



# **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 R. KANEHAILUA, JR.  
ASSISTANT POLICE CHIEF  
AREA I OPERATIONS BUREAU

JB:III/19HQ0246

# 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  
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 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

**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 to Joseph 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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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 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 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

**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



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

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

In reply, please refer to:  
EMDCWB

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.

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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 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

Harry Kim  
Mayor



Michael Yee  
Director

Duane Kariuha  
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.

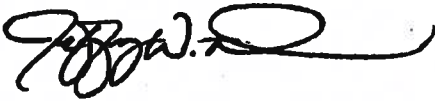
1. The subject property is 0.51 acres in size and is situated within the Hawaiian Paradise Park Subdivision. The property is zoned Agricultural-1 acre (A-1a) by County of Hawai'i and designated as Conservation by the State Land Use Commission.
2. The General Plan Land Use Pattern Allocation Guide (LUPAG) 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,



*For* MICHAEL YEE  
Planning Director

JWD:mad  
P:\wpwin60\CH343\2019\Barry-HPP\LSimon-PreEADraftConsul-BarryHPP.doc

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

# CARLSMITH BALL LLP

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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 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). 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



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

MAR - 7 2019

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

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 Zone<sup>1</sup>, 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/>.

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

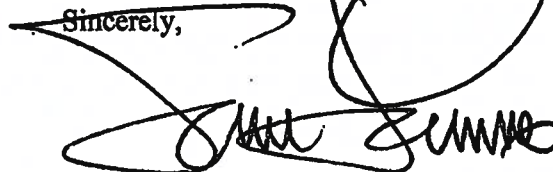
Carlsmith Ball LLP  
Attention: Derek B. Simon

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.

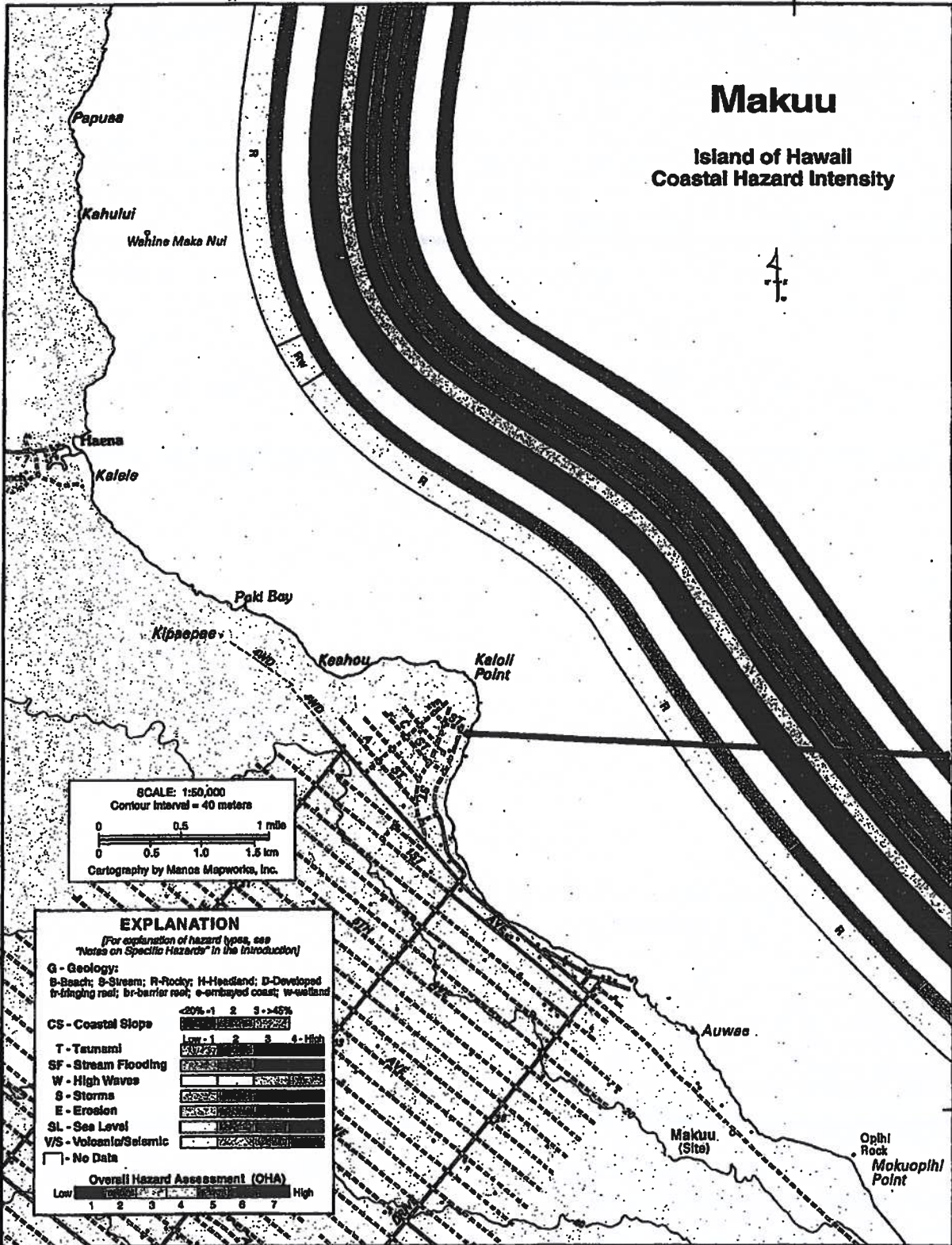
Should there be any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

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 Manos 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%

**T - Tsunami**  
 Low - 1 2 3 4 - High

**SF - Stream Flooding**  
 Low - 1 2 3 4 - High

**W - High Waves**  
 Low - 1 2 3 4 - High

**S - Storms**  
 Low - 1 2 3 4 - High

**E - Erosion**  
 Low - 1 2 3 4 - High

**SL - Sea Level**  
 Low - 1 2 3 4 - High

**VS - Volcanic/Seismic**  
 Low - 1 2 3 4 - High

[ ] - No Data

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

Base Credit: USGS 1:50,000 Hilo, Hawaii 5617 II W733 Edition 1-DMA and USGS 1:50,000 Pahoa, Hawaii 6018 IV W733 Edition 1-DMA

# CARLSMITH BALL LLP

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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 tsunamis, 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 'Derek B. 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 Walmano 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 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](mailto: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

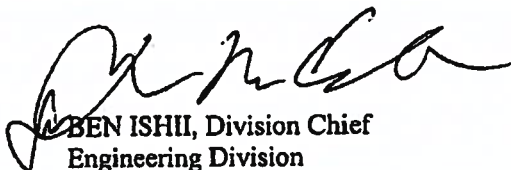
We received the subject dated February 25, 2019 and have the following comments:

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](mailto: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 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](mailto: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 "Russell Y. Tsuji".

Russell Y. Tsuji  
Land Administrator

Enclosures  
cc: Central Files

RECEIVED  
LAND DIVISION



AM 10:39

DEPARTMENT OF LAND &  
NATURAL RESOURCES  
STATE 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

MEMORANDUM

TO:  
**FROM**  
  
FROM:  
**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

SUBJECT:  
  
LOCATION:  
APPLICANT:

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

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: Carly S. Chang, Chief Engineer  
Date: 2/28/19

Attachment  
cc: Central Files

19 FEB 27 AM 10:55 ENGINEERING

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. IGE  
GOVERNOR OF HAWAII



1955A  
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

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:

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

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: 

Print Name: GORDON C. HEIT

Date: 3/12/19

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](mailto: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

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

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

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:

Brian Neilson

Print Name:

Brian Neilson 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  
DIVISION AND OCEAN RECREATION  
BUREAU OF COMPLIANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHUNA LAKE 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.

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**

DAVID Y. IGE  
GOVERNOR

DIRECTOR  
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2848  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

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  
Page 2

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  
April 1, 2019  
Page 4

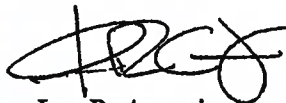
ecosystem, pursuant to HAR § 11-200-10(7).

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](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](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



# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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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 1b: Draft  
Environmental  
Assessment Comment  
Letters and Applicant  
Responses**

Harry Kim  
Mayor

Wil Okabe  
Managing Director

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



**County of Hawai'i**  
PLANNING DEPARTMENT

Michael Yee  
Director

Duane Kanuha  
Deputy Director

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

November 5, 2019

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

Dear Mr. Simon:

**SUBJECT: Comments for Draft Environmental Assessment (DEA) 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 October 25, 2019 requesting comments for the Draft Environmental Assessment (DEA) 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.

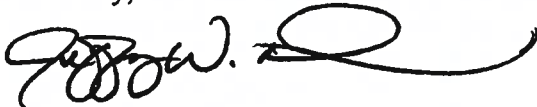
1. The subject property is 0.51 acres in size and is situated within the Hawaiian Paradise Park Subdivision. The property is zoned Agricultural-1 acre (A-1a) by County of Hawai'i and designated as Conservation by the State Land Use Commission.
2. The General Plan Land Use Pattern Allocation Guide (LUPAG) 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  
November 5, 2019

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

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

Sincerely,



*For* MICHAEL YEE  
Planning Director

JWD:mads

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

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:  
069351-00001

February 19, 2020

## VIA U.S. MAIL

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

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Mr. Yee:

Thank you for your letter dated November 5, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

We note that your November 5th letter appears to be substantially similar to the early consultation comment letter, dated March 6, 2019, that your office provided in connection with the proposed reclassification for the Barry Project. We thank you for again confirming the County of Hawai'i (County) zoning, SLU district, County Land Use Pattern Allocation Guide, Special Management Area, and Puna Community Development Plan designations for the Barry Property. We also acknowledge that the Barry 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. The Barry Property's designations, as well as its minimum shoreline setback, were addressed in the Draft EA and will also be addressed in the forthcoming Final Environmental Assessment (Final EA).

Thank you for your participation in this process. Your letter and this response will be included in the Final EA. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

4826-4486-8530.1.069351-00001

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Simon', with a stylized flourish at the end.

Derek B. Simon



**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

November 7, 2019

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

Dear Mr. Simon:

**Subject: Public Comment Period for Draft Environmental Assessment for  
Reclassification Of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, 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,

  
JAMES B. O'CONNOR  
ASSISTANT POLICE CHIEF  
AREA I OPERATIONS

JB:lll/19HQ0246

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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OUR REFERENCE NO.:  
069351-0001

February 19, 2020

## VIA U.S. MAIL

County of Hawai'i  
Police Department  
345 Kapiolani Street  
Hilo, Hawai'i 96720-3998  
Attn: Mr. James B. O'Connor, Assistant Police Chief

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Assistant Chief O'Connor:

Thank you for your letter dated November 7, 2019 providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District. We acknowledge your agency's determination that the proposed reclassification of the Barry Property is not anticipated to result in any significant impacts to traffic or other public safety concerns.

Thank you for your participation in this process. Your letter and this response will be included in the forthcoming Final Environmental Assessment. If you have any questions, please feel free to contact me at dsimon@carlsmith.com or 808-523-2589.

Sincerely,



Derek B. Simon

**Harry Kim**  
Mayor



**Darren J. Rosario**  
Fire Chief

**Lance S. Uchida**  
Deputy Fire Chief

**County of Hawai'i**  
**HAWAI'I FIRE DEPARTMENT**  
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720  
(808) 932-2900 • Fax (808) 932-2928

November 7, 2019

Derek Simon  
Carlsmith Ball LLC  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, Hawai'i 96813

Dear Mr. Derek Simon:

**SUBJECT:** Draft Environmental Assessment for Reclassification of approximately 0.51 Acres of Land located at TMK (3) 1-5-059:059

In regards to the above-mentioned Draft Environmental Assessment application, the following shall be in accordance:

**NFPA 1, UNIFORM FIRE CODE, 2006 EDITION**

*Note: Hawai'i State Fire Code, National Fire Protection Association 2006 version, with County of Hawai'i amendments. County amendments are identified with a preceding "C~" of the reference code.*

**Chapter 18 Fire Department Access and Water Supply**

**18.1 General.** Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

**18.1.1 Plans.**

**18.1.1.1 Fire Apparatus Access.** Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

**18.1.1.2 Fire Hydrant Systems.** Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.



**C~ 18.1.1.2.1 Fire Hydrant use and Restrictions.** No unauthorized person shall use or operate any Fire hydrant unless such person first secures permission or a permit from the owner or representative of the department, or company that owns or governs that water supply or system. Exception: Fire Department personnel conducting firefighting operations, hydrant testing, and/or maintenance, and the flushing and acceptance of hydrants witnessed by Fire Prevention Bureau personnel.

## **18.2 Fire Department Access.**

**18.2.1** Fire department access and fire department access roads shall be provided and maintained in accordance with Section 18.2.

### **18.2.2\* Access to Structures or Areas.**

**18.2.2.1 Access Box(es).** The AHJ shall have the authority to require an access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security.

**18.2.2.2 Access to Gated Subdivisions or Developments.** The AHJ shall have the authority to require fire department access be provided to gated subdivisions or developments through the use of an approved device or system.

**18.2.2.3 Access Maintenance.** The owner or occupant of a structure or area, with required fire department access as specified in 18.2.2.1 or 18.2.2.2, shall notify the AHJ when the access is modified in a manner that could prevent fire department access.

### **18.2.3 Fire Department Access Roads. (\*may be referred as FDAR)**

#### **18.2.3.1 Required Access.**

**18.2.3.1.1** Approved fire department access roads shall be provided for every facility, building, or portion of a building hereafter constructed or relocated.

**18.2.3.1.2** Fire Department access roads shall consist of roadways, fire lanes, parking lots lanes, or a combination thereof.

**18.2.3.1.3\*** When not more than two one- and two-family dwellings or private garages, carports, sheds, agricultural buildings, and detached buildings or structures 400ft<sup>2</sup> (37 m<sup>2</sup>) or less are present, the requirements of 18.2.3.1 through 18.2.3.2.1 shall be permitted to be modified by the AHJ.

**18.2.3.1.4** When fire department access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades, or other similar conditions, the AHJ shall be authorized to require additional fire protection features.

**18.2.3.2 Access to Building.**

**18.2.3.2.1** A fire department access road shall extend to within in 50 ft (15 m) of at least one exterior door that can be opened from the outside that provides access to the interior of the building. Exception: 1 and 2 single-family dwellings.

**18.2.3.2.1.1** When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.1 shall be permitted to be increased to 300 feet.

**18.2.3.2.2** Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility.

**18.2.3.2.2.1** When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 450 ft (137 m).

**18.2.3.3 Multiple Access Roads.** More than one fire department access road shall be provided when it is determined by the AHJ that access by a single road could be impaired by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.

**18.2.3.4 Specifications.**

**18.2.3.4.1 Dimensions.**

C~ **18.2.3.4.1.1** FDAR shall have an unobstructed width of not less than 20ft with an approved turn around area if the FDAR exceeds 150 feet. **Exception:** FDAR for one and two family dwellings shall have an unobstructed width of not less than 15 feet, with an area of not less than 20 feet wide within 150 feet of the structure being protected. An approved turn around area shall be provided if the FDAR exceeds 250 feet.

C~ **18.2.3.4.1.2** FDAR shall have an unobstructed vertical clearance of not less then 13ft 6 in.

C~ **18.2.3.4.1.2.1** Vertical clearances may be increased or reduced by the AHJ, provided such increase or reduction does not impair access by the fire apparatus, and approved signs are installed and maintained indicating such approved changes.

**18.2.3.4.1.2.2** Vertical clearances shall be increased when vertical clearances or widths are not adequate to accommodate fire apparatus.

**C~ 18.2.3.4.2 Surface.** Fire department access roads and bridges shall be designed and maintained to support the imposed loads (25 Tons) of the fire apparatus. Such FDAR and shall be comprised of an all-weather driving surface.

**18.2.3.4.3 Turning Radius.**

**C~ 18.2.3.4.3.1** Fire department access roads shall have a minimum inside turning radius of 30 feet, and a minimum outside turning radius of 60 feet.

**18.2.3.4.3.2** Turns in fire department access road shall maintain the minimum road width.

**18.2.3.4.4 Dead Ends.** Dead-end fire department access roads in excess of 150 ft (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

**18.2.3.4.5 Bridges.**

**18.2.3.4.5.1** When a bridge is required to be used as part of a fire department access road, it shall be constructed and maintained in accordance with county requirements.

**18.2.3.4.5.2** The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

**18.2.3.4.5.3** Vehicle load limits shall be posted at both entrances to bridges where required by the AHJ.

**18.2.3.4.6 Grade.**

**C~ 18.2.3.4.6.1** The maximum gradient of a Fire department access road shall not exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces. In areas of the FDAR where a Fire apparatus would connect to a Fire hydrant or Fire Department Connection, the maximum gradient of such area(s) shall not exceed 10 percent.

**18.2.3.4.6.2\*** The angle of approach and departure for any means of fire department access road shall not exceed 1 ft drop in 20 ft (0.3 m drop in 6 m) or the design limitations of the fire apparatus of the fire department, and shall be subject to approval by the AHJ.

**18.2.3.4.6.3** Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft (0.61 m) beyond each edge of the fire lane.

**18.2.3.4.7 Traffic Calming Devices.** The design and use of traffic calming devices shall be approved the AHJ.

**18.2.3.5 Marking of Fire Apparatus Access Road.**

**18.2.3.5.1** Where required by the AHJ, approved signs or other approved notices shall be provided and maintained to identify fire department access roads or to prohibit the obstruction thereof of both.

**18.2.3.5.2** A marked fire apparatus access road shall also be known as a fire lane.

**18.2.4\* Obstruction and Control of Fire Department Access Road.**

**18.2.4.1 General.**

**18.2.4.1.1** The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

**18.2.4.1.2** Minimum required widths and clearances established under 18.2.3.4 shall be maintained at all times.

**18.2.4.1.3\*** Facilities and structures shall be maintained in a manner that does not impair or impede accessibility for fire department operations.

**18.2.4.1.4** Entrances to fire departments access roads that have been closed with gates and barriers in accordance with 18.2.4.2.1 shall not be obstructed by parked vehicles.

**18.2.4.2 Closure of Accessways.**

**18.2.4.2.1** The AHJ shall be authorized to require the installation and maintenance of gates or other approved barricades across roads, trails, or other accessways not including public streets, alleys, or highways.

**18.2.4.2.2** Where required, gates and barricades shall be secured in an approved manner.

**18.2.4.2.3** Roads, trails, and other access ways that have been closed and obstructed in the manner prescribed by 18.2.4.2.1 shall not be trespassed upon or used unless authorized by the owner and the AHJ.

**18.2.4.2.4** Public officers acting within their scope of duty shall be permitted to access restricted property identified in 18.2.4.2.1.

**18.2.4.2.5** Locks, gates, doors, barricades, chains, enclosures, signs, tags, or seals that have been installed by the fire department or by its order or under its control shall not be removed, unlocked, destroyed, tampered with, or otherwise vandalized in any manner.

### **18.3 Water Supplies and Fire Hydrants**

**18.3.1\*** A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.3.3.

#### **EXCEPTIONS:**

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.2 as amended in the code.
3. When there are not more than two dwellings, or two private garage, carports, sheds and agricultural. Occupancies, the requirements of section 18.3.1 may be modified by AHJ.

**18.3.2\*** Where no adequate or reliable water distribution system exists, approved reservoirs, pressure tanks, elevated tanks, fire department tanker shuttles, or other approved systems capable of providing the required fire flow shall be permitted.

**18.3.3\*** The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road on the site of the premises or both, in accordance with the appropriate county water requirements.

**18.3.4** Fire Hydrants and connections to other approved water supplies shall be accessible to the fire department.

**18.3.5** Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ.

**18.3.6** Where required by the AHJ, fire hydrants subject to vehicular damage shall be protected unless located within a public right of way.



**18.3.7** The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request.

**C~ 18.3.8** Minimum water supply for buildings that do not meet the minimum County water standards:

Buildings up to 2000 square feet, shall have a minimum of 3,000 gallons of water available for Firefighting.

Buildings 2001- 3000 square feet, shall have a minimum of 6,000 gallons of water available for Firefighting.

Buildings, 3001- 6000 square feet, shall have a minimum of 12,000 gallons of water available for Firefighting.

Buildings, greater than 6000 square feet, shall meet the minimum County water and fire flow requirements.

Multiple story buildings shall multiply the square feet by the amount of stories when determining the minimum water supply.

Commercial buildings requiring a minimum fire flow of 2000gpm per the Department of Water standards shall double the minimum water supply reserved for firefighting.

Fire Department Connections (FDC) to alternative water supplies shall comply with 18.3.8 (1)-(6) of *this code*.

**NOTE: In that water catchment systems are being used as a means of water supply for firefighting, such systems shall meet the following requirements:**

- 1) In that a single water tank is used for both domestic and firefighting water, the water for domestic use shall not be capable of being drawn from the water reserved for firefighting;
- 2) Minimum pipe diameter sizes from the water supply to the Fire Department Connection (FDC) shall be as follows:
  - a) 4" for C900 PVC pipe;
  - b) 4" for C906 PE pipe;
  - c) 3" for ductile Iron;
  - d) 3' for galvanized steel.

- 3) The Fire Department Connection (FDC) shall:
  - a) be made of galvanized steel;
  - b) have a gated valve with 2-1/2 inch, National Standard Thread male fitting and cap;
  - c) be located between 8 ft and 16 ft from the Fire department access. The location shall be approved by the AHJ;
  - d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;
  - e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;
  - f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;
  - g) also comply with section 13.1.3 and 18.2.3.4.6.1 of *this code*.
- 4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus' conducting drafting operations at once, in mind.
- 5) Inspection and maintenance shall be in accordance to NFPA 25.
- 6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

**EXCEPTIONS TO SECTION 18.3.8:**

- 1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.
- 2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.
- 3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.
- 4) For one and two family dwellings, agricultural buildings, and storage sheds greater than 2000square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.

Derek Simon  
November 7, 2019  
Page 9

- 5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 932-2911.



DARREN J. ROSARIO  
Fire Chief

CB:ds

# CARLSMITH BALL LLP

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WWW.CARLSMITH.COM

DIRECT DIAL NO.  
808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:  
069351-00001

February 19, 2020

## VIA U.S. MAIL

County of Hawai'i  
Hawaii Fire Department  
25 Aupuni Street, Suite 2501  
Hilo, Hawai'i 96730  
Attn: Mr. Darren J. Rosario, Fire Chief

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Chief Rosario:

Thank you for your letter dated November 7, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

Your letter sets forth the *Hawaii State Fire Code, National Fire Protection Association Version, with County of Hawai'i Amendments* (Fire Code). As explained in the Draft EA, the Barrys are seeking the reclassification of the Barry Property to allow for the development of a dwelling, associated agricultural uses, and other related improvements and uses (Barry Project). The Barry Project will fully comply with all applicable provisions of the Fire Code, including any applicable provisions related to the use of on-site water for firefighting purposes.

Thank you for your participation in this process. Your letter and this response will be included in the forthcoming Final Environmental Assessment. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

4818-0937-2591.1.069351-00001

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek B. Simon', written in a cursive style.

Derek B. Simon

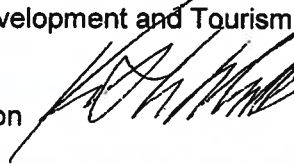


STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF FACILITIES AND OPERATIONS

November 12, 2019

TO: Scott Derrickson  
Land Use Commission  
Department of Business, Economic Development and Tourism

FROM: Kenneth G. Masden II  
Public Works Manager, Planning Section  
Facilities Development Branch 

SUBJECT: Draft Environmental Assessment for Barry Family Project  
Keaau, Hawaii TMK: 1-5-059:059

The Hawaii State Department of Education (HIDOE) has the following comments for the Barry Family Project (Project). According to the Draft Environmental Assessment the Barry Family has filed a petition with the State Land Use Commission to reclassify approximately .51 acres of land from the State Conservation District to the State Agricultural District to construct a single-family dwelling and associated improvements located at Keaau, Island of Hawaii, TMK: 1-5-059:059.

The HIDOE schools servicing the Project are Keaau Elementary, Keaau Middle, and Keaau High. The proposed Project is not anticipated to impact HIDOE schools or facilities.

Thank you for the opportunity to comment. Should you have questions, please contact Robyn Loudermilk, School Lands and Facilities Specialist, Facilities Development Branch, Planning Section at 784-5093 or via email at [robyn.loudermilk@k12.hi.us](mailto:robyn.loudermilk@k12.hi.us).

KGM:rl

c: Derek Simon, Esq., Carlsmith Ball LLP  
Kevin and Monica Barry, Applicant

# CARLSMITH BALL LLP

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DIRECT DIAL NO.  
808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:  
069351-0001

February 19, 2020

## VIA U.S. MAIL

State of Hawaii  
Department of Education  
P.O. Box 2380  
Honolulu, Hawaii 96804  
Attn: Mr. Kenneth G. Masden II

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Mr. Masden:

Thank you for your letter dated November 12, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

Thank you for confirming that the State of Hawai'i Department of Education (DOE) schools servicing the Barry Property are Keaau Elementary School, Keaau Middle School, and Keaau High School. We acknowledge the DOE's determination that the proposed reclassification of the Barry Property is not anticipated to impact DOE schools or facilities.

Thank you for your participation in this process. Your letter and this response will be included in the forthcoming Final Environmental Assessment. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

Sincerely,



Derek B. Simon

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

4814-3114-1810.1.069351-00001

DAVID Y. IGE  
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.  
DIRECTOR OF HEALTH

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

In reply, please refer to:  
File:

LUD - 3 1 5 059 059 DEA  
Reclassf of Land - ID4903

November 20, 2019

Mr. Derek B. Simon  
Carlsmith Ball LLP  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Via email: dsimon@carlsmith.com

Dear Mr. Simon:

**Subject: Public Comment Period for Draft Environmental Assessment (DEA) for  
Reclassification of Approximately 0.51 Acres of Land Located at  
TMK (3) 1-5-059: 059,  
From State Land Use, Conservation District to Agricultural District, Island  
of Hawaii  
(Paradise Ala Kai, Hawaiian Paradise Park, Keaau 96749)**

Thank you for allowing us the opportunity to provide comments on the above subject project in which we have the following comments to offer.

The DEA indicated that a three (3) bedroom single-story family dwelling, two (2)-car garage, lanai, swimming pool, a private water well or private catchment system, and a photovoltaic solar system is planned be constructed as part of the proposed project. Further, the DEA describes that wastewater generated by the project will be processed through a modern individual wastewater system (septic) designed by a licensed engineer and approved by the State of Hawaii, Department of Health.

As this property may be within 1,000 feet of a potable well the individual wastewater system (IWS) to accommodate the wastewater generated from the project may be required to be an NSF/ANSI 40 or 245 certified aerobic treatment unit (ATU) system, rather than a conventional IWS septic system. It should be noted that the filter backwash associated with the operation of the swimming pool is required to be appropriately treated and disposed by an IWS.



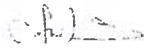
Mr. Derek B. Simon  
November 20, 2019  
Page 2

Accordingly, we have no objection to the proposed land use reclassification provided that all wastewater plans for the project conforms to applicable provisions of the Hawaii Administrative Rules, Chapter 11-62, "Wastewater Systems." This shall include, but not be limited to, conformance with appropriate treatment requirements for the wastewater generated from the project and the applicable setback distance requirements for IWS on the property.

Please be informed that the proposed wastewater systems for the development may have to include design considerations to address any effects associated with the construction of and/or discharges from the wastewater systems to any public trust, Native Hawaiian resources or the exercise of traditional cultural practices. In addition, all wastewater plans must conform to applicable provisions of the Hawaii Administrative Rules, Chapter 11-62, "Wastewater Systems."

Should you have any questions, please call Mr. Mark Tomomitsu of my staff at 586-4294.

Sincerely,



for

SINA PRUDER, P.E., CHIEF  
Wastewater Branch

LM/MST:lmj

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DIRECT DIAL NO.  
808.523.2589

DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:  
069351-0001

February 19, 2020

## VIA U.S. MAIL

State of Hawai'i  
Department of Health  
P. O. Box 3378  
Honolulu, Hawaii 96801-3378  
ATTN: Sina Pruder, P.E., Chief

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Ms. Pruder:

Thank you for your letter dated November 20, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

As noted in the Draft EA, the individual wastewater system (IWS) for the Barry Property will be designed by a licensed engineer and approved by the State of Hawai'i Department of Health. The IWS for the Barry Property and its plans will fully comply with the applicable provisions of Hawai'i Administrative Rules Chapter 11-62, including the appropriate treatment and setback distance requirements. If required, the Barry Property will utilize a NSF/ANSI 40 or 245 certified aerobic treatment unit in the event that it is determined that the Barry Property is within 1000 feet of a potable well. All filter backwash from the swimming pool will be appropriately treated and disposed of by the IWS.

Finally, if necessary, the design of the IWS will take into consideration any effects associated with the construction and operation of the IWS on any public trust resource, Native Hawaiian resource, or the exercise of traditional cultural practices. We do note, however, that as discussed in detail in the Draft EA, the proposed reclassification and development of the Barry Property is not anticipated to have any significant impacts, including to the resources and cultural practices identified in your letter.

HONOLULU

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LOS ANGELES

4847-9091-0386.1.069351-00001

Thank you for your participation in this process. Your letter and this response will be included in the forthcoming Final Environmental Assessment. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

Sincerely,

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

Derek B. Simon

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

December 6, 2019

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

via email: [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com)

Dear Mr. Simon:

SUBJECT: **Republished** Draft Environmental Assessment for the Proposed  
**Barry Family Project** located at Keaau, Puna, Island of Hawaii;  
TMK: (3) 1-5-059:059

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 read "Russell Y. Tsuji".

Russell Y. Tsuji  
Land Administrator

Enclosures  
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

November 8, 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

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

2019 NOV 18 AM 10:45

RECEIVED  
LAND DIVISION

FROM:

Russell Y. Tsuji, Land Administrator

SUBJECT:

**Republished** Draft Environmental Assessment for the Proposed Barry Family Project

LOCATION:  
APPLICANT:

Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059  
Carlsmith Ball LLP on behalf of the **Barry Family Project**

Attached is a letter dated November 1, 2019 from the attorney for the Applicant indicating that the Draft Environmental Assessment will be republished in the November 8, 2019 Environmental Notice. Therefore, please submit any comments by **December 5, 2019**.

*The **republished** DEA can be found on-line at: <http://health.hawaii.gov/oeqc/> (Click on The Environmental Notice in the middle of the page.)*

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 or by email at [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

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

Signed:

*additional*

Print Name:

Cary S. Chang, Chief Engineer

Date:

11/15/19

Attachments  
cc: Central Files

DAVID Y. IGE  
GOVERNOR OF HAWAII



2324  
SUZANNE DY 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

November 8, 2019

MEMORANDUM

TO: ~~From:~~

**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

RECEIVED  
LAND DIVISION  
2019 NOV 14 AM 11:38  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

FROM: ~~To:~~  
SUBJECT:

Russell Y. Tsuji, Land Administrator  
**Republished** Draft Environmental Assessment for the Proposed Barry Family Project

LOCATION: Keaau, Puna, Island of Hawaii; TMK: (3) 1-5-059:059  
APPLICANT: Carlsmith Ball LLP on behalf of the Barry Family Project

Attached is a letter dated November 1, 2019 from the attorney for the Applicant indicating that the Draft Environmental Assessment will be republished in the November 8, 2019 Environmental Notice. Therefore, please submit any comments by **December 5, 2019**.

*The **republished** DEA can be found on-line at: <http://health.hawaii.gov/oeqc/> (Click on The Environmental Notice in the middle of the page.)*

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 or by email at [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

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

Signed: \_\_\_\_\_

Print Name: **DAVID G. SMITH, Administrator**

Date: 11/13/19

Attachments  
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

November 8, 2019

MEMORANDUM

2019 NOV 12 A 10:24  
RECEIVED  
LAND DIVISION  
HILO, 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:

**Republished** Draft Environmental Assessment for the Proposed Barry Family Project

LOCATION:

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

APPLICANT:

Carlsmith Ball LLP on behalf of the Barry Family Project

Attached is a letter dated November 1, 2019 from the attorney for the Applicant indicating that the Draft Environmental Assessment will be republished in the November 8, 2019 Environmental Notice. Therefore, please submit any comments by **December 5, 2019**.

*The republished DEA can be found on-line at: <http://health.hawaii.gov/oeac/> (Click on The Environmental Notice in the middle of the page.)*

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 or by email at [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

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

Signed:

Print Name:

GORDON C. HEIT

Date:

11/21/19

Attachments

cc: Central Files

# 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  
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DIRECT DIAL NO.  
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DSIMON@CARLSMITH.COM

OUR REFERENCE NO.:  
069351-00001

February 19, 2020

## VIA U.S. MAIL

State of Hawai'i  
Department of Land and Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, Hawai'i 96809  
ATTN: Mr. Russell Y. Tsuji, Land Administrator

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Mr. Tsuji:

Thank you for your letter dated December 6, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (the Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

Appended to your letter were responses from three (3) divisions within the State of Hawai'i Department of Land and Natural Resources: (a) the Engineering Division; (b) the Division of Forestry and Wildlife (DOFAW); and (c) the Land Division. The responses from DOFAW and the Land Division stated that neither division had any comments on the Draft EA.

The response from the Engineering Division was marked as having no "additional" comments, which we understand as a reference back your letter dated March 22, 2019, wherein you forwarded comments from the Engineering Division in response to our early consultation request. In its early consultation comments, the Engineering Division provided information regarding the rules and regulations of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) and noted that local flood ordinances may impose higher and/or more restrictive standards. The Engineering Division further noted that it is the responsibility of the property owner to research the Flood Hazard Zone designations for the Barry Property.

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4829-1474-5778.1.069351-00001



In our response dated July 3, 2019, we confirmed that FEMA's National Flood Insurance Rate Map designates the vast majority of the Barry Property as within Flood Zone X, with only a small portion along the shoreline within Flood Zone VE. We further confirmed that no construction is proposed on the portion of the Barry Property within Flood Zone VE, and that all development will comply with applicable County of Hawai'i (County) regulations. The Flood Hazard Zone designations for the Barry Property were included in the Draft EA and will also be included in the forthcoming Final Environmental Assessment (Final EA). Future development of the Barry Property will be fully compliant with all NFIP and County rules and regulations related to flooding.

Thank you for your participation in this process. Your letter and this response will be included in the Final EA. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Simon', written in a cursive style.

Derek B. Simon



# OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

Mary Alice Evans  
DIRECTOR  
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
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DTS201912110811AA

December 16, 2019

To: Daniel Orodener, Executive Officer  
State Land Use Commission

From: Mary Alice Evans, Director *Mary Alice Evans*  
Office of Planning

Subject: A18-806 Barry Family Trust

Draft Environmental Assessment and Finding of No Significant Impact  
Proposed Barry Family Project; Keaau, Hawaii  
TMK: (3) 1-5-059: 059

Thank you for the opportunity to provide comments on the Draft Environmental Assessment and a Finding of No Significant Impact (Draft EA-FONSI) for 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 asking the State Land Use Commission (LUC) in 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 infrastructure for agricultural use.

The property is a 0.51-acre (22,215.6 sq. ft.), vacant and undeveloped parcel within the Hawaiian Paradise Park subdivision along the shoreline in Keaau, Puna, Hawaii. 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 only 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, a small swimming pool, infrastructure (private water well, including an underground water storage tank, or private catchment system, underground individual wastewater system, and photovoltaic solar system), and landscaping.

Under Hawaii Revised Statutes § 205.4.5(a)(4), the dwelling unit is a permissible use as a farm dwelling if it is used in connection with a farm or where agricultural activity provides income to the occupants of the unit. The Petitioner is considering agricultural uses for the property appropriate to the poor soil conditions (rated "E" by the Land Study Bureau), small size of the lot, and proximity

Daniel Orodener  
December 13, 2019  
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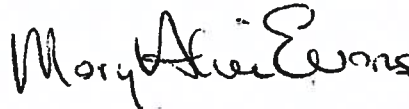
to the Pacific Ocean, such as a greenhouse nursery, aquaponics, native plant propagation, and beekeeping. Petitioner proposes to generate income from the agricultural use through sales at local farmers' markets and/or roadside stand.

Our previous response letter to an Early Consultation Request dated April 1, 2019 requested that the Draft EA:

- Discuss several land use issues, especially the project's impact on the existing inventory of conservation resources, the property's potential agricultural use, and the inclusion of a cultural impact analysis with specific findings as required by the Hawaii Supreme Court's Ka Paakai ruling.
- Examine the project's relevancy with the provisions of Hawaii Revised Statutes (HRS) Chapter 226, the Hawaii State Planning Act;
- Assess the project's adherence with HRS § 205A-2, the objectives and supporting policies of the Hawaii Coastal Zone Management (CZM) program.
- Evaluate the project in relation to the special management area (SMA) and shoreline setback as designated by the County of Hawaii;
- Appraise the project site's exposure and vulnerability to natural hazards linked to climate change, such as sea level rise; and
- Consider the project's impact on coastal and surface water resources resulting from stormwater runoff. The analysis should include a critique on drainage infrastructure, erosion/sediment controls, and water quality impacts.

The Office of Planning (OP) has reviewed the Draft EA-FONSI and acknowledges that our comments above have been addressed. If you have any questions, please contact Aaron Setogawa of our Land Use Division at (808) 587-2883 or Joshua Hekekoa of our CZM program at (808) 587-2845.

Sincerely,



Mary Alice Evans  
Director

c: Kevin M. Barry and Monica S. Barry  
Derek B. Simon, Esq.  
Ron Terry, Ph.D.

# CARLSMITH BALL LLP

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069351-00001

February 19, 2020

## VIA U.S. MAIL

Office of Planning  
State of Hawaii  
235 South Beretania Street, 6th Floor  
Honolulu, Hawaii 96813  
ATTN: Ms. Mary Alice Evans, Director

Re: Public Comment Period for Draft Environmental Assessment for  
Reclassification of Approximately 0.51 Acres of Land Located at Tax  
Map Key No.: (3) 1-5-059:059, Island, County and State of Hawai'i

Dear Ms. Evans:

Thank you for your letter dated December 16, 2019, providing comments on the Draft Environmental Assessment (Draft EA) for the proposed reclassification of Tax Map Key No.: (3) 1-5-059:059 (the Barry Property) from the State Land Use (SLU) Conservation District to the SLU Agricultural District.

The background information noted in your letter, including the Barrys' Petition for District Boundary Amendment pending before the Commission and the proposed use of the Barry Property, is accurate.

The Barrys acknowledge that under HRS § 205-4.5(a)(4), a dwelling is a permissible use in the SLU Agricultural District if it is occupied in connection with an agricultural use or activity that provides income to the occupants of the dwelling. As noted in the Draft EA and your letter, the Barrys are determining the most appropriate agricultural use for the Barry Property, and the uses being considered include a greenhouse nursery, aquaponics, native plant propagation, and apiculture (beekeeping). The Barrys will generate income from the agricultural use through sales at either local farmers' markets, through a roadside stand, or a combination of both.

Finally, thank you for confirming that the comments you provided in response to our early consultation request were sufficiently addressed in the Draft EA.

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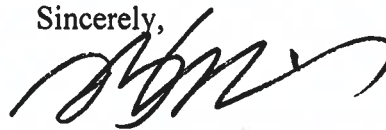
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LOS ANGELES

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Thank you for your participation in this process. Your letter and this response will be included in the forthcoming Final Environmental Assessment. If you have any questions, please feel free to contact me at [dsimon@carlsmith.com](mailto:dsimon@carlsmith.com) or 808-523-2589.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek B. Simon', written in a cursive style.

Derek B. Simon