

**Special Permit (SPP 12-000138)**

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

**Request: To Develop a K to 12 Charter School Campus with Dorm Facilities and Related Uses**

**Tax Map Key: 2-5-006:141**

**ICA Remand (File 9) (Additional Documents after Flash Drive Provided)**

<b><u>EXHIBIT</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION</u></b>
109	10/06/2021	Memo from Ted H.S. Hong, Esq. transmitting Romeo Garcia's Presentation document for WPC October 7, 2021 Hearing
110	10/07/2021	WPC Approved Minutes and Transcript for October 7, 2021 Hearing
111	11/01/2021	Intervenor Jeffrey Gomes Exceptions to COH WPC Proposed Findings of Fact, Conclusions of Law, Decision and Order (FOF, COL, D&O) on Remand; Exhibits "2" & "3"
112	11/02/2021	Letter from Ted H.S. Hong, Esq. Proposed Amendment to COH WPC Proposed FOF, COL, D&O
113	11/03/2021	Applicant Community Based Support Services Memorandum in Opposition to Intervenor Jeffrey Gomes Exceptions to COH WPC FOF, COL, D&O
114	11/04/2021	COH WPC Adopted and Executed FOF, COL, D&O
115	11/16/2021	COH WPC Letter to Parties (Ted Hong, Esq, Michael Matsukawa Esq., and Kevin Richardson Deputy Attorney General) Transmitting Adopted and Executed FOF, COL, D&O

**Mori, Ashley**

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**From:** Ted Hong <ted@tedhonglaw.com>  
**Sent:** Tuesday, October 5, 2021 3:42 PM  
**To:** Dacayanan, Melissa; Araujo, Jaclyn  
**Subject:** Item #4 Connections New Century Public Charter School/CBESS (SPP-12-000138)  
**Attachments:** CBESS.2021.Romeo's Presentation for Planning Commission.docx

Aloha, attached is the written testimony for one of the people who will be speaking on behalf of the School during the presentation. Please include this for the Commissioners to review and as part of the Record.

Thanks,

Ted H. S. Hong  
Attorney at Law

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## **Romeo Garcia's Presentation for Windward Planning Commission**

Date: Thursday, Oct. 7, 2021 9:00 AM

### **Connections Public Charter School Board of Directors (Alphabetical)**

Kirk Bailey, Community Member  
Romeo Garcia, Po'o Kumu/Director  
Elsie Hayashi, Community Member  
Ron Kim, CPCS Parent  
Anna Madrid, CPCS Parent  
Libby Oshiyama, Community Member  
Shinji Salmoiraghi, Board President/Community Member  
Pamela Thatcher, Faculty Representative  
Christina Wilbourn, Staff Representative

Pua Kaai, Charter School Commission Liaison

### **School Leadership**

Romeo Garcia, Po'o Kumu/Director  
B.A., Theater Arts and Rhetoric, Occidental College  
M.A., Education: Staff and Curriculum Development, Mills College  
Doctoral Student, Educational Leadership, Mills College (Leave of Absence)

**Bio:** Romeo Garcia has worked as an educator since 1984. He began his career as an elementary school teacher in the Oakland Unified School District in Oakland, California. He worked at Mills College in Oakland from 1986 -2006 as the Director of Federal TRIO Programs: Upward Bound and Educational Talent Search and as the Assistant to the President. Romeo is co-founder of ARISE Charter High School in Oakland. He has been an Educational Consultant, Executive Director of the Peralta Community Colleges Foundation and Dean of Special Services and Programs at Merritt Community College. Romeo moved to Hawai'i Island in 2016 where he served as the Po'o Kumu/Director at Laupāhoehoe Community Public Charter School. Romeo has been at Connections Public Charter School since 2018 as the Vice Principal and now as Po'o Kumu/Director.

**School Mission:** To create an 'ohana that is conducive to the recognition and development of individual talents. Thematic and experiential learning experiences are provided that focus on how students construct knowledge using creative and critical thinking. Classroom experiences are connected to real life experiences so that students can grow in the understanding of themselves in relation to their community and the world.

**Connections' 'Ōlelo No'eau (#203):** " 'A'ohē pau ka 'ike i ka hālau ho'okāhi." "All knowledge is not taught in one school."

### Geographical Distribution

This is the breakdown of the Hawai'i County Districts and cities that the students are from based on mailing addresses. Note that there may be some discrepancy because this is a mailing address, not a physical address. Should be a small amount.

**This is according to Hawai'i County Districts: Hilo, Puna, Other.  
We provide free bus transportation to families that need it.**

District	Number	Percentage
Hilo	250	69.64%
Puna	108	30.08%
Other	1	0.28%
	359	100.00%

City	Number	Percentage
Hakalau	1	0.28%
Hawaii Nat'l Park	2	0.56%
Hilo	221	61.56%
Honomu	1	0.28%
Keaau	52	14.48%
Kurtistown	11	3.06%
Mt View	24	6.69%
Pahala	1	0.28%
Pahoa	18	5.01%
Papaikou	6	1.67%
Pepeekeo	21	5.85%
Volcano	1	0.28%
	359	100.00%

**\*HIDOE Infinite Campus Database**

<b>Total K-12 Enrollment</b>	<b>359</b>
Male	188
Female	171
Special Education	68
504 Student Support Plans	19
English Language Learners	28

## Student Demographics

Race	Number	Percentage
American Indian or Alaska Native	10	2.79%
Black	16	4.46%
Chinese	2	0.56%
Filipino	15	4.18%
Native Hawaiian	138	38.44%
Japanese	15	4.18%
Portuguese	15	4.18%
Samoan	1	0.28%
White	98	27.30%
Micronesian	19	5.29%
Tongan	5	1.39%
Other Asian	6	1.67%
Other Pacific Islander	8	2.23%
Primary Not Selected	11	3.06%
Total	359	100.00%

\*HIDOE Infinite Campus Database

## Child Nutrition

Since Connections serves predominantly low-income families (87.9%) we offer free, nutritious school meals to all children through the U.S. Department of Agriculture Child Nutrition Program. During the school closures caused by the pandemic in the school year 2020-2021, Connections offered free meals to students in the Hilo community.

## Grants

Artists in the Schools

REACH - Afterschool Programing

UPLINK - Afterschool Programing, Technology Focus

U.S. Department of Agriculture - Child Nutrition Program, Community Eligibility Provision

U.S Department of Agriculture - Farm to School Grant

U.S. Department of Education Title 1 Program

U.S. Department of Education - 21st Century Learning Center Grant

## **Partnerships**

Akaka Foundation for Tropical Forests

Hawai'i Afterschool Alliance

Hawai'i Agriculture Foundation

Hawai'i PK-12 Research & Development Consortium, State Innovation Initiative

Ho'ouana Pono Drug Prevention Program

Kamehameha Schools - Environmental Education Programs

Kama'āina Kids

Kohala Foundation

University of Hawai'i System - UH and HCC

## **Connections Alumni**

Work at Connections - We currently have alumni employed in the following positions:

- Math and Culinary Arts teacher who has been teaching at Connections for \_\_\_\_\_ years.
- The coordinator of our 21st Century Learning Center grant.
- Two Educational Assistant in the Elementary level. One also works in our afterschool program.
- One staff person who works in our Studio Shaka After School Program
- One staff person on our facilities team.
- Two current students who work as Studio Shaka After School Program coordinators.

Attend College - Graduates are enrolled in both University of Hawai'i and Hawai'i Community College programs. One of our students, *Kit Neikirk*, is currently studying in Scotland as an exchange student from the University of Hawai'i. He was featured last week in an article entitled Boy Wonder. This graduate's current research "focuses on recording and analyzing the changes to mitochondria in relation to knock down of genes. Neikirk began his post-secondary academic career as a high school freshman at only 13 years old, when he also started classes at community college level. He graduated high school from Connections Public Charter School in Hilo as a sophomore, the youngest in his graduating class. He entered UH Hilo in 2019 as a 15-year-old triple major in biology, sociology, and chemistry. He plans to graduate with his bachelor degrees in spring 2023, and from there attend medical school to continue his journey toward becoming a healthcare provider."

## Are in the Local Workforce

KTA, Walmart, Mattress Firm, Big Island Countertops, Bed Mart, Tony Honda, Target, Kawamoto's, Miranda's Country Store, Tractor Supply Company, Hilo Fish Company, Pizza Hut, Hilo Kia, Life Care Center, Hamakua Honey, Taco Bell, Pho' Viet, N.A.R.S, Hilo Bay Cafe, American Eagle, U.H. Hilo, Hapuna Prince Hotel, Aloha Monday's, Home Depot, HPM, Ross Department Store.

Visit Campus Regularly - Because Connections continues to be a resource and because they have an allegiance to the school based on the appreciation they're for their experience as a student, we have regular visits from alumni of the school. They come for further support and/or to update us on their lives.

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI'I

MINUTES  
OCTOBER 7, 2021

The Windward Planning Commission met in regular session at 9:05 a.m., with Chairman John Replogle presiding. Based on the Governor's Emergency Proclamation Related to the COVID-19 Response dated August 5, 2021, this meeting was held online, with live-streaming for the public to observe the meeting.

VIRTUAL ATTENDANCE (COMMISSIONERS): Dean Au, Gilbert Aguinaldo (excused at 11:29 a.m.), Joseph Clarkson, Dennis Lin, Michelle Galimba, Thomas Raffiipi (recused and excused at 11:29 a.m.), John Replogle.

VIRTUAL ATTENDANCE (STAFF): Zendo Kern (Planning Director), Jeffrey Darrow (Deputy Planning Director), Malia Hall (Deputy Corporation Counsel for the Windward Planning Commission), Jean Campbell (Deputy Corporation Counsel for the Planning Department), Christian Kay (Planner), Eric Cook (Planner), Jessica Andrews (Planner), Maija Jackson (Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary).

***Secretary's Notes:*** *Throughout the meeting, there were some technical and/or internet difficulties which made the speaker inaudible. Please note that the notation "—" in these Minutes and the Exhibit Transcripts means that there were technical and/or internet difficulties which made the conversation inaudible.*

A quorum was present. Chairman Replogle called the meeting to order. He explained the procedure and protocol for this online meeting and live public testimony. He introduced the Commissioners and staff who were in virtual attendance.

**APPROVAL OF MINUTES**

At 9:08 a.m. it was moved by Commissioner Lin and seconded by Commissioner Au that the minutes of August 5, 2021, be approved. A voice vote was taken, and the motion carried with all in favor and no noes.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS**

Chairman Replogle called upon the individuals registered to provide oral testimony. He swore them in to tell the truth in their testimony and explained the procedure.

At 9:09 a.m. twelve individuals provided testimony regarding Unfinished Business Item 4, the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**. The testimony ended at 9:54 a.m. [SEE TESTIMONY TRANSCRIPT – EXHIBIT A]



It was moved by Commissioner Galimba and seconded by Commissioner Aguinaldo that public testimony be closed. There being no discussion on the motion, a voice vote was taken, and the motion carried by unanimous vote of those present.

## **NEW BUSINESS**

1. **APPLICANT: TAKATA DENTAL HEALTH CENTER INC.  
(AMEND REZ 11-000146)**

Application for time extensions to Condition B (time to complete construction) and Condition C (water commitment) of Change of Zone Ordinance No. 12 33 which rezoned one (1) acre of land from a Single-Family Residential – 10,000 square feet (RS-10) to a Residential-Commercial Mixed Use – 20,000 square feet (RCX-20) zoning district. The subject property is located at 1732 Kīlauea Avenue, approximately 750 feet south of its intersection with Kāwili Street intersection, Waiākea Homestead Houselots, South Hilo, Hawai‘i, TMK: 2-2-038:028.

The Commission took this item up at 9:55 a.m.

Action: It was moved by Commissioner Galimba and seconded by Commissioner Aguinaldo that a favorable recommendation be forwarded to the County Council on the application to amend Change of Zone Ordinance No. 12 33, based on the Planning Director’s recommendation, which shall be adopted. A roll call vote was taken, and the motion carried with seven (7) ayes (Galimba, Aguinaldo, Au, Clarkson, Lin, Raffipiy, Replogle) and no noes.

The hearing item ended at 10:09 a.m. *[SEE HEARING TRANSCRIPT – EXHIBIT B]*

2. **APPLICANT: LEILA SHIMIZU (REZ 21-000247)**

Application for a Change of Zone from a Single-Family Residential-10,000 square feet (RS-10) to an Industrial-Commercial Mixed - 20,000 square feet (MCX-20) zoning district for approximately 22,300-square feet of land. The subject properties are located at 755 Kekūanā‘a Street and 605 Kalanikoa Street, at the northeast corner of the Kekūanā‘a Street - Kalanikoa Street intersection, Waiākea Houselots, South Hilo, Hawai‘i, TMKs: 2-2-035:049 and 2-2-035:096.

The Commission took this item up at 10:09 a.m.

Action: It was moved by Commissioner Lin and seconded by Commissioner Aguinaldo that a favorable recommendation be forwarded to the County Council on the application for a Change of Zone Docket No. REZ-21-000247, based on the Planning Director’s recommendation, which shall be adopted. A roll call vote was taken, and the motion carried with seven (7) ayes (Replogle, Aguinaldo, Au, Clarkson, Galimba, Lin, and Raffipiy) and no noes.

The hearing item ended at 10:22 a.m. *[SEE HEARING TRANSCRIPT – EXHIBIT C]*

Chairman Replogle called a recess at 10:22 a.m., at that time Planning Director Zendo Kern recused himself from the meeting and stated Deputy Director Jeff Darrow will take over for the next two (2) items on the agenda. The Chair called the meeting back to order at 10:32 a.m.

3. **APPLICANT: ARTS AND SCIENCES CENTER (SPP 21-000228)**

Application for a Special Permit to allow the construction and operation of an elementary school campus for approximately 300 students on approximately 2.31 acres of land within the State Land Use Agricultural district. The subject property is located at 16-1678 34<sup>th</sup> Avenue, on the northwest corner of the Orchidland Drive – 34<sup>th</sup> Avenue intersection, Orchid Land Estates, Puna, Hawai‘i, TMK: 1-6-010:083.

The Commission took this item up at 10:32 a.m.

Action: It was moved by Commissioner Au and seconded by Commissioner Aguinaldo that the application for Special Permit Docket No. 21-000228, be approved based on the Deputy Planning Director’s recommendation, including revised Condition No. 7 and the additional condition regarding traffic management, which shall be adopted. A roll call vote was taken, and the motion carried with seven (7) ayes (Au, Aguinaldo, Clarkson, Galimba, Lin, Raffipiy Replogle) and no noes.

The hearing item ended at 11:29 a.m. [*SEE HEARING TRANSCRIPT – EXHIBIT D*]

**UNFINISHED BUSINESS**

4. **APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**

Hearing on Special Permit application SPP No. 12-000138 record as presented on appeal. SPP No. 12-000138 was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai‘i Windward Planning Commission’s May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. Application for a Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai‘i, TMK: 2-5-006:141.

The Commission took this item up at 11:29 a.m.

Commissioner Raffipiy recused himself in participating with the agenda item and Commissioner Aguinaldo was excused for the remainder of the hearing.

*At 11:32 a.m., it was moved by Commissioner Au and seconded by Commissioner Lin that the Commission enter into executive session to consult with its attorney regarding questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5. A voice vote was taken of all Commissioners present, and the motion carried with five aye votes.*

*The live-stream meeting was placed on hold and at 11:32 a.m. the Commission went into executive session. [NO TRANSCRIPT AVAILABLE] At 11:58 a.m. the live-stream meeting reconvened.*

Action: It was moved by Commissioner Clarkson and seconded by Commissioner Galimba that the application for Special Permit No. 12-000138, be continued for new evidence related to public trust issues and other factual issues relating to the permit application. A roll call vote was taken, and the motion failed with two (2) ayes (Clarkson, Galimba) and three (3) noes (Au, Lin, Replogle).

It was moved by Commissioner Lin and seconded by Commissioner Au that the application for Special Permit Docket No. SPP-12-000138 be approved and a favorable recommendation be forwarded to State Land Use Commission based on the Planning Director's recommendation, which shall be adopted. A roll call vote was taken, and the motion carried with four (4) ayes (Lin, Au, Galimba, Replogle) and one (1) no (Clarkson).

It was moved by Commissioner Au and seconded by Commissioner Galimba that the adoption of the written Findings of Facts, Conclusions of Law, and Decision and Order be continued to the next scheduled meeting in November for the approval of Special Permit Docket No. 12-000138. A roll call vote was taken, and motion carried with five (5) ayes (Au, Galimba, Clarkson, Lin, Replogle).

The hearing item ended at 2:03 p.m. *[SEE HEARING TRANSCRIPT – EXHIBIT E]*

### **AGENDA ITEMS FOR NEXT MEETING**

At 2:03 p.m. Chairman Replogle asked staff how many agenda items are on the next meeting agenda. Planner Christian Kay said with the consideration of the Findings of Fact there will be three (3) items on the agenda. He stated there is a Planning Director initiated repeal of a rezoning ordinance, and a State Land Use Boundary Amendment for an affordable housing project and the consideration of the Findings of Fact, Conclusions of Law and Decision and Order for Connections.

### **ANNOUNCEMENTS**

At 2:03 p.m. Chairman Replogle said the next Windward Planning Commission's monthly meeting will be scheduled for Thursday, November 4, 2021, by interactive video conference via Zoom.

Commissioner Au asked staff about the timing of adopting a conflict-of-interest and recusal rule for the Planning Commission. Ms. Jackson stated the issue is the Department is trying to schedule the rule amendment he mentioned at the same time as the rule amendments for Special Management Area (SMA) related to Act 16. She said logistically it is difficult to have a Joint Commission meeting and currently the Department has the Act 16 rule changes scheduled for early next year. Commissioner Au stated in the economic environment we are in now a rule should be set and he was surprised in the prior years he served on the Commission there was no

rule. When he served on the Board of Appeals board, he realized the importance of having rules set in place.

### **ADJOURNMENT**

There being no further business, it was moved by Commissioner Lin and seconded by Commissioner Galimba that the meeting be adjourned. A voice vote was taken, and the motion carried by unanimous vote of those present. Chairman Replogle adjourned the meeting at 2:08 p.m.

Respectfully submitted,

Melissa Dacayanan-Salvador  
Melissa Dacayanan-Salvador (Nov 9, 2021 09:01 HST)

Melissa Dacayanan-Salvador,  
Secretary

A T T E S T:

John R. Replogle  
John R Replogle (Nov 9, 2021 10:16 HST)

John R. Replogle, Chairman  
Windward Planning Commission

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI‘I

TESTIMONY TRANSCRIPT  
OCTOBER 7, 2021

Public testimony regarding the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)** was called to order at 9:09 a.m. via live stream online meeting, with Chairman John Replogle presiding.

COMMISSIONERS PRESENT: Gilbert Aguinaldo, Dean Au, Joseph Clarkson, Michelle Galimba, Dennis Lin, John Replogle

RECUSED: Thomas Raffipiy

ALSO IN ATTENDANCE: Malia Hall, Esq. (Counsel for the Commission), Jean Campbell, Esq. (Counsel for the Planning Department), Jeffrey Darrow (Deputy Planning Director), Christian Kay (Planning Program Manager), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary)

**APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**

Hearing on Special Permit application SPP No. 12-000138 record as presented on appeal. SPP No. 12-000138 was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai‘i Windward Planning Commission’s May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. Application for a Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai‘i, TMK: 2-5-006:141.

*Secretary’s Note: “—” indicates indiscernible speech due to internet/technical difficulties or simultaneous talk.*

REPLOGLE: Okay. We’re going to move on to statements from the public on agenda items now. We have 12 testifiers registered to give oral testimony and their testimony is for Item #4 Connections /CBESS (SPP 12-138). So, I am going to call your names and I guess you should get online, or you should be online, and I will swear you all in together. It’s Ming Peng, Anna Kennedy, Fay Sakata, Jeff Gomes, Pauline Ke’ala Lee Loy, Dr. Henry Lee Loy, Jason Turner, Kimo Miller, Sadira (Sprout) Kirkham - student, Ngetroi Rall - student, Kaitlyn Grogg-student,

Krysta Costa - student. If everybody could turn their cameras on, please, and I will swear you in all together, please raise your right hand now. Do you swear or affirm to tell the truth before the Windward Planning Commission?

TESTIFIERS: Yes, I do.

REPLOGLE: Okay, before you testify, please state your name and the town you live in, so we know where you're from and you may put your hands down. And I'm going to ask you to limit your testimony to three minutes if you've submitted written testimony there's no need to read the testimony submitted but you're welcome to summarize and update your testimony now. After your testimony the Commissioners may have questions for you, if there are no questions or questions have concluded, please log out of the Zoom platform and switch to YouTube channel, if you wish to observe the meeting okay. Okay, alright. So, I would first like to call Ming Peng to speak.

HALL: You're muted sir.

REPLOGLE: Your speaker, your mic is off.

PENG: Thank you, sorry, I apologize.

REPLOGLE: Okay.

PENG: My name is Ming Peng, P-E-N-G, I live on Mele Manu Street near the proposed site of the school of which I am against because of number one the understanding that the construction and presence of a facility of this size will adversely change the existing character and nature of the environment of the surrounding community. Including but not limited to the increased traffic and noise. I'd also like to add that there is only one way in or out of my subdivision. There is no alternative route for the more than 80 houses that exists there. This poses a further danger. Judge Song previously recommended a denial, the previous Windward Planning Commission issued a denial, both for well documented and legitimate reasons. I feel that nothing has changed, and no meaningful action has occurred to allow this project to continue. I urge you to once again deny this permit. Thank you for your time.

REPLOGLE: Thank you Mr. Peng. Anna Kennedy?

KENNEDY: Yes, here I am Anna Kennedy and I live on 1300 Mele Manu in Pacific Plantation. There are two families living in the home and extended family. We are new to the address but not new to Hilo. "—" it all the submitted applications and materials and feel that the Commission did a really good job in the very beginning to deny this proposal. I definitely support our neighbors already expressed concerns. Another additional concern that I feel affects at least 15 homes that are immediately adjacent would be the proposed school phase program to build This would subject all of us to from anywhere from 10 to 26 years of building disturbance, as well as the noise and confusion of the school. I think that the Commission was right to deny the permit in 2014 and hope you will do that again. I do want to thank all of you also for your good work and your due diligence. Thank you.

REPLOGLE: Thank you, Miss Kennedy. Next is Fay Sakata?

SAKATA: Hi, good morning. My name is Fay Sakata and I live on Mele Manu Street, near the site of the proposed charter school. The project will have an adverse impact on the surrounding neighborhood. The record will show that there were considerable objections from the community. A petition was submitted, which showed that of the 106 lots within the Pacific Plantation Subdivision 90 or 85% oppose the project. Further, a survey was taken of properties within 500 feet of the proposed site. There were 170 lots of this, oh I'm sorry. There were 170 lots excluding governmental land and road lots. Of these, 116 or 68% opposed; 54 or 31% took no position or could not be contacted either vacant land or absentee owners.

One of the criteria for a Special Permit is whether the use would have an adverse impact on surrounding property. The statement from the Police Department noting its adverse traffic impact combined with the perceptions and statements of the overwhelming majority of the project's neighbors should be sufficient to conclude that the request indeed would have an adverse impact. As noted by the Court, the Commission has wide discretion in deciding whether to approve a Special permit. While the request may meet some of the other criteria, the most critical one in our estimation, is its impact to the community. We therefore respectfully request the Commission to exercise its discretion and deny the request. Thank you very much.

REPLOGLE: Thank you, Ms. Sakata. Next is Jeffrey Gomes or Jeff Gomes? Your speaker is off Sir.

GOMES: How about that can you hear me now?

REPLOGLE: Yes, very good.

GOMES: My name is Jeff Gomes. I live in Kaūmana. Since this application was submitted, I have become the victim of attempted shaming, theft, lies, vandalism. By the way, whoever's putting bags of popcorn in my mailbox if you're listening I happen to like popcorn. I've become a victim of the lawsuit trying to get me and my neighbors to pay for Ted Hong's attorney fees and I am the Intervenor who won the contested case hearing. Did everyone read Ted Hong's filed proposed Findings of the hearing? Curiously he added some new matter that comes out of the UH dated September 21<sup>st</sup>. Isn't he the one that did not want new evidence submitted? If you haven't already, please ask yourself how did, I, Jeff Gomes without an attorney win the contested case hearing against Ted Hong, the County attorney, and the State Attorney General? The answer is facts.

Did everyone read Ed specs? Did everyone see my video proving Kaūmana caves runs directly under the site proposed for building. Did everyone read, where the County came to the site to examine the dry well proving Kaūmana caves runs under the property on all sides which led the County to require Connections to prove that Kaumana cave does not run under their property. Which they have not proved. Did everyone read about the site visit, where I proved the County illegally dumped the old concrete barrier from Edita Street onto the Connections property. Did you read the evidence where the site visit, where I proved that illegally dumped concrete was smashed into to the Kaumana cave during the illegal grubbing and grading to put up the fence.

Did you read where I proved the lies John Thatcher was promoting that at one of the community meetings someone from the community said when the children of Puna come to Kaūmana they are going to rob our homes. Or the lie that the only reason they illegally put up the 4-foot fence was because at one of the community meetings someone asked for a fence to be installed. It's not in the minutes. The school held the meetings and took the minutes. No one said any of that. Those are lies. This is why the site is not only inappropriate but dangerous for students, faculty, and the surrounding community. There's not enough water to support the school. At the time, one of the hypothetical situations was, what if there's a pandemic. Seem far-fetched at the time. The property is locked by force with only one way in and out. If there's a fire, live shooter, emergency, people can get trapped.

Ed's specs require utilities to be in place before construction. A yes vote allowing to grant the permit clearly acknowledges that you don't care about the safety and well-being of the students, faculty, and residents of Kaūmana or you did not have enough time to review all the evidence. I strongly suggest that someone make a motion to do a site visit. Please come up and look at this site, talk to the residents and see what's going on. There's too much at stake to just do a vote if you haven't really looked at all the evidence. I don't think you've had enough time. Thank you very much for your time.

REPLOGLE: Thank you, Mr. Gomes. Next will be Pauline Ke'ala Lee Loy?

P. LEE LOY: Aloha. Good morning. My name is Pauline Ke'ala Lee Loy, A resident of Mele Manu Street off of Edita. We've been on this journey for almost nine (9) years now, and I would like to reiterate my opposition to building Connections Public Charter School. The philosophy and concept behind the brick-and-mortar school is well thought out and will likely be successful in a more suitable location without all the red flags that scream out on the current proposed location. Water supply, traffic safety, waste deposits. As a Commission charged with rendering a decision on the approval or denial of a Special Use permit for this construction. Please don't make a hasty decision to finally get this off as an agenda item. This will take some critical thinking skills on your part. If you approve this Special Use permit you are attesting to the safety of all the red flags presented 9 years ago and once again today. If you deny this Special Use permit it indicates, you are not yet convinced that all the red flags will be addressed and mitigated.

Please deny this Special Use permit so Connections Public Charter School can select a more suitable and safe location that allows the Charter School to thrive and not only meet but exceed their goals and mission. Mahalo.

REPLOGLE: Thank you, Ms. Lee Loy. Next is Dr. Henry Lee Loy?

H. LEE LOY: Good morning, everyone. My name is Dr. Henry Lee Loy. I live on Mele Manu Street in Kaūmana in Hilo, Hawai'i. I'm not against Connections School. I am against the proposed location. Let me take you on a three (3) minute tour of the area.

REPLOGLE: We can't quite hear you.



H. LEE LOY: This is the campus. This is Edita Street. This is Kaūmana Drive. These red arrows indicate that Kaūmana Elementary School is 0.5 miles above Connection's property. Ernest B. De Silva lies 1.9 miles below the property. This is a single access road. Guidelines say there should be a minimum of two access sites on different sides. Right across the school is a concrete culvert. Below the campus lies 17 acres "—" agricultural. Photo number 2 shows a school bus stop on Kaūmana Drive "—"

REPLOGLE: We cannot hear you.

K. LEE LOY: Are you able to hear?

H. LEE LOY: Can you hear me?

REPLOGLE: Yes.

LEE LOY: Can you hear me now?

REPLOGLE: Yes.

H. LEE LOY: Should I start over? Did you not hear the very beginning?

REPLOGLE: Okay I'll make an exception, start over.

H. LEE LOY: Thank you Mr. Replogle. Let's take a 3-minute tour of the area.

LIN: I'm sorry, Mr. Lee Loy, Dr. Lee Loy —

LEE LOY: "—" is inappropriate.

REPLOGLE: Excuse me, yes.

LIN: Could we mute one of your mics because it's creating the feedback, so I think it's coming from Ke'ala Lee Loy's mic. Either use the ASPNET mic or Ms. Lee Loy's mic because it's creating some feedback, screeching noise. Thank you.

KAY: I have muted, the ASPNET microphone so Ms. Lee Loy's microphone is the only one open now.

REPLOGLE: Okay.

HALL: I think the ASPNET network had less feedback.

P. LEE LOY: Okay, so —

H. LEE LOY: Can you hear me now?

REPLOGLE: Yes, we could, so try again.

H. LEE LOY: I'm sorry. Let's take a 3-minute tour of the area and I'll show you why the location is inappropriate. This is the campus, this is Edita Street, here's Kaūmana Drive. Kaūmana Elementary is located half a mile above the property, E.B. DeSilva is located at 1.9 miles below the property. This is a single access road. I'd like to say, there should be a minimum of two access points on different sides. Right across the school entrance is a flood channel. Below the campus is 17 acres of agricultural crop. "—"

LIN: I'm sorry Dr. Lee Loy. I still hear a lot of screeching noise which is interrupting your presentation. Christian, could you switch the mics over to ASPNET?

KAY: Yes.

LIN: I think that one was better.

KAY: Right, so I have to ask to unmute I can't do it unilaterally. So, I've sent that request, so if you can unmute it looks like it's been done and then I'll mute Ms. Lee Loy's microphone.

LIN: Thank you.

KAY: Yeah.

CLARKSON: Also Christian, this is Commissioner Clarkson:

KAY: Yes.

CLARKSON: It may be coming through the Chair's mic which is never muted. Perhaps muting his mic when he's not speaking will help.

KAY: Okay.

H. LEE LOY: Okay, can I start again? Photo number two shows a school bus on Kaūmana Drive picking up students in the morning, note there are no sidewalks and the road curves. Photo number 3 shows a car accident at Kaūmana Drive and Edita, note no sidewalks, no crosswalks, no traffic signal lights. This resident is an elderly lady trying to come out of Edita when she was struck by this truck coming down Kaūmana Drive. Photo number four location map shows the subdivisions and the streams in relation to the property. Waipāhoehoe Stream, Alenaio Stream, Wailoa River, Downtown Hilo, Hilo Bay. Waipāhoehoe Stream runs right alongside the property and then right below it in runs into the subdivisions of Lakeland and Sunrise. Along this border is an intermittent stream that drains into Alenaio Stream, which runs through the Ponahawai, Kūkūau subdivisions behind the Fire Station into Hilo town into the canal that floods sometimes into Wailoa River and into Hilo Bay. Finally, photo number five shows a concrete channel along Edita Street during severe storms the Kaūmana Caves floods, fills the channel and the culvert and sometimes is known to overflow to this area. Look carefully, because this is the entrance to the school right across from the concrete flood channel.

In conclusion, a school with 435 students, 30-person dormitory, six horse barn, livestock's, 17 acres of agricultural incumbency 70 acres in an established residential neighborhood is inappropriate. Because there is not enough water, increased traffic, waste, agricultural chemicals storm runoff. This adversely affects the health and safety of students, staff, surrounding community, subdivisions downstream, Hilo town, Hilo Bay therefore, I respectfully ask you to deny the Special Permit. Thank you so much.

REPLOGLE: Thank you, Mr. Lee Loy. Next up is Jason Turner?

TURNER: Thank you, my name is Jason Turner my address is 1209C Kaumana Drive. I've lived there for 16 years, and my property runs up against the proposed Special Permit property and I'm strongly opposed to it. In short, I can't believe the amount of time and taxpayer money that Connections School has already wasted on this endeavor. To be clear, as a member of the Kaumana Community we don't want the school, we don't need the school, Connections has consistently been a bad neighbor. It's a failing school which makes this entire project a bad idea First we don't want the school. The Kaūmana community isn't coming to the Planning Commission asking for a school. We don't want it. Why? We already have a school; in fact, we have several schools which have been serving the Kaūmana community for well over 100 years. Kaūmana Elementary is less than a mile from the project site. DeSilva less than two miles. Hilo middle school, Hilo High school less than 3 miles.

Further, Connections School doesn't serve the Kaūmana community. Connection's student body is primarily made up of kids from outside of Kaūmana. Frankly, even outside of Hilo. In addition, from the beginning Connections have been bad neighbors to this neighborhood. I first learned about this project as a D-9 bulldozer was knocking down trees and a chicken coop in my yard. Along the edge of my yard. There was no notice, no school administrator was walking the line to talk with the neighbors. Later I found out the school didn't even have permission to clear the land with the bulldozer and had been required to clear the land by hand. More recently, I found their students and faculty picking fruit for my avocado trees over the fence line. When I asked them to stop, I was told, and I quote, "we were teaching the kids about agriculture". So, stealing fruit from their neighbors is teaching the kids about agriculture.

And yet, what are we really talking about here. Connections is a failing school; it consistently ranks as one of the lowest on Hawai'i island and its students consistently score well below the state average. So why in the world would you give a failing school a permit to build another campus. If you have a child who is a bad driver and getting into accidents. Do you buy him a brand-new car? No! You take away their license and enroll them into driving proficiency program. In sum, as a member of the Kaumana community, I can tell you, we don't want to school, we don't need the school. I can tell you that Connections have been bad neighbors. I can tell you that they are a failing school and providing this permit is just a bad idea that makes no sense whatsoever. Build the campus somewhere it's needed. Build it somewhere it's wanted, not just somewhere close to where the principal lives. Thank you.

AU: Mr. Chair?

REPLOGLE: Yes.

AU: Commissioner Au, I have a question for the testifier.

REPLOGLE: Please Mr. Au, go ahead.

AU: Good morning, Mr. Turner. I appreciate you as a community member coming to testify at this venue and I appreciate all those testifiers prior and future testifiers thank you for taking out time in your day. Question to you Mr. Turner. You mentioned that your property is adjacent to the proposed development, and you shared with us a few of the issues that happened. I'm assuming there's no positive interaction with the school that you've had or is it all negative interaction with the school?

TURNER: Sadly, it's been all negative. It's a constant looking over the fence line to see what what's going on this week. You know, to pull back the curtain I'm an educator and I believe in school systems. I believe in opportunities for kids and this project is going to thorn in the side of this community from the beginning. Again, let's reset this. This isn't the community coming to the Planning Commission saying please build the school for us. This is the exact opposite.

So, no, there isn't any positive that I can report and that doesn't feel good as an educator. But there just isn't. If we put our effort into Kaūmana Elementary that's something I'll give you. Put our efforts into DeSilva school, Hilo Middle and Hilo Inter. The schools that serve the Kaūmana community. I'm right there but this is none of that. Frankly, I mean, why are we doing it here, because the principal lives a block away this makes no sense at all. Sorry just doesn't.

AU: Thank you Mr. Turner.

REPLOGLE: Mr. Lin?

LIN: Yeah, thank you Chair. Hi Mr. Turner. I have a question for you and as well, I want to thank all the testifiers here today. But I wanted to make comment to your actually a question regarding. So, you say E.B. DeSilva, Hilo High, Hilo Intermediate, Kaūmana Elementary those are schools that are within the area. So, if those schools had any plans to expand and use the same location, would you be opposed, and would the community be opposed?

TURNER: You know I can't speak for the community. Had that school set up a meeting with the community and asking what we need. They are children right, so why would a school come to a community asking what we "—". If the community was asking for an expanded footprint of Kaūmana Elementary or one of those schools, and you know, maybe that's part of the discussion, this is the opposite. So, why would a school come to a community that serves it asking for greater footprint, should be the opposite way around or if you're coming to a community saying we need to expand the footprint because all of our kids would have gone there, we don't know. Right, so I understand your hypothetical and I can't say this started so poorly from the beginning that it's hard for me to imagine a different scenario. But I appreciate the question and I understand the question I just I don't know that I have a clear answer for you.

LIN: Thank you.

REPLOGLE: Thank you. Okay, thank you Mr. Turner. We are now going to Kimo Miller?

MILLER: Aloha.

REPLOGLE: Good morning.

MILLER: Morning. Is the Planning Commission planning on building sidewalks on Kaūmana Drive? Oh, wait, wait, my name is Kimo Miller. I'm a resident on Kaūmana Drive near Edita Street. I'm voicing my opposition to having Connections Charter School in our quiet Kaūmana neighborhood. First of all, as noted in earlier testimonies, their vision of having a K thru 12 school in our neighborhood will without a doubt cause disruptions and challenges to the lifestyles that many of us in our elderly years have enjoyed for many years. It's been approximately 7 years since the Commission dealt with this Charter School request and I am dumbfounded. Why in these 7 years the schools visionaries have not found a more suitable location in Hilo with the land and access that would not disrupt an already existing neighborhood.

They had time to look for alternative sites and even meet with the community to look for some compromises, but no, it seems they are choosing to be more in our face in our Kaumana community and ignore us. I know alternatives exist for this school. I think we all know, there's alternatives that exists. Perhaps some mutually agreeable compromises could be reached, but at least they could have tried, but they have not made any efforts. I'm asking the Planning Commission to help Connections Charter School plan a future that all can support. And the reason why I brought up about sidewalks is because I don't know if you guys know Kaūmana, but at the corner of Kaūmana and Chong Street there's a popular swimming hole. When the rain hits hard in Kaūmana which it does, that swimming hole is very dangerous. The swimming hole is only about 200 yards from the entrance of the Charter School. I have reason to believe, as all of us who are parents would believe that if kids are living at the school, they're going to find out about this swimming hole. They are going to track up and down Kaūmana Drive to swim in this hole and Kaūmana Drive is not safe to walk on. Especially up in this area.

So, if there are safe sidewalks for them to walk safely great. The other thing is how about the caves. These are kids going to be living here they're going to be tracking up and down to the caves. What else do they got to do? I mean outside of their proposed agricultural activities, but I think it's a bad idea to have a school in our neighborhood and that's why I'm voicing my opposition and I really appreciate you guys allowing us to see our peace and mahalo.

REPLOGLE: Thank you Mr. Miller. Next will be Sadira (Sprout) Kirham, a student. Sadira?

KIRKHAM: Aloha and good morning, everyone. I believe that Connections should indeed continue with their project on the Kaūmana property, including building a second campus. This will greatly improve our community and our lives on an ecological and social scale. If I as a

student were to have a campus where I could explore and express myself in the outdoors my education and time—

REPLOGLE: Excuse me, excuse me.

KIRKHAM: Yes.

REPLOGLE: Sadira, is there someone talking in your location?

KIRKHAM: Oh, they are listening to the Zoom in the room next to mine. Should I go tell them to have it off?

REPLOGLE: They should. They should or turn it way down.

KIRKHAM: Okay, do I need to start over? Can I pick back up?

REPLOGLE: Thank you Sadira. It's your choice if you'd like to start over go ahead, if not just pick up where you are. We could hear you; it was just the noise was interfering.

KIRKHAM: If I as a student were to have a campus where I could explore and express myself in the outdoors my education and time as a student would have greatly improved, especially during a pandemic. Our agricultural endeavors will bring positive changes to the environment and inspire changes inwardly and outwardly. People will look into see how they can improve, as well as having uplifted self-esteem so, that we may reflect without beating ourselves up. We will help ourselves so that we may help others. We will look out to see how we can benefit the planet and the other creatures on it, including us. Connections kids are creative, innovative, unique, and compassionate. We are the future, and we will shine the light that creates the path to change.

Connections believes in project-based learning and creating a caring and growing environment. It is a place to not only learn school subjects but, to learn valuable life skills as well. It is a place where you may step out of your comfort zone and into your best self as you create fond memories Hands on kinesthetic learning and sovereign communities create curiosity and connection. In the future I'd like to continue creating positive changes for the community and I believe Connections is greatly helping me on that path. For my senior project I like to grow food on the Kaūmana property and cook and bake healthy items at an affordable price range for anyone in need. Connections prepares you for the next step and support you along the way. Stay connected at Connections. Mahalo for your consideration.

AU: Mr. Chair?

REPLOGLE: Thank you Sadira.

AU: I have a question.

REPLOGLE: Any questions?

AU: Mr. Chair, can you hear me, I have a question.

REPLOGLE: Yes, Mr. Au.

AU: I think my bandwidth is not that good, but can you hear me, okay?

REPLOGLE: I can hear you.

AU: Okay, I have a question for you, Ms. Kirkham. Thank you for coming to testify, it's nice to see our young keiki out there being part of this government process, and I do understand you're reading off a script.

KIRKHAM: Yes, I had some things to add like off script if I do have the time. But I'm open to questions.

AU: Okay, well just I don't have a question for you, I just want you to maybe just express in a really, really brief statement of why you think your school should be in this particular location, with all the controversy going around? So please just take a really quick second to think about what you're going to say before you say it. Gather your thoughts, but just share with me why you think it's important to have this school in this location with the controversy going on?

KIRKHAM: Because I believe that Connections cares about the community within our school and outside of our school and cares about the students even once they leave. Having the school in this location would create a healthy and safe environment for a lot of students and create jobs for a lot of people. And it kind of saddens me that some of the people here seem to be slandering our school and our students and saying it's one of the worst schools in Hawai'i. Because I see what they're saying from an academic standpoint to some degree but, because I know the statistics, but I don't think we have the worst school. I think our school is very unique in the way it teaches but that's because our students are very unique and everyone is different in their learning and I believe that having a school that is outside will create so many opportunities for people in life, including people like myself. Because I'm disabled and having a school where I can learn through my disabilities without feeling like I'm being held back and confined it's very nice to think about the future of the next generation after mine getting "—" because it will be down the line to have a school. It's very nice to think that the future keiki can have a wonderful childhood experience.

AU: Thank you.

KIRKHAM: Thank you for listening and thank you for your time.

REPLOGLE: Anything any other questions? Okay, thank you Sadira that was very good, well spoken. Next, we have Ngetroi Rall also a student.

RALL: Hello.

REPLOGLE: Good morning.

RALL: Do I just start?

REPLOGLE: Yes, you may begin.

RALL: Sorry.

REPLOGLE: It's okay.

RALL: Salutations everyone. I'm Ngetroi Rall, one of the students working on the Kaūmana property. I've been a student of Connections since first grade and as an 11th grader I can see how an outdoor campus can and will take our schools education on to the next level. Connection's project-based learning style of education has got me the opportunity to start my own business Mamaki Dream, with my fellow students. I would have never been able to have this opportunity with any other school. We have made sure this business is eco conscious. Connections has provided me and my fellow peers guidance and support. Mamaki Dream is a mamaki tea business with the teachers of Kaūmana helped us to create and develop. Our mission is to provide our clients with a product that is healthy and beneficial for a reasonable price.

Our vision is to go back to our school and one day see Hawaiian culture spread further than just the Hawaiian Islands, starting with mamaki tea an ancient healing herbal tea. Done.

REPLOGLE: Thank you, Any questions Commissioners? Okay thank you Ngetroi.

RALL: Oh, okay.

REPLOGLE: Next, we have Kaitlyn Grogg, also a student.

GROGG: Okay.

REPLOGLE: You may begin Kaitlyn.

GROGG: Okay. Aloha everyone, I am junior who has been at Connections since the first grade, and I am one of the students working on the Kaūmana property in order to prepare the land for agricultural development. I just want to discuss my experiences as a long-term student at the school. Personally, like myself, I was one of the students who did all of my work online last year and coming back to in person schooling was really, really difficult. Especially because our current schooling situation has us confined in a building with only narrow hallways outside of classrooms and we are surrounded by a bunch of storefronts. So, we don't really have our own parking lot either and there's not a lot of room for the students. Having the opportunity to work at the Kaūmana property is a really, really great break from the confined quarters of the Kress building itself. It allows students to do hands on work and experience agriculture in Hawai'i which can better teach students about real world situations.

We learn about invasive plants and how to safely clear them as not to disturb the native ones. We learn how to cultivate plants such a sweet potato, mamaki, and like even coffee. And we



really hope to use those products like at school, like for our lunches which would provide healthier meals, more locally sourced meals and it's honestly been my own personal experience. The staff at Connections cares very deeply about their students, they view them not only as students, but as family. And we care about our family and our neighbors, the environment, we really want to do all we can for them, and despite the fact that my classmates and I will likely not be around the school by the time a new campus would be built. We still want to work as hard as we can for the next generation of students, that they can have better resources than we ever did. We do this because those kids to come after us are going to be our future, and we have to do the best we all can to make sure they get a bright one. That's all I have to say.

REPLOGLE: Thank you Kaitlyn and last will be Krysta Costa, also a student.

COSTA: Yo, what's up everyone?

REPLOGLE: Good morning, Krysta. You may begin.

COSTA: I'm a senior currently going into college.

REPLOGLE: Did you say your name and where you live?

COSTA: Sure, my name is Krysta Costa and I live in Downtown Hilo. Really—

REPLOGLE: Thank you.

COSTA: So, I'm a senior at Connections and I've been here since fourth grade. I really feel the support that they give and last year I was a hybrid student, and this year is the same. However, this year is vastly different, I've had much more fun in so many great new memories and learned a lot. I was lucky enough to be able to work and help out at the schools Kaumana property. One of the distinctive memory from my time working out there was quite the memorable one. I was feeling hungry, and I went up to the waiwi tree that they had and one of the workers there saw and said he wanted to show me something. So, he gave me a yellow waiwi and he picked the red one and he told me how that the red ones were sweeter than the yellow ones, and that flies like them a lot, so they lay eggs on them and had worms.

So, after I ate half of it, he broke open the red waiwi to show me and saw how it had a black head and the white body with long line, a thin body. It was very fun to discover something new, he told me I didn't have to worry because they were digestible and that it wouldn't do anything else. It was funny though, but I actually immediately threw away the other half of the fruit I had my hand after I saw it. All and all I really just have a lot of fun there even though I do find some disturbing things, but I feel like I learned something new every day, and I really like that. Thank you for listening.

REPLOGLE: Thank you, Krysta. Okay, if everybody can turn on their cameras oh, that's already done. Okay, do you have any questions for the testifiers Commissioners, any further questions?

The public testimony ended at 9:54\_a.m.

Respectfully submitted,

*Melissa Dacayanan-Salvador*  
Melissa Dacayanan-Salvador (Nov 9, 2021 09:01 HST)

Melissa Dacayanan-Salvador  
Secretary to Boards and Commissions

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI‘I

HEARING TRANSCRIPT  
OCTOBER 7, 2021

A regularly advertised hearing on the application of **CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)** was called to order at 11:29 a.m. via live-stream online meeting, with Chairman John Replogle presiding.

COMMISSIONERS IN ATTENDANCE: Dean Au, Joseph Clarkson, Michelle Galimba, Dennis Lin, and John Replogle

COMMISSIONER RECUSED: Thomas Raffipiy

COMMISSIONER EXCUSED: Gilbert Aguinaldo

ALSO IN ATTENDANCE: Malia Hall, Esq. (Counsel for the Commission), Jeffrey Darrow (Deputy Planning Director), Jean Campbell, Esq. (Counsel for the Planning Department), Christian Kay (Planner), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary)

**APPLICANT: CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/ COMMUNITY BASED EDUCATION SUPPORT SERVICES (CBESS) (SPP 12-000138)**

Hearing on Special Permit application SPP No. 12-000138 record as presented on appeal. SPP No. 12-000138 was remanded back to the Windward Planning Commission by Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai‘i Windward Planning Commission’s May 12, 2014 Decision and Order, which denied Special Permit SPP No. 12-000138. Application for a Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on both the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai‘i, TMK: 2-5-006:141.

*Secretary’s Note: “—” indicates that there were technical and/or internet difficulties, which made the conversation inaudible.*

REPLOGLE: Next, we are moving on to unfinished business. And that is the applicant Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138)

AGUINALDO: Excused himself and left meeting.

RAFFIPIY: Mr. Chair?

REPLOGLE: Yes, Mr. Raffipiy.

RAFFIPIY: I'm going to recuse myself on this one.

REPLOGLE: That's right.

RAFFIPITY: "—" in the past meeting so, thank you very much and appreciate, thank you all for your support.

REPLOGLE: Okay, thank you, Tom. The hearing on the Special Permit SPP No. 12-000138 record as presented on appeal. SPP No. 12-000138 was remanded back to the Windward Planning Commission by the Intermediate Court of Appeals for further proceedings consistent with its January 31, 2020 Memorandum Opinion vacating the County of Hawai'i Windward Planning Commission's May 12, 2014 Decision and Order, which denied Special Permit No. 12-000138. Application for the Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The property is located on the southwest and northeast sides of Edita Street near its intersection with Kaūmana Drive and adjoining the Pacific Plantation Subdivision in Kaūmana, South Hilo, Hawai'i, TMK: 2-5-006:141.

AU: Mr. Chair?

REPLOGLE: Yes.

AU: Mr. Chair, I have a question.

REPLOGLE: Mr. Au.

AU: I'd like to make a motion to go into Executive Session before we get started with Item #4 to discuss with the Commission's attorney just to make sure that all of us are on the same page.

REPLOGLE: That's a very good idea, I was going to offer that option to you.

LIN: I second that motion.

REPLOGLE: Okay, all those in favor? Aye.

AU: Aye.

CLARKSON: Aye.

LIN: Aye.

REPLOGLE: Okay, so, we apologize to all of you waiting to get on with this, but we are going to go into executive session, briefly, so we can better serve you. Okay.

*The live-stream meeting was placed on hold and at 11:32 a.m. the Commission went into executive session. The live-stream meeting was reconvened at 11:59 a.m.*

HALL: For everyone, I am Malia Hall, Deputy Corporation Counsel for the Commission. They just wanted me to give an overview for everyone here and also for the public of kind of the procedures that will be happening today. The Commission has before it is Special Permit application that is greater than 15 acres thus if they were to motion for approval and that passed this would be processed and given to the Land Use Commission for a final decision. The Land Use Commission has the authority to approve with modifications or deny this this permit if the Commission puts it up for approval. On the other side of that if the Commission decides to deny this permit today, that it would not be forwarded to the Land Use Commission and would be appealable to the Third Circuit. Other than that, everybody will be allowed to give a presentation, the Commissioner's will be asking questions of everyone here the Applicant, the Intervenor, and the Department. If anybody else has any other questions before we proceed, I will pass it back to the Chair and I thank you all for being here today

REPLOGLE: Thank you Ms. Hall. So, we will now proceed with our staff presentation, if there are no objection Planner Christian Kay will provide us with a brief presentation on the application before hearing from the parties.

KAY: Thanks, Mr. Chair and I'll share my screen here just one moment please. Can everybody see the presentation on the screen? What about now?

REPLOGLE: Yes.

KAY: Alright, perfect. Just by way of a quick background here, everything that you're going to see on the screen came from the original presentation given in 2012. With the exception of the final slide which is just a timeline and that was pulled directly from the remand document that you are provided. Again, this is a Special Permit Application No. 12-138 for Connections New Century Public Charter School and CBESS. Okay hold on one moment and I'm being told that I have the wrong screen up. There we go. That's maybe a little bit better. The subject property is situated in the South Hilo District of Hawai'i Island more specifically in the Kaūmana area. For reference with that Kaūmana Drive running generally this direction through the slide. The subject property is outlined in black and consists of about 70.15 acres. Property itself is split in the middle by Edita Street, which is running north south through the slide here.

The zoning for the subject property and some of the surrounding areas is Agricultural 1-acre with other various Agricultural Single-Family Residential and Family Agricultural zoning in the area. The State Land Use designation for the subject property and much of the surrounding area is Agricultural as indicated in green with more Urban designations to the north here as indicated in pink. The General Plan Land Use Pattern Allocation Guide Map designates the subject property within the Low-Density Urban designation. There are some Rural, Open, and Important Agricultural lands in the area as well. Here is an aerial photograph of the subject property again for reference we've got Kaūmana Drive running this direction to the slide and Edita Street

running this direction again splitting the subject property outlined here in black. It's currently vacant of any structures.

The applicant is requesting a Special Permit to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural District. The request is for a new academic campus which will accommodate an elementary, intermediate, and high school and the common facilities that would support these programs. The subject property is divided by Edita Street and includes what is referred to as the "lower parcel" and the "upper parcel". All major school facilities will be located on the lower parcel. The applicant is proposing to design and construct the project in 9 phases. The entire project is projected to be completed within 16 to 25 years. The reason for the request is to consolidate their academic programs at a single location and provide facilities that support the goals and visions of the school.

Here is an indication of the lower parcel site plan, where again all of the structures related to the school program would be built. And then the upper parcel site plan, which shows generally vacant of improvements, except for an elevated walkway that would traverse the entirety of the upper portion of the parcel.

So again, this timeline comes from the remand. July 25, 2012, this Special Permit application was submitted to the Planning Department. October 16<sup>th</sup> the Director's recommendation was given the Planning Commission send a favorable recommendation of the State Land Use Commission. November 9, 2012, the first public hearing was the date of the first public hearing before the Windward Planning Commission. There was a second public hearing on December 6, 2012, a third public hearing on January 10, 2013, and on March 7, 2013, there was a fourth public hearing before the Commission at which time a Contested Case Petition was presented. October 12 through January 22 pardon me October 12, 2013, through January 22, 2014, was a series of 5 Contested Case Hearings.

On April 7, 2014, a Hearing's Officer provided recommendation to the parties and the Commission on that was for a denial. On May 1, 2014, was the fifth public hearing before the Commission at which time the Commission voted to deny the special permit application. May 12, 2014, the Commission issued its Final Findings of Fact, Conclusions of Law and Decision and Order. July 14, 2015, the Decision and Order affirming the Planning Commission Findings of Facts, Conclusions of Law and Decision and Order was issued by the Third Circuit Court. October 2, 2016, was a First Amendment Judgement by that court, January 13, 2017 was the Second Amended Final Judgment by that court and on January 31, 2020 the Intermediate Court of Appeals submitted a decision to remand back to the Planning Commission.

The Planning Department has issued its recommendation has retained its recommendations of an approval and a favorable recommendation up to the State Land Use Commission. We've been sending out information to you right along, you should have received a significant amount of written public testimony as well as draft Findings of Fact, Conclusions of Law and Decision and Order documents from both Mr. Matsukawa and Mr. Hong. With that I'll turn the time back over to the Chair, thank you.

REPLOGLE: Thank you, Christian. Okay. Please hold any questions until after the parties have presented. So will the parties for this Special Permit application Docket No. SPP 12-138 identify yourselves for the record and remember to unmute yourself. Let's start with the Applicants Kevin Richardson, Deputy Attorney General (Attorney for Applicant Connections New Public Charter School), Ted Hong (Attorney for the Applicant Community Based Education Services), Heather McDaniel (Chair of CBESS), John Thatcher (Member of CBESS Board and former Principal), Romeo Garcia (Current CBESS Principal, the Intervenor Michael Matsukawa Esq. (Attorney for Intervenor Jeffrey Gomes).

HALL: Sorry Chair, point of order.

REPLOGLE: Yes, please.

HALL: For identifications, you would just let them identify themselves for the record.

REPLOGLE: Oh, okay.

HALL: “—” read offs, so you can just say you know applicant and then let them identify themselves and then go to the Intervenor and then et cetera.

REPLOGLE: Okay. So, Mr. Richardson I guess you have the floor.

RICHARDSON: Thank you. Good afternoon, Commissioners and Chair my name is Kevin Richardson and I'm a Deputy Attorney General representing Connections New Century Public Charter School with respect to this Special Permit application No. 12-138.

HONG: Good afternoon, Mr. Chairman, members of the Commission, my name is Ted Hong. I represent Community Based Education Support Services more commonly referred to as CBESS.

GARCIA: Aloha, [spoke in the Hawaiian language]. My name is Romeo Garcia and good afternoon to everyone, I am the po'o kumu Principal at Connections Public Charter School and I am not a member of the CBESS organization itself, so I represent Connections Charter School.

THATCHER: Aloha, I'm glad that Romeo straightened that out. I'm the retired Principal. I retired on July 1 from Connections Public Charter School after 19 years as the principal. My name is John Thatcher.

MATSUKAWA: My name is Michael Matsukawa. I'm the Attorney for the Intervenor Jeff Gomes.

REPLOGLE: And we are represented in the Planning Department by Deputy Planning Director Jeffrey Darrow and Deputy Corporation Counsel Jean Campbell, Attorney for the Planning Department. I'm going to swear you all in together. Please raise your right hand. Do you swear to affirm to tell the truth on this matter now before the Windward Planning Commission?

MATSUKAWA: I do.

HONG: Yes.

RICHARDSON: I do.

THATCHER: Yes.

GARCIA: Yes.

REPLOGLE: Thank you. Mr. Hong, Mr. Richardson you have the floor.

HONG: Okay.

RICHARDSON: I guess I'll start off first. So, after conferring with CBESS and its counsel on this matter. Connections joins and supports CBESS's position, including the presentation that's going to be offered to the Commission today as well as CBESS's written submittals, including the proposed Findings of Fact, Conclusions of Law and Order, additional exhibits and supportive application and the proposed conditions of approval submitted to the Commission on October 5<sup>th</sup> and 6<sup>th</sup>. Accordingly, Connections respectfully request this Commission approve the Special Permit application and forward it to the State Land Use Commission for final decision making. Thank you.

HONG: Mr. Chairman, members of the Commission good morning. Again, my name is Ted Hong. I represent CBESS. This morning our presentation is going to consist of two speakers. The first speaker is Romeo Garcia was the current Principal. He's going to talk about a brief overview of the school, its purpose, mission, the demographics of the school and what their future vision is in terms of you know traffic issues, community outreach. The second speaker is going to be John Thatcher, a former Principal. He was the one who was instrumental in drafting these plans before the planning Commission right now. He would like to talk about the overall concept and certainly address the issue that we feel is the issues that we feel are on the Planning Commission's plate. With respect to the Intermediate Court Opinion Intermediate Court of Appeals Decision, which would be the issue of water use and also agriculture. And then I'd like a brief opportunity to conclude our presentation and certainly be more than happy to answer I'm sure a number of questions from the Commissioner's.

REPLOGLE: Thank you.

GARCIA: Aloha, again.

REPLOGLE: You have the floor.

GARCIA: Thank you very much. Aloha. [spoke in the Hawaiian language] again. My name is Romeo Garcia, I am the po'o kumu which also translates to Director and Principal at Connections Public Charter School. Mr. Hong provided an outline of the things that I'm going to cover in my part of the presentation and so I will go right ahead and begin and actually I'm going to go ahead and set my timer for myself to make sure that I stick within my allotted time.



I'd like to start with introducing myself and my background in education. I have a bachelor's degree in theatre arts and rhetoric from Occidental College in Los Angeles. I have a master's degree in education with a focus on staff development and curriculum development at Mills College in Oakland, California. And prior to moving to Hawai'i Island in 2015 I was a doctoral student in educational leadership at Mills College in Oakland. So, I am currently on a leave of absence from that doctoral program. I have been an educator for 37 years. I began as an elementary school teacher in Oakland, California and I actually became a teacher were in one of the schools that I attended as a child there.

After that I went to work at Mills College in Oakland as the Director of Federal TRIO Programs Upward Bound and Educational Talent Search, which provides support to low-income first-generation students. It's a national program in helping and assisting them and preparing them for college since their parents had not earned a college degree. The information about preparing for college and both going through high school and being successful in college was not available to them so, those programs helped to provide students with the support, and we had a very successful program there. I was also for four years the assistant to the President at Mills College where I became a part of the college administration.

After leaving the Mills College, I was a Co-founder of Arise Charter High School in Oakland and I'll refer to that a little bit later on in my comments. I've been an educational consultant. I was the Executive Director of the Peralta Community College District Foundation and also Dean of Special Services and Programs at Merritt College in Oakland. I moved to Hawai'i island in 2016 where I served as the po'o kumu at Laupāhoehoe Community Public Charter School. And because I became ill, I decided to take a leave of absence from there and then decided that returning to full time work was not what I wanted to do at that time and to continue my health recovery, and so I began working at Connections in 2018 as the Vice Principal. So, to kind of step back a little bit and my primary focus as the Vice Principal was to provide students support and support to staff as well to help our students to be successful.

John Thatcher and I met in 2005 at a national conference of small schools from around the United States and I was in the process then of creating this new High School in Oakland, a charter school in Oakland as I referred to earlier Arise High School. But my connection to the Big Island started many years before that to Hawai'i island. 30 years ago, when I was colleagues with friends who work at the University of Hawai'i at Hilo in the Upward Bound and Talent Search programs here. So, both Cornelia Anguay and Kurt Dela Cruz have been longtime friends of mine and were part of helping me to make my move to Hawai'i island where I plan to spend the rest of my life and my career until I retire and working in education. I would like to share my screen so that's introduction to myself and my background in education. I would like to share my screen for a brief moment to give another aerial view of the property that some of our students actually took this drone footage. So, let's see if this works. Here we go. Okay I'm really trying here, and can anyone see my screen now? No. Okay. Trying to connect it to here and zoom. And we'll try one more time if that doesn't work, I will continue on with my presentation.

So, what I will do is refer to the photograph that was shown earlier by the Commission staff person I believe it was Mr. Kay that showed the property. The total of 70 acres that the school has leased or that CBESS has leased from the State. And as he stated before the upper portion of the property, the 35 acres there we will not be doing any land school development there in terms of buildings and structures, particularly because it does sit above the Kaūmana caves. We do plan on putting a raised walkway there so that we can still use the land as an agricultural site for our students to learn about the environment, but certainly not do anything there that's going to endanger the cave property. The lower portion we've already started using the campus there or the property there for agricultural purposes as our students spoke very well of earlier and it's great to have the opportunity to have the land there to really help give them the opportunity to learn about agriculture and sustainability and looking into opportunities for the future is one of our students said to work in that field both here on Hawai'i island and maybe throughout the state.

So, I would like to share part of our mission for Connections. Our mission is to create an 'ohana that is conducive to the recognition and development of individual talents. Thematic and experiential learning experiences are provided that focus on how students construct knowledge using creative and critical thinking. Classroom experiences are connected to real life experiences so that students can grow in the understanding of themselves in relation to their community and to the world. The 'Ōlelo No'eau that drives our work at Connections 'Ōlelo No'eau #203 is "A'ohe pau ka 'ike i ka hālau ho'okāhi". "All knowledge is not taught in one school". Which fits into us wanting to expand to provide another opportunity for our students and another environment for our students to learn.

I'd like to share some geographical information about where our students come from that attend Connections. This is a breakdown of the Hawai'i County districts and cities that the students are from based on their mailing addresses. So, 69% of our students 69.64% of our students and this material has been provided to the Commissioners in writing. 69.64% of our students, which is 250 of our students live in the Hilo district. 30.08% of our students 108 of them come from the Puna district, and we have one other student that doesn't live in either one of those districts. The cities that our school represents with their students and our families, the largest group of students is 61.56% of our students 221 of them live in Hilo. With 14.48% of the students living 52 students live in the Kea'au area. So, we have students from Hakalau, Hawai'i National Park, Honomū, Kea'au, Kurtistown, Mountain View, Pāhala, Pāhoa, Pāpa'ikou, Pepe'ekeo and Volcano. So, we provide transportation for our students if they need it with our school buses to get to our campus that is currently in Downtown Hilo.

Other demographics about our students are again we're a K – 12 school our total enrollment as of today is 360 students, when I wrote this report, it was 359. But we continue to be a resource for students to transfer to us when they have a need. Of those students 188 are male and 171 are female. 68% of our students are in special education and 19 of our students have 504 plans which are special plans to provide students with support. And 28 of our students are English language learners. I will point out that the percentage and the number of students that are in special education and that have 504's is high for the size of our school. One of the reasons for that is Connections has a history of serving students with different special needs serving those students well and helping them to be successful all through school from kindergarten all the way

through high school and move on to their next plans for their lives. Whether that has to do with college or working in the community and I will share a little bit more about that as well.

In terms of other student demographics, we have a very diverse student population. The largest group of students ethnic group of our students are 138 students are self-identify as native Hawaiian and so that makes up 38.44%, 98 students self-identify as White and that's 27.30%. : And there is a mix of student's different numbers from it is 19 students down to one that comprise come from different groups American Indian, Alaska Native, Black, Chinese, Filipino, Japanese, Portuguese, Samoan, Micronesian, Tongan, and Other Asian and Other Pacific Island. So, from that and again the Commissioners, you have this information in writing, you can see that we have a very diverse group both ethnically and geographically.

Since Connections serves predominantly low-income families at 87.9% of our families are identified as low income. We offer nutritious school meals to all students. Through our U.S. Department of Agriculture checking my time agriculture program. During the school closures caused by the pandemic we also offered lunches to any child under the age of 18. That came from the Hilo community. We have different grants that I'd like to talk about some of the grants that we have are announced or share some of the grants that we have. We have artists in the school grants were professional artists come to our school and teach our students, as well as our teachers in different art techniques. We have a REACH grant for after school programming and an UPLINK grant for after school programming with a focus on technology.

U.S. Department of Agriculture child nutrition program. Again because of our location and our student demographics, we are designated as a community eligibility with a provision. So that makes it so all of our students that is in the school are able to have free lunch and breakfast. We also have just received this past, beginning of the school year a \$48,000 Farm to School grant from the U.S. Department of Agriculture and we're now in the process of applying for an additional grant which could go up to \$250,000 with the Department of Agriculture to continue in our farm to schoolwork. We are also a Title One school based on our low-income status and so we receive federal funding for that. We also have the 21st Century Learning Center grant that primarily served students in our after-school program. We have multiple partnerships with the Akaka Foundation, Hawai'i Afterschool Alliance, Hawai'i Agricultural Foundation, the Ho'ouana Pono Drug Prevention Program. We have partnerships with Kamehameha Schools Environmental Education Programs, Kama'āina Kids, Kohala Foundation, and the University of Hawai'i System both the UH and HCC.

Our alumni have a vast number of experiences. We currently have alumni from our campus that work at the school, one of our teachers is a math and culinary arts teacher who has been teaching at Connections for five years. She's a graduate. We are coordinator of our 21st Century Learning Center grant. Two of our educational assistance at the elementary level. One staff person who works in our Studio Shaka After School Program and one of our staff who works on our facilities team. And we have two of our current students who work in Studio Shaka after school program. So, we also believe that it's great to be able to employ graduates of our program and they can come in and work with students based on their experience. I will highlight one of our graduates who just recently appeared last week in an article written by the University of Hawai'i his name is Kit Neikirk and part of the quotation there. This graduate current

research focuses on recording and analyzing the changes to mitochondria in relation to the knock down of genes. Neikirk began his post-secondary academic career as a high school freshman at only 13 years old. When he also started classes at the Community College, he graduated high school from Connections Public Charter School in Hilo as a sophomore. The youngest in his graduating class he entered the University of Hawai'i at Hilo in 2019 as a 15-year-old triple major in biology, sociology, and chemistry. He plans to graduate with his bachelor's degree in the spring of 2023. He's currently studying in Ireland as part of his exchange semester in Europe. And he plans to attend Medical School and continue his journey towards becoming a health care provider and my time is saying I'm up, and so I will wrap things up here just one more comment.

Our alumni are also a very active part of the local workforce. Working everywhere from KTA, Walmart, lots of different businesses Hāpuna Prince Hotel, Home Depot different stores to name a few. Our students, because of their relationship to their experience at Connections and it's become a resource and they have allegiance to the school. Because of their appreciation they visit us on a regular basis to give us updates in terms of what's going on in their lives, and we have many generations, multiple generations of students and siblings that come to our school. Based on this part of the presentation and on the multiple letters I think 50 plus letters of support that have been submitted on our school's behalf I also request that you approve the Special Permit that we're requesting. At this time I can answer some questions later, but at this time I'll turn it over to John Thatcher.

REPLOGLE: Thank you. Mr. Thatcher?

THATCHER: Okay, aloha. I'm John Thatcher, the former principal of Connections. I also worked as a teacher for the Department of Education for about 18 years. So, I retired with 37 years of experience with the State of Hawai'i education system, I have two master's degrees one is in Administration and Supervision from a program that was called an Educational Entrepreneurs Program at Arizona State University was a federally funded program for charter school administrators. I have another master's degree from UH Manoa in Educational Communications and Technology. I am a member of the newly created U.S. Department of Agriculture Hawai'i State Technical Advisory Committee for urban agriculture. I am also currently serving on the Hawai'i Charter Schools Network Board with Steve Hiramaki and other charter school leaders throughout the state.

While I was working as a teacher, I helped to refine field test and train teachers throughout the State of Hawai'i and in Micronesia. Using a science and health curriculum that was developed by the curriculum research and development group at the University of Hawai'i Manoa. A huge part of this program was school gardens and nutrition. We use this to integrate science and health in many different areas, so I have extensive experience with home gardens especially and school gardens.

A little background on how we got to this place. Applied for the land. In 2006 State Legislature passed a law that says that Charter Schools could request vacant land for use as facilities from the State as the State entity, we could request facility. In 2006 right after that Connections asked DLNR for a list of properties in the Hilo area that we could use as a potential building site for a

school. We were given a list of properties. At the time, the Charter schools were told by the administration of the County that we were exempt from State laws, except those related to health and safety. And that the major effects of this was that Charter school is located in State Land Use Agricultural Districts did not have to obtain a Special Use permit. So, that was in 2006 and many things have changed and so we eventually came to the position of asking for a Special Use permit in 2012 I believe this when we started that.

Connections has always had a set of essential goals that we adhere to and a lot of the reason that we chose the land in Kaūmana was that it really helped us in our ability to use the land as a living classroom. The two out of five goals at this address are we want our students to be able to understand use and evaluate technology. As well as produce new innovative uses of application in a variety of fun tech for a variety of audiences. We also want our students to be able to use the land for projects that are self-initiated. So, one of our students said, we use a lot of project-based approach, and so the vision of using the land for this is really supports the agriculture programs that we envision, the aquaculture, the arboriculture, the forestry, and the conservation projects. That we have been planning and have been realizing to some degree on the property, the agricultural especially.

One of the issues that the Intermediate Court sent back to you folks was the water issue. The portable water issue and the issue that all of our students would be using 60 gallons a day seemed very, very overinflated to us at the time. We understand the 4,200 gallons of water that's available through the current pipes and we believe that that can support more than 70 students. I actually have compared figures with Steve Hiramaki and one of his fights was about the same number of students. And both of our sites are actually using an average of about 4.5 gallons of water per student per day. I wanted to confirm that with Steve because he's got good records on this, and he actually brought it up to me originally. And I said well yeah that's consistent with our records of our water bill, and the way that we calculated this is I looked at recent last 2 school years while I was at Connections. And I saw that the times that our students were on campus we used a range per month between 2.6 and 6.7 gallons per day per student. This figure is very, very different than the figure that was used to calculate the fact the idea that we could only have 70 students on the property. So, I think that this is something that really needs to be looked into what are the actual figure for the amount of water that would be used in Kaūmana.

All of the buildings in the new Kaumana site we're planning on using water reduction and conservation fixtures. Irrigation is a big use of water in most schools, but we propose to use rain catchment systems for irrigation and for our agriculture program. And one of the reasons that I am on the it's called the Staff Committee. The State Technical Assistance Committee is urban agriculture is a new program with the USDA and there are places like New York City, with a long history of using rain catchment for agriculture garden that are growing at schools and community site. And so in checking with that I was asked if I would serve on the committee because of our experiences doing that as one of the reasons.

I think if we were talking about composting toilet and septic tanks, which the school intends to use both of these, these are the practices that have been in place for many years now, because we realize, and government has made steps to eliminate the cesspool. Composting toilets are an idea that is not really that recent are used in a lot of trailers, a lot of areas that are outside of the area

served by sewer system. So, by using these kinds of systems I think we can also further reduce our use of water. It's interesting to note that just about all of the houses in the Pacific Plantation subdivision and the surrounding areas use cesspools and these properties are not served by the municipal sewer system it hasn't come up this far yet. Septic tanks would be a better way of catching the wastewater and all of the water, the wastewater that is in cesspools will eventually end up in Hilo Bay.

So, I agree with the maps that the water that's in the ground is being put there through cesspools can pollute Hilo Bay and is polluting Hilo Bay. The school would like to use different technologies including a wastewater system, so we would have a septic tank and also wastewater system very similar to the one that's being used at the Puna Kai Shopping Center. This wastewater system is proven technology, the engineers are from the Big Island that designed this, and it's been approved that shopping center wastewater system was approved by you folks. So, we're not trying to do anything that's different, we are not planning on polluting the ground, we are trying to do something that will show ways of undoing some of the damage that has been done through the residents throughout much of this island.

So, another thing that we're doing right now, and Mr. Garcia mentioned it that we have a part of school's grant, the U.S. Department of Agriculture has invested \$12 million this year, you know 176 projects throughout the United States. This is the most projects that have been funded since 2013 and 4 projects were funded in Hawai'i. Two of them are on Kauai, one is in Waimanalo on Oahu, and we are the only project that was funded on the Big Island this year. Our students are using the living classrooms that we are constructing, we are clearing the land of exotic and introduce plan and we are hand clearing, so we are not destroying the native ohia's and other plants that are found up there. There are 11 native plants that are found on the property.

I think it's important to note that we are using curriculum that embraces the way the canoe class were used by the ancient Polynesian and the ancient Polynesian were master farmers and there is a lot of research that document their use of rainwater and systems. That would be able to collect water and move it from a holding area into "—" and into other garden areas. This stage was self-sustainable for food before and we strongly believe that this is something that can happen again, and so this is our biggest motivation for really working with our students to teach them sustainable technologies, sustainable practices. So that in their life even they will understand how to set up a water catchment tank, how to make sure the water is pure, how to test the water, how to use it safely for agriculture and other uses. So, we believe strongly that this is a future oriented skill that not only will help them in potential jobs in the future, but also in their own homes. I think I have used all of my time that was allotted, and I don't have a timer on but that's the end of my presentation. Thank you.

GARCIA: Mr. Hong and Mr. Chair, there are a couple items that I'd like to add regarding the facility that Mr. Thatcher was talking about. Is it okay Mr. Chair continuing our presentation? Mr. Hong, yes. So, the two issues that I want to address are one has to do with the traffic, which is—

HONG: Romeo? Jeff, Jeff Darrow. Can we take a short recess?

DARROW: Yeah, no problem.

REPLOGLE: That sounds like a good idea.

HONG: Okay, Mr. Chairman how about five minutes would that be appropriate?

REPLOGLE: Yes, it would. We will take a five-minute recess; we will be back at 12:50 p.m.

HONG: Thank you, Sir.

GARCIA: Thank you.

REPLOGLE: You're welcome.

*At 12:44 p.m. the Chair called a recess and the hearing reconvened at 12:52 p.m.*

REPLOGLE: Okay, are we ready to go again? Before we start, I would like to ask if any of you might want to take a lunch break? For, I don't know. I'm up for just plowing through but, I would like to offer that possibly a break would be good, I don't know.

LIN: Mr. Chair, I think, maybe after the Charter schools' representatives are finished, and then we can take a lunch break.

REPLOGLE: Okay, I didn't mean to do it immediately, but people would like lunch okay sounds good.

HONG: Mr. Chairman and members of the Committee, I think Mr. Garcia had a few more remarks that I'll like him to conclude.

REPLOGLE: Okay.

GARCIA: Thank you very much. One of the areas has to do with the community members concern regarding traffic. This again being a long-term project some of our immediate ways of being able to address the issues of traffic is that we're going to be installing a turn lane on Edita or proposed to install the turn lane on Edita that would go on to the property. So, that's one part. The other is that regarding traffic is we don't anticipate until we're able to actually build out a parking lot often to the future as part of our 9 phases. That there will be a lot of car traffic from our school community. What we would be doing is continuing and what our families are used to and dropping off students at our Connections campus right there in Downtown Hilo in the Kress Building. Then we would use our buses to continue to shuttle our students up to the campus and so there would not be an additional amount of car traffic coming up or down Kaūmana. Once our buses pick our students up from the different locations around between Puna and Hilo then they would just be able to take them directly up to the campus. So that's one of the mitigating factors that we consider in terms of addressing traffic concerns in the immediate time and then going into the future.

The other is regarding Community outreach and you know, as I said before, I was a founder of a high school in Oakland, California and we actually constructed this school next to a Senior Citizen Center and we got some pushback from that. And part of how we were able to mitigate the concern from the neighbors there as well, is to actually become a part of that community to have conversations with all of our neighbors in that area. So, that they can be a part of helping us to understand and develop our school in a way that's going to really work for the school community and as well as the surrounding community. So, part of my experience in education and as an educational leader is to really engage the community surrounding any program that I am a part of because I want to make sure that we are good neighbors and that we are mindful of and sensitive to not having a wholesale change of a particular area. With the 35 acres in the video that I was going to show, at this point we've only started using about an acre and a half of the 35 acres for the agricultural work that we're doing with students. So, as we move forward with our planning our conceptual and our aspirational goals that started in the very beginning are flexible and open to making sure that we develop the campus in a way that does not create a problem for the larger community. I think with a land area of the size that we have that we can easily do that and work together with the community. So, I look forward to outreaching to the community inviting them onto the campus onto the property as it exists now, and all along the way, so that they can be a part of how we develop our school. Thank you very much.

REPLOGLE: Thank you. Mr. Hong.

HONG: So, Mr. Chair and members of the Commission. I just want to make three points in conclusion. The first is an administrative issue. We would ask that the Commission adopt and incorporate as part these proceedings and the previous record, which would include the Record on Appeal. That will also, as you know in terms of looking to record, it would show the number of times that we reached out to the community, it would show the record of alternative sites actually considered by our engineering expert witnesses. We will include the petition, the final EA and the transcript of the proceedings. The second point I'd like to make is in terms of alternative sites, as I mentioned before, I just note for the record that would be volume two of the Record on Appeal PDF pages 540 to 544. In the Record on Appeal as required under Planning Commission Rules, we had to reach out to the community on a number of occasions. That record of those outreaches is in that petition, the application also we had that sign in sheets "—" people who actually were there to participate.

So, we ask that the Commission certainly take a look at that, as part of the record and the final point I wanted to make is actually a little more personal. I was concerned by some of the statements that were made. I'm a resident of the Kaūmana community. I live within about a mile of the subject property since 1991. I've been a member of the Kaūmana Elementary School PTA, I've been a member of Kaūmana School Safety Committee. My mother is a retired DOE Sped teacher, special education teacher. I appreciate and understand as the model of Connections is that knowledge is not taught in one school. Other children learn differently. Charter schools' area an important part of that learning process for other children and a lot of students who do not fit within the role of going to a traditional brick and mortar school.

This record is law it's been detailed. It shows that with respect to any of the factors that the Planning Commission should consider. That we proved our burden that we can meet those land



use goals, policies and objective and we would ask the Committee, the Commission, excuse me to approve the petition and let us go to the Land Use Commission. I would note in the recommendations from the Planning Department that before we go to the Land Use Commission at the State level, we would have to update a number of our reports including the traffic report. Which we have no problem. We would be more than happy to answer any questions that the Commissioners may have, I think that they probably would have a lot of questions about this project. And so, with that, again, we asked the Commission to approve the permit application and thank the Planning Department and Planning Director and just know this on the side it's interesting to see this kind of full circle, because Mr. Darrow was actually the first of the Planning Department that presented the original petition application to the Planning Commission in another life. Thank you again for your patience and consideration.

REPLOGLE: Thank you. So, I have a question for my fellow Commissioners. Should we break for lunch now or should we hear the Intervenor's side and then break? I would like the hearings to be —

HALL: Sorry, Chair, point of order.

REPLOGLE: Oh yes, please.

HALL: The Commissioners will be allowed to ask questions now of the applicant if they have any and then it will be the Intervenor's turn to present.

REPLOGLE: Okay. Thank you. Fellow Commissioners do you have questions for the applicant? Mr. Clarkson?

CLARKSON: Yes, this is a question I guess for Mr. Hong. Rather than educational experts from Connections. You in our previous meeting asked us to rely on the record, rather than an additional hearings at which testimony could be updated. But do you think that the record is sufficient to allow the Commission to address as I will put the ICA address the requisites of the public trust doctrine on this remand? And if so, why, and how can we use that record to address public trust issues?

HONG: The public trust doctrine does not apply in this particular application and although in the footnote that the Intermediate Court of Appeals said that the Intervenor can raise it. We've actually submitted opposing briefs at the Intermediate Court and the Third Circuit Court about the public trust doctrine. It only applies to prime agricultural land, not to agricultural land that has been designated poor or certainly the soil classification is B as in the current record. That's the Kauai Springs Case that I think you were referring to. And I would note that with respect to the record with the supplemental exhibit that we submitted and the testimony that's been elicited to this point, I think that the Commission now can address the three issues that were remanded and vacated by the Intermediate Court.

REPLOGLE: Anything further Joe?

CLARKSON: Well, yeah. You mean the footnote in the ICA memorandum is still there, I didn't see anything where they backtracked on the public trust issue. Perhaps we'll have to rely on our Counsel to advise us as to whether you're correct and we need not entertain public trust in this matter. But, to me, I mean a plain reading of the memorandum indicates that they expected us to include that as part of the remand process and the consideration upon remand.

HONG: So, with all due respect when I read that same footnote, it says that the intervening can raise it again with the Planning Commission. Does it say that the Planning Commission asked to consider the fact? Now if, you, Mr. Clarkson feel that this is an issue that we need to address I'd be happy to submit a memorandum regarding that particular situation, but as we pointed out to the Third Circuit and the Intermediate Court both courts who did not rule on that particular issue. The Kauai Springs case has no application in this particular matter because again we're not talking about prime agricultural land.

CLARKSON: Thank you.

REPLOGLE: Anything further? More questions for the applicant?

CLARKSON: I have one more.

REPLOGLE: Okay, Mr. Clarkson.

CLARKSON: It relates to the water issue, a whole lot of the Commission's "—" Findings of Fact related that were vacated by the Court of Appeals related to water. And one of the reasons that they did so was that they could not find in the record the source of the 60 gallons per day per student figure that was used to discuss the suitability of the water supply. But when I read through the record, I very quickly came upon what I thought to be the source of that number which was the applicant, your application's Environmental Assessment (EA) that was included in the record. And that the EA is actually the source of the 60 gallons per day figure and then that was reiterated sometime later by a Mr. McCall from the water bureau. Who also used that figure so my question is can we rely on the EA or not? Are you saying that was an error originally?

HONG: No, the 60 gallons per day is the current DOE standard for the standard back then, for any schools to so whether it's a student at Hilo High School or Waiākea High School or Waiākea Elementary School. The 60 gallons per day requirement because this is still part of "—" set and what we are saying to the Planning Commission and all along, is that, through in terms of our water use and we've shown through our Supplemental Exhibit 2 the actual table of water use at our school that our water usage is less than 60 gallons per day. And also, that, if the Water Department is going to set that 4,200 gallons per day maximum and says that equates to only 70 students. We are saying that in terms of the 4,200 gallons per day that could actually extend to more students, because we look at our record, we do not use it certainly do not come close to 60 gallons per day.

CLARKSON: Thank you.

REPLOGLE: I don't know if anyone else could answer this Mr. Hong. But is it possible that the 60 gallons a day includes is not what one student would use but it includes what the cafeteria uses, what the Fire requirements are and all of that stuff as well when they say 60 gallons?

HONG: I think you're correct Mr. Chair.

REPLOGLE: Okay, thank you anything further Commissioners? Okay.

HONG: If I can interject just briefly Mr. Chairman.

REPLOGLE: Yes, you may.

HONG: In terms of that response, you are correct in the terms of 60 gallons per day, but I would note that with respect to HAAS, Mr. Hiramaki's school and also in terms of our plans. That water that we plan to use for fire hazards, fire suppression actually would come from catchment. HAAS is doing that currently, which has been acceptable to the Fire Department and other regulatory agency. So, we would submit in terms of the 60 gallons per day, although for the normal DOE student, the fire suppression may be included as part of that 60 gallons per day. In our case similar to HAAS we would not include that amount within the 60 gallons per day. We would separate that out because we were using potable water from the County Water Supply.

REPLOGLE: Thank you, I understand that part of your school's plan. I just wanted to verify that school students in Hawai'i aren't drinking 60 gallons of water a day. Anyway, so now if there's nothing further for the applicant we will move on to the Intervenor, Mr. Matsukawa and—

AU: Mr. Chair, this is Commissioner Au. I have a question.

REPLOGLE: Yes.

AU: Sorry to draw this out, but Mr. Hong and Mr. Thatcher. I just feel that there's a, I'm going through a conflict right now because at the last hearing that we had regarding this application. I had the sense that Mr. Hong did not want to add additional information, but the fact that Mr. Thatcher and Mr. Hong is agreeing that there were discussions and comparability of water usage to HAAS. I'm just a little bit confused here. What path are we going down? Because I was from the understanding that we're just going to go based off of what was already on record. So can you just maybe briefly address them Mr. Hong I just want to get a better understanding.

HONG: Oh, it's kind of along the lines of hope for the best prepare for the worst. So, we're hoping for the best which would be the Commission has sufficient evidence or there's sufficient information in the record to make the decision, given the Intermediate Court of Appeals guidance. But we prepared for the worst which is there's been a lot of information in the media, there's been a lot of information, misinformation regarding what even was presented today. And so, it would be hard pressed for us not to respond or certainly address those issues in the event that this has to go back up on appeal. And that's why certainly, I agree that you have sufficient information. We didn't want to present additional information, we didn't feel the need to do

that, but it is obvious that after that last hearing, I think the Board has been and several of the public or mostly the Boards been bombarded by what we feel is completeness information and it will be ashamed that the Board made a decision based on that at least without the opportunity for us to respond to it.

REPLOGLE: Yes, Mr. Au?

THATCHER: Thank you Dean for asking that question and I can't speak for the school, but I have spoken with Mr. Garcia, who may want to add more to this, but even if this was passed with the 70 students limit to begin with, I think that we could easily show that the school is not using that much water. It's not something that I can make a decision on, but I am after 2019 of being the principal for Connection, I know that the students do not use that much water. And so, if the decision is to uphold the 70 students, then I think there's going to be enough steps in the process, enough stages that this could be something that is worked out very quickly in the beginning stages.

REPLOGLE: Thank you, Mr. Au did you have something else? Okay, thank you. Okay so if there's no further questions for the applicants Mr. Matsukawa, please provide the Commission with your position.

MATSUKAWA: Thank you Mr. Chairman and members of the Commission. Thank you for your service. The last discussion between Mr. Au and Mr. Hong, I think is what was bothering me because at the last hearing it was clearly said that the remand hearing would be limited to the record that was already established and Ms. Hall your Corporation Counsel, I believe made a statement that if there were additional pieces of information that would come in at the remand hearing that we're not based on the record that they would be disregarded. So, when I heard Mr. Garcia, Mr. Thatcher and even Mr. Hong talk about additional exhibits and additional information on the water discussion with Mr. Hiramaki, demographics, traffic mitigation, USDA grants demographics it's not fair for the Commission to have said we're going to limit the case to the record. Which essentially would make this hearing a re-argument based on the record, not a new presentation of additional information I understand they can present their case, based on the record, but I think we've gone astray, to that extent I object.

However, in light of the fact that this case was prepared for re-argument we submitted proposed amendments to your existing Findings of Fact, to address the issues raised by the Court of Appeals as to the adequacy or sufficiency of the arguments that I mean the findings that the Commission made the last time, and I think we've addressed them point by point. I think, as to the other issue of the public trust doctrine, you know, there is no statement in the Constitution of the State of Hawai'i that limits the public trust doctrine only to publicly own land that is prime for agriculture. The prime agricultural land is a separate issue that deals with another part of the State constitution as to how we deal with agricultural zoned land.

The State Supreme Court has made several decisions on that point. We're looking at a different part of the State Constitution that makes no distinction between the kind of land or publicly owned resource that we're dealing with. So, the ICA did say that you need to address the issue if raised the Intervenor did raise it in the Intervenor's proposed amendments and we believe that

there is not sufficient record, not sufficient evidence in the record to show that the requirements of the public trust doctrine have been satisfied. With that I'll close by presentation.

REPLOGLE: Thank you, Commissioners, any questions for Mr. Matsukawa?

HALL: Chair, Commissioner Clarkson has his hand up.

REPLOGLE: Yes, Mr. Clarkson?

CLARKSON: So, my question is to Mr. Matsukawa. Considering what you just said, and I actually agree. What would you recommend to the Commission or a procedure that would, in your opinion, allow us to satisfy our obligations at least in this one area of public trust?

MATSUKAWA: Well, I think the door was closed when the applicants did not want to expand an evidentiary portion of their hearing to at least include the public trust doctrine on a limited basis. That being said, you're now locked into the record that was established previously, and when you go through all of the information set forth therein. There really is not enough evidence to demonstrate that the applicants have met the burden of proof, I think that's the focus would be the doctrine applies we need to see if it's been satisfied or addressed based on the existing record not additional information that has been flowing through during this morning's hearing.

CLARKSON: Thank you.

REPLOGLE: Anything further Commissioners? Okay, if there's no more questions for the Intervenor, I will go to Ms. Campbell does the Planning Department have anything further to add?

CAMPBELL: We do. Thank you. Good afternoon, commissioners, Jean Campbell Deputy Corporation Counsel for the Planning Department just a super brief statement for you. As Christian mentioned earlier the Department did previously find that the original application based on the record aligned with Chapter 205 and met the criteria for a Special Permit and the Department has not changed its original revised recommendation or the accompanying conditions. If the Commissioners have questions Deputy Director Darrow, Planner Kay and I are all available to answer questions for you. Thank you.

REPLOGLE: Thank you. Commissioners, any questions? Mr. Clarkson?

CLARKSON: Yes, this is for the Department. I just wondered why the, one of the principal objections that was raised over and over again during all the hearings and the contested case was the traffic issue. And that was one of the important Findings of Fact in the original decision to deny. The Court of Appeals did not vacate not finding a fact at all. They discussed all of the testimony presented by the community, by the traffic experts. Can you explain why you think that traffic issues are changed or why after the Commission made that a major part of their original decision to deny that that's no longer relevant?

DARROW: Good afternoon, Commission, Commissioner Clarkson. When we received this application approximately 10 years ago it was received with a traffic report that was conducted by an expert. That expert looked at all the traffic issues and came to their conclusions. The Planning Department ended up including conditions in the approval that were proposed to be able to resolve some of those issues regarding any impacts the traffic would have in this particular area and that condition is the left storage lane that was spoken earlier by Mr. Garcia, as well as there was concern regarding the safety of students in the area brought up by the Police, that was another condition. The condition for the I'm sorry I got so many backgrounds and recommendations all over the place. The Condition 7 said that "the applicant shall construct a separate turn lane for left turns from the eastbound Edita Street into the Lower Campus at Road A meeting with the approval of the Department of Public Works". As well as Condition 8 which required "the construction of an 8-foot paved shoulder along the northwestern (makai) side of Edita Street from the south end of the subject property to the intersection of Edita and Kaumana meeting with the approval of DPW".

The Department in looking at the information felt that that was sufficient to be able to mitigate the impacts that would be caused by traffic from the school.

CLARKSON: Thank you.

REPLOGLE: Okay. Commissioners are there any questions for any of the parties? Mr. Hong, Mr. Richardson do you have anything further you would like to present the Commission before I entertain a motion? Okay.

HONG: Well, actually I'm sorry I was having trouble with the buttons.

REPLOGLE: Okay, no problem.

HONG: The suggestion by Mr. Matsukawa, we have to somehow disapprove that the public trust doctrine doesn't apply merits I think briefing in this particular case. And I think that in terms of due process, we should be able to, or the Commission should ask for briefs on the part of both parties. I will say that the reason why we didn't address it is because again look at the case law. The Kauai Springs Case the public trust doctrine, as defined by the Supreme Court only applies to primary agricultural land. Mr. Matsukawa is advancing a new argument that has never been adopted in the State of Hawai'i period. So, if you want to address that and use that as a means to somehow deny our permit application then we should be entitled to brief this. Thank you.

REPLOGLE: Thank you, Mr. Hong. Okay, Commissioners I'll entertain a motion for action.

GALIMBA: Given this.

REPLOGLE: Ms. Galimba?

GALIMBA: Yes, thank you, given this discussion of public trust doctrine and as little as I want this to go into another meeting perhaps procedurally or be clear "—". As Mr. Hong suggests and

now both sides to address it. I believe that I would want to do that in a written form. Is that correct?

HONG: Yes, thank you.

REPLOGLE: Mr. Matsukawa?

MATSUKAWA: You know to me it's improper. We all knew what the issues were for many months now, and at this late date to recontinue this hearing on a subject matter that could have been adequately briefed and argued before I think it's unnecessary. The Commission has its own attorneys to consult with they don't need our briefing.

REPLOGLE: Thank you. Commissioners?

CLARKSON: I agree with Michelle to a certain extent, I will say at this point. Based on my reading of the record and the Court of Appeals memorandum and what I've been hearing, as I would move to deny. Particularly because the traffic issue is still outstanding in my opinion, and because we have to rely on the record, we have to rely on an 11-year-old traffic impact assessment and because we cannot consider public trust issues, and I think those are relevant. I personally think the relevant to this decision if we're not allowed to consider those than I would have to move to deny and let some other entity make the decision as to whether my opinion is correct or not. Either that, or I think we basically need to reconsider all of these issues, including public trust, including water, including traffic I'll remind the rest of the Commissioners that respectfully I was the only one that voted against relying on the record because I knew that there were going to be updates available that were—

HALL: Sorry, Commissioner Clarkson just a point of order is that motion before we start discussion?

CLARKSON: All right, yes, I'm sorry. I'm moving to continue to as a later meeting at which new evidence related to public trust issues and other factual issues relating to this permit application can be considered and reconsidered by the Commission.

REPLOGLE: Do we have a second for that? Does not appear to be a second available.

GALIMBA: I will second it.

REPLOGLE: Okay it's been moved by Mr. Clarkson and seconded by Ms. Galimba that we continue this hearing when more facts or both sides can present their facts on the public trust, water, and traffic in an updated fashion I might add, not on the record, it would require I guess the latest opinions or reports.

AU: Mr. Chair?

REPLOGLE: Yes, discussion. Did I state what you want correctly Mr. Clarkson?

CLARKSON: Absolutely that's perfect.

REPLOGLE: Okay, so Mr. Au discussion?

AU: So, the way the motion stands right now I do not support the motion. I believe that we need to follow the laws of the land and the rules. The applicant has done everything that they needed to do, and we've done our due process back in 2012, 2014, all the way till now. The way the motion stands right now, I do not support it, but I would like to hear from Commissioner Lin and Commissioner Replogle. You know we are not the last stop for this applicant, and we need to vote according to what our what our job is and what we need to address on as a Commission. So, I'd like to hear from Commissioner Lin and Commissioner Replogle.

REPLOGLE: Commissioner Lin?

LIN: Thank you, Mr. Au here's my thoughts. I've read the record; this is a very extensive record and I feel that the applicant has done their job. I feel that the community, the spirit of aloha that I've read through that record is not that great. I mean a lot of different points of view were shown negative, positive, whatever it be, but that spirit of aloha was not there in my opinion. The school did their job, they look for land, they requested the appropriate authorizations, they did all their research, they did provide reports done by traffic experts done by finding experts and I think they checked all the boxes. And so, I can't agree with the motion that is on the table right now and I think if we choose to provide more information this will just drag on. Because these reports take time to prepare, to assess further traffic, to have more experts come in, to do water studies, to do another planning and geological and whatnot. If it took 10 years to get to where we are now will it take another 10 years to get to a state that we are acceptable to decide this case on. It's 10 years for our community, it's 10 years for students, it's 10 years of County taxpayer dollars for the Commission or the Planning Department for other departments to review this case. I think a decision has to be done today based off of what we have read and what we have been provided with the exception of what was provided today as testimony and whatnot. But based on the record of what we've read. So, Mr. Au that that is my opinion Chair?

REPLOGLE: Thank you, Mr. Lin. My opinion is basically the same as Mr. Lin's I feel like the applicant has provided us with all the information and at the last meeting, we decided that we wouldn't take necessarily new information. And even though some of it has come in, it really hasn't changed what was stated in the original application with the traffic reports, the water. These issues, I think right or wrong will be addressed at sooner or later. If the school ends up using 8,000 gallons of water a day somebody's from the County's is going to say "Oh, wait a minute". It's just not going to happen. So, there are checks and balances and were being asked if they're wishing to change agricultural land into a school is okay in this particular situation. And it seems like it every one of our meetings Ag land is being turned into a store or something and that bothers me, but I have come to realize that there are there are cases where yeah. It may have been just slap down that everything's in Ag and we'll deal with it as it shows up. But, for right now, I feel I don't support a continuance and I feel that the applicant has met his burden of proof, if you will. And the Intervenor has presented their side as well, and I think today's the day the decision has to be made and it is going to go up to the Land Use Commission. They may



have other things that they can look at and do or deny or whatever, but I think it's time to hand it off and allow the school to move forward.

REPLOGLE: Mr. Clarkson?

CLARKSON: Yeah, I think the Chair prejudging the disposition today. You assumed—

REPLOGLE: Okay, I apologize for that. That was not my intent. Mr. Au you know what I think now. Okay, so, would someone care to call for a vote on Mr. Clarkson's proposal that we continue?

KAY: So, there's a motion and a second, would you like me to do the roll call vote Mr. Chair?

REPLOGLE: Please, that would be nice.

KAY: And this is the motion to defer?

REPLOGLE: Yeah, continue.

KAY: Continue. Commissioner Clarkson?

CLARKSON: Aye.

KAY: Commissioner Galimba?

GALIMBA: I will go with aye.

KAY: Okay, Commissioner Au?

AU: No.

KAY: Commissioner Lin?

LIN: No.

KAY: Chair Replogle?

REPLOGLE: No.

KAY: Mr. Chair motion fails, 2 yes votes and 3 no votes.

REPLOGLE: Thank you, Christian. So, I will entertain a new motion?

LIN: Mr. Chair?

REPLOGLE: Yes, Mr. Lin?

LIN: I move that the application for Special Permit Docket No. SPP-12-000138 be approved and a favorable recommendation be forwarded to State Land Use Commission based on the Planning Director's recommendation, which shall be adopted.

REPLOGLE: A second?

AU: I second.

REPLOGLE: So, Mr. Lin has made a motion that we accept this Special Permit application and it was seconded by Mr. Au. Discussion?

KAY: May I make this one point of clarification, this is a revised favorable recommendation that was submitted in 2012 from the Department?

REPLOGLE: I believe so.

KAY: Okay, thank you.

REPLOGLE: Discussion?

AU: Mr. Chair?

REPLOGLE: Mr. Au?

AU: So, I second the motion and I want to explain what my reasoning is behind this. So, I mentioned in the prior comment that I believe in the law, and I believe in rules. We live in a society, our society we live in there's rules and regulations and that's what keeps us in check and that's what gives us opportunities to appeal and go to the next level and appeal it. I know this hearing is on YouTube and a lot of people are listening to it and it'll be in the papers, probably. But we need to just follow the rules of the land and let it take its course and there was a lot of passionate people, passionate testifiers. I was on the Commission back in 2012. I was on the Commission for the first three hearings. That room was packed at the Hawai'i County Building it was packed. There was a lot of people, and the majority of the people were in opposition. And I appreciated that, and I appreciate what I'm hearing today from the community, because the community needs to come out and express their voice and express their opinions and these are the venues to do this.

But again, I am a person that follows the rules of the land, we live again in a society that is controlled by rules and regulations, and if we don't have rules and regulations we are in chaos. We're going to be like a third world country, so there is opportunity for everybody out there and, and this is one of those opportunities, and I feel the passion from the community, and I feel their hurt and I feel their issues of being cheated and not communicated with. So, to the general public, to the testifiers in opposition, please continue to carry on and do what you're doing and I appreciate everybody, so I just wanted to make that comment and state my reason, so thank you.

LIN: Mr. Chair?

REPLOGLE: Yes, Mr. Lin?

LIN: So, just to add on to my previous comments. So, I agree with Mr. Au there is another opportunity for this community to express their concerns, to express or how this is going to impact their community. But, as well as for the applicant to show that they can do what they have to do to fix these issues that are being brought up. Because this has been 10 years of time, things have changed, for our decision today we're basing it off the record and if new information wants to be brought up. I think the State Land Use Commission on that level you guys can bring it up. But yeah, I just feel that there has to be more connection. more communication between both parties is making sure that you guys hash out the issues that are being addressed or not addressed. Because based on reading what communications are read it's become very upsetting. I don't think this is the Hilo that and I've been born raised to be in. So, I just hope that everybody on this call, those who are watching reach out to your neighbors, reach out to your community, and come together.

REPLOGLE: Thank you. Anyone else, Commissioners? Mr. Clarkson?

CLARKSON: Yes, I'd like to speak against the motion. I'm tempted to asks Commissioner Au, how we voted in the original decision, and if he voted to deny what actually happened to change his mind but I won't. I won't put him on the spot. I will say that I too believe in the rule of law. I think that the makeup of the original Commission that heard this voted to deny. I think the burden of persuasion is on the applicant. The law does not require us to give a Special Permit unless we're convinced that all of the requirements of that permit have been met. I'm still very much not convinced both because of the public trust issues and also because I think that the testimony of Mr. "—" be the traffic analyst who basically found zero change whatsoever at the intersection of Edita Street and Kaūmana was not plausible. And I also found in the traffic impact report this is something that I would have asked for clarification for if we were given the opportunity to review new information. Never really considered the time it took to accumulate cars leaving this area on Edita to get to the Kaūmana/Edita intersection.

I just found it very unpersuasive that there would be no impact from literally dozens to hundreds of cars coming in and out of this facility. So, I'm in some I don't think that the applicant has persuaded, they can persuade the original Commission to see nothing and the Memorandum of Remand that would require us to do anything other than clean up our Findings of Fact, add evidence to those that they found unpersuasive from the record and remove others that they felt are relevant. But we've got to remember that the school has existed for many years and still exists, it's existed for the last 10 years. The issue is what are the implications of moving the school to public lands in a residential community. And to me I'm not persuaded. That's all.

REPLOGLE: Thank you, Mr. Clarkson. Any anything else? Ms. Galimba?

GALIMBA: Yes, I'll take my turn here. So, Mr. Clarkson's logic, as usual, is excellent. I think his points out are very important issues, however, and this is a very difficult issue. I am you know there's just great arguments on both sides are compelling. However, I do feel that that a

school is a very important thing, charter schools. My own daughter went to a charter school and now she's at Harvard, so I love charter schools. And I feel that the conditions that were detailed for this application are adequate to address the issues of the community. However, I would also like to echo Commissioner Lin in saying that there needs to be a real effort made to both sides to remember who we are the love of Hawai'i island. Figure out how to live together given, of course, that this passes the next level of regulation, so let's not assume that that's going to happen. But in any event, whatever happens we all have to aloha each other. So there.

REPLOGLE: Thank you Ms. Galimba. Mr. Clarkson?

CLARKSON: I just want to add one more thing a couple more things very briefly. I love the concept of this Charter school. I went to a technical high school, a hands-on school, I really, really think that the curriculum is the kind of curriculum I would have liked to send my children to they went to Paauilo school in Hāmākua for early years. But that's not the issue, the issue is, is this the right location for that wonderful school. And the other thing I wanted to ask the Commissioners is to not just punt this up to the Land Use Commission because we're tired of it. I know there's that temptation, but I personally feel our obligation when we accepted a position on this Commission is to undertake all the hard slog, consideration that is required to make the best decision possible by the Commission and I hope you'll all agree at least with that.

REPLOGLE: Thank you Mr. Clarkson. Mr. Lin?

LIN: I appreciate Mr. Clarkson's comment regarding that, and I think we have done our job here reviewing the information that was provided to us and making a decision and it may not be everybody's decision, but you know I made a decision based off the information I was provided and my interpretation of that information. And I like to remind my fellow Commissioners, as well as those who are watching that if this does get approved or it gets sent off for recommendation, it does not mean it will get automatically approved elsewhere and that last condition of the Director recommendation states that if a condition is not met, this permit can be revoked. So, I just wanted to make that clear. I do appreciate Mr. Clarkson's thought process and his comments are much appreciated.

REPLOGLE: Thank you, Mr. Lin. Mr. Clarkson? Oh, I thought you were raising your hand.

CLARKSON: I was just saluting Mr. Lin.

REPLOGLE: Okay.

GALIMBA: Chair, one more thing I just to add.

REPLOGLE: Please.

GALIMA: Mr. Clarkson I did vote with you last time so correcting the record on wanting more info so you are not alone.

CLARKSON: My apologies.

REPLOGLE: Okay. I don't look at it as I want to get this over with and get it out of here. But I personally believe that the applicant has answered all the questions. I feel deep in my gut bad that the people of Kaūmana feel the way they do, but that's their right and I respect their feelings. I understand it but that wasn't I don't think our question to answer. And the people of Kaūmana are going to get another opportunity at the Land Use Commission to voice their opinions and both sides, the applicant, and the appellee when they go before the Land Use Commission will be very well prepared to present their cases. And I along with Mr. Lin feel that this has to move, it needs to go to the next step. If we were this is it and final, I may be persuaded by Mr. Clarkson, but at this point I don't see it as such, I think this is a fair action if we approve and that's my stand on it.

And I do feel for the people of Kaūmana, I feel for the people at the school. It's not a good scene and, as Commissioner Galimba said remember we're all Hawai'i island people, we have to work together, do it together, it's us. Anyway, with that said, is there anything more from the Commissioners further discussion? Mr. Lin?

LIN: I just have one clarification for our Corporation Counsel Ms. Hall or Ms. Campbell. Based on the motion would it be allowable to just clarify that on our approval that we allow State Land Use Commission to accept new information or that's under the jurisdiction of the Land Use Commission?

HALL: Yeah, you're correct on the second part.

LIN: Okay.

HALL: It will be up to the Land Use Commission whether to allow new evidence or not.

LIN: Thank you.

REPLOGLE: Okay. Last word, Joe? Okay.

CLARKSON: It's late, I'm ready to vote.

REPLOGLE: Alright. Mr. Christian?

KAY: Yes, sir. Okay, so this is on a motion to approve and send a favorable recommendation to the Land Use Commission. Commissioner Lin?

LIN: Aye.

KAY: Commissioner Au?

AU: Aye.

KAY: Commissioner Clarkson?

CLARKSON: No.

KAY: Commissioner Galimba?

GALIMBA: Aye.

KAY: And Chair Replogle?

REPROGLE: Aye.

KAY: Thank you Mr. Chair, motion carries four (4) to one (1).

REPROGLE: Thank you, you will be notified in writing of this decision.

HONG: Thank you Mr. Chair and members of the Commission and the Planning Department. May we be excused?

REPROGLE: Yes.

KAY: One other thing and I don't know. Do we adopt the Findings at this hearing, or do we put that on the next agenda to adopt the Findings and send them up? Or is this just a recommendation like we normally do. This question is for Malia.

HALL: Hello. So, we do have a proposed Finding of Fact from the Applicant that you guys could adopt or you could push to the next hearing an adoption of the Findings of Fact that I could draft for you as well.

KAY: Malia, the motion was to approve based on the amended recommendation that was provided by the Department back in 2012. Those need to be then transferred into a Findings of Fact to go up or can it go up as a recommendation as such.?

HALL: The record will go up as is with the record the Planning Director's and record. But I believe the Land Use Commission will still want Findings and a Conclusion of Law, Decision and Order from the Commission supporting their approval.

KAY: Thank you, and so we'll do that at a subsequent meeting?

HALL: Yeah, we would need a motion from the Commission either to adopt the proposed Findings of Fact from the applicant or to review and adopt proposed findings at the next meeting.

AU: Mr. Chair, I'm prepared to make that motion.

REPROGLE: Okay, Mr. Au, please.

AU: I move that the adoption of the written Findings of Facts, Conclusions of Law, and Decision and Order be continued to the next scheduled meeting for the approval of Special Permit Docket No. 12-000138.

GALIMBA: I second.

REPLOGLE: It's been moved and seconded any discussion?

KAY: Just a clarification, I'm sorry go ahead.

CLARKSON: I'm going to speak in favor of the motion, and I would hope that our Counsel would write up a draft Findings for the Commission's review and adoption.

KAY: Is that your motion Dean, pardon me Commissioner Au is that the Corporation Counsel would draft those and that's what you'd be voting on.

AU: Yes.

KAY: Okay, thank you.

HALL: And just for the party sake, I will send those out to you in advance as well, at the same time they go to the Commission, you guys will also receive it.

KAY: And this is at the next hearing in November?

HALL: Yes.

REPLOGLE: Okay. Any further discussion? Okay, would you, Mr. Kay read the motion so we can vote?

KAY: Sure, the motion is to at the November hearing adopt the Findings of Facts, Conclusions of Law, Decision and Order to be developed by Deputy Corporation Counsel Hall and I'll read the roll. Commissioner Au?

AU: Aye.

KAY: Commissioner Galimba?

GALIMBA: Aye.

KAY: Commissioner Clarkson?

CLARKSON: Aye.

KAY: Commissioner Lin?

LIN: Aye.

KAY: And Chair Replogle?

REPLOGLE: Aye.

KAY: Thank you, Mr. Chair motion carries five (5) to nothing (0).

REPLOGLE: Okay.

The item ended at 2:03 p.m.

Respectfully submitted,

*Melissa Dacayanan-Salvador*  
Melissa Dacayanan-Salvador (Nov 9, 2021 09:01 HST)

Melissa Dacayanan-Salvador  
Secretary Windward Planning Commission



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Attorney for Intervenor Jeffrey Gomes

BEFORE THE COUNTY OF HAWAI'I

WINDWARD PLANNING COMMISSION

In the Matter of	)	SPP No. 12-00138
	)	
CONNECTIONS NEW CENTURY	)	INTERVENOR JEFFREY
CHARTER SCHOOL AND	)	GOMES' EXCEPTIONS TO
COMMUNITY BASED EDUCA-	)	COUNTY OF HAWAI'I WIND-
TION SUPPORT SERVICES	)	WARD PLANNING COMMIS-
	)	SION'S PROPOSED FINDINGS
	)	OF FACT, CONCLUSIONS OF
	)	LAW, DECISION AND ORDER
Application for Special Permit	)	ON REMAND; EXHIBITS "2"
Application No. 12-000138	)	AND "3;" CERTIFICATE OF
	)	SERVICE
	)	
	)	<u>Argument and Decision</u>
TMK (3) 2-5-006-141; Kaumana,	)	Date: 5/1/14
South Hilo, Hawaii	)	Place: Aupuni Center, Hilo, HI
	)	
	)	
	)	<u>On Remand:</u>
	)	Date: 10/7/21
	)	Place: Remote Hearing
	)	
	)	

INTERVENOR JEFFREY GOMES' EXCEPTIONS TO  
COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S  
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER ON REMAND

The Intervenor Jeffrey Gomes, by and through his attorney, submits exceptions to the Windward Planning Commission’s proposed (draft) findings, conclusions, decision and order on remand. The Intervenor submits these exceptions pursuant to Section 91-11, Hawaii Revised Statutes.

Both Connections New Century Charter School and Community Based Education Support Services are the named applicants in this proceeding and are referred to collectively as “Connections.” Both entities also joined in appeals to the Third Circuit Court and then in the Intermediate Court of Appeals.

Preliminary Matter

On January 31, 2020, in CAAP-17-0000050, the Intermediate Court of Appeals remanded this case to the Windward Planning Commission (the “Planning Commission”) for further proceedings.<sup>1</sup> Although the Intermediate Court of Appeals *reversed* the Planning Commission’s original May 12, 2014 decision, the Court vacated only some (not all) of the Planning Commission’s original findings and conclusions. The original findings and conclusions that were not vacated by the Intermediate Court of Appeals remain valid, binding and in full force and effect on remand.

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<sup>1</sup> The Intermediate Court of Appeals *reversed* “the Planning Commission’s May 12, 2014 Decision and Order,” but did not vacate all of the Planning Commission’s underlying findings and conclusions, and then remanded the case to the Planning Commission “for further proceedings *consistent with* this Memorandum Opinion.” (Memorandum Opinion, Pages 43 to 44).

However, the Planning Commission's proposed (draft) findings and conclusions purport to eliminate, alter or change several of the Planning Commission's original (and critical) May 12, 2014 findings and conclusions that the Intermediate Court of Appeals did NOT vacate and that continue to have full force and effect. The Planning Commission was already informed by Connections that the commission does not have the freedom to "redo" or "rewrite" its prior findings and conclusions and on remand must act within the scope of the Intermediate Court of Appeals' mandate. *State v. Lincoln*, 72 Haw. 480, 825 P.2d 64 (1992); *In Re Hawaii Electric Light Company, Inc.*, 149 Haw. 239, 487 P.3d 708 (2021) (agency may make new determinations only as directed by the appellate court).

A.

Findings and Conclusions Vacated and Not Vacated on Appeal  
and Not Assigned as Error on Appeal

In its January 31, 2020 decision, the Intermediate Court of Appeals vacated only some (not all) of the Planning Commission's original May 14, 2012 findings and conclusions. Further, Connections did not challenge some of the original findings and conclusions or otherwise assign error to original Finding Nos. 22 (Connections' ability to provide sufficient water for the school) and 57 (change to the character of the subject property). (See Exhibits "2" and "3," copies of

Connections' opening briefs on appeal)<sup>2</sup> As a result, the unvacated and unappealed findings remain in full force effect and are binding on remand.

The following outline sets forth the findings and conclusions that the Intermediate Court of Appeals did vacate and those findings and conclusions that the Court did NOT vacate on appeal and that Connections did not assign as error on appeal.

<u>Subject</u>	<u>ICA Decision Page No.</u>	<u>Finding or Conclusion Affected by ICA Decision</u>
Affect on surrounding properties (traffic)	18 to 23	FF 17, 18, 46, 47 NOT VACATED.
Source of 60 gpd data ("where that figure came from")	25 to 27	FF 21, 48, 50, 51 vacated.
Applicants' ability to develop a potable water source	26	FF 49 NOT VACATED.
No evidence applicant can provide sufficient water for the school	---	FF 22 NOT VACATED. NOT ASSIGNED AS ERROR ON APPEAL.
Restrictive view of guideline 6-3(b)(5)(D) that school must "service the needs of its immediate neighbors"	28 to 29	Last sentence in FF 52 erroneous and therefore vacated.
Suitability of land for agricultural uses	29 to 32	FF 55 vacated.

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<sup>2</sup> Rule 28(b)((4) of the Hawaii Rules of Appellate Procedure requires an appellant to assign error to specific findings and conclusions for the purpose of appellate review. If an appellant does not assign error to a specific finding or conclusion, the finding or conclusion stands. *Sprague v. California Pacific Brokers & Insurance, Ltd.*, 102 Haw. 189, 195-196, 74 P.3d 12, 18-19 (2003).

Change in essential character of the land	---	FF 57 NOT VACATED. NOT ASSIGNED AS ERROR ON APPEAL.
General Plan consistency	39 to 42	FF 59 and 62 vacated. COL 5 vacated.
Burden of proof for Special Permit	42 to 43	FF 63 vacated. COL 4 vacated.

B.  
The Remand Hearings

At its first meeting on remand, on August 5, 2021, the Planning Commission ruled that it will not receive or consider new evidence and will confine its action on remand to the record that was established for the post-May 2014 appeals. Nevertheless, at its subsequent October 7, 2021 hearing, the Planning Commission allowed, over the Intervenor’s objection, Connections to offer new evidence regarding actual water usage of another school in Puna as well as at its present school, demographics, USDA grants and community outreach, matters that are not contained in the original record.

At its October 7, 2021 action meeting on remand, the Planning Commission voted to approve Connections’ request for a Special Permit based on the former planning director’s October 2012 revised recommendations. (*See* proposed Finding No. 21, at Page 4; Transcript: Oct. 7, 2021, Page \_\_) However, in 2014, the Planning Commission had rejected the revised recommendations and

the revised recommendations today are still not “consistent with” and still contradict the Planning Commission’s original findings that were NOT VACATED or challenged on appeal and that continue to have full force and effect. Specifically, the former planning director’s statements in her revised recommendations regarding (1) the affect on surrounding properties, including traffic, (2) the sufficiency of potable water and (3) the change in the character of the land are NOT supported by the Planning Commission’s original findings that were NOT VACATED or challenged on appeal.

In this respect, the former planning director’s revised recommendations cannot be “rehabilitated” simply by voting to adopt the same on remand. At the very least, the Planning Commission must explain why those revised recommendations remain valid today and how those recommendations are supported by the record, including the findings that were NOT VACATED or challenged on appeal.

C.

Deviation of Proposed Findings and Conclusions  
from Intermediate Court of Appeals’ Mandate

In its proposed (draft) findings and conclusions, the Planning Commission changed the numbering of its original findings and conclusions, but the text can be “tracked.” The following proposed (draft) findings and

conclusions deviate from the Intermediate Court of Appeals’ decision and are not “consistent with” the Court’s mandate.

<u>Subject</u>	<u>Proposed Finding or Conclusion</u>	<u>Change to Original Findings or Conclusions</u>
Affect on surrounding properties (traffic) [Pages 6 to 7]	31 (removed last sentence of FF 31) 32, 33, 34, 35, 36	<i>Eliminates</i> original FF 17, 18, 46 and 47 that were <b>not</b> vacated on appeal and that remain in full force and effect on remand.
Source of 60 gpd data (“where that figure came from”) [Pages 7 to 8]	37, 38, 39, 40, 41	Does <b>not</b> establish source of 60 gpd data, as mandated.
Ability to develop a potable water source [Pages 7 to 8]		<i>Eliminates</i> original FF 49 that was <b>not</b> vacated on appeal and that remains in full force and effect on remand.
Ability to provide sufficient water for the school [Pages 7 to 8]		<i>Eliminates</i> original FF 22 that was <b>not</b> assigned as error on appeal and that remains in full force and effect on remand.
Adverse affect on surrounding properties [Pages 14 to 15]	Part 65.B Part 65.C	Contradicts original FF 46, 47 that were <b>not</b> vacated on appeal and that remain in full force and effect on remand.
Change in essential character of the land [Page 16]	Part 65.F	<i>Contradicts</i> original FF 57 that was <b>not</b> assigned as error on appeal and that remains in full force and effect on remand.

The foregoing proposed (draft) findings listed above are clearly erroneous. Nor are the former planning director’s revised recommendations that the Planning Commission relied on when it voted to approve Connections’ Special

Permit request on October 7, 2021 supported by the original findings that were NOT VACATED or challenged on appeal.

D.

The Public Trust Doctrine

At Pages 17 to 18, proposed Finding No. 66, the Planning Commission makes a summary analysis of the public trust doctrine that does not satisfy the strict proof requirements set forth in *Kauai Springs, Inc. v. Planning Commission*, 133 Haw. 141, 173-175, 324 P.3d 951, 983-985 (2014). The fact that the Department of Land and Natural Resources should have addressed this constitutional requirement at the start (before issuing the subject lease to Connections) in the first instance does not mean that the Planning Commission, which is the “lead agency” in this proceeding, can or should ask another state agency, the State Land Use Commission, to deal with this matter.

The Planning Commission also fails to address Section 13-29 of the County of Hawaii Charter that county voters adopted to establish a county-based public natural resources trust.<sup>3</sup> As a county agency, the Planning Commission must address Section 13-29, but did not do so.

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<sup>3</sup> “For the benefit of present and future generations, the county shall conserve and protect Hawaii’s natural beauty and all natural and cultural resources, including but not limited to land, water, air, minerals, energy sources, wahi pana, surf spots, historic sites, and historic structures, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the county. All public natural and cultural resources are held in trust by the county for the benefit of the people.” (adopted 2010)



E.  
Sending the Case Up to the State Land Use Commission

Even if the Planning Commission feels it is best to send the case up to the State Land Use Commission as soon as possible, the Planning Commission must still first enter a lawful decision that is based on the record. Convenience is not grounds for rendering a decision, especially if the purpose for doing so is to let another “distant agency,” the State Land Use Commission, decide a “hard case.”

F.  
Argument

The Planning Commission is aware of the *Hawaii Electric Light Company* decision – that on remand, an agency cannot freely “redo” or “rewrite” its reversed decision. The Planning Commission instead “must closely adhere to the true intent and meaning of the appellate court’s mandate” and must confine its actions on remand to what the Intermediate Court of Appeals directed the Planning Commission to do. Findings and conclusions that were NOT VACATED by the appellate court remain in place and continue to be binding on the Planning Commission and the parties on remand. Similarly, findings that Connections did not assign as error on appeal remain in place and continue to be binding on remand.

1. THE PROPOSED (DRAFT) FINDINGS AND CONCLUSIONS DEVIATE FROM THE INTERMEDIATE COURT OF APPEAL'S MANDATE AND ATTEMPT TO ELIMINATE THE ORIGINAL FINDINGS AND CONCLUSIONS THAT THE COURT DID NOT VACATE AND THAT REMAIN IN FULL FORCE AND EFFECT ON REMAND.

As stated in Parts A and C, above, the Planning Commission proposes to eliminate and to "redo" or "rewrite" original Finding Nos. 17, 18, 46 and 47 (adverse affect on surrounding properties), Finding Nos. 22 and 49 (ability of applicant to develop a potable water source or provide sufficient water for the school) and Finding No. 57 (change in the essential character of the land), which are findings that the Intermediate Court of Appeals did NOT VACATE or that were not challenged on appeal. As stated earlier, the former planning director's revised recommendations, which the Planning Commission relied upon when it voted to approve Connections' Special Permit request, are not supported by the unvacated findings and unappealed findings. In fact, some of the former planning director's revised recommendations stand in direct contradiction to the unvacated and unappealed findings as to at least three of the decision criteria.

2. THE PROPOSED (DRAFT) FINDINGS AND CONCLUSIONS FAIL TO REVEAL THE SOURCE OF THE 60 GPD DATA THAT THE INTERMEDIATE COURT OF APPEALS COULD NOT LOCATE IN THE RECORD AND, FURTHER, DO NOT ANALYZE THAT DATA.

The Intermediate Court of Appeals for some reason did not read the testimony of the Department of Water Supply witness (T. McCall, Page 84, Record at 1630) who is the source of the 60 gpd data. (*See Memorandum Opinion, at Page*

25) Connections also referred to that source in its own environmental assessment (Record on Appeal at 124). On remand, the Planning Commission ignores the source of the 60 gpd standard and makes no finding thereon. Nor does the Planning Commission analyze that data in relation to Connections' proposed use and unvacated and unappealed Finding Nos. 22 and 49 that Connections does not have the ability to develop a potable water system or to provide sufficient water for the school.<sup>4</sup>

3. AT LEAST THREE OF THE DECISION CRITERIA DEMONSTRATE THAT THE SCHOOL IS NOT AN "UNUSUAL AND REASONABLE" USE OF THE LAND IN QUESTION.

As stated, the original record shows that an adverse affect is presented to surrounding properties (unvacated Finding Nos. 17, 18, 46 and 47). Further, the original record also shows that there will be a change in the essential character of the land (unvacated and unappealed Finding No. 57). Moreover, the record shows that Connections cannot provide a sufficient water for the school (unappealed

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<sup>4</sup> On this point, the Intermediate Court of Appeals stated that the Planning Commission made no determination on the credibility of Connections' water expert (Memorandum Opinion, at Pages 25-26), but did not address original Finding No. 22 ("Connections has not produced any evidence to demonstrate that it has or can develop *sufficient water* for the Development") because Connections did not assign this finding as error on appeal. Accordingly, the Intermediate Court of Appeals let Finding No. 22 stand as written.

As to original Finding No. 49, the Intermediate Court of Appeals informed the Planning Commission that it "may reconsider any weight to be assigned" to the facts covered by Finding No. 49 ("There is no evidence that Connections has the ability to develop a *potable water source* as a mitigating measure, previously proposed by the Director"). (Memorandum Opinion, Pages 26-27) However, since the Court left original Finding No. 22 in place -- that there is no evidence to demonstrate that Connections "has or can develop sufficient water for the Development" -- the Planning Commission must still give great weight to Finding No. 22.

Finding No. 22, also unvacated Finding No. 49). In its proposed findings and conclusions, the Planning Commission does not explain why Connections' request for a Special Permit should be approved even though Connections' Special Permit request is not consistent with these three important decision criteria. And as stated earlier, the unvacated and unappealed findings do not support the former planning director's revised recommendations on which the Planning Commission based its vote to approve Connections' Special Permit request.

Moreover, the Planning Commission uses a "totality of the evidence" analysis, purporting to "weigh" all seven decision criteria, but without discussion or analysis, and arriving at an ultimate conclusion. On appeal, the Intermediate Court of Appeals criticized the Planning Commission for using this "totality of the evidence" approach (Memorandum Opinion, Page 43), so why use it again? <sup>5</sup>

4. THE PROPOSED (DRAFT) FINDINGS AND CONCLUSIONS DO NOT ANALYZE THE PUBLIC NATURAL RESOURCES TRUST DOCTRINE.

On a subject of great state constitutional importance, the Planning Commission confines its analysis of the public natural resources trust to a single paragraph (Pages 17 to 18, proposed Finding No. 66). In the *Kauai Springs* case,

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<sup>5</sup> "[T]he Planning Commission did not base its decision on any single criterion; rather, it was based on the totality of the evidence when applied to all seven criteria." The Intermediate Court of Appeals then held that if any one of those seven criteria is not satisfied, then in the absence of clear findings that explain how the Planning Commission weighed all of the evidence, the Planning Commission's decision had to be reversed. (Memorandum Opinion, Page 43)

the Hawaii Supreme Court demanded much more of an agency that acts as a public trustee. The Court held that the agency has a duty to address several points with express findings, 133 Haw. at 181, 324 P.3d at 991, such as:

- \* Whether the proposed use is consistent with a trust purpose.
- \* If a presumption should be applied in favor of a public use.<sup>6</sup>
- \* Whether the use is private or commercial in nature; and if so, will it meet the test of a high level of scrutiny.
- \* Whether the use satisfies the “reasonable and beneficial” standard in relation to other public and private uses of the resource (the land).
- \* Whether the applicant has demonstrated its actual needs and the propriety of the use.
- \* Whether the applicant has demonstrated the absence of a practicable alternative.<sup>7</sup>
- \* If harm will be presented to the resource (the land), whether the applicant has demonstrated that the use is still “reasonable and beneficial” and that the applicant can implement reasonable mitigation measures.
- \* Whether the applicant has met its burden of proof.

Proposed Finding No. 66 fails to address these subjects in the manner required by the *Kauai Springs* case. Nor does it address the county’s counterpart set forth in the Hawaii County Charter, Section 13-29.

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<sup>6</sup> A charter school is deemed to be a “public” school in Hawaii.

<sup>7</sup> An “alternative” may be a different place. It may also be a different procedure like a boundary amendment and rezoning, which require appropriate services to be provided.

Furthermore, the record shows that the State Department of Land and Natural Resources, the *fee owner* of the publicly-owned land in question, does not have a masterplan for the land and did not offer testimony to the Planning Commission. Nor did the State Department of Agriculture provide testimony to the Planning Commission. One state agency, the State Office of Planning, did offer comments to the Planning Commission and suggested that a boundary amendment might be a better and alternative procedure to employ in this case (rather than a Special Permit request). The Planning Commission does not discuss these undisputed points of fact in context of the public natural resource trust and whether the participation of these state agencies is or is not relevant.

5. THE FOLLOWING PROPOSED FINDINGS AND CONCLUSIONS ARE BASED ON UNLAWFUL PROCEDURE, ARE NOT SUPPORTED BY THE SUBSTANTIAL EVIDENCE IN THE RECORD AND APPLICABLE LAW AND ARE ARBITRARY.

Based on the foregoing discussion, several of the Planning Commission's proposed findings and conclusions are based on unlawful procedure, are not supported by the substantial evidence in the record or applicable law and are arbitrary.

*Adverse Affect on Surrounding Properties*  
29, 30, 31, 32, 33, 34, 35 and 36; 65-B

*Potable Water*  
39, 40 and 41; 65-C

*Unusual Conditions*  
65-D

*Suitability for Agriculture*  
65-E

*Change in Character of the Land*  
65-F

*Public Natural Resources Trust*  
66

*Conclusion of Law; Decision and Order*

## CONCLUSION

The primary flaw in the Planning Commission's proposed (draft) findings and conclusions is its attempt to "redo" or "rewrite" its original findings that the Intermediate Court of Appeals did NOT VACATE on appeal (see Parts A and C, above) and that Connections did not assign as error on appeal (Finding No. 22). The Planning Commission on remand is bound by the original findings that the Court did NOT VACATE and that were not challenged on appeal. Instead of addressing the unvacated and unappealed findings and explaining why the unvacated and unappealed findings have no evidentiary effect on Connections' Special Permit request, the Planning Commission simply ignores the unvacated and unappealed findings altogether.

Further, the Planning Commission's reliance on the former planning director's revised recommendations is also misplaced because the former planning

director's revised recommendations cannot be "rehabilitated." The former planning director did not make a new appearance in this proceeding and even if she could, she cannot offer new evidence to "fix" her revised recommendations to "fit" the outcome that the Planning Commission now desires. In any event, the revised recommendations are not supported by the original findings that were NOT VACATED or challenged on appeal. As such, the former planning director's revised recommendations stand in direct contradiction with the unvacated and unappealed findings.

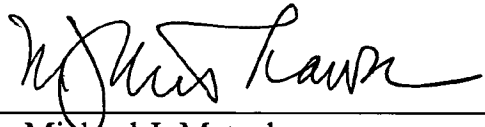
Finally, as noted in the record for the October 7, 2021 meeting, some commissioners believed that the case should be sent up to the State Land Use Commission for final action. However, that belief does not relieve the Planning Commission from making a proper decision on remand, based on the record.

Request for Relief

The Planning Commission should instead adopt the Intervenor's proposed amendments to the Planning Commission's original decision.

Dated at Kailua-Kona, Hawaii: November 1<sup>st</sup>, 2021.

JEFFREY GOMES, Intervenor

By   
Michael J. Matsukawa  
His Attorney



# EXHIBIT "2"

Electronically Filed  
Intermediate Court of Appeals  
CAAP-16-0000813  
21-MAR-2017  
03:31 PM

NO. CAAP-16-0000813

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII

COMMUNITY BASED EDUCATION	)	CIVIL NO. 14-1-0223
SUPPORT SERVICES,	)	(Agency Appeal)
	)	
Applicant-Appellant,	)	APPEAL FROM:
	)	
vs.	)	(1) DECISION AND ORDER AFFIRMING
	)	WINDWARD PLANNING COMMISSION,
WINDWARD PLANNING COMMISSION,	)	COUNTY OF HAWAII'S FINDINGS OF
COUNTY OF HAWAII; DEPARTMENT	)	FACT, CONCLUSIONS OF LAW AND
OF PLANNING, COUNTY OF HAWAII,	)	DECISION AND ORDER DENYING
	)	SPECIAL PERMIT APPLICATION NO.
Appellees,	)	SPP 12-138; and
	)	(2) FIRST AMENDED FINAL
and	)	JUDGMENT FILED ON OCTOBER 26,
	)	2016
JEFFREY GOMES, Intervenor,	)	
	)	JUDGE: Hon. Melvin H. Fujino
Intervenor-Appellee.	)	
	)	

**APPELLANT'S OPENING BRIEF**

**APPENDICES "A." - "D"**

**DECLARATION OF TED H. S. HONG**

and

**CERTIFICATE OF SERVICE**

October 22, 2013 (RA: part III, 1653-1803); November 12, 2013 (RA: part III, 1804-1844); January 8, 2014 (RA: part III, 1845-1987) and January 22, 2014 (RA: part III, 1988-1998). On January 22, 2014, the Hearing Officer closed the contested case hearing. RA: part III, 1992.

On April 7, 2014, the Hearing Officer submitted her Report to the parties and Planning Commission. RA: part III, 2528-2535; 2900-2915; See, Appendix "A," attached hereto.

On or about April 21, 2014, CBESS and Appellant Connections submitted their Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2952-2972. Appellee Planning Director's Exceptions to Hearing Officer's Report Dated April 7, 2014. RA: part 3, 2974-2979.

On May 1, 2014, at the fifth further public hearing, the Appellee Commission voted to uphold the Hearings Officer's report and recommendation and denied SPP No. 12-000138. RA: part III, 2891-2899; 3064-3095.

On May 12, 2014, Appellee Commission distributed its Findings of Fact and Conclusions of Law to the parties. RA: part III, 3103-3118.

On or about June 9, 2014, CBESS filed its Notice of Appeal to the Third Circuit Court, State of Hawaii. RA: part I, 31-87. See, Appendix "B," attached hereto.

The Third Circuit Court issued its Decision and Order Affirming Windward Planning Commission, County of Hawaii's Findings of Fact, Conclusions of Law and Decision and Order Denying Special Permit Application No. SPP 12-138, filed on July 14, 2015 (RA: part I, 1468-1472).

The underlying administrative agency appeal was terminated by the entry of the First Amended Final Judgment filed on October 26, 2016 (RA: Part I, 1619-1622) (Appendix "C.") and Notice of Entry of Judgment, Filed on November 16, 2016 (RA: Part I, 1623-1624).

The Appellant filed its Notice of Appeal on November 16, 2016 in CAAP-16-0000813. RA: part I, 1625-1637.

### **III.**

#### **STATEMENT OF POINTS OF ERROR**

##### **A. Findings of Fact (clearly erroneous standard)**

The Trial Court and Appellee Commission were clearly erroneous in view of the reliable,

probative, and substantial evidence in the whole record by adopting the following Findings of Fact:

II. Proposed Development

A. General Description

9. The Connections application proposes the development of a K to 12 charter school campus with dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Development, together with related use 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 of the Development would be use for outdoor type of educational programs, including a forestry preservation program. (Emphasis added)

RA: part I, 67.

\* \* \*

14. **The Development does not propose to establish a charter on the Property to serve the needs of the immediate vicinity in the Kaumana area of Hilo, although some students from the area may attend this school.** (Emphasis added)

RA: part I, 68.

\* \* \*

Appellant objected to these alleged errors in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2957-2958.

B. Public Utilities and Services  
Access/Traffic

\* \* \*

18. **Notwithstanding the findings of the TIAR and the recommendations of the Police Department and Department of Public Works, the area residents uniformly expressed concerns about the adverse traffic impacts of the Development along Edita Street and Kaumana Drive.** Also residents objected that the TIAR was four years old and the traffic counts contained in the TIAR were taken when certain schools were not in session.

(Emphasis added)

RA: part I, 69.

\* \* \*

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2958-2960.

Water

\* \* \*

**21. The available water from the County of Hawaii municipal water system is insufficient to support the first phase of the Development.**  
(Emphasis added)

RA: part I, 69.

\* \* \*

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2960-2963.

IV. STATE AND COUNTY PLANS

\* \* \*

**36. The County of Hawaii General Plan Land Use Pattern Allocation Guide ("LUPAG") Map designates the Property for low density urban uses. The LUPAG designation of Low Density urban use, allow for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The Development is not proposed to be a community or public use for the Kaumana area of Hilo.** (Emphasis added)

RA: part I, 71.

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2963-2964; 2966.

VI. APPLICATION OF SPECIAL PERMIT CRITERIA TO THE DEVELOPMENT

\* \* \*

B. Affect on Surrounding Properties

46. **Based upon the testimony from surrounding and neighboring property owners, the Development will have an adverse effect on surrounding properties by creating noise, traffic, and impacting the quality of life of the adjoining residents.**

47. **Measures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate the overwhelming concerns raised by surrounding property owners.**

C. Burden on Public Agencies to Provide Services

48. **There is insufficient water available from the county system to service the Development. Therefore, to allow the Development would unreasonably burden the Department of Water Supply to provide water for its facilities.**

49. **There is no evidence that Connections has the ability to develop a potable water source as a mitigating measure, previously proposed by the Director.**

50. **A mitigating measure previously proposed by the Director of limiting the number of students to the amount of potable water available to the project is not reasonable because Connections is proposing to construct a high school for 107 students it first phase, when the potable water available would only allow for 70 students.**

51. **As such, the proposed use may unreasonably burden the County Department of Water Supply to provide water to the Development.**  
(Emphasis added)

RA: part I, 74-75.

Appellant objected to these alleged errors in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 292958-2959; 2958-2963.

D. Unusual Conditions, Trends and Needs

52. **Unusual conditions and needs have arisen since the establishment of this land use district in the 1970s, because the area in which the Property is located has essentially become residential in character. Also the County General Plan LUPAG map recognizes this trend by designating the area for low density urban use. However, there was no evidence presented to demonstrate that**

**location of a school that is not intended to specifically service the needs of the immediate community is such an unusual condition, trend or need that justifies location of the Development at this location.**

**E. Suitability of Land for Agricultural Uses**

**53. The Land Study Bureau soil classification rating for the Property is “D” or “Poor,” which suggests that the land may be unsuited for agricultural uses.**

54. Connections is proposing to maintain the upper portion or nearly one-half of the Property for forestry use. In addition Connections is proposing to construct greenhouses on the Property and conduct an agricultural program in conjunction with its curriculum.

**55. Based upon the representations of Connections, it cannot be found that the Property is unsuited for agricultural uses. (Emphasis added)**

\* \* \*

RA: part I, 75.

Appellant objected to these alleged errors in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2963-2964; 2964-2965.

59. The Development, which proposes a charter school that is not specifically intended to service the immediate community surrounding the school, is not consistent with the uses permitted in the area of low density urban use.

RA: part I, 76.

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 292963-2964; 2966. See, also, Sec. 91-14(g)(5), HRS. *Hua v. Bd. of Trustees of the Employees’ Ret. Sys., State of Hawaii*, 112 Hawai’i 292, 298, 145 P.3d 835, 841 (Ct.App. 2006).

**B. Conclusions of Law (right/wrong standard)**

The Trial Court and Appellee were wrong as a matter of law in adopting the following Conclusions of Law:

\* \* \*

4. The Development does not adequately meet the requirements or guidelines for a special permit as required by Section 205-6, HRS and Rule 6 of the Commission Rules.

5. **The Development is not consistent with the County General Plan, particularly as to the impacts on the immediate community.** (Emphasis added)

RA: part I, 77.

Appellant objected to these alleged errors in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2965-2966; 2967. See also, Sec. 91-14(g)(1), (2), and (4), HRS; *Troyer v. Adams*, 102 Hawai'i 399, 409, 77 P.3d 83, 93 (2003).

**C. Mixed Findings of Fact and Conclusions of Law (clearly erroneous standard)**

The Trial Court and Appellee were clearly erroneous because the Trial Court's and Appellee's conclusions are dependent upon the facts and circumstances of each individual case: The following are Mixed Findings of Fact and Conclusions of Law:

VI. **APPLICATION OF SPECIAL PERMIT CRITERIA TO THE DEVELOPMENT**

\* \* \*

62. Although the County General Plan Public Facilities-Education course of action for South Hilo encourages **the establishment of additional schools as the need arises, the property Development, at the subject location, is contrary to the General Plan.** (Emphasis added)

RA: part I, 76.

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2965-2967.

VII. **UNUSUAL AND REASONABLE USE OF LAND**

63. The construction of a school on the Property is an unusual use of the land because a school is not a permitted use in the State Land Use Agricultural District. However, **the evidence presented does not demonstrate that the Development is a reasonable use of the Property.** Specifically, **Connections has not demonstrated how this school can be built without sufficient potable**



**water resources. Nor, has Connections demonstrated how the development of a regional charter school on the Property that does not specifically service the needs the immediate community and this is overwhelmingly objected to by the immediate community is a reasonable site for this facility. In addition, Connections has not demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application. (Emphasis added)**

RA: part I, 76-77.

Appellant objected to this alleged error in its April 21, 2014, Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. RA: part III, 2966-2967. See also, Sec. 91-14(g)(5), HRS; *Aluminum Shake Roofing, Inc. v. Hirayasu*, 110 Hawai'i 248, 252, 131 P.3d 1230, 1234 (2006); *Del Monte Fresh Produce (Hawaii), Inc. v. Int'l Longshore & Warehouse Union, Local 142, AFL-CIO*, 112 Hawaii 489, 499, 146 P.3d 1066, 1076 (2006)

#### IV.

#### STANDARD OF REVIEW

Generally, appeals of an administrative agency decision is secondary appeal and the court applies the standards of Sec. 91-14(g), HRS, to determine if the trial court's decision was right or wrong:

**§91-14 Judicial review of contested cases.**

\* \* \*

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or**
- (2) In excess of the statutory authority or jurisdiction of the agency; or**
- (3) Made upon unlawful procedure; or**
- (4) Affected by other error of law; or**
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or**
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (Emphasis added)**

# EXHIBIT "3"

CAAP-17-0000050  
(consolidated cases CAAP-16-0000813, CAAP-16-0000879 and CAAP-17-0000050)

**Electronically Filed**

IN THE INTERMEDIATE COURT OF APPEALS **Intermediate Court of Appeals**

**CAAP-17-0000050**

STATE OF HAWAI'I **05-JUL-2017**

**02:21 PM**

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

Applicants-Appellants

vs.

WINDWARD PLANNING  
COMMISSION, COUNTY OF HAWAI'I;

Appellee,

And

JEFFREY GOMES, Intervenor,

Intervenor-Appellee

CIVIL NO. 14-1-0223  
(AGENCY APPEAL)

APPEAL FROM THE  
1) DECISION AND ORDER AFFIRMING  
WINDWARD PLANNING COMMISSION,  
COUNTY OF HAWAI'I'S FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
DECISION AND ORDER DENYING  
SPECIAL PERMIT APPLICATION NO.  
SPP12-138

2) SECOND AMENDED FINAL  
JUDGMENT ENTERED ON JANUARY  
13, 2017

THIRD CIRCUIT COURT  
THE HON. MELVIN H. FUJINO  
Judge

**APPLICANT-APPELLANT CONNECTIONS NEW CENTURY PUBLIC CHARTER  
SCHOOL'S OPENING BRIEF**

**APPENDICES "A" – "B"**

**CERTIFICATE OF SERVICE**

DOUGLAS S. CHIN 6465  
Attorney General of Hawai'i

HOLLY T. SHIKADA 4017  
GREGG M. USHIRODA 5868  
Deputy Attorneys General  
Department of the Attorney General  
235 South Beretania Street, Room 304  
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Attorneys for Applicant-Appellant

Circuit Court's entry of the Second Amended Final Judgment. ICA 25 at PDF 1721-1725. On January 23, 2017, Connections timely filed its Notice of Appeal as to the Second Amended Final Judgment, which was designated as CAAP-17-0000050. *Id.* at PDF 1726-1739.

On April 21, 2017, the Court of Appeals entered its Order Granting February 21, 2017 Motion To Consolidate Appellate Court Case Number CAAP-16-0000813, CAAP-16-0000879 And CAAP-17-0000050 Under Appellate Court Case Number CAAP-17-0000050 And Dismissing As Moot All Other Pending Motions In Appellate Court Cases Number CAAP-16-0000813.

### **III. CONCISE STATEMENT OF POINTS OF ERROR**

The Circuit Court committed the following error(s) in reviewing the Commissions' Decision and Order Affirming Windward Planning Commission, County of Hawai'i's Findings of Fact, Conclusions of Law and Decision and Order Denying Special Permit Application No. SPP12-138:

1. The Circuit Court erred when it reviewed and decided the agency appeal based on the "principle that an agency's decision carries a presumption of validity and appellants have the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences." ICA 25 at PDF 1470. This error occurred in the Circuit Court's Decision and Order. *Id.* The first time that this error appeared in the record was in the Circuit Court's Decision and Order. *Id.* The Circuit Court's Decision and Order is attached as App. B.

2. The Commission erroneously applied the facts to the criteria under Planning Commission Rule 6-3(b)(5)(A)-(G) to deny Connections' special permit application. ICA 25 at PDF 74-78. Therefore, the Circuit Court erred when it affirmed the Commission's determination

that "Connections has not demonstrated that the Development meets most of the criteria to be considered by the Commission in the subject application." ICA 25 at PDF 77-78, 1470-1471. ✓  
FE # 63

This error occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected to this error in Applicants Connections New Century Public Charter School and Community Based Education Support Services (CBESS) Joint Exceptions of Hearings Officer's Report, Findings of Fact, Conclusions of Law, and Recommendation Dated April 7, 2014 (Joint Exceptions). ICA 31 at PDF at 1369 and 1359-1368. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B.

3. The Circuit Court erred when it affirmed the Commission's determination that "[m]easures proposed by Connections, regarding the establishment of building setbacks and roadway improvements to Edita Street do not appear to be sufficient to mitigate the overwhelming concerns raised by surrounding property owners." ICA 25 at PDF 75, 1470-1471. ✓  
FF # 42

This error occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected to this error in its Joint Exceptions. ICA 31 at PDF 1360-1362. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B.

4. The Circuit Court erred when it affirmed the Commission's determination that "the proposed use may unreasonably burden the County Department of Water Supply to provide water to the Development" and that "Connections has not demonstrated how this school can be built without sufficient potable water resources." ICA 25 at PDF 76-78, 1470-1471. This error ✓  
FE # 51  
FE # 60

occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected to this error in its Joint Exceptions. 31 ICA at PDF 1365, 1369, and 1362-1364. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order

is attached as App. B.

5. The Circuit Court erred when it affirmed the Commission's determination that "there was no evidence presented to demonstrate that location of a school that is not intended to specifically service the needs of the immediate community is such an unusual condition, trend or need that justifies location of the Development at this location." ICA 25 at PDF 76, 1470-1471. This error occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected this alleged error in its Joint Exceptions. ICA 31 at PDF 1368-1369. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B. FF # 5

6. The Circuit Court erred when it affirmed the Commission's determination that "it cannot be found that the Property is unsuited for agricultural uses" and that the "evidence presented does not demonstrate that the Development is a reasonable use of the Property." ICA 25 at PDF 76-77, 1470-1471. This error occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected to this error in its Joint Exceptions, ICA 31 at PDF 1366 and 1369. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B. FF # 5

7. The Circuit Court erred when it affirmed the Commission's determination that the "Development, which proposes a charter school that is not specifically intended to service the immediate community surrounding the school, is not consistent with the uses permitted in areas of low density urban use" and that "[a]lthough the County General Plan Public Facilities-Education course of action for South Hilo encourages the establishment of schools as the need arises, the proposed Development, at the subject location, is contrary to the General Plan". ICA 25 at PDF 77, 1470-1471. This error occurred in the Commission Decision and the Circuit FF # 59

Court's Decision and Order. Id. Connections objected to this error in its Joint Exceptions. ICA 31 at PDF 1367-1369. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B.

8. The Circuit Court erred when it affirmed the Commission's determination that "Connections [has not] demonstrated how the development of a regional charter school on the Property that does not specifically service the needs of the immediate community and that is overwhelming objected to by the immediate community is a reasonable site for this facility" and that the "Development is not consistent with the County General Plan, particularly as to the impacts on the immediate community" ICA 25 at PDF 77-78, 1470-1471. This error occurred in the Commission Decision and the Circuit Court's Decision and Order. Id. Connections objected to these alleged errors in its Joint Exceptions. ICA 31 at PDF 1368-1369. The Commission Decision is attached as App. A. The Circuit Court's Decision and Order is attached as App. B.

#### **IV. STANDARD OF REVIEW**

The appeal of the Circuit Court's Decision and Order is a secondary appeal, which means that this Court must determine whether the Decision and Order was either right or wrong. Kolio v. Hawaii Pub. Hous. Auth., 135 Haw. 267, 270-71, 349 P.3d 374, 377-78 (2015). In deciding the merits of this secondary appeal, the Court applies the standards set forth in HRS § 91-14(g) to the Commission's decision, which states in pertinent part:

- (g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
  - (1) In violation of constitutional or statutory provisions; or
  - (2) In excess of the statutory authority or jurisdiction of the agency; or
  - (3) Made upon unlawful procedure; or

BEFORE THE WINDWARD PLANNING COMMISSION

COUNTY OF HAWAI'I

In the Matter of ) SPP No. 12-00138  
)  
CONNECTIONS NEW CENTURY )  
PUBLIC CHARTER SCHOOL AND )  
COMMUNITY BASED EDUCATION )  
SUPPORT SERVICES )  
)  
) CERTIFICATE OF SERVICE  
Application for Special Permit )  
Application No. 12-000138 )  
)  
TMK (3) 2-5-006-141, Kaumana )  
South Hilo, Hawaii )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

Pursuant to Rule 4-3 of the Planning Commissions Rules of Practice and Procedure, I mailed a copy of the foregoing document to the following persons, addressed as follows and postage prepaid:

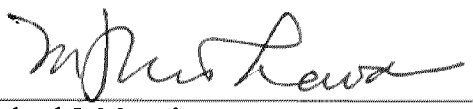
TED H. S. HONG  
P.O. Box 4217  
Hilo, Hawaii 96720

CARTER K. SIU  
235 S. Beretania St., Room 304  
Honolulu, Hawaii 91813

JEAN K. CAMPBELL  
Office of Corp. Counsel  
101 Aupuni St., Suite 325  
Hilo, Hawaii 96720

MELISSA DACAYANAN  
Planning Department  
101 Pauahi Street  
Hilo, Hawaii 96720  
[and by email to Melissa.  
dacayanan@hawaiicounty.gov]

Dated at Kailua-Kona, Hawaii: November 17, 2021.

  
\_\_\_\_\_  
Michael J. Matsukawa  
Attorney for Intervenor





**TED H.S. HONG**  
ATTORNEY AT LAW, L.L.C.

EMPLOYMENT,  
WORKPLACE LAW & LITIGATION

P.O. Box 4217, HILO, HI 96720  
TELEPHONE: (808) 933-1919  
FAX: (808) 935-8281

November 2, 2021

Hon. John R. Replogle  
Chair  
Windward Planning Commission  
Aupuni Center  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

**RE: Remand of SPP 12-000138 to the Windward Planning Commission**  
**Applicant: Connections New Century Public Charter School/Community Based Education Support Services (CBESS)**  
**Tax Map Key: 2-5-006:141**

**Proposed Amendment to the DRAFT County of Hawaii, Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order.**

Dear Chairperson Replogle and Windward Planning Commission Members:

Thank you for allowing my clients to review the DRAFT County of Hawaii, Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order in the above entitled matter.

On behalf of CBESS, my client would like to propose the following amendment to paragraph 24:

<u>Current Draft:</u>	<u>CBESS, Proposed Amendment:</u>
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.	24. The Development would relocate the existing charter school in phases as appropriate, with the high school as the first phase. All students K-12 would utilize the site for agricultural and other trade education.

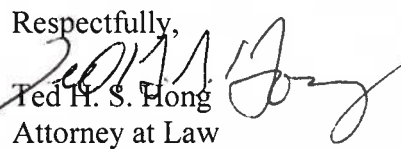
P.O. Box 4217, HILO, HI 96720  
TELEPHONE: (808) 933-1919  
FAX: (808) 935-8281  
WEB: TEDHONGLAW.COM

Connections, due to circumstances, had to give up its lease of the Nani Mau Gardens and is only operating from the Kress Building.



Current Draft:	CBESS, Proposed Amendment:
<p>66. * * *</p> <p>The proposed Development is State Land and therefore is considered a public trust resource. The proposed use is not contrary to the public trust doctrine because the Applicants intend to use the land for educational purposes that will benefit our present and future generations. Further, on the lower campus, the Applicants intend to develop an agricultural program, which would have cultivated gardens to teach children how to grow food. On the upper campus, the Applicants intend to create a forestry/conservation program, which will focus on forest resource management and conservation and forest ecosystem restoration. Both programs are in line with the public trust doctrine's goal to promote the furtherance of a self-sufficient State. There are few higher uses of land than to educate our keiki on how to cultivate, manage and restore the land so that the land may be preserved for future generations</p>	<p>This paragraph should be stricken because it expands the application of the "Public Trust Doctrine" and will have an effect on future projects.</p> <p>The "Public Trust Doctrine" protects forests, water resources and prime agricultural lands from unnecessary urbanization. <i>Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kauai</i>, 130 Hawai'i 407, 426, 312 P.3d 283, 299 (Ct. App. 2013) cert. granted sub nom. <i>Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kaua'i</i>, No. SCWC 29440, 2013 WL 4779589 (Haw. Sept. 4, 2013) and aff'd, 133 Haw. 141, 324 P.3d 951 (2014).</p> <p>The property which was the subject of the Special Permit Application is not classified as "important" by the State Department of Agriculture, but instead, classified as "D" or "Poor" for agricultural activity by the State Land Study Bureau.</p>

CBESS does not have any additional proposed amendments for the Commission's consideration. Thank you for your kind attention to this matter.

Respectfully,  
  
 Ted H. S. Hong  
 Attorney at Law

Attorney for Petitioner  
 Community Based Education Support Services (CBESS)

cc: All parties and counsel

TED H. S. HONG 3569  
Attorney at Law  
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ted@tedhonglaw.com

Attorney for Applicant  
COMMUNITY BASED EDUCATION  
SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

In the Matter of	)	SPP No. 12-000138
	)	
CONNECTIONS NEW CENTURY	)	APPLICANT COMMUNITY BASED
PUBLIC CHARTER SCHOOL and	)	SUPPORT SERVICES' MEMORANDUM
COMMUNITY BASED EDUCATION	)	IN OPPOSITION TO INTERVENOR
SUPPORT SERVICES,	)	JEFFREY GOMES' EXCEPTIONS TO
	)	COUNTY OF HAWAII WINDWARD
Application for Special Permit Application	)	PLANNING COMMISSION'S PROPOSED
No. 12-000138,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW, DECISION AND ORDER ON
TMK: (3) 2-5-006-141; Kaumana, South	)	REMAND, DATED NOVEMBER 1, 2021;
Hilo, Hawaii.	)	CERTIFICATE OF SERVICE
	)	
	)	<u>HEARING:</u>
	)	DATE: November 4, 2021
	)	TIME: 9:00 a.m.
	)	

---

APPLICANT COMMUNITY BASED SUPPORT SERVICES' MEMORANDUM IN  
OPPOSITION TO INTERVENOR JEFFREY GOMES' EXCEPTIONS TO  
COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION and ORDER  
DATED NOVEMBER 1, 2021

Comes Now, Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES,  
(hereinafter referred to as "CBESS"), by and through its undersigned counsel and hereby  
submits its Memorandum in Opposition to Intervenor Jeffrey Gomes' Exceptions to County of

Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, as follows:

**A. OBJECTION**

Intervenor Jeffrey Gomes’ Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, were only served on counsel for Applicant CBESS on November 2, 2021. Counsel for Intervenor continues to play games by having emailed the document to the Windward Planning Commission but only mailed his motion and memorandum on November 1, 2021 and did not have the professional courtesy to email the document to Applicant CBESS’ counsel.

Intervenor Jeffrey Gomes and his counsel’s actions violate Applicant CBESS’ right to due process. Applicant CBESS does not have time to process, analyze and submit an opposition memorandum to challenge and disprove the flawed analysis and argument proffered by Intervenor Gomes and his counsel. Applicant CBESS is deprived of adequate “notice and opportunity to be heard at a meaningful time and in a meaningful manner[.]” on the issues raised by Intervenor Gomes and his counsel. *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai‘i 376, 389, 363 P.3d 224, 237 (2015). Taking any official action based on the intentionally, late submission, would violate Applicant CBESS’ right to due process.

**B. RECONSIDERATION NOT “EXCEPTIONS.”**

Intervenor Jeffrey Gomes’ Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, are not exceptions but another attempt to argue the scope of the rehearing on

remand and the merits of the Special Permit. The Commission previously allowed all parties to submit briefs and argue their positions on the scope of the Intermediate Court of Appeals remand in this case. The Commission held a public meeting on it on August 5, 2021, during which it took testimony from the public and argument from the parties in this matter. The Commission then took action and set the hearing on the Special Permit for October 17, 2021. Even a cursory review of Intervenor Gomes' and Mr. Matsukawa's "exceptions" clearly demonstrates that their submission reargues, rehashes and repeats their prior argument and positions.

Intervenor Gomes and Mr. Matsukawa fraudulently label their extensive filing as "Exceptions" because under the County of Hawaii, Planning Commission Rules of Practice and Procedure (amended 8-9-2021), they are prohibited from filing a motion for reconsideration. Rule 4-31, of the County of Hawaii, Planning Commission Rules of Practice and Procedure (amended 8-9-2021) clearly states:

4-31 Reconsideration of Decision and Order.

The Commission **shall not reconsider its action in any contested case hearing after the effective date of its decision.** (Emphasis added)

Intervenor Gomes and Mr. Matsukawa are deliberately and intentionally trying to circumvent the Commission's rules of procedure by disguising their argument to have the Commission impermissibly reconsider its decision from the October 7, 2021 hearing. Mr. Matsukawa, as former Corporation Counsel for the County of Hawaii should know better. He also has a professional obligation to follow the rules of procedure for all commissions, boards and administrative agencies. Rules 3.3(a)(1) and 3.9, Hawaii Rules of Professional Conduct, a lawyer shall not make a false statement of law to the Commission. In this case, the false

statement is stating that their submission is an “exception” when in reality, it is a motion for reconsideration of the Commission’s decisions on the scope of the remanded hearing made on August 5, 2021 and then on the merits of the Special Permit hearing on October 7, 2021. Their motion is emblematic of their lack of credibility in this case. They think it’s entertaining to watch the Commission thrash about after raising these improper arguments. If the Commission’s rules are to be applied equally to all parties, the Commission should not reward them for their underhanded tactics.

### **C. STANDARD FOR RECONSIDERATION.**

Generally, the standard to consider a Motion for Reconsideration includes:

[T]he purpose of a motion for reconsideration is to allow the parties to **present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion.** Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding. (Citations omitted)

*Tagupa v. Tagupa*, 108 Haw. 459, 465, 121 P.3d 924, 930 (Ct. App. 2005).

The “exceptions” submitted by Intervenor Gomes and Mr. Matsukawa are clearly argument about the scope of the Remand proceeding, that **could have been presented** at the August 5, 2021, by written submission before the hearing or at the hearing through argument. Mr. Matsukawa attached two excerpts of briefs that were submitted to the Intermediate Court of Appeals in the underlying appeal. He then goes on to list what he believes should have been narrowed in terms of the scope of the remanded hearing which was argued and decided on August 5, 2021. Intervenor Gomes and Mr. Matsukawa reargues the merits of the Commission’s hearing and decision at its October 7, 2021 hearing, which granted the Special Permit Application. They are simply relitigating the same matters and raising arguments that they could

and should have made during the October 7, 2021 hearing.

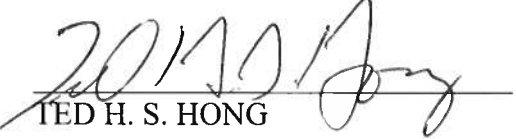
**D. CONCLUSION.**

Applicant CBESS, has at all times, followed the rules and been mindful of the Commission’s role and rules of procedure. Applicant CBESS has been respectful of the process, despite the criminal property damage to its facilities and equipment, trespasses and more recently a physical assault of an employee by surrounding property owners. Intervenor Gomes and Mr. Matsukawa mock the process by asking the Commission to reconsider the scope of the remanded hearing which was decided upon on August 5, 2021. Intervenor Gomes and Mr. Matsukawa show their contempt for the process, the facts, the evidence and truth by filing this frivolous motion for reconsideration as “exceptions.” This is not a game of “Chutes and Ladders.”

Unlike a Court’s rules and procedures, the Commission’s rules and procedures do not allow the Applicant to ask the Commission for an award of attorney’s fees and costs against Intervenor Gomes and Mr. Matsukawa for their frivolous filing.

Accordingly, Applicant CBESS respectfully requests the Commission, reject Intervenor Gomes and Mr. Matsukawa’s Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021.

DATED: Hilo, Hawaii, November 3, 2021.

  
TED H. S. HONG  
Attorney at Law  
Attorney for Applicant  
COMMUNITY BASED EDUCATION  
SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

In the Matter of	)	SPP No. 12-000138
	)	
CONNECTIONS NEW CENTURY	)	CERTIFICATE OF SERVICE
PUBLIC CHARTER SCHOOL and	)	
COMMUNITY BASED EDUCATION	)	
SUPPORT SERVICES,	)	
	)	
Application for Special Permit Application	)	
No. 12-000138,	)	<u>HEARING:</u>
	)	DATE: November 4, 2021
TMK: (3) 2-5-006-141; Kaumana, South	)	TIME: 9:00 a.m.
Hilo, Hawaii.	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the Applicant Community Based Support Services' Memorandum in Opposition to Intervenor Jeffrey Gomes' Exceptions to County of Hawaii Windward Planning Commission's Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, was duly served on the following party in this action, by United States Postal Service, prepaid and by electronic means as indicated:

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Attorney for Planning Director

DATED: Hilo, Hawaii, November 3, 2021



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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 2<sup>nd</sup>, 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**

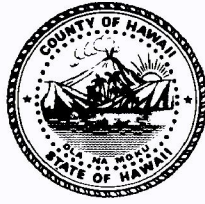
Based upon the preceding Findings of Fact and Conclusions of Law, Special Permit Application SPP No. 12-000138 submitted by Applicants Connections New Century Public Charter School and Community Based Education Support Services to develop a K to 12 charter school campus with dorm facilities and related 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

Mitchell D. Roth  
*Mayor*

Lee E. Lord  
*Managing Director*



John Replogle, Chair  
Gilbert Aguinaldo, Vice-Chair  
Dean Au  
Joseph Clarkson  
Michelle Galimba  
Dennis Lin  
Thomas Raffipiy

## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

November 16, 2021

Ted H.S. Hong, Esq. (via email)  
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Department of the Attorney General  
Education Division  
State Office Tower  
235 S. Beretania Street, Rm. 304  
Honolulu, HI 96813

Dear Sirs:

**SUBJECT: Remand of SPP 12-000138 to the Windward Planning Commission**  
**Applicant: Connections New Century Public Charter School/Community Based Education Support Services (CBESS)**  
**Request: To Develop a K to 12 Charter School Campus with Dorm Facilities and Related Uses**  
**Tax Map Key: 2-5-006:141**

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The Windward Planning Commission, at its meeting on November 4, 2020, reviewed and adopted the proposed Findings of Fact, Conclusions of Law and Decision and Order to approve and send a favorable recommendation to the State Land Use Commission for Special Use Permit SPP 12-000138, to allow the development of a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land situated in the State Land Use Agricultural district with one amendment to Findings of Fact No. 66.

The Windward Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order for Special Use Permit Application No. 12-000138 are enclosed for your reference.

Ted H.S. Hong, Esq.  
Kevin M. Richardson  
Department of the Attorney General  
Michael J. Matsukawa, Esq.  
Page 2  
November 16, 2021

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

  
John R Replogle (Nov 16, 2021 07:04 HST)

John R. Replogle, Chairman  
Windward Planning Commission

LCConnectionsSPP12-138FOFCOLD&Owpc

Enclosure: Findings of Fact, Conclusions of Law, and Decision and Order

cc via email: Malia Kekai, Esq., Deputy Corporation Counsel  
Jean K. Campbell, Esq., Deputy Corporation Counsel  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
State Department of Health  
GIS Section