

From: [Jim and Lichun](#)
To: [Planning WPC Testimony](#)
Subject: Public Testimony JIm McMahon - - WPC 2-July-2026 - FoF and CoL PL-SPP-2024-000075
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Attachments: [Public Testimony JIm McMahon - - WPC 2-July-2026 - FoF and CoL PL-SPP-2024-000075.pdf](#)

Aloha

Please accept my written testimony (attached) in regards to agenda item #5 (PL-SPP-2024-000075) on the 2 July 2026 meeting of the Windward Planning Commission.

Best Regards
Jim McMahon
Pāpa‘ikou

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Jim & Lichun

**Public Testimony - 2 July 2026 Windward Planning Commission Meeting Agenda Item #5
- Consideration and adoption of the Commission's Findings of Fact, Conclusions of Law, Decision and Order to approve a Special Permit PL-SPP-2024-000075**

Jim McMahon - Contested Case Intervenor
Pāpa'ikou

I along with my wife are the intervenors opposing the above-mentioned Special Permit application.

Please see my comments and feedback (FB) to the draft FINDINGS OF FACT (FoF), CONCLUSIONS OF LAW (CoL), AND DECISION AND ORDER

Findings of Fact

FoF 12. Details of the proposed event component include:

*(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.*

FB: No evidence was provided either in the permit application nor during the contested case hearing proving that the applicant has a 50-foot-wide easement across the intervenors' property. In any case, the FoF should only focus on the navigable road width. Additionally, assuming that full width of an easement is available for road use is often in conflict with the easement grants and the servient property owners rights.

FoF 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*

FB: Why even mention the Land Study Bureau (LSB) ratings for the subject property outside of the permit area? The focus should be focused exclusively on the permit area which I believe are entirely located on grade "C" soils - the most highly productive soils available in the general area.

G. CLARIFICATION OF POSITION OF INTERVENORS

FoF 41: On Jan. 5, 2026, Intervenor filed their Intervenor Closing Arguments and

Certificate of Service. In the Executive Summary, Intervenor 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 existing agricultural operations on neighboring properties, including our own. Intervenor complained about “persistent heavy vehicle traffic, dust, vibration, road degradation and compromised emergency access.”

FB: We as the intervenors need to further clarify our position. We are not opposed to the Falls of Fire festival. But we believe that a more suitable venue should be used. There are reasons why similar events held in other states such as “Burning Man” in Nevada take place in remote locations so as to minimize impacts to the surrounding communities. Burning Man takes place on a very large swath of public land in the remote Nevada desert that is accessed by public road.. Similarly, we feel that if a compatible event is to take place in our County or State, that it should, to the extent which is possible, be located in a similar remote corner of the state and away from established communities. Generally we are opposed to any commercial and industrial uses that diminish the productivity and therefore the value of the surrounding agricultural lands. It is the same reasons why such uses should similarly not be placed within or near residentially zoned areas.

CONCLUSIONS OF LAW

CoL 2: *The granting of the request for approval of Special Permit Application No. PLSPP-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 and to allow the rancher lessee to diversify their income stream to help offset the costs of running a ranch by allowing the heavy

equipment base yard use. 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.

FB: Object to this reasoning. Firstly, the Director later acknowledges that the permit area lands are indeed well-suited for agricultural activities. Therefore changing the use clearly does not promote the objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. Secondly, the reasonableness argument stating that a small portion of land can be set aside for other, non-conforming uses for the economic benefit of the tenant is concerning for multiple reasons:

1. Who gets to decide the reasonable small percentage land area threshold? In this example, 1% represents ~15 acres which is larger than the average farm size in the State.
2. If this threshold is small then it becomes a benefit that only large landowners can practically exploit.
3. Encourages diversification of income away from farming/ranching. This especially true as none of the conditions of the special permit even require continuation of the existing agricultural uses. The landowner could terminate the lease but hold on to the special permit use or the leasing tenant could stop or reduce the farming activities in favor of the more profitable non-farm uses. The property tax code also incentivises co-location of non-agriculture uses on farm land through non-dedicated agricultural exemptions.

CoL 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

FB: The same arguments challenging for CoL 2 also apply here. Additionally, it should be pointed out that the permanent structures do exist for heavy equipment baseyard as mentioned in the Director's recommendation report. Also, comparing the site plan against the LSB soil map shows that most of the permit area is located on class "C" soils - which have the highest agricultural potential of any lands in the vicinity. Finally, while the festival event may be of short duration, it does impose constraints on how the land can be used for agriculture. For example, orchards would not be compatible with the site - as might having any tall trees located adjacent to the event site as these could impact the views promoted as part of the event. Additional roads

and parking requirements will also reduce the area available for agriculture. So at least 1% of the land will likely experience a loss of long-term agricultural potential.

CoL 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.*

FB: Many surrounding property owners testified to the late night noise, trespassing, property damage, and traffic issues from the previous unpermitted events. The daily operation of the heavy equipment baseyard absent of any of its own conditions limiting operating hours or volume of traffic will definitely impact all other road users and property owners along the road. This industrial commercial use is simply not compatible with agricultural production and farm homesteads located in the vicinity. These impacts cannot be easily mitigated which is why we have a zoning code to keep some uses separate from each other. Further, some of the proposed mitigation such as road repairs or improvements may be incompatible with the easement deeds and the servient landowners rights and will have their own unintended consequences which can impact character and quality of life of the neighborhood. Both uses are incompatible with our existing agricultural community. That is why the overwhelming majority of the landowners within earshot of the property that have submitted testimony oppose the event. So it's difficult to understand the reason for the Director's claim that "The proposed use does not adversely affect the surrounding properties".

Some additional points to note:

1. The 2 neighboring property owners providing supporting testimony for the event also had earlier written supporting letters included with the permit application. Which means they were already working with the applicant prior to the public being notified of the application. Also, due to the large size of the subject property, there are a large number of neighbors.
2. Despite providing evidence and testimony to the contrary during the Contested Case Hearing and later before the Windward Planning Commission, I seem unable to get the Director to acknowledge the existence of dwellings located closer than 3,500 feet to the north of the event site. In fact there is a subdivision "Onomea Bay Ranch" located to the north and east of the subject parcel containing several, fully permitted dwellings which are located as close as around 2,200 feet - with more expected to be built in the near future. These property owners are likely to be most impacted by noise, smoke, etc. and therefore deserve to be acknowledged.
3. Many surrounding property owners were not notified early enough in the application process to be eligible to be granted standing, should they have chosen to do so, in a Contested Case hearing challenging the application. This is partially due to the limited surrounding property owner notification radius of only 500 feet - which is very little when

the surrounding properties are typically 20 acres or larger in size. It is also partially due to the public notification sign having been removed almost immediately after it was posted along H-19 near its intersection with Indian Tree Road. Who removed the sign and why is unknown. But it should be noted that the sign was improperly placed according to the Planning Commission Rules and Procedure which requires such signs to be posted on the subject property and not on public property. Unfortunately, these rules do not appear to have considered the scenario in which the subject property does not border a public road. So had the public notice sign been properly placed it would not have been visible by most of the public. There are definite issues with the public notification procedures for planning permits. Even we as intervenors fall outside of the 500' mail notification radius as do many other landowners having easements on their property benefiting the subject parcel.

CoL 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 23 roadway.

FB: The Intervenor provided evidence of a dangerous and substandard intersection at the junction of Indian Tree Road where it meets with State Highway H-19. Furthermore, the applicant is required to interact with a long list of local County and State government departments on an annual basis in regards to the Falls on Fire festival including the Dept of Health, Planning Dept., Police, Fire, and possibly the State Dept. of Transportation. Furthermore, the nature of the event and the types of the activities expected means that there is a high probability that assistance from one or more of the first responding public agencies will be required. This is why similar events in other jurisdictions require a permit for each annual event. As an example, Burning Man in Nevada requires an annual permit from the BLM at a cost of between \$3-5Million.

As mentioned earlier, in regards to the claimed 50-foot-wide easement, no evidence was provided neither in the permit application nor during the contested case hearing proving that the applicant has a 50-foot-wide easement across the intervenors' property. In any case, the intervenors do not believe that it was the intent of the state legislators who drafted these Special Permit rules that the public burdens should be dumped onto 3rd party landowners such as us.

CoL 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.*

FB: The same arguments against for CoL 3 also apply here.

CoL 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 and 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 the 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

FB: It can be argued that the character of the community will be impacted by both the heavy equipment use (traffic and noise) and the annual festival (lots of transient visitors to the area along with the noise and traffic). Changes to the character of the land will certainly be audible during the annual event and daily along the access road with the heavy equipment baseyard traffic. It may be impacted permanently should one of the many campfires or burning effigies ignite a large wildland fire.

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

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

FB: To be fair and balanced this CoL should also list the goals and policies that this request does not further or are contrary to the General or Hāmākua Community Development Plans. For example, there is a policy stating that industrial uses shall not be located in areas lacking adequate roads and other basic infrastructure.

Also, there should be an explanation as to HOW the goals and policies are being supported, because in many instances it is not clear. For example one of the stated goals is to “*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*”. It is unclear how a Festival largely based on a mainland festival,

Permit Conditions:

I have concerns with the following permit conditions.

Condition 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.*

FB: Who is an attendee? Is it just the people camping for the duration of the 4 day event or does it also include day pass visitors and persons only participating in night time parties? Staff members? Caterers?

Condition 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.*

FB: Terms of this condition conflict with legal provisions found in the deeded easement grants and therefore should be removed. It also doesn't accurately describe the traffic burden and patterns nor does it provide realistic costs for road maintenance.

Condition 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. The Applicant shall place noise 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).*

FB: A 24-hour 70dBA limit is very likely to generate a large number of noise complaints from the surrounding properties. This is much higher than the typical ambient night time noise level of 40-50dBA in a rural agricultural area. 70dBA may be the HAR § 11-46-3 maximum limit, but such sound levels are very rarely found in practice within a rural community - especially at night.