

Windward Planning Commission
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, Hi 96720-4224
Telephone: (808) 961-8288
Facsimile: (808) 961-8742

BEFORE THE COUNTY OF HAWAI'I
WINDWARD PLANNING COMMISSION

In the Matter of

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

Application for Special Permit Application
No. 12-000138

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

SPP No. 12-000138

COUNTY OF HAWAI'I WINDWARD
PLANNING COMMISSION'S FINDINGS
OF FACT, CONCLUSIONS OF LAW, and
DECISION AND ORDER; CERTIFICATE
OF SERVICE

Remand Hearing:

Date: October 7, 2021

Time: 9:00 am

Location: Held by Remote Hearing

**COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

The County of Hawai'i Windward Planning Commission having duly considered the entire record in the above-entitled matter, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. **PROCEDURAL MATTERS**

1. On July 25, 2012, Connections New Century Charter School ("Connections") and Community Based Support Services ("CBESS") (hereinafter collectively

referred to as the “Applicants”) filed an application for a special permit (“SPP- 12-000138”), pursuant to Section 205-6, Hawai‘i Revised Statutes (“HRS”) and Rule 6 of the County of Hawai‘i Planning Commission Rules of Practice and Procedure (“Commission Rules”), to allow the development of a charter school campus and related improvements for students in kindergarten through twelfth grade (the “Development”), on 70.15 acres of land situated within the State Land Use Agricultural District, at Ponahawai, Kūkūau 2nd, South Hilo, Hawai‘i, commonly referred to as the “Kaūmana” area, Tax Map Key (“TMK”) (3) 2-5-006:141 (the “Property”).

2. Public Hearings on SPP 12-000138 were scheduled and notices were provided to interested parties.

3. The Hawai‘i County Windward Planning Commission (“Commission”) initially held public hearings on SPP 12-000138 on November 9, 2012, December 6, 2012, and January 10, 2013.

4. On November 9, 2012, Connections, its experts, and interested surrounding property owners provided testimony and evidence. No requests for a contested case were made. The Commission and Applicants believed that there was not an option for a contested case because the State Land Use Commission (“LUC”) would make the final decision to approve or deny SPP 12-000138. The Commission and Applicants agreed to delay vote on SPP 12-000138 to conduct further discussion on traffic and other concerns raised about the application.

5. On December 6, 2012, Connections produced additional information and requested a continuance because the State of Hawai‘i Attorney General’s Office was taking over

as Connections legal representation. The Commission granted Connections' request for a continuance.

6. On January 10, 2013, the Commission moved to deny SPP 12-00138. However, no vote was held because members of the Commission were absent. The Commission also instructed the Hawai'i County Planning Department ("Planning Department") and Deputy Corporation Counsel of the Commission to draft consideration of findings of fact, conclusions of law for denial of SPP 12-000138 for consideration at the Commission's March 7, 2013, meeting.

7. On February 15, 2013, the Planning Department mailed out a notice of public hearing to the surrounding property owners, which included notice of the right to file for intervention in contested case and a petition for standing to intervene in a contested case. Thus, the Planning Department suspended drafting proposed findings of fact, and conclusions of law.

8. On March 7, 2013, due to concerns raised about contested case procedures the Commission withdrew its motion to deny SPP 12-000138 and granted a request by Connections for a contested case hearing. The Commission also granted standing to Intervenor Jeffrey Gomes and voted to retain a hearing officer to conduct the contested case hearing.

9. Retired Judge Sandra Petcher Song was retained as the contested case hearing officer ("Hearing Officer"). The contested case hearing was held over five days on October 21, 2013, October 22, 2013, November 12, 2013, January 8, 2014, and January 22, 2014.

10. On April 7, 2014, the Hearing Officer submitted a hearings officer report to the Commission and the Parties. The report concluded that SPP 12-000138 should be denied. The Applicants submitted joint exceptions to the Hearing Officer's report, Finding of Fact,

Conclusions of Law and Recommendation. The Planning Department also submitted exceptions to the Hearing Officer's report.

11. On May 1, 2014, the Commission voted to uphold the Hearing Officer's recommendation and deny SPP 12-000138.

12. On May 19, 2014, the Commission issued its final Findings of Fact, Conclusions of Law, Decisions and Order.

13. On June 9, 2014, and June 19, 2014, CBESS and Connections, respectively, filed timely notices of appeal of the Commission's Decision and Order in the State of Hawai'i Third Circuit Court ("Circuit Court").

14. After hearing arguments on the matter, the Circuit Court issued a Decision and Order affirming the Commission's decision on July 14, 2015.

15. On January 13, 2017, the Circuit Court entered in its Second Amended Final Judgment in favor of the Commission, Intervenor Gomes, the Planning Department, and the Hearing Officer.

16. On January 21, 2017, Connections filed a timely notice of appeal to the State of Hawai'i Intermediate Court of Appeals (ICA).

17. On January 31, 2020, the ICA issued a Memorandum Opinion vacating the Circuit Court's July 14, 2015 Order and January 13, 2017 Final Judgment and the Commission's May 19, 2014 Decisions and Order, and remanded the case back to the Commission for further proceedings consistent with its Memorandum Opinion.

18. On July 6, 2021, the Commission via a letter from the Commission Chair requested the parties provide a brief to the Commission on "[w]hether the Commission should make a decision on the record as presented or open the record and consider new evidence?"

19. July 30, 2021, the Commission received briefs from CBESS, Intervenor Gomes, and the Planning Department. Connections submitted a letter joining CBESS's brief.

20. On August 5, 2021, the Commission voted to decide on the record as presented and continue the hearing to the Commission's October 7, 2021 meeting to allow time to review the voluminous record.

21. On October 7, 2021, after review of the entire record on appeal, hearing public testimony and presentations by the Parties, the Commission voted to approve SPP 12-000138 based on the Planning Director's October 31, 2012 revised recommendation with conditions ("PD's Recommendation"), which was adopted.

II. PROPOSED DEVELOPMENT

A. Description of Proposed Use

22. Special Permit Application SPP 12-000138 proposes the development of a K to 12 charter school campus with dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Property, together with related uses on the 70-acre parcel of land. As the site is bisected by Edita Street, the lower portion of the Development would consist of the major school or campus facilities, while the upper portion would be used for outdoor educational programs, including a forestry preservation program.

23. The lower campus would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students) and 25 intergenerational clients. Also included would be a dormitory capable of supporting 30 students, a gymnasium, kitchen/dining facility, library/resource center, caretaker's residence, and other related facilities. Two parking lots with a total of 140 parking stalls would be provided.

24. The Development would relocate and expand the existing charter school which is presently operating from two separate campuses. The elementary and middle schools are in the Kress Building on Kamehameha Avenue, in downtown Hilo, and the high school is in leased facilities at the Nani Mau Gardens, just outside of Hilo town.

25. Connections proposes having 50 full-time and 17 part-time employees at full build-out of the Development, which is the same number presently employed for this charter school.

26. The Development is intended to be constructed in 9 phases and completed within 16 to 25 years. The first phase would include the caretaker's residence, high school, and administration building, with the projected opening to be within 2.5 to 3.5 years.

B. PUBLIC UTILITIES AND SERVICES

Access

27. Access to the Development is proposed from Edita Street which connects with Kaūmana Drive. Both roads are owned and maintained by the County of Hawai'i. Edita Street has a 60-foot right-of-way width, with a 48-foot-wide pavement width fronting the Development. The paved area accommodates two 20-foot-wide travel lanes, a 20-foot-wide shoulder on the northeast side of the road, and an 8-foot-wide shoulder on the Southwest side. Edita Street is in good condition.

28. The Hawai'i County Police Department ("HPD") recommended that the unpaved shoulder along Edita Street extending from Kaūmana Drive to the Development should be paved so that pedestrians could safely walk along the shoulder.

29. The Applicants have agreed to follow HPD's recommendation.

30. PD's Recommendation condition 8 states, "[t]he applicant shall construct an 8-foot paved shoulder along the northeastern (Makai) side of Edita street from the south end of the subject property to the intersection of Edita Street and Kaūmana Drive (Standard Detail R-34) meeting with the approval of the Department of Public Works."

Traffic

31. A Traffic Impact Analysis Report ("TIAR") dated June 28, 2010, was prepared in conjunction with the Connections application for the purpose of evaluating the Development's impact at the Development's entrance at Edita Street and at the Edita and Kaūmana Drive intersection. Based upon traffic counts taken on May 28, 2009, the TIAR found that the current level of service ("LOS") operates as LOS "A" or "B", meaning that the traffic service is uncongested. The TIAR also concluded that upon full build-out of the Development, the LOS will continue to operate at levels "A" or "B".

32. The Hawai'i County Department of Public Works ("DPW") recommended that a separate left turn lane onto the Development from Edita Street should be constructed to alleviate congestion, and that Connections should prepare a comprehensive traffic management plan for the Development.

33. Applicants have agreed to mitigate and minimize potential traffic impacts by following DPW's recommendations.

34. PD's Recommendation condition 7 states, "[t]he applicant shall construct a separate turn lane for left turns from eastbound Edita Street into Lower Campus at Road A meeting with the approval of the Department of Public Works."

35. PD's Recommendation condition 9 states,
[t]he applicant shall submit a Traffic Management Plan to be reviewed and approved by the Department of Public Works-Traffic Division in consultation with the Police

Department. The comprehensive plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during special events and student pick-up/drop-off activities for the entire school campus. The applicant shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The applicant shall incorporate carpooling, bus and van services, and staggering school pick-up and drop-off times.

36. PD's Recommendation Condition 10 states, "[t]he applicant shall design project driveways/roads, parking and loading areas so all school traffic and congestion is confined to the project site."

Water

37. The Property has access to County of Hawai'i water up to a maximum daily usage of 4,200 gallons per day ("gpd") of water or seven (7) water units (600 gpd per unit) from an existing 8-inch waterline on Kaūmana Drive for the upper campus and from an existing 8-inch waterline on Edita Street for the lower campus to service the entire Development.

38. The existing 8-inch waterline within Edita Street is looped to provide the required 2,000 gallons of water per minute for fire protection for the proposed Development. This requirement is based on the Hawai'i County Department of Water Supply's ("DWS") water system standards for schools.

39. Potable water needs will be met by connecting to the existing county water supply infrastructure.

40. The Applicants have also proposed to meet non-potable water supply needs by developing an extensive rainwater collection system consisting of catchment tanks, storage reservoirs/tanks with a network of water lines to distribute collected water throughout the campus and/or by developing an additional water source.

41. Per PD's recommendation condition 2, the Applicants have agreed to submit anticipated maximum daily water usage and a water commitment deposit to the Hawai'i County Department of Water Supply within 180 of effective date of this permit. The calculations must include the estimated peak flow in gallons per minute and total estimated maximum potable water demand in gallons per day.

Wastewater

42. PD's Recommendation condition 13 states, "[t]he method of sewage disposal shall meet with the requirements of the [State of Hawai'i] Department of Health" ("DOH").

43. Connections is proposing to provide its own wastewater system meeting the requirements of the DOH. Connections prefers installing an ecological/biological wastewater system called the "Living Machine." However, if such a system proves to be unfeasible, Connections will install a traditional septic system with leach fields, or any other system required by the DOH.

Drainage

44. The Property is located within Zone "X" on the U.S. Department of Army Corps of Engineers Flood Insurance Rate Map, which means that the Property is outside the 500-year flood plain. Notwithstanding this flood designation, during severe storms water has been known to overtop the concrete channel and flow across Edita Street, resulting in flooding of adjacent properties. Connections proposes to prepare detailed engineering studies for the purpose of developing appropriate drainage plans to address the potential flood hazard posed by the present condition of Edita Street.

Electric/Phone

45. Electrical and telephone services are available to the Property through overhead lines along Edita Street and Kaūmana Drive.

Public Safety

46. The HPD expressed concern that the Development would increase noise, crime, and traffic. However, there was no evidence that HPD lacks the ability to provide police protection for the Development.

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

47. The Property is presently vacant and undeveloped.

48. Surrounding lands to the south and west of the Property are zoned A-1a, with properties further south being zoned A-20a and A-10a. Properties to the north of the Property are zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaūmana Drive. One parcel is also zoned OPEN adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity.

49. The soils on the Property are primarily composed of pahoehoe lava flow. The Agriculture Lands of Importance to the State of Hawai‘i map designates the property as unclassified. Also, the Land Study Bureau classifies the soil on the Property under its detailed land classification system, as "D" or "Poor" for agricultural activity.

50. No archaeological sites have been found on the Property, and it is surmised that any pre-existing sites would have been destroyed by the lava flow of 1880-1881. Although Connections submitted a request to the State Historic Preservation Division ("SHPD"),

by letter dated August 17, 2010, requesting a "no-effect" determination from that agency, SHPD has not responded to the request.

51. A portion of the Kaūmana Cave is accessible from the upper portion of the Property. Connections has agreed, per PD's Recommendation condition 5, to maintain a minimum 100-foot buffer along the cave's entire perimeter within the Property to alleviate concerns about impact from the Development on the cave's ecosystem. No use, structures or land alteration activities shall be permitted within this Kaūmana cave preservation buffer.

52. A botanical survey of the Property identified 11 native plant species, but none of those species are considered protected species.

53. Invertebrate, mammalian and field surveys were conducted on the Property. No protected species were documented to be present on the Property.

54. No traditional or customary native Hawaiian rights have been identified as being exercised on the Property. Likewise, there is no known public access to the mountains or the shoreline that runs through the Property.

IV. STATE AND COUNTY PLANS

55. The Property is within the State Land Use Agricultural District. A school is not a permitted use within the Agricultural district; however, a school may be permitted in this district if a special permit is obtained for such use pursuant to Section 205-6, HRS and Rule 6 of the Commission Rules.

56. The County of Hawai'i General Plan Land Use Pattern Allocation Guide ("LUPAG") Map designates the Property for low density urban uses. The LUPAG designation of Low-Density urban use, allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses.

58. The County of Hawai‘i zoning for the Property is Agricultural with a minimum lot size of one acre (A-1a). Under Section 25-5-72(d) of the Hawai‘i County Code, a school is permitted in an Agricultural zoned district provided that a special permit is issued for the use if the land is within the State Land Use Agricultural District.

59. The Development, which will be located on State land, is subject to the Hawai'i State Environmental Impact Statement law, Chapter 343, Hawai‘i Revised Statute (“HRS”). Connections prepared an environment assessment in accordance with HRS Chapter 343, and a declaration with a finding of no significant impact was issued for the Development by the State of Hawai‘i Department of Land and Natural Resources. State of Hawai‘i leased the land to Connections for sixty-five (65) years under General Lease No. S-6029.

60. The Property is not situated within the Special Management Area ("SMA") since it is located over three miles from the nearest shoreline. Thus, the coastal environmental considerations relating to the SMA are not applicable to the subject Property.

V. SPECIAL PERMIT REQUIREMENTS

61. HRS Section 205-6, which governs special permits provides, in the relevant part, as follows:

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

...

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

...

(d) Special permits for land the area of which is greater than fifteen acres ... shall be subject to approval by the land use commission. The land use

commission may impose additional restrictions as may be necessary or appropriate in granting the approval including the adherence to representations made by the applicant."

62. Commission Rule 6-7, provides, in the relevant part, that:

"The Commission shall not approve a Special Permit unless it is found that the proposed use:

- (a) Is an unusual and reasonable use of land situated within the Agricultural... District...; and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The Commission shall also consider the criteria listed under Section 6-3(b)(5)(A) through (G)."

63. Planning Commission Rule 6-3(b)(5)(A) through (E)

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

64. The criteria under Hawai'i Administrative Rules (HAR) Section 15-15-95(c)(1) through 15-15-95(c)(5), which is the Criteria the LUC uses to review special permits, are almost identical to Planning Commission Rule 6-3(b)(5)(A) through (E).

VI. CONFORMANCE WITH SPECIAL PERMIT CRITERIA

65. The Applicants proposed Development meets the criteria for an “unusual and reasonable” use as defined by Commission Rule 6-3(b)(5) and HAR Section 15-15-95(b) as follows:

- A. The Use Shall Not Be Contrary to the Objectives Sought to Be Accomplished by the Land Use Law and Regulations.

The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands from those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai‘i. Within the Agricultural District, the intent is to preserve or keep lands of high agricultural potential for agricultural use. The Applicants propose to develop a new academic campus, which will include an elementary, intermediate, and high school facilities to support 381 students and 25 intergenerational clients. The Property is owned by the State of Hawai‘i and consists of soil that is classified as “D” or “Poor” by the Land Study Bureau’s Detailed Land Classification System.

Although the land upon which the proposed use is sought is unsuited for agricultural uses, the Applicants are proposing to have agricultural programs on the lower campus. The agricultural program facilities include green houses, a 6-horse barn, and cultivated gardens, which may include vegetables, taro, fruit trees, native plants, and ornamental plants. The agricultural program may also include livestock like chickens, goats, pigs, and horses. The Applicants intend to use the upper parcel for a forestry/conservation program, which focuses on forest resource management and conservation, and forest ecosystem restoration.

Thus, the proposed use would not be contrary to state land use laws and regulations. Further, the proposed Development intends to have agricultural uses and therefore,

would not frustrate the objectives and effectiveness of the Hawai‘i’s land use scheme and require a state land use boundary amendment in lieu of a special permit.

B. The Desired Use Would Not Adversely Affect Surrounding Properties

Surrounding lands to the south and west of the Property are zoned A-1a, with properties further south being zoned A-20a and A-10a. Properties to the north of the Property are zoned RS-10 and RS-15, with some lands zoned A-3a further north across Kaūmana Drive. One parcel is also zoned OPEN adjoining the northeast corner of the lower portion of the Property. Surrounding uses consist mainly of single-family residences with some vacant lands, and a small percentage of agricultural activity. The nearest dwellings to the upper parcel are located on adjoining properties to the north along Kaūmana Drive and to the south along Mele Manu Street. The nearest dwellings to the lower parcel where most facilities will be located to the north along Edita Street and Kaūmana Drive.

Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents. However, the Applicants have agreed to multiple conditions to mitigate and minimize the potential adverse effects the Development could create for the surrounding properties. For example, a comprehensive traffic management plan will be developed and implemented to ensure that school traffic and congestion does not overflow onto County roads. The Applicants are also required, per PD’s Recommendation condition 4, to create a landscaping buffer along the entire 70-acre project site to eliminate or minimize “noise, dust, litter, glare of lights, signs or unsightly areas between adjacent land uses or between a land use and roadway.” Planning Department Rule No. 17 (Landscaping Requirements).

C. The Use Would Not Unreasonably Burden Public Agencies to Provide Roads and Streets, Sewers, Water, Drainage, School Improvements, And Police and Fire Protection.

As mentioned above, the Developments primary access will be via Edita Street, which extends form Kaūmana Drive. The Applicant’s traffic impact analysis report for the Development indicates that at full build-out the level of service will be “A” or “B”, which is better than acceptable levels of service. However, TIAR did indicate school related vehicles turning left into the campus will cause delays to through traffic along Edita Street unless a separate turn lane is provided. The Applicants are required to construct a separate turn lane to address this potential impact to traffic.

There is no municipal sewer system available at the Property, but the Applicants intend to provide its own wastewater system that will meet the DOH’s requirements. County water service is available from an 8-inch water line on Kaūmana Drive for the upper campus and from an 8-inch water line on Edita Street for the Lower campus. The Applicants are required to dispose of all Development related run-off onsite. Both police and fire are located relatively close to the Development. Electricity, water and wastewater disposal facilities and other essential services are or will be available for the proposed school and related improvements.

D. Unusual Conditions, Trends and Needs Have Arisen Since the District Boundaries and Rules Were Established.

Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also, the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. Connections currently operates two campuses one at the Kress Building, Downtown Hilo and at Nani Mau Gardens Facility. Neither location

is an ideal place for a school campus, establishment of the Kaūmana campus will provide new educational opportunities for current and future students.

E. The Land Upon Which the Proposed Use is Sought is Unsuitable for the Uses Permitted the District.

The Land Study Bureau Detailed Land Classification System (with “A” being the best and “E” being the worst) classifies the soil, which mainly consists of pahoehoe lava as "D" or "Poor" for agricultural activity. The land on which the proposed use if located is “Unclassified” by Agriculture Lands of Importance to the State of Hawai‘i (“ALISH”) System.

As mentioned above, although the land is unsuitable for agricultural uses, Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use, and to construct greenhouses and conduct an agricultural program in conjunction with its curriculum on the lower campus.

F. The Proposed Use Will Not Substantially Alter or Change of the Essential Character of the Land and Present Use.

The current character and present use of the subject property is undeveloped, vacant of structures and uses. The current character of the surrounding area is residential and agricultural. The present use of the area is mainly residential with some agricultural activity and vacant land. The Applicants have proposed to construct buildings as single-story structures, like the surrounding residential community, to help minimize the change to the essential character of the land.

G. The Request Is Not Contrary to The General Plan and Official Community Development Plan and Other Design Plans.

The Economic, Public Facilities and Land Use elements of the County General Plan all require consideration of social and community concerns as follows:

Economic Element – Goal

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

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

- Encourage the establishment of additional schools as need arises.
- Encourage the Provision of public facilities that effectively service the community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community.

Land Use-Public Lands

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

VII. THE PUBLIC TRUST DOCTRINE

66. The “Public Trust Doctrine” protects forests, water resources and prime agricultural lands from unnecessary urbanization. *Kauai Springs, Inc. v. Planning Comm’n of Cnty. Of Kauai*, 130 Hawai‘i 407, 426, 312 P.3D 283, 299 (Ct. App. 2013) cert, granted sub nom. *Kauai Springs, Inc. v. Planning Comm’n of Cnty. of Kaua‘i*, No. SCWC 29440, 2013 WL 4779589 (Haw. Sept. 4, 2013) and aff’d, 133 Haw. 141, 324 P.3d 951 (2014).

The Property which was subject of the Special Permit Application is not classified as “important” by State Department of Agriculture, but instead, classified as “D” or “Poor” for agricultural activity by the State Land Study Bureau.

CONCLUSIONS OF LAW

The construction and operation of a school is not a permitted use within the State Land Use Agricultural District pursuant to 205-2, HRS. The Application to develop a K-12 charter school campus constitutes an “unusual and reasonable” use as provided in HRS Section 205-6 as established by HAR Section 15-15-95(b) and Commission Rule 6-7(b), and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

DECISION AND ORDER

Based upon the preceding Findings of Fact and Conclusions of Law, Special Permit Application SPP No. 12-000138 submitted by Applicants Connections New Century Public Charter School and Community Based Education Support Services to develop a K to 12 charter school campus with dorm facilities and related uses on 70.15 acres situated within the State Land Use Agricultural District is hereby approved and a favorable recommendation shall be forwarded to the State of Hawai‘i Land Use Commission.

DATED: Hilo, Hawai‘i, November 4, 2021.

John R Replogle
John R Replogle (Nov 16, 2021 07:04 HST)
By _____
John Replogle, Chairman
Windward Planning Commission
County of Hawai‘i