



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 4, 2025

VIA E-MAIL/ELECTRONIC FILING

Daniel E. Orodenker, 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)
2025 Annual Report
Tax Map Key No. (3) 1-5-059:059

Dear Executive Officer Orodenker:

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 Count 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 2025 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:

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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 have worked diligently towards developing the Petition Area in substantial compliance with our representations to the Commission. Those efforts have focused primarily on developing 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 granted our SMA and SMAA Application and issued a SMA Minor Permit. On May 4, 2023 we applied for a building permit and it was subsequently issued on July 15, 2023. As indicated in our 2024 Annual Report, lot preparation began on March 25, 2024. Commencing approximately mid-April the lot was completely cleared. In mid-June the slab was poured and septic installed. Since June, 2024, construction activities continue. The previous year brought some unexpected delays. As of the date of this letter the project is not yet complete. We do, however, anticipate project completion in the next coming months.

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 Count 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 2025 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 2025 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.

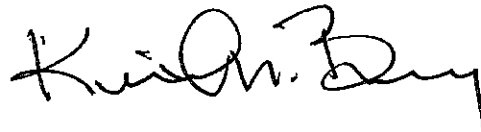
Status of compliance: **Satisfied.** As indicated in the 2024 Annual Report, prior to March 25, 2024, no vegetation had been removed from the subject property. From March 25, 2024 through mid-April, 2024, the subject lot was cleared of all vegetation in accordance with Condition No. 7 as required in the D&O.

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: **Satisfied.** Nearly all the exterior lighting has been installed on the Petition Area. This lighting consists of recessed can lights installed under the eaves of the structure and shielded downwards in compliance with Condition No. 8. The few remaining exterior lights are decorative and "Dark Sky" compliant. These lights are designed to minimize the amount of light that travels upwards, thereby limiting distraction to local seabirds. These lights have yet to be installed, but they are purchased and will be installed in compliance with Condition No. 8 in the near future.

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,

A handwritten signature in black ink, appearing to read "Kevin Barry". The signature is fluid and cursive, with the first name "Kevin" and last name "Barry" clearly distinguishable.

Kevin Barry

A handwritten signature in black ink, appearing to read "Monica Barry". The signature is fluid and cursive, with the first name "Monica" and last name "Barry" clearly distinguishable.

Monica Barry

cc

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