

DAVID Y. IGE
Governor

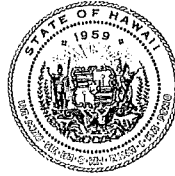
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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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January 10, 2019

Mr. Derek B. Simon, Esq.
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813

Dear Mr. Simon:

Subject: Land Use Commission Docket No. A18-806 Barry Family Trust

This is to acknowledge receipt of the Petition For Land Use Boundary Amendment ("Petition") seeking to reclassify approximately 0.51 acres of land from the State Land Use ("SLU") Conservation District to the SLU Agricultural District for agricultural and accessory uses (the "Project") situated at Kea'au, island of Hawai'i, TMK No.: (3) 1-5-059: 059 ("Petition Area") filed in the subject docket on December 19, 2018, by Kevin M. Barry and Monica S. Barry, Trustees for the Barry Family Trust ("Petitioner").

The following documents in the subject docket were filed with the LUC on December 19, 2018:

- 1) Petition for Land Use District Boundary Amendment;
- 2) Petitioner's Exhibits 1-9;
- 3) Verification of Derek B. Simon;
- 4) Affidavit of Derek B. Simon Attesting to Mailing of Notification of Petition Filing; and,
- 5) Certificate of Service.

In addition, you also filed a Motion Requesting the Commission to be the Approving Agency for an Environmental Assessment. As identified in your Motion, a petition for reclassification of lands from the State Conservation District requires compliance with Hawai'i Revised Statutes ("HRS") Chapter 343 before a petition filing may be deemed complete.

On December 21, 2018 the following documents in the subject docket were filed with the LUC:

- 1) Amended Affidavit of Derek B. Simon attesting to Service of the Petition;
- 2) Amended Certificate of Service for the Motion; and,

3) Amended Certificate of Service for the Petition

At this time, we cannot accept your Petition as a complete filing for several reasons.

- 1) Pursuant to Hawai'i Administrative Rules ("HAR") Section §15-15-50(b), a petition shall not be deemed a proper filing unless an approved environmental impact statement (EIS) or finding of no significant impact (FONSI) is approved or accepted by the Commission. Such approved or accepted EIS or FONSI shall be filed with and be part of the petition for boundary amendment. A Motion has been filed requesting the Commission to be the accepting authority for Petitioner's EA. Upon completion and acceptance, Petitioner's EA and an amended Petition should be filed with the Commission to supplement Petitioner's current filings.
- 2) Pursuant to HAR Sections §§15-15-50(c)(7) and (9), the details of the proposed development, its costs, and method of financing should be provided based on information developed during the EA process.
- 3) Pursuant to HAR Sections §§15-15-50(c)(10), (11), and (12), details describing the Petition Area, an assessment of its impacts, and the adequacy of public services and facilities should be provided based on information developed during the EA process.
- 4) Pursuant to HAR Section §15-15-50(c)(14), details on the economic impacts of the proposed reclassification and any impact on agricultural production should be provided based on information developed during the EA process.
- 5) Pursuant to HAR Section §15-15-50(c)(16), a detailed assessment of the need to reclassify the property into the SLU Agricultural District rather than the SLU Rural District should be provided based on information developed during the EA process. We acknowledge the proximity of the Petition Area to SLU Agricultural District designated lands. However, the size of the parcel would create a potentially non-conforming lot less than the one (1) acre minimum size within the SLU Agricultural District.
- 6) Pursuant to HAR Sections §§15-15-50(c)(18) and (19), details describing any potential impacts to archaeological or cultural resources or natural resources should be provided based on information developed during the EA process.
- 7) Pursuant to HAR Section §15-15-50(c)(20), the Petition should include a statement that confirms that the proposed Project will take less than ten (10) years to complete.
- 8) Pursuant to HAR Section §15-15-50(c)(21), the Petition should provide a statement addressing Hawaiian traditional and customary rights under Article XII, Section 7 of the Hawai'i State Constitution. The statement should be based on an analysis as set forth by the State Supreme Court in its Ka Pa'akai O Ka 'Āina decision.
- 9) Pursuant to HAR Section §15-15-50(c)(22), the Petition should include any written comments received by the Petitioner from governmental agencies, non-governmental organizations, or individuals in regards to the proposed reclassification based on information developed during the EA process.

Pursuant to HAR Section §15-15-50(f), HAR, the Petition is deemed incomplete, at this time, as procedural and substantive filing requirements have not been addressed adequately pursuant to HAR Sections §§15-15-50(b), and (c). The Petition may be deemed a proper filing upon review

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of additional information submitted and upon determination by the Executive Officer. We reserve the right to provide additional comments and raise additional concerns not included in this review.

Please be advised that in the event a notice of intent to intervene is filed with the LUC pursuant to HAR Section §15-15-52(b), the Petitioner is required to serve a copy of the Petition upon the potential intervener and file an affidavit of Petitioner or its agent attesting to its compliance with HAR Section §15-15-48(b).

Please address the above matters as soon as possible. Should you require clarification or further assistance in this matter, please contact Scott A.K. Derrickson, AICP, of my staff at 587-3921.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Daniel E. Orodener
Executive Officer

c: Rodney Funakoshi, OP
Dawn Takeuchi-Apuna, Esq., deputy Attorney General
Michael Yee, Director, Hawai'i County Planning Department
Joseph Kamelamela, Esq., Corporation Counsel