

From: [Jim and Lichun](#)
To: [Planning WPC Testimony](#)
Subject: Response to the draft FOF COL DAO
Date: Wednesday, July 1, 2026 9:31:15 AM
Attachments: [COMMENT ON DRAFT FINDINGS OF FACT.pdf](#)

Dear managers,
My comments on the draft FOF are attached.
Please let me know if you have any questions or require any further information regarding the feedback provided.

Best regards,
Lichun

Comments on Draft Findings of Fact, Conclusions of Law, and Decision and Order

Special Permit Application PL-SPP-2024-000075 Applicant: Teppy Mountain LLC

I respectfully submit the following comments regarding the Draft Findings of Fact, Conclusions of Law, and Decision and Order for the above-referenced application.

Many of the concerns summarized below have been raised repeatedly throughout the public hearing process, contested case proceedings, and public testimony submitted during review of this application. Despite extensive discussion in the record, the Draft Findings do not adequately address several significant legal, factual, and procedural issues that remain unresolved.

Because these issues bear directly on the sufficiency of the Commission's findings and the adequacy of the evidentiary record supporting approval, I submit these comments to request correction of the Draft Findings prior to final adoption and to ensure that these unresolved objections are clearly reflected in the administrative record.

1. Mischaracterization of Private Easement Rights

The Draft FOF repeatedly refers to the Applicant as possessing a "legal easement over the roadway" and to "50-foot-wide easements" serving the subject property. This description overstates and misstates the Applicant's actual property rights.

- **No 50-foot grant.** Subdivision plat maps may depict a 50-foot corridor, but the recorded easement instrument (2002-227898) does not expressly grant a 50-foot-wide easement over my parcel.
- **Limited scope.** The easement is expressly limited to roadway and utility purposes, is non-exclusive, and reserves to the grantor (servient owner) the continuing right to full use of the easement area.
- **Overburdening the servient estate.** Under basic easement law, a dominant estate's use is limited to what was reasonably contemplated at the time of grant. Annual gatherings of up to 500 attendees and 200 vehicles, combined with ongoing heavy equipment rental and hauling operations, materially exceed that original contemplated use.

The County has authority to regulate land use on the Applicant's parcel. It does not have authority to enlarge private easement rights, or to transfer additional property rights from servient to dominant owners, without compensation or judicial determination. The Draft FOF should be revised to remove any implication that permit approval expands private easement rights.

2. Failure to Address Increased Burden on Servient Estate Owners

The Draft FOF acknowledges concerns regarding road damage, heavy commercial truck traffic, safety at the Indian Tree Road/Highway 19 intersection, air quality, nuisance, and damage from heavy equipment hauling — but treats all of these solely as roadway maintenance and traffic-mitigation issues.

The Commission failed to determine whether the Applicant's intensified use materially increases the burden on private servient estate owners whose property rights are directly affected by increased traffic, heavy trucking, dust, vibration, road degradation, and interference with agricultural operations (appendix). Road-repair conditions do not resolve this underlying legal issue.

3. Insufficient Cultural Resource Review

The Draft FOF acknowledges that no archaeological reconnaissance survey, oral history from kama'āina, historical documentary survey, cultural resource assessment, or botanical study was conducted. Despite this, the Commission concluded that the proposed use is unlikely to adversely affect traditional and customary Hawaiian rights.

This conclusion lacks evidentiary support. Under Article XII, Section 7 of the Hawai'i Constitution and *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, agencies have an affirmative obligation to identify cultural resources, assess impacts, and identify protective measures. Reliance on the Applicant's own statement that no cultural resources are "known" to exist is not a substitute for meaningful investigation. The absence of survey data cannot logically support an affirmative finding of no impact.

4. Insufficient Biological and Endangered Species Review

No professional flora or fauna survey was conducted, despite testimony raising concerns about native and endangered species, including multi-year observations of Hawaiian 'Io in the surrounding area. The Commission nonetheless concluded that adverse impacts are unlikely, based largely on the assumption that prior sugarcane cultivation and current grazing make protected species unlikely to be present.

That assumption is not supported by independent biological investigation. Former plantation land does not establish the absence of native species habitat. The Commission lacks a sufficient evidentiary basis to find no biological impact without professional survey data.

5. Unsupported Assumption That Prior Agricultural Disturbance Eliminates Cultural or Ecological Resources

The Draft FOF repeatedly relies on the reasoning that prior sugarcane cultivation makes the site unlikely to contain significant cultural, archaeological, or biological resources. This assumption is unsupported: former plantation lands throughout Hawai‘i frequently contain historical features, cultural sites, trails, burial sites, native species habitat, and restored ecological corridors. Historical disturbance is not a substitute for actual site investigation, and the Commission's conclusions on this point appear speculative rather than evidence-based.

6. Improper Reliance on Permit Conditions to Cure Fundamental Deficiencies

The Draft FOF repeatedly attempts to address substantive impacts through post-approval conditions — roadway repairs, annual reporting, traffic plans, notification procedures, and future agency approvals. Permit conditions cannot substitute for the factual findings required before approval. The Commission must first establish, based on substantial evidence, that the application satisfies the statutory approval criteria. Conditions imposed after approval cannot cure unsupported findings regarding cultural resources, environmental impacts, private property rights, or increased burden on neighboring landowners.

7. Mischaracterization of Public Testimony as Balanced

The Draft Findings characterize public testimony as balanced between support and opposition. This characterization fails to reflect the substance and nature of the testimony presented. Opposition testimony came primarily from local residents, neighboring landowners, agricultural stakeholders, and Native Hawaiian practitioners raising concerns regarding cultural resources, roadway safety, environmental impact, and land-use incompatibility. Public opposition also included an organized petition initiated by local residents demonstrating significant community concern. The record therefore reflects substantial localized opposition rather than evenly balanced community sentiment.

Conclusion

Throughout review of this application, substantial concerns have been repeatedly raised regarding private property rights, roadway burden, cultural resource impacts, biological impacts, land-use compatibility, and the adequacy of the factual record supporting approval.

The Draft Findings continue to rely on assumptions that have not been supported by independent investigation, while important unresolved issues raised throughout the proceedings remain largely unaddressed.

Most significantly, the Draft Findings appear to assume that permit approval may proceed without first addressing whether the Applicant possesses sufficient private access rights to support the intensified roadway use and physical modifications the proposed use requires.

I respectfully request that the Commission reconsider and revise the Draft Findings to accurately reflect these unresolved issues before final adoption.

Sincerely,

Lichun Huang

APPENDIX: TECHNICAL EVIDENCE REGARDING LAND USE INCOMPATIBILITY

I. Executive Summary

This appendix summarizes scientific and regulatory evidence demonstrating that heavy industrial base yard operations may be fundamentally incompatible with fine cacao post-harvest processing conducted in an open-air agricultural environment.

Cacao fermentation and drying involve highly sensitive biochemical and environmental exchange processes. Adjacent heavy industrial activities — including fugitive dust, diesel exhaust emissions, volatile organic compounds (VOCs), and particulate matter generated by heavy equipment operations — create a substantial risk of chemical contamination, sensory degradation, and food safety concerns capable of materially impairing agricultural production viability.

II. Scientific Evidence of Volatile Organic Compound (VOC) Absorption

A. The Mechanism of Sensory Taint

During fermentation and solar drying, cacao beans remain exposed to ambient air for prolonged periods while volatile compounds diffuse through the bean structure. Because cocoa butter functions as an effective organic solvent, airborne hydrocarbons and combustion byproducts may be absorbed into the bean matrix. Once absorbed, these compounds may persist through downstream processing and significantly alter final product quality..

B. Peer-Reviewed Citation

- **Source:** *Journal of Agricultural and Food Chemistry* (American Chemical Society).

- **Study Title:** *Molecular Sensory Analysis Confirms Wood Smoke Exposure as a Source of Smoky Off-Flavors in Fermented Cocoa*
- **Reference Link:** <https://pubs.acs.org/doi/10.1021/acs.jafc.5c06046> (See also NCBI PMC: [PMC12333360](https://pubs.acs.org/doi/10.1021/acs.jafc.5c06046))
- **Direct Findings:**
"Occasionally, batches of fermented cocoa are tainted with smoky, moldy, fecal, cheesy, mushroom-like, or coconut-like off-flavors... Their distribution between nibs and husks showed considerable diffusion into the nibs; thus, husk removal during further processing cannot guarantee a substantial reduction of the smoky compounds."

C. Land-Use Relevance

Ambient exhaust fumes, fuel vapors, and chemical odors from an adjacent industrial base yard will directly diffuse into the processing cacao crop, causing irremediable chemical off-flavors and destroying the commercial value of a specialty food product.

III. Porosity and Vulnerability to Industrial Particulate Matter

A. Atmospheric Exchange Dynamics

Solar dehydration of cacao requires a continuous convective exchange with ambient air over several days, during which bean moisture drops from approximately 55% to under 7%. During this extended open-air drying process, exposed bean surfaces remain particularly vulnerable to airborne physical contamination..

B. Peer-Reviewed Citation

- **Source:** *MDPI Processes Journal* / National Institutes of Health (NIH) PubMed Central.
- **Study Title:** *The Drying Kinetics and CFD Multidomain Model of Cocoa Bean Variety CCN51*
- **Reference Link:** <https://pmc.ncbi.nlm.nih.gov/articles/PMC10001178/>
- **Direct Findings:**
"The drying behavior is influenced by a series of internal parameters, e.g., the density, permeability, porosity, sorption and desorption characteristics, thermophysical properties, and the external parameters such as the temperature, velocity, and relative humidity."

C. Land-Use Relevance

Because solar drying relies entirely on local atmospheric conditions, high-porosity crops are acutely vulnerable to fugitive dust, pulverized rock, and heavy metal abrasion particles (lead, zinc, and cadmium from heavy vehicle brake pads and tires) generated by heavy industrial base yards.

IV. Microbiological Disruption of Natural Fermentation

A. Sensitivity of Ambient Microflora

Cacao fermentation is a live, wild biological succession involving environmental yeasts, lactic acid bacteria, and acetic acid bacteria. It cannot take place in a sterile or chemically contaminated environment.

B. Peer-Reviewed Citation

- **Source:** *National Institutes of Health (NIH) / PubMed Central*
- **Study Title:** *Microbial Diversity and Contribution to the Formation of Volatile Compounds during Fine-Flavor Cacao Bean Fermentation*
- **Reference Link:** <https://pmc.ncbi.nlm.nih.gov/articles/PMC8997610/>
- **Direct Findings:**
"The fermentation of the cacao beans is considered an essential step for the development of the chocolate flavor... NGS [Next-Generation Sequencing] revealed an abundance of environmental microorganisms... The microbiota of cacao bean fermentation and their metabolic activities can influence the production of volatile compounds that are related to fruity and floral aromas."

C. Land-Use Relevance

Industrial activities that introduce airborne chemical suppressants, petroleum mist, or alkaline dust alter the immediate micro-climate and threaten to stall or contaminate the delicate ambient biological succession necessary to safely execute food fermentation.

V. Regulatory Framework & Food Safety Implications

Under the FDA's **Hazard Analysis Critical Control Point (HACCP)** protocols and federal food safety modernization mandates, agricultural processors must actively identify and mitigate chemical and physical hazards.

Placing a heavy industrial operation directly adjacent to an open-air food processing site introduces severe externalized chemical hazards (PAHs, heavy metals, VOCs) that are entirely outside the agriculturalist's control. This forces the agricultural property out of compliance with food-safety standards, effectively rendering the land useless for food production.

VI. Conclusion

The Commission is obligated to evaluate compatibility between neighboring land uses when considering special permit applications.

The scientific and regulatory materials summarized above establish that emissions, airborne particulates, and environmental disturbances associated with heavy industrial base yard operations may create substantial operational and food safety conflicts for adjacent open-air agricultural processing activities.

These concerns move beyond generalized neighbor opposition and establish a technically supported land-use compatibility issue that warrants explicit consideration within the Findings of Fact.

.

