

property is located, sorry, by this red dot and is located along the Hawaii Belt Highway. This would be in the Volcano direction and that would be in the Keaau direction. The property is approximately one mile east of the solid waste transfer station in Volcano. The Applicant intends to construct an art studio on this 39,000 square foot property. We did receive a request for intervention from the, one of the adjoining property owners, and I believe that was this property here, and they are Mr. and Mrs. Clement. The Clements were not present at the Contested Case Hearing that the Hearing Officer had conducted; and he'll also go into the details of that. With that, unless there are any questions from the Commission, I'd like to turn the mike over to our Hearings Officer, Mr. Yeh.

GALDONES: Commissioners, are there any question of Norman?

SIRACUSA: I had a question.

GALDONES: Commissioner Siracusa?

SIRACUSA: Thank you. The report states that the vegetation is a mix of native and non-native species, primarily ohia and staghorn. I'm wondering what else, primarily, assuming that there are other species.

HAYASHI: Well, basically, that's the vegetation of the area. If you're familiar with the Volcano area, that area is in basically of ohia trees as well as the staghorns. There are also some pili grass in the surrounding area.

GALDONES: Any further questions of Norman, Commissioners? If not, Norman?

YEH: Yes, good morning, Commissioners. My name is Thomas Yeh, and I was Hearings Officer appointed to conduct the Contested Case Hearing in this matter. I don't really have anything to add except I think you've seen the recommendations and the recommended decision for this particular application.

One of the things that was a little bit disconcerting, however, was that, you know, we had this request for Contested Case Hearing and despite several attempts to notify the Intervenors, the Clements, about both pre-hearing conferences, pre-hearing deadlines, as well as the Contested Case Hearing, they essentially did not participate. And, so, the quandary that I had as the Hearings Officer was whether or not to move forward with the hearing anyway, take evidences as necessary and submit this recommended decision to the Board or to go back to the Commission which would likely result in some additional timeframes and perhaps another, perhaps, belated request to conduct a Contested Case Hearing. So given that, that was the situation, we decided to move forward; and here we are today.

But from a cost standpoint, you know, it may be something for the Planning Commission to consider, that if someone makes a request for Contested Case Hearing and doesn't appear and essentially doesn't participate, there are some costs involved. So it's just

something for the future you might think about, 'cause it's really unnecessary to have gone through this process. It could have been done probably in a much shorter fashion. Anyway, I have nothing further to add.

GALDONES: Commissioners, are there any questions of Mr. Yeh?
Commissioner Graham?

GRAHAM: Actually this is more for the Planning Director. But in regard to the same point you just brought up, I know earlier, maybe earlier this year, there was some sense in the Commission that the way that the public notice was going out to adjoining property owners, it seemed to encourage, if you are concerned, encourage filing for Contested Case Hearing; and then maybe some were doing it without really understanding the true implications. So I wondered, and at the time we suggested maybe the Planning Department could work on changing the way that notice is put forth. Has anything been done on that?

GALDONES: Mr. Yuen?

YUEN: I started to write something but I never got it finished.

YEH: As I understand the practice is often left up to the Applicant to go send the notices out. It might be good to have some sort of a standard form where the public is provided some more information. 'Cause I think in this situation, the Clements may have understood the notice, or misunderstood the notice, to mean that if they objected they then needed to file a Contested Case Hearing request, but I'm not sure.

HAYASHI: Normally, what we do is that once a petition is filed for standing, we do contact the, procedurally we do contact the Applicant, and I do call them up to say that do you understand what the procedures are. And in this particular case, the Clements decided, yes, they would like to proceed with the Contested Case Hearing. And sometimes I've discussed it with Commissioner Graham that the way the notices are sent out by the Applicant, it does say that if you have any objections, some letters do say that if you have any objections, file this Petition; and maybe that's where we need to inform the applicants that perhaps the wording may not be, should be revised.

GALDONES: Commissioners, any further questions of Mr. Yeh?

YEH: Thank you.

GALDONES: Thank you, Mr. Yeh. Is there any one from the public who wishes to testify on this subject matter? Norman, is the Applicant or the representative present?

HAYASHI: Yes, Mr. and Mrs. Mortara are here.

GALDONES: Okay, could we have the Applicant or the representative, please step forward. Could you please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Hawaii County Planning Commission?

MR. MORTARA: I do.

MRS. MORTARA: I do.

GALDONES: Could you please state your name and your residence address, please?

MR. MORTARA: My name is Michael Mortara. I live in Volcano, Hawaii.

GALDONES: Ma'am? You may use the other mike.

MRS. MORTARA: My name is Misato Mortara. My residence is in Volcano, Hawaii.

GALDONES: Have you received a copy of the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order?

MR. MORTARA: Yes, we have.

GALDONES: Do you have any comments on that?

MR. MORTARA: No, we don't.

MRS. MORTARA: No, we don't.

GALDONES: Thank you. Commissioners, any questions of the Applicants?

SIRACUSA: I do.

GALDONES: Commissioner Siracusa?

SIRACUSA: Thank you. I noticed that you're going to have an ingress from the Belt Highway; and, of course, this is not a developed highway. And I would not like to see it start, you know, set the stage for the beginning of strip development. So I was wondering, are you going to keep all the vegetation that fronts the highway? I noticed that there's some empty spaces there. And I was wondering if that's going to be filled in, or what you're going to do about that to minimize the impact onto the highway?

MR. MORTARA: The existing vegetation in that particular area that our lot is, is it's barely low-line vegetation. So the trees are not well developed, maybe between 6 and 10 feet tall. So there actually is quite a lot of voids in between the trees. But our plan was only to open up the area necessary to bring in the road and site the building, and other than that to leave the rest of the existing vegetation in place.

SIRACUSA: Thank you.

GALDONES: Commissioners, any further questions? Commissioner Graham?

GRAHAM: I think as you recall from the prior hearing here, I had the same sort of issue that Commissioner Siracusa brought up. Especially since there's only five of us here today, I don't want to make a mistake on, you know, how I'm reading the situation so I would like to get comment from the other Commissioners. But my sense is this is a major highway and we do essentially have like a, you know, front road right there that accesses to the Village; and to make more sort of intersections off the highway is contrary to the whole concept of a major through highway, especially where there's a frontage road already in place.

And I'm also concerned, as Ms. Siracusa indicated, that we will certainly, may get in the future other applicants who own parcels along the road there wanting to do a similar thing, and certainly more and more of the same, or would be more and more of what I think is a poor design. And as I understand the recommendations we have now, it's just left up to the Department of Transportation to decide whether they think it's okay and, to me, that feels like kind of passing the buck. It doesn't feel okay to me to take a highway like that, which I think is a very beautiful highway and it's the main route to go to our Volcano National Park, in that they add an extra intersection. So I would appreciate other comments from other Commissioners, or if you had some comment further from what we did last time we had the meeting, and I didn't see any discussion of this in the Contested Case. So, thank you.

MR. MORTARA: Well, what we've tried to do with our, the situation that we have on our lot is rather unique in that there is a road back behind the lot. But in order to get access behind the lot, you'd actually have to drive another mile-and-a-half on both Volcano Highway and then back onto Old Volcano Highway to get egress into the lot. So it's a very kind of confusing situation to be able to see a business from the main highway and not be able to get to it with kind of a direct route. So we, our discussion with the Department of Transportation, we came up with the one-way traffic scenario where people coming up from Hilo could enter from the Belt Highway onto the property and exit out onto Old Volcano Highway, drive back around, and connect up with the Belt Highway again to continue on. People traveling from Volcano would have to enter via Old Volcano Highway, and then enter into the lot through the back way. So what we're trying to do is mitigate traffic in-and-out of the project from Belt Highway. But you have to remember that the Belt Highway is also the economic corridor for East Hawaii. And under one hand we want to maintain the environment, the Volcano, and certainly that highway is part of that. Then on the other hand we need that, we need to have the traffic through our project to make it a successful project. So we're really trying to balance that. I think that that one-way traffic pattern is probably the best of both worlds in that we're getting some direct traffic in the way that makes sense and, also, acknowledging the fact that we really don't want to have a lot of busy in-and-out traffic from the Belt Highway.

And the only other scenario would be to cut off our Belt Highway access and then let people try to find us, which, in a sense, is even more of a confusing traffic issue where people are pulling off to the side of the road or making u-turns trying to figure out how to get to this thing that they can see but they can't get to.

And, I guess, the other issue would be for emergency services, too. As a business, what's the most logical way to provide access for emergency services should they ever be needed?

And, also, that Old Volcano Highway, the road that goes back behind the property is, it's an abandoned highway. So there's no signage, it's unimproved and it's not maintained. So it's kind of an unusual situation. And because our lot is far into that corner as we can get it, it kind of presents us with a challenge; and I think we're trying to just do the best that we can with this particular scenario right here.

MRS. MORTARA: Also, if you noticed, most of those lots facing Old Volcano Highway, all the lots have a flag lot coming out to the highway. So that means if all the property owners decide to build the houses there, there will be so many driveways coming out to the highway, unless Old Volcano Highway and the main highway could be connected at the end. Right now it's just cut off with the vegetation.

GALDONES: Further questions? Commissioner Springer?

SPRINGER: In that regard, perhaps if the Planning Director could comment on it, because we had some discussion of this in Kona about wanting to minimize points of ingress and egress onto the highway. So could the Director respond?

GALDONES: Mr. Yuen?

YUEN: Yeah, we did look at this exact situation, and maybe Mr. Darrow could refresh my memory on this. But I think we wound up accepting this because they have an existing access. There's a number of, which would be, they have an existing two-way access, I believe, right, which would be converted to a one-way. And there's, we like the idea of reopening that intersection closer to Hilo; but that wasn't really feasible. Is that what we came up on this?

DARROW: Yeah, the Department of Transportation, you know, this would have been ideal to just connect this to the highway; and, at that point, you know, this wouldn't have been such an issue. As the Mortaras had mentioned, their property is all the way on the Hilo side of this Old Volcano Highway. So someone would have to, traveling from Hilo, would have to go all the way for approximately a mile-and-a-half, come back on this old road, and hopefully just, you know, think that they're on the right track to get there.

Unfortunately, the Department of Transportation, or the County, or anybody, as they mentioned, this is a road in limbo. So, at this point, nobody is really taking responsibility

of this road. So this, unfortunately, isn't going to be improved. So the other option was, they actually were requesting an egress-ingress. Department of Transportation allowed an ingress-only and the egress would be onto Volcano Highway. So, again, it would be the, allow some traffic to come off the highway. All the other lots, as Mrs. Mortara had mentioned, have access from the highway. They need to ask Department of Transportation; but they have been issuing permits or allowances to come off the highway to their residences.

This road here, I mean, if somebody owned this property over here, they probably would enter here. But, at this point, they're not really identifying this as a road of access. They're identifying their legal access from the highway. So if these people were to be given the same, you know, privileges as everybody else, they would actually, they're actually being minimized, their egress. They're only allowed an ingress.

GALDONES: Further comments?

SIRACUSA: Yeah, it seems to me that if somebody was living, say, in the lot next door to you and coming from Hilo, they might find it a lot faster if you do it this way, to just zip right into your property and out the Volcano end to shorten their trip. Had you thought about that, as people are always looking for the quickie, right, yeah?

MR. MORTARA: There actually are no houses. There's only actually one residence about three-quarters of a mile down the road from us. Other than that there is no -.

SIRACUSA: That changes quickly, doesn't it, though?

MR. MORTARA: Oh.

MRS. MORTARA: But I believe they have access from the highway.

GALDONES: Commissioners, further comments, questions? Commissioner Graham?

GRAHAM: I guess I would, you know, I understand how this is the most reasonable solution to your specific situation. I guess if this property was zoned, you know, Commercial or something like that, then I feel like the County has some responsibility to make the road system work for you. But in the present case, you know, you're using, making a Special Permit application in an agricultural area, which I think is appropriate 'cause you have support from others in the community. But I sure have the feeling that 10 or 20 years from now, if there's other ingresses for other properties and things like that, that people will be shaking their heads saying, "Now, you know, how did that happen? Why did they allow that to happen?" And, of course, I worry about precedence, I mean, in that sense.

MR. MORTARA: And the issue is, the egress from the highway is your main concern?

GRAHAM: The issue is basically if -.

MR. MORTARA: Or the fact that it's developed at all?

GRAHAM: No. I have no problem to the development at all, so I have no problems supporting the application. But I don't want to start a pattern of extra ingress or egress onto the highway beyond what is already planned there, because I think it's a high-speed highway that, you know, you're not going to build deceleration lanes and all. It just feels like we're going in the wrong direction.

SIRACUSA: I have a question, is there a, of Corp. Counsel or maybe of the Director. Is there any way that we can approve this and specify that it should not set a precedent for, make a development, you know, major accesses from the highway?

GALDONES: Okay. Norman? Is Norman there? Lost Norman.

YUEN: I can comment on that. Well, we can, you can say that. But to some extent, to some extent everything you do is a precedent, to some extent everything you do is based on a particular circumstance. So I don't know that saying something like that really makes that much of a difference. As a general policy, what Commissioner Graham and you are saying, we agree with. We looked at the situation and it looked, it was a, given that it was a pretty low-key operation as far as level of traffic, we were talking about an ingress that was, an ingress that was acceptable to the Department of Transportation. The fact that, it would be a more desirable way to set this up as a, if they had set, if they had set this up using the Old Volcano Road as a frontage-type road and kept it. But from what we understand the Old Volcano Road, although physically there, has been abandoned from the standpoint of maintenance and responsibility; and the properties were, had been all approved as flag lots. The properties that actually front on the Old Volcano Road had been approved as flag lots out to the highway, so that's the way that the Department of Transportation -.

SIRACUSA: That's a done deal already.

YUEN: Has set up the lots along the road. Whether, so that's the given situation, and that's -. And I understand what you're saying and Commissioner Graham is saying, and we went down this path in-house; and, on balance, we decided that we would accept the ingress only and the egress out through the back.

MR. MORTARA: Yeah, I just wanted to stress, too, that the scope of our project is really very low key. It's not an Akatsuka, it's not a Blane's Drive-In. You know, it's an ongoing business and we really, we went through this entire process in order to relocate in an area that would help to develop our business and, hopefully, create more jobs. And, you know, we're talking about, we're figuring maybe five or ten cars a day coming onto the property to see what we're doing and to look at some of our products, and things like that. So, you know, I've totally recognized and lived in Volcano long enough to really

appreciate the low-key nature of it. We're artists and moved away from Honolulu to get away from this, the crazy over-development there. So we really are sensitive to that. But, at the same time, I just recognize that the highway is the artery that brings the people to us, you know, and it's going to be the thing that's going to be able to sustain our business. So we're really trying to find some kind of middle ground between development and, you know, existence here.

GALDONES: Commissioner McCall?

MCCALL: Yeah, just a quick question. I'm somewhat confused. Has the Department of Transportation made a decision and allowed ingress only? Is there anything written from them, or is it still somewhat up for debate? 'Cause I'm sort of seeing information in both directions. I don't know who -.

GALDONES: Mr. Yuen?

YUEN: I think the comment from the Department of Transportation was that they would not object to the establishment of the art studio if access was limited to ingress only. If they were to build a house here, they have a legally-permitted access to come in and out on the Volcano Highway. Right, am I right with that?

DARROW: We have a memo dated March 22nd and I think they were reviewing it. Did you happen to receive an additional memo from the Department of Transportation? At that time, they were reviewing the request for an additional access, but it appeared that they had granted the ingress.

MCCALL: They approved the ingress only.

DARROW: Yeah.

MCCALL: Okay, okay.

GALDONES: Commissioner Springer?

SPRINGER: In this regard, I'm looking at Section 3, on page 20, of the Hearings Officer's report to us. And under 3-4, it reads, "Access from Hawaii Belt Road (State Highway 11) will be permitted only upon approval from the Department of Transportation, provided that only ingress would be allowed from the State Highway should the Department of Transportation not permit ingress," and then it goes on with the rest of the condition. So, perhaps, that's the reason for Commissioner McCall's question.

GALDONES: Any response from that, Director?

SPRINGER: It looks as though the Director is re-reading that section.

YUEN: Jeff, is it correct that they have a legal access now to the highway, to the main Volcano Highway?

DARROW: I think that they have applied for one and the memo dated March 22nd was the response to that, stating that they were still determining the access issue. But, at this point, we had been under the impression, and I'm not sure how that came about, that the access was an ingress only; and I believe that was the Department of Transportation, and I thought that was from -. I need to review this a little more, but I thought it was either a memo that was given to us or it was verbal. But, again, I think the issue comes back to the Old Volcano Highway as not being an option because of the fact that it was an abandoned road and that everything really was from the highway.

I actually went on the site visit of this particular property; and this particular area here near the end of the highway, the old highway, is very rough. It's not your ideal situation. I have the pictures here if you want me to send them by again. But it would actually be, probably a better idea to look at it from the highway, at least the ingress. At some point, either, I don't know what'll happen, but there has to be some improvements to the Old Volcano Highway, or maybe at this point, at a further point, they might have to look at an ingress from the highway as well, just because of the fact that the roadway isn't maintained. Let me pull out the pictures, and I can pass them around.

YUEN: The only letter that I see from DOT is this March 22nd and it starts by saying, "We don't anticipate it will have a significant impact on the roadway system. However, we have a concern regarding the Applicant's desire to add a new access to the Volcano Highway Route 11. Our Highways Division is currently reviewing the Applicant's request for an additional access to the subject property, Volcano Highway Route 11. We'll defer further comment until such time that a determination by our Highways Division on the additional access request is completed."

Now, did they have one access already and they were asking for a second, or they have no access and they're asking for one?

DARROW: Oh, if I recall, the original application had two, had like two accesses. Wasn't that correct?

MR. MORTARA: No, the original proposal we sent through to the Department of Transportation was this scenario with -.

DARROW: With one?

MR. MORTARA: Just the ingress only, with one access.

DARROW: Were you, at any time, requesting to be able to have like a turn-around or two -?

MR. MORTARA: No, I was told by the engineer in the permitting department that it wouldn't be allowed.

DARROW: Okay. And you haven't received from your request for an access, you haven't received any reply?

MR. MORTARA: No, none.

DARROW: And this is going on six months?

MR. MORTARA: Eight months.

DARROW: Eight months.

GALDONES: Commissioner McCall?

MCCALL: Yes. Just a quick question. The Special Permit where we're looking at approving here is for this specific use, and any major expansion of the use would require another permit? I mean, a Blane's Drive-In or something in this location would require a separate permit, is that correct?

YUEN: Yes. It's for a 1,400 square foot glass-blowing studio and display area and an office.

MCCALL: Right. So no major changes could be made?

YUEN: Yes. Yes, although I have to say that there's no limit on the ultimate popularity of a site, you know. If more people come then more people come. We don't have a condition on that, nor is that a very easy thing to control or condition.

MCCALL: I mean, maybe just to say, I mean, based on at least what has been presented to me, this sounds like a fairly low-key operation. I don't see there being, you know, hundreds of cars a day coming in here. And since I feel that if they were a homeowner they would have a right to have access to the main highway, anyway. Based on what the setup of these lots were, I don't generally see a problem with, you know, I don't see that this is going to be a whole lot more, you know, drain on the highway systems. So -.

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer?

SPRINGER: I agree with Commissioner McCall's comments that given the conditions, this is an appropriate response to them. However, I do have a question about the authority over the old highway and is that a road that's available for public use? Who owns it? Mainly my concern is liability.

MR. MORTARA: Not even the Department of Transportation knows who owns it.

YUEN: Well, I've talked about roads in limbo before. This is a little bit different because this is a newer situation where the road was, it's not one of these really old roads like a homestead road. My expectation is though that this is a County road, that this is the end result, that this will be like a County road because the State is going to end up successfully disclaiming responsibility for anything except the roads in the State Highways System.

GALDONES: Commissioner Springer?

SPRINGER: With regard to process, and I don't mean to abbreviate further discussion on this, but I guess I would ask of the Planning Director if that Section 3 of the Hearings Officer's report to us is sufficient in terms of conditions, or if there would be any amendments or additions to it from the Planning Department? It's so that we can begin to poise ourselves to move on to action on this.

YUEN: Well, this would be for Section, you mean the whole of Decision and Order -? I was going to suggest that we talk about signage. We don't have any condition on signage.

SPRINGER: Mr. Chairman, with regard to process, my question is if no exceptions have been filed, do we just move forward with our motion on the application based on the Hearings Officer's report, or would there be a re-write and something forthcoming from the Planning Department?

YUEN: We don't have anything further except that in reviewing this and listening to the discussion, I think that we should add a condition on signage, that signage, and I was trying to formulate something. But I would say that signage would be the minimum function, signage visible from the Volcano Highway should be a minimal functional signage and be reviewed and approved at the time of Plan Approval.

DARROW: Can that be added to Condition No. 2 regarding -?

YUEN: Yes.

DARROW: Okay.

GALDONES: Mr. Mortara, you wish to comment on the signage condition?

MR. MORTARA: Yes. It seems to be certainly an applicable condition, although I would hate to go into Planning and then have them tell me that my sign can be no bigger than 4 by 6 inches. That could be problematic. You know, what is a functional sign? Certainly we've seen a variety of signs on the Belt Highway coming up from Hilo. I

would just need to be able to let people know that we're there; and I'll certainly be willing to work with the Planning Department to that regard.

GALDONES: Thank you. Further questions, further discussion on this matter before we take action? Commissioner Graham?

GRAHAM: Just from hearing the comments from the other Commissioners, I guess, the one thing, from a planning point of view, I don't feel good about having the access to the highway like this. On the other hand, I do recognize there has been three different hearings, our original one here plus the Contested Case hearing plus today; and I haven't had other people come from the Volcano community, come up and speak to the problem that bothers me, so I certainly think that says something. So I don't feel proper being the only one to stop that ingress-egress kind of issue from the highway just because of my concerns. I don't know how Ms. Siracusa feels about it. But, given that, if the other four Commissioners are in favor of allowing the ingress only access from the highway, I would go along with that, I presume. But I do think maybe it would be good for us to put a condition to the effect that if the Old Volcano Highway does get improved and access is made, and access is reopened to the main road, that the access would be closed from this property, if that sounds reasonable to the Planning Director and reasonable to the Applicant.

YUEN: Well, the concern that you've been raising is very legitimate, something we talked about quite a bit in-house. I think that that would, I have no problem with that additional condition.

GALDONES: Commissioner Graham, are you introducing that as an additional, as an amendment to the Decision and Order?

GRAHAM: Yeah, but I wanted to be sure that no some specific problem didn't arise with the Applicant that I wasn't aware of. Would that be reasonable for the Applicant?

MR. MORTARA: We'd actually prefer that so -.

GRAHAM: Okay.

GALDONES: That's acceptable by the applicant?

MR. MORTARA: Yes, it is acceptable. We're talking about the segment of Old Volcano Highway that nearly intersects the Belt Highway?

GRAHAM: Yes.

MR. MORTARA: Yeah.

GRAHAM: So if that were open at some future date that you would abandon your access to, your direct access?

MR. MORTARA: Certainly. Yes.

GALDONES: Commissioner Springer?

SPRINGER: I was just wondering if that would be an addition to Condition 4 or if there's a, we need to renumber it?

YUEN: That would be a good addition to 4.

GALDONES: Further questions or comments? Seeing none from the Commissioners, is there anybody from the public, Sharon, that signed up on this matter?

NOMURA: No one.

GALDONES: No one signed up. Okay. Mr. Yeh? Could I call you back up, please?

YEH: Certainly.

DARROW: Could I just ask a quick question?

GALDONES: Jeff.

DARROW: This last amendment, it would reflect that if Old Volcano Highway is improved on the Hilo side of Old Volcano Highway, then the ingress to the property from the main highway will be absolved?

GALDONES: Commissioner Graham, was that your amendment?

GRAHAM: I think your, I think you're not saying it the way I said it. My sense was that if the intersection of Old Volcano Road with the Volcano Highway at the Hilo end were to be reopened, that the Applicant here with the Special Permit would take access only from the Old Volcano Road and not from Volcano Highway.

DARROW: And then at that point, would they have to, I mean, if there's going to still be an access there, would they have to close that access?

GRAHAM: Yes, I would ask that they close that access.

GALDONES: Commissioner Siracusa?

SIRACUSA: And I would think at that point that they would also have to remove that signage. Because, otherwise, it would be confusing if there was a sign there and no legal access.

YUEN: Well, their property goes to the corner so they could put a sign up on the corner.

GALDONES: Mr. Yeh? We kind of butchered up your decision.

YEH: I beg your pardon? You butchered -. I'm not hurt at all, believe me. That's just a natural outcome of the discussion you're having. It's great.

GALDONES: Mr. Yeh, having heard the discussion and the amendments to it, I'm just calling you back if there were any further comments on your part before I close the discussion and go for action.

YEH: You know, the only thing about signage is, you know, the County does have a sign ordinance that allows signs of certain sizes for certain businesses. And the only comment I would make is maybe just to indicate that, you know, during the Plan Approval process, the sign location and function shall be approved during that process, as opposed to talking about minimum. Because that can be, could lead to some issues about interpretation. So, that would be my only comment.

GALDONES: Jeff, could we add that on just for clarity?

DARROW: That the Applicant conform to the Sign Code? I'm sorry, I missed that. I was writing down the sentence -.

YEH: Well, essentially, that the location and function of the sign shall be part of the Plan Approval process.

DARROW: Okay.

YEH: And maybe Chris has some language about that.

YUEN: The reason I talked about minimal functional sign is that I appreciate that you're allowing a business and they need to be able to identify themselves from the highway. I'm not sure what the Sign Code does for a Special Permit, first point. Second point, if the Sign Code then says that a Special Permit follows a commercial sign, that's, I don't know, I would not agree with that for a Special Permit in a location like this where you could have the kind of sign that you could put on a commercial building. I think that would be too big a sign.

GALDONES: Mr. Yeh?

YEH: I think maybe just to say the location and size of the signs to be approved during Plan Approval process, and then the Applicant and the Planning Department can kind of negotiate what that should be. That might be the most appropriate. And the final say will be with the Planning Department, anyway, so -.

GALDONES: Would that be acceptable, Mr. Yuen?

YUEN: I'd still prefer my wording 'cause it gives some direction to where we're going with this. I mean, in either case, either wording leaves it as a judgment call to the Department when the sign comes in; but I think that the first wording gives a clearer indication of where we're going with this. Do we have the Sign Code handy?

TORIGOE: It's in the County Code.

YUEN: Yes.

TORIGOE: It's not easy to decipher.

YUEN: You're trying to work on it?

TORIGOE: I'll just kind of look at it.

GALDONES: In the meantime, Commissioner McCall?

MCCALL: Yeah. My question, I guess, to the Planning Director is just that, I mean, what, since it sounds like this is going to go back to discussions in the Planning Department, what is, what's your idea on proper sign -? I mean, since I don't know what the Code is, I mean, are we talking, you know, 4 ft. by 8 ft., or 1 ft. by 2 ft., or, you know?

YUEN: Well, we're not talking 4 ft. by 8 ft. and probably bigger than 1 ft. by 2 ft. It's somewhere in between, yeah. I mean, the other thing in my view is that the sign should be directed at the Hilo, you know, in the Hilo direction because from the Site Plan and my expectation from what the Department of Transportation is going to permit is a right-in only that you're not -. You know what, does our condition say that, that they're limited to a right-in? Because, you know, and the only way to control this at this location is by the direction of the driveway. But I think we should say that the ingress is a right-in only. Otherwise, you have people stopping and turning left off the highway. We're not going to make them do a left-turn pocket, but I don't think they should do a left-turn. And people are just going to have to, people coming from the Volcano direction are going to have to pre-orient themselves and know that this is where they're going; and if they pass it, they're going to have to find, make a u-turn. But if you have a sign from, that is trying to attract highway travel coming from the Volcano direction, you're almost inviting people to make a u-turn at the site off the main highway.

But let me just pause for a moment and look at what the sign, whether the Sign Code covers the situation and give an idea what the Sign Code would be.

GALDONES: Commissioner Springer?

SPRINGER: May we take a 5-minute recess while the Director reviews the Code?

GALDONES: While he's reviewing that, I'm going to ask the Commissioners if they have any comments to Mr. Yeh's amendment for the location of the signs. Commissioner Graham?

GRAHAM: Since the Planning Director was happy with what he said originally, the only thing that caught my ear that maybe he didn't say originally that you included was location. So, if that's the case I would also like to, his comment, to include location. And, also, with regard to Planning Director's last comments about ingress, I think he was correct that if we don't have that specifically written in Condition No. 4 of the Decision and Order -. So I think that Condition No. 4 should say that, "provided that only right-in ingress will be allowed from the Hawaii Belt Road."

YEH: Chairman Galdones, just one comment to that. The reason I had left it somewhat broad in that respect was because I presumed, perhaps correctly or not, that the Department of Transportation engineers would be able to exercise their engineering discretion to determine what kind of ingress would be allowed. In other words, if they felt that there was sufficient radius for turning from a left turn standpoint, we should leave perhaps that decision up to them since they're going to have to be the ones that decide on what access is appropriate. But, and that's the reason why I didn't distinguish between left or right turn. Thank you.

YUEN: I would not agree with that. I honestly, I mean, I think we really have to watch out for this County. And you're talking, this part of Volcano Highway is a straight shot, it's a high-speed run. You don't expect people to turn left, particularly not, there's no, there's not going to be an intersection sign; and I think we're creating a hazard. It's a low-key business where it's, people, I don't know how they're planning to market or advertise themselves, but I would guess that for the most part they're trying to get people who have some, through some other medium other than the street sign to -. The street sign, I think, provide some ability to help, helps you find the place, but you're not like a drive-in business trolling for customers off the highway. And I'd look at this really differently if we were talking about a business like that. They're going to have to do some kind of marketing to people that are interested in art and want to go see glass blowing and an art studio. So it's, first of all, I don't think it's too much to expect for the Applicant to try to, when they market themselves, to have something that informs the customers if they have to, if they're coming from the Volcano they'll have to turn left at the Old Volcano Road intersection and come around the back, or they have to get down to some place where they can turn around and come back up the Volcano Highway and come in on a right turn.

On the question of signs, the applicable rule in the Sign Code would allow, there's three types of signs that could be allowed. Two of the types are affixed. The ground, I think that they'd be using what's called the "ground sign." That's a sign that, in other words, if their sign would not be attached to the building -. Let me ask the Applicant. You would want a sign that's not, your main sign would be somewhere near the highway and not on the building, right?

MR. MORTARA: Yeah, you know, we see signage similar to what you would see going to like "Lava Tree State Park," or something like that, just a business name that tells you what's going on, studio, gallery and -. Yeah, I don't really see anything bigger than maybe 30 x 50 inches, I mean, that kind of scale. I'd have to draw it out but that's, and ground affixed.

And I also should mention that the, you know, we were talking prior to this about the right-turn only from the highway. This traffic, the orientation and the angle of the driveway were specifically recommended to us by the Department of Transportation for right-turn ingress only with no left-turn egress on the highway. And they've got that sharp angle in there to discourage people from taking that left-turn in, and we totally support that, and are fine with the signage facing toward Hilo side as well, too. I mean, I recognize that we'll have to, if we're going to advertise, we're going to have to include a map so people understand how to get to us from the other end, but -.

YUEN: So, although the Sign Code permits larger signs on the building, as far as the ground sign, that's a sign that's separate from your building?

MR. MORTARA: Yeah.

YUEN: For an Ag district, it would be 8 square feet, which is about, it's about the size that you're talking about, 2-1/2 by 3-1/2. It's a little smaller, slightly smaller than what you just mentioned. But that's the Sign Code, and I'm fine with the Sign Code for this property for the ground sign.

MR. MORTARA: Yeah, because the building will be set back and most of the vegetation will be in place, it's not necessarily practical for us to have a building sign. So, yeah, we would go with the ground sign route.

Torigoe: Well, it would be difficult, that Sign Code may change so you may want to -.

YUEN: Well, I think that, the Corp. Counsel is saying the Sign Code may change. I don't think it's going to greatly change for this part of it. So, I think it'd be fine just to say that signage shall be upon approval, signage shall be limited to a ground sign, no, no, let's just say "Signage shall be as approved through the Plan Approval process consistent with the Sign Code."

GALDONES: Okay. Any further discussion? Is this an indication what the day is going to look like? Any further comments? Mr. Mortara?

MR. MORTARA: I have none.

GALDONES: Mr. Yeh?

YEH: Nothing further.

GALDONES: Commissioners? Okay. Hearing no further discussion, I'm going to call for action. Now there were several amendments that were introduced. Jeff, would you be able to go through those amendments?

DARROW: The ones we just went through, okay. Let's look at the signage first. It would be a condition added to, an amendment to Condition 2, we would be placing, signage shall be as approved through the Plan Approval process, as approved by the Sign Code." And that would be added to Condition No. 2.

It was mentioned earlier that, an addition to Condition No. 4, I'm not sure if this was agreed upon or not, but to add, "right ingress only." Are we saying that we are going to add that or are we -?

SIRACUSA: Yes.

DARROW: Okay. So we will be adding the word "right" before ingress and, also, we will be adding, and I've got to work on the condition, the wording of this, but also to Condition 4 that "In the future if the Old Volcano Road intersection on the Hilo side is improved, that the ingress will be removed, and access will be through the Old Volcano Highway." Does that sound pretty close, Bill?

YEH: Yes.

GALDONES: Okay. Those are the two amendments. Commissioners, there is a recommendation from the Hearing Officer that the application, along with the conditions, be approved, and there are two amendments that were also introduced. Do I hear a motion to that effect? Commissioner Springer?

SPRINGER: I move that with regard to this Special Permit, 04-001, the Hawaii County Planning Commission adopt the recommendations of the Hearings Officer with the amendments as discussed to Condition 2 and Condition 4.

GALDONES: Do I hear a second?

MCCALL: Second.

GALDONES: It has been moved by Commissioner Springer and seconded by Commissioner McCall that Applicants Michael and Misato Mortara (SP 04-001) be approved with amendments to Condition No. 2 and Condition No. 4. Further discussion? Before we take the vote, Commissioners, also would like, so that also the Applicants would be aware of what's going to happen here -. Being that we have only five Commissioners with us today, I'd like to call upon counsel to inform us what the action is necessary to approve; and if we don't meet that majority, then what will be the result of our action.

TORIGOE: Thank you, Mr. Chairman. As you are probably aware, your having only five Commissioners here today, you need to have all five voting in favor of any action that you want to take whether to approve or to deny; and if you are unable to have what is basically a unanimous vote today on some action then, normally, what we have been doing is asking for a motion to continue or having, the Chairperson, I guess, could continue the matter until a later time. Also, the Applicant could request that the matter be continued.

GALDONES: Thank you, Mr. Torigoe. Commissioners, any questions to Mr. Torigoe? If not, Jeff?

DARROW: Thank you, Mr. Chairman. Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: And Mr. Chairman?

GALDONES: Aye.

DARROW: The motion passes, five to zero.

GALDONES: Thank you. Mr. Mortara, you will be informed of today's actions in writing.

MR. MORTARA: Thank you; and thank you, Members of the Commission, for your time. I appreciate it. Thank you very much.

The discussion ended at 10:06 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary