

Kevin M. Barry and Monica S. Barry
Trustees of the Barry Family Trust dated November 15, 2006
P.O. Box 247, Keaau, Hawai'i 96749

April 2, 2024

Via E-Mail/Electronic Filing

Daniel E. Orodener, Executive Officer
Land Use Commission, State of Hawai'i
Leiopapa A. Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813



Re: Docket No. A18-806 (Barry Family Trust)
2024 Annual Report
Tax Map Key No. (3) 1-5-059:059

Dear Executive Officer Orodener:

We are the Petitioners in Land Use Commission (“**Commission**”) Docket No. A18-806. By Findings of Fact, Conclusions of Law, and Decision and Order filed April 21, 2021 (“**D&O**”), the Commission reclassified Tax Map Key No. (3) 1-5-059:059 (“**Petition Area**”) from the State Land Use Conservation District to the Agricultural District. The reclassification was sought to allow for the construction of a farm dwelling and associated agricultural uses.

The D&O imposed eight conditions of approval on the Commission’s reclassification of the Petition Area. Condition No. 3 requires us to “timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai`i Planning Department in connection with the status of the Petition Area and Petitioners' progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.”

This 2024 Annual Report is hereby submitted in compliance with Condition No. 3. The following recites each condition imposed under the D&O, along with the status of our compliance:

1. Compliance with Representations. Petitioners shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Absent substantial commencement of use of the land in accordance with such representations, the Commission shall issue and serve upon the party bound by the condition an order to show cause why the Petition Area should not revert to its former land use classification or be changed to a more appropriate classification.

Status of compliance: **Compliance ongoing.** Since the Commission filed the D&O, we worked diligently towards developing the Petition Area in substantial compliance with our representations to the Commission. Those efforts focused primarily on developing the preliminary site and architectural plans for the farm dwelling. On March 8, 2022, we submitted a Special Management Area (“SMA”) Assessment (“SMAA”) to the County of Hawai‘i Planning Department. On August 26, 2022, the County of Hawaii granted our SMA and SMAA Application and issued a SMA Minor Permit. Since the Permit was issued we finalized building plans and applied for a building permit on May 4, 2023. The building permit was issued on July 14, 2023. Since the building permit issued we experienced some delays due to logistical challenges beyond our control. However, lot preparation on the Petition Area began March 25, 2024.

2. Notice of Change in Ownership. Petitioners shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

Status of compliance: **Compliance ongoing.** There have been no changes in ownership of the Petition Area since the D&O was filed.

3. Annual Reports. Petitioners shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai‘i Planning Department in connection with the status of the Petition Area and Petitioners' progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Status of compliance: **Compliance ongoing.** This 2024 Annual Report is submitted in compliance with Condition No. 3.

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4. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioners.

Status of compliance: **Compliance ongoing.** As of the time of this 2024 Annual Report, we have not sought the release of any conditions imposed under the D&O.

5. Notice of Imposition of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioners shall: (a) record with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

Status of compliance: **Satisfied.** On May 12, 2021, we recorded against the Petition Area a Notice of Imposition of Conditions by the Land Use Commission with the Assistant Registrar of the Land Court of the State of Hawai'i ("Land Court") as Land Court Document No. T-11454455. A copy of the Notice of Imposition of Conditions by the Land Use Commission was filed with the Commission on May 14, 2021.

6. Recordation of Conditions. Petitioners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, pursuant to HAR § 15-15-92.

Status of compliance: **Satisfied.** By email dated July 6, 2021, you approved our proposed form Declaration of Conditions. On August 3, 2021, we recorded the Declaration of Conditions with the Land Court as Land Court Document No. T-11537372. A copy of the recorded Declaration of Conditions was filed with the Commission on August 23, 2021.

7. Vegetation Removal. Petitioners shall refrain from construction activities that disturb or remove woody vegetation taller than 15 feet between June 1 and September 15, when Hawaiian hoary bats may be sensitive to disturbance.

Status of compliance: **Satisfied.** Since the submission of the 2023 Annual Report and before March 25, 2024, no vegetation was removed from the Petition Area. As indicated in Condition No. 1 above, lot preparation began on March 25, 2024. At that time the lot was cleared of most vegetation within the construction footprint. Importantly, it was noted that "no woody vegetation taller than 15 feet" existed on the Petition area. With vegetation removal complete, no construction activities will impact sensitive habitat for the Hawaiian hoary bat in the future.

8. Exterior Lighting. All exterior lighting shall be shielded from shining upward, in conformance with Hawai'i County Code § 14-50 et seq., to minimize the potential for disoriented seabirds.

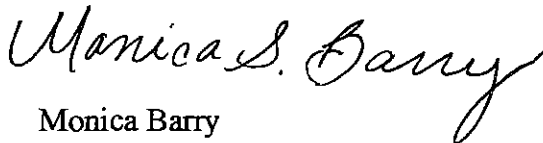
Status of compliance: **Compliance ongoing.** No exterior lighting has been installed or constructed on the Petition Area. Any future exterior lighting will be installed and/or constructed in compliance with Condition No. 8.

We would like to once again thank the Commission, you, and your staff for all of the time and hard work on this Docket. Should you have any questions, please do not hesitate to contact us at 619-851-0297 or kmbarry82@gmail.com.

Sincerely,



Kevin Barry



Monica Barry

cc

State of Hawai'i Office of Planning and Sustainable Development
County of Hawai'i Planning Department
Derek B. Simon, Esq.