

SP82-353 - THE ESTATE OF JAMES CAMPBELL (A-1)



March 17, 1982

Please send all notices to:

Mr. Alan T. Murakami
Legal Aid Society
85-555 Farrington Highway
Waianae, Hawaii 96792

DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET AND USE COMMISSION
HONOLULU, HAWAII 96813 • (808) 523-4482
STATE OF HAWAII



MAY 2 4 08 PM '84

EILEEN R. ANDERSON
MAYOR

MICHAEL M. MCELROY
DIRECTOR

ROBERT B. JONES
DEPUTY DIRECTOR

LU3/84-1461(EY)
81/SUP-6
81/CUP-12

APRIL 30, 1984

MEMORANDUM

TO : PLANNING COMMISSION
FROM : MICHAEL M. MCELROY, DIRECTOR OF LAND UTILIZATION
SUBJECT: REQUEST FOR INFORMATION

The following is in response to information requested by the Planning Commission at its meeting of March 21, 1984.

Item 2: An inspection and status report on the Special Use Permit for the Barbers Point Coral Stockpile of Campbell Estate, especially with reference to the 30-foot height limitation, boundaries and plantings.

On April 6, 1984, an inspector of the Construction Branch of the Division of Engineering, Department of Public Works, after a field investigation, informed the Department of Land Utilization of the following:

1. The average height of Stockpiles Nos. "1 and 2" is 40+ feet. Stockpile No. "3" is approximately 15+ feet high. The approved Conditional Use Permit plan allows a maximum height of 50 feet.
2. Stockpile No. "1" is completed and the landscaper (P. J. Kuniyoshi) is starting to plant "Beach Morning Glory" (5 feet in center).
3. All of the stockpile sites were staked out by the surveyor and are within their proper boundaries.
4. Stockpile No. "2" is about 75% complete and Stockpile No. "3" is about 20% complete.
5. The Corps of Engineers monitors the project daily.

6/1 - WUC

Planning Commission
Page 2
April 30, 1984

6. Attached are eight (8) photographs showing Stockpile Nos. 1 to 3 inclusive, as of April 6, 1984.

Background:

As you are aware, a Conditional Use Permit is also involved.

The approved Conditional Use Permit stockpile plans, which include a stockpiling plan showing cross-sections of the proposed stockpiles at a maximum 40 feet height, was subsequently modified by the Department of Land Utilization, to 50 feet, after review by the Corps of Engineers and Department of Public Works. Both the Planning Commission and State Land Use Commission were sent copies of our letter granting the modification.

A letter from the Planning Commission's Executive Secretary, Mr. Charles Prentiss (dated July 6, 1983), was sent to Mr. Walter P. Thompson, Engineer on the project, informing him that the modification did not apply to the Special Use Permit; and that a rehearing before the Planning Commission to modify the Special Use Permit was required.

We are unaware of the 30-foot height limitation in the Special Use Permit. Our research of both Conditional Use Permit and Special Use Permit files and reports, including the State Land Use Commission's report, did not reveal the 30-foot requirement.

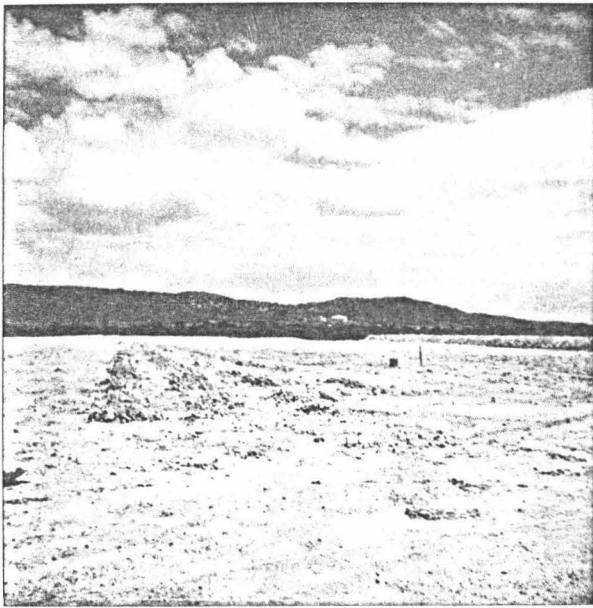
We will be available to answer any questions you may have.



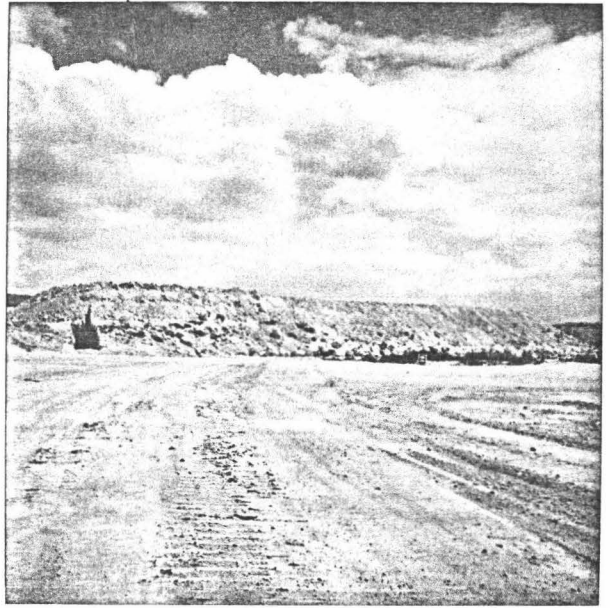
MICHAEL M. McELROY
Director of Land Utilization

MMM:fm
Encl.

cc: State Land Use Commission



STOCKPILE PERMIT 367
BARBERS PT., STOCKPILE No. 1
J. H. H. 4/6/84



STOCKPILE PERMIT 367
BARBERS PT., STOCKPILE No. 1
J. H. H. 4/6/84



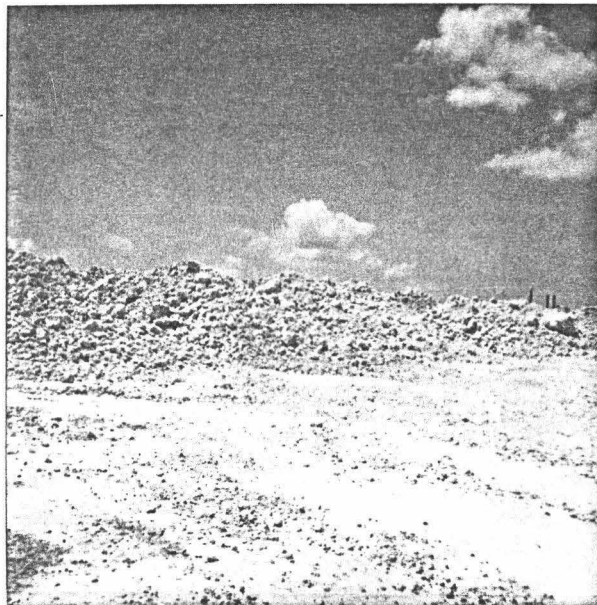
STOCKPILE PERMIT NO. 367
BARBERS PT., STOCKPILE No. 2
J. H. H. 4/6/84



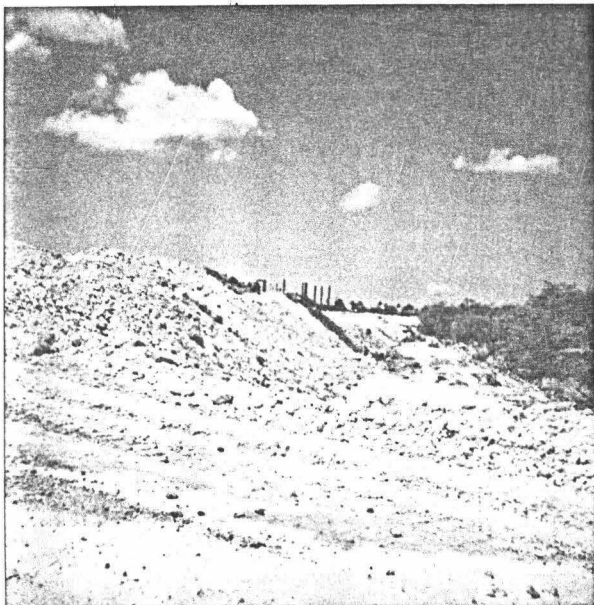
STOCKPILE PERMIT NO. 367
BARBERS PT., STOCKPILE No. 2
J. H. H. ~~4/6/84~~ 4/6/84



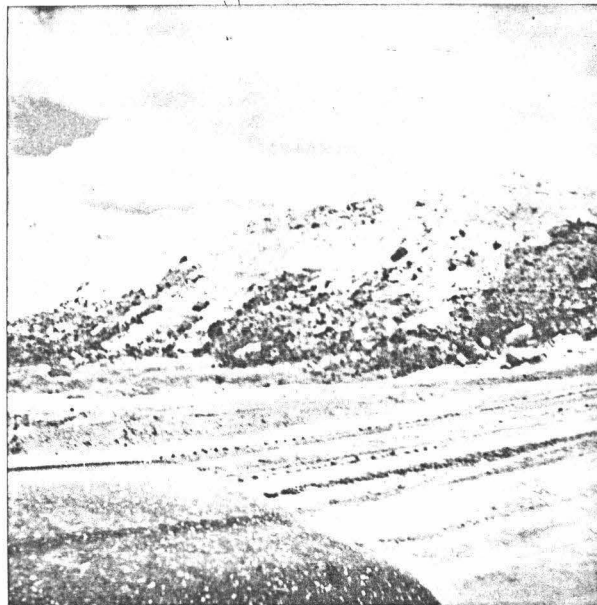
STOCKPILE PERMIT 367
BARBERS PT. STOCKPILE No. 2
J. H. 4/6/84



STOCKPILE PERMIT 367
BARBERS PT. STOCKPILE No. 3
J. H. 4/6/84



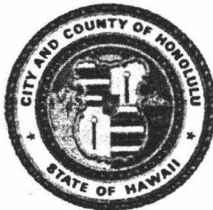
STOCKPILE PERMIT No. 367
BARBERS PT. STOCKPILE No. 3
J. H. 4-6-84



STOCKPILE PERMIT 367
BARBERS PT. STOCKPILE No. 3
J. H. 4/6/84

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813



EILEEN R. ANDERSON
MAYOR

LESLIE S. HIRAHARA
CHAIRMAN

YUKIO KITAGAWA
VICE-CHAIRMAN

81/SUP-6

July 6, 1983

Walter P. Thompson, Inc.
P. O. Box 3351
Honolulu, HI 96801

Gentlemen:

This is in regards to the letter of June 22, 1983 which you received from Michael M. McElroy, Director of Land Utilization, concerning the height of the stockpile of dredged coral from the Barbers Point Deep Draft Harbor.

We wish to clarify that the permission granted in the letter applies only to the Conditional Use Permit. It does not apply to any portion of the area that is covered by the Special Use Permit (SUP) issued by the Planning Commission and the State Land Use Commission. The SUP specifies a maximum of 30 feet (m.s.l.) for the stockpile. Any increase above this would first require a rehearing by the Planning Commission.

If you have any questions, please do not hesitate to call me at 523-4270.

Sincerely,

A handwritten signature in cursive script, reading "Charles A. Prentiss".

CHARLES A PRENTISS
Executive Secretary

APPROVED:

A handwritten signature in cursive script, reading "Willard T. Chow".

WILLARD T. CHOW

Chief Planning Officer

cc: Dept. of Land Utilization

✓ State Land Use Commission

Campbell Estate

Building Dept.

Dept. of Land and Natural Resources

PLANNING COMMISSIONERS

MEMBERS: MARTHA CAIRL, MARYALICE EVANS, HARRIET KANE, GERMAINE L. KELIIOKA, SHIGEYUKI NAKATANI, WILLIAM V. PACHECO, TERUO YOSHIDA

JUL 8 11 39 AM '83
LAND USE COMMISSION
STATE OF HAWAII

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1982 NOV 10 PM 3:13

B. NAKAMAEJO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC
ENOS, RAYMOND A. V. CATANIA,
and GEORGETTE MEYERS,

Appellants,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII, PLANNING
COMMISSION OF THE CITY AND
COUNTY OF HONOLULU, and
JAMES CAMPBELL ESTATE,

Appellees.

CIVIL NO. 72140

DECISION

DECISION

Based on the records herein, this Court remands this matter to the Planning Commission and LUC and orders as follows:

1. The LUC's and the Planning Commission's "Decision and Order" are hereby modified by adding thereto the following, to wit:

a. The Applicant shall or shall cause the stockpiling sites (Parcels I, II, and III) in question to be surrounded by berms to prevent water from the stockpiled material from running off into the surrounding area.

b. The Applicant shall or shall cause the planting and maintaining of

I do hereby certify that this is a full, true and correct copy of the original on file in this office.

Dina Nakamaejo
Clerk, Circuit Court, First Circuit
State of Hawaii

RECEIVED
Dept of Attorney General
State of Hawaii

1982 NOV 15 AM 7:51

LAND USE COMMISSION
STATE OF HAWAII

NOV 22 11:35 AM '82

groundcover on the coral stockpiles and on the berms to control dust, glare and to minimize visual impact.

c. A complaint stating the facts and supported by sufficient and documented evidence alleging that the stockpiling operation creates an adverse impact or creates an adverse effect on the surrounding properties in regard to traffic, or noise, or dust, or glare, or drainage of water from the stockpiled material, or on public facilities may be submitted to the Planning Director. If the Planning Director finds that the complaint and evidence submitted shows probable cause to re-evaluate the special use permit, he shall transmit the complaint and evidence to the Planning Commission. The Commission shall review the submitted complaint and evidence and upon finding probable cause to re-evaluate the special use permit, the Commission shall hold a public hearing, upon giving proper public notices and notices to the Complainant and the Applicant, to determine the merit of the complaint and at the conclusion of the hearing the Commission may impose further conditions, and/or sanctions including the revocation of the special use permit as the Commission may deem appropriate.

d. The Planning Commission and the LUC shall retain jurisdiction in this matter in

the enforcement of this Decision and Order.

2. A clarification shall be made of the following, to wit:

a. If animal husbandry is a permitted use in an Agricultural District, whether paragraph (5) ("That the land upon which the proposed use is sought is unsuited for the uses permitted with the District") appearing on Page 18 of the Findings of Fact of the Planning Commission is supported by competent and preponderance of evidence.

b. Whether the two million dollars worth of rock crushing equipment and other improvements to be used are to crush the excavated coral into different sizes for commercial sale from the stockpiling sites (Parcels, I, II, & III), or are the said equipment and other improvements to be used solely for the purpose of facilitating the stockpiling of excavated coral from the harbor onto the sites.

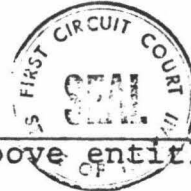
c. If it is found that commercial activity is intended on the stockpiling sites, then Applicant shall be ordered to petition for a land use boundary amendment; if not, then the "Decision and Order" shall specifically prohibit any commercial activity to be conducted on or from the stockpiling sites.

3. The planning Commission and LUC shall conduct further hearings if it is deemed necessary and appropriate to conform to the Order herein.

Dated at Honolulu, Hawaii, this 10th day of November, 1982.

J. H. WAKATSUKI

Judge of the above entitled Court



June 15, 1982

Mr. Leslie S. Hirahara
Chairman
Planning Commission
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Hirahara:

Thank you for advising us that the City and County of Honolulu Planning Commission is satisfied that the applicant, The Estate of James Campbell, has met the requirements stated in Condition No. 1 of the Decision and Order for SP82-353 (Planning Commission Docket No. 8/SUP-6). I'm assuming your letter was for our information only and not for further processing to also have the Land Use Commission determine whether Condition No. 1 has been satisfied.

Please contact me if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:yk

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813

EILEEN R. ANDERSON
MAYOR



May 24, 1982

MAY 28 10 57 AM '82
LAND USE COMMISSION
STATE OF HAWAII

Mr. Gordan Furutani
Executive Officer
State Land Use Commission
Old Federal Building
Room 104, 335 Merchant St.
Honolulu, Hawaii 96813

Dear Mr. Furutani:

The attached letter from Mr. Patrick C. McCoy, Contracts Manager, Bishop Museum, was transmitted to us by Ms. Valerie L. Mendes, Director, Public and Governmental Affairs, Campbell Estate.

As a result of the information in Mr. McCoy's letter, condition number one of the Decision and Order of the Planning Commission in Docket No. 8/SUP-6(EY) dated February 23, 1982 is satisfied for Stockpile Areas 1 and 2.

Sincerely,

A handwritten signature in cursive script, reading "Leslie S. HiraHara".

LESLIE S. HIRAHARA, Chairman
Planning Commission

cc: Valerie L. Mendes
Patrick C. McCoy
State Historic Preservation Officer
Dept. of General Planning
Attachment



B I S H O P M U S E U M

1355 KALIHI STREET • P.O. BOX 19000-A • HONOLULU, HAWAII 96819 • (808) 847-3511

May 11, 1982

Mr. Robert H. Johnsen
Operations Officer
James Campbell Estate
828 Fort Street Mall
Suite 500
Honolulu, Hawai'i 96813

Dear Mr. Johnsen:

Per your request of May 3, 1982 (Item 2), this letter is to confirm the archaeological clearance of the areas known as Stockpile Areas 1 and 2, referred to in the Land Use Commission's decision and approval of SP82-353.

No further archaeological work is required in these two areas. As such, we have no objection to immediate use of these two areas for the stockpiling of coral. We understand, however, that there will be periodic monitoring during construction activities. It is our further understanding that the Museum and the State Historic Preservation Officer will be informed should any significant archaeological materials be found.

For your information, a copy of this letter has been forwarded to the State Historic Preservation Officer.

Very truly yours,

Patrick C. McCoy
Contracts Manager

PCM:mlb

cc: Mr. Susumu Ono
State Historic Preservation Officer

MAR 28 10 58 AM '82
LAND USE COMMISSION
STATE OF HAWAII



DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

GEORGE R. ARIYOSHI
Governor
WILLIAM W. L. YUEN
Chairman
CAROL B. WHITESELL
Vice Chairman

Old Federal Building, Room 104, 335 Merchant Street,
Honolulu, Hawaii 96813

June 4, 1982

COMMISSION MEMBERS:

Richard Choy
Everett Cuskaden
Shinsei Miyasato
Teofilo Tacbian
Robert Tamaye
Edward Yanai

GORDAN FURUTANI
Executive Officer

City Planning Commission
Honolulu Municipal Building
650 South King Street
Honolulu, Hawaii 96813

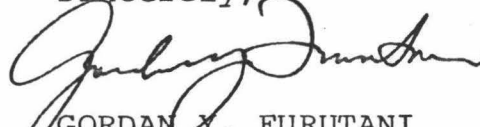
Attention: Mr. Leslie Hirahara, Chairman

Gentlemen:

Subject: SP82-353 - THE ESTATE OF JAMES CAMPBELL

In reference to our letter to you dated
April 28, 1982, enclosed is a copy of the
Decision and Order on SP82-353 for your information
and records.

Sincerely,


GORDAN Y. FURUTANI
Executive Officer

Encl.

cc: Dr. Willard T. Chow, Chief Planning Officer
Department of General Planning

Mr. Michael M. McElroy, Director
Dept. of Land Utilization

Ms. Diane Kishimoto
Ashton & Wriston

The Estate of James Campbell

Mr. Alan Murakami
Legal Aid Society

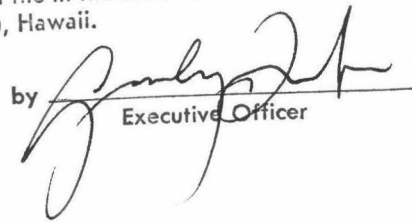
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
THE ESTATE OF JAMES CAMPBELL)
for a Special Permit to Stockpile)
Dredged Coral Spoil from the Barbers)
Point Deep Draft Harbor at Tax Map Key)
No. 9-1-14: Portion 2 and 9-1-15:)
Portion 1, Barbers Point, Ewa, Oahu,)
Hawaii)
_____)

DOCKET NO. SP82-353

This is to certify that this is a true and correct copy of the
Decision and Order on file in the office of the State Land Use
Commission, Honolulu, Hawaii.

6/4/87
Date

by 
Executive Officer

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
)	
THE ESTATE OF JAMES CAMPBELL	)	DOCKET NO. SP82-353
)	
for a Special Permit to Stockpile)	
Dredged Coral Spoil from the Barbers)	
Point Deep Draft Harbor at Tax Map Key)	
No. 9-1-14: Portion 2 and 9-1-15:)	
Portion 1, Barbers Point, Ewa, Oahu,)	
Hawaii)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

This proceeding was initiated by the Application of THE ESTATE OF JAMES CAMPBELL, pursuant to Chapter 205-6, Hawaii Revised Statutes, as amended, Part IX of the Land Use Commission Rules of Practice and Procedure, Part V of the Land Use Commission State Land Use District Regulations, and the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, to allow the Applicant to stockpile dredged coral on approximately 152 acres of land at Barbers Point, Ewa, Oahu, Tax Map Keys 9-1-14: Portion 2 and 9-1-15: Portion 1, in the State Land Use Agricultural District.

The Land Use Commission of the State of Hawaii having duly considered the entire record in the above-entitled matter on April 21, 1982 at Honolulu, Oahu makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. Applicant, the Estate of James Campbell, the fee owner of the subject property, filed this application with the Planning Commission of the City and County of Honolulu on July 31, 1981, through its agent Walter P. Thompson, Inc., for permission to use approximately 152 acres of land situated in

the State Land Use Agricultural District at Barbers Point, Ewa, Oahu, for stockpiling approximately 10.6 million cubic yards of coral dredged from the Barbers Point Deep Draft Harbor.

2. Pursuant to a notice published in the Honolulu Advertiser and in the Honolulu Star-Bulletin on September 5, 1981, Hearing Officer, Gail F. Baron, conducted a public hearing on the Application at 10:00 a.m. on September 15, 1981, at Ewa Beach Community-School Library.

3. At the September 15, 1981 public hearing, Carl Young, on behalf of Na 'Opio Aloha 'Aina ("Na 'Opio"), an association of Waianae Coast residents in opposition to the Application, requested that the public hearing be held as a contested case. Mr. Young's request was granted and the hearing was continued to 7:00 p.m., September 29, 1981, at the Planning Commission Conference Room in Honolulu, Hawaii.

4. Notice of the continued hearing was published in the Honolulu Advertiser and the Honolulu Star-Bulletin on September 19, 1981; however on September 29, 1981, this hearing was again continued because the notice of hearing published for the meeting was defective. The Planning Commission subsequently held continued sessions of the hearing on October 20 and November 3, 10, and 24, and December 17, 1981; and January 2, 1982 at the subject property. All six days of the proceedings before the Planning Commission on the present Application were conducted pursuant to the "contested case" requirements of the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, with the parties afforded ample opportunity for (1) intervention in the proceedings, (2) presentation of evidence, (3) cross examination of witnesses, (4) presentation of rebuttal evidence, (5) filing of proposed decision and orders and objections thereto, and (6) presentation of final arguments to the Commission.

5. On January 12, 1982, after hearing oral arguments by both parties, the Planning Commission voted to approve the

the Application of The Estate of James Campbell for a Special Use Permit subject to the following conditions:

- "1. That the Applicant shall retain or cause to be retained an archaeologist or archaeologists cooperating with the Historic Preservation Office for the State of Hawaii to conduct additional archaeological data recovery on Parcel III to further the research objectives set forth on pages 5 and 6 of Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, Ewa, Oahu, Federal Study Areas 1a and 1b, and State of Hawaii Optional Area 1, Hammatt et al. (1981). The archaeologists shall have a time limit within which to complete such data recovery, to wit, 60 days on Parcels I and II, and 120 days on Parcel III from the date of approval of the Special Use Permit by the State Land Use Commission. Prior to such dates, the Applicant may commence stockpiling activities, including clearing or grubbing, with the approval of the archaeologists retained to conduct the additional archaeological data recovery operations, and
- "2. That pursuant to Rule 4.3 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part IX Special Use Permit Procedures, Section 9-3(2) of the State Land Use Commission Rules of Practice and Procedure, the proposed coral stockpiling use shall be established within three years from the date of approval of the Special Use Permit by the State Land Use Commission, and
- "3. That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu harmless from and against any loss, liability, claim or demand arising out of this Special Use Permit, and
- "4. That full compliance with all applicable Federal, State, and County requirements shall be rendered."

6. The Planning Commission transmitted its decision, together with the findings and the entire record of the proceeding including maps and other exhibits to the Land Use Commission on March 11, 1982.

7. On April 19, 1982, Petitioner filed a written memorandum in support of its application for Special Use Permit.

8. On April 19, 1982, Intervenor filed a written brief in opposition to the Special Use Permit application, a motion to admit additional evidence and a memorandum in support of motion to admit additional evidence. At its meeting on April 21, 1982, the Land Use Commission denied Intervenor's motion to admit additional evidence.

DESCRIPTION OF THE SUBJECT PROPERTY

9. The subject property consists of three parcels located at Barbers Point in the Ewa District, Island of Oahu, State of Hawaii, Tax Map Keys 9-1-14: Portion 2, and 9-1-15: Portion 1. The subject property is located at the southwestern portion of the island of Oahu, immediately north of the James Campbell Industrial Park, located in the Urban District and east (mauka) of the existing barge harbor and the Camp Malakole Military Reservation. A map of the subject property is attached as Exhibit A and incorporated by reference herein.

10. Disposal Area I consists of approximately 22.69 acres, of which 20.66 acres is situated within the Urban District and 2.03 acres is situated within the Agricultural District. Disposal Area II consists of approximately 47.36 acres of which 0.41 acre is situated within the Urban District and 46.95 acres is situated within the Agricultural District. Disposal Area III consists of a total of approximately 107.29 acres of which 3.71 acres is situated in the Urban District and 103.58 acres is situated in the Agricultural District. Approximately 25 acres of the disposal areas is situated within the State Land Use Urban District and 152 acres is within the State Land Use Agricultural District. The portion of the disposal area located within the urban district is not a part of this special permit request, because the proposed use is permitted in the urban district.

11. Disposal Areas I and II have been extensively quarried since 1959, under Variances issued by the Honolulu Planning Commission. These sites presently consist of barren coral plain. Disposal Area III is vacant and overgrown with kiawe. None of the three parcels are in agricultural use at the present time. Disposal Areas I and II are mauka of the future site of the Barbers Point Deep Draft Harbor.

12. The soil of the subject property is predominantly rocky, thin and porous. The Land Study Bureau's overall master

productivity soil rating for agricultural use for the soils of the subject property is "E" or "very poor." The subject property is not classified by the "ALISH" (Agricultural Lands of Importance to the State of Hawaii) system as "Prime," "Unique" or "Other Lands of Importance to the State of Hawaii." The subject property is unsuited for agricultural cultivation.

13. No existing water facilities serve the subject property.

14. No endangered species of flora or fauna inhabit the subject property.

15. There are no documented existing archaeological or paleontological sites on Disposal Areas I and II. The Barbers Point Archaeological District, which includes Disposal Area III is eligible for inclusion in the National Historic Register and has international scientific significance. The United States Army Corps of Engineers retained Archaeological Research Center Hawaii, Inc. (ARCH) to conduct archaeological and paleontological studies on Disposal Area III.

16. Following completion of the ARCH report, five of the six peer review letters solicited by the Corps of Engineers to evaluate the report's findings, strongly criticized the report and recommended that additional studies be conducted in order to "mitigate" the effect of the project on archaeological sites.

17. The Army Corps of Engineers determined that the ARCH report met all applicable Federal laws and regulations concerning historic preservation, and that it could authorize construction to proceed on the deep draft harbor project.

18. One pig farm and two chicken farms occupy areas approximately 0.5 mile mauka of the subject property under year-to-year leases from The Estate of James Campbell. The former long-term leases for these farms have expired and will not be renewed because Hawaiian Cypress Cement has an option to quarry these lands over the next 26 years.

19. Honokai Hale, approximately 0.6 mile northwest of the subject property, is the nearest residential area. The proposed coral stockpiling will not adversely affect surrounding properties.

PROPOSED USE OF THE PROPERTY

20. The Applicant proposes to use the subject property to stockpile coral dredged and excavated from adjacent land during the construction of the Barbers Point Deep Draft Harbor. In 1979, the Land Use Commission reclassified the adjacent 166-acre Deep Draft Harbor site from the State Land Use Agricultural District to the Urban District, and in 1980 the City and County of Honolulu rezoned the site from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agriculture zoning districts to the I-3 Waterfront Industrial zoning district.

21. The Deep Draft Harbor contractor will truck or pipe dredged coral spoil to the subject property from the Harbor site and will store it in piles approximately 30 feet high.

22. The contractor will be required to surround the three disposal areas with berms to prevent water from the stockpiled material from running off into surrounding areas. The contractor will be permitted to drain runoff from the stockpile site only into the Harbor basin, which the contractor will be required to wall off from the ocean until the harbor is completed.

23. The contractor will be required to plant and maintain groundcover on the coral piles and on the berms to control dust, glare, and minimize visual impact.

24. Petitioner proposes to sell the stored dredged coral spoil over a period of approximately 30 years, following which time Petitioner has no planned use for the subject property.

25. The proposed use of the subject property conforms with Policy 13, Objective A, Transportation and Utilities of the General Plan, City and County of Honolulu, (1977) to "facilitate

the development of a second deep-water harbor to relieve congestion in Honolulu Harbor."

26. The Board of Water Supply does not serve the subject property. The water requirements of the proposed use have not been established at this time.

27. No other public facilities will be unreasonably burdened. No sewers or utility systems, schools, fire protection, or other urban type amenities must be constructed in order to accommodate the proposed use. Access roads to the subject property all are privately owned and maintained.

CONFORMANCE TO GUIDELINES FOR DETERMINING "UNUSUAL AND REASONABLE USE"

28. The use requested by Applicant is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations, in that the Commission has previously determined that there is a need for a deep draft harbor at Barbers Point. The use of the subject areas to stockpile coral dredged from the harbor basin is accessory to and necessary for construction of the deep draft harbor to proceed.

29. The proposed use of the subject property for coral stockpiling would not adversely affect the surrounding property, lands to the south and makai being zoned and used or to be used for industrial uses, and west and mauka being vacant and covered with kiawe, and under a 26-year option for coral quarrying purposes.

30. The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection, because urban type amenities, such as sewers, utility systems, drainage and school improvements, or police and fire protection facilities will not be needed to accommodate the proposed use.

31. The 1979 reclassification of the deep draft harbor site is a new development which has arisen since the district boundaries and regulations were established in 1962. Since the district boundaries were established adjacent lands have been

reclassified to urban and rezoned to accommodate Campbell Industrial Park and the proposed Deep Draft Harbor. The coral stockpiling is accessory to and necessary for the development of the Harbor.

32. The land sought for the proposed use is unsuited for the uses permitted within the District, in that the soil of the subject property is predominantly rocky, thin and porous, and has a very poor productivity rating. The Department of Agriculture concluded that the subject property has no significant agricultural value.

APPLICABILITY OF THE SPECIAL PERMIT PROCEDURE

33. The Special Permit procedure is an appropriate vehicle for the proposed use because the proposed use is temporary, for a period of 15-25 years. Coral stockpiling will neither change the essential character of the subject property, nor require the construction of typical urban infrastructures, such as street, sewer and utility systems. Coral stockpiling is not a use permitted in the Urban District and similar uses (quarries, batching) are ordinarily located away from urban concentrations. Through incorporated conditions, Special Use Permits afford the Land Use Commission a greater degree of control over the allowed use than would a District Boundary Amendment.

RULING ON PROPOSED FINDINGS

Any of the proposed Findings of Fact submitted by the Applicant or other parties that are not already ruled upon by the Planning Commission by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

1. The State Land Use Commission has the power and authority to consider and act upon the subject Special Use Permit application pursuant to Chapter 205, Hawaii Revised Statutes and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission.

2. Pursuant to Section 205-6, Hawaii Revised Statutes,

and Part IX of the Rules of Practice and Procedure and Part V of the District Regulations of the State Land Use Commission, the use requested by the Applicant is an "unusual and reasonable" use within the Agricultural District because:

a. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

b. The proposed use will not adversely affect the surrounding property.

c. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

d. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

e. The subject property is unsuited for the uses permitted within the State Land Use Agricultural District.

3. The use of the special use permit procedure to implement the proposed use rather than a district boundary amendment is proper in that the subject property will remain available to accommodate future agricultural needs. At the conclusion of the coral stockpiling use, the subject property will be no less suitable for agricultural activities than at present.

DECISION AND ORDER

IT IS HEREBY ORDERED by the Land Use Commission of the State of Hawaii that the guidelines set forth in Part V, Special Permits, Section 5-2 Test to be Applied, of the State of Hawaii Land Use Commission State Land Use District Regulations have been satisfied and that for reasons as stated herein, the Application of The Estate of James Campbell for a Special Use Permit to stockpile dredged coral on approximately 152 acres of land

in the State Land Use Agricultural District located at Barbers Point, Ewa, Oahu, Hawaii, Tax Map Keys 9-1-14: Portion 2, and 9-1-15: Portion 1, is hereby deemed an "unusual and reasonable" use in the Agricultural District, and approved subject to the following mitigative and protective conditions:

1. That the Applicant shall retain or cause to be retained an archaeologist or archaeologists cooperating with the Historic Preservation Office of the State of Hawaii to conduct additional archaeological data recovery on Parcel III to further the research objectives set forth on pages 5 and 6 of Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, Ewa, Oahu, Federal Study Areas 1a and 1b, and State of Hawaii Optional Area 1, Hammatt et al. (1981). The archaeologists shall have a time limit within which to complete such data recovery, to wit, 60 days on Disposal Areas I and II, and 120 days on Disposal Area III from the date of approval of the Special Use Permit by the State Land Use Commission. Prior to such dates, the Applicant may commence stockpiling activities, including clearing or grubbing, with the approval of the archaeologists retained to conduct the additional archaeological data recovery operations, and

2. That pursuant to Part IX Special Use Permit Procedures, Section 9-3(2) of the State Land Use Commission Rules of Practice and Procedure, the Applicant shall establish proposed coral stockpiling use within three years from the date of approval of the Special Use Permit by the State Land Use Commission, and

3. That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu and State of Hawaii, its agencies (including the Land Use Commission) and Commissioners, harmless from and against any loss, liability, claim or demand arising out of this Special Use Permit, including but not limited to costs of defense and attorneys' fees, and

4. That the Applicant shall comply fully with all applicable Federal, State, and County requirements;

5. That the term of the special permit shall be for a period of 25 years, from the date of approval of the Special Use Permit by the State Land Use Commission and shall expire on June 3, 2007.

DATED: Honolulu, Hawaii this 27th day of May, 1982.

LAND USE COMMISSION
STATE OF HAWAII

By William W. Yuen
WILLIAM W. L. YUEN
Chairman and Commissioner

By Carol B. Whitesell
CAROL B. WHITESELL
Vice Chairman and Commissioner

By Richard B. F. Choy
RICHARD B. F. CHOY
Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO
Commissioner

By Teofilo Phil Tacbian
TEOFILO PHIL TACBIAN
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE
Commissioner

By Edward K. Yanai
EDWARD K. YANAI
Commissioner

P 221-395 001

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO

Willard Chow

STREET AND NO.

P.O., STATE AND ZIP CODE

POSTAGE

\$

71

CERTIFIED FEE

75

¢

SPECIAL DELIVERY

¢

RESTRICTED DELIVERY

¢

CONSULT POSTMASTER FOR FEES

OPTIONAL SERVICES

RETURN RECEIPT SERVICE

SHOW TO WHOM AND
DATE DELIVERED

60

¢

SHOW TO WHOM, DATE,
AND ADDRESS OF
DELIVERY

¢

SHOW TO WHOM AND DATE
DELIVERED WITH RESTRICTED
DELIVERY

¢

SHOW TO WHOM, DATE AND
ADDRESS OF DELIVERY WITH
RESTRICTED DELIVERY

¢

TOTAL POSTAGE AND FEES

\$

2.06

POSTMARK OR DATE



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, **leaving the receipt attached**, and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in Item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

PS Form 3611, Jan. 1979

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered. ¢
☐ Show to whom, date and address of delivery. ¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered. ¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Willard Chow

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

395-001

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee☐ Authorized agent

4.

DATE OF DELIVERY

6/7/82

POSTMARK

5.

ADDRESS (Complete only if requested)

6.

UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



State of Hawaii
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)


P 221 395 002

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO				
Diane Kishimoto				
STREET AND NO.				
P.O., STATE AND ZIP CODE				
POSTAGE			\$ 71	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	75 ¢		
		SPECIAL DELIVERY ¢		
	RESTRICTED DELIVERY ¢			
	OPTIONAL SERVICES	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	60 ¢
			SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
			SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
			SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES			\$ 7.06	
POSTMARK OR DATE				



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, **leaving the receipt attached**, and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in Item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

PS Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered.....\$
☐ Show to whom, date and address of delivery.....\$
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....\$
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.\$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Diane Kishimoto

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

395-002

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee

☐ Authorized agent

4.

DATE OF DELIVERY

JUN 7 1983

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

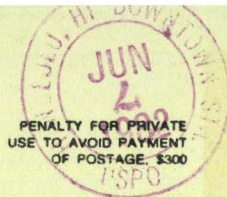
UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



State of Hawaii
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

P 221 398 001

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO				Alan Murakami	
STREET AND NO.					
P.O., STATE AND ZIP CODE					
POSTAGE				\$	71
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE		75	¢
		SPECIAL DELIVERY			¢
	RETURN RECEIPT SERVICE	RESTRICTED DELIVERY			¢
		SHOW TO WHOM AND DATE DELIVERED		60	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY			¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY			¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY			¢		
TOTAL POSTAGE AND FEES				\$	206

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the article, **leaving the receipt attached**, and present the article at a post office service hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on receipt card, Form 3811, and attach it to the front of the article by means of the gummed permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If a return receipt is requested, check the applicable blocks in Item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one)

☒ Show to whom and date delivered..... \$

☐ Show to whom, date and address of delivery..... \$

☐ RESTRICTED DELIVERY

Show to whom and date delivered..... \$

☐ RESTRICTED DELIVERY.

Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Alan Murakami

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

398-001

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee

☐ Authorized agent

4.

DATE OF DELIVERY

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



PERALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300

National Flag Day



State of Hawaii
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
THE ESTATE OF JAMES CAMPBELL) DOCKET NO. SP82-353
for a Special Permit to Stockpile)
Dredged Coral Spoil from the Barbers)
Point Deep Draft Harbor at Tax Map Key)
No. 9-1-14: Portion 2 and 9-1-15:)
Portion 1, Barbers Point, Ewa, Oahu,)
Hawaii)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

WILLARD T. CHOW, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

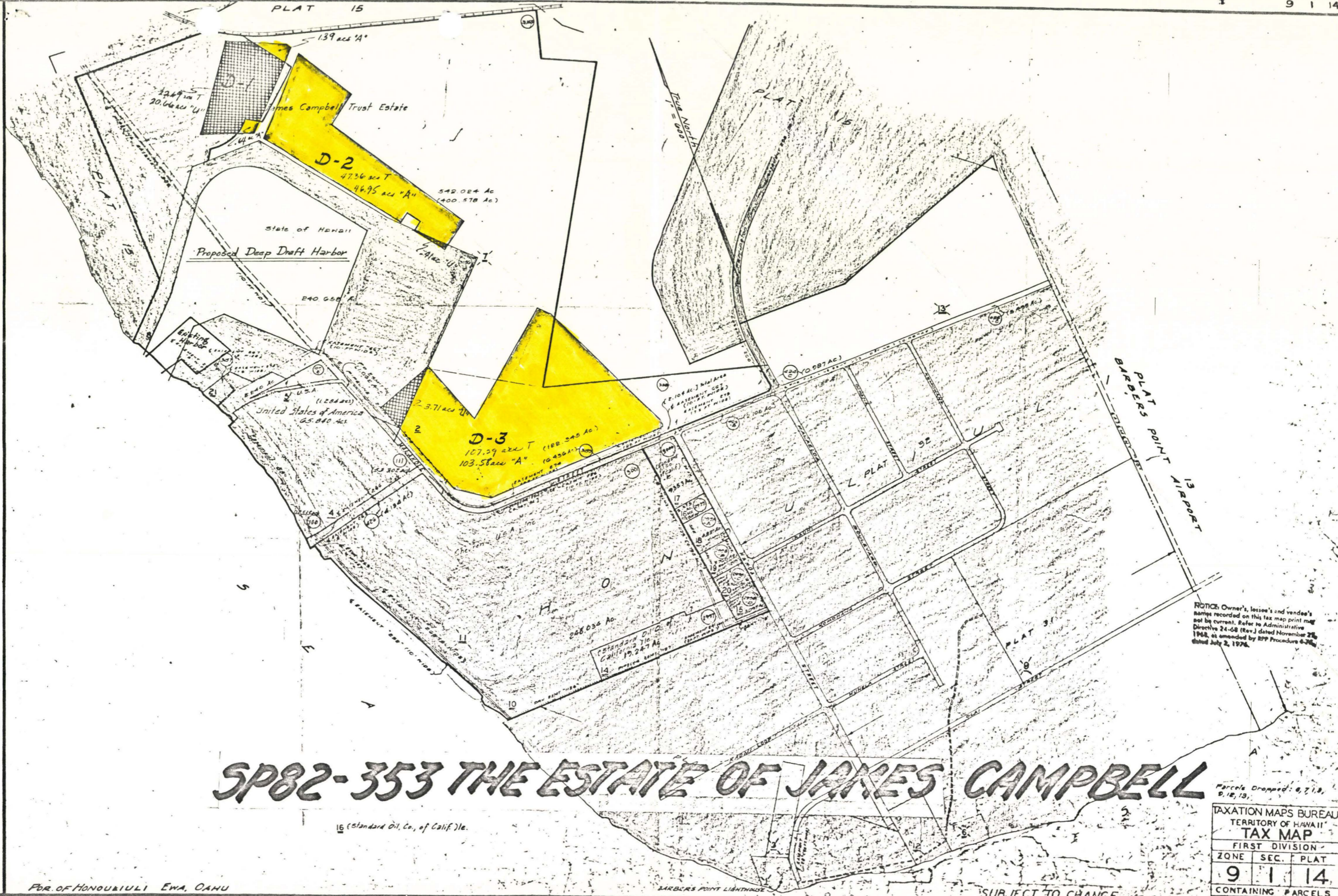
DIANE S. KISHIMOTO
Ashford & Wriston
Attorneys at Law
P. O. Box 131
Honolulu, HI 96810

ALAN MURAKAMI
Legal Aid Society
85-555 Farrington Highway
Waianae, Hawaii 96792

DATED: Honolulu, Hawaii this 4th day of June, 1982.



GORDAN Y. FURUTANI
Executive Officer



SP82-353 THE ESTATE OF JAMES CAMPBELL

16 (Standard Oil Co., of Calif.) l.e.

NOTES: Owner's, lessee's and vendee's names recorded on this tax map print may not be current. Refer to Administrative Directive 24-68 (Rev.) dated November 28, 1968, as amended by RFP Procedure 6-26, dated July 2, 1974.

Parcels Dropped: 9, 12, 13.

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST DIVISION		
ZONE	SEC.	PLAT
9	1	14
CONTAINING PARCELS		
SCALE: 1 in. = 600 ft.		

SUBJECT TO CHANGE

Dwg. No. 3502
Source: C.A. App. Map 1 T.M.B.
By: P.C.C.H.N. H.E.M.

FOR OF HONOLULU EWA, OAHU

April 28, 1982

City Planning Commission
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Attention: Mr. Willard Chow, Chief Planning Officer

Gentlemen:

At its meeting on April 21, 1982, the Land Use Commission voted to approve a Special Permit request by The Estate of James Campbell (SP82-353) to allow the stockpiling of dredged coral from the proposed Barbers Point Deep Draft Harbor on three sites totaling approximately 152 acres, situated within the Agricultural District at Barbers Point, Ewa, Oahu, Tax Map Keys 9-1-14: Portion 2 and 9-1-15: Portion 1.

Approval of this Special Permit is subject to the conditions imposed by the Planning Commission of the City and County of Honolulu, subject to the amendment and additional condition imposed by the Land Use Commission as follows:

Amendment: Condition No. 3: "That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu and the State of Hawaii, its agencies and commissions, harmless from and against any loss, liability, claim or demand arising out of this Special Use Permit, and

Addition: "5. That the term of the Special Permit shall be for a period of 25 years from the effective date of approval."

Please be advised that the petitioner's failure to comply with any of the delineated conditions of approval, particularly those relating to time, shall be reason for termination of the Special Permit. The Land Use Commission will not consider any request for time extension which is filed after the stipulated commencement or expiration dates.

The Land Use Commission's Decision and Order on SP82-353 will be forwarded to you at a later date. Please call me if you have any questions on the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

cc: Michael M. McElroy, Director, Department of Land Utilization
The Estate of James Campbell
Diane Kishimoto, Ashford & Wriston
Alan Murakami, Legal Aid Society

April 28, 1982

Ms. Diane S. Kishimoto
Ashford & Wriston
Attorneys at Law
P. O. Box 131
Honolulu, HI 96810

Dear Ms. Kishimoto:

The original of the attached letter is on file in the office of the City and County of Honolulu Planning Department, 650 South King Street, Honolulu, Hawaii, 96813.

Please be advised that failure to comply with any of the delineated conditions of approval, particularly those relating to time, shall be reason for termination of the Special Permit. The Land Use Commission will not consider any request for time extension which is filed after the stipulated commencement or expiration dates.

The Land Use Commission's Decision and Order on SP82-353 will be forwarded to you at a later date. Please call me if you have any questions on the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

cc: The Estate of James Campbell

April 28, 1982

Department of Planning and
Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

Attention: Mr. Hideto Kono, Director

Gentlemen:

At its meeting on April 21, 1982, the Land Use Commission voted to approve a Special Permit request by The Estate of James Campbell (SP82-353) to allow the stockpiling of dredged coral from the proposed Barbers Point Deep Draft Harbor on approximately 152 acres of land situated within the Agricultural District at Barbers Point, Ewa, Oahu, Tax Map Keys 9-1-14: Portion 2 and 9-1-15: Portion 1.

Approval of this Special Permit is subject to the conditions imposed by the Planning Commission of the City and County of Honolulu and the Land Use Commission. A copy of the Land Use Commission's Decision and Order on this matter is on file at the Commission's office.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

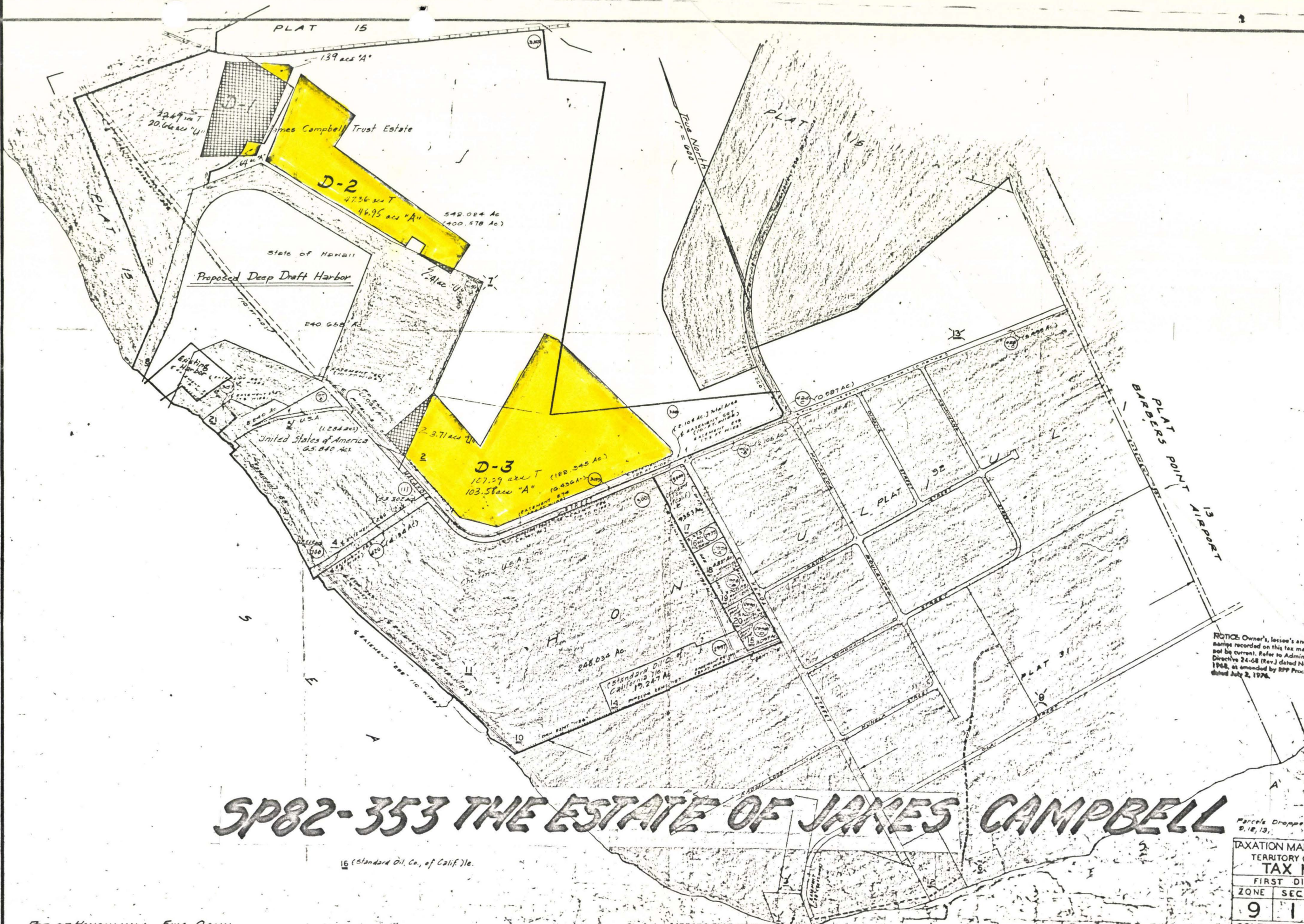
GYF:gm

Enc.

cc: Real Property Assessment Division, Department of Finance, Oahu
Mapping Section, Department of Finance
Property Technical Office, Department of Finance
Property Assessment, Department of Finance
Office of Environmental Quality Control
Land Management, DLNR

VER 1 1941
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REV 2 1941
REV 3 1941
REV 4 1941
REV 5 1941
REV 6 1941
REV 7 1941
REV 8 1941
REV 9 1941
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REV 92 1941
REV 93 1941
REV 94 1941
REV 95 1941
REV 96 1941
REV 97 1941
REV 98 1941
REV 99 1941
REV 100 1941

DWG. No. 3502
Source: C.A. App. No. 1 T.M.B.
By: P. S. C. H. N. 112214



SP82-353 THE ESTATE OF JAMES CAMPBELL

16 (Standard Oil Co. of Calif.) 11e.

NOTICE: Owner's, lessee's and vendee's names recorded on this tax map print may not be current. Refer to Administrative Directive 24-68 (Rev.) dated November 2, 1968, as amended by RFP Procedure 6-70, dated July 2, 1976.

FOR OF HONOLULU EWA, OAHU

SUBJECT TO CHANGE

Parcels Dropped: 6, 7, 8, 9, 10, 11, 12, 13.

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST DIVISION		
ZONE	SEC.	PLAT
9	1	14
CONTAINING PARCELS		
SCALE: 1 in = 600 ft.		

LEGAL AID SOCIETY OF HAWAII

1164 BISHOP STREET
SUITE 1100
HONOLULU, HAWAII 96813

808 / 536-4302

NATHAN T.K. AIPA, ESQ.
President, Board of Directors

ALLENE K. RICHARDSON, ESQ.
Executive Director

April 16, 1982

LAND USE COMMISSION
STATE OF HAWAII
APR 19 11 12 AM '82

Chairman,
Land Use Commission
335 Merchant Street, Room 104
Honolulu, Hawaii 96813

Re: Request for Re-Ordering of Arguments
on April 21, 1982 Agenda

Dear Mr. Chairman:

After checking with Mr. Gordon Furutani, I am requesting a re-ordering of your April 21, 1982 agenda in order to move the special use permit application of James Campbell Estate from item 3 to item 4.

I will have a potential conflict in my schedule for that morning unless I am allowed to appear no earlier than 10:00 a.m. I have a court hearing scheduled at 9:00 a.m. the same morning, which I cannot alter. If the agenda can be re-ordered as requested, I believe I will have sufficient time to appear before the commission subsequently.

I have checked with Ms. Diane Kishimoto, who has consented to the proposal I am making.

Please contact me to verify your assent to this arrangement (phone: 696-6321).

Sincerely yours,



ALAN T. MURAKAMI
Attorney for Na Opio Aloha Aina

ATM:ggp

cc: Diane Kishimoto

LAND USE COMMISSION
STATE OF HAWAII
APR 19 4 14 PM '82

ALAN T. MURAKAMI
Legal Aid Society of Hawaii
85-555 Farrington Highway
Waianae, Hawaii 96792
Telephone: 696-6321

Attorney for NA OPIO ALOHA AINA

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application)	Docket No. <i>SP82-353</i>
the JAMES CAMPBELL ESTATE)	
for a Special Use Permit to)	BRIEF IN OPPOSITION
Stockpile Dredged Spoil from)	TO THE SPECIAL USE
the Barber's Point Deep Draft)	PERMIT APPLICATION OF
Harbor on 177 Acres of Land in)	JAMES CAMPBELL ESTATE
Ewa at Tax Map Key No. 9-1-14:)	
por. 2 and 9-1-15: por. 1, Bar-)	
bers Point, Ewa, Oahu, Hawaii.)	

BRIEF IN OPPOSITION TO THE SPECIAL USE PERMIT
APPLICATION OF JAMES CAMPBELL ESTATE

I.

INTRODUCTION

NA OPIO ALOHA AINA (NA OPIO) urges the Land Use Commission to deny the Special Use Permit Application of James Campbell Estate (JCE) because it is an improper procedural vehicle for approving the proposed coral stockpiling project. In the alternative, NA OPIO urges rejection because JCE otherwise failed to carry its burden of proving that the proposed use is "unusual and reasonable" and thereby in harmony with the objectives of H.R.S. Chapter 205 and this Commission's District Regulation 5-2. The approval of this permit will mean the destruction of invaluable cultural and historical resources which have local and international scientific value. This destruction would violate federal laws

designed to protect such resources and compromise state objectives to preserve those resources.

Furthermore, rejection would preclude the City Planning Commission from justifying the permit without adequately examining the true effects the proposed use will have on water resources and the surrounding agricultural land.

II.

The Commission Should Reject the Application Because a Special Use Permit Is Inappropriate for the Proposed Use Because It Conflicts With the Objectives and Effectiveness of the Hawaii Land Use Law and Regulations.

The Hawaii Supreme Court has made it clear that it will strike down any misuse of the Special Use Permit process where it conflicts with the objectives of the Hawaii Land Use Law - H.R.S. Chapter 205. This application would compromise those objectives. Hence, the Commission should deny JCE this permit.

In Waianae Neighborhood Board No. 24 State Land Use Commission Hawaii Supreme Court Slip. Op. No. 7112 (January 22, 1982), the Supreme Court invalidated the special use permit granted to the Oahu Corporation to build an amusement park on 103 acres of agricultural district land at Kahe Point on the Waianae Coast. Citing an earlier attorney general opinion, 1963 Attorney General 63-37, it focused on the restricted application and limited protections of the Special Use Permit procedure. The court was wary of the danger of a substitute for the boundary amendment process, and the clearer substantive and procedural rights which attach to it. Accordingly, the court found that granting the permit in

that case, would "frustrate" the "objectives and effectiveness" of H.R.S. Chapter 205.

In particular, the court noted that, in enacting H.R.S. Chapter 205, the legislature intended, inter alia, to "[s]tage the allocation of land for development in an orderly plan. H. Stand. Comm. Rep. No. 395, 1st Haw. Leg., 2d Sess., reprinted in House Journal 855-56. Citing legislative objectives to avoid scattered urban development, the court refused to allow the special permit procedure to be used to circumvent the mechanism more properly designed to effectuate these ends - the district boundary amendment procedure of H.R.S. § 205-4. Similar concerns about scattered and disorderly development prompted the First Circuit to reverse a commission decision to redesignate for urban land use land slated for the Ewa Marina project.

Similarly, if not identically, in this instant case, JCE is asking the Commission to circumvent H.R.S. § 205-4 by granting a special use permit pursuant to H.R.S. § 205-6. Once again a major urban use is contemplated - crushing, hauling, and stockpiling of dredged coral. Once again large acreage is involved - 177 acres overall. Once again the proposed use could spur spot development on a disorderly fashion without more planning and scrutiny which would be available in a district boundary amendment process. These crucial similarities with the Kahe Point Amusement Park dictate that the proposed use would frustrate the effectiveness of H.R.S. Chapter 205.

In addition, the Court in Waianae was particularly conscious of the appropriate use of a special use permit:

Unlike a district boundary amendment,
which is analogous to a rezoning in its

effect of reclassifying land, and unlike a variance, which permits a landowner to use his property in a manner forbidden by ordinance or statute, a special permit allows the owner to put his land to a use expressly permitted by ordinance or statute on proof that certain facts and conditions exist, without altering the underlying zoning classification. Its essential purpose as explained by the state Attorney General, is to provide landowners relief in exceptional situations where the use desired would not change the essential character of the district nor be inconsistent therewith. 1963 Op. Attorney Gen. 63-37. "By the use of the special use permits, the broad division of uses in terms of residential, commercial, and industrial, and subdivisions of each, can be supplemented by requiring a use which falls conveniently within a class assigned to a particular district, but which has singular characteristics which may be incompatible with some uses of such class, to submit the (sic) administrative scrutiny, to meet certain standards, and to comply with conditions." 3 R. Anderson, American Law of Zoning § 19.01 at 359.

This proposed use will totally compromise the "essential character of the district". JCE plans to cover 177 acres with 10.6 million cubic yards of salty, dredged coral spoil which will reach 30-35 feet in height by JCE estimates. JCE will thereafter crush and haul the spoil away for cement production and construction. This use is a purely industrial use. TR 10/20/81 at 43. The fill will totally alter the current features, burying archaeological and paleontological sites of international scientific value, Exhibit N-3, particularly on Disposal Site III, under 35 feet of dredged spoil.

Anticipating the construction of the deep draft harbor, and other unapproved developments nearby, JCE admits it has no plans to ever return the area to any kind of agricultural use. Transcript Record (hereafter "TR") of the

October 20, 1981 meeting of the City and County Planning Commission (hereafter "10/20/81"). In fact, with the truck hauling and \$2 million rock-crushing operation which will accompany the stockpiling, the proposed use will completely transform the use for which this area was designated from agriculture to industrial. TR 10/20/81 at 57. The proposed use does not merely have one or two features which make it distinguishable from agriculture. It is completely inconsistent with agricultural activities. This inconsistent use is not the type contemplated in the 1963 Attorney General opinion and the cited treatise, as appropriate for a special use permit.

The special use permit would also frustrate the objectives of H.R.S. 205 because the Commission would be sanctioning violations of federal laws protecting archaeological resources TR 10/20/81 at 70-71 and state plan objectives to:

- (1) Promote the preservation and restoration of significant natural and historic resources.
- (3) Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage. H.R.S. § 226-12(b).

The clear preponderance of the evidence and the predominant archaeological and paleontological opinion demonstrate that JCE's data recovery plan, as devised by its consultant, is totally inadequate to serve as a means of mitigating the adverse impact of the stockpiling and crushing operation on the Barber's Point Archaeological District. The Army Corps of Engineers attempted to comply with federal laws and regulations by consulting with the Advisory Council. However, by failing to adequately consult with the State

Historic Preservation Office and the Secretary of the Interior, its attempts were inadequate. Moreover, upon examination of the substance of the peer reviewers and the Advisory Council correspondence, it is clear that JCE will be destroying invaluable Native Hawaiian cultural resources without adequate study or recovery.

The several peer reviewers who examined the Archaeological Research Center of Hawaii's (ARCH) survey report were highly critical of the methodology, analyses, and conclusions it contained. One reviewer characterized the efforts of ARCH as an example of a "waste of public funds" TR 10/20/81 at 71, Exhibit N-2. Another stated that the archaeological and paleontological resources at Barber's Point have international scientific value. He predicted a "tragedy" if stockpiling was allowed based on the ARCH Report, TR 10/20/81 at 74, Exhibit N-3.

Nevertheless, the Planning Commission, the Army Corps of Engineers and JCE now proposed to bury those resources, even though thousands of sinkholes with valuable data could go unsampled and unstudied, TR 10/20/81 at 77. The Planning Commission supports its position by imposing a condition or approval which would give a community group 120 days to perform whatever archaeological work would be necessary to adequately recover data from Site III. This position neither assures time for adequate study nor the resources to support such an effort, since JCE is not required to finance it. The Army Corps of Engineers merely contends it followed all the procedures, without regard for the substance of the

archaeological testimony before it. Petitioner's Exhibit _____. This potential travesty on the significant cultural resources and the information they contain about early Hawaiian history must be stopped at this stage to prevent further harm to Hawaiian heritage and to adhere to the state plan objectives on historic resource preservation.

Therefore, the Commission should reject the application of JCE for a special use permit in this case.

III.

Even Assuming, *Arguendo*, That The Procedure Is Appropriate, the Applicant Has Not Shown that the Proposed Use Is "Unusual and Reasonable" Under the Commission's Regulations.

The applicant failed to meet the tests which apply in determining whether the proposed use is "unusual and reasonable", thereby justifying a permit. In addition, the Planning Commission failed to allow appropriate cross-examination on the potential secondary effects of the stockpiling. It attempted to justify this restriction of questioning by conceptually divorcing the stockpiling from the creation of the harbor from which it would spring. This approach was improper and demonstrated the folly of following the special use permit procedure.

A. The Applicant Failed To Show That The Proposed Use Would Not Unreasonably Burden Public Agencies to Provide Water

The applicant clearly failed to show that the water requirements for the proposed use would not unreasonably burden the public agency encharged with providing it. This failure is critical because of the current status of the Pearl Harbor Groundwater Basin, which the state has recently

declared to be under emergency status. This competition for water resources was not even addressed by the City Planning Commission, despite the clear mandate of this Commission's District Rule 5-2. Furthermore, JCE, having the burden of proof, produced no evidence of the effect that contemplated irrigation and spraying would have on available water sources. Accordingly, this permit application cannot be granted.

District Regulation 5-2 clearly requires inter alia, a finding on whether public water resources will be unreasonably burdened by the granting of a special use permit. One of the factors to be considered is whether:

(3) Such use would not unreasonably burden public agencies to provide. . . water. . .

The record demonstrates that the contractor will be required to spray the stockpile with water and to irrigate vines planted in the stockpile to control dust. TR 10/20/81 at 47. Since JCE projects that the stockpile and crushing operation could last for 30 years or more, water demand to irrigate and spray up to 177 acres of land, perhaps daily, would severely tax any water source. Nevertheless, JCE produced no evidence of how much water would be needed nor from where it would come.

Without this information the Commission cannot grant approval without violating its duties to scrutinize special use permit under H.R.S. Chapter 205. Having failed to carry its burden of proof on this crucial issue, JCE should not be allowed this permit.

B. The Applicant Has Failed to Show, and the City Planning Commission Has Failed to Consider, the Adverse Effects of the Proposed Use on Surrounding Property.

The Planning Commission unilaterally chose to pursue a narrow line of inquiry into the potential adverse effects of the stockpiling and rock crushing operation on surrounding property. By doing so, it justified its approach to limit cross-examination by NA OPIO to the direct effects on the immediately surrounding properties. This approach, if approved, would frustrate the objectives and effectiveness of HRS Chapter 205.

District Regulation 5-2(2) specifies the following factor to be considered when evaluating special use permit applications:

- (2) that the desired use would not adversely affect surrounding property.

This factor must be read in light of the requirement that the use "promote the effectiveness and objectives" of HRS Chapter 205. In this light, a special use permit cannot be confined to a narrow inquiry if the scrutiny mandated under the district boundary amendment procedure would require investigation into areas outside that scope.

The proposed use is clearly an industrial one. As such, if a boundary amendment procedure was followed, the Commission would have to make inquiries into the areas identified by District Regulation 6-1. The applicant could not simply employ a special use permit procedure to circumvent such inquiry if the effects of a proposed use would undercut that regulation. That was the outcome prescribed by the Supreme Court in Waianae Neighborhood Board, supra.

In this situation, the Planning Commission would allow JCE to proceed on a massive harbor and urbanization project (currently on file with this Commission as the Honouliuli Master Plan) which could ultimately urbanize vast acreages of land on the Ewa Plain. No matter how hard it tries, JCE and the Planning Commission cannot make that spectre disappear by pretending to turn a blind eye to the iceberg beneath the tip referred to as the "stockpiling" project. In asking this Commission to follow its lead, JCE hopes to put blinders on this Commission and to consider the stockpiling divorced from its mother project.

JCE justifies this view by claiming: 1) that the stockpiling and crushing operation is "temporary" (30 years or more) and 2) that it had mentioned to the Commission in previous proceedings that it would be seeking a permit during prior hearings conducted on the redesignation of harbor lands into urban use because stockpiling would last only 17 years. First, neither of these reasons are justifications for a special use permit, as enunciated by the regulations, statutes or other authorities. Furthermore, JCE ignores District Regulation 6-2, which allows incremental districting for multi-phase developments like the deep draft harbor. This mechanism allows the Commission to get a comprehensive view of large urbanization projects which will take longer than five years to complete. It also allows monitoring of those phases and prescribes the conditions for modifying initial approval as necessary. In fact, this is the more orderly approach to land use planning that the legislature originally contemplated.

If JCE had contemplated the stockpiling and crushing activity in 1977, as it claimed, TR 10/20/81 at 48, then it could have included that operation in the phasing of the harbor project in the same redesignation proceeding, pursuant to District Regulation 6-2 (effective December 21, 1975).

However, rather than follow that scheme of planning orderly development, JCE now comes in through the side door in an attempt to avoid the time and expense of re-doing what it should have accomplished initially: include the disposal sites in the original application for redistricting.

By going for an independent special use permit, JCE is now asking the Commission to "tack on" 177 acres of land virtually all in the agricultural district - to its initial harbor proposal of some 90 acres. But in doing so, JCE asks that we not consider the indirect and long-term consequences of the disposal activities since it is merely "temporary". It claims these considerations were addressed in earlier proceedings, ignoring the benefit of changed circumstances and the knowledge gained through actual experience. This bootstrapping is improper.

Unfortunately, the Planning Commission agreed and restricted any questioning by NA OPIO on the impact of this urban intrusion on neighboring farmers and on the economic viability of nearby prime agricultural land TR 10/20/81. These questions were not addressed in prior proceedings before this Commission. In fact, the recommendations of the State Department of Agriculture failed to account for those farmers TR 10/20/82 at 30-31.

Despite this restriction of questioning, and perhaps because of it, the Planning Commission purported to conclude

that there would be no adverse impact on surrounding land. That conclusion was erroneous. Oswald Stender's own testimony showed that JCE has a calculated policy to drive farmers who have farmed the area for 40 years out of the area by placing them on year-to-year leases. TR 10/20/81 at 43. JCE contends there is no connection between this policy and the proposed use. That conclusion can only stand if one refuses to acknowledge the connection between this proposed use and the larger deep draft harbor and Honouliuli Master Plan of which this used is but one feature.

The crushing and stockpiling operation proceeds from much grander urban designs. To say it bears no connection to the diminishing farming operations and potential incursions on surrounding agricultural land is both myopic and naive. The Planning Commission, in its drive for administrative efficiency, ignored the true objectives of District Regulation 5-2 (2).

C. The Applicant Attempts To Construe the Other Tests of District Regulation 5-2 to Its Own Ends, Contrary To Logic and Legislative Intent.

The applicant misconstrues District Regulation 5-2(4) and (5) to suit its own needs. Unfortunately, the interpretations neither comport to logic nor to sound land use planning.

The remaining tests in District Regulation 5-2 require the Commission to evaluate two more factors:

(4) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

(5) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district. (emphasis added).

JCE would have the Commission believe that the first test is satisfied by the development of the Campbell Industrial Park and the deep draft harbor. TR 1/12/82 at 15.

A close reading of the test lays this claim to rest. The Campbell Industrial Park was in existence long before the district boundaries (1979) and regulations (1975) were last established. TR 10/20/81 at 41. In addition, the deep draft harbor has not caused any condition, trend or need to arise which was not contemplated long before the years the district boundaries and regulation were established. Hence, JCE has not met this test.

Secondly, JCE attempts to convince us that the land in question is unsuited for agricultural use because there is no soil or water to support it. TR 1/12/82 at 13-14.

While JCE contends that the soil classification ('E') precludes any agricultural use, the State Department of Agriculture did not consider the viability of animal husbandry as a potential agricultural activity for this land TR 10/20 at 30. This use is included in H.R.S. 205-2 as an activity defined as "agricultural". Moreover, the department did not do so despite the presence of pig and chicken farmers on surrounding property, in close proximity to the proposed site, who operate on similar terrain and under similar circumstances.

Alternatively, JCE maintains that the land has no agricultural value because agricultural use will become incompatible with the projected resort development on surrounding property TR 10/20/81 at 59. JCE envisions that farm operations will conflict with resorts, quarrying and other urban uses it contemplates on currently-designated agricultural land.

JCE's contention smacks more of a 'self-fulfilling prophecy' than of the actual condition of the land. By deliberate policy, JCE is making farming uneconomical for small farmers through their short-term leasing policy, refusal to allow renewal of 40 year-old agricultural operations, and conscious choice to derive more short-term profit from the land than can be achieved by agricultural pursuits. On the one hand, JCE claims that here is insufficient water for agricultural development; on the other, JCE claims there is sufficient water to irrigate vines to be planted on the coral stockpile over 30 years. Compare, TR 10/20/81 at 47 and 57.

Furthermore, JCE anticipates conflicts with unapproved resort developments to justify the unsuitability of the land for agricultural use. However, JCE ignores the fact that the urban redesignation granted for the West Beach development was invalidated by the Hawaii Supreme Court in Life of the Land v. Land Use Commission 63 Haw. 160 (1981) because of procedural defects.

That decision effectively reverts 640 acres of urban land near the subject site to agricultural use. Accordingly, if this permit is granted, the Commission would be enhancing the appearance of the disorderly and scattered development at Barber's Point.

Hence, JCE has not shown that tests 4 and 5 have been met. No unusual trends, conditions and needs have arisen since 1975. In addition it appears that the subject land is suited for animal husbandry, a use permitted in the agricultural district.

IV.

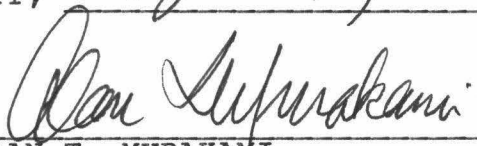
CONCLUSION

The Commission should reject JCE's attempt to misuse the special use permit procedure to gain approval for its proposed use of the subject 177 acre site. Such approval would frustrate the objectives and effectiveness of the Hawaii Land Use Law and Regulations by circumventing the district boundary amendment process. Approval would allow clearly industrial activity to transform currently designated agricultural land through a process never designed for such use. Furthermore, it would sanction the destruction of valuable historic resources contrary to federal law and state planning objectives.

Alternatively, the Commission should deny JCE this permit because its application fails to meet the specific tests of District Regulation 5-2 for uses that are "unusual and reasonable". The proposed use is unreasonable because it fails the various tests identified by Commission regulations for special use permits. Water demand and availability is unaddressed. The record is unduly restricted in its scope of examining the effects on surrounding property. The applicant misconstrues the tests to evaluate the reasonableness of the proposed use.

Therefore, the Commission must reject the application.

DATED: Waianae, Hawaii, April 19, 1982.


ALAN T. MURAKAMI
Attorney for NA OPIO ALOHA AINA

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be hand
delivered to the following a copy of the foregoing document:

DIANE KISHIMOTO, ESQ.
Ashford & Wriston
235 Queen Street, 6th Floor
Honolulu, Hawaii 96810

Attorney for JAMES CAMPBELL ESTATE

DATED: Waianae, Hawaii, April 18, 1982

A handwritten signature in cursive script, appearing to read "Alan T. Murakami", written over a horizontal line.

ALAN T. MURAKAMI
Attorney for NA OPIO ALOHA AINA

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LEGAL AID SOCIETY OF HAWAII
85-555 Farrington Highway
Waianae, Hawaii 96792
Telephone: 696-6321

ALAN T. MURAKAMI 2285-0
Attorney for NA OPIO ALOHA AINA

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application)	DOCKET NO. SP82-353
of THE ESTATE OF JAMES CAMPBELL)	
for a Special Use Permit to)	MOTION TO ADMIT ADDITIONAL
Stockpile Dredged Spoil from)	EVIDENCE; MEMORANDUM IN
the Barbers Point Deep Draft)	SUPPORT OF MOTION TO ADMIT
Harbor at Tax Map Key No. 9-1-14:))	ADDITIONAL EVIDENCE
por. 2 and 9-1-15: por. 1,)	
Barbers Point, Ewa, Oahu, Hawaii)	
_____)	

MOTION TO ADMIT ADDITIONAL EVIDENCE


Pursuant to this Commission's Rules of Practice and Procedure, Rule 3-14(9) and (10), NA OPIO ALOHA AINA hereby moves that the commission take official notice of, or, in the alternative, admit the following additional evidence:

1) The Donald Wolbrink study, Honouliuli: A Self Contained City in Ewa, previously filed with this commission, on June 21, 1974, and reflecting the long-term development plan of James Campbell Estate on the Ewa plain, specifically, the cover letter signed by Donald Wolbrink, pp. 26, (and attached plate) 43, 53-54, 64, 65.

2) The Board of Land and Natural Resources decision to declare the Pearl Harbor Water District as a Groundwater Control Area, effective June 30, 1979.

3) The location of the proposed stockpile site in the Pearl Harbor Water District.

DATED: Waianae, Hawaii, April 19, 1982



ALAN T. MURAKAMI
Attorney for NA OPIO ALOHA AINA

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Application	)	DOCKET NO. SP82-353
)	
of THE ESTATE OF JAMES CAMPBELL	)	MEMORANDUM IN SUPPORT OF
for a Special Use Permit to	)	MOTION TO ADMIT ADDITIONAL
Stockpile Dredged Spoil from	)	EVIDENCE
the Barbers Point Deep Draft)	
Harbor at Tax Map Key No. 9-1-14:)	
por. 2 and 9-1-15: por 1,)	
Barbers Point, Ewa, Oahu, Hawaii)	
)	

MEMORANDUM IN SUPPORT OF
MOTION TO ADMIT ADDITIONAL EVIDENCE

This Commission is authorized to, and should, admit additional evidence to supplement the record in this docket. This evidence will give the Commission a more comprehensive record upon which to evaluate this special permit application in light of state land use objectives.

Under this Commission's Rules of Practice and Procedure (RPP) 3-14(9), this agency may take official notice of matters "of generally recognized technical or scientific facts within the Commission's specialized knowledge", so long as the parties to a proceeding are given prior notice and an opportunity to contest the facts noticed.

In addition, under RPP 3-14(8), the Commission may admit by reference, records previously filed with it as a public record without the necessity of producing an exhibit, provided that particular portions are specifically referenced. Of course, the document must be otherwise competent, relevant and material.

Finally, under RPP 3-14(10), the presiding officer is authorized to require production of further evidence on any issue.

HRS 205-6 gives this Commission the responsibility to approve any special use permit granted by the City Planning Commission involving more than 15 acres of land. This responsibility gives the

Commission the duty to independantly assess the action of the county agency in light of state land use objectives. Hence, if a special use permit would be contrary to those objectives, or if the Commission is not satisfied that an adequate evaluation of the permit application was conducted, it should disapprove the permit application.

This check on special use permits provides a safety value where prior action to approve was erroneous. As indicated in NA OPIO ALOHA AINA's Brief in Opposition to the Application for a Special Use Permit, the City Planning Commission:

1) failed to consider the impact of this proposed use on public water sources, contrary to this Commission's District Regulation (DR) 5-2(3) and

2) unduly restricted questioning of the effects of this project on surrounding property, contrary to DR 5-2(2) and objectives of HRS Chapter 205.

These and other defects make the Planning Commission decision erroneous since it raises material issues concerning whether all the tests of DR 5-2 were met.

The Commission is not bound by the hard and fast rules of evidence. RPP 3-14(1). If a doubt arises as to admissibility in an administrative hearing, the relevant rules should be construed liberally, in favor of admission, Dependents of Cazimero v Kohala Sugar Company 54 Haw.479, 482-483 (1973).

Here, the Commission should exercise its discretion and responsibility to admit evidence on critical issues on the basis of its specialized knowledge of land use matters and documents, such as those being proposed for admission. It can take official notice of all three items covered by this motion pursuant to RPP 3-14(8) and (9). Alternatively, it can exercise its independant authority to admit additional evidence under RPP 3-14(10). HRS Section 91-10 also requires that any documentary evidence not irrelevant,

immaterial or repetitive be admitted.

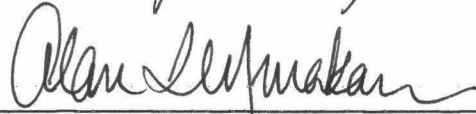
First, the failure to account for the dramatic new water use contemplated by the applicant is clearly contrary to DR 5-2(3), which requires an assesement of the project's water demand on public water sources. The Board of Land and Natural Resources (BLNR) decision to declare the Pearl Harbor Water District a Ground Water Control Area reflects the critical circumstances confronting the Board of Water Supply in that area. Any new water demands must now receive prior board approval.

The BLNR decision is material and relevant to this docket because of the water issue which went unaddressed by the Planning Commission. In their findings of facts, the Planning Commission could not make a statement about whether an unreasonable burden would result from this project! However, the applicant testified that dust control measures required that water be used first to spray the area stockpile, then to irrigate vines to be planted over the 177 acre site. This operation could last for 30 years or more, consuming millions of gallons of water. If the permit were approved, the Commission would be doing so in a vacuum without any information of water needs in a water district in which water supply is critically short.

Secondly, the Planning Commission unduly restricted questioning on the impact of the project on surrounding property. The information contained in the Donald Wolbrink study is material to show the long-term development of the Ewa plain, of which the stockpiling and crushing operation is just a part. Since it is already on file as a public record, this Commission can and should take official notice of its contents in order to get a comprehensive view of the total development being contemplated. This evidence is material, relevant and non-repetitive.

Therefore, in order to effectively carry out its mandate to scrutinize special use permits pursuant to HRS Section 20506 and to implement the Hawaii Land Use Law, the Commission should grant this motion.

DATED: Waianae, Hawaii, April 19, 1982.



ALAN T. MURAKAMI
Attorney for NA OPIO ALOHA AINA

Alan Murken

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development
Honolulu, Hawaii

September 28, 1979

Chairman and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Gentlemen:

Designation of the Pearl Harbor Ground Water Control Area

Pursuant to Chapter 177, HRS, the Ground Water Use Act and the Department's Regulation 9 on Control of Ground Water Use, the Board of Land and Natural Resources has the responsibility to manage the use of ground water resources in the State of Hawaii.

The Division of Water and Land Development, responsible for the Department's water resources program, concludes from its continuing state-wide assessment of ground water resources, that the Pearl Harbor ground water basin is in urgent need for regulation by the Board of Land and Natural Resources. Evidence of long-term decline in water levels, increase in salinity, and increase in ground water basin withdrawals has been observed and recorded. In support of this evidence, attached is a report on the "Findings of Fact". Also included in the report are testimonies received at the August 23, 1979 Public Hearing conducted by the Board on the proposed designation of the Pearl Harbor ground water control area. The testimonies generally support the designation proposal.

Additionally, the Department staff held many public information meetings of affected agencies, organizations and the general public. Public meetings were held in the communities of Waipahu and Aiea in August. Support for designation was also favorable from the general public.

RECOMMENDATION:

That the Board designate the Ewa and Wahiawa Districts (Tax Zones 7 and 9) as the Pearl Harbor ground water control area for control of ground water development and use effective September 28, 1979.


Respectfully submitted,



ROBERT T. CHUCK
Manager-Chief Engineer

Attachment

APPROVED FOR SUBMITTAL



SUSUMU ONO, Chairman


CERTIFICATE OF SERVICE

I hereby certify that I have caused to be hand
delivered to the following a copy of the foregoing document:

DIANE KISHIMOTO, ESQ.
Ashford & Wriston
235 Queen Street, 6th Floor
Honolulu, Hawaii 96810

Attorney for JAMES CAMPBELL ESTATE

DATED: Waianae, Hawaii, April 19, 1982



ALAN T. MURAKAMI
Attorney for NA OPIO ALOHA AINA

Of Counsel:
ASHFORD & WRISTON

DIANE S. KISHIMOTO 2035-0
235 Queen Street
P. O. Box 131
Honolulu, Hawaii 96810
Tel. No. 524-4787

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

In the Matter of the Application	)	Docket No. SP 82-353
)	
of THE ESTATE OF JAMES CAMPBELL)	
for a Special Use Permit to)	
Stockpile Dredged Spoil from the)	
Barbers Point Deep Draft Harbor)	
at Tax Map Key No. 9-1-14: por. 2)	
and 9-1-15: por 1, Barbers Point,)	
<u>Ewa, Oahu, Hawaii.</u>)	

MEMORANDUM IN SUPPORT OF APPLICATION
FOR SPECIAL USE PERMIT

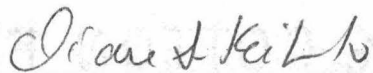
The Applicant herein respectfully requests, by and through its attorneys, that the Land Use Commission of the State of Hawaii approve the decision of the Planning Commission of the City and County of Honolulu to grant Applicant's request for a Special Use Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land Use District at Barbers Point, Ewa, Oahu, Hawaii, subject to certain conditions, all as set forth in the Findings of Fact, Conclusions of Law and Decision and Order filed in Docket No. 81/SUP-6 (EY) before said Planning Commission. Said Findings of Fact, Conclusions of Law and Decision and Order are amply supported by the record before the Planning Commission, as shown by the references to said record in the copy of said Findings of Fact, Conclusions

(Certificate of Service attached)

APR 19 12 35 PM '82
LAND USE COMMISSION
STATE OF HAWAII

of Law and Decision and Order attached hereto as Exhibit
"A" and made a part hereof.

DATED: Honolulu, Hawaii; April 19, 1982.



Diane S. Kishimoto
Attorney for Applicant

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

In the Matter of the Application	)	Docket No. 81/SUP-6(EY)
	)	The Estate of James Campbell
of THE ESTATE OF JAMES CAMPBELL)	
for a Special Use Permit to)	
Stockpile Dredged Spoil from the)	
Barbers Point Deep Draft Harbor)	
at Tax Map Key No. 9-1-14: por. 2)	
and 9-1-15: por. 1, Barbers Point,)	
<u>Ewa, Oahu, Hawaii.</u>)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER

THE APPLICATION

This proceeding was initiated by the Application of THE ESTATE OF JAMES CAMPBELL, pursuant to Chapter 205-6, Hawaii Revised Statutes, as amended, Part IX of the Land Use Commission Rules of Practice and Procedure, Part V of the Land Use Commission State Land Use District Regulations, and the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, to allow the Applicant to temporarily stockpile dredged coral on approximately 177 acres of land at Barbers Point, Ewa, Oahu, TMK No. 9-1-14: por. 2 and 9-1-15: por. 1, in the State Agricultural land use district, until the coral can be sold or otherwise disposed of. The site is in the Urban (25+ acres) and Agriculture (152+ acres) State land use district classifications. The area is shown as Industrial and Agricultural on the Development Plan for Ewa and is presently zoned I-3 Waterfront Industrial District (4+ acres); and AG-1 Restricted Agriculture District (173+ acres). The existing land use is coral quarrying pursuant to City Planning Commission Variance No. 374, and vacant lands.

The Commission, having heard and examined the testimony and evidence presented during the contested case hearings on October 20, 1981, November 3, 1981, November 10, 1981 and November 24, 1981, in Honolulu, Hawaii, and on December 17, 1981, in Waianae, Oahu, Hawaii, and having heard arguments and rebuttal on the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed

by the parties herein on January 12, 1982, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. The Application was filed on July 31, 1981, by Applicant, through its agent Walter P. Thompson, Inc., to obtain permission to temporarily use approximately 152+ acres of land at Barbers Point, Ewa, Oahu, in the Agricultural State land use district, to stockpile approximately 10.6 million cubic yards of coral dredged from the Barbers Point Deep Draft Harbor.

2. Notice of the combined Conditional Use Permit/Special Use Permit public hearing on the Application, scheduled for September 15, 1981, at 10:00 a.m., at the Ewa Beach Community-School Library, 91-950 North Road, Ewa Beach, was published in the Honolulu Advertiser and in the Honolulu Star-Bulletin, on September 5, 1981.

3. A Public hearing on the Application was held at 10:00 a.m. on September 15, 1981, at Ewa Beach Community-School Library, before Hearings Officers Ian McDougall and Gail F. Baron. The public hearing on the Conditional Use Permit was concluded and the Conditional Use Permit granted.

4. At the September 15, 1981 public hearing, Carl Young, testifying on behalf of Na 'Opio Aloha 'Aina ("Na 'Opio") in opposition to the Application, requested that a contested case hearing on the Special Use Permit be held. Mr. Young's request was granted and the hearing was continued to 7:00 p.m., September 29, 1981, at the Planning Commission Conference Room in Honolulu, Hawaii.

5. Notice of the continued hearing was published in the Honolulu Advertiser and the Honolulu Star-Bulletin on September 19, 1981.

6. At the hearing held on September 29, 1981, at 7:00 p.m., the Applicant, the Estate of James Campbell, was represented by Diane Kishimoto, Esq. Intervenor Na 'Opio Aloha 'Aina was represented by Alan Murakami, Esq. Counsel for Na 'Opio challenged the adequacy of the notice of the public hearing, so the hearing was therefore readvertised and published in the Honolulu Advertiser and the Honolulu Star-Bulletin on October 3, and October 5, 1981, and continued to 2:30 p.m. on October 20, 1981, in the Planning Commission Conference Room.

7. A Request for Issuance of Subpoena for Production of Documents was filed by Na 'Opio Aloha 'Aina on October 7, 1981, and was denied by the Planning Commission on the basis that:

1) The discretionary subpoena power is vested solely in the Planning Commission pursuant to Rule 6 of the Rules Relating to Administrative Procedure of the Planning Commission, Department of General Planning, City and County of Honolulu; and

2) The Planning Commission voted to deny issuance of any subpoena duces tecum for the items listed in the above Request for Issuance of Subpoena based upon the fact that the certain items requested were either provided voluntarily by the Applicant, irrelevant, or covered by the oral testimony during the public hearing.

8. A Motion and Memorandum in Support of Motion to Dismiss Special Use Permit Application was filed by Na 'Opio and dated November 3, 1981. The basis for the Motion was that a boundary amendment, rather than a Special Use Permit, should have been pursued. Applicant filed a Memorandum in Opposition to Motion to Dismiss Special Use Permit on November 10, 1981. After a review of the memoranda filed, and having heard oral argument by the parties thereon, the Planning Commission voted to deny Intervenor's Motion to Dismiss Special Use Permit application.

9. The hearing was held on October 20, 1981, and continued through November 3, 10 and 24, 1981, and concluded on December 17, 1981. The Planning Commission voted to take a view of the site, and after notice to both parties, the Commission, accompanied by counsel for The Estate of James Campbell and Na 'Opio, viewed the subject property on January 2, 1982. No oral or written testimony on the Application was presented at that time.

10. The parties' Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders were filed on January 4, 1982 by the Estate of James Campbell, and on January 5, 1982 by Na 'Opio. The parties' Objections to Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders were both filed on January 11, 1982. On January 26, 1982, oral argument on the Proposed Decisions and Orders was heard by the Planning Commission, whereupon they voted to approve the Application of The Estate of James Campbell for a Special Use Permit.

DESCRIPTION OF THE SUBJECT PROPERTY AND VICINITY

11. The subject property consists of three parcels located at Barbers Point in the Ewa District, Island of Oahu, State of Hawaii, TMK No. 9-1-14: por. 2, and 9-1-15: por. 1.

12. Applicant, The Estate of James Campbell, is the fee simple owner of the subject property.

13. Parcels I and II of the subject property consist of approximately 23 acres and 47 acres, respectively, and are located immediately mauka of the future site of the Barbers Point Deep Draft Harbor. Parcel III of the subject property consists of approximately 107 acres and is located mauka, (across Malakole Road) of Camp Malakole, and north (across Malakole Road) of the James Campbell Industrial Park. (T 10/20/81, pp. 41-42)

14. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time. (T 10/20/81, pp. 41-42)

15. The soil of the subject property, where present, is predominantly rocky, thin and porous. The Land Study Bureau's overall master productivity soil rating for agricultural use for the soils of the subject property is "E" or "very poor." The subject property is not classified by the "ALISH" (Agricultural Lands of Importance to the State of Hawaii) system as "Prime," "Unique" or "Other Lands of Importance to the State of Hawaii." (T 10/20/81, pp. 34-35, 44, 24)

16. From 1954 to 1974, the subject property was used for grazing cattle. Since 1974, Parcels I and II have been quarried and Parcel III has been fallow and used only as a dump site by tenants of the James Campbell Industrial Park. (T 10/20/81, pp. 41-42)

17. At present, there are no existing water facilities serving the subject parcel.

18. There are no endangered species of flora or fauna on the subject property. (T 10/20/81, p. 45)

19. There are no documented existing archaeological or paleontological sites on Parcels I and II. There are archaeological and paleontological sites on Parcel III. The United States Army Corps of Engineers has accepted archaeological and paleontological studies conducted on Parcel III by the Archaeological Research Center Hawaii, Inc., (ARCH), wherein archaeological and paleontological data was collected and preserved. (T 10/20/81, pp. 64 and 66; T 11/3/81, p. 78)

20. A peer review process was conducted on the ARCH report to evaluate the report's methodology and findings. Five of the six review letters were strongly critical of the 1981 ARCH report and

recommended that various levels of additional studies be conducted before adequate "mitigation" could be considered to have been accomplished. (Exhibit P-23)

21. The United States Army Corps of Engineers decided that the ARCH report did meet the reporting requirements of the United States Department of the Interior. The United States Army Corps of Engineers, Honolulu District, concluded that the ARCH report is in full compliance with applicable Federal laws and regulations concerning historic preservation and that construction may proceed on the deep-draft harbor project. (Exhibit P-23)

22. Witnesses for Na 'Opio testified that a period of approximately four to six weeks would be required to complete any additional archaeological recovery operations. They also testified that "in-place" preservation of any archaeological or paleontological sites on the subject property would be inappropriate. (T 11/3/81, pp. 52-54, 73, 78-79)

23. The area makai of Parcels I and II is the future site of the Barbers Point Deep Draft Harbor and consists primarily of barren coral plain with some kiawe and scrub. The areas to the west and mauka of Parcels I and II are also covered with kiawe and scrub. (T 10/20/81, pp. 41-42)

24. The James Campbell Industrial Park is located south, across Malakole Road, from Parcel III. Camp Malakola is located makai, across Malakole Road, from Parcel III. The areas mauka and north of Parcel III are covered with kiawe. (T 10/20/81, pp. 41-42)

25. Further mauka of the subject property, the land is in sugar cultivation. These sugar lands are, however, of relatively low productivity. (T 10/20/81, pp. 41-42 and Exhibit N-12)

26. One pig farm and two chicken farms are located mauka of the subject property under year-to-year leases from The Estate of James

Campbell. The former long-term leases for these farms have expired and will not be renewed since Hawaiian Cypress Cement has an option to quarry these lands over the next 26 years. (T 10/20/81, pp. 42-43, 52)

27. The nearest residential area is approximately 0.6 miles northwest of the subject property. (T 10/20/81, p. 43)

28. The James Campbell Industrial Park is in the Urban State land use district and is county zoned in the I-2 Heavy Industrial zoning district. The Deep Draft Harbor site was reclassified from the Agricultural State Land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agriculture districts to the I-3 Waterfront Industrial district in 1980. (T 10/20/81, p. 44)

29. The Barbers Point Archaeological District, which includes Disposal Area II, is eligible for inclusion on the National Historic Register. The paleontological resources of the Kalaeloa area are of international scientific significance. (Exhibit N-3, p. 6.)

APPLICABLE STATUTES AND REGULATIONS

30. Standards and procedures governing the granting of Special Use Permits are found in Section 205-6, Hawaii Revised Statutes, Part IX of the Land Use Commission Rules of Practice and Procedure, and Part V of the Land Use Commission State Land Use District Regulations, and Rule 4, Procedures for State Special Use Permits, Rules Relating to Administrative Procedure of the Planning Commission, City and County of Honolulu.

HRS Section 205-6 provides:

"Sec. 205-6 Special permit. The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to

use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located for permission to use his land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The county planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

Special permits for land the area of which is greater than fifteen acres shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant.

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen (15) acres shall be transmitted to the land use commission within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

31. Part IX of the Land Use Commission Rules and Regulations and Part V of the Land Use Commission State Land Use District Regulations provide that:

"PART IX. SPECIAL USE PERMIT PROCEDURES

- 9-1 PETITION FOR SPECIAL USE PERMIT. Any person who desires to use his land within an agricultural or rural district for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for a Special Use Permit to use his land in the manner desired. If approved, the County Planning Commission within 60 days following its decision shall forward the decision together with the findings and the entire record of the proceeding including maps, charts, and other exhibits used in the proceeding to the Commission.

9-2 CONTENT OF PETITION. Petitions for issuance of a Special Use Permit shall specify the use desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the Special Use Permit, and shall include any facts, views, arguments, maps, plans and relevant data.

9-3 COUNTY PLANNING COMMISSION PROCEDURES

(1) Rules. The petitioner shall comply with all of the rules of practice and procedure of the County Planning Commission in which the subject property is located.

(2) Conditions. The County Planning Commission may impose such protective conditions as it deems necessary in the issuance of a Special Use Permit. The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit, among other conditions shall be a condition of the Special Use Permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specified time, it may revoke the permit. The County Planning Commission may, with Land Use Commission concurrence, extend the time limit if it deems that unusual circumstances warrant the granting of such an extension.

9-4 DECISION AND ORDER BY THE LAND USE COMMISSION. Within 45 days after receipt of the county agency's decision, the Commission shall act to approve, approve with modification, or deny the petition. The Commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant.

9-5 APPEALS. A denial or a modification of the Special Use Permit, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

"PART V. SPECIAL PERMITS

5-1 PETITION BEFORE COUNTY PLANNING COMMISSION. Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for permission to use his land in the manner desired. The procedure to be utilized is outlined in Part IX of this Commission's Rules of Practice and Procedure.

5-2 TEST TO BE APPLIED. Certain 'unusual and reasonable' uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable use.'

(1) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

- (2) That the desired use would not adversely affect surrounding property.
- (3) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
- (4) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
- (5) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District."

32. Rule 4 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu establishes the procedure and tests for determining an unusual and reasonable use which may be permitted in an agricultural district:

RULE 4. PROCEDURES FOR STATE SPECIAL USE PERMITS

- "4.1 (a) Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural use may petition the Planning Commission for permission to use his land in the manner desired. The Special Use Permit petition shall be submitted to the Department of Land Utilization. A copy of the Special Use Permit petition shall also be submitted to the Department of General Planning by the applicant. If approved, the Planning Commission shall forward the petition to the State Land Use Commission for its action as hereinafter provided."
- "4.1 (d) Test to be Applied. Certain 'unusual and reasonable' uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable use.'

 - 1. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
 - 2. That the desired use would not adversely affect surrounding property.
 - 3. Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
 - 4. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
 - 5. That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.

6. That the proposed use will not substantially alter or change the essential character of the land and the present use.
7. That the proposed use will make the highest and best use of the land involved for the public welfare."

PROPOSED USE OF THE PROPERTY

33. The Applicant proposes to use the subject property to stockpile coral dredged and excavated during the construction of the Barbers Point Deep Draft Harbor. (T 10/20/81, pp. 46-47)

34. The coral will be trucked or piped to the subject property from the Harbor site and will be stored in piles approximately 30 feet high. (T 10/20/81, p. 47)

35. Each of the three parcels comprising the subject property will be surrounded by berms to prevent water from the stockpiled material from running off into surrounding areas. The contract for the construction of the Harbor allows run off from the stockpile site only into the Harbor basin, which will be walled off from the ocean until the harbor is completed. (T 10/20/81, pp. 48-49 and Exhibit P-2)

36. The contract for the construction of the Harbor requires the contractor to plant and maintain groundcover on the coral piles and on the berms to control dust, glare and to minimize visual impact. (T 10/20/81, p. 47 and Exhibit P-2)

37. The United States Corps of Engineers will monitor the construction to insure compliance with the contract, including those portions which relate to stockpiling of the dredged material. (T 11/10/81, p. 59)

38. At present, the Applicant proposes to dispose of the stockpiled material in approximately 30 years. (T 10/20/81, p. 41)

39. The proposed use of the subject property is in conformance with Policy 13, Objective A, Transportation and Utilities, of the General Plan, City and County of Honolulu, (1977) p. 40.

"Facilitate the development of a second deep-water harbor to relieve congestion in Honolulu Harbor."

40. With the possible exception of water, no public facilities will be unreasonably burdened. No urban type amenities, such as sewers or utility systems, need to be constructed to accommodate the proposed use. The roads giving access to the subject property are privately owned and maintained. (T 10/20/81, p. 48)

41. The water requirements of the proposed use have not been established at this time.

CONFORMANCE TO GUIDELINES FOR DETERMINING "UNUSUAL AND REASONABLE USE"

42. Pursuant to Section 205-6, Hawaii Revised Statutes, and the State Land Use Commission's Part IX of the Rules of Practice and Procedure, and Part V of the District Regulations, and Rule 4.1(d), Rules Relating to Administrative Procedure for the Planning Commission, the use requested by Applicant is an "unusual and reasonable" use within the Agricultural District because:

(1) Such use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

a. The purpose of the land use rules and regulations is set forth under Part I, Section 1-2 of the State Land Use District Regulations which provides that "...they are intended to preserve, protect, and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii."

b. There are no endangered flora or fauna species on the subject property. (T 10/20/81, p. 41)

c. There are no documented existing archaeological or paleontological sites on Parcels I and II. There are archaeological and paleontological sites on Parcel III. The United States Army Corps of Engineers has accepted archaeological and paleontological studies conducted on Parcel III by the Archaeological Research Center of Hawaii, Inc., (ARCH). These studies have collected and preserved archaeological and paleontological data. (T 10/20/81, pp. 64 and 66; T 11/3/81, p. 78)

d. A peer review process was conducted to evaluate the report's methodology and findings. Five of the six review letters were strongly critical of the 1981 ARCH report and recommended various levels of additional studies be conducted before adequate "mitigation" could be considered to have been accomplished. (Exhibit P-23)

e. Witnesses for Na 'Opio testified that a period of approximately four to six weeks would be required to complete any additional archaeological recovery operations. They also testified that "in-place" preservation of any archaeological or paleontological sites on the subject property would be inappropriate. (T 11/3/81, pp. 52-54, 73, 78-79)

f. The United States Army Corps of Engineers decided that the ARCH report did meet the reporting requirements of the United States Department of the Interior. The United States Army Corps of Engineers, Honolulu District, concluded that the ARCH report is in full compliance with applicable Federal laws and regulations concerning historic

preservation and that construction may proceed on the deep-draft harbor project. (Exhibit P - 23)

g. The nearest residential area is approximately 0.6 miles northwest of the subject property. (T 10/20/81, p. 43)

h. The proposed use of the subject property is in conformance with Policy 13, Objective A, Transportation and Utilities, of the General Plan, City and County of Honolulu, (1977) p. 40.

"Facilitate the development of a second deep-water harbor to relieve congestion in Honolulu Harbor." (T 10/20/81, pp. 41-42)

i. The proposed use of the subject property for the temporary stockpiling of dredged coral will not alter the essential character of the subject property because Parcels I and II have been under extensive coral quarrying operations pursuant to City Planning Commission Variance No. 374 since 1959. Parcel III is vacant and primarily covered with kiawe. None of the subject property is in agricultural use at the present time. (T 10/20/81, pp. 41-42)

j. The proposed use will not be inconsistent with the surrounding uses in the area because 1) the Barbers Point Deep Draft Harbor will be located immediately makai of the subject property, and 2) The James Campbell Industrial Park is located immediately south, across Malakole Road, from the subject property. The land to the west and mauka of the subject property is vacant and covered with kiawe, and portions of these lands are under a 26-year option for coral quarrying purposes. (T 10/20/81, pp. 41-43)

k. All six days of the proceedings before the Planning Commission on the present Application were

conducted pursuant to the "contested case" requirements of the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, with the parties afforded ample opportunity for (1) intervention in the proceedings, (2) presentation of evidence, (3) cross examination of witnesses, (4) presentation of rebuttal evidence, (5) filing of proposed decision and orders and objections thereto, and (6) presentation of final arguments to the Commission.

1. The proposed temporary use of the subject property for coral stockpiling will not require the construction of typical urban facilities, infrastructure, or services such as streets, sewer or utility systems, or police and fire service. (T 10/20/81, p. 48)

m. The use of the special use permit procedure for the presently proposed coral stockpiling was contemplated and discussed before the Land Use Commission at the time of reclassification of the lands for the Barbers Point Deep Draft Harbor from Agriculture to Urban. (T 10/20/81, p. 48)

n. The use of the special use permit procedure to implement the proposed use (rather than a district boundary amendment) is proper in that it will help assure the availability of agriculturally suitable lands to accommodate future needs. (Hawaii State Planning Act, Section 226-7(b)(6), HRS) At the conclusion of the temporary coral stockpiling use, the subject property will be no less suitable for agricultural activities than at present. There will remain at least the potential for future agricultural use of the subject property.

(2) That the desired use would not adversely affect the surrounding property.

a. The area makai of Parcels I and II is the future site of the Barbers Point Deep Draft Harbor and consists primarily of barren coral plain with some kiawe and scrub. The areas to the west and mauka of Parcels I and II are also covered with kiawe and scrub. (T 10/20/81, pp. 41-42)

b. The James Campbell Industrial Park is located south, across Malakole Road, from Parcel III. Camp Malakole is located makai, across Malakole Road, from Parcel III. The areas mauka and north of Parcel III are covered with kiawe. (T 10/20/81, pp. 41-42)

c. Further mauka of the subject property, the land is in sugar. These sugar lands are, however, of relatively low productivity. (T 10/20/81, pp. 41-42 and Exhibit N-12)

d. One pig farm and two chicken farms are located mauka of the subject property under year-to-year lease (p. 43). The former long-term leases for these farms have expired and will not be renewed since Hawaiian Cypress Cement has an option to quarry these lands over the next 26 years. (T 10/20/81, pp. 42-43, 52)

e. The James Campbell Industrial Park is in the Urban State land use district and is county zoned I-2 Heavy Industrial zoning district. The Deep Draft Harbor site was reclassified from the Agricultural State land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agricultural districts to the I-3 Waterfront Industrial district in 1980. (T 10/20/81, p. 44)

f. The United States Army Corps of Engineers will monitor the construction to insure compliance with the contract, including those portions which relate to stockpiling of the dredged material. (T 11/10/81, p. 59)

(3) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

a. The Applicant proposes to use the subject property to stockpile coral dredged and excavated during the construction of the Barbers Point Deep Draft Harbor. (T 10/20/81, pp. 46-47)

b. The coral will be trucked or piped to the subject property from the Harbor site and will be stored in piles approximately 30 feet high. (T 10/20/81, p. 47)

c. Each of the three parcels comprising the subject property will be surrounded by berms to prevent water from the stockpiled material from running off into surrounding areas. The contract for the construction of the Harbor allows run-off from the stockpile site only into the Harbor basin, which will be walled off from the ocean until the Harbor is completed. (T 10/20/81, pp. 48-49 and Exhibit P-2)

d. With the possible exception of water, no public facilities will be unreasonably burdened. No urban type amenities, such as sewers, utility systems, drainage and school improvements, or police and fire protection facilities need to be constructed to accommodate the proposed use. The roads giving access to the subject property are privately owned and maintained. (T 10/20/81, p. 48)

e. The water requirements of the proposed use have not been established at this time.

(4) Unusual conditons, trends and needs have arisen since the district boundaries and regulations were established.

a. The James Campbell Industrial Park is in the Urban State land use district and is county zoned in the

I-2 Heavy Industrial district. The Deep Draft Harbor site was reclassified from the Agricultural State land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agricultural districts to the I-3 Waterfront Industrial district in 1980. (T 10/20/81, p. 44)

(5) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.

a. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time. (T 10/20/81, pp. 41-42)

b. The soil of the subject property, where present, is predominantly rocky, thin and porous. The Land Study Bureau's overall master productivity soil rating for agricultural use for the soils of the subject property is "E" or "very poor." The subject property is not classified by the "ALISH" (Agricultural Lands of Importance to the State of Hawaii) system as "Prime," "Unique" or "Other Lands of Importance to the State of Hawaii." (T 10/20/81, pp. 34-35, 44, 24)

c. From 1954 to 1974, the subject property was used for grazing cattle. Since 1974, Parcels I and II have been quarried and Parcel III has been fallow and used only as a dump site by tenants of the James Campbell Industrial Park. (T 10/20/81, pp. 41-42)

d. At present, there are no existing water facilities serving the subject parcel.

e. The Department of Agriculture concluded that the subject property has no significant agricultural value; however, its recommendation may have related only to the

potential for crop cultivation without discussing the potential for animal husbandry uses. (T 10/20/81, p. 24)

(6) That the proposed use will not substantially alter or change the essential character of the land and the present use.

a. The contract for the construction of the Harbor requires the contractor to plant and maintain groundcover on the coral stockpiles and on the berms to control dust, glare and to minimize visual impact. (T 10/20/81, p. 47 and Exhibit P-2)

b. At present, the applicant proposes to dispose of the stockpiled material in approximately 30 years. (T 10/20/81, p. 41)

c. Campbell Estate contemplates the temporary installation of \$2 million worth of equipment for rock crushing equipment and other improvements on the site in order to facilitate the removal of the dredged coral. (T 10/20/81, p. 57)

d. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time. (T 10/20/81, pp. 41-42)

(7) That the proposed use will make the highest and best use of the land involved for the public welfare.

a. By utilizing the Special Use Permit process, the subject property will remain in the Agricultural land use district so there is at least a potential for future agricultural use of the subject property, as opposed to immediate urbanization through the district boundary amendment procedure.

43. Any of the proposed Findings of Fact submitted by the Applicant or other parties that are not already ruled upon by the

Planning Commission by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

1. The Planning Commission of the City and County of Honolulu has the power and authority to consider and act upon the subject Special Use Permit application pursuant to Chapter 205, Hawaii Revised Statutes, the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, and the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu.

2. Pursuant to Section 205-6, Hawaii Revised Statutes, and Part IX of the Rules of Practice and Procedure and Part V of the District Regulations of the State Land Use Commission, and Rule 4.1(d), Rules Relating to Administrative Procedure for the Planning Commission of the City and County of Honolulu, the use requested by the Applicant is an "unusual and reasonable" use within the Agricultural District because:

a. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

b. The proposed use will not adversely affect the surrounding property.

c. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

d. Other than the 1979 Land Use Commission boundary amendment for the establishment of the Barbers Point Deep Draft Harbor, no unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

e. The subject property is unsuited for the uses permitted within the Agricultural State land use district.

f. The proposed use will not substantially alter or change the essential character of the subject property and the present use of the subject property.

g. The proposed use will make the highest and best use of the subject property for the public welfare.

DECISION AND ORDER

IT IS HEREBY ORDERED by the Planning Commission of the City and County of Honolulu that the guidelines set forth in Rule 4.1(d) of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part V, Special Permits, Section 5-2 Test to Be Applied, of the State of Hawaii Land Use Commission State Land Use District Regulations have been satisfied and that for the reasons as stated herein, the Application of THE ESTATE OF JAMES CAMPBELL for a Special Use Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land use district located at Barbers Point, Ewa, Oahu, Hawaii, Tax Map Key No. 9-1-14: por. 2, and 9-1-15: por. 1, is hereby deemed an "unusual and reasonable" use in the Agricultural District, and approved subject to the following mitigative and protective conditions:

1. That the Applicant shall retain or cause to be retained an archaeologist or archaeologists cooperating with the Historic Preservation Office for the State of Hawaii to conduct additional archaeological data recovery on Parcel III to further the research objectives set forth on pages 5 and 6 of Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, Ewa, Oahu, Federal Study Areas 1a and 1b, and State of Hawaii Optional Area 1, Hammatt et al. (1981). The archaeologists shall have a time limit within which to complete such data recovery, to wit, 60 days on Parcels I and II, and 120 days on Parcel III from

the date of approval of the Special Use Permit by the State Land Use Commission. Prior to such dates, the Applicant may commence stockpiling activities, including clearing or grubbing, with the approval of the archaeologists retained to conduct the additional archaeological data recovery operations, and

2. That pursuant to Rule 4.3 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part IX Special Use Permit Procedures, Section 9-3(2) of the State Land Use Commission Rules of Practice and Procedure, the proposed coral stockpiling use shall be established within three years from the date of approval of the Special Use Permit by the State Land Use Commission, and

3. That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu harmless from and against any loss, liability, claim or demand arising out of this Special Use Permit, and

4. That full compliance with all applicable Federal, State, and County requirements shall be rendered.

DATED: Honolulu, Hawaii this 23 day of FEBRUARY, 1982.

PLANNING COMMISSION

CITY AND COUNTY OF HONOLULU

APPROVED:

By Leslie S. Haskins-Chambers

By Zuko Hasegawa

By Randall Kamei

By *Amey K. K. K.*

By *Elizabeth K. K.*

DISAPPROVED:

By *Harriet J. K.*

By *Martha L. C.*

By _____

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, CHARLES A. PRENTISS, Acting Executive Secretary to the Planning Commission of the City and County of Honolulu, certify that the attached is a true and correct copy of the Findings of Fact, Conclusions of Law and Decision and Order in the matter of the application of The Estate of James Campbell for a State Special Use Permit to Stockpile Dredged Spoil from the Barbers Point Deep Draft Harbor held before the City and County Planning Commission on September 15 and 29, 1981, October 20, 1981, November 3, 10 and 24, 1981, December 15 and 17, 1981, January 12 and 26, 1982 and February 9, 1982.

DATED: March 4, 1982.

Charles Trent

CHARLES A. PRENTISS
Acting Executive Secretary
Planning Commission
City and County of Honolulu

Subscribed and sworn to
before me this 4th day of
March, 1982.

Arden I. Shit
Notary Public of the First
Judicial Circuit

My commission expires: 9-16-55

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

In the Matter of the Application	)	Docket No. SP 82-353
)	
of THE ESTATE OF JAMES CAMPBELL	)	CERTIFICATE OF
for a Special Use Permit to	)	SERVICE
Stockpile Dredged Spoil from the)	
Barbers Point Deep Draft Harbor)	
at Tax Map Key No. 9-1-14: por 2)	
and 9-1-15: por 1, Barbers Point,)	
<u>Ewa, Oahu, Hawaii.</u>)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of a copy of the attached Memorandum in Support of Application for Special Use Permit was made upon the following persons by depositing the same in the United States mail, postage prepaid, on April 19, 1982, addressed as follows:

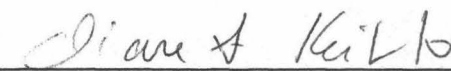
Steven Lim, Esq.
Deputy Corporation Counsel
Office of the Corporation Counsel
650 South King Street
Honolulu, Hawaii 96813

Attorney for Planning Commission,
City and County of Honolulu

Alan T. Murakami, Esq.
Legal Aid Society of Hawaii
85-555 Farrington Highway
Waianae, Hawaii 96792

Attorney for Na Opio Aloha Aina

DATED: Honolulu, Hawaii; April 19, 1982.



Diane S. Kishimoto
Attorney for Applicant

April 13, 1982

Ms. Diane S. Kishimoto
Ashford & Wriston
Attorneys at Law
P. O. Box 131
Honolulu, HI 96810

Dear Ms. Kishimoto:

This is in response to your letter of April 2, 1982 regarding the application for a Special Use Permit by the Estate of James Campbell for stockpiling coral at Barbers Point, Oahu. As you are aware, requests for the presentation of oral and written arguments before the Land Use Commission have been made. After reviewing the letter requests, it was determined that if a decision to allow oral and written arguments were made before the action meeting, it would be beneficial to all concerned. The Chairman has, therefore, directed me to advise you that oral and written arguments will be allowed and accepted by the Land Use Commission. The following are some guidelines to follow in preparing for oral presentation and any written arguments to be submitted:

1. No new evidence will be presented in either the written or oral arguments. Presentations will be limited to the record developed by the City and County Planning Commission.
2. All written arguments must be filed at the Land Use Commission's office by 12:00 noon, April 19, 1982.
3. Each party will be allowed one-half (1/2) hour to present oral arguments at the Commission's meeting on April 21, 1982. The one-half hour is inclusive of any rebuttal arguments parties may desire to make.

Please call me at 548-4611 if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

Enc.

4/13 - Sent ^{copy of} letter + attachment to LUC

CLINTON R. ASHFORD*
A. JAMES WRISTON, JR.*
ALBERT H. OGAWA*
JOHN JUBINSKY
CHARLES B. DWIGHT, III*
GALEN C. K. LEONG
J. M. ROLLS, JR.
ALBERT I. MOON, JR.
WAYNE NASSER
DOUGLAS W. MACDOUGAL
JOHN A. LOCKWOOD
CUYLER E. SHAW

MICHAEL W. GIBSON
DAVID B. DOHMS
ROSEMARY T. FAZIO
DIANE S. KISHIMOTO
PAUL S. AOKI
CHARLES W. CRUMPTON

*A LAW CORPORATION

ASHFORD & WRISTON

ATTORNEYS AT LAW

P. O. BOX 131

HONOLULU, HAWAII 96810

April 2, 1982

SIXTH & SEVENTH FLOORS
235 QUEEN STREET

TELEPHONE 524-4787
AREA CODE 808

TELECOPIER
(808) 521-0280

Mr. William W. L. Yuen
Chairman, Land Use Commission
State of Hawaii
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

Attention: Mr. Gordon Furutani
Executive Officer

Re: Application for Special Use Permit by
James Campbell Estate to Stockpile
Dredged Coral

Dear Chairman Yuen:

We have received courtesy copies of Alan Murakami's letters addressed to the Land Use Commission, one dated February 22, 1982 and the other undated but received March 15, 1982. Mr. Murakami has requested in both letters that the Na Opio Aloha Aina be permitted to make oral argument and file exceptions before the Land Use Commission on the decision of the Planning Commission of the City and County of Honolulu. We do not necessarily agree with Mr. Murakami's interpretation of the Hawaii Administrative Procedure Act (Chapter 91, HRS), and it is our understanding that the usual practice of the Land Use Commission is to confine its deliberations toward a decision solely on the record as developed by the County Planning Commission.

However, should the decision of the Land Use Commission be to allow oral argument and the filing of exceptions, we respectfully request clarification on the following issues.

1. That the oral argument and any written exceptions will be limited to the record developed by the County Planning Commission and that there will be no new evidence presented or any new testimony or witnesses heard.

APR 5 11 43 AM '82
LAND USE COMMISSION
STATE OF HAWAII

4-7-82 W. Yuen

Mr. William W. L. Yuen
April 2, 1982
Page Two

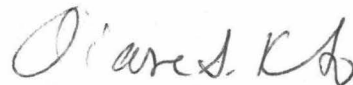
2. That there will be a reasonable time limit established for oral argument to avoid a protracted action meeting and to avoid undue delay in the time schedule for decision.
3. That the applicant will be afforded equal opportunity to address the Commission orally and in writing to support the decision of the County Planning Commission.
4. That there will be adequate and timely notice to the applicant regarding the nature and relevance of the argument by Na Opio Aloha Aina to allow adequate preparation in response (i.e., a reasonable deadline established for the filing of written argument and service upon other parties).
5. That the applicant may retain the right to object to any oral or written argument beyond the scope of the record and to avoid undue repetition and delay.

We look forward to your timely reply to the above concerns.

Very truly yours,

ASHFORD & WRISTON

By



Diane S. Kishimoto
Attorneys for the Estate
of James Campbell

DSK:el

cc: Alan Murakami, Esq.
The Estate of James Campbell

2000 COLLEGE LIBRARY 2/15
2/15/00 10:00 AM

April 13, 1982

Mr. Willard T. Chow
Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

Dear Mr. Chow:

This is to advise you that the Land Use Commission will be allowing parties to present written and oral arguments regarding the Special Permit Application filed by the Estate of James Campbell for stockpiling coral at Barbers Point, Oahu.

If you intend to submit written arguments or present oral arguments, the following are some guidelines to follow:

1. No new evidence will be presented in either the written or oral arguments. Presentation will be limited to the record developed by the City and County Planning Commission.
2. All written arguments must be filed at the Land Use Commission's office by 12:00 noon, April 19, 1982.
3. Each party will be allowed one-half (1/2) hour to present oral arguments at the Commission's meeting on April 21, 1982. The one-half hour is inclusive of any rebuttal arguments parties may desire to make.

Please call me at 548-4611 if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

April 13, 1982

Mr. Michael M. McElroy, Director
Department of Land Utilization
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

Dear Mr. McElroy:

This is to advise you that the Land Use Commission will be allowing parties to present written and oral arguments regarding the Special Permit Application filed by the Estate of James Campbell for stockpiling coral at Barbers Point, Oahu.

If you intend to submit written arguments or present oral arguments, the following are some guidelines to follow:

1. No new evidence will be presented in either the written or oral arguments. Presentation will be limited to the record developed by the City and County Planning Commission.
2. All written arguments must be filed at the Land Use Commission's office by 12:00 noon, April 19, 1982.
3. Each party will be allowed one-half (1/2) hour to present oral arguments at the Commission's meeting on April 21, 1982. The one-half hour is inclusive of any rebuttal arguments parties may desire to make.

Please call me at 548-4611 if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

April 12, 1982

Mr. Alan T. Murakami
Legal Aid Society
85-555 Farrington Highway
Waianae, Hawaii 96792

Dear Mr. Murakami:

Since receiving your letter requesting that you be allowed to present oral and written arguments on the Special Permit application by The James Campbell Estate for stockpiling coral at Barbers Point, Oahu, we have received a letter from Ms. Diane Kishimoto, attorney for Campbell Estate. A courtesy copy of the April 2, 1982 letter was provided to you.

After reviewing the letter requests, it was determined that if a decision to allow oral and written arguments were made before the action meeting, it would be beneficial to all concerned. The Chairman has, therefore, directed me to advise you that oral and written arguments will be allowed and accepted by the Land Use commission. The following are some guidelines to follow in preparing for oral presentation and any written arguments to be submitted:

1. No new evidence will be presented in either the written or oral arguments. Presentation will be limited to the record developed by the City and County Planning Commission.
2. All written arguments must be filed at the Land Use Commission office by 12:00 noon, April 19, 1982.
3. Each party will be allowed one-half ($\frac{1}{2}$) hour to present oral arguments at the Commission meeting on April 21, 1982. The one-half hour is inclusive of any rebuttal arguments parties may desire to make.

Please call me at 548-4611 if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:yk

4/13 - sent copy of letter to LUC

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES CAMPBELL DATE April 21, 1982
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

NAME	YES	NO	ABSTAIN	ABSENT
TAMAYE, ROBERT S.	X			
TACBIAN, TEOFILO PHIL	X			
MIYASATO, SHINSEI	X			
M - CHOY, RICHARD B. F.	X			
CUSKADEN, EVERETT L.		X		
S YANAI, EDWARD K.	X			
WHITESELL, CAROL B.	X			
YUEN, WILLIAM W. L.	X			

Comments: I move to approve SP82-353, The Estate of James Campbell, to allow the stockpiling of dredged coral on approximately 152 acres of land situated within the State Land Use Agricultural District at Honouliuli, Ewa, Oahu, subject to the conditions imposed by the City & County of Honolulu and as amended by the Land Use Commission.

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES DATE April 21, 1982
CAMPBELL
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

NAME	YES	NO	ABSTAIN	ABSENT
TAMAYE, ROBERT S.	X			
TACBIAN, TEOFILO PHIL	X			
MIYASATO, SHINSEI	X			
CHOY, RICHARD B. F.	X			
S CUSKADEN, EVERETT L.	X			
YANAI, EDWARD K.	X			
M WHITESELL, CAROL B.	X			
YUEN, WILLIAM W. L.	X			

Comments:

I move that we limit the term of the special permit to 25 years.

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES DATE April 21, 1982
CAMPBELL
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

NAME	YES	NO	ABSTAIN	ABSENT
TAMAYE, ROBERT S.		X		
TACBIAN, TEOFILO PHIL	X			
MIYASATO, SHINSEI		X		
CHOY, RICHARD B. F.		X		
S CUSKADEN, EVERETT L.	X			
YANAI, EDWARD K.		X		
M WHITESELL, CAROL B.	X			
YUEN, WILLIAM W. L.	X			

Comments:

I move that we limit the term of the special permit to 20 years.

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES DATE April 21, 1982
CAMPBELL
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

	NAME	YES	NO	ABSTAIN	ABSENT
	TAMAYE, ROBERT S.		X		
	TACBIAN, TEOFILO PHIL		X		
	MIYASATO, SHINSEI		X		
	CHOY, RICHARD B. F.		X		
M	CUSKADEN, EVERETT L.	X			
	YANAI, EDWARD K.		X		
S	WHITESSELL, CAROL B.	X			
	YUEN, WILLIAM W. L.		X		

Comments:

I move that the term of the special permit shall be for a period of 15 years.

VOTE RECORD

PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

S

I move to amend the County's condition as follows:

(passed by voice vote)

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES CAMPBELL DATE April 21, 1982
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

	NAME	YES	NO	ABSTAIN	ABSENT
	TAMAYE, ROBERT S.		X		
	TACBIAN, TEOFILO PHIL		X		
	MIYASATO, SHINSEI		X		
	CHOY, RICHARD B. F.		X		
M	CUSKADEN, EVERETT L.	X			
	YANAI, EDWARD K.		X		
S	WHITESELL, CAROL B.		X		
	YUEN, WILLIAM W. L.	X			

Comments:

I move to amend the motion to basically incorporate the conditions put on the permit by the County with the following revision:

Condition #2 - ".....the proposed coral stockpiling use shall be established within one year from the date of approval....."

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP82-353 - THE ESTATE OF JAMES DATE April 21, 1982
CAMPBELL
PLACE Conf. Rooms 322 A&B TIME 9:00 a.m.
Kalanimoku Bldg., Honolulu, HI

Motion to admit additional evidence - By Na Opio Aloha Aina

	NAME	YES	NO	ABSTAIN	ABSENT
	TAMAYE, ROBERT S.				
S	TACBIAN, TEOFILO PHIL				
	MIYASATO, SHINSEI				
	CHOY, RICHARD B. F.				
	CUSKADEN, EVERETT L.				
	YANAI, EDWARD K.				
M	WHITESELL, CAROL B.				
	YUEN, WILLIAM W. L.				

Comments:

I move that we deny the motion to admit additional evidence.
(passed by voice vote)

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 B
Kalanimoku Building
Honolulu, Hawaii

April 21, 1982 - 9:00 a.m.

Approved
7/1/02

COMMISSIONERS PRESENT: William Yuen, Chairman
Carol Whitesell, Vice Chairman
Richard Choy
Everett Cuskaden
Shinsei Miyasato
Phil Tacbian
Robert Tamaye
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Joseph Chu, Planner
Carolee Aoki, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

SP80-347 - GEOTHERMAL EXPLORATION & DEVELOPMENT CORPORATION
Request for a Time Extension to commence drilling
of the first exploratory geothermal well at
Laepaoo, Puna, Hawaii

Mr. Chu, staff planner, presented a summary of the staff memo relative to the request for time extension by petitioner. The location of the property was also delineated on the posted maps and oriented with various landmarks.

Commissioner Tamaye moved to approve the extension request which was seconded by Commissioner Tacbian.

Commissioner Cuskaden moved to amend condition No. 4 to read: "That the drilling of the first well shall be completed within one year from the approval of the extension request by the Land Use Commission." It was seconded by Commissioner Tacbian and carried by voice vote.

The Commissioners were polled on the motion to approve the extension request, subject to the conditions imposed by the Hawaii County Planning Commission and as amended by the Land Use Commission. It was unanimously carried.

SP82-354 - ALLIED HAULING, INC.

To allow rock quarrying, rock crushing, and concrete batching at Pulehunui, Maui

A summary of the staff memo prepared for the subject request was presented by Mr. Chu. A description of the subject property was also offered by staff planner.

Chairman Yuen noted for the record that the Commission was in receipt of a letter from Mr. John Hoskins, representing Ameron, Inc., protesting the special permit request by petitioner. However, the Chairman ruled that Ameron, Inc. may not participate in the present proceedings since it had not been a party during the hearing procedures before the County Planning Commission. Moreover, the Chairman continued that any arguments should have been presented before the County Planning Commission since the Land Use Commission bases its decision only on the record submitted by the Planning Commission.

It was moved by Commissioner Miyasato, seconded by Commissioner Choy, to approve SP80-354, Allied Hauling, Inc.

During the ensuing discussion, questions were raised regarding the improvements that were planned for the access road, the drainage and erosion problems, the water consumption for the project, etc.

Commissioner Miyasato moved to amend his motion by adding the condition that "the quarrying operations commence within one year." It was seconded by Commissioner Choy and carried by voice vote.

The original motion, as amended, was carried with the following votes:

Ayes: Commissioners Miyasato, Tacbian, Tamaye, Choy, Yanai, Chairman Yuen

Nays: Commissioners Whitesell and Cuskaden

✓ SP82-353 - THE ESTATE OF JAMES CAMPBELL

Chairman Yuen advised all parties to the proceedings that oral arguments will be permitted on the subject special permit application inasmuch as the hearing was conducted under a contested case procedure before the City Planning Commission.

Appearances

Diane Kishimoto, Attorney representing the petitioner

Alan Murakami, Attorney representing Na Opio Aloha Aina

Mr. Furutani, Executive Officer, presented a summary of the staff memo which had been prepared for the subject request.

Chairman Yuen announced that before entertaining arguments, it would be in order for the Commission to act on the Motion to Admit Additional Evidence which had been filed by intervenor Na Opio Aloha Aina.

Vice Chairman Whitesell moved to deny the Motion to Admit Additional Evidence, which was seconded by Commissioner Tacbian. The motion was passed by voice vote.

The Chairman cautioned the parties to confine their arguments to the issues involved in the special permit request, i.e. the question of dredging and to the five factors which the Commission must consider in arriving at a decision on special permit applications.

The arguments by the parties and cross examination are recorded in the transcript on the pages noted.

PETITIONER

Diane Kishimoto - Petitioner's Attorney

Closing arguments-----44 to 49
Examination by Vice Chairman Whitesell-----49 to 51
Examination by Commission Cuskaden-----51
Examination by Chairman Yuen-----51 to 54

INTERVENOR

Alan Murakami - Attorney for Na Opio Aloha Aina

Closing arguments-----55 to 67
Examination by Commissioner Cuskaden-----67 to 70
Examination by Chairman Yuen-----70
Examination by Vice Chairman Whitesell-----71 to 75
Examination by Commissioner Tacbian-----75 to 77
Reexamination by Chairman Yuen-----77 to 79

REBUTTAL

By Ms. Kishimoto-----79 to 81

Examination by Commissioner Cuskaden-----81 to 85

Examination by Vice Chairman Whitesell-----85

It was moved by Commissioner Choy to approve SP82-353, The Estate of James Campbell, to allow the stockpiling of dredged coral on approximately 152 acres of land situated within the State Land Use Agricultural District at Honouliuli, Ewa, Oahu. It was seconded by Commissioner Yanai.

Commissioner Cuskaden moved to amend condition No. 2 to read: "That the proposed coral stockpiling use shall be established within one year from the date of approval"; condition No. 3 to read: "That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu, its agencies (including the Land Use Commission) and Commissioners, harmless from and against any loss....."; and add as condition No. 5: "That the term of this special permit shall be for a term of 15 years from the date of approval." The motion was seconded by Vice Chairman Whitesell.

Commissioner Tacbian requested that the various amendments to the motion be acted on separately.

Chairman Yuen called on the Executive Officer to poll the Commissioners on the first amendment. The amendment was ~~not~~ not carried as indicated by the following votes:

Ayes: Commissioners Cuskaden, Whitesell, Chairman Yuen

Nays: Commissioners Tamaye, Tacbian, Miyasato, Choy,
Yanai

The Commissioners were polled on the ~~third~~ amendment which also failed as per the following votes:

Ayes: Commissioners Cuskaden, Whitesell

Nays: Commissioners Tamaye, Miyasato, Tacbian, Choy,
Yanai, Chairman Yuen

The amendment indemnifying the Land Use Commission against any loss, etc., was unanimously approved by voice vote.

Vice Chairman Whitesell moved that the term of the special permit be limited to 20 years, which was seconded by Commissioner Cuskaden. The Commissioners were polled as follows:

Ayes: Commissioners Cuskaden, Tacbian, Whitesell,
Chairman Yuen

Nays: Commissioners Choy, Miyasato, Tamaye, Yanai

The motion did not carry.

It was moved by Vice Chairman Whitesell that the term of the special permit be limited to 25 years, which was seconded by Commissioner Cuskaden and the motion was unanimously carried.

Differing views were expressed regarding the propriety of establishing the proposed use under a special permit procedure. Chairman Yuen expressed his feeling that the petitioner had met the five requirements pursuant to HRS 205.6 for the granting of a special permit.

The Executive Officer polled the Commissioners on the motion to approve the special permit, subject to the conditions imposed by the County Planning Commission and as amended by the Land Use Commission. The motion was carried with Commissioner Cuskaden casting the only dissenting vote.

The Commission was in recess from 12:20 p.m. to 1:30 p.m.

1:30 p.m.

A81-511 - MAUI LAND & PINEAPPLE COMPANY, INC.

Chairman Yuen called on Mr. Benjamin Matsubara, Hearing Officer who conducted the hearing on subject petition, to present his findings and recommendations. Based on a review of the petition, the evidence adduced at the hearing, the provisions of Chapter 205 HRS, Mr. Matsubara reported that the County of Maui and the Department of Planning and Economic Development had recommended that the reclassification of the subject property be approved with conditions.

Subsequent discussion between the Hearing Officer and Commission members brought out the fact that financial assistance will not be provided by the petitioner to employees for the purchase of the lands, the procedures involved in general plan amendment and zoning change, the reason the anti-speculation clause was not recommended as a condition, etc.

Commissioner Miyasato moved to approve the petition of Maui Land & Pineapple Company, Inc. to reclassify approximately 8.5 acres of land currently in the Agricultural District into the Urban District at Kukuiaeo and Kailua, Makawao, Maui, for residential subdivision, subject to the condition that all of the lots of the subject development shall be sold in fee to employees of Maui Land & Pineapple Company. It was seconded

STATE OF HAWAII
LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME AND PLACE

April 21, 1982 - 9:00 a.m.
Conference Room 322 A & B
Kalanimoku Building
Honolulu, Hawaii

REC'D. BY

002 APR 8 AM 9 13

LT. GOVERNOR'S OFFICE

A G E N D A

I. ACTION

1. SP80-347 - Geothermal Exploration & Development Corporation (Hawaii)

Request for a time extension to commence drilling of the first exploratory geothermal well on approximately 180 acres of land situated within the State Land Use Agricultural District at Laepaoo, Puna, Hawaii.

2. SP82-354 - Allied Hauling, Inc. (Maui)

To allow rock quarrying, rock crushing, and concrete batching operations on approximately 45.957 acres of land situated within the State Land Use Agricultural District at Pulehunui, Maui.



3. SP82-353 - The Estate of James Campbell (Oahu)

To allow the stockpiling of dredged coral on approximately 177.338 acres of land situated within the State Land Use Agricultural District at Honouliuli, Ewa, Oahu.

4. A81-511 - Maui Land & Pineapple Company, Inc. (Maui)

To reclassify approximately 8.5 acres of land currently in the Agricultural District into the Urban District at Kukuiaeo and Kailua, Makawao, Maui, for residential subdivision.

4/8/82 - A copy of this agenda was mailed to all persons and organizations on the attached mailing lists:

- | | | | | |
|--------------|---------|-----------|---------|----------|
| 1. STATEWIDE | 2. OAHU | 3. HAWAII | 4. MAUI | 5. KAUAI |
| 6. MOLOKAI | | | | |

STATE OF HAWAII
LAND USE COMMISSION
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

April 7, 1982

Mr. Willard Tim Chow
Chief Planning Officer
Department of General Planning
City & County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Chow:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP82-353 - THE ESTATE OF JAMES CAMPBELL (OAHU)

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



JORDAN FURUTANI
Executive Officer

Enclosure - Agenda

cc: Mr. Michael McElroy, Director
Dept. of Land Utilization

Mr. Charles A. Prentiss
Acting Executive Secretary

STATE OF HAWAII
LAND USE COMMISSION
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

April 7, 1982

Ms. Diane Kishimoto
Ashford & Wriston
6th Floor, 235 Queen Street
Honolulu, Hawaii 96813

Dear Ms. Kishimoto:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP82-353 - THE ESTATE OF JAMES CAMPBELL (OAHU)

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



JORDAN FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

April 7, 1982

The Estate of James Campbell
828 Fort Street Mall
Suite 500
Honolulu, Hawaii 96813

Dear Gentlemen:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP82-353 - THE ESTATE OF JAMES CAMPBELL (OAHU)

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



GORDAN FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

April 7, 1982

Mr. Alan T. Murakami
Legal Aid Society of Hawaii
85-555 Farrington Highway
Waianae, Hawaii 96792

Dear Mr. Murakami:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP82-353 - THE ESTATE OF JAMES CAMPBELL (OAHU)

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



JORDAN FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

TO: Land Use Commission

DATE: April 21, 1982

FROM: Staff

SUBJECT: SP82-353 - The Estate of James Campbell

The petitioner, The Estate of James Campbell, is requesting a Special Permit to allow the stockpiling of dredged coral from the proposed Barbers Point Deep Draft Harbor on approximately 152 acres of land at Barbers Point, Ewa, Oahu, TMK 9-1-14: Portion 2 and 9-1-15: Portion 1. It is estimated that approximately 10.6 million cubic yards of coralline material will be dredged and the stockpiling activity will be ongoing for a period of approximately 30 years. The coral will be trucked or piped to the disposal areas from the proposed Harbor site and stored in piles approximately 30 feet high. The disposal sites will be surrounded by berms to prevent water from the stockpiled material from flowing uncontrolled into surrounding areas. Runoffs from the stockpiled coral is proposed to be channeled into the harbor basin.

The site for stockpiling operation is located at the southwestern portion of the island of Oahu, just north of the James Campbell Industrial Park and east of the existing barge harbor and the Camp Malakole Military Reservation.

Three separate disposal sites are proposed. Disposal Area I consists of approximately 22.69 acres, 20.66 acres of which is situated within the urban district and 2.03 acres within the agricultural district. Disposal Area II consists of approximately 47.36 acres and 0.41 acre is within the urban district and 46.95 acres is within the agricultural district. Disposal Area III consists of a total of approximately 107.29 acres, 3.71 acres is in the urban district and 103.58 acres in the agricultural district. Altogether approximately 25 acres of the subject property is situated within the State Land Use urban district and 152 acres in within the State Land Use agricultural district. The subject lands located within the urban district are not a part of this special permit request since the proposed use is a permitted one in the urban district. A visual description of the three disposal sites is attached as "A."

The petitioner's special permit application and reason for supporting the request, including exhibits are attached as "B." Please note that the report Archaeological and Paleontological Investigation at Kalaeloa, Honouliuli, Ewa, O'ahu Island by Hallett H. Hammatt, Ph.D., and William H. Folk is part of the petitioner's exhibit and was previously sent to you under separate cover.

The Estate of James Campbell is the fee simple owner of the lands in question. Presently, none of the three sites are in any active agricultural use. Disposal Sites I and II have been used for coral quarrying operations by Cyprus Hawaiian Cement. The two sites have been extensively quarried and is now a barren coral plain. Disposal Site III is vacant and overgrown with kiawe. Land uses surrounding the subject site include the James Campbell Industrial Park which is located just south of Disposal Area III. The existing Barge Harbor and the future site of the Barbers Point Deep Draft Harbor is located North of Disposal Site III and immediately west of Disposal Sites I and II. Lands to the north of the stockpiling site include the proposed West Beach resort and residential community. Land uses to the west of the lands in question include vacant areas overgrown with kiawe and sugar cane cultivation. The nearest residential area is approximately .6 of a mile to the northeast of the subject site.

The subject properties are designated industrial and agricultural under the City and County Development Plan and zoned I-3 Waterfront Industrial (4 ACS) and AG-1 Restricted Agriculture (173 acres). Under the City's interim zoning control map the area is designated industrial. The properties fall outside of the City's shoreline management area (SMA). Maps showing the extent of development plan, zoning and SMA designations are included in Attachment "C."

The Land Study Bureau's overall master productivity soil rating for agricultural use for the soils of the subject property in "E" or "very poor." The property is not classified as "prime," "unique" or "other lands of importance to the State of Hawaii" under the ALISH system (Agricultural Lands of Importance to the State of Hawaii).

Regarding public services and facilities, the City and County Department of Land Utilization reported at the September 15, 1982 meeting that:

"There are no comments from the U.S. Conservation Services. U.S. Corps of Engineers states that the summary and other information supplied by the applicant appears accurate and in order. The Neighborhood Board is of the consensus by all Board members to favorably recommend approval of the subject application. The Department of Parks and Recreation states that the areas have no impact on any park property in the area. The Board of Water Supply has no objections. The State Department of Agriculture does not object to the granting of a Special Use Permit for the intended use. We have given our support to the deep draft harbor project in the past. The State Department of Health states that there may be some minimal problems with fugitive dust which can be controlled by more water on it, and a permit will be required for the storm water runoff that exceeds the minimum size confinement ponds for which the stockpiling area is located. The Department of Public Works has no objections to the refuse collection nor the sanitary sewers since this is only for stockpiling. The Department of Transportation Services has no objections to the issuance of a Conditional Use Permit and a State Special Use Permit because it is only for stockpiling."

Procedural History

1. The special permit application was filed on July 31, 1981.
2. A public hearing on the special permit request was held on September 15, 1981 at the Ewa Beach Community-School Library before Hearings Officer Gail F. Baron.
3. At the September 15, 1981 hearing, Mr. Carl Young who testified in opposition to the application on behalf of Na 'Opio Aloha 'Aina (Na 'Opio) requested that a contested case hearing be held. The request was granted and the hearing was continued to September 29, 1981 at the Planning Commission conference room in Honolulu.

4. At the meeting on September 29, 1981 the Estate of James Campbell was represented by Diane Kishimoto, Esquire, and intervenor Na 'Opio Aloha 'Aina was represented by Alan Murakami, Esquire. At the hearing, intervenor challenged the adequacy of the Notice of Hearing and thereby caused the hearing to be continued to October 20, 1981.
5. A Request for Issuance of Subpoena for Production of certain documents was filed by intervenor on October 7, 1981. The Planning Commission denied the request. A copy of the subpoena is attached as "D."

6. In a Motion and Memorandum to Dismiss the Special Use Permit Application dated November 3, 1981 and filed by Na 'Opio, the intervenor sought to establish that a boundary amendment, rather than a Special Use Permit should have been pursued to allow the stockpiling of coral. The applicant filed a memorandum in opposition to the Motion to Dismiss on November 10, 1981. The Planning Commission voted to deny the Motion to Dismiss the Special Use Permit application. Copies of the Motion to Dismiss and Memorandum in Opposition are attached as "E" and "F" respectively.

7. The contested case hearing was held on October 20, 1981 and continued through November 3, 10, and 24, 1981. The hearing was concluded on December 17, 1981. Copies of written material and exhibits filed by intervenor Na 'Opio is attached as "G", minutes of the hearings are attached as "H" and the Director of the Department of Land Utilization's Special Permit Report to the City Planning Commission is attached as "I."

8. On January 12, 1982 the City and County Planning Commission voted to approve the subject Special Use Permit. Prior to the action date, the parties submitted Proposal Finding of Fact, Conclusions of Law and Decisions and Orders and provided comments on Proposed Findings of Fact filed by the other parties. Copies of these documents are attached as "J." In addition minutes of the action meeting is attached as "K."

The favorable recommendation for approval by the City and County Planning Commission was subject to the following four conditions:

- "1. That the Applicant shall retain or cause to be retained an archaeologist or archaeologists cooperating with the Historic Preservation Office for the State of Hawaii to conduct additional archaeological data recovery on Parcel III to further the research objectives set forth on pages 5 and 6 of Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, Ewa, Oahu, Federal Study Areas 1a and 1b, and State of Hawaii Optional Area 1, Hammatt et al. (1981). The archaeologists shall have a time limit within which to complete such data recovery, to wit, 60 days on Parcels I and II, and 120 days on Parcel III from the date of approval of the Special Use Permit by the State Land Use Commission. Prior to such dates, the Applicant may commence stockpiling activities, including clearing or grubbing, with the approval of the archaeologists retained to conduct the additional archaeological data recovery operations, and
- "2. That pursuant to Rule 4.3 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part IX Special Use Permit Procedures, Section 9-3(2) of the State Land Use Commission Rules of Practice and Procedure, the proposed coral stockpiling use shall be established within three years from the date of approval of the Special Use Permit by the State Land Use Commission, and
- "3. That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu harmless from and against any loss, liability, claim or demand arising out of this Special use Permit, and
- "4. That full compliance with all applicable Federal, State, and County requirements shall be rendered."

A copy of the Findings of Fact, Conclusions of Law and Decision and Order adopted by the Planning Commission was previously transmitted to you.



DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

GEORGE R. ARIYOSHI
Governor

WILLIAM W. L. YUEN
Chairman

CAROL B. WHITESELL
Vice Chairman

Old Federal Building, Room 104, 335 Merchant Street,
Honolulu, Hawaii 96813

March 16, 1982

COMMISSION MEMBERS:

Richard Choy
Everett Cuskaden
Shinsei Miyasato
Teofilo Tacbian
Robert Tamaye
Edward Yanai

GORDAN FURUTANI
Executive Officer

MEMORANDUM

TO: Land Use Commission

FROM: Staff

SUBJECT: SP82-352 - The Estate of James Campbell

Staff is in receipt of the record regarding the above Special Permit that was recently approved by the City Planning Commission. Inasmuch as the record is quite voluminous and it will take staff some time to review the record and prepare the report, staff is transmitting the enclosed material in advance for your review.

For your information, the action span for the subject Special Permit is March 11, 1982 to April 25, 1982.

Please call staff if you have any questions concerning the above.

Encls.

- ① see attached FF, Enclosures
- ② Petis X-15 Archaeological Report

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

In the Matter of the Application	)	Docket No. 81/SUP-6(EY)
	)	The Estate of James Campbell
of THE ESTATE OF JAMES CAMPBELL)	
for a Special Use Permit to)	
Stockpile Dredged Spoil from the)	
Barbers Point Deep Draft Harbor)	
at Tax Map Key No. 9-1-14: por. 2)	
and 9-1-15: por. 1, Barbers Point,)	
<u>Ewa, Oahu, Hawaii.</u>)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER

THE APPLICATION

This proceeding was initiated by the Application of THE ESTATE OF JAMES CAMPBELL, pursuant to Chapter 205-6, Hawaii Revised Statutes, as amended, Part IX of the Land Use Commission Rules of Practice and Procedure, Part V of the Land Use Commission State Land Use District Regulations, and the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, to allow the Applicant to temporarily stockpile dredged coral on approximately 177 acres of land at Barbers Point, Ewa, Oahu, TMK No. 9-1-14: por. 2 and 9-1-15: por. 1, in the State Agricultural land use district, until the coral can be sold or otherwise disposed of. The site is in the Urban (25+ acres) and Agriculture (152+ acres) State land use district classifications. The area is shown as Industrial and Agricultural on the Development Plan for Ewa and is presently zoned I-3 Waterfront Industrial District (4+ acres); and AG-1 Restricted Agriculture District (173+ acres). The existing land use is coral quarrying pursuant to City Planning Commission Variance No. 374, and vacant lands.

The Commission, having heard and examined the testimony and evidence presented during the contested case hearings on October 20, 1981, November 3, 1981, November 10, 1981 and November 24, 1981, in Honolulu, Hawaii, and on December 17, 1981, in Waianae, Oahu, Hawaii, and having heard arguments and rebuttal on the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed

by the parties herein on January 12, 1982, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. The Application was filed on July 31, 1981, by Applicant, through its agent Walter P. Thompson, Inc., to obtain permission to temporarily use approximately 152± acres of land at Barbers Point, Ewa, Oahu, in the Agricultural State land use district, to stockpile approximately 10.6 million cubic yards of coral dredged from the Barbers Point Deep Draft Harbor.

2. Notice of the combined Conditional Use Permit/Special Use Permit public hearing on the Application, scheduled for September 15, 1981, at 10:00 a.m., at the Ewa Beach Community-School Library, 91-950 North Road, Ewa Beach, was published in the Honolulu Advertiser and in the Honolulu Star-Bulletin, on September 5, 1981.

3. A Public hearing on the Application was held at 10:00 a.m. on September 15, 1981, at Ewa Beach Community-School Library, before Hearings Officers Ian McDougall and Gail F. Baron. The public hearing on the Conditional Use Permit was concluded and the Conditional Use Permit granted.

4. At the September 15, 1981 public hearing, Carl Young, testifying on behalf of Na 'Opio Aloha 'Aina ("Na 'Opio") in opposition to the Application, requested that a contested case hearing on the Special Use Permit be held. Mr. Young's request was granted and the hearing was continued to 7:00 p.m., September 29, 1981, at the Planning Commission Conference Room in Honolulu, Hawaii.

5. Notice of the continued hearing was published in the Honolulu Advertiser and the Honolulu Star-Bulletin on September 19, 1981.

6. At the hearing held on September 29, 1981, at 7:00 p.m., the Applicant, the Estate of James Campbell, was represented by Diane Kishimoto, Esq. Intervenor Na 'Opio Aloha 'Aina was represented by Alan Murakami, Esq. Counsel for Na 'Opio challenged the adequacy of the notice of the public hearing, so the hearing was therefore readvertised and published in the Honolulu Advertiser and the Honolulu Star-Bulletin on October 3, and October 5, 1981, and continued to 2:30 p.m. on October 20, 1981, in the Planning Commission Conference Room.

7. A Request for Issuance of Subpoena for Production of Documents was filed by Na 'Opio Aloha 'Aina on October 7, 1981, and was denied by the Planning Commission on the basis that:

1) The discretionary subpoena power is vested solely in the Planning Commission pursuant to Rule 6 of the Rules Relating to Administrative Procedure of the Planning Commission, Department of General Planning, City and County of Honolulu; and

2) The Planning Commission voted to deny issuance of any subpoena duces tecum for the items listed in the above Request for Issuance of Subpoena based upon the fact that the certain items requested were either provided voluntarily by the Applicant, irrelevant, or covered by the oral testimony during the public hearing.

8. A Motion and Memorandum in Support of Motion to Dismiss Special Use Permit Application was filed by Na 'Opio and dated November 3, 1981. The basis for the Motion was that a boundary amendment, rather than a Special Use Permit, should have been pursued. Applicant filed a Memorandum in Opposition to Motion to Dismiss Special Use Permit on November 10, 1981. After a review of the memoranda filed, and having heard oral argument by the parties thereon, the Planning Commission voted to deny Intervenor's Motion to Dismiss Special Use Permit application.

9. The hearing was held on October 20, 1981, and continued through November 3, 10 and 24, 1981, and concluded on December 17, 1981. The Planning Commission voted to take a view of the site, and after notice to both parties, the Commission, accompanied by counsel for The Estate of James Campbell and Na 'Opio, viewed the subject property on January 2, 1982. No oral or written testimony on the Application was presented at that time.

10. The parties' Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders were filed on January 4, 1982 by the Estate of James Campbell, and on January 5, 1982 by Na 'Opio. The parties' Objections to Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders were both filed on January 11, 1982. On January 26, 1982, oral argument on the Proposed Decisions and Orders was heard by the Planning Commission, whereupon they voted to approve the Application of The Estate of James Campbell for a Special Use Permit.

DESCRIPTION OF THE SUBJECT PROPERTY AND VICINITY

11. The subject property consists of three parcels located at Barbers Point in the Ewa District, Island of Oahu, State of Hawaii, TMK No. 9-1-14: por. 2, and 9-1-15: por. 1.

12. Applicant, The Estate of James Campbell, is the fee simple owner of the subject property.

13. Parcels I and II of the subject property consist of approximately 23 acres and 47 acres, respectively, and are located immediately mauka of the future site of the Barbers Point Deep Draft Harbor. Parcel III of the subject property consists of approximately 107 acres and is located mauka, (across Malakole Road) of Camp Malakole, and north (across Malakole Road) of the James Campbell Industrial Park.

14. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time.

15. The soil of the subject property, where present, is predominantly rocky, thin and porous. The Land Study Bureau's overall master productivity soil rating for agricultural use for the soils of the subject property is "E" or "very poor." The subject property is not classified by the "ALISH" (Agricultural Lands of Importance to the State of Hawaii) system as "Prime," "Unique" or "Other Lands of Importance to the State of Hawaii."

16. From 1954 to 1974, the subject property was used for grazing cattle. Since 1974, Parcels I and II have been quarried and Parcel III has been fallow and used only as a dump site by tenants of the James Campbell Industrial Park.

17. At present, there are no existing water facilities serving the subject parcel.

18. There are no endangered species of flora or fauna on the subject property.

19. There are no documented existing archaeological or paleontological sites on Parcels I and II. There are archaeological and paleontological sites on Parcel III. The United States Army Corps of Engineers has accepted archaeological and paleontological studies conducted on Parcel III by the Archaeological Research Center Hawaii, Inc., (ARCH), wherein archaeological and paleontological data was collected and preserved.

20. A peer review process was conducted on the ARCH report to evaluate the report's methodology and findings. Five of the six review letters were strongly critical of the 1981 ARCH report and

recommended that various levels of additional studies be conducted before adequate "mitigation" could be considered to have been accomplished.

21. The United States Army Corps of Engineers decided that the ARCH report did meet the reporting requirements of the United States Department of the Interior. The United States Army Corps of Engineers, Honolulu District, concluded that the ARCH report is in full compliance with applicable Federal laws and regulations concerning historic preservation and that construction may proceed on the deep-draft harbor project.

22. Witnesses for Na 'Opio testified that a period of approximately four to six weeks would be required to complete any additional archaeological recovery operations. They also testified that "in-place" preservation of any archaeological or paleontological sites on the subject property would be inappropriate.

23. The area makai of Parcels I and II is the future site of the Barbers Point Deep Draft Harbor and consists primarily of barren coral plain with some kiawe and scrub. The areas to the west and mauka of Parcels I and II are also covered with kiawe and scrub.

24. The James Campbell Industrial Park is located south, across Malakole Road, from Parcel III. Camp Malakola is located makai, across Malakole Road, from Parcel III. The areas mauka and north of Parcel III are covered with kiawe.

25. Further mauka of the subject property, the land is in sugar cultivation. These sugar lands are, however, of relatively low productivity.

26. One pig farm and two chicken farms are located mauka of the subject property under year-to-year leases from The Estate of James

Campbell. The former long-term leases for these farms have expired and will not be renewed since Hawaiian Cypress Cement has an option to quarry these lands over the next 26 years.

27. The nearest residential area is approximately 0.6 miles northwest of the subject property.

28. The James Campbell Industrial Park is in the Urban State land use district and is county zoned in the I-2 Heavy Industrial zoning district. The Deep Draft Harbor site was reclassified from the Agricultural State Land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agriculture districts to the I-3 Waterfront Industrial district in 1980.

29. The Barbers Point Archaeological District, which includes Disposal Area II, is eligible for inclusion on the National Historic Register. The paleontological resources of the Kalaeloa area are of international scientific significance. (Exhibit N-3, p. 6.)

APPLICABLE STATUTES AND REGULATIONS

30. Standards and procedures governing the granting of Special Use Permits are found in Section 205-6, Hawaii Revised Statutes, Part IX of the Land Use Commission Rules of Practice and Procedure, and Part V of the Land Use Commission State Land Use District Regulations, and Rule 4, Procedures for State Special Use Permits, Rules Relating to Administrative Procedure of the Planning Commission, City and County of Honolulu.

HRS Section 205-6 provides:

"Sec. 205-6 Special permit. The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to

use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located for permission to use his land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The county planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

Special permits for land the area of which is greater than fifteen acres shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant.

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen (15) acres shall be transmitted to the land use commission within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

31. Part IX of the Land Use Commission Rules and Regulations and Part V of the Land Use Commission State Land Use District Regulations provide that:

"PART IX. SPECIAL USE PERMIT PROCEDURES

- 9-1 PETITION FOR SPECIAL USE PERMIT. Any person who desires to use his land within an agricultural or rural district for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for a Special Use Permit to use his land in the manner desired. If approved, the County Planning Commission within 60 days following its decision shall forward the decision together with the findings and the entire record of the proceeding including maps, charts, and other exhibits used in the proceeding to the Commission.

- 9-2 CONTENT OF PETITION. Petitions for issuance of a Special Use Permit shall specify the use desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the Special Use Permit, and shall include any facts, views, arguments, maps, plans and relevant data.
- 9-3 COUNTY PLANNING COMMISSION PROCEDURES
- (1) Rules. The petitioner shall comply with all of the rules of practice and procedure of the County Planning Commission in which the subject property is located.
 - (2) Conditions. The County Planning Commission may impose such protective conditions as it deems necessary in the issuance of a Special Use Permit. The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit, among other conditions shall be a condition of the Special Use Permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specified time, it may revoke the permit. The County Planning Commission may, with Land Use Commission concurrence, extend the time limit if it deems that unusual circumstances warrant the granting of such an extension.
- 9-4 DECISION AND ORDER BY THE LAND USE COMMISSION. Within 45 days after receipt of the county agency's decision, the Commission shall act to approve, approve with modification, or deny the petition. The Commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant.
- 9-5 APPEALS. A denial or a modification of the Special Use Permit, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

"PART V. SPECIAL PERMITS

- 5-1 PETITION BEFORE COUNTY PLANNING COMMISSION. Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for permission to use his land in the manner desired. The procedure to be utilized is outlined in Part IX of this Commission's Rules of Practice and Procedure.
- 5-2 TEST TO BE APPLIED. Certain 'unusual and reasonable' uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable use.'
- (1) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

- (2) That the desired use would not adversely affect surrounding property.
- (3) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
- (4) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
- (5) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District."

32. Rule 4 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu establishes the procedure and tests for determining an unusual and reasonable use which may be permitted in an agricultural district:

RULE 4. PROCEDURES FOR STATE SPECIAL USE PERMITS

- "4.1 (a) Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural use may petition the Planning Commission for permission to use his land in the manner desired. The Special Use Permit petition shall be submitted to the Department of Land Utilization. A copy of the Special Use Permit petition shall also be submitted to the Department of General Planning by the applicant. If approved, the Planning Commission shall forward the petition to the State Land Use Commission for its action as hereinafter provided."
- "4.1 (d) Test to be Applied. Certain 'unusual and reasonable' uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable use.'
- 1. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
 - 2. That the desired use would not adversely affect surrounding property.
 - 3. Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
 - 4. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
 - 5. That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.

6. That the proposed use will not substantially alter or change the essential character of the land and the present use.
7. That the proposed use will make the highest and best use of the land involved for the public welfare."

PROPOSED USE OF THE PROPERTY

33. The Applicant proposes to use the subject property to stockpile coral dredged and excavated during the construction of the Barbers Point Deep Draft Harbor.

34. The coral will be trucked or piped to the subject property from the Harbor site and will be stored in piles approximately 30 feet high.

35. Each of the three parcels comprising the subject property will be surrounded by berms to prevent water from the stockpiled material from running off into surrounding areas. The contract for the construction of the Harbor allows run off from the stockpile site only into the Harbor basin, which will be walled off from the ocean until the harbor is completed.

36. The contract for the construction of the Harbor requires the contractor to plant and maintain groundcover on the coral piles and on the berms to control dust, glare and to minimize visual impact.

37. The United States Corps of Engineers will monitor the construction to insure compliance with the contract, including those portions which relate to stockpiling of the dredged material.

38. At present, the Applicant proposes to dispose of the stockpiled material in approximately 30 years.

39. The proposed use of the subject property is in conformance with Policy 13, Objective A, Transportation and Utilities, of the General Plan, City and County of Honolulu, (1977) p. 40.

"Facilitate the development of a second deep-water harbor to relieve congestion in Honolulu Harbor."

40. With the possible exception of water, no public facilities will be unreasonably burdened. No urban type amenities, such as sewers or utility systems, need to be constructed to accommodate the proposed use. The roads giving access to the subject property are privately owned and maintained.

41. The water requirements of the proposed use have not been established at this time.

CONFORMANCE TO GUIDELINES FOR DETERMINING "UNUSUAL AND REASONABLE USE"

42. Pursuant to Section 205-6, Hawaii Revised Statutes, and the State Land Use Commission's Part IX of the Rules of Practice and Procedure, and Part V of the District Regulations, and Rule 4.1(d), Rules Relating to Administrative Procedure for the Planning Commission, the use requested by Applicant is an "unusual and reasonable" use within the Agricultural District because:

(1) Such use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

a. The purpose of the land use rules and regulations is set forth under Part I, Section 1-2 of the State Land Use District Regulations which provides that "...they are intended to preserve, protect, and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii."

b. There are no endangered flora or fauna species on the subject property.

c. There are no documented existing archaeological or paleontological sites on Parcels I and II. There are archaeological and paleontological sites on Parcel III. The United States Army Corps of Engineers has accepted archaeological and paleontological studies conducted on Parcel III by the Archaeological Research Center of Hawaii, Inc., (ARCH). These studies have collected and preserved archaeological and paleontological data.

d. A peer review process was conducted to evaluate the report's methodology and findings. Five of the six review letters were strongly critical of the 1981 ARCH report and recommended various levels of additional studies be conducted before adequate "mitigation" could be considered to have been accomplished.

e. Witnesses for Na 'Opio testified that a period of approximately four to six weeks would be required to complete any additional archaeological recovery operations. They also testified that "in-place" preservation of any archaeological or paleontological sites on the subject property would be inappropriate.

f. The United States Army Corps of Engineers decided that the ARCH report did meet the reporting requirements of the United States Department of the Interior. The United States Army Corps of Engineers, Honolulu District, concluded that the ARCH report is in full compliance with applicable Federal laws and regulations concerning historic

preservation and that construction may proceed on the deep-draft harbor project.

g. The nearest residential area is approximately 0.6 miles northwest of the subject property.

h. The proposed use of the subject property is in conformance with Policy 13, Objective A, Transportation and Utilities, of the General Plan, City and County of Honolulu, (1977) p. 40.

"Facilitate the development of a second deep-water harbor to relieve congestion in Honolulu Harbor."

i. The proposed use of the subject property for the temporary stockpiling of dredged coral will not alter the essential character of the subject property because Parcels I and II have been under extensive coral quarrying operations pursuant to City Planning Commission Variance No. 374 since 1959. Parcel III is vacant and primarily covered with kiawe. None of the subject property is in agricultural use at the present time.

j. The proposed use will not be inconsistent with the surrounding uses in the area because 1) the Barbers Point Deep Draft Harbor will be located immediately makai of the subject property, and 2) The James Campbell Industrial Park is located immediately south, across Malakole Road, from the subject property. The land to the west and mauka of the subject property is vacant and covered with kiawe, and portions of these lands are under a 26-year option for coral quarrying purposes.

k. All six days of the proceedings before the Planning Commission on the present Application were

conducted pursuant to the "contested case" requirements of the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, with the parties afforded ample opportunity for (1) intervention in the proceedings, (2) presentation of evidence, (3) cross examination of witnesses, (4) presentation of rebuttal evidence, (5) filing of proposed decision and orders and objections thereto, and (6) presentation of final arguments to the Commission.

1. The proposed temporary use of the subject property for coral stockpiling will not require the construction of typical urban facilities, infrastructure, or services such as streets, sewer or utility systems, or police and fire service.

m. The use of the special use permit procedure for the presently proposed coral stockpiling was contemplated and discussed before the Land Use Commission at the time of reclassification of the lands for the Barbers Point Deep Draft Harbor from Agriculture to Urban.

n. The use of the special use permit procedure to implement the proposed use (rather than a district boundary amendment) is proper in that it will help assure the availability of agriculturally suitable lands to accommodate future needs. (Hawaii State Planning Act, Section 226-7(b)(6), HRS) At the conclusion of the temporary coral stockpiling use, the subject property will be no less suitable for agricultural activities than at present. There will remain at least the potential for future agricultural use of the subject property.

(2) That the desired use would not adversely affect the surrounding property.

a. The area makai of Parcels I and II is the future site of the Barbers Point Deep Draft Harbor and consists primarily of barren coral plain with some kiawe and scrub. The areas to the west and mauka of Parcels I and II are also covered with kiawe and scrub.

b. The James Campbell Industrial Park is located south, across Malakole Road, from Parcel III. Camp Malakole is located makai, across Malakole Road, from Parcel III. The areas mauka and north of Parcel III are covered with kiawe.

c. Further mauka of the subject property, the land is in sugar. These sugar lands are, however, of relatively low productivity.

d. One pig farm and two chicken farms are located mauka of the subject property under year-to-year lease (p. 43). The former long-term leases for these farms have expired and will not be renewed since Hawaiian Cypress Cement has an option to quarry these lands over the next 26 years.

e. The James Campbell Industrial Park is in the Urban State land use district and is county zoned I-2 Heavy Industrial zoning district. The Deep Draft Harbor site was reclassified from the Agricultural State land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agricultural districts to the I-3 Waterfront Industrial district in 1980.

f. The United States Army Corps of Engineers will monitor the construction to insure compliance with the contract, including those portions which relate to stockpiling of the dredged material.

(3) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

a. The Applicant proposes to use the subject property to stockpile coral dredged and excavated during the construction of the Barbers Point Deep Draft Harbor.

b. The coral will be trucked or piped to the subject property from the Harbor site and will be stored in piles approximately 30 feet high.

c. Each of the three parcels comprising the subject property will be surrounded by berms to prevent water from the stockpiled material from running off into surrounding areas. The contract for the construction of the Harbor allows run-off from the stockpile site only into the Harbor basin, which will be walled off from the ocean until the Harbor is completed.

d. With the possible exception of water, no public facilities will be unreasonably burdened. No urban type amenities, such as sewers, utility systems, drainage and school improvements, or police and fire protection facilities need to be constructed to accommodate the proposed use. The roads giving access to the subject property are privately owned and maintained.

e. The water requirements of the proposed use have not been established at this time.

(4) Unusual conditons, trends and needs have arisen since the district boundaries and regulations were established.

a. The James Campbell Industrial Park is in the Urban State land use district and is county zoned in the

I-2 Heavy Industrial district. The Deep Draft Harbor site was reclassified from the Agricultural State land use district to the Urban State land use district in 1979, and was rezoned from the I-2 Heavy Industrial, R-6 Residential and AG-1 Restricted Agricultural districts to the I-3 Waterfront Industrial district in 1980.

(5) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.

a. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time.

b. The soil of the subject property, where present, is predominantly rocky, thin and porous. The Land Study Bureau's overall master productivity soil rating for agricultural use for the soils of the subject property is "E" or "very poor." The subject property is not classified by the "ALISH" (Agricultural Lands of Importance to the State of Hawaii) system as "Prime," "Unique" or "Other Lands of Importance to the State of Hawaii."

c. From 1954 to 1974, the subject property was used for grazing cattle. Since 1974, Parcels I and II have been quarried and Parcel III has been fallow and used only as a dump site by tenants of the James Campbell Industrial Park.

d. At present, there are no existing water facilities serving the subject parcel.

e. The Department of Agriculture concluded that the subject property has no significant agricultural value; however, its recommendation may have related only to the

potential for crop cultivation without discussing the potential for animal husbandry uses.

(6) That the proposed use will not substantially alter or change the essential character of the land and the present use.

a. The contract for the construction of the Harbor requires the contractor to plant and maintain groundcover on the coral stockpiles and on the berms to control dust, glare and to minimize visual impact.

b. At present, the applicant proposes to dispose of the stockpiled material in approximately 30 years.

c. Campbell Estate contemplates the temporary installation of \$2 million worth of equipment for rock crushing equipment and other improvements on the site in order to facilitate the removal of the dredged coral.

d. Parcels I and II have been extensively quarried and consist of barren coral plain. Parcel III is primarily covered with kiawe. None of the three parcels are in agricultural use at the present time.

(7) That the proposed use will make the highest and best use of the land involved for the public welfare.

a. By utilizing the Special Use Permit process, the subject property will remain in the Agricultural land use district so there is at least a potential for future agricultural use of the subject property, as opposed to immediate urbanization through the district boundary amendment procedure.

43. Any of the proposed Findings of Fact submitted by the Applicant or other parties that are not already ruled upon by the

Planning Commission by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

1. The Planning Commission of the City and County of Honolulu has the power and authority to consider and act upon the subject Special Use Permit application pursuant to Chapter 205, Hawaii Revised Statutes, the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, and the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu.

2. Pursuant to Section 205-6, Hawaii Revised Statutes, and Part IX of the Rules of Practice and Procedure and Part V of the District Regulations of the State Land Use Commission, and Rule 4.1(d), Rules Relating to Administrative Procedure for the Planning Commission of the City and County of Honolulu, the use requested by the Applicant is an "unusual and reasonable" use within the Agricultural District because:

a. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

b. The proposed use will not adversely affect the surrounding property.

c. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

d. Other than the 1979 Land Use Commission boundary amendment for the establishment of the Barbers Point Deep Draft Harbor, no unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

e. The subject property is unsuited for the uses permitted within the Agricultural State land use district.

f. The proposed use will not substantially alter or change the essential character of the subject property and the present use of the subject property.

g. The proposed use will make the highest and best use of the subject property for the public welfare.

DECISION AND ORDER

IT IS HEREBY ORDERED by the Planning Commission of the City and County of Honolulu that the guidelines set forth in Rule 4.1(d) of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part V, Special Permits, Section 5-2 Test to Be Applied, of the State of Hawaii Land Use Commission State Land Use District Regulations have been satisfied and that for the reasons as stated herein, the Application of THE ESTATE OF JAMES CAMPBELL for a Special Use Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land use district located at Barbers Point, Ewa, Oahu, Hawaii, Tax Map Key No. 9-1-14: por. 2, and 9-1-15: por. 1, is hereby deemed an "unusual and reasonable" use in the Agricultural District, and approved subject to the following mitigative and protective conditions:

1. That the Applicant shall retain or cause to be retained an archaeologist or archaeologists cooperating with the Historic Preservation Office for the State of Hawaii to conduct additional archaeological data recovery on Parcel III to further the research objectives set forth on pages 5 and 6 of Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, Ewa, Oahu, Federal Study Areas 1a and 1b, and State of Hawaii Optional Area 1, Hammatt et al. (1981). The archaeologists shall have a time limit within which to complete such data recovery, to wit, 60 days on Parcels I and II, and 120 days on Parcel III from

the date of approval of the Special Use Permit by the State Land Use Commission. Prior to such dates, the Applicant may commence stockpiling activities, including clearing or grubbing, with the approval of the archaeologists retained to conduct the additional archaeological data recovery operations, and

2. That pursuant to Rule 4.3 of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part IX Special Use Permit Procedures, Section 9-3(2) of the State Land Use Commission Rules of Practice and Procedure, the proposed coral stockpiling use shall be established within three years from the date of approval of the Special Use Permit by the State Land Use Commission, and

3. That the Applicant, its successors and assigns, shall defend, indemnify and hold the City and County of Honolulu harmless from and against any loss, liability, claim or demand arising out of this Special Use Permit, and

4. That full compliance with all applicable Federal, State, and County requirements shall be rendered.

DATED: Honolulu, Hawaii this 23 day of FEBRUARY, 1982.

PLANNING COMMISSION

CITY AND COUNTY OF HONOLULU

APPROVED:

By Leslie S. Hironaka-Chaimen

By Yukio Hironaka

By Randall Hironaka

By Amey K. K. K.

By Shizuko K. K.

DISAPPROVED:

By Harriet J. K.

By Martha S. C.

By _____

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

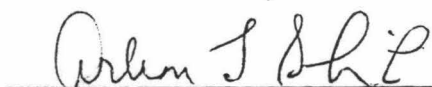
I, CHARLES A. PRENTISS, Acting Executive Secretary to the Planning Commission of the City and County of Honolulu, certify that the attached is a true and correct copy of the Findings of Fact, Conclusions of Law and Decision and Order in the matter of the application of The Estate of James Campbell for a State Special Use Permit to Stockpile Dredged Spoil from the Barbers Point Deep Draft Harbor held before the City and County Planning Commission on September 15 and 29, 1981, October 20, 1981, November 3, 10 and 24, 1981, December 15 and 17, 1981, January 12 and 26, 1982 and February 9, 1982.

DATED: March 4, 1982.



CHARLES A. PRENTISS
Acting Executive Secretary
Planning Commission
City and County of Honolulu

Subscribed and sworn to
before me this 4th day of
March, 1982.



Notary Public of the First
Judicial Circuit

My commission expires: 9-16-85

March 16, 1982

Mr. Alan T. Murakami
Legal Aid Society
85-555 Farrington Highway
Waianae, Hawaii 96792

Dear Mr. Murakami:

We have received your request to present oral arguments before the Land Use Commission regarding the special permit application of the James Campbell Estate for the stockpiling of dredged coral at Barbers Point, Oahu. Your request will be forwarded to the Commission and considered by the Commission at its action meeting. As yet, a meeting date to act on the special permit has not been established. As soon as a date is set by the Commission, I will notify you of the time, date and place.

Please feel free to call me if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

cc: Diane Kishimoto
Dept. of General Planning
Dept. of Land Utilization

*Kishimoto
c/o Ashford + Winston
6th floor, 235 Queen St
Hon, HI 96813*

LEGAL AID SOCIETY OF HAWAII

1164 BISHOP STREET
SUITE 1100
HONOLULU, HAWAII 96813

808 / 536-4302

NATHAN T.K. AIPA, ESQ.
President, Board of Directors

ALLENE K. RICHARDSON, ESQ.
Executive Director

LAND USE COMMISSION
STATE OF HAWAII
MAR 15 11 24 AM '82

Chairperson
Land Use Commission
335 Merchant St. Rm 104
Honolulu, Hawaii 96813

RE: Application of James Campbell Estate for a
Special Use Permit to Allow Stockpiling of
Dredged Spoil for Barber's Point Deep Draft
Harbor

Dear Mr. Chairperson:

Thank you for your response to my inquiry about the procedures you intend to follow in evaluating the special use permit application of the James Campbell Estate.

Since my letter and your response through Mr. Gordon Furutani, I learned that the Planning Commission has transmitted the record and recommended decision to the Land Use Commission. On behalf of Na Opio Aloha Aina, I request the opportunity to file exceptions to the decision and to present oral argument prior to your commission's action on the pending application. Since there appears to be no formal rules governing this procedure, I am making my request pursuant to Chapter 91, Hawaii Revised Statutes.

Please advise me as to the schedule of action so I may be given sufficient time to act. I would appreciate your earliest indication of when the commission will be voting on the application.

Thank you.

Sincerely,



Alan T. Murakami

696-6321

P.S. Please address all correspondence to: Legal Aid Society
85-555 Farrington Hwy.
Waianae, Hawaii 96792

cc: Diane Kishimoto

Serving the State of Hawaii

March 4, 1982

Mr. Alan T. Murakami
Managing Attorney
Legal Aid Society of Hawaii
85-555 Farrington Highway
Waianae, Hawaii 96792

Dear Mr. Murakami:

In response to your letter of February 22, 1982, to date the Land Use Commission has not received formal notification from the City Planning Commission regarding its approval of the special use permit application of the Estate of James Campbell for stockpiling dredged coral. We are aware, however, that the City Planning Commission has approved such a special use permit and that correspondence and records concerning this matter will be forthcoming.

The following is a brief description of the special permit procedure followed by the Land Use Commission. The Land Use Commission's decisions on special use permit applications are based on the record transmitted by the County Planning Commission. The Land Use Commission does not hold hearings on special permit requests. Each County Planning Commission is required to conduct a hearing to receive evidence and testimony on the permit application. If the Planning Commission approves the special use permit, its findings together with the entire record of the proceeding is forwarded to the Land Use Commission for review and final determination. Within forty-five days after receipt of the record from the County Planning Commission, the Land Use Commission must act to approve, approve with modification or deny the special permit. After the Land Use Commission receives the record from the Planning Commission, the Land Use Commission staff prepares a report which essentially involves the organization of the transmitted material in a chronological and coordinated format. No new evidence, analysis or recommendation from the LUC staff is introduced in the report. This report is then sent to the Land Use Commission before the action or decisionmaking meeting for the commissioners' review. At the action meeting, the Land Use Commission staff presents a brief summary of the report. Following discussion, clarification and answers to questions the Land Use Commission may have, the Land Use Commission votes to approve, deny, or modify on the permit. Finally, a Decision and Order reflecting the Land Use Commission's decision is served to complete action on this matter.

Mr. Murakami
March 4, 1982
Page 2

As you can see from the above description, the Land Use Commission does not expand on the record transmitted to them by the counties; and the Commission acts as a reviewing body in the special permit process.

The following is in response to your specific questions regarding the applicability of Part 5 of the Land Use Commission's Rules of Practice and Procedure, filing a request for oral argument with the Land Use Commission and transcript preparation:

- o Part 5 of the Land Use Commission Rules of Practice and Procedure concern post hearing procedures for hearings conducted by a hearing officer for Land Use District boundary amendment petitions and therefore would not apply to matters pertaining to the subject special permit.
- o You may submit a request for oral argument before the Land Use Commission. The Commission will decide on your request at the action meeting.
- o Transcripts to the proceedings are prepared by the County Planning Commission and is a part of the record transmitted to the Land Use Commission. At this time, since the Land Use Commission has not received any material from the Planning Commission regarding the special permit for stockpiling dredged coral, access to the transcripts must be arranged with the City Planning Commission.

Please call the Commission's office at 548-4611 if you have any questions regarding the above.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

cc: Gil Barron
Diane Kishimoto
Carl Young

LEGAL AID SOCIETY OF HAWAII

WAIANAE BRANCH
85-555 FARRINGTON HIGHWAY
WAIANAE, HAWAII 96792
TELEPHONE (808) 696-6321

(Chapman)

LAND USE COMMISSION
STATE OF HAWAII

RICHARD DORSEY MULLER, ESQ.
Interim Executive Director

February 22, 1982

William W. L. Yuen
Chairman
Land Use Commission
Old Federal Building
335 Merchant Street
Room 104
Honolulu, Hawaii 96813

LAND USE COMMISSION
STATE OF HAWAII
FEB 25 10 47 AM '82

RE: APPLICATION OF JAMES CAMPBELL ESTATE
FOR SPECIAL USE PERMIT TO STOCKPILE
DREDGED CORAL

Dear Mr. Yuen:

I represent Na Opio Aloha Aina, and intervener in the aboved-reference proceeding before the Honolulu City and County Planning Commission.

I understand that the recommended findings of fact and conclusions of law are being finalized for transmittal to the Land Use Commission.

I would appreciate prompt notice of this transmittal and the opportunity to file exceptions.

Since I am unfamiliar with the procedure to be followed, I request clarification on the schedule the Commission proposes to follow in making a final decision on this matter. Specifically, will Part 5 of the Commission's rules of Practice and Procedure apply?


In addition, I wish to file request for oral argument with my exceptions. Accordingly, it would be imperative to clarify the proper procedures to be utilized.

Finally, I wish to raise my concern about the preparation of transcripts concerning these proceedings. I have been informed by the executive secretary to the Commission that transcripts will be prepared. The parties have had to argue their case without the benefit of written transcripts. This lack of record has somewhat hindered Na Opio Aloha Aina's ability to propose findings of fact. Accordingly, it may be necessary to request additional time then that specified in Commission Rule 5-2(1) to file exceptions. As of this date, I do not believe the transcripts have been completed.

William W. L. Yuen
Page 2
February 22, 1982

If the Commission needs clarification on any of the above concerns,
please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan T. Murakami". The signature is fluid and cursive, with the first name "Alan" being more prominent.

ALAN T. MURAKAMI
Managing Attoreny

ATM/cn

cc: Gil Barron
Diane Kishimoto
Carl Young

Send CC
Mr. ~~Carl Brown~~ - to following:

City Planning Commission
Municipal Bldg.

Ms Diane Kishimoto
~~235 Queen St~~

P.O. Box 131
Hm, Hi 96810

Mr. Carl Young
c/o Hale Ola:
89-188 Farrington
Highway.
Waimea, Hi 96792

Chi Nakagawa
CHI NAKAGAWA
Chairman and Commissioner

Ei Miyasato
EI MIYASATO, Commissioner

Jooura
JO OURA, Commissioner

Carol B. Whitesell
WHITESELL, Commissioner

George Pascua
E PASCUA, Commissioner

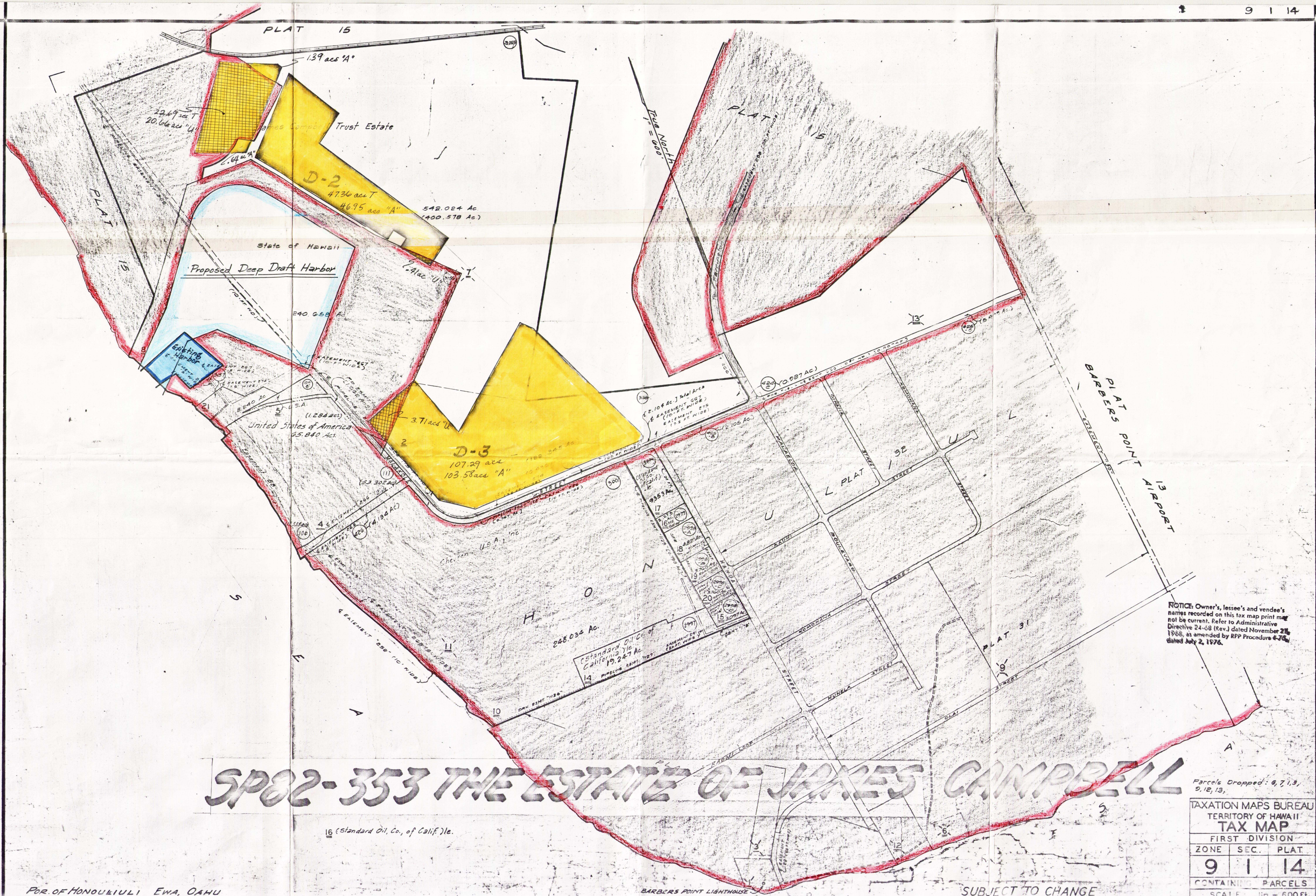
William W. Yuen
AM W. L. YUEN, Commissioner

State of Hawaii
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

7/23/82

Original colored maps were
sent to the Circuit Court.

LUC Maps
SP82-353



SP82-353 THE ESTATE OF JAMES CAMPBELL

POR. OF HONOLULU EWA, OAHU

BARBERS POINT LIGHTHOUSE

SUBJECT TO CHANGE

NOTICE: Owner's, lessee's and vendee's names recorded on this tax map print may not be current. Refer to Administrative Directive 24-68 (Rev.) dated November 21, 1968, as amended by RPP Procedure 4-76, dated July 2, 1976.

Parcels Dropped: 6, 7, 1, 3,
9, 12, 13,

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST DIVISION		
ZONE	SEC.	PLAT
9	1	14
CONTAINING PARCELS		
SCALE 1 in. = 600 Ft.		

MAR 23 1982