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(ii) Adverse environmental effects are minimized; and

(iii) The development is important to the State's economy.

The Project is consistent with the objectives and policies related to economic uses. The Barry Property is situated along the coastline in Hawaiian Paradise Park. Hawaiian Paradise Park has been in continual stages of development for decades and a significant number of shoreline lots within Hawaiian Paradise Park already have dwellings of similar size to the Project. In addition, the Project will provide a small, but positive economic benefits to the County through an increase in the tax base, and employment and sales generated by construction of the Project. When a multiplier effect is taken into consideration, this positive impact will be magnified.

6. COASTAL HAZARDS

Objectives: *Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.*

Policies: *(a) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and non-point source pollution hazards;*

(b) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, point and non-point pollution hazards;

(c) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(d) Prevent coastal flooding from inland projects.

The Project is consistent with the objectives and policies related to coastal hazards.

The majority of the Barry Property is located in Flood Zone "X," which represents areas outside of the 0.2% annual chance flood plain. A small portion of the Property along the shoreline is within the "VE" Flood Zone (also known as the Coastal High Hazard Area), which is the area subject to high velocity water including waves and tsunamis, and is defined by the 1% annual chance (base) flood limits and wave effects of three (3) feet or greater. However, no development activities are proposed within the portion of the Property located in the "VE" Flood Zone.

As discussed *supra*, a Coastal Erosion Study and Volcanic Hazard Study were prepared for the Project and is included with this Draft EA as Appendix 2. That study concluded that the Barry Property is suitable for the Project.

The Property is within the County's tsunami inundation zone and is subject to tsunami evacuation. However, dwellings are very common along this portion of the coastline, and the Project does not present any extraordinary tsunami risks.

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At the appropriate time, an engineer will determine whether the Project will require a County grading permit or National Pollutant Discharge Elimination System permit. Plans for grading the driveway and dwelling lot will seek to minimize the potential for sedimentation, erosion and pollution of coastal waters. The general shoreline area in Hawaiian Paradise Park already supports a significant number of dwellings, and is utilized by residents and the public to park vehicles and fish, and there are no reported water quality problems from these uses. Upon its completion, the Project would be similar to the existing dwellings on shoreline lots in this area and is not anticipated to contribute to sedimentation, erosion, or pollution of coastal waters.

7. MANAGING DEVELOPMENT

Objective: *Improve the development review process, communication, and public participation in the management of coastal resources and hazards.*

Policies: *(a) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;*

(b) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(c) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process;

The Project is consistent with the objectives and policies related to managing development. Through the EA process under HRS Chapter 343, as well as the DBA process under HRS Chapter 205, the Project will undergo review and decision by the LUC. Both processes provide opportunity for public review and comment on the Project. In addition, through these processes, the potential short- and long-term impacts of the Project will be identified and analyzed, and, to the extent necessary, appropriate mitigation measures will be presented at early stages of the Project.

8. PUBLIC PARTICIPATION

Objective: *Stimulate public awareness, education, and participation in coastal management.*

Policies: *(a) Promote public involvement in coastal zone management processes;*

(b) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and

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(c) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

The Project is consistent with the objectives and policies related to public participation. As a part of this Draft EA, Petitioners will engage in outreach efforts with community organizations, groups, interested individuals, as well as with County and State agencies. This outreach started with the early consultation process and will continue through the publication and dissemination of this Draft EA to all relevant County, State and Federal agencies and organizations, as well as community organizations, interested individuals, and elected officials.

9. BEACH PROTECTION

Objective: *Protect beaches for public use and recreation.*

Policies: *(a) Locate structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;*

(b) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities;

(c) Minimize the construction of public erosion-protection structures seaward of the shoreline; and

(d) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and

(E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor.

The Project is consistent with the objectives and policies related to beach protection and recreation. The Barry Property does not have an official or unofficial shoreline trail either above or below the sea cliff. The area below the cliff is topographically difficult and no continuous access is possible. The pahoehoe shelf *mauka* of the sea cliff is easily walkable (see photos in Figure 2) and is occasionally used by fishermen who are traversing the coast looking for ulua fishing or opihi gathering sites. 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.

The Project does not involve the construction of erosion-protection structures and will not result in the creation of nuisances, through uncontrolled vegetation or otherwise.

10. MARINE RESOURCES

Objective: *Implement the State's ocean resources management plan.*

Policies: *(a) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*

(b) Assure the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;

(c) Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;

(d) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

(e) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

(f) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

The Project is consistent with the objectives and policies related to marine resources. The general shoreline area in Hawaiian Paradise Park already supports hundreds of dwellings and is utilized by residents and property owners to park vehicles and fish, and there are no reported water quality problems from these uses. Upon completion, the Project would be similar to the existing dwellings on shoreline lots in the area, and would not be expected to contribute to sedimentation, erosion, and pollution of coastal waters.

At the time development is proposed, the Barrys and their engineer will determine whether the area of disturbance is sufficiently large to require a County grading permit or National Pollutant Discharge Elimination System (NPDES) permit. Grading for the driveway and dwelling site will include practices to minimize the potential for sedimentation, erosion and pollution of coastal waters.

SMA RULE 9-10(H) – CRITERIA OF SUBSTANTIAL ADVERSE EFFECTS

The entire Barry Property is within the SMA. The County of Hawai'i Planning Department requires preparation of an SMA Assessment Application to ensure that the proposed use complies with the objectives, policies and guidelines of the CZMP, and to determine whether a SMA permit is required. A single-family dwelling of the size proposed by the Barrys is usually determined to be an exempt action not requiring a SMA permit, as long as it does not affect public access to recreational areas, historic

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resources, scenic and open space resources, coastal ecosystems, economic uses, or coastal hazards. In determining whether a proposed action may have substantial adverse effects on the environment pursuant to SMA Rule 9-10(h), the Planning Director will consider whether the proposed action:

(1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;

The Project does not involve the irrevocable commitment to loss or destruction of any natural or cultural resource. As discussed in Sections 3.2.2 and 3.2.3, the Project will not adversely affect archaeological, historic or cultural resources. No historic sites are present or would be adversely affected by the Project. Aside from shoreline area uses, which would not be affected by the Project, there are no known cultural resources or practices. As also discussed in this Draft EA, the Project will not adversely affect any other natural resources.

No designated scenic vistas or view planes would be affected by the Project. Currently, heavy vegetation blocks all views through the Barry Property; development of a dwelling on the site would likely open up at least some coastal views.

(2) Curtails 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 Data Book, published by the State of Hawai'i Department of Business, Economic Development and Tourism, there are approximately 1,973,846 acres of land classified within the SLU Conservation District. The Project involves the reclassification of approximately 0.51 acres of privately-owned SLU Conservation District Land, and will, therefore, not impact the public's access to or beneficial use of SLU Conservation District 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) Conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;

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 in size and scope and basically environmentally benign, and is thus consistent with all elements of the State's long-term environmental policies. The Project's consistency with the County General Plan is discussed *infra*.

(4) Substantially affects the economic or social welfare and activities of the community, County or State;

The Project will not adversely affect the economic or social welfare and activities of the community,

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County or 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) Involves substantial secondary impacts, such as population changes and effects on public facilities;

As discussed in Section 3.4, given its small scale, the construction and occupation of the Project in this rural-agricultural neighborhood would not produce any major secondary impacts, such as population changes or effects on public facilities.

(6) In itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;

As also discussed in Section 3.4, the Project is not anticipated to result in substantial cumulative impacts. There are thousands of vacant lots in Hawaiian Paradise Park and, at any given time, it is normal to have a number of dwellings under construction. The adverse effects of building a single-family dwelling in this context are very minor and involve temporary disturbances to air quality, noise, traffic and visual quality during construction. Even if several dwellings are under construction simultaneously in the same general area, there should be no accumulation of substantial adverse impacts.

(7) Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;

As discussed in Section 3.1.4, the Project is not anticipated to have significant adverse impacts on any rare, threatened, or endangered species of animal or plant, or its habitat. Thorough survey has determined that no endangered plant species are present on the Barry Property. The Hawaiian hoary bat, which was not observed on the Barry Property but has been observed elsewhere in Hawaiian Paradise Park, is an island wide-ranging species that will experience no adverse impacts from the Barry 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.

(8) Detrimentially affects air or water quality or ambient noise levels;

The Project is not anticipated to detrimentally affect air or water quality, or ambient noises, although brief and minor adverse effects would occur during construction of the Project. Air quality in the Hawaiian Paradise Park area is generally excellent, due to its rural-agricultural nature and minimal degree of human activity. With implementation of Best Management Practices associated with grading permits, there would be no impacts from the Project on marine resources or coastal waters.

(9) Affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or

The Project will not affect any environmentally sensitive areas. The Barry Property is not situated over

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any natural drainage system or water feature that would flow into the nearby coastal system, and no floodplains are present in the area that would be expected to be developed. The threats posed by coastal hazards are addressed at length in Appendix 2 (and summarized in Section 3.1.1), which concludes that the Barry Property is suitable for the proposed Project.

(10) Is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

As discussed *supra*, the Project is consistent with the policies and objectives of the CZMP.

If and when the Barrys proceed with constructing the Project, or any other permitted use, the County Planning Director will be asked to make the determination that the Project (or other use) is not considered a “development” under SMA Rules and Regulations of the County of Hawai‘i, Section 9-4 (10) (B), and is otherwise not subject to an SMA permit. If for some reason the Director determines that the proposed use does qualify as development, the Barrys would need to obtain a SMA permit.

3.6.3 Hawai‘i County General Plan

The General Plan for the County of Hawai‘i (General Plan) is the document expressing the broad goals and policies for the long-range development of the Island of Hawai‘i. The General Plan was adopted by ordinance in 1989 and revised in 2005. The General Plan’s Land Use Allocation Guide Map designates the Barry Property as Open. The General Plan is organized into thirteen elements, with policies, objectives, standards, and principles for each. There are also discussions of the specific applicability of each element to the nine judicial districts comprising the County of Hawai‘i. Listed below are pertinent sections followed by a discussion of conformance.

ECONOMIC GOALS

- (a) Provide residents with opportunities to improve their quality of life through economic development that enhances the County’s natural and social environments.
- (b) Economic development and improvement shall be in balance with the physical, social, and cultural environments of the island of Hawaii.
- (d) Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County’s cultural, natural, and social environment.

Discussion: The proposed DBA and construction and occupation of the Project would be in balance with the natural, cultural and social environment of the County. It would increase the tax base, create temporary construction jobs for local residents, and boost the economy through construction industry purchases from local suppliers. A multiplier effect takes place when these employees spend their income for food, housing, and other living expenses in the retail sector of the economy. Such activities are in keeping with the overall economic development of the island.

ENVIRONMENTAL QUALITY GOALS

- (a) Define the most desirable use of land within the County that achieves an ecological balance providing

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residents and visitors the quality of life and an environment in which the natural resources of the island are viable and sustainable.

- (b) Maintain and, if feasible, improve the existing environmental quality of the island.
- (c) Control pollution.

ENVIRONMENTAL QUALITY POLICIES

- (a) Take positive action to further maintain the quality of the environment.

ENVIRONMENTAL QUALITY STANDARDS

- (a) Pollution shall be prevented, abated, and controlled at levels that will protect and preserve the public health and well being, through the enforcement of appropriate Federal, State and County standards.
- (b) Incorporate environmental quality controls either as standards in appropriate ordinances or as conditions of approval.
- (c) Federal and State environmental regulations shall be adhered to.

Discussion: The proposed DBA and construction and occupation of the Project would not have a substantial adverse effect on the environment and would not diminish the valuable natural resources of the region. The home and associated improvements would be compatible with the existing rural-agricultural uses in the area. Pertinent environmental regulations would be followed, including those for mitigation of water quality impacts.

HISTORIC SITES GOALS

- (a) Protect, restore, and enhance the sites, buildings, and objects of significant historical and cultural importance to Hawaii.
- (b) Appropriate access to significant historic sites, buildings, and objects of public interest should be made available.

HISTORIC SITES POLICIES

- (a) Agencies and organizations, either public or private, pursuing knowledge about historic sites should keep the public apprised of projects.
- (b) Amend appropriate ordinances to incorporate the stewardship and protection of historic sites, buildings and objects.
- (c) Require both public and private developers of land to provide historical and archaeological surveys and cultural assessments, where appropriate, prior to the clearing or development of land when there are indications that the land under consideration has historical significance.
- (d) Public access to significant historic sites and objects shall be acquired, where appropriate.

Discussion: No archaeological sites are present. The only cultural resources or practices are associated with traditional fishing and shellfish gathering *makai* of the lot, which will not be affected.

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FLOOD CONTROL AND DRAINAGE GOALS

- (a) Protect human life.
- (b) Prevent damage to man-made improvements.
- (c) Control pollution.
- (d) Prevent damage from inundation.
- (e) Reduce surface water and sediment runoff.
- (f) Maximize soil and water conservation.

FLOOD CONTROL AND DRAINAGE POLICIES

- (a) Enact restrictive land use and building structure regulations in areas vulnerable to severe damage due to the impact of wave action. Only uses that cannot be located elsewhere due to public necessity and character, such as maritime activities and the necessary public facilities and utilities, shall be allowed in these areas.
- (g) Development-generated runoff shall be disposed of in a manner acceptable to the Department of Public Works and in compliance with all State and Federal laws.

FLOOD CONTROL AND DRAINAGE STANDARDS

- (a) "Storm Drainage Standards," County of Hawaii, October, 1970, and as revised.
- (b) Applicable standards and regulations of Chapter 27, "Flood Control," of the Hawaii County Code.
- (c) Applicable standards and regulations of the Federal Emergency Management Agency (FEMA).
- (d) Applicable standards and regulations of Chapter 10, "Erosion and Sedimentation Control," of the Hawaii County Code.
- (e) Applicable standards and regulations of the Natural Resources Conservation Service and the Soil and Water Conservation Districts.

Discussion: The proposed Project improvements will be sited entirely within Flood Zone X, or areas outside of the 500-year floodplain as determined by detailed methods in FEMA's Flood Insurance Rate Maps (FIRM). The project will conform to applicable drainage regulations and policies of the County of Hawai'i.

NATURAL BEAUTY GOALS

- (a) Protect, preserve and enhance the quality of areas endowed with natural beauty, including the quality of coastal scenic resources.
- (b) Protect scenic vistas and view planes from becoming obstructed.
- (c) Maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty.

NATURAL BEAUTY POLICIES

- (a) Increase public pedestrian access opportunities to scenic places and vistas.

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(b) Develop and establish view plane regulations to preserve and enhance views of scenic or prominent landscapes from specific locations, and coastal aesthetic values.

Discussion: The Project would be minor and in keeping with long-standing uses of the area, and would not cause scenic impacts or impede access.

NATURAL RESOURCES AND SHORELINES GOALS

- (a) Protect and conserve the natural resources from undue exploitation, encroachment and damage.
- (b) Provide opportunities for recreational, economic, and educational needs without despoiling or endangering natural resources.
- (c) Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- (d) Protect rare or endangered species and habitats native to Hawaii.
- (e) Protect and effectively manage Hawaii's open space, watersheds, shoreline, and natural areas.
- (f) Ensure that alterations to existing land forms, vegetation, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of an earthquake.

NATURAL RESOURCES AND SHORELINES POLICIES

- (a) Require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse effects on the environment.
- (c) Maintain the shoreline for recreational, cultural, educational, and/or scientific uses in a manner that is protective of resources and is of the maximum benefit to the general public.
- (d) Protect the shoreline from the encroachment of man-made improvements and structures.
- (h) Encourage public and private agencies to manage the natural resources in a manner that avoids or minimizes adverse effects on the environment and depletion of energy and natural resources to the fullest extent.
- (p) Encourage the use of native plants for screening and landscaping.
- (r) Ensure public access is provided to the shoreline, public trails and hunting areas, including free public parking where appropriate.
- (u) Ensure that activities authorized or funded by the County do not damage important natural resources.

Discussion: All Project improvements will be sited at appropriate distances from the shoreline to ensure that they will not affect shoreline resources or be damaged by waves or tides.

PUNA COMMUNITY DEVELOPMENT PLAN

The Puna Community Development Plan (CDP) encompasses the judicial district of Puna, and was developed under the framework of the February 2005 County of Hawai'i General Plan. Community Development Plans are intended to translate broad General Plan Goals, Policies, and Standards into implementation actions as they apply to specific geographical regions around the County. CDPs are also intended to serve as a forum for community input into land-use, delivery of government services and any

other matters relating to the planning area.

The Puna CDP does not specify land use in the project area, but contains the following Goals for Managing Growth that are relevant to the action.

3.1.1 Goals (for Managing Growth)

- a. Puna retains a rural character while it protects its native natural and cultural resources.
- b. The quality of life improves and economic opportunity expands for Puna's residents.
- d. Exposure to high risk from natural hazards situations is reduced.
- f. Native vegetation, coastal and historic resources are provided new forms of protection.

Discussion: The proposed DBA and the Project would not degrade the rural-agricultural character of the area, as the neighborhood is composed of similar dwellings and uses, all in the SLU Agricultural District. The Barry Property is within Volcanic Hazard Zone 3, and shares the same lava flow and seismic hazards as the rest of Hawaiian Paradise Park. The expected location of the dwelling on the Barry Property, well set back from the shoreline, would avoid coastal hazards. No native vegetation, rare species, coastal resources or historic sites will be adversely affected.

The construction of the Project is consistent with the Puna CDP.

3.6.4 Hawai'i County Zoning

The Barry Property is currently within the SLU Conservation District. The Barry Property is zoned by the County of Hawai'i within the Agricultural District, minimum lot size of one acre (A-1a), although County zoning per se does not apply in the Conservation District. The proposed DBA and the Project are consistent with the A1-a County zoning district.

PART 4: DETERMINATION, FINDINGS AND REASONS

4.1 Determination

The Barrys expect that the LUC will determine that the proposed action will not significantly alter the environment, as impacts will be minimal, and that this agency will accordingly issue a Finding of No Significant Impact (FONSI). This determination will be based on comments to the Draft EA, and the Final EA will present the LUC's final determination.

4.2 Findings and Supporting Reasons

1. *The proposed 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

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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. No archaeological sites are present. The only cultural resources or practices are associated with traditional fishing and shellfish gathering makai of the Barry Property, which will not be affected.

2. *The proposed 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 Data Book, published by the State of Hawai'i Department of Business, Economic Development and Tourism, there are approximately 1,973,846 acres of land classified within the 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.
3. *The proposed 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 all elements of the State's long-term environmental policies.
4. *The proposed project will not substantially affect the economic or social welfare of the community or State.* The Project would not have any substantial effect on the economic or social welfare of the County or State of Hawai'i.
5. *The proposed 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 of Hawai'i Department of Health regulations.
6. *The proposed project will not involve substantial secondary impacts, such as population changes or effects on public facilities.* The small scale of the Project would not produce any major secondary impacts, such as population changes or effects on public facilities.
7. *The proposed 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. *The proposed 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 Barry Property. The Hawaiian hoary bat, which was not observed on the Barry Property but has been observed elsewhere in Hawaiian Paradise Park, is an island wide-ranging species that will experience no adverse impacts from the Barry 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. *The proposed project is not one which is individually limited but cumulatively may have*

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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. There are no substantial government or private projects in construction or planning in the area, and no accumulation of adverse construction effects would be expected. Other than the precautions for preventing adverse effects during construction listed above, no special mitigation measures should be required to counteract the small adverse cumulative effect.

10. *The proposed 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 SLU District Boundary Amendment. Eventual construction of the Project would involve brief, temporary and very minor effects that would occur during construction and would be mitigated. Future uses would be in harmony with neighboring land uses dwelling uses.

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, as much of the Puna District faces similar volcanic and seismic hazard. The Barry Property is in 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 Barrys understand that there are hazards associated with developing in this geologic setting, and have made the decision that the Project is not imprudent to construct or inhabit. Damage to any future home 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. *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 Barry Property, so development of the Project would likely open up at least some coastal views through the Barry Property.

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 (PV) system that will allow the Project to be powered completely, or at least partially, "off-grid."

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County Planning Department.

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**Appendix 1a: Early
Consultation Letters
and Applicant
Responses**

Harry Kim
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai`i 96720-3998
(808) 935-3311 • Fax (808) 961-8865

March 1, 2019

Mr. Derek B. Simon
Carlsmith Ball, LLP
1001 Bishop Street, Suite 2100
Honolulu, HI 96813

Dear Mr. Simon:

Subject: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawaii

Staff, upon reviewing the provided documents, does not anticipate any significant impact to traffic and/or public safety concerns.

Thank you for allowing us the opportunity to comment.

If you have any questions, please contact Captain John Briski, Puna District Commander, at (808) 965-2716.

Sincerely,


MITCHELL K. KANEHALA, JR.
ASSISTANT POLICE CHIEF
AREA I OPERATIONS BUREAU

JB:III/19HQ0246

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
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TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

County of Hawai'i
Police Department
349 Kapiolani Street
Hilo, Hawai'i 96720-3998
ATTN: Mr. Mitchell K. Kanehailua, Jr.

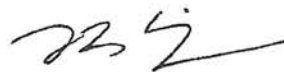
Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Kanehailua:

Thank you for your letter dated March 1, 2019, responding to the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059. We acknowledge your determination that the County of Hawai'i Police Department does not anticipate any significant impacts to traffic and/or public safety concerns from the Project.

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4833-7451-5867.1.069351-00001

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

Cynthia Y. Arashiro

From: Self, Amy <Amy.Self@hawaiicounty.gov>
Sent: Tuesday, March 05, 2019 3:04 PM
To: Derek B. Simon
Cc: Kamelamela, Joe; Schoen, Renee; Masuda, Craig; Kim, Ronald
Subject: Letter dated February 22, 2019; Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification
Attachments: 2019-02-22 Ltr toJoseph Kamelamela from Derek Simon RE Kevin & Monica Ba....pdf

Dear Mr. Simon:

We are in receipt of the attached letter regarding the above referenced subject matter. Our office does not provide legal services to the general public. More specifically, our office does not accept requests for early review and comment on draft EAs pursuant to Hawai'i Administrative Rules, Title 11, Chapter 200. Please direct your request to the County of Hawai'i Planning Department, which is the appropriate department for this type of request.

CARLSMITH BALL LLP

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DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

Amy G. Self, Esq.
County of Hawai'i
Office of the Corporation Counsel
333 Kilauea Avenue, 2nd Floor
Hilo, Hawai'i 96720

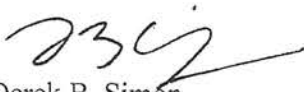
Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Ms. Self:

Thank you for your email dated March 5, 2019, responding the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059. We acknowledge that the County of Hawai'i Office of the Corporation Counsel does not accept early consultation requests, and we will remove your office from all further requests for comment on the Project. A copy of the Barrys' early consultation request was also sent to the County of Hawai'i Planning Department.

Thank you for taking the time to review the Barrys' early consultation request. A copy of your early consultation letter and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to the County of Hawai'i Planning Department. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,


Derek B. Simon

cc: Clients

4835-1064-2587.1.069351-00001

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

Cynthia Y. Arashiro

From: Haae, Glenn <glenn.haae@doh.hawaii.gov>
Sent: Wednesday, March 06, 2019 1:55 PM
To: Derek B. Simon
Cc: HI Office of Environmental Quality Control; Wong, Alec Y
Subject: Barry Family Project (Request for Comments)
Attachments: 2019A070.pdf

Dear Mr. Derek B. Simon,

The Clean Water Branch received your letter dated February 22, 2019 regarding the "Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawaii" requesting comments. We are forwarding your letter to the Office of Environmental Quality Control who facilitate the environmental review process.

For Clean Water Branch comments, you may view our Standard Comments at <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

Sincerely,

Glenn Haae
Clean Water Branch
Phone: (808) 586-4309

Notice: This information and attachments are intended only for use of the individual(s) or entity to which it is addressed, and may contain information that is privileged and/or confidential. If the reader of this message is not the intended recipient, and dissemination, distribution, or copying of this communication is strictly prohibited and may be punishable under state and federal law. If you have received this communication and/or attachments in error, please notify the sender via e-mail immediately and destroy all electronic and paper copies.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
END/CWB

05023PDCL.18

May 10, 2018

MEMORANDUM

SUBJECT: Clean Water Branch Standard Project Comments
TO: Agencies and Project Owners
FROM: ALEC WONG, P.E., CHIEF *Alec Wong*
Clean Water Branch

This memo is provided for your information and sharing. You are encouraged to share this memo with your project partners, team members, and appropriate personnel.

The Department of Health (DOH), Clean Water Branch (CWB) will no longer be responding directly to requests for comments on the following documents (Pre-consultation, Early Consultation, Preparation Notice, Draft, Final, Addendums, and/or Supplements):

- Environmental Impact Statements (EIS)
- Environmental Assessments (EA)
- Stream Channel Alteration Permits (SCAP)
- Stream Diversion Works Permits (SDWP)
- Well Construction/Pump Installation Permits
- Conservation District Use Applications (CDUA)
- Special Management Area Permits (SMAP)
- Shoreline Setback Areas (SSA)

For agencies or project owners requiring DOH-CWB comments for one or more of these documents, please utilize the DOH-CWB Standard Comments below regarding your project's responsibilities to maintain water quality and any necessary permitting. DOH-CWB Standard Comments are also available on the DOH-CWB website located at: <http://health.hawaii.gov/cwb/>.

DOH-CWB Standard Comments

The following information is for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program.

1. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
2. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for point source water pollutant discharges into State surface waters (HAR, Chapter 11-55). Point source means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

Some of the activities requiring NPDES permit coverage include, but, are not limited to:

a. Discharges of Storm Water

- i. For Construction Activities Disturbing One (1) or More Acres of Total Land Area.

By HAR Chapter 11-55, an NPDES permit is required before the start of the construction activities that result in the disturbance of one (1) or more acres of total land area, including clearing, grading, and excavation. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale.

- ii. For Industrial Activities for facilities with primary Standard Industrial Classification (SIC) Codes regulated in the Code of Federal Regulations (CFR) at 40 CFR 122.26(b)(14)(i) through (ix) and (xi). If a facility has more than one SIC code, the activity that generates the greatest revenue is the primary SIC code. If revenue information is unavailable, use the SIC code for the activity with the most employees. If employee information is also unavailable, use the SIC code for the activity with the greatest production.
- iii. From a small Municipal Separate Storm Sewer System (along with certain non-storm water discharges).

b. Discharges to State surface waters from construction activity hydrotesting or dewatering

c. Discharges to State surface waters from cooling water applications

d. Discharges to State surface waters from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pest) to State waters

e. Well-Drilling Activities

Any discharge to State surface waters of treated process wastewater effluent associated with well drilling activities is regulated by HAR Chapter 11-55. Discharges of treated process wastewater effluent (including well drilling slurries,

lubricating fluids wastewater, and well purge wastewater) to State surface waters requires NPDES permit coverage.

NPDES permit coverage is not required for well pump testing. For well pump testing, the discharger shall take all measures necessary to prevent the discharge of pollutants from entering State waters. Such measures shall include, if necessary, containment of initial discharge until the discharge is essentially free of pollutants. If the discharge is entering a stream or river bed, best management practices (BMPs) shall be implemented to prevent the discharge from disturbing the clarity of the receiving water. If the discharge is entering a storm drain, the discharger must obtain written permission from the owner of the storm drain prior to discharge. Furthermore, BMPs shall be implemented to prevent the discharge from collecting sediments and other pollutants prior to entering the storm drain.

3. A Section 401 Water Quality Certification (WQC) is required if your project/activity:
 - a. Requires a federal permit, license, certificate, approval, registration, or statutory exemption; and
 - b. May result in a discharge into State waters. The term "discharge" is defined in Clean Water Act, Subsections 502(16), 502(12), and 502(6).

Examples of "discharge" include, but are not limited to, allowing the following pollutants to enter State waters from the surface or in-water: solid waste, rock/sand/dirt, heat, sewage, construction debris, any underwater work, chemicals, fugitive dust/spray paint, agricultural wastes, biological materials, industrial wastes, concrete/sealant/epoxy, and washing/cleaning effluent.

Determine if your project/activity requires a federal permit, license, certificate, approval, registration, or statutory exemption by contacting the appropriate federal agencies (e.g. Department of the Army (DA), U.S. Army Corps of Engineers (COE), Pacific Ocean Division Honolulu District Office (POH) Tel: (808) 835-4303; U.S. Environmental Protection Agency, Region 9 Tel: (415) 947-8021; Federal Energy Regulatory Commission Tel: (866) 208-3372; U.S. Coast Guard Office of Bridge Programs Tel: (202) 372-1511). If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch regarding their permitting requirements.

To request a Section 401 WQC, you must complete and submit the Section 401 WQC application. This application is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Please see HAR, Chapter 11-54 for the State's Water Quality Standards and for more information on the Section 401 WQC. HAR, Chapter 11-54 is available on the CWB website at: <http://health.hawaii.gov/cwb/>.

4. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation and up to two (2) years in jail.
5. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bio-engineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.
 - b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
 - c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.

- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

CARLSMITH BALL LLP

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DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

State of Hawai'i
Department of Health
Clean Water Branch
P.O. Box 3378
Honolulu, Hawai'i 96801-3378
ATTN: Mr. Glenn Haae

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Haae:

Thank you for your email dated March 6, 2019, responding to the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059. Thank you for directing us to the Clean Water Branch's Standard Comments, which will be reviewed in conjunction with the Draft Environmental Assessment (Draft EA), and for forwarding a copy of the Barry's early consultation request to the Office of Environmental Quality Control (OEQC). Please note that we also provided OEQC with a copy of the Barry's early consultation request.

The Barrys greatly appreciate you taking the time to review their early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft EA for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4836-6372-6235.1.069351-00001

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

Harry Kim
Mayor



Michael Yee
Director

Duane Kanuha
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 6, 2019

Mr. Derek B. Simon
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawai'i 96813

Dear Mr. Simon:

**SUBJECT: Comments for Early Consultation for Environmental Assessment for
Reclassification of Approximately 0.51 Acres of Land (Barry Family Trust)
Tax Map Key: (3) 1-5-059:059 Kea'au, Puna, Hawai'i**

This is in response to your letter dated February 22, 2019 requesting early consultation comments for an environmental assessment being prepared for the reclassification of approximately 0.51 acres of land from the State Land Use Conservation District to the State Land Use Agricultural District on the above referenced property, which is owned by the Barry Family Trust.

1. The subject property is 0.51 acres in size and is situated within the Hawaiian Paradise Park Subdivision. The property is zoned Agricultural-1 acre (A-1a) by County of Hawai'i and designated as Conservation by the State Land Use Commission.
2. The General Plan Land Use Pattern Allocation Guide (LUPAG) map designation for the property is Rural (rur).
3. The property is located within the Special Management Area (SMA) and is situated along the shoreline/cliff area, which will require a minimum shoreline of 40 feet from the certified shoreline for any structures.
4. The property is in an area affected by the Puna Community Development Plan, which was adopted by the Hawai'i County Council by Ordinance No. 08-116 and amended by several ordinances.

Mr. Derek B. Simon
Carlsmith Ball LLP
Page 2
March 6, 2019

We have no further comments at this time. Please forward us a copy of the draft EA for review.

If you have any questions, please feel free to contact Jeff Darrow at 961-8158.

Sincerely,



MY

MICHAEL YEE
Planning Director

JWD:mad

P:\wpwin60\CH343\2019\Bary-HPP\LSimon-PreEADraftConsul-BaryHPP.doc

cc w/copy of letter: Ronald Kim, Deputy Corporation Counsel

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
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808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

County of Hawai'i
Planning Department
East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
ATTN: Mr. Michael Yee

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Yee:

Thank you for your letter dated March 6, 2019, responding the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). Thank you for confirming the County of Hawai'i zoning, State Land Use District, County of Hawai'i Land Use Pattern Allocation Guide, Special Management Area, and Puna Community Development Plan designations for the Property. We also acknowledge that the Property has a minimum shoreline setback of forty (40) feet pursuant to Rule 11-5 of the County of Hawai'i Planning Department Rules of Practice and Procedure.

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4846-0207-0683.1.069351-00001

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Correspondence: HA 19-127

Carlsmith Ball LLP
Attention: Derek B. Simon
1001 Bishop St., Suite 2100
Honolulu, HI 96813

MAR - 7 2019

SUBJECT: Early Consultation Request for the Preparation of a Draft Environmental Assessment (EA) for Property Located at Waikahekahe, Puna, TMK: (3) 1-5-059:059

Dear Mr. Simon:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your information regarding the subject matter. According to your information, an Environmental Assessment is being prepared for the proposed reclassification of the subject parcel from the Conservation State Land Use District to the Agricultural State Land Use District and for a proposed residence.

The OCCL notes according to the Atlas of Natural Hazards in the Hawaiian Coastal Zone¹, the overall coastal hazard assessment of this area is high, as there are natural hazards that may affect this low-lying region. High waves consist generally of refracted north swell, trade-wind waves, and waves associated with approaching tropical cyclones. The storm hazard is high as the coast is exposed to both the tropical cyclone and Kona storm windows. Due to volcanic and the related seismic activity, this coast has been experiencing rapid long-term subsidence which enhances the rate of relative sea-level rise. The area is located in lava flow hazard zone 3 with zone 1 having the most severity on a scale of 1-9. Sea level rise is faster in this region than any other in Hawai'i due to subsidence and the area may experience seismicity associated with Kilauea volcano. (Exhibit A)

ALL proposed development along coastlines of Hawai'i should take climate change into consideration. The applicant should discuss potential impacts of climate change and how these impacts will be mitigated within the EA. The siting of the residence should be located as far mauka as practical from the certified shoreline and post on pier construction should be considered. You may wish to review the projected sea level rise exposure area on the Hawai'i Sea Level Rise Viewer at <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>.

¹ Fletcher, Grossman, Richmond & Gibbs. 2002. Atlas of Natural Hazards in the Hawaiian Coastal Zone. Department of the Interior, USGS.

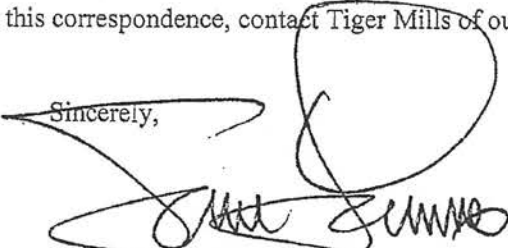
Carlsmith Ball LLP
Attention: Derek B. Simon

Correspondence: HA 19-127

Lateral shoreline access, subsistence fishing/gathering and indigenous religious contemplation/expression are traditional uses that take place along this coastline and are protected by the Hawai'i State Constitution and statute.

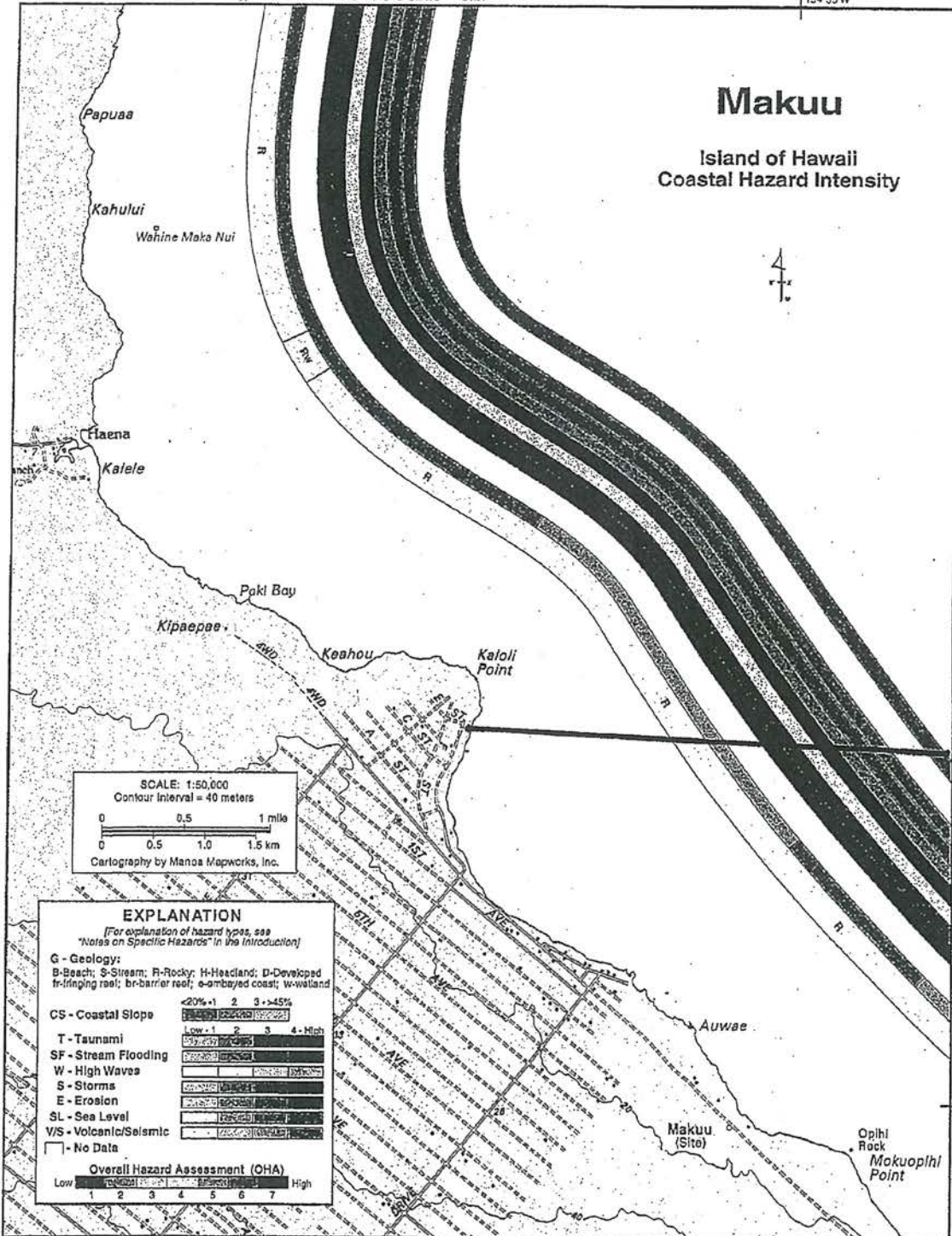
Should there be any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: LUC
HDLO
County of Hawai'i
-Planning



SCALE: 1:50,000
 Contour Interval = 40 meters
 0 0.5 1 mile
 0 0.5 1.0 1.5 km
 Cartography by Manoa Mapworks, Inc.

EXPLANATION
 [For explanation of hazard types, see "Notes on Specific Hazards" in the Introduction]

G - Geology:
 B-Beach; S-Stream; R-Rocky; H-Headland; D-Developed fringing reef; br-barrier reef; e-embayed coast; w-wetland

CS - Coastal Slope
 <20% 1 2 3 >45%
 Low 1 2 3 4 High

T - Tsunami
SF - Stream Flooding
W - High Waves
S - Storms
E - Erosion
SL - Sea Level
WS - Volcanic/Seismic
 - No Data

Overall Hazard Assessment (OHA)
 Low 1 2 3 4 5 6 7 High

Base Credit: USGS 1:50,000 Hilo, Hawai 5817 II W733 Edition 1-DMA and USGS 1:50,000 Paohoa, Hawaii 6016 IV W733 Edition 1-DMA

EXHIBIT A

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

808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

State of Hawai'i
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, Hawai'i 96809
ATTN: Mr. Samuel J. Lemmo

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Lemmo:

Thank you for your letter dated March 7, 2019, responding to the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). On behalf of the Barrys, we offer the following responses to the comments in your letter.

As a part of the Draft Environmental Assessment (Draft EA), the Barrys commissioned Geohazards Consultants International, Inc. (GCI) to do a Coastal Erosion and Volcanic Hazards Report (GCI Report). The GCI Report analyzes in detail the coastal hazards for the Property, and includes both the generalized assessments set forth in the Natural Hazards in the Hawaiian Coastal Zone (Fletcher et. al 2002) and GCI's own assessments specific to the Property. Both assessments rate the threat from tsunami, stream flooding, high waves, storms, erosion, sea-level change, and volcanic and seismic activity, as well as provide an overall hazard assessment for the Property. The GCI report notes that the Property is within Lava Flow Hazard Zone 3 as assessed by the U.S. Geological Survey.

The GCI Report also addresses the potential impacts of climate change on the Property, including the effects of sea-level rise and subsidence, and the Draft EA will include a printout from the Hawai'i Sea Level Rise viewer for the Property. The GCI Report concludes that the Property is suitable for the proposed Project. Finally, the Draft EA discusses appropriate siting for the Project, both as a means to mitigate coastal hazards and sea-level rise, and to ensure continued lateral access along the shoreline for recreational and cultural uses.

July 3, 2019

Page 2

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft EA for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Simon', with a long horizontal flourish extending to the right.

Derek B. Simon

cc: Clients

4822-4172-6107.1.069351-00001

From: Corrigan, Joan <joan.corrigan@doh.hawaii.gov>
Sent: Friday, March 08, 2019 12:19 PM
To: Derek B. Simon
Subject: Barry Family Project TMK: 315059059 Preparation of Draft EA

Aloha Mr. Simon,

Thank you for the opportunity for the Safe Drinking Water Branch (SDWB) to review the Barry Family Project. Based on the information provided, it appears that the SDWB does not need to regulate the water system and therefore, have no comments on the project.

Thank you,

Joan S. Corrigan
Environmental Engineer
Hawaii Department of Health | Safe Drinking Water Branch
Uluakupu Building 4
2385 Waimano Hm Rd, Suite 110
Pearl City, HI 96782-1400
(808) 586-4258 Voice | (808) 586-4351 Fax

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

808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

Hawai'i Department of Health
Safe Drinking Water Branch
Uluakupu Building 4
2385 Waimano Hm. Rd., Suite 110
Pearl City, Hawai'i 96782-1400
ATTN: Ms. Joan S. Corrigan

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Ms. Corrigan:

Thank you for your email dated March 8, 2019, responding to the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). We acknowledge your determination that the Hawai'i Department of Health, Safe Drinking Water Branch (SDWB) does not need to regulate the proposed Project's water system and that SDWB therefore does not have any comments on the Project.

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4818-7085-7883.1.069351-00001

HONOLULU

HILO

KONA

MAUI

LOS ANGELES



Harry Kim
Mayor

Wil Okabe
Managing Director

David Yamamoto, P.E.
Director

Allan G. Simeon, P.E.
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224
(808) 961-8321 · Fax (808) 961-8630
public_works@hawaiicounty.gov

MARCH 18, 2019

ATTN: DEREK SIMON
CARLSMITH BALL LLP
1001 BISHOP STREET, SUITE 2100
HONOLULU, HAWAII 96813
(via email to dsimon@carlsmith.com)

SUBJECT: EARLY CONSULTATION FOR DRAFT ENVIRONMENTAL ASSESSMENT FOR
RECLASSIFICATION OF APPROXIMATELY 0.51 ACRES OF LAND
PUNA DISTRICT, ISLAND OF HAWAII
TMK: (3) 1-5-059:059

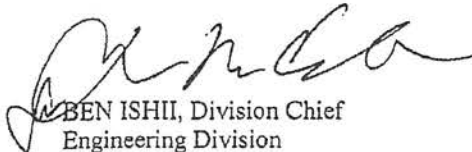
We received the subject dated February 25, 2019 and have the following comments:

The subject parcel is in an area designated as Flood Zone X and VE on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Flood Zone VE is the Special Flood Hazard Area inundated by the 100-year coastal flood (1% chance of occurring in any given year) with velocity hazard (wave action). All construction within Flood Zone VE shall comply with the requirements of Hawaii County Code, Chapter 27, Floodplain Management.

All development-generated runoff shall be disposed of on site and not directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting the approval of the Department of Public Works.

All activities shall comply with the requirements of Hawaii County Code, Chapter 10, Erosion and Sedimentary Control.

Should there be any questions concerning this matter, please contact Ms. Robyn Matsumoto in our Engineering Division at (808) 961-8924 or at Robyn.Matsumoto@hawaiicounty.gov.


BEN ISHII, Division Chief
Engineering Division

RM

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

808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

County of Hawai'i
Department of Public Works
Aupuni Center
101 Pauahi Street, Suite 7
Hilo, Hawai'i 96720-4224
ATTN: Mr. Ben Ishii

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Ishii:

Thank you for your letter dated March 18, 2019, responding to the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). We acknowledge your confirmation that the Property is designated as Flood Zones X and VE on the Federal Emergency Management Agency's Flood Rate Insurance Map. Please note that the vast majority of the Property is within Flood Zone X and that no construction is proposed on the makai portion of the Property within Flood Zone VE.

We further note that, based upon our discussions with your agency, a drainage study will not be required for the proposed Project. All development-generated runoff will be disposed of onsite and will not be directed towards any adjacent properties, and the Project will comply with Chapter 10 of the Hawai'i County Code related to erosion and sedimentary control.

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to your

July 3, 2019
Page 2

agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Simon', with a long horizontal stroke extending to the right.

Derek B. Simon

cc: Clients

4852-9393-4235.1.069351-00001

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 22, 2019

Carlsmith Ball LLP
Attn: Derek B. Simon, Esq.
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

via email: dsimon@carlsmith.com

Dear Mr. Simon:

SUBJECT: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land located at Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059 on behalf of the **Barry Family Project**

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Engineering Division, (b) Division of Forestry & Wildlife, and (c) Land Division – Hawaii District on the subject matter. Should you have any questions, please feel free to call Darlene Nakamura at (808) 587-0417. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Tsuji".

Russell Y. Tsuji
Land Administrator

Enclosures
cc: Central Files

RECEIVED
DAVID IGE
GOVERNOR OF HAWAII
LAND DIVISION



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT



AM 10:39

DEPARTMENT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 27, 2019

19 FEB 27 AM 10:55 ENGINEERS

MEMORANDUM

TO:
FROM
TO
FROM:
SUBJECT:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division - Hawaii District
- Historic Preservation

Russell Y. Tsuji, Land Administrator
 Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land
 Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059
 Carlsmith Ball LLP on behalf of **Barry Family Project**

LOCATION:
APPLICANT:

Transmitted for your review and comment is information on the above-referenced subject matter. We would appreciate your comments by **March 21, 2019**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:
 Print Name: Carty S. Chang, Chief Engineer
 Date: 2/28/19

Attachment
cc: Central Files

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/Russell Y. Tsuji

Ref: Early Consultation Request for Preparation of a Draft Environmental
Assessment for Reclassification of Approximately 0.51 Acres of Land
Location: Keaau, Puna, Island of Hawaii
TMK: (3) 1-5-059:059
Applicant: Carlsmith Ball LLP on behalf of Barry Family Project

COMMENTS


The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiinfip.org/FHAT>).

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- o Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- o Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- o Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- o Kauai: County of Kauai, Department of Public Works (808) 241-4846.

Signed: _____


CARTY S. CHANG, CHIEF ENGINEER

Date: _____

2/28/17

DAVID Y. ICE
GOVERNOR OF HAWAII



19554
SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 27, 2019

MEMORANDUM

RECEIVED
LAND DIVISION
2019 MAR -5 AM 10:40
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Commission on Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division – Hawaii District
 Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator

SUBJECT: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059

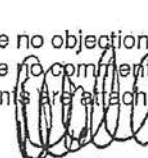
LOCATION: Carlsmith Ball LLP on behalf of Barry Family Project

APPLICANT:

Transmitted for your review and comment is information on the above-referenced subject matter. We would appreciate your comments by **March 21, 2019**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: 
Print Name: DAVID G. SMITH, Administrator
Date: 3/4/19

Attachment
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

2019 MAR -1 A 10:49

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

RECEIVED
LAND DIVISION
HILO, HAWAII

February 27, 2019

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Commission on Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division - Hawaii District
 Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator *[Signature]*

SUBJECT: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land

LOCATION: Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059

APPLICANT: Carlsmith Ball LLP on behalf of Barry Family Project

Transmitted for your review and comment is information on the above-referenced subject matter. We would appreciate your comments by ~~March 21, 2019~~.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *[Signature]*

Print Name: GORDON C. HEIT

Date: 3/13/19

Attachment
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 27, 2019

Carlsmith Ball LLP
Attn: Derek B. Simon, Esq.
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

via email: dsimon@carlsmith.com

Dear Mr. Simon:

SUBJECT: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land located at Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059 on behalf of the **Barry Family Project**

Thank you for the opportunity to review and comment on the subject matter. In addition to our previous comments dated March 22, 2019, enclosed are comments from the Division of Aquatic Resources on the subject matter. Should you have any questions, please feel free to call Darlene Nakamura at (808) 587-0417. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Land Administrator

Enclosure
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 27, 2019

RECEIVED

JAN 27 2019

Division of Aquatic Resources

DAR 5877

MEMORANDUM

TO:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division – Hawaii District
- Historic Preservation

FROM:

Russell Y. Tsuji, Land Administrator

SUBJECT:

Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land

LOCATION:

Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059

APPLICANT:

Carlsmith Ball LLP on behalf of **Barry Family Project**

RECEIVED
LAND DIVISION
2019 MAR 22 AM 11:12
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Transmitted for your review and comment is information on the above-referenced subject matter. We would appreciate your comments by **March 21, 2019**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:

Print Name:

Brian Nelson DAR Administrator

Date:

3/21/19

Attachment
cc: Central Files

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

Date: March 21, 2019

DAR # 5877

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN REGULATION
BUREAU OF COMPLIANCE
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Troy Sakihara *TS*, Aquatic Biologist

SUBJECT: Early review of a proposed private home construction by the Barry Family

Request Submitted by: Russell Tsuji, Land Administrator

Location of Project: Kea'au, Puna, Hawaii Island, TMK (3) 1-5-059:059

Brief Description of Project:

The Barry Family is proposing to build a single-story dwelling on their 0.51 acre private oceanfront property in Hawaiian Paradise Park in the Puna District on Hawaii Island, TMK (3) 1-5-059:059. The proposed project is located in the State Land Use Conservation District and is currently zoned Agricultural A1-a by the County of Hawaii. As such, an Environmental Assessment is required and being drafted. The proposed single-story house is to be sited toward the ocean, but within reasonable distance from the coastline avoiding impacts to any existing native vegetation, coastal habitat or natural resources. The proposed activities and construction are therefore not cause for immediate concern to DAR.

No Comments Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: _____

Brian J. Neilson
Brian J. Neilson
DAR Administrator

Date: _____

3/21/19

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

808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:
069351-00001

July 3, 2019

State of Hawaii
Department of Land and Natural Resources
Land Division
Post Office Box 621
Honolulu, Hawaii 96809
ATTN: Mr. Russell Y. Tsuji

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Tsuji:

Thank you for your letters dated March 22 and 27, 2019, forwarding responses from various Divisions within the State of Hawai'i Department of Land and Natural Resources (DLNR) to Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). On behalf of the Barrys, we offer the following responses to the comments appended to your letters:

1. **Engineering Division:** Thank you for providing information regarding the rules and regulations of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program. FEMA's National Flood Insurance Rate Map designates the vast majority of the Property as within Flood Zone X, with only a small portion along the shoreline within Flood Zone VE. No construction is proposed on the portion of the Property within Flood Zone VE, and all development on the Property will comply with applicable County of Hawai'i regulations.
2. **Division of Forestry and Wildlife:** We acknowledge that the Division of Forestry and Wildlife has no comments on the proposed Project.
3. **Land Division:** We acknowledge that the Land Division has no comments on the proposed Project.

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

July 3, 2019
Page 2

4. **Division of Aquatic Resources:** We acknowledge that the Division of Aquatic Resources (DAR) has determined that the proposed Project is not a cause for immediate concern and that it therefore has no comments on the Project. In the event that there are any changes to the Project plans, we will provide DAR with an opportunity to review and provide comments on such changes, as requested.

Thank you for taking the time to review the Barrys' early consultation request and for obtaining input from various divisions within DLNR. Copies of your early consultation letters, including the Division comments, and this response will be included in the Draft Environmental Assessment for the Project, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4835-6771-5995.1.069351-00001



**OFFICE OF PLANNING
STATE OF HAWAII**

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GOVERNOR

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DTS 201904011017BE

April 1, 2019

Mr. Derek B. Simon
Associate
Carlsmith Ball, LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813-3484

Dear Mr. Simon:

Subject: Early Consultation for Preparation of a Draft Environmental Assessment –
Reclassification of Approximately 0.51 Acres of Land, Hawaiian Paradise
Park, Puna District, County and State of Hawaii
TMK: (3) 1-5-059: 059

Thank you for the opportunity to provide comments on the early consultation request for the preparation of a Draft Environmental Assessment (Draft EA) on the Barry Family Trust land reclassification.

The Barry Family Trust property is located within the State Land Use Conservation District. The Barry Family Trust (Petitioner) is petitioning the State Land Use Commission (LUC), Docket Number A18-806, to reclassify the land from the State Conservation District to the State Agricultural District to construct a single-story dwelling and related agricultural uses.

The property is a 0.51-acre (22,215.6 sq. ft.), vacant and undeveloped parcel within the Hawaiian Paradise Park subdivision in Puna. The lot is bounded by Paradise Ala Kai Drive to the west, the Pacific Ocean to the east, an existing dwelling to the north, and a vacant, undeveloped lot to the south. All the surrounding parcels are within the State Agricultural District. The Petitioner notes that almost all the other oceanfront lots within Hawaiian Paradise Park were reclassified from the Conservation District to the Agricultural District under a single petition, LUC Docket Number A76-419. The Barry Family Trust parcel was originally included in this petition, but was removed from the final Decision and Order after attempts to contact the then-owner of the property failed.

The proposed dwelling unit will consist of a single-story, 1,800-square foot, three-bedroom, two-bath structure for use by the Barry family as their primary personal residence. The project will also include a two-car garage, a lanai, a courtyard, and a small swimming pool.

Mr. Derek B. Simon
April 1, 2019
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The Office of Planning (OP) has reviewed the transmitted material and has the following comments to offer:

1. State Land Use District Boundary Amendment

The Draft EA is being prepared to support the Barry Family Trust's Petition for District Boundary Amendment, Docket No. A18-806, from State Conservation District to State Agricultural District. Some of the issues the LUC must consider are:

- **Water Resources** – OP notes the Draft EA will discuss the provision of potable water to the property either from a private well to be drilled on site with treatment and an underground water storage tank, or a rainwater catchment system if necessary.
- **Agricultural Use** – The Draft EA should disclose the potential related agricultural uses.
- **Cultural, Archaeological, and Historic Resources** – OP notes the Draft EA will contain an archaeological survey and a cultural impact analysis (CIA). The CIA must make specific findings and conclusions as specified in the Hawaii Supreme Court's holding in *Ka Pa'akai O Ka'Aina v. Land Use Commission, State of Hawai'i*.
- **Energy Use** – OP notes that the Draft EA will discuss the availability of electrical service to the area and the Petitioner's intent to install a photovoltaic solar system for their personal use.
- **Conservation District** – Since the Petitioner seeks a reclassification from the State Conservation to Agricultural District, the Draft EA should discuss the existing inventory of conservation resources (habitat, watershed area, etc.) and how the loss of these resources will impact the public.

2. Hawaii State Planning Act

Hawaii Administrative Rules (HAR) § 11-200-10(4) requires an Environmental Assessment to provide a general description of the action's technical, economic, social, and environmental characteristics. The Draft EA should provide a discussion on the project and its ability to meet State goals and priorities as detailed in HRS Chapter 226.

The analysis on the Hawaii State Planning Act should examine the project's consistency with all three parts of HRS Chapter 226 or clarify where the project conflicts with them. If any of these statutes are not applicable to the project, the analysis should affirmatively state such determination, along with discussion paragraphs.

3. Hawaii Coastal Zone Management Program

The Hawaii Coastal Zone Management (CZM) area is defined as "all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the U.S. territorial sea" (HRS § 205A-1).

Pursuant to HRS § 205A-4, in implementing the objectives of the CZM program, approving agencies shall consider ecological, cultural, historic, esthetic, recreational, scenic, open space

values, coastal hazards, and economic development. As this project requires agency approvals and permitting, the Draft EA should provide analysis on the project's consistency with the objectives and supporting policies of the Hawaii CZM program, HRS § 205A-2.

4. Special Management Area / Shoreline Setback Requirements

According to the review material, the proposed dwelling unit will be sited toward the ocean. The Draft EA should indicate the project site's proximity to the Special Management Area (SMA) of Hawaii Island (as delineated by the County of Hawaii), and the distance of the proposed structures to the shoreline as defined in HRS § 205A-2.

Furthermore, because the makai perimeter of the project parcel consists of a lava shelf shoreline, the dwelling unit development may be subject to shoreline setback requirements of Hawaii County. We recommend that the Barry Family or their representatives, consult with the Hawaii County Planning Department on SMA permitting and a shoreline setback determination.

5. Sea Level Rise

Based on the enclosed map, because the dwelling unit structure is located near a shoreline lava shelf, it may be susceptible to coastal weather threats such as storm surge, violent wave action, tsunami inundation, or coastal flooding. Sea level rise (SLR) resulting from climate change may increase the risk of this residential site to these hazards.

To assist you in the development of climate change adaptation and resiliency strategies to safeguard this residence, OP suggests you review the findings of the Hawaii Sea Level Vulnerability and Adaptation Report, 2017 (Report), by the Hawaii Climate Change Mitigation and Adaptation Commission. The Report, and the Hawaii SLR Viewer (Viewer), can be accessed via the Hawaii Climate Adaptation Portal at <http://climateadaptation.hawaii.gov>. For SLR forecasts and flood projections, the Viewer identifies a 3.2-foot SLR exposure area across the main Hawaiian Islands. The Viewer may assist you in preparing and planning for these natural threats.

6. Drainage / Stormwater Runoff Mitigation / Erosion Control

Pursuant to HAR § 11-200-10(6) -- identification and summary of impacts and alternatives considered; to ensure that the water and marine resources of the Puna District of Hawaii Island remain protected, the effects of stormwater inundation, resulting from this development, should be evaluated in the Draft EA.

Issues that may be examined include, but are not limited to, project site characteristics in relation to flood and erosion prone areas, open spaces, the potential vulnerability of surface water resources, drainage infrastructure currently in place, and comparing the level of impervious versus permeable in the project area. These items should be considered when developing mitigation measures for the protection of nearby water resources and the coastal

Mr. Derek B. Simon
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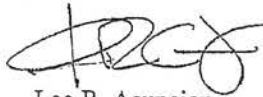
ecosystem, pursuant to HAR § 11-200-10(7).

OP notes that the Barry Family Trust proposes a landscaping plan for the project. OP recommends that the Barry Family Trust consider enhanced landscaping (rain gardens, bioswales, and natural detention basins) to control stormwater runoff. Enhanced landscaping features are consistent with low impact development (LID). OP has developed guidance documents on stormwater runoff strategies. OP recommends consulting these evaluative tools when developing mitigation approaches for polluted runoff. They offer useful techniques to keep land-based pollutants and sediment in place, while considering the management practices best suited for the area and the types of contaminants affecting the surrounding environment. The evaluative tools that should be considered during the design process include:

- **Stormwater Impact Assessments** can be used to identify and analyze information on hydrology, sensitivity of coastal and riparian resources, and management measures to control runoff, as well as consider secondary and cumulative impacts to the area. http://files.hawaii.gov/dbedt/op/czm/initiative/stormwater_impact/final_stormwater_impact_assessments_guidance.pdf; and
- **Low Impact Development (LID), A Practitioners Guide** covers a range of structural systems and best management practices that mimic or utilize the natural processes of infiltration and evapotranspiration of polluted runoff. LID features promote onsite storm water management, urban layouts that minimize environmental impacts, and can lead to improved water quality. http://files.hawaii.gov/dbedt/op/czm/initiative/lid/lid_guide_2006.pdf

If you have any questions regarding this comment letter, please contact Aaron Setogawa of our Land Use Division at (808) 587-2883, or Joshua Hekeka of our CZM Program at (808) 587-2845.

Sincerely,



Leo R. Asuncion
Planning Program Administrator II

c. Land Use Commission

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OUR REFERENCE NO.:
069351-00001

July 3, 2019

Office of Planning
State of Hawai'i
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813
ATTN: Mr. Leo R. Asuncion

Re: Early Consultation Request for Preparation of a Draft Environmental Assessment for Reclassification of Approximately 0.51 Acres of Land Located at TMK No. (3) 1-5-059:059, County and State of Hawai'i

Dear Mr. Asuncion:

Thank you for your letter dated April 1, 2019, responding the Kevin M. and Monica S. Barry's, as Trustees of the Barry Family Trust dated November 15, 2006, request for early consultation comments for their Project proposed at TMK No.: (3) 1-5-059:059 (the Property). On behalf of the Barrys, we offer the following responses to the comments in your letter:

1. **Water Resources:** The Draft Environmental Assessment (Draft EA) will discuss the provision of potable water to the Property. The Barrys intent is to obtain potable water from a well drilled on site with treatment through a reverse-osmosis or similar purification system. However, if necessary, the Barrys will utilize a catchment system.
2. **Agricultural Use:** The Draft EA will discuss the potential agricultural uses to be implemented with the Project. The Barrys are in the process of determining the most appropriate agricultural use for the Property. Mrs. Barry has been an active participant in University of Hawai'i at Hilo's "East Hawai'i Master Gardeners" program since January 2018. The agricultural uses being considered include beekeeping, greenhouse nursery, aquaponics, native plant propagation, and apiculture (beekeeping).
3. **Cultural, Archaeological, and Historic Resources:** ASM Affiliates was retained to conduct an Archaeological Field Inspection of the Property. The Archaeological Field Inspection revealed that no archaeological features are present on the surface of the Property and determined that the likelihood of encountering subsurface resources is extremely remote given the exposed bedrock ground surface.

ASM Affiliates also conducted a Cultural Impact Assessment (CIA) for the proposed Project. As discussed at length in the CIA, and summarized in the Draft EA, no specific cultural sites were identified within the Property by any sources or informants. However, the context of the Property along the Kaloli Point coastline puts it within an area frequently accessed for subsistence marine resource collection. The Barrys are Hawai'i residents who are well aware of the rights of the public to utilize the area makai of the shoreline and the subsistence and cultural importance of these practices. The CIA includes the findings and conclusions required under *Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

4. **Energy Use:** Electrical power is available in the area of the Property from HELCO poles; however, the Barrys intend to install a solar photovoltaic system that will allow the proposed Project to be powered completely, or at least partially, "off-grid."
5. **Conservation District Land Inventory:** The Draft EA will discuss the current inventory of State Land Use (SLU) Conservation lands and how the reclassification of the 0.51-acre parcel proposed for reclassification will affect the public. According to the 2017 State of Hawai'i Data Book, published by the State of Hawai'i Department of Business, Economic Development and Tourism, there are approximately 1,973,846 acres of land classified within the 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 SLU Conservation District resources, including the shoreline fronting the Property.
6. **Hawai'i State Planning Act:** The Draft EA will discuss the applicable provision of the Hawaii State Plan, codified at Chapter 226, Hawai'i Revised Statutes (HRS).
7. **Coastal Zone Management Program and Special Management Area:** The Draft EA will discuss the Project's consistency with the objectives and policies of the Coastal Zone Management Program set forth in HRS § 205A-2.

The Draft EA will also analyze the criteria contained in the Special Management Area (SMA) Rules of the County of Hawai'i for determining whether the proposed Project may have substantial adverse environmental or ecological effects. Upon completion of the Chapter 343, HRS environmental review process, the same criteria will be used by the County of Hawai'i Planning Director to determine whether the proposed Project is exempt from having to obtain a SMA permit.

Finally, the Draft EA will also discuss the siting of the proposed dwelling and improvements with respect to their proximity to the shoreline, and the Project will comply with the County of Hawai'i's shoreline setback regulations.

8. **Sea-Level Rise and Coastal Hazards:** As a part of the Draft EA, the Barrys commissioned Geohazards Consultants International, Inc. (GCI) to do a Coastal Erosion and Volcanic Hazards Report (GCI Report). The GCI Report analyzes in detail the

coastal hazards for the Property, and includes both the generalized assessments set forth in the Natural Hazards in the Hawaiian Coastal Zone (Fletcher et. al 2002) and GCI's own assessments specific to the Property. Both assessments rate the threat from tsunami, stream flooding, high waves, storms, erosion, sea-level change, and volcanic and seismic activity, as well as provide an overall hazard assessment for the Property. The GCI Report also addresses the potential impacts of climate change on the Property, including the effects of sea-level rise and subsidence, and the Draft EA will include a printout from the Hawai'i Sea Level Rise viewer for the Property. The GCI Report concludes that the Property is suitable for the proposed Project.

9. **Drainage/Stormwater Runoff Mitigation/Erosion Control:** The potential for stormwater inundation from the proposed Project, including impacts to water and marine resources, will be addressed in the Draft EA. Grading for the driveway and dwelling site will include practices to minimize the potential for sedimentation, erosion and pollution of coastal waters, and the Barrys will also review the resources related to stormwater runoff strategies noted in your letter.

Thank you for taking the time to review the Barrys' early consultation request and for providing your input. A copy of your early consultation letter and this response will be included in the Draft EA, a copy of which will be provided to your agency for further review and comment. Should you require any additional information, please feel free to contact me at 808-523-2589.

Sincerely,



Derek B. Simon

cc: Clients

4828-8057-1035.1.069351-00001

Appendix 2



GEOHAZARDS CONSULTANTS INTERNATIONAL, INC.
Appraisal of hazards – reduction of risk

Coastal Erosion and Volcanic Hazards Report

Barry Property
Hawaiian Paradise Park
Puna, Hawai'i
TMK: (3) 01-5-059:059

J.P. Lockwood, Ph.D.

January 2019

John P. Lockwood



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