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

STATE OF HAWAII AND USE COMMISSION

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:

I am one of the attorneys for Petitioners KEVIN M. BARRY AND MONICA S. 1. 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 <u>Exhibit "A"</u> 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.

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_uaM4mMeOT3eZCfJjj6itgg

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

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 MATTE NOTICE OF HEAD	
STATE OF HAWAII City and County of Honolulu	}, } ss. }	}
Doc. Date: Notary Name: Doc. Description: Publication	JAN 2 1 2021 E. SORANAKA Affidavit of	# Pages: 1 First Judicial Circuit
Notary Signature	JAN 2 1 202 Date	NO. 90-263
<u>Lisa Sakakida</u> being duly sworn, d to execute this affidavit of Oahu P Star-Advertiser, MidWeek, The Ga Tribune-Herald, that said newspap of Hawaii, and that the attached no	ublications, Inc. publisher arden Island, West Hawai ers are newspapers of ger	of The Honolulu i Today, and Hawaii neral circulation in the State
Honolulu Star-Advertiser 01/21/2021 MidWeek	times on: times on:	
The Garden Island 01/21/2021	times on:	
Hawaii Tribune-Herald 01/21/2021 West Hawaii Today	1times on:	
01/21/2021 Other Publications: And that affiant is not a party to or	in any way interested in t	times on:
Type Jakahu Lisa Sakakida		
Subscribed to and sworn before me		
Colleen E. Soranaka, Notary Public My commission expires: Jan 06 202 Ad # 0001311164	24	NOTARY PUBLIC No. 90-263

NOTICE OF HEARING

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Docket Number and Petitioner:

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

TMK (3) 1-5-059 059

Tax Map Key:

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.

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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) neaning 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, lender the proceedings, inefficient and unmanageable. An person whose application to intervene its denied may appeal such denial to the circuit court pursuant to Section 91-14, HRS.

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OF THE SECOND CIRCUIT STATE OF HAWAII NOTICE OF HEARING ON PETITION FOR ADOPTION

PETITION FOR ADOPTION
In the Matter of Adoption OF A MALE
CHILD, born on January 12, 2016, by
MATTHEW SEAN MAZZONCINI and
DAISY LOUISE WAKE MAZZONCINI,
husband and wife and legal guardians of
the minor child.

ECAND 31, 10003

FC-A No. 21-1-0002.

FC-ANo. 21-1-0002.

TO: UNKNOWN MOTHER, mother of child born on January 12,2016 to Unknown Mother and Unknown Father and UNKNOWN FATHER, father of child born on January 12,2016 to Unknown Mother and Unknown Father:

Unknown Mother and Unknown Father:
You are hereby notified that a Petition
for Adoption of a Male Child has been
filed in this Court against you and is
set for hearing in the courtroom of the
Presiding Judge of the Family Court,
Second Circuit, Hoapili Hale, 2145 Main
Street Courtroom (3A), Waituku, Hawaii
on April 28, 2021 at 8:20 a.m. or as soon
thereafter as the case can be heard.

In the event you fail to appear at the
hearing, further action may be taken in
this cause, including judgment for
the relief requested in the Petition for
Adoption, filed January 11, 2021, without
further notice to you.

DATED: Wailuku, Hawaii, January 11, APT/CONDO RENTA 4520 UPCOUNTRY

DATED: Wailuku, Hawaii, January 11,

/sgd./ V. Ishihara (seal)
V. ISHIHARA
CLERK OF THE ABOVE-ENTITLED
COURT

(MN: Jan. 14, 21, 28; Feb 4, 2021)

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NOTICE OF HEARING

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Place: Zoom Webinar Virtual Meeting Registration-use link below

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

Register in advance for this webinar:

Register in advance for this webinar: https://us02web.zoom.us/webinar/register/WN_uaM4 mMeOT3eZCIJii6itgg 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 Required (3) 1-3-039/039 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.

State of Hawai'.

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AND PERSON WHO THOUGH FROMY.

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Commission within mitteen (13) days after the plunctation of tins notice.

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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

LAND USE COMMISSION JONATHAN LIKEKE SCHEUER, Chairperson By DANIEL ORODENKER, Executive Officer (MN: Jan. 21, 2021)



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HANA HIGHWAY ROCKFALL MITIGATION MP 12, PROJECT NO. 36C-01-10

Please be advised that construction work on Hana Highway Rockfall Mitigation MP 12, Project No. 36C-01-10 will begin on January 25, 2021. The scope of work on this project includes slope clearing, rock scaling, rockmesh installation, guardrail installation, and pavement demo/replacement. For the safety of the public, single lane closure and traffic contraflow of Hana Highway should be expected for an overall duration of 8 months on weekdays from 8:00 AM - 4:00 PM. Please pardon the inconvenience. Please call (808) 591-1141 or email peter@prometheus construction.com with any questions regarding the road closures. (MN: Jan. 21, 22, 23, 2021)

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.

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16-Feb-2021 11:14AM

Job Date Time

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Identification

Duration

Pages

Result

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11:13:21AM Send

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CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASD TOWER SUITE 2100 HONOLUIU, HAWAII 96813 Trisphone 818.523 2500 FAX 808 523.0842 WWW CARLSMITH COM

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DATE:

February 16, 2021

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

Carlsmith Ball LLP

NUMBER OF PAGES INCLUDING THIS COVER SHEET!

Pages 3

CASE NAME:

In the Matter of the Petition Of KEYIN M. BARRY AND MONICA S, BARRY, TRUSTEES OF THE BARRY FAMILY TRUST DATED NOVEMBER 15, 2006
Docket No. A18-806

CASE NUMBER:

ORIGINAL/COPY WILL BE MAILED

X ORIGINAL/COPY WILL NOT BE MAILED

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

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

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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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 inc	CLUDING THIS COVER SE	IEET:	Pages 3
CASE NAME: CASE NUMBER:		ES OF TH	KEVIN M. BARRY AND MONICA E BARRY FAMILY TRUST
ORIGINAL/COPY W	ILL BE MAILED	X ORIG	GINAL/COPY WILL NOT BE MAILED
MESSAGE:			
Dear Mr. Malcolm Hal	ll,	aabad Nati	as a f Hassina

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

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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

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

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