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LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 16 A 8:06

LETTER OF TRANSMITTAL

TO: Mr. Scott Derrickson
Land Use Commission, State of Hawaii
Leiopapa A. Kamehameha Building
235 South King Street, Room 406
Honolulu, Hawaii 96813

DATE: July 12, 2019

RE: Docket No. A18-806: Barry Family Project

Via US Mail

THE FOLLOWING IS (ARE) TRANSMITTED HEREWITH:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	7/11/2019	<i>Memoandum re Chapter 343, Hawaii Revised Statutes Significance Criteria</i>

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| <input type="checkbox"/> Per Our Telephone Conversation | <input type="checkbox"/> See Remarks Below |

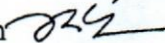
REMARKS:

Please find enclosed *Memorandum re Chapter 343, Hawaii Revised Statutes Significance Criteria*. Please contact Derek B. Simon, Esq. at dsimon@carlsmith.com or 523-2589 with any questions.. Thank you.

Enclosure(s)

By Cynthia Arashiro
Cynthia Arashiro
Legal Assistant to Derek B. Simon, Esq.

2019 JUL 16 A 8:06

Memorandum To: Scott Derrickson **Reference No.:** 069351-00001
cc: State of Hawai'i Land Use Commission Staff
From: Derek B. Simon 
Date: July 11, 2019
Subject: Docket No. A18-806: Barry Family Project – Memorandum Regarding Chapter 343, Hawaii Revised Statutes Significance Criteria

Pursuant to your request and on behalf Kevin M. and Monica S. Barry, as Trustees of the Barry Family Trust dated November 15, 2006 (the "**Barrys**"), this analyzes the Barry Family Project (the "**Project**"), proposed at Tax Map Key No.: (3) 1-5-059:059 (the "**Property**"), under the Significant Criteria set forth in Hawaii Administrative Rules ("**HAR**") § 11-200-12(b). For the following reasons, as set forth more fully in the previously submitted Draft Environmental Assessment ("**Draft EA**"), the Project is not anticipated to have significant impacts on the environment:

1. HAR § 11-200-12(b)(1): *The Project will not involve an irrevocable commitment or loss or destruction of any natural or cultural resources.*

No valuable natural or cultural resource would be committed or lost. Common native plants are present, but native ecosystems would not be adversely affected. The Property is dominated by alien vegetation, with the only sensitive ecosystem being the shoreline vegetation, where common native plants mixed with weeds are present. It is expected that future development of the Project would avoid this area. No adverse impact upon vegetation or endangered species would occur. Because of the location and nature of the Project relative to sensitive vegetation and species, its construction, use and occupation are not likely to cause adverse biological impacts.

In addition, no archaeological sites are present. The only cultural resources or practices are associated with traditional fishing and shellfish gathering makai of the Property, which will not be affected by the Project. The Barrys are Hawai'i residents who are well aware of the rights of the public to utilize these areas and the cultural and subsistence importance of these practices.

2. HAR § 11-200-12(b)(2): *The Project will not curtail the range of beneficial uses of the environment.*

No restriction of the beneficial uses of the environment would occur through the construction, use and occupation of the Project. According to the 2017 State of Hawai'i ("**State**") Data Book, published by the State Department of Business, Economic Development and Tourism, there are approximately 1,973,846 acres of land classified within the State Land

Use (“SLU”) Conservation District. The Project involves the reclassification of 0.51 acres of privately-owned SLU Conservation District Land, and will, therefore, not impact the public’s access to or beneficial use of conservation resources.

Moreover, the dwelling site would be set back from the shoreline and thus not restrict any shoreline uses such as hiking, fishing or water sports. Lateral pedestrian use of the shoreline area would not be impacted, and there would be no adverse effect on the public’s access to or enjoyment of this shoreline area.

3. HAR § 11-200-12(b)(3): *The Project will not conflict with the State’s long-term environmental policies.*

The State’s long-term environmental policies are set forth in Chapter 344, Hawai‘i Revised Statutes. The broad goals of this policy are to conserve natural resources and enhance the quality of life. The Project is minor and basically environmentally benign, and it is thus consistent with the State’s long-term environmental policies.

4. HAR § 11-200-12(b)(4): *The Project will not substantially affect the economic or social welfare of the community or State.*

The Project would not have any substantial effects on the economic or social welfare of the County of Hawai‘i (“County”) or the State. The Project will have a positive economic impact for the County through an increase in the tax base and the employment and sales generated by construction. When a multiplier effect is taken into consideration, this positive impact will be magnified.

5. HAR § 11-200-12(b)(5): *The Project does not substantially affect public health in any detrimental way.*

The Project would not affect public health and safety in any way. Wastewater will be disposed of in conformance with State Department of Health regulations.

6. HAR § 11-200-12(b)(6): *The Project will not involve substantial secondary impacts, such as population changes or effects on public facilities.*

Given the small scale of the Project, it would not produce any major secondary impacts, such as population changes or effects on public facilities.

7. HAR § 11-200-12(b)(7): *The Project will not involve a substantial degradation of environmental quality.*

The Project is minor and essentially environmentally benign, and thus it would not contribute to environmental degradation.

8. HAR § 11-200-12(b)(8): *The Project will not substantially affect any rare, threatened or endangered species of flora or fauna or habitat.*

Thorough survey has determined that no endangered plant species are present on the Property. The Hawaiian hoary bat, which was not observed on the Property but has been observed elsewhere in Hawaiian Paradise Park, is an island wide-ranging species that will experience no adverse impacts from the Project due to mitigation in the form of timing the removal of vegetation. Other than the hoary bat, no rare, threatened or endangered species of fauna are known to exist on or near the Project site, and none would be affected by any Project activities.

9. HAR § 11-200-12(b)(9): *The Project is not one which is individually limited but cumulatively may have considerable effect upon the environment or involves a commitment for larger actions.*

The adverse effects of building the Project are limited to very minor and temporary disturbances to traffic, air quality, noise, and visual quality during construction. There are no substantial government or private projects in construction or in planning in the area, and no accumulation of adverse construction effects would be expected. Other than certain precautions for preventing adverse effects during construction discussed in the Draft EA, no special mitigation measures should be required to counteract the small adverse cumulative effect.

10. HAR § 11-200-12(b)(10): *The Project will not detrimentally affect air or water quality or ambient noise levels.*

No direct effects to air, water, or ambient noise would occur from the Project. Eventual construction of the Project would involve brief, temporary, and very minor effects on air quality and noise that would occur during construction and would be mitigated, as discussed *supra*. Future use of the Project would be in harmony with neighboring land uses, including the numerous existing dwellings along the coastline area of Hawaiian Paradise Park.

11. HAR § 11-200-12(b)(11): *The Project does not affect nor would it likely to be damaged as a result of being located in environmentally sensitive area such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal area.*

In general, geologic conditions do not impose undue constraints on the Project. Much of the Puna District faces similar volcanic and seismic hazard. The Property is located in Lava Zone 3, along with most of the settled area of Puna and nearly all of Hilo, and it is unlikely that prohibitions on dwellings in Zone 3 will be adopted as a reaction to the recent lava flows of Kilauea. Nevertheless, it must be acknowledged that lava flow hazard exists, and that responding to disasters has fiscal consequences for government agencies.

The Property is designated as Flood Zones X and VE on the Federal Emergency Management Agency's Flood Rate Insurance Map. However, the vast majority of the Property is within Flood Zone X, with only the very makai portion being within Zone VE. No construction is proposed in portion of the Property within Zone VE.

The Barrys understand that there are hazards associated with developing in this environmental setting and have made the decision that the Project is not imprudent to construct or inhabit. Damage to any future dwelling from coastal erosion and other coastal hazards can be

minimized or avoided altogether by appropriate siting of Project improvements as determined at the time of construction.

12. HAR § 11-200-12(b)(12): *The Project will not substantially affect scenic vistas and viewplanes identified in County or State plans or studies.*

No designated scenic vistas or viewplanes would be affected by the Project. Intermittent scenic views of the shoreline and sea along Paradise Ala Kai Drive are present between the dozens of existing dwellings. Currently, heavy vegetation blocks all views through the Property, so development of the Project would likely open up at least some coastal views through the Property.

13. HAR § 11-200-12(b)(13): *The Project will not require substantial energy consumption.*

Negligible amounts of energy input would be required for the construction, use and occupation of the Project. Electrical power is available in the area from HELCO poles; however, the Barrys intend to install a solar photovoltaic system that will allow the Project to be powered completely, or at least partially, "off-grid."