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KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF
THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006

To Amend the Land Use District Boundary of Certain Lands Situated at Kea‘au, Puna, County and State of Hawai‘i, Consisting of 0.51 Acres from the Conservation District to the Agricultural District, Tax Map Key No. (3) 1-5-059:059

DOCKET NO. A18-806

PETITIONERS’ MOTION REQUESTING THE LAND USE COMMISSION TO BE THE APPROVING AGENCY FOR AN ENVIRONMENTAL ASSESSMENT; MEMORANDUM IN SUPPORT OF MOTION; CERTIFICATE OF SERVICE

PETITIONERS’ MOTION REQUESTING THE LAND USE COMMISSION TO BE THE APPROVING AGENCY FOR AN ENVIRONMENTAL ASSESSMENT

I. RELIEF SOUGHT

Petitioners KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006 ("Petitioners"), by and through their legal counsel, CARLSMITH BALL LLP, respectfully asks this honorable Land Use Commission of the State of Hawai‘i (the "Commission") to determine that it will be the
Approving Agency for an Environmental Assessment ("EA") under Chapter 343, Hawai‘i Revised Statutes ("HRS").

II. GROUNDS FOR RELIEF

This Motion is brought pursuant to Chapter 205, HRS, and Hawai‘i Administrative Rules ("HAR") §§ 15-15-50(b), 15-15-70, 11-200-6(b)(1)(F), 11-200-9, and HRS §§ 343-5(a)(7), 343-5(e). In this Docket, Petitioners will seek to amend the State Land Use ("SLU") Conservation District boundary into the SLU Agricultural District boundary.

Pursuant to HAR § 15-15-70(e), Petitioners respectfully request that the Commission hold a hearing on this Motion.


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DOCKET NO. A15-799
MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

As more fully described in Petitioners KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006 ("Petitioners") Petition for Land Use District Boundary Amendment (the "Petition"), filed concurrently with this Motion, Petitioners are requesting to amend the State Land Use ("SLU") District Boundary of certain lands consisting of approximately 0.51 acres situated at Kea‘au, Puna, County and State of Hawai‘i, presently identified as Tax Map Key No. (3) 1-5-059:059 (the "Petition Area"), from the SLU Conservation District to the SLU Agricultural District, to allow for Petitioners to develop a dwelling, related agricultural uses, and other accessory uses and improvements (the "Project"). However, prior to implementing the proposed District Boundary Amendment ("DBA"), Petitioners must first comply with the environmental review process established under Chapter 343, Hawai‘i Revised Statutes ("HRS").

Through this Motion, Petitioners are respectfully requesting that the Land Use
Commission of the State of Hawai‘i (the “Commission”) agree to be the Approving Agency to
determine the acceptability of an Environmental Assessment (“EA”) that Petitioners shall
prepare to assess the environmental effects of the proposed DBA and Project.

II. ENVIRONMENTAL REVIEW IS REQUIRED

Because the DBA proposes to reclassify land from the SLU Conservation District into the
SLU Agricultural District, an EA is required pursuant to HRS §343-5(a)(7)\(^1\) and HAR § 11-200-
6(b)(1)(F).\(^2\) Further, HAR § 15-15-50(b) provides that:

For petitions to reclassify properties from the conservation district
to any other district, the petition shall not be deemed a proper
filing unless an approved environmental impact statement or
finding of no significant impact is approved or accepted by the
commission for the proposed boundary amendment request.
Such approved or accepted environmental impact statement or
finding of no significant impact shall be filed with and be part of
the petition for boundary amendment. Notwithstanding any rule
to the contrary, the processes provided by subsections (e) and (f)
shall not commence until this subsection is satisfied.

(Emphases added).

III. THE COMMISSION IS THE APPROPRIATE APPROVING AGENCY

The necessary first step for developing the Project is the processing of the
DBA through the Commission, which, as discussed supra, triggers compliance
with Chapter 343, HRS. HRS § 343-5(e) provides, in pertinent part, that:

Whenever an applicant proposes an action specified by [HRS
§343-5](a) that requires approval of an agency . . . , the agency
initially receiving and agreeing to process the request for
approval shall require the applicant to prepare an environmental
assessment of the proposed action at the earliest practicable time

\(^1\) “Except as otherwise provided, an environmental assessment shall be required for actions that . . . [p]ropose any
reclassification of any land classified as a conservation district by the state land use commission under chapter
205[.]” HRS § 343-5(a)(7).

\(^2\) Requiring the processing of an EA for “[a]ny reclassification of any land classified as conservation district by the
state land use commission under chapter 205, HRS[.]” HAR § 11-200-6(b)(1)(F).
to determine whether an environmental impact statement shall be required[.]

(Emphases added). An "Approving Agency" is the "agency that issues an approval prior to actual implementation of an action." HAR § 11-200-2. Therefore, the Commission is the appropriate Approving Agency for Petitioners' EA.

IV. CONCLUSION

Petitioners respectfully request that this Commission agree to be the Approving Agency for the EA that Petitioners shall prepare to assess the environmental effects of the DBA and the development of the Project.


[Signature]

STEVEN S.C. LIM
DEREK B. SIMON

Attorney for Petitioner
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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In the Matter of the Petition of
KEVIN M. BARRY AND MONICA S.
BARRY, TRUSTEES OF THE BARRY
FAMILY TRUST DATED NOVEMBER 15,
2006

To Amend the Land Use District Boundary of
Certain Lands Situated at Kea‘au, Puna,
County of Hawai‘i, State of Hawai‘i,
Consisting of 0.51 Acres from the
Conservation District to the Agricultural
District, Tax Map Key No. (3) 1-5-059:059.

CERTIFICATE OF SERVICE

I hereby certify that due service of the within document was made by depositing the same
with the United States Mail, postage prepaid, or by hand delivery, on December 19, 2018,
addressed to:

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2006