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**STATE OF HAWAII**

**LAND USE COMMISSION**

Hearing held on February 17, 2022

Commencing at 9:00 a.m.

Held via Zoom Interactive Conference Technology

**VI. CALL TO ORDER**

**VII. ADOPTION OF ORDER**

SP21-413 Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP12-000138) (Hawaii) To Consider the form of the Order, Findings of Facts and Conclusions of Law to deny Special Permit Application for the Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP12-000138)

**VIII. CONTINUED ACTION (IF NECESSARY)**

A19-809 LANAI RESORTS, LLC dba PULAMA LANAI To Consider the Acceptance of Petitioner's Final Environmental Assessment and Motion to Issue a Finding of No Significant Impact relating to Petition to Amend the Land Use District Boundaries of certain land situated at Lanai City, Island of Lanai, consisting of approximately 200 acres from the Agricultural District to the Urban District. Tax Map Key No. (2)4-9-02:01 (por.).

**IX. ADJOURNMENT**

**BEFORE :**

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**APPEARANCES BY VIDEOCONFERENCE**

**COMMISSIONERS PRESENT:**

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

**COMMISSIONERS RECUSED:**

- Nancy Cabral
- Gary Okuda

**STAFF PRESENT:**

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Riley Hakoda, Staff Planner
- Natasha Quinones, Chief Clerk
- Julie China, Esq. Deputy Attorney General

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**APPEARANCES BY VIDEOCONFERENCE**

**PETITIONER:**

Kevin Richardson, Esq., for Connections  
Romeo Garcia, Principal, for Connections  
Ted H.S. Hong, Esq, for CBESS  
John Thatcher, Member, CBESS

**COUNTY OF HAWAII:**

Malia A. Kekai, Esq. Deputy Corporation Counsel  
Hawaii Planning Commission  
Diana mellon-Lacey, Esq., Deputy Corporation Counsel,  
Hawaii County Planning Department  
Jeff Darrow, Deputy Planning Director

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

Alison Kato, Esq., Deputy Attorney General  
Lorene Maki, Planner

**INTERVENOR:**

Jeffrey Gomes, Intervenor  
Michael J. Masukawa, Esq.

1                   **CHAIR SCHEUER:** Aloha mai kakou. Good  
2 morning. This is the February 17th, 2022, Land Use  
3 Committee meeting, which is being held using  
4 interactive conference technology linking  
5 videoconference participants and other interested  
6 individuals of the public via the Zoom Internet  
7 conferencing program to comply with state and county  
8 official operational directives during the COVID-19  
9 pandemic. Members of the public are able to view the  
10 meeting via the Zoom webinar platform.

11                   Well, members of the public and all  
12 attendees, I'd like to urge you to speak slowly,  
13 clearly, and directly into your microphone. We are  
14 taking transcripts from the recording of this  
15 meeting, so it has a couple of implications. First,  
16 it is helpful if you state your name and address,  
17 your name before you start speaking.

18                   And secondly, please know that this  
19 meeting is being recorded, and your participation is  
20 your implied consent to be part of the public record  
21 at this meeting. If you do not wish to be part of  
22 the public record, you should exit the meeting now.

23                   This technology allows the parties and  
24 each participating commissioner individual remote  
25 access to the meeting via our Internet connections

1 on our own personal digital devices. Because of  
2 that, and often due to matters often entirely  
3 outside of our control, occasional disruptions to  
4 connectivity may occur for one or more members in  
5 the meeting at any give time. If this happens,  
6 please be patient, and please let us know as we try  
7 to restore audiovisual signals to be able to conduct  
8 business during the pandemic.

9           There is one agenda item on today's  
10 agenda. It is adoption of the order related to the  
11 charter school. I will allow for public testimony  
12 related to the adoption of the order. The decision  
13 has already been made by the commission at our  
14 previous meeting to deny the permit, so testimony  
15 should be focused on our adoption of the order to  
16 implement our decision.

17           If there's anybody who's trying to testify  
18 via phone, use the key sequence \*9 to virtually  
19 raise your hand and \*6 to ask to be unmuted.  
20 Otherwise, use the Raise Your Hand function in the  
21 Zoom software.

22           My name is Jonathan Likeke Scheuer, and I  
23 have the honor and pleasure of serving as the Land  
24 Use Commission chair. Along with me, Commissioner  
25 Dawn Chang, Commissioner Arnold Wong, Commissioner

1 Ed Aczon, and our Executive Officer Daniel Orodener  
2 -- as this is all our staff, really -- our Chief  
3 Planner Scott Derrickson, our Staff Planner Riley  
4 Hakoda, and our Chief Clerk Natasha Quinones are all  
5 on the island of O'ahu along with our Deputy  
6 Attorney General Julie China.

7 Commissioner Lee Ohigashi is on Maui, and  
8 Commissioner Dan Giovanni is on the island of Kauai.  
9 We have eight seated commissioners of a possible  
10 nine. Commissioners Gary Okuda and Nancy Cabral have  
11 recused themselves from this item.

12 So our only remaining agenda item for the  
13 day is the adoption of the order for Docket No.  
14 SP21-413 Connections New Century Public Charter  
15 School/Community-Based Education Support Services,  
16 or CBESS, to consider a form of the order, findings  
17 of fact, conclusions of law, and decision and order  
18 to deny the special permit application for the  
19 Connections New Century Public Charter School.

20 The commission last heard this matter on  
21 January 19th and 20th, 2022, via Zoom. During that  
22 hearing, we took public testimony on the substance  
23 of the matter. Since that time, we have also  
24 received written public testimony from Gene Zarro,  
25 the CEO of the South Maui Learning Ohana, and Taffi

1 Wise, the executive director of KALO.

2 Ms. Quinones, has there been any  
3 additional written testimony submitted to the  
4 commission?

5 **MS. QUINONES:** Good morning, Chair. I want  
6 to recognize that Steve Hirakami had also submitted  
7 written testimony initially on January 31st and  
8 again yesterday -- or today. So that's the only one.

9 **CHAIR SCHEUER:** Okay. I will go over what  
10 our proceedings will be for today. So I've  
11 recognized written testimony.

12 I'm going to allow for oral testimony  
13 focused on the narrow issue of our adoption of the  
14 order. I will bring people in if there's anybody who  
15 wishes to provide oral testimony after they've  
16 raised their hands. I will give you three minutes to  
17 testify. You will then be available for questions  
18 from the parties and the commissioners.

19 Following the conclusion of oral  
20 testimony, I'll provide the opportunity for any of  
21 the parties who may wish to address the commission  
22 before we enter into deliberations, I'll provide any  
23 of the parties who wish to avail themselves of this  
24 10 minutes. And following that, the commission will  
25 enter into final deliberations on this matter.

1 Let's do appearances and any  
2 clarifications if you do not understand our order  
3 today, starting with the petitioner.

4 **MR. RICHARDSON:** Good morning. Deputy  
5 Attorney General Kevin Richardson on behalf of the  
6 applicant, Connections New Century Public Charter  
7 School. Also with me is, well, on the Big Island is  
8 the principal of Connections, Romeo Garcia.

9 **CHAIR SCHEUER:** Good morning. And do you  
10 understand our procedures for today?

11 **MR. RICHARDSON:** I do.

12 **CHAIR SCHEUER:** Okay.

13 **MR. HONG:** Good morning, Mr. Chairman,  
14 members of the commission. My name is Ted Hong. I  
15 represent Community-Based Education Support  
16 Services, also known as CBESS. I don't see that my  
17 client, Heather McDaniel or John Thatcher, the  
18 representatives from CBESS are on. And certainly, we  
19 would waive their presence, with the permission of  
20 the chair. Thank you.

21 And I do understand the procedures you  
22 explained. Thank you.

23 **CHAIR SCHEUER:** Thank you, Mr. Hong. Mr.  
24 Hong, I know John Thatcher is in as an attendee.  
25 Would you like me to promote him to be a panelist?



1           **MR. HONG:** Yes, please.

2           **CHAIR SCHEUER:** Okay. And I apologize. You  
3 mentioned one other name, Mr. Hong.

4           **MR. HONG:** Heather McDaniel, but I don't  
5 know that she's --

6           **CHAIR SCHEUER:** I don't believe that she  
7 is here.

8           **MR. HONG:** Okay.

9           **CHAIR SCHEUER:** Thank you.

10          **MR. HONG:** Thank you.

11          **CHAIR SCHEUER:** Thank you very much. Okay.  
12 Hawaii County?

13          **MS. KEKAI:** Good morning. Malia Kekai for  
14 the Windward Planning Commission. And I do  
15 understand your explanation of the procedures today.

16          **CHAIR SCHEUER:** Thank you.

17          **MS. MELLON-LACEY:** Good morning. Diana  
18 Mellon-Lacey, deputy corporation counsel appearing  
19 with Jeff Darrow, deputy planning director. And we  
20 can understand the procedures for today.

21          **CHAIR SCHEUER:** Thank you.

22                Ms. Kato?

23          **MS. KATO:** Good morning. Alison Kato,  
24 deputy attorney general for the Office of Planning  
25 and Sustainable Development. Lorene Maki from OPSD

1 is also here, and I understand the procedures. Thank  
2 you.

3 **CHAIR SCHEUER:** Commissioner Wong?

4 **COMMISSIONER WONG:** Here. You know, the  
5 Hawaii County Planning just made their statement,  
6 but it was very hard for me to hear because I'm a  
7 little older, so if you don't mind taking off her  
8 mask when she talks. It'll be better for me. Thank  
9 you.

10 **MS. MELLON-LACEY:** Okay. Do I need to  
11 repeat?

12 **CHAIR SCHEUER:** If you would, if that's  
13 okay, please.

14 **MS. MELLON-LACEY:** Okay. Diana Mellon-  
15 Lacey, deputy corporation counsel, County of Hawaii,  
16 appearing with Jeff Darrow, deputy planning  
17 director. And we do understand the procedures.

18 **CHAIR SCHEUER:** Thank you, Ms. Mellon-  
19 Lacey. I appreciate it.

20 Are there any members of the public who  
21 wish to testify to us today? If so, use the Raise  
22 Your Hand function.

23 Oh, sorry, excuse me. Kala mai. Mr.  
24 Matsukawa?

25 **MR. MATSUKAWA:** Michael Matsukawa for the

1 intervenor, Jeffrey Gomes. And I understood the  
2 procedure.

3 **CHAIR SCHEUER:** Okay. And I believe your  
4 client is here with us as well.

5 **MR. MATSUKAWA:** Yes.

6 **CHAIR SCHEUER:** Okay. Thank you, Mr.  
7 Matsukawa. I apologize for my oversight.

8 Are there any members of the public who  
9 wish to testify today on the adoption of the order?  
10 If so, please raise your hand using the Raise Your  
11 Hand function.

12 There was an inquiry before in the chat.  
13 Okay. I'm going to admit Mr. Hirakami to be a  
14 panelist.

15 When you're admitted to be a panelist, you  
16 will be able to enable your audio and video, so  
17 please do. I will then swear you in. Good morning.

18 **MR. HIRAKAMI:** Good morning.

19 **CHAIR SCHEUER:** Do you swear or affirm the  
20 testimony you're about to give is the truth?

21 **MR. HIRAKAMI:** I do.

22 **CHAIR SCHEUER:** Okay. So if you'd state  
23 your name and address for the record and then begin.

24 **MR. HIRAKAMI:** My name is Steve Hirakami.  
25 My address is 12-4265 Pahoia Kalapana Road in Pahoia,

1 Hawaii. I'm here. I'm the principal of Hawaii  
2 Academy of Arts and Sciences, a charter school  
3 located in Pahoia, dedicated to taking care of the  
4 environment.

5 And I wanted to supply to have you not  
6 adopt the order to deny the permit and send it back  
7 for further review. I really see a win-win situation  
8 with this piece of land.

9 I know the land in question is the one  
10 bordering the subdivision, but that is a native  
11 forest, and the students of Connection could be  
12 forest stewards, and they could remove endangered  
13 species. They could protect the environment for all  
14 the native birds. They could be docents for the  
15 Kaumana Cave and demonstrate the restoration and the  
16 preservation of an important part of Hawaii.

17 We're losing a lot of our forests in urban  
18 areas. So I know the bottom half is where they want  
19 to build a school. I think the complaints is there's  
20 a natural border between the subdivision and Kaumana  
21 Drive and the backyard. And a lot of times when  
22 people buy properties next to state land, they  
23 think, oh, wow, you know, I got an extension on my  
24 property, and I got to build.

25 So I can understand why they don't want

1 that developed, but I certainly could think that the  
2 school could turn this into a real win-win for the  
3 community, for the subdivision owners, and generally  
4 for Hawaii.

5           We need to teach our kids about  
6 environmental stewardship and taking care of the  
7 aina and everything, and I see a perfect learning  
8 opportunity to learn. This is about education. It  
9 all starts with our children, and I think it's very  
10 important that these kind of opportunities don't go  
11 to waste because a subdivision thinks that  
12 somebody's going to come and eradicate the forest  
13 behind their lot.

14           So I really implore you to not adopt this  
15 order. Send it back so that there can be more  
16 discussion about dividing the upper part. It's 70-  
17 something acres. I know there's 30-something acres  
18 on the upper part that goes all the way up to  
19 Kaumana Cave. That could be a beautiful place for  
20 kids to be docents and be guides in the forest and  
21 to explain how they preserve the forest.

22           You know, when this 2018 lava flow  
23 decimated our community, our kids became docents at  
24 the Lava Museum, and they're important part of  
25 telling the tourists and visitors alike how the

1 volcano affected their lives. They lost their homes  
2 and, you know, the Jaggar Museum donated a lot of  
3 artifacts to the museum, so they can be docents.

4 So I thank you for this opportunity.

5 **CHAIR SCHEUER:** Thank you very much, Mr.  
6 Hirakami. If you'd please just remain online to see  
7 if there's any questions for you from any of the  
8 parties, starting with Mr. Richardson.

9 **MR. RICHARDSON:** No questions. Thank you.

10 **CHAIR SCHEUER:** Mr. Hong?

11 **MR. HONG:** No questions. Thank you.

12 **CHAIR SCHEUER:** Ms. Kekai?

13 **MS. KEKAI:** No questions. Thank you.

14 **CHAIR SCHEUER:** County Planning? County  
15 Planning, any questions for the witness? Hawaii  
16 County Planning, can you hear me? Are there any  
17 questions for the witness?

18 **MS. MELLON-LACEY:** No questions.

19 **CHAIR SCHEUER:** Okay. Thank you.

20 Mr. Matsukawa?

21 **MR. MATSUKAWA:** No questions, Mr. Chair.

22 **CHAIR SCHEUER:** Commissioners, any  
23 questions for the witness?

24 Thank you very much for taking the time to  
25 testify before us today. And thank you for your

1 work. We appreciate it. I'm going to move you to be  
2 an attendee.

3 Are there any other members of the public  
4 who wish to testify on adoption of the order? If so,  
5 please raise your hand using the Raise Your Hand  
6 function. I don't see anybody calling in by phone.  
7 Seeing none.

8 Before the commission enters into formal  
9 deliberations on adoption of the order, I will  
10 provide the opportunity to any of the parties to  
11 address the commission, and I will give the parties  
12 up to 10 minutes to do so. We'll go in the same  
13 order, and you don't have to avail yourselves of it,  
14 but you can, if you wish, beginning with Mr.  
15 Richardson.

16 **MR. RICHARDSON:** Thank you. I just have  
17 one matter of clarification. Was the draft order  
18 provided? I didn't receive one, but was one sent out  
19 or provided prior to this meeting?

20 **CHAIR SCHEUER:** A draft order was sent to  
21 two of the entities who requested the order. It was  
22 only completed. It was in draft form for quite a  
23 while with our counsel. It was only completed last  
24 night.

25 **MR. RICHARDSON:** Thank you. No other

1 questions, Chair, or comments.

2 **CHAIR SCHEUER:** Okay.

3 Mr. Hong?

4 **MR. HONG:** I would note for the record  
5 that we received the proposed draft order at  
6 approximately 4:39 p.m. yesterday, and I did have  
7 the opportunity to review it.

8 And at this stage of the proceedings, I  
9 think we would submit that our objections and  
10 opposition with respect to some of the errors  
11 contained in the draft order are very clear on the  
12 record. Thank you.

13 **CHAIR SCHEUER:** Thank you, Mr. Hong.

14 Ms. Kekai?

15 **MS. KEKAI:** Good morning, commission. I  
16 think the only thing of concern is basically that  
17 the commission is finding that a school is not a  
18 usual use -- or a reasonable use, I'm sorry -- which  
19 would be concerning for Hawaii Island, as we have a  
20 lot of ag land and, you know, we're probably  
21 trending towards building more agricultural schools  
22 here.

23 So it's a little worrisome if a school  
24 that is truly ag, a fully ag school could then not  
25 apply for a special permit when surrounded by ag as



1 well. So I feel it's a little limiting. But that's  
2 all we have. Thank you.

3 **CHAIR SCHEUER:** Thank you very much.

4 County Planning?

5 **MS. MELLON-LACEY:** I'm Diana Mellon-Lacey.

6 We have no comments at this time.

7 **CHAIR SCHEUER:** Thank you.

8 Ms. Kato, OPSD?

9 **MS. KATO:** Thank you. No further comments  
10 from OPSD.

11 **CHAIR SCHEUER:** Thank you.

12 Mr. Matsukawa?

13 **MR. MATSUKAWA:** Yes. Just a comment on the  
14 County's statement. The County general plan notes  
15 that there are large tracts of public land in the  
16 County of Hawaii.

17 But there is no master plan of the part of  
18 the BLNR, the owner of those properties, as to the  
19 proposed long-term uses. So if that's a factor of  
20 concern, then BLNR should be approached to develop  
21 that master plan. Thank you.

22 **CHAIR SCHEUER:** Thank you, Mr. Matsukawa.

23 Having received statements, I'm now going  
24 to move into formal deliberations. Before we take up  
25 any motion, the chair would like to confirm for the

1 record that all the commissioners and myself are  
2 prepared to participate in these proceedings.

3 Commissioner Chang, are you prepared to  
4 participate?

5 **COMMISSIONER CHANG:** Mr. Chair, yes, I am.

6 **CHAIR SCHEUER:** Commissioner Wong?

7 **COMMISSIONER WONG:** Yes, Mr. Chair. I am  
8 ready.

9 **CHAIR SCHEUER:** Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** Yes.

11 **CHAIR SCHEUER:** Commissioner Giovanni?

12 **COMMISSIONER GIOVANNI:** Yes.

13 **CHAIR SCHEUER:** Commissioner Aczon?

14 **COMMISSIONER ACZON:** Yes, Mr. Chair.

15 **CHAIR SCHEUER:** The chair is also prepared  
16 to participate.

17 The commission will now consider the  
18 adoption of the order. Commissioners, before you for  
19 your consideration, deliberation, and adoption are  
20 the proposed findings of fact, conclusions of law,  
21 and decision and order prepared by staff as  
22 instructed at the last meeting on this docket. Is  
23 there any discussion, or does somebody wish to enter  
24 a motion?

25 Commissioner Aczon?

1           **COMMISSIONER ACZON:** Thank you, Mr. Chair,  
2 and good morning. I'd like to make a motion for the  
3 Land Use Commission to adopt the proposed decision  
4 and order denying special permit on SP21-4013  
5 Connections New Century Public Charter School and  
6 Community-Based Education Support Services brought  
7 by the County of Hawaii Windward Planning  
8 Commission.

9           **CHAIR SCHEUER:** Is there a second?  
10 Commissioner Ohigashi?

11           **COMMISSIONER OHIGASHI:** I would second  
12 that.

13           **CHAIR SCHEUER:** Okay. Does the movant and  
14 the secondary wish to speak to the motion?

15           **COMMISSIONER ACZON:** Mr. Chair, I believe  
16 that the commission heard, and the commission's  
17 decision was based on records provided by the  
18 County. And I believe the draft of the decision and  
19 order covered all the public record.

20           **CHAIR SCHEUER:** Thank you.  
21 Commissioner Ohigashi?

22           **COMMISSIONER OHIGASHI:** No comment, Mr.  
23 Chair.

24           **CHAIR SCHEUER:** Okay. Commissioners, we  
25 have a motion before us made by Commissioner Aczon

1 and seconded by Commissioner Ohigashi. Is there  
2 discussion?

3 Commissioner Chang?

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

5 I just have a few comments.

6 I greatly appreciated Mr. Hirakami's  
7 testimony this morning. I do want to be clear that,  
8 as far as I'm concerned, the Land Use Commission's  
9 decision and action today does not preclude the  
10 charter school from, one, meeting with the community  
11 to address some of the concerns, as well as looking  
12 at the Land Use Commission's order and addressing  
13 those concerns as well, and resubmitting, preparing  
14 a new proposal that addresses all these concerns to  
15 move forward.

16 Because I think the commission did make --  
17 at least, I felt this was a -- I made the motion  
18 last meeting with a heavy heart, knowing that  
19 education, and in particular agriculture, is  
20 important in Hawaii Island. So I do encourage the  
21 school, if they're still interested, to pursue it  
22 after review -- in consideration of our order.

23 Thank you, Mr. Chair.

24 **CHAIR SCHEUER:** Thank you, Commissioner  
25 Chang.

1 Commissioners, is there further  
2 discussion?

3 I'll just second or join in Commissioner  
4 Chang's remarks about having a heavy heart. I'm  
5 nearing the end of eight years on this commission,  
6 and I have not had a -- I found this to be one of  
7 the most frustrating dockets that we've dealt with.

8 Mr. Orodenker, would you please poll the  
9 commission?

10 **MR. ORODENKER:** Mr. Chair, the motion is  
11 to adopt the proposed D&O, the decision and order  
12 denying the special permit in this matter.

13 Commissioner Aczon?

14 **COMMISSIONER ACZON:** Aye.

15 **MR. ORODENKER:** Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** Yes.

17 **MR. ORODENKER:** Commissioner Giovanni?

18 **COMMISSIONER GIOVANNI:** Aye.

19 **MR. ORODENKER:** Commissioner Chang?

20 **COMMISSIONER CHANG:** Aye.

21 **MR. ORODENKER:** Commissioner Wong?

22 **COMMISSIONER WONG:** Aye.

23 **MR. ORODENKER:** Chair Scheuer?

24 **CHAIR SCHEUER:** Aye.

25 **MR. ORODENKER:** Mr. Chair, the motion

1 passes unanimously with six votes.

2           **CHAIR SCHEUER:** I thank all the parties  
3 for your participation in this matter.

4           There being no further business for the  
5 commission, I declare this meeting adjourned.

6           **(Meeting adjourned at 9:24 a.m.)**

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CERTIFICATE

I, Davilyn Payne, 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 31st day of March, 2022.



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Davilyn Payne