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County of Hawai'i

WINDWARD PLANNING COMMISSION

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November 16, 2021



Daniel Orodener, Executive Officer
State Land Use Commission
DBEDT
P.O. Box 2359
Honolulu, HI 96804

Dear Mr. Orodener:

SUBJECT: LUC Docket No. SP21-413 Connections/CBESS SPP 12-138
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

In accordance with Chapter 205, Section 205-6, Hawai'i Revised Statutes, we are transmitting the decision and findings of the County of Hawai'i Windward Planning Commission on the above-referenced request 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 project site 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.

The Windward Planning Commission at its duly advertised public hearing held on October 7, 2020, voted for Special Permit SPP 12-000138 to be approved and a favorable recommendation be forwarded to the State Land Use Commission based on the Planning Director's October 31, 2012, revised recommendation, and conditions (enclosed). On November 4, 2021, the Commission adopted the enclosed Findings of Fact, Conclusions of Law, and Decision and Order for Special Use Permit Application No. 12-000138.

Daniel Orodener, Executive Officer
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On October 29, 2021 a flash drive with the historical information and current information dated up to October 26, 2021 was provided to your office. Enclosed are additional documentation on the application received since then. The November 4, 2021 Commission minutes and hearing transcripts will be approved at the December 2, 2021 hearing and will be provided thereafter under separate cover.

Should you have any questions regarding this matter, please contact Christian Kay of the Planning Department at (808) 961-8136.

Sincerely,


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

John R. Replogle, Chairman
Windward Planning Commission

LCconnectionsSPP12-138LUCwpc
Enclosures

cc: Ted Hong, Esq.
Kevin M. Richardson, Department of the Attorney General
Michael Matsukawa, Esq.
Department of Public Works
Department of Water Supply
County Real Property Tax Division

COUNTY OF HAWAI'I PLANNING DEPARTMENT
REVISED RECOMMENDATION

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/CBESS
SPECIAL PERMIT APPLICATION NO. 12-000138 (SPP 12-000138)

Upon review of the request against the guidelines under Rule 6 of the Planning Commission Rules of Practice and Procedures for granting a Special Permit, the Planning Director **recommends that the Planning Commission send a favorable recommendation to the State Land Use Commission** of this request 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. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. This favorable recommendation is based on the following findings:

The applicant has submitted a Special Permit application to develop a new academic campus, which will include an elementary, intermediate, and high school facilities, 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 following is a description of the proposed development:

- **Lower Parcel:** The major school facilities include the elementary, intermediate and high school classroom buildings, the administrative center, the library/resource center, the kitchen/dining facility, a gymnasium/multi-purpose building, green/shade houses, a 6-horse barn, a maintenance building, a 30-person dormitory, a caretaker's residence, and a small facility to house the intergenerational program. These facilities would support a projected 167 elementary students, 107 intermediate students, 107 high school students (381 K through 12 students), and 25 intergenerational clients. The dormitory would serve a maximum of 30 non-traditional students. The buildings will be single story in height. There will be two parking lots (main and secondary) with a total of 140 parking stalls. The applicant will be conducting an agricultural program on the

lower campus. The agricultural program facilities include the green houses, the 6-horse barn, and cultivated gardens. The cultivated gardens would be limited to the lower campus, which may include vegetables, taro, fruit trees, native plants, and ornamental plants. The agricultural program may also include some livestock (e.g., chickens, goats, pigs and horses).

- Upper Parcel: There will be no major school facilities constructed on the upper parcel. A walkway is the only structure being proposed on the upper parcel, which will provide access and viewing opportunities within the 'ōh'ia forest. The walkway would be elevated on posts roughly 4 to 5 feet above grade. Connections intends to use this land area to support a future forestry/conservation program, which focuses on forest resource management and conservation, and forest ecosystem restoration.

The applicant's 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. Currently, Connections operates campuses at the Kress Building in Downtown Hilo and at the Nani Mau Gardens Facility.

According to the applicant, the objective of the request is to allow the applicant to continue its planning efforts to develop a new campus in Kaūmana. Securing the Special Permit would facilitate fundraising efforts so that additional studies and planning/design work can continue. Additionally, approval of the Special Permit would allow the applicant to implement the initial phases of the school while they continue to work at resolving infrastructure and financial constraints. 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.

According to the applicant, funding for the project will be through various sources. The applicant has applied for a long-term, low-interest loan from the United States Department of Agriculture (USDA). Recent communication with the USDA has indicated that approval of the loan looks very promising. If approved, this loan would provide approximately \$8 million dollars to start implementing the project's initial phases (Phase 1, 2 and 3). Future funding is expected from operational money the applicant

receives through rental income from the Kress Building, grants, and private donations. The applicant currently has an active capital campaign to raise funds for the project, which includes annual in-house donations from the school's staff. It is also possible that capital improvement funds and/or facility funds may become available from the State.

In 1999, the Legislature of the State of Hawaii created a new educational initiative with the passage of Act 62, SLH 1999 or "The New Century Charter Schools" law. Charter schools are more autonomous with greater flexibility in decision-making. Charter schools are excluded from many State laws and department rules and regulations. However, charter schools are public schools in that they receive public funds. These schools must still meet all applicable federal, State and County requirements and are not exempt from collective bargaining, discriminatory practice laws, health and safety laws and standards, and the implementation of the Hawaii content and performance standards.

The proposed school is defined as a public school holding a charter to operate as a charter school under chapter 302B (HRS), which have the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management. Each charter school is responsible for selecting their own sites. If a public school has space available, a charter school may seek to enter into an arrangement with the Department of Education for the use of a portion of the school's facilities.

From a planning perspective, this request has proven to be difficult in arriving at a position we are comfortable with. In reviewing this request against the criteria for approval for a Special Permit, the request does meet most of the criteria for approval. The greatest difficulty we encountered was determining whether or not this is an appropriate location for a public charter school whose student body largely consists of students who do not live in this particular section of Hilo. Currently, there are approximately 50 percent of the student body coming from the Puna District and approximately 50 percent coming from different locations in the South Hilo District. The fact remains that as the school is developed and the student body evolves, the school could mature into an institution that more directly serves the residents of this area. As this is a public charter school, they are given flexibility regarding a number of factors that

govern a typical DOE public school, including the location of where students live who attend the school.

In reviewing this land use request for a new K-12 school, we considered several factors. One factor is that a K-12 school should be located in close proximity to where people live and near the center of probable student population for the proposed school. This will enhance integration of the school into the community and thus create a better neighborhood and a more livable community. A school should not be located in an area where the students live a far distance from the school and require students to be transported via buses or vehicles. As mentioned above, there will be an opportunity for students living in the immediate area to attend this facility as the school and the curriculum evolves and matures to be an integral part of the community. Although the development of the school will create some adverse affects to the surrounding property owners, such as increased traffic and noise, these impacts can be reasonably mitigated to minimize the overall impacts.

Another factor we considered is that the new K-12 school should not attempt to isolate itself from the community. The new school should create a sense of community and develop strong connections with the surrounding neighborhood. Schools are often designed to provide programs for the surrounding community, including childcare, after school programs, park facilities with athletic programs, and a place for community meetings. The applicant should make every effort to work with the surrounding community to provide these types of programs.

The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as

amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The request is unusual in that a school is not normally considered agricultural in nature. However, it is reasonable use that a school be located within the Agricultural district because communities within agricultural districts require certain services that support the agricultural community in which they are located, including schools.

In recognizing that lands within the Agricultural district might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. Schools may be permitted the in Agricultural district, provided that a Special Permit is issued for the use.

The subject property is 70.15 acres in size and is situated within the County's Agricultural (A-1a) zoned district. The applicant is proposing to develop a K to 12 charter school campus with dorm facilities and related uses on the subject property. The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Additionally, the soil is classified as "D" or "Poor" by the Land Study Bureau's Detailed Land Classification System and is identified mainly as pāhoehoe lava flow (rLW).by the U.S. Soil Survey.

Based on the agricultural potential of the subject property, the proposed use of a school for this property is considered an unusual and reasonable use of agricultural land, which will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. As discussed above, the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. Surrounding lands to the south and west are similarly zoned A-1a. Further south are properties zoned A-20a and A-10a. To the north are properties zoned RS-10 and RS-15, with some properties zoned A-3a further north across Kaūmana Drive. There is a property zoned Open that adjoins the lower parcel to the northeast. Surrounding uses consist mainly of single-family residences and vacant lands, with some agricultural activity occurring in the area. 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 the majority of facilities will be located are located to the north along Edita Street and Kaumana Drive

An adverse affect is defined as an unwanted and unanticipated result of taking a particular action. The proposed action is to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres of land. The anticipated impacts that would adversely affect surrounding properties from the proposed school are an increase in traffic to the area and an increase of noise. Although there are anticipated adverse impacts that would be created by this new use, these impacts can be mitigated to minimize their effects to surrounding property owners. Conditions of approval will be added to address traffic and noise that will mitigate and minimize these impacts.

A Traffic Impact Analysis Report (TIAR) was conducted as part of the Environmental Assessment for the project. The report concluded that based on the level-of-service, all controlled traffic movements are expected to operate at better than acceptable levels-of-service and no additional mitigation measures are recommended at this time. Further, the report stated that the level-of-service analysis concluded that the project driveways along Edita Street will operate at acceptable levels-of-service without separate left turn lanes. However, school related vehicles turning left into the project will

cause delays to through traffic along Edita Street unless separate left turn lanes are provided. To minimize the impact of project related traffic on through traffic, The TIAR recommended that a separate left turn lane be provided for left turns from eastbound Edita Street into the Lower Campus at Road A. Additionally, to help mitigate noise and visual impacts, landscaping will be required along the perimeter of the property.

Based on the above discussion, the proposed use is anticipated to have an adverse affect on the surrounding properties, but these adverse impacts can be mitigated to minimize these impacts through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the subject property is via Edita Street, which extends from Kaūmana Drive. Both Edita Street and Kaūmana Drive are County roads. Edita Street has a 60-foot right-of-way width, which includes a 48-foot pavement width fronting the project site. The paved area accommodates two travel lanes (20 feet), and there are paved shoulders fronting the subject property. The road is in good condition.

As previously mentioned, a condition of approval will be added to require the applicant to construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at Road A to help minimize the impact of the project related traffic to those traveling on Edita Street. In addition, comments were received from the Department of Public Works-Traffic Division. DPW-Traffic Division is requesting, among other things, that the applicant 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. A condition of approval will be included as part of the recommendation to reflect this request from the DPW-Traffic Division.

Additionally, the Police Department commented that although the section fronting the proposed site is wide with a paved shoulder; the section of Edita Street from Kaūmana Drive leading to this site has no pavement off of the travel portion of the roadway. The shoulder in this area is grass/muddy and not desirable for pedestrian travel. This causes pedestrian traffic to walk on the roadway. If approved, there will be a substantial increase in pedestrian traffic as a result of this project. That, combined with the lack of sidewalks in this area, will make it unsafe for pedestrian traffic.

There are sufficient paved shoulders from the subject property to Mele Manu Street along Edita Street. There are only grass shoulders from the subject property to Kaūmana Drive along Edita Street. To address the comments from the Police Department, a condition of approval will be added requiring the applicant to add 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.

County water is available for up to a maximum daily usage of 4,200 gallons per day 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. The property is assigned seven (7) units of water, which equates to an average usage of 600 gallons per day per unit of water (4,200 gpd). Additionally, the existing 8-inch waterline within Edita Street is looped and therefore adequate to provide the required 2,000 gallons per minute of flow for fire protection, as per the Department's Water System Standards for schools. Potable water needs will be met by connecting to the existing county water supply infrastructure. Non-potable water supply needs will be met with an extensive rainwater collection system consisting of catchment tanks, storage reservoirs/tanks with a network of water lines to distribute the collected water throughout the campus. The potable water system and the catchment system cannot be interconnected. It may become evident during the design of the development that a potable well is needed at which time the applicant will then need to conduct additional detailed analyses and apply for additional permits.

There is no municipal wastewater system currently serving the Kaūmana area. The applicant will have to provide its own wastewater system meeting with the State

Department of Health regulations. The applicant intends to implement a biological wastewater system unless it is not economically feasible at which time the applicant will then resort to installing a traditional septic system with leach fields or other disposal system meeting with the approval of the Department of Health.

The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity and telephone are available to the property. A condition of approval will be included to require the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements. Based on the above discussion, the requested use should not burden public agencies to provide additional services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. Although the property and surrounding areas are designated for agricultural uses by both State and County land use laws, through the issuance of a Special Permit, various "non-agricultural" services may be allowed, including schools.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Additionally, the soil is classified as "D" or "Poor" by the Land Study Bureau's Detailed Land Classification System and is identified mainly as pāhoehoe lava flow (rLW).by the U.S. Soil Survey. Based on this information, the land upon which the proposed use is sought is unsuited for agricultural uses permitted within the Agricultural District.

Although the land is unsuited for agricultural uses, the applicant is proposing to have an agricultural program and a forestry/conservation program. The applicant will be conducting an agricultural program on the lower campus. The agricultural program

facilities include the green houses, the 6-horse barn, and cultivated gardens. The cultivated gardens would be limited to the lower campus, which may include vegetables, taro, fruit trees, native plants, and ornamental plants. The agricultural program may also include some livestock (e.g., chickens, goats, pigs and horses). Additionally, the applicant intends to use the upper parcel to support a future forestry/conservation program, which focuses on forest resource management and conservation, and forest ecosystem restoration.

(F) The use will not substantially alter or change the essential character of the land and the present use. The current character and present use of the subject property is undeveloped, vacant of structures and uses. The current character of the surrounding area is residential to the north and residential/agricultural to the south. The present use of the surrounding area is mainly residential with some agricultural activity and vacant land.

The proposed school will alter or change the essential character of the land and its present use from its current undeveloped character. The applicant has proposed to construct the buildings as single story structures, similar to the surrounding residential community, to help minimize the change to the essential character of the land. The applicant is encouraged to design the campus to match the surrounding rural character rather than having an institutional character typical of a public school campus.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in an area identified as Low Density Urban in the General Plan. The Low Density Urban designation allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses where overall residential density may be up to six units per acre. The request will not be contrary to the LUPAG Map designation for this

area. Additionally, the approval of the subject request would support the following goals and policies of the Economic, Public Facilities and Land Use elements of General Plan.

Economic Element

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

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

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

Land Use-Public Lands

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

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

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The subject property is located over three miles to the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. There is no designated public access to the mountain areas over the property. There is no record of traditional Hawaiian rights being practiced on the property.

Additionally, an archaeological assessment was conducted of the property in 2008 by Pacific Legacy, Inc. Research found little evidence of human activity in the project area during the pre-Contact period. The entire project area is situated on the 1880-1881 lava flow and as a result it is surmised that any pre-existing archaeological or historic

sites within the project area would have been destroyed by the flow. During the field investigation, no archaeological sites were encountered and it appears that subsequent to the 1880-1881 flow, permanent human use of the area stopped. By letter dated August 17, 2010, Connections Public Charter School (through Wil Chee – Planning and Environmental) requested a “no-effect” letter from SHPD based on the findings of the archaeological assessment survey and field inspection of Kaūmana Cave. To date, no response has been received from SHPD.

Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, the proposed request to develop a K to 12 charter school campus with dorm facilities and related uses on approximately 70 acres is an unusual and reasonable use of land which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The favorable recommendation recommends the following conditions for the proposed use:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant(s) shall submit the anticipated maximum daily water usage

calculations as prepared by a professional engineer licensed in the State of Hawai'i and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this permit. The calculations must include the estimated peak flow in gallons per minute and total estimated maximum daily potable water demand in gallons per day.

3. The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
4. Construction of the high school phase shall be completed within ten (10) years from the effective date of this permit. Prior to the start of construction for each separate school phase (high, intermediate, elementary), the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval for the development of each proposed phase from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping along the perimeter of the entire 70-acre project site shall also be indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) buffer yard requirements for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) zone.
5. On plans submitted for Plan Approval review or any land alteration permit(s), the applicant shall identify the location of Kaūmana Cave within the subject property and to ensure its protection, also identify a 100-foot wide preservation buffer along its entire perimeter. No use, structures or land alteration activities shall be permitted within this Kaūmana Cave preservation buffer area.
6. All driveway connections to Edita Street shall conform to Chapter 22, County Streets, of the Hawai'i County Code.

7. The applicant shall construct a separate turn lane for left turns from eastbound Edita Street into the Lower Campus at Road A meeting with the approval of the Department of Public Works.
8. The applicant shall construct an 8-foot paved shoulder along the northeastern (makai) side of Edita Street from the south end of the subject property to the intersection of Edita Street and Kaūmana Drive (Standard Detail R-34) meeting with the approval of the Department of Public Works.
9. The applicant shall submit a Traffic Management Plan to be reviewed and approved by the Department of Public Works-Traffic Division in consultation with the Police Department. 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.
10. The applicant shall design project driveways/roads, parking and loading areas so all school traffic and congestion is confined to the project site and does not overflow onto County roads.
11. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. A drainage plan may be required by the Plan Approval process in accordance with Section 25-2-72(3) of the Hawai'i County Code.
12. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
13. The method of sewage disposal shall meet with the requirements of the Department of Health.

14. Prior to any ground altering activities the applicant shall submit a monitoring plan in accordance with HAR 13-279 to the DLNR-SHPD for review and approval. A copy of the approved monitoring plan shall be provided to the Planning Department prior to issuance of Final Plan Approval.
15. All ground altering activities associated with the proposed development shall be monitored by a qualified archaeologist in a manner meeting with the approval of the DLNR-SHPD.
16. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
18. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.
19. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

Windward Planning Commission
County of Hawai'i
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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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. PROPOSED DEVELOPMENT

A. Description of Proposed Use

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

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

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

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

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

B. PUBLIC UTILITIES AND SERVICES

Access

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

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

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

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

Traffic

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

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

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

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

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

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

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

Water

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

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

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

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

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

Wastewater

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

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

Drainage

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

Electric/Phone

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

Public Safety

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

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY AND SURROUNDING AREAS

47. The Property is presently vacant and undeveloped.

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

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

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

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

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

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

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

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

IV. STATE AND COUNTY PLANS

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

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

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

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

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

V. SPECIAL PERMIT REQUIREMENTS

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

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

...

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

...

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

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

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

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

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

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

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

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

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

VI. CONFORMANCE WITH SPECIAL PERMIT CRITERIA

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

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

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

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

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

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

B. The Desired Use Would Not Adversely Affect Surrounding Properties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Economic Element – Goal

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

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

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

Land Use-Public Lands

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

VII. THE PUBLIC TRUST DOCTRINE

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

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

CONCLUSIONS OF LAW

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

DECISION AND ORDER

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

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

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