

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I
STATE OF HAWAI'I

TEPPY MOUNTAIN, LLC,

Applicant,

JAMES McMAHON and LICHUN HUANG,

Intervenors,

JEFFREY W. DARROW,

Planning Director.

SPECIAL PERMIT APPLICATION NO. PL-SPP-2024-000075

CONTESTED CASE HEARING PL-SPP-2025-000025

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER;
CERTIFICATE OF SERVICE**

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

This matter came on for contested case hearing before Hearing Officer Sherry Broder (“Hearing Officer”) on November 13, 2026 (“Hearing”). Teppy Mountain, LLC (“Applicant”), was represented by its Counsel, Calvert Chipchase, Esq. and Jacob Honigman, Esq. Jeffrey W. Darrow, Planning Director, County of Hawai'i (“Director”) was represented by Deputy Corporation Counsel, Jean K. Campbell, Esq. Intervenors James McMahon and Lichun Huang represented themselves.

After considering all the evidence presented in the Special Permit application and at the Hearing, as well as all public oral and written testimony received relating to this matter, the Hearing Officer submits this Findings of Fact, Conclusions of Law, Decision and Order:

FINDINGS OF FACT

A. Background

1. The Applicant submitted a Special Permit application to allow an annual, 4-day long festival event with overnight camping and to allow the storage of up to 6 commercial vehicles on 14.7 acres (“permit area”) of a larger 1,419-acre parcel in the State Land Use Agricultural District.

2. The subject property is located at 27-476 Indian Tree Road, approximately 0.7 miles west (mauka) of its intersection with Hawai‘i Belt Road, Alemai to Kawainui, Pāpa‘ikou, South Hilo, Hawai‘i, TMK: (3) 2-7-007:001 (por.).

3. State Land Use District: The permit area is in the State Land Use Agricultural district.

4. County Zoning: The permit area is in the County Agricultural 20-Acre (A-20a) zoning district.

5. General Plan LUPAG Map Designation: The subject property is primarily designated as Important Agricultural Lands, which are lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors.

6. Hāmākua Community Development Plan (HCDP): The HCDP was adopted by Ordinance No. 18-78, with an effective date of August 22, 2018. The subject property is within the geographic area contemplated by the HCDP.

7. Special Management Area (SMA): The permit area is not located within the County's Special Management Area (SMA) and is situated over one mile from the nearest coastline.

8. The Applicant leases a portion of the subject property to a local rancher who utilizes approximately 1,000 acres of the subject property as pasture for his cattle.

B. Project Description

9. The proposed project consists of two components, an event component and a commercial vehicle storage component.

10. In the event component, the Applicant proposes to operate an annual, 4-day-long festival event called “Falls on Fire”, in the spirit of the Burning Man Event held in the Black rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, Nevada. Burning Man is a weeklong event and attracts an estimated 70,000 to 80,000 attendees. The Applicant proposes to hold only one 4-day event per year and for no more than 500 people. Over the last three years, the Applicant has held the event in November but would like some flexibility to hold it at other times, provided it occurs only once per year. The event will be centered on principles of inclusion, gifting, self-reliance, self-expression, communal effort, civic responsibility, and respect for the environment, emphasizing the practice of “leave no trace”. The event will be offered on a donation basis and attendees will be encouraged to bring all that they need, share with others and leave the environment better than they found it. As at Burning Man, the Applicant proposes to host a burning ceremony of an effigy which is lit on fire to close the event. During the duration of the event, activities may occur at any time of the day.

11. In the commercial vehicle storage component, the Applicant proposed that an approximately 0.46-acre area will be utilized continuously to store up to six (6) vehicles, including dump trucks, tractor trailers, and a backhoe. According to the Applicant, while these vehicles are primarily used for cattle ranching purposes, the vehicles are also used to transport gravel to local businesses when not in agricultural use. Despite the representation of the storage of up to 6 such vehicles, a site visit found 8 pieces of heavy equipment (2 new excavators, 2 new bulldozers, a new tractor, a new SkyTrak forklift, an older tractor trailer dump truck, equipment trailers, and an older farm tractor) along with vehicle fueling infrastructure, and several

unpermitted storage structures. Additionally, according to testimony by neighbors, this heavy equipment is rented and delivered by the Applicant's ranching lessee to off-site users through his business, "Indian Tree Ranch and Rental LLC". Based on the preceding, the Planning Director considers the use to be a heavy equipment rental base yard, rather than a commercial vehicle storage area.

12. Details of the proposed event component include:

- (a) Land Area: Approximately 14.24 acres of land, inclusive of access roads, would be used for the annual 4-day festival event including designated camping areas and a bonfire area. The remaining approximately 0.46-acres would be used for a check-in area for the event as well as the commercial vehicle storage area.

Fencing and signage throughout the property will ensure that attendees remain within the boundaries of the Special Permit area. Additionally, it is noted that attendees will be welcome to enjoy the waterfalls and scenery on this private property during the event as an outdoor recreational use which is permitted on agricultural land.

- (b) Attendees: The Applicant proposes to host up to 500 attendees. Attendees will be required to bring their own food, water, camping supplies and other gear as those things will not be supplied by organizers.
- (c) Activities & Workshops: Activities and workshops offered during the event will be dynamic and may change year-to-year as they will be initiated by the event participants, not the organizers. Thus, the number of possible activities which may occur during each event will depend on the number of participants.

Examples of possible events, activities and workshops include fire performances/dancing, light installations (i.e. projection of light onto waterfalls or

holograms), art installations celebrating native Hawaiian culture, flora and fauna, live music and DJ sets, eco-conscious workshops featuring topics such as permaculture, sustainable building and ocean conservation, healing and wellness spaces (i.e. meditation zones and yoga areas), interactive community projects (i.e. collaborative art-making), environmental activism meetups and a burning ceremony involving the burning of a symbolic effigy to close out the event.

- (d) **Camping:** The Applicant proposes to offer overnight camping in three designated campsite areas. Attendees will be encouraged to share their own artistic contributions, workshops, and performance ideas to create a vibrant and engaging sense of community within the camp.
- (e) **Bonfire Area:** A designated bonfire area will consist of approximately 0.31 acres and will serve as additional gathering space for attendees. This area will be the location of a burning ceremony mentioned above.
- (f) **Event Safety:** The Police Department, Fire Department and Planning Department will be notified prior to the annual event. Volunteers will be stationed at the access gate to ensure that all attendees are registered. Additionally, depending on the number of attendees anticipated, between 4 and 10 volunteer “rangers” will be on site. The rangers are individuals trained to watch out for and de-escalate conflicts. The rangers will call the appropriate authorities should a situation arise, which cannot be safely resolved.
- (g) **Fire Protection:** According to the application, a 3,000-gallon water tank exists in the base yard area and will be available for emergency fire protection. However, it should be noted that during a site visit, staff observed that the tank had been disassembled, therefore, the tank is not available. Additionally, fire extinguishers

will also be located within the bonfire area and each of the campsite areas. If required, the Applicant is willing to install a fire suppression water tank within the bonfire area.

- (h) **Amplified Sound:** Amplified sound will be permitted during the event. All amplified sound will be directed in a westerly (mauka) direction, toward the bulk remainder of the vacant 1,419-acre parcel, away from any neighboring dwellings. and Applicant agreed to put measures into place to address concerns related to security and the potential for disruption.
- (i) **Access and Parking:** Access to the property is provided via Indian Tree Road, a private roadway with pavement widths varying between 12 and 16 feet within 50-foot-wide easements over which the Applicant has legal easement. Internal access through the property to the bonfire area, designated campsite areas will be provided by an existing 10-foot-wide gravel driveway. This existing driveway includes multiple pull-off points to accommodate two-way traffic and crosses a stream. Parking for up to 200 vehicles is available in designated areas within the campsite zones on existing grassy areas.
- (j) **Potable Water & Wastewater:** The property is not served by the County water system; thus, attendees will be required to bring their own potable water for the 4-day event. The Applicant proposes to provide portable toilets for the 4-day event.

13. Details of the proposed component for commercial vehicle storage, determined to be a heavy equipment storage area, include:

- (a) The remaining approximately 0.46-acres being used for a check-in area for the event will also be used for the heavy equipment rental base yard.

- (b) The heavy equipment rental base yard area on the property has been previously cleared and consists of gravel, providing a stable and suitable surface for base yard and event check-in purposes.

C. Description of Subject Property and Surrounding Area

14. Subject Property and Permit Area: The subject property consists of 1,419 acres of land and is located at the top of Indian Tree Road, approximately 0.7 miles west (mauka) of Hawai'i Belt Road in Pāpa'ikou. A series of streams run throughout the property and vegetation thereon consist primarily of non-native shrubs and grasses, although the proposed permit area has been previously cleared. Approximately 1,000 acres of the parcel is leased to a rancher and utilized as pasture for grazing cattle and an approximately 0.46-acre area of the property contains a permitted agricultural storage structure, vehicle fuel tanks, and a parking area where several pieces of heavy equipment are stored. While the Applicant represented this was for storage of up to 6 such vehicles, a site visit found 8 pieces of heavy equipment and several unpermitted structures (including 9 shipping containers, a portable office structure, a shed roof carport, and a temporary canopy structure housing most of the heavy equipment. The remainder of the property is vacant of other structures and uses.

15. Surrounding Zoning/Land Uses: Most surrounding properties are similarly zoned A-20a, with a few parcels to the south designated as A-10a. Surrounding land uses are primarily agricultural, including cattle grazing, growing of high-quality cacao by Intervenors and some residential use with the nearest dwelling approximately 3,500 feet to the southeast of the proposed event area. Directly west (mauka) of the subject parcel is a large, approximately 11,395-acre property owned by the Applicant, primarily designated as conservation land.

16. USDA Soil Survey Report: Soils in the permit area are classified as Hilo Hydrous Silty Clay Loam: Characterized by 10 to 20 percent slopes. This soil type is well-drained and formed from ash fields over lava flows. It is classified as having a medium runoff class.

17. Land Study Bureau Soil Rating: The subject property and permit area include a mix of soils designated as “C” or fair and as “D” or “Poor” and the stream areas designated as “E” or “Very Poor” for agricultural productivity. Although these lands are so classified, at one time they lands were all in agricultural production with sugar cane.

18. Agricultural Lands of Significance to the State of Hawai‘i (ALISH): The permit area is classified as primarily prime agricultural land, with portions of the property along the streams as “unclassified.”

19. Flood Zone: The permit area is situated within Zone “X”, determined by FEMA to be an area of minimal flood hazard.

20. Floral/Fauna Resources: No professional survey was conducted of the floral and faunal resources of the site. The subject property’s observed flora primarily consists of non-native shrubs and grasses, reflecting its historical use for sugar cane cultivation and cattle grazing. No endangered plant species are known to inhabit the area. The fauna includes common non-native bird species such as doves, warbling white-eyes, house finches, and common mynas, alongside domestic and feral animals like cats, dogs, and pigs. Native species, such as the Hawaiian hawk, Hawaiian owl, and Hawaiian hoary bat, may occasionally traverse/utilize the site due to its rural nature. Intervenors stated that a breeding pair of the endangered Hawai‘i ‘io (Hawaiian hawk) “has been observed on the servient parcel continuously for at least six years.”

21. Archaeological/Historical/Cultural Resources: According to the Applicant, no formal archaeological studies have been conducted for the site, as the property and permit area have a long history of agricultural use, primarily for sugar cane cultivation and cattle grazing,

which has likely diminished the presence of archaeological, cultural, and historic resources. Furthermore, the Applicant is unaware of any traditional or customary Hawaiian practices associated with the property.

22. Public Access: There is no known public access to the mountains or the shoreline that runs through the permit area.

D. Public Facilities, Utilities and Services

23. Access and Parking: Access to the property is provided via Indian Tree Road, a private roadway with pavement widths varying between 12 and 16 feet within 50-foot-wide easements, with the property situated approximately 0.7 miles west (mauka) of Hawai'i Belt Road. The Applicant has legal easement over the roadway (please note, the application initially included the incorrect grant of easement document, but the Applicant subsequently provided the correct documentation of legal access). Internal access through the property to the bonfire area and designated campsite areas will be provided by an existing 10-foot-wide gravel driveway. This existing driveway includes multiple pull-off points to accommodate two-way traffic and crosses a stream. The Applicant plans to comply with Fire Code requirements for Fire Department Access Roads. Parking for up to 200 vehicles is available in designated areas within the campsite zones on existing grassy areas. The commercial vehicle parking area on the property has been previously cleared and consists of gravel, providing a stable and suitable surface for vehicle storage and event check-in purposes. All parking for the event would be confined to Applicant's property

24. Traffic Impacts: The Applicant anticipates the four-day, annual event to attract 200 vehicles based on an estimated attendance of 500 people, with most attendees carpooling. Traffic will be staggered, with arrivals spread over Friday and Saturday and departures on Sunday and Monday, avoiding peak morning traffic times.

25. While the Applicant indicated that the proposed commercial vehicle storage area, is not expected to generate significant additional traffic as these vehicles are primarily used on-site, testimony from Intervenors and neighbors indicate that the property is used more as a base yard for heavy equipment rental and that there is frequent hauling of heavy equipment causing damage to the roadway. Intervenors also testified that these commercial vehicles capable of and frequently hauling heavy equipment use diesel fuel which adversely affects air quality on the cacao farm with is adjacent to the road.

At the Hearing, Applicant and the Rancher testified that the requested vehicle storage would alleviate the significant burden currently imposed on the Rancher, whose primary focus is on conducting agricultural activity, in having to store his vehicles off-site. Rancher testified that the commercial vehicles help to subsidize his operations. The Intervenors testified that these vehicles use diesel fuel which in their opinions degrades the air quality and imposes a possible risk to the quality of their cacao production. There was no other testimony nor evidence presented that storing and driving the vehicles on Indian Tree Road would adversely affect the agricultural use of the property or surrounding properties.

26. Water: The subject property is not currently served with County water. Attendees will be required to bring their own potable water for the 4-day event. As mentioned above, while the application indicated the presence of an existing, 3,000-gallon rainwater catchment tank adjacent to the proposed truck parking area, a site visit revealed that the catchment tank was disassembled and is no longer available for non-potable and fire suppression needs.

27. Wastewater: The property is not currently serviced by the County sewer system. The Applicant proposes to provide portable toilets for the 4-day event.

28. Other Essential Utilities and Services: There is no electrical service to the property, thus attendees may bring their own camp stoves, generators or solar energy systems for the event. Police, fire, and medical services are located approximately 6.5 miles away in Hilo.

E. Contested Case Hearing

29. The application for the Special Permit was on the agenda of the February 6, 2025, meeting of the Windward Planning Commission. A Petition for Contested Case Hearing was received from James McMahon and Lichun Huang on January 29, 2025. Both Intervenors were granted standing at the February 6, 2025 Windward Planning Commission meeting in Hilo, Hawai'i. Thereafter, mediation between the parties was conducted in May and June 2025 and was unsuccessful. The contract of the Hearing Officer appointment was finalized on October 8, 2025.

30. Public testimony at the Windward Planning Commission meeting and at the contested case hearing held on November 13, 2025 was split between supporting and objecting to the Application.

31. On October 17, 2025, a pre-hearing conference was attended by Andrew Tepper for the Applicant, Calvert Chipchase and Jacob Honigman as counsel for the Application, James McMahon and Lichun Huang, Intervenors, the Director and Jean K. Campbell as counsel for the Director, Maija Jackson, Planning Program Manager for the Windward Planning Commission, Melissa Dacayanan-Salvador, Windward Planning Commission Secretary, and the Hearing Officer.

32. The Hearing Officer issued an Amended Scheduling Order dated October 31, 2025, following the pre-hearing conference, which fixed deadlines for the filing of witness lists, briefs, exhibits, additional evidence and supplemental memos, and the date of the contested case hearing. Public notice was given of a contested case hearing for the application to be conducted

by Hearing Officer Sherry Broder, Esq. for the Windward Planning Commission of the County of Hawai‘i in accordance with the provisions of Chapter 91-9, Hawai‘i Revised Statutes and the Planning Commission’s Rules of Practice and Procedure. Among other things, the following information was provided. Date: Thursday, November 13, 2025, Time, 9:00 a.m. Place: Hawai‘i County Council Chambers in Hilo 25 Aupuni Street, Hilo, Hawai‘i. The public was also notified that this meeting will be held in person and by interactive conference technology (ICT) via Zoom and that the public could testify at the physical location listed or by joining Zoom.

33. The contested case Hearing was held on November 13, 2025 in the Council Chamber starting at approximately 9 a.m. and concluding at approximately 8:15 p.m. There were 25 members of the public who testified in person and 12 members by zoom. The Hearing Officer limited public testimony to three minutes but allowed further written testimony to be submitted by October 17, 2025, 4:30 p.m. An additional 23 members of the public submitted written testimony by the deadline.

34. The Applicant presented their testimony first and had three witnesses who testified.

(a) Andrew Tepper, Owner, Teppy Mountain LLC (Applicant) Mr. Tepper (through his LLC) is the owner of the land and organizer of the gathering at issue. He testified about the gathering and vehicle storage for which the permit is requested, including the gathering’s purpose and values, and measures to limit any adverse environmental impacts they might have. He testified that neither the gathering nor the storage will involve any permanent structures or alteration of the land in any way.

(b) Roger Uchima is local rancher who leases approximately 1,000 acres from Applicant as pasture for his cattle. He seeks permission to store his vehicles on a small area of the property. He testified about his ranching and trucking operations and explained that he rotates his cattle, in normal course, through dozens of different parcels throughout

the property, and the gathering will not in any way impact his ability to conduct cattle grazing.

- (c) John Pipan, Planning Administrator, Land Planning Hawai'i LLC Mr. Pipan is the environmental consultant who prepared and submitted the Special Permit Application at issue on the Applicant's behalf. He testified about the gathering and vehicle storage for which the permit is requested, including measures to limit their environmental impacts.

35. The Intervenors presented their testimony second and had two witnesses. Mr. James McMahon and Ms. Lichun Huang testified on the reasons for their objections and presented evidence relating to their objections.

36. The Planning Department presented its evidence third and had one witness. Mr. Jeffrey W. Darrow, Planning Director, provided testimony on how the Planning Department interprets and applies criteria for recommending approval of a Special Permit; provided description of condition of the property at County site visit; described how this application met or did not meet applicable criteria.

37. The Planning Commission staff provided the copies of all written testimony, Zoom recordings and computer-generated transcripts to counsel and the parties.

38. Many members of the public testified or submitted written testimony, part of which were in 'Ōlelo Hawai'i. The Hearing Officer contacted two different court reporting services to transcribe the hearing but neither one was agreed to transcribe including the 'Ōlelo Hawai'i testimony. The Hearing Officer set a zoom post hearing conference on November 26, 2025 to discuss the Court Reporter, Transcript of 'Ōlelo Hawai'i Testimony, and Deadlines and explain difficulties and issues. All parties agreed to use the computer-generated written transcript based on the zoom recording ("transcript") as the official transcript but with

opportunity for parties to object to any language party determines is not correct an After discussion and statements of positions by counsel and the parties and recognizing that the Hawai`i State Constitution provides that ‘Ōlelo Hawai‘i and English are the official languages of Hawai`i and that many members of the public did use ‘Ōlelo Hawai‘i, the Hearing Officer decided that the Ōlelo Hawai‘i testimony should be translated and would retain a knowledgeable in ‘Ōlelo Hawai‘i to translate testimony, confirm the accuracy of and to correct where necessary the computer generated ‘Ōlelo Hawai‘i, and point out where there might be some discrepancies with the self-translation and provide the translations to the parties.

39. The Hearing Officer retained an expert translator and worked with the translator on the scope of assignment, including utilizing the computer-generated transcripts and listening to the zoom recordings, preparing spreadsheets of the corrected and translated zoom computer-generated written transcripts, and developing a glossary of commonly used ‘Ōlelo Hawai‘i words in the testimonies which are also generally known. The Hearing Officer circulated the work of the translator and provided her curriculum vitae to counsel and the parties.

40. The Applicant, the Intervenors and the Director each filed such documents and evidence as they deemed relevant and appropriate.

G. Clarification of position of Intervenors.

41. On Jan. 5, 2026, Intervenors filed their Intervenors Closing Arguments and Certificate of Service. In the Executive Summary, Intervenors stated the following to clarify their position.

We are not opposed the Falls on Fire Event, nor do we ask this body to prohibit them as a matter of principle. Our objection is narrower and procedural, and it is driven primarily by the proposed heavy equipment storage and base yard use. That use introduces a continuous industrial operation into a protected Agricultural District in a manner that

directly and substantially interferes with exiting agricultural operations on neighboring properties, including our own.

Intervenors complained about include “persistent heavy vehicle traffic, dust, vibration, road degradation and compromised emergency access.”

CONCLUSIONS OF LAW

To the extent that any of the Findings of Fact constitute Conclusions of Law, or Conclusions of Law constitute Findings of Fact, they shall be considered as such. Based on the foregoing Findings of Fact, the Hearing Officer makes the following Conclusions of Law, including mixed Findings of Fact and Conclusions of Law:

1. The Windward Planning Commission has jurisdiction over this Special Permit application.
2. The granting of the request for approval of Special Permit Application No. PL-SPP-2024-000075 to allow an annual, 4-day long festival event with overnight camping and to allow the operation of a heavy equipment rental base yard on 14.7 acres of a larger 1,419-acre parcel in the State Land Use Agricultural District is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended.

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

The subject request is unusual in that the proposed uses are not strictly agricultural in nature and would allow the Applicant to hold an annual, 4-day-long festival event on their property and

to continue to operate a heavy equipment rental base yard for non-agricultural-related commercial uses in a designated area on the property. However, the proposed uses are reasonable in that they would only use a small portion (1%) of the larger land area with a small development footprint to host occasional special events to diversify their income stream to help offset the costs of running a ranch. The remainder of the land area will continue to be used for ranching. Therefore, it is reasonable that this use be allowed in the Agricultural District.

3. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

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

The permit area includes a mix of soils designated as “C” or “Fair” and as “D” or “Poor” and the stream areas are designated as “E” or “Very Poor” for agricultural productivity. Additionally, lands within the permit area are designated “prime” agricultural lands and “unclassified” along the stream areas by the State’s ALISH Map.

Given that the Special Permit request involves only a small portion of the property (1% of the total land area), that the festival use is infrequent (occurring only once a year for a four-day duration), and that the Applicant is not proposing any permanent structures or ground disturbance, the request is unlikely to impact the long-term agricultural potential of the land.

Regarding overnight camping in the SLU Agricultural District, the State Land Use Commission (“LUC”) cited Hawai‘i Revised Statutes and the 2023 Hawai‘i Supreme Court decision in *Ho‘omoana Foundation v. Land Use Commission*, stating that overnight camping in the SLU Agricultural District is entirely prohibited. They clarified that even a Special Permit

cannot allow such use; instead, a State Land Use District Boundary Amendment (“SLUBA”) would be required.

Through the Ho‘omoana Foundation decision, the Court ruled that, “*The specific exclusion of overnight camps from permitted uses in HRS § 205-4.5(a)(6) means that the public and private recreational use of overnight camps is not permitted, even by special use permit, on class A and B agricultural district land.*” Given that the subject property and permit area are situated on soils designated as class C, D, and E by the Land Study Bureau, a SLUBA is not necessary, and a Special Permit is an appropriate path for approval of the requested use on this specific property.

4. The proposed use does not adversely affect the surrounding properties.

Most surrounding properties are similarly zoned A-20a, with a few parcels to the south designated as A-10a. Surrounding land uses are primarily agricultural, including cattle grazing and some residential use with the nearest dwelling approximately 3,500 feet to the southeast of the proposed event area. Directly west (mauka) of the subject parcel is a large, approximately 11,395-acre property owned by the Applicant, primarily designated as conservation land. It should be noted that the application included letters from some neighbors in support of the Special Permit.

Testimony was also received from some neighbors along Indian Tree Road citing concerns over the existing and potential impacts of the proposed uses on surrounding property owners including increased traffic related to the annual event; safety concerns over the Indian Tree Road/Highway 19 intersection; damage to Indian Tree Road by event attendees and commercial trucks; noise, visual, and air quality impacts during event periods, and security concerns.

To mitigate damage the Indian Tree Road, the Applicant has proposed to repair potholes and other damage related to increased traffic from the annual event. This will be added as a

condition of approval and expanded to require repair of the roadway related to the more frequent hauling of heavy equipment over the roadway by the Applicant's lessee.

To mitigate potential intersection safety concerns, a condition of approval will require the Applicant to develop a traffic management plan and for review and approval of the State Department of Transportation (DOT) District Engineer prior to each annual event and will be responsible for implementing the plan as may be required by DOT.

To mitigate potential noise impacts, the Applicant has indicated that all amplified sound will be directed in a westerly (mauka) direction, toward the bulk remainder of the vacant 1,419-acre parcel, away from any neighboring dwellings. The other concerns will be addressed as discussed below.

The Police Department expressed concerns and objections to the proposed annual festival event due to the lack of proper approval and permitting. They emphasized the importance of being notified in advance, along with the Fire Department and neighboring property owners, before the annual event. Specifically, they requested the following information: 1) The anticipated number of participants; 2) The expected volume of vehicular traffic, along with assurances that all parking will be managed on-site; 3) A plan detailing how the Applicant will handle event security; and 4) How the Applicant intends to notify neighbors of each event and how the Applicant intends to address neighbor complaints during the event period (e.g., noise complaints, etc.)

The Applicant responded in writing indicating that they would not hold any subsequent events until all necessary approvals and permits are obtained through the Special Permit process. Prior to each annual event, the Applicant will notify the Planning, Police, and Fire Departments of the event dates, expected attendees, and vehicle numbers. Security plans, including the use of 4-10 trained "rangers" to monitor and de-escalate conflicts, will be reviewed with the Police

Department, with authorities contacted if needed. All parking will be on-site, and roadside parking will be prohibited. Neighbors and landowners along Indian Tree Road will be informed via email before the event. The Applicant will address complaints during the event, taking immediate action on reasonable concerns. Disruptive attendees will be removed and barred from future events. The preceding will be added as a condition of approval.

To ensure that event attendees remain within the extent of the permit area, a condition of approval will require the Applicant to secure a metes and bounds survey of the and install flagging around the approved permit area. Prior to and for the duration of each event, the Applicant shall provide signage indicating the extent of the permit area.

In November 2023, Applicant did conduct Falls of Fire events on the property without having obtained a Special Use Permit. Applicant filed for a Special Use Permit on August 27, 2024 and explained in the Application that he did not know he needed a Special Use Permit. “Although the Applicant had informed the County Planning, Police and Fire Departments prior to hosting the event in 2023, unfamiliar with the County and State regulations requiring a Special Permit, the Applicant regrets that he misunderstood County requirements and held the 2023 event without obtaining a Special Permit.” Applicant did hold two additional Falls of Fire events on the subject property in November 2024 and 2025. Applicant stated that he was trying to do the 2025 event as a “private gathering”. For the 2025 event, Applicant canceled the planned burning because DOH did not approve it.

Applicant has promised that he would have continued discussions with the Fire Department and implement all recommended measures, including installing a larger or additional tank and burning within a certain distance from the tank.

The Hawai'i County Planning Department has issued fines and other sanctions to Teppy Mountain LLC for violations for hosting unpermitted events as follows.

The Planning Department sent a Notice of Violation and Order (NOVO) Letter to Applicant dated June 25, 2024, in response to several complaints regarding the unpermitted event, Falls of Fire, November 2023. Additionally, the Applicant website advertised a similar event for November 2024. The NOVO order the Applicant to pay a \$5,500 fine and remove all advertisement for the 2024 Even from their website. Planning Department Background Report, Exhibit 4.

The Planning Department sent a first Daily Fines letter dated September 25, 2024. Applicant had not complied with the requirements of the NOVO and informing him that daily fines had then accrued to an amount of \$13,200. Planning Department Background Report, Exhibit 5.

The Planning Department then sent a second Daily Fines letter dated November 4, 2024. The Planning Department told Applicant to stop advertising the November 2024 event on their website, prohibit the event and require payment of an increased daily fines amount of \$21,400. Planning Department Background Report, Exhibit 6.

The Applicant did hold the November 2024 Event and the Planning Department issued a NOVA, Revised Repeat Violation letter in response to complaints. Based on the Applicant's disregard to repeated written and verbal instructions not to hold the event, the Department increased fines to a total of \$34,000 and required the Applicant provide a Letter of Understanding stating that the Applicant would not conduct or advertise any further unpermitted events until a Special Permit was secured. Planning Department Background Report, Exhibit 7.

The Applicant filed a Petition for Appeal on January 14, 2025 to the County Board of Appeals.

There are still these outstanding notice of violations and fines related to previously unpermitted festival events that the Applicant has yet to address, thus a condition of approval

should require the Applicant to rectify all outstanding violations prior to operating the next annual festival event in 2026.

The Planning Department sent a Warning Letter dated September 8, 2022 pursuant to Zoning Code Violation 2021-015E to the Applicant in response to a complaint about an unpermitted commercial rental business/base yard within the agricultural zone district with included heavy equipment related to ranching operations and a material hauling business. Planning Department Background Report, Exhibit 2. The Planning Department sent a Closure Letter dated November 1, 2022 after inspectors found that three dump trucks were removed from the property. Planning Department Background Report, Exhibit 3.

5. The proposed use does not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. (PD recommendation, p. 8-10, and PD FOF and COL.)

Access to the property is provided via Indian Tree Road, a private roadway with pavement widths varying between 12 and 16 feet within 50-foot-wide easements that serve 7 properties between the highway and subject property, with the property situated approximately 0.7 miles west (mauka) of Hawai'i Belt Road. The Applicant has legal easement over the roadway.

Internal access through the property to the bonfire area and designated campsite areas will be provided by an existing 10-foot-wide gravel driveway. This existing driveway includes multiple pull-off points to accommodate two-way traffic and crosses a stream. A condition of approval will require the Applicant to comply with Fire Code requirements, which may include the necessity to widen and improve the Indian Tree Road and the internal access driveway to Fire Department Access Road standards if required by the Fire Department.

Parking for up to 200 vehicles is available in designated areas within the campsite zones on existing grassy areas. While Plan Approval is usually required as a condition of a Special Permit, it is not required. Given the annual, short-term nature of the proposed festival event and the fact that no permanent structures or improvements related to the festival use are proposed on the property, Plan Approval is not recommended for the proposed use. However, a condition of approval will require the Applicant to meet the requirements of the State Department of Health Disability and Communication Access Board (DCAB) to provide for disabled access and parking.

The heavy equipment rental base yard area on the property has been previously cleared and consists of gravel, providing a stable and suitable surface for base yard and event check-in purposes, thus Plan Approval is not recommended for that area either.

As there is no County sewer system in the area, the Applicant proposes to provide portable toilets for the annual, 4-day event. There is no wastewater created by the commercial vehicle parking area.

The subject property is not currently served with County water. Event attendees will be required to bring their own potable water for the 4-day event and there are currently no fire suppression water storage facilities on the property. A condition of approval will require the Applicant to comply with Fire Code for appropriate fire suppression water storage for both the annual event use and heavy equipment rental base yard.

The property is situated within an area designated as Flood Zone X on the Flood Insurance Rate Map (FIRM) by FEMA, an area of minimal flood hazard located outside the 500-year flood plain. Cellular telephone service is available to the property, however there is no electrical service to the property, thus attendees may bring their own generators or solar energy systems for the

duration of the event. Police, fire, and medical services are located approximately 6.5 miles away in Hilo.

During previously held events, different activity organizers offered prepared food to participants (e.g., mushroom soup, grilled cheese sandwiches, pancakes, and juices), prompting some concern that requirements of the Department of Health related to food safety were not being followed. In response, the Applicant indicated that while attendees are responsible for bringing their own provisions and camping supplies, many attendees choose to bring extra food supplies to share with the other campers. In the spirit of inclusion and gifting, any such food items are freely shared and are not for distribution at retail or wholesale to the public. Thus, such sharing of food is not considered a food establishment as defined and regulated by the Department of Health (DOH) under Chapter 11-50. As the event will only be held annually, the Applicant will pursue a special event food permit from DOH, as needed, prior to the event. The preceding will be added as a condition of approval.

With respect to the proposed effigy burning bonfire and campfires for festival attendees, open burning is generally prohibited in Hawai'i, as outlined in Hawai'i Administrative Rules (HAR) 11-60.1, which define open burning as, *"the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare."* Exceptions to this prohibition are permitted only with approval from the State Department of Health (DOH) Director. Under HAR Section 11-60.1-52(d)(1), fires for recreational, decorative, or ceremonial purposes may be allowed if prior approval is secured from the State DOH through a formal request process. A condition of approval will require the Applicant to secure permission from State DOH for both the proposed bonfires and campfires and prohibit such open burning when there is an active "No Burn Period" for the district where the subject property is situated.

A condition of approval will be included requiring the Applicant to meet all applicable County, State and Federal laws, rules, regulations, and requirements. Based on the preceding, the requested use will not burden public agencies to provide additional services.

6. Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.

In the 1960's and 1970's, the State's Agricultural District boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964.

The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various non-agricultural uses/services that may not be available or allowed by zoning for its residents.

Since the district boundaries were established, demand has increased for venues to host special events in natural settings. Furthermore, farmers and ranchers have sought to diversify income streams to support their agricultural operations. The proposed uses would address the preceding by providing event an opportunity to enjoy an event venue on a small portion of a working ranch while helping the rancher lessee diversify their land uses and supplement their income.

7. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The lands within the permit area are suitable for agricultural uses allowed in the district and most of the property is actively being used for cattle ranching. However, since most of the

permit area will only be used for the proposed festival once a year for four days, and the Applicant will not construct any permanent structures or cause new land disturbance related to the festival use, the proposed use will not adversely affect the long-term agricultural potential of the land.

8. The proposed use will not substantially alter or change the essential character of the land and the present use.

Except for the vehicle parking area, the permit area is vacant of any structures and uses, and only minimally improved with an existing 10-foot-wide gravel driveway. The existing heavy equipment base yard will remain the Applicant is not proposing any permanent structures or land alteration related to the proposed festival use.

Neither the gathering nor the vehicle storage will involve any permanent structures, or alteration of the land in any way.

The Rancher rotates his cattle, in normal course, through dozens of different parcels throughout the property, and the gathering will not in any way impact his ability to conduct cattle grazing.

While the character of the land will temporarily change during the 4-day annual event; the festival area is centrally located on the property, far from neighboring properties. As a result, any changes to the character of the land will not be obvious from outside the property and will remain short-term in nature.

9. The request is not contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the

various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The permit area is designated as Important Agricultural Lands, which are lands with better potential for sustained for sustained high agricultural yields because of soil type, climate, topography, or other factors. Use of the 14.24-acre land area for festival use once a year for four days will have minimal impact on the agricultural potential of the permit area. The 0.46-acre land area for the heavy equipment rental base yard is utilized by the rancher who leases 1,000 acres of the property for their cattle ranching operation. As such, some of the heavy equipment is used on-site for agricultural purposes and some of the equipment is rented and hauled off-site for commercial jobs. The legitimization of the use is necessary under the requested Special Permit.

The approval of the subject request would support the following goals and policies of the General Plan:

Economic Element

- *Encourage the development of a visitor industry that is in harmony with the social, physical, and economic goals of the residents of the County.*
- *Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.*

Recreation Element

- *Provide a wide variety of recreational opportunities for the residents and visitors of the County.*
- *Provide a diversity of environments for active and passive pursuits.*

Land Use-Agricultural Element

- *Preserve the agricultural character of the land.*

- *Encourage other compatible economic uses that complement existing agricultural and pastoral activities.*

The Hāmākua Community Development Plan (HCDP) was adopted by Ordinance No. 18 78, with an effective date of August 22, 2018. The proposed use is consistent with the following objectives of the HCDP:

- *Enhance and promote local and sustainable agriculture, farming, ranching, renewable energy, and related economic support systems.*
- *Promote appropriate rural tourism that welcomes guests for an alternative visitor experience. Promote Hawai‘i’s host culture and Hāmākua’s heritage, including historic roads and plantation towns, and festivals that celebrate our rich multi-cultural music, art and agriculture.*

10. The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management.

The property is located over one mile away from the nearest shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. Additionally, it is not located in the Special Management Area and there is no record of a designated public access to the shoreline or mountain areas that traverses the property. Based on the preceding, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes relating to Coastal Zone Management.

11. The request will not have a significant adverse impact to traditional and customary Hawaiian Rights.

In view of the Hawai‘i State Supreme Court’s “PASH” and “*Ka Pa‘akai O Ka‘Aina*” decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in

terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaʻāina accounts of the area, historical survey of documentary records, or botanical study was included in the application.

The valued cultural, historical, and natural resources found in the special permit area: According to the Applicant, no archeological or historical features are known to exist within the permit area as it has been previously cleared and heavily utilized for sugar cane cultivation and cattle grazing. Furthermore, the Applicant is unaware of any traditional or customary Hawaiian practices associated with the property. No professional surveys were conducted of the flora/fauna resources on the property and there are no known endangered or listed plant species on the property.

Possible adverse effect or impairment of valued resources: As there are no known valuable archaeological, historical, or cultural resources within the permit area and the Applicant is not proposing any additional development or ground disturbance, the proposed use is unlikely to adversely affect or impair valued resources.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed use will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

DECISION AND ORDER

Based on its consideration of the evidence and argument presented at hearing, including the public testimony, the documents filed herein, and the foregoing Findings of Fact and

Conclusions of Law, and applying the reliable probative evidence and law, the Hearing Officer hereby decides and orders as follows:

Special Permit Application No. PL-SPP-2024-000075 to allow an annual, 4-day long festival event with overnight camping and to allow the operation of a heavy equipment rental base yard on 14.7 acres of a larger 1,419-acre parcel in the State Land Use Agricultural District would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations and should be granted subject to the following conditions:

1. The Applicant, its successor or assigns, shall be responsible for complying with all the stated conditions of approval.
2. The operation of the proposed uses shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application, any subsequent material received by the Planning Department, and any representations made to the Windward Planning Commission. Any expansion or uses beyond what is represented shall require an amendment to this permit.
3. Festival events shall be limited to one per calendar year no longer than four days in duration and shall not exceed a maximum of 500 attendees per event.
4. As represented by the Applicant, the heavy equipment rental base yard shall include the storage of no more than six (6) pieces of heavy equipment that is rented for commercial uses off-site. This limitation does not apply to agricultural vehicles to be used exclusively on-site.
5. All festival-related parking shall occur within the permit area and shall be prohibited on or along any public or private roadway. The Applicant shall provide access and parking for disabled participants meeting with the requirements of the

Americans with Disabilities Act (ADA) and State Department of Health Disability and Communication Access Board (DCAB).

6. To mitigate traffic impacts to the Indian Tree Road/State Highway 19 intersection related to the annual event, the Applicant shall develop a Traffic Management Plan that shall be submitted to and approved by the State Department of Transportation District Engineer prior to each event. A copy of the approved plan shall be provided to the Planning Department prior to each event. Implementation of the approved plan shall be the responsibility of the Applicant. In addition, the Applicant shall submit a plan to the Planning Department to develop three paved pull-out/passing areas on Indian Tree Road between the boundary of the subject property and State Highway 19. The Applicant shall be solely responsible for the construction and cost of said pull-out/passing areas once approved by the Director. The Applicant will be responsible for maintenance of the pullouts as part of Condition No. 7.
7. Prior to each annual festival event, the Applicant shall conduct and document a pre-use roadway condition assessment, including photo/video documentation of roadway conditions. Within a month after each annual festival event, the Applicant shall repair any damages to Indian Tree Road caused by festival traffic, which may include up to 200 vehicles. The Applicant shall also repair any damages related to the heavy equipment rental/hauling operation at least once per year. Repairs must restore the roadway(s) to the same or better condition as documented in the pre-use assessment. The Applicant shall allocate \$10,000 annually for roadway repairs to fulfill these requirements. The Applicant shall provide the Planning Director an annual report documenting the repairs made.

8. No later than one month prior to each annual festival event, the Applicant shall notify the Planning Department, Police Department, and Fire Department of the event dates, number of expected attendees, and anticipated vehicle numbers. Furthermore, the Applicant will provide and review fire safety plans with the Fire Department and event security plans with the Police Department. The Applicant shall provide the Planning Department documentation that these notifications/consultations have occurred.
9. No later than one month prior to each annual festival event, the Applicant shall notify neighbors along Indian Tree Road before the event providing event dates, number of expected attendees, anticipated vehicle numbers and contact information to communicate nuisance complaints. The Applicant will address complaints during the event, taking immediate action on reasonable concerns.
10. Prior to each annual festival event, the Applicant shall secure written approval from the Director of the State Department of Health (DOH) through the Clean Air Branch for any open burning as defined by the DOH during the festival event, including but not limited to fires for recreational, decorative, or ceremonial purposes. Documentation of the approval shall be provided to the Planning Department no later than one month prior to each annual festival event. Open burning shall be prohibited if there is an active 'No Burn Period' as designated by the DOH for the district within which the subject property is situated.
11. All amplified sound, including but not limited to percussive music, shall be directed in the western (mauka) direction toward the vacant portion of the property and away from any surrounding residences and shall cease by 9 p.m.

12. Within sixty days of the approval of this Special Permit, the Applicant shall provide the Planning Department with a metes and bounds survey of the approved permit area, completed by a surveyor licensed by the State of Hawai'i. Use of the property beyond the permit area for uses approved under this permit shall be prohibited. Within sixty days of the approval of this Special Permit, the Applicant shall install flagging around the approved permit area and provide signage indicating the extent of the permit area for the duration of each event. The Applicant shall provide attendees with a map or diagram showing the permit area.
13. Within 180 days of the approval of this Special Permit, the Applicant shall either remove, secure building permits, or receive an HRS 46-88 exemption from the Department of Public Works-Building Division for all unpermitted structures in the heavy equipment rental base yard area. The Applicant shall complete this requirement within one (1) year thereafter.
14. The Applicant shall comply with Fire Code as required by the Fire Department for both the annual festival event and heavy equipment rental base yard, which may include improvements of roadways to Fire Department Access Road standards and installation improvements for fire suppression. Prior to the next annual event in 2026, at the permit area the Applicant shall install a fixed water storage tank with a capacity of no less than 5,000 gallons which is equipped with a pump, which may be portable but is installed and operational during each festival event, sufficient to provide water flow of no less than 60 gallons per minute and water pressure no less than 300 PSI and a hose compliment and nozzle(s) adequate to reach the fire source. Upon successful completion of the improvements, if any, and prior to the next annual event in 2026, the Applicant

shall provide the Planning Department documentation from the Fire Department that the improvements meet Fire Code standards. The Applicant shall make any improvements in subsequent years that are required by the Fire Code Standards and provide the Planning Department documentation from the Fire Department that these upgrades meet the new Fire Code Standards.

15. The Applicant shall provide a sufficient number of portable toilets for each annual 4-day festival, ensuring compliance with ADA accessibility requirements. The toilets must be monitored and maintained in a clean, functional, and sanitary condition throughout the event, with regular servicing and emptying as necessary to prevent unsanitary conditions. A licensed company must be contracted for the provision, maintenance, and removal of the toilets. All portable toilets must be removed from the event site within 48 hours after the festival concludes, ensuring no waste or equipment remains.
16. Within thirty days of the approval of this Special Permit, the Applicant shall remedy all outstanding violation actions issued by the Planning Department, including completing corrective actions and paying all associated fines, fees, and penalties.
17. To ensure food safety during the event, the Applicant shall comply with all applicable requirements of the State Department of Health regarding prepared foods provided to event participants.
18. The Applicant shall comply with all applicable County, State, and Federal laws, rules, regulations, and requirements.
19. If the Applicant fails to comply with the conditions of approval or cause complaints relating to any interference or nuisance and are unable to resolve them

with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the Applicant fails to comply with the conditions of approval or has caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.

20. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicant, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the Applicant should require an additional extension of time, the Planning Department shall submit the Applicant's request to the Windward Planning Commission for appropriate action.

Dated: Hilo, Hawai'i, Feb. 17, 2026.

By: Sherry P. Broder
SHERRY P. BRODER, Hearing Officer
Windward Planning Commission
County of Hawai'i
State of Hawai'i

WINDWARD PLANNING COMMISSION

COUNTY OF HAWAII

STATE OF HAWAII

TEPPY MOUNTAIN, LLC,

Applicant,

JAMES McMAHON and LICHUN HUANG,

Intervenors,

JEFFREY W. DARROW,

Planning Director.

SPECIAL PERMIT APPLICATION NO. PL-SPP-2024-000075

CONTESTED CASE HEARING PL-SPP-2025-000025

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon the parties identified below by electronic mail service upon the following on January 12, 2026:

Delivered via Electronic Mail (E-Mail)

TEPPY MOUNTAIN, LLC

c/o Andrew Tepper

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Allison Park, PA 15101

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Attorney for Planning Director

Dated: Hilo, Hawai`i, February 17, 2026.

/s/ Sherry P. Broder
SHERRY P. BRODER
Hearing Officer