LUC Docket No. SP21-413
Connections New Century Public Charter School/
CBESS
Kaūmana, South Hilo, Island of Hawaiʻi
TMK No. 2-5-006:141

Staff Report

Hearing and Action Meeting
January 19-20, 2022

Submitted: January 18, 2022

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Executive Officer
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1. EXPLANATION OF PROCESS

The Special Permit process is unlike that used for district boundary amendments. The official evidentiary record is developed at the county-level before its Planning Commission. The in-depth review process is conducted by the County Department of Planning (“DP”) and a report with a recommendation is presented to the County Planning Commission. The applicant can and usually does present a case, complete with expert witnesses, to the County Planning Commission. Where the County Planning Commission approves a Special Permit, it makes a decision based on the record, sets conditions to be placed on the project, and forwards a recommendation to the LUC. A denial at the County level does not result in the Special Permit being forwarded to the LUC for consideration.

The LUC’s decision must be made based on the record developed at the county-level and any amendments to conditions or additional conditions must be based on that same record. The LUC needs to be careful about allowing the introduction of any new information, whether inadvertently or purposely, into its deliberative process that might require a remand back to the County.

Section 205-6, Hawai‘i Revised Statutes (HRS), and Section 15-15-96(a), Hawai‘i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may:

approve,
approve with modification,
or deny the Application.

The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval; so long as the additional restrictions or conditions are based on evidence contained in the record received from the County.

Guidelines for Special Permits
The guidelines for Special Permits are contained within 15-15-95, HAR, that allows certain “unusual and reasonable” uses within the Agricultural and Rural Districts. These guidelines are to be used in determining whether a proposed use is “unusual and reasonable.”

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.
2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonably burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

2. BACKGROUND AND PROCEDURAL MATTERS

**Background**

Connections is a public charter school that operates an elementary and middle school in Hilo and a high school located just outside of Hilo. CBESS is a domestic non-profit corporation that supports and raises funds for Connections. Connections wishes to consolidate its campuses and so it sought to develop a new campus on 70.15 acres of land located within the State Land Use Agricultural District, at Ponahawai, Kūkūau 2nd, South Hilo, Hawai‘i, commonly referred to as the “Kaūmana” area of Hilo (Property). Connections proposes to develop a charter school campus with dorm facilities, a number of school buildings, and other related improvements for students from kindergarten through twelfth grade.

In March of 2008, Connections obtained approval, in principle, for a direct lease of the Property for school purposes from the State Board of Land and Natural Resources (“BLNR”)
(Memorandum Opinion by ICA 1/31/2020). A Direct Lease was issued by BLNR in January 2011.

The Applicant performed an Environmental Assessment under Chapter 343, HRS and the Department of Land and Natural Resources made a determination of “Finding of No Significant Impact” and notified OEQC of this determination via a letter dated October 22, 2010. (PD Recommendation, pdf page 52, Bates Stamp #470, FOF # 59).

Procedural Matters
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”).

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


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.

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.

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.

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.

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.

Retired Judge Sandra Pechter 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.

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 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.

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

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

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”).

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

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.

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

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.

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?”

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

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.

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.

On October 8, 2021, the LUC received an email notification from the Windward Planning Commission (“WPC”) that SUP12-000138 had been approved by the WPC and that the minutes and adoption of the minutes would be forthcoming in early December.

On November 3, 2021, the LUC and WPC staff discussed via email and telephone how to best transfer the vast amounts of records associated with this docket.

On November 16, 2021, the LUC received a request from WPC staff to provide electronic records in lieu of paper documents.

On December 7, 2021, the LUC memorialized the authorization of the approval of the use of digital files with written correspondence to the WPC.
On December 10, 2021, the LUC received the initial transmittal of the record from the Windward Planning Commission.

On December 21, 2021, the LUC received the County Planning Commission’s submittal of the record memorializing their approving the Special Permit application; however, it was missing some files. (Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order dated November 4, 2021; and County Meeting Minutes of November 24, 2021\(^1\)).

On December 28, 2021, the LUC received a Notice of Appearance of Intervenor Jeffery Gomes’ Attorney, Michael Matsukawa.

On January 4, 2022, the LUC received Applicant Connections New Charter School’s Notice of Representation by Deputy Attorney General Kevin M. Richardson

On January 7, 2022, the LUC mailed the Agenda Notice for the January 19-20, 2022 meeting to the Parties, Statewide and County lists.

On January 10, 2022, the LUC received County of Hawai‘i Planning Department’s Notice of Representation by Deputy Corporation Counsel Jean Campbell.

Also, on January 10, 2022, LUC Staff received copies of the Third Circuit Court Decision and Order and Third Circuit Court First Amended Final Judgment from the WPC and determined that the docket file was complete as of this date. (LUC email to WPC dated January 10, 2022.).

On January 11, 2022, the LUC received County of Hawai‘i Windward Planning Commission’s Notice of Representation by Deputy Corporation Counsel Malia Kekai and public testimony from Linda Pexa.

\(^1\) County Circuit Court Decision and Final Judgment was received on January 10, 2022 and that date is used to determine the application complete date.
3. SUMMARY OF PROPOSED USE

The area of the subject application is located at Kaūmana, South Hilo, Island of Hawai‘i. The site consists of an approximately 70.15-acre portions (“Petition Area”) and the Special Permit 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 Property, together with related uses on the 70-acre parcel of land. The property 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.

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.

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.
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.

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

4. PLANNING COMMISSION REVISED RECOMMENDATION (This revised recommendation was submitted to be included with the WPC’s final D&O as a single document, but the D&O language does not incorporate the Revised Recommendation into the final D&O. Only FOF # 21 mentions the Revised Recommendations. LUC staff made notes in “( )” to indicate questions or comments that will be noted in Staff Recommendations. The ICA opinions which affect the D&O is noted below. This staff report will concentrate on those portions where staff felt that the Commission may want further clarification on.

This Special Permit Application had a lengthy and complicated record as demonstrated by the procedural record. The Intermediate Court of Appeals imposed its decision upon the Planning Commission and the result was a final Decision and Order that included the Planning Department’s Revised Recommendations as part of its Decision and Order. LUC Staff had to also overlay and review the impact of the ICA decision upon the County’s final submittals.

The ICA Memorandum Opinion’s vacated the Circuit Court’s July 14, 2015 Order and January 13, 2017 Final Judgment and the WPC’s May 19, 2014 Decisions and Order, and remanded the case back to the WPC for further proceedings consistent with its Memorandum
Opinion.

The Windward Planning Commission (“WPC”) then prepared revised recommendations which were included with the Decision and Order that was approved by the WPC and sent to the LUC lacking many specific to make the Decision and Order effective.

The ICA opinion considered matters in the areas of:

- Affect on Surrounding Properties-Traffic Concerns- ICA stated that it could not conclude that the PC had erred on adopting FOF 18, 46, and 47.
- Burden on Public Utilities- Water Allocation concerns- ICA reviewed FOF 21, 48 and 50 and found them erroneous, and FOF 49 unclear. FOF51 was also to be vacated.
- Unusual Conditions, Trends and Needs-Compatibility of an education facility located in an area designated for low density urban use- ICA reviewed FOF 14 and 52 and found them questionable.
- Suitability of Land for Agricultural Uses- ICA concluded that the PC must vacate its FOF 55
- The General Plan and other Plans- The ICA reviewed the various plans that it thought were applicable to this case to determine the jurisdictional powers that the Planning Direction and the Planning Commission had in planning and permitting matters.

On page 38 of the opinion, the ICA does recognize how HRS§205-6(c )provides that the Planning Commission has the discretion to grant a special permit “only when the use would promote the effectiveness and objectives of [HRS Chapter 205].” The general plan is one of the means used to further the objectives of HRS Chapter 205. See CCH§ 3-15 (general plan sets forth the council’s long-range policy for the comprehensive physical, economic, environmental, and socio-cultural well-being of the county and “shall be designed to assure the coordinated development of the county and to promote the general welfare and prosperity of its people”.

The ICA goes on to recognize how HRS 205-17, -2, and -18 factor into the county planning process and how HRS 205-6 ( c ) authorizes the Planning Commission to consider the general plan in making a permitting decision.

The ICA could not determine why building a school in a low density urban area is contrary to the General Plan (pg. 41) and found FOF 59 and 62 arbitrary and capricious and COL 5 to be inconsistent with the County General Plan.
The ICA also directed that FOF 63 and COL 4 be vacated and concluded that the Circuit Court’s July 14, 2015 Order Affirming and January 13, 2017 Final Judgement and the Commission’s May 12, 2014 Decision and Order are vacated and remanded the case to the Planning Commission for further proceedings consistent with the Memorandum Opinion on January 31, 2020.

The County’s analysis of the SP application’s conformance with Special Permit were 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 is (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. (County Revised Recommendation, pg. 4)

In addition to the above listed criteria, the Planning Commission considered the criteria listed under Section 6- 3( b)( 5) ( A) through( G). In considering the criteria, the Planning Director recommended the following (County Revised Recommendation, pgs.6-12):

(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 agricultural lands.

The ICA opinion cited references and reasoned that guidelines had been adopted, pursuant to HRS 205, that require the Planning Commission to consider the following criteria in determining whether a proposed use within an agricultural district is an “unusual and reasonable use” and spoke of how HAR§15-15-95(b) (eff. 2000) and the County rules of Practice and Procedures Rule 6-3(b) (5) (A)-€ (2016) set forth criteria that must be considered by the Planning Commission when an application for a special permit is sought.

The “shall not be contrary” argument lacks strong evidence of why the Special Permit should be granted as the proposed permanent school facility will have an adverse impact on the preservation and agricultural use (though soil rating is poor) of the area.
LUC staff would note that the proposed project is not only a school, but it will also provide dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Property. It does not appear to the LUC staff that the ICA remembered to include the additional proposed services that would be provided by the facility.

(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 Kaūmana 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.

The ICA opinion recognized the Petitioners’ civil engineer expert Phillip J. Rowell’s Traffic Impact Assessment Report (“TIAR”) in its decision making. Mr. Rowell did acknowledge that the LUC would require an updated study and the ICA could not conclude that the Planning Commission had erred in adopting FOFs 18, 46, and 47.
and that, even with the proposed traffic mitigation efforts, traffic stemming from the Development would have an adverse effect on surrounding properties.

The passage of time and continued development in the area may have had a significant adverse effect and it is probable that this criteria would yield different results if another TIAR were conducted presently.

(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.

The ICA opinion focused mainly on the project issues of Traffic and Water. The Planning Commission was directed to reconsider any weight it assigned to those matters. The PC, without assigning time limits to this project leaves open huge gaps in County Planning to coordinate development of resources to support the proposed project.

The ICA recognized that the PC failed to identify how the water usage standards were established and by what authority. The revised recommendations and the D&O do not provide that information.

The additional proposed uses to provide dorm facilities, and an intergenerational program that would provide childcare and elder care at a single facility on the Property were not addressed.

(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.

The ICA found that the PC’s reasons to deny the Special Permit for this portion of the D&O inadequate. LUC staff did not find more substance included in the Revised Recommendations and Final D&O presented to the LUC.

(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.

The ICA did not find this a reason to deny the Special Permit.

(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.

The ICA had FOF 55 vacated and this section does not have much substance to demonstrate how the use will not substantially alter or change the essential character of the land and the present use.

(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 ICA defines the jurisdictions of the Planning Director and the Planning Commission but does not provide direction on how the Special Permit will contribute to achieving the goals of the stated plans.
The lack of clarity and details on how to maintain the designated Land Uses when permanent structures and urban-like proposed uses are involved under a Special Permit blur established definitions that the use of a district boundary amendment would solve.

**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 (no reference as to source- could be from AIS).

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 Ka‘ūmana 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.

The Planning Commission attempted to meet the ICA Memorandum of Opinion but did not include the usual extensive justifications that the LUC staff has come to expect from County Permits. This D&O has minimal explanations and findings as LUC staff has noted.
The Planning Department and Applicant addressed the Public Utilities and Services issues within the Findings section (Final Hawai`i County FOF #27-46) of its Decision and Order. However, LUC staff was only able to find the County’s continued reliance on FOF #21 to express how the required Conditions of the final Decision and Order would address the applicable conditions for this Special Permit mentioned in the various Findings of Fact.

FOF 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.

LUC staff could only find language in the WPC’s Revised Recommendation to note that the approval obligated the Applicant to comply with government requirements (PD Revised Recommendation, pg. 12):

“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.”

The favorable PD revised recommendation lists 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 Kaumana 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 Kaumana Cave preservation buffer area.

6. All driveway connections to Edita Street shall conform to Chapter 22, County Streets, of the Hawai‘i County Code. 13-

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 Kaumana 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 Hawaiʻi 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-SHPD) 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.

LUC staff again notes that the County used the Finding of Fact section in the Decision and Order to address or resolve the various considerations, requirements and details regarding Access, Traffic, Water, Wastewater, Drainage, Electric/Phone and Public Safety matters within the order, making it difficult to report on since they are contained in separate documents.

In an effort to address the conditions as presented, the Findings are listed below and the Planning Department or Agency recommendations are highlighted to illustrate how vague and general the responses/remedies are:

**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.” *LUC Staff again notes that there is no acknowledgement by Applicant within this order other the FOF 21 to assure compliance-

Water

The ICA was unable to determine how the water usage standards were established and by what authority. The revised recommendations and the D&O still do not provide that information.

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. (at whose expense? Can LUC assume Applicant concurs to this infrastructure cost?)

40. The Applicants have also proposed (not agreed?) 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 (days?) 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.

6. QUESTIONS TO ASK COUNTY AND MISSING PD REVISED RECOMMENDATION

**IMPORTANT TOPICS**

1. Need a complete explanation of the water issue, especially the sustainable yield and how the water for full buildout was going to be obtained. It also needs to be mentioned that the ICA concluded that since there was enough water for the initial phase of the project and the Applicants could continue to seek how this need for water would be met. This would appear to be a failure of its obligation under the public trust doctrine.

2. What about the cave? Although it is part of the Environmental Assessment, was it given sufficient weight during the BLNR proceeding or when the County Planning Department reviewed the proposed project?
3. The nature of the development also needs to be thoroughly examined. It looks like what they are proposing to build is not simply a school but a complex including dorm residences and care facilities for children and Seniors. Doesn’t that take it out of being a “school”? If so, this is even more evidence that it is an intended commercial operation and urban use. With such planned future uses, it will have permanent structures, allowed urban activities and thus, should be the subject of a DBA. Also, doesn’t that take it out of the list of allowed uses that can be subject to an SP under the county code.

4. Are the studies used to get the FONSI still valid? They are 11 years old.

5. Was the original EA sufficient or should a full EIS have been done?

6. What do the surrounding areas look like from a Land Use District standpoint (LUC’s maps illustrate that the surrounding area has been in the Urban designation since August 23, 1964- see attached maps)

7. Why did the Planning Commission feel it did not need to re-open the case after the ICA decision for more evidence? Is there something in the record that supports the decision not to go for more evidence?

8. There is no discussion of the ICA decision and what it means. The parties should be questioned on how they interpret it. Are we bound by what appears to be a decision by the ICA than the permit should have been granted or can we look at the evidence and determine that there is enough evidence to support a different conclusion? In particular what about the requirement that the SP meet the intent and purpose of Chapter 205?

9. Why is there is there no end date to the SP?

10. Is this petition a legitimate SP or should it be a DBA?

11. If a requirement is that the land is not be suitable for its designated use (Agriculture) how come they are proposing to do agricultural activity on the property? The ICA did not find validity in this argument.

Archaeological Assessment

PD’s Proposed Decision and Order’s FOF 50 (PD Revised Recommendation pg. 11) does not detail how an Archaeological Impact Assessment (“AIS”) for the Petition Area was completed in 2008 by Pacific Legacy, Inc. Research. The fieldwork for the study found little evidence of human activity during the pre-Contact period and noted that the entire project area was situated on the 1880-1881 lava flow, thus surmising that any pre-archaeological or historic sites within the project area would have been destroyed by the flow. The report was completed and by letter dated August 17, 2010, Connections Charter School (through Wil Chee- Planning and Environmental) requested a “no-effect” letter from SHPD based on the findings of the AIS.
survey and field inspection of Kaūmana Cave. No response had been received by the issue date of the Revised Recommendation, and no FOF acknowledging a SHPD response is in the Final Decision and Order.

**Ka Pa’akai Analysis**

On page 16 of the PD’s revised recommendations, there are no details of how or who determined whether any valued cultural, historical, or natural resources were present within the project site. LUC staff suggests that the Commission determine if the AIS report on the lava flow of the 1800s was sufficient and is SHPD satisfied that the archeological assessment was enough? Also, was there a consultation process used to confirm whether any culture-historical background or traditional and customary practices that formerly took place within the general project area vicinity?

**Public Trust Doctrine**

Included in the Decision Order as FOF 66 but only cited without an explanation of how it applies to this Special Permit Application.

6. **STATE OFFICE OF PLANNING AND SUSTAINABILITY COMMENTS**

   OPSD had not submitted any comments

OP should be questioned as to:

   o Why they did not submit a position statement given the complexity of the issue?
   o Why they have not identified any policy issues associated with the use of an SP process and a permit with no end date to grant what is clearly an urban use?
   o Why there is no discussion of the ICA decision and what it means.

      o The parties should also be questioned on how they interpret it.
      o Are we bound by what appears to be a decision by the ICA than the permit should have been granted or can we look at the evidence and determine that there is enough evidence to support a different conclusion? In particular what about the requirement that the SP meet the intent and purpose of Chapter 205?
      o OPSD should be asked to explain how they feel, from a policy standpoint, that this SP fits into the intent and purpose of Chapter 205.
      o Have there been any changed circumstances that would render the old studies, especially water and traffic, stale given that they are 11 years old?
      o Is the Chapter 343 analysis sufficient?
      o Was the public trust doctrine analysis undertaken by the PC and the ICA, particularly with regard to the water issue, sufficient or properly done?
      o Where in the PC process was the Kapa’a Kai analysis done?
Given the prior decisions of this commission, is a decision to support an SP with no time limit and that grants a permanent urban use consistent with precedent?

7. STAFF RECOMMENDATIONS

Section 205-6, HRS, and Section 15-15-96(a), HAR, provides the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. However, any modifications or additional restrictions must be based on the record as developed by the County Planning Commission. The LUC may also remand the Application to the Planning Commission for further proceedings if they determine that additional consideration of new information, relevant to the application, is warranted.

Staff is uncertain that sufficient information exists that the Petitioner has met the guidelines for a State Special Permit and has the following concerns.

**Use of a SP vs DBA**

SPs have generally been viewed as appropriate for projects that do not clearly fit into the Agricultural or Urban designations and this project can clearly been seen as a permanent urban use. SPs are generally granted for uses that have a recognizable ends date and are uses that are not permanent in nature (rock quarry’s, solar projects, etc.) such that the land can be returned to its original state. This project is not consistent with the types of uses we have usually granted SPs for.
**Duration of Permit**

The documented record from the County includes the Planning Commission’s record memorializing their decision and identifying the 19 conditions they recommended, the Special Permit application and supporting documents, the Planning Director’s Report, and approved hearing transcripts/minutes. However, in the final Decision and Order, it is unclear what span of time the Permit will be effective for, and what conditions the Application’s approval is subject to. County’s condition 18 (PD Revised Recommendations) makes reference to time and compliance, and seems to infer that County had a time element in mind but did not include it.

OPSD’s letter of October 3, 2012 recognizes that:

“the applicant and the landowner have the discretion to apply for a Special Permit for the proposed project, the proposed school will be developed over an extended time period and will establish a permanent use and facility on land in the Agricultural District. Pursuant to HAR §15-15-95€, the county planning commission must impose time limits on project development and the duration of a Special Permit. The applicant and fee owner may wish to consider whether reclassification to the State Rural or Urban Districts may be appropriate in the future to facilitate permitting of planned facilities.”

The County’s Decision and Order imposes no “time-limits” on the proposed Special Permit and the State’s interests are protected by General Lease No. S-6049 issued and approved by the Department of Land and Natural Resources – Board of Land and Natural Resources on January 22, 2016 under Section 171-36(a)(5), Hawai‘i Revised Statutes, as amended. The 65 year lease term commenced on February 1, 2013 and expires on January 31, 2078. The first rental reopening is scheduled for February 1, 2023. The current stated annual rental is $480.00 per annum.

Lease term No. 8 Improvements notes that:

“The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and
become the property of the Lessor or shall be removed by Lessee at Lessee’s sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.”

Lease term No. 9. Repairs to improvements notes that:

“The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.”

Since the description of the facility clearly identifies it as an urban or rural permanent structure, the County’s use of its Special Permit process to initially allow it under County’s Rule 6, the State Land Use Law and Regulations should be applied to better designate it to match the emerging urban/rural nature of the surrounding area that the County General Plan will be reviewing over the coming years.

There is no clear finding as to when the SP should expire as suggested by the OPSD letter of October 3, 2012.

**Access and Traffic (FOF 26-36)**

FOF 26 states that the proposed development in intended to be constructed in 9 phases and completed within 16 to 25 years, with the first phase including the caretaker’s residence, high school, and administration building, with a projected opening within 2.5 to 3.5 years.

With no firm timetable, how can the State and County be assured that Applicant will perform as expected to enable associated infrastructure planning and funding to meet the public’s needs?
The County PD recognizes that the project will have an adverse impact upon the Community (PD Revised Recommendations, Section 6-3 (b)(5) (B), pg. 12) but relies on a TIAR done in 2010 (FOF31), the Hawai‘i County Police Department’s and the Hawai`i County Department of Public Works recommendations during its consideration of the situation. (FOF 27-36)

A more comprehensive updated and detailed review for the issues of access and traffic may be needed to allow the County to better forecast needed transitional development in the area to meet the community’s demands. The project completion timetable is critical to this issue as the County’s burden of providing adequate public services and ensuring public safety is at risk if adequate funding and resources are not in place when needed.

**Water (FOF 37-41), Wastewater (FOF42-43), Drainage (FOF44)**

FOF 37-39 describes the current water supply infrastructure and available capacities to meet the estimated needs of the proposed project. FOF 39 states that potable water needs will be met by connecting to the existing water system. What is not clear is will it be at the Applicant’s expense or the County’s?

Similarly, FOF 40 states that Applicant has proposed to meet non-potable water supply needs by developing an extensive rainwater collection system. This language is quite different from Applicant “agrees or commits to meet” in the opinion of staff. This also applies to the language of FOF 43 and 44.
The Commission also needs to determine what 180 is referencing in FOF 41 or confirm that it is days or weeks etc.- the time element is missing.

**Actions the Commission may take:**

1. Grant the Permit;

2. Remand the matter back to the county for further proceedings, enumerating what the county should address. This could include legal issues stemming from the ICA decision on developing a more complete record to support its findings;

3. Deny the SP for any of the reasons contained in 15-15-95 HAR, including that the SP is inconsistent with the policy and purpose of 205 HRS.; or

4. Grant the SP with conditions including: Time limits, TIAR and other study updates, conditions with regard to water, etc. The Commission may also require that the Applicant file a petition for a DBA within a certain period and complete it within a certain period prior to beginning construction.

Also, additional Conditions are suggested if the Petition is granted.

If the LUC is inclined to approve the Application, staff recommends that the LUC make sure to include in any motion the following language to make the record clear and provide staff with specific directions in drafting the LUC’s Decision and Order:

Additional Suggested Conditions:
1. That the Applicant seeks a District Boundary Amendment prior to substantial commencement of construction within a year of the executed Decision and Order in this matter to align its development’s land use with the development expected to occur in the surrounding area during the lifespan of the 65 year lease.

2. In its District Boundary Amendment Petition, Applicant will provide a project completion timetable that accurately reflects and reports on expected progress to be made in achieving the representations and commitments made to the Commission regarding development of all parts of the proposed campus.

3. Water: 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. Should the applicant utilize more than the maximum average daily usage of potable water (4,200gpd) from the existing County 8-inch water line, the applicant will be required to secure or construct an additional source of potable water or limit the number of students to the amount of potable water available.

4. Applicant will seek and provide to the Commission by June 30, 2022 the missing “no effect” SHPD letter that needs to be obtained prior to the issuance of building permits. Any specific required condition of such approval may be added to the CUP or grading permit or building permit at the discretion of the Director of the PD. (County D&O FOF 50)

5. A Ka Pa`akai Analysis (PD Revised Recommendation ) was not reported as completed to determine whether any valued cultural, historical, or natural resources were present within the project site. A review of the culture-historical background material in conjunction with the results of the consultation process to attempt to identify resources, as well as traditional and customary practices that formerly took place within the general project area vicinity should be attempted to meet this need.

6. A condition requiring that an annual report on compliance with conditions to be sent to the County PD, OPSD and the LUC till the notice of completion for the proposed project is recognized and acknowledged by the County who will then release Applicant from this requirement.

7. The Commission may wish to provide a condition related to substantial compliance for this SP. The following is an example from a previous SP.
   ○ The Applicant shall develop and operate the facility, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission
and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent BMPs to ensure that the development and operation of the facility does not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.

8. OPSD may suggest additional Findings of Fact, Conclusions of Law or conditions to the Decision and Order in its comments to the LUC, however, those comments were not received in time to be considered for this staff report.

“Approve the Special Permit application for Connections Charter School subject to the 19 conditions as recommended by the County of Hawai‘i Planning Commission in their Findings of Fact, Conclusions of Law, and Decision and Order dated November 4, 2021; with the following changes:”

- The FOF amendments are needed to correct any changes made to the final D&O.

- Amend the language of FOF 26-36 to contend with changes resulting from the imposition of time criteria on the proposed development and any resulting new requirements for new studies or action by the Applicant.

- Amend the language of FOF 37-44 to ensure that Applicant will abide by the FOF action and not merely propose it.

- Amend Condition 18 regarding the establishment and life of the Project to ensure allowance for extensions is clarified that it is the Land Use Commission that would ultimately approve any extensions of the SP for whatever time limit is imposed.

- Further Amend Condition 18 regarding Project establishment period and allowance for extension to make the LUC the authority for granting any extension.

- Add condition(s) to address Archaeological Assessment, Ka pa‘a kai, Public Trust concerns that may arise?