your oral statement to the Planning
5 Commission, this was a hundred percent what you wrote,
6 correct?

7 A. Yes.

8 Q. And where is it required that the applicant
9 has to prove that its agricultural program is needed
10 or wanted by the students, if you can give me the
11 legal citation for this?

12 A. There is no legal citation, except for common
13 sense, that if someone is going to represent that
14 something is to be done, then it should submit
15 sufficient evidence to indicate that it will, in fact,
16 accomplish what they propose to do, and that there is
17 a need for the proposed use, because that is the basis
18 for the foundation of the selection of this particular
19 property that has been used for agriculture purposes
20 and that this property was uniquely suited for their
21 program.

22 So therefore, it seems to me that if you're
23 going to say that this is a unique site, that fills
24 their criteria and it's needed for the agricultural
25 program then you should establish that you, in fact,

1 have one or will have one, and if so, how many
2 students are going to be participating in it and why
3 do you need such a large area if you only have one or
4 two students.

5 That's the foundation for my -- and that
6 because the Planning Department's generally the watch
7 dog or guardian of the public interest, and it should
8 look into these matters to see that what is being
9 alleged will, in fact, take place.

10 Q. Okay. And in terms of your familiarity with
11 the charter school law, how would you describe it?

12 A. Nil.

13 Q. I'm sorry?

14 A. Nil.

15 Q. Okay. You're not aware that in terms of the
16 charter school curriculum that a charter school has to
17 go before the charter school commission to justify
18 improvement it needs for its curriculum?

19 A. No, I was not aware.

20 Q. Thank you.

21 MR. HONG: I have no further questions.

22 THE HEARINGS OFFICER: Mr. Siu?

23 MR. SIU: I have no questions.

24 THE HEARINGS OFFICER: Ms. Self?

25 MS. SELF: No questions.

1 MR. GOMES: Maybe one question.

2 CROSS EXAMINATION

3 BY MR. GOMES:

4 Q. Are you aware that if the special permit IS
5 granted, you may possibly spend the rest of your life
6 driving through a construction zone?

7 A. Yes, I'm painfully aware of that.

8 MR. GOMES: No further questions.

9 THE HEARINGS OFFICER: Redirect?

10 MR. HONG: No, thank you.

11 THE HEARINGS OFFICER: Thank you,
12 Mr. Yoshioka, you're excused.

13 THE WITNESS: Thank you.

14 THE HEARINGS OFFICER: Mr. Hong, you have no
15 further witnesses today?

16 MR. HONG: Today, no.

17 THE HEARINGS OFFICER: Mr. Siu, you have no
18 witnesses?

19 MR. SIU: That's correct.

20 THE HEARINGS OFFICER: Ms. Self?

21 MS. SELF: Not today, but I do want to call
22 somebody on November 12.

23 MR. YOSHIOKA: Madam Hearings Officer, am I
24 permitted to sit in on the balance of the hearing?

25 THE HEARINGS OFFICER: Yes, you may.

1 MR. YOSHIOKA: Thank you.

2 THE HEARINGS OFFICER: Mr. Gomes, you have a
3 witness today?

4 MR. GOMES: Yes, one last --

5 THE HEARINGS OFFICER: Who is your witness?

6 MR. GOMES: Dana Kenny.

7 THE HEARINGS OFFICER: Please raise your right
8 hand.

9 DANA KENNY

10 called as a witness by and on behalf of Mr. Gomes,
11 after having first been duly sworn, was examined and
12 testified as follows:

13 Thank you. Could you please state your name
14 and provide us with your address, and please speak
15 into the microphone?

16 THE WITNESS: Dana Kenny. My address is
17 1316A Mele Manu Street, Hilo, Hawaii, 96720.

18 THE HEARINGS OFFICER: Mr. Gomes?

19 MR. HONG: I object. I don't believe I see a
20 Mr. Dana Kenny on the witness list.

21 THE HEARINGS OFFICER: Mr. Hong, he's on the
22 witness list.

23 Go ahead.

24 DIRECT EXAMINATION

25 BY MR. GOMES:

1 Q. Mr. Kenny, what do you do?

2 A. I'm the vice-president and principle broker of
3 Savio Realty, Savio Development Company.

4 Q. And what are your qualifications?

5 A. Basically, our company does real estate
6 development statewide, and I've been doing that now
7 for twenty-five years.

8 Q. And what kind of large projects have you
9 worked on in the past concerning land use and
10 development?

11 A. The larger ones -- well, on this island, I was
12 involved in the ones in the demise of Hamakua Sugar
13 Company, so-to-speak. One of the things we had to do
14 was analyze the 35,000 acres that they owned. What
15 was the best use for each parcel, what was the plan
16 going forward, how do you utilize that land, what's
17 the best way to do that. I did the same thing for
18 AMFAC on Kauai when they sold off their lands, and the
19 Case guys bought it. And I was involved in Pahala
20 when they were -- C. Brewer was closing down.

21 Now, basically, we analyze, you know, anything
22 from a one-acre parcel up to tens of thousands of
23 acres to determine what's the best most sensible thing
24 to do with the land and what are the challenges that
25 you are facing in going forward with any plan that you

1 might have.

2 Q. Based on your experience, what is your opinion
3 of the location of this school?

4 MR. HONG: I object it's vague, ambiguous, I
5 don't understand "the location".

6 THE HEARINGS OFFICER: I'm going to overrule
7 the objection.

8 Answer the question. Go ahead and answer it.

9 A. Yeah, I can answer it. In doing what I do for
10 a living, we come across three different kinds of
11 situations, a situation where somebody owns a piece of
12 property and says, "Well, what's the best -- I want to
13 do this, how can I do it?" The other times is when
14 somebody comes to us and says, "This is what we want
15 to do, find us a place."

16 From both points of view in looking at this
17 property, it doesn't make sense. If I own this
18 property, it's probably the worst piece of land that I
19 could choose to build a school on. If you were to
20 approach me and say, "I want to build a school here,"
21 after we did our analysis on it, the answer would be,
22 "Sell the property, and choose something that's going
23 to be better suited to that use."

24 If you told me to go find a place to build a
25 school, and I don't mean to sound like a smart Alec,

1 but if I send my guys out to look for a location out
2 of the locations that are available, and they came
3 back with that as a location, I'd fire somebody. It
4 does not make sense. It doesn't suit -- the land
5 itself, doesn't suit the goals of what it is that
6 you're trying to do with it. Can I elaborate on what
7 I mean?

8 MR. HONG: Objection, calls for narrative.

9 THE HEARINGS OFFICER: He's going to have to
10 ask you questions.

11 BY MR. GOMES:

12 Q. Please elaborate.

13 MR. HONG: Objection, calls for narrative.

14 THE HEARINGS OFFICER: Mr. Gomes, you're going
15 to have to ask questions to this witness.

16 BY MR. GOMES:

17 Q. Can you give me an example of what you're
18 talking about?

19 A. From my understanding is fifty percent of the
20 population that is going to attend the school is in
21 Puna. The other fifty percent, I guess, is spread out
22 between Volcano and going up the Hamakua Coast a ways.
23 If you're going to build a school to meet a need, the
24 public need of students, it doesn't make sense to put
25 it where you're talking about putting it, because it's

1 as far away as it could possibly be. It'd be like
2 building a school in Hawaii Kai to service the Waianae
3 community. Why make them go thirty miles to suit that
4 need.

5 Second thing, it's not level. The cost to
6 create a school on that piece of property, dealing
7 with the water issues, dealing with the traffic
8 issues, dealing with the topography of the land,
9 dealing with the cave system that may or may not be
10 under it -- the amount of money that it's going to
11 take you to mitigate those situations is enough money
12 for you to go buy a really nice piece of property that
13 has none of those problems almost anywhere else.

14 So from the point of view of someone who has
15 to justify the choices there being made, it's almost
16 every other choice is a better choice. A school
17 doesn't need to make a profit. Most things we look
18 at, it has to make a profit. It has to make sense.
19 And being that it's a school, you're not going to make
20 a profit, but you're dealing with public funds. And
21 you have the responsibility to spend them wisely.
22 That's what I'm looking at. It's just not the right
23 location for -- to meet the goals that are being
24 sought.

25 Q. Isn't it possible that over the sixteen to

1 twenty-five-year phase plan that the twenty million
2 dollar cost could actually double to forty million
3 dollars?

4 MR. HONG: Objection, lack of foundations,
5 also misstates facts in evidence.

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

8 Would you rephrase the question?

9 BY MR. GOMES:

10 Q. Do you have any idea how many vacant lots are
11 along Kaumana Drive that could be developed without a
12 special permit tomorrow?

13 MR. HONG: Objection, relevance. For what
14 purpose? Residential? Commercial?

15 THE HEARINGS OFFICER: I'm going to allow
16 that.

17 Go ahead.

18 A. Well, the last time I looked, I don't have an
19 exact number, because it was just -- I just couldn't
20 keep on counting, but what I did is I pulled up the
21 tax records for existing properties that access
22 Kaumana between the Mohouli Street, and up to Kaumana
23 City. And these are -- these are legally
24 existing sites that are vacant that could have homes
25 on them tomorrow. If you pull a building permit and

1 build a house without going through any special
2 subdivision process or anything else, the number is
3 right around 1400.

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

5 THE HEARINGS OFFICER: Mr. Hong, cross exam?

6 MR. HONG: Thank you.

7 CROSS EXAMINATION

8 BY MR. HONG:

9 Q. So you're saying that because the students --
10 fifty percent of the students are from Puna, the
11 school should be built in Puna, this is what you're
12 telling us, right?

13 A. No, that's not what I said.

14 Q. Really? What did you say?

15 A. What I said was that if you're going to feed a
16 need, then you place it where it best feeds the need.
17 So you could place it anywhere in the middle would be
18 fine, in Puna, it doesn't matter.

19 Q. So you mean like Kamehameha Schools in Pahoa
20 -- that's a place according to your analysis where the
21 majority of the students should be from, right?

22 A. No. I think Kamehameha made a good choice of
23 where they placed the school servicing the population
24 that they have to service.

25 Q. And where is that population from, do you

1 know?

2 A. No, I don't. But obviously, if they're
3 servicing the East side of the Hawaii, the major
4 population centers being Puna, and North and South
5 Hilo, that would be a place I would trust --
6 somewhere in that area would be a perfect choice for
7 the school.

8 Q. What about HPA, Hawaii Preparatory Academy?

9 A. Hawaii Preparatory Academy is a private
10 school.

11 Q. It's a private school?

12 A. Yeah.

13 Q. Right. And do you know this is a charter
14 school?

15 A. Yes, I do.

16 Q. And have you read anything regarding the
17 autonomy charter schools has separate and apart from
18 DOE?

19 A. No. But it wouldn't change my opinion.

20 Q. Sure. It wouldn't. I can understand that.
21 So in terms of the school, do you know that
22 charter schools recruit from the entire East Hawaii
23 side?

24 A. Reasonably, yes.

25 Q. And are you aware that charter schools attract

1 and recruit students based on the curriculum that
2 they're offering?

3 A. I'm sure that that's true as well.

4 Q. But what you're saying, this charter school
5 should be located out in Puna, because most of the
6 students come out of Puna?

7 A. What I'm saying is I have an eleven-year-old
8 and I would rather --

9 Q. Did you hear my question? Did you understand
10 my question?

11 A. I did, I did.

12 Q. Answer my question.

13 MR. GOMES: Objection. He's arguing with my
14 witness.

15 THE HEARINGS OFFICER: Answer the question and
16 don't argue with the witness.

17 A. What I'm saying is I have an eleven-year-old.
18 I'm not going to send my eleven-year-old to Kapoho to
19 go to school.

20 BY MR. HONG:

21 Q. I don't understand your answer, could you
22 elaborate?

23 A. It's too far.

24 Q. Uh, so in terms of the curriculum, what school
25 you decide to send your child to, doesn't matter. It

1 matters that the distance is the only factor, that's
2 what you're saying?

3 A. I have a close friend who want to have
4 their son go to HPA. They moved to Waimea to do it.
5 It's a matter of practicality, you're shipping people
6 across thirty, forty miles to get a service that they
7 could if the choices were different -- we've gotten
8 closer.

9 Q. So my question was, the distance of travel,
10 that's your primary concern in terms of where the
11 school should be in relation to students?

12 A. No. That's not my primary concern. My
13 primary concern has to do with a fact that it's a bad
14 choice to build a school of any kind.

15 Q. Okay. What research have you done concerning
16 the process that this project has reached to this
17 point?

18 A. What research have I done?

19 Q. Yes.

20 A. I read what's available that people have given
21 out. I sat in on community meetings. I've listened
22 to things.

23 Q. What people? Identify the people that have
24 given you things to look at?

25 A. Well, you haven't given me anything to look

1 at, but I've been listening to you for a few minutes
2 now.

3 Q. I'm saying what people, you told us that some
4 people have given you information, and I'm asking you
5 what people? Name the people.

6 A. This information here --

7 Q. I'm sorry, when I'm saying --

8 THE HEARINGS OFFICER: Wait, wait, wait. Hold
9 on. We have a court reporter who is taking everything
10 down. You cannot speak at the same time.

11 Sir, you have to wait until Mr. Hong is done
12 with the questions. And Mr. Hong, please wait 'til
13 he's done with the answer.

14 THE WITNESS: Yes.

15 BY MR. HONG:

16 Q. So my question was what, W-H-A-T, people have
17 been giving you information about this project that
18 you referred to earlier?

19 A. What I have received is the information that
20 the school has been giving out to the public. I don't
21 have a specific person I got it from.

22 Q. You know Sidney Fuke?

23 A. Yeah, he's a neighbor.

24 Q. Uh, okay, he's a neighbor, and has he given
25 you any information about this project?

1 A. No.

2 Q. What about Terrence Yoshioka?

3 A. I'm not sure who Terrence is.

4 Q. Alan Okamoto?

5 A. Alan Okamoto is our attorney, but I've never
6 spoken to him on this topic.

7 Q. Are you listing one of the homes on Mele Manu
8 Street for sale?

9 A. Yes.

10 Q. And that's at 1360B Mele Manu Street?

11 A. Yes.

12 Q. And the asking price is \$829,000?

13 A. That's correct.

14 Q. Would it be fair to say that you don't want
15 the school in that neighborhood because you perceive
16 it could reduce the value of what you're asking for?

17 A. No.

18 Q. It could reduce the amount of money that would
19 be put in your pocket?

20 A. No.

21 Q. Okay.

22 A. Can I elaborate?

23 Q. No, I'm asking the questions.

24 A. All right. Go ahead.

25 Q. In terms of the other questions that I want to

1 ask you --

2 A. Uh hmm.

3 Q. -- you had said -- well, let me ask you this.

4 Were you aware that my clients went before a State
5 Land Use Commission for approval?

6 A. Yes.

7 Q. And were you aware that it was up to those
8 representatives to weigh and approve our -- my
9 client's request?

10 A. Yes.

11 Q. So is it fair to say that in terms of your
12 testimony, you're disagreeing with what the Land Use
13 Commission did, or are you saying that you're
14 disagreeing with what my client wanted to do, or are
15 you disagreeing with the whole process?

16 A. The land use process is one of -- does it meet
17 the criteria of what the law is? It has nothing to do
18 with what's practical or make sense in the real world
19 situation. I'm addressing the fact that I don't think
20 it's practical and makes sense from a real world
21 situation.

22 Q. So you're saying that in terms of the people
23 -- you reviewed the transcript of the testimony before
24 the Land Use Commission?

25 A. No, no, I saw parts of it. I didn't pay

1 attention to it.

2 Q. You saw parts of it, how did you see parts of
3 it?

4 A. You know, this is public record stuff that is
5 there. I had read paragraphs here and there.

6 Q. You read paragraphs here and there?

7 A. Yes.

8 Q. Was that the transcript of the proceedings
9 before the Land Use Commission?

10 A. I believe so, yes.

11 Q. And how did you find those?

12 A. Again, I can't tell you exactly where I saw
13 them, people give me -- you know, there is this much
14 paper being circulated by all of you guys. I just
15 read it as I get it.

16 Q. It just happened to show up on your door step,
17 right?

18 A. I go to public meetings.

19 Q. Okay. In terms of the process of the
20 selection of property, were you aware that the
21 Department of Land and Natural Resources gave my
22 client the different alternatives of where to site the
23 school?

24 A. I've heard that.

25 Q. You didn't look at it?

1 A. No. It doesn't matter -- from where I'm
2 coming from.

3 Q. Okay. How many special permit applications
4 have you participated directly in as the applicant?

5 A. As the applicant, no none. Applicants'
6 representative, hundreds. I've been involved in the
7 process.

8 Q. I'm sorry. My question was -- you heard my
9 question. You answered my question, right, you did
10 answer my question, right?

11 THE HEARINGS OFFICER: Mr. Hong, don't argue
12 with the witness.

13 MR. HONG: I'm just clarifying, because it
14 just seems to be a sliding scale here in terms of
15 answering my questions.

16 THE HEARINGS OFFICER: Mr. Hong, just ask your
17 questions.

18 BY MR. HONG:

19 Q. Cost -- you had said in terms of -- well, let
20 me point it out. You had expressed some concern about
21 the water, do you recall that?

22 A. Yes.

23 Q. And what information were you given about the
24 water usage up there -- in terms of my client's
25 application?

1 A. What my understanding is that there is a
2 limited amount of water. I want to say the figure of
3 seven hundred gallons per day. I'm not sure exactly
4 what it is, that is available to the site. And what
5 my understanding is, is that the school and the
6 Planning Department are in a situation that the
7 Planning Department is saying, "We have enough water
8 to build a certain amount of what you want to do. You
9 don't have enough water to build it all. So you have
10 to address the issue of where the rest of the water
11 comes from before they'll allow you to proceed to
12 finish," I believe that's the situation.

13 Q. And where did you get that information from?

14 A. Reading the newspapers -- again, what people
15 give me.

16 Q. And what people gave you stuff about the water
17 use?

18 A. Maybe I can save some time and just say nobody
19 has sat down with me, and briefed me or given me
20 stacks of information. I'm getting the stuff the same
21 way the people get stuff. I mean I don't have names
22 of people that gave me a specific thing. I've been
23 paying attention to it, because that's what I do for a
24 living, that's interesting to me.

25 Q. Traffic, you commented on traffic. Did you

1 review the traffic impact analysis report?

2 A. I didn't make comment on traffic, I don't
3 think. I talked about the increase number of homes
4 that can built in the area, that would result in
5 greater traffic.

6 Q. And my question was, did you review, prior to
7 coming today, the traffic impact analysis report?

8 A. No.

9 Q. And in terms of the cave system that you had
10 talked about earlier, have you done an independent
11 investigation of the cave system?

12 A. No, I haven't.

13 Q. And in terms of my client's application. Have
14 you read through the -- the report regarding the
15 caves?

16 A. No, but I live there, so my children play in
17 the caves.

18 Q. And are you aware that my clients have money,
19 not State money, regarding the building of, at least,
20 the first phase of the project?

21 A. I wasn't aware of that, but again, it's not
22 relevant to my position is. It doesn't make sense
23 whose ever money it is to build it there.

24 MR. HONG: No further questions.

25 THE HEARINGS OFFICER: Mr. Gomes, any

1 redirect?

2 MR. GOMES: No, Ma'am, no further questions.

3 THE HEARINGS OFFICER: Thank you, Mr. Kenny,
4 you're excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE HEARINGS OFFICER: Mr. Siu, I take it you
7 have no witnesses?

8 MR. SIU: I have none.

9 THE HEARINGS OFFICER: Ms. Self?

10 MS. SELF: I don't.

11 THE HEARINGS OFFICER: Mr. Gomes, you're done
12 for today?

13 MR. GOMES: Done.

14 THE HEARINGS OFFICER: Well, then I want to
15 thank all the parties for their efforts at this
16 hearing. It's gone very smoothly so far. We're going
17 to continue this hearing until November 12. Can we
18 start at 8:30?

19 MR. ARAI: We'll try our best.

20 THE HEARINGS OFFICER: It's in this conference
21 room November 12. We will take public testimony when
22 we first begin, then we will proceed to a site visit
23 of the property. I will have a -- I will ask the
24 court reporter to be there in case anybody wants to
25 make statements, and then we will proceed to take any

1 other testimony. If the parties have additional
2 witnesses for the hearing on the 12th, please provide
3 me with a supplemental witness list.

4 Anything further?

5 MR. HONG: I know it's difficult, because you
6 have to take testimony from the public, but in terms
7 of a time frame -- because there is locked gate, and
8 hopefully the lock still works. We have to get
9 somebody up there --

10 THE HEARINGS OFFICER: Mr. Hong, you just have
11 to have somebody available. I can't tell how long the
12 public testimony will be, but I have to allow public
13 testimony, and I am.

14 MR. HONG: Thank you very much.

15 THE HEARINGS OFFICER: Anything further?

16 MS. SELF: I'm not aware -- you might mention
17 about dressing appropriately for a site visit --

18 THE HEARINGS OFFICER: Okay.

19 MS. SELF: -- safety wise.

20 THE HEARINGS OFFICER: I leave it to
21 everybody's discretion.

22 MR. GOMES: It is rocky terrain.

23 THE HEARINGS OFFICER: We'll proceed with this
24 hearing dressed very informally afterwards, so coat
25 and tie is not necessary.

1 MR. HONG: Thank you.

2 THE HEARINGS OFFICER: So we'll see you on the
3 12th. We're adjourned today.

4 MR. HONG: Thank you.

5 (The hearing is adjourned at 12:21 p.m.)

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STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

I, MERCEDES SHARON SOUZA, a certified court reporter in the State of Hawaii, do hereby certify that the foregoing pages are a true and correct transcription of the proceedings in the above matter.

Dated this 24th day of October , 2013.

Mercedes Sharon Souza, CSR No. 184