

CARLSMITH BALL LLP

STEVEN S.C. LIM 2505
DEREK B. SIMON 10612
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813
Tel. No.: (808) 523-2500
Facsimile No.: (808) 523-0842



Attorneys for Petitioners
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 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. A18-806

AFFIDAVIT OF DEREK B. SIMON;
EXHIBITS "A"-"E"; CERTIFICATE OF
SERVICE

AFFIDAVIT OF DEREK B. SIMON

DEREK B. SIMON, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys for Petitioners KEVIN M. BARRY AND MONICA S. BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006 (“**Petitioners**”), licensed to practice in the State of Hawai'i, duly authorized to make this affidavit, and do so upon personal knowledge and belief. I have personal knowledge of the matters set forth herein and am qualified and competent to make this affidavit.

2. In compliance with Hawaii Administrative Rules (“**HAR**”) § 15-15-51(b), the Notice of Hearing attached hereto as **Exhibit “A”** was mailed to all recipients listed on the Land Use Commission’s (“**Commission**”) statewide mailing list, County of Hawai‘i mailing list, and electronic mail distribution list, all three (3) of which were obtained from the Commission’s Chief Clerk Riley Hakoda on January 21, 2021.

3. In compliance with HAR § 15-15-51(c), the Notice of Hearing was published in the Honolulu Star Advertiser, The Garden Island, Hawaii Tribune Herald, and West Hawaii Today on January 21, 2021, as evidenced by the Affidavit of Publication from Oahu Publications, Inc. (publisher of the foregoing newspapers) dated January 21, 2021, attached hereto as **Exhibit “B”**.

4. In further compliance with HAR § 15-15-51(c), the Notice of Hearing was published in The Maui Times on January 21, 2021. Attached hereto as **Exhibit C** is a copy of the Notice of Hearing as published in The Maui Times. However, Petitioners have not yet received the affidavit of publication from Maui Publishing Co., Limited, the publisher of The Maui News. Petitioners will file that affidavit immediately upon receipt.

5. In further compliance with HAR § 15-15-51(c), the Notice of Hearing was filed with the Lieutenant Governor’s office by electronic mail on February 9, 2021, and again by facsimile on February 16, 2021. *See* **Exhibit D** & **Exhibit E**, attached hereto.

DATED: Honolulu, Hawai'i, February 23, 2021.

A handwritten signature in black ink, appearing to read 'DSi', written over a horizontal line.

DEREK B. SIMON

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

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN of the hearing to be held by interactive video conference by the Land Use Commission of the State of Hawai'i to consider a petition for change of district boundaries as provided for in Section 205-4, Hawai'i Revised Statutes, as amended:

DATE, TIME AND PLACE:

Place: Zoom Webinar Virtual Meeting Registration-use link below

Wednesday, February 24, 2021 – 9:00 a.m.

Register in advance for this webinar:

https://us02web.zoom.us/webinar/register/WN_uaM4mMeOT3eZCfjj6itgg

Docket Number

and Petitioner: A18-806 - Kevin M. Barry and Monica S. Barry, Trustees of the Barry Family Trust Dated November 15, 2006

Tax Map Key: TMK (3) 1-5-059:059

Change Requested: To reclassify approximately 0.51 acres of land currently in the State Land Use Conservation District to the Agricultural District at Kea'au, Puna, Island, County and State of Hawai'i.

Maps showing the proposed district boundaries and copies of the Commission Rules governing the above petition may be inspected at the County of Hawai'i Planning Department's Hilo office located in the Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawai'i 96720, during its regular office hours from 7:45 a.m. to 4:30 p.m., Monday through Friday; and the Land Use Commission, Room 406, Leiopapa A Kamehameha Building, 235 So. Beretania Street, Honolulu, Hawai'i, 96813, during its regular office hours from 8:00 a.m. to 4:00 p.m., Monday through Friday.

All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.

All other persons may apply to the Commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the Commission or its hearings

EXHIBIT A

officer, if one is appointed, may deny an application to intervene when in the Commission's or hearings officer's sound discretion it appears that: (1) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (2) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to Section 91-14, HRS.

Petitions to intervene shall be in conformity with Section 15-15-52 of the Commission Rules. The petition for intervention with proof of service on all parties shall be filed with the Commission within fifteen (15) days after the publication of this notice.

All persons or individuals wishing to present testimony, orally or in writing, are requested to notify the Commission prior to the commencement of the hearing. Together with other witnesses that the Commission may desire to hear at the hearing, a representative of a citizen or a community group wishing to express the views of such citizen or community group concerning the proposed boundary amendment is requested to notify the Commission prior to the commencement of the hearing and may be requested to submit written evidence of authorization to represent the citizen or community group. It is suggested that such notification be submitted to the Commission no later than February 10, 2021.

Any party to the proceeding may be represented by legal counsel. An individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association.

For persons requesting special accommodations due to disabilities, please contact the Commission at 587-3822 or notify the Commission in writing at P. O. Box 2359, Honolulu, Hawai'i 96804-2359, at least 10 days before the scheduled hearing.

LAND USE COMMISSION
JONATHAN LIKEKE SCHEUER, Chairperson
By DANIEL ORODENKER, Executive Officer

AFFIDAVIT OF PUBLICATION

IN THE MATTER OF
NOTICE OF HEARING

STATE OF HAWAII }
 } SS.
City and County of Honolulu }

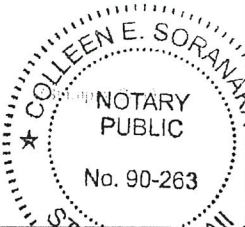
JAN 21 2021

Doc. Date: _____ # Pages: 1

Notary Name: COLLEEN E. SORANAKA First Judicial Circuit

Doc. Description: Affidavit of
Publication

Colleen E. Soranaka JAN 21 2021
Notary Signature Date



Lisa Sakakida being duly sworn, deposes and says that she is a clerk, duly authorized to execute this affidavit of Oahu Publications, Inc. publisher of The Honolulu Star-Advertiser, MidWeek, The Garden Island, West Hawaii Today, and Hawaii Tribune-Herald, that said newspapers are newspapers of general circulation in the State of Hawaii, and that the attached notice is true notice as was published in the

Honolulu Star-Advertiser 1 times on:
01/21/2021

MidWeek 0 times on:

The Garden Island 1 times on:
01/21/2021

Hawaii Tribune-Herald 1 times on:
01/21/2021

West Hawaii Today 1 times on:
01/21/2021

Other Publications: 0 times on:

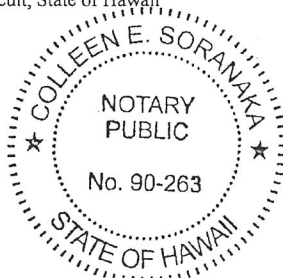
And that affiant is not a party to or in any way interested in the above entitled matter.

Lisa Sakakida
Lisa Sakakida

Subscribed to and sworn before me this 21 day of January A.D. 20 21

Colleen E. Soranaka
Colleen E. Soranaka, Notary Public of the First Judicial Circuit, State of Hawaii
My commission expires: Jan 06 2024

Ad # 0001311164



NOTICE OF HEARING

NOTICE IS HEREBY GIVEN of the hearing to be held by interactive video conference by the Land Use Commission of the State of Hawaii to consider a petition for change of district boundaries as provided for in Section 205-4, Hawaii Revised Statutes, as amended:

DATE, TIME AND PLACE:

Place: Zoom Webinar Virtual Meeting Registration-use link below

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<https://us02web.zoom.us/join/register/WNuaM4mMe0T3eZCfJl6itgg>

Docket Number

and Petitioner: A18-806 - Kevin M. Barry and Monica S. Barry, Trustees of the Barry Family Trust Dated November 15, 2006

Tax Map Key:

TMK (3) 1-5-059:059

Change Requested: To reclassify approximately 0.51 acres of land currently in the State Land Use Conservation District to the Agricultural District at Kea'au, Puna, Island, County and State of Hawaii.

Maps showing the proposed district boundaries and copies of the Commission Rules governing the above petition may be inspected at the County of Hawaii Planning Department's Hilo office located in the Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720, during its regular office hours from 7:45 a.m. to 4:30 p.m., Monday through Friday; and the Land Use Commission, Room 406, Leleopa A Kamehameha Building, 235 So. Beretania Street, Honolulu, Hawaii 96813, during its regular office hours from 8:00 a.m. to 4:00 p.m., Monday through Friday.

All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.

All other persons may apply to the Commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the Commission or its hearings officer, if one is appointed, may deny an application to intervene when in the Commission's or hearings officer's sound discretion it appears that: (1) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (2) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to Section 91-14, HRS.

Petitions to intervene shall be in conformity with Section 15-15-52 of the Commission Rules. The petition for intervention with proof of service on all parties shall be filed with the Commission within fifteen (15) days after the publication of this notice.

All persons or individuals wishing to present testimony, orally or in writing, are requested to notify the Commission prior to the commencement of the hearing. Together with other witnesses that the Commission may desire to hear at the hearing, a representative of a citizen or a community group wishing to express the views of such citizen or community group concerning the proposed boundary amendment is requested to notify the Commission prior to the commencement of the hearing and may be requested to submit written evidence of authorization

ICSP N
by S. Iwama Construction LLC of that certain Accessory Dwelling Unit Addition/Alteration to Single-Family Home and Attention to Existing Single-Family Home situated at 4319 Halupa Street, Honolulu, HI 96818, TMK: 9-9-061:009, has been completed. TMK: 4-2-042:022, has been completed. Harold E. and Richard J. Berestorff, Midori M. Toor Trust

Derek B. Simon

From: Cynthia Y. Arashiro
Sent: Tuesday, February 09, 2021 1:31 PM
To: 'LtGov.Contact@hawaii.gov'
Cc: Derek B. Simon
Subject: Docket No. A18-806
Attachments: Docket No. A18-806 Barry Trust- Notice of Hearing.pdf

RE:
Docket No. A18-806; 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 whom it may concern:

Pursuant to HAR § 15-15-51(c) we are required to file the attached Notice of Hearing before the State of Hawai'i Land Use Commission with the Lieutenant Governor's office at least six (6) days prior to the Commission's February 24, 2021 hearing. We understand from your website that the Lieutenant Governor's office is currently closed to the public. We sent email to your office to confirm proper procedure for filing the Notice of Hearing, but have not yet received a response.

Unless directed otherwise by your office, through this email we are hereby filing the attached Notice of Hearing pursuant to HAR § 15-15-51(c). Please advise if you prefer or require the Notice of Hearing to be filed in a different manner.

Thank you for your time and attention to this matter.

EXHIBIT D

HP LaserJet 400 MFP M425dn

Fax Confirmation

16-Feb-2021 11:14AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
4368	16/ 2/2021	11:13:21AM	Send	5860231	0:42	3	OK

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

450 TONGUE SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0942
WWW.CARLSMITH.COM

FACSIMILE TRANSMISSION

UNLESS OTHERWISE INDICATED OR OBVIOUS FROM THE NATURE OF THE TRANSMITTAL, THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR OR ARE NOT SURE WHETHER IT IS PRIVILEGED, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU.

DATE: February 16, 2021

TO:	Name	Fax No.	Phone No.
	Office of the Lieutenant Governor	(808) 586-0231	(808) 586-0255

FROM: Carlsmith Ball LLP

NUMBER OF PAGES INCLUDING THIS COVER SHEET: Pages 3

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

CASE NUMBER: Docket No. A18-806

ORIGINAL/COPY WILL BE MAILED ORIGINAL/COPY WILL NOT BE MAILED

MESSAGE:

Dear Mr. Malcolm Hall,
Per your email instructions, I am faxing the attached Notice of Hearing.
Thank you very much.
Cynthia
523-2619

If problems occur, please call our fax operator at 808.523.2500.

EXHIBIT E

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

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LAND USE COMMISSION
JONATHAN LIKEKE SCHEUER, Chairperson
By DANIEL ORODENKER, Executive Officer

**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

CERTIFICATE OF SERVICE

I hereby certify that due service of the foregoing document was made by depositing the same with the United States Mail, postage prepaid, or by hand delivery, on February 23, 2021, addressed to:

MARY ALICE EVANS, DIRECTOR
Office of Planning
State of Hawai'i
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

[Via Hand Delivery]

BRYAN YEE, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

[Via Hand Delivery]

Attorney for State of Hawai'i Office of
Planning

ZENDO KERN, DIRECTOR
Department of Planning, County of Hawai'i
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720

[Via U.S. Mail, postage prepaid]

DIANA MELLON-LACEY, ESQ.
Corporation Counsel
Department of Corporation Counsel
County of Hawai'i
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, HI 96720

[Via U.S. Mail, postage prepaid]

Attorney for County of Hawai'i Planning
Department

JOSEPH CLARKSON, CHAIR
Windward Planning Commission
County of Hawai'i
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720

[Via U.S. Mail, postage prepaid]

ANGELIC MALIA HALL, ESQ.
Deputy Corporation Counsel
Department of Corporation Counsel
County of Hawai'i
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, HI 96720

[Via U.S. Mail, postage prepaid]

Attorney for County of Hawai'i Windward
Planning Commission

DATED: Honolulu, Hawai'i, February 23, 2021.



STEVEN S.C. LIM
DEREK B. SIMON
Attorneys for Petitioners
KEVIN M. BARRY AND MONICA S.
BARRY, TRUSTEES OF THE BARRY
FAMILY TRUST DATED NOVEMBER 15,
2006