

OFFICE OF PLANNING
 Leiopapa a Kamehameha, Room 600
 235 South Beretania Street
 Honolulu, Hawaii 96813
 Telephone: (808) 587-2846
 Facsimile: (808) 587-2824



BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A18-806
)	
KEVIN M. BARRY AND MONICA S.)	TESTIMONY OF THE OFFICE OF
BARRY, TRUSTEES OF THE BARRY)	PLANNING IN SUPPORT OF THE
FAMILY TRUST DATED NOVEMBER)	PETITION WITH CONDITIONS;
15, 2006)	EXHIBIT 1; CERTIFICATE OF
)	SERVICE
To Amend the Land Use District Boundary)	
of Certain Lands Situated at Keaau, Puna,)	
County and State of Hawaii, Consisting of)	
0.51 Acres from the Conservation District to)	
the Agricultural District, Tax Map Key No:)	
(3) 1-5-059:059)	

**TESTIMONY OF THE OFFICE OF PLANNING IN SUPPORT OF THE PETITION
 WITH CONDITIONS**

The Office of Planning (“OP”) recommends approval of Kevin M. Barry and Monica S. Barry, Trustees of the Barry Family Trust’s (“Petitioner”) request to reclassify 0.51 acre from the State Conservation District to the Agricultural District, subject to conditions. OP’s recommendation is based on the representations of the Petitioner and documents filed to date in these proceedings, consultation with affected government agencies, and the statutes and regulations applicable to these proceedings.

Petitioner's Proposed Use of the Property

Petitioner is requesting the Land Use Commission (“LUC”, “Commission”) to reclassify approximately 0.51 acre (“Petition Area”) from the State Conservation District to the State Agricultural District for income-producing agricultural use with accessory uses, including a dwelling unit. The Petitioner’s Amended Petition for Land Use District Boundary Amendment filed November 4, 2020 (“Petition”) indicates the intent to establish a bee colony in the Petition Area to generate income from the sale of honey, pollen, and wax products through a roadside stand, at local farmers’ markets and/or online. In support of and as an accessory to this agricultural use, Petitioner intends to construct a single-story dwelling including a two-car garage and related infrastructure and landscaping. A swimming pool may be added at a future date. (Petition, pp. 10-11.)

Description of the Petition Area

The Petition Area is a 0.51-acre (22,215.6 sq. ft.), vacant and undeveloped parcel within the Hawaiian Paradise Park subdivision along the shoreline in Keaau, Puna, Hawaii. Access to the Petition Area is provided via Paradise Ala Kai Drive that connects to State Highway 130 via Paradise Drive. All the surrounding parcels are within the State Agricultural District. Soil conditions in the Petition Area are rated “E” by the Land Study Bureau and “Unclassified” under the Agricultural Lands of Importance to the State of Hawaii.

The Petition Area is within the Hawaii County Special Management Area. The County General Plan classifies most of the Petition Area as “Rural” and the portion of the parcel closest to the shoreline as “Open”. The parcel is zoned A1-a, Agricultural, by the County.

Background of the Petition Area

The Hawaiian Paradise Park subdivision that includes the Petition Area was established in 1959, prior to the enactment of Hawaii Revised Statutes (“HRS”) Chapter 205 that established the State Land Use District Boundaries. Upon the enactment of HRS Chapter 205, the subdivision, including the coastline parcels approximately one-half acre in size, was placed in the State Agricultural District. (Petition, p. 2.)

During the LUC's 1969 Boundary Review, the coastal parcels in the subdivision were reclassified into the State Conservation District for the purpose of protecting the shoreline from development. This was prior to the enactment of HRS Chapter 205A, Hawaii's Coastal Zone Management Program ("CZMP"). In 1976, after the establishment of the CZMP and after several landowners were denied permits to build single-family dwellings on their parcels by the State Department of Land and Natural Resources, owners of almost all of the coastal parcels petitioned the LUC for a District Boundary Amendment in Docket No. A76-419 to return the parcels to the Agricultural District. (Petition, p. 3.)

On August 17, 1977, the LUC approved the petition and issued its Decision and Order ("1977 D&O") finding that the Coastal Zone Management Act provides the same protection of the shoreline that the Commission intended by classifying the parcels in the Conservation District, that the surrounding parcels are in the Agricultural District, and that the subject parcels have no special conservation value. Consequently, the LUC ruled that it would be unjust and inequitable to limit these owners from the use of their property that other landowners within the same subdivision enjoy. However, because the owners of the Petition Area could not be located at that time, the Petition Area was not included in the Docket No. A76-419 Petition and 1977 D&O. (Petition, p. 4.)

KEY ISSUES OF CONCERN TO THE STATE

The following summarizes key issues related to areas of State concern in HRS §§ 205-16 and 205-17.

Conformance with Hawaii State Plan

OP agrees with Petitioner's finding that the Petition conforms to the Hawaii State Plan. (Petition, pp. 29-34.)

Impacts on Areas of State Concern

Natural Systems and Habitats

Water to the project will be provided from a well drilled on-site and treated or alternately a catchment system will be used if necessary, therefore water resources will not be negatively impacted.

OP agrees with Petitioner's finding that the Petition conforms with the objectives and policies of the Coastal Zone Management Program (Petition, pp. 33-44.) Petitioner intends on filing a Special Management Area Assessment with the County of Hawaii if the Petition is approved. (Petition, p. 35 and Petitioner Exhibit 16.) Wastewater will be processed through a underground individual wastewater system approved by the State Department of Health. (Petition, p. 12.) Therefore, there will be no impacts on the shoreline or water quality.

The State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") provided comments on the Petition (OP Exhibit 1). DOFAW's concerns included the potential presence of the endangered Hawaiian Hawk and the Hawaiian Hoary Bat in the vicinity of the Petition Area, the risk of introducing invasive species during construction and spreading Rapid Ohia Death if ohia trees are present, a recommendation that native plant species appropriate for the area be used for landscaping, and the threat of nighttime lighting to seabirds.

As part of Petitioner's Final Environmental Assessment, a biological survey of the Petition Area was conducted. The survey noted that the Hawaiian Hawk nests in large trees and that the Petition Area does not contain nor is it near large trees suitable for hawk nests. (Petitioner's Exhibit 7, p. 22.) The Hawaiian Hoary Bat has been observed in Hawaiian Paradise Park but not in the Petition Area. (Petition, p. 16.) Nevertheless, Petitioner states their commitment to a condition that: **"Construction will refrain from activities that disturb or remove the woody vegetation taller than 15 feet between June 1 and September 15, when Hawaiian hoary bats may be sensitive to**

disturbance.” (Petitioner Exhibit 7, p. 24.) The biological survey did not find ohia trees within the Petition Area (Petition Appendix 3, Table 1.) Finally, with regard to DOFAW’s concern over the potential threat to seabirds, Petitioner has also committed to a condition that: **“All exterior lighting will be shielded from shining upward, in conformance with Hawaii County Code § 14-50 et seq., to minimize the potential for disorientation of seabirds.”** (Petitioner Exhibit 7, p. 24.)

Consequently, OP finds that the project does not adversely impact natural systems and habitats and that any potential threats can be mitigated by the conditions Petitioner has already committed to.

Archaeological, Historic, and Cultural Resources

As part of Petitioner’s Final EA, an archaeological survey was conducted and no archaeological, historic or cultural resources were found. In addition, a Ka Paakai Analysis was conducted and found that no native Hawaiian traditional and customary practices will be impacted by the proposed project. (Petition, pp. 16-18 and 53.)

Natural Resources Relevant to Hawai‘i’s Economy

The proposed reclassification will have no detrimental impact on the surrounding agricultural uses.

Commitment of State Funds and Resources

The proposed development will have no impact on State facilities and resources.

CONCLUSION

Based on our assessment of the Project with respect to the Commission’s decision-making criteria, OP recommends that the Petition be approved with the conditions as represented by Petitioner that will address the concerns raised herein. The proposed boundary amendment does not conflict with HRS Chapter 205 and generally meets the Commission’s decision-making criteria contained in HRS Chapter 205 and HAR Chapter 15-15.

DATED: Honolulu, Hawai'i, February 22, 2021.

OFFICE OF PLANNING
STATE OF HAWAI'I



MARY ALICE EVANS

Director

Docket No. A18-806

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

CARLSMITH BALL LLP
STEVEN S.C. LIM, ESQ. 2505
DEREK B. SIMON, ESQ. 10612
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813

ZENDO KERN, DIRECTOR
Department of Planning, County of Hawaii
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

ELIZABETH A. STRANCE, ESQ.
Corporation Counsel
Department of Corporation Counsel
County of Hawaii
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawaii 96720

JOHN REPLOGLE, CHAIR
Windward Planning Commission
County of Hawaii
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

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

DATED: Honolulu, Hawai'i, February 22, 2021.


A handwritten signature in blue ink that reads "Mary Alice Evans". The signature is written in a cursive style with a horizontal line underneath the name.

MARY ALICE EVANS

Director

Office of Planning