

CADES SCHUTTE
A Limited Liability Law Partnership

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TEPPY MOUNTAIN LLC

BEFORE THE WINDWARD PLANNING COMMISSION
COUNTY OF HAWAII
STATE OF HAWAII

Teppy Mountain LLC,

Applicant,

James McMahon and Lichun Huang,

Intervenor,

Jeffrey W. Darrow,

Planning Director.

Special Permit Application PL-SPP-2024-
000075
PL-CCH-2025-000025

APPLICANT TEPPY MOUNTAIN LLC'S
EXCEPTIONS TO HEARING OFFICER'S
REPORT; CERTIFICATE OF SERVICE

Contested Case Hearing

Date: November 13, 2025

Time: 9:00 a.m. HST

ORAL ARGUMENT REQUESTED

**APPLICANT TEPPY MOUNTAIN LLC'S EXCEPTIONS
TO HEARING OFFICER'S REPORT**

Pursuant to Section 4-23(a) of the Planning Commission Rules of Practice and Procedure (the "**Planning Commission Rules**"), Applicant files limited exceptions to the Findings of Fact, Conclusions of Law, Decision and Order submitted by the Hearing Officer in this matter on February 17, 2026 (Record Doc. 59) ("**Hearing Officer's Report**").

Pursuant to Section 4-26(a) of the Planning Commission Rules, Applicant requests oral argument on these narrow exceptions to the Hearing Officer's Report.

I. INTRODUCTION

The Hearing Officer, like the County of Hawai'i Planning Department (the "**Planning Department**"), concluded that Applicant's proposed land uses "would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS" and recommended they be approved. Hearing Officer's Report at 15 (Record at 669); Planning Department's Recommendation at 5 (Record at 59). Applicant only takes exception to two of the conditions (out of 20) recommended by the Hearing Officer. Applicant respectfully requests that the Planning Commission modify those two conditions as set forth herein and approve the Special Permit (the "**SP**").

II. BACKGROUND

Applicant submitted the SP Application seeking authorization to hold a 4-day gathering on a working ranch that would not negatively affect the ranch's agricultural use and utilize a 0.46-acre area of the ranch for storage of vehicles owned by the rancher who operates the ranch. The Planning Department recommended that the SP be approved, subject to conditions. The Hearing Officer, Sherry Broder, Esq., conducted a hearing regarding the SP on November 13, 2025 (the "**Hearing**"), and recommended granting the SPA, subject to 20 conditions. Hearing Officer's Report at 29-34.

III. LEGAL STANDARD

Pursuant to HRS § 205-6(a), the Planning Commission “may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.” HRS § 205-6(c) provides that the Planning Commission “may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter.”

Section 6-3(b)(5) of the Planning Commission Rules provides that the following criteria are to be considered in determining whether to grant a Special Permit:

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

IV. ARGUMENT

A. Recommended Condition 6 of the Hearing Officer's Report should be modified, in part, to avoid unfairly imposing an obligation on Applicant with which it lacks the ability to comply.

The Hearing Officer recommended that the SP including a condition providing in part:

“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 [Planning] Director.”

Hearing Officer's Report at 30 (Record at 684), Condition 6.

Applicant takes exception with that condition to the degree that it imposes an obligation to complete the construction because it does not have the unilateral authority to authorize the construction. One of the easements over Indian Tree Road in Applicant's favor provides:

“Approval of Improvements to Easements. The Grantee under this document shall not build, alter, construct or reconstruct any improvements in, upon, under or to the easements . . . without the prior written consent of the affected Grantor, which consent shall not be unreasonably withheld.”

Record at 319, paragraph 4.¹

To eliminate the prospect of that unfair situation, Applicant respectfully proposes that Condition 6 be revised to read as follows:

“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

¹ At least one other easement that Applicant holds over Indian Tree Road (its title includes several, governing different segments thereof) contains a similar restriction as well. Because the easement documentation included in the Record provides sufficient basis for Applicant's exception, no other easement documentation is included here.

subject property and State Highway 19 and shall request consent from other holders as required. The Applicant shall be solely responsible for the construction and cost of said pull-out/passing areas, provided the necessary consents have been received and the plans approved by the [Planning] Director.”

(requested modifications underlined).

B. Recommended Condition 11 of the Hearing Officer’s Report should be modified, in part, to avoid restricting music more stringently than needed to avoid adversely affecting surrounding properties.

The Hearing Officer recommended that the Special Permit contain a condition providing:

“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.”

Hearing Officer’s Report at 31 (Record at 685), Condition 11.

Applicant agrees that all amplified sound during the gathering should be directed in the western (mauka) direction—toward the vacant portion of the property and away from any surrounding residences.

Applicant takes exception to the portion of that condition requiring that all amplified sound at the gathering to cease by 9 p.m. The Record indicates that the portion of the condition regarding speaker orientation is sufficient to avoid disturbing neighbors:

- In setting forth its recommendation, the Planning Department noted: “Directly west (mauka) of the subject parcel is a large, approximately 11,395-acre property owned by the applicant, primarily designated as conservation land. . . . 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.” Planning Department’s Recommendation at 6-7 (Record at 60-61).

- At Applicant's 2025 event, unlike at its previous events, all speakers faced mauka, ensuring that the amplified sound was pointed away from any nearby properties. Hearing (first half) at 5:16:09-20 (Record at 533).
- At the Hearing (which was shortly after the 2025 event), the Intervenor (James McMahon) stated: "I was aware of some noise, but **it wasn't too bothersome this year.**" Hearing (first half) at 4:07:01-05 (Record at 518) (emphasis added).

To further ensure that music does not disturb neighbors, Applicant proposes to revise Condition 11 to require Applicant to establish noise monitoring stations and to check at least four times each night to ensure that sound levels are below the maximum level allowed in the district. Per HAR § 11-46-4, the maximum permissible sound level for applicant's property, which has "Class C" zoning per HAR § 11-46-3, is 70dBA (during both "daytime" and "nighttime"). Specifically, Applicant proposes that Condition 11 be revised to read as follows:

"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. The Applicant shall place monitoring stations at the edge of its property along each straight line between any amplified sound and the property line and to check each station at least four times each night to ensure that the sound level at the stations does not exceed 70 dBA (where dBA means the 'A-weighted sound level' as defined in HAR § 11-46-2)."

(requested modification underlined).

V. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Planning Commission modify recommended Conditions 6 and 11 of the Hearing Officer's Report as provided above and approve the SPA and issue the Special Permit. Applicant also requests oral argument before the Planning Commission regarding this matter.

DATED: Honolulu, Hawai‘i, March 4, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Jacob M. Honigman

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon the parties identified below by electronic mail service pursuant to Planning Commission Rule 4-23(a) on March 4, 2026.

Delivered via electronic mail (e-mail):

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DATED: Honolulu, Hawai'i, March 4, 2026.

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