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FAMILY TRUST DATED NOVEMBER 15,
2006

**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 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.

**PETITION FOR LAND USE DISTRICT
BOUNDARY AMENDMENT;
PETITIONER'S EXHIBITS 1 - 9;
VERIFICATION OF DEREK B. SIMON;
AFFIDAVIT OF DEREK B. SIMON
ATTESTING TO SERVICE OF
PETITION; AFFIDAVIT OF DEREK B.
SIMON ATTESTING TO MAILING OF
THE NOTIFICATION OF PETITION
FILING; CERTIFICATE OF SERVICE**

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PETITIONER'S EXHIBITS 1 – 9; VERIFICATION OF DEREK B. SIMON;
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NOTIFICATION OF PETITION FILING; CERTIFICATE OF SERVICE**

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**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 Conservation Land Use District
Boundary Into the Agricultural Land Use
District For Approximately 0.51 Acres of
Land, consisting of Tax Map Key No. (3) 1-5-
059:059, situated at Kea‘au, Puna, County and
State of Hawai‘i

DOCKET NO. A 15-799

PETITION FOR LAND USE DISTRICT
BOUNDARY AMENDMENT

PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

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, hereby respectfully petition this Honorable Land Use Commission of the State of Hawai‘i (the “**Commission**”) to amend the Land Use District Boundary of certain lands consisting of approximately 0.51 acres, situate at Kea‘au, Puna, County and State of Hawai‘i, currently identified by Tax Map Key (“**TMK**”) No. (3) 1-5-059:059 (the “**Petition Area**”), from the State Land Use (“**SLU**”) Conservation District to the SLU Agricultural District.

Concurrent with the filing of this Petition for a SLU District Boundary Amendment (“**DBA**”), Petitioners have also filed a Motion Requesting the Commission to be the Approving Agency for an Environmental Assessment (“**EA Motion**”). Through the EA Motion, Petitioners are respectfully requesting that 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.

I. INTRODUCTION

Petitioners purchased the Petition Area in 2007 with the hopes of one day building their dream retirement home amongst those of their neighbors along the coastline of the Island of Hawai‘i. Now retired, Petitions are ready to fulfill that dream.

Petitioners are proposing to construct a modest three (3) bedroom, two (2) bath, approximately 1,800 sq. ft. single-story dwelling and related agricultural uses that Petitioners will use as their primary personal residence (the “**Project**”). The Project will include a two-car garage, a lanai on the makai side of the dwelling facing the Pacific Ocean, a courtyard on the mauka side of the dwelling fronting Paradise Ala Kai Drive, a small swimming pool, and appropriate landscaping. The style of the dwelling will be contemporary Hawaiian consistent with the overall style of the existing homes in Hawaiian Paradise Park.

II. ENVIRONMENTAL REVIEW AND AMENDED PETITION

Due to the requirement to complete the environmental review process pursuant to Hawai‘i Revised Statutes (“**HRS**”) Chapter 343, Petitioners reserve the right to file an Amended Petition with this Commission upon completion of that process. The Amended Petition will include more details about the Project and the requirements for a DBA, with much of the necessary information being developed as part of the preparation of the EA. Petitioners acknowledge that this Petition does not satisfy the Commission’s requirements for an acceptable Petition under the Commission’s rules found at Hawai‘i Administrative Rules (“**HAR**”) Title 15, Subtitle 3, Chapter 15; however, all appropriate information regarding the Project and the DBA will be provided in the Amended Petition.

III. DBA PETITION - AUTHORITY FOR RELIEF SOUGHT, PETITIONER, PETITION AREA, NOTIFICATION, SERVICE

HAR § 15-15-50(a)(1): State clearly and concisely the authorization or relief sought; and (2) Cite by appropriate reference the statutory provision or other authority under which commission authorization or relief is sought;

The Commission is authorized to grant the relief sought herein pursuant to HRS Chapter 205. Under HRS § 205-2, the Commission is charged with the classification of lands in Hawai‘i into districts. The Commission is also specifically charged with considering requests to amend district boundaries that involve lands within Conservation Districts. HRS § 205-4 states, in relevant part, as follows:

[A]ny person with a property interest in the land sought to be reclassified, may petition the **land use commission** for a change in the boundary of a district. This section applies to **all petitions** for changes in district boundaries of lands within **conservation districts**[.]

HRS § 205-4(a) (emphasis added). The proposed DBA will cover approximately 0.51 acres currently within the SLU Conservation District. Therefore, the Commission has the necessary statutory authority to consider a DBA Petition in this matter.

A. IDENTIFICATION OF PETITIONER

HAR § 15-15-50(c)(1): The exact legal name of each petitioner and the location of the principal place of business and if applicant is a corporation, trust, or association, or other organized group, the state in which the petitioner was organized or incorporated;

Petitioners are KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006, whose mailing address is P.O. Box 247, Kea‘au, Hawai‘i 96749. The Barry Family Trust was formed under the laws of the State of California and is the owner in fee simple of the Petition Area.

B. AUTHORIZED REPRESENTATIVES

HAR § 15-15-50(c)(2): The name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed.

The law firm of CARLSMITH BALL LLP has been appointed to represent Petitioners on this Petition and in the proceedings thereon pursuant to HAR § 15-15-35(b). Attached hereto as **Petitioners' Exhibit 1** is Petitioners' Fee Owners' Authorization. Pursuant to HAR § 15-15-50(c)(2), all correspondences and communications in regard to this Petition and Docket shall be addressed to and served upon:

Derek B. Simon
CARLSMITH BALL LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813

C. DESCRIPTION OF PETITION AREA

HAR § 15-15-50(c)(3): Description of the subject property, acreage, and tax map key number, with maps, including the tax map, that identify the area stated in the petition. If the subject property is a portion of one or more tax map key parcels, or the petition proposes incremental development of the subject property on both increments of development, the petitioner shall include a map and description of the subject property and each increment in metes and bounds prepared by a registered professional land surveyor.

The Petition Area is a single tax map parcel located on the shoreline in Kea'au, Puna, County and State of Hawai'i, and consists approximately 0.51 acres of land. The Petition Area is currently identified by TMK No. (3) 1-5-059:059. Attached hereto as **Petitioners' Exhibit 2** is a tax map showing the Petition Area.

IV. BOUNDARY AMENDMENT SOUGHT

HAR § 15-15-50(c)(4): The boundary amendment sought and present use of the property, including an assessment of conformity

of the boundary amendment to the standards for determining the requested district boundary amendment.

Petitioners are seeking the reclassification of approximately 0.51 acres of land from the SLU Conservation District to the SLU Agricultural District. The Petition Area is currently undeveloped and vacant. Petitioners acquired the Petition Area from Karen Edens in 2007. *See **Petitioners' Exhibit 3*** (Warranty Deed, dated June 25, 2007), attached hereto.

In 1977, virtually all of the coastal lands surrounding the Petition Area were reclassified from the SLU Conservation District to the SLU Agricultural District pursuant to the Commission's Decision and Order in Docket No. A76-419 ("**1977 D&O**"). The Petition Area was originally included in Docket No. A76-419, but was later removed because the Commission was unable to locate and obtain the participation of the then-owner of the Petition Area. A significant number of the parcels reclassified under the 1977 D&O have since been developed with dwellings.

V. PETITIONER'S PROPERTY INTEREST; AFFIDAVIT; EASEMENTS

HAR § 15-15-50(c)(5): The petitioner's property interest in the subject property. The petitioner shall attach as exhibits to the petition the following: (A) A true copy of the deed, lease, option agreement, development, or other document conveying to the petitioner a property interest in the subject property or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner; (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of all fee owners to file the petition and a true copy of the deed to the subject property; and (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48.

Petitioners have standing to file this Petition pursuant to HRS § 205-4(a) and HAR § 15-15-46(3), which entitle any person with a property interest in the land sought to be reclassified to petition the Commission for a DBA. Petitioners are the fee simple owners of the Petition Area

pursuant to a Warranty Deed and, therefore, have standing to file this Petition. *See* Petitioners' Exhibit 3.

An affidavit of Derek B. Simon, attorney with Carlsmith Ball LLP, attesting to Petitioner's compliance with HAR § 15-15-48 (Service of Petition) is filed with this Petition. In accordance with HAR § 15-15-48(b), copies of this Petition will also be served upon any potential intervenors upon receipt of a notice of intent to intervene pursuant to HAR § 15-15-52(b).

A. DESCRIPTION OF EASEMENTS

HAR § 15-15-50(c)(6): A description of any easements on the subject property, together with identification of the owners of the easements; a description of any other ownership interests shown on the tax maps.

The Petition Area is not subject to any easements or other ownership interests.

VI. THE PROJECT

A. PROPOSED DEVELOPMENT

HAR § 15-15-50(c)(7): Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;

As discussed *supra*, the proposed Project consists of a modest three (3) bedroom, two (2) bath, 1,800 sq. ft. single-story dwelling and related agricultural uses that the Barry family will use as their primary personal residence. At this preliminary stage of the planning and entitlements process, and in light of the Petition Area's poor soils, small size and close proximity to the Pacific Ocean, Petitioners propose to implement appropriate agricultural uses as part of the Project. Petitioners' proposed agricultural use will be described in detail in the Amended Petition, and the Project will comply with the requirements of HRS Chapter 205 and the Hawaii County Code related to permissible uses in the SLU Agricultural District.

The Project will include a two-car garage, a lanai on the makai side of the dwelling facing the Pacific Ocean, a courtyard on the mauka side of the dwelling fronting Paradise Ala Kai Drive, a small swimming pool, infrastructure (*i.e.*, private water well, including an underground water storage tank, or private catchment system, underground individual wastewater system (“**IWS**”), photovoltaic solar system), and landscaping, including a driveway. Access to and from the nearest government road and the Petition Area is provided via the adjacent Paradise Ala Kai Drive.

The dwelling will be sited towards the ocean, but well behind the shoreline area of the Petition Area, and any development on the Petition Area will be set back outside the lava shelf and shoreline shrub zones, thus avoiding these resources. The style of the dwelling will be contemporary Hawaiian consistent with the overall style of homes in Hawaiian Paradise Park. The landscaping plan for the Project will also be consistent with the existing Hawaiian Paradise Park neighborhood, and will leave some exposed lava (if permitted by the Petition Area’s topography) and include appropriate salt-tolerant ground cover and tropical plants. Although some non-native species may be removed, appropriate native species may be planted and a narrow trail to the shoreline may be established, taking care to minimize any potential harm to native species.

The intent is that the Project will receive its potable water from a well drilled on site with treatment through a reverse-osmosis or similar purification system, although the Project will alternatively utilize a catchment system if necessary. The wastewater generated by the Project will be processed through a modern IWS (septic) system designed by a licensed engineer and approved by the State of Hawai‘i Department of Health. Electrical service is available in the area from Hawai‘i Electric Light Company, Inc. (“**HELCO**”); however, Petitioners intend to

install a photovoltaic solar system that will allow the Project to be powered completely, or at least partially, “off-grid.”

B. DEVELOPMENT PROJECTS

HAR § 15-15-50(c)(8): A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables.

As discussed *supra*, the Project will consist of one (1) dwelling on the approximately 0.51-acre Petition Area, to be used by Petitioners as their primary residence. The Project does not involve the subdivision of the Petition Area or multiple lots. Upon obtaining the DBA, and assuming issuance of the required permit(s) by the County of Hawai‘i (“**County**”), Petitioners expect the Project to be completed within approximately 18-24 months.

C. FINANCIAL CONDITION

HAR § 15-15-50(c)(9): A statement describing the financial condition together with a current certified balance sheet and income statement as of the last calendar year, or if the petitioner is on a fiscal year basis, as of the end of the petitioner's last fiscal year, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development.

Petitioners have the financial ability to develop the Project. However, at this preliminary stage of the planning and entitlements process, Petitioners have not generated their final projected cost figures for the Project.

Petitioners will obtain and prepare greater levels of detail regarding costs for developing the Project upon completion of the environmental review process, together with a certified balance sheet, income statement, and/or other appropriate documentation that will be current at the time the Commission is asked to consider the Amended Petition. Petitioners acknowledge that they will be required to provide the Commission with a financial statement as well as a clear

description of the manner in which Petitioners propose to finance the development of the Project. This information will be provided in the Amended Petition.

VII. PETITION AREA

A. DESCRIPTION OF PETITION AREA AND SURROUNDING AREA

HAR § 15-15-50(c)(10): Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawai'i classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property.

The Petition Area is located in the Puna District of the Island of Hawai'i. The Petition Area is currently undeveloped and vacant. Since being acquired by Petitioners in 2007, the Petition Area has not been utilized for any purpose.

1. Soil Classification

The soil in and around the Petition Area is classified as Opihikao highly decomposed plant material. This is a well-drained, thin organic soil developed over pahoehoe bedrock. It is found from sea level to 1,000 feet in elevation and is rapidly permeable, with slow run-off, and a slight erosion hazard. This soil is within subclass VIIs, which means that it has limitations that make it unsuitable for cultivation and restrict its use for pasture, range, woodland or wildlife.

2. Agricultural Lands of Importance to the State of Hawai'i

The State of Hawai'i Department of Agriculture has established three categories of Agricultural Lands of Importance to the State of Hawai'i ("ALISH"): Prime; Unique; and Other. Lands that do not fall into one of the three ALISH categories are listed as Unclassified. "Prime" land is the best suited for the production of food, feed, forage, and fiber crops. "Unique" land is used for the production of specific high-value food crops. "Other" land does not qualify as Prime or Unique, but is still of Statewide or local importance for the production of

food, feed, fiber, and forage crops. Soils without any ALISH classification are not considered agriculturally important lands.

The soils within the Petition Area are *Unclassified*. See **Petitioners' Exhibit 4** (ALISH Map), attached hereto.

3. Land Study Bureau

The Land Study Bureau (“**LSB**”) rating system is based on the agricultural productivity of soils throughout the State, accounting for characteristics such as texture, slope, salinity, erodibility, and rainfall. The productivity ratings are used to designate each area as Class A, B, C, D, or E, with Class A representing the most productive soils and Class E representing the least productive soils. Class E soils are considered “very poor” for agricultural production.

All of the soils within the Petition Area have been classified “**E**” by the LSB overall master productivity rating system. See **Petitioners' Exhibit 5** (LSB Map) , attached hereto.

4. Flood and Drainage

The Puna District receives an average of approximately 124 inches of rain annually, with most falling during the winter. According to the Flood Insurance Rate Map (“**FIRM**”) prepared by the Federal Emergency Management Agency, National Flood Insurance Program, the vast majority of the Petition Area is within the “X” Flood Zone. See **Petitioners' Exhibit 6** (FIRM Map), attached hereto. This means that this portion of the Petition Area is outside the 0.2 percent-annual-chance (500-year) flood zone.

A small portion of the Petition Area along the shoreline is within the “VE” Flood Zone, with a base flood elevation of fifteen (15) feet. See *id.* The “VE” Flood Zone, also known as the Coastal High Hazard Area, is the area subject to high velocity water including waves and tsunamis, and is defined by the 1% annual chance (base) flood limits and wave effects of three

(3) feet or greater. No development activities are proposed within this portion of the Petition Area.

5. Topography

U.S. Geological Survey maps and Google Earth images indicate that elevations within the Petition Area range from 12 to 25 feet above mean sea level. Further details regarding the topography of the Petition Area and its impact on development of the Project will be provided in the Amended Petition.

VIII. ASSESSMENT OF IMPACTS

HAR § 15-15-50(c)(11): An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area. If required by chapter 343, HRS, either a finding of no significant impact after a review of an environmental assessment or an environmental impact statement conforming to the requirements of chapter 343, HRS, must be filed.

As discussed *supra*, Petitioners intend to prepare an EA to assess the potential impacts of the Project, and to identify appropriate mitigation measures for those impacts. Upon the completion of the EA process, and the anticipated issuance of a Finding of No Significant Impact by the Commission, Petitioners will file an Amended Petition that will fully address the impacts assessment required under HAR § 15-15-50(c)(11).

An assessment of the anticipated impacts from the development of the Project will be provided through detailed studies, which will be incorporated into the Draft EA, including, but not necessarily limited to: (i) an Archeological Inventory Survey; (ii) a Cultural Impact Assessment; (iii) a Biological Study; (iv) a Coastal Erosion Study; and (v) a Volcanic Hazard Study. At this preliminary stage of the planning process, Petitioners have started but not completed their planned scientific studies.

IX. AVAILABILITY OF PUBLIC SERVICES AND FACILITIES

HAR § 15-15-50(c)(12): Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or reclassification.

A. EDUCATIONAL AND RECREATIONAL RESOURCES

Regarding the availability of educational resources, the Hawai‘i State Department of Education (“**DOE**”) operates the following public schools in the vicinity of the Petition Area: (1) Kea‘au Elementary School; (2) Kea‘au Intermediate/Middle School; and (3) Kea‘au High School. See **Petitioners’ Exhibit 7** (DOE Map for Hawai‘i County), attached hereto.

The Puna District experiences a high demand for coastal recreation, especially in calmer shoreline areas near population centers. Despite the long coastline, there are few beaches in Puna and none in the vicinity of the Petition Area. Along most of the Puna shoreline, ocean recreation consists primarily of fishing from the cliffs. There is moderate use of the rough and irregular shoreline in this area.

Existing parks and other recreational resources in close proximity to the Petition Area include two undeveloped shoreline park sites within Hawaiian Paradise Park. Within the greater Puna District, recreational opportunities include, *inter alia*, Hawai‘i Volcanoes National Park, MacKenzie State Recreation Area, Lava Tree State Monument, and an undeveloped State parcel located adjacent to Honolulu Landing. The County-owned Isaac Kepo‘okalani Hale Beach Park also recently reopened on December 6, 2018 after being affected by the Kilauea eruptions.

Maps of public access produced by the County of Hawai‘i do not indicate any nearby official mauka-makai shoreline public accesses along Paradise Ala Kai Drive (<http://www.hawaiicounty.gov/pl-shoreline-access-big-island>). However, an unpaved road

located at the north end of Paradise Ala Kai Drive provides pedestrian access to the coast where one can then walk south along the coastline.

B. WASTEWATER SYSTEMS

The Project proposes the construction of an underground individual wastewater system (“IWS”). The IWS (septic) will be designed by a licensed engineer and approved by the State of Hawai‘i Department of Health.

C. SOLID WASTE DISPOSAL

The forthcoming Draft EA will discuss how construction materials, cleared and grubbed materials, and other materials will be disposed of during and after construction of the Project, including details such as whether privately-owned or government haulers will be used and whether there will be any impact on existing solid waste collection/disposal services and facilities. Upon completion of the Project, solid waste disposal and recycling will be provided by a private collection service, as the County does not offer curbside collection.

D. DRAINAGE

At the time development of the Project is commenced, Petitioners and their engineer will determine whether the area of disturbance is sufficiently large to require a County grading permit or National Pollutant Discharge Elimination System permit. Plans for grading the driveway and dwelling lot will seek to minimize the potential for sedimentation, erosion and pollution of coastal waters.

The general shoreline area in Hawaiian Paradise Park already supports a significant number of homes and is utilized by residents and the public to park vehicles and fish, and there are no reported water quality problems from these existing uses. Upon completion, Petitioners’ dwelling would be similar to the existing dwellings on shoreline lots in the area, and is not expected to contribute to sedimentation, erosion, or pollution of coastal waters.

E. WATER

Presently, Petitioners' intent is that the Project will receive its potable water from a potable well drilled on site, with treatment through a reverse-osmosis or similar purification system. However, in the event that an on-site well proves to be impracticable or unfeasible, the Project will alternatively utilize a catchment system similar to the ones used throughout the Hawaiian Paradise Park subdivision.

F. TRANSPORTATION SYSTEMS

The Petition Area is in relatively close proximity to Highway 130/Kea'au-Pahoa Road, which falls under the jurisdiction of the State of Hawai'i Department of Transportation. Access to the Petition Area is provided via Paradise Ala Kai Drive, which can be reached directly from Highway 130 via Paradise Drive, as well as indirectly via Kaloli Drive. The Petition Area is not currently served directly by Hele-On Bus, the County's public bus service.

G. PUBLIC UTILITIES

Electrical power to all of the lots in the vicinity of the Petition Area is provided by HELCO on overhead poles, which also support landline telephone service. However, Petitioners intend to install a photovoltaic solar system that will allow the Project to be powered completely, or at least partially, "off-grid."

H. POLICE, FIRE, EMERGENCY MEDICAL SERVICES

Police services are provided to the Petition Area via the Hawai'i County Police Department's Pahoa Station, which is located approximately 9.3 miles from the Petition Area at 15-2615 Kea'au-Pāhoa Road, Pāhoa, Hawai'i 96778. Hawai'i County Fire Department Station 18 is located within the Hawaiian Paradise Park subdivision approximately 3.7 miles from the Petition Area at 151575 Paradise Drive, Kea'au, Hawai'i 96749.

The closest hospital is the Hilo Medical Center, which is located approximately 20.6 miles from the Petition Area. Emergency medical services are provided through the Hawai'i County Fire Department and American Medical Response, and medical services are also available through the Puna Community Medical Center located approximately 9.6 miles from the Petition Area.

I. CIVIL DEFENSE

The County of Hawai'i Civil Defense Agency is responsible for administering and operating various local, state, and federal civil defense programs for the County. This includes planning, preparing and coordinating civil defense operations in meeting disaster situations and coordinating post-disaster recovery operations. The forthcoming Draft EA and related consultation will determine whether there are any specific civil defense concerns; however, none are anticipated.

J. PUBLIC AGENCIES

The forthcoming Draft EA will discuss whether the Project will affect population parameters in such a way as to have significant effects on public agencies. Specifically, the Draft EA will discuss whether the Project will generate a need for additional recreational/education facilities and services, and whether the Project calls for an expansion of existing emergency medical services in the area. However, given that the Project involves only the construction of one (1) dwelling, it is not anticipated to have any significant effects on public agencies.

X. LOCATION AND ADJACENT LAND USE DISTRICTS

HAR § 15-15-50(c)(13): Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment.

The Petition Area is located on the flank of Kilauea in the ahupua‘a of Kea‘au within the Puna District. The Petition Area is flanked by similarly sized parcels, one of which contains an existing dwelling, and is adjacent to Paradise Ala Kai Drive on its mauka side and the Pacific Ocean on its makai side. With the exception of two County-owned parcels¹ and four privately-owned parcels² (at the southern end of the subdivision), the Petition Area is surrounded entirely by lands already within the SLU Agricultural District.

As discussed *supra*, virtually all of the land surrounding the Petition Area was reclassified from the SLU Conservation District to the SLU Agricultural District in 1977. Although the Petition Area was originally included in those proceedings, it was later removed because the Commission was unable to obtain the participation of the then-owner of the Petition Area. Since the 1977 reclassification, many of the reclassified lots have been developed with dwellings and others will presumably be similarly developed in the future.

The Puna District has been the County’s fastest-growing district over the last thirty years. Population as measured in the 2010 U.S. Census was 45,326, a 66 percent increase over the 2000 count of 27,232. The basis of the economy of Puna has evolved from cattle ranching and sugar to diversified agriculture, various services for the growing populations commuting to Hilo, and tourism, which has been stimulated by being home to Kilauea, one of the world’s most active volcanoes. Many Puna subdivisions, including Hawaiian Paradise Park, are now partially bedroom communities for Hilo’s workforce.

XI. ECONOMIC IMPACTS OF THE PROPOSED BOUNDARY AMENDMENT

HAR § 15-15-50(c)(14): Economic impacts of the proposed reclassification, use, or development including, without limitation,

¹ The two County-owned parcels are currently identified by TMK Nos. (3) 1-5-057:001 and (3) 1-5-059:047.

² The four Privately-owned parcels are currently identified by TMK Nos. (3) 1-5-031:059, 065, and (3) 1-5-032:030, 032.

the provision of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county of and State.

The Project will have a small but positive economic impact for the County. Development of the Project would increase the tax base, create temporary construction jobs for local residents, and boost the economy through construction industry purchases from local suppliers. When a multiplier effect is taken into consideration, this positive impact would be magnified, as construction employees will spend their construction-related income for food, housing, and other living expenses in the retail sector of the economy. These activities are consistent with and in furtherance of the overall economic development of the County.

The Project will not adversely impact agricultural production in the vicinity of the Petition Area, the County, or the State. The Project consists of a single dwelling that will include an agricultural component, and will not disturb existing agricultural uses or impede any potential future agricultural uses.

A. HOUSING NEEDS OF LOW INCOME, LOW-MODERATE INCOME AND GAP GROUPS

HAR § 15-15-50(c)(15): A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups.

As the Project consists of one (1) dwelling, its development will neither create a need for additional affordable housing nor adversely affect the existing affordable housing stock. The Project is not subject to the County's affordable housing requirements under the Hawai'i County Code ("HCC"). See HCC § 11-4(a) & (b).

XII. ASSESSMENT OF NEED FOR RECLASSIFICATION

HAR § 15-15-50(c)(16): An assessment of need for the reclassification based upon the relationship between the use or development proposed and other projects existing or proposed for

the area and consideration of other similarly designated land in the area;

Petitioners seek to have the Petition Area reclassified from the SLU Conservation District to the SLU Agricultural District. HAR § 15-15-19 sets forth the standards used by the Commission for determining SLU Agricultural District boundaries, and provides, in pertinent part, that Agricultural Districts “may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics[.]”³ As discussed *supra*, the soils within the Petition Area are not well suited for agricultural purposes.

As also discussed *supra*, virtually all of the land surrounding the Petition Area was reclassified from the SLU Conservation District to the SLU Agricultural District in 1977. Although the Petition Area was originally included in those proceedings, it was later removed because the Commission was unable to obtain the participation of the then-owner of the Petition Area. Since the 1977 reclassification, many of the reclassified lots have been developed with dwellings and others will presumably be similarly developed in the future.

³ HAR § 15-15-19 provides, in full, as follows:

Except as otherwise provided in this chapter, in determining the boundaries for the “A” agricultural district, the following standards shall apply:

- (1) It shall include lands with a high capacity for agricultural production;
- (2) It may include lands with significant potential for grazing or for other agricultural uses;
- (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics; and
- (4) It shall include all lands designated important agricultural lands pursuant to part III of chapter 205, HRS.

As HAR § 15-15-19(1), (2) and (4) do not apply to proposed use of the Petition Area, they are not further discussed herein.

Development of the Project would, therefore, be consistent with both the standards for determining the boundaries of the SLU Agricultural District and the historical uses of the neighboring SLU Agricultural District lands.

XIII. CONFORMITY OF THE RECLASSIFICATION TO THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI‘I STATE PLAN, PRIORITY GUIDELINES AND FUNCTIONAL PLANS POLICIES

HAR § 15-15-50(c)(17): An assessment of conformity of the boundary amendment to applicable goals, objectives, and policies of the Hawai‘i state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies.

The Hawai‘i State Planning Act, found in HRS Chapter 226 (the “**State Plan**”), is a comprehensive guide for the future long-range development of the State of Hawai‘i. Among other things, the State Plan’s purposes are to identify the goals, objectives, policies, and priorities for the State of Hawai‘i, provide a basis for allocating limited resources, and improve coordination between Federal, State and County agencies. The three themes underlying the State Plan are: (1) individual and family self-sufficiency; (2) social and economic mobility; and (3) community or social well-being. *See* HRS § 226-3.

The State Plan also provides numerous State goals and specific objectives and policies to achieve those goals. The State goals include a strong, viable, stable and diverse economy, the development of physical environments that are beautiful, clean and unique, and that enhance the mental and physical well-being of the residents, and the physical, social, and economic well-being for the people of Hawai‘i that nourishes a sense of community responsibility and participation. *See* HRS § 226-4. The development of the Project will further the above-described goals of the State Plan.

A detailed analysis of the Project’s conformance with the objectives, policies, priority guidelines and Functional Plans of the State Plan will be provided in the forthcoming Draft EA,

as required under Chapter 343, HRS. A more streamlined analysis of the Project's conformance with specific State Plan objectives and policies is provided below.

A. GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN

The proposed DBA conforms to the following goals, objectives and policies of the State Plan:

1. HRS § 226-4 – State Goals

- (1) A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations.*
- (2) A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.*
- (3) Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life.*

2. HRS § 226-5 – Objectives and Policies for Population

- (b)(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.*
- (b)(3) Promote increased opportunities for Hawai'i 's people to pursue their socio-economic aspirations throughout the islands.*

3. HRS § 226-6 – Objective and Policies for the Economy in General

- (a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people, while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.*
- (b)(9) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.*
- (b)(11) Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.*

(b)(14) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

4. HRS § 226-11 – Objectives and Policies for the Physical Environment - Land-based, Shoreline, and Marine Resources

(a)(1) Prudent use of Hawaii's land-based, shoreline, and marine resources.

(a)(2) Effective protection of Hawaii's unique and fragile environmental resources.

(b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

5. HRS § 226-12 – Objective and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources

(b)(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.

(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

The Project is in conformance with the above-quoted goals, objectives, and policies of the State Plan, HRS §§ 226-4, 226-5, 226-6, 226-11 and 226-12 in several respects. First, with respect to HRS § 226-4, the Project involves the construction of a modest single-story dwelling and related agricultural uses that are in harmony with and maintain an existing physical environment that is beautiful, clean, quiet, and unique.

Second, with respect to HRS §§ 226-5 and 226-6, the Project will have a positive economic impact for the County through an increase in the tax base and the employment and sales generated by construction. When a multiplier effect is taken into consideration, this positive impact will be magnified.

Third, with respect to HRS § 226-11, the Project's design and planning takes into account the physical attributes of the Petition Area and neighboring lands. The dwelling will be sited

towards the ocean, but well behind the shoreline area of the Petition Area, and any development on the Petition Area will be set back outside the lava shelf and shoreline shrub zones, thus avoiding these resources. Once completed, the Project will be in harmony with the existing homes along the coast in Hawaiian Paradise Park.

Finally, with respect to HRS § 226-12, no designated scenic vistas or viewplanes will be affected by the Project. There are some intermittent scenic views of the shoreline and sea along Paradise Ala Kai between the numerous existing homes. Currently, heavy vegetation blocks all views through the Petition Area and development of the Project will likely open up at least some coastal views.

B. HAWAII STATE PLAN PRIORITY GUIDELINES

The proposed DBA and Project conforms to the following goals, objectives and policies of the State Plan Priority Guidelines:

1. HRS § 226-103 – Economic Priority Guidelines

HRS § 226-103(a)(1) Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.

a. Encourage investments which:

- (i) Reflect long term commitments to the State;*
- (ii) Rely on economic linkages within the local economy;*
- (iii) Diversify the economy;*
- (iv) Re-invest in the local economy;*
- (v) Are sensitive to community needs and priorities; and*
- (vi) Demonstrate a commitment to management opportunities to Hawai'i residents.*

2. HRS § 226-104 – Population Growth and Land Resources Priority Guidelines

(a)(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai'i's people.

(b)(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

(b)(2) Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

(b)(12) Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations.

The Project is in keeping with the State Plan Priority Guidelines in several respects.

First, the Puna District has been the County's fastest-growing district over the last thirty years.

Second, the Hawaiian Paradise Park subdivision already has a significant number of existing

dwellings, including along the coastline, and new dwellings continue to be built. Third, as

discussed *supra*, the Petition Area's soils are generally poorly suited for agricultural uses,

thereby making the Petition Area marginal, non-essential agricultural land that is appropriate for

the Project.

C. STATE FUNCTIONAL PLANS

The State Plan calls for the creation of functional plans to further define and implement the statewide goals, objectives, and policies set forth under the State Plan. *See* HRS § 226-56.

Developed in the late 1980s and early 1990s, the State Functional Plans (the "SFPs") are the

primary guidance tools for implementing the State Plan. While the State Plan establishes long-

term objectives for the State of Hawai‘i, the SFPs are intended to identify major State-wide concerns, define current strategies, identify major relationships and provide strategies for departmental policies, programs, and priorities. The reclassification requested by Petitioners is consistent with the following specific SFPs.

1. Energy Functional Plan

The current Energy Functional Plan (“**EFP**”) was prepared by the State of Hawai‘i, Department of Business, Economic Development and Tourism in 1991. The EFP recognizes the “[d]evelopment of alternative and renewable energy resources is essential for the displacement of oil and other fossil fuels as Hawaii’s primary energy source.” To that end, the EFP sets as an objective the “displace[ment of] oil and fossil fuels through alternate and renewable energy sources” (Objective B). As discussed above, Petitioners intend to install a photovoltaic solar system that will allow the Project to be powered completely, or at least partially, “off-grid.”

2. Agricultural Functional Plan

The current Agricultural Functional Plan (“**AFP**”) was prepared by the State of Hawai‘i, Department of Agriculture in 1991. The AFP set as an objective the “achievement of optimal contribution by agriculture to the state’s economy” (Objective D). More specifically, the AFP calls for the determination of “alternative agricultural uses of the land, water, infrastructure, and human resources presently committed to sugarcane and pineapple production” (Action D(1)(c)).

The Petition Area has never been used for commercial sugar or pineapple production. The reclassification requested by Petitioners will support an “alternative agricultural use” of the land by providing a dwelling lot with the opportunity to conduct small-scale farming or other similar agricultural uses. For these reasons, reclassification of the Petition Area is consistent with the policies and objectives of the State Plan and the AFP.

XIV. CONFORMITY OF THE RECLASSIFICATION TO THE OBJECTIVES AND POLICIES OF THE COASTAL ZONE MANAGEMENT PROGRAM

HAR § 15-15-50(c)(18): An assessment of the conformity of the boundary amendment to objectives and policies of the coastal zone management program, chapter 205A, HRS.

Hawai‘i’s Coastal Zone Management Program ("CZMP"), found in HRS Chapter 205A, establishes numerous objectives, policies, and standards to guide and regulate public and private uses in the Coastal Zone Management Area. The Petition Area is within the County Special Management Area. The Project conforms to the following objectives and policies of the CZMP:

A. HISTORIC RESOURCES.

Objective: *Protect, preserve and, where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

Policies: *(a) Identify and analyze significant archeological resources;*

(b) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(c) Support state goals for protection, restoration, interpretation, and display of historic resources.

The Project is not expected to have an adverse effect on historical, cultural and archaeological resources. As discussed *supra*, an Archaeological Inventory Survey and Cultural Impact Assessment will be prepared as a part of the forthcoming Draft EA.

B. ECONOMIC USES.

Objective: *Provide public or private facilities and improvements to the State's economy in suitable locations.*

Policies: *(a) Concentrate coastal development in appropriate areas;*

(b) Ensure that coastal development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located, designed, and constructed

to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(c) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-terms growth at such areas, and permit coastal dependent development outside of presently designated areas when:

(i) Use of presently designated locations is not feasible;

(ii) Adverse environmental effects are minimized; and

(iii) The development is important to the State's economy.

The Petition Area is situated along the coastline in Hawaiian Paradise Park. As discussed *supra*, Hawaiian Paradise Park has been in continual stages of development for decades and a significant number of shoreline lots within Hawaiian Paradise Park already have dwellings of similar size to the Project. In addition, the Project will provide a small, but positive economic benefits to the County through an increase in the tax base, and employment and sales generated by construction of the Project. Therefore, the Project is consistent with the CZMP's objective and policies for economic uses.

C. COASTAL HAZARDS.

Objectives: *Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.*

Policies: *(a) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and non-point source pollution hazards;*

(b) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, point and non-point pollution hazards;

(c) Ensure that developments comply with requirements of the Federal Flood Insurance Program;

(d) Prevent coastal flooding from inland projects; and

(e) Develop a coastal point and non-point source pollution control program.

As discussed *supra*, the majority Petition Area is located in Flood Zone “X,” which represents areas outside of the 0.2% annual chance flood plain. *See* Petitioners’ Exhibit 6. A small portion of the Petition Area along the shoreline is within the “VE” Flood Zone (also known as the Coastal High Hazard Area), which is the area subject to high velocity water including waves and tsunamis, and is defined by the 1% annual chance (base) flood limits and wave effects of three (3) feet or greater. *See id.* However, no development activities are proposed within the portion of the Petition Area located in the “VE” Flood Zone.

As also discussed *supra*, a Coastal Erosion Study and Volcanic Hazard Study will be prepared in connection with the forthcoming Draft EA. The findings of these studies will be incorporated into the Amended Petition.

The Petition Area is within the County’s tsunami inundation zone and is subject to tsunami evacuation. However, dwellings are very common along this portion of the coastline, and the Project does not present any extraordinary tsunami risks.

At the appropriate time, Petitioners and their engineer will determine whether the Project will require a County grading permit or National Pollutant Discharge Elimination System permit. Plans for grading the driveway and dwelling lot will seek to minimize the potential for sedimentation, erosion and pollution of coastal waters.

The general shoreline area in Hawaiian Paradise Park already supports a significant number of dwellings, and is utilized by residents and the public to park vehicles and fish, and there are no reported water quality problems from these uses. Upon its completion, the Project would be similar to the existing dwellings on shoreline lots in this area and is not anticipated to contribute to sedimentation, erosion, or pollution of coastal waters.

D. BEACH PROTECTION.

Objective: *Protect beaches for public use and recreation.*

Policies: (a) *Locate structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;*

(b) *Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and*

(c) *Minimize the construction of public erosion-protection structures seaward of the shoreline.*

As discussed *supra*, a Coastal Erosion Study will be prepared in connection with the forthcoming Draft EA. The findings of this study will be incorporated into the Amended Petition.

E. MARINE RESOURCES.

Objective: *Implement the State's ocean resources management plan.*

Policies: (a) *Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*

(b) *Assure the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;*

(c) *Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;*

(d) *Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;*

(e) *Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and*

(f) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

At the time development of the Project is commenced, Petitioners and their engineer will determine whether the area of disturbance is sufficiently large to require a County grading permit or National Pollutant Discharge Elimination System permit. Plans for grading the driveway and dwelling lot will seek to minimize the potential for sedimentation, erosion and pollution of coastal waters.

F. PUBLIC PARTICIPATION.

Objective: *Stimulate public awareness, education, and participation in coastal management.*

Policies: *(a) Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management.*

(b) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and

(c) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

As a part of the Draft EA process, Petitioners will engage in outreach efforts with community organizations, groups, interested individuals, as well as with County and State agencies. This outreach will occur during both the early consultation process and through the publication and dissemination of the Draft EA to all relevant County, State and Federal agencies and organizations, as well as community organizations, interested individuals, and elected officials.

XV. CONFORMITY OF THE RECLASSIFICATION TO THE COUNTY GENERAL PLAN, COMMUNITY PLANS, AND ZONING DESIGNATIONS AND POLICIES

HAR § 15-15-50(c)(19): An assessment of conformity of the boundary amendment to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required.;

The relevant County plans are the Hawai‘i County General Plan (the “**General Plan**”) and Puna Community Development Plan (the “**Puna CDP**”). The proposed DBA is in conformity with the General Plan and the Puna CDP.

A. County General Plan

The General Plan sets forth the County’s long range policy for the comprehensive physical, economic, environmental, and socio-cultural well-being of the County. *See* Hawai‘i County Charter § 3-15. The General Plan was adopted in 1989 and most recently revised in 2005. The General Plan’s Land Use Pattern Allocation Guide map classifies the entire coastline of Hawaiian Paradise Park, including the Petition Area, as “Open Area.” As discussed *supra*, there is already a significant number of dwellings along this stretch of the coastline and the Project will be in harmony with these existing dwellings.

The General Plan is organized into thirteen elements, each with its own set of policies, objectives, standards, and principles. The General Plan also includes discussions of the specific applicability of each element to the nine judicial districts comprising the County of Hawai‘i. The Project and proposed DBA are consistent with the following objectives and policies.

1. Economic Goals

(a) Provide residents with opportunities to improve their quality of life through economic development that enhances the County’s natural and social environments.

(b) Economic development and improvement shall be in balance with the physical, social, and cultural environments of the island of Hawaii.

- ...
- (d) Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural, and social environment.*

The proposed DBA and Project are consistent with the foregoing economic goals of the General Plan. Development of the Project would increase the tax base, create temporary construction jobs for local residents, and boost the economy through construction industry purchases from local suppliers. When a multiplier effect is taken into consideration, this positive impact would be magnified, as construction employees will spend their construction-related income for food, housing, and other living expenses in the retail sector of the economy. These activities are consistent with and in furtherance of the overall economic development of the County.

2. Environmental Quality Goals

- (a) Define the most desirable use of land within the County that achieves an ecological balance providing residents and visitors the quality of life and an environment in which the natural resources of the island are viable and sustainable.*
- (b) Maintain and, if feasible, improve the existing environmental quality of the island.*
- (c) Control pollution.*

3. Environmental Quality Policies

- (a) Take positive action to further maintain the quality of the environment.*

4. Environmental Quality Standards

- (a) Pollution shall be prevented, abated, and controlled at levels that will protect and preserve the public health and well being, through the enforcement of appropriate Federal, State and County standards.*
- (b) Incorporate environmental quality controls either as standards in appropriate ordinances or as conditions of approval.*
- (c) Federal and State environmental regulations shall be adhered to.*

The proposed DBA and Project are consistent with the foregoing environmental goals, policies, and standards of the General Plan, and would not have a substantial adverse effect on the environment or diminish the valuable natural resources of the region. The proposed dwelling, related agricultural uses, and associated improvements would be compatible with the existing dwellings and uses throughout the Hawaiian Paradise Park subdivision and the greater community. All pertinent environmental regulations would be followed, including those relating to the mitigation of any potential water quality impacts.

5. Historic Sites Goals

(a) Protect, restore, and enhance the sites, buildings, and objects of significant historical and cultural importance to Hawaii.

(b) Appropriate access to significant historic sites, buildings, and objects of public interest should be made available.

6. Historic Sites Policies

(a) Agencies and organizations, either public or private, pursuing knowledge about historic sites should keep the public apprised of projects.

(b) Amend appropriate ordinances to incorporate the stewardship and protection of historic sites, buildings and objects.

(c) Require both public and private developers of land to provide historical and archaeological surveys and cultural assessments, where appropriate, prior to the clearing or development of land when there are indications that the land under consideration has historical significance.

(d) Public access to significant historic sites and objects shall be acquired, where appropriate.

As discussed *supra*, Petitioners will be preparing both an Archeological Inventory Survey and Cultural Impact Assessment as a part of the Draft EA process. The forthcoming Draft EA will discuss in detail the findings of both studies, including details regarding: (1) the presence of historical or archaeological resources within the Petition Area; (2) whether the Petition Area has been used for traditional cultural purposes within recent times; and (3) whether the Project will

affect the exercise of any Hawaiian traditional or customary activities, including activities related to gathering, access, or other customary activities.

7. Flood Control And Drainage Goals

- (a) Protect human life.*
- (b) Prevent damage to man-made improvements.*
- (c) Control pollution.*
- (d) Prevent damage from inundation.*
- (e) Reduce surface water and sediment runoff.*
- (f) Maximize soil and water conservation.*

8. Flood Control and Drainage Policies

- (a) Enact restrictive land use and building structure regulations in areas vulnerable to severe damage due to the impact of wave action. Only uses that cannot be located elsewhere due to public necessity and character, such as maritime activities and the necessary public facilities and utilities, shall be allowed in these areas.*

...

- (g) Development-generated runoff shall be disposed of in a manner acceptable to the Department of Public Works and in compliance with all State and Federal laws.*

9. Flood Control and Drainage Standards

- (a) "Storm Drainage Standards," County of Hawaii, October, 1970, and as revised.*
- (b) Applicable standards and regulations of Chapter 27, "Flood Control," of the Hawaii County Code.*
- (c) Applicable standards and regulations of the Federal Emergency Management Agency (FEMA).*
- (d) Applicable standards and regulations of Chapter 10, "Erosion and Sedimentation Control," of the Hawaii County Code.*

(e) Applicable standards and regulations of the Natural Resources Conservation Service and the Soil and Water Conservation Districts.

The dwelling will be sited towards the ocean, but well behind the shoreline area of the Petition Area, and any development on the Petition Area will be set back outside the lava shelf and shoreline shrub zones, thus avoiding these resources. This would keep the Project entirely within the portion of the Petition Area in the “X” Flood Zone or outside of the 500-year floodplain as determined by detailed methods in the Flood Insurance Rate Maps (FIRM). See Petitioners’ Exhibit 6. The project will conform to all applicable County drainage regulations and policies.

10. Natural Beauty Goals

(a) Protect, preserve and enhance the quality of areas endowed with natural beauty, including the quality of coastal scenic resources.

(b) Protect scenic vistas and view planes from becoming obstructed.

(c) Maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty.

11. Natural Beauty Policies

(a) Increase public pedestrian access opportunities to scenic places and vistas.

(b) Develop and establish view plane regulations to preserve and enhance views of scenic or prominent landscapes from specific locations, and coastal aesthetic values.

The Project would be consistent with the long-standing uses and developments within Hawaiian Paradise Park, and would not cause any adverse impacts to its scenic value or impede public access.

12. Natural Resources and Shorelines Goals

- (a) Protect and conserve the natural resources from undue exploitation, encroachment and damage.*
- (b) Provide opportunities for recreational, economic, and educational needs without despoiling or endangering natural resources.*
- (c) Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.*
- (d) Protect rare or endangered species and habitats native to Hawaii.*
- (e) Protect and effectively manage Hawaii's open space, watersheds, shoreline, and natural areas.*
- (f) Ensure that alterations to existing land forms, vegetation, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of an earthquake.*

13. Natural Resources and Shorelines Policies

- (a) Require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse effects on the environment.*
- (c) Maintain the shoreline for recreational, cultural, educational, and/or scientific uses in a manner that is protective of resources and is of the maximum benefit to the general public.*
- (d) Protect the shoreline from the encroachment of man-made improvements and structures.*
- (h) Encourage public and private agencies to manage the natural resources in a manner that avoids or minimizes adverse effects on the environment and depletion of energy and natural resources to the fullest extent.*
- (p) Encourage the use of native plants for screening and landscaping.*
- (r) Ensure public access is provided to the shoreline, public trails and hunting areas, including free public parking where appropriate.*

(u) Ensure that activities authorized or funded by the County do not damage important natural resources.

The dwelling will be sited towards the ocean, but well behind the shoreline area of the Petition Area, and any development on the Petition Area will be set back outside the lava shelf and shoreline shrub zones. This location and orientation would ensure that the dwelling and associated facilities would not affect shoreline resources or be damaged by waves or tides.

B. THE PUNA CDP

The Puna CDP was first adopted as Ordinance No. 08-116 on September 10, 2008, and later amended by successive actions through Ordinance No. 10-104 on November 4, 2010, Ordinance Nos. 11-51, 11-52, and 11-53 on June 8, 2011, and Ordinance Nos. 11-117 and 11-118 on December 6, 2011.

Through an extensive public involvement process, the Puna CDP identifies the following three overarching themes that correspond with the top three issues faced in the region:

- **Mālama I Ka ‘Āina** establishes how the contextual natural, historic and cultural features of Puna should be preserved and respected. The goals, objectives and implementing actions under this theme address cultural and historic sites and districts; forest lands and unique geological features; scenic resources; and drainage, aquifers and coastal water quality.
- **Growth Management** addresses how the future pattern of human settlement and land use should be shaped to respect that context and support the desired quality of life for Puna’s residents. The goals, objectives and implementing actions under this theme address the land use pattern; agricultural and economic development; public services, social services and housing; parks and recreation; and renewable energy and energy efficiency.
- **Transportation** focuses on sustainable approaches to transportation to support the goals of the two above themes. The goals, objectives and implementing actions under this theme address mass transit and alternative travel modes, travel demand management and roadway connectivity and safety.

The development of the Project is consistent with the following goals, objectives, policies and standards of the Puna CDP.

1. Managing Growth

Goal: Puna retains a rural character while it protects its native natural and cultural resources The quality of life improves and economic opportunity expands for Puna's residents Exposure to high risk from natural hazards situations is reduced Native vegetation, coastal and historic resources are provide new forms of protection Inappropriate and disproportionate County zoning can be adjusted in order to maintain and increase the quality of life and to preserve valued natural and cultural resources in the district.

Objectives and Policies: Limit the size of dwellings and accessory uses that are allowed in non-conforming, agriculturally-zoned subdivisions to discourage excessive lot clearance and speculative building practices.

a. Analysis:

As demonstrated throughout this Petition, the Project is consistent with the Puna CDP's goals, objectives, and policies in regards to land use. The Project involves the construction of a modest dwelling that conforms to the objective of limiting the size of dwellings and accessory uses that are allowed in agriculturally-zoned subdivisions to discourage excessive lot clearance and speculative building practices. The proposed DBA and Project will not degrade the rural-agricultural character of the area, as the neighborhood is already composed of uses and dwellings of a similar size and style. In addition, the dwelling will be set back from the shoreline in order to reduce its exposure to coastal hazards. Further, based upon preliminary diligence and as will be more fully studied in the forthcoming EA, no native vegetation, rare species, coastal resources or historic sites are anticipated to be adversely affected by the Project.

2. Shoreline Area

Goal: Exposure of development to the risks of shoreline subsidence and coastal flooding is reduced.

Objectives and Policies: Expand the scope of regulations and review procedures for shoreline development to consider dynamic and interrelated potential hazards to development Strengthen the capacity of the County to identify important shoreline resources and evaluate development regulations and proposed developments in the shoreline area.

a. Analysis:

As demonstrated throughout this Petition, the Project is consistent with the Puna CDP's goals, objectives, and policies in regards to the Shoreline Area. Upon completion, the Project will be similar to the existing dwellings on shoreline lots in Hawaiian Paradise Park and is not anticipated to contribute to any potential hazards that larger shoreline developments may impose. In addition, as discussed *supra*, the proposed dwelling will be sited to reduce the risk of shoreline subsidence, coastal flooding and other related hazards.

C. COUNTY ZONING

The Petition Area is zoned A1-a (Agricultural with a minimum lot size of 1 acre) by the County of Hawaii. See **Petitioners' Exhibit 8** (County of Hawai'i Zoning Map), attached hereto. Development of the Project is consistent with the A-1a zoning district.

XVI. HAWAIIAN CUSTOMARY AND TRADITIONAL RIGHTS

HAR § 15-15-50(c)(21): A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution;

Petitioners are aware of, and sensitive to, the protections afforded to Native Hawaiian customary and traditional rights under Article XII, section 7 of the Hawai'i State Constitution. The forthcoming Draft EA will discuss the findings of the Cultural Impact Assessment that will be prepared for the Project, which will include details about whether the Petition Area has been used for traditional cultural purposes within recent times, and whether the Project will affect the exercise of any Hawaiian traditional or customary activities, including activities related to gathering, access, and other customary activities.

XVII. WRITTEN COMMENTS

HAR § 15-15-50(c)(22): Any written comments received by the petitioner from governmental and non-governmental agencies,

organizations, or individuals in regards to the proposed boundary amendment.

As a part of the Draft EA process under HRS Chapter 343, Petitioners will engage in outreach efforts with community organizations, groups, interested individuals, as well as with County and State agencies. This outreach will occur during both the early consultation process and through the publication and dissemination of the Draft EA to all relevant County, State and Federal agencies and organizations, as well as community organizations, interested individuals, and elected officials.

XVIII. NOTIFICATION OF PETITION FILING

HAR § 15-15-50(c)(23): A copy of the notification of petition filing pursuant to [HAR § 15-15-50(d)].

Attached hereto as **Petitioners' Exhibit 9**, and incorporated herein by reference, is a true and correct copy of the Notification of Petition Filing of this Petition, required under HAR § 15-15-50(d). Copies of said Notification were sent to all persons included on the mailing lists provided by the Commission's Chief Clerk.

XIX. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that at an appropriate time, upon completion of the HRS Chapter 343 environmental review process and Petitioner's filing of the Amended Petition, this Commission find that the Amended Petition complies with the necessary requirements of a petition for a DBA pursuant to HAR § 15-15-50. At that time, Petitioners shall also respectfully request that the Commission find that the proposed development of the Petition Area for the Project meets the standards for determining the SLU Agricultural District boundaries pursuant to HAR § 15-15-19 and, therefore, grant the requested reclassification of the Petition Area.

DATED: Honolulu, Hawai'i, December 19, 2018.



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DATED NOVEMBER 15, 2006