STATE OF HAWAII

LAND USE COMMISSION

Hearing held on January 19, 2021
Commencing at 9:00 a.m.
Held via Zoom by Interactive Conference Technology

I. CALL TO ORDER

II. ADOPTION OF MINUTES

January 5-6, 2022 Minutes

III. TENTATIVE MEETING SCHEDULE

IV. ACTION

SP21-413 CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL/Community Based Education Support Services (CBESS) (SPP 12-000138) HAWAII

To Consider Special Permit Application for the Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138)

V. RECESS/ADJOURNMENT

BEFORE:
APPEARANCES BY VIDEOCONFERENCE

COMMISSIONERS PRESENT:
Jonathan Scheuer, Chair
Dawn N.S. Chang
Dan Giovanni
Lee Ohigashi
Edmund Aczon
Arnold Wong

COMMISSIONERS RECUSED:
Nancy Cabral
Gary Okuda

STAFF PRESENT BY VIDEOCONFERENCE:
Daniel Orodenker, Executive Officer
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Natasha Quinones, Program Specialist/Chief Clerk
Linda Chow, Deputy Attorney General
APPEARANCES BY VIDEOCONFERENCE CONTINUED

PETITIONER:
Ted H.S. Hong, Esquire, for CBESS
Kevin M. Richardson, Esquire for Connections

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:
Mary Allice Evans, Director
Alison Kato, Deputy Attorney General

COUNTY OF HAWAII:
Zendo Kern, Director
Jeff Darrow, Deputy Planning Director
Jean K. Campbell, Esquire, Deputy Corporation Counsel,
   Hawaii Planning Department
Malia A. Kekai, Esquire, Deputy Corporation Counsel,
   Hawaii Planning Commission

INTERVENOR JEFFREY GOMES:
Michael J. Matsukawa, Esquire
CHAIRMAN SCHEUER: Okay. Mai kakou, good morning. This is the January 19, 2022 Land Use Commission meeting which is being held using interactive conference technology linking videoconference participants and other interested individuals of the public via the Zoom Internet conferencing platform.

We are doing this, of course, to comply with ongoing county and state official operational directives during the still ongoing COVID-19 pandemic. Members of the public are able to attend and view the meeting via the Zoom webinar platform.

One change that has occurred during the pandemic is that we make our court transcript recordings from the Zoom recording; so it's really important for all participants that I stress to you the importance to speak slowly, clearly, directly into your microphone, and before speaking, it is helpful to identify yourself for the record.

Please be aware, of course, for all meeting participants, including any witnesses or public testifiers who come in, that this meeting is being recorded on the digital record of this meeting; so your continued participation is your implied consent to be part of the public record for
the event. If you do not wish to be part of the
public record, you should leave the meeting now.

As most of us know, the Zoom conferencing
technology allows the parties and each individual
commissioner individual remote access to the meeting
via our own personal digital devices.

Because of that and because of many times
matters entirely outside of our control, occasional
disruptions to connectivity may occur. If this does
happen, please let us know and please be patient as
we try to restore audiovisual signals in order to
conduct business during the pandemic.

For any members of the public who are here
who wish to testify on any matter on which testimony
is being allowed and you are accessing this meeting
by phone rather than the Zoom Internet software,
please know that to raise your hand, you can press
the key sequence star 9 or the same again to lower
it and star 6 to ask to be unmuted.

Otherwise, participants can use the
software raise hand button to raise your hand. We
will take breaks from time to time, approximately 10
minutes every hour.

My name is Jonathan Likeke Scheuer, and I
have the pleasure and honor of serving as the State
Land Use Commission Chair.

We currently have eight seated commissioners of a possible nine. Along with me on Oahu, Commissioner Dawn Chang, Commissioner Arnold Wong, Commissioner Ed Aczon as well as our Chief Executive Officer Daniel Ordenker, our Chief Planner Scott Derrickson, our Staff Planner Riley Hakoda, our Chief Clerk Natasha Quinones, our Deputy Attorney General Linda Chow are all on the island of Oahu.

Commissioner Nancy Cabral is on Hawaii Island. Commissioner Ohigashi is on Maui. Commissioner Dan Giovanni is on Kauai.

As I stated before, court transcripts are being done from this Zoom recording. I note that Commissioner Gary Okuda is excused and has already recused himself from this meeting.

Commissioner Cabral, do you also wish to say something at this time?

COMMISSIONER CABRAL: Yes. Thank you, Chair. I would very much love to hear this petition and be able to be involved, but in review of the state ethics laws and with the help of getting that information from our Linda Chow with the Attorney General's office, and in review of that, I realize
that I am an agent and representative and involved
and have financial benefit from my relationship with
Connection schools as they are my tenant in their
current location in the Kress Building.

And so in order to not have any kind of
future claims or problem from any of the different
parties involved with this, I have to recuse myself
from this hearing.

So I want to say aloha to everyone
involved and wish I could be more involved with
this, but I think that in light of the law, though I
think I'm fair and impartial at all times, but in
light of the wording of the law, I definitely cannot
hear this case.

CHAIRMAN SCHEUER: Thank you, Commissioner
Cabral. Commissioner, if you wish to stay for
approval of the minutes and a hearing of the staff
or the upcoming meeting schedule, you may.

COMMISSIONER CABRAL: Yes, I will do that,
thank you.

CHAIRMAN SCHEUER: Okay. Thank you for
that. So our next order of business is adoption of
the minutes of the January 5 and 6, 2022 meeting.
Ms. Quinones, has any written testimony been
submitted?
MS. QUINONES: Good morning, Chair. No, I have not received any written testimony on the minutes.

CHAIRMAN SCHEUER: Okay. Is there anybody in the public attending this meeting who wishes to testify solely on adoption of the minutes.

There will be a separate opportunity to testify on the main docket that we are hearing today; so I would like you to raise your hand only if you wish to testify on the adoption of the minutes from January 5 through 6.

If your hand is raised I'm going to call on you and assume that you are testifying on adoption of the minutes. There's two people whose hands were already raised, but if that is incorrect, you should lower your hands at this time.

So checking, if your hand is raised, it means you wish to testify on adoption of the minutes. I am going to be promoting to be a panelist Anna Kennedy.

When you are promoted to be a panelist, you can enable your audio and video. I will swear you in. Okay. Ms. Kennedy, lower your hand, please, if you are declining to be promoted to be a panelist.
Is there anybody who wishes to testify on adoption of the minutes? Seeing none, is there any comments or questions or is there a motion to approve? Commissioner Cabral?

COMMISSIONER CABRAL: Since it's my one act of the day, I will make a motion to approve the minutes of the LUC meetings on January 5 and 6.

CHAIRMAN SCHEUER: I'm sorry, one moment. Panelist Romeo Garcia, your hand is raised. Do you wish to say something at this time? Romeo Garcia, your hand is raised. Can you hear me.

Okay. I'll suspect that somebody who is associated with Mr. Garcia will communicate with him. We are moving on. Is there a second?

COMMISSIONER GIOVANNI: (Indicating).

CHAIRMAN SCHEUER: Seconded by Commissioner Giovanni.

COMMISSIONER GIOVANNI: Second.

CHAIRMAN SCHEUER: Any discussion? Seeing none, Mr. Ordenker, please do a roll call vote for approval of the January 5 through 6, 2022 minutes.

MR. ORODENKER: Thank you, Mr. Chair. The motion is to approve the minutes. Commissioner Cabral.

COMMISSIONER CABRAL: Yes.
MR. ORODENKER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: Aye.

MR. ORODENKER: Commissioner Aczon.

COMMISSIONER ACZON: Yes.

MR. ORODENKER: Commissioner Chang.

COMMISSIONER CHANG: Aye.

MR. ORODENKER: Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Aye.

MR. ORODENKER: Commissioner Wong.

COMMISSIONER WONG: Aye.

MR. ORODENKER: Commissioner Okuda is absent. Chair Scheuer.

CHAIRMAN SCHEUER: Aye.

MR. ORODENKER: Thank you, Mr. Chair. The motion passes.

CHAIRMAN SCHEUER: Thank you, Mr. Ordenker. Our next agenda item is the tentative meeting schedule. Will you please share it with us.

MR. ORODENKER: Thank you, Mr. Chair. Tomorrow we also have this matter scheduled for Zoom meeting, New Century Public Charter School. On February 2, we will hopefully be adopting the order in the New Century Public Charter School matter. And on February 3rd, we will tentatively carry the ER21-75 the Kaukauna Hula Ranch matter.
On February 16, we will be taking up the FEA acceptance for Pulama Lanai Miki Basin. That's also scheduled for February 17th as well as potentially the adoption of the order on the Kaukauna Hula Ranch matter.

On March 9, we have ER21-72. We are anticipating a motion in the Church-Hildal matter.

On March 10th, we are currently open. March 23rd, we have scheduled the 10:55 KSY on the solar farm matter, and March 24th, we have the FEIS acceptance for Kanaha Hotel.

On April 13th, we will be once again taking up the KSY on the solar farm matter. That's also tentatively scheduled for the 14th if necessary.

On the 27th, we have tentatively scheduled the Kekaha agricultural matter. The 28th is open at this point, and that takes us through our confirmed schedule.

CHAIRMAN SCHEUER: Thank you very much, Mr. Ordenker. Commissioners, are there any questions for Dan about our schedule? Commissioner Giovanni.

COMMISSIONER GIOVANNI: Yeah. Thank you, Chair. April 27th, Kekaha Ag, is that the IAL
matter?

CHAIRMAN SCHEUER: Yes, I believe it is.

MR. ORODENKER: Yes, it is, that is correct. That's the DR21-76, which is IAL.

COMMISSIONER GIOVANNI: Okay, thank you.

That's all.

CHAIRMAN SCHEUER: Any further questions?

If not, we bid a fond adieu and productive workday to Commissioner Cabral. Thank you.

Our next agenda item today is an action item for docket number SP21-413, Connections New Century Public Charter School, Community Based Education Support Services, Hawaii, to consider a special permit application for the Connections New Century Public Charter School/Community Based Education Support Services SPP 12-000138.

Will the parties please identify yourselves for the record starting with the Petitioner.

MR. RICHARDSON: Good morning, Chair, and Commissioners. Kevin Richardson, Deputy Attorney General on behalf of Connections New Century Public Charter School. Also with me is Romeo Garcia, principal for Connections.

MR. GARCIA: Good morning, this is Romeo
Garcia, Po'okumu, Principal at Connections Charter School. Unfortunately, my screen is frozen on my end. Can you see me moving?

CHAIRMAN SCHEUER: No, we cannot.

MR. GARCIA: So I'm going to go ahead and log out and then log back in again.

CHAIRMAN SCHEUER: Okay, that would be great. Thank you.

MR. GARCIA: Thank you.

MR. HONG: Good morning, Mr. Chairman, Members of the Land Use Commission. My name is Ted Hong. I represent the Petitioner CBESS. With me this morning representing CBESS is Mr. John Thatcher, who appears on the Zoom screen as petitioner with a green painted wall in the background.

CHAIRMAN SCHEUER: Okay.

MR. THATCHER: Aloha.

CHAIRMAN SCHEUER: Okay. So can we change his name?

MR. THATCHER: Yeah, it should be CBESS.

CHAIRMAN SCHEUER: But your name.

MR. THATCHER: John Thatcher.

CHAIRMAN SCHEUER: J-o-h-n or J-o-n?

MR. THATCHER: J-o-h-n T-h-a-t-c-h-e-r.
CHAIRMAN SCHEUER: Okay.

MR. HONG: Thank you.

CHAIRMAN SCHEUER: Anyone else from the Petitioner? No. County?

MS. CAMPBELL: Good morning, Commissioners. This is Jean Campbell, Deputy Corporation Counsel for the Planning Department, and with me is Deputy Planning Director Jeffrey Darrow.

CHAIRMAN SCHEUER: Thank you very much.

Good morning. Office of Planning and Sustainable Development.

MS. KATO: Good morning, Alizon Kato, Deputy Attorney General for the Office of Planning and Sustainable Development. Also here with me are Rodney Funakoshi and Lorraine Maki from OPSD. Thank you.

CHAIRMAN SCHEUER: Excuse me, we also have somebody else from the Planning Commission from the county?


CHAIRMAN SCHEUER: Okay. And Intervenor.

MR. MATSUKAWA: My name is Michael Matsukawa for the Intervenor Jeffrey Gomes. Jeffrey
Gomes is logging in from Hilo separately.

CHAIRMAN SCHEUER: Okay. I see Mr. Gomes is here, and I'm going to promote him to be a panelist as well, though would ask him to keep his screen off until he's called on, if that occurs.

Have we gotten everybody? Okay. My next step is to update the record.

On October 8, 2021, the Commission received a county of Hawaii employee's email advising that SUP 12-138 had been passed by the Windward Planning Commission.

On October 20, the LUC informed the Windward Planning Commission that docket number SP21-413 would be assigned for future submittals.

On October 30, due to the very large volume of files to be transferred to the Commission, the Commission had email communications with the Windward Planning Commission on the best, most efficient, and accurate intake of older historical files to update and establish the docket history.

On November 3, the Commission received the Applicant's record on appeal and File 9. On November 16, the Commission received a letter from the Windward Planning Commission in reference to the project.
On December 7 we sent -- the Land Use Commission sent a letter authorizing digital files.

On December 10, the Applicant filed an index and additional document Exhibits 109 through 115 via email.

On December 28, the Commission received notice of appearance from Intervenor's representative Michael Matsukawa.

On January 4, the Commission received the Applicant's notice of representation by Kevin M. Richardson, a Deputy Attorney General with the Department of Education, and the Applicant CBESS's notice of appearance for Ted Hong.

On January 7, the LUC mailed and emailed the agendas for the January 19 and 20, 2022 meetings for the parties, statewide, and county mailing lists.

On the 10th, the Hawaii -- County of Hawaii Planning Department filed its notice of representation by Jean Campbell. Also on that day we received from the Windward Planning Commission the Third Circuit Court decision and order and the Third Circuit Court first amended final judgment.

On January 11, the County of Hawaii Planning Commission filed its notice of appearance
by Malia Kekai, Deputy Corporation Counsel. And yesterday, the Office of Planning and Sustainable Development filed its recommendation letter. Also on that date we received a written statement on behalf of CBESS by Ted Hong.

Now let me go over our procedures for today's docket. First I will recognize any written testimony that has been submitted. Next I will call for people who wish to provide oral testimony on this matter to do so using either the star 9 key sequence or raising your hand.

After each witness is brought into the hearing room, I will swear you in, give you three minutes to testify. After any testimony that you offer, you then need to remain on the line to have any questions asked of you by any of the parties in this docket or the Commissioners.

Following the conclusion of any public testimony, I will call for the Applicant to make their presentation and to allow the Commissioners to ask their questions. I don't know, between Mr. Richardson and Mr. Hong, whether you have an order that you wish to go in.

MR. HONG: Mr. Chairman, if it please the Commission, the agreed upon order to myself and Mr.
Richardson, Mr. Richardson and Mr. Garcia will go first and then we will follow up.

**CHAIRMAN SCHEUER:** Okay. So we will do Richardson and then Hong and following that, we will do the county. Between Planning Commission and Planning Department, what's the order? Ms. Campbell?

**MS. CAMPBELL:** The Planning Commission can go first and the Planning Department will follow.

**CHAIRMAN SCHEUER:** Acceptable, Ms. Kekai?

**MS. KEKAI:** Yes, thank you.

**CHAIRMAN SCHEUER:** Thanks for the oral response. Okay. Following that, OPSD. So that's the order that we will do the presentations. After each presentation, there will be questions from the Commissioners.

When we get through all that, the Commission will then be allowed to ask any final questions to any of the parties, and then we will enter into formal deliberations. As I've stated before, we take breaks about 10 minutes every hour; so first anticipated break is at 9:15.

The only other matter I want to go through or only couple of matters I want to go through before I check with the understanding of the
parties, Commissioners, can I clarify your availability today and tomorrow.

   When do people need to leave by today?
The Chair needs to be completed by four o'clock today. Is there anybody who needs to leave before four o'clock?

   Tomorrow, Mr. Aczon, if we continue to tomorrow, Mr. Aczon, you have an appointment in the day?

   COMMISSIONER ACZON:  That's correct.

   CHAIRMAN SCHEUER:  What time is that?

   COMMISSIONER ACZON:  One o'clock.

   CHAIRMAN SCHEUER:  Sorry, could you repeat that?

   COMMISSIONER ACZON:  From eleven o'clock to one o'clock.

   CHAIRMAN SCHEUER:  Okay. And Commissioner Wong, you are unavailable?

   COMMISSIONER WONG:  That is correct, Chair.

   CHAIRMAN SCHEUER:  Okay. We have eight seated commissioners, and two have recused so we have six seating. We need a bare minimum of five both as quorum and to take action; so should we go beyond today into tomorrow, we will have to take a
mandatory break while Commissioner Aczon is unavailable because -- well, wait, no, we could continue but then he'd have to go -- Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Tomorrow I have a court hearing from about two o'clock. So might not be able to be here 2:00 to 3:00.

CHAIRMAN SCHEUER: Okay. We will do the best we can. Obviously just want the parties to be aware to the degree that we can get our work done today, it will be logistically easier for all of us. Another reminder, I'd like to remind the public and the parties that special permit proceedings before the Land Use Commission under Section 205-6 Hawaii Revised Statutes are not evidentiary hearings.

As such, the Commission is limited to review the evidence already contained in the record in rendering its decision. Generally, there's no requirement for the parties to present witnesses or submit written evidence.

Sorry, Commissioner Giovanni?

COMMISSIONER GIOVANNI: Yes, Chair. Will we be hearing directly from the Intervenor?

CHAIRMAN SCHEUER: Yes. I neglected that
in the order. They would be last prior to --

    COMMISSIONER GIOVANNI: Prior to
deliberation?

    CHAIRMAN SCHEUER: Thank you, Mr. Giovanni. Normally we don't have two parties per
every party so I got thrown off a little bit. Thank
you for that clarification.

    So I'm going to go in order and check that
all the parties here today understand our procedures
that I've gone over. Starting with Mr. Richardson.

    MR. RICHARDSON: Yes, understood.

    CHAIRMAN SCHEUER: Okay. Mr. Hong?

    MR. HONG: Yes, Mr. Chairman, thank you.

    CHAIRMAN SCHEUER: Ms. Kekai?

    MS. KEKAI: Yes.

    CHAIRMAN SCHEUER: Ms. Campbell?

    MS. CAMPBELL: Yes.

    CHAIRMAN SCHEUER: Ms. Kato?

    MS. KATO: Yes.

    CHAIRMAN SCHEUER: And Mr. Matsukawa.

    MR. MATSUKAWA: Yes.

    CHAIRMAN SCHEUER: Are there any further
disclosures that the Commissioners have to make at
this time related to this docket? I'll note that
for many years, the Mr. Hong's sister and I have
worked together and have been friends, but I don't actually believe I've ever met Mr. Hong.

And if I have met you before, I apologize, I don't even recall. So just a social -- social working relationship with Mr. Hong's sister. Any other disclosures.

Seeing none, it's now time for public testimony. Ms. Quinones, what written testimony has been received in this docket?

MS. QUINONES: Yes, good morning, Chair.

I forwarded you the list we have received. I can read it for you, if you want.

CHAIRMAN SCHEUER: Would you please?

MS. QUINONES: Yes. I have we received written testimony from January 11 until yesterday. The first one was Linda Pexa, Ivan Mochida, Carolyn Kaichi, Lester Sakamoto, June Sakamoto, Wayne Kanemoto, Iwasaki Farms, Loretta and Ronald Crivello, Fay Sakata, Yolanda Keehne, Steven Sakata, Bertram Carvalho, Anna Kennedy, Ke'ala Lee Loy, Henry Lee Loy, Wanda Quiocho and Ming Peng. There was a total of 17 testimonies received.

CHAIRMAN SCHEUER: Okay, Ms. Quinones.

And those have been posted to our website?

MS. QUINONES: Yes.
CHAIRMAN SCHEUER: Thank you. Are there any members of the public who wish to give oral testimony today? Now you may raise your hand and I will call you in order, admit you to be panelists one by one, swear you in. You'll have the opportunity to be questioned by any of the parties, and then we will move on.

So Ming Peng followed by Nalyn Ang, then Henry Lee Loy, Anna Kennedy. And Mr. Gomes, you wish to testify as a public testifier, do I understand that correctly by your raised hand? Mr. Matsukawa, could you clarify?

MR. MATSUWAKA: Yes, I think he signed in to testify.

CHAIRMAN SCHEUER: Ms. Peng, Ming Peng, if you can enable your audio and video.

DR. PENG: Certainly.

CHAIRMAN SCHEUER: I'm going to swear you in. Do you swear or affirm the testimony you are about to give is the truth?

DR. PENG: Yes.

CHAIRMAN SCHEUER: Okay. So if you would state your name and address for the record, and then proceed.

DR. PENG: Yes. My name is Ming Peng, P-
e-n-g. I live at 1547 Mele Manu Street in Hilo, and just for the record, I did not submit written testimony. I believe that was my wife Nalyn Ang who actually submitted the written testimony.

CHAIRMAN SCHEUER: Okay. You can proceed.

I'll give you three minutes.

DR. PENG: Thank you. Again, my name is Ming Peng. I live near the proposed site of the school of which I am against. I hope my testimony today will help your decision to deny this special use permit.

I don't know if any of you are familiar with the Kaumana area, but if you were, you would understand that this quiet, residential community is inappropriate and incompatible for a facility of this size.

I feel a facility of this size with the construction and presence would adversely impact the environment and surrounding community because of the increased traffic, increased noise, increased utilization of resources, and increased waste.

Also, the facility is located near the entrance of the subdivision of where I live, and there is only one way in or out of the subdivision for the over 80 houses that currently exist there.
There is no alternative route, and I feel this poses a further danger.

I guess in general, I have to admit that I'm a little bit cynical. I kind of get this feeling that throughout this process and with all the attorneys involved, that the community's concern is not being heard and that there is this expectation of a rubber stamp of approval by the Land Use Commission, but I guess that's my own cynicism of how things have been going.

And, you know, these are just feelings, I guess, but I hope that you guys will please consider the concerns of the local community, the adverse impact of this facility, and deny this permit. I'm happy to take questions now.

CHAIRMAN SCHEUER: Okay. Thank you very much. Questions for the witness, Mr. Richardson?

MR. RICHARDSON: No questions.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: Thank you, I have some questions. Mr. Peng, what do you do for a living.

DR. PENG: I'm a physician.

MR. HONG: In Hilo.

DR. PENG: Yes.

MR. HONG: And isn't it true that your
community has opposed any attempt to include another
access into your subdivision.

DR. PENG: That I'm not aware of, you
know, I mean, I would actually -- yeah, I'm not
aware of that there has been opposition to an
alternative access.

MR. HONG: How long have you been living

MR. HONG: Have you read any of the draft
environmental reports or assessments in this case.

DR. PENG: I briefly looked at them.

MR. HONG: And have you read any of the
decisions rendered by the Hearings Officer or
Planning Commission or the latest findings of fact
by the Planning Commission.

DR. PENG: I have briefly looked at them.

MR. HONG: When was the last time you
looked at the findings by the planning -- Windward
Planning Commission.

DR. PENG: About just a few weeks ago,
yeah.

MR. HONG: Thank you. I have no further
questions.

CHAIRMAN SCHEUER: Thank you. Ms. Kekai?

MS. KEKAI: No questions, Chair.
CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa?

MR. MATSUKAWA: No questions.

CHAIRMAN SCHEUER: Commissioners,

questions? So I didn't say this, I sometimes say this when we get dockets in front of us which bring in a number of people who've never had reason to attend Land Use Commissions before.

Just so you know, we are all volunteers, nine of us. We get appointed by the governor, confirmed by the senate, disclose our finances. Some of us are attorneys. I'm not, a number of us aren't.

We do this to as a way to serve Hawaii, and I would say if you asked around in various communities in Hawaii including the development community, rubber stamp is not a word that would be used to describe this particular Commission.

But that's just my personal opinion after serving almost eight years, but just wanted to say that as a response to your testimony. Thank you very much for taking the time to testify today.
DR. PENG: No, thank you.

CHAIRMAN SCHEUER: We appreciate it very much.

DR. PENG: Thank you.

CHAIRMAN SCHEUER: Okay. I'm going to move you back to be attendee. I'm going to admit who I understand from your earlier -- actually, I'm going to go to Mr. Gomes and then follow by Nalyn Ang.

Mr. Gomes, would you please enable your video? Jeff Gomes, would you please enable your video?

Mr. Matsukawa. Mr. Gomes, can you enable your video, are you able to? Can you say something? Okay. We are going to pause on Mr. Gomes, I'll let you work that out. Perhaps you need to exit the meeting and come back in, but I'm going to move on to Nalyn Ang, followed by Henry Lee Loy.

When you are admitted, Nalyn Ang, please enable your audio and video.

DR. ANG: All right.

CHAIRMAN SCHEUER: There we go. Aloha. I'm going to swear you in and then ask you to say your name and address for the record and then testify. Do you swear or affirm the testimony you
are about to give is the truth?

DR. ANG: Yes. And my name is Nadezna Lyn Ang, I go by Nalyn. Last name is Ang, A-n-g. I live at 1547 Mele Manu Street here in Hilo, and I, too, am testifying in opposition to this project.

My point of view is I'm concerned about the lack of water and that they are going to have a state sponsored project on catchment when no one else in this area is on catchment. That's going to open the state to liability when people do get sick from the catchment water or even suspect that they have gotten sick from the catchment water.

They propose dorms on this project which is going to involve lots of water use, and 25 intergenerational clients, I guess, living on the complex, which would again involve lots of water use and as well as a groundskeeper cottage. These people are going to need to bathe, cook, clean, wash their clothes.

I've had other residences. You know, if you have a personal catchment system, it's your responsibility to maintain it. When it's the state maintaining it because there is a public school, it's the state who's going to be responsible.

Having said that, I'm also concerned about
just the size of this project. If water
availability and roads and traffic do not limit the
size and scope of a project, I don't know what does
other than the potentially 70 acres that they have.

I am concerned that this project will
morph into something much bigger. A 25 client
intergenerational client housing complex may expand
to 30, 35. The dorms for 30, start doubling them up
in a room, will expand to a dorm for 60.

These are concerns I have because that
will make this very much more a commercial endeavor
that has been dropped into an already well-
established residential area, and there is still no,
you know, talk of alternate access.

When we first met, we asked them could you
please make your access off Puainako Extension, and
the answer was no because it would be expensive. We
went yes, but the goodwill of the community and
possibly bringing in more water, is that worth the
money or could you find someone to help you develop
that road?

It's been very dismissive. They say, no,
we don't need to, and from a resident's point of
view where I have to drive by there every day and
thinking, oh, my goodness, how am I going to get my
1 child to school with all the traffic coming in and
2 out.
3
4 We already have backups going down Kaumana
5 up to the Legacy, that's like a half mile. You
6 bring in another hundred, 150 cars into this area,
7 that's going to back us up even further and make it
8 not only inconvenient but dangerous for people
9 trying to get just in and out of their house.
10
11 It's not just their community up here on
12 Mele Manu Street or Pacific Plantation that's
13 affected by the traffic coming up and down Kaumana
14 Street. It's all the houses.
15
16 CHAIRMAN SCHEUER: Okay. Can I ask you to
17 summarize, please.
18
19 DR. ANG: Yeah. So in summary, this is
20 way too big. I think Connections absolutely needs a
21 campus. I would love for them to be in Pono Hilo or
22 Kona, but definitely not Kaumana. This is not an
23 appropriate use of the land in this area. Thank you.
24
25 CHAIRMAN SCHEUER: Thank you very much.
26 Please stay on to see if there's any questions for
27 you from any of the parties or the Commissioners.
28 Mr. Richardson?
29
30 MR. RICHARDSON: No questions, Chair.
31
32 CHAIRMAN SCHEUER: Mr. Hong?
MR. HONG: Thank you, I have a few questions. Ms. Ang, how many of the community meetings did you attend where Connections made a presentation.

DR. ANG: I attended the ones I knew about because I live outside of that radius of notification, and there were at least two to three when they, because we met at Kaumana Elementary, when they first announced the development of the school.

Honestly since then, it's been pretty much radio silence from Connections as far as outreach to the community that I know of. There's been no.

MR. HONG: Then have you ever looked at the findings from the Windward Planning Commission back in October, did you read through those.

DR. ANG: Yes, I read through them last night. That's where they reminded me of the dorms for the nontraditional housing and the 25 intergenerational clients. I had already remembered the groundskeeper. I didn't remember how big of a dorm they were planning.

MR. HONG: And what do you do for a living.

DR. ANG: I am a physician, but currently
I am not working.

MR. HONG: All right. And in terms of any experience regarding the water calculations, do you have any experience in that area.

DR. ANG: No, I do not. I had to go --

MR. HONG: Okay, thank you very much. No further questions.

CHAIRMAN SCHEUER: Thank you, Mr. Hong.

Ms. Kekai?

MS. KEKAI: No questions. Thank you, Chair.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions. Thank you, Chair.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa?

MR. MATSUKAWA: No questions.

CHAIRMAN SCHEUER: Commissioners, any questions for this witness? I'm seeing none. Thank you very much for your testimony. We very much appreciate it.

DR. ANG: I have to leave, right?

CHAIRMAN SCHEUER: Well, I will move you off, don't worry, to be an attendee. I'm now going
to admit -- sorry, any luck with Mr. Gomes? Can you unmute? See if we can't at least get audio on Mr. Gomes.

If you are able to hear me and you are having a hard time, you might try, as worked for Mr. Garcia, to leave the meeting and come back in. I'm going to admit Henry Lee Loy, if Henry will enable your audio and video. Aloha.

DR. LEE LOY: Good morning, Mr. Chair.

CHAIRMAN SCHEUER: Good morning. Do you swear or affirm the testimony you are about to give is the truth?

DR. LEE LOY: I do.

CHAIRMAN SCHEUER: Okay. State your name and address for the record and then proceed.

DR. LEE LOY: I'm having some construction around the area so --

CHAIRMAN SCHEUER: We cannot hear it. You are coming in perfectly.

DR. LEE LOY: Okay. I was going to ask Mr. Riley Hakoda to -- I had made a video because of the noise. Would he be able to play it in lieu of my three-minute testimony?

CHAIRMAN SCHEUER: So, yes. So can you stay on for questioning, and I was -- I got a copy
to the link so let me see if I can pull that up.

   Okay, one moment. I'm going to try and
share screen and then -- but I need you to stay on
for questioning by any of the parties, okay, Mr. Lee
Loy?

   DR. LEE LOY: Yes, I will, Mr. Chairman.

   CHAIRMAN SCHEUER: Can somebody confirm
that they are seeing the video of Mr. Lee Loy?

   UNIDENTIFIED MALE: Yes.

   CHAIRMAN SCHEUER: Okay. And then
somebody confirm when I start playing whether the
audio is coming through.

   UNIDENTIFIED MALE: No audio.

   CHAIRMAN SCHEUER: No audio, okay. So Mr.
Lee Loy, I'm going to stop screen sharing. It might
exceed our technical abilities on the fly; so if you
could give us your oral testimony, please.

   DR. LEE LOY: Yes, sir. Good morning, my
name is Dr. Henry Lee Loy. I'm a retired physician.
I live in Kaumana, Hilo, Hawaii.

   I'm not against the existence of
Connections Public Charter School. I oppose the
development of a public charter school for 435
students and a 30-person dormitory for multiple
health and safety reasons, primarily inadequate
water supply and the cave system vulnerable to surface pollution from contamination by chemicals and sediment associated with urban, agricultural, and livestock land use.

In the 1940s when the Red Hill fuel tanks were constructed, we did not have the foresight to predict the catastrophic existential threat to our lives. Today we are equipped with foresight, experience, and evidence-based science.

Every decision regarding our land and natural resources must be scrutinized and vetted for potential hazards. Island living requires this kind of substantial and careful approaches to granting permits for anything and everything.

It is too costly to fix after the fact. Human lives and destruction of natural resources cannot and should not be compromised ever.

The EA was not thoroughly scrutinized and instead readily passed by then Office of Environmental Quality Control Director Katherine Kealoha, who today sits in a federal prison.

This commission has an obligation to deliver such scrutiny. This 70-acre parcel is the last remaining watershed directly above and protecting the town of Hilo.
It is situated directly over the extensive Kaumana Cave system formed by the 1881 lava flow from Mauna Loa, which Princess Ruth, Ke'elikolani, an advocate for Hawaiian culture helped to stop by standing in its path at the foot of the lava flow while chanting and making offerings to Pele. The lava flow soon ceased and she camped overnight just beyond the lava's reach.

Ola i ka Wai, Water is Life. If the position for the cultural commissioner were filled, I'm sure you would be having a different conversation today. As Commissioners, you have a moral obligation to keep our citizens safe from tainted or contaminated resources. Ola i ka Wai, Water is Life. Mahalo.

CHAIRMAN SCHEUER: Mahalo a nui for your testimony. Let me check with the parties if there's questions for you. Mr. Richardson?

MR. RICHARDSON: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: I have a few questions for Dr. Lee Loy.

CHAIRMAN SCHEUER: Please proceed.

MR. HONG: How far is your home away from where the site is in terms of where Connections
wants to build.

DR. LEE LOY: I live, Mr. Hong, I live approximately half a mile away as you know because you attend the tennis school near our neighborhood.

MR. HONG: Yeah, I did until one of the neighbors complained about the tennis lessons and those have been shut down by --

CHAIRMAN SCHEUER: I'm going to ask the parties to focus on the matter at hand.

MR. HONG: My question is in terms of the water calculations, have you looked at those.

DR. LEE LOY: Yes, I have, Mr. Hong.

MR. HONG: What experience do you have in terms of water use and water calculations and how the water -- the water, county water allocations you have in the course of your experience as a physician.

DR. LEE LOY: I reviewed the application form which stated that there is only 4,200 gallons of potable water available for this entire project that will require between 10,000 and 26,000 at full buildout.

MR. HONG: All right. And did you also, in terms of the wastewater of how the school intended to use, for lack of a better knowledge,
wastewater from toilets, things like that, did you see how they intended to handle that issue.

DR. LEE LOY: I believe they were trying to reach an R2 level of wastewater for recycling use into their agricultural program.

MR. HONG: Okay. Thank you, Doctor. I have no further questions.

DR. LEE LOY: Thank you, Mr. Hong. That's not my phone, sorry.

CHAIRMAN SCHEUER: Somebody, I think it's -- somebody silence their phone, please.

UNIDENTIFIED MALE: Sorry, Mr. Chair, that was my fault, my bad.

CHAIRMAN SCHEUER: Thank you. Mr. Hong, sorry, did you conclude your questions?

MR. HONG: I did, Mr. Chairman, thank you.

CHAIRMAN SCHEUER: Thank you, Ms. Kekai?

MS. KEKAI: No questions. Thank you, Chair.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions. Thank you, Chair.

CHAIRMAN SCHEUER: Ms. Kato? The.

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa?
MR. MATSUWA: No questions.

CHAIRMAN SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: Aloha, Mr. Lee Loy.

DR. LEE LOY: Aloha.

COMMISSIONER CHANG: I'm Dawn Chang and I sit on the Commission. I have -- I read your written testimony that we received, and in it, it says Kaumana Cave system is important for its natural, historical, and cultural resources. Can you please expand on that, what -- could you, yeah, just expand, what is important about the Kaumana Cave system with respect to these three components, natural, historical, and cultural resources?

DR. LEE LOY: Yes, Ms. Chang. As I stated in my oral testimony, the Kaumana Cave system was formed during the 1881 lava flow from Mauna Loa. As it made its way, as the lava flow made its way downhill toward the city of Hilo, Princess Ruth stood in its path and did oli and offerings to Pele and it seemed to have worked as the lava flow stopped and did not flow down further into Hilo.

The Kaumana Cave system is part of the County of Hawaii park system which allows visitors and residents to access this large lava tube, very extensive which runs probably further down from the
1 parcel further down into Hilo.
2
3 This is the last remaining watershed that protects the area of Hilo. If developed, it would cause more problems with flooding, runoff from agricultural, urban, and pollutants into the nearby Waipahoe stream which runs directly along the border of the property and further empties downstream into Alenaio Stream, thus into Wailoa River where the Nene goose breed, and out directly into Hilo Bay. So I believe there is a significant cultural significance to the location of this proposed project.

COMMISSIONER CHANG: Okay. Mr. Lee Loy, can I ask you, are you aware of any, within this cave system, any cultural resources that have been discovered, any, for example, iwi kupuna or other kinds of resources that have been discovered in this lava tube?

DR. LEE LOY: I heard but have not seen any written evidence that there may be some iwi that were, but I did not read any written proof of this.

COMMISSIONER CHANG: All right. Are you aware of any other kinds of cultural activities associated with either Kaumana Cave system or the surrounding areas.
DR. LEE LOY: Well, we have native mammalian hoary bats, and we also have the native hawk which resides in the forest in this area. The hawk is the Aumakua to many families, including my family, and my video that I was to play was of a hawk sitting right outside my door yesterday screeching and probably wanting to remind the Land Use Commission that it is responsible for preserving and providing, protecting Hawaii's lands as it was meant to be.

COMMISSIONER CHANG: Can I ask you, Mr. Lee Loy, in light of the fact that this may be your Aumakua or some of the other examples you've just described, what impact would this project have on these cultural resources that you have a connection to.

DR. LEE LOY: It could lead to development of the --

CHAIRMAN SCHEUER: I'm sorry, one second, Mr. Gomes, sorry, can you not, like, put things up in front of your screen? It's disruptive to the hearing. Excuse me. Please continue Commissioner Chang.

COMMISSIONER CHANG: Mr. Lee Loy, yes, go ahead. So what impact would this project have on
these resources that you just --

    UNIDENTIFIED FEMALE: Unfortunately, we
won't know until it's too late.

    DR. LEE LOY: Well, unfortunately we won't
know until it's too late, but this property has
already begun cleaning and clearing the area and
illegally had removed Ohia trees from the property
without any permission from the state.

    COMMISSIONER CHANG: Are you aware of
anyone using these Ohia trees historically, are you
aware of anybody gathering resources from these
sites, from this property?

    DR. LEE LOY: Other than where the eel
probably resides and nests and where the Hawaiian
bats used to live, I'm not aware of any other
significance.

    COMMISSIONER CHANG: All right. Thank you
so much. I greatly appreciate your testimony.

    DR. LEE LOY: Thank you, ma'am.

    CHAIRMAN SCHEUER: Thank you, Commissioner
Chang. Commissioners, any further questions for Dr.
Lee Loy? Seeing none, thank you very much Dr. Lee
Loy, I will remove you to be an attendee.

    DR. LEE LOY: Thank you.

    CHAIRMAN SCHEUER: Mr. Gomes, can you
1 enable your audio? You are muted. Bottom left hand
corner of your screen perhaps, a little microphone-
like button that says mute.

   MR. GOMES: There we go.

   CHAIRMAN SCHEUER: Okay. So before we
proceed further, the other account that's logged in
as Jeff Gomes, I'm going to dismiss that.

   MR. GOMES: Okay.

   CHAIRMAN SCHEUER: Or can you log out of
that, is that you on a different device?

   MR. GOMES: It's me because I'm looking
and watching the computer.

   CHAIRMAN SCHEUER: Okay. I'm going to
move that to be attendee. Okay. Mr. Gomes, do you
swear or affirm the testimony you are about to give
is the truth?

   MR. GOMES: I do.

   CHAIRMAN SCHEUER: Okay. State your name
and address for the record and proceed.

   MR. GOMES: My name is Jeff Gomes. I live
at 281 Edita Street in Hilo.

   CHAIRMAN SCHEUER: Okay, please proceed.

   MR. GOMES: So I'm concerned that there's
so much evidence, you didn't all get the opportunity
to look at all the evidence, and I'd like to start
with the letter from Mary Evans recommending approval. If you go to page 6 in the FEA, section mitigating measures, 100-foot buffer to the surrounding area.

So I don't know if you watched this video or not. If you look up on YouTube, Dry Well on Edita Street, this is part of the evidence, Dry Well on Edita Street.

It shows that Kaumana Cave, I proved because I lived there, right, I showed -- the video shows that the Kaumana Cave flows directly underneath the property completely on both sides.

The irony of the letter from Mary Evans is she mentioned Dr. Fred Stone, who was opposed to the project. Dr. Fred Stone is the reason the school has agreed not to build on the upper portion because this is actually documented.

And there's a lot of evidence and I can't imagine you've had time to look at everything, but Dr. Stone has verified it is an ecosystem. The cave needs to be preserved, it needs to be protected.

When the school illegally bulldozed to put up the illegal fence without permits prior to the levy, if you watched the video that I posted, I'm standing in the levy area at the top of the dry
well.

Before that levy was put in, the county had a barrier, a concrete barrier blocking the water that floods out of Kaumana Cave from hitting the residents, and as everybody probably knows, the concrete barrier does not stop water and so the county dismantled the concrete barrier and built the levy.

But when they dismantled the barrier, they illegally dumped it on the state property where Connections is located now, and the residents who grew up in the area, all the kids remember climbing and playing on the concrete that the county illegally dumped on state property.

So this concrete that was left on the property. When the school illegally bulldozed to put their fence up, they crushed the concrete and smashed --

CHAIRMAN SCHEUER: Mr. Gomes, it's been three minutes. Could I ask you to summarize your testimony, please?

MR. GOMES: Okay. Look at the website. This is wrong. Watch the video. Ask me a ton of questions.

CHAIRMAN SCHEUER: Let me see if there's
any questions for you, Mr. Gomes, starting with Mr. Richardson.

    MR. RICHARDSON: No questions, thank you.

    CHAIRMAN SCHEUER: Mr. Hong?

    MR. HONG: No questions, thank you.

    CHAIRMAN SCHEUER: Ms. Kekai?

    MS. KEKAI: No questions, thank you.

    CHAIRMAN SCHEUER: Ms. Campbell?

    MS. CAMPBELL: No questions, thank you.

    CHAIRMAN SCHEUER: Ms. Kato?

    MS. KATO: No questions, thank you.

    CHAIRMAN SCHEUER: Mr. Matsukawa?

    MR. MATSUWKA: No questions.

    CHAIRMAN SCHEUER: Commissioners? Seeing --

    MR. GOMES: May I make one final statement before.

    CHAIRMAN SCHEUER: Hold on. Checking if any of the Commissioners have questions for you. I have a question for you, Mr. Gomes. The video that you are referencing, is that part of the record that was in front of the Windward Planning Commission?

    MR. GOMES: Yes. And so that's why when that video was introduced, the Windward Planning Commission came up to the dry well, looked at it,
and told the Petitioner that they need to investigate and prove that I am wrong.

So Dr. Fred Stone climbed down into that dry well where he fell and broke his back and never did the investigation, and he recently died from those injuries.

So this has not been investigated and it still proves that the cave runs completely under the lower section as well as the upper section and it's very unsafe. The fact that they --

CHAIRMAN SCHEUER: Okay. Hold on, Mr. Gomes, I'm going to -- you've answered the question that I posed for you which was whether or not it was part of the record on appeal. And for the LUC, just very, like, one sentence for those commissioners who may not be familiar with what a dry well is, can you explain what a dry well is?

MR. GOMES: So let.

CHAIRMAN SCHEUER: Let me put it this way. A dry well is a hole in the ground, correct?

MR. GOMES: Right, it's a hole in the ground to catch excess water, and eventually it overflows, but this particular --

CHAIRMAN SCHEUER: That was -- that was -- that was sufficient. Thank you very much.
Commissioners, anything further? Thank you very much for your testimony, Mr. Gomes.

MR. GOMES: Thank you.

CHAIRMAN SCHEUER: Are there any other members -- if you put yourself on mute again, Mr. Gomes, could you mute yourself, please? Are there any other members of the public who wish to provide testimony at this time? If so, raise your hand.

Okay, Ms. Kennedy, Anna Kennedy. Anybody else.

I see that we have now been going a full hour. I'm going to admit Anna Kennedy to testify, and subsequent to that we will end public testimony on this matter, and we will get into the substance of presentations by the parties.

So going once, twice, if you want to testify orally, raise your hand. If not, I'm going to close public testimony. Seeing none, just Anna Kennedy. I'm promotions you to be a panelist. If you enable your audio and video. Okay. Your audio is on and your video is there, great. I think you've seen how we do this so can you say something so I can hear you?

MS. KENNEDY: Yes. Can you hear me?

CHAIRMAN SCHEUER: Okay, great. We can. Do you swear or affirm the testimony you are about
to give is the truth?

**MS. KENNEDY:** I do.

**CHAIRMAN SCHEUER:** Okay. State your name and address for the record and proceed.

**MS. KENNEDY:** Okay. My name is Anna Kennedy and I live on 1300 Mele Manu. This home is in direct sight of the Connections proposed property or project.

I live here with my extended family, and I've lived here now for three years. I've lived on the island for 10.

We are not opposed to the concept of the Connections school and think that the state and the island would benefit from an agricultural school at this level of education. However, we do not think this property is in the best interest of the school, its clientele, or the immediate surrounding community.

As has been stated, it's on Kaumana Drive, which is very narrow and is already hazardous, and the traffic counts for the school were taken at least 13 years ago. Much -- there has been development since then.

There is also a proposed development on a piece of property that is immediately adjacent to
the school, which is now Kaumana Inn, and it has
been approved to be subdivided into six lots for six
houses. The property has not yet sold, but that is
a possibility.

It has been stated it's on top of a lava
flow, and I would like to point out that the nature
of this kind of lava is not suitable for farming
because there's no soil. It does not develop soil
rapidly, and how in the heck can you farm when
there's no soil.

Half of the property has already been
determined unusable because of the cave; however,
there is the possibility of other tubes and caves
under the property, and if detected as development
proceeds, they will have to cease and stop and
figure out something and so why would anyone gamble
the future and the safety of their school and the
students with such a big unknown?

The location of this school in my opinion
should be developed in an agricultural area that is
already established so the school could benefit from
two examples of surrounding agricultural activity where
it's safer, has a longer future, and does not impact
da dense residential area that already has a
constricted traffic flow.
It is my understanding that special permits can be granted; however, they should not impact state or county or any government agency with excessive expense, which means that if the Edita Street were to connection to the Puainako Extension, state's going to have to pay for that and --

CHAIRMAN SCHEUER: If I could ask you to summarize your testimony, please.

MS. KENNEDY: Okay. That would be a big expense for the state plus it, too, would impact not only the community but the school property also.

Thank you.

CHAIRMAN SCHEUER: Let me see if there's questions for you. Mr. Richardson, questions for Ms. Kennedy?

MR. RICHARDSON: No questions.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: No. Thank you, Mr. Chair, no questions.

CHAIRMAN SCHEUER: Ms. Kekai?

MS. KEKAI: No questions, Chair, thank you.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Kato?
1 MS. KATO: No questions.
2 CHAIRMAN SCHEUER: Mr. Matsukawa?
3 MR. MATSUKAWA: No questions.
4 CHAIRMAN SCHEUER: Commissioners? Sorry, hold on. Mr. Garcia, you've raised your hand again. Was that intentional, are you trying to --
5 MR. GARCIA: Yes, I raised my hand because we have a couple of students that have used the public link to offer testimony today.
6 CHAIRMAN SCHEUER: Hold on, can I conclude with this witness? Then --
7 MR. GARCIA: Sure. I'm sorry.
8 CHAIRMAN SCHEUER: -- come to you in a moment. Questions for this witness from the Commissioners? Ms. Kennedy, did you participate in any of the proceedings in front of the Windward Planning Commission on this matter?
9 MS. KENNEDY: Did I what?
10 CHAIRMAN SCHEUER: Participate in any of the proceedings before the Windward Planning Commission on this matter?
11 MS. KENNEDY: I attended their Zoom meeting in September of this year. I have thoroughly studied the Windward Planning Commission materials that I have found.
CHAIRMAN SCHEUER: Did you testify at that meeting, was testimony allowed?

MS. KENNEDY: Yes, I did.

CHAIRMAN SCHEUER: Thank you so much. I really appreciate it. Any further questions? If not, I'm going to move you to be an attendee. Okay. Mr. Garcia, I think you are trying to indicate that some students have been trying to testify? Can you unmute yourself?

MR. GARCIA: Yes. We have had a couple of students that were logged on to the public link. I'm not sure if they are able to raise their hand, I'm checking with a staff person. Are they still able to raise their hand if they are present still?

CHAIRMAN SCHEUER: Yes, but the only person whose hand is raised --

MR. GARCIA: It's from Connections. It will say Connections Charter School.

CHAIRMAN SCHEUER: The only hand that's -- okay. I see there's somebody as an attendee using your name --

MR. GARCIA: Yes.

CHAIRMAN SCHEUER: -- so perhaps they registered under your name.

MR. GARCIA: Yes, because they are located
here in the school building.

CHAIRMAN SCHEUER: And then Krysta Costa.

MR. GARCIA: Yes.

CHAIRMAN SCHEUER: So were they not clear with the directions to raise hands?

MR. GARCIA: Yeah, they may have -- may not have been clear. I'm not in the room with them.

CHAIRMAN SCHEUER: Who are the two individuals?

MR. GARCIA: Krysta Costa and Sadira Sprout Kirkham.

CHAIRMAN SCHEUER: Okay. So I'm going to close testimony after them, but it is 10:08. We need to take a break. It is 10:08. We will take a 10-minute break until 10:18 exactly at which time we will hear from the two last public testifiers and then proceed.

MR. GARCIA: Thank you very much.

(Recess taken from 10:08 to 10:18 a.m.)

CHAIRMAN SCHEUER: Okay. It's 10:18, we are back on the record. I've admitted Sadira Kirkham as a witness. Do you swear or affirm the testimony you are about to give is the truth?

MS. KIRKHAM: I do.

CHAIRMAN SCHEUER: Could you state your
name and address for the record and then proceed.

MS. KIRKHAM: Sadira Kirkham, 16913 Waipala Road, Mountain View, Hawaii.

CHAIRMAN SCHEUER: Okay. So you have three minutes, you can share your testimony with us.

MS. KIRKHAM: Thank you. I believe that Connections should indeed continue with their projects on the Kaumana property including building a separate campus. This will greatly improve our community and our lives on an ecological and social scale.

If I as a student were to have a campus where I could explore and express myself in the outdoors, my education and time as a student would greatly improve, especially during a pandemic.

Our agricultural endeavors will bring positive changes to the environment and inspire changes inwardly and outwardly. People will look in to see how they can improve as well as having uplifted self-esteem so that we may reflect without beating ourselves up.

We will help ourselves so that we may help others. We will look out to see how we can benefit the planet and the other creatures on it including us.
Connections kids are creative, innovative, unique, and compassionate. We are the future and we will shine the light that traced back to change. Connections believes in project-based learning and creating a caring and growing environment.

It is a place to not only learn school subjects but learn valuable life skills as well. It is a place where you may step out of your comfort zone and into your best self as you create fond memories. Hands on kinesthetic learning and sovereign communities create curiosity and connections.

In the future, I'd like to continue creating positive changes for the community, and I believe Connections is greatly helping me on that path.

For my senior project, I'd like to grow food on Kaumana property and cook and bake healthy items at an affordable price range for anyone in need. Connections prepares you for the next step and will help you along the way. Mahalo for your consideration.

CHAIRMAN SCHEUER: Mahalo for your testimony. Let me see if there's questions for you.

Mr. Richardson?
MR. RICHARDSON: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: No questions, Mr. Chairman, thank you.

CHAIRMAN SCHEUER: Ms. Kekai?

MS. KEKAI: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa apparently is still absent. Commissioners, questions for the witness?

I will say that you are more articulate than a lot of more experienced testifiers who have appeared in front of us.

MS. KIRKHAM: Thank you.

CHAIRMAN SCHEUER: So your testimony is really valued.

MS. KIRKHAM: I appreciate that.

CHAIRMAN SCHEUER: Any further questions? If not, thank you very much for taking the time to testify and for your testimony. Going to move you back to be an attendee.

MS. KIRKHAM: Thank you.
CHAIRMAN SCHEUER: And final witness, Krysta Costa. If you would enable your audio.
Aloha. Great, I can see you.

MS. COSTA: Hello.

CHAIRMAN SCHEUER: So do you swear or affirm the testimony you are about to give is the truth?

MS. COSTA: Yes, I do.

CHAIRMAN SCHEUER: Okay, great. If you'd state your name and address for the Record and then proceed.

MS. COSTA: Sure, my name is Krysta Costa. It's 333 Ohai Street, Apartment 412.

CHAIRMAN SCHEUER: Please proceed.

MS. COSTA: I believe Connections should be approved because they -- this would be really good for the students.

See, there's so many students and kids nowadays who stay in the phones and devices and they don't really go out, and they just don't really do much with the nature and the earth. So I think this could really help them to reconnect and to learn more about the earth that they live on.

I also think it would be really good for the students because we can make so many new
memories there. We can -- on what we do. We can
make friends there.

We can -- and for students like me who are
really poor, and I live in an apartment so I really
can't interact with nature all that much, although
I'm also very lazy so I can't say anything about
that, but I will say that I do believe that there
are lots of students like me who stay disconnected.

So I think this would really help them,
not to mention that this would also help those who
are poor to, you know, have more experiences where
they wouldn't be able to. And, yeah, I think that's
-- yeah, I think that's it.

CHAIRMAN SCHEUER: Great. Let me see if
there's questions for you. Mr. Richardson?

MR. RICHARDSON: No questions.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Kekai?

MS. KEKAI: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions. Thank you.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa?
MR. MATSUWA: No questions.

CHAIRMAN SCHEUER: What year are you at the charter school?

MS. COSTA: I'm senior so I will be leaving, sir.

CHAIRMAN SCHEUER: So your testimony really is not to benefit you but for future students?

MS. COSTA: Yeah. It's, I don't know, I just wanted to help give them what we could not or what I did not have.

CHAIRMAN SCHEUER: Are you willing to share any of your future plans with the Commission?

MS. COSTA: Oh, yes, sorry. I plan to go to college, become a psychologist or author, you know.

CHAIRMAN SCHEUER: Okay.

MS. COSTA: Maybe go overseas.

CHAIRMAN SCHEUER: Thank you so much for your testimony. We really appreciate it. I'll move you back to being an attendee.

Okay. We are closing testimony on this, and now we will proceed with presentations by each of the parties followed by questions from the Commission members starting in the agreed to order.
which we now should have clear, starting with Mr. Richardson.

MR. RICHARDSON: Thank you, Chair. Just to give you a road map.

CHAIRMAN SCHEUER: Yes, please.

MR. RICHARDSON: I'll plan to give a brief background of some of the history and of the proceedings with this case, and then I'll have Mr. Garcia follow up with a brief presentation about the project itself, and then after that, Mr. Hong, Mr. Thatcher will give their presentations or discussions.

And as far as question and answers go, both myself and Mr. Garcia are relatively new to this case whereas Mr. Hong and Mr. Thatcher have been there since the outset. Therefore, perhaps question and answers could be collectively for the - - all the Petitioners.

CHAIRMAN SCHEUER: I will question -- I don't mind taking questions at the end of the presentations from Mr. Hong. I'll just remind the parties again, now that we are done with public witness portion, we are confined under our rules to the information on the docket as the evidence has been presented to us by the Windward Planning
Commission.

So to the degree that you are able to
directly reference items in the record, it will be
of great assistance to this Commission. And for the
Commissioners, we will often ask our questions in
terms of pointing to the record where is such and
such, does it exist or not.

Commissioner Wong, I see your hand waving.

Of course it's harder with the smaller. Sorry if
I've missed you for a little while.

**COMMISSIONER WONG:** I just wanted to
inform the Chair and Commissioners and all of the
parties that tomorrow during the break -- I checked
with my office.

I can listen to the testimony and all the
proceedings until maybe 1:00 or 2:00, then I can
join you, you know, via Zoom, but I can only listen
tomorrow and not ask any questions if that's okay
with you, Chair.

**CHAIRMAN SCHEUER:** That's great, thank
you. Let's see how far we get today, hopefully --
hopefully very far. Thank you very much,
Commissioner Wong. Anything further.

If not, let's start with the
presentations. I'm sorry, do you have a time
estimate, Mr. Richardson?

MR. RICHARDSON: My overview will be very brief, certainly less than five minutes.

CHAIRMAN SCHEUER: Okay. And Mr. Thatcher.

MR. GARCIA: This is Romeo Garcia. I'll be following.

CHAIRMAN SCHEUER: Sorry.

MR. GARCIA: I should be about 15 minutes, probably less.

CHAIRMAN SCHEUER: Great, thank you.

Please proceed.

MR. RICHARDSON: Okay. So my portion's just a brief background of proceedings. It started in, you know, over 10 years ago in March 2008.

Connections obtained conditional approval for a direct lease from the Board of Land and Natural Resources for the subject property. I'll refer to it as the Kaumana property.

And so in order to receive the DLNR approval, an environmental assessment was conducted, and that was initiated in 2009 and the final EA, which included a finding of no significant impact, was published in November 2010.

Shortly thereafter in January 2011, the
DLNR approved a 65-year lease, and in May 2012 public notice of the lease was issued, and my understanding is that the commencement date of that lease was February 1, 2013.

Shortly after the public notice of the lease, Connections and CBESS -- sorry. For clarification purposes, Connections is the public charter school whereas CBESS is the 501(c)(3) nonprofit that supports the charter school.

Both, I'll call them co-applicants, submitted their special permit application to the County of Hawaii Planning Department. After a series of public hearings and a five-day contested case hearing spanning from November 2012 all the way to May 2014, the Windward Planning Commission issued its decision and order adopting the hearing officer's findings recommending that the special permit be denied.

That matter was appealed to circuit court where it was affirmed, a decision and order, and that decision was then appealed to the Intermediate Court of Appeals. The ICA rendered its decision in January 2020 vacating the 2014 decision and order and remanding the case back to the Planning Commission for further proceedings consistent with
the court's decision.

Looking at the ICA decision, they vacated specific findings of fact including numbers 21, 48, 50, the last sentence of 52, 55, 59, 62, and 63. And additionally, the ICA vacated the conclusions of law number 4, 5, and 51 meaning those findings and conclusions were either unsupported, contrary to law, or contradicted by evidence and therefore nullified.

As far as the specific findings by the court, they mostly reversed on issues pertaining to erroneous findings that there was available municipal or, excuse me, that available municipal and potable water was insufficient. Also the ICA acknowledged that there was evidence the traffic concerns were not sufficient and could be reasonably mitigated.

Additionally, the court found it erroneous that the 2-20-14 decision and order finding that the location of the proposed school would not benefit the immediate community.

The court also noted that unusual conditions and needs have arisen since the land use district was established as an agricultural use district in the 1970s because the other is now
essentially residential in character pointing to the
LUPAG map designation for low density urban use.

The court also addressed erroneous
findings pertaining to the consideration of
suitability of land for agricultural uses finding
that the land was not suited for any agricultural
use was erroneous including -- and that the
agricultural component of the school was not a
reason to nullify the permit or to deny the permit,
excuse me.

The ICA found that it would be an absurd
result to read the unsuited for agricultural use
consideration so strictly and narrowly, particularly
under the circumstances such as those presented here
to deny a special permit to an applicant's attempt
to incorporate an agricultural component into its
proposed use.

Finally, the -- with respect to the
general plan and other plan, which is the separate
consideration for the Planning Commission, the court
stated that the finding that the location and
purpose of the proposed school was not consistent
with the uses permitted in areas of low density
urban use, that that was an erroneous finding.

In addition, that the proposed school is
contrary to the county's general plan was also an
erroneous finding and so this was remanded back to
the Windward Planning Commission.

On July 6, there was -- the Planning
Commission requested that the parties provide a
brief regarding whether the Commission should decide
the special permit application on the record as
presented or open the record to consider new
evidence and after --

CHAIRMAN SCHEUER: You can totally
continue if you want to, just be sure the
Commissioners do read the record.

MR. RICHARDSON: Okay, I understand.

CHAIRMAN SCHEUER: This is contained in
the ICA decision, which is also part of the record
before us so --

MR. RICHARDSON: Okay, that's fine. I
just wanted to go over that if somebody had or any
Commissioners hadn't reviewed that, but I'll
conclude that their decision and order was adopted
on November 14 and now is here before the LUC. And
so I'll let Mr. Garcia go next.

CHAIRMAN SCHEUER: Okay. Mr. Garcia, I'm
going to swear you in. Do you swear or affirm the
testimony you are about to give is the truth?
MR. GARCIA: Yes, sir.

CHAIRMAN SCHEUER: Okay. Please proceed.

MR. GARCIA: I'd like to share screen if I could.

CHAIRMAN SCHEUER: Let me ask, is the matter which you are sharing screen part of, like, are you showing things that are already part of the record?

MR. GARCIA: Yes. I'm giving information about the school itself, our educational philosophy, and providing information about the use of the land moving forward.

CHAIRMAN SCHEUER: And is this a presentation that's already been presented on the record, for instance, in front of the Windward Planning Commission?

MR. GARCIA: Part of the presentation. Statistics at the end of the presentation were presented then. The narrative that I have was not presented then, and it gives more information about the activities and the focus of the school.

CHAIRMAN SCHEUER: So just to be really clear again, right, so we are limited in our decision-making to making a decision based on the record that has come before us from the Windward
Planning Commission.

So I would -- I would ask you in your presentation, I will allow the presentation, but I will ask you to limit your remarks to things that have already been before the Windward Planning Commission.

MR. GARCIA: Okay. Yes, they have.

CHAIRMAN SCHEUER: Okay. You should be able to share screen.

MR. GARCIA: Okay. All right. I'm looking to operate zoom --

CHAIRMAN SCHEUER: My version of the software, it appears at the very bottom of your screen.

MR. GARCIA: Okay. It says security. I did click on share screen and it took me to security and privacy. I'll try it again. Share screen, it says desktop one, desktop two, whiteboard.

CHAIRMAN SCHEUER: Yeah. So at that point, you click on whatever it is that you are wishing to share.

MR. GARCIA: Okay. Desktop one, share. Above zoom to share your screen. Okay. Now it's asking for other information. All right.

CHAIRMAN SCHEUER: Commissioner Ohigashi.
You are muted, Commissioner.

COMMISSIONER OHIGASHI: Sorry. Mr. Richardson, could you point us to where in the Record this presentation was made so maybe we can access it because we do have the record here.

While he's making his presentation, if you can access what part of the record it is in, it would assist us because.

MR. RICHARDSON: It was in the minutes of the October winter planning commission meeting.

CHAIRMAN SCHEUER: It would be of particular use given the vast volume of records here if you could point to us where on the LUC's website where the record is posted it appears.

MR. RICHARDSON: Okay. Mr. Garcia.

CHAIRMAN SCHEUER: Go ahead, Mr. Richardson.

MR. RICHARDSON: I was going to say, Mr. Garcia, I don't know if your actual presentation itself was used during that meeting so perhaps you came use the similar testimony that you provided --

MR. GARCIA: Okay.

MR. RICHARDSON: -- from the October meeting.

MR. GARCIA: So I'm not going to -- I
guess for technical reasons I'm not going to be able
to share my screen. I can't understand what it --
it wouldn't let me share it with Zoom for some
reason, but I can go ahead and provide the narrative
that I prepared.

CHAIRMAN SCHEUER: So long as that is the
same as information that's been provided earlier, I
will allow it.

MR. GARCIA: Yes. There's no new
information.

CHAIRMAN SCHEUER: Please proceed. And
just tell the parties, especially given the number
of parties here, I really would like to run these
proceedings as efficiently as possible while still
giving all parties all opportunity to present; so
try to be prepared. Mr. Garcia, please continue.

MR. GARCIA: All right. Thank you very
much, Chair. My apologies for the technical
difficulty.

Connections, as you know, public charter
school opened in August 2000 on the campus of
Mountain View Elementary School with 184 students in
grades K through six. By August 2001, the school
was expanded to a K-12 program at the Kress Building
in Hilo with a total of 360 students.
Connections maintains an enrollment waiting list today evidencing the school's success and the need and desire for alternative educational opportunities.

In 2006, the legislature passed a law allowing charter schools to lease unused state lands for the location of school facilities. The following year, Connections asked DLNR for a list of properties that could be used for the construction of a campus.

At that time, the Hawaii state code, Hawaii County general plan, and a memo outlined a compilation of county and state rules and regulations that charter schools in Hawaii County were required to follow.

Hawaii general plan stated charter schools were defined as public schools responsible for selecting their own sites. A county memo defined the applicability of state laws as charter schools were exempt from state laws except those relating to health, safety, and a few other exemptions, building, fire, and sanitation codes.

The major effect of this exemption was that charter schools located in state land use agricultural districts did not have to obtain a
special permit.

The school asked the director of DLNR for a list of properties in the Hilo area that would be suitable for construction of a K-12 charter with agriculture in force for projects integrated with the academic program.

On March 28, 2008, the DLNR provided in principle a direct lease to the school of a 72.43 acre undeveloped agricultural zone sited in Kaumana, upper Hilo.

Consultants were hired by the school and an environmental assessment was prepared. The draft EA was published in August of 2009. Supporting materials included a biological survey, an archeological assessment, and a traffic impact assessment report.

Concerns about the project's potential impacts on Kaumana Caves and possible historic resources were raised during that 30-day public review.

In response to these concerns, the school paid for an archeological field inspection of the accessible portion of the part of the cave that underlies the upper parcel of the property. The inspection only found names carved in the sides of
the cave walls. No historic elements were found.

   The director of the school met several
times with concerned citizens and the school to
agree -- and the school agreed to revise the
conceptual plan for the campus by locating all
buildings and associated infrastructure on the lower
parcel of the property and by maintaining a 100-foot
buffer on both sides of the cave alignment to
alleviate concerns about impacting the cave's
ever system. The draft EA was amended and published
in August 2010.

   Comments received were again responded to,
and DLNR determined that the project would not have
significant environmental effects and issued a
finding of no significant impact in November 2010.

   The school decided to locate all
facilities on the lower, the eastern parcel. No
facilities will be built on the upper section of the
property. This land will be used to support a
developing forestry conservation program focusing on
forest resource management, conservation, and
ecosystem restoration.

   Native species that once grew in the area
will be introduced. More than half of the upper
section of the property is suitable for
reforestation projects. An elevated walkway will be
built to provide access and viewing options with the
least amount of impact on the forest.

It will be a lightweight structure with
shallow footings or a pier foundation. Access to
the walkway will be controlled and limited by the
school.

When the lease for the Kaumana property
was finally signed in 2012, Connections operated
from two separate campuses. The elementary and
middle school were located in the Kress Building on
Kamehameha Avenue in downtown Hilo where we are now,
while the high school was located in leased
facilities 1:37:59, Nani Mau Gardens just outside of
Hilo.

In 2015, the school consolidated all of
the academic programs at the Kress Building. While
the 40,000 square foot Kress Building provides just
enough classroom space for the current student
enrollment, the building's proximity to Hilo Bay has
created a major challenge.

The sea level around the bay has risen 10
inches since 1950. It is currently rising at a rate
of one inch every four years. Increased flooding
from storms and big waves is affecting
transportation infrastructure in this older section of Hilo.

A 16 percent increase in the downtown homeless population is also exacerbating the problem where we are currently located.

The school has begun development of the first phase of the Kaumana property. Connections opened as the state's first charter school in 2000. The initial vision was to enable students to become stewards of Hawaii's unique environment.

This year the school has been participating in a USDA Farm to School Grant funded project with our associated nonprofit, CBESS, to embrace sustainable agricultural practices through integrations with other school curriculum.

The major need identified is for more locally produced agricultural products to be used by the school's cafeteria. The student-centered goal is to create exposure to and opportunities for agricultural-related 21st century concepts and skill development through project-based learning.

In this morning's news broadcast, the floor majority leader in Hawaii spoke to the importance of our school's great -- our state's great food sustainability within the state, citing
90 percent of our food comes from out of state.

The school's makery program is also being supported by the Kaumana property enabling students to use technology to explore, create, and develop essential 21st century skills that enhance and enrich learning opportunities.

Computer-aided design and computer fabrication systems enable students to transform their ideas into actual projects. A collaborative, cultural, and project-based learning approach will integrate digital media technology and essential 21st century skills.

The integration of emergent career and technical education will prepare students to become skilled, adaptable, creative, and equipped for success in the rapidly changing workforce.

On the slide, you would have seen that this is information I did share at the previous hearing, is that this, the breakdown of the Hawaii County districts and the cities that Connections students are from based on their mailing addresses.

The information shows that our students come from Hilo, Puna, and one other area. 250 -- our current enrollment is 359. 250, which is about 70 percent of our students, reside in Hilo. Thirty
percent of our students reside in Puna, and there's one other that one student comes from, Pahala.

The cities that our students live in are Hakalau, Hawaiian National Park, Hilo, Honomu, Keaau, Kurtistown, Mountain View, Pahala, Pahoa, Papaikou, Pepeekeo, and Volcano.

Of our student enrollment, 188 students are male, 171 are female. We have 68 students who are special education, and 504 students who have student support plans.

That comprises about 19 percent of our student population, which is high for a public school, and having access to land for some of these students would be the best learning modality for them.

We also have 28 students who are English language learners. We have a diverse student population of American Indian, black, Chinese, Filipino, Native Hawaiian, Japanese, Portuguese, Samoan, white, Micronesian, Tongan, other Asian, other Pacific Islander as well. 138 percent of our students are Native Hawaiian, 98 percent of our students are white, 16 percent of our students are black, and 19 percent of students are Micronesian, and the numbers get smaller from there going down
the list.

We have child nutrition programs. Since Connections serves predominantly low-income families, 87.9 percent, we offer free nutritious meals to all children throughout U.S. Department of Education child -- through our child nutrition program.

During the school closures caused by the pandemic in the school year 2021, connections offered meals to students in the Hilo community. We have multiple grants which we use to help support our agricultural program, multiple partnerships with organizations like the Akaka Foundation for Tropical Forests, Hawaii Afterschool Alliance, the Hawaii Agricultural Foundation, the Kamehameha Schools environmental education programs, the Kohala Foundation, University of Hawaii system, University of Hawaii Hilo and Hawaii Community College.

Connections alumni work at Connections, they attend college, and they are in the local workforce. Because Connections continues to be a resource and because they have an allegiance to the school based on the appreciation they have for their experience as a student, we have regular visits from our alumni. They come for further support and to
update us on their lives.

I wish I was able to show the slides that I had, unfortunately technical difficulties. One thing I wanted to highlight that would have been in a video that was going to be shown was an aerial view of both parcels, the upper portion, which I said again will not be built, no structures will be built on, and the lower portion is where we are proposing to build the future campus.

We are quite aware of the environmental impact that a school would have. I would love to have been able to show you architectural renderings of how schools have already been incorporated through our national network, schools that have been incorporated in -- in agricultural areas so as not to disturb but to blend into their agricultural areas.

So I'll stop at that point, and I guess we will go on, go back to Chair.

CHAIRMAN SCHEUER: Thank you. Mr. Richardson?

MR. RICHARDSON: Thank you. To briefly address Commissioner Ohigashi's question about where in the record this was, this is Exhibit 110, and I believe Mr. Garcia's testimony starts at page 6.
CHAIRMAN SCHEUER: Thank you very much.

Commissioner Chang, you have questions right now for the parties? I think the request of the parties was to allow Mr. Hong and Mr. Thatcher to present and then have questions consolidated.

COMMISSIONER CHANG: Okay. Actually this is a legal question for Mr. Richardson. It's not so much factual so if you don't mind, these are questions I'm probably going to ask all of the parties.

CHAIRMAN SCHEUER: Go ahead.

COMMISSIONER CHANG: So Mr. Richardson, I just, I wanted to confirm that you and I have both the same legal understanding on the applicable rules.

So would you agree that the rules related to the special use permit, both under HRS 205 and specifically 15-15-95(b) related to unusual and reasonable use. Would you agree that it requires that all five of those conditions be met?

MR. RICHARDSON: I believe the ICA decision provides some clarity on that, that all considerations are taken.

COMMISSIONER CHANG: Yes, I'm reading page 15 of the order. Guidelines have been adopted
pursuant to HRS Chapter 205 that requires the Planning Commission to consider the following criteria in determining whether a proposed use within an agricultural district is an unusual and reasonable use. So you would agree that all five of those one to five need to be considered?

MR. RICHARDSON: My understanding is that it's a balancing test considering all factors and weighing and balancing them individually.

COMMISSIONER CHANG: Okay. And then this is the next question that I have because I'm trying to make sure that we are all understanding the Intermediate Court of Appeals, the memorandum opinion, the same way.

So I'm looking at page 23 of their order. This is in relationship to the criteria related to surrounding areas, effect relating to surrounding areas, specifically the traffic.

So on page 23, the ICA opinion says on the record in this case, we cannot conclude that the Planning Commission clearly erred in adopting finding of facts 18, 46, and 47 and concluding that even with the proposed traffic mitigation, traffic stemming from the development would have an adverse effect on the surrounding properties.
So in other words, as I'm reading the ICA decision, and I just want to make sure you would agree that the ICA is saying that the Planning Commission made no error in those findings related to the traffic, which specifically concluded that there would be an adverse effect on the surrounding areas due to traffic. Do you agree with my interpretation of the ICA's decision?

MR. RICHARDSON: Correct, that's the -- those findings weren't overturned.

COMMISSIONER CHANG: Okay.

MR. RICHARDSON: Even though the entire decision was vacated. There is also evidence that the ICA pointed to evidence that those effects could also be mitigated, that there was evidence in the record from the testimony of Raul and the TIAR report that the traffic impacts could be mitigated.

COMMISSIONER CHANG: But it said notwithstanding that they could be mitigated, traffic stemming from the development would have an adverse effect on the surrounding properties.

MR. RICHARDSON: That's correct.

COMMISSIONER CHANG: So I'm just -- and the last legal question I've got to ask you is would you agree that the Planning Commission and the Land
Use Commission are obligated to comply with Article XII, Section 7 of the Hawaii state constitution related to the protection and preservation of traditional and customary practices exercised by Hawaiians to the extent feasible, would you agree that that is an obligation of the Planning Commission and the Land Use Commission?

MR. RICHARDSON: Where there is evidence that there are customary cultural practices being exercised or that were exercised in the past, yes, that would be a consideration for all state agencies.

COMMISSIONER CHANG: Okay. So can you show me where in the record --

CHAIRMAN SCHEUER: Sorry, Commissioner Chang, one moment. Commissioner Ohigashi, were you wanting to ask subsequent questions or do you have a procedural matter?

COMMISSIONER OHIGASHI: No, I just want to ask something about location of something in the record. It can wait until after.

CHAIRMAN SCHEUER: Okay. Sorry to interject, just trying to understand. Please continue, Commissioner Chang.

COMMISSIONER CHANG: So my question, Mr.
Richardson, is where in the record, specifically the Commission's findings, does it relate to Article XII Section 7 specifically in relationship to compliance with the Ka Pa'akai analytical framework?

MR. RICHARDSON: When you talk about the Ka Pa'akai legal framework, are you referring generally to the public trust doctrine or --

COMMISSIONER CHANG: No, I'm specifically --

CHAIRMAN SCHEUER: A legal finding, Ka Pa'akai versus Land Use Commission, a Hawaii Supreme Court case.

COMMISSIONER CHANG: Yeah. This is specifically the Hawaii Supreme Court's guidance to state and county agencies on how do you comply with Article XII Section 7 and protect and preserve traditional customary practices.

MR. RICHARDSON: There's no mention of Ka Pa'akai in the decision; however, I believe the record, if you were to look at the final environmental assessment, there are -- there is discussion of cultural resources or the lack thereof.

COMMISSIONER CHANG: Where in the specific findings in the order does it relate to Ka Pa'akai
and traditional and customary practices?

    MR. RICHARDSON: Ka Pa'akai is not specifically referenced.

    COMMISSIONER CHANG: All right, very good. That's all that I wanted to ask. Thank you, I have no further questions.

    CHAIRMAN SCHEUER: Thank you very much, Commissioner Chang. Commissioner Ohigashi.

    COMMISSIONER OHIGASHI: Yeah. I was trying to find a diagram of what the proposed development would look like, and the only one I could find was in the pro bono appeal part 2, page 141.

    And I printed it out and it was pretty black and white and pretty grainy; so I was asking Mr. Richardson if anywhere in the record that you can show us where it would have some kind of figure, show us what it looked like. I can put it up to my camera and show you what I have here.

    MR. RICHARDSON: Please.

    COMMISSIONER OHIGASHI: But that's about it.

    MR. RICHARDSON: Oh.

    COMMISSIONER OHIGASHI: Anyway, it's in there, and I was just asking at some time during
maybe Mr. Hong's presentation or anything like that, someone can direct me to a picture or if this is the only one, I can work with it.

MR. RICHARDSON: I think that there are several diagrams that are included as appendices to the permit application, and I think that might be one of the ones that you are referring to.

I believe that's probably, as far as building renditions and whatnot, is probably the most accurate one, but I defer to either Mr. Thatcher or Mr. Hong.

COMMISSIONER OHIGASHI: I just was curious. If they can point out to me something that I can read better because when you scan these things, it becomes all grainy.

CHAIRMAN SCHEUER: Thank you, Commissioner Ohigashi. Let's bring that up again after the presentation of Mr. Hong.

Commissioners, anything further for Mr. Richardson or Mr. Garcia? Seeing none, it's 11:01. I want to take a break until 11:11, then go for about 50 minutes, take a lunch break that would last 30 to 45 minutes and proceed after that. So, Mr. Hong, we will get to you at 11:11.

(Recess taken from 11:01 to 11:11 a.m.)
CHAIRMAN SCHEUER: It's 11:11, we are back on the record. During the break -- oh, my god, you logged out again. Mr. Garcia, your name has changed again.

You indicated you have PowerPoint images and you can show them that have diagrams. My specific question is can you refer to exactly where in the record these images already existed? Are you able to do that?

MR. GARCIA: I'm not able to point directly to the record. It was part of my general presentation.

CHAIRMAN SCHEUER: So just to be really repetitive and try to be as clear as possible, if we start to allow information into this docket that was not in the record, I would assume that some people -- and then we base a decision partially on those items, it would be possible for a party that disagreed with our decision to suggest that we were not complying with the very rules that we are supposed comply with.

That's why I'm going to be strict in terms of trying to keep us to the record that was presented to us. So if you cannot point to me the exact point where in the record those images
proceed, I don't want to allow them.

          MR. GARCIA:  Okay.

          CHAIRMAN SCHEUER:  As much as I would like
to see them on a personal level.

          MR. GARCIA:  It's possible that when Mr. 
Thatcher and Mr. Hong begin their part of the
presentation, that one of them can point out, 
probably Mr. Thatcher can point out where this 
already appeared in the record.

          CHAIRMAN SCHEUER:  Okay.  Thank you very 
much.  With that, let's start with your 
presentation, Mr. Hong.  And could you also give a 
road map for where you intend to take us?

          MR. HONG:  Good morning, Mr. Chairman, and 
members of the Land Use Commission.  My name is Ted 
Hong.  I represent the Applicant CBESS, and that's 
the nonprofit governing board for Connections.

          In terms of a road map this morning, I 
basically provide some general background that is 
already in the record.  Can I give you chapter and 
verse?  Unfortunately, no.  This record has been --
is voluminous as you know.

          I just wanted to highlight a couple of 
points, and then I want to turn it over to Mr. 
Thatcher who would discuss what's already in the
record but also dispel some of the misconceptions that have been presented to the Commission today which I think are important.

With the Chair's permission, I would note that I had some technical difficulties. I'm trying to pull up the LUC record to find the diagram that would relate to Mr. Ohigashi's question.

I think that's highly relevant based on some of the testimony we have seen before. I hope that during the lunch break, I can kick my PC hard enough so it will actually work, and I can find that information for you.

If not, if I can impose on the Planning Department or the Planning Commission, I know that they have the same access but probably better computers than I do. So with the Chair's permission, I'd like to start my presentation.

CHAIRMAN SCHEUER: Absolutely. Just do you have a sense of how long you might want to spend with us this morning?

MR. HONG: My presentation should take approximately five minutes. Mr. Thatcher's presentation should take approximately 20 minutes.

CHAIRMAN SCHEUER: Great, thank you.

Thank you very much. Please proceed.
MR. HONG: Thank you. Again, good morning, Mr. Chairman, Members of the Commission, we -- I submitted a written summary of our position and we ask that be incorporated into the record.

Just as background, and this has been the testimony that I've submitted previously to the Planning Commission. I live in the Kaumana area, about a mile away from the project. I actually walk door to door in the community where some of these people live that have testified earlier.

And forgive me if I'm passionate about this project because it -- Connections is a very innovative, exciting school, and this property is best suited for this school's mission, and it is, I think the highest and best use of the property. So again, forgive me if I'm a little passionate.

We ask the Commission to take notice, administrative notice of the findings of fact, conclusions of law, decision and order regarding a special use permit that was granted to Kamehameha school for its Keaau campus. That's docket number SP00-393 filed by the Commission on April 7 in year 2000.

Why that decision is important is because it does discuss the benefits, and certainly at that
time, of proceeding through a special use permit
instead of a district boundary amendment.

I wanted to talk briefly about Jonathan --
excuse me, John Thatcher. He's an innovative
educator. He's the former principal and the person
who actually initiated this process, and why it's
important, it should be approved, this particular
property should be, in terms of its use, approved by
the Land Use Commission.

And we would highlight and correct certain
misconceptions that are already in the record and
again perpetuated earlier this morning. John, are
you on?

MR. THATCHER: Yes, I am.

CHAIRMAN SCHEUER: Are you able to --
thank you.

MR. HONG: So with the Chair's permission,
I'd like to introduce Mr. Thatcher and turn it over
to him.

CHAIRMAN SCHEUER: Yes. Please proceed,
Mr. Thatcher.

MR. THATCHER: Aloha.

CHAIRMAN SCHEUER: Please proceed.

CHAIRMAN SCHEUER: Sorry, kala mai. Do
you swear or affirm the testimony you are about to
give is the truth?

MR. THATCHER: Yes, I do.

CHAIRMAN SCHEUER: Please proceed.

MR. THATCHER: Aloha, and thank you for
this opportunity to testify. I personally want to
thank you, Chair, for being strict on the rules
because this has been a very long process, and I
would not like to see it derailed by a technicality.
So thank you again.

There's several things that are on the
record. I'm not sure exactly where things are in
the record. If you look at the record, it's not
searchable. So it is a document that is, I think,
printed, a printed PDF so you cannot search it to
find different parts, but I have lived through this
record.

In 2007 when the law was passed that would
allow for charter schools to get state land, we
asked Laura Thielen, who was the chair or the
director of the Department of Land and Natural
Resources if she could identify some -- some
properties on the Big Island that we might be able
to lease according to the new law.

So she sent a set of properties over. We
looked at the properties. We studied them
carefully, and the one we chose, this one in Kaumana, we specifically chose it for the environment, for what is available up there.

In my testimony, I'm not sure when, it was in 2012 or '13, I believe, I testified that this land was formally Crown Land or I guess it still is Crown Land, and that was one of the reasons when we looked at the land, there was five things that Crown Land was supposed to be used for and that was in my testimony.

The first one was support of public education, and charter schools are public schools. We are not private schools. So sometimes people get confused that charter schools are not public schools, but in Hawaii, all charter schools are publicly funded schools that are bound to the same laws as other public schools.

So we looked at the property and I also live near the property and so I'm very familiar with the site. I've lived here since 19- -- since 1992, and most of the houses that are up around the property were not even built then.

There was one set of houses that were, but the whole subdivision that people keep claiming represents Kaumana, the Pacific Plantation
subdivision is one subdivision of about 60 houses in Kaumana. Kaumana is probably 20,000 people or more.

So I live across the street from signs that say No Connections in Kaumana. I know this is part of the record because Mr. Gomes purchased signs back then and stuck them up all over the place.

Now Mr. Lee Loy has been sticking up signs all over the place that say No Connections in Kaumana. The arguments that they are using are arguments that we have already dispelled, and I'm sorry to hear them coming up again.

One of the, and I'm not sure where in the record it is, Mr. Gomes was talking about Dr. Stone, Dr. Fred Stone who went down into the dry well. I'm not sure if I can clear up that story.

Mr. Gomes had one side of the story. I have a very different interpretation of that because I worked a lot with Dr. Stone. So I would like to respond to that, but if it's going to create a problem, I won't respond to that. I would just say that it's not -- it's not factually accurate, the story that was told about the dry well.

I have been in the cave, I helped the guy that was doing the cave report. We went through the cave at least two times in one day, every single
inch of the cave that we could find. The main part
of the cave from where it comes into the park or
comes out of the park goes on to the upper land and
exits right at Edita Street.

Now the cave did -- actually does go down
the former director of Planning Department, Bobby
Jean Leithead Todd, said that it comes out by Hilo
library. So it's an extensive cave, but when they
built Edita Street, a bulldozer collapsed it, and I
remember reading that in the record.

So the bulldozer collapsed the cave; so it
is not accessible from there on. And that would be
the lower part of our property.

The cave comes in on the north side, it's
under the north side of the property, and it's where
we have a fenceline. And we are not developing
anywhere. We know exactly where the cave is
according to the most accurate maps that are
available.

And so the property itself, the lower part
of the property, I do want to say that because of
Dr. Stone, we completely redid our EA.

We -- the EA was advertised the ways it's
always advertised. So if it wasn't sent out to the
neighbors in that area, I don't know why because
that was not up to us to distribute the EA.

When we saw what Dr. Stone was saying about the cave, we agreed, we will not develop that upper part, but, and he agreed, we could use this for forestry, for conservation projects that would greatly benefit our students.

One of -- as one of the founders of Connections, Connections was founded, primarily we were starting as a school within a school on Mountain View campus, and as the first charter school in the state, one of our greatest missions was to create a school that would help promote sustainable industries on this island.

So agriculture is a sustainable industry. Forestry conservation, definitely sustainable industries. So we were very, very specific in locating a land that would support this.

We also realized that the lower part of the land, and the upper part actually, but the upper part is about 80 percent Ohia forest with uluhe underscore -- understory, and the lower part is about 20 percent Ohia trees.

Now, these Ohia on the property have also been greatly affected by the Ohia blight; so we are working with different university partners to map
out which trees are affected by the blight, and we are working -- our high school kids are working on projects to try to collect data for the different agencies that are looking for solutions.

So the property offers us a living laboratory. It's a place where we can take students, the two girls that testified, they have worked up on the property. They have worked there multiple times.

One of them we -- we actually said she should probably go into this field because she was really good at the stuff she was doing up there.

And so when we are looking at the land and looking at its agriculture potential, we are not looking at a traditional kind of agriculture because there is very little soil up there, but agriculture was a critical life skill that the ancient people had.

All throughout the Pacific islands that are mountainous islands, there was extensive terracing that was happening, and this has been rediscovered by western scientists, and luckily a lot of that research is on this island and in the state.

And there is a new kind of agriculture
that combines agriculture and forestry, it's called agroforestry, and much of the land that our students live on, especially those in Puna, is very similar to this.

So what we are using is traditional agricultural methods that were used by the Hawaiians, used by other Polynesian peoples to create areas of forest on the lower part of the parcel that will actually have agriculture and forestry integrated.

And so this property offers unique property for that kind of agriculture. We also, and this is right from 2012, we first submitted things, we were very specific about the kinds of agriculture we wanted to do, and hydroponics was a very key part of this.

So hydroponics can be used in the classrooms down at the Kress Building. They create starter plants, and we can take them up to the property to put them in the property there.

So far what we are trying to do with this property is to teach students that even if you have marginal land, if you have marginal land in Puna, there are ways that you can do agriculture.

We don't have to have large-scale
agriculture to feed this state. It also has to be dependent on the small farmers, the ones that have maybe 20 acres, and it may be marginal land where they are using greenhouses, hydroponics, aquaponics, and agroforestry techniques.

And so while we probably didn't use the word agroforestry in the record, what we described in the record as the way we were going to be using the land for agricultural purposes has now been named agroforestry so I'm just throwing that in there.

I'm not sure, Mr. Hong, was there something else I was supposed to cover? I think --

MR. HONG: John, if you could talk to us briefly about three issues, the water issue, the intergenerational issue, and the dormitories that are already in the record.

MR. THATCHER: Okay, yeah. So the water issue, you know, we had said from the beginning, we will use the amount of water that is available, the public water that is available. The public water available, the potable water for drinking.

We don't believe that the number is 70 or 72. We believe that our documented use of water over the last 20 years shows that our students are
using or the school is using maybe four to six
gallons per student, and that is quite different
than the calculations that were there, but we said
we will live within whatever the water calculations
are.

We are not planning to build the school in
a hurry. We are planning to take our time, and some
of the original plans that are in the original --
the original documents, they show us going through
about nine phases of development.

Now, the water issue is two issues,
really, the water that is drinkable and then the
water that is used for agriculture. So I work -- I
am on a state technical advisory committee for urban
agriculture. This is a new program that the USDA has
started, so I am very familiar with agricultural
uses.

And in the record, a lot of this is in
presentations by Wil Chee Planning. In the record,
Celia Shen has a lot of the diagrams, I think, in
her presentations.

And we planned from the beginning to use
catchment systems because Kaumana gets a lot of
water. We are right at the edge of a rain belt and
so there's a lot of water that falls on the ground.
If anything, we have too much water, but when -- in
the old sugar plantation days, Kaumana was one of
the only places in the state where it didn't have to
rely on irrigation because there's enough rain, and
I know I've said this a whole bunch of times before
in the past in presentations.

So these are reasons why we chose it and
we know how to use the water catchment systems in a
way that the water will be safe for use. We were
not planning to use the water for drinking.

We are not planning for using it for any
other purpose besides agriculture, but we do want
our students to see how do you maintain a catchment
system that is safe, and that's a learning process.

So this is why I say this property is a
living laboratory because it offers us so much
potential for teaching our students in a hands-on
way. So the water issue is something that we will
deal with as it comes, and we will develop as it
comes.

The dormitory was initially planned
because we had a lot of groups of students visiting
our school. We have a lot of partners in different
parts of the country and world that we work with.

We have taken students to many different
places throughout the country. We've had visitors from different countries, from Korea, from Peru, and these students are very interested in what we're doing, and a lot of them are very interested in the kind of agriculture that we are proposing to do.

So we have no intention ever of putting our students into the dormitories. These dormitories, as we said from the beginning, would be used only for visiting groups of students and educators, primarily in the summer, and in intersessions when school is not in session.

The intergenerational program was modeled after something that is going on at preschools on Oahu, and it was meant to be a development where we may have a preschool program integrated with our regular K to 12 program.

And the charter school commission that oversees the charter schools had a grant where they got a lot of money for preschools, for starting up preschools, but because we hadn't -- we were not certain of where we were with this project, we did not push to keep developing that.

So we did not apply for those grant monies for the preschool; so that intergenerational preschool would be one of the last things that we
I think the Windward Planning Commission made it very clear that we need to go back to them every stage of development and so modifications can be made at every phase of the development, and we agreed that that would be fine.

So currently, the same as when we developed this project, we are probably looking at about a 20-year build to have the project completed, and the only thing that might make that go a little faster is if the sea starts rising faster than we think it is and if the downtown Hilo area becomes even more inaccessible than it has started to become in the last few years.

So I think that's enough -- and I took my glass of water out of the room -- so I have been involved with this from the beginning; so I do know where it's at all the way to today, and I'm helping with the agricultural components today. And I retired on July 1 from the school.

MR. HONG: Thanks, John. I just have a couple of points that I wanted to follow up on.

CHAIRMAN SCHEUER: Sorry, Mr. Hong, if I may, I'm trying to manage the proceedings here. Mr. Matsukawa, your client is using the chat function to
sort of raise questions, and, you know, it's an
artifact of being in this virtual world rather than
in a physical meeting room.

He wouldn't be allowed to hand notes to
the Land Use Commissioners during the hearing. I'm
dismissing these chats as they appear, but I would
instruct your client to not act in a way where the
Chair needs to remove him from the proceedings for
disruptive activity. Is that understood, Mr.

Matsukawa?

MR. MATSUWA: Yes.

CHAIRMAN SCHEUER: Thank you. Please
continue, Mr. Hong.

MR. HONG: Just very brief points. I know
that Commissioner Chang had brought up the issue of
the traffic report. I would note that before the
Planning Commission, the last session, we had
committed to updating the plan, the traffic report.

That is actually being done right now at
our own expense. We've already engaged somebody and
paid that money to do that because since the
Puainako Extension has opened, traffic on Kaumana
Drive has significantly dropped off, and we wanted
to make sure that's documented.

The other point I wanted to make about the
water calculations is what we submitted -- we, at the last hearing before the Windward Planning Commission, did commit to updating the water calculations because in terms of the gallons per day per student, we are far below that, like half below the standard, the national standard.

With respect to Mr. Ohigashi's question, I have in the Petitioner's filing that was submitted to the Land Use Commission, at page 496 and page 503, a diagram of the property that shows where the upper property and the -- upper parcel and the lower parcel are.

And certainly if the Planning Commission or the Planning Department has a better map, then I'd be certainly happy to have them cite that.

COMMISSIONER OHIGASHI: Can you repeat -- will you repeat those pages?

MR. HONG: In the PD background report, 9-28-12, that page is at 496, and then also at 503.

COMMISSIONER OHIGASHI: PD?


COMMISSIONER OHIGASHI: I will look for it.

MR. HONG: Thank you. Thank you, Mr.
Chairman, Commissioners. If you have any questions, Mr. Thatcher and I would be more than happy to answer.

CHAIRMAN SCHEUER: There's the matter of questions for the Petitioners and also the motion made by Mr. Hong for us to take judicial notice of a previous decision on the special use permit from this Commission. I want to take up that motion first, if I may.

Mr. Hong, you referenced SP00-393, which was a special use permit for Keaau campus of Kamehameha Schools?

MR. HONG: Yes, sir.

CHAIRMAN SCHEUER: Has that been incorporated into the record at any other point prior to this?

MR. HONG: I believe earlier on in the first initial hearings with the Planning Commission that was put into the record, but I don't believe -- well, that's one. I can't give you chapter and verse and I apologize.

The second point I'd like to make about that is I think the Commission could take judicial notice of its prior decisions.

CHAIRMAN SCHEUER: So the, I guess for me,
the question is twofold, and you've touched on them, Mr. Hong, and I want to give all the parties a brief chance to respond.

One is is it the kind of decision that we can take judicial notice of, and second, is it introducing new evidence into the proceedings at this time. So I'm going to allow Mr. Richardson to speak to it.

Do you have anything more to say at this time? If you don't or if you do, that's fine. If you don't, I'll go through the order of the parties and give them a chance to comment and offer the Commissioners a chance to question. Mr. Richardson?

MR. RICHARDSON: Just I'm in support of Mr. Hong's contention that this is appropriate for judicial notice.

CHAIRMAN SCHEUER: Ms. Kekai?

MS. KEKAI: I apologize, I missed exactly what is being taken judicial notice of.

CHAIRMAN SCHEUER: Mr. Hong has moved that the Commission take judicial notice of a previous decision by this Commission regarding special permit number 00-393, which was a permit apparently for the Keaau campus of Kamehameha Schools.

And the question that I'm asking you to
respond to is it the kind of document that we could take judicial notice of, and if it is not already in the record, is it an improper introduction of new evidence on the record?

        MS. KEKAI: I would support the -- actually let me take that back. I would say if it's not already in the record, then I would say it is inappropriate.

        CHAIRMAN SCHEUER: Ms. Campbell?

        MS. CAMPBELL: I would agree with Deputy Corporation Counsel Kekai. To the extent that it's not in the record, I believe it would be inappropriate to introduce new material at this point. Thank you.

        CHAIRMAN SCHEUER: Thank you. Ms. Kato?

        MS. KATO: My understanding was that if it's LUC's records, then it can be looked at, but I don't know this for sure. I'd have to research it.

        CHAIRMAN SCHEUER: Mr. Matsukawa?

        MR. MATSUKAWA: Yes. I was not involved in the first round of the Windward Planning Commission's hearings in the contested case, but I know in the record, some people made general reference that there was another school permit granted for Kamehameha Schools.
I think it's in the traffic study somewhere, but not the administrative record itself. And recently in the DW Aina Le'a case that involved the Commission, the Supreme Court ruled when a request had been made to introduce administrative records from other proceedings into the record and the court denied it. So I think it would be inappropriate for judicial notice.

CHAIRMAN SCHEUER: Commissioners, do you have questions for any of the parties on this particular matter or thoughts or comments?

COMMISSIONER CHANG: I would just have one. Mr. Hong, what is your offer of proof, what is the relevancy of that proceeding to the case here?

MR. HONG: It discusses, I think it's page 23 or four -- and actually beginning at page 24. My offer of proof is that it discusses why the Land Use Commission back at that period of time, including our period of time when we initiated this process, why a special use permit was the better vehicle versus a district boundary amendment.

And we are not offering it as further evidence or any evidentiary reason, we are offering it as in terms of analysis regarding how the
Commission views its role and the fact for a special use permit.

**COMMISSIONER CHANG:** That's really not the issue before us today though, right, whether it's a district boundary amendment or a special use permit? It is applying the special use permit criteria to this particular case, but I haven't seen a request to do a district boundary amendment. So quite frankly, I'm not sure what the relevancy of that, that matter, would be to this one.

**MR. HONG:** Certainly. I appreciate what you are saying. And what our position has been, you know, we've been having to fight shadows from day one in this, and I was anticipating another argument that could be made against the project and why this particular special use permit should be denied by the Land Use Commission; so I was anticipating an argument that could come up.

**CHAIRMAN SCHEUER:** Commissioner Ohigashi.

**COMMISSIONER OHIGASHI:** Mr. Hong, you probably are right because I had the same -- I had the same issues. What I'm thinking, I don't believe that we can accept the necessary -- the decision into the record at this point in time.

However, if the issue comes up and if we
are going to discuss whether or not an SUP is appropriate in this matter, because if you take a look at the Neighborhood Board case cited, Neighborhood Board case cited at 64 Hawaii 265 it talked about appropriate process to utilize a special use permit, and in that case, although cited, the criteria cited by the case was cited in a memorandum opinion.

It failed to cite page 272 which the court said procedural and substantive differences between the two techniques, that being a DBA versus a SUP, underscore the necessity for the proper application to the particular land use problems they are designed to address.

As the courts have repeatedly recognized, unlimited use of the special permit to effectuate what essentially what amounts to a boundary change undermine the protection from piecemeal changes that the zoning scheme guaranteed landowners by the more extensive procedural protections of boundary amendments.

And dealing that language in the Neighborhood Board case, it doesn't seem to be addressed by the memorandum opinion. I think that Mr. Hong is right that there is an argument here and
there is -- and there is a question of law here as to whether or not this is procedurally should be an SUP versus DBA proceeding.

And I think that this case gives us, places upon us the duty to make that determination or at least have that determination be briefed and - - briefed and found out about, among other issues, I'm assuming, and I'm getting that the only mechanism for that would be a remand to discuss this particular issue.

But since Mr. Hong raised it and I've been reading about it, I thought it would be appropriate to mention at this point.

MR. HONG: Mr. Chairman, may I address that, please, just briefly?

CHAIRMAN SCHEUER: Sure. And sorry, Mr. Thatcher, just to be clear, we are having a discussion among Counsel and Commissioners right now. You may respond, Mr. Hong.

MR. HONG: Thank you. So we have considered early on which vehicle we should pursue; so in the event that this does become an issue for the Commissioners, you know, based on the Mauna Kea One case, we would ask that due process should allow us the opportunity to submit written briefs on this
particular issue. Thank you.

**CHAIRMAN SCHEUER:** Commissioners? So let me understand your last statement, Mr. Hong, but I'll preface my question with I also have been, having reviewed the record, been struggling with this issue, whether or not this is the proper procedure for this Commission to use.

So you are citing to the Mauna Kea One case, and you have evoked due process concerns. Do you believe that before this Commission you should be able to do additional briefing on this matter rather than this Commission in its procedures specifically remanding it back to the Windward Planning Commission for additional proceedings on this issue?

**MR. HONG:** I believe that in terms of -- well, the Mauna Kea case talks about do we have a meaningful time and a meaningful opportunity to be heard on a particular issue.

**CHAIRMAN SCHEUER:** Right.

**MR. HONG:** That's what that due process issue comes down to, and in this case, whether it's a special use permit or district boundary amendment, if that's what the Commission is going to focus on, we should have the opportunity to brief that to
convince the Commission that this is the vehicle that we've chosen 14 years ago or --

CHAIRMAN SCHEUER: I hear what you are saying, Mr. Hong, but how do you reconcile that with the procedures for special permits, which make it fairly clear that all the argument and evidentiary record is supposed to be before the Windward Planning Commission, the respective planning commission, rather than this body?

MR. HONG: Well, those are based on, in terms of the record, the complete record on the 205.

CHAIRMAN SCHEUER: Six, I believe.

MR. HONG: Right. The complete record speaks to, and if you are looking at this in pari materia, it speaks to the evidentiary record that was before the Windward Planning Commission at the time that special use permit and those factors come before it.

I think that you are actually looking, the Commission is expressing a concern about an issue of law that it has to decide, and on that issue of law, those fact -- those evidentiary factors really don't come into play because it's going to focus on what is the proper vehicle for future developments or future proposals.
And I don't know that -- we are not asking
the Commission to approve a district boundary
amendment, we are asking the Commission to say
between the two vehicles, the special use permit
vehicle is the appropriate one, and that's why we
feel that briefing would be necessary.

**CHAIRMAN SCHEUER:** So I understand what
you are saying about briefing, but the other concern
I just have, and I'll recognize Commissioner Chang,
under our rules and under the law, we have 45 days
to make a decision on a special permit.

That may indeed not allow us to
effectively discharge our duties or the parties to
effectively brief on such an issue whereas that
deadline, that 45-day deadline does not exist at the
Planning Commission level.

**MR. HONG:** If you condemn us to the
Planning Commission, the Windward Planning
Commission, with all due respect to the Planning
Commission, you know, this process has been
unusually long.

So to give you an example, the Kamehameha
Schools Keaau, that special use permit took less
than a year from the application to the actual
approval. We've been going at this for a long period
of time. Back to the ICA, to the IC, back down, and further. You condemn us to an even longer process with respect to this particular project.

CHAIRMAN SCHEUER: Okay. But really that's just not answering my question, which has to deal with the 45-day --

MR. HONG: Set a date, set the date when briefs are due. You know, I've got weekends, I've got nights. Mr. Matsukawa hasa got weekends. We got nights. You set the date, you set the time, we will submit the briefs.

CHAIRMAN SCHEUER: The other matter just to throw out there is we have other matters before us. The Commissioners are not -- we have weekends and nights where we do our paperwork, among other things. So Commissioner Chang.

COMMISSIONER CHANG: Thank you, Mr. Chair.

As I understand Mr. Hong's position, he's asking -- as I understand it, Mr. Hong, you are asking for brief -- an opportunity to brief in the event the Commission decides to make it -- to base its decision that the more appropriate vehicle for this is on -- to do a boundary amendment.

But if the Commission makes a decision based upon the record before it, which is the
Planning Commission's recommendation, then you are not asking for briefing. Only if one of the bases for the Land Use Commission's, let's say denial, is that you've got the wrong vehicle, then you are asking for briefing; is that correct?

    MR. HONG: That's correct.

    COMMISSIONER CHANG: Okay, that's what I understood.

    CHAIRMAN SCHEUER: But the specific motion we were discussing most immediately was whether or not we take judicial notice of this.

    COMMISSIONER CHANG: Right. And I don't think it's relevant. I would agree with the county. That's just my opinion, thank you.

    CHAIRMAN SCHEUER: Anything further, Commissioners? Mr. Hong, I don't think that you would be prejudiced if I said that I was not going to take judicial notice of it at this time but would allow you to reintroduce the motion to take judicial notice of it should, in the course of our proceedings, we start to focus on whether or not this should be a DBA versus a special permit.

    MR. HONG: Thank you, Mr. Chair. I understand.

 Commissioners, can I get a sense of how many questions we have for Mr. Hong, Mr. Thatcher, and perhaps back to Mr. Richardson and Mr. Garcia? Commissioner Chang, you have some questions.

COMMISSIONER CHANG: Yes.

CHAIRMAN SCHEUER: Do you have a sense of length.

COMMISSIONER CHANG: Probably no more than five minutes.

CHAIRMAN SCHEUER: Okay. Any other commissioners at this time? Okay. So let's -- Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I have a few.

CHAIRMAN SCHEUER: Sorry?

COMMISSIONER OHIGASHI: I just have a few questions.

CHAIRMAN SCHEUER: Okay.

COMMISSIONER OHIGASHI: I need time to find it.

CHAIRMAN SCHEUER: Is it your preference to take a break now and question after lunch or to question now while the presentations are most immediately in our mind?

COMMISSIONER OHIGASHI: My preference is always lunch first.
CHAIRMAN SCHEUER: Sorry, Commissioner Wong, I didn't hear you.

COMMISSIONER WONG: Sorry, Chair. That would be my statement. Commissioner Ohigashi, he must be muting me again.

CHAIRMAN SCHEUER: Commissioner Chang?

COMMISSIONER CHANG: Mr. Chair, I'm fine if we just hold the questioning until after lunch, that's fine.

CHAIRMAN SCHEUER: Okay. We did at least dispense with the motion issue. So it's 11:57. I'm going to ask that we reconvene at 12:30.

Sorry for the short lunch, but we do have a lot of things to do. We want to make the most efficient use of our time.

We will reconvene at 12:30 with questions from Commissioners Chang and Ohigashi to Mr. Hong and Mr. Thatcher. We are in recess.

(Recess taken from 11:57 a.m. to 12:30 p.m.)

CHAIRMAN SCHEUER: It's 12:30, going on the Record again.

We had gotten a conclusion of presentation from Mr. Hong and Mr. Thatcher, and now we were going to take questions from Commissioner Chang and
Commissioner Ohigashi and perhaps others. Please go ahead, Commissioner Chang.

**COMMISSIONER CHANG:** Thank you, Mr. Chair.

Mr. Hong I wanted to ask you the same question that I asked Mr. Richardson. Is it your understanding that the Planning Commission and the Land Use Commission is required to comply with Article 12, Section 7 related to the protection and preservation of traditional and customary rights of Native Hawaiians to the extent feasible?

**MR. HONG:** Actually three points in response. Number one, when I look at the Ka Pa'akai O Ka'aina case, which is at 94 Hawaii 31, which I think Mr. Richardson -- Matsukawa was the attorney for petitioner in that case, I'm concerned that the analytical framework set out by the Hawaii State Supreme Court only applies to petitions for reclassification of district boundaries, and I point out that that would be at 94 Hawaii pages 46 and 47. They lay out three factors, and in the third factor, footnote 28, footnote 28 refers to the language change or the change in the environmental impact statement factors or assessment that has to be conducted which incorporates, certainly, those cultural factors that you are concerned about.
So in our case, number one, I would say that that distinction or that analysis in that case, Mr. Matsukawa's case, only applies to petition for reclassification of district boundaries. I have not seen any court extend that analysis, that analytical framework, to special use permits. That's saying one thing.

The second thing I wanted to point out that in the intermediate court of opinion, the court of appeals opinion at page 15 through 18, it cites that one of the factors in our county charter and in our county general plan requires any change or land -- let me rephrase that. Land use has to take into consideration any cultural aspects with respect to the proposed property use.

And I would point out finally, the third point, in the record, and this is now I'm looking at the Petitioner's filing that was submitted because I don't have volumes, volume one, volume two, but I would point out that in the record, the final environmental assessment at pages 531 through 533 talks about how we made, my client made the effort to determine if there were any traditional customary practices on the property, and there were none.

And that's also reflected in the county
planning background report from the same filing.

The date is 4-23 and 4-24. So in answer to your
question, yes, it does affect, in my opinion, under
the law under Mr. Matsukawa's case, it does affect
petitions for reclassification of district
boundaries, and, yes, in terms of our county general
plan and our county charter, we do have to take
those factors into consideration.

And did we take those factors into
consideration in this case? Yes, we did. There
were no customary traditional practices found on the
property.

COMMISSIONER CHANG: Okay. Where do I
begin, Mr. Hong? First of all, I'm going to begin
with clearly you and I have a very different
understanding of the constitutional obligations
under Article XII.

Ka Pa'akai is just one case that used Land
Use Commission, but there is a line of cases that go
from Oni versus Meek down in 1858 to Kalipi versus Hawaiian Trust, 1982; Pele
Defense Fund versus Paty, 1992; Public Access
Shoreline versus Hawaii Planning Commission, 1995;
State versus Hanapi, 1998; Ka Pa'akai, 2000; Water
Commission elena navi aha, 2012; State versus Pratt,

These are a series of cases that have -- that the Hawaii Supreme Court has applied Article XII Section 7, 7-1, 1-1. So I beg to differ with you. I think the constitutional obligation of state and the counties apply to all lands in Hawaii.

With respect to your -- the attempts made by the Applicant, as I read the environmental assessment, their conclusion that no -- that there were no adverse effect was based upon a letter that they mailed to four, four agencies or four individuals including Kapa'a Male, Edith Kanaka'ole Foundation, and nobody responded.

So based upon a lack of response, the conclusion was there's no traditional customary practices. And I will beg to differ that that is not what the court requires of government agencies with respect to -- to determining impacts of the project on traditional customary practices.

So I get where you are coming from, Mr. Hong. Obviously you and I see the constitution and the requirements of, in particular, government agencies very differently.
So I appreciated your candid response. That was very helpful for me to understand. Mr. Chair, I've got no further questions.

MR. HONG: May I follow up, may I follow up, Mr. Chair?

CHAIRMAN SCHEUER: You may respond.

MR. HONG: So all I wanted to point out on page 453 was in terms of my client, even if the lack of response, and I think you also left out the part that our client actually held a public informational meeting on April 16, 2009 for the issue of cultural and traditional practices, my client has committed, and I'm quoting from the EA page 452, however, if any traditional or cultural practices are identified, Connections will make efforts to accommodate continuation of these practices, period end quote.

So I don't know that we actually differ with respect to our perspective, and again, as we pointed out, our county charter, Intermediate Court of Appeals opinion also pointed out, our county general plan takes into consideration, makes it imperative that we need to take into cultural customary and traditional practices. And did we make best efforts? I think we did. And so I'm a
little concerned --

COMMISSIONER CHANG: No.

MR. HONG: -- if people are not going to respond, how we can get them to respond.

CHAIRMAN SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: So, I mean, clearly, Mr. Hong, you and I, we are going to differ on this. I believe the requirements in particular as stated under Ka Pa'akai, it is to identify the resources, determine its impact, and come up with reasonable mitigation.

More importantly, the agency cannot delegate that to the developer. So we cannot leave it up to the Petitioner that if there is in the future traditional customary practices, that he's going to ensure that they are protected. That is not his obligation, that is our obligation when we are reviewing a permit or some kind of entitlement.

So I think the question is, like in Ka Pa'akai where the Land Use Commission's determination was reversed and remanded back to the Planning Commission for failure to have sufficient findings to support the determination.

So that's what Ka Pa'akai, what the court found in Ka Pa'akai was that the findings were
insufficient to make a determination that the Land
Use Commission protected and preserved traditional
customary practices.

So while you and I, we are going to
disagree on this, but like I said, I really do
appreciate your candid response to me and your
viewpoint of this, but I think we see the law a
little differently. So thank you. I don't -- I
think we are okay. Thank you, Mr. Chair.

CHAIRMAN SCHEUER: Thank you.
Commissioner, sorry, just a procedural matter. The
Q and A function should be limited by any
participants in this meeting to ask questions of
perhaps where we are in the docket or what is being
allowed, not to ask substantive questions.

I addressed this earlier. I think the
person who has entered something into the chat
recently missed my earlier announcement about that.
So it's not really to be directing comments or
questions to the Commissioners at this time.

We are in a formal proceeding. It is
somewhat the equivalent if we were in a physical
room that suddenly you were rushing forward and
handing notes to commissioners. It's not supposed
to work that way.
Commissioner Ohigashi, questions for Mr. Hong and Mr. Thatcher?

COMMISSIONER OHIGASHI: Mine is more factual, my question is more factual in nature. Is there, and I'm sorry, Mr. Hong, I only could find this.

MR. HONG: This what?

COMMISSIONER OHIGASHI: That's about it, okay? Like I said, I think it's part 2 of the ICA record on appeal and it's page 141. That's the one I notice, but I'm asking what -- I'm not sure that Mr. Thatcher or Mr. Garcia can answer this. Was there in the record any plans for the infrastructure of this particular property, an infrastructure plan?

MR. HONG: John, yeah, go ahead.

MR. THATCHER: Do you mean in terms of the water and electricity?

COMMISSIONER OHIGASHI: No. You are showing on this map that I was looking at, you are showing a lot of roads and I'm presuming and buildings and structures, and normally when developers come before us, and for example, like in DBA, district boundary amendment situation, an infrastructure type of a plan would indicate how the infrastructure will be built out and the time frames
that it may take to build, and actually it would provide us a cost. Is there anything in the record like that for a special use permit?

MR. THATCHER: I'm not sure if there is, but I want to make a point that the drawing that you are looking at is a conceptual plan. It is not a plan, it was -- we had a number of different drawings for different ways that we could configure the property.

So we never got to the point of actually paying for the more than just conceptual plans; so we went through a series of conceptual plan scenarios and that's the one that we ended up with.

COMMISSIONER OHIGASHI: So have you had any kind of final plan be made part of the record in this case?

MR. HONG: Commissioner Ohigashi, I would point out, no, and the reason why is because once the special use permit was denied, originally 2014 by the Planning Commission, that ended the process, and then we decided to -- not decided, but we went up on appeal and took a while up on appeal as you well know and came back down.

COMMISSIONER OHIGASHI: So the record doesn't have one. I just wanted to be sure.
MR. HONG: Right. The record doesn't have one only because of the timing. And you are facing a unique situation.

COMMISSIONER OHIGASHI: I understand your problem, I'm just asking some questions I just want to throw out. So is there any condition or any part of the D and O that was passed by the Windward Planning Commission that would establish where these buildings would be?

MR. HONG: I would point out there's, in the final EA, there's a conceptual drawing, and that's at page 498.

COMMISSIONER OHIGASHI: Again, I can't find that. Besides that, that conceptual drawing at 498, okay, that is not the final plan; is that right, according to Mr. Thatcher?

MR. HONG: Yes, that's not the final plan. That was our conceptual plan what buildings are going to go where, and I would just note for the record that the record is actually clear that in terms of that conceptual plan at 498 in the final EA, that that would actually be pushed more toward the corner of the lower part of the property.

COMMISSIONER OHIGASHI: I'm trying to figure out because it says here on my map it's a
biological treatment system, and there's a box in
there saying number 18, biological treatment system.
Is that the approximate area where you intend to
place the biological treatment system?

MR. HONG: I think Mr. Thatcher should
respond to that.

COMMISSIONER OHIGASHI: He, yeah, we will
get on him even though I may be looking at you.

MR. THATCHER: We brought in one engineer
already to look at that, and he was involved with
creating the same kind of a system as is used at
Puna Kai Shopping Center.

COMMISSIONER OHIGASHI: I'm not asking
about the system, I'm asking about the placement of
that particular biological system.

MR. THATCHER: That, yeah, that's about
the place -- that's where we envisioned it would be,
yeah.

COMMISSIONER OHIGASHI: And how, is there
anything in the record to show how that was
determined to be the place?

MR. THATCHER: I believe that in the
record, it would show that we had a number of
different analyses of the land. So we had people
that were doing, in their studies, were going
through there and covering different tracts of the
land going back and forth, and I believe the one
that was we were using for this one was the study
that was looking at the biological and so we were
looking at where we would locate it with the least
impact.

COMMISSIONER OHIGASHI: And I see here
that you have different types of an art music
building, intermunicipal classrooms, library, but
you said that these things would be done in phases;
is that right?

MR. THATCHER: Yeah. The county -- and
the county said in their findings that we would be
doing these in phases, and we would be going back to
the county for the permits at each phase.

COMMISSIONER OHIGASHI: Is there anything
in the record that shows how the phases will go?

MR. THATCHER: Yes. There was nine phases
that are in the record in the first part. It's in
the first 20 pages, I believe.

COMMISSIONER OHIGASHI: Is there -- is
there a finding exhibit that refers to that
particular phasing?

MR. HONG: Yes. Actually that's WilChee
and Associates report. And I --
COMMISSIONER OHIGASHI: A finding? I'm just curious because I was looking at the findings. I was trying to find some of this.

The next question, area of questions that I really have is if you are going to phase, what is your plan, initial plan that was in the record to show what will initially be built and the time frame?

MR. THATCHER: The county said that we need -- the first things we need to do is to --

COMMISSIONER OHIGASHI: I'm not sure the county -- I'm not asking what the county said you should do. I'm just asking what is the phase that your plans are and the timetable for the at least initial phase and what does the first phase have?

MR. THATCHER: I'm not sure.

MR. RICHARDSON: I think I might be able to point you to where in the record the phases are listed in the permit application. If you look at the ICA record on appeal, 204, it would be Exhibit 34. Or excuse me, page 34.

COMMISSIONER OHIGASHI: That's the way it's set up. I have four parts of the record on the ICA appeal.

MR. RICHARDSON: The second part, yeah.
And then it would be page 34 on the bottom right-hand side, not the PDF.

**COMMISSIONER OHIGASHI:** Can you tell me, then, what is the first phase?

**MR. RICHARDSON:** I can read it to you.

**COMMISSIONER OHIGASHI:** Yeah, read it to me because I have to go dig it right now, and I don't want to do it right now.

**MR. RICHARDSON:** Phase one is refinement of planning and project costs and completion of attendant studies, which may include a topographic survey, geotechnical soil study, drainage study, and water study. Estimated time to complete is one to two years.

**COMMISSIONER OHIGASHI:** Has that been done yet? Has that been started yet?

**MR. RICHARDSON:** John?

**MR. THATCHER:** The only one that -- the two that we are updating are the traffic study and the water study. The rest have been completed.

**COMMISSIONER OHIGASHI:** Has the traffic study been done yet?

**MR. THATCHER:** It hasn't been completed yet.

**COMMISSIONER OHIGASHI:** When is the
completion of that?

MR. THATCHER: Mr. Garcia was meeting with them, I believe they were saying at the end of January or February.

COMMISSIONER OHIGASHI: I'm going to strike this conversation because I don't think that that was part of the record, was it?

MR. THATCHER: No.

COMMISSIONER OHIGASHI: So let me ask you this. As of the time of the permit, there was no traffic study done, update; is that right?

MR. HONG: No, there was. There was a traffic study done.

COMMISSIONER OHIGASHI: It wasn't updated?

MR. HONG: It wasn't updated, right.

COMMISSIONER OHIGASHI: I just wanted to be clear on that. So what I'm trying to get at is when does the construction start?

MR. THATCHER: That would start in the phase two.

COMMISSIONER OHIGASHI: Is that what has been -- and when would the completion date to the construction be phase two?

MR. THATCHER: I think it says on there, and I have to get it up again, but it says that it
could vary. So it's about 20 years.

COMMISSIONER OHIGASHI: And what would

that first construction phase consist of?

MR. THATCHER: It would be the -- let me

find it here, I had it just now. The first part --

well, the first phase was finishing what we talked

about. The second phase was the designing and

permitting of the caretaker's residence,

administrative building, and the high school

facilities. And that we assumed would take about

one to two years.

So the third phase would be when we start

the site grading, installation of utilities,

wastewater systems, access road, construction of the

caretaker's residence, administrative building, and

high school facilities, classrooms and high school

green and shade houses, and that would be a phase

that would last for about two and a half to three

and a half years.

COMMISSIONER OHIGASHI: Do you foresee

opening up in stages during that phase?

MR. THATCHER: I think it's going to be

dependent on what the Windward Planning Commission,

if they are putting conditions on, other conditions.

COMMISSIONER OHIGASHI: Did you have a
plan before in the record in regard to when --
whether or not you'd be occupying buildings prior to
the end of phase two?

    MR. THATCHER: I don't think we had
anything in the record that said that. It was a
little more open.

    COMMISSIONER OHIGASHI: So has there been
an estimate in the record of the cost of the
infrastructure for this project?

    MR. THATCHER: In the record, it showed
that we had a USDA loan before, but I believe it
said that was for part of the construction.

    COMMISSIONER OHIGASHI: I'm just asking
about the infrastructure. That would be the roads,
the sewers, the whatever type of sewage treatment
you have, utility lines, waterlines, et cetera, as
well as your catchment basin system. Has there been
an estimate as to what the costs are?

    MR. HONG: You know, Mr. Ohigashi, I don't
want -- with all due respect --

    COMMISSIONER OHIGASHI: No, it's no --

    MR. HONG: -- even if we did, I think
there were, but even if we did, at this stage in
2022, all those prices and estimates would be
completely blown because I'm sure you are aware that
even on Maui or the Big Island, all construction and everything else costs have gone up dramatically; so our point is that in terms of the special use permit -- and we are also faced with a time factor because this case has taken so long.

COMMISSIONER OHIGASHI: No. My question, so the answer would be it's not. You don't have it right now, not sure if it's in the record, but if it's in the record, it probably would cost more; is that right?

MR. HONG: Absolutely, yes.

COMMISSIONER OHIGASHI: So if it is in the record, and I'm not sure if it is, that's why I was asking you. It's a voluminous record. I was trying to look for it. I was wondering who would pay for the cost of the infrastructure.

MR. HONG: In the current statutory overlay in terms of charter schools, the charter school and the CBESS would be responsible exclusively, not state of Hawaii generally. It wouldn't come out of the DOE budget or certainly the schools' private school budget. That would be our kuleana it to go get those, get that money.

COMMISSIONER OHIGASHI: In a special use permit, is it required that the developer, that
being Petitioner in this case, show that they are capable of meeting the financial obligations to place infrastructure?

MR. HONG: One of the -- yes. And, yes, we did show at the time of this process all the way up until the appeal that we had, I think it was how many, $40 million, John? I forget how much money the USDA had loaned us to do construction.

MR. THATCHER: Was going to loan us.

MR. HONG: Was going to loan us. It was about 40,000, I mean 40 million, right?

MR. THATCHER: Yep.

COMMISSIONER OHIGASHI: $40 million?

MR. THATCHER: And there is -- there is something that we clarified also is that the reason why CBESS is involved in this is charter schools cannot own facilities, they can only lease facilities.

So CBESS owns the Kress Building where the school is currently located and works with First Hawaiian Bank. First Hawaiian Bank has met with us and USDA and said that, yes, they would lend us the money or at least part of it to get the project started. So go ahead.

COMMISSIONER OHIGASHI: But the problem
that the Land Use Commission has faced in the past
is developer saying that we are going to develop
this place and we are going to put in this
infrastructure, and later on for whatever reasons
it's not, infrastructure doesn't go in, and that
exacerbates the problem, but they start working on
it.

So you can't pull back, you can't pull it
back in the DBA district boundary amendment, but
what I'm trying to find out, does this special
permit give us additional hooks into you in regard
to making sure that you can build the infrastructure
because frankly, you know, that's one of our
concerns.

That's always been one of our concerns,
that it's actually built, being used for the purpose
it's being used for and it's going to be there.

MR. HONG: I think that -- oh, I'm sorry.

COMMISSIONER OHIGASHI: So I'm going to go
-- that's the reason why I'm not asking these
questions. The final area of question that I really
want to know, how long do you intend to stay here?
Assuming that you get the permit, how long do you
intend to stay?

MR. THATCHER: The lease is for 65 years
so I probably won't be around to make the decision, but it would be a permanent facility. That's why we looked at this because we needed something permanent because we had moved from place to place.

COMMISSIONER OHIGASHI: Normally in a special use permit situation, we usually give a permit for five, sometimes 10; so is the developer, are you, the petitioner, linked to them with a five-year permit?

Because my understanding of special use permit or my feeling of special use permit is that it should not be permanent, it should be temporary, even like landfills are considered to be that because they will be covered up and returned to the property that it is.

MR. HONG: If I can respond, two things. Can the Land Use Commission put in some kind of landmarks and tie it to certain specific times as part of the terms and conditions of granting the special use permit? I would submit, yes, that they can under 205.

Second question that you bring up is is a special use permit temporary like for five or 10 years, and I would have to say no because when I look at, for example, the special use permit granted
to Kamehameha Schools, I mean, that's just indefinite.

**COMMISSIONER OHIGASHI:** You can't make that argument right now. My question specifically is whether or not you guys can live with a 10-year, five, 10-year special use permit. Because even, like, solar facilities, for example, have a lifetime under special use.

Even, I guess, landfills, I used that. Rock quarries have a life beyond special use. What do you believe makes this different that shouldn't be subject to a temporary use?

And honestly speaking, you should revert it, you should revert is back to what it was like before like in any other special use permit.

**MR. HONG:** So the lease was for educational or school purposes only and so we would submit that in terms of special use permit, it would last up until the end of the lease because we are using it only for school or educational uses.

And I think that's the major difference here than, let's say, a land, you know, a landfill or rock quarry or something elsewhere. You are talking about, you know, a specific resource or definitive area.
We are talking about what is the lease
given to us for by DLNR only for school purposes,
education purposes, and so when we look at this as a
change in terms of land use, that's what the special
permit when we applied for it allows us, and I would
submit extends through the life of the lease.

COMMISSIONER OHIGASHI: My last question
is really rhetorical and it's more rhetorical than
anything.

My last question is given all the problems
with a special use permit, given all the fact that
it appears to be a down and dirty type of operation
type of thing, and I use the word down and dirty,
it's quick, quicker, supposedly quicker and easier
type of system, which it wasn't here, wouldn't a
district boundary amendment sort of satisfy a lot of
these concerns, be able to get a good EA down,
financing questions would be answered, length of
term should be no problem because it will be under a
lease by the Board of Land and Natural Resources,
limited to a certain purposes, the board can control
that and the board would be able to say whether or
not it should be fact, wouldn't that be easier, a
good world solution to the issue?

MR. HONG: I don't know that that's
rhetorical. I think it actually begs an answer because in our circumstance when we started this process originally, discussing this with former Chairperson Laura Thielen and we discussed it with Planning Department, the recommendation was this is the way to go. They told us get in this bus. We got on the bus.

Now 14 years later, all of a sudden the bus isn't good enough, we should have got on the other bus, right. So, you know, I'm a little hesitant to condemn us to go back and start another 14-year process.

There's no guarantee in terms of time. I don't think anybody here on this Zoom call can tell us or give us an accurate date of time if we have to go and play chutes and ladders and start over.

So, you know, we are at the point now where we have fulfilled, I think, all our statutory obligations, regulatory obligations, and it's now before the Land Use Commission.

I think that if on a policy level you want to say no more special use permits, because you are right, it's kind of down and dirty, I think that's one issue, but certainly my client shouldn't be penalized for that and so I think that this begs a
larger discussion on a policy basis that the
Commission needs to -- needs to address.

CHAIRMAN SCHEUER: Hold on, hold on Mr.
Thatcher.

COMMISSIONER OHIGASHI: I just, I didn't
expect that answer, but nice to hear from you, Mr.
Hong. I have no further questions.

CHAIRMAN SCHEUER: Okay. Mr. Thatcher,
I'm going to allow if you wanted to say something
briefly in response.

MR. THATCHER: No, I just wanted to
clarify that when we first looked for the land back
in 2007, the county code said that charter schools
had to use agriculture zoned land and so that's what
we asked for.

All of the land around the -- developed
around the property has been rezoned since, and even
Pacific Plantations are now low density urban
instead of one acre ag. So the county currently
zones it as one acre ag.

So we tried to do it the way we were told
to do, but then there was a case with another
charter school, and the county changed and said that
we'd have to go for a special use permit.

CHAIRMAN SCHEUER: Okay. Commissioners,
further questions for Mr. Hong or Mr. Thatcher at this time?

COMMISSIONER WONG: Yes.

CHAIRMAN SCHEUER: Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair.

Just the question, again following up on Commissioner Ohigashi. So regarding this special permit that's in front of us right now, there's no drawings per se, true drawings, it's only conceptual; is that correct.

MR. HONG: Yes, that's correct because when we applied and started this process, that's the only thing that was required.

COMMISSIONER WONG: Okay. So that was in 2007, correct?

MR. HONG: That's correct.

COMMISSIONER WONG: So we have approximately, you know, 15 years. I would say 14 years because we are just starting 2022; so during that time period, couldn't you do something more? Let's say draft, I mean, we have conceptual drawings from 2007, and as you said, costs change, things change, so ideas sometimes change during that period.

Couldn't you just bring up a new plans or
something more finite or more that we can grab our hands onto? Because to me it's like, here, I have this idea, this plan, but it may change in 15 years, you know?

It's like I used to have hair on my head 15 years ago, now I don't have any hair, I mean, so you might say things change. I mean, I used to be 150 pounds and I'm over that weight.

So I just don't understand why we couldn't, you know, you couldn't bring up at least something more up to speed to this period.

**MR. HONG:** Well, I think that's a legitimate concern and so the Intermediate Court of Appeals decision was issued on January 31, 2020. It took several months from the Intermediate Court of Appeals decision to get a judgment and then transfer back the proceeding or remand them back to the Windward Planning Commission.

The Windward Planning Commission held a hearing or started holding hearings on the remand in, was it -- I think the first one was August of 2021.

So in terms of redoing this at an expense to my client, because actually the special permit talks about whether or not there should be a change,
this permitted use -- it focuses on the use, not necessarily the actual nuts and bolts, you know, V8 engine with, you know, certain other aspects of it.

    You know, it is conceptual, and in terms of timing, we are fundamentally a victim of the timing, and that's the answer to your question.

    Would we have liked to present updated plans or things like that? Yes, we would have, but I would point out again, you know, we are not Hualalai or someplace else.

    We are a very small charter school, and in terms of finances, we are waiting for the approval of this new change of use so we could do this, and then we would start that process of doing the plans according to other special use permits and how it went.

    I would point out as I had mentioned earlier, during the course of the last Windward Planning Commission hearing, we had committed to the Planning Commission and the community that we would be updating the traffic report. We would be updating the water calculations.

    So, you know, unfortunately, yeah, we are a victim of the timing of the situation. So we were given essentially, according to your timeline, maybe
less than a year to update everything in terms of
the plans including cost estimates, blueprints,
diagram, that kind of thing, and I think that would
be burdensome and problematic.

COMMISSIONER WONG: Okay, thank you. So
I'm just going to give a forewarning to the
Commission or county or whoever I'm supposed to ask
that during the process after the remand, why didn't
they ask for, you know, new drawings or something
because, you know, once it hits our -- once it's
filed with us, we have 45 days.

And right now, we have -- it's almost,
sorry to say, don't get me wrong, it's just that
it's so nebulous in my mind, I would say that we are
going to go this pie in the sky and eventually it
will become a tree house.

I'm not saying it's going to be, you know,
but I -- I'm just saying that I would like to grab
something a little bit more around this than just,
you know, ideas or plan, you know, schematics, you
know, and some guesses. So that's all I'm going to
say right now. Thank you.

MR. THATCHER: Can I add something to Mr.
Hong's --

CHAIRMAN SCHEUER: So I'm not sure a
question was directed at you, Mr. Thatcher, by commissioner Wong.

MR. THATCHER: Oh, I thought it was directed at both of us.

CHAIRMAN SCHEUER: Okay, go ahead.

MR. THATCHER: No, I just wanted to add, Mr. Wong, that one of the things that we said from the beginning is that our classrooms would utilize a lot of outdoor space, and that has become even more important now with the pandemic.

And so I did have discussions with the mayor and, you know, we are talking about possibly when we are going back to for the permits for the buildings. We have guaranteed that we want to maintain that ability to use the outdoor spaces as much as possible, and that's critical right now.

That's one of the reasons that the school was able to stay open, one of the few schools that was able to stay open for the entire year last year except for one two-week period.

CHAIRMAN SCHEUER: Thank you.

Commissioners, questions for Mr. Hong and Mr. Thatcher? The Chair has a series of questions.

I'm going to really briefly preface my questions so that the parties or anybody watching
this proceeding doesn't sort of draw their own inaccurate conclusions about my motivations.

Just three brief points in preface. One is we are partly here because of the raw deal that charter schools got given: Hey, you guys can exist, but we are not going to give you any facilities, you got to go find it yourselves.

It's a double standard in public education in Hawaii that I just think is obnoxious, and you have to acknowledge the sort of general injustice of the situation that we are now dealing with some of the subsidiary outcomes of.

From the descriptions of the curriculum that I've gotten from the record and from the presentations, you know, when I was in high school at Iolani and tried to talk to them about things like farming and sustainability, like let's say it wasn't well received.

We joke that our spirits come precrushed having gone to Iolani school. So, you know, it's the kind of schooling I would have probably thrived at, but that said, this is not the body that you want judging curriculum.

We are not qualified to do so nor are we supposed to be making our decision on how cool or
how poor we think a particular school is doing. We
are really limited to the land use decisions at
hand.

I just, in that regard, too, I just want
to make it really clear to the public testifiers who
have talked about traffic and other impacts, the law
is really clear that you can have substantial
permanent and adverse impacts and still move forward
with a project.

That's mostly, however, dealt with through
the DBA process rather than the special permit
process. So with that preface, I have, I think,
about eight questions, some of which are short, some
of which maybe longer. Two questions pertaining to
the record at hand, and I presume Mr. Hong's going
to respond to this. 15-15-95(a) of the Land Use
Commission's rules specify in part, and I'm going to
read it directly, that from Part A, the record shall
include evidence that the person requesting the
special permit has written authorization of all fee
simple owners to file the petition, which
authorization shall also include an acknowledgement
that the owners and their successors shall be bound
by the special permit and its conditions.

Now, I saw in the record evidence that the
DLNR had indicated that they were intending to issue a lease, but I have not seen anywhere in the Record specific compliance with this condition of 15-15-95(a).

Where can you point me towards that existence in the record where the DLNR as the fee simple owner has said, yes, we actually agree to the special permit conditions and we will be bound by them?

MR. HONG: If I hear you correctly, you are asking whether there's anything in the record that DLNR specifically stated that they would agree to any special -- the terms and conditions of a special use permit?

CHAIRMAN SCHEUER: Understand the requirements of 15-15-95(a).

MR. HONG: Other than issuing a lease, I don't know that I recall seeing that. I don't know, John, do you recall getting that?

MR. THATCHER: I'm not familiar with that part, with the part of the law you are citing, but we did go back to DLNR to modify the lease, and we added the CBESS to the lease at one point.

CHAIRMAN SCHEUER: So I think let me just, so it's a really specific question. And this is not
a hidden part of the administrative rules, it's the
part of the administrative rules that describes how
special use permits can be issued.

    So I assume that at some point in the
decision to make a special use permit application,
this was looked at, and I'm just asking is it --
parties are free to argue that I'm reading this
wrong, but it seems fairly straightforward to me.

    The word shall include evidence that the
person requesting the special permit has the written
authorization of all fee simple owners to file the
petition, which authorization shall also include an
acknowledgement that the owners and the successors
shall be bound by the special permit and its
conditions. Is that in the record or not?

    MR. HONG: And I believe that when we
submitted it, the EA and everything else, the Celia
Shen did include letters from the Department of Land
and Natural Resources, and I would ask that I be
given the opportunity to sift through the record.

    CHAIRMAN SCHEUER: You can go ahead, and I
think if I've read those correctly, they concurred
with the finding of no significant impact, but they
--

    MR. HONG: All of them did.
CHAIRMAN SCHEUER: But they did not say specifically that I saw we agree to be bound by the special use permit conditions. So that's the first question.

Second, 6E, Hawaii Revised Statute 6E, Section 8 requires a letter of concurrence from the State Historic Preservation Division, not a finding of, yeah, we don't think there's anything there, but a letter of concurrence under that language. I would also ask the same question; is that in the record?

MR. HONG: I am not sure. I apologize.

CHAIRMAN SCHEUER: I would like to know before making a decision whether or not that is in the record.

Third, and this is going back to an assertion, Mr. Hong, if I heard you make correctly, you said people told us to go get a special use permit rather than a district boundary amendment. Is that in the record?

MR. THATCHER: It's in the record, yeah.

It is in the record that we had to follow the process that I said.

MR. HONG: Well, before we started again on this, is it in the record, I'm not sure that that
was to the extent where I get a memo or a letter
from a Chairman Thielen or the planning director or
a letter from the planning director, Bobby Jean
Leithead Todd at the time.

Do I believe that's in the record that we
should use a special use permit versus a district
boundary amendment? I don't believe that that's in
the record.

CHAIRMAN SCHEUER: I'll say, my question
about that is it would be foolish to not acknowledge
how long this process has taken, but I do have pause
as Chair of the Land Use Commission that we be
assigned full and complete and sole blame for the
length of time that this process has taken.

MR. HONG: I apologize. If I've given you
any indication that I'm blaming, laying any blame on
the Land Use Commission, I certainly apologize.
That was never my --

CHAIRMAN SCHEUER: Okay, thank you. So is
the current property within the urban growth line
under the county general plan or is it outside of
the urban growth boundary?

MR. HONG: I would defer that to the
county, I'm sorry.

CHAIRMAN SCHEUER: Okay. You are familiar
with the Hawaii Supreme Court case, and I apologize
I don't have the full citation at my fingertips the
Local 5 case which had to do with how long an
environmental impact statement regarding the Turtle
Bay development was essentially good for.

We are looking at an EA that was done, I
believe, if I read the record correctly, 11 years
ago. And maybe we will come back to this, but I'm
interested in whether or not the Supreme Court's
directive under Local 5 should or should not apply
to our decision-making in this case, reliance on an
EA that is of some age. You can respond to that now
or later, that's fine.

MR. HONG: It's an interesting question,
you know, it's an interesting question.

CHAIRMAN SCHEUER: And perhaps fortunately
for everybody, I cannot read my chicken scratch of
my last point so I will defer. If I reread it
later, I will reserve the right to ask the question.

Commissioners, any further questions for -
- Commissioner Giovanni.

COMMISSIONER GIOVANNI: Thank you, Chair.
I'm sorry for the late question. So I think it was
Mr. Garcia that remarked in his testimony today that
moving -- one of the incentives to move from the
Kress Building was concern over the climate effects in downtown Hilo.

Can you tell us what, if anything, is proposed in the record where the new location of the school would address in some positive way the effects of climate change?

MR. GARCIA: Well, the effects of climate change that we are speaking about on the Bayfront have to do with the rising waters.

COMMISSIONER GIOVANNI: Let me clarify. My -- this is a project of significant activity, construction and ongoing operations.

MR. GARCIA: Yes.

COMMISSIONER GIOVANNI: And that activity in and of itself will contribute to increased loading of the atmosphere. What are you doing to mitigate or compensate or otherwise neutralize the effects of your activities at the new site so that you don't exacerbate climate issues?

MR. GARCIA: Okay. I understand, thank you. May I, as part of the team, may I defer to Mr. Thatcher because as far as I know, you know, that type of study in terms of the environmental impact of our efforts to construct the school has not been done.
COMMISSIONER GIOVANNI: I think, Chair, it had to be in the record already in terms of what they are responding to my question.

CHAIRMAN SCHEUER: Correct. Mr. Thatcher, did you have something to add to the response?

MR. THATCHER: Yeah, I was just looking at the beginning of the record, the PD1, and I -- I'm not seeing anywhere in there right now where it said it, but I know there is places where it came up that the school's location was in the Bayfront area and that was one of the reasons the school was trying to move, but I'd have to look for it in the record.

As I said before, I can't search the record so you just have to go through it page by page almost.

COMMISSIONER GIOVANNI: Mr. Thatcher, my question was not why are you moving. It's like what are you doing to neutralize or mitigate the impact of climate change through the activity you are proposing at the new location, and whether or not that's in the record is yes or no.

MR. THATCHER: I think it's in the record where we are talking about the phases and so one of the reasons we wanted to do it in phases is so that we would build slowly so it wouldn't have as much of
an impact.

We are not planning on coming in and building a whole school with all the waste that's involved with that with construction. So I don't know if we said something in there in the record, but that's the part of the record.

Where it would be is where we are talking about the phases and the reason to move it to the phases, and it could be in testimony by Wil Chee Planning also.

COMMISSIONER GIOVANNI: Okay, thank you. Let me just make one of Commissioner Ohigashi's rhetorical comments if I may, Chair.

CHAIRMAN SCHEUER: Please do.

COMMISSIONER GIOVANNI: My question was stimulated by your question about the potential staleness of the EA in this project, being 11 years old, and in my view, a lot of EAs that were done in that time period did not give adequate consideration to climate change effects, and those are really far more relevant today. So it kind of underscores from my view, perhaps, that the EA is stale. Thank you.

CHAIRMAN SCHEUER: Thank you very much, Commissioner Giovanni. I did decipher my chicken scratch, and it was whether or not -- the question I
have is one of the conditions that I believe, if I have read the record correctly, and you can correct me if I haven't, is that all wastewater is required by the county to be disposed on-site.

But one aspect of our terrestrial cave ecosystems that they often have, in addition to being sites of iwi kupuna and moi puu and other cultural things, we also often have endemic cave fauna, some of which can be quite sensitive to impacts.

So is there something on the record that talks about how you can meet the county's requirement to dispose of all runoff on-site but yet also not negatively impact the cave fauna or the cultural artifacts that may exist? Mr. Hong or somebody else?

MR. HONG: John, you want to talk about that specifically?

MR. THATCHER: Well, in the record, the first part on page 42, it says about one sentence. Wastewater, currently there is no municipal wastewater system serving the Kaumana area, and the proposed project like the surrounding area residents, would have to provide its own wastewater system.
MR. HONG: Well, I think the question is more to talk about the type of wastewater system that you were alluding to earlier that's also in the record.

CHAIRMAN SCHEUER: Just to be really clear, I didn't ask about wastewater, which is a separate concern. I was talking about a specific county condition as to runoff being processed on-site.

MR. HONG: Oh, runoff. That is actually in the record, and thank you for clarifying because that did come up in one of the hearings before the Planning Commission, and they had, actually with Wil Chee, Celia Shen had talked about what the plans were.

And I can't give you, I apologize again, chapter and verse where that was, but that was discussed. That was -- a plan was in the record.

CHAIRMAN SCHEUER: And specifically was the plan, did the plan take into account the potential for infiltration into the Kaumana cave system?

MR. HONG: I believe it did. It did.

CHAIRMAN SCHEUER: It would be great to get, I mean, I have spent an inordinate amount of
time trying to review the record, but I don't, if it's there, I have missed it; so I would like to have attention drawn to it. Thank you very much.

MR. THATCHER: It may -- it may not -- it may be affected by the fact that we agreed to build on the lower portion of the property, and on the lower portion of the property, the cave is all the way on the northern side and so all of the runoff and everything would be to the south of that and so the cave would not be impacted.

And that part of the cave is inaccessible, at least as far as we know, because the entrance on that side was caved in by the bulldozer when they paved Edita Street when they originally made it.

So there are endemic animals in Kaumana Cave and we, you know, as far as the upper part of the parcel goes, that was one of the reasons we decided not to build on the upper portion because it could have an impact on the endemic animals, endemic to Kaumana Cave, not just to the state of Hawaii.

CHAIRMAN SCHEUER: Thank you for your response. That's helpful, Mr. Thatcher.

Commissioners, anything further?

We have gone a full hour. If there's nothing further, I would suggest we take a 10-minute
break, and then move on to the county, Ms. Kekai followed by Ms. Campbell. It's 1:31. Let's reconvene at 1:41.

(Recess taken from 1:31 to 1:41 p.m.)

CHAIRMAN SCHEUER: Okay. We are back on the Record.

Ms. Kekai, can you, along with Ms. Campbell give us your road map of your presentation?

MS. KEKAI: Oh, mine will be very short. I'm sure hers will be as well. Very less -- basic, basic statement about the Commission's findings, less than 10 minutes.

CHAIRMAN SCHEUER: Okay. I see Ms. Campbell nodding for the Record so --

MS. KEKAI: Thank you, Commissioners. Thank you, Chair. We just want to keep this real simple. We recognize that it's a voluminous record to say the least.

The Commission, you know, took a lot of time to review it and made the decision to make -- to review the record and make their decision off the record.

And so I would just simply restate that the Commission stands behind its recommendation that this project application met all criteria, special
permit criteria, and I'm available for any questions.

COMMISSIONER WONG: Chair, you are muted.

CHAIRMAN SCHEUER: Just figured that out.

Commissioners, questions for the Windward Planning Commission? Commissioner Wong, you have a paddle, that's impressive.

COMMISSIONER WONG: Yeah, so you can see me now. Thank you.

CHAIRMAN SCHEUER: How much are you bidding?

COMMISSIONER WONG: I have no idea, but whatever it is, I can't afford it.

CHAIRMAN SCHEUER: Commissioner Wong followed by Commissioner Chang.

COMMISSIONER WONG: Thank you, Chair. I just have following up on the question I have regarding the plans. You know, why, I mean, it was 2007 when, you know, through this county issue and then had the Intermediate Court of Appeals that Mr. Hong said was, what, 2020, 2021? So what -- and it came back to the Commission or the county.

How come at that point in time you guys didn't ask for new plans or new, you know, I mean, you are using something that old.
MS. KEKAI: Initially we decided to put it up to the parties to refund issue on whether the record should be reopened and things should be updated, and the Commission found that it was not necessary and they could make the decision on the record.

And I would add to that that the Commission did not want to prejudice the Applicants in the sense that making them kind of design at risk or to provide drawings when their entitlements were not in place is not usually a practice of the Commission. You know, that's what the conditions are there for.

We, you know, they have 10 years to complete their construction and phases and such, and if they cannot, then they have to come back to the Commission or actually to the Department and ask for extension. So there were -- there are things in place, basically, without making them design at risk.

COMMISSIONER WONG: Okay. So I don't know if it's to you or the Planning Department so take this as -- I guess during my period with the Land Use Commission, almost any special permits usually have a little bit more finite or little bit more, a
plan to say, yes, we are going to give you the
special permit because you are showing us the
finances, you are showing us, you know, good and
able be here, not that nebulous.

So, I mean, I'm not sure how long, sorry
to say, you have been with the Planning Commission,
but, you know, I guess or coming to the Land Use
from your, but did you ever -- do you have an
understanding of how much the Land Use wants or
needs to provide for the record to approve or
disapprove or modify or, you know, for these kind of
things?

MS. KEKAI: Let me see if I understand
your question. Are you asking me if your rules
allow you to make a decision on the present record
or if you guys need more?

COMMISSIONER WONG: Well, it's more, I
guess, a statement or, sorry, just let me figure out
how -- I'll just say it more, more good stuff, okay.

We want to do stuff correctly and we want
something that we can grab to say, hey, it's going
to cost ten dollars instead of it may cost ten
dollars, it may cost a hundred dollars, but we don't
know.

So we want something to say it's going to
be this big, you know, instead of it may be this big, it may be this big. We are given something that says it may look like this, but eventually it will come like this.

So, you know, I guess when I've been working at the Land Use or on the Land Use, we have at least some parameters or something to say it will be this much and it will cost this much, but when you have the wiggle room that you can little bit bigger but not this big; so, I mean, did that ever come clear with the county?

**Ms. Kekai:** I do not recall. I believe that they, you know, they thought that there was information sufficient on the record to make their decision and that, you know, there was a lot of discussion about what this project would be on the record, you know, the fact that they were going to have LEEDs, it's a LEEDs project. All kinds of what they, you know, the intention and the mission was.

And yes, again, we recognize that charter schools don't have the money to go out and design, predesign for these projects, but they did have -- there was immense discussion about what this project would be and what it would present.

**Commissioner Wong:** Okay. So the other
question going to come up from the Chair that I'm
going to ask you, it's about the turtle bay issue.
That EIS EIA issue and how things get stale.
The Planning Commission ever say, hey,
this may be stale, you have to go back to, you know,
get a more alive or whatever it's called to make it
more up-to-date, did that ever come into play?

MS. KEKAI: No, there was no discussion
that the EA was stale. They found it sufficient.

COMMISSIONER WONG: Okay, that's it.

Thank you, Chair. Thank you, ma'am.

CHAIRMAN SCHEUER: Thank you, Commissioner
Wong. Commissioner Chang.

COMMISSIONER CHANG: Thank you. Good
afternoon, Ms. Kekai. I'm going to ask you similar
questions to what I've asked Mr. Thatcher. I want
to just make sure that we are on the, you know, we
understand the legal requirements the same.

So with respect to special use permits and
looking at the reasonable -- the unusual and
reasonable criteria under the both 205 and 15-15-
95(b).

Would you agree that -- and similar to the
ICA opinion that when the Planning Commission
reviews the SUP, they have to consider the following
criteria in determining whether proposed use within
the ag district is an unusual and reasonable use,
and it has -- it lists five considerations, but it
has an "and" after four before you get to five; so I
read it as you would have to apply all five,
consider all five, right? Okay.

MS. KEKAI: Yes, I agree with your
reading, I'm sorry, go ahead.

COMMISSIONER CHANG: And if one of those
five -- and if one of those five criteria cannot be
positively or satisfactorily met by the proposed
project, for example, it would cause an adverse
effect. In your opinion, is that a basis upon which
to find that the SUP should not be approved?

MS. KEKAI: I agree with the statement
that they have to meet all five criteria. I would
say that if adverse impacts were found, you would
also have then find that they can be mitigated.

COMMISSIONER CHANG: Okay. All right. So
now that's going to take me both the ICA opinion,
the ICA's findings on the traffic.

So as I read the ICA decision, it
concludes on page 23 on the record we cannot
conclude that the Planning Commission clearly erred
in adopting findings of facts 18, 46, and 47 in
concluding that even with the proposed mitigation efforts, traffic stemming from the development would have an adverse effect on the surrounding properties.

So as I read the ICA opinion, they are saying notwithstanding the mitigation efforts, the proposed project would cause an adverse effect on the surrounding properties. Is that how you would read the IC opinion?

**MS. KEKAI:** Yeah, I agree that that's what was written, but I don't think that that would limit the Comission to the same decision as the first can Commission rendered.

**COMMISSIONER CHANG:** So I cannot get in the minds of the Planning Commission. All I know is I can read from the record there's been a tremendous amount of both testimony, the TIAR was done at that point in time, you know, four years, and even their expert as the ICA noted, Rowell, recommended that it be updated because -- and he specifically say it be updated because there's, you know, proposed new projects.

This is now -- so this is now 2021, probably 13, 14 years later. What changed for the Planning Commission for them to render a decision
that in 2014 it was an adverse effect and a basis for denial of the permit to today they are saying, no, we are going to grant -- we are going to grant the permit?

So how did they deal, because the record doesn't -- you relied upon the same record, there wasn't any changes, no new traffic TIAR update, no new studies. So how did they come to a different conclusion?

**MS. KEKAI:** I think the Commission really focused on the conditions that are being placed and knowing that DPW would have to review the traffic mitigation plan and such, they really were dependent on the expertise of that, of DPW and so therefore, you know, the fact that the conditions say that they have to keep the majority of, you know, drop-off pick-up on campus, you know what I mean, to not create a backup and stuff like that, that that's what the Commission would have depended on and that the conditions would mitigate those impacts.

**COMMISSIONER CHANG:** So was DPW's comments the same in 2014 as they were in 2021?

**MS. KEKAI:** Yeah, I do not believe -- Jeff, you can jump in if you know. I don't believe that DPW submitted anything new.
COMMISSIONER CHANG: Right, because you didn't -- you didn't amend the record, right?

MS. KEKAI: No.

COMMISSIONER CHANG: The record was the same.

MS. KEKAI: Yeah.

COMMISSIONER CHANG: So it was just -- so in 2014, the planning commission felt adverse effect even if there's mitigation.

MS. KEKAI: Uh-huh.

COMMISSIONER CHANG: But in 2021, seven years later, they feel based upon the same evidence that, no, we think the mitigation is sufficient; is that fair to say, is that how the discussion went?

MS. KEKAI: Yes.

COMMISSIONER CHANG: Were there public testimony at the hearing as well?

MS. KEKAI: Yes.

COMMISSIONER CHANG: And did the public testimony also raise some of the questions related to the traffic concerns?

MS. KEKAI: They did, yes.

COMMISSIONER CHANG: And so notwithstanding both the previous record, the ICA's determination to find no error on the part of the
Planning Commission, no new evidence, no new TIA update, the Planning Commission nonetheless felt that the traffic was not going to change the surrounding properties?

MS. KEKAI: Yeah, with the condition with the mitigation plan that DPW would be able to mitigate that impact.

COMMISSIONER CHANG: Okay, okay. My next series of questions deal with, again, Ka Pa'akai. So is it your understanding that the Planning Commission and the Land Use Commission are required to fulfill the obligations of Article XII, Section 7 with respect to the protection of preservation of traditional customary practices?

MS. KEKAI: I would agree, yes.

COMMISSIONER CHANG: Okay. Can you direct me in the record where did the Commission, what evidence did they consider to make that determination that there's no adverse effect?

MS. KEKAI: I apologize, I don't have the record of the environmental -- the draft environmental assessment and should be letters and also -- but in the actual findings of fact, Exhibit 114, page 10 of the document, page 108 of the record, you know, findings of fact number 54 does
state that there was no, that they found -- sorry,
just read it directly.

No traditional or customary Native Hawaiian rights have been identified as being exercised on the property.

**COMMISSIONER CHANG:** And is that --

**MS. KEKAI:** Sorry, so along with the
should be finding concurring and the EA, the Commission also took into account the fact that there were a lot, numerous hearings held, and the public was allowed to testify at every single one but contested case hearings previously and currently, and at any time, anyone could have brought up a traditional or customary practice, and none was brought up.

So at that point, you know, it was identified for the Pa'akai test, and, you know, the third part of Pa'akai test does end with if they exist, then you have to, you know, do these things. And so it was determined they do not exist and therefore, the remainder of the test is not relevant.

**COMMISSIONER CHANG:** And whose obligation is it to provide the information, is it the public, the Hawaiian, it is the Native Hawaiians' obligation
to demonstrate traditional customary practice or is it the Applicant's responsibility to demonstrate no harm to traditional customary practices, whose obligation is it?

**MS. KEKAI:** It definitely is the obligation of the Applicant to present the evidence and then the agency's obligation to weigh that evidence.

So I would say, no, it's not technically the obligation of the Native Hawaiians, but in such, they do have the opportunity to provide public testimony if the applicant did miss something.

**COMMISSIONER CHANG:** And I'm not too sure your extent in working with the Hawaiian community, but in my experience with respect to traditional customary practices, that is not something necessarily that they are going to come to a public hearing, not a Kupuna, not a cultural practitioner.

They are not -- that's not the forum for them to express their traditional customary practice. Do you know whether a cultural impact assessment was prepared for this EA?

**MS. KEKAI:** I want to say yes, but again, I'd have to defer to Jeff.

**COMMISSIONER CHANG:** I didn't see one. I
didn't see one in the record.

MS. KEKAI: Okay.

COMMISSIONER CHANG: And, you know, Act 50 was passed in 2000, and this came --

MS. KEKAI: But I would actually add that I'm very involved in the Hawaiian community, and we actually do get a lot of participation at the Planning Commission, a lot actually, they show up a lot, yeah.

COMMISSIONER CHANG: Okay. And you are very fortunate if they do, but again, I think that the case law --

MS. KEKAI: But I'm not saying it's their obligation.

COMMISSIONER CHANG: Yeah, right. It is the Petitioner's obligation to provide, and likewise, it is our constitutional responsibility, both the Planning Commission and the Land Use Commission to have sufficient findings to make the determination that there's no adverse effect.

When I read the environmental assessment by its archeological firm, their conclusion was based upon four letters were mailed, no responses. Do you think that that's adequate, do you think that is a sufficient basis upon which to conclude that
there's no -- there's no impact to traditional

customary practices?

MS. KEKAI: I would defer that to the
courts. I don't have an opinion at this time.

COMMISSIONER CHANG: Okay. Because the
Planning Commission made a determination -- well, I
don't -- I guess actually I find that there's an
absence of that, absence of sufficient findings, but
that's just my opinion on this.

A final question related to the
environmental assessment. The Applicant indicated
that this is going to be a phased project.

Isn't there an issue regarding
segmentation, that they have to do -- not only is
the question whether the EA is stale under the case
that the Chair cited, but also don't they have an
issue of segmentation coming in just phases and not
doing a very comprehensive environmental EIS for a
project such as this?

MS. KEKAI: I would say it would only be --
the phasing segmentation problem would only be if
the original EA didn't take into consideration the
impacts of the entire project, which I believe it
did in the sense of the full -- but it would be at
full buildout and how many students would be
involved and how many buildings and such or what
their imagined plan was.

COMMISSIONER CHANG: Because that seems to be inconsistent with the Applicant's testimony today that they didn't -- they don't have a very detailed plan, it's very conceptual; that when they prepared the EA before the Board of Land and Natural Resources for the lease, the disposition, it really was much more of a conceptual plan. It does not appear as if they had a detailed plan. So is your opinion still the same?

MS. KEKAI: Yeah, I --

COMMISSIONER CHANG: Okay.

MS. KEKAI: -- I think that, yes, my opinion is the same.

COMMISSIONER CHANG: Okay. All right.

Thank you so much, Ms. Kekai, I appreciate the responses.

CHAIRMAN SCHEUER: Thank you very much Commissioner Chang. Commissioners, questions for Ms. Kekai? Commissioner Ohigashi.

COMMISSIONER OHIGASHI: I'm going to do my best, I'm going to -- you are familiar with Neighborhood Board versus State Land Use Commission, 64 Hawaii 265?
MS. KEKAI: Sort of. I mean, I don't recall the full case at this very moment, no.

COMMISSIONER OHIGASHI: That case dealt with a big project. They had five point, they went through the Planning Commission in Honolulu and they wound up with the Land Use Commission for a special use permit.

And the Supreme Court said, hey, this doesn't fall within being done by a special use permit, it should be done by a district boundary amendment because of the size and impact of the project.

However, we've heard testimony from Mr. Hong saying that it was your planning director as well as I think it was the head of the Board of Land and Natural Resources at that time advised them to seek a special use permit.

Do you have anything in your records that would indicate that your client had made that advice to Mr. Hong? Is that part of the record in this case?

MS. KEKAI: I advise the Planning Commission so I don't know the advice that the director gave Mr. Hong.

COMMISSIONER OHIGASHI: Are you aware of
anything in the record that shows that advice?

MS. KEKAI: I am not aware of anything in the record. I cannot recall at this time, no.

COMMISSIONER OHIGASHI: The case was 1982 and when I read the memorandum opinion, it indicated that the -- that they were citing this case for residential, and right now I believe it's applicable to the present situation.

So I'm going to ask you the same thing I asked Mr. Hong, I think, that I'm looking on page 273. 272, it says that the procedural and substantive differences between the two techniques, that being special use permit and the district boundary amendment, in this court the necessity for their proper application to the particular land use problems they are designated to address.

As courts have repeatedly recognized, unlimited use of the special permit to effectuate essentially what amounts to a boundary change undermine the protection from piecemeal changes in the zoning scheme guaranteed to landowners by the more extensive procedural protections of the boundary amendment statutes.

Now, in this case, I was intrigued by one of the footnotes where it talked about, footnote
number -- I got to use my magnifying glass, footnote number 7 on page 25 in memorandum opinion.

And it said something about the special permit application stated that at the time a definitive solution was not evident, but -- and it was talking about the water problem -- but the potential for additional sources of potable water might be a rain catchment system, a portable water well, possibility of future joint developer agreement whereby Connections might be able to gain additional water credits.

Connections submitted that there was one or two decade -- there was a one- or two-decade period before the DWS allotment would be reached, and there was ample time to identify and assess the feasibility of other sources and secure the necessary permits. Otherwise, campus development would not proceed beyond that sustained part.

In a -- is that the standard that SUP uses in the Hawaii County in terms of determining whether or not to issue SUP, whether or not things anticipated in the future can be considered in granting an SUP?

**MS. KEKAI:** I think that that's -- I would say, yes, in the sense that that's what the
conditions are for is to plan for things that aren't completely laid out at the time of application, that can't be laid out at application.

COMMISSIONER OHIGASHI: And so would that also apply in a district boundary amendment question, would that standard also be present in a district boundary amendment? Because I just give you a hint, as a LUC commissioner, I don't think I would buy this.

MS. KEKAI: Yeah. And I'll just -- I'll just take a little latitude and say that I also don't think that a boundary amendment would apply in this case in the sense that this is state land, and therefore, I would say that if the state wanted this to be amended, a boundary amendment, that they could have issued that to the applicant instead of a special use permit.

COMMISSIONER OHIGASHI: The state didn't issue a special use permit.

MS. KEKAI: No, but I mean in their lease, they could have said that you can go -- you should go and get a boundary amendment instead of a special use permit if the state wanted this piece of land which, you know, is state owned to be amended or to -- at the end of the day, they all have it.
COMMISSIONER OHIGASHI: For example, let me, for example, I know that this is on Maui, you may not know this, but school, in the Keaau, Keaau school here that is being done by the DOE is not owned by the DOE.

The underlaying land is owned by the state of Hawaii, but because it's a school and the agricultural -- it was in agricultural district, they did a district boundary amendment to amend it so that we can put specific conditions and make sure it's done correctly.

So the state itself didn't put into any lease a requirement, but they recognize that this, the district boundary amendment.

I'm just asking now. I don't think that whether or not somebody puts it in a lease or doesn't put in a lease is very important. I think what's important is what the Chairman indicated to you, whether or not you you do have the -- that you -- you put the DLNR on the hook that said, hey, you guys got to follow all the conditions or not.

You know, you have to have that in writing, but, you know, I don't think it's important to put it in a lease. So I'm going to ask you -- I'm trying to put it into its topic.
Is this a case where special use permit application as identified by the ICA in that footnote that I read is sort of more procedural latitude, a special use permit versus DBA, a district boundary amendment?

MS. KEKAI: I don't know that I really understand your use --

COMMISSIONER OHIGASHI: I'll withdraw the question. I'll withdraw the question.

MS. KEKAI: Sorry.

COMMISSIONER OHIGASHI: I made my point.

MS. KEKAI: Okay, good.

CHAIRMAN SCHEUER: Thank you, Commissioner Ohigashi. Commissioners, further questions for Ms. Kekai? I believe all the questions I have have been raised by Commissioners prior to me so let's hear from Ms. Campbell.

CHAIRMAN SCHEUER: Let's hear from Ms. Campbell.

MS. CAMPBELL: Good afternoon, Commissioners. I'm Jean Campbell, Deputy Corporation Counsel for the Hawaii County Planning Department. The Planning Department also does not have an extensive presentation for you today.

As you know, the Planning Department in
the normal course of this special permit application
prepared its recommendation and background report,
both of which are in the record, Planning Department
folder, two pages, 881 and 419 respectively if my
review of the record is correct.

These, both the recommendation and the
report, were submitted to the Windward Planning
Commission for their consideration. The Planning
Department recommended that the Planning Commission
approve the special permit application and continues
to stand by this recommendation, and I -- the Deputy
Director and I are available for what I do expect
are your questions.

CHAIRMAN SCHEUER: Thank you, Ms.
Campbell. Questions. Commissioner Chang?

COMMISSIONER CHANG: Ms. Jean Campbell,
you know I cannot let you get away without asking
you the same questions. I'm -- I wanted to ask you
since the Planning Department made recommendations
to the Planning Commission, what information did you
have to recommend that there were no traditional
customary practices on the property and therefore no
adverse effect?

MS. CAMPBELL: As my Co-Deputy Hall noted,
we, the Planning Department, relied on the final
environmental assessment and additionally the lack of public testimony at the time and continuing; so the Planning Department did feel that this was an adequate inquiry on our part.

We do agree with both you and Deputy Hall that both the state and the county do have the responsibility to consider and protect traditional and cultural rights and practices and that this obligation does extend to special permit applications, and, you know, and we -- we actually thank the Commission for your continuing this inquiry.

As I noted, the Planning Department, the county did feel that their inquiry was adequate, and we recognize the state's both right and obligation to continue that inquiry as far as you believe it needs to go.

**COMMISSIONER CHANG:** I guess a question that I asked Ms. Kekai, we both agreed upon, who's -- would you agree that the obligation to come forth with information to determine no adverse effect on traditional customary practices is the obligation of the Applicant?

**MS. CAMPBELL:** Yes.

**COMMISSIONER CHANG:** So it's not the
obligation of the Native Hawaiian practitioner but
the Applicant?

MS. CAMPBELL: That's correct.

COMMISSIONER CHANG: And are you -- are
you comfortable, I don't know if comfortable's the
right word because I'm trying to be somewhat -- do
you believe that reliance on the environmental
assessment where they mailed four letters and no
response, do you believe that that's adequate to
make a determination that there's no adverse effect
on cultural practitioners or Native Hawaiian
traditional customary practices given the fact that
this is a Kaumana Cave?

MS. CAMPBELL: I believe that the Planning
Department exercised its own expertise as well so
the Planning Department would have taken into
account its own -- its own knowledge of the area,
the knowledge that it received regarding the date of
the lava flow and the surrounding properties mostly
being all developed subdivisions or, you know, more
modern used utilized properties or modern developed
properties surrounding this one.

I believe that the determination could
have been different if surrounding properties were
undeveloped. So I believe -- I guess the short
answer is I don't believe that the Planning Department's determination was limited solely to the environmental impact statement or, I mean, I'm sorry, the EA and the lack of response from four letters only.

I believe that the Planning Department would have exercised its own expertise and its own discretion if its own evaluation as well.

COMMISSIONER CHANG: Does the record contain that sort of that expertise and that knowledge so that we can weigh that against the conclusion? Because at this point in time, all we have is the EA. Is there anything in the record to indicate the staff's expertise and experience?

MS. CAMPBELL: I'm afraid there's not much articulation of that, no.

COMMISSIONER CHANG: All right. All right. Thank you very much, Jean. Good to see you, thank you.

MS. CAMPBELL: You, too.

CHAIRMAN SCHEUER: Thank you Commissioner Chang. Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair. Ms. Campbell, I guess I want to do the same question that I asked Ms. Kekai. First off, again, did the
Planning Department think that conceptual drawing was enough to make that decision to approve it to send it up to us?

    MS. CAMPBELL: Yes.

    COMMISSIONER WONG: Okay. So then the other question I would have, and I know I sound like a broken record because, you know, Chair has a way of saying it, but EA, did you think it was stale?

    MS. CAMPBELL: No, we didn't believe that it was stale.

    COMMISSIONER WONG: Okay. So the other question I have that was brought up that's kind of brothering me a little bit is who, I mean, is there anything on the record to say, hey, Petitioner, go for a special permit instead of a DBA?

    MS. CAMPBELL: I'm not aware that there is a specific directive in the record anywhere advising the applicant one way or the other about which application to submit.

    The Planning Department was presented with a special permit application and so that's what they processed. The Planning Department does actually believe that a special permit is the most appropriate application for this process and for this particular property, in part because of the
agricultural nature of the proposed school.

Had this been a boundary amendment and the property been changed to an urban designation, some of the agricultural, the proposals wouldn't be permitted any longer and so it would -- it would change the nature of the school that's being proposed.

In addition, I believe -- I don't -- I think it was Commissioner Ohigashi who referred to the special permit as sort of a down and dirty application, but in some ways, it's exactly perfect for this because it's very limited, right?

It would not allow all of the other uses that an urban designation for this property would, which would be significantly broader than a school and that would be permanent and so this special use permit allows this particular use on this particular property.

To the extent that anyone puts a time limit on the use itself, it would expire. It could be revoked. You know, it's very narrowly tailored and I would encourage you to look at it that way rather than a shortcut.

And so I believe that it is actually an appropriate methodology for going about this
particular project, and on top of that, if we look at the proposed use, if they did do a boundary amendment, they would then, in addition, have to come in for a use permit after that.

And so it -- a boundary amendment at a glance might seem like a good proposition, but the Planning Department didn't really believe that that was a better alternative, but again, the Planning Department simply processed the application that was in front of them as well.

COMMISSIONER WONG: Thank you. I guess I better go back again. You know, most of the time when someone comes up for a special permit during my period, we have a little bit more firm, I would say firm statement like toilets over here, you know, it's more firm or finite, like this is the funding stream.

We can guarantee we have, you know, even though I know it's a charter school, but we have $5 in the bank guaranteed to spend on this. It's, you know, I mean, it's not -- it's a plan.

I know here it's part of it, but it seems like very, to me, very nebulous. I'm not sure how the Planning Department deals with that if you could explain just a little bit, just, you know, that
much.

**MS. CAMPBELL:** Thank you. And I guess to some extent, you know, this project was compared to Kihei High School, which is a really different project, right, and so perhaps I wouldn't suggest you are confusing the two in any way because they are so distinguishable.

There's no real ag component to Kihei. It's a standard DOE school, but this project, we believed based on, you know, the application needed more flexibility.

They needed to be able to, I wouldn't say, you know, come up with plans on the fly because we didn't believe that that's what they were doing, but we felt -- the Planning Department felt that the conditions that were being imposed were adequate to deal with the uncertainty.

**COMMISSIONER WONG:** Okay. So I guess just falling back on the zoning issue again, sorry. It bugs me just that, as you know, for Land Use we have four designations compared to the county which has multiples, right?

So even if a state zoning says we will change it to urban, the county can say you know what, you still, even though it's urban, you can do
it, you know, you can do some ag on it or, I'm sorry, talking about Oahu now.

You know, you can do a more of a like a Waimanalo Gulch Landfill on a urban district; so, you know, you can do other things on it while the county levels statements.

While urban is almost like anything under urban, whatever the county says you can do, you know, I mean, so I don't -- it's kind of -- I can't put two and two together. That's the problem I'm having right now.

So I'm not sure. I don't know if it's just a statement or if you can answer that. If not, that's fine.

**MS. CAMPBELL:** Well, the urban uses, I guess it would be -- the county felt that it would be most consistent to leave it in ag considering the proposed ag nature of the school versus, you know, something is really truly urban and then trying to carve out or add in, you know, other uses that are truly not urban uses.

It just seemed most consistent to us to leave it ag. And again, we weren't presented with a boundary amendment request.

**COMMISSIONER WONG:** Thank you, Ms.
Campbell. Thank you, Chair.


COMMISSIONER OHIGASHI: Follow-up question on that last question, Ms. Campbell. What was to stop the applicant from only designating the half they were going to build on as a special use permit, why was it necessary to designate the entire parcel if they were only going to build on the first half?

MS. CAMPBELL: You know, that was the request that came to us.

COMMISSIONER OHIGASHI: No, I'm just trying to follow your logic. You are saying that it's supposed to remain in agriculture and a bunch about special use permit, but if we were going to follow that logic, then Planning Department should have processed it, should have advised them why don't you just do this part, then, as a special use permit.

In fact, why don't you keep it down to 15 acres. That way you don't even have the Land Use Commission bothering you. I'm just curious about that because that's what you mentioned.

The second thing that bothers me is that my reference to the Kamehameha school was in
response to a statement made by the Planning
Commission's attorney saying that the state would
have put it in the lease if they wanted a boundary
amendment and because they didn't do that, we are
free to do whatever we want.

My response is, hey, this is a state land
EA permit school. They went to a DBA. They didn't
do whatever they want. So I was responding to that,
and to make it seem like I am comparing that school
to this school, ridiculous.

Third point that I want to make is this,
is that did the Planning Director direct Mr. Hong's
clients to file for special use permit; is that in
the record?

MS. CAMPBELL: I don't believe that there
is a directive in the record from the Planning
Department of --

COMMISSIONER OHIGASHI: That's all the
questions I have.

CHAIRMAN SCHEUER: Thank you, Commissioner
Ohigashi. Commissioners? So at the risk of being
repetitive to this line of questioning, but I am
trying to -- because Commissioner Ohigashi and Wong
went where my mind was going, which can be a scary
thing, I realize, but, you know, there we go.
If I understand the record in front of me correctly, the actual urban like uses, the school uses, the built environment, it's going to be confined to one part of the parcel, one part of one half of the parcels and could be less than 15 acres; am I correct?

**MS. CAMPBELL:** I apologize. I need to defer to the deputy director about the size.

**CHAIRMAN SCHEUER:** I got to swear you in, Jeff. Do you swear or affirm the testimony you are about to give is the truth?

**MR. DARROW:** Yes.

**CHAIRMAN SCHEUER:** Thanks, Jeff.

**MR. DARROW:** Jeff Darrow, Deputy Planning Director with the county of Hawaii. We, you know, the record kind of starts where the application was submitted to the Planning Department back in July of 2012, but prior to that, the Applicants were going through all the environmental assessment process that they were required to do being that this was state land and they were proposing a school.

We did meet with them for the proposal and discussed the different options. The discussion came up a number of times about trying to keep the school under 15 acres, but their proposal was clear
that they wanted to utilize the entire 70-acre parcel. So it was clear that they understood that that meant approval through the Land Use Commission, and that was the direction that they wanted to go.

There was -- I don't recall a lot of discussion about going through the direction of a boundary amendment because again, as Deputy Corporation Counsel Campbell had mentioned, that this school was very focused on the agricultural component for its uses.

And to be able to go through a urban designation and then to be required to possibly have to change the zone to a residential zoning to be consistent and then to have going through a use permit felt like a pretty, you know, pretty exasperating process when this option of the special permit appeared to be more in line with the direction of the school. It wasn't that they were trying to make an easier path.

And so again, I can't -- I mean, this was 10 years ago. I was -- I think I was the planner assigned to do a lot of the work for this application. I was involved in the meetings, but again, their focus and direction was clear.

CHAIRMAN SCHEUER: And you would agree
that the path we've ended on has been an
exasperating for nearly everyone involved, wouldn't
you?

MR. DARROW: I, I mean, how many years,
yeah, it's been exasperating, but again, if we would
have gone down a different path, we are not sure how
long that may have taken.

CHAIRMAN SCHEUER: No. I keep thinking of
the motto of the Medici family, do you happen to
know what that was?

MR. DARROW: I don't.

CHAIRMAN SCHEUER: Translated into
English, Make haste slowly. So I guess the last
question for now on this line of questioning, it is
in the urban growth area, right?

MR. DARROW: Correct. General plan
designation for this area is low density urban.

CHAIRMAN SCHEUER: So that's why I'm like
just scratching my head. Like even with all the
other things you've said, you have an applicant in
the urban growth area and you are saying, no, keep
the land in ag when the county has actually gone on
record as saying, actually, it should go into the
urban district.

MR. DARROW: Again, the Applicant was
focused on the direction that they wanted to go.

CHAIRMAN SCHEUER: I know what the

Applicant asked.

MS. CAMPBELL: I think had the Applicant

come in to want to do a residential subdivision,

then obviously a boundary amendment would have been

the most appropriate way to go, but this applicant

came in for essentially an agricultural school and

so it seems consistent.

CHAIRMAN SCHEUER: But when, I mean, and

I'm a little bit familiar with Hawaii County

planning, like, I mean, when you set out the urban

growth boundary after the extensive community plan

and general plan process, it really is the statement

ultimately by the council that this is what we want

urban boundaries to be, correct? That is the policy
decision of the county.

MR. DARROW: Correct.

CHAIRMAN SCHEUER: What you are

recommending when you are going with recommendation

for a special permit really is contrary to what the

stated position of the county is for where the urban

growth boundary should be.

MR. DARROW: I would agree with that

statement, but that doesn't negate the options that
are available to property owners that do have existing zoning that these options are available to them.

When the planning director looked at this request in light of the general plan designation, they felt that the school was in line with that low density type of use.

**CHAIRMAN SCHEUER:** Couple other questions. I have not seen on the record any time limit to the latest version of the permit that was issued by the Planning Commission recommended to the LUC.

**MR. DARROW:** If I direct the Commission to Condition 4 of the revised recommendation that was adopted by the findings of fact, that has the time frame to build the high school phase of the project.

The planning director at the time put time conditions on the up to the high school phase. My thought is that the understanding is that if they have gotten to that point in their -- their project, that at that point, we wouldn't need to continue with time limits until they finish, but that the school would be established at that point.

**MS. CAMPBELL:** And there is a 10-year time limit on the development of the school.

**MR. DARROW:** Right.
CHAIRMAN SCHEUER: But that's more akin to the LUC says you must commence by such and such date or be subject to revocation. It's not actually a time limit on the length of the special use, correct?

MS. CAMPBELL: Right, but there doesn't need to be an absolute time limit. If you look at the HAR 15-15-95(e), the duration of the entire project is permissive versus the initial buildout is a shell and so this is in line with the administrative rules.

CHAIRMAN SCHEUER: Except to the degree, I guess, I would counter, Ms. Campbell, and with real respect for your understanding of the law with the case that we've talked about, the Neighborhood Board case, because we are really trying to draw a distinction between district boundary amendment actions versus special permit actions. I think you have to read 15-15-95(e) also in context of the overall land use statute in this state, right?

MS. CAMPBELL: Yeah. And certainly the Land Use Commission would be free to add a time limit duration as --

CHAIRMAN SCHEUER: Okay, great. So you are getting to exactly where I'm trying to go. What
in the record would be a reasonable basis for
placing a time condition on it, should the
Commission garner five votes to agree?

MS. CAMPBELL: You know, I think that's in
the discretion of the Commission, and I wouldn't
want to direct the --

CHAIRMAN SCHEUER: It has to be based on
the record, yeah?

MS. CAMPBELL: Right. There is an awful
lot of information in the record, including the
duration of the lease itself. I haven't looked
closely at that to recall whether it's got extension
periods, renewal options or any of those. I think
there's -- the record is voluminous and I'm afraid I
can't cite to you all of the different
considerations you would want to --

CHAIRMAN SCHEUER: Because in the record
regarding Waimanalo Gulch, we specifically got
dinged for placing a time condition that was not
related deeply to the record, yeah, so I ask that
question.

I think I'm out for now. Any others,
Commissioners? Okay. It's 2:37. I think we
started at 1:41. Am I remembering correctly? So if
we end off our county questions for now, then we
could go on to OPSD and the intervenor after a 10-minute break. Okay. So let's reconvene at 2:47.

(Recess taken from 2:37 to 2:47 p.m.)

CHAIRMAN SCHEUER: It's 2:47. We are back on the record, and we will now hear from OPSD, Ms. Kato, questions for OPSD followed by Mr. Matsukawa. Ms. Kato.

MS. KATO: Thank you, Chair. The Office of Planning and Sustainable Development recommends approval of this special permit subject to additional conditions to address state concerns with respect to the project's potential impacts to archeological resources and endangered species.

Special permits may be granted by the county Planning Commission and the Land Use Commission for certain unusual and reasonable uses within the state agricultural land use district.

Now, HAR 15-15-95(c) provides five guidelines to aid in determining whether a use is unusual or reasonable. OPSD believes that the proposed use generally meets the special permit guidelines for an unusual and reasonable use within the agricultural district.

The property is undeveloped and poorly suited for agricultural use due to its location on
the 1888 and '81 lava flow. Land has LSP soil rating of D or poor.

According to the county exhibits, Exhibit 78, County of Hawaii Planning Department revised recommendation, the proposed project with appropriate mitigation will not adversely affect the surrounding property and would not unreasonably burden public resources.

The use is also consistent with the surrounding area, which has developed into low density residential neighborhoods.

While the property is considered low quality agricultural land, Petitioner proposes to establish agricultural and reforestation programs as part of the school's curriculum. The reforestation projects would include reintroducing and preserving the existing Ohia forest and reintroducing some native species.

The proposed agricultural program would provide students with hands-on experience in sustainable agricultural practices and may include greenhouses, cultivated gardens, and we understand possibly livestock.

These programs will help defer their Hawaii's sustainability goals and is a compatible
and appropriate use within the agricultural
district.

OPSD notes that the county Planning
Commission's finding of facts number 21 reference
adoption of the recommended conditions contained
within County's Exhibit 78, the Planning
Department's own revised recommendation.

The 19 recommended conditions, however, do
not appear to have been incorporated into the
Planning Commission's D and O. The 19 conditions
cover public facilities and certain matters of state
concern, specifically the Kaumana Cave that
underlies the property.

The recommended conditions include a
hundred foot buffer zone and other related historic
sites mitigation as supported by the FEA. So OPSD
therefore recommends also that the LUC incorporate
the 19 conditions in the Planning Department's
revised recommendation dated October 31, 2012.

In addition, OPSD recommends one
additional condition related to endangered species
as recommended in the policy of the project's FEA.
The condition relates to avoidance of impacts to the
Hawaiian hawk and Hawaiian hoary bat, which are
species that one of the public testifiers mentioned
as being in the area. Specific language for this additional condition is provided in OPSD's written testimony.

Again, the Office of Planning and Sustainable Development recommends approval of the special permit for this project subject to the imposition of the mentioned conditions. Thank you.

CHAIRMAN SCHEUER: Questions for Ms. Kato?

Commissioner Chang.

COMMISSIONER CHANG: Thank you, Mr. Chair. Ms. Kato, I want to be consistent and ask everybody the same series of questions so you would agree that under special use permit as well as the IC opinion that all five of those criteria must be considered in determining unusual and reasonable use?

MS. KATO: I think that they should be considered. I don't think that they necessarily all need to be met as they are guidelines and not specifically requirements.

COMMISSIONER CHANG: Okay. So you believe it is within the discretion of the Planning Commission to weigh the evidence and use their discretion in weighing -- in determining whether it's unusual and reasonable use?

MS. KATO: That's correct.
COMMISSIONER CHANG: Okay. And based upon the record, the original determination in 2014, I believe it was, they determined there would be adverse effect on the surrounding areas, in particular because of the traffic and the water issues.

And although the record hasn't been amended, no updated TIAR, no additional information, you believe deference should be given to the county, county Planning Commission in deciding to change their mind that now they believe the permit should be issued?

MS. KATO: Are you talking about the difference between the Planning Commission's first decision and second decision?

COMMISSIONER CHANG: Yes.

MS. KATO: I think that's the subject of the IC opinion, which found that certain conclusions the Planning Commission made in the first decision were incorrect and reversed and remanded it.

COMMISSIONER CHANG: However they also did not find error in some of their findings and conclusions?

MS. KATO: Our understanding is that, you know, there are potential impacts but that those
impacts can be mitigated with the conditions that were included in the Planning Department's revised recommendation --

COMMISSIONER CHANG: Okay.

MS. KATO: -- which do address traffic and water.

COMMISSIONER CHANG: Do you find that the EA that was prepared for the original lease from DLNR is still -- is still applicable and viable 13, 14 years later?

MS. KATO: Generally, yes.

COMMISSIONER CHANG: Okay.

MS. KATO: We do not currently find an issue with it.

COMMISSIONER CHANG: Okay. And my final questions relates to Article XII Section 7. Do you believe that the record, that the county Planning Commission's findings are adequate for both the Planning Commission and the Land Use Commission to conclude the traditional customary practices have been adequately addressed in the record?

MS. KATO: Well, the efforts made by the Petitioner to identify the cultural resources and practices are discussed in the FEA. That page is 532, 533.
You know, we understand that there were no identified traditional and customary native Hawaiian rights exercised on the property. I'm not sure that I can speak well to efforts that were made, but it's described in there, and we felt that it was sufficient.

COMMISSIONER CHANG: And would you agree that the burden is on the Applicant to prove that there is no adverse -- no harm to traditional customary practices and not on the cultural practitioners to prove that there is a practice?

MS. KATO: Yes. I agree with that.

COMMISSIONER CHANG: So okay. All right, thank you. You've answered my questions.

CHAIRMAN SCHEUER: Thank you, Commissioner Chang. Commissioners, questions for Ms. Kato? The wow, yes, bidder number 652.

COMMISSIONER WONG: Thank you, Chair. Ms. Kato, let me be repetitive what I asked the county also. Do you think the EA is stale?

MS. KATO: I think Commissioner Chang also asked this. We did not find it to be stale.

COMMISSIONER WONG: Okay. So the other question is I know you've been with us or you've been with OP and with them coming in front of the
Land Use Commission a short period, I will say short period compared to other attorneys.

You know, during your -- the time of special permits, we usually have a little bit more substantial information in terms of what -- where is the toilets going, you know, so do you think that's good enough for the record so we can say, yeah, go for it or, no, don't go for it?

**MS. KATO:** Well, in my time doing these matters, the SPs that I've seen come through have been for projects in which the applicant or the petitioner had a lot of money to create all those substantial, you know, plans and things.

So it's a little difficult to say what is required. I think it's within the LUC's discretion to determine whether you think the record is sufficient or there's enough information to make your decision.

I'm not sure that it's -- I'm not sure to what extent you should look at what other petitioners have provided for SPs to determine whether what this Petitioner has provided is sufficient.

**COMMISSIONER WONG:** So another question I have is, I guess Commissioner Ohigashi brought this
up, or Commissioner Giovanni, sorry, one of the
Commissioners brought up that why didn't the
Petitioner come and say, you know what, instead of
the whole apple, we are going to come in front of
just the county and just do instead, leave it at ag
on this part, and then come this part for rural or
designation with the county zoning for the
schoolhouse, I mean, what's your idea of that?

    MS. KATO: Anything I say about why they
made that decision would be speculation.

    COMMISSIONER WONG: Okay, no problem. The
other question I have, then, is as you know, the
Land Use Commission has four definitive, you know,
areas, preservation, ag, you know, urban, all that,
right.

    And the counties can have other
designation within urban, other designation within
ag, et cetera, et cetera, et cetera.

    Could the counties come and say you know
what, we will go for the -- or the Petitioner come
and say we will go for DBA urban, but let the county
decide what. We want to do it under urban because
urban can do anything, in general, you know what I'm
saying?

    MS. KATO: You mean at the state level?
COMMISSIONER WONG: Yeah.

MS. KATO: That is possible, but, you know, given that -- you know, I understand that schools are normally not really the use that you think of in special permits, but the reason that we say that it's compatible and appropriate in an agricultural district is because of the school's plans for extensive agricultural programs, including their agroforestry.

COMMISSIONER WONG: Right. It's just hard for me, due I've been hearing that it's going to take 30 years for full buildout, and 30 years is a long time for a special permit. You know, usually when we hear 30 years, that's a DBA pretty much. You know, usually it's a finite time for special permits.

I'm not sure if you were here for Waimanalo Gulch, but we change, it says, no, come back here for -- do a DBA if you really want it because it shouldn't be special permits.

So you know what I'm trying to get at is 30 years is a pretty long time in my estimation. I mean, I won't be here. I'm hoping I will be here, but I doubt it.

You will be here, but you know what I say,
it's one of those things that it's pretty long. If you don't want to answer that's fine, it's just a statement.

MS. KATO: Okay.

COMMISSIONER WONG: Thank you, Ms. Kato.

Thank you, Chair.


COMMISSIONER OHIGASHI: Ms. Kato, I'm going to give you a chance to just help me out on this Neighborhood Board Land Use Commission case, 64 Hawaii 265.

So I'm reading from the opinion on 266, the facts part. It says that a proposed site has been vacant and undeveloped since 1960. The soils has been assigned a Land Study Bureau overall productivity rating of E or very poor for overall agriculture productivity with frequent rock outcropping.

Immediately south between the subject parcel and Kamehameha Highway, there are 13 single family homes which form part of the old agricultural subdivision.

So the facts of this case that were reported to the state Land Use Commission seem to
imply in this particular case given the fact that
for very poor, we are giving it the same thing, very
poor land, very poor -- frequent outcroppings, in
this case lava flows, and it has certain amount of
(inaudible) wild things scattered about it, right,
yet -- and admittedly, it was a theme park that they
decided not to do it.

But yet they said -- this is a different
quote on page 273, we do not believe that the
legislature envisioned the special use technique,
they didn't use permit, technique they used, could
be used as a method of circumventing district
boundary amendment procedures to allow for the ad
hoc infusion of major urban area uses into
agricultural districts. That's on page 273.

Can you help me out and tell me why is
this again unreasonable -- is reasonable and unusual
that would allow the Neighborhood Board, State Land
Use Commission would allow it?

MS. KATO: Well, Commissioner Ohigashi,
I'm assuming the case you are talking about is the
one with the recreational theme park?

COMMISSIONER WONG: Yes.

MS. KATO: Okay. I am not prepared to
speak about that. I haven't really reviewed this
case so I'm not sure about that, but it sounds -- a recreational theme park, I think, is very different from a school that is planning to do a lot of agriculture.

COMMISSIONER OHIGASHI: And how is it factually different?

MS. KATO: That the school is planning to have agricultural programs and reforestation programs.

COMMISSIONER OHIGASHI: When you indicated your OPS reasoning, I think you relied upon the fact that it's barren land or unable to be agriculture and that it's --

MS. KATO: The soils are --

COMMISSIONER OHIGASHI: And that in that particular area; so I'm just trying to get a hold on what is the different facts here? In fact, if you take a look on 267, the lands further south of the site, under sugar cultivation at the time of Oahu's application, were reclassified from an agriculture to urban district.

So they even had a classification to urban district to permit construction of a residential, commercial, and resort development. Northwest of the site stands Hawaiian Electric Kahe Power Plant
beyond such.

Now surrounding this area are industrial uses, but then they still say, A, you got to go through the boundary, district boundary amendment process because a special use was not meant to do this type of thing.

So you got to help me out in this and tell me what, reading after -- since you haven't read the case, I can't ask you to understand the case, but since -- how do we get past Neighborhood Board, State Land Use Commission?

MS. KATO: I'm sorry, Commissioner Ohigashi. I know you made some references to certain pages, but I don't know what those reference are.

COMMISSIONER OHIGASHI: Okay, I'll withdraw the question then because that's what I'm getting in trouble with.

MS. KATO: Well, I did see that the, you know, the land is unsuited for agriculture because of the poor soils because of the lava.

COMMISSIONER OHIGASHI: That's what they said in this case, too.

MS. KATO: Yeah, but they are planning -- I understand the Petitioner is planning to have things like greenhouses, various other things that
can be on the property that are agriculture. And specifically I think we are interested in the reforest -- the planting of trees.

**COMMISSIONER OHIGASHI:** I would have no objection if they decide to put up a farm there today, anything else like that, but what they are planning to do is a school, and a school is basically -- let me go back, let me go back.

The other question that I have is in truth, excuse me, time limits. Chairman mentioned is it possible to make a special use permit either 10 years that the county has required be built, that the school be built?

**MS. KATO:** You are asking whether a special -- you can impose a time limit on the special permit; is that the question?

**COMMISSIONER OHIGASHI:** Yes.

**MS. KATO:** Yes, I think you have discretion to do that.

**COMMISSIONER OHIGASHI:** That would mean that if the time comes up, we can retract the special permit; is that correct?

**MS. KATO:** Well, the special permit would expire. That's all.

**COMMISSIONER OHIGASHI:** Okay. Prior to
that, does the state Land Use Commission have the authority to take away the special permit? With supposing we have an evil dictator as governor, you know, and things like that and force us -- say we are going to go say, hey, that's it, that's the end. We can terminate right there.

**MS. KATO:** I mean, I'm not an expert on LUC's rules, I'd have to take a look. I think if the Petitioner violates conditions, there's probably something that allows you to withdraw special permit, but I would have to check and see where that is.

**COMMISSIONER OHIGASHI:** So the Petitioner may be well aware, should be aware that if they violate any of the conditions that have been placed upon them, that the state Land Use Commission has the opportunity to bring them in and to review the special use permit; is that right?

**MS. KATO:** I'm sorry, what's the question again?

**COMMISSIONER OHIGASHI:** So should the Applicant be aware or Petitioner be aware that if they violate any condition under the special use permit, that the state Land Use Commission still has the jurisdiction to call them in on our order to
show cause to say, hey, we are going to terminate this because of your failure to follow the conditions?

MS. KATO: I mean, if that's what's in the rules, that's what's in the rules.

COMMISSIONER OHIGASHI: I'm asking your opinion. Is that what the OP --

MS. KATO: Are you asking me if the Petitioner is aware of this?

COMMISSIONER OHIGASHI: Yes.

MS. KATO: I don't know what the Petitioner is aware of.

COMMISSIONER OHIGASHI: OPSD, the SD again is for sustainable development.

MS. KATO: Sustainable development.

COMMISSIONER OHIGASHI: Yeah. We had a talk about the other day, which I found really enlightening, has this project been reviewed under your department under for sustainability, the sustainability guidance?

MS. KATO: Yes, we -- yes.

COMMISSIONER OHIGASHI: Have they issued a report as to what the sustainability or reaction to what this report is?

MS. KATO: I mean, we included a statement
in our written response, written testimony.

    COMMISSIONER OHIGASHI: And you got to forgive me because, you know, I've read so much documents, can you refer me to it and tell me what it says?

    MS. KATO: It's at --

    COMMISSIONER OHIGASHI: I can't remember what I had for dinner last night.

    MS. KATO: Sustainability, the Hawaii 2050 sustainability plan, turning a course for the decade of action 2020 to 2030, page 107, Natural Resource Protection Section.

    The Petitioner's proposal for reforestation program and protection of natural resources meets strategy 35, protect and manage watersheds, and strategy 37, to conserve working forest landscapes, protect forests from harm and enhance public benefits from trees and forests.

    COMMISSIONER OHIGASHI: So is that -- so that is your recommendation or that is in the record concerning your position on sustainability?

    MS. KATO: That is part of our written testimony.

    COMMISSIONER OHIGASHI: I just ask that question because I was intrigued about Commissioner
Giovanni's question, and I was just wondering whether or not there was anything about it in there. The last question that I have is -- scratch that. That's all the questions I have.

THE COURT: Okay. Thank you, very much Commissioner Ohigashi. Commissioners?

CHAIRMAN SCHEUER: I have six questions for you, Ms. Kato. First question, Hawaii Administrative Rules 15-15-95(c)(2). It says we can issue a special use permit when the proposed use would not adversely affect the surrounding property.

We have on the record, as has been repeatedly pointed out by Commissioner Chang, even on the record from appeal from the ICA that there's going to be adverse impacts on traffic, findings that were not struck, how is it that you read, presumably from OPSD's position, you read this provision of the rules of having an asterisk on it that says or if it's mitigated to below significance?

MS. KATO: I'm sorry. So what are you referring?

MS. KATO: You are talking about the guidelines.

CHAIRMAN SCHEUER: Yes. States we can issue the permit if, quote, the proposed use would not adversely affect surrounding property.

Is it OPSD's contention that based on the entire record of this case, this issuance of this permit will not affect surrounding -- adversely affect surrounding property?

MS. KATO: That is our understanding. We -- the relevant public facilities are county concerns so OPSD has relied on the recommendation of the county Planning Department with respect to these matters.

CHAIRMAN SCHEUER: So you've not independently -- as long as the county says we're good, you are good?

MS. KATO: They are not county -- I mean they are not state roads. They are not -- we believe that these are more appropriate for the county.

CHAIRMAN SCHEUER: You disagree that the ICA opinion noted that there are still adverse impacts?

MS. KATO: I'm not sure.
CHAIRMAN SCHEUER: Okay, let's move on.

You stated that one of your reasons for supporting this special use permit issuance is because specifically that this school is doing farming and forestry activities as part of their curriculum. Did I understand you correctly?

MS. KATO: Yes.

CHAIRMAN SCHEUER: So if it is so integral to the approval of the special use permit, would it be appropriate for this Commission to place special conditions that compliance with this permit would not only include the development of physical facilities, but the development of educational and restoration and farming programs as committed to by the Applicant?

MS. KATO: I -- I think that's your discretion.

CHAIRMAN SCHEUER: No. Well, yes, I know it's my discretion or our discretion, but that's not the question that I asked you.

Your logic is the reason why -- one of your things you have said is the reason why a special use permit is appropriate is because farming and forestry is integral to the activity that's being proposed.
MS. KATO: That is just our opinion. I mean, if you don't agree with it, that's fine.

CHAIRMAN SCHEUER: And that's your argument, correct? Have I misunderstood your argument?

MS. KATO: That's our testimony.

CHAIRMAN SCHEUER: So if we were to believe your testimony, wouldn't it be appropriate for us to require that those activities be required as a condition of the permit?

MS. KATO: If you find that to be necessary to granting a special permit and appropriate, then, yes.

CHAIRMAN SCHEUER: Wouldn't that logically follow if we agreed with your argument?

MS. KATO: Yes, sure.

CHAIRMAN SCHEUER: Okay. Do you believe the Land Use Commission has the power to require after a certain date that a DBA be filed as a condition of a special use permit?

MS. KATO: I'm not sure. I haven't looked at that.

CHAIRMAN SCHEUER: Fourth question, we are almost through. Recently, the Office of Planning and Sustainable Development set out a draft five-
year boundary review study that you presented to
this Commission, and among the contentions in that
study, to paraphrase, is that if lands are in the
urban growth boundary in the county general plan,
they should be converted into urban uses, and yet in
this docket, lands that are in the urban growth
boundary for Hawaii County you are specifically
suggesting we take an action to do the exact
opposite.

And I'm trying to understand what I'm
perceiving as to be two contrary positions from OPSD
within a month of each other.

MS. KATO: I do not recall that review
report, but I think I would have to defer that to my
client.

CHAIRMAN SCHEUER: Does your client want
to respond?


MR. FUNAKOSHI: Okay, Rodney Funakoshi
from the Office of Planning and Sustainable
Development.

CHAIRMAN SCHEUER: Do you swear or affirm
the testimony you are about to give is the truth?

MR. FUNAKOSHI: Yes. Okay. I understand
the question, and I think it was raised before, and
I would agree with the county's position on this matter that, yes, even though it's within the urban growth boundary, it's not an automatic that it should be, you know, reclassified because there's others -- other areas such as, for example, parks that might be in the urban growth boundary, but they are not necessarily you want to reclassify them. And so similarly it's more an option as opposed to a should be.

CHAIRMAN SCHEUER: But that's not what your report said, correct? You didn't have that clarification in your report.

MR. FUNAKOSHI: Again, I'm not sure exactly what you are referring to, but, I mean, it's not a carte blanche, you know, for everything that's within the urban growth boundary should be in the urban district.

I don't think we said that. Certainly candidates for urban reclassification is probably what we would find.

CHAIRMAN SCHEUER: Perhaps I read it differently when I read it. This is for Ms. Kato or Mr. Funakoshi. Did you consult with the Division of Forestry and Wildlife or the State Historic Preservation Division in preparing your
recommendations?

MR. FUNAKOSHI: No, we did not. Because we haven't, you know, it's required that we rely on the record so only what is in the county Planning Commission's record. We could -- so we would not independently consult with DLNR.

CHAIRMAN SCHEUER: Okay. Last question. And this is for Ms. Kato. You stated that you did today an analysis and concluded that under the Unite Here and Local 5 decision, you did not feel that the EA was stale, if you will.

Can you describe a little bit more about the analysis that you conducted to come to that conclusion?

MS. KATO: I did not -- I did not say that I did a specific analysis of this.


MS. KATO: I did not do a legal analysis of this, no.

CHAIRMAN SCHEUER: So the OPSD has not said -- done analysis whether or not EA is sufficient under the Supreme Court's finding under Unite Here?
MS. KATO: We have not specifically done this legal analysis. That was not part of our testimony.

CHAIRMAN SCHEUER: Okay. I misunderstood your oral comments before, I'm sorry. Thank you for clarifying. I have nothing further. Commissioners, anything further? Thank you very much. Mr. Matsukawa. You are muted.

MR. MATSUKAWA: Thank you, Mr. chairman.

CHAIRMAN SCHEUER: And if, like the other parties, you could give a sort of overview of where you want to go, that would be helpful.

MR. MATSUKAWA: I'll be maybe 15 minutes, and what I want to help the Commission with is how we got here and why we are having this extensive discussion at this time.

CHAIRMAN SCHEUER: Please proceed.

MR. MATSUKAWA: Okay. When I got into the case, the decision back in 2014 had already been made, which was a denial. So it was the Applicant Connections and CBESS who took the appeal and so in that posture, Mr. Gomes as the intervenor was not required to assign points of error. He did not file a cross appeal, just defended the position that the county had for a denial.
When ICA then vacated the court's -- I mean the Commission's ruling, the first question that was raised was what happens on remand, and at that time, the supreme court had already decided the Hu Honua versus Hawaii electric case when the POC was overruled.

The court reminded the parties, especially the agencies, that on remand, you only focus on what we tell you to do, and you do not have the liberty to rewrite the findings, and of course you base it on the record.

So the second question then came to the Planning Commission, which was do we open the record to consider more information to focus on the issues that we have been authorized to look at per the ICA. The decision was made not to reopen the record and so therefore a lot of issues that could have been addressed were not. The record was confined to what was created back in 2012 to 2014.

And in light of some of the questions that have been raised by some Commissioners, the record does show the testimony of a person who lives in the neighborhood next door to the project site, he testified at the contested case hearing, and he also made a presentation to the Planning Commission as a
whole.

He raised the issue of whether it's appropriate to submit a proposal based simply on concepts and that we will work things out later. I think that was -- I can't speak for the Commission members who voted the first time, but I'm sure they considered his testimony that if we are just looking at concepts, are we discharging our responsibilities without asking for more.

And this concept issue appears in the transcript for the last -- during the first hearing where people were asking questions about water especially, when will things be done and how and issues over traffic, which brings us to what the ICA did and did not do.

The intervenor filed proposed findings. That's in file nine. We filed it on September 24 and October 1. In our proposed findings, we addressed the water issue that the Commission had overlooked. They came -- I mean the ICA had overlooked.

They could not find references to the 60 gallons per student standard and so we directed the Planning Commission in our proposed findings to the testimony of the Department of Water personnel who
testified to the Commission the first time as to the standard itself and how to use it.

Among other things that we brought up in the amended findings, proposed amended findings was this issue of if some of the standards or criteria are not met, does that itself justify denial, do we need -- in other words, can you deny just on one criteria not being satisfied and vice versa, could you grant just on one standard or criteria because the ICA at the end of its decision seemed to criticize the idea of a totality of the evidence type of decision-making, suggesting that the Planning Commission must point directly to the criteria that they are relying upon to grant or to deny.

So it's not -- the process may be one of weighing the evidence, testing the weight of each point, but still someone has to identify what criteria the decision is based on.

We also in the proposed amended findings raised the issue that some of the Commissioners have raised today which is one, this is on page 25 of our proposed amended findings, paragraph 60D as in dog where we quote the Office of State Planning who wrote a letter on October 3, 2012, record on appeal
404, that a boundary amendment might be a preferred alternative to obtain entitlements it needs to build and operate a school on the property.

And at the end, we point out, as the IC said we could, we could argue that the public trust doctrine must be analyzed under a reasonable and beneficial standard, and that such evidence was lacking.

The Commission did not, pursuant to statute, incorporate into its decision that's before you a ruling on our proposed finding. Section 91-12 requires a decision on proposed findings.

They do not have to rule on every single item, but they need to at least indicate for the record that they have considered the proposed amended findings. And they could say it's not consistent with our ruling today or some method to demonstrate they did consider the proposed -- proposals that had been put before them.

And then getting back to the ICA and as Commissioner Chang has pointed out, the fact that the court did not reverse some of the findings of the Planning Commission the first time binds the Commission. They can't deviate, they can't rewrite it.
So on paragraph -- finding 47 on adverse impacts despite mitigation, that is binding. The Commission couldn't try to rewrite it, and we pointed this out in our exceptions.

The other finding that was not reversed was number 22 and 49 concerning Connections' ability to develop the water sources as proposed. That -- those two findings stand, cannot be rewritten, but the Planning Commission did in fact rewrite it.

And the ICA also never addressed finding number 57 from the first go-around, which was the change in the essential character of the property.

Now, this is not a state LUC criterion, this is something that the county added to its special permit criteria, that the proposal would not change the essential character of the land.

The ICA never touched number 57. So again, that binds the county Planning Commission.

The planning director's recommendation that the Planning Commission then adopted the second go-around is dated 2012.

It's based on information that was in the record as of 2012 so some of the findings that were not vacated are inconsistent with the planning director's revised recommendations.
So there's inconsistency and yet the Planning Commission on the remand adopted without qualification the planning director's revised recommendations from 2012.

What I think is most important, though, is the ICA did allow the intervenor to present issues on the public trust doctrine because the land is public land.

In our proposed amended findings, we addressed some of that issue based on the record, but because the issue was closed in terms of new evidence, the Planning Commission simply said in its current ruling that the public trust doctrine doesn't apply simply because it's not important ag land.

And there's no qualification in the state constitution that says that. It says all land, including water, must be held in the public trust, and if we follow the water cases that have been handed down, we know that although we are dealing with land, not water and most of the litigation on public trust doctrine has been focused on water, the same general principles apply.

And I think if the Kauai Springs case teaches us anything, many of Mr. Ohigashi's
questions would have been answered had the county
been -- had the Planning Commission undertaken a
true public trust analysis because how you use the
land, what benefits, what impacts, all of these
questions would come up under a public resources
trust analysis.

That opportunity was before the Planning
Commission. They chose not to explore it. The
minutes of the hearing on November 4 are quite
clear. When one Commissioner says we need to address
it, the majority says no, and the written decision
is somewhat clear.

So based on that, the intervenor's
position is that the Commission should deny the
application. Thank you.

CHAIRMAN SCHEUER: Thank you, Mr.
Matsukawa. Commissioners, Commissioner Chang?

COMMISSIONER CHANG: Thank you, Mr. Chair.
Good afternoon, Mr. Matsukawa, it's good to see you.
And thank you for that summary of some of the things
that were not stated, and we don't -- we didn't have
the benefit of being there during that process after
the case got remanded.

Is it your opinion that based upon the ICA
opinion as well as the administrative rules and
chapter 205 and specifically looking at 15-15-95
that adverse effect, a finding of adverse effect on
one of those five criteria can be the basis to
determine that the SUP should be denied because it's
not consistent or it's not -- it doesn't meet the
unusual and reasonable use?

MR. MATSUKAWA: I believe so. And when
you read the ICA's opinion at the very end, they
seem to suggest that you can deny it on any one
criteria, you can grant on any one criteria, but
it's part of the weighing process and that is one
that carries the greatest weight, then I presume the
ICA will agree.

COMMISSIONER CHANG: Because that's how I
read their discussion in particular on the traffic,
that they looked at all of the evidence, the entire
record went up before them, and while they said that
the Planning Commission can weigh, and they did --
they did apply that, that analysis of the Planning
Commission having the discretion to weigh on some of
the findings and conclusions.

But with respect to -- because I agree
with you with respect to the traffic, even the ag
use, that it's very ironic you are saying it's
incompatible with ag, but yet your project is
focusing on ag that the ICA did seem to give great -
- well, one, they were not remanding it back for the
Planning Commission to exercise any discretion.
They were bound by that. Notwithstanding the
mitigation, they are bound by that.
So, okay. And let me ask you, I am
surprised that no one raised the issue of Article
XII Section 7. And wouldn't you agree that that
applies to this process as well?

MR. MATSUWAKA: Well, Commissioner Chang,
one of the dilemmas we had was it was not an issue
raised the first go-round because my client had
technically prevailed with the denial.
On remand, the Planning Commission by
ruling that they were going to stick to the record
and that the intervenor did not himself raise that
issue, I personally felt that we were prohibited
from raising an issue that we had not raised before.

COMMISSIONER CHANG: Okay.

MR. MATSUWAKA: And then based on that
Honua case, that we couldn't ask the Commission to
rewrite something that we never argued for the first
time around --

COMMISSIONER CHANG: Okay.

MR. MATSUWAKA: -- with this type of
decision to make.

COMMISSIONER CHANG: All right. And I wasn't there so don't clearly understand sort of the thought process, but would you agree that the constitutional obligation is on the Planning Commission and Land Use Commission, notwithstanding the fact that anybody has raised it or not raised it, but we have an independent obligation to preserve and protect?

MR. MATSUKAWA: I agree. When you read the public trust doctrine, it says the obligation exists at every stage of the permitting process.

COMMISSIONER CHANG: Right.

MR. MATSUKAWA: So, yes, whether someone had properly raised it at the Commission level during the evidentiary hearing, it can be raised at any time in the permitting process. So that would apply to today.

COMMISSIONER CHANG: And the obligation to -- the burden of proof to show that there is no harm to traditional customary practices is on the Applicant, not on the cultural practitioner; would you agree with that?

MR. MATSUKAWA: Yes.

COMMISSIONER CHANG: Okay. And did you
read the environmental assessment that was prepared for the original Land Board determination on issuing this lease that they are relying on to -- they are relying on the reports that were done in the EA as the factual basis to say that there is no traditional and customary practices, did you review that?

CHAIRMAN SCHEUER: Commissioner Chang, sorry, one moment. There was a power surge at the LUC offices and we apparently --

COMMISSIONER CHANG: Oh, did we lose them?

CHAIRMAN SCHEUER: Yeah.

COMMISSIONER CHANG: Okay.

CHAIRMAN SCHEUER: Kala mai if I missed that. I don't know exactly when they went out. They are trying to reboot now.

COMMISSIONER CHANG: Okay, I'll wait. Do you want me to wait, just hold on or do you want to take a break? You need to leave by 4:00; is that correct?

CHAIRMAN SCHEUER: Yeah. No, my hope was to be finished by 4:00 today. Even the most -- even the tremendous commissioners we have all have sort of mental limits to how much we can process in a single day to be effective and discharge our duties.
COMMISSIONER CHANG: Yeah, it would be good if we can close this out, at least the questioning of the parties.

CHAIRMAN SCHEUER: Yeah. I'm not sure. I don't have a sense of whether -- where the other Commissioners are at.

COMMISSIONER CHANG: Okay. I think, well, we will just -- did you want to just wait? Because I'll conclude to provide everybody else more time to ask questions.

CHAIRMAN SCHEUER: So, okay. I'd rather actually just wait until a couple minutes.

COMMISSIONER CHANG: Yeah, okay.

CHAIRMAN SCHEUER: Let's -- we are sort of on a recess until they show up again.

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I just want a recess.

CHAIRMAN SCHEUER: Is four minutes sufficient, Commissioner?

COMMISSIONER OHIGASHI: More than sufficient. More than sufficient. You keep me here a little longer.

CHAIRMAN SCHEUER: Just recess subject to the call of the Chair.
COMMISSIONER CHANG: Okay.

(Recess taken from 3:42 to 3:45 p.m.)

CHAIRMAN SCHEUER: Okay, 3:45 we are back on the Record. Commissioner Chang.

COMMISSIONER CHANG: I've concluded, I've concluded my questioning so you can go on. Thank you.

CHAIRMAN SCHEUER: Thank you.

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Yeah, I was only going to comment, but I think the Supreme Court agrees with you that we can deny even on one of the conditions, as I keep citing Neighborhood Board versus state Land Use Commission. That case, Supreme Court determined that the first condition wasn't even met, therefore denied the entire or vacated the entire permit.

So I -- I think when the ICA adopted that recall when it cited Neighborhood Board in its decision. That's all the comment I had.

CHAIRMAN SCHEUER: Thank you, Commissioner Ohigashi. Commissioners, Mr. Wong? No? You know, I'm glad, Mr. Matsukawa, you brought to our attention the transcripts from the meeting where the Planning Commission reconsidered the decision.
I have to say, well, you may or may not know I actually published on the public trust doctrine in Hawaii water law cases. I couldn't agree more that the public trust doctrine in Hawaii is expansive, does not apply solely to important agricultural lands, but not only old water resources without distinction but also all publicly held natural resources are held in trust.

But I guess here's what I'm struggling with. Like there was some other kind of, like, ugly stuff in that hearing, too, people testifying on the record like, oh, this is somebody said, and I'm not -- I'm only repeating what somebody said. Somebody's like, oh, this is a failing school, why would you give a failing school a new campus?

Like even if that was true, which I don't believe is true and I don't think there's anything on the record to support that statement, but isn't that exactly who you would support if you had a school that needed -- that wasn't doing well, wouldn't you want to support them?

I guess I'm asking you given the importance of the issues that you've raised, denial, how does denial further justice and get us to where not only are immediate neighbors' specific concerns
raised but also a school that's trying to educate
some of the neediest kids in our islands also has a
chance to move forward, and not in inordinately
complex way, where do we go?

**MR. MATSU KAWA:** My answer, Mr. Chairman,
would be quite simple, an alternative site. Look at
how much time has been wasted over this particular
parcel. If an alternative site had been sought,
school could have been up and running already.

**CHAIRMAN SCHEUER:** Perhaps or perhaps not.
Do you think, however, if the Applicant had instead
gone for district boundary amendment, right, there's
not a requirement that there be no impact to
surrounding.

There's not actually -- there's not a
requirement in Hawaii law that all public trust
resources should never be harmed.

**MR. MATSU KAWA:** I agree.

**CHAIRMAN SCHEUER:** What the cases have
said is that only this should be done with a level
of diligence and foresight that meet the sort of
high value that those resources have in our
constitution and laws.

Hadn't -- if they had simply gone through
or if they simply go through for the same site a DBA
process, that might not be what your clients want,
but your clients would actually get a fairer
hearing.

MR. MATSU KAWA: I agree.

CHAIRMAN SCHEUER: I don't think I have
anything further for Mr. Matsukawa at this time.
Does anyone else?

Okay. Seeing none, it's 3:50. We cannot
start until 9:30 tomorrow. We will not have -- we
would have quorum, but we would actually set up a
problem if we are intending to make a decision
tomorrow, which is a good goal given the 45-day
deadline that this Commission has.

It would require Commissioner Giovanni to
review some of the record right after having missed
it and just the timing might not be effective on
that. So while the agenda says that we are going to
start at 9:00, and certainly the room can be opened
at 9:00, we are not actually going to start until
9:30 a.m. tomorrow morning.

We have closed presentations from all the
parties and questions from the Commissioners to all
the parties.

As I laid out in our procedures for today,
subsequent to that, I'm going to allow a space for
the Commissioners to ask any final questions of any
of the parties that they want to prior to moving
into deliberation.

We have closed public testimony so there's
not going to be any additional public testimony
tomorrow. Are there any other questions about our
procedures?

I'm going to go in order just to make
sure. Oh, did we lose Mr. Richardson? There you
are. You moved on your screen. I'm sorry, I had
put you up in the top left. Mr. Richardson?

MR. RICHARDSON: No questions.

CHAIRMAN SCHEUER: Mr. Hong?

MR. HONG: No questions, thank you. Oh,
wait, I do actually have a question. There were
three questions that you asked earlier on regarding
the concurrence, the bound by, 15-15-94(a), bound by
orders of consent, also regarding the infiltration
of wastewater runoff into the caves.

I wasn't able to provide you with the
record references. Would you like me to try and
provide those to you tomorrow?

CHAIRMAN SCHEUER: That would be good,
thank you. Thank you for raising those. Any
further questions, Mr. Hong, on procedures?
MR. HONG: Oh, no, thank you.

CHAIRMAN SCHEUER: Okay. Ms. Kekai?

MS. KEKAI: None. Thank you, Chair.

CHAIRMAN SCHEUER: Ms. Campbell?

MS. CAMPBELL: No questions, thank you.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions, thank you.

CHAIRMAN SCHEUER: Mr. Matsukawa?

MR. MATSUKAWA: None.

CHAIRMAN SCHEUER: Okay. Seeing none, it's 3:53. I'm going to adjourn -- excuse me, go in a recess until 9:30 tomorrow morning. Hold on. Commissioner Chang, you are on mute.

COMMISSIONER CHANG: Yeah. Could you just clarify what's going to be our schedule tomorrow because we've got Commissioners coming and going. So we are going to start at 9:30, and we've got Commissioner Wong on the phone?

CHAIRMAN SCHEUER: That is correct and so he is going to be following the proceedings --

COMMISSIONER CHANG: Okay.

CHAIRMAN SCHEUER: -- the entire time.

Commissioner Aczon has to leave at 11:30, I believe. Is that correct, Commissioner Aczon? Sorry, Ed, could you orally confirm?
COMMISSIONER ACZON: Yes.

CHAIRMAN SCHEUER: Yes, 11:30?

COMMISSIONER ACZON: Eleven.

CHAIRMAN SCHEUER: Eleven, eleven o'clock, okay. Commissioner Giovanni.

COMMISSIONER GIOVANNI: Yeah, I'm also unavailable from 11:30 to 1:30, same time as Commissioner Aczon.

CHAIRMAN SCHEUER: Okay. So we will start tomorrow morning, very briefly hear if there's answers to my previous questions on the record from Mr. Hong.

We will go to any final questions for the parties, then we will go into deliberations. That will be from 9:30 to 11:00. Should we not be finished, we will take a two-hour recess and reconvene at one o'clock to continue the proceedings.

COMMISSIONER CHANG: Thank you.

CHAIRMAN SCHEUER: Anything further, Commissioners? Or Mr. Ordenker? Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I just want to ask Mr. Hong, so big a record, if you do have answers to those questions, could you email us not only a cite
but a portion of that, of the document you are
referring to or portion of the section so at least I
can read it? I have a hard time searching through
this thing as everybody.

CHAIRMAN SCHEUER: So most properly the
e-mail would be to Ms. Quinones, who could distribute
it to the Commissioners --

COMMISSIONER OHIGASHI: Is that okay?

CHAIRMAN SCHEUER: -- and the parties.

MR. HONG: Very good.

CHAIRMAN SCHEUER: Okay. Is there
anything further, Commissioners? Parties? Seeing
none, we are in recess. We will reconvene at 9:30
a.m. tomorrow. Mahalo nui.

(Meeting recessed at 3:56 p.m.)
CERTIFICATE

I, LeeAnne McAdam, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 11th day of February, 2022.

____________________________
LeeAnne McAdam

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LeeAnne McAdam