

From: [Jim McMahon](#)
To: [Planning WPC Testimony](#)
Subject: Public Testimony In Opposition to Special Permit Application PL-SPP-2024-000075
Date: Monday, May 11, 2026 3:41:27 PM
Attachments: [PL-SPP-2024-000075 Testimony - Oppose - Jim McMahon -2026.pdf](#)

Aloha Hawaii County Windward Planning Commission members.

Please accept my following testimony (attached) in continued opposition to item #1 on the Special Meeting Agenda of the Windward Planning Commission scheduled for this Thursday, May 14, 2026 concerning Special Permit Application PL-SPP-2024-000075.

Sincerely
Jim McMahon
Indian Tree Road, near Pāpa'ikou, Hawaii

To: WPCtestimony@hawaiicounty.gov

From: jimlichun@gmail.com

Subject: Public Testimony In Opposition to Special Permit Application PL-SPP-2024-000075

Aloha Hawaii County Windward Planning Commission members

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Jim McMahon

Indian Tree Road, near Pāpa‘ikou, Hawaii

Summary:

We are not categorically opposed to the Falls on Fire or similar events, nor do we ask this body to prohibit them as a matter of principle. But we do object to the present location. Such events should be located far away from residential and agricultural areas - in areas that are less likely to be impacted by the noise, traffic, and other nuisances - similar to the better known Burning Man festival located in the Nevada desert. Our objection to the permit 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 existing agricultural operations on neighboring properties, including our own.

The current record cannot support the findings required for approval. The proposed uses—particularly the heavy equipment base yard—are not driven by agricultural necessity but by logistical convenience, and they rely on a privately owned and privately maintained easement as de facto public infrastructure. This reliance creates cumulative, unenforceable, and incompatible impacts, including persistent heavy vehicle traffic, dust, noise, vibration, diesel exhaust emissions, degradation of privately owned roads, including various safety, security and liability concerns, all of which undermine lawful agricultural production, processing, and ag-tourism uses.

Absent findings that resolve these failures—specifically, the incompatibility of industrial uses with agricultural zoning, the substantial adverse impacts on neighboring farms, and the lack of enforceable access governance—approval cannot lawfully proceed. Denial of the Special Permit is therefore the only legally defensible outcome on the present record.

Detailed Arguments in Opposition to the Special Permit

My wife and I are the intervenors in this contested case challenging this Special Use Permit application. Granting of standing in these proceedings was made primarily because our property is bisected by a private road easement used as the primary form of access to the permit applicant's subject property. Our interests are therefore different from that of the general public. However, since many of our neighbors and other island residents provided testimony in opposition to these proposed uses we feel obligated to include many of the concerns raised by the broader community which we also share.

To begin, we as the Intervenor (James McMahon and Lichun Huang, Husband and Wife) purchased our property at the end of 2019 in the hopes of being able to operate a

farm to grow tropical fruits including Cacao that cannot be easily cultivated elsewhere throughout much of the rest of the US. This area of the Hamakua coast north of Hilo is blessed with the conditions necessary for this type of farming. Our biggest concern at the time of purchase was the presence of the road bisecting our property as we knew that it represented the greatest risk due its potential burdens it could impose on our property. We therefore consulted a highly experienced local real estate attorney as well as did our own research into various land use laws in the state Hawaii Revised Statutes (HRS) and the local Hawaii County Code (HCC). Given that our property as well as that of all of our immediate neighbors and dominant road easement users all have the same Agricultural (A-20A) zoning, our burden should have been constrained by the allowed uses in that zoning as well as administrative protections granted by the State and County laws. While no one can predict the future, one would assume that any major change in zoning would occur gradually as part of a managed County or District development plan. In short, our confidence in the protections offered by the laws was misplaced. In retrospect, we should have spent more time researching the County's track record of previous controversial planning and development decisions throughout the past decades in order to have a better understanding of the risks to purchasing agricultural land in this district. However, even by measured by these past standards, the proposed combined non-agricultural uses in this application go beyond what has ever been considered for approval before. These include the following:

1. Two unrelated uses in the same Special Use Permit Application

Having reviewed every Special Use Permit Application submitted to the Hawaii County Planning Commission since 1992, we were unable to find very many permits for more than a single use. Of these, many were for related uses. In any case, none with 2 or more unrelated uses were fully approved with only one of the uses receiving approval.

It's a common legislative tactic to attach an unpopular proposal to a more popular/less controversial one in hopes that both proposals will get approved. In this case as to which one of 2 proposed uses enjoys more administrative and public support is debatable. However, it's clear based on the application submission, the Planning Director's Recommendation Report, feedback from other public agencies, public testimony, and reporting in news media that the "Falls on Fire" event use has received almost all of the attention throughout the application process and thus has largely overshadowed the other remaining use - the Heavy Equipment Baseyard. This raises some concerns over the permit application reviewing process as to whether or not each proposed use will be evaluated independently based on its merits. For example the criteria listed

under Section 6-3(b)(5) of the Hawaii County's Special Permit Practice and Procedure should be reviewed for each unrelated use. When they are not, it means that one or more of the proposed uses did not receive the same and equal comprehensive evaluation. In the permit application, the Planning Director's Recommendation, and the Contested Case Hearing Officer's report it is often unclear if the evaluation criteria is being applied to one use, the other use, or to both uses at the same time. It is often implied that the "Falls on Fire" event use is what is being discussed without it being explicitly stated while the other use which should be subject to a similarly rigorous review goes unmentioned.

2. Misleading Description of the Proposed Uses in the Special Permit Application

The Application describes the proposed uses as follows: (1) "to host an annual four (4) – day event with overnight camping" and (2) "to store up to six work vehicles on the property". As to the first proposed use, it is more accurately described as a 4-day Burning Man themed festival. Overnight camping is simply one component of this multifaceted event. Whether one is familiar with the Burning Man movement or not, at least they would be easily able to find more about these types of events by performing some online research. In so doing they would probably also uncover much of the challenges and controversy surrounding the main Nevada-based event and similar events held elsewhere. It is not the typical set of outdoor recreation activities one has during traditional camping events.

Similarly, there is a substantive difference between a proposal "to store up to six work vehicles on the property" or to allow "storage of commercial vehicles" and the actual use as a heavy equipment rental baseyard. The former implies that vehicles are going to be stored on site for lengthy periods of time much like how someone would use a self storage facility to store personal belongings. Whereas the more accurate heavy equipment baseyard use describes regular/daily traffic to and from the property by large heavy construction type vehicles with other support services such as equipment repair and refueling - a much more intensive commercial-industrial use.

Should the permit reviewers dive into the body of the application document and find the following paragraph offering a more complete description of the proposed vehicle storage use:

With regard to the request to utilize a 0.46-acre area of the parcel for vehicle storage, these vehicles are used to support the ranching activities on the property. However, while not being used for ranching purposes, the rancher who owns the vehicles also uses them to haul gravel. His ability to use his farm vehicles for other commercial purposes is vital to his ability to finance the vehicles and earn a living. However, because the use of the vehicles is not strictly related to agriculture use, a Special Permit is required to store the vehicles on agricultural land.

The issue here is that while factually correct it is both misleading and incomplete description of the proposed use. It is misleading because the vehicles will be used off site for non ranching purposes and for commercial material hauling purposes the vast majority of the time. This evidence comes from observations made prior to the following notice of violation issued by the Planning Department against the subject property: ZCV-2021-015E - *Unpermitted Commercial Rental Business / Base Yard within the Agricultural Zoned District* at which time several large dump trucks used to haul the gravel were observed departing the baseyard daily during the early mornings and generally returning in the late afternoon. The description is incomplete because it only mentions the gravel hauling aspect of this use. When in reality a far broader set of heavy equipment rental services are offered as provided as evidence during the Contested Case hearing. This includes excavation equipment such as backhoes and bulldozers, a telehandler for heavy lifting, a roller for road work, and a large tractor-trailer to haul these heavy pieces of equipment to and from the baseyard. We believe it's materially important to those reviewing the permit application to know to what extent this equipment is used offsite for non-farm related commercial activities vs. in direct support of the ranch. Or in other words, which of the 2 uses - ranching or the commercial heavy equipment operation - is the primary dominant use from at least the financial perspective. Should it be established as we are asserting that the commercial heavy equipment operation is responsible for more revenue than the ranching operation then it diminishes the financial argument in favor of the Special Permit.

The Planning Director did partially correct the use descriptions in his recommendation report. However, this correction was not made before the application was sent to reviewing agencies, the surrounding property owners, and posted online for general public review. Nonetheless, the inaccurate use description still persists to the present day including in the announcement for the Windward Planning Commission's *Agenda for Special Meeting* announcement where the use remains being referred to as a "storage of commercial vehicles".

We continue to object to this phraseology that serves the interests of the applicants over providing an accurate description of the actual use.

The conclusion is that those reviewing this application document or merely seeing the public notices were unlikely to have a true and accurate picture of proposed uses.

3. The Special Permit Application is Incomplete due to incomplete and inaccurate description of access to the subject property.

Planning Commission Rule 6-4 of the Special Permit Practice and Procedure Requires *The Commission, through the Planning Department, shall neither accept nor process an application which is incomplete as to form and content.* Section 6-3 of the same rules lists the required content including 6-3(b)(2) - *Description of the property in sufficient detail to determine its precise location.*

The Special Permit Application provides several descriptions of the property location and its access. The first description being paragraph 3B as follows:

The subject site, identified as TMK (3) 2-7-007:001, consists of 1,1419.17 acres of land and is zoned Agricultural 20-acres (A-20a) (Figure 3). The parcel is located at the top of Indian Tree Road, approximately 0.7 miles west of Hawaii Belt Road in Pāpa‘ikou, South Hilo, Hawai‘i (Figure 1). Access to the site is via Indian Tree Road, an existing paved private roadway with access off Hawaii Belt Road.

While the TMK number and zoning are accurate, the parcel size is not (it should be 1419.17 acres). But the main point is that the Indian Tree Road property location and access description is inaccurate and unclear for the following reasons:

1. The property is not best described as being located at the top of Indian Tree Road but rather it is located in the middle of it as the road makes a sharp turn just before the gated entrance to the subject property allowing users to eventually connect with Kalaoa Camp Road - a road which also connects to the Hawaii Belt Road. Both Indian Tree Road and Kalaoa Camp Road are private roads over which the subject property has easement access.
2. Indian Tree Road is not identified on Figure 1 of the Application, nor any other maps shown in the Application with the exception of the site plan

- (Figure 2). However, it is shown as only heading in the eastward direction when in fact the road continues southward towards Kalaoa Camp Road.
3. Figure 1 shows an inaccurate outline of the subject property. It includes additional parcels not part of the subject property as noted by public testifier Kawahara.
 4. Portions of Indian Tree Road remain unpaved.
 5. This access description also fails to mention that it, irrespective of which road is actually used, passes over several other servient properties.

The next description of access to the subject property is found in Paragraph 3J of the Application:

Access to the site is via Indian Tree Road, approximately 0.7 miles west of Hawaii Belt Road. Indian Tree Road is a private paved roadway with a 50-foot right-of-way and pavement widths varying between 12 and 16 feet. The road is generally well maintained, but does contain a few potholes. The applicant is willing to repair the potholes if deemed necessary. The applicant has legal easement access over the private roadway (Exhibit A).

This access description is clearer than the previous one in some ways but still continues to add to the confusion by stating that Indian Tree Road is *approximately 0.7 miles west of Hawaii Belt Road*. Whereas Indian Tree Road itself connects directly to the Hawaii Belt Road. 0.7 miles west of the Hawaii Belt Road is a description of the subject parcel location, it merely states that Indian Tree Road will be used. But it is unclear if any other private roads over which the subject parcel also claims to have legal access will also be used such as the aforementioned Kalaoa Camp Road. In any case, the entire length of the road is not paved as mentioned, the minimum width of the road that is paved is actually closer to 10 feet, and despite it being located within a 50-foot wide road and utility easement, it's basically only a single lane road - meaning that it is unable to support bidirectional traffic without one vehicle having to pull over to allow opposing traffic to pass. It cannot comfortably handle the additional traffic volume resulting from the proposed large events. Nor can it handle the large heavy vehicle traffic. Smaller vehicles are frequently forced to yield to the larger vehicles and pull over wherever the shoulder is wide enough. In some rare circumstances one large truck has been forced to reverse back down to the main highway after encountering another large vehicle travelling in the opposite direction.

The final point of confusion over access comes from a document attached to the application as Exhibit A. This document is supposed to prove that the applicant has legal easement access over the private roadway. However, it does not show Indian Tree Road at all. Nor is the benefitted property the subject property. A closer examination at the document revealed that this easement grant is actually for a different property (TMK 2-8-001-002) located near Kaupakuea Homestead Road above Pepekeo ~2.5 miles north of the subject property and Indian Tree Road. This issue was reported to the Planning Department by the Intervenor on Jan 17, 2025. While the Planning Department acknowledged the incorrect easement document and was able to send us the correct document provided by the Applicant, this error was never corrected in the official online public docket. Cross examination during the Contest Case Hearing of the applicant's witness, John Pipan, who prepared the application on behalf of the applicant was unable to identify the location shown on the Exhibit A map.

The reason why we, as the Intervenor, are so focused on the access issue is because of our familiarity with the complex patchwork of the various private road easements located in our area. Many parcels in our area have multiple possible routes they can use to access the public road. So knowing which combination of easements the applicant intends to use between the subject property and the public road will reveal which servient parcels will be burdened by the traffic and where the traffic will ultimately be directed to when it does eventually reach a public road such as the Hawaii Belt Road. We as the Intervenor can rely on our personal knowledge from living along Indian Tree Road and from witnessing the traffic from past unpermitted events that the applicant intends to Indian Tree Road. But we cannot expect the other reviewers of the application such as the public agencies who are not as familiar with the area as we are to be so informed. We cannot make any assumptions over what information the reviewers of the application relied upon when providing their feedback . We only know that they have been provided with inaccurate and inconsistent information as to location of the property and how it will be accessed both in present and possibly in the future. We thus believe the standard of PC Rule 6-3(b)(2) has not been met.

4. The Public was Not Properly Notified

The required public notification signs for the permit application were not placed as per Planning Commission Rule 6-5 of the Special Permit Practice and Procedure. On at least 2 separate occasions a sign was placed along the Hawaii Belt Road near the entrance to Indian Tree Road. Following each placement, the

sign was taken down almost immediately by unknown persons. The Planning Department was notified of the disappearing signs. In any case, according to Planning Commission Rule 6-5(c), *The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road.* And according to Rule 6-5 (b), *The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.* So wherever the correct location of the sign is, it should still be posted. However, no sign has been posted since ~Nov 2024. Public notice signs such as these are one of the few ways to notify the general public as few people these days pay attention to the official notices in the local newspapers. The only reason we as the intervenors were notified (by mail) is because we specifically asked to be as we were the original complainants for the previous use violations. But being more than 500 feet away from the subject parcel, as is also the case for many of neighbors, we would not normally receive notices by mail.

The combination of incomplete use description, unclear description of location and property access, and limited public notification - intentional or not - works in the applicant's favor by limiting the number of potential intervenors and opposing public testimony.

Summary:

Thus far, in our opinion, the preceding arguments at least amount to a “do over” as they identify issues with the contest of the special permit application and the process that was required to be followed in seeking its approval. The remaining arguments will focus on why the special permit - even if the application was complete and accurate and the correct procedures were followed - should not be granted.

The preceding arguments also help to establish the actual uses and how the subject parcel plans to provide access for those uses. These aspects are core to the following arguments.

5. Transformation of Indian Tree Road into a de facto Public Road

We ask that approval not proceed without fully addressing the risks created when a private easement such as Indian Tree Road is used, in practice, as public infrastructure. A private easement is not a public road. Under Hawai'i law, a private easement remains private property. Indian Tree Road is privately

maintained, gated, and subject to private insurance and liability. The County does not control its width, structural capacity, maintenance standards, or traffic management. Yet the proposed uses would require this easement to function as if it were a public road—supporting heavy vehicles, event traffic, and emergency response—without any public authority to ensure safety or reliability.

The scale and intensity of access required for Falls on Fire—large gatherings, peak traffic surges, and reliance by emergency responders—also effectively transforms this private easement into a de facto public access route without corresponding public governance or enforceable standards. This mismatch is the core problem before the Planning Commission.

Unlike some other private roads located in some of the Island’s larger subdivisions, there is no Home Owners Association (HOA) or other intermediate overseeing authority responsible for the improvement and maintenance of the roads. Nor is there any formal maintenance agreement between the landowners. Therefore, it’s the surrounding landowners over which these easements exist that are directly burdened financially for maintenance and liability.

This functional mismatch shifts risk onto parties without corresponding authority: servient landowners bear property tax, insurance, and maintenance exposure; dominant easement users benefit from access without proportional responsibility; and the County benefits from economic and cultural activity without assuming control over the infrastructure that makes it possible. When no entity has authority, accountability is deferred until after harm occurs—precisely what the Special Permit process is designed to prevent.

Condition 6 of the Hearing Officer’s Report requires the applicant to make specific improvements to the road. While we agree with the Hearings Officer that improvements are needed on our road, such improvements cannot be made unilaterally by the applicant and without the express written permission of the servient landowners in accordance with the easement deeds.

The transformation of Indian Tree Road into a de facto public road therefore is an unreasonable burden on the surrounding landowners and therefore violates Special Permit Rule 6-3(b)(5) (B), *The desired use shall not adversely affect the surrounding properties.*

6. Conflicting Uses: Permitted Agricultural Uses vs. Commercial, Industrial Uses under Special Permit.

The primary uses of Agricultural lands according to State Statutes and County Codes is for the production of agricultural products such as fruits, vegetables, and livestock. Market forces, land characteristics, and climate ultimately determine what products are produced. In Hawaii, high production costs generally favor specialized “boutique” products that can be marketed at higher sales prices and that avoid the pricing pressures of the international commodity markets. Coffee and Cacao (chocolate) are 2 such products that Hawaii has or is gaining international recognition for. There is absolutely no possible way Hawaii could compete in the international commodity market given the much higher local production cost of these products unless the quality and marketing can command a substantial premium. These and similar products must be grown in a relatively clean environment, free of soil contamination and minimal pollution. They also require open air processing. In the case of Cacao there is a multiday fermentation followed by a drying process before the product is stable enough that it can be stored or transported to market. Especially during the drying process the Cacao beans are exposed to the outside environment in order to take advantage of the natural sun and warm temperatures instead of energy intensive mechanical commercial drying systems. The slower drying of the natural process also helps to improve final product quality. However, it is dependent on the surrounding air being relatively clean as any pollution such as diesel exhausts from nearby truck traffic will be absorbed by the product. Hence it is important any significant industrial or heavy traffic be located away from the farm. Air pollution from farm equipment is already a concern. Additional heavy truck traffic along Indian Tree Road arising from a commercial heavy equipment baseyard presents any additional burden through its negative impact on the product quality. It could, for example, change which products this area, including our farm, is suitable for producing.

Additional permitted uses in agriculturally zoned lands include a farm dwelling. This means that the farmer, whether they own or lease the land, is allowed to live on the parcel. Many farms also have additional farm dwellings to house farm workers. So rather than simply being places of work, many farms are where people live and build communities. Non-conforming uses like those proposed in the application have the potential to degrade the quality of life for the people calling these places home. Noise from heavy traffic and multiday all-night festivals and smoke from multiple campfires, outdoor fires, as well as burning of effigies is generally not welcomed by the locals.

These non-farm uses also make the lands less attractive to secondary farm uses such as agrotourism and transient accommodations. Both of these activities require additional permitting. However, they are becoming more components of a viable Hawaii farm while also providing broader economic benefits to the state by tying into Hawaii's most valuable industry - that of course being tourism. It should come as no surprise that most visitors do not want to stay at or even visit farms that are directly exposed to non-farm activities such as non-farm heavy equipment traffic and aforementioned impacts from all day and night festival activities.

All of these impacts in effect diminish the agricultural potential and therefore values of these properties. Diminished property values of course adversely affect the surrounding property owners (Special Permit Rule 6-3(b)(5) (B)). However these impacts also are contrary to the Special Permit Rule 6-3(b)(5) (A) *Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations*. This is because the proposed project area use of ~15 acres adversely impacts the existing permitted and potential future agricultural uses of the surrounding properties - a far greater area than a mere 15 acres.

7. The Limits of Conditional Mitigation Without Enforceability

The County has attempted to address access impacts through conditions requiring before-and-after photographs, post-event repairs, private traffic control, private security, and voluntary compliance. These measures do not resolve the underlying risks.

First, access road degradation is cumulative, not episodic. Daily use, heavy loads, weather, and time contribute to progressive deterioration. A photographic comparison tied to a single event cannot ensure that the road remains structurally sound or passable for emergency access year after year. Repairing visible surface damage does not restore load-bearing capacity, drainage, or long-term safety.

Second, there is no governance mechanism to ensure ongoing compliance. There is no road maintenance agreement, no homeowners' association, and no designated entity with authority to set standards, inspect conditions, or compel timely repairs. Conditions relying entirely on self-reporting and voluntary compliance lack practical effect.

Third, the record reflects repeated permit violations over multiple years. This is not raised to assign blame, but it is relevant to assessing whether compliance can now be reasonably assured. Absent findings explaining why compliance is likely going forward, reliance on private guards and self-documentation remains speculative.

8. Past Record of the Falls on Fire Festival Organizer and the Ability to Properly Manage Future Events

To date, the festival organizer has received 3 Notices of Violations for having hosted unpermitted Falls on Fire events during the past 3 years (2023, 2024, and 2025). Each of these events were held in violation of verbal and written cease and desist orders issued by the County not to hold these events without a permit. This has resulted in a significant amount of unpaid fines that the applicant is presently contesting through the appeal process.

For the 2023 and 2024 events the attendance was significantly greater than we as property owners along the road were told to expect. The traffic was also significantly higher than expected with traffic along our road at all hours of the day and night. Having talked story with several of the attendees, the intervenors were able to learn that many of them did not have tickets and were essentially ‘gate crashing” but were allowed to stay and participate in the event anyway. During the 2024 event, the actual gate entrance into Indian Tree Road located along the Hawaii Belt Road was damaged late at night by people seeking access to the event. For a short while, traffic stuck behind the gate was observed to be backing up onto the Hawaii Belt Road. Similarly, the noise and smoke from the late night music and various burning activities respectively was more than expected.

For 2025, the event was less publicized and we were not contacted by the organizer beforehand to know what to expect. But still an estimated ~500 attendees were present. Both prior to, during, and after this event, our property experienced significant damage - some of which appears to have been inflicted intentionally by individuals who knew us to be the property owners opposing this event. Consequently, several police reports have been filed and we are still awaiting the outcome of their investigations and subsequent legal proceedings. Also during the 2025 event, several attendees were observed to have gotten lost as they attempted to navigate to the event resulting in some trespassing onto our property and that of our neighbors. At least one other public testifier also reported trespassers during prior year’s events. All of these incidents raise concerns over

the event organizer's ability to conduct these events in a way such that impacts to the surrounding property owners and the burden placed upon public agencies such as the police and fire departments is minimized.

On the topic of noise for the most recent 2025 event, the Applicant filed a document containing some exceptions to the hearing officer's report. One of those exceptions requested modifications to Condition 11 to "*avoid restricting music more stringently than needed to avoid adversely affecting surrounding properties*". One of the arguments in favor of this modification was a quote from my testimony during the contested case hearing in which I said "I was aware of some noise, but it wasn't too bothersome this year." However, I also immediately added as part of the same testimony that several of our neighbors, including one located further away, reported the music volume as being more bothersome compared to previous years. For the record, my dwelling is located ~1.2 miles away. While some of these reports are subjective, it is likely that noise from the event will vary year-to-year due multiple factors. My personal observation is that our location on the slopes of Mauna Kea often feels like being inside an amphitheater. Sound seems to travel very well here with a lot more local amplitude variability than I am accustomed to. Unless one is an acoustical engineer, it is probably difficult to predict which areas around the event site will be most impacted. So unless we and our neighbors can be assured that the sound volume from the event will fall below the thresholds allowed by HCC, we fully support Condition 11.

Another correction that I would like to make for the record, concerns the reported distance of the festival event to the nearest dwelling. Both the Application and the Contested Case Hearings officer report that the nearest dwelling is 3500 feet to the southeast. However, a simple check using Google Maps or similar satellite mapping application shows that there are multiple dwellings (5-10) located nearer to the event site - with the nearest home being only ~2200 feet away to the north.

The applicant/organizer's statements during the Contested Case Hearing in which he placed a minimum set of constraints upon the activities of the various camp participants should also be a concern to everyone but especially to the public agencies as it greatly increases the probability that their services will be required during future events.

Finally, one public testifier, Candice Love, who claims to be affiliated with the Burning Man Regional Leadership and has met with the applicant to do a site survey in 2023 raised a broader set of similar concerns including liability,

nuisance, fire safety, unsatisfactory emergency medical response, and unqualified staff.

This willful and continuing disregard for law, the well-being of both the attendees and the surrounding community should be considered by the Planning Department before issuance of any permits. We have concerns that should a permit for the event be issued, then it is highly unlikely the applicant will abide by its conditions.

9. Unreasonable Public Agency Burdens

According to the Special Permit Rule Section 6-3(b)(5) (C), *Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.*

Given the relative unstructured and novel nature of the Falls on Fire event, the kinds of activities that are likely to take place during the event, the aforementioned record from past unpermitted events, and considering the proposed Planning Director's condition that both the Police and Fire agencies be consulted prior to each event, it's highly probable that there will be significant burden placed upon these agencies.

As to the Fire Risk, the event name itself offers a hint of what is to be expected - "Falls on Fire". We do know from past events and testimony from the applicant that there will be various activities involving fire: Cooking, camp fires, ceremonial fires including the burning of large wooden effigies, fire art and artistic performances involving fire, etc. The applicant claims that they were told that the wild fire risk is low because they are in a "Tropical Rainforest". We dispute that based on the applicant's description of the site as well as from satellite imagery and video/pictures showing the event is held in an area mostly surrounded by a grassy field and not a tropical rainforest. While it's true that there are nearby wet tropical rainforests nearby, the dominant non-native grassy vegetation found on most properties in the area including the subject property, is highly flammable under the right conditions. While the area does receive heavy rainfall estimated to be between 140-180 inches per year depending on the elevation according to the Rain Atlas of Hawaii. The most recent 10 years has seen a noticeable reduction in annual rainfall according to NOAA. In fact this past year the nearest most NOAA station, the Hilo Airport station, only recorded 59 inches of rain for all of 2025 when it normally would expect to receive 135 inches per year. While this area generally receives a generous amount of rainfall over the course of the year,

it doesn't tell the whole story as it applies to the wildfire risk. Other important considerations include the distribution of the rainfall, the relative humidity, and wind patterns. It is not usual for this area to experience a monsoonal style weather pattern in which copious amounts of rain fall over a relatively short period, triggering heavy and rapid growth of vegetation, that is then followed by a prolonged dry period in which the vegetation dries out and becomes highly flammable. A period of low humidity and westerly winds such as those produced by the Kona winds can rapidly increase the fire danger. Certainly extra precautions need to be followed during such exceptional fire risk conditions. Should the event's activities ignite a wildfire the reported 3000 gallon water storage tank located ~1 mile away and the nearest fire station located some 10 miles away in Hilo are likely to pose some challenges to an early and effective response. Furthermore, the long single lane access road is likely to be blocked by those escaping the fire as the Fire agencies resources attempt to navigate the same road into the incident area.

As to police resources. One only has to look at existing challenges that other similar events located on the mainland have reported. Incidents relating to drug and alcohol use and sexual assault appear to be the most common concerns. We as intervenors share those concerns as well as our concerns over vandalism, property damage, trespassing, property theft, and general nuisances based on our experiences with the prior unpermitted events. Concerns for our general safety have required us to invest in security systems within our property.

As to the medical and other emergency services: Both the 2023 and 2024 events required at least one medical evacuation. Many reported activities involve some significant risk. This includes construction of various theme camps, tall structures, slacklines, activities involving the use of fire, aquatic activities in the local stream and waterfalls, etc. are all examples of such activities. There is therefore a high risk that local event staff will need to call upon outside public resources either to assist in rescue or to evacuate injured participants.

As to public roads: A recent State field investigation (December 19, 2025) of Highway 19 (Hawaii Belt Road) identified progressively worsening surface distress, depressions, slope changes, and deep-seated failures extending below the roadway base. Emergency mitigation measures are underway, and a comprehensive geotechnical report is still in progress, with results expected later this year. The affected highway segment spans mile markers 4 through 15. The subject property and access easement lie at approximately mile marker 8, squarely within the zone of concern around the junction with Indian Tree Road.

As discussed in earlier testimony, the Indian Tree Road intersection with the Hawaii Belt Road was already reported to be substandard and high risk in 2021 - well before the new additional uses were proposed. The risk is especially acute for visitors who are unfamiliar with this intersection such as the visitors who would be expected to attend the Falls on Fire event and to traffic on the Hawaii Belt Road itself with additional risks created by the heavy equipment baseyard traffic due to a combination of high highway speeds (55MPH), a passing zone located immediately in front of the intersection, limited visibility, non standard intersection markings, and the lack of acceleration/deacceleration and dedicated turning lanes.

10. Subject Lands being Unsuitable for Agriculture

Both the applicant and the Planning Director mention that the ~15 acres or so of LSB Class C soils found in the project area is well suited for its existing productive agricultural use. So the lack of suitability argument commonly used to justify granting of the Special Permits on agricultural lands is not justified. In fact the Class C productivity rating is as good as it gets in this area of the Hamakua coast. This means that the land could arguably support even more productive agriculture than its current limited use as a pasture. However, constraints imposed by the event such as the area having to remain clear of permanent vegetation such as orchards as well as the more limited area required by the heavy equipment baseyard will prevent this land from achieving its full agricultural potential. The applicant justifies this by stating that the subject area is only a small percentage of the total parcel size. While it is true that ~15 acres represents only ~1% of the total parcel area, this is not as insignificant as the applicant's would like one to believe. Firstly, most of the parcel does not consist of Class C soils. Most are Class D or less. Secondly, 15 acres is still larger than the median Hawaii farm size of ~5 acres. So when looked at from that perspective, the area becomes more important as to loss of agricultural value.

Finally, one should not be granted extra use privileges simply by owning a large piece of agricultural land. This argument appears contrary to the objectives of HRS 205. This is especially true when also considering the negative impacts of the heavy equipment baseyard on the other agricultural parcels surrounding the access road. In our opinion, the only privilege the large large landowner should have over the smaller farmer is the ability to grow more produce, have larger pastures, and other permitted agricultural uses.

11. Necessity vs. Convenience: Heavy Equipment Base Yard

A Special Permit may be granted only where the proposed use is reasonable and necessary, compatible with surrounding uses, and consistent with the purpose of agricultural zoning. That standard is not met here.

The operator already maintains a functioning base yard in a properly zoned commercial/industrial district and conducts business island-wide from that location. Locating an additional base yard on agricultural land serves logistical convenience, not agricultural necessity. Where suitable facilities already exist, authorizing the same industrial function on agricultural land cannot be found “necessary” under HRS §205-6.

Furthermore, there are no proposed conditions in the permit binding the applicant to the ranching tenant who also operates the baseyard or even to require for the ranching activity to continue while the baseyard is in operation. This is inconsistent with the applicant’s argument and the Planning Director’s recommendation

Approving this use would allow an industrial business to operate under agricultural zoning and agricultural tax classification, conferring a financial advantage while shifting traffic, road degradation, liability, and emergency reliance onto neighboring landowners and private infrastructure. This is not the purpose of the Special Permit process.

12. Overuse of the Non-Farm Activity Economic Benefits Arguments

Various arguments what I would call “Starving Farmer” arguments: e.g. *“host occasional special events to diversify their income stream to help offset the costs of running a ranch.”* Being a farmer myself, I don’t want to diminish the many financial challenges farmers face. But for this argument to carry any weight, it needs to be combined with some additional information. For example, financial disclosures showing the specific financial challenges of operating the ranch and of this specific rancher as justification. There is a long list of counter arguments, especially in this case, that would need to be considered:

1. By all reports the landowner is extremely wealthy. He owns over 15000 acres on this island alone.

2. The subject property enjoys considerable tax benefits. While the market value is over \$6Million, the total taxable value is only \$420000 - due to agricultural dedicated uses. Making the annual tax bill less than \$4000.
3. To be sure, property taxes are not the only financial burden of running a ranch. However, ~1000 acres are leased to a rancher who presumably pays rent. The rancher himself also appears to be operating a well capitalized heavy equipment rental business out of the same property. Meanwhile this rancher, at least in the past, was among the largest recipients of federal funding in the State from the USDA.
4. There is an additional related argument presented later in the recommendation report "*The proposed uses would address the preceding by providing event guests 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.*" The event here is the "Falls on Fire" festival. Exactly how or why the rancher leasing the property will have his income supplemented by this event is not discussed. Nor can I think of any way that the rancher would realize financial gain from this unrelated use. Again there appears to be an attempt to use the "Starving Farmer" argument to justify a use which is no way connected to ranch operation other than it being located on the same parcel.
5. Furthermore, because the permit applicant/permit holder is the property owner and not the farmer leasing the land, such arguments claiming that the permit would help the farmer should be reviewed with some skepticism. There is nothing preventing termination of the farmer's lease once the permit is issued. It could be leased to a different farmer/rancher or simply all farming activity could stop. There is nothing in the condition of the permit that ensures that agricultural uses will remain on the property after the permit is issued and I don't believe there is any condition the County could impose to preserve the productive agricultural activity while the other uses remain. Of course, the owner would lose the rental income and should also lose the property tax savings. But the choice is completely up to them..
6. One doesn't usually become a farmer for purely economic reasons or because they have no other options. It's more a lifestyle choice. This is especially true for the smaller independent family farmer. So it should come to no surprise that anything which threatens or impinges upon that

lifestyle makes farming less desirable. Many of these Impingements include the same uses one would not normally like to be exposed to in a residential setting - including various industrial and commercial uses. So there is a trade-off here: Quality lifestyle vs. the economic opportunity argument. The problem is that when a single landowner makes a decision to allow non-farm uses it often negatively impacts the quality of life for the farmer leasing that parcel as well as for any surrounding farmers. Thus this same counter argument applies when discussing the often cited permit condition: *"The desired use shall not adversely affect the surrounding properties"*.

In conclusion, I don't see the rich landowner nor the rancher leasing the property as deserving of additional land use benefits to offset cost to their existing operations. Also, based on my understanding, there is no present way for the County Real Property Tax Office to adjust their property tax assessments based on actual use instead of the land classification. So any change of use made through Special Permits has no impact on property taxes. This is unfair to other landowners/business owners making equivalent uses on appropriately zoned lands such as those which are zoned commercial or industrial. The County is basically creating a tax incentive to locate commercial and industrial uses on lower cost and lower taxed ag. lands. This robs the County of tax revenue while allowing uses that are often contrary to the General and Community Development Plans.

Conclusion and Request

Approval should not proceed without addressing three fundamental failures in the current record:

1. The mismatch between the private legal status of the access easement and its public functional use, particularly for emergency response and evacuation.
2. The insufficiency and unenforceability of conditions that rely on voluntary compliance, post-event documentation, and speculative future repairs despite cumulative degradation and a documented history of violations.
3. The substantial adverse impacts on neighboring agricultural properties arising from continuous traffic, dust, noise, and industrial access associated with both Falls on Fire and the heavy equipment base yard.

At a minimum, the findings must address cumulative and ongoing impacts, evaluate compatibility with neighboring agricultural operations and development potential, clarify responsibility for traffic control and long-term access impacts, and acknowledge the disproportionate burden placed on servient landowners without regulatory authority.

Addressing these issues now protects neighboring landowners, agricultural viability, emergency responders, and the County itself. Ignoring them does not eliminate risk or conflict—it merely defers them until after harm occurs. Accordingly, denial is the only legally defensible outcome on the present record.

Going forward, we would like for the Planning Director to more rigorously challenge the arguments that applicants have put forward to justify their permits. We keep seeing the same or very similar arguments being used by different applicants without explanation as to **how** they further the objectives of HRS 205 or how they broadly align with the objectives of the general or community development plans. The public are being forced to blindly accept many arguments despite the missing or questionable logic and unsubstantiated claims. For our part, we would have liked to have the opportunity to ask both the Applicant and the Planning Director many more questions beyond what was allowed on the basis for having been granted standing as Intervenor in the Contested Case proceedings. We therefore hope that the commission members will be able to ask some of these questions when the this application is tabled before the Planning Commission.

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